From: tom Beck
To: All Alders
Subject: Fwd: zoning change proposal
Date: Friday, January 27, 2023 10:41:55 AM

Begin forwarded message:

From: tom Beck
Date: January 27, 2023 at 10:40:08 AM CST
To: pccomments@cityofmadison.com
Subject: zoning change proposal

no, leave the definition of single families as is, not not change.

Thanks,
Tom
Protect our 1st. & 2nd. Amendment rights
Sent from my iPad

From: netseek@tds.net
To: All Alders
Cc: Plan Commission Comments; Mayor; Bannon, Katherine J; Tucker, Matthew
Subject: Proposed zoning changes
Date: Thursday, January 26, 2023 12:54:51 PM

Please vote against the zoning change to allow 5 unrelated people in a single family zoned residence. I would support allowing 3 unrelated people in an area zoned for single family, but beyond that will push out single families in exchange for students who when combined can pay higher rent/costs than a single family.
Julie Blankenburg

From: Dborski11@att.net
To: All Alders
Subject: [All Alders] Proposed zoning change
Date: Tuesday, February 7, 2023 4:38:45 PM

Recipient: All Alders

Name: Janice BusseBorski
Address: 1628 Jefferson Street, Madison, WI 53711
Phone: 608-257-8449
Email: Dborski11@att.net

Would you like us to contact you? No, do not contact me

Message:

Please vote no to the zoning change.
It will only make it harder for low income people to find decent housing in neighborhoods.
Janice Busse Borski

From: Jeremy Cesarec
To: Plan Commission Comments; All Alders
Subject: Plan Commission on 2/13/23 - 5:30 PM: register in support Agenda Item #10
Date: Friday, February 10, 2023 8:01:10 AM

Hello,

I am a homeowner and resident of the Tenney-Lapham neighborhood, and a graduate of UW Madison.

I support the change being proposed to the family definition ordinance.

These regulations are outdated and old-fashioned and do not account for the massive changes that have occurred in the population of Madison since they were written, including rent prices, population density, new models of family, and climate change concerns.

As a community, we cannot both say we want to end homelessness and discrimination against non-traditional lifestyles, while continuing to uphold the old-fashioned rules that enable those issues to persist.

Excelsior,
Jeremy Cesarec
408 Sidney Street

From: Nicholas Davies
To: Plan Commission Comments
Cc: Foster, Grant; All Alders
Subject: Yes on 74885: Remove discriminatory language!
Date: Sunday, January 8, 2023 5:23:54 PM

Dear Plan Commission and alders,

I hope to join the Plan Commission meeting tomorrow, but I want to make sure you hear from me regardless.

Based on the experiences of people I know, it's really common to violate the city ordinance about who can form a household and/or family together. There are a lot of consenting adults living together--sinfully or not!--who have no idea this ordinance exists.

Whether three adults are living together out of friendship, in a committed relationship, or are just trying to get by in an expensive housing market, that is none of the government's business! I'm appalled that in the year 2023 we still have a restrictive, regressive definition of a family in city ordinance.

Maybe the effect of this ordinance today is primarily in segregating students from landed gentry. But let's call it what it is. It's discrimination against lower-income people, against unrelated immigrant and refugee households, against the queer community who were historically denied the institution of marriage, against low income people in general.

Removing this bigotry from our ordinances will not mean telling any property owner what to do with their property. Nor will it mean telling any household that they need to change the composition of that household. Exactly the opposite.

If mansion-owners on Summit Ave want to impose occupancy limits on their neighbor's properties, then that is a separate issue. They should have to meet the high bar involved in changing the zoning of a property that isn't your own. They should certainly not be allowed to do so by keeping discriminatory language in city-wide ordinance.

Furthermore, the city does need to be able to house more people, and allowing unrelated people to live together if they so choose is one way to do that. Splitting housing costs also helps those individuals save in order to purchase a home of their own later. This is not speculation, this is the experience of me and lots of my friends. So I would also not support an occupancy-limit overlay of certain neighborhoods. Especially not along the University/Campus Drive BRT corridor.

Thank you to the sponsors for bringing attention to this regressive ordinance, and working to remove it.

Sincerely,

Nick Davies
3717 Richard St

From:	bjerlenb@wisc.edu
To:	All Alders
Subject:	[All Alders] "REDEFINING FAMILY ZONING PROPOSAL
Date:	Sunday, February 5, 2023 11:18:58 PM

Recipient: All Alders

Name: Barbara Erlenborn
Address: 2316 West Lawn Avenue, Madison, WI 53711
Email: bjerlenb@wisc.edu

Would you like us to contact you? Yes, by email

Message:

Dear Alders, my message is simple...please oppose revising the zoning ordinance allowing 5 unrelated people to rent a non owner occupied house. This ordinance change is being billed as making housing more affordable ...this zoning change will do just the opposite! As in the 60's and 70's when the downtown turned into student housing...you will be recreating the same scenario. Families will not be able to compete with 5 adult wage earners. Prices of home will go even higher and you will have created a very bad housing situation for the City of Madison. I implore hyou...Oppose this zoning change. There are ways for folks to become home owners with the help of HUD and HOPE loans. Folks will be able to build equity by truly owning a home...not just by living in one. Sincerely,

From:	bjerlenb@wisc.edu
To:	All Alders
Subject:	[All Alders] Revising Family Zoning Ordinance
Date:	Monday, February 6, 2023 3:30:39 PM

Recipient: All Alders

Name: Barbara Erlenborn
Address: 2316 West Lawn Avenue, Madison, WI 53711
Phone: 608-512-2409
Email: bjerlenb@wisc.edu

Would you like us to contact you? Yes, by email

Message:

Alders, this message is from former mayor, Paul R. Soglin:
The ECONOMICS of this zoning change is mammoth. The situation, now, is much worse then the
1960's: 1 a greater housing shortage. 2 we are not just talking about students, we are talking about all
adults who will merge their salaries to pay high rents for residences, thus out- pricing families 3
International companies are capitalizing on the housing shortage. They will buy up properties and then
rent them out.
This well-intentioned but unrealistic amendment is going to make the situation worse: All families,
regardless of income will be competing for housing with five unrelated people who can afford two to
three times the rent that a couple of combined families with children. Purchasing single family home in
Madison will become even more costly.
There is another negative consequence of this proposal: Families looking for an affordable single family
home will go the suburbs, thus encouraging more sprawl and environmental degradation.
The proponents of the new ordinance are well intentioned seeking a way of making housing affordable
for low and moderate income people. Unfortunately they have not thought out the economics. History
tells us that this proposal will drive up the cost of housing for the very people this proposal is designed
to help. The nation real estate companies are already on to this. Perhaps recently you have seen TV ads
from real estate companies, not locally based offering to buy homes for cash, no contingencies. They
want your house, it will not go to some local family looking to rent or own. A local family cannot afford

to match their offering price for your home. They will then rent the house to five unrelated adults, not
the families the ordinance is intended to help
Madison is at the cusp of repeating this zoning disaster. Do the right thing and vote against the "Revising Family Zoning Ordinance."

From:	bjerlenb@wisc.edu
To:	All Alders
Subject:	[All Alders] "REDEFINING FAMILY ZONING PROPOSAL
Date:	Friday, February 10, 2023 3:45:23 AM

Recipient: All Alders

Name: Barbara Erlenborn
Address: 2316 West Lawn Avenue, Madison, WI 53711
Email: bjerlenb@wisc.edu

Would you like us to contact you? Yes, by email

Message:

Dear Alder, I implore you to vote "No" on Redefining Family Zoning Proposal. The public has not been told the whole story. The hidden fact is that this zoning change is being proposed to pay for the bus rapid transit system and the public has not been fully informed as to the consequences and the impact this zoning change will have on their neighborhoods and single family housing. Please vote "No." Thank you,

From:	Ellie Feldman
To:	Tucker, Matthew
Cc:	Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Bidar-Sielaff, Shiva
Subject:	Re: A Madison Real Estate Brokers Perspective on Redefining the Family Definition
Date:	Thursday, January 26, 2023 9:48:28 AM

Matt,

Thanks for your questions, we have a 2 week old baby at home so life is a bit crazy right now in terms of me doing specific address research but I hope this helps below.

I would be very curious who you interviewed- are they lifelong Madison residents who grew up and live in the neighborhoods surrounding campus, is a significant portion of their business done in the neighborhoods surrounding campus? Do they own investment properties in those areas? There are 2,300 agents in Madison and unfortunately the barrier to entry in real estate is extremely low. Anyone who knows the areas surrounding campus and does a lot of business would not answer those that way.

$750K is nothing for families who would be the demographic to purchase an investment property here, who pay to send their kids to an out of state school, not to mention $750K to coastal buyers is like $250K to Buyers from the Midwest or South, they think our real estate values are cheap, same with tax rate. As mentioned, every listing I've had in these neighborhoods I've had out of state parents calling interested in zoning restrictions and purchasing for their child going to school at UW or Edgewood.

Maintenance costs higher here and normal wear and tear too expensive? That is honestly laughable and simply not true, maybe higher than the South? Also investors simply do not do the things that owner-occupied folks do to take care of these homes, again look at any previously single family home in Vilas or University Heights or Greenbush to see how the condition compares to single-family homes in those neighborhoods.

Our 1 bedroom under 600 square feet above our office at 2208 Regent St is rented for $1,825/mo to a UW football player. Our tiny studio apartments about 2201-2207 that are under 300 square feet are rented for $819/mo. Our 4 unit rents are similar, most all of our tenants are students- grad or undergrad. If I can buy a home for $750K with 20% down at let's say 6.5% interest rate with 5 bedrooms, my mortgage would be $3,397. I would rent each bedroom for a minimum of $1,500/mo (conservative) or $7,500/mo, and cash flow over $4K/mo. When my kid finished college I would sell the property, for the great appreciation that we see in Madison, let's assume conservatively a 5% appreciation a year for 4 years, no brainer. Much smarter financial decision for me as a parent if I can afford it to do this versus put my kid up in these apartments that are $2,000+/mo.

As for examples- One simply can look at the Lathrop area in University Heights and the North East Side of Vilas to see the difference between the areas that are rentals and single family owner occupied homes. There is a very distinct line that would immediately become blurred and extend into the primarily owner-occupied areas if this zoning proposal should pass. In college one of my friends lived at Madison and Oakland, which is primarily college rentals flanked by single-family homes, there are beer cans everywhere, homes are not taken care of, cars lining the streets, parties until 3a, kids passed out on the lawns. It would be very simple

for the city to reach out to neighbors in University Heights and Vilas to get their opinions on this- it really couldn't be more obvious, game day is an extreme example of this but it happens on smaller scales every Thurs-Sun specifically, and simply cannot be ignored.

One simply cannot ignore the fact that this zoning proposal would have a disproportionate negative impact on these neighborhoods, and they should 100% be exempt.

