



CITY OF SAINT PAUL
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Memorandum

Re: Study on the Definition of *Family* in the St. Paul Zoning Code
To: Saint Paul Planning Commission
From: Comprehensive and Neighborhood Planning Committee
Date: December 31, 2020

Summary

This study examines the Zoning Code's definition of the term *family*, which regulates the number and relatedness of occupants of every dwelling unit in the City of Saint Paul. The Committee recommends approval of the attached draft Planning Commission resolution recommending City Council approval of the proposed Zoning Code text amendments.

1. Background
2. Study Objectives
3. Analysis
 - Zoning and the existing definition of *family*
 - Problems to be addressed
 - Data limitations
 - Households and housing stock
 - Other City and State occupancy ordinances
 - Consistency with City plans
 - Examples from other cities
 - Initial concerns
4. Public Hearing & Analysis
5. Recommendations & Discussion
 - Proposed text amendment
 - Other potential approaches
 - Definition of *dwelling unit*
 - Committee recommendation
6. Appendices

1. Background

The Zoning Code definition of *family* was alluded to in the 2030 Comprehensive Plan and then explicitly targeted in the draft 2040 Comprehensive Plan (discussed later) as a regulation that could be studied for better compliance with Fair Housing laws and better provision of housing. This study was requested by City Council Resolution 18-1204 on July 18, 2018 (attached as Appendix D). The resolution calls “for action to create and preserve housing that is affordable at all income levels, address racial, social and economic disparities in housing, and create infrastructure needed to stabilize housing for all in Saint Paul.” In this resolution “the Saint Paul City Council acknowledges the housing crisis in our city and region, and the urgent need to address the crisis as our population grows” and requests “[z]oning studies by the Planning Commission to explore ways to increase density in residential districts including ... reviewing and updating the definition of ‘family’.”

The definition of *family* was also highlighted as a barrier to housing choice with potentially discriminatory effects in the 2017 Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice, prepared for the Twin Cities’ Fair Housing Implementation Council (FHIC) (relevant portion attached as Appendix E).^a Saint Paul’s definition ranked a 2 – “medium risk” of being discriminatory or arbitrary – on a scale of 1 (low-risk) to 3 (high risk).

2. Study Objectives

The objective of this study is to consider the impact of amending the definition of *family*. Potential benefits of amending this definition are to open opportunities for residents to find affordable housing where the definition of *family* in the Zoning Code may be an unnecessary barrier; to support the ability of cost-burdened households to add housemates who can help shoulder rent costs and housekeeping duties; and to enable zoning regulations to reflect and legalize current household customs in Saint Paul. The section titled Impact of Options discusses the balance between these potential benefits and concerns that arise.

3. Analysis

Zoning and the existing definition of *family*

The City of Saint Paul Zoning Code regulates occupancy of dwellings through its definition of the word *family*. Per Zoning Code Section 60.207, the term *family* is defined as follows:

Family. One (1) or two (2) persons or parents, with their direct lineal descendants and adopted or legally cared for children (and including the domestic employees thereof) together with not more than two (2) persons not so related, living together in the whole or part of a dwelling comprising a single housekeeping unit. Every additional group of four (4) or fewer persons living in such housekeeping unit shall be considered a separate family for the purpose of this code.

Current
definition

The Department of Safety and Inspections has developed the visual included in this report as Appendix B to help clarify who may be included in a *family*.

This definition was adopted with the 1975 Zoning Code. Before 1975, the Zoning Code’s definition of *family* read: “One or more persons customarily living together as a single housekeeping unit in a dwelling unit as distinguished from a group occupying a hotel, club, religious or institutional building, boarding or lodging house, or fraternity.” The 1975 update coincided with municipalities around the United States using definitions of *family* or *household* to describe and restrict the occupancy of a

Previous
definition

^a Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice, May 2017 (<https://www.ramseycounty.us/sites/default/files/Projects%20and%20Initiatives/Draft%20III%20Addendum.pdf>)

dwelling. Nationally, the term *family* is well-established in the zoning lexicon, despite differences with its meaning in housing or family law.

The utility of this definition as an occupancy restriction in the Zoning Code is to address issues of land use – that is, how the activities, and structures on a certain parcel impact the surrounding activities and structures. Any definition of *family* must further the purposes of the Zoning Code without violating the goals of the City as communicated in the decennial Comprehensive Plan. Some main purposes of the Zoning Code found in § 60.103 are to “ensure adequate light, air, privacy, and access to property”; “facilitate adequate provision for transportation, water, recreation, and other public requirements”; and “prevent overcrowding and undue congestion of population”. Under the umbrella of “preventing overcrowding and undue congestion of population”, the City’s safety code inspection and enforcement staff have attested to the frequent correlation between higher-occupancy dwelling units and safety code violations. The occupancy restriction, wherever it is set, has the use of ensuring safe and orderly living conditions citywide, which in turn supports safe and orderly living conditions for neighbors and empowers code inspection staff to more efficiently and effectively administer their duties.

While Saint Paul has never issued a formal explanation for its definition of *family*, other cities, states, and federal court cases have expressed benefits that echo those ascribed to single-family zoning. In *Village of Belle Terre v. Boraas*, the landmark 1974 Supreme Court case that supported the zoning power to regulate occupancy through this definition, a supporting justice opined that

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds. ... A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. ... The police power is not confined to elimination of filth, stench, and unhealthy spaces. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.^b

Court opinions from several states have also discussed the nexus between occupancy and zoning. Some named benefits include prevention of population congestion, “suppression of disorder”, traffic safety, more effective police patrolling and street maintenance, and freedom from fear of strangers.

While the Supreme Court upheld zoning restrictions on the total number of unrelated occupants in a dwelling in 1974, in the 1977 case *Moore v. City of East Cleveland*, the Court struck down regulations that specified which family relations are allowed and not allowed, citing violation of substantive due process.^c East Cleveland’s ordinance allowed a grandmother to live with grandchildren descended from only one of her children, which she did. When a grandchild through another of her children moved in, bringing total occupancy to four (Grandmother, Son, Grandson, and Grandson from another son), she was penalized by the City, a penalty that was eventually ruled illegal. The Court stated:

“The strong constitutional protection of the sanctity of the family established in numerous decisions of this Court extends to the family choice involved in this case, and is not confined within an arbitrary boundary drawn at the limits of the nuclear family (essentially a couple and their dependent children). ... The nature and tradition of this Nation compel a larger conception of the family.”^d

^b *Village of Belle Terre v. Boraas*. 416 U.S. 1 (more) 94 S. Ct. 1536; 39 L. Ed. 2d 797; 6 ERC 1417

^c Maldonado, S. (n.d.). Sharing A House but Not A Household: Extended Families and Exclusionary Zoning Forty Years After Moore. *Fordham Law Review*, 85, 13.

^d *Moore v. City of East Cleveland*. 431 U.S. 494 (more) 97 S. Ct. 1932; 52 L. Ed. 2d 531; 1977 U.S. LEXIS 17

The implication of the above Supreme Court cases is that a zoning code can restrict how many people occupy a dwelling agnostic to relatedness, but cannot explicitly state that some relatives may reside together to the exclusion of other relatives.

Scholars have suggested that zoning code definitions of *family*, as well as other forms of occupancy regulations, standardized upper-middle-class White Anglo-Saxon Protestant values on immigrant and tenement workers during the industrial revolution, enforcing the new and anomalous nuclear family household style where it had not existed before and outmoding more economically and socially resilient households. Enabled by homogenous gender role expectations, high wages, and the post-war housing boom, the nuclear family household peaked in the 1950s and 1960s, and began declining as wealth, health, educational, and other socioeconomic disparities began widening in the 1970s.^{e f}

Zoning code occupancy regulations based on relatedness have been questioned from the early 1970s to the present year. Considered by some as going beyond land use planning into the realm of ideologically-motivated social control, they continuously toe the boundary of police power bestowed on municipalities. Over and above dimensional standards and land use categorization at the heart of every zoning code – which more effectively mitigate the externalities resulting from denser populations – occupancy regulations beyond those related to safety address a municipality’s balance of public benefit with private liberty. In the case of a limited housing supply, an increasing renter population, and increases in single-person households *and* percent of the population residing in shared living quarters, this balance must be continuously reconsidered in context.^{g h i j} Prominent planning organizations such as the American Planning Association have issued opinions on *family* definitions, highlighting their often strict restrictions on unrelated occupants as easy regulations to amend to allow for more inclusive housing in generally exclusive single-family zoning districts.^{k l}

Though municipal governments have public purposes for regulating occupancy beyond building and fire codes, it is a litigious issue and may work against the City’s interests if too intrusive into the privacy of households. Additionally, legal scholars continue to challenge the power of governments to regulate with whom a person may choose to reside, citing the US Constitution’s First Amendment right of free association. While this issue is settled delicately at a federal level, these challenges exemplify the contentious nature of this type of regulation even in the world of constitutional law.^{m n}

Problems to be addressed

The occupancy restriction in the current Zoning Code definition of *family* is problematic under review from legal (Fair Housing), social, and housing supply lenses.

^e Pader, Ellen. “Housing Occupancy Standards: Inscribing Ethnicity and Family Relations On The Land.” *Journal of Architectural and Planning Research*, vol. 19, no. 4, 2002, pp. 300–318. *JSTOR*, www.jstor.org/stable/43030627.

^f Brooks, D. (2020, February). The Nuclear Family Was a Mistake. *The Atlantic*. Retrieved February 11, 2020, from https://www.theatlantic.com/magazine/archive/2020/03/the-nuclear-family-was-a-mistake/605536/?utm_source=share&utm_campaign=share

^g Toni Klimberg, Excluding the Commune from Suburbia--The Use of Zoning for Social Control, 23 *Hastings L.J.* 1459 (1972). Available at: https://repository.uclastatements.edu/hastings_law_journal/vol23/iss5/5

^h Richards, J. G. (1982). Zoning for Direct Social Control. *Duke Law Journal*, 1982(5), 761. <https://doi.org/10.2307/1372309>

ⁱ James A. Smith Jr., *Burning the House to Roast the Pig Unrelated Individuals and Single Family Zoning’s Blood Relation Criterion*, 58 *Cornell L. Rev.* 138 (1972)

^j Redburn, K. (2017). Zoned Out: How Zoning Law Undermines Family Law’s Functional Turn. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3109969>

^k Merriam, D. H., FAICP. (2007, February). Ozzie and Harriet Don't Live Here Anymore. *Zoning Practice*.

^l Connolly, Brian J. and Brewster, David A. (2020, May). Modern Family: Zoning and the Non-Nuclear Living Arrangement. *Zoning Practice*.

^m Oliveri, R. C. (2016). Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions. *Florida Law Review*, 67, 55.

