



~~Item 3F~~  
Yellowstreet  
Oct 2<sup>nd</sup> 18  
Staff

## MEMORANDUM

To: Mayor and Members of City Council

From: Jane S. Brautigam, City Manager  
Kurt Firnhaber, Director of Housing and Human Services (HHS)  
Jay Sugnet, Senior Planner (HHS)

Date: October 1, 2018

Subject: **ADU Update – CAC Questions for October 2 Third Reading**

---

On October 1, CAC asked several questions related to the ADU Update memo and ordinance. This memo seeks to answer those questions.

### 1. Dependents

The August 29 motion from council was to “Remove occupancy limit of 2 people in the ADU. Exempt dependents from the occupancy limit for the main house and the ADU.” Under the current code, a property with an ADU must meet the occupancy requirements of Section 9-8-5 which allows for (1) members of a family plus one or two additional unrelated persons or (2), depending on the zoning district, a total of three or four persons, or (3) two persons and any of their children. No more than two persons may occupy the ADU.

The proposed code language would delete the occupancy limit of two for the ADU and allow for the owner and the owner’s dependents to be counted as one person in determining occupancy, thereby effectively allowing a family plus the owner and owner’s dependents to reside on the property. The proposed language is similar to the occupancy standard for short-term rentals which allows, for purposes of determining allowed occupancy of a dwelling unit rented as a short-term rental, that “the licensee and people related to the licensee to be counted as one person.” (Section 10-3-19(j)). This language accomplishes council’s intent to allow two families with dependents in both the principal and accessory units.

If language is added to not count all dependents for both owners and renters, that could result in three families living on the property.

### 2. Landmarks

CAC asked if the landmarking incentives are the same as the affordable incentives. The landmarking incentives require that the building is landmarked (or is contributing in a historic district) in exchange for loosening the requirements related to unit size, parking, and

saturation. The differences with the affordable incentives are that the landmarking incentive increases the saturation limit from 20 to 30 percent and increases the allowed size of a detached ADU from 800 to 1,000 square feet if the ADU structure is designated as a landmark. It does not require the ADU to be rented as affordable.

### **3. Paved Parking**

The current code (Table 9.2) requires paved parking for an accessory dwelling unit or an owner's accessory unit. In addition, the variance criteria to allow parking within the front setback also requires that space to be paved (Section 9-2-3(j)(7)). However, the code exempts detached dwelling units from requiring all parking areas are paved with asphalt, concrete, or other similar permanent, hard surface (Section 9-9-6(d)(5)(B)). Removing this requirement was not part of the August 29 motion by council and therefore the paved parking requirement remains. If council chooses to remove the paved parking requirement, please include that in the third reading motion. *Suggested motion language: "Delete the word paved from Table 9.2, Section 9-2-3(j)(7)), and Section 9-9-6(d)(5)(B), B.R.C., 1981 related to accessory units."*

### **4. Penalties**

Concern was raised that the current fine structure was not enough of a deterrent to renting above the maximum rents for affordable ADUs. The current proposal allows the city manager to impose a penalty equal to the amount charged more than the affordability standard during the term of the license, plus interest at the rate of twelve percent per annum. Providing compensation to the renter is a mechanism to ensure compliance, as the renter will be most likely to inform the city that the rent paid was above the maximum rent.

In addition, the city may take any one or more of the following actions to remedy the violation: impose a civil penalty of \$100 for the first violation, \$300 for the second, and \$1,000 for the third; revoke the rental license; or issue an order reasonably calculated to ensure compliance. Staff believes this achieves council intent to ensure compliance through escalating fines. Criminal penalties can be up to \$2,000 per day of violation. The minimum fine for a criminal conviction of renting without a rental license is a minimum fine of \$500 per violation (can be per day), the total fine not to exceed a \$30,000 fine per case or for consolidated cases, unless aggravating circumstances exist (Section 10-3-16).

### **5. Implementation Period**

Staff recommended an effective date of April 1, 2019 to allow staff time to create new application materials, modify internal city processes to accept and review the different type of ADU applications being created by the amended ordinance. This is a time period that is consistent with the implementation of the co-op ordinance and is necessary to make configuration changes to the city's land management and permitting system (EnerGov), including the creation of new case types related to affordable ADUs. After further consideration, staff has been able to adjust the workplan to accommodate a Feb. 1, 2019 implementation date. *Suggested motion language: "Change the effective date of the ordinance from April 1, 2019 to February 1, 2019 and amend the ordinance accordingly."*

### **6. "As of" instead of "on"**



Section 10-13-9 includes the following language, “Both the accessory unit and the principal dwelling unit were legally established on March 31, 2019.” CAC suggested that “as of March 31” may be clearer.

**7. Bedroom Size**

The October 2 memo incorrectly stated that the AMI for an affordable ADU was based on the bedroom size. The ordinance clearly states that affordable rents are based on the number of bedrooms.

Staff also identified a needed change to the landmarking incentive provision. The current ordinance inadvertently included non-contributing structures as eligible for the incentive. The intent as discussed by the Landmarks Board subcommittee was to only include individual landmarked properties and contributing properties within a historic district. *Staff is working language and will have a written proposal available prior to the meeting tonight.*

If you have any questions, please contact Jay Sugnet at [sugnetj@bouldercolorado.gov](mailto:sugnetj@bouldercolorado.gov).