Ellie

On Tue, Jan 24, 2023 at 3:01 PM Tucker, Matthew <MTucker@cityofmadison.com> wrote:

> We have checked with some other real estate professionals. Here is what we heard:
>
> • Purchase of existing owner-occupied home in near-campus neighborhoods is highly unlikely.
>
> o Expensive cost. $750k+ too steep for investment property returning on only a maximum 5 resident occupants, often in a 3-4 bedroom singe family house.
>
> o Same about high tax rate, can't simply push it, on tenants as part of rent,
>
> o Maintenance costs in the upper midwest are high, also discourages this type of investment,
>
> o Normal wear-and-tear on an expensive houses in these areas discourages change to rental.
>
> • Thousands of new units have been created in/around campus, catering to students. Likely renters of near-camps conversions (if there are any) will not be students.
>
> • Thousands of new units have been built in the greater downtown and near downtown areas, catering to younger professionals retirees, with underground parking and on-site amenities. 5 unrelated rental in a 3-4 bedroom house with no amenities and limited parking seems unrealistic.
>
> I would like to learn about specific recent examples you know of in the area where owner-occupied houses became rentals. We can then look into the economics and situation at these sites. Anywhere in Madison would be fine – not just the near campus neighborhoods.
>
> Thanks for anything you might be able to provide to give this question more shape. Matt Tucker
>
> **From:** Ellie Feldman <ellie@the608team.com>
> **Sent:** Tuesday, January 24, 2023 1:02 PM
> **To:** Tucker, Matthew <MTucker@cityofmadison.com>
> **Subject:** Re: A Madison Real Estate Brokers Perspective on Redefining the Family Definition
>
>
> Thanks for the clarification, understood. My points still remain this would disproportionately affect the neighborhoods surrounding campus negatively, and not solve the issues it is aiming to solve, rather exacerbate them and create (and exacerbate)

unintended consequences for the Madison real estate market which is a large part of our local economy.

On Tue, Jan 24, 2023 at 12:58 PM Tucker, Matthew <MTucker@cityofmadison.com> wrote:

> Hi Ellie- Thanks for your comments. Just to clarify, the proposal is to treat the occupancy for dwellings equally regardless of owner occupancy or renter occupancy would apply city wide, not just for the neighborhoods surrounding the UW campus. About 1/3 of the land in the city favors owner-occupancy over renter occupancy, with the limitation to a maximum of "2 unrelated" in a renter occupied dwelling. Owner-occupied units are allowed up to five unrelated (or a family of related individuals plus four unrelated roomers) basically anywhere in the City. Matt Tucker
>
> **From:** Ellie Feldman <ellie@the608team.com>
> **Sent:** Tuesday, January 24, 2023 12:46 PM
> **To:** Plan Commission Comments <pccomments@cityofmadison.com>; All Alders <allalders@cityofmadison.com>; Mayor <Mayor@cityofmadison.com>; Bannon, Katherine J <KBannon@cityofmadison.com>; Tucker, Matthew <MTucker@cityofmadison.com>
> **Cc:** Bidar-Sielaff, Shiva <shivabidar@tds.net>
> **Subject:** A Madison Real Estate Brokers Perspective on Redefining the Family Definition
>
> Caution: This email was sent from an external source. Avoid unknown links and attachments.
>
> To Whom it May Concern,
>
> My name is Ellie Feldman Colosimo and I'm writing to you to share my perspective on the zoning issues at hand for the neighborhoods surrounding campus. I grew up in Madison, in the Vilas neighborhood, on Van Buren Street where my parents still live today. Since graduating college from UW-Madison in 2013 I have been practicing real estate in the Madison area, with most of my business exclusively focused on the neighborhoods surrounding campus.
>
> My husband and I live and are invested in the neighborhoods surrounding campus, owning and operating The 608 Team, A RE/MAX Lifestyle; the first and only RE/MAX luxury office in the state of Wisconsin. Personally, we own three buildings in University Heights; two commercial mixed-use buildings on Regent Street, a 4-unit residential building on Kendall Ave, and our primary residence in Dudgeon-Monroe.
>
> In reviewing the zoning proposal for the neighborhoods surrounding campus, I am quite frankly shocked; not only do I believe the proposal lacks any ability to solve the problems which are a lack of sufficient and affordable housing, but it instead, exacerbates the fundamental issue we see in Madison today: an increasingly unaffordable housing market.
>
> This zoning proposal attempts to address the scarcity of affordable housing for low-income residents in the campus area which are attributable to high density: there are more renters than there are rentals, more demand than supply, which is

the engine for high and getting higher rents leaving renters fewer and fewer opportunities be part of our neighborhoods.

Rather than alleviating this problem, this proposal would allow this density issue to spread into what are now primarily single-origin family households in long-established Madison neighborhoods which has the unintended consequence of family households being priced out of their own neighborhoods by more lucrative investment opportunities for campus housing.

Over the last few years, we have seen countless locals priced out of their own neighborhoods; these are families with school-aged children who wanted the ability to walk to Randall, to walk to West High School, to be close to the hospital because they were surgeons on call at all hours of the night; the very fabric of society that makes Madison what it is, one of the top places to live.

The amount of cash offers we saw in the real estate market in the last few years would blow you away; the coastal money that is coming here, the great Midwest migration for a better life, is increasingly making housing unaffordable in Madison.

What happens when we now change the ordinance to allow five unrelated people to live in the neighborhood? The DEMAND for homes to purchase goes up, and this time it's not the (smaller) percentage of the population who is moving to Madison to work and grow their families here, it is an additional percentage of the population that has the money to spend to make a solid real estate investment.

Almost all listings I've had in the neighborhoods surrounding campus, I have had multiple phone calls from cash Buyers from other states, reaching out to see what the zoning restrictions are on the homes for sale to inquire about buying for their children going to college at Edgewood or UW. Why would a parent who has the money to buy an investment property near campus pay to have their kid in a 200 square foot apartment for $2,000/mo when they can buy a house with cash or a loan that allows them to rent EACH bedroom in a 5 bedroom single-family home for $2,000/mo? It is a no brainer, something I would do in a heartbeat in a market that appreciates the rate at which Madison appreciates.

A healthy balanced real estate market has 6 months worth of inventory, which means all homes that are on the market now would be sold in 6 months. Currently in Madison we have less than 1 month of inventory, .9 to be exact, which means in just .9 months all inventory on the market will have sold. If we don't have room for people to live in the quintessential neighborhoods in the heart of Madison, and those neighborhoods become dominated with real estate investors, we are eating away at the very fabric of what makes Madison, Madison.

In summary, while this proposal could temporarily allow for more bedrooms for renters to rent, it will NOT solve the issue of rental unaffordability, rather exacerbate it, all while exacerbating the issue of increasing un-affordability of home ownership; a lose-lose outcome.

As far as being a "free way" to increase the city's housing supply, there is nothing

free about displacing permanent long-time residents in the near campus neighborhoods. There is no question that owner-occupied homes are better taken care of, see less turnover than, and help build community, over renter occupied homes. Is displacing permanent residents for wealthy real estate investors truly a “free” way of increasing housing supply? Decidedly, not.

What is the economic impact of exchanging home owners with real estate investors? Sure property taxes would increase as prices are driven up due to increasing un-affordability of ownership, but what about other sources of income and revenue? As we displace long term residents who live, work, and shop in our community 12 months out of the year we also disperse and displace the economic impacts of those community members in exchange for renters who may or may not live in these properties for even a full 12 months at a time before there is turnover.

If a long-term resident in Madison can no longer afford to live in the heart of our community where do they go? They disperse as well, which is what we have seen in the housing market, people having to move further and further from the city center to be able to afford a home to purchase. As they disperse, so do their jobs and their economic impact on the community. No longer are they shopping at the Hive on Monroe Street and getting their groceries at Trader Joes. No longer are they working at UW hospital or UW-Madison and commuting by bike to work. They are trading in the city for the suburbs because that is what they can afford, and at the same time, trading Trader Joes for Costco.

While I do not claim to know what the perfect solution is for housing affordability in Madison, I do know that the current zoning changes that are already in effect in the Regent Street corridor; the ability to now build higher; and the sheer number of proposed hundred plus unit developments on the city planning website, should be given time to work, before we enact a plan that deteriorates some of our most loved neighborhoods. We should learn from history and look at the Greenbush Neighborhood Plan, to see what effect this zoning proposal would have on the neighborhoods surrounding campus. Rather than having to provide future TIF money to re-establish these neighborhoods as single family neighborhoods, let's continue to let them flourish as they are now.

In summary; while we do have a serious issue of housing affordability in both the rental market and the real estate market in Madison, this zoning proposal will exacerbate this problem rather than solve it.

Sincerely,

Ellie Feldman Colosimo

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From:	Caitlin Gardner
To:	Plan Commission Comments; All Alders; Benford, Brian; Mayor
Subject:	Support of change to family definition
Date:	Monday, February 13, 2023 1:03:42 PM

Hello all,

As a long term Madison renter, I support the proposed changes to the family definition. Banning more than two unrelated people from renting in many areas of Madison does not make sense and is discriminatory against a large swath of the Madison population. Where this ban is enforced or not enforced can be discriminatory. Some may, understandably or unintentionally, find themselves in a living situation that is not allowed, leaving them at risk of eviction at the whim of neighbors. I hear many alders, and now alder candidates, purporting to support affordable housing. Here is a change that could help improve housing affordability in addition to protecting folks from being evicted due to an antiquated definition of family.

Updating this rule is a no-brainer.

Best,
Caitlin Gardner

From: Lucy Gibson
To: Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Tucker, Matthew
Subject: I agree that single family homes should be able to house more unrelated people
Date: Monday, January 30, 2023 8:22:46 PM

I just want to tell you that I agree with the proposal to allow up to 5 unrelated people to live in a single family home. I believe we are in a terrible housing crisis, and this is only one measure that will help somewhat to alleviate it.
We also need more government built and maintained housing, given that the private sector is currently going hog wild with raising rents such that people who newly have gained relief from poverty due to higher wages now have to turn over their gains to realtors and developers and landlords, thus falling back into poverty and possible homelessness. The thousands of homeless people, children, and families in Dane County are terrifying to me and anyone else who wants to live in a stable community, and also to not be afraid of losing their own housing at some point.
Sincerely,
Lucy Gibson
1610 Angel Crest Way
Madison WI 53716
608-221-3258

From: Nate Goethel
To: All Alders
Subject: Support Changing the Family Definition
Date: Friday, February 3, 2023 4:35:27 PM

Alders,

I'm writing you to voice my support of the proposal to change the definition of "family" in Madison's zoning codes.

After graduating from UW in 2017, a couple of friends and I (three total tenants) were denied from several apartments/rentals due to this archaic definition. Loosening this definition will help alleviate housing issues in Madison by allowing friends, coworkers, and others to split housing costs.

Additionally, this proposal does not change occupancy limits, so any concerns that loosening this definition will lead to overcrowding are unfounded.

Sincerely,

- Nate Goethel (resident and homeowner, District 10)

From: Jamesgisaac@gmail.com
To: All Alders
Subject: [All Alders] Proposed Zoning Definition Change
Date: Tuesday, January 31, 2023 9:46:19 AM

Recipient: All Alders

Name: James Isaac
Address: 4006 Mandan Crescent, Madison, WI 53711
Phone: 608-234-2009
Email: Jamesgisaac@gmail.com

Would you like us to contact you? Yes, by email

Message:

Dear Alders,

First and foremost, thank you for everything that you do for the Madison community. I'm sure your jobs can feel thankless at times, and I'm grateful that you invest your time in our community.

