ORDINANCE NO. 35329

AN INTERIM ZONING ORDINANCE OF THE CITY OF SPOKANE, WASHINGTON, RELATING TO THE DEFINITION OF A HOUSEHOLD; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to RCW 35.63.200 and RCW 36.70A.390, the City of Spokane is authorized to impose interim zoning ordinances; and

WHEREAS, Federal housing laws prohibit discrimination in all aspects of housing because of familial status; and

WHEREAS, familial status is defined as having one or more individuals under 18 years of age who reside with a parent or another person with care and legal custody of that individual (including foster children) or with the designee of that parent or other person with legal custody; and

WHEREAS, foster children who are legally placed in a home meet the definition of “familial status” under the Fair Housing Act (42 U.S.C. Section 3602(k)) and, consequently, are protected by the Fair Housing Act from discrimination on the basis of familial status (Gorski v. Troy, 929 F.2d 1183 (7th Cir. 1991)); and

WHEREAS, enforcing zoning regulations in a manner that discriminates on the basis of familial status is unlawful and it is also a violation of fair housing laws for neighbors or other members of the community to harass or otherwise imply that residents are unwelcome because of their familial status; and

WHEREAS, pursuant to Chapter 1.06 of the Spokane Municipal Code, the City Council has previously found that discrimination based on familial status poses a substantial threat to the health, safety and general welfare of the citizens of Spokane, and that discrimination means different or unequal treatment because of familial status, which the SMC 1.06.030(G) defines as the relationship between two or more individuals, at least one of whom has not attained the age of eighteen years of age and is domiciled with a parent or person having legal custody, or the designee, with written permission of a parent or person having legal custody; and

WHEREAS, the City’s Planning Director recently issued an interpretation of Section 17A.020.080(P) of the City’s zoning code, concluding that it does not limit the number of foster children who may reside with their state-licensed foster parents; a group has appealed the Planning Director’s interpretation to the City’s Hearing Examiner; and

WHEREAS, as outlined in the Briefing Paper re: Definition of “Household,” dated November 30, 2015 and attached and incorporated into this Ordinance, it is clear that the City of Spokane, through its zoning code or otherwise, intends instead to treat

Rec’d 11/30/15
families with foster children the same as families with other children, whether related by blood, adoption, or guardianship, and that the City has never intended to place a limit on the number of foster children that can live in a state-licensed foster family home; and

WHEREAS, based on the arguments raised in the pending appeal of the Planning Director's interpretation, however, the City plans to review its current zoning codes and ordinances to ensure that its existing regulations are consistent with Federal and State housing laws and chapter 1.06 SMC; and

WHEREAS, in the interim, the City Council hereby adopts an amended definition of "household" with the intent of eliminating any argument about whether or not the City intends to, by its zoning code, regulate the number of foster children that can live with their foster parents in a state-licensed foster family home; and

WHEREAS, pursuant to RCW 35.63.200 and 36.70A.390, where a city adopts an interim zoning ordinance without holding a public hearing on the proposed interim zoning ordinance, it must hold a hearing on the adopted interim zoning ordinance within at least sixty days of its adoption, whether or not the city has received a recommendation on the matter from the planning commission, and if the city has not adopted findings of fact justifying the interim zoning ordinance before this hearing, it must do so immediately after the public hearing; and

WHEREAS, the City Council finds that the interim zoning regulation adopted by this ordinance is necessary for the protection of the public health, safety, property or peace; and

WHEREAS, pursuant to WAC 197-11-880, the adoption of this ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act; and

WHEREAS, the City Council adopts the foregoing as its findings of fact justifying its adoption of this ordinance;

NOW, THEREFORE, the City Council of the City of Spokane, Washington, does ordain:

Section 1. Interim Zoning Ordinance Adopted Regarding Definition of Household. Spokane Municipal Code Section 17A.020.080(P) is hereby amended, on an interim basis, as follows:

