
ZONING CODE TEXT AMENDMENT

Initiator: Council President Bender
Introduction Date: February 9, 2018
Prepared By: Janelle Widmeier, Principal City Planner, (612) 673-3156
Specific Site: Not applicable
Ward: All
Neighborhood: All
Intent: To modify occupancy regulations in the zoning code.

APPLICABLE SECTION(S) OF THE ZONING CODE

- Chapter 520, Introductory Provisions
- Chapter 546, Residence Districts
- Chapter 547, Office Residence Districts
- Chapter 548, Commercial Districts
- Chapter 549, Downtown Districts
- Chapter 551, Overlay Districts

BACKGROUND

At the August 13, 2018, meeting of the City Planning Commission, this amendment was continued indefinitely. The amendment was continued at the request of the author to allow for further evaluation. Public hearing notices were sent out to all neighborhood groups to make them aware that the amendment was again scheduled for a public hearing. Also, this amendment was previously discussed at the November 2, 2017, and July 19, 2018, City Planning Commission Committee of the Whole meetings.

An ordinance was introduced to the City Council on February 9, 2018, to amend occupancy regulations in the zoning code. Affected chapters are those listed above. This ordinance was introduced by Council President Bender. The purpose of the amendment is to add flexibility to the residential dwelling unit occupancy regulations by eliminating maximum occupancy requirements in the zoning code. Maximum occupancy regulations were last amended nearly 3 years ago to allow for intentional communities. A companion amendment to Title 12, Chapter 244 relating to the Housing Maintenance Code has also been introduced and is expected to move forward in the near future.

The City of Minneapolis currently regulates occupancy through both the Zoning Code and the Housing Maintenance Code. The Zoning Code regulates occupancy based on the definition of family and number of unrelated persons, while the Housing Maintenance Code regulates occupancy based on the total square footage of the dwelling and each sleeping room and a definition of family. The policy intent of the occupancy regulations in the zoning code is to maintain the residential character of certain areas in the city. The occupancy regulations of the housing maintenance code and building code are life safety provisions intended to ensure the health, safety and welfare of residents. As such, there are residential structures in the city that could safely accommodate more occupants than the Zoning Code allows, but are unable to be fully utilized due to an ordinance that evaluates the relatedness of the individuals. The proposed amendment would remove occupancy regulations from the zoning code and rely exclusively on square-footage calculations and an updated definition of family in the Housing Maintenance Code. The Housing Maintenance Code definition of “family” is expected to be expanded to include additional household types with unrelated persons. The changes would provide more opportunities for individuals who are not related to share housing.

ANALYSIS

What is the reason for the amendment and what public purpose will be served?

The purpose of the amendment is to add flexibility to the residential dwelling unit occupancy regulations by eliminating maximum occupancy requirements in the zoning code. The current occupancy regulations of a dwelling unit located in the R1 through R3 Districts allow for one family plus up to two unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five persons. In the higher density districts, the zoning code limits the maximum occupancy of a dwelling unit to one family plus four unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five persons. The current zoning code definition of “family” reads as follows:

An individual or two (2) or more persons related by blood, marriage, domestic partnership as defined in Chapter 142 of the Minneapolis Code of Ordinances, or adoption, including foster children and domestic staff employed on a full-time basis, living together as a permanent household. This definition of family is established for the purpose of preserving the character of residential neighborhoods by controlling population density, noise, disturbance and traffic congestion, and shall not be applied so as to prevent the city from making reasonable accommodation where the city determines it necessary to afford handicapped persons living together in a permanent household equal access to housing pursuant to the Federal Fair Housing Amendments Act of 1988.

There is no authorized variance to the occupancy regulations. Nearly 3 years ago, a text amendment was approved allowing for intentional communities. Intentional communities allow for self-identifying groups of individuals to register as an intentional community and not be subject to the current occupancy regulations. However, this is currently the only option for larger groups (more than five) of unrelated individuals to live together. The proposed amendment would eliminate maximum occupancy requirements in the zoning code and rely on the housing maintenance code. With that, occupancy would not depend on the relatedness of persons.

