



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Elizabeth H. Tyler, AICP, Director

DATE: December 30, 2004

SUBJECT: Plan Case No. 1914-T-04: Request by the Zoning Administrator to amend the Urbana Zoning Ordinance with respect to over-occupancy of dwelling units and overall enforcement of the Zoning Ordinance.

Introduction

The Zoning Administrator is requesting an amendment to the Zoning Ordinance to improve the City's ability to enforce residential occupancy limits, to clarify and facilitate the authority of the Zoning Administrator and City Attorney in this respect, to increase the maximum fines for all zoning violations. The proposed text amendment would make it explicitly unlawful to "offer to lease" property or "any part of a structure" which would result in occupancy higher than allowed by the ordinance. It would also identify a minimum fee for violation of any provision in the Zoning Ordinance of \$50 and would increase the maximum fee from \$500 per day per violation to \$1000 per day per violation. This fine would escalate for repeat violators. In addition, the text amendment would clarify the setting of fine amounts, reduce redundant language, and clarify notice timing obligations and responsibilities of the Zoning Administrator in pursuing enforcement.

Background

The Zoning Ordinance currently limits a dwelling unit to being "occupied at any given time by a group of persons consisting of one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit together with not more than three additional persons not related by blood, adoption or marriage." (In the case of a single-family dwelling, the occupancy limit is exclusive of household servants). In most cases, over-occupancy of dwellings is not an issue since the Zoning Ordinance definition is sufficiently broad as to capture common familial living arrangements. However, in some instances, the limitations on occupancy may be violated, sometimes on a chronic basis. These situations most often occur near campus where an older, larger home may be rented out by a number of students. A related violation occurs when a

structure has been converted to contain additional dwelling units beyond those authorized in the zoning district or in a certificate of occupancy issued under previous zoning restrictions. Each year, the Community Development Department receives numerous complaints about suspected over-occupancy of dwelling units. These instances can be extremely difficult to enforce for a number of reasons, including: difficulty in ascertaining the precise number of people who are actually living (not simply visiting) at a location, efforts to conceal the true nature of the occupancy through quick adjustments, and incorrect leases and paperwork. In some cases, over-occupancy occurs with no awareness of the situation by the property owner. In other cases, tenants must move out when they had no awareness of the violation and had been misled by the landlord as to the permissible number of occupants. In these later cases, the City is interested in placing additional responsibility upon the property owner to accurately offer the property for rent to the permissible number of people. By strengthening this responsibility and introducing escalating fines for repeat offenders, it is hoped that some of the chronic violations that appear semester after semester may be prevented.

It should be noted that over-occupancy of dwelling units near campus is a problem in virtually all college communities. This is due to the natural desire by landlords to maximize rental payments received on valuable property and by student residents to reduce their rent payments by increasing the number of roommates. In situations where an older home with multiple bedrooms is offered for rent in a student-heavy environment, it can be extremely difficult to discourage over-occupancy. Neighborhood concerns about over-occupancy include increased noise, activity, garbage, and parking needs. In addition, over-occupancy of a dwelling can result in unsafe building conditions to the extent that code requirements are not met.

Over the past two years, the City has been working together with the West Urbana Neighborhood Association and the University of Illinois as a part of the University/Neighborhood/City (UNC) Group, to address a number of relevant concerns, including over-occupancy. City representatives on the UNC include Mayor Satterthwaite and Community Development Director, Libby Tyler. The proposed text amendment is one outcome of discussions with this group. Under the direction of Mayor Satterthwaite, the text amendment has been drafted by City Attorney Steve Holz.

Proposed Amendment

Proposed amended language is first summarized and then the actual text is shown in italics with changes indicated by strikeouts and underlining as follows:

1. Property Owner Responsibility

The following amendment would make it explicitly unlawful to offer to lease property when , if the offer were accepted, it would result in occupancy higher than allowed by the ordinance. By adding the phrase “or any part of a structure,” the language would apply not just to a lot but to a single apartment.

