

Parowan City Planning and Zoning Minutes
January 3, 2024 – 6:00 P.M.
35 East 100 North – Parowan City Office

MEMBERS PRESENT: Larry Zajac (Chair), Jerry Vesely, Heather Pett, Weston Reese, David Burton (Council Representative)

MEMBERS ABSENT: Tony Leydsman, Jamie Bonnett

COUNCIL AND STAFF PRESENT: Mollie Halterman (Mayor), John Dean (Council), Dan Jessen (City Manager), Keith Naylor (Zoning Administrator Assistant), Judy Schiers (Secretary)

PUBLIC PRESENT: There was no public present.

CALL TO ORDER: Larry Zajac called the meeting to order at 6:00 P.M.

ANY CONFLICTS WITH ITEMS ON THE AGENDA: No conflicts were declared.

APPROVAL OF MINUTES DECEMBER 20, 2023: Larry wanted it noted that he discussed the need to make code for external accessory dwelling units also. Heather Peet made a motion to approve the minutes from December 20, 2023. Jerry Vesely seconded the motion. All members voted in favor and the motion passed.

BIKE UTAH – OVERVIEW OF THE ACTIVE TRANSPORTATION PLAN: Bike Utah was not ready to present. This item will be on the next agenda.

ANNUAL ELECTION OF CHAIR AND CHAIR PRO TEMPORE: Jerry Vesely nominated Larry Zajac as Chair of the Planning and Zoning Committee. Heather Peet seconded the motion. All members voted in favor of this nomination.

Jerry Vesely nominated Heather Peet as Chair Pro Tempore of the Planning and Zoning Committee. Weston Reese seconded the motion. All members voted in favor of this nomination.

INTERNAL ACCESSORY DWELLING UNIT CODE DISCUSSION: Larry said that this item was a result from the last meeting, specifically internal accessory dwelling units but he said we may have some discussion about external, although he is only prepared to talk about internal accessory dwelling units at this meeting.

Dan said that due to recent legislation, the new State Code forces use to allow internal accessory dwelling units in any residential zone. Our current code is not consistent with this new legislation. Also, we need to look at our "other than residential zones," and maybe only allow them in certain zones. The City R2 code allows multiple dwellings, but only limits it to a duplex. The code says building not buildings. He says we need to look at what the difference would be in allowing casitas or mother-in-law buildings and if they are more of an impact to the City than a duplex. He said our code is a little rigid on this.

Larry handed out information from the Utah Land Institute that they use for trainings. It was put out in March of 2023. Dan said it is written to help cities with the internal accessory dwelling unit requirements. Larry informed the commission that the IADU State Code is 10-9a-530.

Larry went through the material and requirements (see attached). He asked the commission for their thoughts and the pros and cons. He also asked the members to think about what other concerns we would want in our code. Larry said that he read that Kaysville only requires licenses if it is rented to other than a family member. He said that the State Code seems pretty solid and we can adopt that into our code as an Internal Accessory Dwelling Unit Code that mirrors the State Code, but asked what else would our concerns be, that we would want to put into Parowan City Code.

He said for example, Kaysville's Code, which must comply with State Code, does not allow an IADU over a garage. In prior meetings we have had discussions about barnominiums. This would not be allowed as an IADU, as they are not allowed over a garage or barnominium, only in a primary dwelling unit.

David said that he understands that if it is a detached garage, IADUS are not allowed. Weston asked if that would then be considered as an external ADU. Larry said a living unit over a garage would be an external accessory dwelling unit.

Heather questioned if the primary owner of a residence could live in the IADU and rent out the primary residence. Larry said he is unsure if the State Code addresses this. Heather said in the handout under Relevant Law (ii) an "internal accessory dwelling unit" is an accessory dwelling unit that is within the footprint of the primary detached dwelling unit (occupied as the primary residence of the owner) and offered for rent for 30 consecutive days or longer. She said she guesses it doesn't matter if the primary owner lives in the ADU and rents out the primary residence, as long as the owner resides on the lot and it is not a short-term rental.

