

**MINUTES OF MORGAN CITY
COUNCIL WORK MEETING**

DECEMBER 12, 2023; 6:00 P.M.

MAYOR AND COUNCILMEMBERS

PRESENT:

Mayor Steve Gale, Tony London, Jeff Wardell, Jeffery Richins and Dave Alexander

STAFF PRESENT:

Ty Bailey, City Manager; Gary Crane, City Attorney; Jake Young, City Planner, CitiDesign; and Denise Woods, City Recorder

EXCUSED:

Eric Turner

This meeting was held in the Council Conference Room of the Morgan City Offices, 90 West Young Street, Morgan, Utah. The meeting was streamed live on YouTube and available for viewing on the City's website – morgancityut.org.

This meeting was called to order by Mayor, Steve Gale.

ITEMS FOR DISCUSSION

AN ORDINANCE ENACTING TITLE 10, CHAPTER 10.16, SECTION 10.16.180 ENTITLED ACCESSORY DWELLING UNITS OF THE MORGAN CITY CODE; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE – ORDINANCE 23-16

Jake Young, City Planer, CitiDesign, discussed the proposed ordinance related to state law and accessory dwelling units. He stated the existing state law required all cities to allow for accessory dwelling units (ADUs). The law specified that these ADUs could be internal, within the building footprint, and now even included the possibility of converting a garage for this purpose.

Jake stated over the past year, efforts were made to enact an ordinance to formalize the allowance of ADUs within the City. The decision was driven by the fact that state law already permitted it, making it necessary for the City to align its regulations accordingly.

Jake highlighted that the Planning Commission had actively exercised its authority to control various aspects related to ADUs. This included considerations such as parking regulations and the possibility of requiring owner occupancy.

As for the definitions and understanding of ADUs, Jake explained that these units could take various forms, from being in the attic to secondary units over garages. The ordinance specifically added definitions like "attached accessory dwelling unit" for those expanding their existing homes and "detached accessory dwelling unit" for completely separate units.

Jake also touched upon the fact that the ordinance, as proposed, would permit individuals to have up to two accessory dwelling units, considering both internal and detached units. However, he clarified that several conditions, including parking requirements, needed to be met before construction could commence.

Jake referenced other cities in Utah, such as Farmington and Layton, which had allowed ADUs for years without significant issues. He mentioned that the prevalence of ADUs in cities with the highest adoption rates accounted for only 5% of all homes.

Jake addressed the expectation that not everyone would immediately rush to construct accessory dwelling units (ADUs) in Utah. He acknowledged that there might be initial concerns or misconceptions about a sudden surge in ADU construction, but he emphasized the importance of recognizing the practicality of the situation.

Jake addressed questions regarding the various types of ADUs. He clarified that an ADU was distinct from an RV or a mobile home. He stressed that ADUs must be on a foundation, and while there might be anticipated resistance or objections to this requirement, it was a specific stipulation in the definition of ADUs.

Jake stated that there might be individuals already residing in motor homes next to houses, falsely claiming them as ADUs. He affirmed that such mobile units did not meet the established definition of ADUs, which explicitly mandated a foundation. Addressing the situation where someone might be living in an RV next to a house, he indicated that this scenario wouldn't fall under the ADU ordinance, as there are likely existing regulations and codes governing such situations, possibly deeming it a code violation. He said if someone was living in an RV on a property, the ADU ordinance wouldn't be applicable, as there would likely be separate regulations limiting the duration of RV stays. He admitted that he didn't have precise information on the local regulations but indicated that living in an RV near a house might be subject to specific limitations.

Councilmember London mentioned the enforcement issue was quite challenging, as the City didn't have the resources or staff to proactively address this issue. He explained if a resident had concerns about activities in their neighborhood and suspected a violation, they could approach the City to file a complaint and the City would then investigate the reported issue.

Jake explained permitted uses for accessory dwelling units (ADUs) mirrored those of single-family homes. The regulations specified that whatever activities were allowable in a single-family home were also permissible in an ADU. This encompassed home-based businesses, living arrangements, and considerations like farm animals, all subject to the property's existing allowances.

Jake explained that ADUs were allowed in every residential zone (R), and additionally marked on commercial zones with some conditions. Notably, existing residential homes on State Street, now in commercial zones due to changes over time, were considered non-conforming but were permitted to remain residential until sold. An important point was raised regarding the tie between the use of the main property and the accessory use. Specifically, if a residential property transitioned to a commercial use, such as converting the main home into an office, any existing ADU on the property might need to be removed.

Gary Crane, City Attorney confirmed this perspective.

Jake stated the regulations limited commercial use with an existing home to internal ADUs only, excluding detached ADUs. The rationale for this exclusion was to facilitate the transition of these commercial homes into different uses in the future, leveraging economic opportunities. Additionally, detached ADUs were explicitly prohibited on flag lots due to potential challenges related to emergency access, utilities, and overall practicality in such configurations, i.e., a home behind a home, behind a home.

Jake explained the ADU application process. Depending on the type of ADU, whether it was internal, attached, or detached, the requirements varied in complexity. For internal ADUs, applicants only needed to

complete a few specific steps. However, for attached or detached ADUs, individuals were required to submit building plans and obtain a building permit, among other necessary documents.

