Addendum to the 2014 Regional AI

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costs, labor costs, resident support or opposition to development, income levels, and other market forces.

Zoning and land-use laws should accommodate housing and uses that are based on regional needs, and not simply maintain the status quo within an individual jurisdiction. The following discussion illustrates opportunities for the surveyed municipalities to more completely uphold their commitments to furthering fair housing. The issues highlighted below show where zoning ordinances and policies could go further to protect fair housing choice for protected and disadvantaged classes, and still fulfill the zoning objective of protecting the public's health, safety, and general welfare.

Issue #1: Definition of "Family"

Often one of the most scrutinized provisions of a municipality's zoning code is its definition of "family." Local governments use this provision to limit the number of unrelated persons who may live together in a single dwelling. Unreasonably restrictive definitions may have the intended or unintended (depending on the motivations behind the drafting of the jurisdiction's definition) consequence of limiting housing for nontraditional families and for persons with disabilities who reside together in congregate living situations. While the Supreme Court has recognized a local government's right to limit the number of unrelated individuals who may live together as constitutionally permissible, the 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.

As a region, the average score was 1.68 on this issue. 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. Cities such as Hopkins and Saint Paul, which limit the number of unrelated persons who may reside together as a single "family" to no more than four, were given a 2 (medium risk score) for having neither the most permissive nor most restrictive definitions.

Crystal and Minneapolis were the only two jurisdictions in the region to score a 3 (high risk score) for having the most restrictive definitions in the region. Crystal's zoning ordinance limits the number of unrelated persons who may reside together as a common household to no more than three. In light of current jurisprudence on the matter and more modern acceptance of nontraditional family structures, this restrictive definition could be open to challenge as being arbitrary and discriminatory.

Minneapolis also received a 3 (high risk score) on Issue 1. The City's definition of family only includes persons related by blood, marriage, domestic partnership, and adoption/foster care, and excludes unrelated persons even if they reside together as a functionally equivalent household. However, occupancy is regulated by both the Zoning Code and the Housing Maintenance Code. Taken together, up to three unrelated persons may reside together in the lower density districts (mostly single family), and up to five unrelated persons may reside together in some of the higher density districts. This is somewhat arbitrary as many of the lower density areas support large homes which could safely accommodate more than 3 residents.

On Dec. 9, 2016, the Minneapolis City Council approved an ordinance which seeks to ameliorate some of the disconnect between the zoning code and housing maintenance code's occupancy limits and allow more flexibility. The new "Intentional Community" ordinance offers a path to legalizing previously illegal groups of unrelated persons, but critics argue that it also places onerous and arbitrary burdens both on the residents and the City. The regulations require groups wishing to reside together as an intentional community to register with the City, and to include an interior floor plan, and if applicable, legal documentation establishing the existence of the intentional community and/or lease agreement. (*See* Code of Ordinances, Sec. 244.820.) This use category still creates barriers to group living for persons without the time, resources, or sophistication to organize themselves and meet the regulatory requirements of an "intentional community."

Minnetonka's family definition was scored a 2 (medium risk), however, the definition is significant as an illustration of differential treatment of family size for the general population compared with people living in group homes. The City's definition does not limit the number of unrelated persons who may reside together as a single housekeeping unit except in the case of residents of a licensed residential care facility or community-based residential facility for persons with disabilities. Minnetonka's definition is problematic because group living arrangements for people with disabilities are singled out and treated less favorably under the zoning ordinance based on the disability status of the residents, which may violate fair housing laws.[41] Under state law, a state-licensed residential facility or a "housing with services" establishment registered under chapter 144D serving six or fewer persons must be considered a permitted single family residential use of property under local zoning controls. (MINN. STAT. § 462.357). However, if a home for persons with disabilities otherwise meets the definition of family—here, "[a]ny number of individuals living together on the premises as a single housekeeping unit"—it should not be treated differently than other similarly situated dwellings. (*See* Minnetonka Zoning Ordinance, Sec. 300.02(43)).

[41] *See* Joint Statement of the Department of Justice and the Department of Housing and Urban Development: *Group Homes, Local Land Use, and The Fair Housing Act*, available at https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1.

It is recommended for those jurisdictions with a more restrictive definition of family, that they 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. These methods are more in line with recent court decisions on the issue of functionally equivalent families.

Issue #2: Exclusionary Zoning

The Met Council forecasts that between the years 2010 and 2040, roughly 146,800 households with incomes less than 80% AMI will be added to the region's population. Between the years 2020 and 2030, the Twin Cities region will add 37,400 low- and moderate-income households that will need additional affordable housing.[42] The need for affordable housing extends beyond persons experiencing homelessness and very low-income households. Exclusionary zoning only exacerbates the lack of affordable housing supply and the means to address it.

Zoning codes often are used to impose unreasonable residential design regulations (such as high minimum lot sizes, large minimum building square footage, large setbacks, and/or low maximum density allowances) that are not congruent with the actual standards necessary to protect the health and safety of current average household sizes and prevent overcrowding. These regulations may not be in direct violation of fair housing laws, but may nonetheless contribute to exclusionary zoning and have the effect of disproportionately reducing housing choice for moderate to low-income families (public service workers, teachers, entry level workers, etc.), persons of color, persons with disabilities on fixed incomes, families with children, and other protected classes by making the development of affordable housing cost-prohibitive. Legitimate public objectives, such as environmental protection or public health, must be balanced with housing needs and availability.

There are jurisdictions in the region where single-family districts allow minimum lot sizes and minimum floor areas that meet general conditions approximating affordability (10,000 sq. ft. or less minimum lot sizes and 1,200 sq. ft. or less minimum floor area requirements). But as a region, the jurisdictions surveyed scored an average 1.82 (medium risk) on Issue 2, with six of the jurisdictions studied receiving a 3 (high risk score) on this issue. Those that scored a 1 (low risk score), generally have single family and two family districts which have reasonable minimum lot size requirements to support more density and infill development and eliminate minimum livable floor area requirements (besides what is required by the safety and building codes). For example, in Brooklyn Center, the zoning code and map

[42] See Met Council 2040 Housing Policy Plan, available at: https://metrocouncil.org/Housing/Planning/2040-Housing-Policy-Plan.aspx.