



AGENDA
Planning & Development Committee Housing Sub-Committee
Tuesday, October 25, 2022
Virtually Via Zoom
5:00 PM

Those wishing to make public comments may submit written comments in advance or sign up to provide public comment in-person during the meeting by completing the [online comment form](#), or by calling/texting 847-448-4311.

Join via Zoom:

<https://us06web.zoom.us/j/88973565692?pwd=K3NKVVIPZEVCN2pnRVB1YnhqOGplZz09>

Passcode: 178578

Or Join by phone:

Dial: +1 312 626 6799

Webinar ID: 889 7356 5692

Passcode: 178578

I. CALL TO ORDER/DECLARATION OF A QUORUM

II. SUSPENSION OF THE RULES

Members participating electronically or by telephone.

III. APPROVAL OF MINUTES

A. Meeting of August 11, 2022

There were no minutes for this meeting. Please view the August 11, 2022 [Presentation Materials provided by Dan Lauber](#). The video recording of this meeting is available here: [Meeting Video](#).

IV. PUBLIC COMMENT

V. ITEMS FOR DISCUSSION

- A. **Updates on Rental Registration and Inspection Items**
- B. **Discussion of definition of family and 3-unrelated rule**
- C. **Discussion of future meeting dates**

VI. ADJOURNMENT

The next meeting is currently scheduled for November 10, 2022 at 5:00 PM

Case Law on Community Residences and Zoning Code Definition of “Family”

The courts have consistently found that a zoning code is discriminatory on its face if it fails to treat community residences for people with disabilities that comply with the jurisdiction’s zoning definition of “family” the same as other families. The courts look at the jurisdiction’s zoning code definition of “family” (alternatively, “household”) as well as the absence of a definition of “family.”

- ◆ So if a city’s zoning code definition of “family” allows **any number of unrelated individuals to live together as a single housekeeping unit** — there is no cap on the number unrelated occupants in a dwelling — community residences for people with disabilities must be treated the same as any other family and it is facially discriminatory for the city to exclude them from any zoning district where residences are allowed or to require spacing between community residences or even require a license.
- ◆ When a definition of “family” establishes **a cap on the number of unrelated people living together** as a single housekeeping unit, community residences that fit within that cap must be treated the same as any other family and it is facially discriminatory for the city to exclude them from any zoning district where residences are allowed or to require spacing between community residences or even require a license. The Fair Housing Act’s reasonable accommodation requirement kicks in for community residences that house more unrelated people than the cap in the definition of “family.” So if the cap on unrelated occupants is four people, then a city cannot require spacing or licensing for community residences with four or fewer occupants and must allow community residences for up to four people as a permitted use in all zoning districts where residences of any type are permitted uses.
- ◆ When a city’s **zoning ordinance does not define “family,”** community residences for people with disabilities must be allowed as of right where ever residences are permitted uses and the zoning code cannot impose any zoning restrictions like spacing or a licensing requirement on community residences for people with disabilities because, doing so, would treat them differently than other groups of unrelated people living together — facial discrimination once again.

Below is a list of *some* of the court decisions that illustrate these principles. Recent cases are pretty rare because this rule of law is so well-established.

- ◆ ***United States of America v. City of Chicago Heights***, 161 F.Supp.2d 819 (N.D.Ill. 2001)
This *Chicago Heights* decision offers the clearest explanation that a community residence for people with disabilities that complies with the cap on the number of unrelated individuals allowed to dwell together under a city’s zoning code definition of “family” constitutes a family for zoning purposes, *not* a community residence, and must be treated the same as any other

family. No spacing distance, licensing, or other requirement *not* imposed on all other residences can be imposed on such a living arrangement.

Chicago Heights' zoning code definition of "family" included up to five unrelated people living as a single housekeeping unit. Threshold's proposed community residence for eight people with mental illness was within 500 feet of an existing house licensed by the state as a "community residence" housing five individuals with developmental disabilities. Since this was within the city's 1,000-foot spacing distance between community residences allowed as of right, the city required Thresholds to apply for a special use permit. The city denied the special use permit.