Councilmember Alexander inquired about the status of the application, specifically whether they were still in the process of development or if they had already been prepared and were ready for use.

Jake stated they were still in the process of developing the process and applications. He said once the ordinance was adopted the process and applications would be finalized.

Ty Bailey, City Manager, explained the fee had not been set yet. The process for establishing fees was conducted through the Consolidated Fee Schedule. The fees for short-term rentals would be set through business licensing and the fee structure for the ADUs aligned with the building permit, with considerations for the number of inspections, plan reviews, and staff time involved.

Jake clarified that there were distinct permits involved, including the land use permit for accessory dwelling units and the building permit. Both permits adhere to the Consolidated Fee Schedule, ensuring consistency in the fee structure. He said once the ordinance had been adopted the fees would be calculated and an amendment to the Consolidated Fee Schedule would come before the Council for approval to set the fees.

Jake mentioned the standards which applied to all accessory dwelling units (ADUs) which included the following:

- **Separate Sales Prohibition:** All accessory dwelling units (ADUs) were subject to a strict standard prohibiting separate sales, addressing concerns raised by attempts to build detached units for subsequent property division.
- **Building Code Compliance:** Strict adherence to all applicable building codes was a fundamental requirement for any ADU project, ensuring safety and compliance with regulatory standards.
- **Sensitive Lands Review:** For ADUs located in sensitive lands, particularly detached units, a review by City staff was mandated as per the sensitive lands ordinance, with the hope that the review process would remain relatively light.
- **Prohibition of Separate Meters:** While state regulations allowed for separate meters, the decision for ADUs was contingent upon the City's perspective, considering the complexities associated with separate metering and aligning with certain divisions within the municipal structure.
- **Setback Requirements:** Setback requirements for attached ADUs mirrored those of the main structure, given their integration into the primary building. However, detached ADUs were subject to distinct setback provisions outlined in the ordinance.
- **Architectural Design Conformity:** Design standards were outlined, requiring 25% of the exterior material of ADUs to match the main house, promoting architectural cohesion. Similarly, color choices for ADUs were expected to align with 60% of the main house.
- **Outside Entrance Mandate:** Detached ADUs were mandated to have an outside entrance, ensuring convenient access for tenants. This decision aimed to address practical concerns, providing a clear and accessible path for renters, especially during adverse weather conditions.
- **Single-Family Rental Restriction:** In the past, the stipulation was that no more than one family could rent an Accessory Dwelling Unit (ADU) at any given time. This restriction aimed to regulate occupancy and usage.
- **State Code Reference:** Reference was made to the state code concerning family definitions, ensuring compliance.

The discussion continued with pointing out the following for internal, attached, and detached ADUs.

- **Internal and Attached ADUs:**

- State code regulations allowed for internal and attached ADUs, with a prohibition on lots less than 6,000 square feet.
- Off-street parking was a requirement for ADUs, with an additional space mandated on top of the existing parking requirements for the primary residence.
- ADUs were not permitted in mobile homes.
- **Detached ADUs:**
 - Detached ADUs were subject to specific conditions, such as not being built on slopes greater than 30%.
 - Architectural and color matching were requirements for detached ADUs.
 - Separate building permits were necessary for detached ADUs, even if built concurrently with a single-family home.
 - Larger lot size, 10,000 square feet, was a requirement for detached ADUs.
 - Setback regulations included a 5-foot setback from the front of the home, 10-foot side yard setback (15 feet for corner lots), 10-foot rear setback, and a 10-foot distance from the primary structure.
 - The building code allowed for a 6-foot minimum distance between two buildings, as requested by the building department for fire safety.
- **Fire Safety Measures:**
 - A requirement was added that detached ADUs should not be more than 250 feet from the nearest fire hydrant.
 - Parking requirements for detached ADUs were set at one stall per bedroom.
 - The maximum height for detached ADUs was 25 feet, aligning with the height of single-family homes.
 - To address concerns about size, a regulation was established that the main floor of a detached ADU should not exceed the existing square footage of the primary dwelling's main floor or a maximum of 1,000 square feet. This ensured that ADUs remained accessory structures and not larger than the primary residence.
- **Termination Considerations:**
 - The termination of the land use allowance for an Accessory Dwelling Unit (ADU) was a key consideration.
 - Once an ADU was built, its permanence was evident, but the City retained the authority to revoke the residential use allowance.
 - Revocation meant restrictions on renting to individuals outside the family, and the possibility of revoking a business permit for non-compliance with landlord responsibilities.
- **Occupancy Requirements:**
 - Property owners were required to occupy the ADU if it was being rented, a mandate supported by the Planning Commission.
 - This requirement aimed to prevent homes from transforming into rental duplexes and encouraged home ownership for overall neighborhood stability.
 - The condition addressed potential concerns about the City approving additional units, emphasizing the gradual and organic growth of residential properties.
- **Flexibility in Occupancy:**
 - The requirement for one unit to be owner-occupied allowed property owners flexibility in deciding whether to reside in the ADU while renting out the main house or vice versa.
 - This ensured the ongoing presence of the property owner on the premises, regardless of the specific configuration of living arrangements.
- **Notices and Violations:**
 - The City retained authority over notices and violations related to ADUs.
 - Enforcement measures included the ability to place a lien on the property.
 - Violations could result in fines of \$100 per day, indicating a substantial deterrent and regulatory mechanism.