P. Household.
   A housekeeping unit consisting of:
      1. an individual;
      2
      
Rec'd 11/30/15
2. two or more ((persons related by blood or marriage)) related persons as defined in SMC 17A.020.180(M);

3. a group of two or more disabled residents protected under the Federal Fair Housing Amendment Act of 1988;

4. adult family homes as defined under Washington State law; or

5. a group living arrangement where six or fewer residents receive support services such as counseling, foster care or medical supervision at the dwelling unit by resident or non-resident staff; and

6. up to six residents not related by blood or marriage who live together in dwelling unit, or in conjunction with any of the above individuals or groups, ((may occupy a dwelling unit)) shall also be considered a household. ((For purposes of this section, minors living with parent or legal guardian shall not be counted as part of the maximum number of residents.))

7. For purposes of this section, minors living with parent, legal custodian (including a foster parent), or legal guardian shall not be counted as part of the maximum number of residents.

8. Any limitation on the number of residents resulting from this definition shall not be applied in a manner inconsistent with the Fair Housing Amendment Act of 1988, 42 U.S.C. 360, et seq., the Washington law Against Discrimination, Chapter 49.60 RCW, and/or the Washington Housing Policy Act, RCW 46.63.220.

Section 2. Purpose. The purpose of amending the foregoing definition on an interim basis is to allow the City adequate time to review and possibly amend on a permanent basis its land use regulations relating to the definition of household and occupancy limitations.

Section 3. Duration of Interim Zoning Ordinance. This Ordinance shall be in effect for a period of six (6) months, beginning on the date of the adoption of this Ordinance.

Section 4. Public Hearing on Interim Zoning Ordinance. Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing on this interim zoning ordinance within the next 60 days, on a date to be determined by the City Clerk. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this interim zoning ordinance, and either justify its continued imposition or cancel it.

Rec’d 11/30/15
Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. Declaration of Emergency and Effective Date. This ordinance, passed by a majority plus one of the whole membership of the City Council as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall be effective immediately upon its passage. Without this Ordinance, the City Council is concerned that the City’s zoning regulations might be interpreted and enforced in a manner that is inconsistent with the City Council’s desires and/or legislative intent, potentially subjecting the City to an increased risk of fair housing litigation.

ADOPTED BY THE CITY COUNCIL ON November 30, 2015.

__________________________________________
Council President

Attest:

__________________________________________
City Clerk

Approved as to form:

__________________________________________
Assistant City Attorney

Mayor

Date

Effective Date

Rec’d 11/30/15
Attachment

Briefing Paper re: Definition of “Household”


**Subject**
Earlier this month, the City’s Planning Director received a request for an administrative interpretation of the City’s zoning code, and particularly SMC 17A.020.080(P), which defines “household.” The request was prompted by a pending home sale on W. Kitsap, in northwest Spokane. The buyers are state-licensed foster parents and are licensed to have eight foster children in their foster family home. Neighbors allege that the City’s zoning code limits the number of foster children that may live in a foster family home, and that this family, because of the number of children in the home, falls under the City’s group living regulations. On November 10, the Planning Director issued an interpretation, indicating that the City’s zoning code does not limit the number of foster children that may reside in a foster family home. On November 23, on behalf of several neighbors, an attorney appealed the decision to the City’s Hearing Examiner.

**Background**
State and Federal housing laws forbid discrimination in all aspects of housing against families with children, including adopted and foster children, unless the housing is for older persons. In particular, Federal housing laws prohibit discriminatory housing practices based on handicap and familial status, and foster children who are legally placed in a foster home meet the definition of “familial status” under the Fair Housing Act (42 U.S.C. Section 3602(k)). Consequently, foster parents and foster children are protected by the Fair Housing Act from discrimination on the basis of familial status. *Gorski v. Troy*, 929 F.2d 1183 (7th Cir. 1991). Enforcing zoning regulations in a manner that discriminates on the basis of familial status is unlawful, and it is also a violation of fair housing laws for neighbors or other members of the community to harass or otherwise imply that residents are unwelcome because of their familial status.