The court ruled that the city erred when it classified as a "community residence" the house in which the five people with developmental disabilities lived as a "community residence." The court arrived at this conclusion because the existing house licensed as a community residence fit within the cap of five unrelated persons allowed to constitute a family under the zoning code's definition of "family." Consequently, *for zoning purposes*, the existing house was a single-family residence occupied by a family and zoning cannot treat it as a community residence (even though the State of Illinois had licensed it as a community residence for people with developmental disabilities).

- ◆ ***Valencia v. City of Springfield***, 2017 WL 3288110 (C.D. Ill. Aug. 2, 2017), upheld in *Valencia v. City of Springfield, Illinois*, 883 F.3d 959 (2018). The most relevant language is in the district court's decision. Under the city's definition of "family" allowing up to five unrelated individuals to live together as a single housekeeping unit, both group homes were families and, therefore, a spacing distance could not be required.
- ◆ ***Children's Alliance v. City of Bellevue***, 950 F.Supp. 1491 (W.D. Wash. 1997)
- ◆ ***Oxford House–Evergreen v. City of Plainfield***, 769 F. Supp. 1329, 134146 (D.N.J. 1991) (invalidating the City's attempt to preclude an Oxford House from a single-family district)
- ◆ ***Support Ministries for Persons with AIDS v. Village of Waterford***, 808 F. Supp. 120, 136-38 (N.D.N.Y. 1992) (requiring city to issue the permits sought to establish home for persons with AIDS under definition of "family" as opposed to a boarding house)
- ◆ ***Merritt v. City of Dayton***, No. C-3-91-448 (S.D. Ohio Apr. 7, 1994) (rejecting a 3,000-foot spacing requirement where community residence met definition of "family").
- ◆ ***Oxford House v. City of Virginia Beach***, 825 F. Supp. 1251, 1264 (E.D. Va. 1993)
- ◆ ***Oxford House v. Township of Cherry Hill***, 799 F. Supp. 450,462 n. 25 (D.N.J. 1992)
- ◆ ***Easter Seals Society of New Jersey and "John Does" v. Township of North Bergen***, 798 F. Supp. 228 (D.N.J. 1992) (while the decision to issue a preliminary injunction was based on other factors, the briefs made it clear that North Bergen's zoning code did not define "family" at all which ultimately contributed to the court rejecting the township's zoning provisions for group homes)

The above list is *not* exhaustive.

Law Office of Daniel Lauber

7215 Oak Avenue 📍 River Forest, Illinois 60305 ☎ 708/366-5200

Email: dan@grouphomes.law

<http://www.grouphomes.law>

Inclusive Definition of “Family” or “Household”

While legal, many zoning code definitions of “family” don’t recognize the expansion of the nature of family structures common today. The following is definition of “family” that is substantially more inclusive than today’s typical definition. For those jurisdictions that prefer to use the word “household,” just substitute it for “family.” As explained later, it is essential that this definition include a cap on the number of unrelated individuals that can constitute a “family” [which is perfectly legal according to the U.S. Supreme Court’s decision in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974)].

Family: A family consists of any person living alone or any number of people related by blood, marriage, adoption, or guardianship; two unrelated individuals in a domestic partnership who have made a commitment to share their lives, living as a single housekeeping unit along with their children including step children, adopted children, and children under guardianship; or up to four unrelated individuals not living in a domestic partnership.

This definition does not make any distinctions regarding gender in a domestic partnership, nor does it require that the couple be legally married. Consequently it includes couples comprised of any genders. In addition, the number “four” is an example of a common cap on the number of unrelateds not in a domestic partnership. A cap is essential for reasons explained further below.

In addition to what traditional zoning definitions of “family” cover, the above definition encompasses:

- Unmarried couples of any gender(s) living in a domestic relationship as a single housekeeping unit plus their children of all types (biological, adopted, foster)
- Blended families
- Nuclear families

- Extended families
- “Domestic partnership” in this definition encompasses not only unmarried domestic partnerships but also all legally recognized same-sex relationships, including civil unions and reciprocal beneficiary arrangements

This definition very deliberately does *not* include communes. The moment a city includes communes in its zoning code’s definition of “family,” is the moment it loses the ability to legally zone for community residences for people with disabilities and for recovery communities. As explained below, you get the same result if there is no definition of “family” or the definition allows any number of unrelated people to live together as a single housekeeping unit.