ⁿ *Challenging Restrictive Family Definitions in Zoning Ordinances: City of Santa Barbara v. Adamson*, 610 P.2d 436 (Cal.), 23 *Urb. L. Ann.* 307 (1982)

The Twin Cities Fair Housing Implementation Council report discusses the potential for harm in definitions of *family*:

Definition may have a discriminatory impact

Unreasonably restrictive definitions may have the intended or unintended ... consequence of limiting housing for nontraditional families and for persons with disabilities who reside together in congregate living situations. ... [T]he restriction must be reasonable and not exclude a household which in every sense but a biological one is a single family. An unreasonably, or arbitrarily, restrictive definition could violate state due process and/or the federal FHA as it may have a disproportionate impact on people with disabilities, people of color, and families with children.

Describing municipalities that received a low-risk score, the FHIC report called out the number of unrelated occupants as key to its Fair Housing evaluation:

The jurisdictions that received a 1 (low risk score) either have family definitions that allow five or more unrelated persons to reside together as a single housekeeping unit, as in the case of Apple Valley and Plymouth, or were even more permissive and do not specifically define “family” or the number of unrelated persons who may reside together, as in the case of Edina, instead leaving maximum occupancy per dwelling as a matter of safety regulated by the building code. (p.98 – emphasis by this author)

The report recommends that cities with a medium or high risk score

amend their codes to either (1) have the definition of family more closely correlate to neutral maximum occupancy restrictions found in safety and building codes; (2) increase the number of unrelated persons who may reside together to better allow for nontraditional family types; or (3) create an administrative process that allows for a case-by-case approach to determining whether a group that does not meet the code’s definition of family or housekeeping unit is nonetheless a functionally equivalent family. (p.100)

The FHIC report specifically names the maximum number of unrelated individuals who can live together as a factor in its Fair Housing evaluation, making that number a vital focal point of this zoning study.

Additionally, Saint Paul’s definition specifies which relatives may reside together – those linearly related to someone else in the household – and places a limit on those relatives who are not linearly related by including them in the “unrelated” category. This creates a maximum of four (4) on certain relatives, such as siblings or cousins without a common ancestor present, while allowing any number of others, for instance the children of another occupant. The 1977 Supreme Court case *Moore v. City of East Cleveland* discussed above speaks to the capricious and intrusive nature of such a limitation.

Socially, the current definition limits residents to a near-nuclear family style that is peculiar across time and societies, neither accommodating Saint Paul’s culturally diverse population and household customs nor allowing more flexible household arrangements of unrelated people during economic, social, or individual hardship. Saint Paul’s population includes people of cultural traditions where multigenerational households provide housing for unrelated elders and children. The current definition of *family* limits these groups from finding culturally-sensitive housing and care from those they identify as kinfolk if they fall too far outside the bounds of blood, marriage, or adoption. Households composed of occupants who are tied by complex bonds of affinity, shared history, identity, or common interest are limited in their ability to dwell together by this regulation. Traveling laborers, immigrants, post-graduate college students, and others in transitional phases of life are sometimes barred from sensible, appropriate, and necessary housing options. Higher rates of larger, less-nuclear households are found among communities of color, causing them to be disproportionately affected by this restriction. Current regulation limits these natural and mutually supportive households.

Definition prohibits certain types of households

In addition to the legal and social consequences of the current definition of *family*, Zoning Code occupancy restrictions have been noted nationally as barriers to affordable housing. An affordable housing crisis across the Twin Cities is making cost-sharing techniques more desirable for struggling residents. Providing housing has taken a priority position for governments at all levels, and cities are looking for new housing-creation tools. By raising the number of people allowed to live in a dwelling unit, a city can expand the capacity of its existing housing stock to accommodate those in need.

Data limitations

Several limitations have constrained analysis of the impact of the number and relationship of occupants of a single dwelling on housing affordability and neighborhood wellbeing. The limitations are:

- A. A lack of household data specific to individual properties rather than tracts, block groups, or zip codes. Data from the U.S. Census, American Community Survey, and International Public Use Microdata Series (IPUMS) capture household information at too high of a level to be useful to predict the impact of an increased household size; we also cannot know longitudinal histories of household composition.
- B. A lack of before-and-after housing values for comparison due to not having already undergone a citywide change in occupancy allowances. Saint Paul's current definition of *family* has been in place since 1975, since which year major social and economic changes have occurred.
- C. The lack of similar ordinance amendments in comparable cities or metro regions. Few cities or states around America have changed their occupancy restrictions in the last few decades, leaving us with no comparable city or regulatory environment. The only relevant analysis staff could find was a 2014 study by CivicAnalytics, analyzing home values, demolition and building permits, and home size in one section of the City of Austin, TX at the zip code level. That study concluded that there was *no* correlation between household size and current average value per zip code; that there *was* a loose correlation between household size and increasing average home value per zip code; and that there was no way to determine causation. From the report^o:

Are 5+ occupants in a single-family zoned property a response to the market, in that incomes are not keeping up with the cost of housing in some neighborhoods? Or is development of significantly larger properties commanding a higher total rent compared to existing properties driving up overall rents in impacted areas? Or both?

- D. The unknown demand for household sizes larger than what the city currently allows. This study was guided by the early decision to not search for existing cases of over-occupancy. Due to a legitimate interest in protecting household privacy, it is impossible to know how many individuals and households in need of affordable housing solutions or more diverse household situations could be supported by an updated definition of *family* that is more in line with Fair Housing principles. Without this information, as well as not knowing how many residents are not over-occupying but would benefit from living in a larger household size, we are unable to project the positive impact of a text amendment.
- E. Enough socio-economic complications to cast uncertainty on any projected impacts of an increase in permitted occupants, related or not. Any correlation that could be drawn between an increase in household size and composition and housing affordability or neighborhood wellbeing would need to be proven outside of housing market realities, demographic and cultural preferences, and socio-economic dynamics, the scale of analysis of which would be well outside the scope of the present study.

Households and housing stock^p

Much of the housing stock in St. Paul was built to accommodate larger households than is typical today. In 1960, when St. Paul was fully developed, the average household size in the U.S. was 3.3 people. It fell

^o Study found at <http://www.austintexas.gov/edims/document.cfm?id=207173>

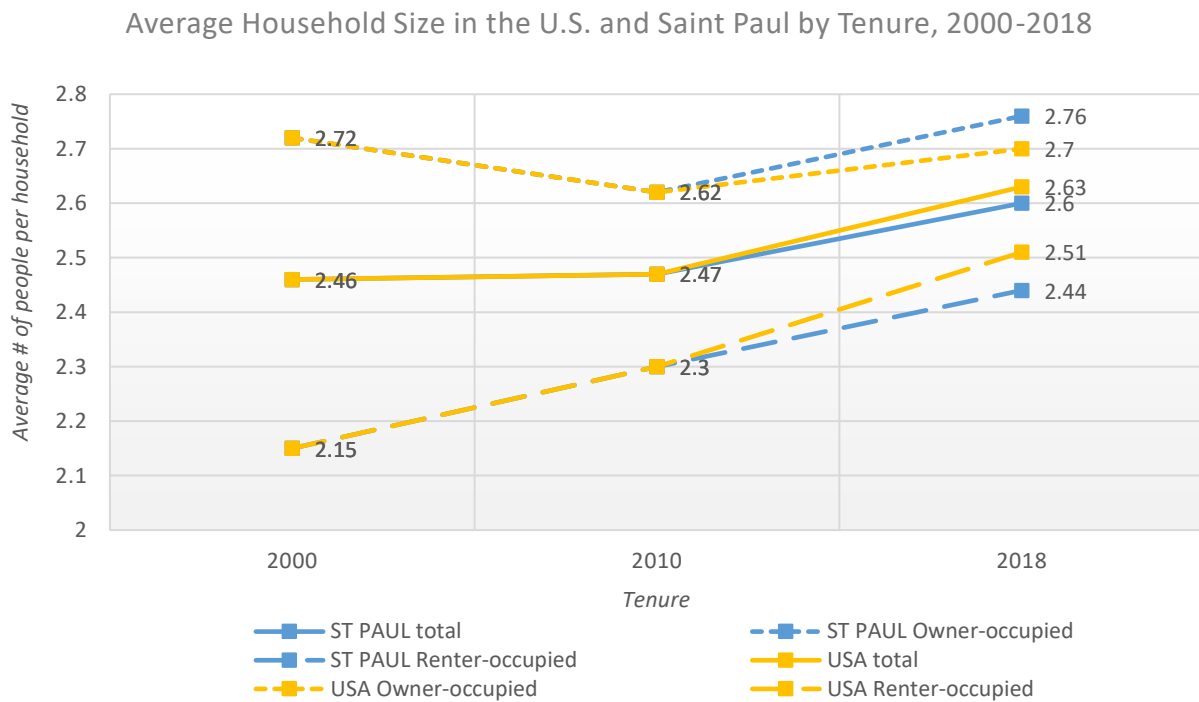
^p The data in this analysis is pulled from 2016 to 2019 datasets. The spread is due to the availability of data at the beginning and end of this zoning study and does not impact its findings. Each date is called out per figure or table.

continuously until 2010, when it was about 2.5 people per household. Since 2010 it has grown slightly to an estimated 2.6 people per household in 2018, increasing for the first time since records began in the 18th century.⁹ The average number of occupants per room has also increased slightly since 2010, driven by minority, foreign-born, and young adult residents. The proportion of residents inhabiting multigenerational households has more than doubled nationally since 1980.[†]

The average size of households in Saint Paul has grown since 2010, especially among owner-occupied households. The average size of renter-occupied households continues to rise.

