

city of saint paul
planning commission resolution
file number
date

WHEREAS, the Saint Paul Zoning Code, found in chapters 60 through 69 of the Saint Paul Legislative Code, is established to promote and to protect the public health, safety, morals, aesthetics, economic viability and general welfare of the community; and

WHEREAS, Section 61.801(a) of the Zoning Code calls for periodic review of said code to reflect current city policies, to address current technology and market conditions, and to bring the zoning code up-to-date; and

WHEREAS, the Zoning Code definition of “family” has been identified in the 2017 Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice as a barrier to housing choice and potentially discriminatory; and

WHEREAS, the draft 2040 Comprehensive Plan, in Housing policy H-17, directs City staff to ensure that the regulatory definition of family and allowable dwelling types meet the needs of residents and reflect how people want to live, while meeting fair housing requirements; and

WHEREAS, City Council Resolution 18-1204 calls for a study of the Zoning Code definition of “family” in order to explore ways to preserve housing that is affordable at all income levels, address racial, social, and economic disparities in housing, and increase density in residential districts; and

NOW, THEREFORE, BE IT RESOLVED, under provisions of Section 61.801(b) of the Legislative Code, that the Planning Commission initiates a zoning study to consider amendments to the Zoning Code pertaining to the definition of “family” in Article 60.200 of the Zoning Code, and other connected regulations contained in the Zoning Code; and

BE IT ALSO RESOLVED, that the Planning Commission releases the zoning study and proposed amendments for public review and schedules a public hearing for November 13, 2020.

moved by _____
seconded by _____
in favor _____
against _____



CITY OF SAINT PAUL
Melvin Carter, Mayor

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PED Staff Report

Re: Study on the Definition of *Family* in the St. Paul Zoning Code
To: Saint Paul Planning Commission
Author: Comprehensive and Neighborhood Planning Committee
Date: October 2, 2020

Summary

This study examines the Zoning Code's definition of the term *family*, which regulates the number and relatedness of occupants of every dwelling unit in the City of Saint Paul. The study recommends the text amendments to the Zoning Code found in Appendix A.

- 1. Background**
- 2. Amendment Objectives**
- 3. Analysis**
 - Zoning and the existing definition of *family*
 - Problems to be addressed
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 - Households and housing stock
 - Other City and State occupancy ordinances
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- 4. Recommendations & Discussion**
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 - Other potential approaches
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1. Background

The Zoning Code definition of *family* was alluded to in the 2030 Comprehensive Plan and then explicitly targeted in the draft 2040 Comprehensive Plan (discussed later) as a regulation that could be studied for better compliance with Fair Housing laws and better provision of housing. This study was requested by City Council Resolution 18-1204 on July 18, 2018 (attached as Appendix D). The resolution calls “for action to create and preserve housing that is affordable at all income levels, address racial, social and economic disparities in housing, and create infrastructure needed to stabilize housing for all in Saint Paul.” In this resolution “the Saint Paul City Council acknowledges the housing crisis in our city and region, and the urgent need to address the crisis as our population grows” and requests “[z]oning studies by the Planning Commission to explore ways to increase density in residential districts including ... reviewing and updating the definition of ‘family’.”

The definition of *family* was also highlighted as a barrier to housing choice with potentially discriminatory effects in the 2017 Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice, prepared for the Twin Cities’ Fair Housing Implementation Council (FHIC) (relevant portion attached as Appendix E).^a Saint Paul’s definition ranked a 2 – “medium risk” of being discriminatory or arbitrary – on a scale of 1 (low-risk) to 3 (high risk).

Study Objective

The objective of this study is to consider the impact of amending the definition of *family*. Potential benefits of amending this definition are to open opportunities for residents to find affordable housing where the definition of *family* in the Zoning Code may be an unnecessary barrier; to support the ability of cost-burdened households to add housemates who can help shoulder rent costs and housekeeping duties; and to enable zoning regulations to reflect and legalize current household customs in Saint Paul. The section titled Impact of Options discusses the balance between these potential benefits and concerns that arise.

2. Analysis

Zoning and the existing definition of *family*

The City of Saint Paul Zoning Code regulates occupancy of dwellings through its definition of the word *family*. Per Zoning Code Section 60.207, the term *family* is defined as follows:

Family. One (1) or two (2) persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two (2) persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four (4) or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code.

Current
definition

The Department of Safety and Inspections has developed the visual included in this report as Appendix B to help clarify who may be included in a *family*.

This definition was adopted with the 1975 Zoning Code. Before 1975, the Zoning Code’s definition of *family* read: “One or more persons customarily living together as a single housekeeping unit in a dwelling unit as distinguished from a group occupying a hotel, club, religious or institutional building, boarding or lodging house, or fraternity.” The 1975 update coincided with municipalities around the United States using definitions of *family* or *household* to describe and restrict the occupancy of a

Previous
definition

^a Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice, May 2017
(<https://www.ramseycounty.us/sites/default/files/Projects%20and%20Initiatives/Draft%20III%20Addendum.pdf>)

dwelling. Nationally, the term *family* is well-established in the zoning lexicon, despite differences with its meaning in housing or family law.

The utility of this definition as an occupancy restriction in the Zoning Code is to address issues of land use – that is, how the activities, and structures on a certain parcel impact the surrounding activities and structures. Any definition of *family* must further the purposes of the Zoning Code without violating the goals of the City as communicated in the decennial Comprehensive Plan. Some main purposes of the Zoning Code found in § 60.103 are to “ensure adequate light, air, privacy, and access to property”; “facilitate adequate provision for transportation, water, recreation, and other public requirements”; and “prevent overcrowding and undue congestion of population”.

Zoning
Code intent

While Saint Paul has never issued an explanation for its definition of *family*, other cities, states, and federal court cases have expressed benefits that echo those ascribed to single-family zoning. In *Village of Belle Terre v. Boraas*, the landmark 1974 Supreme Court case that supported the zoning power to regulate occupancy through this definition, a supporting justice opined that

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds. ... A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. ... The police power is not confined to elimination of filth, stench, and unhealthy spaces. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.^b

Court opinions from several states have also discussed the nexus between occupancy and zoning. Some named benefits include prevention of population congestion, “suppression of disorder”, traffic safety, more effective police patrolling and street maintenance, and freedom from fear of strangers.

While the Supreme Court upheld zoning restrictions on the total number of unrelated occupants in a dwelling in 1974, in the 1977 case *Moore v. City of East Cleveland*, the Court struck down regulations that specified which family relations are allowed and not allowed, citing violation of substantive due process.^c East Cleveland’s ordinance allowed a grandmother to live with grandchildren descended from only one of her children, which she did. When a grandchild through another of her children moved in, bringing total occupancy to four (Grandmother, Son, Grandson, and Grandson from another son), she was penalized by the City, a penalty that was eventually ruled illegal. The Court stated:

“The strong constitutional protection of the sanctity of the family established in numerous decisions of this Court extends to the family choice involved in this case, and is not confined within an arbitrary boundary drawn at the limits of the nuclear family (essentially a couple and their dependent children). ... The nature and tradition of this Nation compel a larger conception of the family.”^d

The implication of the above Supreme Court cases is that a zoning code can restrict how many people occupy a dwelling agnostic to relatedness, but cannot parse out which relatives may or may not reside together.

Scholars have suggested that zoning code definitions of *family*, as well as other forms of occupancy regulations, standardized upper-middle-class White Anglo-Saxon Protestant values on immigrant and tenement workers during the industrial revolution, enforcing the new and anomalous nuclear family household style where it had not existed before and outmoding more economically and socially resilient

^b *Village of Belle Terre v. Boraas*. 416 U.S. 1 (more) 94 S. Ct. 1536; 39 L. Ed. 2d 797; 6 ERC 1417

^c Maldonado, S. (n.d.). Sharing A House but Not A Household: Extended Families and Exclusionary Zoning Forty Years After Moore. *Fordham Law Review*, 85, 13.

^d *Moore v. City of East Cleveland*. 431 U.S. 494 (more) 97 S. Ct. 1932; 52 L. Ed. 2d 531; 1977 U.S. LEXIS 17

households. Enabled by homogenous gender role expectations, high wages, and the post-war housing boom, the nuclear family household peaked in the 1950s and 1960s, and began declining as wealth, health, educational, and other socioeconomic disparities began widening in the 1970s.^{e f}

Zoning code occupancy regulations based on relatedness have been questioned from the early 1970s to the present year. Considered by some as going beyond land use planning into the realm of ideologically-motivated social control, they continuous toe the boundary of police power bestowed on municipalities. Over and above dimensional standards and land use categorization at the heart of every zoning code – which more effectively mitigate the externalities resulting from denser populations – occupancy regulations beyond those related to safety address a municipality’s balance of public benefit with private liberty. In the case of a limited housing supply, an increasing renter population, and increases in single-person households *and* percent of the population residing in shared living quarters, this balance must be continuously reconsidered in context.^{g h i j} Prominent planning organizations such as the American Planning Association have issued opinions on *family* definitions, highlighting their restrictions on unrelated occupants as easy regulations to amend to allow for more inclusive housing in generally exclusive single-family zoning districts.^{k l}

Though municipal governments have stated public purposes for regulating occupancy beyond building and fire codes, it is a litigious issue and may work against the City’s interests if too intrusive into the privacy of households. Additionally, legal scholars continue to challenge the power of governments to regulate with whom a person may choose to reside, citing the US Constitution’s First Amendment right of free association. While this issue is settled delicately at a federal level, these challenges exemplify the contentious nature of this type of regulation even in the world of constitutional law.^{m n}

Problems to be addressed

The occupancy restriction in the current Zoning Code definition of *family* is problematic under review from legal (Fair Housing), social, and housing supply lenses.

The Twin Cities Fair Housing Implementation Council report discusses the potential for harm in definitions of *family*:

Unreasonably restrictive definitions may have the intended or unintended ... consequence of limiting housing for nontraditional families and for persons with disabilities who reside together in congregate living situations. ... [T]he restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate state due process and/or the

Definition may have a discriminatory impact

^e Pader, Ellen. “Housing Occupancy Standards: Inscribing Ethnicity and Family Relations On The Land.” *Journal of Architectural and Planning Research*, vol. 19, no. 4, 2002, pp. 300–318. *JSTOR*, www.jstor.org/stable/43030627.

^f Brooks, D. (2020, February). The Nuclear Family Was a Mistake. *The Atlantic*. Retrieved February 11, 2020, from https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/?utm_source=share&utm_campaign=share

^g Toni Klimberg, Excluding the Commune from Suburbia--The Use of Zoning for Social Control, 23 *Hastings L.J.* 1459 (1972). Available at: https://repository.uchastings.edu/hastings_law_journal/vol23/iss5/5

^h Richards, J. G. (1982). Zoning for Direct Social Control. *Duke Law Journal*, 1982(5), 761. <https://doi.org/10.2307/1372309>

ⁱ James A. Smith Jr., *Burning the House to Roast the Pig Unrelated Individuals and Single Family Zoning’s Blood Relation Criterion*, 58 *Cornell L. Rev.* 138 (1972)

^j Redburn, K. (2017). Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3109969>

^k Merriam, D. H., FAICP. (2007, February). Ozzie and Harriet Don’t Live Here Anymore. *Zoning Practice*.

^l Connolly, Brian J. and Brewster, David A. (2020, May). Modern Family: Zoning and the Non-Nuclear Living Arrangement. *Zoning Practice*.

^m Oliveri, R. C. (2016). Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions. *Florida Law Review*, 67, 55.

ⁿ *Challenging Restrictive Family Definitions in Zoning Ordinances: City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal.), 23 *Urb. L. Ann.* 307 (1982)

federal FHA as it may have a disproportionate impact on people with disabilities, people of color, and families with children.

Describing municipalities that received a low-risk score, the FHIC report called out the number of unrelated occupants as key to its Fair Housing evaluation:

The jurisdictions that received a 1 (low risk score) either have family definitions that allow five or more unrelated persons to reside together as a single housekeeping unit, as in the case of Apple Valley and Plymouth, or were even more permissive and do not specifically define “family” or the number of unrelated persons who may reside together, as in the case of Edina, instead leaving maximum occupancy per dwelling as a matter of safety regulated by the building code. (p.98 – emphasis by this author)

The report recommends that cities with a medium or high risk score

amend their codes to either (1) have the definition of family 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; or (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. (p.100)

The FHIC report specifically names the maximum number of unrelated individuals who can live together as a factor in its Fair Housing evaluation, making that number a vital focal point of this zoning study.