David asked if the State imposed ordinance changes are going to take priority and precedent over City Code. Larry said we can't be more strict than State Code. David said he thought we could be more strict than State Code. Dan said in this instance, State Code trumps. He said there was a big fight over this very issue, but we have to allow them because the State says specifically that we shall.

Larry said that as a City we need to decide what our path is going to be. We are missing middle housing and housing affordability in general, so moving forward we will need to revise code and we need to decide how we want to do that. At the State level, because we are a small City, we can fall under the radar, and some of the State Code doesn't make sense for us, for example mass transit. He said this is just a tip of the iceberg. The buzz word is "upzoning" which is a concept of allowing higher density in the existing zones. He said we just need to start thinking about some of these things.

Dan read from the State Code "in any area zoned primarily for residential use, the use of an IADU is a permitted use except as in certain section and subsections. A municipality may not establish any restrictions or requirements." We can not do anything that would contradict State law. Dan said he believes there is going to be a lot more legislation this year to try and combat the housing affordability problems. Larry said there is already HB 206.

Larry asked how are we going to enforce intended use of long-term rentals. Enforcement will be difficult at best. If anyone has any ideas on how to mitigate this, that would be a good discussion, also how to prevent short-term rental use and how do we monitor that.

Heather asked if short term rentals are being required to have a business license. Mayor Halterman said that is already in place. Dan said we don't have a short-term rental code, but when the City implemented the Transient Room Tax, the ordinance says that anyone who collects that tax are required to have a business license.

Heather said that there could be several ways that this can be policed. She said one is when they come into get a building permit to build an IADU. They are notified of the rules then. Another, is when they get a business license. If they want to take the risk of violating the rules, they should be notified that the County can hold a lien against their home. She said is policing this going to be hard, yes, but if they are going to be notified up front and they want to take that risk, we can at least know we have done what we can.

Larry said that the people who run AirBNB's and VRBO's that don't have a business license now, probably won't come in to and say they have an ADU. Larry said that he always thought of an ADU as a purpose for aging parents, or a sick relative, that sort of thing. You will never police that. But what if the situation changes and now the home goes up for sell and nothing is recorded with the property that this must be run in accordance with Parowan City Code. There is not anyway to police or follow that.

Heather said she is contemplating creating an IADU in her house, because a groomer that has come to work for her has no place to live. She will come in and get a building permit, and when the house sells, she thinks that would have to be disclosed in a realtor's statement. Larry said that the State Code goes further and says it has to be recorded with the County Recorder and would be found in a title search of the home. Dan said he thinks the main purpose of that is for renter's rights. If you buy a home with renters in the home, that should have to be disclosed. You can't just kick them out and a recorded ADU against the deed would notify any potential buyers. Larry thinks that would be good practice. He said along the same kind of discussion this is also the issue with the Historic Preservation District, who is responsible to notify that buyer. It would be the same type of situation.

Dan asked if the commission thinks we need to have any restrictions on IADUS. He said the State Code says he have to have them, but we can put certain restrictions on them. He asked if we need to write IADU code or just simply amend the zones. There was a discussion regarding which zones would need to be amended. Scott Burns (City Attorney) said that the State has been a little heavy handed with this. He said he thinks that 90% of municipal codes are in conflict. He said that the pressure is on this body and the Mayor and City Council to become compliant with State Code. He said a person comes in and get a permit and builds their dream home, the largest investment they will every make, and then the guy next door can turn his house into a multiple rental unit. You will have some public clamor.

Dan points out we need to find a way to marry with the State of Utah and what they are trying to make us do. David said that the cookie cutter approach that applies to every municipality is wrong. Scott said you are right that we are not West Valley or Draper, but we need to find a way to make this work for Parowan.

