



Planning and Development Services

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MEETING MINUTE SUMMARY TOWN OF BRIGHTON PLANNING COMMISSION MEETING Wednesday, September 18, 2024 6:00 p.m.

****Meeting minutes approved on October 16, 2024****

Approximate meeting length: 1 hour 54 minutes

Number of public in attendance: 11

Summary Prepared by: Wendy Gurr

Meeting Conducted by: Commissioner Machlis

***NOTE:** Staff Reports referenced in this document can be found on the State website, or from Planning & Development Services.

ATTENDANCE

Commissioners and Staff:

Commissioners	Public Mtg	Business Mtg	Absent
Donna Conway	x	x	
Don Despain (Chair)			x
Ulrich Brunhart	x	x	
Tom Ward	x	x	
Ben Machlis (Vice Chair)	x	x	
Phil Lanuoette (Alternate)			x
John Carpenter (Alternate)			x

Planning Staff / DA	Public Mtg	Business Mtg
Wendy Gurr	x	x
Jim Nakamura	x	x
Curtis Woodward	x	x
Trent Sorensen	x	x
Kara John	x	x
Polly McLean	x	x

BUSINESS MEETING

Meeting began at – 6:01 p.m.

- 1) Approval of Minutes from the August 21, 2024 Planning Commission Meeting.

Motion: To approve Minutes from the August 21, 2024 Planning Commission Meeting as presented.

Motion by: Commissioner Ward

2nd by: Commissioner Brunhart

Vote: Commissioners voted unanimous in favor (of commissioners present)

- 2) Other Business Items. (As Needed)

Ms. McLean advised Title 18 is coming in October. MSD staff has been working on more complete changes than just state code and will ask for a recommendation. Commissioner Ward asked for more time to review documentation and submitted at least a week prior to the planning commission and posted online. Commissioner Machlis said they don't want to handicap staff and express in advance the bigger things as a goal, but not mandated.

PUBLIC HEARING(S)

Hearings began at – 6:07 p.m.

OAM2024-001259 - Consideration and possible action on an Ordinance amending 19.42.030 Accessory Dwelling Units, Internal to clarify that Short Term Rental Use is not permitted on properties with Accessory Dwelling Units, that the Accessory Dwelling Unit is the unit not being lived in by the owner, and to clarify the definitions of 19.04.020 (19) dwelling units, (54) Owner Occupancy, (59) Primary Dwelling, and (66) Second kitchen. **Planner:** Jim Nakamura (Discussion/Motion)

Greater Salt Lake Municipal Services District Planner Jim Nakamura and Polly McLean, Attorney provided an analysis of the code amendments.

Commissioners, Counsel, and staff had a brief discussion regarding renting long term requirement for business licenses, current three applications have come in for an ADU, but one is not using it as a STR. Difference between an ADU and a duplex, water and uses, conservation and water contingency plan, occupancy going up and water use will go up as well and will hit the limit of capacity of delivering water, water meter installation with tiered water rate structure. New builds can't require how many bathrooms, but requirement for fixtures.

Mr. Sorensen explained that to qualify as a duplex, the building must meet a one-hour fire rating for safety to ensure tenants are protected from one another. Additionally, furnace ducts cannot connect the two units. This is based on the international building code. To promote IADUs as a means of creating affordable housing, the state relaxed some of the building code. But to ensure safety, the owner must live primarily in one part of the IADU because it's expected an owner would have oversight by being in the home opposed to two sets of tenants. Having a caretaker doesn't exempt the home, it would need to be upgraded to meet the building code. An IADU can have a door separating the two units and can have the minimum level of sheetrock. It must share a meter, electricity, and heating whereas a duplex the utilities are separate like in a townhome. The challenge is enforcing the owner lives there.

Commissioner Brunhart motioned to open the public hearing, Commissioner Ward seconded that motion.

PUBLIC PORTION OF HEARING OPENED

Speaker # 1: Citizen

Name: Morgan on behalf of Carole McCalla

Address: Not provided

Comments: Morgan read Ms. McCalla's submitted letter. (Attached)

Speaker # 2: Citizen

Name: Brian Reynolds

Address: 12274 East Willow Loop Road

Comments: Mr. Reynolds said concurs with the thoughts put forth. Each property has a total capacity. Allocation to IADU and doesn't agree with loading up a STR. With respect to the IADU, if you decide to have one reduces the impact to the STR. Capacity to one use or another. Focus on capacity and allow the owner a tradeoff. Appears there's a consensus of having the owner in the property. Maybe one use shouldn't be emphasized over another.

