Provo City Planning Commission

Report of Action

December 11, 2024

ITEM 3* Development Services requests an Ordinance Text Amendment to Section 14.01.110 (Prohibition of Sham Property Transactions) to clarify rules with LLCs and trusts. Citywide application. Jessica Dahneke (801) 852-6413 jdahneke@provo.org PLOTA20240309

The following action was taken by the Planning Commission on the above described item at its regular meeting of December 11, 2024:

RECOMMENDED APPROVAL

On a vote of 7:0, the Planning Commission recommended that the Municipal Council approve the above noted application.

Motion By: Daniel Gonzales Second By: Adam Shin

Votes in Favor of Motion: Adam Shin, Barbara DeSoto, Daniel Gonzales, Jeff Whitlock, Melissa Kendall, Andrew South, and Anne Allen.

Jeff Whitlock was present as Chair.

• Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with Staff analysis and determination.

TEXT AMENDMENT

The text of the proposed amendment is attached as Exhibit A.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

CITY DEPARTMENTAL ISSUES

• The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

NEIGHBORHOOD AND PUBLIC COMMENT

• This item was City-wide. The District 1 Chair, Sharron Memmott, addressed the Planning Commission stating that she felt this text amendment closes a loophole and will help enforcement of accessory apartments.

CONCERNS RAISED BY PUBLIC

No concerns were raised by residents.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Staff explained that for a property to be considered owner occupied when owned by an LLC all members of the LLC need to live at the property.
- Staff explained that the city cannot prohibit an LLC or Trust from applying for an accessory apartment.
- In response to questions regarding short-term rentals, staff explained tools that can be used to enforce short-term rentals.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Commissioner Whitlock clarified that the text amendment is for accessory dwelling units and asked if adopted would it apply to already existing accessory dwelling units.
- Commissioner Kendall asked for clarification regarding a member vs. trustor. She then asked if a property was
 owned by an LLC that consisted of a lot of members but only some of the members live at the property would
 the property be considered owner occupied.
- Commissioner Whitlock asked for further explanation of how people are avoiding owner occupancy through LLCs and how this text amendment would prevent it.
- Commissioner Shin stated that keeping "or" between the listed items in the subsection of the text amendment could make it clearer that each of the clauses listed in the subsection would count as a sham property transaction as opposed to a person having to meet all the clauses listed before it would be a sham property transaction.
- Commissioner DeSoto agreed
- Commissioner Allen asked why we allow LLCs/Trusts to have accessory apartments.
- Commissioner Kendall stated that it is not uncommon for people to put properties in LLCs or Trusts for estate or tax purposes, but people have been putting properties in LLCs and letting their children live in them with an accessory dwelling unit by switching the members in the LLC
- Commissioner Whitlock stated that there have been a lot of changes to the code regarding ways to enforce
 accessory apartments that are already in compliance, but not many conversations about properties with
 accessory dwelling units not in compliance.
- Commissioner Kendall stated there are accessory apartments that seem like they are complying; however, because they are owned by LLCs and changing members do not stay owner occupied and never intended to.
- Commissioner DeSoto stated there people not in compliance with city code because they are working the system and people not in compliance with the code because they don't know the rules and this text amendment would make it more difficult for those people who just try to work around the code.
- Commissioner Whitlock agreed with the statement but said this text amendment focuses on people already trying to work with the city or that the city is aware of he has not seen items brought to the Planning Commission that focus on finding accessory dwelling units that have not been brought to the city's attention.
- Commissioner Gonzales pointed out that zoning is complaint based and for the city to be made aware of accessory dwelling units neighbors have to complain to the city.
- Commissioner Whitlock pointed out that areas with a lot of renters have a higher turnover and the neighborhoods would be less likely to be aware of an illegal accessory dwelling.
- Commissioner DeSoto asked Commissioner Whitlock if he meant he would like to see a framework for dealing with finding accessory dwelling units that does not rely on neighborhood complaints alone.
- Commissioner Whitlock agreed stating he'd like a framework for enforcement that addresses finding not only illegal accessory dwelling units but additional violations such as short-term rentals without needing neighborhood complaints to identify it.
- Commissioner DeSoto asked some questions regarding tools for enforcement of short-term rentals.
- Commissioner Gonzales motioned to recommend approval of the item to the Municipal Council.

Planning Commission Chair

Bill Reperane

Director of Development Services

- See <u>Key Land Use Policies of the Provo City General Plan</u>, applicable <u>Titles of the Provo City Code</u>, and the <u>Staff Report to the Planning Commission</u> for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.
- <u>Legislative items</u> are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.
- Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Development Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit A

Proposed amendment to 14.01.110

14.01.110

Prohibition of Sham Property Transactions.

...

- (2) A sham transaction shall be presumed regarding premises required by this Title to be owner occupied when:
 - (a) the name of a person who does not occupy the premises periodically appears as the owner of the property in the chain of title over a period of time; or
 - (b) the name of the person who occupies premises and claims to be the property owner does not appear in any instrument in the land records of Utah County which grants a fifty-one percent (51%) or greater property interest in the property to such person; or
 - (c) a property owner who does not occupy the premises transfers the owner's interest in the property, or a portion thereof, to another person who:
 - (i) occupies the premises as the purported property owner and agrees to transfer the property back to the non-occupying property owner upon termination of person's occupancy of the premises on the property or some other event, or
 - (ii) executes, as a condition of occupancy, documents that will have the effect of transferring the title to the property back to the first property owner upon termination of the person's occupancy of the property-; or
 - (d) if the property owner is an LLC or trust, the following types of ownership changes occur within the first year of ownership by an LLC or trust, occur within the first year after applying for a rental license, or repeatedly occur during the rental period, unless every member or trustor can be demonstrated to occupy the premises as their primary residence:
 - (i) changes in ownership involving members of the LLC or trustors; or
 - (ii) transfer of the property to another LLC or trust, if any member or trustor of the new owner entity was also a member or trustor of the transferring owner entity, or an immediate family member of a member or trustor of the transferring owner entity.

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