Increase in average household size

Figure 1: Average household size in the U.S. and Saint Paul by tenure, 2000-2018 ^s



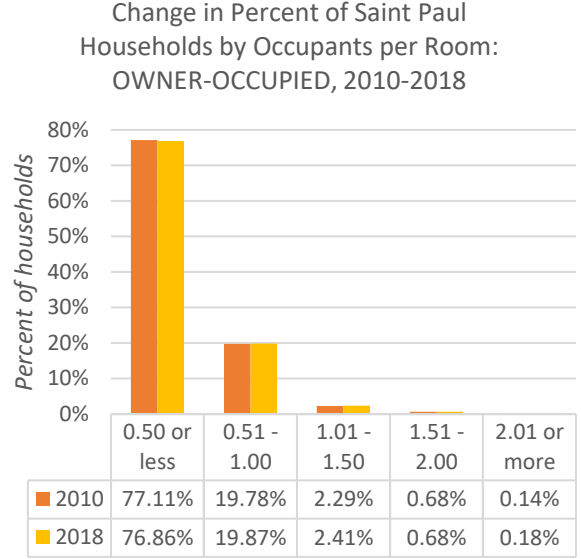
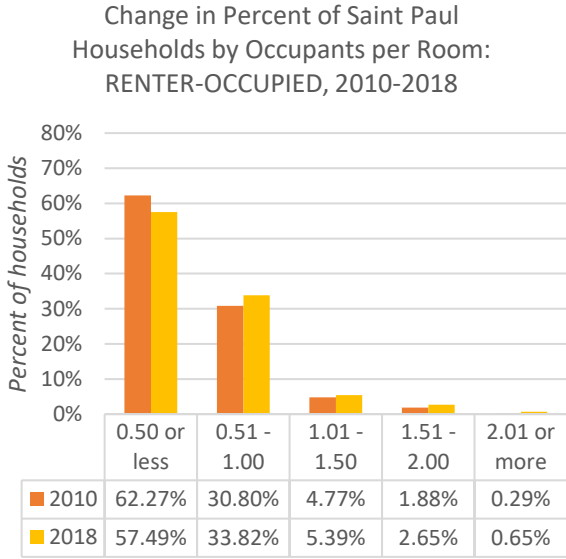
Average number of occupants per room increased slightly from 2010 to 2018 among renter-occupied households. Owner-occupied households stayed mostly stable. In 2020, Saint Paul has grown to over fifty percent renter households.[§]

Increase in occupants per room

⁹ PEW Research Center (<https://www.pewresearch.org/fact-tank/2019/10/01/the-number-of-people-in-the-average-u-s-household-is-going-up-for-the-first-time-in-over-160-years/>)

[†] PEW Research Center (<https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>)

[§] Data sources: 2000 and 2010 Decennial U.S. Census, 2018 American Community Survey 5-year estimates



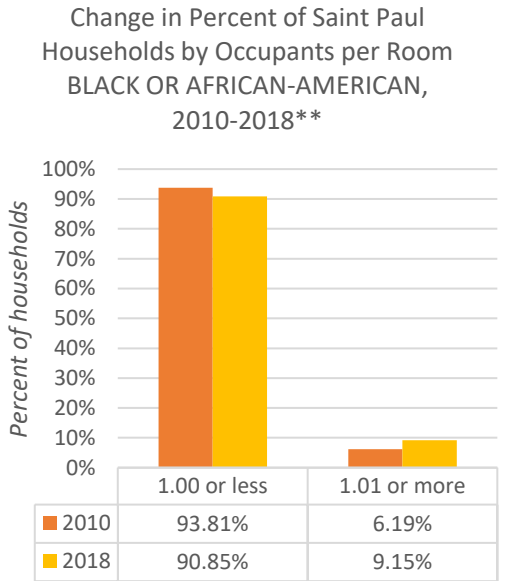
Average number of occupants per room

Average number of occupants per room

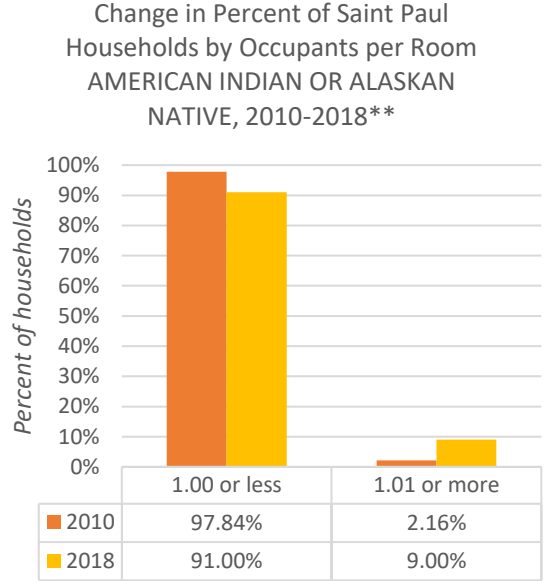
The increase in occupants per room is driven partly by residents of color in Saint Paul, except Hispanic residents. According to conversations with one nonprofit serving the Latinx community in the Twin Cities, one counterbalancing group that maintains large household sizes is traveling Hispanic laborers. Hispanic communities also sometimes rely on households of unrelated individuals for care of the young or elderly, a household style that is masked by these numbers.

Increase in occupants per room among some minorities, not Hispanics

Figure 2-5: Change in percent of households by occupants per room by race and ethnicity¹



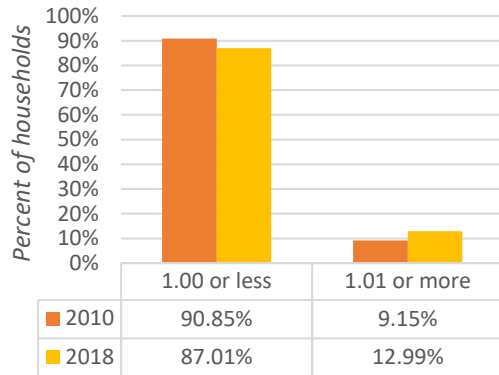
Average number of occupants per room



Average number of occupants per room

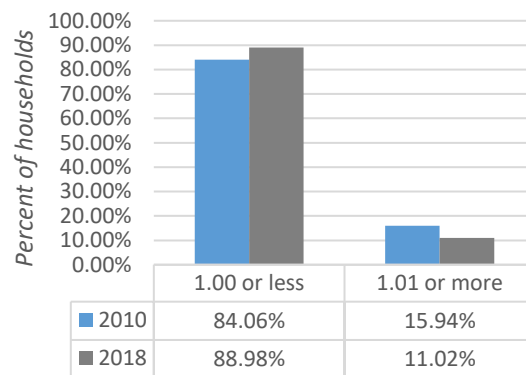
¹ Data sources: 2010 Decennial U.S. Census, 2018 American Community Survey 5-year estimates

Change in Percent of Saint Paul Households by Occupants per Room SOME OTHER RACE, 2010-2018*



Average number of occupants per room

Change in Percent of Saint Paul Households by Occupants per Room HISPANIC, 2010-2018*



Average number of occupants per room

The number of people living in multigenerational family households across the U.S. has reached a record high. By 2016, 64 million people were living in households with two or more adult generations or a generation in between the residents (grandparent and grandchild), comprising 20% of Americans compared to a low of 12% in 1980. Asian, Black, and Hispanic Americans are more likely to live in multigeneration family households than the average, as are foreign-born residents, while white Americans are less likely than the average. As communities of color account for a growing portion of Saint Paul’s residents, this is sure to be reflected in households across this city. Younger adults were the most likely age group to live in multigenerational households at 33% nationally, up from 13% in 1980. Among those aged 18 to 34, “living with parents surpassed other living arrangements.”^u Reflecting this trend, the percent of residents living in “shared living quarters” – households with adult residents who are not the householder, the spouse or unmarried partner of the householder, or 18 to 24-year-old college student – grew nationally from 28.8% in 1995 to 31.9% in 2017.^v

Increase in residents of multi-generational households

Increase in residents of shared living quarters

Areas of Saint Paul with greater proportions of residents of color also show larger household sizes. This shows up clearly in the North End, Payne-Phalen, and Frogtown/Rondo areas, as well as on the West Side and the Greater East Side. Any change to occupancy standards is more likely to affect residents of color and to a greater degree than white residents. The first map below shows the average number of occupants per household overlaid with the percent of that tract that of color in 2016, the most accurate recent data available. The second map shows the percent of households in each block group that have seven or more occupants as of 2010. (2010 conditions are not too dissimilar to 2016 and allows us a finer-grained understanding of large households.)

Populations of color correlate with larger households

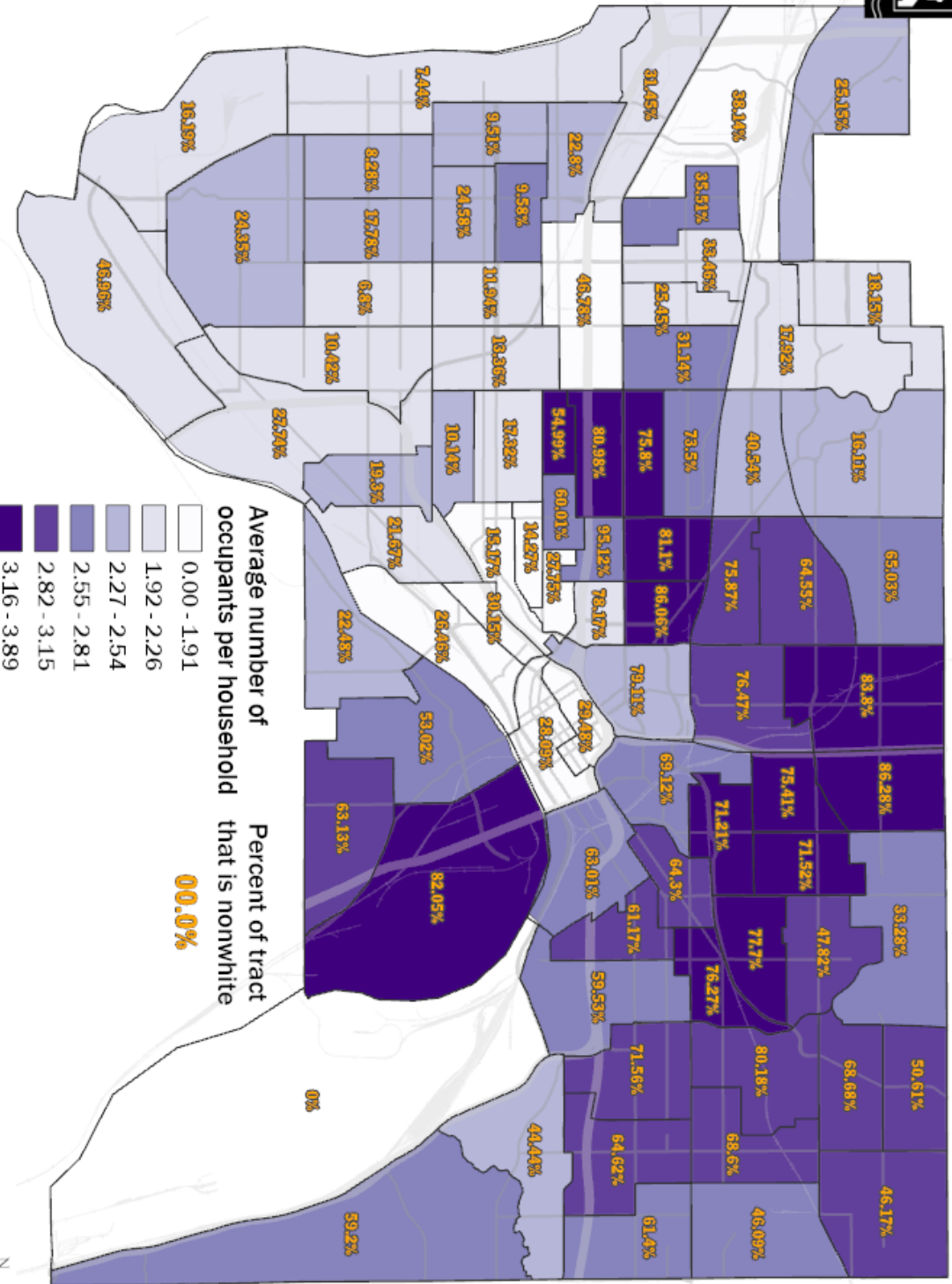
^u PEW Research Center - <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>