Current regulations limiting occupancy based on the relationship status of dwelling unit occupants may place an undue restriction on some Minneapolis residents in their search for housing options. The restriction has been identified as an impediment to fair housing.

How is the amendment consistent with the purpose of the zoning district(s) or ordinance chapter(s) being amended?

The amendment would affect all zoning districts where residential uses are allowed. Zoning codes are meant to regulate uses and not users. With adoption of the amendment, the zoning districts will continue to regulate uses and the housing maintenance code will continue to regulate occupancy based on life safety provisions that are intended to ensure the health, safety and welfare of residents.

Are there consequences in denying this amendment?

The amendment is intended to allow flexibility to the current occupancy regulations in the zoning code by providing an opportunity for increased occupancy that does not rely on the relatedness of persons. It would be an incremental step in relaxing occupancy regulations and would provide for additional housing types and opportunities in the city. Further it would remove an impediment to accessing fair housing. If the amendment is denied, City staff will continue to enforce occupancy based on the relatedness of individuals and, pursuant to the Federal Fair Housing Amendments Act of 1988, the City will continue to make reasonable accommodation for persons with disabilities seeking fair and equal access to housing in the application of its zoning regulations. Most of the requests for reasonable accommodation relate to occupancy. The amendment will significantly reduce the number of requests for accommodation received and the amount of staff time needed to process them.

What adverse effects may result with the adoption of this amendment?

The amendment is not expected to create any significant problems. The occupancy of dwelling units will still be regulated by the Housing Maintenance code and all life safety provisions of Chapter 244, Housing, would apply. Because “family” is referenced throughout the zoning code (e.g. single-family dwelling or multiple-family dwelling), a definition for family will be retained. The definition will be revised to refer to the Housing Maintenance Code definition of family to avoid any inconsistencies. The Housing Maintenance Code definition of “family” is expected to be updated to recognize additional household types with unrelated persons.

How does the amendment relate to other City ordinances?

The City of Minneapolis currently regulates occupancy through both the Zoning Code and the Housing Maintenance Code. The Zoning Code regulates occupancy based on the definition of family and number of unrelated persons, while the Housing Maintenance Code regulates occupancy based on the total square footage of the dwelling and each sleeping room and the definition of family. The proposed amendment would eliminate maximum occupancy regulations from the zoning code and rely exclusively on square-footage calculations and an updated definition of family in the Housing Maintenance Code. The changes would provide more opportunities for individuals who are not related to share housing.

What factors are influencing the timing of the proposed amendment? Why?

There are residential structures in the city that could safely accommodate more occupants than the Zoning Code allows, but are unable to be fully utilized due to an ordinance that evaluates the relatedness of the individuals. This amendment is intended to remedy that.

While legal, the City's current occupancy regulations have also been formally identified as an impediment to accessing fair housing in a regional study that included 22 metro-area cities. In 2017, the Fair Housing Implementation Council (FHIC) prepared the "Addendum to the 2014 Regional Analysis of Impediments to Fair Housing" as required of communities that receive certain funds from the U.S. Department of Housing and Urban Development (HUD). In the addendum, the City of Minneapolis' occupancy regulations were identified as an impediment to fair housing choice. Minneapolis was one of two cities out of 22 studied that had this particular issue identified. The report made three specific recommendations to change the zoning code in order to remove this barrier. Those three recommendations are as follows:

- (1) Amend the definition of "family" to more closely correlate to neutral maximum occupancy restrictions found in safety and building codes.
- (2) Increase the number of unrelated persons who may reside together to better allow for nontraditional family types.
- (3) Create an administrative process that allows for a case-by-case approach to determining whether a group that does not meet the code's definition of family or housekeeping unit is nonetheless a functionally equivalent family.