I write today related to the proposed change of the definition of "family" in the city's zoning ordinance. In a recent Cap Times article that described the proposal, Alder Grant Foster, who I understand is leading the effort to change the definition, was quoted as describing the views of those Madison residents who oppose his proposed change as, among other things, "disgusting." Although I have heard and read many disconcerting things from certain members of the Common Council since moving back to Madison a few years ago, this disparagement of city residents is near the top of the list. Alder Foster's dismissive hyperbole is hateful, condescending, and, perhaps most importantly, wholly unproductive. Alder Foster's comment is yet the latest example of how unrelenting ideology taints local government's decision-making process. City residents who do not share Alder Foster's opinion are not "disgusting." Alder Foster's opinion is worth no more than the opinion of other well-intentioned city residents. To name call and bully, as Alder Foster has done in his comments, is one of the easiest ways - and certainly most childish ways - to avoid engagement with diverse viewpoints.

When I consider both sides of the current debate, I do not see any indication of bad faith on the part of those who have concerns with the proposed change. There is nothing wrong with caring about one's neighborhood or expressing skepticism that Alder Foster's proposal will even accomplish its stated objectives. I live in one of the neighborhoods that could be affected by this change. As with any proposed change to the neighborhoods that Madison residents call home, residents are entitled to their own views on that proposed change - and they are certainly entitled to express a view that may be contrary to that held by certain Common Council members without a Common Council member denigrating them.

One gets the sense that Alder Foster's attempts at bullying on this issue will not be limited to city residents who disagree with him, but rather will also extend to his fellow Common

Council members. Thankfully, based on prior experience, I know that there is a great amount of independent thinking on our Common Council, and I applaud in advance those on the Common Council who will exercise the same on the present topic, whatever their ultimate view may be.

Sincerely, James Isaac

From: gdjacob@sbcglobal.net
To: All Alders
Subject: [All Alders] Zoning meeting
Date: Monday, February 13, 2023 4:42:13 PM

Recipient: All Alders

Name: GAIL JACOB
Address: 2320 eton ridge, madison, WI 53726
Email: gdjacob@sbcglobal.net

Would you like us to contact you? Yes, by email

Message:

In advance of tonight's meeting, I want to express my support for the proposal submitted by Alders Vidaver and Evers to delay voting on zoning changes until more questions about impact can be answered. I fully agree with the content of their proposal and concerns they have raised. Having been involved in accessing
affordable housing for over forty years for people with
disabilities, I am well aware of the needs, and the pitfalls of repeating past mistakes. I would also ask that the conversations in the future be more comprehensive to include more community voices about what people are looking for in terms of stable, affordable housing and neighborhoods. We also need to explore the roles/efforts of various stakeholders in the community in terms of what we all need to do in order to make Madison a better place to live for everyone.
Thank you.

From:	Claude Kazanski
To:	Mayor; Plan Commission Comments; All Alders; Bannon, Katherine J
Subject:	No on Proposed Definition of Family
Date:	Tuesday, February 7, 2023 11:44:59 AM

Dear Mayor Rhodes-Conway and Alders:

The current definition of "family" in the zoning changes you are now considering will not improve the availability of affordable housing for low income families. Economic realities suggest that the beneficiaries will be students seeking off campus housing, realtors, and student housing landlords.

It is difficult to believe this will not occur, particularly in areas that students find appealing. As currently written the definition will encourage new concentrations of student housing in what are now considered family oriented neighborhoods, without increasing the availability of housing for low income families. It should not be adopted.

Why not encourage multi-family buildings where one unit is owner occupied? Or, limit the number of unrelated occupants to three?

Please restructure the proposed definition to better encourage greater density and affordability for low income families.

Thank you for the opportunity to present my concerns.

Claude Kazanski
2233 West Lawn Ave
Madison

From: Leopold, Madelyn
To: All Alders
Subject: Family Definition Proposal
Date: Tuesday, February 7, 2023 7:43:55 AM

Dear Decision Makers:

I think the question is how best to assure that the zoning changes will benefit low-income families.

A landlord renting to five students can charge more than one renting to a family of two working adults with young children. Wherever this practice becomes common, families will be priced out of the market--and this practice is likely to become common in areas that are attractive to students.

Can the rule be designed to promote neighborhood diversity in such areas while still increasing density?

Thank you for your consideration.

Madelyn Leopold
2233 West Lawn Ave.
Madison 53711

From: Tibi Light
To: All Alders
Subject: Zoning proposal to "Change Family Definition"
Date: Sunday, January 29, 2023 10:56:32 AM

Hello all,
I have been a resident of Madison for 53years. I have been a student living in a single family home with 3-4 other students, a dorm resident, a property owner of numerous different properties, and a landlady.

I have found thru personal experience, and the observations of parents, just how formative and valuable the group living experience is for young people. The affordability is critical as well.
For lower income people, living in group situations can be a necessity.

I have also seen and experienced how thoughtless, destructive and irresponsible the behavior of young people, and others, can be in these living situations. It can make a safe, quiet and pleasant neighborhood into a very difficult place to live.

We have a housing shortage. We have students and other people who need affordable places to live….often on a short term basis. If landlords are empowered to enforce a code of behavior and ethics, and held accountable to enforcing them with their renters, and renters are also held accountable for responsible behavior, perhaps the situation could become a win-win.
Neighbors should have the landlords contact so they can inform the landowner of what is going on, and loop the landlord into the community.

Items such as a noise curfew, limit on cars per property, garbage conditions, property upkeep-inside and out, conditions for out of state landlords, rowdy behavior in yard or street, are all of concern.

If people are renting out their homes as a means to make money, fine, but they need to be accountable for the quality of life that property plays as a part of the neighborhood. If that can't be ensured, then they shouldn't be allowed to rent out to multiple unrelated people in a residential community. Build good community, build a good world.

Sincerely,
Tibi Light

From:	litweilerc@hotmail.com
To:	All Alders
Subject:	[All Alders] Change in Zoning to 5 unrelated people in residential "home"
Date:	Monday, February 6, 2023 10:23:00 AM

Recipient: All Alders

Name: Chuck Litweiler
Address: 5 Lukken Court, Madison, WI 53704
Email: litweilerc@hotmail.com

Would you like us to contact you? No, do not contact me

Message:

I have not kept up on the policy change proposed. Just now read Paul Soglin's case against the change. Based on his experience he thinks it will encourage sale of a lot of homes to businesses that will increase occupancy and rents driving out potential single family owners. Unless you can disprove his argument do not increase the allowable unrelated persons occupancy..

From:	Lisa Miller
To:	All Alders; Plan Commission Comments; Mayor; Bannon, Katherine J; Tucker, Matthew
Subject:	Zoning proposal to change family definition
Date:	Thursday, January 26, 2023 2:20:03 PM

To all,
I oppose changing the zoning law to allow more than 2 unrelated persons to live in a house.
Lisa Miller
2513 Commonwealth Ave
Dudgeon/Monroe neighborhood

Sent from Lisa's iPad

From: Madison AHAA
To: All Alders
Subject: Change of definition urged
Date: Sunday, February 12, 2023 6:58:29 PM

Dear Plan Commission & Common Council

The Affordable Housing Action Alliance would like to voice our support of the revision of the family definition to allow up to 5 unrelated adult renters to share a unit in **all** residential zones across the City of Madison.

Currently, untold numbers of renters across Madison are already violating the existing family definition ordinance, often unknowingly. If a neighbor reports them, their housing is at risk. The change to the family definition will allow people to stay secure in their own homes without fear of a neighbor's complaint leading to them being forced out. The City reports receiving about 20 of these complaints each year.

This ordinance clearly discriminates against renters, since 5 unrelated adults can live together if one of them owns the house. According to the City's 2022 Housing Snapshot, more than half of the City of Madison's population is renters, and almost half of the renters are rent-burdened (paying more than 30% of their income on housing). This ordinance change would open up more housing options for renters and effectively increase the housing supply, while current supply is very constrained.

Restricting where low-income people can live is directly related to racist redlining practices, and it also protects the traditional family structure based on mid-century morals and cultural fears of that era. We live in a different era than we did when this ordinance was first created. It's becoming fairly commonplace for adults to share housing costs, and to marry and/or have children later in life (or never). This kind of home-sharing is not just about students. Housing costs have far outgrown incomes. Many people of every age no longer have the resources to buy homes, and may choose to rent with other consenting adults to afford the cost of a single-family house. Not allowing at least one person to occupy each bedroom in a home creates unnecessary economic hardship. We agree with the staff analysis that this ordinance as it currently stands hurts low-income households and people of color.

The current law also limits cost sharing among seniors and retirees who are increasingly looking for ways to reduce expenses and gain companionship. Additionally, Madison has an uncountable but significant number of homeless individuals who stay with friends and family for the near or long term while trying to find other housing, the "doubled-up" population. An ordinance that restricts how many unrelated people can be in a single-family house together impacts the legality of the doubled-up population having safe housing with consenting friends.

If the concerns are about occupancy numbers in a given home, building codes already exist for maximum occupancy requirements based on square footage. If the

concerns are about potential noise, we also already have noise ordinances to address that.

Please support the ordinance change for all residential areas of Madison.

Sincerely,
Affordable Housing Action Alliance

From:	pmeyer2@wisc.edu
To:	All Alders
Subject:	[All Alders] zoning
Date:	Wednesday, February 8, 2023 10:33:19 AM

Recipient: All Alders

Name: Patricia Meyer
Address: 2451 commonwealth, madison, WI 53711
Email: pmeyer2@wisc.edu

Would you like us to contact you? No, do not contact me

Message:

I am writing to ask you and the Council to delay or oppose rapid acceptance of proposed changes to the City's residential zoning rules.

I am greatly confused about the outcomes of this rezoning proposal. I have read info about it in the newspaper and from that I understand that the intent is to increase housing density in specific areas of the city. This seems like a logical plan, but I can't support it if it means construction of 5- story apartment buildings in are what are now residential neighborhoods, if it means that single story residences will be prohibited and I don't understand how either of these measures will make low-cost housing more available. What developer is going to build new apartment buildings and make them available at rental levels that are less than existing the city right now? Am I to believe that this plan is going to somehow reduce rental rates throughout the city?
I have read that the existing zoning for single family neighborhoods has intentionally segregated people. I have also read the claim that banks have redlined certain neighborhoods and I have read that Madison's zoning laws have caused severe segregation by race in home ownership. While segregation exists, has it been caused by zoning? I have not seen proof of any of these claims.
I believe this matter is very controversial. I also believe the City Council should delay taking any action on the proposed zoning changes until citizens like me can clearly understand the purpose, the need, and the effects this change will make.

From:	Mike Miller
To:	Plan Commission Comments; All Alders; Mayor
Subject:	Proposed change of family definition in zoning ordinance. Feb 28, 2023 vote
Date:	Friday, February 3, 2023 11:41:30 AM

Hello, my name is Michael Miller and my wife Rita and I have resided at 2375 West Lawn Ave, Madison since about 1990.

We and several of our neighbors are ADAMANTLY OPPOSED to the new proposed zoning change in the family definition for the following reason.