Additionally, Saint Paul’s definition specifies which relatives may reside together – those linearly related to someone else in the household – and places a limit on those relatives who are not linearly related by including them in the “unrelated” category. This creates a maximum of four (4) on certain relatives, such as siblings or cousins without a common ancestor present, while allowing any number of others, for instance the children of another occupant. The 1977 Supreme Court case *Moore v. City of East Cleveland* discussed above speaks to the capricious and intrusive nature of such a limitation.

Socially, the current definition limits residents to a near-nuclear family style that is peculiar across time and societies, neither accommodating Saint Paul’s culturally diverse population and household customs nor allowing more flexible household arrangements of unrelated people during economic, social, or individual hardship. Saint Paul’s population includes people of cultural traditions where multigenerational households provide housing for unrelated elders and children. The current definition of *family* limits these groups from finding culturally-sensitive housing and care from those they identify as kinfolk if they fall too far outside the bounds of blood, marriage, or adoption. Households composed of occupants who are tied by complex bonds of affinity, shared history, identity, or common interest are limited in their ability to dwell together by this regulation. Traveling laborers, immigrants, post-graduate college students, and others in transitional phases of life are sometimes barred from sensible, appropriate, and necessary housing options. Higher rates of larger, less-nuclear households are found among communities of color, causing them to be disproportionately affected by this restriction. Current regulation limits these natural and mutually supportive households.

Definition prohibits certain types of households

In addition to the legal and social consequences of the current definition of *family*, Zoning Code occupancy restrictions have been noted nationally as barriers to affordable housing. An affordable housing crisis across the Twin Cities is making cost-sharing techniques more desirable for struggling residents. Providing housing has taken a priority position for governments at all levels, and cities are looking for new housing-creation tools. By raising the number of people allowed to live in a dwelling unit, a city can expand the capacity of its existing housing stock to accommodate those in need.

Definition may be a barrier to affordable housing

Data limitations

Several limitations have constrained analysis of the impact of the number and relationship of occupants of a single dwelling on housing affordability and neighborhood wellbeing. The limitations are:

- A. A lack of household data specific to individual properties rather than tracts, block groups, or zip codes. Data from the U.S. Census, American Community Survey, and International Public Use Microdata Series (IPUMS) capture household information at too high of a level to be useful to predict the impact of an increased household size; we also cannot know longitudinal histories of household composition.
- B. A lack of before-and-after housing values for comparison due to not having already undergone a citywide change in occupancy allowances. Saint Paul's current definition of *family* has been in place since 1975, since which year major social and economic changes have occurred.
- C. The lack of similar ordinance amendments in comparable cities or metro regions. Few cities or states around America have changed their occupancy restrictions in the last few decades, leaving us with no comparable city or regulatory environment. The only relevant analysis staff could find was a 2014 study by CivicAnalytics, analyzing home values, demolition and building permits, and home size in one section of the City of Austin, TX at the zip code level. That study concluded that there was *no* correlation between household size and current average value per zip code; that there *was* a loose correlation between household size and increasing average home value per zip code; and that there was no way to determine causation. From the report^o:

Are 5+ occupants in a single-family zoned property a response to the market, in that incomes are not keeping up with the cost of housing in some neighborhoods? Or is development of significantly larger properties commanding a higher total rent compared to existing properties driving up overall rents in impacted areas? Or both?

- D. The unknown demand for household sizes larger than what the city currently allows. This study was guided by the early decision to not search for existing cases of over-occupancy. Due to a legitimate interest in protecting household privacy, it is impossible to know how many individuals and households in need of affordable housing solutions or more diverse household situations could be supported by an updated definition of *family* that is more in line with Fair Housing principles. Without this information, as well as not knowing how many residents are not over-occupying but would benefit from living in a larger household size, we are unable to project the positive impact of a text amendment.
- E. Enough socio-economic complications to cast uncertainty on any projected impacts of an increase in permitted occupants, related or not. Any correlation that could be drawn between an increase in household size and composition and housing affordability or neighborhood wellbeing would need to be proven outside of housing market realities, demographic and cultural preferences, and socio-economic dynamics, the scale of analysis of which would be well outside the scope of the present study.

Households and housing stock^p

Much of the housing stock in St. Paul was built to accommodate larger households than is typical today. In 1960, when St. Paul was fully developed, the average household size in the U.S. was 3.3 people. It fell continuously until 2010, when it was about 2.5 people per household. Since 2010 it has grown slightly to an estimated 2.6 people per household in 2018, increasing for the first time since records began in the 18th century.^q The average number of occupants per room has also increased slightly since 2010, driven by

^o Study found at <http://www.austintexas.gov/edims/document.cfm?id=207173>

^p The data in this analysis is pulled from 2016 to 2019 datasets. The spread is due to the availability of data at the beginning and end of this zoning study and does not impact its findings. Each date is called out per figure or table.

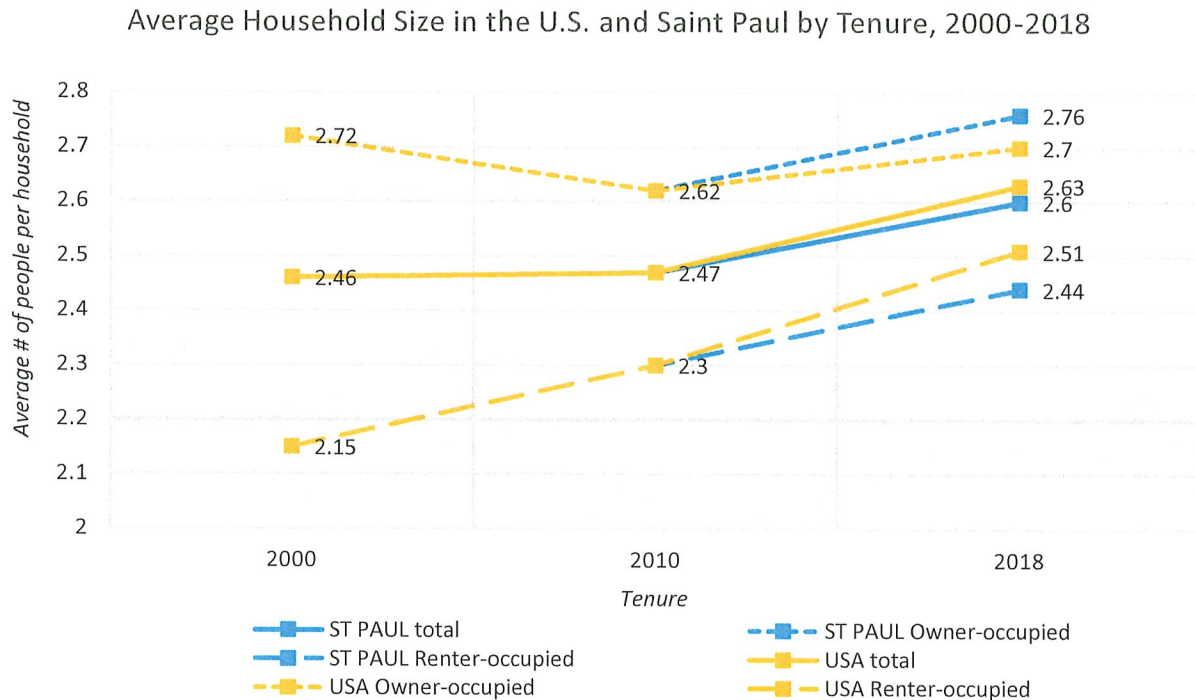
^q PEW Research Center (<https://www.pewresearch.org/fact-tank/2019/10/01/the-number-of-people-in-the-average-u-s-household-is-going-up-for-the-first-time-in-over-160-years/>)

minority, foreign-born, and young adult residents. The proportion of residents inhabiting multigenerational households has more than doubled nationally since 1980.[†]

The average size of households in Saint Paul has grown since 2010, especially among owner-occupied households. The average size of renter-occupied households continues to rise.

Increase in average household size

Figure 1: Average household size in the U.S. and Saint Paul by tenure, 2000-2018[§]

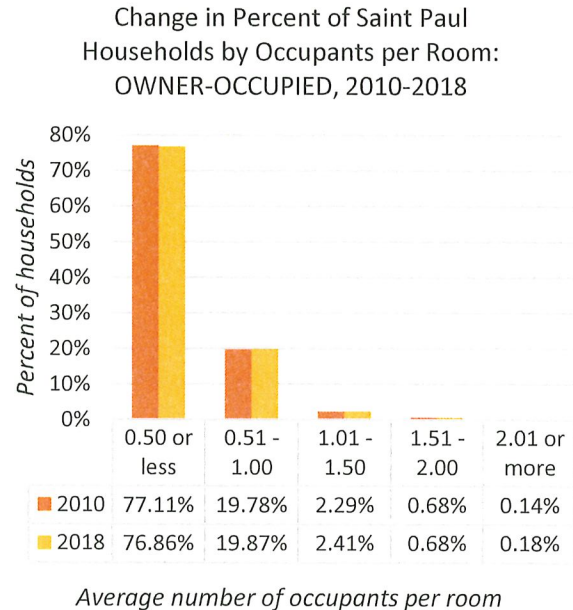
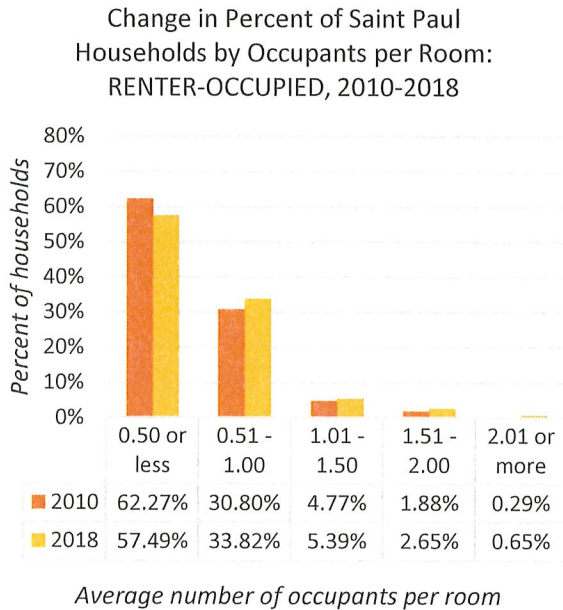


Average number of occupants per room increased slightly from 2010 to 2018 among renter-occupied households. Owner-occupied households stayed mostly stable. In 2020, Saint Paul has grown to over fifty percent renter households.[§]

Increase in occupants per room

[†] PEW Research Center (<https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>)

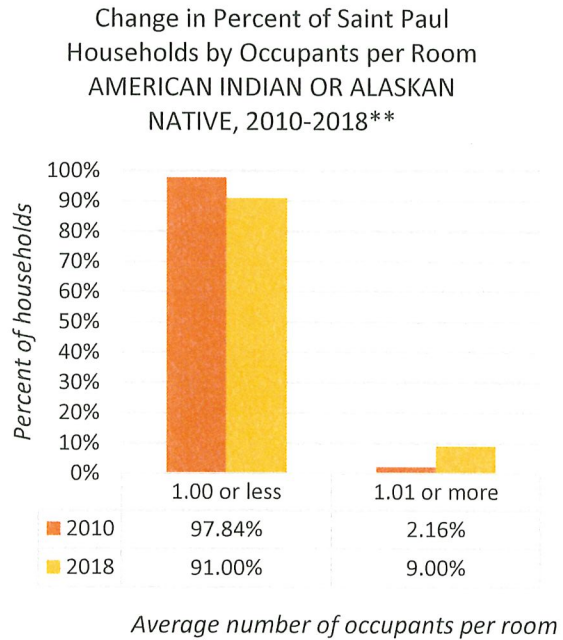
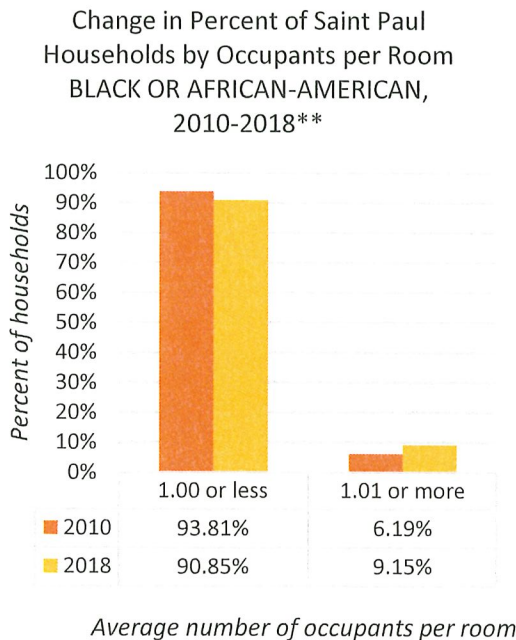
[§] Data sources: 2000 and 2010 Decennial U.S. Census, 2018 American Community Survey 5-year estimates



