

## Defining an Evanston family: An analysis of the City of Evanston's definition of a family and its impact on housing and the community.

### KEY POINTS

- ▶ Safety is being used as a red herring to support restrictions on unrelated persons living together.
- ▶ The City of Evanston's restrictions on occupancy by unrelated persons are outdated, artificial, arbitrary, and culturally biased.
- ▶ Evanston's definition of family does not address the root of student nuisance issues.
- ▶ In fact, the policy likely exasperates student nuisance issues.
- ▶ The policy adversely impacts property values and investment in the community.
- ▶ The narrow definition of family increases housing costs and prices others out of Evanston.
- ▶ The law places property owners and real estate licensees in the tenuous position of questioning family and marital status.
- ▶ Occupancy standards should be uniform regardless of familial status.

### **A brief background on the law:**

The City of Evanston restricts the number of unrelated persons that can live in a single residential dwelling unit. According to the City Code, no dwelling unit shall be occupied by more than one type:

- A. One or more persons related by blood, marriage, or adoption living together as a single housekeeping unit in a dwelling unit;
- B. Two unrelated persons and their children living together as a single housekeeping unit in a dwelling unit; or
- C. A group of not more than three unrelated persons living together as a single housekeeping unit in a dwelling unit.

There are limited exceptions for fraternities and sororities, religious not-for-profit organizations, and the like.

The prevailing theory behind the law’s genesis was to limit the number of university students in a particular neighborhood and therefore minimize noise and other nuisances. This law has been primarily supported by a vocal group of non-student residents that live near Northwestern University (NU) students. While the law likely was adopted to limit student living arrangements, legally the law cannot just apply to students or young adults, but must be applied evenly among the whole Evanston population. Subsequently, impacted groups extend beyond the traditional NU student.

**The number of unrelated individuals in a dwelling unit and over-occupancy are separate and distinct issues:**

It is absolutely critical to understand that Evanston City Code dictating how many unrelated persons can domicile in a dwelling unit is separate and distinct from how many persons can safely live in a dwelling unit. Efforts have been made to coningle the two issues – leading some to purport that any relaxation of restrictions on the number of unrelated persons that can occupy a single dwelling unit will encourage or allow an unsafe number of unrelated persons to live in unsafe conditions. This is patently false and intellectually dishonest.

Associate Professor of Regional Planning at the University of Massachusetts - Aherst Ellen Pader, a leading scholar on occupancy restrictions, hits the nail on the head when she says “[w]hile appearing to be neutral, and purported by their supporters to be in the interest of protecting the physical and mental health and safety of all, property owners and municipalities have long used overly restrictive occupancy codes explicitly to keep out unwanted populations...”

The total number of persons, related or not, allowed to live in single dwelling unit is governed by other parts of the City Code and is generally, with some nuance, determined by the following requirements:

SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 Occupants	3-5 Occupants	6+ Occupants
Living Room	No Requirements	120	150
Dining Room	No Requirements	80	100
Bedrooms	70 for one occupant and an additional 50 for each occupant thereof.		

A relaxation of occupancy restrictions on unrelated persons would not allow ten unrelated people to live in a small attic space; the same would be true for related persons. Illogically, those that purport it is “unsafe” for four unrelated persons to live in a four bedroom apartment contend it is perfectly safe for four related persons to occupy a two bedroom apartment.

Equally ironic, City of Evanston staff, for nearly a year, refused to disclose the above formula. In other words, some City officials express grave concern that residents, primary students, are living in overcrowded, unsafe conditions, but would not divulge how many people can safely occupy a dwelling based on square feet and bedrooms. Even if a property owner or tenant wanted to ensure

their living arrangements were legal under City Code, City staff and legal counsel took the position that the information is copyrighted.