While this definition certainly can be refined, it is critical that it include a cap on the number of unrelated occupants not in a domestic partnership.

The cap on the number of unrelateds not in a domestic relationship is essential to preserve the ability of a jurisdiction to zone for community residences for more than four people (in this example) with disabilities. Without this cap, a jurisdiction cannot use zoning to regulate community residences for people with disabilities at all. Whatever number is chosen for the cap on unrelated individuals, keep in mind that any community residence for people with disabilities that fits within that cap cannot be subjected to any zoning requirements that are not applicable to all families.

And if the zoning code either does not cap the number of unrelated individuals that constitutes a family or does not define family at all, the zoning ordinance cannot regulate community residences for people with disabilities at all including provisions to prevent clustering and concentrations and provisions to require licensing/certification to protect the occupants from scam and incompetent operators who abuse, exploit, rob, and otherwise mistreat residents. In both these circumstances, a jurisdiction must treat a community residence for people with disabilities exactly the same as any other family — namely the jurisdiction would have no ability to legally zone for community residences for people with disabilities. I would recommend a cap of three or four although the U.S. Supreme Court has ruled that the cap can be as low as two. in an opinion written by Justice William O. Douglas.

Keep in mind that this is a practical functional definition of "family" that can be implemented under a zoning ordinance. Many, if not most, of the definitions discussed online are so theoretical and amorphous that they couldn't possibly be used in a real world zoning ordinance.

Updates on Rental Registration and Inspection Items

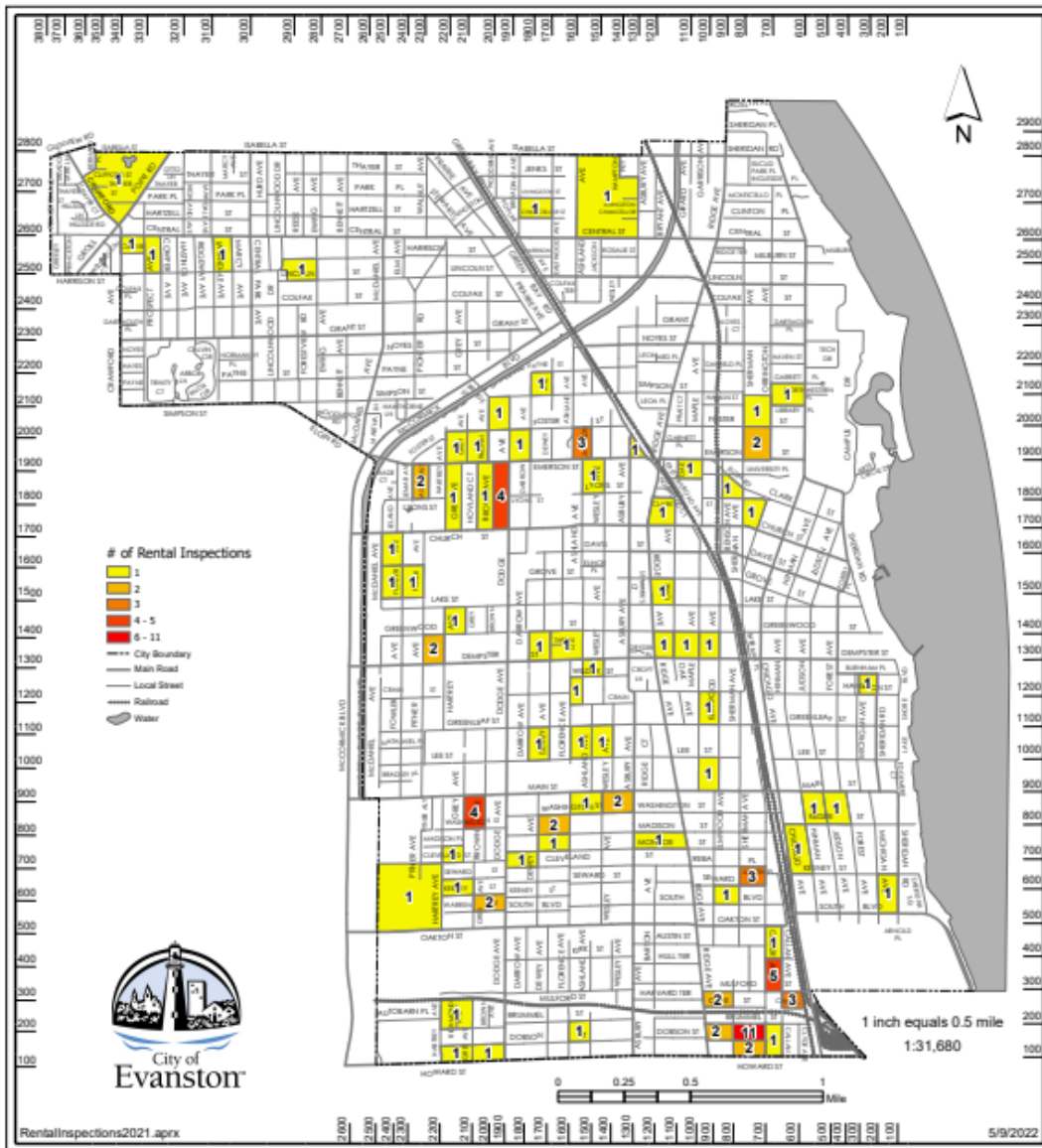
1) Update on the suggested Public Review of rental properties proposal. This was the process that included a public listing of the rental properties and opportunity for landlords and the public to identify unregistered rentals. This idea was suggested during the April meeting and staff was going to investigate.