Weston asked if we have to notify those in the zones this will affect. Dan said yes, there will be meetings and public hearings and the public will be notified. Dan said that the State Code does allow us to put restrictions within our bounds, such as parking spaces, utility meters, etc.

Heather said she would agree that one internal IADU would be the maximum in a residence. Larry said part of the definition of an ADU is it is being offered for rent for 30 consecutive days or longer.

The commission talked about ways to implement the code. Scott asked the commission to allow him to reach out to other cities that have full-time attorneys and planners. He said there are 1,000 variants that can be applied and just relying on State Statute isn't going to cut it, we need something in our code that is relevant to Parowan and what Parowan needs. Dan said he will also check with other City Managers.

Heather said that she wants to make it clear that she is very in support of IADUs. She said there are some restrictions that we should make, but she is in support of this code.

David said he thinks we need to be careful of accepting government overreach as one size fits all. He said we should express our concerns to the legislators. Weston feels it is wrong to force these into a R1 Zone and thinks we could have a lot of upset people. David said that laws can be changed and modified.

Larry said this is going to be a heated topic and a discussion for some time, but it is our responsibility to have the discussion. He said we can't ignore it. When it comes time to vote, vote your mind.

Weston Reese made the motion to table the motion until the attorney can do some research. Heather Peet seconded the motion. All members present voted in favor of the motion and the motion passed.

MEMBER REPORTS: Dan said he thinks that what we are doing is on the right track with discussions on ADU's. Larry says ADUs help with low-cost housing and middle housing and we are probably ahead of the game looking at different options.

Dan said we have people wanting to develop property in Parowan that has been tricky because of the property characteristics. The demand for housing is huge right now and developers are requesting us to figure it out. He said if our code is not where we want it to be, we are going to get what we have. It is good to work through these issues and make sure we are good. Dan said when Jake Hulet was on the board, he suggested adjusting our R2 code to allow building a duplex with a common property line down the middle, so that each side of the duplex could have separate ownership. This wouldn't be much of an impact, but one thing that could have immediate affordability.

David said that he wanted to reiterate that as we do this, we have got to take into consideration the integrity of Parowan and the desire of the citizens of Parowan and what our city needs to be, not the desires of the state. The state is accusing the Federal Government of overreach and the State is having the same behavior, and we as a City have a duty to protect the integrity of our City.

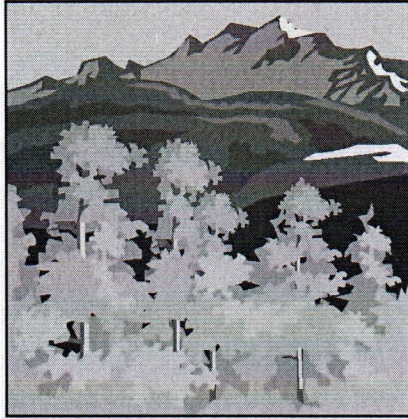
Heather said that she sees people that want to be a part of our community that can't have a roof over their head and those that want to be a part of Parowan and contribute to Parowan because this is a great place, but they can't afford anywhere here to live. We should help them to be a part of this great town. I say this as only three-year resident not fifth generation

Larry said he wanted to remind the commission that we are the Planning and Zoning Commission and the spearhead for change if there is going to be any. The City Council will act on our recommendations, by either following or rejecting those recommendations. He said it would be nice if we work closely together, and keep that perspective in mind.

Weston said he thinks we should fight back on the legislation.

Jerry said he has mixed emotions and there are plus and minuses, so this will take a bit of discussion. This community should be self-sufficient and not burdened by metropolitan areas. He said he agrees with Heather that we do have issues with affordable housing. This is just a tip of the iceberg and he thinks this is going to take research and discussion and hopes to resolve it that so that it will be to Parowan's benefit.

ADJOURN: Heather Peet made a motion to adjourn the meeting at 7:05 P.M. Jerry Vesely seconded the motion. The meeting was adjourned.