**The law provides an outdated, artificial, arbitrary, and culturally biased definition of a family:**

What is a traditional family? Many twenty-first century American families certainly look different than families of 30 or 40 years ago when this law was adopted. Certainly perceptions and acceptance of what a family can look has also changed. After a 50 year decline in household size, that trend is reversing as more and more related and unrelated persons are choosing to house together. A significant driver of this trend is the economy, where, for example, a family impacted by foreclosure may move in with friends or family. Other noticeable changes in households include adult children living with their parents for longer periods, unmarried co-habitation, home sharing, and rapid immigration growth. No longer are Mom, Dad, and 2.3 children considered the ideal family makeup. In fact, only 14 percent of American households reflect a married-couple household with a working dad and stay-at-home mom.

Yet the prohibitions in this law hold on tightly to antiquated and arbitrary notions of family. The table below demonstrates various living arrangements that appear to be allowed and prohibited under this law:

<b>APPEARS TO ALLOW</b>	<b>APPEARS TO PROHIBIT</b>
A married couple with seven children ( <i>nine total, allowed by family type A</i> ).	Two unrelated persons, each with one child, and a friend that lives with them for the purpose of saving money and helping with childcare ( <i>five total, prohibited by family type B</i> ).
Three unrelated undergraduate students ( <i>three total, allowed by family type A</i> )	Four unrelated young working professionals ( <i>four total, prohibited by family type C</i> ).
A married couple with an unmarried couple ( <i>four total, allowed by family type C</i> ).	Two unmarried couples ( <i>four total, prohibited by family type C</i> ).
A married couple with a child that rents rooms to a single father with a child ( <i>five total, allowed by type B</i> ).	An unmarried couple with a child that rents a room to a visiting professor ( <i>four total, prohibited by family type B</i> ).
A married couple with their adult child and her fiancé ( <i>four total, allowed by family types B and C</i> ).	A married couple with their adult child, her fiancé, and the engaged couple’s child ( <i>five total, prohibited by family type B</i> ).
A married couple with four children plus two boarders ( <i>eight total, allowed by family type C</i> ).	Two single mothers, each with two minor children, and a friend’s child living with them while the parent serves overseas in the military ( <i>seven total, prohibited by family type B</i> ).
An unmarried couple, each with five children ( <i>12 total, allowed by family type C</i> ).	Four unrelated college students ( <i>four total, prohibited by family type C</i> ).

Is a married couple living with an unmarried couple (four adults total) safe and acceptable while two unmarried couples (four adults total) living together unsafe and harmful to the community? Is it logical that a married couple with a child can rent a room to a single father with a child (three adults

and two children total), but an unmarried couple with a child cannot rent a room to a visiting professor (three adults, one child total)? Common sense would say no, yet this is how the ordinance, as illustrated above, is written and applied in the real world.

Pader says “[w]hat we’re really talking about here is a culturally constructed definition of appropriate family composition and the apportioning of domestic space masquerading as a neutral, and even healthy and necessary, social policy<sup>1</sup>. Occupancy standards “are based on a middle-class, Anglo-Saxon concept of family relationships and living space<sup>2</sup>.”

It is for these reasons that a majority of American communities do not have such laws, and that many that do have scaled back. According to the Village of Northbrook’s Director of Community Planning, “Most nearby communities have updated their codes to increase the number of unrelated individuals that can live together as family...”<sup>3</sup> Deerfield, Glenview, Highland Park, and Northfield – all communities with a plainly less urban environment all have less restrictive occupancy standards for unrelated persons. In fact, the Village of Skokie has rescinded their policies on the number of unrelated persons that can live together because the Village believes such a policy to be in violation of federal law.

### **The law does little if anything to curb student nuisances:**

College students all over the world live a lifestyle that at times is found bothersome by their non-student neighbors. These are decades-old issues that the City of Evanston, Northwestern University, student groups, property owners, community groups, and the like are continuously addressing through the City’s noise ordinances, intervention by NU’s Office of Student Conduct and Conflict Resolution, increased dialogue, educational campaigns, and other tools. Moreover, by way of discussions with and filed complaints by non-student residents, it has become clear that the majority of nuisances are people walking through neighborhoods at night – not nuisances from neighbors. And even in cases there are nuisances from within a neighborhood, there is no evidence to suggest that three students in a dwelling are less likely to throw a party than four or five students.