The City is required to examine its land use and zoning policies in light of the Addendum's findings and take appropriate actions to ensure that said policies affirmatively further fair housing. The proposed amendment to eliminate maximum occupancy requirements in the zoning code would specifically address the first two recommendations above. The third recommendation has been at least partially addressed through the allowance of intentional communities.

The proposed text amendment would relax the occupancy regulations by relying on the Housing Maintenance Code, which once amended takes an objective approach to occupancy that does not rely on the relatedness of persons. Minneapolis is fairly unique in that occupancy is regulated in both the Zoning Code and the Housing Maintenance Code. Minneapolis also seems to be in the minority among larger cities by regulating occupancy by number of individuals in the zoning code. Some zoning codes among peer cities are silent on maximum occupancy altogether. The February 2007 issue of "Zoning Practice," a publication of the American Planning Association, was titled "Practice Redefining Family." Regarding the definition of family, this publication states that defining family is primarily a use issue, not one of occupancy. It goes on to say that occupancy is best addressed in housing codes and the International Building Code.

The amendment is timely given the recent growth trends in the city and the need to provide additional housing options to accommodate that growth and a persistently low vacancy rate in recent years. The amendment is also timely given the fact that the City appears to be unique among peer cities in terms of how we regulate occupancy. Specific examples on that issue are provided below. Most importantly, the amendment is timely given the timeline provided to the City in the "Addendum to the 2014 Regional Analysis of Impediments to Fair Housing", which identified the City of Minneapolis' occupancy regulations as an impediment to fair housing choice. This addendum gave the City a timeframe of 2018 to address this issue.

How does the amendment compare to practices in other cities?

Staff conducted research of peer cities nationwide for examples of how this particular issue is addressed. The Zoning Code regulates occupancy based on the definition of family and number of unrelated persons.

In other cities, a definition for “family” or household” that includes a defined number of unrelated persons is commonly found in zoning codes. However, the City of Minneapolis is fairly unique in that it generally does not allow for any number of unrelated individuals to be considered a family. A legal memorandum prepared by the New York Department of State notes “Some municipalities have attempted to define “family” to comply with court decisions by providing for discretionary review of groups of unrelated persons greater than a specified number to ensure that they are the functional equivalent of a family. Under this approach, the municipality defines all related persons and a specific number (e.g.- four) of unrelated individuals as constituting a “family.” The City of Portland, Oregon takes this approach and regulates occupancy by household. Their definition of household is “One or more persons related by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; or one or more handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit.” The City of Chicago, Illinois, regulates occupancy through a definition of household: “One or more persons related by blood, marriage, legal adoption or guardianship, plus not more than 3 additional persons, all of whom live together as a single housekeeping unit; or one or more handicapped persons, as defined in the Fair Housing Amendments Act of 1988, plus not more than 3 additional persons, all of whom live together as a single housekeeping unit.” The City of Seattle also regulates occupancy through a definition of household in its zoning code, which is defined as a “housekeeping unit consisting of any number of related persons; eight or fewer non-related, non-transient persons, eight or fewer related and non-related non-transient persons, unless a grant of special or reasonable accommodation allows an additional number of persons.”

As noted above, Minneapolis seems to be in the minority among larger cities by regulating occupancy by number of individuals in the zoning code. Outside of definitions for “family” or household,” most other cities do not have occupancy regulations in their zoning codes. Some zoning codes among peer cities are silent on maximum occupancy altogether.

How will this amendment implement the comprehensive plan?

The amendment will implement the following applicable policies of *The Minneapolis Plan for Sustainable Growth*:

Land Use Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

- 1.1.1 Ensure that the City’s zoning code is consistent with The Minneapolis Plan and provides clear, understandable guidance that can readily be administered.

Land Use Policy 1.8: Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses.

- 1.8.1 Promote a range of housing types and residential densities, with highest density development concentrated in and along appropriate land use features.

Housing Policy 3.6: Foster complete communities by preserving and increasing high quality housing opportunities suitable for all ages and household types.

