

Comments to the Occupancy Limits Sections of the Draft Strategic Housing Blueprint Implementation Plan

In 2016, the City Council took a major step to diminish economic incentives to demolish existing affordable housing. It did so when it voted to reaffirm the action of the previous Council taken in 2014 to modify the rules for occupancy limits for some new residential construction. Among the considerations for their actions was the fact that the looser regulations were giving financial incentives for the demolition of affordable existing housing. The current rules work. They have dramatically reduced the rate of demolitions of units to be replaced by high-occupancy duplexes. There are hundreds of thousands of grandfathered units that are covered by the six-person rules and that are not affected by the amendments in 2014 and 2016.

We are pleased to see the recommendation to examine construction trends before and after the City's occupancy limit change. However, we are puzzled by this sentence in Action II.7.A: "Examining construction trends before and after the City's occupancy limit change will help to determine whether the reduction in occupancy limits from six to four unrelated adults has *promoted* [emphasis added] the demolition and replacement of existing housing with newer, costlier alternatives." The intent of the ordinance change in 2014 was to *mitigate*, not promote, demolitions. Anecdotal evidence in the Northfield/North Loop neighborhood is dramatic. Before the new rules, builders of high-occupancy duplexes were motivated to demolish affordable starter homes so they could derive upwards of \$6,000 per building per month in rents. We are confident that a study will confirm that the current rules work to achieve the goals intended by the Council.

The number of bedrooms in a building or apartment is relevant to whether family housing is being built. It is not relevant to limiting the number of unrelated adults in a building. Gathering data is always a good idea. The Draft plan has no Action IV.2.C. The intended reference is to Action IV.2.B.

Regarding the Draft Plan's discussion of fair housing laws, the two-person per bedroom rule in the old HUD Keating memo was designed to prevent discrimination against families. It does not relate to rules regulating the number of unrelated persons. The City of Austin's ordinance that protects certain classes of people is a protection against acts by private persons. We fail to see how it relates to actions by the City Council to regulate occupancy. Austin's occupancy rules and the enforcement thereof do not violate fair housing laws. As a protected class, students and persons with disabilities have not been prejudiced by the current rules, and there is no basis in federal or state law for implying the contrary. The city already makes reasonable accommodation for unlicensed homes occupied by persons with disabilities, and there is more than ample grandfathered housing available to them.

The Housing Blueprint relied on a report by BBC Research & Consulting (Denver, CO) in 2014 titled *Analysis of Impediments to Fair Housing Choice City of Austin*. In its analysis of impediments to fair housing, BBC Research and Consulting says this:

“On March 20, 2014, the City of Austin amended its city code regarding dwelling unit occupancy to reduce the maximum occupancy limits in single family homes in certain zoning districts and for duplexes from six unrelated adults to four. The ordinance has a provision excluding group home type settings from the limit.

This change has the potential to raise the cost of housing for unrelated roommates since housing costs will be split among fewer occupants. It is unclear how many of Austin’s households are made up of units with five and six unrelated occupants and, thus, how many “excess” roommates need to find other housing units. [Emphasis added.] At any rate, the change in occupancy limits will create additional demand for housing for those displaced from their current units. [Emphasis added.]

Without further study of the types of households living in five- to six-roommate situations, it is also unclear if the change disproportionately impacts a certain protected class. The change is most likely to affect the city’s student population, but could also have implications for persons with disabilities who reside together in a group setting that is not a licensed group home. In this case, the city would need to make a reasonable accommodation to the ordinance to avoid fair housing violations.” (Section IV, p.18)

Staff has asserted that occupancy limits may have a negative impact on fair housing choice. BBC did not say this. It simply said that the amendment “has the potential” to raise housing cost and that the impact is “unclear”. **BBC Research & Consulting, however, made its own inaccurate statement by assuming that the 2014 amendment displaced current occupants.** BBC’s statement showed a lack of basic understanding of Austin’s ordinance for the following reasons:

- 1) It ignored that the 2014 amendment applies to only **newly constructed** dwelling units within the McMansion area.
- 2) The purpose of the 2014 amendment was to preserve affordable existing housing by taking away financial incentives for its demolition and the displacement of longtime residents – **both owners and renters.**
- 3) **The 2014 amendment did not affect the over 200,000 units grandfathered by the ordinance.** These units continue to be available for occupancy of up to six unrelated adults.
- 4) While the current number of households with more than four unrelated adults is small, the impact of items 2) and 3) is to increase the likelihood of the preservation of existing high occupancy units – both those currently used by six unrelated adults and those that might be similarly used in the future
- 5) The report ignores the common use of occupancy limits in both small and large U.S. metropolitan areas,
- 6) Both the United States Supreme Court and the U.S. Department of Justice have found that occupancy limits are not discriminatory *per se*, and
- 7) It is not shown how an occupancy limit of four in Austin would be any more discriminatory than an occupancy limit of six. Note that the Austin occupancy limit of four is above the

national average and significantly above the average in the State of Texas (based on 2014 research).

- 8) Current, long-standing (per research in 2014) apartment leasing standards limit occupancy to two unrelated adults per bedroom. Considering that approximately 90% of apartments are two or fewer bedrooms, the occupancy of four per single-family site is consistent with the multi-family standards. Continuing this line of thought, all of the “potential” negative impacts of any single-family occupancy limit would correspond to multi-family units, yet we see no similar outcry regarding occupancy limit practices in multi-family rentals.
- 9) Advocates for higher occupancy limits for unrelated adults ignore the impacts of higher occupancy, including: the reduction of the effectiveness of life safety provisions of a building; lengthened first responder times; noise, light, and other pollution; inability of public infrastructure such as water/wastewater, transportation, stormwater/flooding, green spaces, etc. to support higher densities. It is hard to see how one could call it fair housing if higher occupancy resulted in conditions that become unhealthy, unsanitary, impair first responder or other City services or expose occupants to dangers of fire hazards, collapse of structures, etc.

The 2014 amendment passed by the prior City Council with only one dissenting vote. It was renewed by the current city council in 2016 by another large margin. None of the usual real estate industry interests spoke against the 2016 action. There was clearly a community consensus in favor of the current occupancy rules.

The 2014 amendment worked. It achieved its intended purpose. It slowed dramatically the demolition of older, affordable housing to be replaced by high-occupancy, less affordable duplex buildings, particularly in the neighborhoods near the university. The change had an immediate and beneficial impact on neighborhoods, homeowners, and tenants.

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