What is clear though is that this policy does little to address nuisance issues – regulating the number of unrelated persons to a dwelling unit is a specious, ineffective means to deal with noise, garbage, binge drinking or the myriad of other concerns some hope will solve by restricting occupancy. Other laws and policies are aimed at abating those issues – residents and city and NU officials should focus their limited resources on policing true nuisances.

### **In fact, the law likely exasperates neighborhood nuisances:**

University students, like everyone, have needs and wants. They need to frequent school buildings on a near daily basis, they want and will socialize among their friends, and they are going to patronize businesses that cater to them. By and large, students want to live close to campus and among their peers. This figurative core is represented in Zone A in the graphic found at the end of this position paper. Zone A maintains a heavy student population and a light non-student population. However, Zone A has an artificial cap on the number of students that can legally live within that zone and therefore pushes more students into Zones B, C, and beyond, which have progressively higher non-student populations.

To demonstrate this, envision the following, somewhat simplistic scenario (please note, the following figures are for illustrative purposes only and not necessarily reflective of true figures). Say during a typical year Zone A maintains a population of 6,000 students – 1,500 students live alone, 1,200 students live with one other roommate (2,400 total), and 700 students live with two other roommates (2,100 total). However, the existing housing stock in Zone A could easily and safely absorb 375 additional students and the demand for those additional roommates exists. In fact, the demand for housing in Zone A exceeds those additional 125, but developers and property owners are not in a position to meet that demand because the law does not allow it. But if they were allowed to meet that demand through a combination of reconfiguring bedrooms in existing dwellings or building new, higher density buildings another 900 (on top of the 375) students can safely call Zone A home. But they cannot, so those 1,275 students must find housing elsewhere. Where do they look? Naturally, in Zones B, C, and elsewhere. And because Zone B is in higher demand because of lack of available housing in Zone A, and because the definition of family restricts the ability for property owners to meet demand in Zone B, a number of students are then pushed into Zone C, and this continues pushing more and more students further away from the core of their campus life and into more, traditional non-student neighborhoods.

Compounding the problem, a larger than necessary number of students in Zones B and C will be travelling throughout these zones to reach Zone A. The opposite is true too. Now that more peers are forced to live in Zones B and C, students from Zone A will be lured to travel into Zones B and C for social purposes. A weekend house party in Zone C will likely draw students from Zone A and B – those students travelling from Zones A and B will be trekking into neighborhoods with a higher non-student population.

Businesses will also take notice of shifting student populations and accommodate their needs. For example, a new college oriented bar built in Zone C may never have been built had the student population not been pushed further into that zone.

The City of Evanston can relieve pressure from zones outside Zone A by allowing more students to legally live in Zone A. Ask a non-student resident of Zone B or C displeased with student nuisance issues if they would like 1,000 or 2,000 students to move closer to campus, the answer would be a resounding yes.

### **The law discourages investment and likely reduces property values:**

Investment property is largely determined by the income it produces. Properties with artificially imposed limitations on the number of occupants take a hit in two ways. First, because the universe of potential renters is limited, annual vacancy rates will increase because the owner will, from time to time, need to turn away qualified groups of tenants who cannot legally occupy the premise. Second, as is often the case with unrelated roommates each paying their own way, the tenants are generally most concerned with their individual monthly rent rather than the total monthly rent. Therefore, property owners can generally command a slightly higher overall rent with more tenants. Subsequently, many properties in Evanston are at a disadvantage.

Suppose an investor is considering between two identical, four bedroom, single family homes to purchase with an all cash deal. One in Chicago's Roger's Park neighborhood and traditionally has been rented out to Loyola University students and other young working adults. The other one is in

Evanston and traditionally has been rented to Northwestern University students and young working adults. The asking price for each home is \$250,000. Provided the market demand was there to fill each bedroom, and adjusting for a slightly higher Evanston vacancy rate, the Rogers Park house is clearly the better investment as detailed in the table below. This is even the case with each occupied bedroom in Rogers Park commanding \$150 less than each occupied bedroom in Evanston, and this is still the case even if the vacancy rates were both at four percent. In order for the Evanston home to be considered on par with the Rogers Park house, the Evanston house would have to come down in price or the investor would have to hope to capture even higher rent than \$700 per person per month.