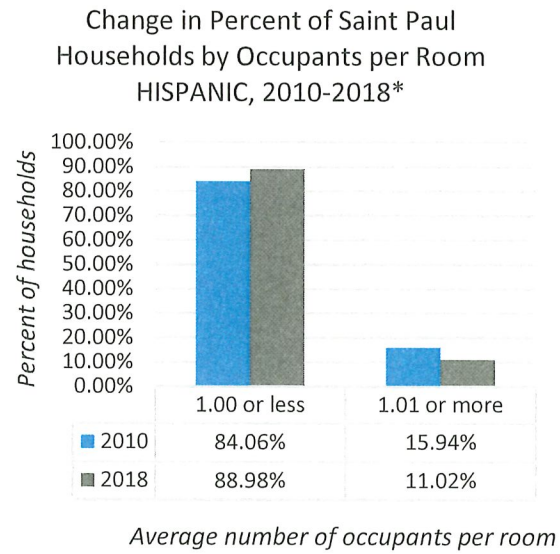
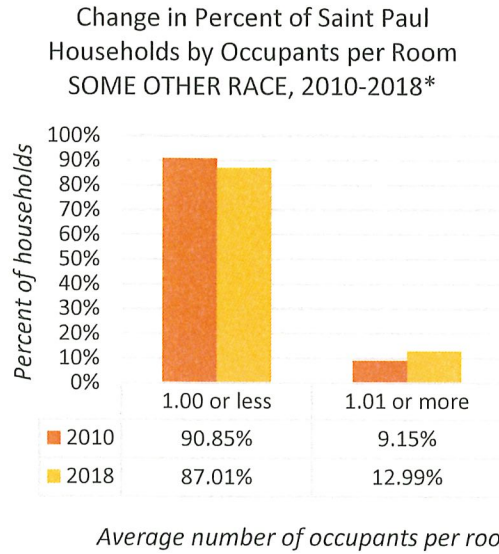
The increase in occupants per room is driven partly by residents of color in Saint Paul, except Hispanic residents. According to conversations with one nonprofit serving the Latinx community in the Twin Cities, one counterbalancing group that maintains large household sizes is traveling Hispanic laborers. Hispanic communities also sometimes rely on households of unrelated individuals for care of the young or elderly, a household style that is masked by these numbers.

Increase in occupants per room among some minorities, not Hispanics

Figure 2-5: Change in percent of households by occupants per room by race and ethnicity¹



¹ Data sources: 2010 Decennial U.S. Census, 2018 American Community Survey 5-year estimates



The number of people living in multigenerational family households across the U.S. has reached a record high. By 2016, 64 million people were living in households with two or more adult generations or a generation in between the residents (grandparent and grandchild), comprising 20% of Americans compared to a low of 12% in 1980. Asian, Black, and Hispanic Americans are more likely to live in multigeneration family households than the average, as are foreign-born residents, while white Americans are less likely than the average. As communities of color account for a growing portion of Saint Paul’s residents, this is sure to be reflected in households across this city. Younger adults were the most likely age group to live in multigenerational households at 33% nationally, up from 13% in 1980. Among those aged 18 to 34, “living with parents surpassed other living arrangements.”^u Reflecting this trend, the percent of residents living in “shared living quarters” – households with adult residents who are not the householder, the spouse or unmarried partner of the householder, or 18 to 24-year-old college student – grew nationally from 28.8% in 1995 to 31.9% in 2017.^v

Increase in residents of multi-generational households

Increase in residents of shared living quarters

Areas of Saint Paul with greater proportions of residents of color also show larger household sizes. This shows up clearly in the North End, Payne-Phalen, and Frogtown/Rondo areas, as well as on the West Side and the Greater East Side. Any change to occupancy standards is more likely to affect residents of color and to a greater degree than white residents. The first map below shows the average number of occupants per household overlaid with the percent of that tract that of color in 2016, the most accurate recent data available. The second map shows the percent of households in each block group that have seven or more occupants as of 2010. (2010 conditions are not too dissimilar to 2016 and allows us a finer-grained understanding of large households.)

Populations of color correlate with larger households

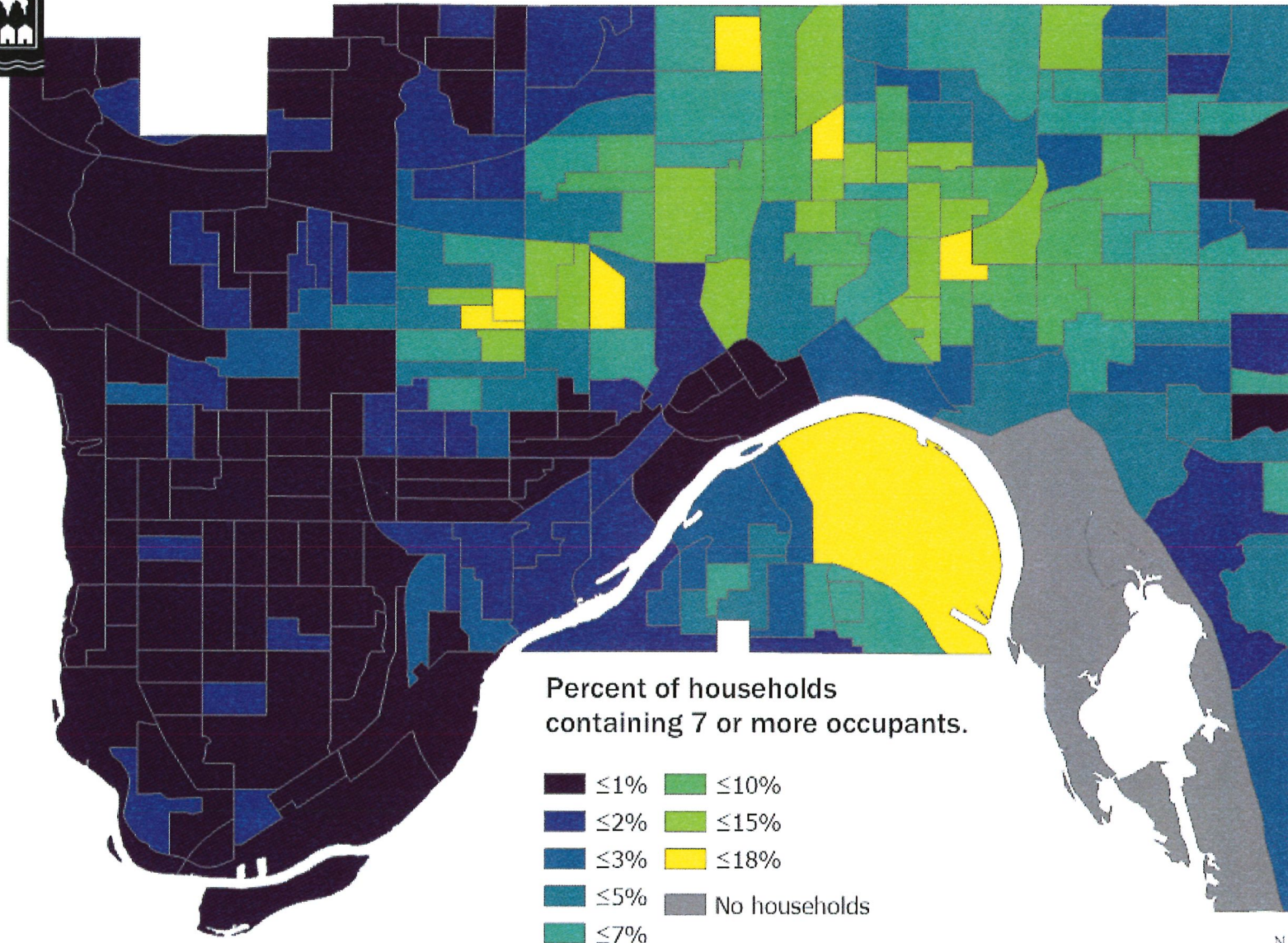
^u PEW Research Center - <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>

^v PEW Research Center - <https://www.pewresearch.org/fact-tank/2018/01/31/more-adults-now-share-their-living-space-driven-in-part-by-parents-living-with-their-adult-children/>



Percent of households containing 7 or more occupants

2010 US Decennial Census



Source: ESRI Living Atlas, US Census Bureau, 2010 US Decennial Census

0 0.5 1 2 3 4 Miles



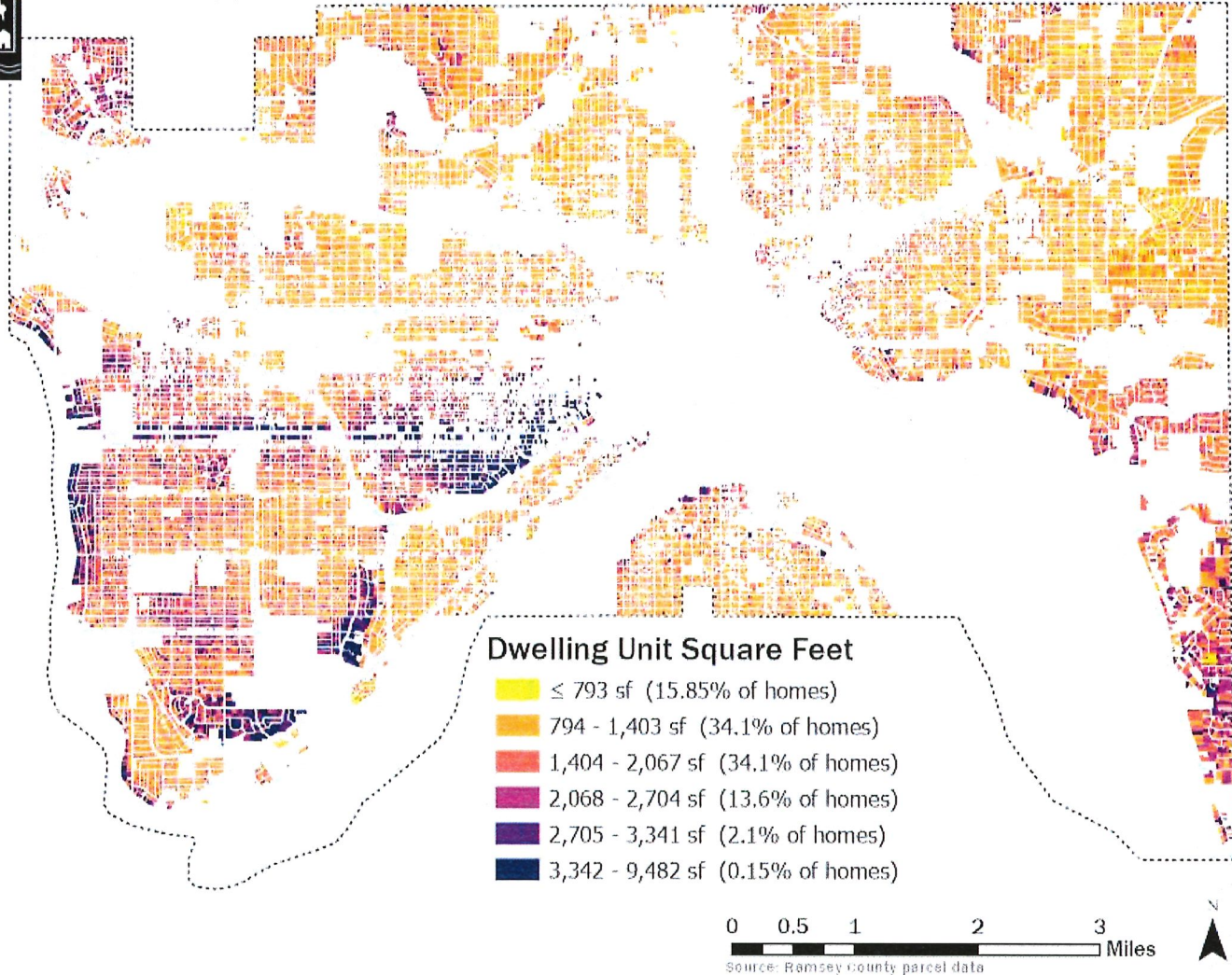
Consideration of occupancy must be done in the context of available dwelling square footage. The major effect of a change to occupancy regulations will be on larger dwelling units, which are generally single family homes. Saint Paul's single-family housing stock consists mostly (68%) of homes between 793 and 2,067 square feet. The average (mean) size is 1,430 square feet. Homes between 2,068 and 2,703 square feet make up 13.6%, and houses larger than 2,704 square feet make up only 2.25% of single-family homes in Saint Paul.

