

MEMORANDUM

TO: Planning Commission

FROM: Allan Giffen, Planning Director



DATE: September 12, 2016

SUBJECT: Zoning Code Definition of "Family" and related code amendments

A. Background Information: On April 21, 2015, the Planning Commission agreed to initiate consideration of an amendment to the Zoning Code definition of "family." City staff requested the amendment to 1) bring the definition into consistency with State law; and 2) provide clarification related to a gap in the current definition related to households for disabled individuals. The Planning Commission acted upon the first change in the process of the Comprehensive Plan update in 2015. No action has been taken yet on the second change due, in part, to litigation pending in other states for a definition that was similar to the City's definition that limits the number of unrelated adults to not more than four. Staff was hopeful that the outcome of those cases would provide some guidance. However, the legal cases were dismissed on procedural grounds, and they have not provided any guidance for definition of family as it pertains to number of unrelated adults in a household.

B. Existing Definition: The current zoning code definition reads as follows:

"Family" means any number of persons related by blood, marriage or legal adoption and including foster children and exchange students living together as a single housekeeping unit. "Family" also means the following when living together as a single, not-for-profit housekeeping unit: (*emphasis added for purposes of discussion*)

1. A group of not more than four related and unrelated adults and their related minor children, but not to exceed a total of eight related and unrelated persons; (*emphasis added for purposes of discussion*) or
2. Not more than eight disabled persons, whether adults or minors, living together in a consensual residential living arrangement, but not to exceed a total of eight persons; (*emphasis added for purposes of discussion*) or
3. State licensed adult family homes as defined by RCW [70.128.010](#); or
4. State licensed foster family homes and group care facilities as defined in RCW [74.15.020](#).

For the purposes of this definition, an adult is a person eighteen years of age or older, and a minor child is a person under the age of eighteen years old.

The underlined portions of the definition are the focus of the proposed amendments.

C. Problem Statement: The challenge with the current definition relates to two common problems encountered by City code enforcement and planning staff:

- Problem 1 – enforcement staff frequently encounter houses that function more like a roominghouse than as a group of persons living together as a single housekeeping unit. In most of these situations, the tenants have an individual lease with a landlord and do not function as a single housekeeping unit. The turnover in tenants creates a more transient type of housing, which can decrease stability in the neighborhood. Roominghouses are permitted in Everett’s multi-family zones, but not in the RS, R-1 and R-2 zones that comprise most of its single family neighborhoods.
- Problem 2 - the existing code has a gap in that the definition limits occupancy to a maximum of 4 unrelated adults, or combination of 4 related and unrelated adults, but it allows up to 8 disabled persons to live together. Recovering drug and alcohol abusers are included in the term disabled, under the Fair Housing Act. The allowance for a greater number of unrelated disabled residents in the City’s definition was created to recognize court decisions related to the Fair Housing Act. The City allows more than 8 disabled residents to live in a dwelling through a process of reasonable accommodation, consistent with federal law. Enforcement staff often encounter houses in which a landlord claims to be a “clean and sober house” or “like an Oxford house” believing that they are exempt from building codes and local building permits. While the reasonable accommodation process can grant exceptions to zoning limitations, federal law does not exempt a property owner or household from meeting building and safety codes or the requirement to secure building permits.

D. Proposed Amendments: The proposed amendments would address the two problems identified above as follows:

For Problem 1, a definition is added for “single housekeeping unit.”

“Single housekeeping unit” means one household where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses and maintenance of the premises are shared or carried out according to a household plan or other customary method. If the dwelling unit is rented and the household members occupy the unit under more than a single lease, they must be able to demonstrate that the group is operating in a manner that is the functional equivalent of a family in order to be considered a single housekeeping unit.

For Problem 2, the definition of “family” is amended to read as follows:

“Family” means a person living alone, or any of the following living together as a single housekeeping unit and sharing common living, bathroom, cooking and eating facilities, provided, however, that 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 Amendments Act of 1988, 42 USC 3604(f)(3)(b):

- 1. Any number of persons related by genetics, marriage or legal adoption and including foster children and exchange students; or*
- 2. A group of unrelated adults (18 or older) or related and unrelated adults but not to exceed four total adults and their related minor children (younger than 18); or*
- 3. State licensed adult family homes as defined by RCW [70.128.010](#); or*
- 4. State licensed foster family homes and group care facilities as defined in RCW [74.15.020](#).*

Regardless of the foregoing language, the term “family” shall exclude individuals residing in halfway houses, crisis residential centers as defined in RCW 74.15.020, group homes licensed for juvenile offenders, or other facilities, whether or not licensed by the state, where individuals are incarcerated or otherwise required to reside pursuant to court order under the supervision of paid staff and personnel.

There are several related amendments needed to add clarity to the above definition, by either adding more definitions or amending existing definitions.

The definition of “dwelling” would be amended to read as follows:

“Dwelling” means one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, not more than one kitchen, unless it is clearly accessory (such as an outdoor grill), eating, and sanitation, and in which all habitable rooms are internally accessible from within the dwelling.