In addition, pursuant to chapter 1.06 of the Spokane Municipal Code, the City Council has previously found that discrimination based on familial status poses a substantial threat to the health, safety, and general welfare of the citizens of Spokane, and that discrimination means different or unequal treatment because of familial status, which SMC 1.06.030(G) defines as the relationship between two or more individuals, at least one of whom has not attained the age of eighteen years of age and is domiciled with a parent or person having legal custody, or the designee, with written permission of a parent or person having legal custody. Specifically, SMC 1.06.090(A)(d) provides that is a violation of the City of Spokane’s law against discrimination for any person to discriminate by attempting to discourage the sale of any real property to a purchaser.

With respect to foster care and foster children specifically, Washington State law defines a “group-care facility” as an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis. RCW 74.15.020(1)(f). Similarly, Washington State regulations define a “staffed residential home” as a licensed facility that provides twenty-four hour care to six or fewer children who require more supervision than can be provided in a foster home. (WAC 388-145-1305).

By contrast, State law defines a “Foster-family home” as an agency which regularly provides
care on a twenty-four hour basis to one or more children, expectant mothers, or persons with
developmental disabilities in the family abode of the person or persons under whose direct care
and supervision the child, expectant mother, or person with developmental disability is placed.
RCW 74.15.020(1)(c). Similarly, Washington regulations define “foster home or foster family
home” as a person(s) licensed to regularly provide twenty-four hour care in their home to
children. WAC 388-148-1305.

We are confident that the City’s zoning regulations are consistent with the foregoing
antidiscrimination provisions and cannot be read to limit the number of foster children living in a
foster family home. Section 17A.020.080(P) of the City’s zoning regulations defines household
as follows:

Household.

A housekeeping unit consisting of:

1. an individual;
2. two or more persons related by blood or marriage;
3. a group of two or more disabled residents protected under the Federal Fair
   Housing Amendment Act of 1988;
4. adult family homes as defined under Washington State law; or
5. a group living arrangement where six or fewer residents receive support
   services such as counseling, foster care or medical supervision at the
dwelling unit by resident or non-resident staff;¹ and
6. up to six residents not related by blood or marriage, or in conjunction with
   any of the above individuals or groups, may occupy a dwelling unit. For
   purposes of this section, minors living with parent or legal guardian shall
   not be counted as part of the maximum number of residents.

In a related definition, “related persons” are defined as follows:

Related Persons.

One or more persons related either by blood, marriage, adoption, or guardianship,
and including foster children and exchange students; provided, however, any
limitation on the number of residents resulting from this definition shall not be
applied if it prohibits the City from making reasonable accommodations to
disabled persons in order to afford such persons equal opportunity to use and
enjoy a dwelling as required by the Fair Housing Amendment Act of 1988, 42

Section 17A.020.180(M).

¹ The neighbors point to the reference to “foster care” in this section as the controlling language
in their appeal. But we believe it is clear that this language refers to the State’s definition of a
group-care facility, per RCW 74.15.020(1)(f), and not a foster family home where foster parents
care for foster children in their own home, as in this case.

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When the forgoing provisions are read together, it is clear that the City Council intended to treat families with foster children the same as families with other children, whether related by blood, adoption, or guardianship, and that the Council never intended to place a limit on the number of foster children that can live in a foster family home.

**Action**
While the City disagrees with efforts to interpret the City’s zoning regulations in a manner that treats families with foster children differently than other families, the City would like to take this opportunity to conduct a review of its zoning codes and ordinances to ensure that the City’s existing regulations are fully consistent with Federal and State housing laws and chapter 1.06 of the Spokane Municipal Code. In the interim, the City plans to adopt an interim zoning ordinance that aims to eliminate any question about whether or not the City Council intends for the City’s zoning code to treat families with foster children differently than any other families.

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