In 2006, a house 2 doors east of our side yard on Monroe St was purchased by a Mount Horeb resident/builder named Karls, acc to city assessors page, as a college house for his daughter and 4 unrelated students. That's when the nightmare began of nightly, including weeknight, parties til 2 or 3 AM which included the residents and their guests shouting and urinating on our bushes below our and our kids' bedrooms as well as leaving 1/2 full and empty beer cans and garbage in our yard. Neither our kids or us or our neighbors and their kids got any sleep. Several police calls and visits occurred, as well as dad coming over from Mount Horeb in the middle of the night frequently. Neither made a difference. This went on for at least a couple months. Finally, Thank God, our neighbor in between discovered the present ordinance and that Karls was in violation of said ordinance. Karls was informed by the council that he was in violation after they (you) received a petition from at least 7 surrounding neighbors complaining about the noise, trespassing and zoning violation. Karls moved out all but his daughter and one student to comply. He ultimately sold the house to a family at 2352 Monroe St, apparently because it was no longer a good financial investment. We have had quiet nights since.

Please vote down this proposed change for Dudgeon Monroe and other areas surrounding campus or create an overlay zone near campus to grandfather in the present ordinance. Without the protection of the present ordinance we could still be dealing with an intolerable situation.

Respectfully submitted.

From: Mike Miller
To: Plan Commission Comments; All Alders; Mayor
Subject: Re: Proposed change of family definition in zoning ordinance. Feb 28, 2023 vote
Date: Tuesday, February 7, 2023 12:02:47 PM

And if you vote this new proposal in, against the wishes of a large number of home owners, please also put some partner ordinance in place that protects us against overcrowded neighboring houses full of students (or others) who disrupt the peace and tranquility of our neighborhoods. Because as I noted, in our situation, numerous police calls didn't solve the problem, only the present zoning ordinance did.

On Fri, Feb 3, 2023, 11:41 AM Mike Miller <mrmiller2375@gmail.com> wrote:

> Hello, my name is Michael Miller and my wife Rita and I have resided at 2375 West Lawn Ave, Madison since about 1990.
>
> We and several of our neighbors are ADAMANTLY OPPOSED to the new proposed zoning change in the family definition for the following reason.
>
> In 2006, a house 2 doors east of our side yard on Monroe St was purchased by a Mount Horeb resident/builder named Karls, acc to city assessors page, as a college house for his daughter and 4 unrelated students. That's when the nightmare began of nightly, including weeknight, parties til 2 or 3 AM which included the residents and their guests shouting and urinating on our bushes below our and our kids' bedrooms as well as leaving 1/2 full and empty beer cans and garbage in our yard. Neither our kids or us or our neighbors and their kids got any sleep. Several police calls and visits occurred, as well as dad coming over from Mount Horeb in the middle of the night frequently. Neither made a difference. This went on for at least a couple months. Finally, Thank God, our neighbor in between discovered the present ordinance and that Karls was in violation of said ordinance. Karls was informed by the council that he was in violation after they (you) received a petition from at least 7 surrounding neighbors complaining about the noise, trespassing and zoning violation. Karls moved out all but his daughter and one student to comply. He ultimately sold the house to a family at 2352 Monroe St, apparently because it was no longer a good financial investment. We have had quiet nights since.
>
> Please vote down this proposed change for Dudgeon Monroe and other areas surrounding campus or create an overlay zone near campus to grandfather in the present ordinance. Without the protection of the present ordinance we could still be dealing with an intolerable situation.
>
> Respectfully submitted.

From:	Sam Munger
To:	Plan Commission Comments
Cc:	All Alders
Subject:	In support of agenda item 10 / legistar item 74885
Date:	Monday, February 13, 2023 3:46:06 PM

Friends - I'm writing in **support** of the change to the definitions of "family" under Legistar File #74885 to be discussed in the Plan Commission on 2/13, agenda item 10.

I'm a homeowner and long-time resident of District 13, just down Keyes Ave from Alder Evers. I greatly value the quality of the local community and its mix of residential, commercial, and public establishments. And I understand the concerns about potential changes to that community. However, I do not think maintaining on the books a law with its roots in the 1950's moral panic about immigrants, LGBTQ, and youth is either an effective - or a morally defensible - mechanism for building an inclusive community.

No one who lives in Madison would deny the obvious need for more housing, affordable and otherwise; this will increase both affordability and density, especially for renters. Is it a complete solution to those problems? Obviously not. And we can all agree that the new, high-priced student housing that seems to be the only thing developers are willing to build at the moment is not a solution, either. But the fact that this will not completely solve Madison's housing problems is not a good reason to oppose or delay a measure that is at least somewhat helpful.

One last story about this: several years ago, a younger unmarried couple in our neighborhood had a complaint under this ordinance called in against them - apparently, an elderly neighbor was offended that they were living "in sin" and generally felt that they and their kids were too noisy. They were so upset that they subsequently left theneighborhood. If that is the type of "community" people want to preserve with this ordinance, then please count me out. Please support updating Madison's regulations to allow up to 5 unrelated adults and their children to live in these districts no matter their marital status or renting/owning status.

Sincerely,
Sam Munger
1825 Keyes Ave
Madison, WI 53711

From: James Nahas
To: All Alders
Subject: Zoning
Date: Friday, February 10, 2023 9:18:50 AM

Good Morning:

In the 70's Madison's residential zoning categories ranged from R1 to R6. The higher the number the more density was allowed. Most Madison single family home districts were zoned R-1 or R-2. Large apartment buildings (Hill Farms) and campus area neighborhoods were zoned R6. Dudgeon Monroe, much of Vilas, Tenney-Lapham and Willy Street were R3 and R4 where we had single family homes mixed with the frame 2&3 story apartments. Going out, Johnson and Gorham, Jennifer and Spaight Streets were R-4. In the 60's and 70's the University of Wisconsin had the worst record in terms of providing university housing for students. The UW relied on private housing operators more than any other university in the country. On campus housing was provided for less than half the student population. Baby boomers in the early 60's moved into the University Avenue, Dayton Street, Camp Randall, Johnson streets. Family housing and 2&3 story buildings occupied the area where Sellery and Witte now exist. In the mid 60's students moved into Mifflin area. By 1970, UW student enrollment grew from 15,000 to 35,000 students. Students came to occupy University Heights, Vilas, Williamson, East Johnson, Gorham to the Yahara River. 2-5 students were paying and living in one apartment. Families could not compete and moved out. Schools closed: Lincoln, Central High, Doty, Washington, Longfellow, Dudgeon, and Lapham. Whole areas depopulated by elimination of grade schools and high schools .New families would not move into the area because there were no neighborhood schools or the the schools were threaten with closure. Each section of R4 was vulnerable to this dynamic growth…so R4A was created. The difference between R4 and R4A…R4A did not allow for more than 2 unrelated people in a non-owner occupied house. Today it is a worse situation because 1) we are not just talking students and the campus. 2) young professionals have higher incomes to merge and pay higher rent 3) international companies are capitalizing on the US housing shortage and are becoming an interface between housing and the public. 4) Houses and apartments that are designed for single family will now –because of combined incomes—drive up the value of a house…and families will be forced out. The implications of revising the zoning ordinance go far beyond the students and the campus. The ECONOMICS of this zoning change is mammoth. The situation, now, is much worse then the 1960's: 1) a greater housing shortage. 2) we are not just talking about students, we are talking about all adults who will merge their salaries to pay high rents for residences, thus out- pricing families 3) International companies are capitalizing on the housing shortage. They will buy up properties and then rent them out. This well-intentioned but unrealistic amendment is going to make the situation worse: All families, regardless of income will be competing for housing with five unrelated people who can afford two to three times the rent than a couple of combined families with children. Purchasing single family home in Madison will become even more costly. There is another negative consequence of this proposal: Families looking for an affordable single family home will go the suburbs, thus encouraging more sprawl and environmental degradation. The proponents of the new ordinance are well intentioned seeking a way of making housing affordable for low and moderate income people. Unfortunately they have not thought out the economics. History tells us that this proposal will drive up the cost of housing for the

very people this proposal is designed to help. The nation real estate companies are already on to this. Perhaps recently you have seen TV ads from real estate companies, not locally based offering to buy homes for cash, no contingencies. They want your house, it will not go to some local family looking to rent or own. A local family cannot afford to match their offering price for your home. They will then rent the house to five unrelated adults, not to the families the ordinance is intended to help. Madison is at the cusp of repeating this zoning disaster. Do the right thing and vote against the “Revising Family Zoning
Thank You,

Jimmie Nahas
1908 Adams St
jnahas57@me.com
608-628-0955

From:	tomnordberg@juno.com
To:	All Alders
Subject:	[All Alders] Zoning
Date:	Wednesday, February 8, 2023 2:54:56 PM

Recipient: All Alders

Name: Thomas Nordberg
Address: 2628 Van Hise Ave., Madison, Wi 53705
Phone: 608-231-3322
Email: tomnordberg@juno.com

Would you like us to contact you? Yes, by email

Message:

I am opposed to zoning changes that would allow five unrelated people to live in a house in this Regent neighborhood.
I agree with former mayor Paul Soglin: that it would be detrimental to families living in this neighborhood.

Please consider leaving the current zoning as is. That would help me and my family to stay in our home here.

From: William Ochowicz
To: Plan Commission Comments; All Alders; Benford, Brian; Mayor
Subject: I support the change in the family definition
Date: Monday, February 13, 2023 10:00:57 AM

Hello all,

I have been a renter in Madison for about 10 years, I am on my neighborhood association's council, and I consider myself a good neighbor. I am fully in favor of the proposed changes to the family definition, which currently bans more than two unrelated people from renting in more than 1/3 of Madison. This is absolutely an outdated rule that should be removed from the ordinances.

I would like to highlight a letter that my friend wrote:

> I am writing today in support of the proposed change to revise the family definition, which is an antiquated and discriminatory law that reinforces "traditional" families at the expense of unmarried couples, young professionals, blended families, retirees, students, low-income residents, and people of color.
> For many years after graduating, I was able to afford to live here because I rented with three other non-related roommates. As someone who worked for a non-profit, my income was limited and this housing arrangement was the only way I could afford to live in my neighborhood. Although we were four young men renting a house, we contributed to the neighborhood. We volunteered to clean our nearby park and made friends with our adjacent neighbors, home-owners with young children. We loved our time in that neighborhood and it would not have been possible with enforcement of the current family definition.
> I have now learned this current practice actually banned us from living in that home, which was in a TR-C3 zoned district in the Greenbush Neighborhood (410 S. Orchard Street). This was not weaponized against us. I suspect our privilege as four white men helped considerably.
> Please change this language so that Madison can become a more inclusive community and that this rule can stop being enforced in discriminatory, racially-driven manner.

I'd also like to specifically contrast this with Alder Vidaver's blog, which calls out naturally occurring affordable housing, speculation, and implores us to *"... dispense with the hyperbole and the vitriol and work together to move forward with the best possible solution. ".*

There is nothing hyperbolic about my friend's situation. He is a real person, who actually lived in Greenbush, and who could have lost his housing if someone complained to the city. It is absolutely **bullshit** that it's even a possibility for that to happen in our city in this day and age. No amount of studies, or delays, or debates, or overlays, or any **other half-assed solutions will make that not bullshit.** If 4 people want to rent a 4 bedroom house, they should be allowed to. Full stop.

The outcome of this change is entirely predictable. There are people today, living in Madison, who are under threat of losing their housing because of this ordinance. **At least 147 people have lost their housing because of this ordinance in the past 10 years**. Legalizing this kind of living situation will lead to more "naturally occurring affordable housing" that some

opponents to the change suddenly care about. And what makes this so frustrating is that this is even up for debate.

Stop the delays, and change the definition.