THE UTAH LAND USE INSTITUTE

Accessory Dwelling Units

Utah Land Use Regulation Topical Series

Melanie Clark, Author

March 2023

Funding for these materials is provided by the Utah Department of Workforce Services, Division of Housing and Community Development. The Office of the Property Rights Ombudsman has also provided funding for this training program from the 1% surcharge on all building permits in the State of Utah. The Utah Land Use Institute deeply appreciates the ongoing support of the S. J. and Jessie E. Quinney Foundation and Salt Lake County as well.

ACCESSORY DWELLING UNITS

Author: *Melanie R. Clark*¹

*Utah Land Use Institute*²

March 2023

Introduction

Allowing property owners to provide a second living unit on the lot now occupied by a single family home is nothing new, but the details of how this is to be done has become a vital topic in current land use regulation. The chronic shortage of housing units for middle income individuals and families is causing many conversations about the options to address that shortage. Using existing lots for more housing solves a number of issues, and avoids the new streets, sewers, water lines and power sources that new subdivisions require.

The Utah Legislature has recently stepped in to encourage more use of “ADU’s”. This outline is meant to inform local decision makers as well as land use applicants and neighbors about the laws related to ADU’s. This outline concludes with considerations in making decisions related to ADU’s and tips for implementing ADU regulations.

Those reviewing this may also be interested to read Todd Sheeran’s summary of the law related to Short Term Rentals, found in this same series of topical summaries at the Land Use Library at utahlanduse.org. A video of a presentation of both subjects is also available there.

This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

I. Relevant Law

a. Background.

- i. New governing statutes were adopted in 2021. There is not yet any published case law interpreting these statutes.
- ii. Statutory limitations primarily relate to the way a municipality or county can regulate, restrict, or prohibit *internal* accessory dwelling units.³

b. Definitions.

- i. An “accessory dwelling unit” (frequently referred to as an “ADU”) is a livable unit that could be:

¹ Melanie Clark is a partner and Business Law Department attorney with Foley & Lardner LLP. Melanie is based in the Salt Lake City office where she is a member of the firm’s Real Estate Practice Group. Melanie’s practice focuses on advising on all aspects of large-scale real estate projects including acquisition and disposition of land, leasing, financing, and project development.

² The Office of the Property Rights Ombudsman has provided funding for this update from the 1% surcharge on all building permits in the State of Utah. Appreciation is also expressed to the Division of Housing and Community Development of the Department of Workforce Services for funding the project which produces these topical summaries of land use regulations. The Utah Land Use Institute also expresses continuing appreciation for the ongoing funding provided by the S. J. and Jessie E. Quinney Foundation and the Dentons Law Firm.

³ Utah Code Ann. §§ 10-9a-530 and 17-27a-526.

1. converted from existing space within a single-family home (e.g., a basement apartment),
 2. an addition to a single-family home (typically on the side or back),
 3. part of a separate building on the same lot as a single-family home (e.g., above a detached garage), or
 4. a stand-alone building on the same lot as a single-family home (e.g., a tiny home in the backyard).⁴
- ii. An “internal accessory dwelling unit” is an accessory dwelling unit that is within the footprint of the primary detached dwelling unit (occupied as the primary residence of the owner) and created for the purpose of being offered for rent for 30 consecutive days or longer.⁵
- c. Moderate Income Housing. Only a couple of statutes apply broadly to all ADUs, these include:
- i. The general plan for a county or municipality must include a moderate income housing element.⁶ The statute lists 24 different potential recommendations on implementing moderate income housing strategies. Two of these recommendations that *could* be included in the general plan are:
 1. allowing or reducing regulations for accessory dwelling units in residential zones and
 2. eliminating impact fees for non-internal accessory dwelling units.
 - ii. Municipalities and counties must submit annual moderate income housing reports. Starting in calendar year 2023 the report must include information on the number of accessory dwelling units for which a building permit or business license was issued.⁷
- d. Limitations on Regulation of Internal Accessory Dwelling Units.
- i. In 2021 the State legislature imposed limits on how a municipality or county may regulate internal accessory dwelling units in residential zones. Any regulations adopted or contained in existing ordinances must be within the statutory allowances.
 - ii. One internal ADU in a primary detached dwelling generally must be a permitted use in any area zoned primarily for residential use and may not be restricted except as provide below.⁸
 - iii. A municipality or county may not impose a requirement governing:
 1. the size of the internal ADU in relation to the primary dwelling;
 2. the total lot size (except requiring a minimum lot of 6,000 square feet); or
 3. street frontage.
- e. Permitted Restrictions on Internal Accessory Dwelling Units.⁹
- i. A municipality or county may:

⁴ Utah Code Ann. §§ 10-9a-103 and 17-27a-103.

⁵ Utah Code Ann. §§ 10-9a-511.5, 10-9a-530, 17-27a-510.5, and 17-27a-526.

⁶ Utah Code Ann. §§ 10-9a-403 and 17-27a-403.

⁷ Utah Code Ann. §§ 10-9a-408 and 17-27a-408.

⁸ Utah Code Ann. §§ 10-9a-530(2) and 17-27a-526(2).

⁹ Utah Code Ann. §§ 10-9a-530(4) and 17-27a-526(4).

1. prohibit installation of a separate utility meter for the internal ADU;
 2. require that the ADU be designed so that the appearance of the primary dwelling unit doesn't change.
 3. Require one additional on-site parking space for the ADU, unless four or more spaces are already required.
 4. Require replacement of any parking spaces lost if an ADU is constructed in what was previously a garage or carport.
 5. Require the owner to obtain a license for renting the ADU.
 6. Prohibit renting the ADU for fewer than 30 consecutive days.
 7. Prohibit rental if the primary dwelling unit is not occupied as the owner's primary residence.
- ii. A municipality or county may prohibit creation of internal accessory dwelling units altogether:
1. In zoning districts that are not primarily for residential use (in other words, zones where the primary use is commercial, industrial, or agricultural);
 2. In primary dwellings already containing an internal ADU;
 3. In attached homes, mobile homes, and within detached garages;
 4. Within a zoning district that:¹⁰
 - a. Geographically covers 25% or less than the total area zoned primarily for residential use.¹¹
 - b. Geographically covers 67% or less than the total area 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 county or municipality.¹²
 5. In primary dwelling units with failing septic tanks.
 6. On lots with 6,000 or fewer square feet.
- f. Rights of Municipalities and Counties.
- i. If a municipality or county adopts permitted regulations and those regulations are violated, the municipality or county may hold a lien against the property after going through the following procedure:¹³

¹⁰ The wording in this section of the statute allows a municipality or county to "prohibit the creation" of an internal ADU in these districts. This is not written as an exception to the requirement that the use of an internal accessory dwelling unit is a permitted use in any area zoned primarily for residential use. This could be interpreted to mean that the use must be permitted, but the municipality or county could prohibit creating **new** internal ADUs in the described districts.

¹¹ As drafted, each zoning district is evaluated separately and there is no cumulative limitation. In other words, technically if a municipality had 1,000 acres zoned primarily for residential use, split evenly among 4 residential zoning districts (each with 250) acres, the municipality could prohibit the creation of internal accessory dwelling units in all of those zoning districts. However, the intent may have been that the creation of internal accessory dwelling units may only be prohibited in 25% (or 67%) of the total residential areas within the municipality or county.

¹² Right now this would likely apply to Orem (Utah Valley University), Provo (Brigham Young University), Salt Lake City (University of Utah), Ogden (Weber State University), Logan (Utah State University), Cedar City (Southern Utah University), and St. George (Utah Tech University).