- 3.6.2 Promote housing development in all communities that meets the needs of households of different sizes and income levels.
- 3.6.6 Actively enforce anti-discrimination laws and act to promote Fair Housing practices.

The amendment will implement the following applicable policies of *Minneapolis 2040*:

Policy 35: Innovative Housing Types: Pursue innovative housing types and creative housing programs to help meet existing and future housing needs.

- b. Review and revise existing policies, programs, and regulations to remove barriers and support innovative, energy efficient, and creative housing options, such as multi-generational housing that supports large family structures, single room occupancy, shared housing, co-housing, and cooperative-housing.

Policy 39: Fair Housing: Expand fair housing choice and access throughout the city.

- a. Participate in regional collaboration to eliminate fair housing barriers, including the completion of a fair housing assessment at least every five years, to be informed by robust community and stakeholder engagement.

This amendment will provide additional housing options to accommodate growth and removes an impediment to fair housing choice, as consistent with the above policies of the current and new comprehensive plans.

RECOMMENDATIONS

The Department of Community Planning and Economic Development recommends that the City Planning Commission and City Council adopt staff findings to amend Title 20 of the Minneapolis Code of Ordinances, as follows:

A. Text amendment to modify occupancy regulations.

Recommended motion: **Approve** the text amendment to modify occupancy regulations.

Chapter 520 related to the Zoning Code: *Introductory Provisions*

Chapter 546 related to the Zoning Code: *Residence Districts*

Chapter 547 related to the Zoning Code: *Office Residence Districts*

Chapter 548 related to the Zoning Code: *Commercial Districts*

Chapter 549 related to the Zoning Code: *Downtown Districts*

Chapter 551 related to the Zoning Code: *Overlay Districts*

ATTACHMENTS

1. Ordinance amending Chapter 520 related to the Zoning Code: Introductory Provisions
2. Ordinance amending Chapter 546 related to the Zoning Code: Residence Districts
3. Ordinance amending Chapter 547 related to the Zoning Code: Office Residence Districts
4. Ordinance amending Chapter 548 related to the Zoning Code: Commercial Districts
5. Ordinance amending Chapter 549 related to the Zoning Code: Downtown Districts
6. Ordinance amending Chapter 551 related to the Zoning Code: Overlay Districts

ORDINANCE

By Bender

Amending Title 20 of the Minneapolis Code of Ordinances relating to Zoning Code.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That the definitions for “family” and “supportive housing” contained in Section 520.160 of Chapter 520, Introductory Provisions, be amended to read as follows:

520.160. - Definitions. Unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall, for the purposes of this zoning ordinance, have the meanings indicated. Additional definitions may be found within specific chapters of this zoning ordinance. All words and phrases not defined shall have their common meaning.

Family. ~~An individual or two (2) or more persons related by blood, marriage, domestic partnership as defined in Chapter 142 of the Minneapolis Code of Ordinances, or adoption, including foster children and domestic staff employed on a full-time basis, living together as a permanent household. This definition of family is established for the purpose of preserving the character of residential neighborhoods by controlling population density, noise, disturbance and traffic congestion, and shall not be applied so as to prevent the city from making reasonable accommodation where the city determines it necessary to afford handicapped persons living together in a permanent household equal access to housing pursuant to the Federal Fair Housing Amendments Act of 1988. A person or persons as defined in Chapter 244 of the Minneapolis Code of Ordinances.~~

Supportive housing. A facility that provides housing for twenty-four (24) hours per day and requires participation by residents in programs or services designed to assist residents with improving daily living skills, securing employment or obtaining permanent housing. It does not include:

- (1) Senior housing with services designed specifically to serve the needs associated with the aging of the residents.
- (2) Inebriate housing.
- (3) Any facility licensed by the Minnesota Department of Human Services (DHS), Department of Health (DOH) or Minnesota Department of Corrections (DOC).
- (4) Any other county, state or federal community correctional facility.
- (5) Fraternities, sororities or other student housing.
- (6) Any facility owned, leased or operated by the Minneapolis Public Housing Authority (MPHA).
- (7) The use of one (1) dwelling unit on one (1) zoning lot ~~which meets the occupancy requirements of the zoning district in which it is located.~~