Thank you,
Will Ochowicz

From:	Masaru Oka
To:	Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Tucker, Matthew
Subject:	proposed change to "single family" zoning
Date:	Friday, January 27, 2023 12:50:19 AM

Hi, I'm writing to strongly support the proposal to get rid of the 2 unrelated people in a house rule. This caused me and a friend a ton of grief back in 2013 when as young professionals we wanted to live in Dudgeon-Monroe. We wanted to be closer to downtown than Verona or the far west side (Walmart) because it's just so much livelier. But his girlfriend of several years would be joining us once she graduated, and that meant we technically were excluded from most of the housing we wanted. I can understand the people wanting a buffer zone maybe within a few blocks of Camp Randall. Those probably would get turned into student rentals. But just a little farther and you're looking at a lot of 20-something workers who want to live in a great neighborhood and are getting friends together to split the high rent.

From:	Jean Parks
To:	All Alders
Subject:	concerned about the proposed zoning changes
Date:	Tuesday, February 7, 2023 5:36:15 PM

Dear Alders of Madison,

Please protect the neighborhoods near the UW campus. An **owner-occupancy requirement** as part of a zoning overlay to the proposed change of "family" definition seems like a reasonable solution. It would welcome folks into a home that is cared for by someone on site.

Our spot along the 2000 bock of Kendall Ave is a great mix of students, elderly and families(of all kinds). As properties turn over, I fear that investors will be first-in-line, cash-in-hand to purchase homes. Those homes will surely be student "transient" rentals. The Greenbush history is a homegrown example of that.

Sincerely,

Jean Parks
302 Chamberlain Ave

From: Mary Pustejovsky
To: All Alders
Subject: revision of family definition
Date: Wednesday, February 8, 2023 12:57:01 PM

Hello
I am writing to express my support for the revision of family definition in the zoning code. When I was working in Boston at a nonprofit many years ago, the only place I found that I could afford was a 7 bedroom house in Brookline (town adjacent to Boston). It was near a T stop, so I could take transit to work. I could not afford a car. Brookline had an ordinance that said no more than 4 unrelated women (yes it was called a brothel law) were allowed to live together. We were all graduate students, teachers, or just folks making very low incomes. We never had parties or anything like that. However, since what we did was technically illegal, we had a "silent lease" for those outside the 4 official tenants. If there had been issues with the landlord or among ourselves, we had very little tenant protections. It put us in a precarious place but many of us felt we had no choice. Current regulations put people in a precarious position if they attempt to have 4 people rent a 4 bedroom house.
The revision proposed by staff seems reasonable, and would make the city more equitable to all. We should not have some neighborhoods that are allowed to discriminate against those who are lower income or who are students and cannot afford more for rent. In a city where more than 50% of residents rent their homes, this is critical.
I know there are concerns about noise or trash. There are already ordinances at the city that exist to address those concerns. Residents should use those rules to file complaints against those who are too noisy, or leave too much trash, etc.

Thank you for your attention to this matter.

From:	draubal@gmail.com
To:	All Alders
Subject:	[All Alders] Proposed Zoning Changes
Date:	Tuesday, December 13, 2022 1:21:48 PM

Recipient: All Alders

Name: Douglas Raubal
Address: 1826 Rowley Avenue, Madison, WI 53726
Phone: 608-279-1419
Email: draubal@gmail.com

Would you like us to contact you? Yes, by email

Message:

I have just become aware of proposed changes to the City of Madison's zoning which would:

-Allow up to five unrelated adults and their dependents in a housing unit in all zoning districts that allow housing.
-Keep the current standard of allowing an unlimited number of related individuals e.g., multi-generational families are allowed to live together.-
-Remove the distinction between owner-occupied households and renter-occupied households.Allow two unrelated families with dependents to live together as one household e.g., an unmarried couple with their respective children.-
-Remove the distinction between some zoning districts and others by creating the same occupancy standard for all zoning districts that allow housing.

I am vehemently opposed to these changes. I live in the Regent neighborhood near the UW campus and I have no doubt this would result in the rapid degradation of my neighborhood by changing long-standing family housing into campus housing. If these changes were to go through, you would see local companies that rent housing to students buying up houses as they become available and turning them into campus housing. This would destroy the fabric and nature of the neighborhood causing people like me to have to leave. We were hoping to retire in this home, but if these changes come to fruition I believe this would be very unlikely. The current zoning system in areas adjacent to the UW campus should be maintained as is, or the city risks turning areas like mine into another West Mifflin street. Families would leave and home prices would drop. A significant purpose of zoning is it to recognize that one size does not fit all and that what works for one part of the city may not work well for others. Please continue to recognize the need for zoning near campus to maintain these historic neighborhoods

Douglas Raubal
Rowley Avenue
Madison, WI 53726
608-279-1419

From:	Ann Reyes
To:	Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Tucker, Matthew
Subject:	zoning definition
Date:	Saturday, January 28, 2023 8:48:59 AM

Hello,

I am writing to express my support for the proposed changes to the definition of "family." As an educator in our community for the past 14 years, I am acutely aware of the changes in the average family in our society, as well as the discriminatory impact of the current definition of "family" as it relates to zoning. Madison has continually been shown to be a very different city for BIPOC and it is time we take action to fix this. It you support the message of Madison's Racial Equity & Social Justice Initiative (https://www.cityofmadison.com/civil-rights/programs/racial-equity-social-justice-initiative) then you must support this proposed change to the definition of "family!"

Racial Equity & Social Justice Initiative - Madison, Wisconsin

Establish racial equity and social justice as a core principle in all decisions, policies and functions of the City of Madison. Madison is known for its commitment to livability and sustainability, yet not all people, families and neighborhoods share in this experience.

www.cityofmadison.com

From:	Alex Saloutos
To:	Tucker, Matthew
Cc:	council; Mayor; Bannon, Katherine J; Plan Commission Comments; Ledell Zellers; All Alders; Haas, Michael R; Jason Hagenow; tony.fernandez5@gmail.com; sundevils98@yahoo.com; bacantrell@charter.net; klanespencer@gmail.com; mcsheppard@madisoncollege.edu; nicole.solheim@gmail.com
Subject:	Discrimination in zoning code, equitable access to housing, and Wisconsin AG"s opinion on definition of family
Date:	Thursday, January 26, 2023 12:14:22 AM
Attachments:	63 Op. Att"y Gen. 34.pdf

Hi, Matt!

I support updating the zoning code so occupancy anywhere in the City of Madison is based on the number of adult members in a household and not a definition of family that is based on blood or marriage, which is inequitable and discriminatory. There are better, more nuanced ways to define a household and how many people can live in a home. It may take some time to wordsmith the definition of household to accomplish the intended goals but using a definition of family based on blood or marriage needs to go.

In support of this change, I call your attention to the opinion of the Attorney General of Wisconsin on this specific issue, “Zoning ordinances utilizing definitions of ‘family’ to restrict the number of unrelated persons who may live in a single-family dwelling are of questionable constitutionality.” 63 Op. Att'y Gen. 34 (Ops. Wis. Atty. Gen. 1974). A copy is attached for your reference. That was 1974. This is 2023.

It’s time for us to remove discriminatory language in our zoning code and make the zoning code fair and equitable for all.

Cheers,

--

Alex Saloutos
BHHS True Realty
Cell: (608) 345-9009
Email: asaloutos@tds.net

From: Alex Saloutos
To: Tucker, Matthew
Cc: All Alders; Mayor
Subject: FW: Question about Functional Family/Household
Date: Monday, February 13, 2023 9:27:02 PM
Attachments: Zoning For Families.pdf

Hi, Matt!
Katie's testimony to the Plan Commission tonight about the use of the functional family/household definition in place of the current definition of family in the zoning code was misleading and a disservice to the Plan Commission and the citizens of Madison. In essence she stated staff looked at it and it isn't good because of the burdens for administrating it. What she described is Character Model for implementing the functional family/household definition. There are two other models for implementing a functional family/household definition she did not tell the Plan Commission about. One is the Privacy model, which I prefer, and the other is the Density Model, which would be my second choice. The model she described is the least desirable and most onerous of the models. What can be done about this?
Respectfully,
--

Alex Saloutos
BHHS True Realty
Cell: (608) 345-9009
Email: asaloutos@tds.net

From: "asaloutos\;tds net"
Date: Monday, February 13, 2023 at 8:09 PM
To:
Cc: Michael Haas , Jason Hagenow , , , , , , Satya Rhodes-Conway , "allalders@cityofmadison.com" , Matt Tucker , Ledell Zellers
Subject: Question about Functional Family/Household
Hi, Nicole!
Good question about using a definition of function family/household to remove all discrimination in the city's zoning ordinance. Katie's response to your question about the burden on the city to administrate the program left out important information. There are three models for implementing the functional family/household definition. I recommend the Privacy Model, and as a second choice, the Density Model. What Katie described is called the Character Model, which I oppose. It assumes the city must administer functional families/households. Many municipalities have adopted the

functional family/household model using the Privacy and Density Models. The attached paper is the best information I've found on this subject and describes the three models for implementing functional family/household.

Respectfully,

--

Alex Saloutos
BHHS True Realty
Cell: (608) 345-9009
Email: asaloutos@tds.net

Indiana Law Journal

Volume 95 | Issue 1 Article 1

Winter 2020

Zoning For Families

Sara C. Bronin
University of Connecticut, sara.bronin@uconn.edu

Zoning For Families

SARA C. BRONIN*

Is a group of eight unrelated adults and three children living together and sharing meals, household expenses, and responsibilities—and holding themselves out to the world to have long-term commitments to each other—a family? Not according to most zoning codes—including that of Hartford, Connecticut, where the preceding scenario presented itself a few years ago. Zoning, which is the local regulation of land use, almost always defines family, limiting those who may live in a dwelling unit to those who satisfy the zoning code's definition. Often times, this definition is drafted in a way that excludes many modern living arrangements and preferences.

This Article begins by exploring how zoning codes define both the family and the "functional family," namely, a group of individuals living together like the Hartford group described above. The Article then carefully tracks judicial decisions that have rejected restrictive definitions of family and analyzes sociological and anthropological literature demonstrating that definitions excluding functional families are unreasonable as a matter of law. Based on the law as it has developed and demographic trends, my view is that governments must allow, but may regulate, functional families.

The Article concludes with suggestions for local governments to revise their zoning codes to allow for functional families. In making these revisions, communities must weigh the real need to control density, the desire of functional families for privacy, and the urge to manage community character. Local governments who choose to regulate functional families may choose between three models of regulation: the density model, the privacy model, and the character model. Once decision-makers recognize these choices, they may more appropriately consider fellow community members' increasingly diverse living arrangements and preferences—and better zone for families, whatever their modern form may entail.

INTRODUCTION

Consider the "Scarborough 11," a group of eight adults and three children who live together in a nine-bedroom mansion, situated on just over two acres of wooded riverside property in an affluent part of the West End neighborhood of Hartford, Connecticut.[1] While six of the adults are married to each other, forming three separate marital units, the other two are single. None of the adults in the three marital units has a relationship based on blood, adoption, custodianship, or guardianship to

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* Sara C. Bronin is Thomas F. Gallivan Chair of Real Property Law at the University of Connecticut and the faculty director of its Center for Energy & Environmental Law. She is also an architect and the Chair of the City of Hartford's Planning & Zoning Commission. She would like to thank Robert Cane, Shaun McGann, Zachary Kohl, Christopher Finch, and Brian Lampert in their assistance with research for this Article, and to Yale, UConn, Fordham, and the University of Kentucky for hosting presentations of this paper.

