

ORDINANCE NO. \_\_\_\_\_

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

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 responsibility for 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, in November 2015 the City’s Interim Planning Director 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 appealed the Planning Director’s interpretation to the City’s Hearing Examiner (the “Appeal”); and

WHEREAS, as outlined in the Briefing Paper re: Definition of “Household,” dated November 30, 2015 and attached and incorporated into Ordinance C35329, it is clear that the City of Spokane, through its zoning code or otherwise, intends 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 Appeal, the City Council adopted Ordinance C35329 as an interim ordinance amending the 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 (the “Interim Zoning Ordinance”); and

WHEREAS, the Interim Zoning Ordinance took effect November 30, 2015 and will expire May 30, 2016 (six months later); and

WHEREAS, the City Council finds that adopting the definition of “household” set forth in the Interim Zoning Ordinance on a permanent basis 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. Zoning Ordinance Adopted Regarding Definition of Household. Spokane Municipal Code Section 17A.020.080(P) is hereby amended, on a permanent 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 a single-family dwelling, 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 a permanent basis is to clarify the treatment of foster children under the SMC and to avoid any possible future misunderstanding or error in interpretation.

Section 3. 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 4. Declaration of Emergency, Effective Date, and Termination of Interim Zoning Ordinance. 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. The Interim Zoning Ordinance C35329 is hereby terminated as of the date that this Ordinance takes effect.

ADOPTED BY THE CITY COUNCIL ON \_\_\_\_\_, 2016.

Attest:

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

\_\_\_\_\_  
Mayor

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

Approved as to form:

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Effective Date