A new definition for “kitchen” is added, to read as follows:

“Kitchen” means an identifiable area inside a dwelling for the cooking or preparation of food, including, but not limited to, all fixtures and functionally related appliances including a stove, range, oven, microwave, or any combination thereof, a refrigerator or other food storage appliance, a sink and a counter or cupboards, in proximity to each other.

The following section of the Zoning Code would be repealed, and the number of persons living in a dwelling in single family zones would be regulated by the definition of family:

~~**39.060 Boarding and rooming.** In single-family zones, rental of rooms for lodging is limited to two roomers. There shall be no separate kitchen facilities in rented rooms.~~

The definition of “roominghouse” would be amended to read as follows:

“Roominghouse” means non-owner occupied dwelling that is subject to multiple leases or in which rooms are offered for rent or lease on an individual room basis.

A copy of the recommended amendments to the above definitions showing the changes in legislative format is attached to this memorandum.

E. Discussion: The above recommended definitions and amendments would provide clarification in the number of unrelated adults that may live in a dwelling, what constitutes a single housekeeping unit, what constitutes a dwelling unit (includes kitchen), what constitutes a kitchen, and what constitutes a roominghouse. The recommended amendments do not change the number of non-disabled unrelated adults from the limits in the current definition. They remove the limit on the number of disabled residents, provided that for more than 4 unrelated adults who are disabled, the City will use the reasonable accommodation process.

For reasonable accommodation under the federal Fair Housing Act, the City has established an administrative process for evaluating requests that uses the following information to determine if the proposed occupancy is eligible for the accommodation, and what is reasonable as it relates to the specific location:

1. Name of property owner(s)
2. What specific modification(s) of the requirements of the City’s Zoning Code is requested in order to allow reasonable accommodation?
3. What is the nature of the disability or disabilities of the individual(s) for whom the accommodation is requested, and explain in detail why the specific accommodation is necessary based on the disability.
4. State the number of unrelated persons that currently reside in the property.
5. State the maximum number of persons that you are proposing to allow to reside in the property.
6. Provide a copy of any written guidelines that describe any policy regarding the maximum number of individuals that may reside in the property.
7. State and explain the actual and/or expected frequency of tenant turnover, including how long the occupants typically stay in the property.

8. Identify and explain the admission criteria for persons to be eligible to reside in the property. Describe all policies and procedures used to ensure that the admission criteria are met before an individual is allowed to move into the property, and followed during the individual's term of residency to ensure compliance with your eligibility requirements. Please provide a copy of any documents that describe such criteria, policies or procedures.
9. Describe each resident's responsibilities related to payment of rent, maintenance of building and grounds, purchase of groceries and household supplies, preparation of meals, payment of household bills, and other responsibilities related to living in a family environment.
10. Describe all on-site congregate dining or other common living areas in the property, such as kitchens, dining rooms and living/family rooms.
11. Describe any agreements you have with individuals that reside in the property, including whether rental leases are required for each unrelated individual.
12. Describe any policies or procedures generally applicable to individuals who reside in the property, including rules about the number of cars that residents may have parked at or near the property or other "house rules." Provide a copy of any written policies or procedures that residents must follow.
13. Provide a copy of the application form that you use for prospective tenants to become a resident of the subject property.

F. Number of Unrelated Adults. During previous Planning Commission dialogue on the definition of family, the limit on the number of unrelated adults at four was discussed. The recommended definition does not change the current limit. It appeared, based on comments by some commissioners, that there was interest on the part of some to allow more than four. As an alternative to the recommended amendment to the definition, below is an excerpt from a recently amended City of Bellevue code, which is provided below for purposes of discussion:

Family means not more than four adult persons, unless all are related by blood, marriage, or legal adoption, living together as a single housekeeping unit. A group of related persons living in a household shall be considered a single housekeeping unit. Provided: a group of more than four unrelated adult persons living together in a dwelling unit may also be included within the definition of "family" if they demonstrate to the Director that they operate in a manner that is functionally equivalent to a family. Factors that shall be considered by the Director include whether the group of more than four unrelated persons:

1. *Shares the entire dwelling unit or acts as separate roomers;*
2. *Includes minor, dependent children regularly residing in the household;*
3. *Can produce proof of sharing expenses for food, rent, or ownership costs, utilities, and other household expenses;*

4. *Shares common ownership of furniture and appliances among the members of the household;*
5. *Constitutes a permanent living arrangement, and is not a framework for transient living;*
6. *Maintains a stable composition that does not change from year to year or within the year;*
7. *Is not a society, fraternity, sorority, lodge, organization or other group of students or other individuals where the common living arrangement or basis for the establishment of the housekeeping unit is temporary; or*
8. *Can demonstrate any other factors reasonably related to whether or not the group of persons is the functional equivalent of a family.*

The Director shall issue a written determination of whether a group of more than four unrelated adult persons are operating in a manner that is functionally equivalent to a family.

The Bellevue definition specifically excludes more than four college students from being considered under their exception process.

G. Effect of Recommended Change in Definition on Existing Housing for Disabled Residents: The proposed changes in definitions will not affect any existing legally established housing for disabled persons. The amendments do not affect any building or fire code standards.