1. Susan Campbell, *Despite Controversy, Intentional Living Gaining Acceptance in Connecticut*, CONN. MAG. (Apr. 1, 2015), http://www.connecticutmag.com/travel/despite-controversy-intentional-living-gaining-acceptance-in-connecticut/article_47c651c8-cb5c-5f58-849c-b8dbe5944ad4.html [https://perma.cc/LNZ9-9ESD].

any member of any of the other marital units. Two of the children are related to one marital unit, and the other child is related to another marital unit. The eight adults share a household budget and are purported to share an ownership interest in the property.[2] They have intentionally chosen to live together, they consider themselves to be a family, and they present themselves to the outside world as a family.[3]

Are they a family? Can they live where they choose? Not according to most local zoning codes in the United States. Zoning, which is the local regulation of land use, almost always defines family, limiting those who may live in a dwelling unit to those who satisfy the zoning code's definition of family. Yet often times, this definition is drafted in a way that excludes many modern living arrangements and preferences. This Article explores how zoning codes can better zone *for* families, whatever their modern form may entail.

At the time the Scarborough 11 moved into their mansion, the Hartford zoning code stated that only one "family," plus up to three domestic employees of the family, could live in a home in that part of the West End.[4] The zoning code further defined family to include any number of individuals related to each other by blood, marriage, adoption, custodianship, or guardianship, but only two adults who were not so related.[5] The ostensible justification for this restrictive definition of family was to control density, while also minimizing the possibility that boardinghouses, rooming houses, dormitories, or fraternity or sorority houses—defined separately elsewhere in the zoning code—would locate in the neighborhood. Although the Scarborough 11 did not constitute any of these undesirable uses, the terms of the zoning code made their residency illegal.

Whether the Scarborough 11 intentionally violated the zoning code—an issue hotly debated in Hartford—is irrelevant to this discussion. Instead, I focus on how living arrangements such as the Scarborough 11—sometimes called "functional families" or "intentional communities"[6]—challenge conventional definitions of

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2. The term "ownership interest" is used loosely here. Only two of the members of the Scarborough 11 (one member of a marital unit and one single person) are on the deed to the property. The others have entered into some contractual arrangement, not available to the author, to share responsibility for the mortgage, upkeep, and maintenance of the property and to otherwise act as co-owners.

3. *See* Vanessa De La Torre, *"Scarborough 11" File Federal Complaint Against Hartford*, HARTFORD COURANT (Mar. 25, 2015, 10:01 PM), http://www.courant.com/community/hartford/hc-hartford-scarborough-zoning-0326-20150325-story.html [https://perma.cc/9RU9-CMQR] (quoting the lawyer for the Scarborough 11 as saying, "[t]his is an important right that is part of a long American tradition of extended families, part of a long American tradition of cooperative and collective living arrangements, something that goes all the way back to the Iroquois Nation, even before there was a United States").

4. *See* HARTFORD, CONN., ZONING REGULATIONS art. I, § 2 (2015).

5. *Id.*

6. The term "functional family" is more commonly used than "intentional community," for all areas of law (including zoning), so I use that term in this Article. Four hundred and sixty-one law reviews and articles using the term "functional family" appear in Westlaw as of January 28, 2019. A search of "intentional community" on Westlaw on October 4, 2018, however, yielded just 131 results. None of the 131 results containing the term "intentional community" from secondary sources discussed/analyzed local zoning ordinance definitions of

family in American zoning codes. These arrangements involve individuals living together who do not satisfy the traditional zoning code definition of family, but who otherwise demonstrate behaviors and characteristics of a family.

We start with definitions, which, after all, are the primary subject of this Article. Part I first characterizes the most common zoning code definition of family, which focuses on whether people are "related" to each other. It then goes on to highlight some jurisdictions' attempts to define the "unrelated" functional family.

Part II turns to the courts, analyzing judicial treatment of functional families. It starts with a discussion of federal court decisions, highlighting among other cases the U.S. Supreme Court's 1974 decision in *Village of Belle Terre v. Boraas*, which upheld the application of a restrictive definition of family to exclude a group of six college students displaying no familial characteristics.[7] It then tracks the more recent and growing trend in state supreme courts to reject restrictive definitions of family. Part II concludes by suggesting that more courts will reject definitions of family that exclude functional families, primarily pursuant to rational basis review required by challenges rooted in due process.

Part III then gives support to the argument that zoning codes that exclude functional families will fail the rational basis test. It introduces sociological and anthropological literature, not yet cited by courts, that demonstrate that traditional familial arrangements are falling out of favor, and that cohabitation among unrelated people is on the rise. Given these clear trends over the course of several decades, strict adherence to traditional definitions of family seems irrational.

Based on the law as it has developed and demographic trends, this Article contends that governments must allow, but may regulate, functional families. In light of these findings, Part IV offers suggestions to local governments. If functional families must be allowed, then decision-makers must decide how to balance the need to control density on the one hand with privacy concerns and desire to maintain community character on the other. No rule can achieve all three goals. Rather, a local government must choose which to prioritize. In doing so, they may consider three models: the privacy model, the density model, and the character model. A density model would regulate based only on the number of adults living in a particular type or size of dwelling. A privacy model would prioritize privacy: it would allow for a broad, loose definition of a household without requiring a functional family to submit an application to be considered as such. A character model would set forth regulatory requirements for the functional family focusing on the nature, length, and depth of their relationships. Each of the options has trade-offs.

In the Conclusion, I will reveal how the Scarborough 11 have fared in Hartford —where, incidentally, I chair the planning and zoning commission, which is empowered with writing the zoning rules, and where my husband is mayor, responsible for enforcing them.

"intentional community." Another term used by scholars is "family of choice."

7. 416 U.S. 1, 9 (1974).

I. DEFINITIONS OF FAMILY

Few terms have proven more contentious than the term "family." Pressures to extend the legal definition of a family to the functional equivalents of a family have resulted in changes in the law of immigration, health insurance, eviction, and trusts and estates.[8] Perhaps the most significant modern discussions about what makes a family have been in the areas of marriage rights, custody, and divorce law—all of which have evolved in recent years to encompass broad definitions of family.[9]

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8. There are too many citations involving these issues to fully enumerate, but I include a few to add flavor. There were extensive discussions in the first part of the twenty-first century about the extensions of the federal Family and Medical Leave Act, 29 U.S.C. § 2601(b)(1) (2002), to domestic partnerships. In the eviction context, the 1989 case of *Braschi v. Stahl Associates Co.*, 543 N.E.2d 49, 53–54 (N.Y. 1989) (protecting from eviction a gay couple who lived together as "permanent life partners" and extending its logic to say that "the term family . . . should not be rigidly restricted to those people who have formalized their relationship by obtaining, for instance, a marriage certificate or an adoption order. The intended protection against sudden eviction should not rest on fictitious legal distinctions or genetic history, but instead should find its foundation in the reality of family life. In the context of eviction, a more realistic, and certainly equally valid, view of a family includes two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence.") garnered attention for being among the first judicial decisions to recognize a gay couple as a functional family. In the caregiving context, Carol B. Stack suggested that the legal system accept "folk systems" promoting kinship, rather than strict definitions of family. *See* CAROL STACK, ALL OUR KIN (1974). For a summary of issues of the family in immigration cases, see Aubry Holland, Note, *The Modern Family Unit: Toward a More Inclusive Vision of the Family in Immigration Law*, 96 CAL. L. REV. 1049 (2008). The issue has come up in bystander emotional distress cases. *See* Thomas T. Uhl, *Bystander Emotional Distress: Missing an Opportunity to Strengthen the Ties that Bind*, 61 BROOK. L. REV. 1399 (1995) (observing negative impacts of limiting to immediate family members relief in bystander emotional distress cases). And so on.

9. Numerous scholars have explored these issues. *See, e.g.*, Katherine K. Baker, *Legitimate Families and Equal Protection*, 56 B.C. L. REV. 1647, 1649 (2015) (noting the complex issues raised by the fact that "issues other than genetic connection must be relevant to questions of parenthood"); Naomi Cahn, *The New "Art" of Family: Connecting Assisted Reproductive Technologies & Identity Rights*, 2018 U. ILL. L. REV. 1443, 1461 (2018) (identifying legal issues related to assisted reproduction technology, including the problem of "genetic essentialism" which equates a child's identity to her genes "at the expense of the functional family"); Craig W. Christensen, *Legal Ordering of Family Values: The Case of Gay and Lesbian Families*, 18 CARDOZO L. REV. 1299 (1997) (observing how the *Bartschi* case, and other legal developments had begun to challenge longstanding legal principles about family makeup); William N. Eskridge, Jr., *Family Law Pluralism: The Guided-Choice Regime of Menus, Default Rules, and Override Rules*, 100 GEO. L. R. 1881 (2012); Suzanne B. Goldberg, Harriet Antczak & Mark Musico, *Family Law Scholarship Goes to Court: Functional Parenthood and the Case of* Debra H. v. Janice R., 20 COLUM. J. GENDER & L. 348 (2011); Jenni Millbank, *The Limits of Functional Family: Lesbian Mother Litigation in the Era of the Eternal Biological Family*, 22 INT'L J.L. POL'Y & FAM. 149 (2008); Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185, 1187 (2016) (arguing that the landmark 2015 Supreme Court marriage equality decision *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), supports an expanded concept of parenthood "premised on *intentional* and *functional*, rather than biological and gendered, concepts of parentage");

Martha Minow is perhaps among the most prominent scholars who have focused on the functional family.[10] In 1991, she pushed for the law to recognize "how people actually live," expressing a preference for "functional definitions of families that expand beyond reference to biological or formal marriage or adoptive relationship because the people involved have chosen family-like roles."[11] Generally, this area of inquiry is still evolving, making it fertile scholarly ground.

This Article focuses on how just one area of law—local zoning—defines the family. Since their inception in the early twentieth century, zoning codes have defined who makes a family. This Part considers both the most common zoning definition of family (which includes only "related" people) and additional definitions that include unrelated people acting as the functional equivalent of a family.

A. "Related" Families

Zoning codes almost always define the family to include any number of people who are "related" to each other.[12] Being related always includes relationships based on consanguinity and marriage. Consanguinity and marriage encompass a variety of relationships: parents and children; siblings; grandparents and grandchildren; a married couple and their in-laws, who are related to the married couple by blood, on both sides. In addition, zoning codes often explicitly recognize relationships based on adoption and sometimes recognize relationships based on custodianship (including foster arrangements) and guardianship.[13] In some cases, guests and domestic workers are included.[14]

Raymond C. O'Brien, Obergefell's *Impact on Functional Families*, 66 CATH. U. L. REV. 363 (2016) (noting demographic shifts and legal shifts given the decline in marital relationships); Richard F. Storrow, *Parenthood by Pure Intention: Assisted Reproduction and the Functional Approach to Parentage*, 53 HASTINGS L.J. 597 (2002); Allison Anna Tait, *Divorce Equality*, 90 WASH. L. REV. 1245 (2015) (arguing that same-sex divorces should be equally distributed).