Investors of rental property have a very broad choice of communities to among where to invest. They can easily choose Chicago or Lincolnwood or Gurnee over Evanston, and artificially decreased return on investments, coupled with a overly-regulatory community, makes it all too easy for investors to choose other communities over Evanston. Decreased demand for Evanston rental property translates to lower property values, for both income-producing and owner-occupied properties, and a diminished property tax base. And since the average home sale in Illinois generates \$28,581<sup>4</sup> in direct expenditures throughout the local economy (construction, retail, transportation, etc.), all of Evanston suffers from weakened interest in Evanston properties.

	<b>EVANSTON HOUSE</b>	<b>ROGERS PARK HOUSE</b>
Potential Gross Annual Income	\$700 X 3 X 12 = \$25, 200	\$550 X 4 X 12 = \$26,400
Less Vacancy	6.5% (-\$1,638) = \$23,562	4% (-\$1,056) = \$25,344
Less Taxes	\$8,000	\$8,000
Less Insurance	\$800	\$800
Less Maintenance/Repairs	\$2,800	\$2,800
Less Utilities (partial)	\$1,900	\$1,900
Less Legal and Accounting	\$400	\$400
<i>Total Expenses:</i>	<i>\$13,900</i>	<i>\$13,900</i>
<b>Annual Net Operating Income</b>	<b>\$9,662</b>	<b>\$11,444</b>

**This law decreases housing affordability:**

As detailed in the above example, many Evanston property investors face pressure to meet their investment needs by increasing rent prices. While property owners certainly cannot command any price from renters, this law artificially decreases the supply of available bedrooms and demand, along with rent, increases. In the case above, the Rogers Park home, even accepting \$150 less per student tenant still provides more annual revenue. If the law restricting non-familial occupancy was reformed tenants would have more housing choices and therefore more negotiating power in determining monthly rent. An owner would gladly take \$150 less per month per tenant for four tenants as compared to only three tenants, and still make more money overall. Pader says occupancy standards directly impact the availability and affordability of housing and, by extension, homelessness, coercive racial, ethnic and class segregation and access to quality education, jobs, recreation, transportation and other services.

As a community that has made affordable housing a top priority, Evanston should be especially considerate of this housing policy impacts housing affordability.

**Property owners and real estate licensees are placed in the tenuous position of questioning people's relationship status:**

Contrary to training and ongoing education not to question prospective tenants' and homebuyers' relationship status, this law compels questioning of people's personal lives. Federal, state, and local fair housing laws are aimed at protecting various classes of people based on factors including, familial and marital status. In order to help ensure compliance and avoid violations and penalties associated with various fair housing laws, property owners and real estate licensees are advised not to delve into this line of questioning, yet this law forces them to engage tenants and buyers on these matters.

**The solution:**

The time has come for the City of Evanston to drop this archaic, discriminatory, and ineffective law. Proponents of Evanston's occupancy restrictions for unrelated persons have long-held on tight as the solution to a wide spectrum of ongoing, historic concerns. However, the issues, intended to be solved by occupancy restrictions, remain outstanding, all while carrying significant adverse societal consequences. It is time to cut the ties to decades old failed policies, and usher in overdue reform. Occupancy standards for unrelated individuals should be commensurate with occupancy standards for related individuals. If it is safe for a family of four related persons to occupy a house, it is safe for four unrelated persons to occupy a house. The North Shore – Barrington Association of REALTORS® is committed to working with all interested parties in thoughtfully and carefully reforming this existing policy.

For more information, please contact Howard Handler, NSBAR Government Affairs Director, at [hhandler@iar.org](mailto:hhandler@iar.org) or 847-480-7177.

