



**Agenda Sheet for City Council Meeting of:**  
01/04/2016

<b>Date Rec'd</b>	12/9/2015
<b>Clerk's File #</b>	ORD C35329
<b>Renews #</b>	
<b>Cross Ref #</b>	
<b>Project #</b>	
<b>Bid #</b>	
<b>Requisition #</b>	

<b>Submitting Dept</b>	CITY COUNCIL
<b>Contact Name/Phone</b>	BEN STUCKART 625-6258
<b>Contact E-Mail</b>	BSTUCKART@SPOKANECITY.ORG
<b>Agenda Item Type</b>	Hearings
<b>Agenda Item Name</b>	0320 HEARING ON ORD C35329 DEFINITION OF HOUSEHOLD

**Agenda Wording**

Public Hearing on Interim Zoning Ordinance C35329 of the City of Spokane, Washington, relating to the definition of a household; and declaring an emergency.

**Summary (Background)**

On November 30, 2015, the City Council approved an interim zoning ordinance relating to the definition of household. Because the ordinance was passed as an emergency without a noticed public hearing, State law requires the City Council hold a public hearing within sixty days. To comply with this requirement, a public hearing on the interim zoning ordinance will be held on January 4, 2016.

<b>Fiscal Impact</b>		<b>Budget Account</b>	
Select	\$	#	
Select	\$	#	
Select	\$	#	
Select	\$	#	
<b>Approvals</b>		<b>Council Notifications</b>	
<b>Dept Head</b>	STUCKART, BEN	<b>Study Session</b>	
<b>Division Director</b>		<b>Other</b>	
<b>Finance</b>	KECK, KATHLEEN	<b>Distribution List</b>	
<b>Legal</b>	RICHMAN, JAMES	AMcDaniel	
<b>For the Mayor</b>	SANDERS, THERESA	BMcClatchey	
<b>Additional Approvals</b>		JRichman	
<b>Purchasing</b>			

## NOTICE OF SPOKANE CITY COUNCIL PUBLIC HEARING

### RE: PUBLIC HEARING ON INTERIM ZONING ORDINANCE C35329 RELATING TO THE DEFINITION OF A HOUSEHOLD

(Ordinance C35329)

Notice is hereby given that there will be a public hearing before the City of Spokane City Council on **January 4, 2016, at 6:00 p.m.** in the City Council Chambers, Lower Level of City Hall, 808 West Spokane Falls Boulevard, Spokane, Washington. On November 30, 2015, the City Council passed an interim zoning ordinance of the City of Spokane, Washington, relating to the definition of a household; and declaring an emergency. Because the ordinance was passed as an emergency without a noticed public hearing, state law requires that the City Council hold a public hearing within sixty days. To comply with this requirement, a public hearing on the interim zoning ordinance will be held on January 4, 2016 (at the time and place referenced above). The City Council reserves the right to continue this public hearing. 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.

Written comments and oral testimony at the public hearing will be made part of the public record. Any person may submit written comments on this matter or call for additional information at:

*Spokane City Council*  
*Attn: Adam McDaniel*  
*808 West Spokane Falls Boulevard*  
*Spokane, WA 99201*  
*Phone (509) 625-6269*  
[amcdaniel@spokanecity.org](mailto:amcdaniel@spokanecity.org) or [citycouncil@spokanecity.org](mailto:citycouncil@spokanecity.org)

**AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION:** The City of Spokane is committed to providing equal access to its facilities, programs and services for persons with disabilities. The Spokane City Council Chamber in the lower level of Spokane City Hall, 808 W. Spokane Falls Blvd., is wheelchair accessible and also is equipped with an infrared assistive listening system for persons with hearing loss. Headsets may be checked out (upon presentation of picture I.D.) at the City Cable 5 Production Booth located on the First Floor of the Municipal Building, directly above the Chase Gallery or through the meeting organizer. Individuals requesting reasonable accommodations or further information may call, write, or email Christine Cavanaugh at (509) 625-6383, 808 W. Spokane Falls Blvd, Spokane, WA, 99201; or [ccavanaugh@spokanecity.org](mailto:ccavanaugh@spokanecity.org). Persons who are deaf or hard of hearing may contact Ms. Cavanaugh at (509) 625-6383 through the Washington Relay Service at 7-1-1. Please contact us forty-eight (48) hours before the meeting date.