Average
single-family
home: 1,430
square feet



Square footage of single family homes

Ramsey County parcel data, 2019



Other relevant ordinances

Other occupancy regulations

The next most restrictive occupancy limit is found in the Minimum Property Maintenance Standards, which is Chapter 34 of the Legislative Code. Section 34.13 requires that a dwelling unit contain a minimum habitable gross floor area of at least 150 square feet for the first occupant and at least 100 square feet for each occupant thereafter. Every room intended for sleeping for one person is required to have at least 70 square feet, while sleeping rooms for two or more people are required to have 50 square feet per person (and 60 square feet for efficiency or studio dwellings). Chapter 34 applies regardless of relationship, age, or any other occupant characteristic. This regulation ensures minimum space per dwelling unit to prevent overcrowding, while the definition of *family* in the Zoning Code sets a maximum per dwelling unit to address the impact of a dwelling unit on its surroundings.

In addition to Chapter 34, construction of single-family and two-family dwellings are governed by the Minnesota Residential Code, which does not have minimum occupant loads. (An occupant load is a constant factor that determines things like how much and where to build egress and other structural elements, and can act as a minimum occupancy restriction.) Multifamily dwellings – those with three or more units – are regulated by the Minnesota Building Code which carries an occupant load of 200 square feet per person for residential units, as well as square footage minimums of 120 square feet for at least one room, 70 square feet for other habitable rooms, and a minimum of 100 square feet for each additional person past the first, with a minimum of 220 square feet for efficiency units.

The sum total of these occupancy definitions is that the Zoning Code is the most restrictive (allowing only four people) down to a dwelling unit of 800 square feet (depending on specific room sizes). Below this the particular sizes of rooms will trigger Chapter 34, Building Code, and Fire Code. Appendix C shows how these codes and the Zoning Code definition of *family* regulate various sizes of dwelling units.

Dependent Land Uses

The definition of *family* is referred to explicitly in the standards and conditions of two land uses (accessory dwelling units and short term rentals). Other land uses use the number four to set the maximum household size before a dwelling becomes the specified land use; to enact spacing requirements between certain types of congregate living facilities; and to set minimum lot area requirements for facilities with more than four guest rooms or occupants. Changing the definition of family would require amending all or most of these land uses.

- *Adult care home (§ 65.151)*

A facility where aged, infirm, or terminally ill persons reside in order to receive nursing care, custodial care, memory care, Medicare-certified hospice services, or individualized home care aide services either by the management or by providers under contract with the management. The standards and conditions include:

(a) *In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of four (4) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.*

A change in the definition of *family* would require amending the threshold at which adult care homes require a larger lot size in residential and T1 traditional neighborhood districts.

- *Community residential facility, licensed correctional (§ 65.152)*

A licensed correctional community residential facility is a facility where one or more persons reside under the care and supervision of a residential program licensed by the state department of corrections. The standards and conditions include:

- (b) *The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than **four (4)** adult residents, except in B4-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.*
- (e) *In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of **four (4)** guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.*

A change in the definition of *family* would require amending the occupancy threshold of congregate living facilities subject to spacing requirements, and the minimum lot area requirement.

- *Overnight shelter (§ 65.157)*

An overnight shelter is a facility where “persons receive overnight shelter, but are not expected or permitted to remain on a 24-hour-per-day basis.” The only condition on this land use is that “The facility shall be a minimum distance of six hundred (600) feet from any other of the following congregate living facilities with more than **four (4)** adult residents: overnight shelter, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or shelter for battered persons.” A change in the definition of *family* would require amending the occupancy threshold of congregate living facilities subject to spacing requirements.

- *Shelter for battered persons (§ 65.160)*

A shelter for battered persons is state-certified facility which, for a maximum of thirty days, houses adults or children who have suffered assault or battery. This facility is geared toward being a detached, low-density residence dedicated wholly to battered persons and their protection.

The following standards and conditions apply to facilities serving more than four adult facility residents:

- (a) *In residential, traditional neighborhood, Ford and OS-B2 business districts, a conditional use permit is required for facilities serving more than **four (4)** adult facility residents and minor children in their care.*
- (b) *The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than **four (4)** adult residents: shelter for battered persons, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or overnight shelter.*
- (c) *In RL-RT2 residential, traditional neighborhood, Ford, OS-B3 business and IT-I2 industrial districts, the facility shall serve sixteen (16) or fewer adult facility residents and minor children in their care.*
- (d) *The facility shall not be located in a two-family or multifamily dwelling unless it occupies the entire structure.*

(e) *In residential and T1 traditional neighborhood districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of **four (4)** guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.*

A change in the definition of *family* would require amending the occupancy threshold at which these standards and conditions are triggered, the occupancy threshold of congregate living facilities subject to spacing requirements, and the minimum lot area calculation for facilities serving seventeen or more residents.

- *Sober house (§ 65.161)*

The definition of a sober house is:

A dwelling unit occupied by more than four (4) persons, all of whom are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendment of 1988, ... The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. ...

A request for reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988 by providing an exception to the maximum number of unrelated persons living together in a dwelling unit shall automatically be granted if the following standards and conditions are met. ...

A dwelling unit with four or fewer residents is not regulated as a sober house, no matter the chemical dependency or activity of the residents, so up to four unrelated people may reside together in any dwelling unit as regulated by the definition of *family*. In excess of the definition of *family*, five to ten residents may occupy a sober house in RL to R4 with a request for reasonable accommodation. Eleven to sixteen residents may occupy a dwelling unit in most other districts (RT1 – RM3, all traditional neighborhood districts, all business districts, IT-I2, and F1-F5) with a request for reasonable accommodation. Seventeen or more residents may occupy a dwelling unit in those listed districts with a modified conditional use permit. There is a minimum spacing requirement of 330 feet between properties with sober houses.

Formation of these regulations was the result of a long study in 2006 and involved consideration of state regulation of licensed residential facilities (group homes). Minnesota Statute § 462.357 subdivisions 7 and 8 require state-licensed residential facilities of up to six residents be permitted as single-family residential uses by right, and facilities of up to sixteen residents be permitted as multifamily residential uses by right. Sober houses differ from these facilities in a number of ways and are an independent land use in Saint Paul’s Zoning Code; however, the thresholds of six and sixteen displayed the state’s determination of what size of dwelling number is appropriate for single-family and multifamily land uses.

A change to the definition of *family* would require amending the occupancy threshold that triggers a request for reasonable accommodation, but would not affect spacing requirements.

- *Supportive housing facility (§ 65.162)*

A supportive housing facility is a residence “where persons with mental illness, chemical dependency, physical or mental handicaps, and/or persons who have experienced homelessness reside and wherein counseling, training, support groups, and/or similar services are provided to the residents.” Six residents are allowed in RL-RT1 residential districts, while up to sixteen residents are allowed in most other districts. A conditional use permit is required for facilities

serving seven or more residents in residential, T1, and F1 districts. In residential and T1 districts, facilities serving more than seventeen residents triggers lot area minimums. Lastly, “The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than **four (4)** adult residents, except in B5-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.”

A change in the definition of *family* would require amending the occupancy threshold of congregate living facilities subject to the spacing requirements.

- *Short term rental (§ 65.645)*

A short term rental is “a dwelling unit, or a portion of a dwelling unit, rented for a period of less than thirty (30) days.” Allowance of more than one short term rental on a lot (including more than one unit in a single building like a duplex) is heavily restricted based on the presence or absence of the owner. Occupancy of a short term rental is limited to the definition of *family* “except that occupancy in excess of the definition of family may be permitted with a conditional use permit, on a case by case basis, for large one- and two-family dwellings on large lots.” Those short term rentals with a CUP to exceed the occupancy limit cannot be within 1,000 feet (about 20 typical single-family lot widths) of another with the same CUP. So far, no one has applied for a CUP for this purpose. The definition of *family* was chosen as the occupancy standard for this land use to avoid the complications of an independent regulation, and to keep it in harmony with the character of single-family use of a dwelling unit. A change in the definition would automatically affect short term rentals. As of the time of this study, there have been no applications for a CUP to exceed the definition of *family*, so it is reasonable to expect little change in occupation of short term rentals.

- *Roominghouse (§ 65.158)*

The roominghouse land use in the Zoning Code acts as a catch-all residence that allows occupancy to exceed the definition of *family*. It includes structures that provide single-room occupancy to more than four unrelated individuals and rental arrangements by the room. In lower-density zoning districts, a roominghouse lot must have “a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of four (4) guest rooms.” A change in the definition of *family* would require amending the number of unrelated individuals allowed in a dwelling before it is considered a roominghouse and could mildly affect lot size requirements. Additional proposed minor edits to this land use clarify that this is distinct from a dwelling unit, which is subject to the definition of *family*.

- *Accessory dwelling unit (“ADU”) (§ 65.913)*

An ADU is meant to be a subordinate “extra” dwelling unit paired with a single-family home on a single lot. Per § 65.913(d), “The total occupancy of the principal dwelling unit and accessory dwelling unit shall not exceed the definition of family in section 60.207 allowed in a single housekeeping unit.” The *family* definition applies to both units together – though together the two units may be made of two functional households – in order to limit population per lot. A change to the definition of *family* would affect occupancy of an ADU and its associated principal dwelling. As of May 6th, 2020 Saint Paul had twelve known ADUs either completed or in progress.

- *Student dwelling in the SH student housing neighborhood impact overlay district (§ 67.700)*

The SH district includes a definition of a student dwelling:

Within the SH student housing neighborhood impact overlay district, a student dwelling is a one- or two-family dwelling requiring a fire certificate of occupancy in which at least one (1) unit is occupied by three (3) or four (4) students or the purposes of this article, a student is an individual who is enrolled in or has been accepted to an undergraduate degree program at a university, college, community college, technical college, trade school or similar and is enrolled during the upcoming or current session, or was enrolled in the previous term, or is on a scheduled term break or summer break from the institution.

This overlay district was created in 2012 to manage the perceived negative impact of a concentration of students living in single-family neighborhoods around local colleges and universities. These effects include increased parking and traffic, behavioral and property management shortcomings, and a loss of ownership single-family housing stock to student rental properties. The zoning standards require a distance of 150 feet (about three single family home lot widths) from another student dwelling, and that it provide all necessary parking as if it were a new structure (no nonconforming parking permitted). Additionally, a student dwelling must be registered with the Department of Safety and Inspection. Also of note: relatedness does not factor into what constitutes a student dwelling.

By definition, the only SH district encompasses the blocks around the University of St. Thomas, a product of years of concern by residents in the area. Since implementation of the district, the neighborhood has seen a slowdown in turnover of ownership housing to student rentals. Recently the University of St. Thomas has constructed new dormitories on campus, and now requires first- and second-year students to reside on campus, both changes that should accomplish a similar relief intended by the SH overlay spacing requirements. As other municipalities have considered amending their occupancy allowances, concerns about disturbances by high densities of students have received the most attention.

A change to the definition of *family* would suggest either an amendment to the range of students allowed in a student dwelling, or simply the inclusion of other nonstudent occupants, but would not change the spacing or registration requirements.

Consistency with City plans

The objectives of this amendment conform to the City's 2030 and 2040 Comprehensive Plans, as well as numerous district plans and small area plans.

2030 Comprehensive Plan

The Housing chapter of the 2030 Comprehensive Plan affirms safe and affordable housing as a basic human need, and lists demands on affordable housing resources in Saint Paul. The list includes deferred maintenance costs of its older housing stock; the need for housing for the homeless county-wide; a consistently under-funded Public Housing Agency; and slow growth in new housing construction. The Plan includes major Strategy 3: Ensure the Availability of Affordable Housing Across the City and fills out this strategy with several policies:

Amendments
are consistent
with the 2030
Comprehensive
Plan

- 3.1. Support the preservation of publicly-assisted and private affordable housing
 - Note (d) – Support the preservation of other low-income housing units under private ownership and management.
- 3.2. Support new housing opportunities for low-income households throughout the city.
- 3.6. Ensure fair housing.