Section III-2. Evasion of Development Regulations

Except as provided in Article X of this Ordinance, it shall be unlawful to offer to lease, lease, sell, convey, use, or build upon a lot or any part of a structure, if the effect of such action is:

- A. To reduce the area of the lot below the minimum required by this Ordinance;*
- B. To exceed the maximum floor area ratio or building height permitted by this Ordinance;*
- C. To provide less than the usable open space ratio required by this Ordinance;*
- D. To reduce any dimension of a lot below the minimum or average required by this Ordinance;*
- E. To provide less than the minimum yards required by this Ordinance;*
- F. To provide less than the minimum number of parking spaces required by this Ordinance;*
or
- G. To occupy or permit occupancy or use beyond the limits of this Ordinance, or, in the case of an offer to lease, if the offer, if accepted, would have permitted or caused occupancy or use beyond the limits of this Ordinance.*

2. Clarification of Zoning Administrator Duties

This amendment deletes text setting fine amounts that is redundant with similar language in Section XI-9 (proposed for amendment in the next section). This section also contains language about enforcing parking violations which seems out of place and is redundant with language contained elsewhere in this section. This language is proposed to be deleted. Text addressing the responsibility for various types of violations is also proposed to be moved to Section XI-9.

In Section XI-1.B.9, this amendment would also strike the phrase “immediately upon his knowledge of such violation”, as it applies to the timing of any notice of the violation by the Zoning Administrator, because it seems to be unnecessary and hampers the Zoning Administrator’s ability to deal verbally with respect to property owners. In addition, this phrase could be construed as limiting the Zoning Administrator’s ability to take necessary action if the Zoning Administrator for some reason did not give notice “immediately”. Also proposed is the addition of a sentence at the end of that paragraph saying that the notice requirements are not a prerequisite for any enforcement action, and specifically exempting out the parking ticket violations from the notice requirement. By stating that the notice requirements are not a prerequisite to any court actions by the Zoning Administrator and the City Attorney, the City will enable itself to deal with the repeat violators of the occupancy limit by taking them to court without having to re-notice every new violation. This will help to close a loophole where, under the present system, a landlord can repeatedly violate the occupancy limit, but avoid fines by simply correcting the problem upon written notice. The amended language would increase incentives for complying.

In Section XI-1.B.10, the phrase “when necessary” would be eliminated due to lack of clarity and the words “inform the City Attorney” would be rephrased to “refer the matter to the City Attorney.”

Finally, in Section XI-1.B.11, the language referring to parking tickets has been moved to Section XI-9.A.8 as it is a more appropriate location.

Section XI-1. Zoning Administrator

A. Enforcement of this Ordinance ~~and Penalties~~. This Ordinance shall be administered and enforced by the Zoning Administrator, appointed by the Mayor, by and with the advice and consent of the City Council. The Zoning Administrator may be provided with the assistance of such persons as the City Council may direct.

~~*Any person violating any of the provisions of this Ordinance, except Section VIII 3, shall upon conviction thereof be fined in an amount not exceeding \$500.00. Each day such violation is committed or permitted to continue shall constitute a separate offense.*~~

~~*Any person violating the provisions of Section VIII 3 shall be issued a parking citation.*~~

~~*Except for Section VIII 3, the owners of the land upon which a violation of this Ordinance has occurred or is occurring shall be prima facie responsible for such violations of this Ordinance which occur on property owned by such person; provided, however, the foregoing shall not be construed to relieve the occupants, or any of them, of the land upon which the zoning violation has occurred or is occurring of the responsibility for such violation under this Ordinance.*~~

~~*Pursuant to Section VIII 3, the owners of the vehicle which is parked in violation of that section shall be prima facie responsible for such violations; provided, however, the foregoing shall not be construed to relieve the owner of the land upon which the violation occurred of responsibility for such violation under this Ordinance.*~~

B. Duties of the Zoning Administrator: The Zoning Administrator shall have the authority and duty to administer and enforce this Ordinance, and shall:

- 1. Issue all building permits and Creekway permits where authorized by this Ordinance, and keep permanent and accurate records thereof;*
- 2. Issue all Certificates of Occupancy where authorized by this Ordinance, and keep permanent and accurate records thereof;*
- 3. Issue all special use permits, where authorized by the City Council according to the provisions of Article VII of this Ordinance, and keep permanent and accurate records of such permits and of any conditions or standards specified therein;*
- 4. Issue all conditional use permits, where authorized by the Board of Zoning Appeals, according to the provisions of Article VII of this Ordinance, and keep permanent and accurate records of such permits and of any conditions and standards specified therein;*
- 5. Issue all sign permits where authorized by this Ordinance, and keep permanent and accurate records thereof;*
- 6. Conduct such inspections of principal and accessory structures and uses as may be*

necessary to determine compliance with this Ordinance;

7. Maintain permanent and accurate records pertaining to variances granted, modified, or denied by the Board of Zoning Appeals, and of their other decisions and actions;

8. Carry out such other responsibilities as may be specifically delegated to the Zoning Administrator by this Ordinance, or by the City Council;