¹³ Utah Code Ann. §§ 10-9a-530(5) and 17-27a-526(5).

1. Written notice of violation to the owner (mailed and posted on the property);
 2. Hearing regarding the violation (only if owner files a written objection within 14 days of the notice being postmarked or posted on the property);
 3. Owner fails to cure (14-day cure period for violating a 30-day rental requirement; 30-day cure period for all other violations);
 4. Written notice of lien to owner (mailed and posted on the property); and
 5. Record lien in county records in the amount up to \$100 for each day the violation continues after the cure period.
- ii. If a municipality or county issues a rental license or building permit for an internal ADU, the municipality or county may record a notice in the county records with a description of the primary dwelling, a statement that it contains an internal ADU, and a statement that the internal ADU may be used only in accordance with applicable land use regulations. If such a notice is recorded, a copy must be sent to the property owner.¹⁴
- g. Emergency Egress Windows.
- i. One other statute addresses internal accessory dwelling units. Generally a municipality or county may require installation of an emergency egress window in a bedroom. There are a few instances in which adding the window cannot be required, but these exceptions do not apply to internal accessory dwelling units.¹⁵
 - ii. In other words, a municipality or county may require installation of an emergency egress window in the bedroom of an internal ADU.

II. Considerations for Making Decisions

- a. The above described statutes were adopted in the context of a state-wide housing shortage and escalating home prices. In adopting any regulations on ADUs the legislative body should consider how the proposed regulation will affect the availability of housing, particularly moderate income and affordable housing.
- b. While internal ADUs generally may not be prohibited in residential zones and may be prohibited in non-residential zones, the legislative body should consider where additional housing may be needed and would fit with the character of existing neighborhoods. A zone with primarily commercial uses, but with mixed-use projects that include residential units may be a good place to have accessory dwelling units.
- c. There are some inverse implications in the general requirement that one internal ADU in a primary detached dwelling must be a permitted use in a residential zone.
 - i. By stating that internal ADUs must be a permitted use in areas zoned primarily for residential use the following is implied:
 1. external/detached ADUs do not need to be a permitted use in any zone.

¹⁴ Utah Code Ann. §§ 10-9a-530(6) and 17-27a-526(6).

¹⁵ Utah Code Ann. §§ 10-9a-511.5 and 17-27a-510.5.

2. internal ADUs may be a conditional or prohibited use in non-residential zones.
- ii. By defining an internal ADU as being within a primary dwelling, and defining a primary dwelling as a single-family detached dwelling that is owner occupied, the following is implied:
 1. internal ADUs may be prohibited in, and the statutory limitations do not otherwise apply to multi-family or attached dwellings.¹⁶
 2. internal ADUs may be prohibited in vacation homes or dwellings occupied by renters.

III. Tips for Implementing Local Regulations

- a. Requiring a rental license, which is expressly permitted by the statute, will allow municipalities and counties to identify where ADUs are located, making it easier to enforce any restrictions. Also, part of the license process could include verifying that the applicant owns and occupies the home as a primary residence.
- b. Municipalities and counties should be consistent in how and when they enforce any restrictions. As in all regulations, no special treatment should be given to certain neighborhoods or higher-income areas.
- c. As these statutes were newly adopted in 2021, municipalities and counties should watch for legislative amendments and court cases interpreting the statutes and implementing ordinances.

¹⁶ Unfortunately, the term “attached dwelling” is never defined by statute, but is used in the Community Association Act, Utah Code Title 57, Chapter 8a, to refer to dwellings that are physically connected to another dwelling. The only statutory definition of a “detached dwelling” is found in the Community Association Act, in the context of solar energy systems, where it is defined as a dwelling where the owners association does not have an ownership interest in the roof. In common usage a “detached” home refers to a stand-alone single-family home where no part of the building is connected to another home or building and an “attached” home would include any home where there was a shared wall or ceiling/floor connecting one home to another home or unit.