- Note (a) – Promote fair housing choices for all, particularly those from historically disadvantaged backgrounds;
- Note (c) – Provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familiar status, disability, and national origin;

The Land Use chapter similarly acknowledges the changing demographics and housing choices of Saint Paul residents, recognizing the needs of “large, extended families in immigrant communities who desire sizeable single-family houses, ... fewer two-parent households with children ... more couples without children, more singles of all age groups, and more empty nesters.” While these text amendments will predominantly impact low-density areas, the Plan intends those areas (“Established Neighborhoods”) to allow mild increases in density, allowing for densities up to twenty dwelling units per acre (e.g. a standard single-family block with scattered duplexes and townhomes). While the housing stock is not predicted to change because of these amendments, and while the impact of these amendments is not expected to be concentrated on any certain block in the city, allowing more occupants per house functionally allows a mild increase in population density in accordance with the Plan, similar to allowing duplexes or townhouses. Applicable Land Use policies include:

1.1. Guide the development of housing in Established Neighborhoods, commercial areas within Established Neighborhoods, and in Residential Corridors.

- “This policy is intended to provide for the development of housing in Established Neighborhoods, Residential Corridors and adjacent commercial areas consistent with the prevailing character and overall density of these areas. The density goals are residential development of 3-20 dwelling units per acre in Established Neighborhoods and residential development of 4-30 dwelling units per acre in Residential Corridors and adjacent commercial areas.”

1.8. Encourage the development of townhouses and smaller multi-family developments, compatible with the character of Established Neighborhoods.

1.40. Promote the development of housing that provides choices for people of all ages, including singles and young couples, families, empty-nesters, and seniors.

2040 Comprehensive Plan

The Housing Chapter of the 2040 Comprehensive Plan is guided by seven goals, three of which are directly furthered by this amendment: “3. Fair and equitable access to housing for all city residents”; “6. Improved access to affordable housing”; and “7. Strong neighborhoods that support lifelong housing needs.”

Amendments
are consistent
with the 2040
Comprehensive
Plan

One housing policy explicitly mentions the subject of these text amendments:

H-17. Ensure that the regulatory definition of family and allowable dwelling types meet the needs of residents and reflect how people want to live, while meeting fair housing requirements.

Other relevant Housing policies include:

H-15. Accommodate a wide variety of culturally-appropriate housing types throughout the city to support residents at all stages of life and levels of ability.

H-16. Increase housing choice across the city to support economically diverse neighborhoods by pursuing policies and practices that maximize housing and locational choices for residents of all income levels.

H-44. Make achieving the Metropolitan Council’s affordable housing goals a top priority both in planning and legislative efforts.

H-45. Support the preservation and maintenance of historic housing stock as an affordable housing option.

H-54. Support alternative household types, such as co-housing, intergenerational housing, intentional communities or other shared-living models, that allow residents to “age in community.”

The Land Use chapter of the 2040 Comprehensive Plan is guided in part by its goal number “6. Efficient, adaptable and sustainable land use and development patterns and processes.” “Urban Neighborhoods” are the lowest-density urban category named in the plan, including most of the city’s low-density neighborhoods. As mentioned in the 2030 Comprehensive Plan section of this report, an increase in allowed occupancy achieves a population increase on the scale of smaller missing middle housing types, and so further related policies. Supporting policies in this chapter are:

LU-7. Use land use and zoning flexibility to respond to social, economic, technological, market and environmental changes, conditions and opportunities.

LU-34. Provide for medium-density housing that diversifies housing options, such as townhouses, courtyard apartments and smaller multi-family developments, compatible with the general scale of Urban Neighborhoods.

Neighborhood Plans

Each planning district in Saint Paul has formed a guiding plan that is appended to the City’s current comprehensive plan and is vital in transforming community values into actionable policies. Ten neighborhood plans include policies regarding preserving or creating housing affordability or housing variety. Several of those mention specifically ensuring housing for diverse cultures, people of color, or people “from all walks of life”.

Amendments
are consistent
with the most
Neighborhood
Plans

Precedent among other cities

Since the early 20th Century, the presence of occupancy regulations in city charters or municipal codes has become ubiquitous, usually in the form a definition of *family* or *household* in their zoning or land development codes. Cities analyzed as part of this report were: Atlanta, GA; Austin, TX; Boston, MA; Charlotte, NC; Chicago, IL; Dallas, TX; Denver, CO; Fort Worth, TX; Minneapolis, MN; Pittsburgh, PA; Portland, OR; San Francisco, CA; and Seattle, WA. (Other cities have been reviewed as parts of larger referenced works; for instance: Ames, IA; Roswell, NM; Tulsa, OK; Beverly Hills, CA; and others are discussed in the American Planning Association’s 2004 *Planner’s Dictionary* under the entry “family”.)

“Family Plus X” Model. Among these peer cities, several models are common. Portland, Oregon allows any occupants who are all related to each other “by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than 5 additional persons” (which has been called the “Family Plus” model). Notwithstanding building or fire code restraints, this could conceivably reach a large number of related people joined by five extra unrelated residents. Chicago’s definition of “household” is similar, allowing a family plus three unrelated. Dallas allows a family plus four.

“Family Or X” Model. Seattle, on the other hand, uses a threshold: if the entire household is related, then there is no (zoning code) limit; however, if even one unrelated person resides in the dwelling unit, a cap of eight total occupants kicks in regardless of relatedness (which can be called a “Family Or” model). Many cities follow this model: Charlotte allows a family or six unrelated occupants, Fort Worth allows a family or five unrelated”, and Pittsburgh allows a family or three unrelated, not including domestic staff.

“Functional Family” Model. Some cities attempt to recognize a “functional family” household that gives flexibility to occupancy. A “functional family” is one that has characteristics of a group of relatives but are not related. In San Francisco, up to five unrelated people may live together, *or* more than five unrelated people if the group “(a) has control over its membership and composition; (b) purchases its food and prepares and consumes its meals collectively; and (c) determines its own rules of organization and utilization of the residential space it occupies.” Ames, Iowa includes several categories of maximums depending on relatedness, but grants a special use permit to functional families to exceed any maximum if they meet a long list of standards, including “a strong bond or commitment to a single purpose, ... share a household budget; ... prepare food and eat together regularly; share in work to maintain the premises; and legally share in the ownership or possession of the premises.” Atlanta allows up to ten occupants if they are all age 60 or older, are “self-caring,” and comprise a single, non-profit housekeeping unit. These approaches place a greater burden on the discernment of a city’s zoning administration, and can be challenging if not impossible to enforce in day-to-day life.

In 2016, Minneapolis passed an ordinance allowing intentional communities as households of unrelated people who want to exceed the occupancy limit. To establish an intentional community, the group must register with the city and communicate information about the building and occupancy, submit documentation like a lease agreement, building floorplan, or cooperative registration number, and establish information for a primary contact. This process was criticized in the 2017 FHIC report as onerous and still possibly inhibiting fair housing choice.

Tailored Models. Other cities identify a number of unrelated occupants, and then tailor that further by zoning district or residence type. Austin, Texas allows any number of related occupants or up to six unrelated occupants, except in single-family zones, where a *family* may consist of only four unrelated occupants. Atlanta allows up to six unrelated adults in its general provisions, but follows that with a provision that “not more than four unrelated adults may reside on a site” of a long list of low density residence types in a long list of low density zoning districts. Note that this applies to adults only, so minors are exempted by exclusion. Denver’s “household” term lists occupancy categories by dwelling type, allowing up to two spouses or domestic partners and their close relatives in any residence, up to two unrelated adults plus their relatives in any single-family home, and up to four unrelated adults and their close relatives in two-unit or multi-unit dwellings only. (The close relatives listed are those to the second level of consanguinity – grandparents, uncles and aunts, and nieces and nephews.) These tailored approaches are clearly guided by the priorities of low-density, single-family zoning for nuclear families.

Limits can be tailored by zoning district or dwelling type

Until recently, Minneapolis had a traditional “blood, marriage, adoption, or domestic partnership” definition of *family* in its Zoning Code, and then specified how many unrelated people could reside with the family per zoning district. In lower-density residential zones, for instance, unless the entire household was related, only two unrelated people could reside with a family not to exceed five occupants total; or, only up to three occupants were allowed if all were unrelated. Following the definition was an explanatory statement: “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...” The FHIC Analysis of Impediments gave Minneapolis a score of 3 (high risk of discriminatory or arbitrary regulation) because of this strict limitation. In December 2019, Minneapolis removed all mention of occupancy from the Zoning Code, falling back on its definition of *family* in its Housing Maintenance Code, which is a “family *or* 5” limit. The City is currently considering revisions to that Code’s definition.

Minneapolis is currently revising its definition(s)

Austin, TX is the only city of those analyzed with an ordinance applying only to adults and exempting minors. This unique characteristic allows more flexibility in childcare.

Limits can apply to or exempt minors

Changes to these definitions are ongoing. In 2017, the State of Iowa passed an ordinance removing the city’s power to enforce occupancy limits in residential rental properties based on family or nonfamily relationships between tenants. Ames, IA, home to Iowa State University, responded by implementing a rental density cap, allowing only ten percent of houses on each block to receive a rental permit. Earlier in

2020, the State of Washington considered following suit but time in their legislative session ran out without coming to an agreement. Conversely, in 2014 the City of Austin lowered the number of unrelated adults allowed in a dwelling unit from six to four in several single-family districts.

Recommendations & Discussion

The following three options for amendments to the definition of *family* allow up to five or six unrelated adults and any number of minors in their care. Of these alternatives, Option 1 is the most restrictive, and Option 3 is the least restrictive.

Proposed Amendment Option 1: “Any Six”

- *Text:*
Family. Six (6) or fewer adults, together with minor children in their care, living as a single housekeeping unit.
- *Analysis:*
 - **Related** – No outlet for a household of occupants related all to each other. This option keeps the definition simple and avoids basing it on how the occupants of a dwelling unit are related, which can be legally problematic and difficult to enforce. Relatedness is difficult for inspectors to ascertain, so regulations based on relatedness are often unenforced. Six adults plus any number of minor children in their care is substantially less restrictive than the current definition and reasonably provides for a much broader range of family types.
 - **Unrelated** – Six adults of any relation may occupy the dwelling. Minnesota Statute § 462.357 subdivisions 7 and 8 require that state-licensed residential facilities of up to six residents be permitted as single-family residential uses by right. Allowing six residents by right is consistent with the state statute language. As there is no provision for related family members in this option, it is less restrictive on total unrelated occupants than options 2 and 3.
 - **Minors** – Any number of minors are allowed and they do not need to be traditionally related, allowing flexibility in childcare within a community;
 - **Adult care home** – The threshold at which adult care homes require a larger lot size in residential and T1 traditional neighborhood districts would rise from five guest rooms to seven.
 - **Community residential facility, licensed correctional** – The occupancy threshold at which community residential facilities are subject to spacing requirements would rise from five occupants to seven adult occupants. Additional minimum lot area would be required starting at the seventh guest room rather than the fifth.
 - **Overnight shelters** – The occupancy threshold at which overnight shelters are subject to spacing requirements would rise from five occupants to seven adult occupants.
 - **Roominghouses** – The threshold at which a dwelling is considered a roominghouse would rise from five occupants to seven adult occupants. Additional minimum lot area would be required starting at the seventh guest room rather than the fifth.
 - **Shelter for battered persons** – The threshold at which a conditional use permit is required would rise from five occupants to seven adult occupants. The occupancy threshold at which congregate living facilities are subject to spacing requirements would also rise to seven adults. Additional minimum lot area would be required starting at the seventh guest room rather than the fifth.

Option 1:
Maximum of
six adults;
removes
relatedness

- **Sober houses** – Instead of a request for reasonable accommodation being required for between five and ten occupants in RL-R4 districts, it would be required for between seven and ten. All other parts of this ordinance would remain unchanged.
- **Supportive housing facility** – The occupancy threshold at which supportive housing facilities are subject to spacing requirements would rise from five occupants to seven adult occupants.
- **Short term rentals** – Still subject to this definition. The requirement for a conditional use permit to allow occupancy to exceed this would remain in place, as would the spacing requirements.
- **Accessory dwelling units** – Still subject to sharing this definition with its associated principal dwelling unit. This would allow up to six adults between both the principal and accessory dwelling units. ADUs are still subject to size standards, which already limit them to low levels of occupancy per Fire Code.
- **Student dwellings** – The allowed number of students in a “student dwelling” in the SH student overlay district would remain at 3 or 4. A fifth or sixth occupant may also reside in the dwelling unit, but only if they are not students as defined in this section. Student dwellings would still be registered and be subject to spacing requirements. Relatedness does not affect this standard.

Proposed Amendment Option 2: “Family or Five”

- *Text:*

Family. Five (5) or fewer adults, or any number of adults who are all related to each other by blood, marriage, guardianship, or domestic partnership as defined by Chapter 186 of the Saint Paul Legislative Code, together with minor children in their care, living as a single housekeeping unit.