9. In the event that any regulations and standards of this Ordinance are being violated, notify in writing, ~~immediately upon his knowledge of such violation~~, the perpetrator of such violation, indicating the nature of the violation, and the action necessary to correct it. The Zoning Administrator shall order the discontinuance of any illegal use of any land or structure, or any additional change or alteration thereto, except as permitted by this Ordinance, or the discontinuance of any illegal work being done; or shall take other action authorized by this Ordinance to ensure compliance with or to prevent violation of its regulations and standards. The notice requirements of this subparagraph are not a prerequisite for any such administrative or court actions by the Zoning Administrator and the City Attorney with respect to any violation. The notice requirements of this subparagraph B.9 do not apply to parking tickets issued pursuant to Section VIII-3.

~~10. When necessary,~~ The Zoning Administrator, after investigation and recommendation, may refer the matter to the City Attorney, who shall, in turn, institute any appropriate action or proceeding in law or equity to restrain, correct, or abate such violation, or to recover an appropriate fine for violation of this Ordinance.

~~10. 11. In the event that the provisions of Section VIII-3 are being violated, the Zoning Administrator shall cause the owner of the vehicle, as determined by the record of the Secretary of State, to be issued a parking citation to be issued.~~

3. Adjustment of Fines

Section XI-9 (“Fines”) contains various penalty provisions, with subparagraph (A)(2) containing language setting a general maximum fine. This language is proposed to be deleted and replaced with language setting a minimum of \$50 per day per violation and a maximum of \$1,000 per day per violation, but also requiring that the total fine amount for a first offense must be at least \$500, for a second offense at least \$750, and for a third offense at least \$1,000. Exceptions are made for parking fines, indigent persons, or where some other paragraph in the zoning ordinance sets a different amount.

Section XI-9.A.7 is a new paragraph with the language about *prima facie* responsibility for a zoning violation relocated from current Section XI-1.A. Relocated text is also presented for paragraph XI-9.A.8.

It should be noted that Section XII-9 of the Zoning Ordinance (shown below) sets forth the penalties for violations of the historic preservation requirements. This section sets fines with a minimum of \$50 and a maximum of \$500 per day per violation. These fines are proposed to remain as they are, and would not be subject to the escalating fines proposal at Section XI-9.A.2. Violation of established historic preservation requirements is not currently a problem in Urbana. Under the guidance of the Historic Preservation Commission, the City continues to work to

encourage the designation of eligible landmarks and districts. Increasing fines for violations would not help in this effort.

Section XI-9. Fines

A. General Penalty; Continuing Violations; Persons Responsible.

1. *In all cases where the same offense is made punishable or is created by different clauses or sections of the Urbana Zoning Ordinance, the prosecuting officer may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense; provided that the revocation of a permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.*

2. *~~Whenever the Urbana Zoning Ordinance authorizes a minimum but not a maximum fine or penalty, the court may in its discretion fine the offender any sum equal to or greater than the minimum fine or penalty but not exceeding \$500.00.~~ Except as expressly stated elsewhere in this Ordinance, any person violating any of the provisions of this Ordinance, shall upon conviction thereof be fined not less than fifty dollars (\$50.00) per day per violation, nor more than one thousand dollars (\$1,000.00) per day per violation. No total fine in any individual case except a parking violation under Section VIII-3 shall be less than five hundred dollars (\$500.00) for a first conviction of any provision of the Zoning Ordinance, seven hundred fifty dollars (\$750.00) for a second conviction related to the same property (or dwelling unit, as the case may be), and one thousand dollars (\$1,000.00) for a third or subsequent conviction related to the same property (or dwelling unit, as the case may be), irrespective of the number of days of the violation, unless the court finds that the violator is an indigent person.*

3. *Whenever in the Urbana Zoning Ordinance the doing of any act or omission to do any act constitutes a violation, and the section violated is listed in XI-9(C), any person who shall be convicted of any such violation shall be fined not less than the minimum fine set forth in XI-9(C) nor more than \$500.00 for each offense.*

4. *In case of an amendment of any section of the Urbana Zoning Ordinance containing provisions for which a penalty is provided in another section, the penalty so provided in such other section shall relate to the section so amended or the amending section, whether re-enacted in the amendatory ordinance or not unless such penalty is specifically repealed therein.*

5. *A separate offense shall be deemed committed on each day during or on which a violation of the Urbana Zoning Ordinance occurs or continues.*

6. *No provision of the Urbana Zoning Ordinance designating the duties of any officer or employees shall be construed as to make such officer or employee liable for any fine or penalty provided in the Urbana Zoning Ordinance for a failure to perform such duty, unless the intention of the Council to impose such a fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.*

7. *Except for Section VIII-3, the owners of the land upon which a violation of this Ordinance has occurred or is occurring shall be prima-facie responsible for such violations of this Ordinance which occur on property owned by such person; provided, however, the foregoing shall not be construed to relieve the occupants, or any of them, of the land upon which the*

zoning violation has occurred or is occurring of the responsibility for such violation under this Ordinance.