10. *See, e.g.*, Martha Minow, *Redefining Families: Who's In and Who's Out?*, 62 U. COLO. L. REV. 269 (1991). How this recognition happens is another question. One scholar suggests "registered contractual relationships" that would allow any combination of otherwise unrelated individuals to be recognized under the law. Erez Aloni, *Registering Relationships*, 87 TUL. L. REV. 573, 573 (2013).

11. Minow, *supra* note 10, at 271, 278. She adds that her support of expansive definitions of family diminishes when the law punishes people: "But I worry when the government assigns family-like status in order to punish people or deny them benefits for which they would otherwise be eligible." *Id.* at 278.

12. SARA C. BRONIN & DWIGHT H. MERRIAM, RATHKOPF'S THE LAW OF ZONING AND PLANNING § 23:8 (4th ed. 2019) ("Municipalities . . . undertook to enact ordinances which restricted households in single-family districts to persons related by blood, marriage, or adoption. Today, many municipalities define 'family' by use of this latter 'relatedness' requirement along with a further provision allowing occupancy by a limited number of unrelated persons living together as a single-housekeeping unit.").

13. *Id.* § 23:18 ("[S]ome municipalities have undertaken to enact ordinances that restrict households in single-family dwelling districts to persons related by blood, marriage, or adoption.").

14. *See, e.g.*, MANSFIELD, CONN., ZONING REGULATIONS art. IV, § B(24)(1) (2019) (defining family to include "[a]ny number of people related by blood, marriage, civil union,

A single family for the purposes of a zoning code may therefore include individuals related by all of the relationship types—blood, marriage, adoption, custodianship, guardianship, or others—allowed by the zoning code. As a result, a large number of people who are related to each other may nonetheless satisfy this definition of a family. A family may include:

A husband (A) and wife (B), their adult children (C, D, and E), the adopted and natural children of C and D, the siblings of A and B, and an aging friend of E for whom E has assumed legal guardianship.

A grandmother (F) and her adopted adult child (G), along with G's wife (H) and children, the nieces and nephews of H, the blood-related aunt (I) and uncle (J) of G, along with and spouses and children of I and J.

Twins (K and L), their spouses (M and N), the father and stepmother of K, the mother and stepfather of K, the widowed mother of L (O) and her twin (P), and the children of P.

And so on. One might ask whether any such group of individuals would be ever interested in living in any of the example configurations. The point here is not that many people *would* live this way, but that they *may*, because the "related" definition of family is highly permissive with regard to the number of people who may collocate within a single dwelling unit.

In this definition, groups of unrelated people are excluded. Indeed, as Justice Marshall noted in his dissent in *Village of Belle Terre v. Boraas*, discussed further below, "related" definitions allow "an extended family of a dozen or more . . . in a small bungalow, [but] three elderly and retired persons could not occupy the large manor house next door."[15]

B. "Unrelated" Families (Functional Families)

Zoning codes sometimes go farther than the related family to count as families groups who are not legally related to each other, but who demonstrate behaviors and characteristics of a "traditional" family. We will call these groups "functional families." Often times, a zoning code will provide for a functional family through a provision within the definition of family that allows some (or any) number of unrelated people to live together "as a single housekeeping unit."[16] The concept of the household unit varies but generally requires sharing meals and a household budget. Many functional families satisfy these broad criteria. Other times, a zoning code will expressly define the functional family (or the intentional community) and establish much more specific criteria.[17] In either case, there are more restrictions imposed on the functional family than on the "traditional" related family. Put differently, the law does not "care" whether A, B, C, D, and E in our example in Section I.A. share meals together, or whether Grandma F and her sprawling clan

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adoption, foster care, guardianship or other duly authorized custodial relationship, gratuitous guests, domestic help and not more than one (1) additional unrelated person"). See also the discussion of Mansfield's functional family definition in Section I.B.

15. 416 U.S. 1, 19 (1974) (Marshall, J., dissenting).

16. Despite exhaustive study, the Author has not encountered a zoning code that does not contain the household/housekeeping unit concept.

17. *See, e.g.*, *infra* Section I.B.2 (describing ordinances).

share a household budget. Given the myriad of zoning jurisdictions, though, it is important to note that these additional restrictions on functional families fall along a spectrum.

All that said, the salient distinction between jurisdictions for our purposes is not necessarily whether they have broad criteria like the housekeeping unit or have more specific and prescriptive criteria. Rather, this Article distinguishes jurisdictions based on the way their zoning codes achieve the three values—privacy, character, and density—identified as values in tension. Some zoning codes may allow the functional family (whether through the definition of household unit or otherwise) without any special approvals—the privacy model of regulation, discussed further in Part IV. Other zoning codes may allow the functional family but only with an advance approval—establishing what Part IV terms the character model of regulation, which requires local governments to delve into the nature of the relationships between unrelated persons. Part IV will add a third approach, the pure density model, not discussed in this Section.

1. Privacy Model Definitions

In privacy model jurisdictions, members of a functional family may occupy a dwelling without having to undergo a formal review by zoning officials. These jurisdictions typically allow functional families through the broad concept of the housekeeping unit. Individuals operating as a household unit may locate wherever any other type of family may locate. In these jurisdictions, these individuals need not tender proof of their bonds in advance, nor must they satisfy ongoing burdens of proof. Inspectors will respond only to complaints about possible violations but will not conduct raids to determine whether the functional family meets the applicable criteria. The broad conduct guidelines are often unenforced, allowing functional families to largely escape government scrutiny. Local governments adopting the privacy model are, in effect, prioritizing the privacy of residents.

The town of Wethersfield, Connecticut, exemplifies this approach. Its zoning code defines a family to include:

"Any number of individuals living and cooking together as a single housekeeping unit, whether related to each other legally or not, and shall be deemed to include domestic help but not to include paying guests."[18]

Notice that this definition does not limit the number of persons who may constitute a housekeeping unit. However, there are limitations on the behaviors and characteristics of the unrelated persons claiming to constitute a family: they must live and cook together as a single unit. Such limitations are intended to capture the essential behaviors and characteristics of the so-called "traditional" family. As long as the unrelated persons living in a dwelling unit satisfy the housekeeping unit definition, they will be considered a family for the purposes of the zoning code.

Mansfield, Connecticut, the home of the University of Connecticut, has also adopted a version of the privacy model. Its zoning code defines family to include "[p]ersons living together as a *functional family*."[19] The code states a presumption

18. WETHERSFIELD, CONN., ZONING REGULATIONS art. II, § 2.3 (2004).

19. MANSFIELD, CONN., ZONING REGULATIONS art. IV, § B(24)(4) (2019)

that college students, or four or more persons, living together do not constitute a functional family.[20] The regulations go on to require that a "functional family" of any number of persons demonstrate the following:

> A. The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by a functional family;
>
> B. The group shares expenses for food, rent or ownership costs, utilities and other household expenses;
>
> C. The group is permanent and stable and not temporary or transient in nature. Evidence of such permanency and stability may include:
>
> (1) The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
>
> (2) Members of the household have the same address for purposes of voter's registration, driver's license, motor vehicle registration and filing of taxes;
>
> (3) Members of the household are employed in the area;
>
> (4) The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;
>
> (5) There is common ownership of furniture and appliances among the members of the household; and
>
> (6) Any other factor reasonably related to whether or not the group is the functional equivalent of a family.[21]

Mansfield's definition of the functional family is more specific than Wethersfield's. It requires that the group operate as a single housekeeping unit. But it also requires that the group be able to prove its stability and permanence through voter registrations, shared furniture ownership, and the presence of children.[22] This proof may be required to overcome the presumptions about college students or four-plus people living together, but it does appear to need to be tendered in advance. Rather, an alleged functional family may be requested to provide proof of their relationships to town officials only during a zoning enforcement action. Before town

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(emphasis added). The code also recognizes that certain disabled groups are entitled to "family" status. *Id.* § B(24)(5).

20. *Id.* § B(24).

21. *Id.* § B(24)(4).

22. This definition represents what Part IV calls the character model of regulating the functional family.

officials get a complaint, the privacy of the members of the functional family is prioritized.

Although Mansfield has a presumption against households with four or more people, it does not have an absolute cap on the number of people who can be a functional family.[23] Unlike Mansfield and Wethersfield, many communities institute a cap on the number of unrelated persons constituting a household unit. In Connecticut,[24] at least thirty municipalities (out of a total of 169) allow an unlimited number of unrelated individuals to cohabitate as a family.[25] But most localities in the state set a cap on the number of unrelated individuals: fifty-nine percent have a limit of three, four, or five; fourteen percent have a limit of six; two percent have a limit of seven or eight.[26] Just five communities (three percent) cap the number of unrelated persons at two.[27] Hartford, where the Scarborough 11 live, was a member of this last group until January 2016, when otherwise sweeping changes to the zoning code modestly lifted the cap of two to three. (Since that change, the code uses the term "household" instead of "family" and refers to housing that other communities call "single-family" dwellings as "single-unit" dwellings.) While the number of unrelated adults who may operate in a functional family is often capped, the same is not true for the number of related persons who may constitute a family, beyond maximum occupancies required by building, housing, and health codes.

Even if there is a cap on the number of unrelated people who can live together, jurisdictions that allow functional families without the need for an extra permit are in effect prioritizing resident privacy. Zoning officials are not delving into internal household matters, nor are they asking members of the functional family to prove their bonds, absent an enforcement action necessitating a review for compliance.

2. Character Model Definitions

In other jurisdictions, members of a functional family are required to tender proof to zoning officials about the nature, length, and depth of their relationships prior to being permitted in the community. This approach prioritizes analysis of the character of the group purporting to be a functional family. It de-emphasizes the privacy of members of the group.

For an example of this approach, we turn to Ames, Iowa. The Ames zoning code states that "[l]arger groups of unrelated persons have frequently shown to have a detrimental affect [sic] on Single Family neighborhoods since larger groups of unrelated persons do not live as a family unit and do not have significant economic or emotional ties to a neighborhood."[28]

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23. *See* MANSFIELD, CONN., ZONING REGULATIONS art. IV, § B(24) (2019).

24. I root this discussion in the Connecticut experience because most of the state is regulated by zoning and because the varying codes offer a rich diversity of views. Of Connecticut's 169 towns, only Eastford does not have a zoning code.

25. Joseph Mortelliti, Survey of Maximum Permissible Number of Unrelated Individuals that Qualify as a Family in Connecticut (2016) (unpublished manuscript on file with the *Indiana Law Journal*). Only 166 of the 169 towns were surveyed in this study.

26. *Id.*

27. *Id.*

28. AMES, IOWA, MUNICIPAL CODE § 29.1503(4)(d) (2019).

Ames requires that a functional family obtain a special use permit from zoning officials by submitting an application containing information that demonstrates compliance with established standards.[29] Public hearings and notice to neighbors are part of the special permit process. The functional family application must demonstrate that:

a. The functional family shares a strong bond or commitment to a single purpose (e.g. religious orders);

b. Members of the functional family are not legally dependent on others not part of the functional family;

c. Can establish legal domicile as defined by Iowa law;

d. Share a single household budget;

e. Prepare food and eat together regularly;

f. Share in the work to maintain the premises; and

g. Legally share in the ownership or possession of the premises.[30]

As explained by its drafter, this carefully scripted definition of "functional family" was intended to limit the number of unrelated college students cohabitating.[31] It achieves this goal by laying out behaviors and characteristics that the typical group of college students would not normally exhibit.[32] Rather, a functional family

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29. *Id.* Note: Ames considers residents in a "family home" a "family" as opposed to a "functional family." AMES, IOWA, MUNICIPAL CODE § 29.201(72) (2018).