**References:**

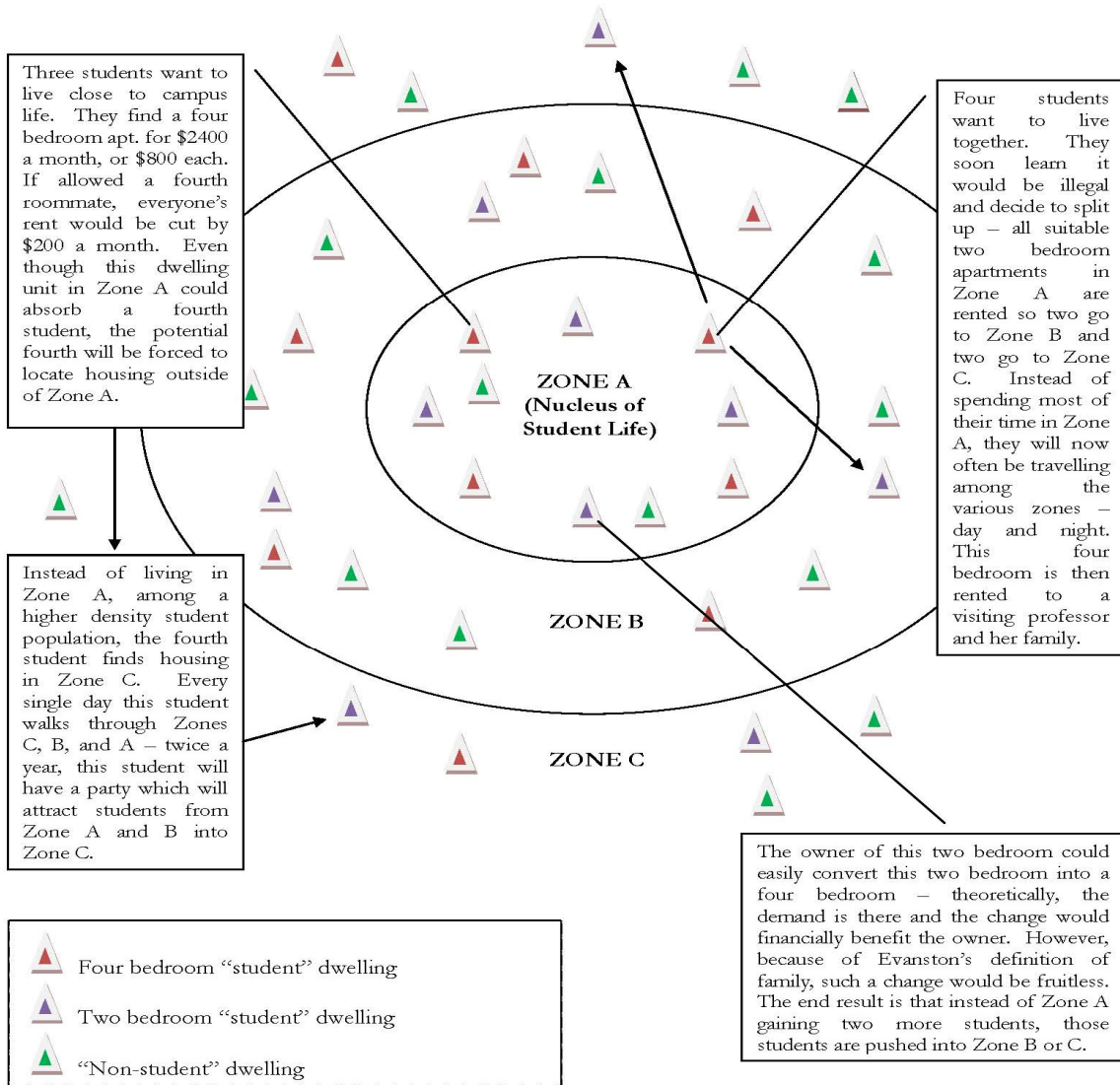
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<sup>2</sup> Umass professor says federal housing rules discriminate . (1994). *The 'Lectric Law Library*. Retrieved from <http://www.lectlaw.com/files/gvb02.htm> on August 26, 2011.

<sup>3</sup> Poupard, T.R. Village of Northbrook (Illinois), Department of Community Planning. (2009). *Preliminary board review: making reasonable accommodations*.

<sup>4</sup> RCF Economic and Financial Consulting (2011). *The Economic Impact of Residential Property Sales in Illinois*.

**GRAPHIC REFERENCED WITHIN PAPER**



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