

Committee of the Whole Agenda Cover Memorandum

Meeting Date: November 22, 2010

Item Title: Occupancy Limits

Action Requested:

- Approval
- For discussion
- Feedback requested
- For your information

Staff Contact: Cathy Doczekalski, CP&D Manager

Phone Number: 847/318-5296

Email Address: cdoczeka@parkridge.us

Background:

Over the past several months concerns have been raised on the number of unrelated people who are allowed to live together in a single-family home. Currently, section 22-5-2 of the Municipal Code states one family or up to five unrelated people can live together in a dwelling unit.

At the September 27, 2010 Committee of the Whole meeting the Committee came to consensus to discuss this further. The City Attorney researched what limits the City can put on the occupancy of single-family homes and what other communities have in place. Attached is memo from City Attorney Henn.

According to the Police Department, there has been about one case a year in which the City has been notified about a potential violation of the current ordinance.

At the October 25, 2010 Committee of the Whole, City Attorney Hill asked for time to review the matter. City Attorney Hill and City Attorney Henn have discussed the matter and have determined that the City should not reduce the number of unrelated people that are allowed to live in a single family home below 5, due to the Supreme Court decision referenced in the attached memo.

Recommendation:

Staff recommends making no changes to the ordinance at this time.

Budget Implications:

Does Action Require an Expenditure of Funds: Yes No

If Yes, Total Cost:

If Yes, is this a Budgeted Item: Yes No

Attachments:

- Current ordinance
- Memo from City Attorney Henn dated October 20, 2010
- Email from City Attorney Henn dated November 17, 2010

ARTICLE 22

PROPERTY MAINTENANCE CODE

CHAPTER 5 MAXIMUM DENSITY REQUIREMENTS

SECTION

- 22-5-1 Amount of Space
- 22-5-2 Number of People

22-5-1 AMOUNT OF SPACE

Every dwelling or dwelling unit shall contain at least one hundred and fifty (150) square feet of floor space for the first occupant and at least one hundred (100) square feet of floor space for every additional occupant thereof; the floor space to be calculated on the basis of total habitable room area excluding rooms or portions thereof used for cooking purposes. Floor space where the ceiling height is less than seven feet (7') may not be included in calculating total habitable room area.

(Ord 2006-01, 1/9/06, S24)

22-5-2 NUMBER OF PEOPLE

Not more than one (1) family, or a group of not more than five (5) persons not all so related, except for guests or domestic employees, shall occupy a dwelling or dwelling unit unless it is approved as a rooming house by the City.

MEMORANDUM

To: Cathy Doczekalski
From: Kathie Henn
Date: October 20, 2010
Re: Occupancy limits

We have been asked to provide recommendations for amending the Park Ridge Municipal Code ("Code") sections regarding occupancy limits for dwelling units. The current restrictions are included in Section 22-5-1 and 22-5-2 of the Code, copies of which are attached. The language in Section 22-5-2 is based on the federal Fair Housing Act ("Act"), 42 U.S.C. § 3601 et seq. The Act prohibits discrimination on the basis of familial status. It also permits, "reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1).

Several courts have reviewed occupancy restrictions to determine if they are "reasonable" for purposes of the Act. Courts have upheld restrictions for occupancy that are based on habitable space requirements per occupant and also based on minimum square footage requirements for bedrooms. The Supreme Court has also determined that defining "family" to include a group of five or fewer unrelated persons is permissible. *City of Edmonds v. Oxford House*, 514 U.S. 725, 738 (1995).

There are several options to consider in determining whether to amend the Code. First, the language could remain the same because it complies with federal law. Second, changes could be made to space requirements in 22-5-1. Third, occupancy requirements specific to bedrooms could be added to the Code.

A federal Court of Appeals reviewed several different space requirements in *Fair Housing Advocates Association v. City of Richmond Heights, Ohio*, 209 F. 3d 626 (6th Cir. 2000). In that case, the court upheld the space requirements enacted by 3 communities because it determined that they were passed "to protect health and safety by preventing dwelling overcrowding." *Id.* at 636. The requirements of each community are listed below:

Bedford Heights requires a minimum of 200 square feet of habitable floor space for the first occupant and an additional 150 square feet for each additional occupant; also requires a minimum of 650 square feet of habitable space for dwellings having 4 occupants

Fairview Park requires a minimum of 300 square feet of habitable floor space for the first occupant and an additional 150 square feet for each additional occupant; also requires a minimum of 750 square feet for a dwelling unit with 4 occupants; also requires each bedroom to have a minimum of 80 square feet of habitable space for each bedroom for the first occupant and a minimum of 50 square feet for each additional occupant

Warrenville Heights requires 350 square feet of habitable floor area for the first occupant and an additional 100 square feet for each additional occupant. Further, the ordinance requires a minimum of 650 square feet of habitable space for dwellings with four occupants

Other municipalities have also included a square footage requirement for bedrooms based on the International Property Maintenance Code. The 2003 version of the International Property Maintenance Code provides, "Every bedroom occupied by one person shall contain at least 70 square feet (6.5 m²) of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet (4.6 m²) of floor area for each occupant thereof."

Mount Prospect requires, "Every bedroom occupied by one person shall contain at least 70 square feet of floor area, and every bedroom occupied by more than one person shall contain at least 50 square feet." Niles requires, "Every bedroom occupied by one person shall contain at least 90 square feet of floor area with no dimension less than 8 feet and every bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant thereof." Niles also creates a maximum occupancy for bedrooms of no more than 4 persons, regardless of the floor area.

As you can see, there are numerous options to discuss to determine what changes, if any, should be made to the Code.

Doczekalski, Cathy

From: Kathie T. Henn [KTHenn@KTJNET.com]
Sent: Wednesday, November 17, 2010 4:28 PM
To: Doczekalski, Cathy
Cc: Everette M. Hill
Subject: occupancy limits

Cathy:

I listened to the tape. I think the discussion shows that people, including Buzz, were confused by part of my memo regarding what occupancy limits are permissible. The sentence that they focused on provided, "The Supreme Court has also determined that defining a 'family' to include a group of five or fewer unrelated persons is permissible." It appears that that language was interpreted by some to mean that permitting a number of fewer than five people was allowable. It is not. The point I was trying to make is that the Supreme Court has agreed with the limit of 5 unrelated persons. As a result, the City should not reduce the number of unrelated persons that are permitted in Section 22-5-2 below the number 5.

Please let me know if you have any questions or would like to discuss this further.

Kathie Henn
Klein, Thorpe and Jenkins, Ltd.
20 N. Wacker Drive, Suite 1660
Chicago, Illinois 60606
312.984.6424
fax: 312.984.6444
email: kthenn@ktjlaw.com