^v PEW Research Center - <https://www.pewresearch.org/fact-tank/2018/01/31/more-adults-now-share-their-living-space-driven-in-part-by-parents-living-with-their-adult-children/>



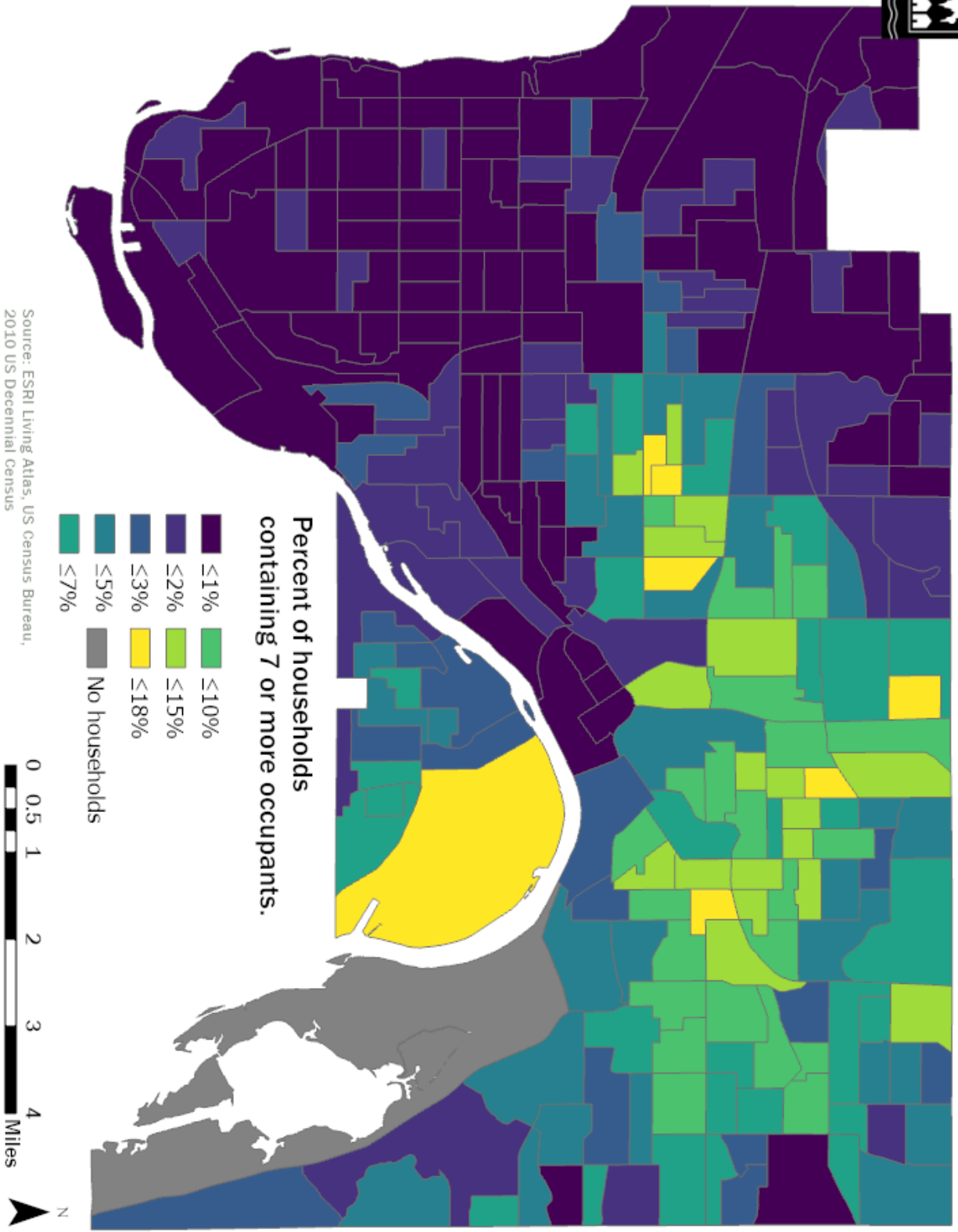
Average Household Size and Percent of Tract that is Nonwhite

2016 ACS 5-Year Estimates



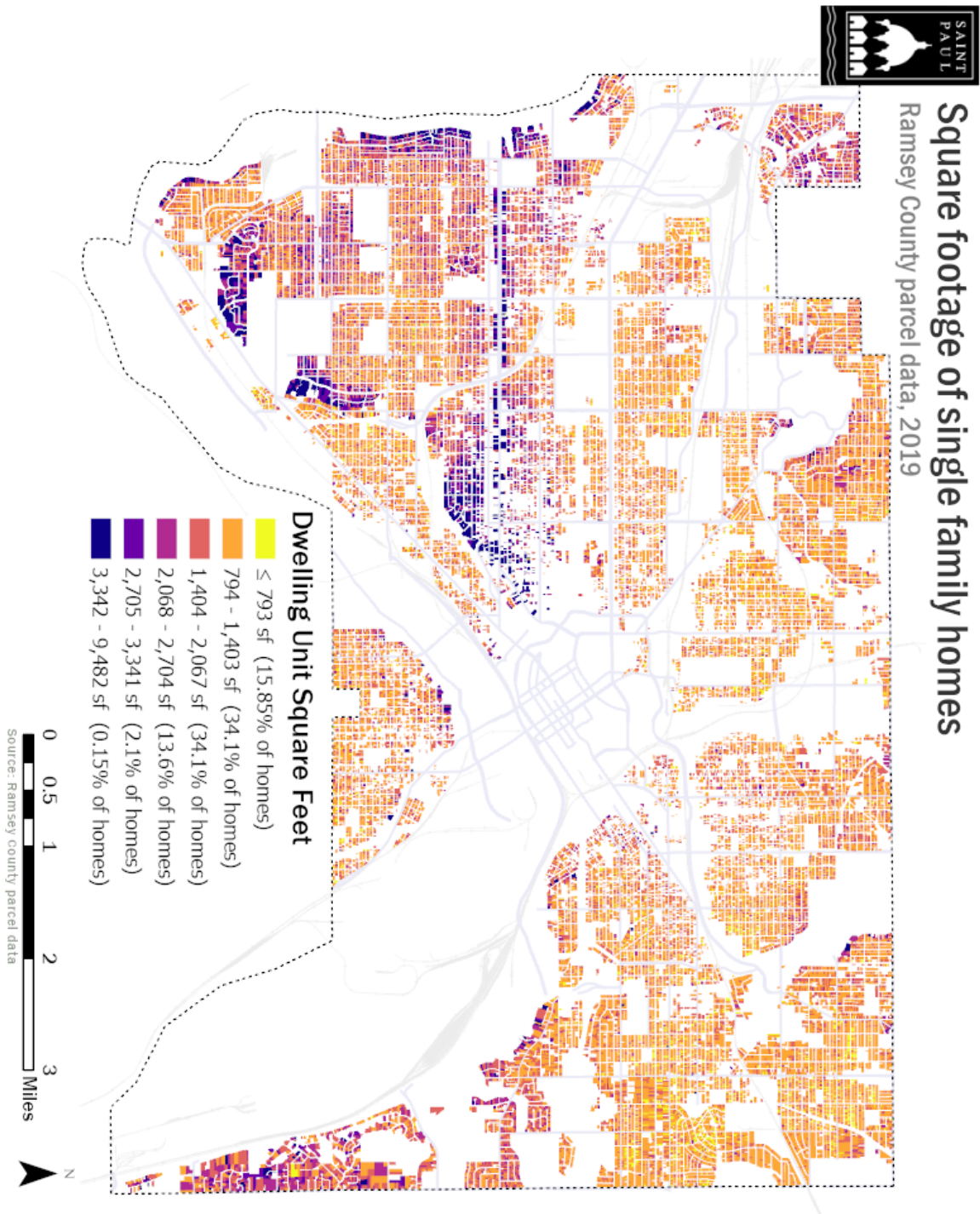


Percent of households containing 7 or more occupants 2010 US Decennial Census



Consideration of occupancy must be done in the context of available dwelling square footage. The major effect of a change to occupancy regulations will be on larger dwelling units, which are generally single family homes. Saint Paul's single-family housing stock consists mostly (68%) of homes between 793 and 2,067 square feet. The average (mean) size is 1,430 square feet. Homes between 2,068 and 2,703 square feet make up 13.6%, and houses larger than 2,704 square feet make up only 2.25% of single-family homes in Saint Paul.

Average single-family home: 1,430 square feet



Other relevant ordinances

Other occupancy regulations

Other occupancy restrictions apply regardless of relationship, age, or any other occupant characteristic. After the Zoning Code definition of *family*, the next most restrictive occupancy limit is found in the Minnesota Fire Code, which requires a minimum of 200 square feet per occupant.

Slightly less restrictive than the Fire Code is Chapter 34 of the Saint Paul Legislative Code, Minimum Property Maintenance Standards. Section 34.13 requires that a dwelling unit contain a minimum habitable gross floor area of at least 150 square feet for the first occupant and at least 100 square feet for each occupant thereafter. Every room intended for sleeping for one person is required to have at least 70 square feet, while sleeping rooms for two or more people are required to have 50 square feet per person (and 60 square feet for efficiency or studio dwellings).

In addition to Chapter 34, construction of single-family and two-family dwellings are governed by the Minnesota Residential Code, which does not have minimum occupant loads. (An occupant load is a constant factor that determines things like how much and where to build egress and other structural elements, and can act as a minimum occupancy restriction.) Multifamily dwellings – those with three or more units – are regulated by the Minnesota Building Code which carries an occupant load of 200 square feet per person for residential units, as well as square footage minimums of 120 square feet for at least one room, 70 square feet for other habitable rooms, and a minimum of 100 square feet for each additional person past the first, with a minimum of 220 square feet for efficiency units.

The sum total of these occupancy definitions is that the Zoning Code is the most restrictive (allowing only four people) down to a dwelling unit of 800 square feet (depending on specific room sizes). Below this the particular sizes of rooms will trigger Chapter 34, Building Code, and Fire Code. These regulations ensure minimum space per dwelling unit to prevent overcrowding of the structure, while the definition of *family* in the Zoning Code sets a maximum occupants per dwelling unit to address the impact of a dwelling unit on its surroundings. Appendix C shows how these codes and the Zoning Code definition of *family* regulate various sizes of dwelling units.

Dependent Land Uses

The definition of *family* is referred to explicitly in the standards and conditions of two land uses (accessory dwelling units and short term rentals). Other land uses use the number four to set the maximum household size before a dwelling becomes the specified land use; to enact spacing requirements between certain types of congregate living facilities; and to set minimum lot area requirements for facilities with more than four guest rooms or occupants. Changing the definition of family would require amending all or most of these land uses.

- *Adult care home (§ 65.151)*

A facility where aged, infirm, or terminally ill persons reside in order to receive nursing care, custodial care, memory care, Medicare-certified hospice services, or individualized home care aide services either by the management or by providers under contract with the management. The standards and conditions include:

- (a) *In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of four (4) guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.*

A change in the definition of *family* would require amending the threshold at which adult care homes require a larger lot size in residential and T1 traditional neighborhood districts.