- These enforcement measures aimed to ensure compliance and deter any deviations from the established regulations, demonstrating the City's commitment to the proper use and management of ADUs.

Councilmember Alexander stated the proposed ordinance allowed for a denied approval application to be appealed through the appeal authority. He asked who the appeal authority would be.

Gary explained pursuant to the City Code an appeal authority was appointed when needed (Title 10, Chapter 10.10). This change was implemented to ensure a more streamlined and efficient process. Historically, three or four qualified individuals were pre-selected for this role.

Ty stated a recent training session he attended suggested potential challenges when appointing individuals at the time of a challenge, as the other party may not have an opportunity to provide input on the appointees. It was acknowledged that it had been a while since appointments were made, and there was a proposal to address this by revisiting the selection of qualified individuals.

Gary said often the attorney from another jurisdiction played a crucial role. For instance, Clint Drake from Bountiful used to be a part of Layton's appeal authority, and Layton reciprocated by having a representative on his team. He stated this reciprocal arrangement was a common practice. The selection process typically involved choosing someone from the land use group. The emphasis was on selecting an individual who could maintain objectivity and possessed comprehensive knowledge. The key consideration was to ensure that the selected person could approach matters impartially, especially in cases where there might be skepticism due to local affiliations.

Councilmember Alexander suggested referencing the existing City code in the proposed ordinance, specifically the section related to the appeal authority, for clarity and consistency.

Discussion commenced regarding the addressing section of the ordinance. For all ADUs the address would incorporate an "a," "b," or "c" designation alongside the house number for emergency services, or any location-specific purposes. This method ensured clarity and precision in specifying different units within the same address. Because the Morgan Post Office is a rural post office it will only deliver mail to the main house number.

Discussion regarding the concern of constructing the Accessory Dwelling Unit (ADU) before the primary residence. Ty pointed out that this approach could pose challenges unless both were part of a joint application. Ty emphasized the importance of having the main residence planned and in progress before considering the ADU. Concerns were raised about potential limitations if someone decided to build their dream home after constructing the ADU, considering factors were the placement of the ADU affecting the property and the positioning of the primary residence. Ty mentioned current regulations prohibited constructing structures like a barn before the main house. This raised the question of whether the ordinance needed addressing to accommodate such situations.

Jake suggested that the process might require obtaining plans for both units simultaneously to avoid future complications.

Ty considered the possibility of both building plans being approved at the same time to provide flexibility. However, he acknowledged the potential financial challenges and suggested that having the main residence built first or simultaneously could be a more prudent approach. He also expressed concerns about situations where a building permit was obtained but the construction was delayed or abandoned, leading to a reset in the process.

Jake suggested adding language to the ordinance stating that detached ADUs should be built after the primary dwelling was constructed or simultaneously.

TRAINING – GARY CRANE, CITY ATTORNEY

Gary said one of the most frustrating things he encountered during his time on the Hill was dealing with referendum issues. There was always a sentiment that referendums were sacred because they dealt with the electorate – the people who vote and their ability to vote. He provided some historical context. He explained Utah was one of the first states to adopt a referendum or initiative back in 1900. By 1920, about nine states had adopted some form of referendum or initiative. He said the individuals on the Hill believed there was a need for people to vote on issues, leading to the adoption of referendums. However, the original framers of these referendum and initiative provisions in the Constitution likely never anticipated that they would be used to limit someone else's use of their land. He said he believed that if they had foreseen this, they might have included restrictions.

Gary stated in subsequent years, the legislature exempted zoning from the referendum process. The Constitution stated that people have the right to vote on issues, but only as the legislature created rules for voting on those issues. The court has been cautious about ensuring the legislature doesn't overreach. For a long time, there were no rules addressing planning, zoning, and financial issues in referendums.


Gary said in the '70s, a provision was invoked to subject planning and zoning to referendums, but limited it to only certain legislative acts, i.e., a rezone, a massive rezone of the city, a large master plan change, or an annexation. Many states continued to exempt land use from referendums due to conflicting constitutional rights – people's right to develop their land versus their right to vote on issues. However, the legislature passed Senate Bill 199, stating that if a land use provision had received a 100% vote from the legislative body, it was not subject to referendum. This marked a significant shift in favor of land use and development.

Gary delved into specific cases, discussing a judge's determination regarding a referendum over high-density housing. The court's decisions and the evolving landscape of referendums in the state were highlighted, emphasizing the potential impact on property rights and development.

Overall, the training session provided insights into the complexities and challenges associated with the referendum process, particularly in the context of land use issues.

This meeting was adjourned at 7:03 p.m.


Denise Woods, City Recorder


Steve Gale, Mayor

These minutes were approved at the February 13, 2024 meeting.