Mr. Reynolds submitted two letters prior to the meeting (attached) and said he wanted to address the affidavits. Mr. Reynolds said he didn't understand why the requirement is made. When he sells his property, the buyer would be responsible for applying for the STR. If the buyer must pursue as an applicant, there is an obligation to follow the license. In the manner conducting a STR is irrelevant. Affidavit will sit in the

file for 20 years, he won't remember but the title company will. No mechanism to update code requirements that need to reflect in the letter. Better solution if changes in the ordinance, buyers responsibility to be aware.

Speaker # 3: Citizen

Name: Chad Smith

Address: Willow Loop Road

Comments: Mr. Smith said worried when reviewing the packet and recommendation and agrees with concerns. How to best align goals and where do we want ADU's, and STR. Current proposal written says its legal but removing rights to point out clarity. Benefits to allowing ADU's and STR. State and county definition is a dwelling unit to be used for long term rentals. Conflict when assuming talking about caretaker unit. Personal situation is not to have the occupancy go up, but full-time residence and make money while subsidizing own mortgage but use as friends come over, occasional rental. Alternative if passed and STR not allowed. Would have to leave when her sister does to rent the whole home. Much prefer fewer people, two bedrooms rented. Encourage to consider what types of rentals and ADU's.

Speaker # 4: Citizen

Name: Wendy Smith

Address: Willow Loop Road

Comments: Ms. Smith said appreciates the comments Tom made tonight. Don't think need to chose one. Longtime housing for workforce and living in the canyon. Expensive to live in the canyon and not fortunate to have purchase years ago. The families to incentivize is difficult to do with the costs and don't want to limit and use in their homes how to use their properties. People want to come here with beautiful resources. Want both and provide STR and long-term housing. She wants this body to not forward this how it is written. Definition for changing a kitchen. Take the comments received and come up with other language.

Speaker # 5: Citizen

Name: Amy Kelley

Address: Willow Loop Road

Comments: Ms. Kelley said appreciates the conversation. Would like to understand more of what this body does. Polly mentioned earlier is it to long term situation available or STR's safer with owner occupancy or require owner primary residence. Would like these addresses and what the intent is. Property owners trying to plan for futures. They have built current property and thinking of family needs and important part of community aspect and property owners be thoughtful on how to use your property. Respect the canyon and resources. Would like to hear more of the intent of what an IADU is.

Comments from Chat:

Tara Paras 9/18/2024 7:26 PM • Here is the Internal Accessory Dwelling Unit state code reference.

https://le.utah.gov/xcode/Title10/Chapter9a/C10-9a-S530_2023050320230503.pdf

(4) A municipality may:

- (a) prohibit the installation of a separate utility meter for an internal accessory dwelling unit;
- (b) require that an internal accessory dwelling unit be designed in a manner that does not change the appearance of the primary dwelling as a single-family dwelling;
- (c) require a primary dwelling: (i) regardless of whether the primary dwelling is existing or new construction, to include one additional on-site parking space for an internal accessory dwelling unit, in addition to the parking spaces required under the municipality's land use regulation, except that if the municipality's land use ordinance requires four off-street parking spaces, the municipality may not

require the additional space contemplated under this Subsection (4)(c)(i); and (ii) to replace any parking spaces contained within a garage or carport if an internal accessory dwelling unit is created within the garage or carport and is a habitable space;

(d) prohibit the creation of an internal accessory dwelling unit within a mobile home as defined in Section 57-16-3;

(e) require the owner of a primary dwelling to obtain a permit or license for renting an internal accessory dwelling unit;

(f) prohibit the creation of an internal accessory dwelling unit within a zoning district covering an area that is equivalent to: Utah Code Page 2 (i) 25% or less of the total area in the municipality that is zoned primarily for residential use, except that the municipality may not prohibit newly constructed internal accessory dwelling units that: (A) have a final plat approval dated on or after October 1, 2021; and (B) comply with applicable land use regulations; or (ii) 67% or less of the total area in the municipality that is zoned primarily for residential use, if the main campus of a state or private university with a student population of 10,000 or more is located within the municipality;

(g) prohibit the creation of an internal accessory dwelling unit if the primary dwelling is served by a failing septic tank;

(h) prohibit the creation of an internal accessory dwelling unit if the lot containing the primary dwelling is 6,000 square feet or less in size;

(i) prohibit the rental or offering the rental of an internal accessory dwelling unit for a period of less than 30 consecutive days;

(j) prohibit the rental of an internal accessory dwelling unit if the internal accessory dwelling unit is located in a dwelling that is not occupied as the owner's primary residence;

(k) hold a lien against a property that contains an internal accessory dwelling unit in accordance with Subsection (5); and (l) record a notice for an internal accessory dwelling unit in accordance with Subsection (6).