- *Community residential facility, licensed correctional (§ 65.152)*

A licensed correctional community residential facility is a facility where one or more persons reside under the care and supervision of a residential program licensed by the state department of corrections. The standards and conditions include:

*(b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than **four (4)** adult residents, except in B4-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.*

*(e) In residential and T1 traditional neighborhood districts, the facility shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of **four (4)** guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.*

A change in the definition of *family* would require amending the occupancy threshold of congregate living facilities subject to spacing requirements, and the minimum lot area requirement.

- *Overnight shelter (§ 65.157)*

An overnight shelter is a facility where “persons receive overnight shelter, but are not expected or permitted to remain on a 24-hour-per-day basis.” The only condition on this land use is that “The facility shall be a minimum distance of six hundred (600) feet from any other of the following congregate living facilities with more than **four (4)** adult residents: overnight shelter, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or shelter for battered persons.” A change in the definition of *family* would require amending the occupancy threshold of congregate living facilities subject to spacing requirements.

- *Shelter for battered persons (§ 65.160)*

A shelter for battered persons is state-certified facility which, for a maximum of thirty days, houses adults or children who have suffered assault or battery. This facility is geared toward being a detached, low-density residence dedicated wholly to battered persons and their protection.

The following standards and conditions apply to facilities serving more than four adult facility residents:

*(a) In residential, traditional neighborhood, Ford and OS-B2 business districts, a conditional use permit is required for facilities serving more than **four (4)** adult facility residents and minor children in their care.*

*(b) The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than **four (4)** adult residents: shelter for battered persons, supportive housing facility, licensed correctional community residential facility, emergency housing facility, or overnight shelter.*

(c) In RL-RT2 residential, traditional neighborhood, Ford, OS-B3 business and IT-I2 industrial districts, the facility shall serve sixteen (16) or fewer adult facility residents and minor children in their care.

- (d) *The facility shall not be located in a two-family or multifamily dwelling unless it occupies the entire structure.*
- (e) *In residential and T1 traditional neighborhood districts, facilities serving seventeen (17) or more facility residents shall have a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of **four (4)** guest rooms. In T2-T4 traditional neighborhood districts, the density shall be regulated as for multifamily uses.*

A change in the definition of *family* would require amending the occupancy threshold at which these standards and conditions are triggered, the occupancy threshold of congregate living facilities subject to spacing requirements, and the minimum lot area calculation for facilities serving seventeen or more residents.

- *Sober house (§ 65.161)*

The definition of a sober house is:

A dwelling unit occupied by more than four (4) persons, all of whom are in recovery from chemical dependency and considered handicapped under the Federal Fair Housing Act Amendment of 1988, ... The residents of a sober house are similar to a family unit, and share kitchen and bathroom facilities and other common areas of the unit. ...

A request for reasonable accommodation for this use as required under the Federal Fair Housing Act Amendments of 1988 by providing an exception to the maximum number of unrelated persons living together in a dwelling unit shall automatically be granted if the following standards and conditions are met. ...

A dwelling unit with four or fewer residents is not regulated as a sober house, no matter the chemical dependency or activity of the residents, so up to four unrelated people may reside together in any dwelling unit as regulated by the definition of *family*. In excess of the definition of *family*, five to ten residents may occupy a sober house in RL to R4 with a request for reasonable accommodation. Eleven to sixteen residents may occupy a dwelling unit in most other districts (RT1 – RM3, all traditional neighborhood districts, all business districts, IT-I2, and F1-F5) with a request for reasonable accommodation. Seventeen or more residents may occupy a dwelling unit in those listed districts with a modified conditional use permit. There is a minimum spacing requirement of 330 feet between properties with sober houses.

Formation of these regulations was the result of a long study in 2006 and involved consideration of state regulation of licensed residential facilities (group homes). Minnesota Statute § 462.357 subdivisions 7 and 8 require state-licensed residential facilities of up to six residents be permitted as single-family residential uses by right, and facilities of up to sixteen residents be permitted as multifamily residential uses by right. Sober houses differ from these facilities in a number of ways and are an independent land use in Saint Paul’s Zoning Code; however, the thresholds of six and sixteen displayed the state’s determination of what size of dwelling number is appropriate for single-family and multifamily land uses.

A change to the definition of *family* would require amending the occupancy threshold that triggers a request for reasonable accommodation, but would not affect spacing requirements.

- *Supportive housing facility (§ 65.162)*

A supportive housing facility is a residence “where persons with mental illness, chemical dependency, physical or mental handicaps, and/or persons who have experienced homelessness reside and wherein counseling, training, support groups, and/or similar services are provided to

the residents.” Six residents are allowed in RL-RT1 residential districts, while up to sixteen residents are allowed in most other districts. A conditional use permit is required for facilities serving seven or more residents in residential, T1, and F1 districts. In residential and T1 districts, facilities serving more than seventeen residents triggers lot area minimums. Lastly, “The facility shall be a minimum distance of one thousand three hundred twenty (1,320) feet from any other of the following congregate living facilities with more than **four (4)** adult residents, except in B5-B5 business districts where it shall be at least six hundred (600) feet from any other such facility: supportive housing facility, licensed correctional community residential facility, emergency housing facility, shelter for battered persons, or overnight shelter.”

A change in the definition of *family* would require amending the occupancy threshold of congregate living facilities subject to the spacing requirements.

- *Short term rental (§ 65.645)*

A short term rental is “a dwelling unit, or a portion of a dwelling unit, rented for a period of less than thirty (30) days.” Allowance of more than one short term rental on a lot (including more than one unit in a single building like a duplex) is heavily restricted based on the presence or absence of the owner. Occupancy of a short term rental is limited to the definition of *family* “except that occupancy in excess of the definition of family may be permitted with a conditional use permit, on a case by case basis, for large one- and two-family dwellings on large lots.” Those short term rentals with a CUP to exceed the occupancy limit cannot be within 1,000 feet (about 20 typical single-family lot widths) of another with the same CUP. So far, no one has applied for a CUP for this purpose. The definition of *family* was chosen as the occupancy standard for this land use to avoid the complications of an independent regulation, and to keep it in harmony with the character of single-family use of a dwelling unit. A change in the definition would automatically affect short term rentals. As of the time of this study, there have been no applications for a CUP to exceed the definition of *family*, so it is reasonable to expect little change in occupation of short term rentals.

- *Roominghouse (§ 65.158)*

The roominghouse land use in the Zoning Code acts as a catch-all residence that allows occupancy to exceed the definition of *family*. It includes structures that provide single-room occupancy to more than four unrelated individuals and rental arrangements by the room. In lower-density zoning districts, a roominghouse lot must have “a minimum lot area of five thousand (5,000) square feet plus one thousand (1,000) square feet for each guest room in excess of four (4) guest rooms.” A change in the definition of *family* would require amending the number of unrelated individuals allowed in a dwelling before it is considered a roominghouse and could mildly affect lot size requirements. Additional proposed minor edits to this land use clarify that this is distinct from a dwelling unit, which is subject to the definition of *family*.

- *Accessory dwelling unit (“ADU”) (§ 65.913)*

An ADU is meant to be a subordinate “extra” dwelling unit paired with a single-family home on a single lot. Per § 65.913(d), “The total occupancy of the principal dwelling unit and accessory dwelling unit shall not exceed the definition of family in section 60.207 allowed in a single housekeeping unit.” The *family* definition applies to both units together – though together the two units may be made of two functional households – in order to limit population per lot. A change to the definition of *family* would affect occupancy of an ADU and its associated principal dwelling. As of May 6th, 2020 Saint Paul had twelve known ADUs either completed or in progress.

- *Student dwelling in the SH student housing neighborhood impact overlay district (§ 67.700)*

The SH district includes a definition of a student dwelling:

Within the SH student housing neighborhood impact overlay district, a student dwelling is a one- or two-family dwelling requiring a fire certificate of occupancy in which at least one (1) unit is occupied by three (3) or four (4) students. For the purposes of this article, a student is an individual who is enrolled in or has been accepted to an undergraduate degree program at a university, college, community college, technical college, trade school or similar and is enrolled during the upcoming or current session, or was enrolled in the previous term, or is on a scheduled term break or summer break from the institution.

This overlay district was created in 2012 to manage the perceived negative impact of a concentration of students living in single-family neighborhoods around local colleges and universities. These effects include increased parking and traffic, behavioral and property management shortcomings, and a loss of ownership single-family housing stock to student rental properties. The zoning standards require a distance of 150 feet (about three single family home lot widths) from another student dwelling, and that it provide all necessary parking as if it were a new structure (no nonconforming parking permitted). Additionally, a student dwelling must be registered with the Department of Safety and Inspection. Also of note: relatedness does not factor into what constitutes a student dwelling.

By definition, the only SH district encompasses the blocks around the University of St. Thomas, a product of years of concern by residents in the area. Since implementation of the district, the neighborhood has seen a slowdown in turnover of ownership housing to student rentals. Recently the University of St. Thomas has constructed new dormitories on campus, and now requires first- and second-year students to reside on campus, both changes that should accomplish a similar relief intended by the SH overlay spacing requirements. As other municipalities have considered amending their occupancy allowances, concerns about disturbances by high densities of students have received the most attention.

A change to the definition of *family* would suggest either an amendment to the range of students allowed in a student dwelling, or simply the inclusion of other nonstudent occupants, but would not change the spacing or registration requirements.

Consistency with City plans

The objectives of this amendment conform to the City's 2030 and 2040 Comprehensive Plans, as well as numerous district plans and small area plans.

2030 Comprehensive Plan

The Housing chapter of the 2030 Comprehensive Plan affirms safe and affordable housing as a basic human need, and lists demands on affordable housing resources in Saint Paul. The list includes deferred maintenance costs of its older housing stock; the need for housing for the homeless county-wide; a consistently under-funded Public Housing Agency; and slow growth in new housing construction. The Plan includes major Strategy 3: Ensure the Availability of Affordable Housing Across the City and fills out this strategy with several policies:

- 3.1. Support the preservation of publicly-assisted and private affordable housing
 - Note (d) – Support the preservation of other low-income housing units under private ownership and management.
- 3.2. Support new housing opportunities for low-income households throughout the city.

Amendments
are consistent
with the 2030
Comprehensive
Plan

3.6. Ensure fair housing.

- Note (a) – Promote fair housing choices for all, particularly those from historically disadvantaged backgrounds;
- Note (c) – Provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familiar status, disability, and national origin;

The Land Use chapter similarly acknowledges the changing demographics and housing choices of Saint Paul residents, recognizing the needs of “large, extended families in immigrant communities who desire sizeable single-family houses, ... fewer two-parent households with children ... more couples without children, more singles of all age groups, and more empty nesters.” While these text amendments will predominantly impact low-density areas, the Plan intends those areas (“Established Neighborhoods”) to allow mild increases in density, allowing for densities up to twenty dwelling units per acre (e.g. a standard single-family block with scattered duplexes and townhomes). While the housing stock is not predicted to change because of these amendments, and while the impact of these amendments is not expected to be concentrated on any certain block in the city, allowing more occupants per house functionally allows a mild increase in population density in accordance with the Plan, similar to allowing duplexes or townhouses. Applicable Land Use policies include:

1.1. Guide the development of housing in Established Neighborhoods, commercial areas within Established Neighborhoods, and in Residential Corridors.