Success Rate of Penalizing Owners that do not Register. How many times were the penalties spelled out below used:

1. Daily Fines: There is a daily fine of \$75.00 per day for the first offense, escalating to \$750.00 per day for the third and successive offenses.
2. Posting of Violation on Property: City can post violations at the property.
3. Denial of Permits: The department can deny any building or modifications.

Status of Initial Inspections - Is the attached map now updated to include the initial inspections and the 311 complaints? Do we have a current map of 2022 to date? Please specify initial from complaint driven.

2021 Rental Inspections by Block



This map is provided "as is" without warranties of any kind. See www.cityofevanston.org/mapdisclaimers.html for more information.

Status on Top Tickets and Violations: Councilmember Reid also asked for information on the number and types of tickets by ward. **Staff will bring back information on the top tickets and violations**

Status on Staffing - Previous indications were that there were departmental shortages.

Suggested modifications to Language and Inspection Process:

Ensure that All Owners are Included in the Registration Application: The current language specifies that ALL owners and if a corporation or partnership is the owner that the principals be named. This could be updated to be consistent with the current Federal Corporate Transparency regulations in the National Defense Act and ask for "beneficial members".

Re-Inspection upon Substantive Change: Currently if a property is being registered as a "permanent" rental an inspection is required. Suggested modification would include a re-inspection at any time there is a change including ownership change. Also include language that limits the permanent designation for properties that are not designated as multi-family (4 units or less) to a specific owner. If change of ownership occurs, the City should be able to deny that the dwelling can no longer continue as a rental unit if the density of the rental unit exceeds a certain number of units in an area. Other municipalities require the inspection and registration at the time when properties change hands.

Increase the Delay in Registration Penalty: Some communities have increased the fines to \$2500 per day (Hammond Indiana) for failure to register, and \$500 for late filing. However, that may not be necessary because our ordinance does not appear to distinguish between registration and annual registration, so the \$75.00 per day should prevail.

Add Listing of Tenants: The registration process for some municipalities reviewed required a listing of tenants. This listing must be updated whenever the tenants change. Some also include the provision that a landlord is unable to rent to a student that will sublet to other students.