Option 2: all related adults or five unrelated adults

- *Analysis:*

- **Related** – If all adults in a household are related to each other, the household may include as many occupants as the minimum square footage requirements in Chapter 34 of the Saint Paul Legislative Code will allow. This recognizes the enduring Supreme Court opinion that families shall not be intentionally culled by municipal regulations. However, land use regulation based on whether people are related can also be legally problematic and difficult to enforce. Relatedness is difficult for inspectors to ascertain, so regulations based on relatedness are often unenforced.
- **Unrelated** – If not all adult occupants are related to each other, five adults may occupy the dwelling. Five was the number recommended by the FHIC report as allowing Saint Paul to achieve a score of 1 – low risk of discriminatory or arbitrary regulation, and has been recommended by Saint Paul Fire Safety staff as all that is required to remove arbitrary occupancy barriers as long as families of any size may live together.
- **Minors** – Any number of minors are allowed and they do not need to be traditionally related, allowing flexibility in childcare within a community.
- **Student dwellings** – The allowed number of students in a “student dwelling” in the SH student overlay district would remain at 3 or 4. A fifth occupant may also reside in the dwelling unit, but only if they are not a student as defined in this section. Student dwellings would still be registered and be subject to spacing requirements. Relatedness does not affect this standard.
- Application to other land uses in the Zoning Code are the same as those of Option 1, except using the number 5 instead of 6.

Proposed Amendment Option 3: “Family *plus* 4”

- *Text:*

Family. Any number of adults who are all related to each other by blood, marriage, guardianship, or domestic partnership as defined by Chapter 186 of the Saint Paul Legislative Code and up to four (4) additional adults, together with minor children in their care, living as a single housekeeping unit.

Option 3:
any related
adults plus
four
additional
adults

- *Analysis:*

- **Related** – The household may always include as many related occupants (in only one group of relatives) as the minimum square footage requirements in Chapter 34 of the Saint Paul Legislative Code will allow. This recognizes the enduring Supreme Court opinion that families shall not be intentionally culled by municipal regulations. However, land use regulation based on whether people are related can also be legally problematic and difficult to enforce. Relatedness is difficult for inspectors to ascertain, so regulations based on relatedness are often unenforced.
- **Unrelated** – In addition to any number of related adults, four additional adults may also occupy a dwelling unit. If no occupants are related to each other, this results in a maximum of five unrelated occupants. Five was the number recommended by the FHIC report as allowing Saint Paul to achieve a score of 1 – low risk of discriminatory or arbitrary regulation, and has been recommended by Saint Paul Fire Safety staff as all that is required to remove arbitrary occupancy barriers as long as families of any size may live together.
- **Minors** – Any number of minors are allowed and they do not need to be traditionally related, allowing flexibility in childcare within a community.
- **Student dwellings** – The allowed number of students in a “student dwelling” in the SH student overlay district would remain at 3 or 4. A fifth occupant may also reside in the dwelling unit, but only if they are not a student as defined in this section. Student dwellings would still be registered and be subject to spacing requirements. Relatedness does not affect this standard.
- Application to other land uses in the Zoning Code are the same as those of Option 1, except using the number 5 instead of 6.

No change or complete removal

To keep the current definition is to ignore a barrier to achieving the City’s goal of greater housing opportunity for present and future residents. The FHIC’s score of “medium risk” of discriminatory or arbitrary regulation states specifically that the City’s maximum of four unrelated occupants may be contributing to unfair housing conditions, leaving the City open for legal action. The unfair housing conditions may appear in the form of a cost-burdened household unable to pay rent without a fifth or sixth unrelated occupant’s income, or an elderly or adolescent community member unable to find appropriate care because they are not linearly related according to the definition, or as a household that has to make a choice between taking in one occupant’s spouse or another occupant’s sibling.

The current
definition
could be
enforcing
discriminatory
housing
conditions

Completely removing the definition of *family* as an occupancy regulation is not recommended. While this regulation addresses dwelling units, land uses that consist of larger numbers of adult occupants tend to come with special programming that is should be addressed uniquely in the Zoning Code through the congregate living section. Special requirements regarding spacing, permitting, minimum lot area, or parking, when triggered by occupancy in excess of the definition of *family*, can be tailored to best accommodate these land uses and their effect on surrounding land uses.

The *family*
regulation is
useful to tailor
the Zoning
Code to the
special
requirements
of congregate
living
residences

Effect of the amendment options

With any of the proposed amendments, the Zoning Code will no longer impede a median single-family home in Saint Paul – between 1,000 and 2,000 square feet – from being occupied to its fullest safe allowance. Option 1 (“Any 6”) keeps the definition simple and avoids basing it on how the occupants of a dwelling unit are related, which can be legally problematic and difficult to enforce. Under Option 2 (“Family *or* 5”), a household consisting entirely of related occupants is subject only to the Fire Code. And under Option 3 (“Family *plus* 4”), a household may be subject only to the Fire Code as long as no more than four occupants are unrelated to the householder or primary family group. This type of household could conceivably grow large and allow for greater fragmentation within a household between the householder (whoever in the household is on the lease or owns the home) and other occupants who may have less stake in property or neighborhood well-being. Saint Paul code enforcement staff and nonprofit housing partners have echoed that, historically, the more degrees of separation there are between an occupant and the legal and financial responsibility for the property, the greater the presence of trash, noise, traffic, and other problems. Option 2 allows larger households in recognition of the mutual reliance and familiar hierarchical relationships that structure kinship groups, a system that traditionally supports the householder’s legal and financial responsibilities.

All proposed options open up housing opportunity

Three concerns have been expressed about results from these amendments: negative effects of higher population density; degradation of neighborhood maintenance and character; and manipulation of the housing stock and cost to benefit landlords.

Concern has been expressed about potential adverse effects from increased population density in low density residential areas as a result of the proposed text amendments. Increased density may bring increased cars on neighborhood streets, decreased availability of on-street parking for neighbors, a net decrease in open space per neighborhood resident, and an increase in noise generated by cars, music, get-togethers, etc. Increased traffic may accelerate wear-and-tear on roadways and an increased need for repair and maintenance costs. Other public utilities like sewer capacity and public services like police patrols may experience a heavier burden than has been previously projected. As these effects of density increase, the ability to plan for them in an organized way may be reduced. Dwelling units, especially detached single-family homes, are allowed most anywhere in the city, and an increase in occupancy limits may lead to higher density in unexpected areas.

Concern 1: Amendments may increase negative effects of density.

While these are all potential effects of a concentrated increase in population density, no evidence has been found that allowing a small increase in dwelling unit occupancy, diffused across the city, will produce these effects to a significant extent, or to an extent that outweighs the added housing opportunity. Saint Paul Public Works uses the occupancy standards in the Fire and Building Codes to calculate the amount of potential water usage by a property. And because the impact of these amendments will be spread city-wide, the likelihood that these amendments would allow a neighborhood’s utility or service burden to escalate so unpredictably and uncontrollably that the intention of low-density zoning districts would be undermined, and that city services would be unable to handle the resulting disorder, is low.

Saint Paul’s urban form, housing stock, and utilities were largely already built out by the 1960s, when the average household size was about 20% larger than it is today. Prior to 1975 the City’s Zoning Code allowed smaller lot sizes and larger dwelling sizes (meaning much denser residential areas), and the definition of *family* did not limit family size. Most of the streets, utilities, and houses that still exist today were built before 1975 and were designed to accommodate denser urban form and larger families.

These effects should also be discussed in the context of low-density residential zoning, which is likely to be most affected by these amendments. The Supreme Court majority opinion in *Belle Terre v. Boraas* states that low-density residential zoning in its most innocent conception is intended to support “family needs”, “family values”, and “youth values”, without clarifying what those are, and that “the blessings of quiet seclusion and clean air make the area a sanctuary for people.” Affordable housing for families, especially those with youth, fits the above value categories. While lower-density areas may have some benefits for people fortunate enough to own or rent property within them, to exclude larger families and households from accessing both affordable housing and such benefits is to privilege nuclear family households and higher-income residents at the expense of others. Allowing greater use of the streets,

utilities, and houses we already have reduces the costs of sprawl and the need to construct and maintain additional streets, utilities, and houses.

In interviews with community partners, nonprofit housing management staff, and City inspection staff, anecdotes have been shared of uncivil behavior and poor property and neighborhood care associated with larger household sizes. The detriment is said to stem from occupancy by people who are not associated closely with the head of the household and are transient, and therefore have less stake in the wellbeing of their house, yard, street, and neighbors. Practical effects of this include increased litter, noise, property damage, property neglect, and disruptions of the peace.

Concern 2:
Larger households may produce detrimental behavioral problems.

While low occupancy maximums may reduce such issues, this must be weighed against the need for housing, as well as consideration of those many large, quiet households that do not produce anything but stability, care, and positive community contributions. The Zoning Code is generally not a good tool for addressing behavioral disturbances; it is inferior in many ways to public services dedicated specially to address these issues without posing a barrier to fair housing choice.

Concern has been expressed that landlords may add bedrooms to rental properties to fit more tenants and make a higher profit, damaging the architectural quality of Saint Paul's housing stock and accelerating the conversion of ownership housing to dwellings resembling roominghouses. It has also been suggested that, as more renters are fit into dwellings, the total value of the house and property increase, increasing the value of the surrounding properties and the resulting tax burden. No evidence that this would result from the proposed amendments to a significant extent has been found. Considering the data limitations discussed earlier in this report, it would be a difficult correlation to project. Any such negative effects of this would need to be weighed against the benefits of added fair and affordable rental housing.

Concern 3:
Landlords will degrade the housing stock and increase surrounding property values

Definition of *dwelling unit*

In addition to the definition of *family*, the definition of *dwelling unit* has received new scrutiny. The proposed amendment to the definition of *dwelling unit* is:

Dwelling unit. A building or part thereof that provides complete independent living facilities, including bathroom and kitchen facilities, for the exclusive and unhindered use of one family.

Also proposing an amendment to the definition of "Dwelling unit"

Dwelling unit and *family* are terms that are linked as used in the Zoning Code. A *family* is a group of people living together in a dwelling unit, and a *dwelling unit* provides living accommodations for a family. Given the relationship between these terms, it is good to consider amendments to both of them together. Consistent with the intent of the proposed amendments to the definition of *family*, the proposed amendment to the definition of *dwelling unit* is more accommodating to diverse families.

The proposed amendment is also more consistent with state Building Code definitions. It is generally useful for city definitions to be consistent with state definitions. Unlike state Building Code definitions for *dwelling unit* and *congregate living facilities*, the current definition of *dwelling unit* in the Zoning Code is based on unclear language about what rooms were designed for or intended for:

Dwelling unit. One (1) or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility (stove and/or oven, refrigerator, and sink), sleeping area, and bathroom provided within the unit for the exclusive use of a single household

The proposed amendment to this is based on state Building Code definitions. "A building or part thereof that" is from the Building Code definition of *congregate living facilities*. "Provides complete independent living facilities, including" is from the Building Code definition of *dwelling unit*. "Bathroom and kitchen facilities" is from the Building Code definition of *congregate living facilities*.

Additional potential approaches

Household styles are sure to diversify in unexpected ways, both in occupancy numbers, household constitution, and physical dwelling forms. The following suggestions may contribute to more affordable and equitable housing.

- Consider a review of the *roominghouse* and *shareable housing* land uses in the Zoning Code
- Initiate zoning studies that would increase by-right infill and/or missing middle housing opportunities, including developing a program for City-owned small lots
- After some period of time passes in which the City can ascertain the impacts of an updated definition of *family*, consider studying the fair housing impact of establishing some form of intentional community or functional family program, wherein a group of people that does not conform to Saint Paul's definition of *family* forms a household that is mutually beneficial and contributes to the city's strong neighborhoods.

Other approaches to allowing non-conforming household styles should be considered.

Committee recommendation

The Comprehensive and Neighborhood Planning Committee recommends that the Planning Commission initiate a study on the definition of *family* and related issues and requirements, release this staff report and its attachments for public review and comment, and set a public hearing for November 13, 2020.

Appendices

Appendix A – Text amendments

Appendix B – “Occupancy Limits for a Residential Property”

Appendix C – Current occupancy restrictions in Saint Paul by dwelling unit square footage, 2018-2020 combined

Appendix D – Saint Paul City Council Ordinance 18-1204

Appendix E – Relevant pages of the 2017 Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice, prepared for the Twin Cities' Fair Housing Implementation Council (FHIC).

Appendix A – Text Amendments

Option 1

Existing language to be deleted shown by ~~strikeout~~. New language to be added shown by underlining.