Section 2. That Section 520.80 contained in Chapter 520, Introductory Provisions, be amended to read as follows:

520.80. - Reasonable accommodation. The city has a legitimate interest in preserving the character of residential neighborhoods by adopting regulations relating to the number and type of structures and uses, the number of persons who may occupy a dwelling or structure, and off-street parking, in order to control population density, noise, disturbance and traffic congestion. However, these regulations shall not be applied so as to prevent the city from making reasonable accommodation as required by the Federal Fair Housing Amendments Act of 1988 pursuant to the procedure set forth in sections 525.590 to 525.650.

Section 3. That Section 546.50 contained in Chapter 546, Residence Districts, be and is hereby repealed.

~~**546.50. Maximum occupancy.** (a) *Dwelling units.* The combined maximum occupancy of a dwelling unit located in the R1 through R3 Districts shall not exceed one (1) family plus up to two (2) unrelated persons living together as a permanent household provided that the family plus the unrelated persons shall not exceed a total of five (5) persons. The maximum occupancy of a dwelling unit located in the R4 through R6 Districts shall not exceed one (1) family plus four (4) unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons.~~

~~(b) *Rooming units.* The maximum occupancy of a rooming unit shall be as regulated by Chapter 244 of the Minneapolis Code of Ordinances, Housing Maintenance Code.~~

Section 4. That Section 547.50 contained in Chapter 547, Office Residence Districts, be and is hereby repealed.

~~**547.50. Maximum occupancy.** (a) *Dwelling units.* The maximum occupancy of a dwelling unit located in the office residence districts shall not exceed one (1) family plus four (4) unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons.~~

~~(b) *Rooming units.* The maximum occupancy of a rooming unit shall be as regulated by Chapter 244 of the Minneapolis Code of Ordinances, Housing Maintenance Code.~~

Section 5. That Section 548.50 contained in Chapter 548, Commercial Districts, be and is hereby repealed.

~~**548.50. Maximum occupancy.** (a) *Dwelling units.* The maximum occupancy of a dwelling unit located in the commercial districts shall not exceed one (1) family plus four (4) unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons.~~

~~(b) *Rooming units.* The maximum occupancy of a rooming unit shall be as regulated by Chapter 244 of the Minneapolis Code of Ordinances, Housing Maintenance Code.~~

Section 6. That Section 549.50 contained in Chapter 549, Downtown Districts, be and is hereby repealed.

~~**549.50. Maximum occupancy.** (a) *Dwelling units.* The maximum occupancy of a dwelling unit located in the downtown districts shall not exceed one (1) family plus four (4) unrelated persons living together as a~~

~~permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons.~~

~~(b) *Rooming units.* The maximum occupancy of a rooming unit shall be as regulated by Chapter 244 of the Minneapolis Code of Ordinances, Housing Maintenance Code.~~

Section 7. That Section 551.390 contained in Chapter 551, Overlay Districts, be and is hereby repealed.

~~**551.390. Maximum occupancy.** (a) *Dwelling units.* The maximum occupancy of a dwelling unit located in the IL Overlay District shall not exceed one (1) family plus four (4) unrelated persons living together as a permanent household, provided that the family plus the unrelated persons shall not exceed a total of five (5) persons.~~

~~(b) *Rooming units.* The maximum occupancy of a rooming unit shall be as regulated by Chapter 244 of the Minneapolis Code of Ordinances, Housing Maintenance Code.~~

Section 8. That Section 551.770 contained in Chapter 551, Overlay Districts, be amended to read as follows:

551.770. - Purpose. The B4H Downtown Housing Overlay District is established to provide areas that offer affordable housing that may not meet the regulations of the primary zoning district, including minimum spacing and maximum occupancy requirements for congregate living residential uses.