

**ITEM NO. 5 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; ACCESSORY DWELLING UNIT (MJL)**

**TA-13-00106:** Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 (Single-Dwelling Residential) District.

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

**PUBLIC HEARING**

Ms. Holly Krebs said she submitted the request for the Text Amendment out of a desire to build a new garage with an accessory dwelling unit above it to serve as her husband's home office. She said it would also position them to potentially provide care for elderly family members if needed. She said her understanding about the accessory dwelling unit regulations was that when they were passed several years ago the units were allowed in all districts except RS5 out of a concern that a massive influx of accessory dwelling units might create too much density. She said there was not a massive influx of these units and she did not feel that would happen in the RS5 district either. She said the limitation of a small lot in RS5 would naturally restrict too many of these units being built. She believed that allowing accessory dwelling units on lots that would accommodate it would appropriately allow for slightly denser living in certain areas and would provide a mix of housing types, which were both goals of Horizon 2020.

Mr. Kirk McClure, Old West Lawrence Neighborhood Association, said they generally supported the notion of accessory dwelling units. He said the difficulty was with investors buying older properties and Old West Lawrence Neighborhood Association was concerned about maintaining the desirability of the neighborhood which meant maintaining the single-family character. He said the concern was with the abuse of procedure of absentee owners who break up an old house into a multi-unit structure. He requested the definition of an owner be written carefully so that there wasn't a surrogate agent operating as an owner through a corporate entity or partnership. He felt the process could be facilitated as a mechanism to restore older homes. He supported the Text Amendment but felt it should be tightened through the definition of the owner.

Mr. Jim O'Malley agreed with Mr. McClure's comments. He stated the spirit of the accessory dwelling use was intended for the principal residents of actual living breathing home owners. He said there was a loophole for absentee owners to use the corporate form to evade owner occupancy and principal residence requirements. He said the result would be duplex use without owner occupancy. He felt the definition of ownership should be narrowed.

Ms. Karen Kressin said she was disturbed to see this happen in the name of infill. She said maybe this should only be available on double lots in RS5. She felt corporations should not be allowed to own a structure with an accessory dwelling unit. She gave the example of a house on her block a few years ago that was owned by a corporation who tried very hard to make the house a duplex. She said the house did not end up being split up because a buyer appeared and did not want there to be an extra unit in the house. She expressed concern about families who would use the accessory dwelling unit selling their house to someone who would use it as a rental. She said corporations should not be allowed to own accessory dwelling units and felt they should have to transfer the property to personal ownership.

Ms. Katy Nitcher felt there should be notice to adjoining neighbors or neighborhood associations for this type of use as part of the application process. She agreed with all the previous public comments.

**COMMISSION DISCUSSION**

Commissioner von Achen asked how staff currently handles rental properties that already have an accessory dwelling unit on them.

Ms. Leininger said rental properties in the RS District would have to apply for a rental license.

Mr. McCullough said those types of units do not participate in the program because there is an owner on site so they are not required to be licensed.

Ms. Leininger said that would be considered two dwelling units, not an accessory because the owner would have to live in one of the units.

Commissioner Denney asked if staff could consider the issue of definition of owner.

*Commissioner Liese arrived at the meeting at approximately 6:40pm.*

Mr. McCullough said yes. He said the prevailing issue seemed to be the potential for abuse from ownership. He recognized the potential but said it had not been seen in practice. He said there had only been about 15 accessory dwelling units registered in the past seven years. He said it was seen more in a trust where an heir picks up the property or in probate. He said the potential for abuse may be worth pursuing and that better language could be drafted. He said regarding the issue of notice, they should consider the bundle of property rights people enjoy and weigh what should get notice and what should not. He stated building permits do not require notice to neighbors or neighborhood associations but that use changes or rezonings would.

Commissioner Rasmussen asked staff to comment about being able to chop houses up into multi-units since he thought that could occur now.

Mr. McCullough said in the RS Districts some of the established neighborhoods have had non-conforming uses and different zoning districts throughout the decades. He said under the current zoning codes it was a single-family district so a house could not be changed into a duplex.

Commissioner Rasmussen said he was referring to more of a boarding house.

Mr. McCullough said in this particular district it could not be changed into a boarding house. He said the other distinction was that if there was the ability to change it to a duplex there would be two units with each having an occupancy cap of three with a total of six people on the property.

Commissioner Josserand asked Mr. McClure about his concern for the potential for abuse. He wondered if Mr. McClure had suggestions on how to tighten the language to prevent abuse.

Mr. McClure said when he lived in Berkley, California he ran into the situation of investors forming limited partnerships and one tenant would become a managing general partner for a \$100 deposit, which would be refunded at the end of their lease, and acting as agents for the ownership while being residents. He said if there was a requirement of identity of interest between the occupant and owner of record then that would equal a real live person. He was worried about devious people who would find ways around it. He hoped the Text Amendment would provide regulatory authority for the administrators to make sure there was a flesh and blood owner on-site and a mechanism where the neighborhood could appeal if that was deviated from.

Commissioner Josserand inquired about the situation of an accessory use where the resident dies and the property was sold to a new owner who rents out both structures. He wondered what mechanism existed now to deal with that situation.

Mr. McCullough said it would likely be received through a complaint. He said staff investigates and has the code authority to compel compliance.