Chapter 60. Zoning Code – General Provisions and Definitions; Zoning Districts and Maps Generally

ARTICLE II. – 60.200. GENERAL DEFINITIONS

Sec. 60.205. – D.

Dwelling unit. A building or part thereof that provides complete living facilities, including bathroom and kitchen facilities, for the exclusive and unhindered use of one family. ~~One (1) or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility (stove and/or oven, refrigerator, and sink), sleeping area, and bathroom provided within the unit for the exclusive use of a single household.~~

Sec. 60.207. – F.

Family. ~~One (1) or two (2) persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two (2) persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four (4) or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code.~~

Family. Six (6) or fewer adults, together with minor children in their care, living as a single housekeeping unit.

Chapter 65. Zoning Code – Land Use Definitions and Development Standards

ARTICLE II. – 65.100. RESIDENTIAL USES

Division 3. – 65.150. Congregate Living

Sec. 65.151. Adult care home.

...

Standards and conditions:

- (a) In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ six (6) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

Sec. 65.152. – Community residential facility, licensed correctional.

...

Standards and conditions:

...

- (b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than ~~four (4)~~ six (6) adult residents, except in B4-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.

...

- (e) In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ six (6) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

Sec. 65.155. – Overnight shelters.

...

Condition:

The facility shall be a minimum distance of six hundred (600) feet from any other of the following congregate living facilities with more than ~~four (4)~~ six (6) adult residents: overnight shelter, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or shelter for battered persons.

Sec. 65.158. – Roominghouse.

~~(1) A dwelling unit that provides living and sleeping arrangements for more than four (4) unrelated individuals for periods of one (1) week or longer; or~~

(2) A residential structure ~~or dwelling unit~~ that provides single room occupancy (SRO) housing as defined in CFR section 882.102 to more than ~~four (4) unrelated individuals~~ six (6) adults; or

(3) A building housing more than ~~four (4) unrelated individuals~~ six (6) adults that has any of the following characteristics shall be considered and regulated as a roominghouse:

...

Standards and conditions:

- (a) In residential and T1 traditional neighborhood districts, a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ six (6) guest rooms. In T2-T4 traditional neighborhood, BC community business (converted), and industrial districts the density shall be regulated as for multifamily uses.

Sec. 65.160. – Shelter for battered persons.

...

Standards and conditions for shelters for battered persons serving more than ~~four (4)~~ six (6) adult facility residents and minor children in their care:

- (a) In residential, traditional neighborhood, Ford and OS-B2 business districts, a conditional use permit is required for facilities serving more than ~~four (4)~~ six (6) adult facility residents and minor children in their care.
- (b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than ~~four (4)~~ six (6) adult residents: shelter for battered persons, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or overnight shelter.

...

- (e) In residential and T1 traditional neighborhood districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ six (6) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

Sec. 65.161. – Sober house.

A dwelling unit occupied by more than ~~four (4)~~ six (6) persons, all of whom are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988, that provides a non-institutional residential environment in which the residents willingly subject themselves to written rules and conditions, including prohibition of alcohol and drug use (except for prescription medications obtained and used under medical supervision), intended to encourage and sustain their recovery.

Sec. 65.162. – Supportive housing facility.

Standards and conditions:

- (a) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than ~~four (4)~~ six (6) adult residents, except in ~~B5B4~~-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.
- (b) In RL-RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2 residential, T1 traditional neighborhood, OS-B3 business and IT-I2 industrial districts, the facility shall serve sixteen (16) or fewer facility residents.

...

ARTICLE VII. – 65.900. ACCESSORY USES

Sec. 65.913. – Dwelling unit, accessory.

...

- (d) *Unit occupancy.*

- (1) The total occupancy of the principal dwelling unit and accessory dwelling unit shall not exceed the definition of family in section 60.207 ~~allowed in a single housekeeping unit.~~

Chapter 67. Zoning Code – Overlay Districts

ARTICLE VII. – 67.700. SH STUDENT HOUSING NEIGHBORHOOD IMPACT OVERLAY DISTRICT

Sec. 67.703. – Standards and conditions.

Within the SH student housing neighborhood impact overlay district, the following standards and conditions shall apply for student dwellings:

- ~~(1)~~ (1) A student dwelling shall be occupied by no more than four students.
- ~~(2)~~ (2) A student dwelling shall be located a minimum of one hundred fifty (150) feet from any other student dwelling located on a different lot, measured as the shortest distance between the two (2) lots on which the student dwellings are located.
- ~~(3)~~ (3) Parking shall be provided in accordance with the requirements of article 63.200 for new structures.

Options 2 and 3

Existing language to be deleted shown by ~~strikeout~~. New language to be added shown by underlining.

Chapter 60. Zoning Code – General Provisions and Definitions; Zoning Districts and Maps Generally

ARTICLE II. – 60.200. GENERAL DEFINITIONS

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Sec. 60.207. – F.

Family. ~~One (1) or two (2) persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two (2) persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four (4) or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code.~~

Family. Five (5) or fewer adults, or any number of adults who are all related to each other by blood, marriage, guardianship, or domestic partnership as defined by Chapter 186 of the Saint Paul Legislative Code, together with minor children in their care, living as a single housekeeping unit.

OR

Family. Any number of adults who are all related to each other by blood, marriage, guardianship, or domestic partnership as defined by Chapter 186 of the Saint Paul Legislative Code and up to four (4) additional adults, together with minor children in their care, living as a single housekeeping unit.

Chapter 65. Zoning Code – Land Use Definitions and Development Standards

ARTICLE II. – 65.100. RESIDENTIAL USES

Division 3. – 65.150. Congregate Living

Sec. 65.151. Adult care home.

...

Standards and conditions:

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Sec. 65.152. – Community residential facility, licensed correctional.

...

Standards and conditions:

...

- (b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than ~~four (4)~~ five (5) adult residents, except in B4-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.

...

- (e) In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ five (5) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

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(3) A building housing more than ~~four (4) unrelated individuals~~ five (5) adults that has any of the following characteristics shall be considered and regulated as a roominghouse:

...

Standards and conditions:

- (a) In residential and T1 traditional neighborhood districts, a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ five (5)

guest rooms. In T2-T4 traditional neighborhood, BC community business (converted), and industrial districts the density shall be regulated as for multifamily uses.

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Standards and conditions for shelters for battered persons serving more than ~~four (4)~~ five (5) adult facility residents and minor children in their care:

- (a) In residential, traditional neighborhood, Ford and OS-B2 business districts, a conditional use permit is required for facilities serving more than ~~four (4)~~ five (5) adult facility residents and minor children in their care.
- (b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than ~~four (4)~~ five (5) adult residents: shelter for battered persons, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or overnight shelter.

...

- (e) In residential and T1 traditional neighborhood districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of ~~four (4)~~ five (5) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.

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A dwelling unit occupied by more than ~~four (4)~~ five (5) persons, all of whom are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendments of 1988, that provides a non-institutional residential environment in which the residents willingly subject themselves to written rules and conditions, including prohibition of alcohol and drug use (except for prescription medications obtained and used under medical supervision), intended to encourage and sustain their recovery.

Sec. 65.162. – Supportive housing facility.

Standards and conditions:

- (a) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than ~~four (4)~~ five (5) adult residents, except in ~~B5B4~~-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.
- (b) In RL-RT1 residential districts, the facility shall serve six (6) or fewer facility residents. In RT2 residential, T1 traditional neighborhood, OS-B3 business and IT-I2 industrial districts, the facility shall serve sixteen (16) or fewer facility residents.

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ARTICLE VII. – 65.900. ACCESSORY USES

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(d) *Unit occupancy.*

- (1) The total occupancy of the principal dwelling unit and accessory dwelling unit shall not exceed the definition of family in section 60.207 ~~allowed in a single housekeeping unit.~~

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Sec. 67.703. – Standards and conditions.

Within the SH student housing neighborhood impact overlay district, the following standards and conditions shall apply for student dwellings:

- ~~(1)~~ A student dwelling shall be occupied by no more than four students.
- ~~(2)~~ ~~4~~ A student dwelling shall be located a minimum of one hundred fifty (150) feet from any other student dwelling located on a different lot, measured as the shortest distance between the two ~~(2)~~ lots on which the student dwellings are located.
- ~~(3)~~ ~~2~~ Parking shall be provided in accordance with the requirements of article 63.200 for new structures.

Appendix B – Occupancy Limits for a Residential Property




Occupancy Limits for a Residential Property

The number of people allowed in a residential property must comply with both of the following requirements:




Zoning Code Requirements


The Zoning Code limits the number of people allowed in any dwelling unit. The following tool is intended to assist you in understanding how many people are allowed. You may select up to 4 of the following boxes to reach the maximum number of people allowed.




1 Adult with Kids:
1 Parent & their direct lineal descendants & adopted or legally cared for children (e.g. children [kids and adults], grandchildren, etc.)




1 Adult with Kids:
1 Parent & their direct lineal descendants & adopted or legally cared for children (e.g. children [kids and adults], grandchildren, etc.)




Adult:
1 adult with no kids. Adult can be the other parent, a friend, guest, etc.



Adult:
1 adult with no kids. Adult can be the other parent, a friend, guest, etc.



Adult:
1 adult with no kids. Adult can be the other parent, a friend, guest, etc.



Adult:
1 adult with no kids. Adult can be the other parent, a friend, guest, etc.



Building Code & Property Maintenance Code Requirements

The Building Code limits the number of people allowed by setting minimal square footage requirements per person:

- Total required space in dwelling units – a minimum habitable gross floor area of at least one hundred fifty (150) feet for the first occupant, at least one hundred (100) square feet for each occupant thereafter.
- Required space and ceiling heights in sleeping rooms – a minimum gross floor area of at least seventy (70) square feet for the first occupant and for every room occupied for sleeping purposes by two (2) or more occupants shall have a minimum gross floor area of fifty (50) square feet per occupant thereof. Only those portions of the floor area of a room having a clear ceiling height in excess of five (5) feet may be included. At least half of the floor area of any habitable room shall have a clear ceiling height of seven (7) feet or more.

Appendix C – Current occupancy restrictions in Saint Paul by dwelling unit square footage, 2018-2020 combined¹

CURRENT (Shaded cells indicate which regulation is the most limiting at any square footage)

Dwelling Unit Size – total square feet	Section 34.13 <i>150 + 100 * (n-1)</i>	Fire Code <i>200 * n</i>	Current Zoning Code <i>4 unrelated or 2 lineal families + 2 unrelated</i>
220 – minimum size per MN Building Code	1	1	4 unrelated or 2+2
300	1	1	4 unrelated or 2+2
400	2	2	4 unrelated or 2+2
450	3	2	4 unrelated or 2+2
500 (~ national average studio apartment)	4	2	4 unrelated or 2+2
550	4	2	4 unrelated or 2+2
600	5	3	4 unrelated or 2+2
700	6	3	4 unrelated or 2+2
750 (~ national average one-bedroom apartment)	6	3	4 unrelated or 2+2
800	7	4	4 unrelated or 2+2
900	8	4	4 unrelated or 2+2
950	8	4	4 unrelated or 2+2
1000 (~ St Paul median two-bedroom apt)	9	5	4 unrelated or 2+2
1100 (~ national & St Paul average two-bedroom apt)	10	5	4 unrelated or 2+2
1200	11	6	4 unrelated or 2+2
1250 (~ St Paul median 1-family home – 1,282 sf)	11	6	4 unrelated or 2+2
1300	12	6	4 unrelated or 2+2
1350	13	6	4 unrelated or 2+2
1400 (~ St Paul avg. 1-family home – 1,430 sf)	13	7	4 unrelated or 2+2
1500	14	7	4 unrelated or 2+2
1600	15	8	4 unrelated or 2+2
1700 (~ St Paul median four-bedroom house)	16	8	4 unrelated or 2+2
1800 (~ St Paul avg. four-bedroom house)	17	9	4 unrelated or 2+2
1900	18	9	4 unrelated or 2+2
2000	19	10	4 unrelated or 2+2
2100	20	10	4 unrelated or 2+2
2200 (~ St Paul median five-bedroom house)	21	11	4 unrelated or 2+2
2300	22	11	4 unrelated or 2+2
2350 (~ St Paul avg. five-bedroom house)	23	11	4 unrelated or 2+2

¹ Data sources: Ramsey County parcel data, RentCafé/Yardi Matrix (<https://www.rentcafe.com/blog/rental-market/real-estate-news/us-average-apartment-size-trends-downward/>)



Legislation Details (With Text)

File #: RES 18-1204 **Version:** 1 **Name:**
Type: Resolution **Status:** Passed
In control: City Council
Final action: 7/18/2018

Title: Calling for action to create and preserve housing that is affordable at all income levels, address racial, social and economic disparities in housing, and create infrastructure needed to stabilize housing for all in Saint Paul.