H. Request for Direction from Planning Commission: Staff recommends that the Planning Commission take public comments on the proposed amendments, ask questions of staff, and discuss the proposed amendments. Staff would like direction concerning any additional information the commission wants, or if there are any suggested refinements to the draft amendments staff has recommended. Staff would like to have the commission's refinements before conducting an environmental review of the changes. If an additional public workshop is needed for further discussion, staff will schedule that for either the second meeting in October or in November. If the Commission is comfortable with the draft recommendations in this packet, staff will perform the environmental analysis and, once that process is complete, schedule a decision public hearing for the commission.

PROPOSED CODE AMENDMENTS RELATED TO DEFINITION OF FAMILY

Option 1: (Recommended - Amend existing definition)

“Family” means ~~a person living alone, or any of the following any number of persons related by blood, marriage or legal adoption and including foster children and exchange students living together as a single housekeeping unit and sharing common living, bathroom, cooking and eating facilities, provided, however, that 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 Amendments Act of 1988, 42 USC 3604(f)(3)(b); “Family” also means the following when living together as a single, not for profit housekeeping unit:~~

~~1. Any number of persons related by genetics, marriage or legal adoption and including foster children and exchange students; or~~

~~2. A group of not more than four related and unrelated adults (18 or older) or related and unrelated adults and their related minor children, but not to exceed four total adults and their related minor children (younger than 18) a total of eight related and unrelated persons; or~~

~~2. Not more than eight disabled persons, whether adults or minors, living together in a consensual residential living arrangement, but not to exceed a total of eight persons; or~~

3. State licensed adult family homes as defined by RCW [70.128.010](#); or

4. State licensed foster family homes and group care facilities as defined in RCW [74.15.020](#).

~~For the purposes of this definition, an adult is a person eighteen years of age or older, and a minor child is a person under the age of eighteen years old.~~

~~Regardless of the foregoing language, the term “family” shall exclude individuals residing in halfway houses, crisis residential centers as defined in RCW 74.15.020, group homes licensed for juvenile offenders, or other facilities, whether or not licensed by the state, where individuals are incarcerated or otherwise required to reside pursuant to court order under the supervision of paid staff and personnel.~~

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Option 2 for purposes of discussion: (City of Bellevue definition)

Family means not more than four adult persons, unless all are related by blood, marriage, or legal adoption, living together as a single housekeeping unit. A group of related persons living in a household shall be considered a single housekeeping unit. Provided: a group of more than four unrelated adult persons living together in a dwelling unit may also be included within the definition of “family” if they demonstrate to the Director that they operate in a manner that is functionally equivalent to a family. Factors that shall be considered by the Director include whether the group of more than four unrelated persons:

1. Shares the entire dwelling unit or acts as separate roomers;
2. Includes minor, dependent children regularly residing in the household;
3. Can produce proof of sharing expenses for food, rent, or ownership costs, utilities, and other household expenses;
4. Shares common ownership of furniture and appliances among the members of the household;
5. Constitutes a permanent living arrangement, and is not a framework for transient living;
6. Maintains a stable composition that does not change from year to year or within the year;
7. Is not a society, fraternity, sorority, lodge, organization or other group of students or other individuals where the common living arrangement or basis for the establishment of the housekeeping unit is temporary; or
8. Can demonstrate any other factors reasonably related to whether or not the group of persons is the functional equivalent of a family.

The Director shall issue a written determination of whether a group of more than four unrelated adult persons are operating in a manner that is functionally equivalent to a family.

Add the following definitions:

“Single housekeeping unit” means one household where all the members have common access to and common use of all living, kitchen, and eating areas within the dwelling unit, and household activities and responsibilities such as meals, chores, expenses and maintenance of the premises are shared or carried out according to a household plan or other customary method. If the dwelling unit is rented and the household members occupy the unit under more than a single lease, they must be able to demonstrate that the group is operating in a manner that is the functional equivalent of a family in order to be considered a single housekeeping unit.

“Kitchen” means an identifiable area inside a dwelling for the cooking or preparation of food, including, but not limited to, all fixtures and functionally related appliances including a stove, range, oven, microwave, or any combination thereof, a refrigerator or other food storage appliance, a sink and a counter or cupboards, in proximity to each other,

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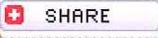
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Amend the following definitions:

~~“Roominghouse” means non-owner occupied dwelling that is subject to multiple leases or in which rooms are offered for rent or lease on an individual room basis. a principal building other than a hotel where lodging which complies with the city Housing Code is provided, without meals, for compensation on other than a day to day basis, and which is not open to transient guests.~~

“Dwelling” means one or more habitable rooms which are designed to be occupied by one family with facilities for living, sleeping, not more than one kitchen, cooking unless it is clearly accessory (such as an outdoor grill), eating, and sanitation, ~~which meets the minimum requirements of the Everett Housing Code,~~ and in which all habitable rooms are internally accessible from within the dwelling.

Repeal the following provision and regulate with the definition of family::

~~39.060 Boarding and rooming~~ 

~~In single family zones, rental of rooms for lodging is limited to two roomers. There shall be no separate kitchen facilities in rented rooms.~~

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