Tara Paras 9/18/2024 7:30 PM • 10-9a-530 Internal accessory dwelling units.

(1) As used in this section:

(a) "Internal accessory dwelling unit" means an accessory dwelling unit created:

(i) within a primary dwelling;

(ii) within the footprint of the primary dwelling described in Subsection (1)(a)(i) at the time the internal accessory dwelling unit is created; and

(iii) for the purpose of offering a long-term rental of 30 consecutive days or longer.

(b)

(i) "Primary dwelling" means a single-family dwelling that:

(A) is detached; and

(B) is occupied as the primary residence of the owner of record. (ii) "Primary dwelling" includes a garage if the garage:

(A) is a habitable space; and

(B) is connected to the primary dwelling by a common wall. (2) In any area zoned primarily for residential use:

(a) the use of an internal accessory dwelling unit is a permitted use;

(b) except as provided in Subsections (3) and (4), a municipality may not establish any restrictions or requirements for the construction or use of one internal accessory dwelling unit within a primary dwelling, including a restriction or requirement governing:

(i) the size of the internal accessory dwelling unit in relation to the primary dwelling; (ii) total lot size;

(iii) street frontage; or

(iv) internal connectivity; and

(c) a municipality's regulation of architectural elements for internal accessory dwelling units shall be consistent with the regulation of single-family units, including single-family units located in historic

districts.

(3) An internal accessory dwelling unit shall comply with all applicable building, health, and fire codes.

Tara Paras 9/18/2024 7:31 PM • (a) A municipality that issues, on or after October 1, 2021, a permit or license to an owner of a primary dwelling to rent an internal accessory dwelling unit, or a building permit to an owner of a primary dwelling to create an internal accessory dwelling unit, may record a notice in the office of the recorder of the county in which the primary dwelling is located.

This section states a municipality ...may...record a noticebut it does not state you have to record a notice

Tara Paras 9/18/2024 7:31 PM • Can we clarify the wording of may versus must in the state code?

Tara Paras 9/18/2024 7:39 PM • I don't believe it has to be it...it was intendedcan you clarify intended versus it has to be

Commissioner Ward motioned to open the public hearing, Commissioner Brunhart seconded that motion.

PUBLIC PORTION OF HEARING CLOSED

Commissioners, staff, and counsel had a brief discussion regarding whether there is a duplex in the canyon, and if so, does it have two water shares, full-time renter/full-time contact. Workshop with planning commission and STR task force, and representatives from the water company. Grandfather existing 6, but none moving forward. Goals options: principle residence and short term rental, long term caretaker/ 24 hour contact, no two str in the same property, rent the entire house and have a STR, no affidavit revoked and can it be taken off state code, include and require water company supply demand study for permits, conservation water scarcity and contingency plan, and if you live there you can do a STR-permit by right.

Ms. McLean read the State code definition 10-9a-5.

Focus on IADU, keep interaction between IADU and STR in the STR ordinance. Focus on affidavit and what's in there and what we're doing with that, incentive compliance. 5.19.090, definition of STR.

Motion: To continue file #OAM2024-001259 Consideration and possible action on an Ordinance amending 19.42.030 Accessory Dwelling Units, Internal to clarify that Short Term Rental Use is not permitted on properties with Accessory Dwelling Units, that the Accessory Dwelling Unit is the unit not being lived in by the owner, and to clarify the definitions of 19.04.020 (19) dwelling units, (54) Owner Occupancy, (59) Primary Dwelling, and (66) Second kitchen to the Town of Brighton Council for approval until a workshop is organized to discuss broader policy issues and staff consider issues addressed and workshop outline.

Motion by: Commissioner Machlis

2nd by: Commissioner Brunhart

Vote: Commissioners voted unanimous in favor (of commissioners present)

Commissioner Brunhart motioned to adjourn, Commissioner Ward seconded that motion.

MEETING ADJOURNED

Time Adjourned – 7:55 p.m.

Kara,

Can I submit this statement for the planning commission tonight to be read, please? I tried to keep it short.

"I would like to request that the planning commission recommend to town council to remove any and all language in the town ordinances forbidding homes with an IADU from operating as a short term rental (STR) with the following conditions:

1. the water company of the STR give written approval of water availability
2. the restriction that the property cannot operate as TWO STRs.