- “This policy is intended to provide for the development of housing in Established Neighborhoods, Residential Corridors and adjacent commercial areas consistent with the prevailing character and overall density of these areas. The density goals are residential development of 3-20 dwelling units per acre in Established Neighborhoods and residential development of 4-30 dwelling units per acre in Residential Corridors and adjacent commercial areas.”

1.8. Encourage the development of townhouses and smaller multi-family developments, compatible with the character of Established Neighborhoods.

1.40. Promote the development of housing that provides choices for people of all ages, including singles and young couples, families, empty-nesters, and seniors.

2040 Comprehensive Plan

The Housing Chapter of the 2040 Comprehensive Plan is guided by seven goals, three of which are directly furthered by this amendment: “3. Fair and equitable access to housing for all city residents”; “6. Improved access to affordable housing”; and “7. Strong neighborhoods that support lifelong housing needs.”

Amendments
are consistent
with the 2040
Comprehensive
Plan

One housing policy explicitly mentions the subject of these text amendments:

H-17. Ensure that the regulatory definition of family and allowable dwelling types meet the needs of residents and reflect how people want to live, while meeting fair housing requirements.

Other relevant Housing policies include:

H-15. Accommodate a wide variety of culturally-appropriate housing types throughout the city to support residents at all stages of life and levels of ability.

H-16. Increase housing choice across the city to support economically diverse neighborhoods by pursuing policies and practices that maximize housing and locational choices for residents of all income levels.

H-44. Make achieving the Metropolitan Council’s affordable housing goals a top priority both in planning and legislative efforts.

H-45. Support the preservation and maintenance of historic housing stock as an affordable housing option.

H-54. Support alternative household types, such as co-housing, intergenerational housing, intentional communities or other shared-living models, that allow residents to “age in community.”

The Land Use chapter of the 2040 Comprehensive Plan is guided in part by its goal number “6. Efficient, adaptable and sustainable land use and development patterns and processes.” “Urban Neighborhoods” are the lowest-density urban category named in the plan, including most of the city’s low-density neighborhoods. As mentioned in the 2030 Comprehensive Plan section of this report, an increase in allowed occupancy achieves a population increase on the scale of smaller missing middle housing types, and so further related policies. Supporting policies in this chapter are:

LU-7. Use land use and zoning flexibility to respond to social, economic, technological, market and environmental changes, conditions and opportunities.

LU-34. Provide for medium-density housing that diversifies housing options, such as townhouses, courtyard apartments and smaller multi-family developments, compatible with the general scale of Urban Neighborhoods.

Neighborhood Plans

Each planning district in Saint Paul has formed a guiding plan that is appended to the City’s current comprehensive plan and is vital in transforming community values into actionable policies. Ten neighborhood plans include policies regarding preserving or creating housing affordability or housing variety. Several of those mention specifically ensuring housing for diverse cultures, people of color, or people “from all walks of life”.

Amendments
are consistent
with the most
Neighborhood
Plans

Precedent among other cities

Since the early 20th Century, the presence of occupancy regulations in city charters or municipal codes has become ubiquitous, usually in the form a definition of *family* or *household* in their zoning or land development codes. Cities analyzed as part of this report were: Atlanta, GA; Austin, TX; Boston, MA; Charlotte, NC; Chicago, IL; Dallas, TX; Denver, CO; Fort Worth, TX; Minneapolis, MN; Pittsburgh, PA; Portland, OR; San Francisco, CA; and Seattle, WA. (Other cities have been reviewed as parts of larger referenced works; for instance: Ames, IA; Roswell, NM; Tulsa, OK; Beverly Hills, CA; and others are discussed in the American Planning Association’s 2004 *Planner’s Dictionary* under the entry “family”.)

“Family Plus X” Model. Among these peer cities, several models are common. Portland, Oregon allows any occupants who are all related to each other “by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than 5 additional persons” (which has been called the “Family Plus” model). Notwithstanding building or fire code restraints, this could conceivably reach a large number of related people joined by five extra unrelated residents. Chicago’s definition of “household” is similar, allowing a family plus three unrelated. Dallas allows a family plus four.

“Family Or X” Model. Seattle, on the other hand, uses a threshold: if the entire household is related, then there is no (zoning code) limit; however, if even one unrelated person resides in the dwelling unit, a

cap of eight total occupants kicks in regardless of relatedness (which can be called a “Family *Or*” model). Many cities follow this model: Charlotte allows a family or six unrelated occupants, Fort Worth allows a family or five unrelated”, and Pittsburgh allows a family or three unrelated, not including domestic staff.

“Functional Family” Model. Some cities attempt to recognize a “functional family” household that gives flexibility to occupancy. A “functional family” is one that has characteristics of a group of relatives but are not related. In San Francisco, up to five unrelated people may live together, *or* more than five unrelated people if the group “(a) has control over its membership and composition; (b) purchases its food and prepares and consumes its meals collectively; and (c) determines its own rules of organization and utilization of the residential space it occupies.” Ames, Iowa includes several categories of maximums depending on relatedness, but grants a special use permit to functional families to exceed any maximum if they meet a long list of standards, including “a strong bond or commitment to a single purpose, ... share a household budget; ... prepare food and eat together regularly; share in work to maintain the premises; and legally share in the ownership or possession of the premises.” Atlanta allows up to ten occupants if they are all age 60 or older, are “self-caring,” and comprise a single, non-profit housekeeping unit. These approaches place a greater burden on the discernment of a city’s zoning administration, and can be challenging if not impossible to enforce in day-to-day life.

In 2016, Minneapolis passed an ordinance allowing intentional communities as households of unrelated people who want to exceed the occupancy limit. To establish an intentional community, the group must register with the city and communicate information about the building and occupancy, submit documentation like a lease agreement, building floorplan, or cooperative registration number, and establish information for a primary contact. This process was criticized in the 2017 FHIC report as onerous and still possibly inhibiting fair housing choice.

Tailored Models. Other cities identify a number of unrelated occupants, and then tailor that further by zoning district or residence type. Austin, Texas allows any number of related occupants or up to six unrelated occupants, except in single-family zones, where a *family* may consist of only four unrelated occupants. Atlanta allows up to six unrelated adults in its general provisions, but follows that with a provision that “not more than four unrelated adults may reside on a site” of a long list of low density residence types in a long list of low density zoning districts. Note that this applies to adults only, so minors are exempted by exclusion. Denver’s “household” term lists occupancy categories by dwelling type, allowing up to two spouses or domestic partners and their close relatives in any residence, up to two unrelated adults plus their relatives in any single-family home, and up to four unrelated adults and their close relatives in two-unit or multi-unit dwellings only. (The close relatives listed are those to the second level of consanguinity – grandparents, uncles and aunts, and nieces and nephews.) These tailored approaches are clearly guided by the priorities of low-density, single-family zoning for nuclear families.

Limits can be tailored by zoning district or dwelling type

Until recently, Minneapolis had a traditional “blood, marriage, adoption, or domestic partnership” definition of *family* in its Zoning Code, and then specified how many unrelated people could reside with the family per zoning district. In lower-density residential zones, for instance, unless the entire household was related, only two unrelated people could reside with a family not to exceed five occupants total; or, only up to three occupants were allowed if all were unrelated. Following the definition was an explanatory statement: “This definition of family is established for the purpose of preserving the character of residential neighborhoods by controlling population density, noise, disturbance and traffic congestion...” The FHIC Analysis of Impediments gave Minneapolis a score of 3 (high risk of discriminatory or arbitrary regulation) because of this strict limitation. In December 2019, Minneapolis removed all mention of occupancy from the Zoning Code, falling back on its definition of *family* in its Housing Maintenance Code, which is a “family *or* 5” limit. The City is currently considering revisions to that Code’s definition.

Minneapolis is currently revising its definition(s)

Austin, TX is the only city of those analyzed with an ordinance applying only to adults and exempting minors. This unique characteristic allows more flexibility in childcare.

Limits can apply to or exempt minors

Changes to these definitions are ongoing. In 2017, the State of Iowa passed an ordinance removing the city's power to enforce occupancy limits in residential rental properties based on family or nonfamily relationships between tenants. Ames, IA, home to Iowa State University, responded by implementing a rental density cap, allowing only ten percent of houses on each block to receive a rental permit, which has since been struck down in court. Earlier in 2020, the State of Washington considered following suit but time in their legislative session ran out without coming to an agreement. Conversely, in 2014 the City of Austin lowered the number of unrelated adults allowed in a dwelling unit from six to four in several single-family districts.

Initial concerns

Three concerns have been expressed about the result of an expanded definition: negative effects of higher population density; degradation of neighborhood maintenance and character; and manipulation of the housing stock and cost to benefit landlords.

Concern has been expressed about potential adverse effects from increased population density in low density residential areas as a result of an expanded definition. Increased density may bring increased cars on neighborhood streets, decreased availability of on-street parking for neighbors, a net decrease in open space per neighborhood resident, and an increase in noise generated by cars, music, get-togethers, etc. Increased traffic may accelerate wear-and-tear on roadways and an increased need for repair and maintenance costs. Other public utilities like sewer capacity and public services like police patrols may experience a heavier burden than has been previously projected. As these effects of density increase, the ability to plan for them in an organized way may be reduced. Dwelling units, especially detached single-family homes, are allowed most anywhere in the city, and an increase in occupancy limits may lead to higher density in unexpected areas.

Concern 1: Amendments may increase negative effects of density.

While these are all potential effects of a concentrated increase in population density, no evidence has been found that allowing a small increase in dwelling unit occupancy, diffused across the city, will produce these effects to a significant extent, or to an extent that outweighs the added housing opportunity. Saint Paul Public Works uses the occupancy standards in the Fire and Building Codes to calculate the amount of potential water usage by a property. And because the impact of these amendments will be spread city-wide, the likelihood is low that an expanded definition would allow a neighborhood's utility or service burden to escalate so unpredictably and uncontrollably that the intention of low-density zoning districts would be undermined, and that city services would be unable to handle the resulting disorder.

On a historical note, Saint Paul's urban form, housing stock, and utilities were largely already built out by the 1960s, when the average household size was about 20% larger than it is today. Prior to 1975 the City's Zoning Code allowed smaller lot sizes and larger dwelling sizes (meaning much denser residential areas), and the definition of *family* did not limit family size. Most of the streets, utilities, and houses that still exist today were built before 1975 and were designed to accommodate denser urban form and larger families.