OFFICE OF THE CITY CLERK  
808 W. SPOKANE FALLS BLVD.  
SPOKANE, WASHINGTON 99201-3342  
509.625.6350

December 1, 2015

City Clerk File No.:  
ORD C35329

COUNCIL ACTION MEMORANDUM

RE: EMERGENCY ORDINANCE NO. C35329 RELATING TO THE DEFINITION  
OF A HOUSEHOLD; AND DECLARING AN EMERGENCY

During its 6:00 p.m. Legislative Session held Monday, November 30, 2015, the Spokane City Council took the following action:

**Motion** by Council Member Snyder, seconded by Council Member Stratton, **to suspend** the (Council) Rules; **carried unanimously.**

Council President Stuckart requested a motion to add Emergency Ordinance C35329 on household definitions to the agenda. The following action was taken:

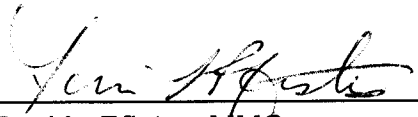
**Motion** by Council Member Snyder, seconded by Council Member Fagan, **to so move (to add** Emergency Ordinance C35329 on household definitions to the agenda); **carried unanimously.**

Council President Stuckart provided an overview of Emergency Ordinance C35329. Public testimony was received and Council commentary held. Council Member Snyder pointed out that, because there is a specific case in a specific neighborhood (pertaining to the current definition of a household), there has been a filing fee filed for making the appeal which is \$250. He stated there is no way the folks making that appeal could have known that the City Council was going to be coming forward to try to make this clarification. He requested that, if the City Council passes the ordinance tonight, Administration consider refunding that appeal (fee) because this (Ordinance C35329) makes the appeal moot. Subsequent to additional commentary by City Council and response by Brian McClatchey, Policy Advisor to the City Council, the following action was taken:

**Motion** by Council Member Snyder, seconded by Council Member Allen, **to request** that the Administration waives the \$250 appeal; **carried unanimously.**

Following final remarks by Council President Stuckart, the following action was taken:

**Upon Unanimous Roll Call Vote**, the City Council **passed Emergency Ordinance C35329**—an interim zoning ordinance of the City of Spokane, Washington, relating to the definition of a household; and declaring an emergency.

  
\_\_\_\_\_  
Terri L. Pfister, MMC  
Spokane City Clerk

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 (7<sup>th</sup> 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

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. 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.

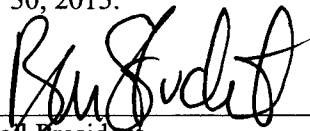
Section 3. Duration of Interim Zoning Ordinance. This Ordinance shall be in effect for a period of six (6) months, beginning on the date of the adoption of this Ordinance.

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.

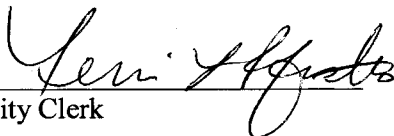
Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause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

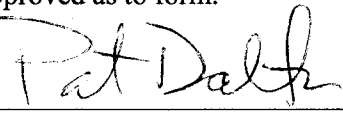
ADOPTED BY THE CITY COUNCIL ON November 30, 2015.

  
\_\_\_\_\_  
Council President

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Mayor

Mayoral Decision to Return Unsigned

(Returned by Mayor 12-08-2015)

\_\_\_\_\_  
Date

November 30, 2015  
\_\_\_\_\_  
Effective Date

**Attachment**

**Briefing Paper re: Definition of "Household"**

**BRIEFING PAPER**  
Definition of "Household"  
November 30, 2015

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**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 (7<sup>th</sup> 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)(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.

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;<sup>1</sup> 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 U.S.C. 3604(f)(3)(b) and the Washington Housing Policy Act, RCW 35.63.220.

Section 17A.020.180(M).

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<sup>1</sup> 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.

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.