Discussion of Definition of Family and 3-unrelated Rule

2) Definition of Family / Three Person Rule

Points from Attorney/Planner Daniel Lauber's presentation and discussion:

1. **Definition of Family is Legal - Supreme Court:** Including a definition of "Family" (or "Household") is appropriate for a City and supported with Supreme Court decision in Village of Belle Terra vs Boraas, 416 U.S. 1 (1974).
2. **Primary Reason for Definition of Family is City Control.** Evanston would lose the ability to control how properties are used, become unable to protect vulnerable residents from abusive predatory practices, and potentially become subject to degradation of homes and neighborhoods. The City should be able to make deliberate strategic planning of density, not merely reactive to market forces.
3. **Special Use is Permitted in R4a Districts:** Many of the individuals that have spoken during public comment could still go forward with establishing their group homes of "like minded women" or "limited enrollment for LGBTQ community". But a special permit would need to be requested. This allows the City to control the number and spacing of such residences in a particular area to ensure successful integration with the community. This would help curtail the current unnatural escalation of housing costs. (See R4a Regulations)
4. **Concerns about Enforcement** - No matter what regulation is in place, there is the need for enforcement.
5. **Reinforce Evanston's Commitment to Affordability for Families** - Evanston is increasingly perceived as anti-family focusing more on fringe and individual issues rather than fostering a community of stable families. Maintaining a definition of family protects the removal of housing from the pool of available homes for families.
6. **Specific suggested modifications.**

Suggested Definition of Family: A family consists of any person living alone or any number of people related by blood, marriage, adoption, or guardianship; two unrelated individuals in a domestic partnership who have made a commitment to share their lives, living as a single housekeeping unit along with their children including step children, adopted children, and children under guardianship; or up to three unrelated individuals not living in a domestic partnership. ("Household" can be substituted for "Family")

Evanston's Current Definition:

(A) Type (A) Family: One or more persons related by blood, marriage, or adoption living together as a single housekeeping unit in a dwelling unit.

(B) Type (B) Family: Two (2) unrelated persons and their children living together as a single housekeeping unit in a dwelling unit.

(C) Type (C) Family: A group of not more than three (3) unrelated persons living together as a single housekeeping unit in a dwelling unit.

(D) Type (D) Family: A group of two (2) or more persons containing within it one or more families, as defined in subsections (A) and (B) of this definition, including a husband and wife married to one another and their children, as well as adults, living together in a dwelling unit as a single housekeeping unit and management, in premises in which the adult occupants are affiliated with a bona fide not for profit corporation organized for religious purposes chartered by the state of Illinois, that owns or rents the property and has been in existence for at least five (5) years prior to seeking certification by the director of planning and zoning as provided herein; provided, that in no case shall the total occupancy of the dwelling unit exceed two (2) persons per bedroom, nor shall the premises be utilized for religious public assembly. This type (D) family may occupy a dwelling unit only in accordance with the procedures in section 6-4-1-14 of this title.

Suggestions derived from Attorney Lauber's presentation:

1. Eliminate family type D: Suggest wording similar to "Other occupancy requests that do not align with the definition above must be presented to the Zoning Department for consideration and authorization.
2. Establish Spacing Regulations: For Group homes and congregate housing within Evanston.
3. Establish Rapid Approval Process: Zoning should be aware of density issues with spacing requirements established for other types of households not contained in the definition (group homes, selected enrollment, sober homes, religiously affiliated homes, rooming houses) and be able to authorize or deny requests rapidly.

Links Regarding Rental Housing Trends and Impacts of LLCs on the Rental Market

https://shelterforce.org/2022/08/23/when-landlords-hide-behind-llcs/?utm_source=sfweekly&utm_medium=email&utm_campaign=082922

<https://www.nytimes.com/2018/04/30/upshot/anonymous-owner-llc-why-it-has-become-so-easy-to-hide-in-the-housing-market.html>

<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/07/22/investors-bought-a-quarter-of-homes-sold-last-year-driving-up-rents>

<https://www.wgbh.org/news/local-news/2022/05/16/across-massachusetts-shrouded-corporations-are-scooping-up-single-family-homes>

<https://www.nytimes.com/2022/04/23/us/corporate-real-estate-investors-housing-market.html>