8. Pursuant to Section VIII-3, the owners of the vehicle, as determined by the records of the Secretary of State, which is parked in violation of that section shall be prima-facie responsible for such violations; provided, however, the foregoing shall not be construed to relieve the owner or occupant of the land upon which the violation occurred of responsibility for such violation under this Ordinance.

B. Settlement of Violation Prior to Suit Being Filed; Minimum Fines

1. A person accused of violating a section of the Urbana Zoning Ordinance set forth in paragraph C of this section may be permitted to pay the minimum fine which is set forth in paragraph C of this section as settlement of such violation if payment is made in the following manner:

Payment shall be made within 14 days after the date that the Notice to Appear was issued to the person accused of such violation. A payment shall be considered made within said 14 days if the payment is actually received by the City's Finance Department by 5:00 P.M. on the 14th day following the date the Notice to Appear was issued.

2. If a person pays the minimum fine pursuant to this section, then the City Attorney shall file no Complaint charging the person with the particular violation.

3. The minimum fine for those violations listed in paragraph C of this Section shall be as set forth in paragraph C of this section in lieu of the minimum fine set forth in other provisions of the Urbana Zoning Ordinance.

C. Minimum Fine Schedule for Certain Violations

1. The minimum fine for parking in violation of Article VIII is \$25.00.

2. The minimum fine for displaying a temporary sign in violation of Section IX-7 is \$25.00.

Section XII-9. Penalties

A. Any person, firm or corporation who alters, demolishes, repairs or relocates any landmark or any building, structure, site or object within a historic district without complying with the provisions of this Article shall be required to restore the building, structure, site or object to its appearance prior to the violation. Any action to enforce this section shall be brought by the City Attorney, his designee or by designated representatives of the Department of Community Development Services. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

B. If there is a willful violation of the provisions of this Article, any person, firm or corporation shall be deemed guilty of violating this ordinance and, upon conviction, shall be fined not less than \$50.00 nor more than \$500.00. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

Summary of Staff Findings

1. The proposed amendment would assist in the administration and enforcement of the Zoning

Ordinance.

2. The proposed amendment is consistent with goals and objectives of the Comprehensive Plan calling for neighborhood preservation.
3. The proposed amendment would address concerns about chronic over-occupancy of rental properties experienced in parts of Urbana and is a direct outgrowth of the work being undertaken by the University/Neighborhood/City “UNC” group.
4. The proposed amendment would make it unlawful to offer to lease property in such a way as to result in over-occupancy, thereby placing additional responsibility upon property owners to avoid creating such situations.
5. The proposed amendment would introduce escalating fines for repeat offenders, thereby addressing chronic zoning violation situations.
6. The proposed amendment would help to clarify and facilitate the Zoning Administrator and City Attorney’s responsibilities in enforcing the provisions of the Zoning Ordinance.
7. The proposed amendment would increase maximum zoning violation fees, thereby assisting in efficacy of enforcement efforts.

Options

The Plan Commission has the following options for recommendations to the City Council. In Plan Case 1914-T-04, the Plan Commission may:

- a. forward this case to City Council with a recommendation for approval of the proposed text amendment to the Zoning Ordinance, as presented herein.
- b. forward this case to City Council with a recommendation for approval of the proposed text amendment to the Zoning Ordinance, as modified by specific suggested changes.
- c. forward this case to City Council with a recommendation for denial of the proposed text amendment to the Zoning Ordinance.

Staff Recommendation

Based on the evidence presented in the discussion above, and without the benefit of considering additional evidence that may be presented at the public hearing, **staff recommends that the**

Commission recommend approval of the proposed text amendment to the Zoning Ordinance, as presented herein.

Cc: Champaign County Apartment Association

UNC Group Members

City: Tod Satterthwaite

University: Dan Bureau, Kris Fitzpatrick, April Getchius, Ron Hermann, Bob Kelly,
Dave Nelson, Esther Patt, Karen Tow;

Neighborhood: Liz Cardman, Betsey Cronan, Camille Goudeseune, Curtis Pettyjohn,
Lisa Treul

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