Sponsors: Amy Brendmoen, Samantha Henningson, Rebecca Noecker, Dai Thao

Indexes:

Code sections:

Attachments: 1. Misc. comments for July 18 meeting from website

Date	Ver.	Action By	Action	Result
7/23/2018	1	Mayor's Office	Signed	
7/18/2018	1	City Council		

Calling for action to create and preserve housing that is affordable at all income levels, address racial, social and economic disparities in housing, and create infrastructure needed to stabilize housing for all in Saint Paul.

WHEREAS the Saint Paul City Council acknowledges the housing crisis in our city and region, and the urgent need to address the crisis as our population grows, and

WHEREAS the Met Council has forecasted the need for Saint Paul to house approximately 15,000 additional households by 2030, and

WHEREAS stagnant wages, skyrocketing rents, a lack of affordable housing and a 2.4 percent housing vacancy rate are making it harder for Saint Paul residents to find housing and to afford it over time, and

WHEREAS the Saint Paul Area Association of Realtors has stated that a healthy housing market has a six month supply of homes for sale, and that in June 2018 the supply was at 1.7 months, so Saint Paul needs to increase the homes for sale from 500 to 1720 to achieve a healthy housing market, and

WHEREAS the City Council has convened work groups to draft reports on poverty and homelessness as well as fair housing, and

WHEREAS Resolution 17-2064 passed by the City Council in December 2017 directed the Fair Housing Workgroup to develop a Fair Housing Strategic Plan and the Fair Housing Workgroup presented a report titled "Fair Housing Work Group: Status update and policy and program options in response to Resolution 17-2064" to the City Council in March 2018, and

WHEREAS the City of Saint Paul is currently engaging in programs and practices advancing Saint Paul's housing goals including:
-Low Income Housing Tax Credits (4 and 9%), which provide financial support for development of additional affordable multi-family rental units in areas of opportunity and preservation of units in areas of concentrated poverty,

- Inspiring Communities Program which provides financial support to develop additional affordable single family units.
- Home improvement loan program to support and preserve owner-occupied units.
- Rental Rehab loan program to support and preserve affordable, small rental units.
- Participation in the Fair Housing Implementation Council (FHIC).
- Emergency Solutions Grants, which provide financial support of partner organizations serving homeless individuals with shelter and basic needs, in partnership with Ramsey County, and

WHEREAS the City of Saint Paul is currently conducting studies and developing policies to advance Saint Paul's housing goals including:

- Completing a zoning study to develop a citywide accessory dwelling units policy in order to add capacity for more units in residential districts.
- Planning for strategic development of more densely populated neighborhood nodes as part of the 2040 Update to the Saint Paul Comprehensive Plan.
- Creating an Emergency Housing Plan to support tenants who are displaced due to building and code issues as determined by the Department of Safety and Inspections.
- Creating a citywide inventory of naturally occurring affordable housing (NOAH).
- Expanding the Human Rights and Equal Economic Opportunity Department's (HREEO) Fair Housing Training Program for property managers and landlords, and

NOW THEREFORE BE IT RESOLVED that the Saint Paul City Council commits to advancing the following policy changes:

- Requiring all housing projects that receive funding (directly or pass-through) from the HRA to accept Section 8 vouchers.
- Adding more points to the Low Income Housing Tax Credit scorecard for senior housing to assist residents as they age in our community.
- Working with our community partners to increase the use of Tenant Remedies Actions.

BE IT FURTHER RESOLVED that the City Council directs immediate changes to administrative policies including:

- Setting an ambitious goal for production of new housing over the next ten years with at least one-third of units affordable at 30-50% Area Median Income.
- Developing and employing an equitable development scorecard in PED resource team decisions to ensure local community benefits.
- Including Section 8 training in the Landlord 101 required training course for all new Certificate of Occupancy holders (landlords) in the city.
- Promoting Landlord 101 training to all existing landlords, and
- Implementing the 4D tax incentive to build and preserve affordable units, and

BE IT FURTHER RESOLVED that the City Council requests further study and legal analysis from city staff of the following policies or concepts by the end of 2019:

- Tenant protection ordinances including advance notice of sale, right to counsel for all tenants in housing court, just-cause eviction and condemnation assessments.
- Ordinances to reduce barriers to finding rental housing including ban-the-box, limiting application fees and increasing acceptance of Housing Choice Vouchers.
- Zoning studies by the Planning Commission to explore ways to increase density in residential districts including: analysis of increasing the maximum number of unrelated adults from 4 to 5 in units with more than 4 bedrooms; analysis on allowing more multi-unit buildings (i.e. triplexes and fourplexes) in along transit routes and in neighborhood nodes in single-family zoning districts; and reviewing and updating the definition of "family."
- Impacts and advantages of a citywide and/or targeted inclusionary zoning policy.
- Land trusts, cooperatives and other forms of home-ownership to preserve long-term affordability, and

BE IT FURTHER RESOLVED that the City Council requests that the Mayor's 2019 budget proposal includes significant new funding for:

- An Affordable Housing Trust Fund to assist in the creation of additional units of affordable housing and to renovate and preserve naturally occurring affordable housing.
- A Down Payment Assistance Program to benefit Saint Paul residents who wish to become home-owners and additional support for first-time home buyers.
- An Emergency Repair Fund to make needed life-safety repairs in rental properties in order to prevent displacement (to be assessed to the landlord).

BE IT FURTHER RESOLVED that the City Council requests funding be secured for a staff position to develop a fair housing strategy with a user-friendly dashboard to track and report on outcomes, coordinate between departments, monitor the housing landscape and propose programs and policies to improve housing stability citywide, and

NOW, FINALLY BE IT RESOLVED the City Council directs the creation of an advisory body dedicated to housing stability, under which experts, renters, landlords, homeowners, and advocates may provide input and support to staff and housing-related city activities.

Addendum to the 2014 Regional AI

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Prepared for the
Fair Housing Implementation Council

By



costs, labor costs, resident support or opposition to development, income levels, and other market forces.

Zoning and land-use laws should accommodate housing and uses that are based on regional needs, and not simply maintain the status quo within an individual jurisdiction. The following discussion illustrates opportunities for the surveyed municipalities to more completely uphold their commitments to furthering fair housing. The issues highlighted below show where zoning ordinances and policies could go further to protect fair housing choice for protected and disadvantaged classes, and still fulfill the zoning objective of protecting the public's health, safety, and general welfare.

Issue #1: Definition of "Family"

Often one of the most scrutinized provisions of a municipality's zoning code is its definition of "family." Local governments use this provision to limit the number of unrelated persons who may live together in a single dwelling. Unreasonably restrictive definitions may have the intended or unintended (depending on the motivations behind the drafting of the jurisdiction's definition) consequence of limiting housing for nontraditional families and for persons with disabilities who reside together in congregate living situations. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate state due process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, people of color, and families with children.

As a region, the average score was 1.68 on this issue. The jurisdictions that received a 1 (low risk score) either have family definitions that allow five or more unrelated persons to reside together as a single housekeeping unit, as in the case of Apple Valley and Plymouth, or were even more permissive and do not specifically define "family" or the number of unrelated persons who may reside together, as in the case of Edina, instead leaving maximum occupancy per dwelling as a matter of safety regulated by the building code. Cities such as Hopkins and Saint Paul, which limit the number of unrelated persons who may reside together as a single "family" to no more than four, were given a 2 (medium risk score) for having neither the most permissive nor most restrictive definitions.

Crystal and Minneapolis were the only two jurisdictions in the region to score a 3 (high risk score) for having the most restrictive definitions in the region. Crystal's zoning ordinance limits the number of unrelated persons who may reside together as a common household to no more than three. In light of current jurisprudence on the matter and more modern acceptance of nontraditional family structures, this restrictive definition could be open to challenge as being arbitrary and discriminatory.

Minneapolis also received a 3 (high risk score) on Issue 1. The City's definition of family only includes persons related by blood, marriage, domestic partnership, and adoption/foster care, and excludes unrelated persons even if they reside together as a functionally equivalent household. However, occupancy is regulated by both the Zoning Code and the Housing Maintenance Code. Taken together, up to three unrelated persons may reside together in the lower density districts (mostly single family), and up to five unrelated persons may reside together in some of the higher density districts. This is somewhat arbitrary as many of the lower density areas support large homes which could safely accommodate more than 3 residents.

On Dec. 9, 2016, the Minneapolis City Council approved an ordinance which seeks to ameliorate some of the disconnect between the zoning code and housing maintenance code's occupancy limits and allow more flexibility. The new "Intentional Community" ordinance offers a path to legalizing previously illegal groups of unrelated persons, but critics argue that it also places onerous and arbitrary burdens both on the residents and the City. The regulations require groups wishing to reside together as an intentional community to register with the City, and to include an interior floor plan, and if applicable, legal documentation establishing the existence of the intentional community and/or lease agreement. (*See Code of Ordinances, Sec. 244.820.*) This use category still creates barriers to group living for persons without the time, resources, or sophistication to organize themselves and meet the regulatory requirements of an "intentional community."

Minnetonka's family definition was scored a 2 (medium risk), however, the definition is significant as an illustration of differential treatment of family size for the general population compared with people living in group homes. The City's definition does not limit the number of unrelated persons who may reside together as a single housekeeping unit except in the case of residents of a licensed residential care facility or community-based residential facility for persons with disabilities. Minnetonka's definition is problematic because group living arrangements for people with disabilities are singled out and treated less favorably under the zoning ordinance based on the disability status of the residents, which may violate fair housing laws.⁴¹ Under state law, a state-licensed residential facility or a "housing with services" establishment registered under chapter 144D serving six or fewer persons must be considered a permitted single family residential use of property under local zoning controls. (MINN. STAT. § 462.357). However, if a home for persons with disabilities otherwise meets the definition of family—here, "[a]ny number of individuals living together on the premises as a single housekeeping unit"—it should not be treated differently than other similarly situated dwellings. (*See Minnetonka Zoning Ordinance, Sec. 300.02(43)*).

⁴¹ See Joint Statement of the Department of Justice and the Department of Housing and Urban Development: *Group Homes, Local Land Use, and The Fair Housing Act*, available at <https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1>.

It is recommended for those jurisdictions with a more restrictive definition of family, that they amend their codes to either (1) have the definition of “family” 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; or (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. These methods are more in line with recent court decisions on the issue of functionally equivalent families.

Issue #2: Exclusionary Zoning

The Met Council forecasts that between the years 2010 and 2040, roughly 146,800 households with incomes less than 80% AMI will be added to the region’s population. Between the years 2020 and 2030, the Twin Cities region will add 37,400 low- and moderate-income households that will need additional affordable housing.⁴² The need for affordable housing extends beyond persons experiencing homelessness and very low-income households. Exclusionary zoning only exacerbates the lack of affordable housing supply and the means to address it.

Zoning codes often are used to impose unreasonable residential design regulations (such as high minimum lot sizes, large minimum building square footage, large setbacks, and/or low maximum density allowances) that are not congruent with the actual standards necessary to protect the health and safety of current average household sizes and prevent overcrowding. These regulations may not be in direct violation of fair housing laws, but may nonetheless contribute to exclusionary zoning and have the effect of disproportionately reducing housing choice for moderate to low-income families (public service workers, teachers, entry level workers, etc.), persons of color, persons with disabilities on fixed incomes, families with children, and other protected classes by making the development of affordable housing cost-prohibitive. Legitimate public objectives, such as environmental protection or public health, must be balanced with housing needs and availability.

There are jurisdictions in the region where single-family districts allow minimum lot sizes and minimum floor areas that meet general conditions approximating affordability (10,000 sq. ft. or less minimum lot sizes and 1,200 sq. ft. or less minimum floor area requirements). But as a region, the jurisdictions surveyed scored an average 1.82 (medium risk) on Issue 2, with six of the jurisdictions studied receiving a 3 (high risk score) on this issue. Those that scored a 1 (low risk score), generally have single family and two family districts which have reasonable minimum lot size requirements to support more density and infill development and eliminate minimum livable floor area requirements (besides what is required by the safety and building codes). For example, in Brooklyn Center, the zoning code and map

⁴² See Met Council 2040 Housing Policy Plan, available at: <https://metro council.org/Housing/Planning/2040-Housing-Policy-Plan.aspx>.