Commissioner Lamer asked if there was a definition of owner elsewhere in the Code outside of this section.

Ms. Leininger said yes, Article 17-01, in the general terms. She read the definition of owner.

Commissioner Lamer inquired about the definition of family as it relates to three unrelated individuals.

Ms. Leininger said all the occupancy information was in Article 6-01(d) under Occupancy Limits, and it talks about unrelated as not related by blood, marriage, or adoption.

Commissioner Lamer asked if staff could look at those two definitions and merge them together as owner family.

Ms. Leininger said recently with the occupancy limit Text Amendment the definition of family was lumped all in with the occupancy limits.

Mr. McCullough said the value of the former definition of family was maintained. He said if the direction was to look at those definitions to address the issue staff could do that.

Commissioner Lamer said one way to address the issue of corporations or limited partnerships was with a threshold, such as the individual living in the home having a certain percentage membership interest.

Commissioner Rasmussen said they could scare themselves with a lot of scenarios but that they were not seeing this in practice so he did not think they should craft a highly technical definition of owner to avoid a problem that may not even occur. He was worried they were going to regulate out a problem that may not even occur. He felt if it was a big money maker that people were going to manipulate they would have already seen it in other districts.

Commissioner Josserand agreed with Commissioner Lamer. He said abuse had not been seen yet because accessory dwelling units were not allowed in the RS5 District. He was concerned about the issue of potential abuse and that it may take a little bit of drafting for the language.

Commissioner Rasmussen asked Commissioner Josserand if he was concerned about accessory dwelling units springing up all of a sudden in RS5 but not in RS7 where they were already allowed.

Commissioner Josserand said Old West Lawrence was unique enough to distinguish it from other areas of the city. He appreciated Commissioner Rasmussen's concern about family corporations and felt that if the language was written well enough it would allow for families to be fine.

Commissioner Lamer asked staff to discuss the parking.

Ms. Leininger read from Article 5 – Use Regulations, 20-534 Accessory Dwelling Units (2)(vii)a *“Lots containing Accessory Dwelling Units shall contain a minimum of two off-Street Parking Spaces.”* She said there would need to be two parking spots for the property.

Commissioner Denney said he was in favor of adding the capability to RS5 but was concerned about absentee landlords. He would like to find a way for this to go forward but with some limitations on it.

Commissioner Rasmussen asked staff to show on the overhead map what parts of town it would add to.

Ms. Leininger showed the map on the overhead.

Commissioner von Achen asked staff if language could be drafted to address the concerns about absentee landlords.

Mr. McCullough said staff could attempt to do that.

Mr. Randy Larkin, staff attorney, said staff could attempt to draft a definition of owner that would apply to this particular provision that would try to accommodate the number of different opinions.

Commissioner Culver asked staff if Planning Commission should take action and then draft language or defer it and have it brought back with language.

Mr. McCullough said staff would prefer to have the item deferred if that was the majority consensus direction and have it brought back next month. He said it would also allow more time for the public to review the language.

Commissioner Culver asked if there had been any thoughts on notice that could be given to neighbors and neighborhoods in the event of a use change. He asked if an Accessory Dwelling Unit would trigger that notice.

Commissioner Lamer thought notice was appropriate but he didn't want a situation where someone would have to go through a process of approval that could add more expense. He said building permits did not require notification.

Commissioner Josserand said typically notice was sent for meetings with the ability to provide input and receive a decision but that Accessory Dwelling Units would be more of a right.

Mr. McCullough gave the examples of Home Occupations and Site Plans that were a matter of right but that provide notice to the neighborhood. He said construction on a property was also a right which only required a building permit that would be displayed on site and people would have to seek out the information.

Commissioner Rasmussen said structurally it was like building a garage, which did not require notice. He said the difference was that it would be a garage with people living in it.

Commissioner Josserand said he was not as concerned about the notice. He said he was more concerned about the potential abuse through a legal manipulation entity.

Commissioner von Achen asked the audience if they knew of cases where this had happened.

Ms. Kressin said there was a case where a corporation tried to turn a house into a duplex on her block with no intention of living there. She said the corporation was unsuccessful because RS5 did not allow Accessory Dwelling Units and it delayed the process long enough that a buyer appeared who wasn't interested in a duplex.

Commissioner Rasmussen asked if an Accessory Dwelling Unit was a separate building or part of the main structure.

Mr. McCullough said it could be either or.

### **ACTION TAKEN**

Motioned by Commissioner Lamer, seconded by Commissioner Josserand, to defer and direct staff to draft a definition of "owner" specific to this code section that would preclude corporations from abusing the intent and purpose of permitting Accessory Dwelling Units on owner-occupied properties in the RS districts.

Commissioner von Achen inquired about the notification issue.

Commissioner Lamer said he did not include that in the motion because he did not feel it was necessary.

Commissioner Denney expressed concern about a lengthy process and wondered if it would create a hardship to the applicant.

Mr. McCullough said it would be brought back next month.

Ms. Leininger said from discussions with the applicant it was not something she was looking at doing immediately, just setting up options for the future.

Commissioner Culver asked if the notification issue could be discussed next month.

Mr. McCullough said it could but that it would be a better service to the process if majority direction was provided today so the public knows the direction. He said the City Commission could also send it back for Planning Commission to discuss if they desire.

Motion carried 6-0-1, with Commissioner Liese abstaining.