These effects should also be discussed in the context of low-density residential zoning, which is likely to be most affected by an expanded definition. The Supreme Court majority opinion in *Belle Terre v. Boraas* states that low-density residential zoning in its most innocent conception is intended to support "family needs", "family values", and "youth values", without clarifying what those are, and that "the blessings of quiet seclusion and clean air make the area a sanctuary for people." Affordable housing for families, especially those with youth, fits the above value categories. While lower-density areas have some benefits for people fortunate enough to own or rent property within them, to exclude larger families and households from accessing both affordable housing and such benefits is to privilege nuclear family households and higher-income residents at the expense of others. Allowing greater use of the streets, utilities, and houses we already have reduces the costs of sprawl and the need to construct and maintain additional streets, utilities, and houses.

In interviews with community partners, nonprofit housing management staff, and City inspection staff, anecdotes have been shared of uncivil behavior and poor property and neighborhood care associated with larger household sizes. The detriment is said to stem from occupancy by people who are not associated closely with the head of the household and are transient, and therefore have less stake in the wellbeing of their house, yard, street, and neighbors. Practical effects of this include increased litter, noise, property damage, property neglect, disruptions of the peace, increased safety code violations.

Concern 2:
Larger households may produce detrimental behavioral problems.

While inspection and code enforcement staff confirm that low occupancy maximums do reduce such issues, this must be weighed against the need for housing, as well as consideration of those many large, quiet households that do not produce anything but stability, care, and positive community contributions. The Zoning Code is generally a blunt tool for addressing property and neighborhood maintenance issues; it is inferior in many ways to public services dedicated specially to address these issues. A reasonable expansion to the definition of family can continue to stave off property and neighborhood detriment without being a barrier to open and legal housing opportunity.

Concern has been expressed that, with an expanded definition, landlords may add bedrooms to rental properties to fit more tenants and make a higher profit, damaging the architectural quality of Saint Paul's housing stock and accelerating the conversion of ownership housing to dwellings resembling roominghouses. It has also been suggested that, as more renters are fit into dwellings, the total value of the house and property increase, increasing the value of the surrounding properties and the resulting tax burden. No evidence that this would result to a significant extent from a reasonably expanded definition has been found. Considering the data limitations discussed earlier in this report, it would be a difficult correlation to project, and any such negative effects of this would need to be weighed against the benefits of added fair and affordable rental housing.

Concern 3:
Landlords will degrade the housing stock and increase surrounding property values

4. Public Hearing Testimony & Analysis

The Saint Paul Planning Commission held a public hearing on the study and three proposed amendment options on Friday, November 13th, 2020. During the period of public comment preceding the public hearing, a letter was sent from staff of fourteen district councils requesting the public hearing be postponed to allow the district councils more time for public engagement and discussion. In response to this letter, the period for public comment was extended by the Planning Commission until December 14th. During the public comment period, six district councils requested a presentation by staff, all of which were accompanied by discussion.

Thirty-six people responded via an online form posted at www.stpaul.gov/family-study, one person emailed Planning staff directly, and letters were sent from the local organization Sustain Saint Paul and five district councils. Three people testified verbally at the virtual public hearing. Appendix F contains all public comment collected during the extended public comment period.

The three amendment options presented were:

Option 1 – “Any Six”

Family. Six (6) or fewer adults, together with minor children in their care, living as a single housekeeping unit.

Option 2 – “Family or Five”

Family. Five (5) or fewer adults, or any number of adults who are all related to each other by blood, marriage, guardianship, or domestic partnership as defined by Chapter 186 of the Saint Paul Legislative Code, together with minor children in their care, living as a single housekeeping unit.

Option 3 – “Family plus Four” Family. Any number of adults who are all related to each other by blood, marriage, guardianship, or domestic partnership as defined by Chapter 186 of the Saint Paul Legislative Code and up to four (4) additional adults, together with minor children in their care, living as a single housekeeping unit.

Responses from Individual Residents

Thirty-seven comments from residents were submitted either on the online form at www.stpaul.gov/family-study or via email to Planning staff. Commenters were asked to select which amendment option they preferred. The total votes for each amendment option are below. (One respondent abstained. Two respondents voted for two options.)

Amendment option	Number of votes
Option 1: “Any Six”	15
Option 2: “Family or five”	3
Option 3: “Family plus four”	12
None of the above	8

Of the thirty-seven comments, only one resident opposed expanding occupancy as allowed by the definition, citing too many small homes with too many occupants, and giving examples of household occupancy levels that are already well-above any of the safety code allowances.

Three of the eight residents who chose “None of the above” advocated for completely removing the regulatory definition of *Family* from the Zoning Code, while another four of the eight advocated for more specific text edits. One resident advocated for combining options 2 or 3 with option 1 – that is, allow a maximum of six unrelated adults rather than five in those options.

The remaining residents, choosing one of the three proposed options, voiced their support for an updated definition that accommodates modern household styles. Reasons given for expanding the definition of *Family* were:

- Expanded diversity of households since the mid-20th century;
- Greater housing affordability for students;
- Greater housing affordability in general;
- Growing economic uncertainty due to climate change;
- Inappropriateness of a government body regulating household composition by relatedness;
- Inappropriateness of a government body regulating household occupancy for any reason other than safety; and
- Better adaptive use of large homes.

Responses from District Councils and Organizations

The local organization Sustain Saint Paul submitted a letter and a representative spoke at the public hearing. They recommended that the City adopt both amendment options 1 and 3, effectively allowing up to six unrelated adults, or any number of related adults plus four additional adults, and any number of minors.

A letter from the Saint Anthony Park Community Council recommended adoption of Option 2 “Family Or Five”. Letters from the Southeast Community Organization, Northeast Neighborhood Organization,

Payne-Phalen Community Council, and Summit Hill Association asked the Planning Commission to go farther:

- Remove the regulatory definition of *Family* from the Zoning Code completely;
- Do not attempt to define “family” in any way;
- To describe household occupants, replace the term *Family* with something more accurate and neutral like *Occupants*;
- Establish a rental/landlord licensing system; and
- Allow more time for public engagement.

Speakers representing the Payne-Phalen Community Council and Summit Hill Association echoed the above recommendations at the public hearing. The Southeast Community Organization recommended Option 3 “Family *Plus Four*” if one of the proposed options must be accepted.

Analysis of Public Comment

The section below analyzes some of the main issues raised in the public comment and during district council engagement.

1. Issue: Remove the regulatory definition of *Family* from the Zoning Code completely.

- Arguments:
- There is not sufficient policy rationale for an occupancy regulation beyond those in safety codes.
 - Inspection activity related to the definition of *Family* disproportionately exposes low-income residents and households of color to enforcement and punitive measures.
 - Housing is a human right and should not be withheld for any reason not safety-related.

Discussion: The occupancy regulation in the definition of *Family* has three functions.

One function of this definition is to limit the instances of other building, property maintenance, and fire code violations and maintain an efficient and effective City inspection program. Inspection and code enforcement staff report that properties with more unrelated occupants often correlate with code violations interior to the building, which remain hidden. This correlation cannot be tracked through inspection records but is reported through the experience of DSI inspectors and Police Department code enforcement officers. It is also unlikely to be disclosed in a process of public engagement, as a resident in violation of codes may have little incentive to report their violation.

Additionally, these violations remain hidden until an inspector has occasion to enter the building. When a complaint for an exterior code violation is filed, an inspector can legally only inspect the exterior of the property. Only when a complaint is filed that involves an interior code violation – including over-occupancy – can an inspector enter the house, at which point they may uncover other interior code violations (for example, blocked egress). Over-occupancy is a more visible violation in this category of interior codes; complaints concerning interior code violations are less frequent than exterior violations because they are usually less visible. The practical effect of not having an occupancy regulation in the Saint Paul Legislative Code would be higher potential for interior safety code violations and fewer occasions to inspect the interiors of dwellings to identify these violations.

It is important to note, however, that Section 34.13 of Chapter 34. - Minimum Property Maintenance Standards for All Structures and Premises of the Saint Paul Legislative Code also serves this function and would continue to in the absence of a

regulatory definition of *Family* in the Zoning Code. This section requires a minimum of 150 square feet of gross floor area for the first occupant of a dwelling unit, and at least 100 square feet for each additional person, as well as a minimum of 70 square feet for sleeping rooms intended for one occupant and 50 square feet per person for sleeping rooms intended for two or more occupants. This is a considerably less restrictive occupancy regulation. Complaints could still be filed with the Department of Safety and Inspections (“DSI”) if a violation of Section 34.13 is suspected.

In response to concerns that inspection activity resulting from anonymous complaints can perpetuate race-based abuse of the code enforcement system, DSI implemented new processes to curb unfounded and retaliatory complaints in 2020. DSI is obligated to inspect all legitimate safety and property maintenance complaints regardless of occupant or property characteristics. The process was improved such that after three complaints are filed regarding a certain property that result in inspections, but no violations are found, further complaints regarding that property are escalated to a DSI staff supervisor for review of legitimacy before an inspector or any enforcement letters are sent to the property. This update is one of many implemented by DSI Code Enforcement, Fire Safety Inspection, and Licensing divisions over the last five years as a result of an equity assessment and engagement process.

A second function of the regulatory definition of *Family* is to better integrate more populous residential land uses into generally low-density neighborhoods. Specifically, sober houses and supportive housing facilities, which serve residents in recovery from chemical dependency, are permitted in low-density zoning districts despite including more residents. As a federally-protected class, these residents cannot be regulated more strictly than any other residents (meaning, they cannot be subject to a lower occupancy limit than any typical dwelling unit) and group homes that serve them cannot be denied establishment in a neighborhood arbitrarily. At the same time, the higher per-unit occupancy and increased concentration of these land uses in neighborhoods have been the subject of some concern by communities and facility operators alike. As an indication of what an appropriate occupancy level may be, Minnesota State Statute §462.357 states that a state-licensed residential facility which serves six or fewer persons shall be considered a permitted single-family residential use for the purposes of zoning. While sober houses and supportive housing facilities are not generally state-licensed, their function in providing housing for a group of vulnerable adults embedded in a residential neighborhood context is similar.

With a reasonable citywide dwelling unit occupancy limit that allows a full diversity of household sizes (such as the amended definitions of *Family* under consideration), sober houses and supportive housing facilities – and perhaps other congregate housing facilities that serve vulnerable protected classes of people - could grow beyond that occupancy limit while integrating seamlessly into neighborhoods through requirements such as additional lot size and minimum spacing between facilities. Without a citywide occupancy limit, the City would be required to permit such housing facilities to be occupied to the full extent of building and fire codes. In addition, it is anticipated that that such housing would concentrate in relatively few neighborhoods where property purchase prices, unit sizes, and other necessary amenities are supportive, potentially impacting the stable residential context that operators say is key to the recovery process these facilities are meant to foster.

