

BRIEFING PAPER
Definition of “Household”
April 4, 2016

Subject

An Ordinance modifying the definition of a “Household” SMC 17A.020.080(P) to clarify that the City does not include foster children in the consideration of the maximum number of persons allowed to reside in a given dwelling. This Ordinance will make permanent the interim changes to SMC 17A.020.080(P) adopted by Ordinance C35329, passed by the City Council November 30, 2015.

Background

On November 10, 2015, the Planning Director issued an administrative interpretation of the City’s Zoning Code as it relates to the definition of a household, specifically SMC 17A.020.080(P), 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. Prior to a hearing on that appeal, the City Council adopted Interim Zoning Ordinance C35329, stating that foster children do not count towards the maximum number of allowed residents under the definition of “household.”

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). Zoning regulations that discriminate on the basis of familial status are unlawful. 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)(e). 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.

Action

Because the City’s zoning regulations pertaining to the definition of “household” and the treatment of families with foster children are open to interpretation, the City will amend the existing regulations in a manner that ensures no misinterpretation is possible. The proposed action would approve the attached Zoning Ordinance and make permanent the changes made on an interim basis by Ordinance C35329.

The changes proposed in the original Interim Zoning Ordinance are repeated in the permanent Zoning Ordinance now being considered by the City. No changes are proposed, nor are any required to conform to federal, state, or local laws or regulations.