Given that the town is not involved in the water business, any restrictions based on water usage should be avoided by town ordinances. If water is removed as a factor in the town's decision to NOT allow STRs in homes with IADUs, I would like to ask:

What issues arise for the town or local community if an STR with an IADU is rented to a long term caretaker or is owner occupied? I believe that there are NO ISSUES. It is an enhancement to the community if a long term renter or owner is present. Do the planning commission members understand my logic and agree with me on this fact? If not, please explain.

Rather than make the whole process more complicated with the proposed IADU affidavit, simply allow ALL homes with an IADU approved by the MSD (state mandate in mind) to operate as an STR with 1. water company approval and 2. restriction on operating more than ONE STR

Given that STRs are only allowed in the Brighton Loop area, Solitude and Silver Fork, where measures have already been taken to cap Silver Fork's STR growth at 15% and Solitude is not as issue, we are not talking about a huge surge in IADUs in STRs canyon wide. The potential to provide affordable housing and oversight on short term renters is greater than any threat to community. Thank you."

Thanks,
Carole

Kara:

Please submit this public comment to the Planning Commission.

In all due respect, I would ask the Planning Staff as to what they are trying to accomplish through such proposed regulations?

In my view, there's no functional distinction (occupancy, water usage, parking or any other resource utilisation) between an STRs property with or without a IADU.

For example: Should the owner elect to include the IADU as part of the short term rental it serves solely as an additional kitchen, bedroom and bathroom being made available to the STR guests, and as such, is subject to the same regulations as any other bedroom or bathroom.

Should the owner decide to occupy that IADU, they shall then have to reduce the number of bedrooms and bathrooms being made available to the STR guests. Essentially, their actions reduce the number of bedrooms/bathrooms being made available to the STR guests. As such, there's no difference in the overall utilization of the property - it's simply a trade off between who's utilizing that space.

The same argument pertains as to whether the owner is occupying IADU as a primary or secondary residence. What's the difference?

As for the minimum lot size, parking and detached structures, are not these considerations already covered by the FCOZ ordinances that govern the size of the structure, number of parking spaces and detached structures. Whether a property does or does not contains an IADU seems irrelevant to these considerations.

It seems the Planning Staff is proposing that properties with IADU be prevented from serving as STR's solely for the ease of the enforcement that owners not rent out their IADU's as second short term rentals. They should be reminded that the STR permit already prohibits such activity and the Town actively monitors the OTA websites (VRBO, AirBNB) for violations. To my knowledge, no violations of this nature have ever even been alleged.

And lastly, these proposed restrictions in IADU's and secondary homes as STR properties appear to operate as a means to force these properties into the LT rental pool for canyon residents. The underlying economics of such don't support such use. Rather these ill conceived efforts would have the opposite effect. For without a means of supplementary income, these properties would transition to second homes for the wealthy elite and Brighton would become more like Deer Valley.

Respectively, submitted for consideration by the Planning Commission.
Brian Reynolds
Resident of Brighton

Kara,

Please submit the following comments for the consideration of the Planning Commission.

Please explain why STR owners being forced to attest to IADU's and serve notice to all future owners must live in one of the units as their primary residence?

In my opinion, this requirement represents an irrelevant and unnecessary attestation to which the City has not considered the ramifications of its actions.

As I understand, there are no rights or benefits conveyed from the Seller of a STR property to any Buyer. That ascertain is evidence by my understanding that any perspective buyer would have to reapply for their STR permit. Accordingly, there would be no rights or benefits conveyed through the sales process. Therefore, why would the Seller have any obligation to notice a perspective buyer as to their obligation to live in a IADU as their primary residence? Would not the Buyer as the perspective STR permit applicant - with no rights or benefits having been conveyed upon him by the Seller - be solely responsible to undertake the permitting process. And, as the permit holder, they would be responsible for abiding by the requirements and obligations set forth in the STR ordinances.

Should the Buyer elect to pursue a STR application, they must undergo the same process as any other applicant. Therefore, having purchased the property from someone else has no relevance to the application process. Should they want to secure a permit, they must adhere to the same regulations as anyone else.

What purpose does this notification serve when the STR ordinances clearly state that the property shall constitute the property owner's primary residence and restrict those conditions under which the primary owner rent portions of the property?

My overriding concern however is that it places an obligation upon me that could have adverse legal consequences. For example, should the City revise the ordinance in manner contrary to this notice, who shall notify me of such change(s)? Before the City forces an obligation upon me as the property owner, they should take into consideration their own responsibility to notify me of any changes to the ordinance and legal recourse, should they fail to notify me in due course of those changes.

Why are we creating a chain of legal responsibilities for those regulations that already reside in the STR ordinances when it's not necessary?

Kindly submitted,
Brian Reynolds
12274 E Willow Loop Road
Brighton