The third function of the definition of *Family* is to mitigate the land use effects of higher density such as increased traffic, increased use of open space, and increased litter and noise in predominantly low-density residential areas of the city. An

expanded definition can incrementally achieve increased density while still mitigating the land use effects of higher density in such neighborhoods compared to removing the definition completely.

In sum, complete removal of the regulatory definition of *Family* is likely to increase the amount of other safety code violations generated by households, and to greatly increase the land use effects of density in predominantly low-density residential neighborhoods. Removal would also require the City to remove regulations for higher-occupancy sober houses, supportive housing facilities, and perhaps other congregate housing facilities, allowing these higher-occupancy group homes to concentrate in neighborhoods more than is currently permitted. Such concentration is likely to have a disproportionate impact on certain neighborhoods, resulting in an increase in the land use effects of density in predominantly low-density residential neighborhoods. For these reasons, staff does not recommend removal of the regulatory definition of *Family*.

Argument: A definition of *Family* supports exclusive single-family zoning, perpetuating racial inequities citywide.

Discussion: Concerns about exclusionary single-family-only neighborhoods are best addressed through amendments to one-family residential zoning districts to include more building and dwelling types. Most households in Saint Paul will not expand in size with any expansion in permitted occupancy. The fundamental impact of one-family zoning districts lay in the primacy of single-family dwellings permitted and built in those districts.

Argument: It is inappropriate for any government entity to determine who or how many people constitute either a family or a household (“*Family*”).

Discussion: This topic is a matter of Constitutional law. As of December 2020, the Supreme Court of the United States has ruled it is constitutional and in a municipality’s interest to use its police powers to enforce occupancy restrictions on dwellings citywide as long as they apply only to occupants deemed unrelated or are applied neutrally, not privileging one relative over another.

2. Issue: Do not define what a family can or cannot be.

Discussion: The use of the term *Family* in the Zoning Code does not have any determining effect on who an individual may consider related or not, despite the use of the expression “family”. Alternative terms such as “occupants” or “household” are more accurate and neutral in describing occupancy without getting into questions of household composition.

3. Issue: Student housing

Discussion: A potential increase in number of students permitted in low-density residential neighborhoods has drawn both support and opposition. Saint Anthony Park Community Council members have indicated that a major increase in the cost of housing has resulted from increased demand by students. At the same time, two comments from individual residents supported the greater affordability of housing for students that could occur with expanded occupancy limits. The potential for increased public nuisances by students has also been brought up as an argument against raising occupancy limits. The current SH Student Housing Neighborhood

Impact Overlay District, which regulates student dwellings in the neighborhood around the University of Saint Thomas, was the result of community pressure on the University and City Council to mitigate the effect of a high concentration of students and student housing. Recently the University of Saint Thomas has built new dormitories on campus and newly requires first- and second-year students to reside on campus. It is hoped that this will further mitigate concerns about the impact of students.

4. Issue: Rental licensing

Discussion: From one resident’s public comment and from discussion with district councils, staff heard support for a rental licensing program in managing truly problem rental properties. Currently the City requires one- and two-unit rental dwellings to register with DSI Fire division to obtain a Residential Certificate of Occupancy, which could be revoked in the instance of a substandard property. A rental licensing program could go farther by penalizing a landlord themselves or revoking their license. It is common for other municipalities to use a rental licensing program to manage student rental properties.

5. Issue: Amend Options 2 and 3 to allow up to six unrelated occupants

Discussion: Prior to the Planning Commission public hearing, staff considered allowing up to six unrelated occupants in Options 2 and 3 to better differentiate them from Option 1. (Option 2 allowed any number of related occupants *or* up to six adults; Option 3 allowed any number of related occupants *and* up to five additional adults, functionally allowing up to six unrelated occupants.) The number six is taken from the Minnesota State Statute §462.357 referenced earlier stating that a state-licensed residential facility which serves six or fewer persons shall be considered a permitted single-family residential use for the purposes of zoning. After cautionary comment from DSI Zoning, the number of unrelated occupants allowed by Options 2 and 3 was decreased to five, although the difference in land use or property maintenance impacts between five and six unrelated occupants is not clear.

Summary

The utility of a citywide occupancy limit lies in mitigating the amount of building, property maintenance, and fire code violations that tend to result from larger households of unrelated people; the mitigation of the effects of density in predominantly low-density residential neighborhood; and the integration of sober houses and supportive housing facilities into predominantly low-density residential neighborhoods. Of the three proposed amendment options in the study draft released for public comment, Option 1 “Any Six” was the most-voted in the online form. This option best fulfills these functions while also removing relatedness from the Zoning Code definition altogether and allowing households of up to six adults and any number of minors. It is expected that this household size will accommodate households citywide. Option 2 “Family *or* five” would allow a slight increase in unrelated adults while allowing any number of related adults, and Option 3 “Family *and* four” would allow a slight increase in unrelated occupants along with an unlimited increase in related occupants; both of these rely on including some concept of relatedness, which has proven to be controversial in the public eye as well as difficult for code enforcement staff to ascertain and enforce. In any case, replacing the term *Family* with a neutral term such as *Household* would be more accurate and descriptive.

5. Recommendation & Discussion

Of the three alternative options released by the Planning Commission for public hearing, based on the public input and additional City staff deliberation, the proposed text amendment Option 1 – “Any Six” was recommended by City staff.

Family. Six (6) or fewer adults, together with minor children in their care, living as a single housekeeping unit.

- **Related occupants** – Option 1 keeps the definition simple and avoids basing it on how the occupants of a dwelling unit are related, which can be legally problematic and difficult to enforce. Relatedness is difficult for inspectors to ascertain, so regulations based on relatedness are often unenforced. Six adults plus any number of minor children in their care is substantially less restrictive than the current definition and reasonably provides for a much broader range of family types.
- **Unrelated occupants** – Option 1 allows six adults of any relation to occupy the dwelling. Minnesota Statute § 462.357 subdivisions 7 and 8 require that state-licensed residential facilities of up to six residents be permitted as single-family residential uses by right. Allowing six residents by right is consistent with the state statute language.
- **Minors** – Any number of minors are allowed and they do not need to be traditionally related, allowing flexibility in childcare within a community;
- **Adult care home** – The threshold at which adult care homes require a larger lot size in residential and T1 traditional neighborhood districts would rise from five guest rooms to seven.
- **Community residential facility, licensed correctional** – The occupancy threshold at which community residential facilities are subject to spacing requirements would rise from five occupants to seven adult occupants. Additional minimum lot area would be required starting at the seventh guest room rather than the fifth.
- **Overnight shelters** – The occupancy threshold at which overnight shelters are subject to spacing requirements would rise from five occupants to seven adult occupants.
- **Roominghouses** – The threshold at which a dwelling is considered a roominghouse would rise from five occupants to seven adult occupants. Additional minimum lot area would be required starting at the seventh guest room rather than the fifth.
- **Shelter for battered persons** – The threshold at which a conditional use permit is required would rise from five occupants to seven adult occupants. The occupancy threshold at which congregate living facilities are subject to spacing requirements would also rise to seven adults. Additional minimum lot area would be required starting at the seventh guest room rather than the fifth.
- **Sober houses** – Instead of a request for reasonable accommodation being required for between five and ten occupants in RL-R4 districts, it would be required for between seven and ten. All other parts of this ordinance would remain unchanged.
- **Supportive housing facility** – The occupancy threshold at which supportive housing facilities are subject to spacing requirements would rise from five occupants to seven adult occupants.
- **Short term rentals** – Still subject to this definition. The requirement for a conditional use permit to allow occupancy to exceed this would remain in place, as would the spacing requirements.
- **Accessory dwelling units** – Still subject to sharing this definition with its associated principal dwelling unit. This would allow up to six adults between both the principal and accessory dwelling units. ADUs are still subject to size standards, which already limit them to low levels of occupancy per Fire Code.
- **Student dwellings** – The allowed number of students in a “student dwelling” in the SH student overlay district would remain at 3 or 4. A fifth or sixth occupant may also reside in the dwelling unit, but only if they are not students as defined in this section. Student dwellings would still be registered and be subject to spacing requirements. Relatedness does not affect this standard.

Additional potential approaches

Household styles are sure to diversify in unexpected ways, both in occupancy numbers, household constitution, and physical dwelling forms. The following suggestions may contribute to more affordable and equitable housing.

- Consider a review of the *roominghouse* and *shareable housing* land uses in the Zoning Code
- Initiate zoning studies that would increase by-right infill and/or missing middle housing opportunities, including developing a program for City-owned small lots
- After some period of time passes in which the City can ascertain the impacts of an updated definition of *family*, consider studying the fair housing impact of establishing some form of intentional community or functional family program, wherein a group of people that does not conform to Saint Paul’s definition of *family* forms a household that is mutually beneficial and contributes to the city’s strong neighborhoods.

Other approaches to allowing non-conforming household styles should be considered.

Definition of *dwelling unit*

In addition to the definition of *family*, the definition of *dwelling unit* has received new scrutiny. The proposed amendment to the definition of *dwelling unit* is:

Dwelling unit. A building or part thereof that provides complete independent living facilities, including bathroom and kitchen facilities, for the exclusive and unhindered use of one family.

Also proposing an amendment to the definition of “Dwelling unit”

Dwelling unit and *family* are terms that are linked as used in the Zoning Code. A *family* is a group of people living together in a dwelling unit, and a *dwelling unit* provides living accommodations for a family. Given the relationship between these terms, it is good to consider amendments to both of them together. Consistent with the intent of the proposed amendments to the definition of *family*, the proposed amendment to the definition of *dwelling unit* is more accommodating to diverse families.

The proposed amendment is also more consistent with state Building Code definitions. It is generally useful for city definitions to be consistent with state definitions. Unlike state Building Code definitions for *dwelling unit* and *congregate living facilities*, the current definition of *dwelling unit* in the Zoning Code is based on unclear language about what rooms were designed for or intended for:

Dwelling unit. One (1) or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility (stove and/or oven, refrigerator, and sink), sleeping area, and bathroom provided within the unit for the exclusive use of a single household

The proposed amendment to this is based on state Building Code definitions. “A building or part thereof that” is from the Building Code definition of *congregate living facilities*. “Provides complete independent living facilities, including” is from the Building Code definition of *dwelling unit*. “Bathroom and kitchen facilities” is from the Building Code definition of *congregate living facilities*.

Committee recommendation

The Comprehensive and Neighborhood Planning Committee recommends approval of the attached draft Planning Commission resolution recommending City Council approval of the proposed Zoning Code text amendments.

Appendices

Appendix A – Draft Planning Commission resolution with text amendments

Appendix B – “Occupancy Limits for a Residential Property”

Appendix C – Current occupancy restrictions in Saint Paul by dwelling unit square footage, 2018-2020 combined

Appendix D – Saint Paul City Council Ordinance 18-1204

Appendix E – Relevant pages of the 2017 Addendum to the 2014 Regional Analysis of Impediments to Fair Housing Choice, prepared for the Twin Cities' Fair Housing Implementation Council (FHIC).

Appendix F – Public comment