30. AMES, IOWA, MUNICIPAL CODE § 29.1503(4)(d) (2019).

31. Dwight H. Merriam, *Ozzie and Harriet Don't Live Here Anymore: Time to Redefine Family*, ZONING PRACTICE, Feb. 2007, at 2, 5–7.

32. The Ames code also provides a definition for "family." AMES, IOWA, MUNICIPAL CODE § 29.201(72) (2018) ("Family means a person living alone, or any of the following groups living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities: (a) Any number of people related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship; (b) Three unrelated people; (c) Two unrelated people and any children related to either of them; (d) Not more than eight people who are: (i) Residents of a 'Family Home' as defined in Section 414.22 of the Iowa code and this ordinance; or (ii) 'Handicapped' as defined in the Fair Housing Act, 42 U.S.C. Section 3602 (h) and this ordinance. This definition does not include those persons currently illegally using or addicted to a 'controlled substance' as defined in the Controlled Substances Act, 21 U.S.C. Section 802 (6); (e) Not more than five people who are granted a Special Use Permit as a single nonprofit housekeeping unit (a 'functional family') pursuant to Section 29.1503(4)(d) of this ordinance."). Ames excludes from the definition of family: "a. Any society, club, fraternity, sorority, association, lodge, combine, federation, coterie, or like organization; b. Any group of individuals whose association is temporary or seasonal in nature; and c. Any group of individuals who are in a group living arrangement as a result of criminal offenses." (emphasis omitted); *see also id.* § 29.201(194) ("Single, Nonprofit Housekeeping Unit means the functional equivalent of a traditional family, including a non-

sanctioned by the zoning code to live in Ames must act like a traditional family, or at least an idealized version of one.

Minneapolis has also adopted the character model. It includes in the definition of family the "intentional community" (another term for a functional family).[33] The city places no cap on the number of people who can live in an intentional community but requires that members of the community "liv[e] together as a single household, [and] shar[e] in the management of resources and household expenses."[34] Intentional communities must be registered and must submit an application that provides the name of the community, the community's official representative, and floor plans, among other things.[35] City officials must be notified if a community dissolves, if members of the community change, or if the named representative of the community ceases to reside in the community.[36] Intentional communities may only be located in certain places.[37] Interestingly, Minneapolis also allows for up to five unrelated people to live together "as a single housekeeping unit" without having to apply for any special permits.[38] Perhaps more interestingly, the city is moving in the direction of more liberal zoning laws, as its comprehensive plan adopted in late 2018 virtually guarantees that "single-family" zoning will be phased out within a decade.[39]

Through prescriptive rules, treatments of the functional family are designed to proactively and intentionally limit groups considered undesirable in and "detrimental"[40] to strictly residential areas. They bar college friends, fraternity brothers, and sorority sisters because they require sharing household expenses and a single household budget. They bar itinerant travelers, such as roomers and boarders, because they require occupants to show a permanent relationship to the other

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transient, interactive group of persons jointly occupying or a non-transient individual person occupying a single dwelling unit, including the joint or individual use of common areas, for the purpose of sharing or conducting household activities and responsibilities such as meals, chores and expenses. 'Single, Nonprofit Housekeeping Unit' shall not include occupants of a boarding house, hotel, fraternity, sorority, or club.") (emphasis omitted).

33. MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 12, art. VIII, § 244.820(c) (2019) ("[A] family may include a group of two (2) or more unrelated adults living together in a dwelling unit when operating as an intentional community.").

34. *Id.* tit. 20, § 520.160 ("An intentional community shall share an entire dwelling unit and may not function as a rooming house.").

35. *Id.* tit. 12, art. VIII, § 244.820(e).

36. *Id.* § 244.820(d).

37. *Id.* § 244.820(d)(3) (barring intentional communities in rental properties owned by landlords with "Tier II or Tier III" properties).

38. *Id.* § 244.40.

39. *See Minneapolis City Council Agenda: Regular Meeting*, MINNEAPOLIS (Dec. 7, 2018), https://lims.minneapolismn.gov/MarkedAgenda/Council/694 [https://perma.cc/C2H9-6X6K] (adopting the Minneapolis 2040 Comprehensive Plan). The comprehensive plan goals may actually be enacted within the year pursuant to state law requirements that the city actively update its zoning code to conform with its comprehensive plan. *See* MINN. STAT. ANN. § 473.858 (West 2008 & Supp. 2019). I am using the term "single-family" here because that is the term most dominant in zoning codes and in the literature. In the Hartford zoning code, we have replaced the term "single-family" with the term "single-unit."

40. *See, e.g.*, AMES, IOWA, MUNICIPAL CODE § 29.1503(4)(d)(i) (2019) (calling large groups of unrelated persons "detrimental" to single-family neighborhoods).

occupants of the housing unit. They bar recovering alcoholics and others receiving rehabilitation or medical treatment, except to the extent such persons are protected by federal law, for the same reason.[41] As noted above, these uses are typically separately defined and regulated.

* * *

It may be important to reemphasize here that what constitutes a functional family is a tricky question. Consider, for example, nuns, college friends, sorority sisters, itinerant travelers, recovering alcoholics, and similar groups wanting to cohabitate. Zoning codes typically treat convents, dormitories, fraternity and sorority houses, rooming houses, group homes, and rehabilitation homes not as dwelling units (which may be occupied by a family) but as other types of as residential living types, distinctly regulated.[42] Some of these arrangements may be more desirable than others. For example, a group of quiet, elderly nuns may be thought to have fewer negative land use effects than a group of sorority sisters who may be more likely to throw raucous parties. Other uses, including group homes, may not be favored locally, but for policy reasons, may be difficult to restrict.[43]

The distinction between groups of friends and functional families presents special problems. About a decade ago, there was a push among some scholars to prioritize friendship within our legal system.[44] Among this group of scholars, which include

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41. *See, e.g.*, MANSFIELD, CONN., ZONING REGULATIONS art. IV, § B(24)(4) (2019) (specifying circumstances that might allow recovering alcoholics or others receiving rehabilitation or medical treatment to be considered a family pursuant to the Americans with Disabilities Act and the Fair Housing Act). Note, however, that state legislatures often limit local governments' ability to exclude rehabilitation homes. For example, Iowa requires local governments to consider homes for persons with disabilities as "family homes," IOWA CODE ANN. § 414.30 (West 2015), a term that allows up to eight people to receive care in one location. *Id.* § 414.22 (2)(c).

42. BRONIN, *supra* note 12, at § 23:21 ("The 'functional family' test, however, is unlikely to be met in cases involving boarding or rooming houses, large groups of students, such as fraternities or sororities or residential treatment centers or similar institutional uses.") (citations omitted).

43. It is important to note that the functional family is different from residents of a group home (also called a "family home" or a "residential care facility"). Generally, a group home is a noninstitutional residential facility for individuals with developmental disabilities. Group homes are protected under the law. Thirty-seven states preempt local regulation of group homes, and thirty-five of these require that group homes be subject to the same zoning restrictions as single-family dwelling units. *See id.* at § 23:24–29*; see also, e.g.*, CONN. GEN. STAT. ANN. § 8-3e (West 2010) ("No zoning regulation shall treat the following in a manner different from any single family residence: (1) Any community residence that houses six or fewer persons with intellectual disability and necessary staff persons . . . ."); FLA. STAT. ANN. § 393.062 (West 2018) ("[Group homes] shall be considered and treated as a functional equivalent of a family unit and not as an institution, business, or boarding home"). States vary as to how many individuals may reside in a group home in residential districts—though twenty-four states allow up to six or eight developmentally disabled individuals plus staff/guardians.

44. *See, e.g.*, Katherine M. Franke, *Longing for* Loving, 76 FORDHAM L. REV. 2685, 2705

Katherine Franke and Ethan Lieb, there is a feeling that friendship has gotten short shrift because friendship is just as important as other privileged relationships, such as marital or professional relationships, yet is not protected in the same way. They are right that the law regulates friendship without expressly acknowledging it is doing so.[45] Indeed, the definitions noted in Part I would exclude mere friends—regulating them, in effect, out of the areas where families (including functional families) are privileged. Perhaps only in privacy model jurisdictions could friendship relationships find a home—not because friends satisfy local zoning definitions of family or functional family, but because looser rules may lead to looser enforcement. This Article does not go so far as to say that friendships must be as privileged as functional families, though I leave the question open for another scholar.

II. JUDICIAL TREATMENT OF THE FUNCTIONAL FAMILY

Local zoning code definitions of family and functional family provide important background as we turn to courts. Relevant cases arise when a local government enforces its zoning code against a group of people who do not satisfy the definition of family (or, where it exists, the definition of functional family). The group may challenge the zoning code as applied or as written, on statutory or constitutional grounds. Federal and state courts have dealt differently with these challenges. After reviewing these cases, this Part concludes by articulating the judicial trend of striking down laws that exclude a true functional family but upholding laws challenged by groups of mere friends.

A. The Federal Cases

Over the course of just three years, the Supreme Court decided two key cases relating to how local governments may regulate a family through zoning. In the first case, *Village of Belle Terre v. Boraas*,[46] regulation of unrelated persons was upheld when applied to a group of six college students not functioning as a family. In the second case, *Moore v. City of East Cleveland*,[47] a prohibition on related members of an extended family was struck down when applied to a grandmother and her grandsons. Although the Supreme Court has never considered how a zoning code applies to a functional family, these two decisions, and a third involving a federal law offering food-related aid to low-income persons,[48] provide important insights about the extent to which the Court may sanction a zoning code's infringement upon the right to privacy and, further, the related right to assemble a household.

(2008); Ethan J. Leib, *Friendship & the Law*, 54 UCLA L. REV. 631, 654 (2007); Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189, 191 (2007).

45. *E.g.*, Leib, *supra* note 44, at 631 ("I offer a normative argument for why the law should promote a public policy of friendship facilitation and for why the law ignores friendships only at its peril. . . . We are regulating friendships without even recognizing that we are doing so . . . I offer a framework to show how the law could exact certain duties from friends and confer certain privileges upon them as well.").

46. 416 U.S. 1 (1974).

47. 431 U.S. 494 (1977).

48. *See* U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 534 (1973).

1. *Village of Belle Terre v. Boraas*

In *Village of Belle Terre v. Boraas*, the Supreme Court considered a challenge by a landlord and six unrelated college students to a zoning regulation that limited a "family" to:

> [o]ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family.[49]

No application or advance permit was required for occupancy, which means under our framework, *Belle Terre* was a privacy model jurisdiction. The landlord had been cited for violating the ordinance, likely after a complaint. Among other things, the landlord's challenge alleged that this language interfered with the right to travel and the right to privacy.[50] The Supreme Court rejected these claims, reasoning that "every line drawn by a legislature leaves some out that might well have been included."[51] According to the Court, the line drawn by the zoning ordinance of *Belle Terre* fell well within the city's police power because the police power allows for localities to deal with "urban problems" like boarding houses and fraternity houses and to otherwise address the question of density.[52] More broadly, the Court noted, the police power allows localities 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."[53]

Justice Marshall, dissenting, agreed that the police power allowed local governments broad powers but found that the classification between related and unrelated individuals "burdens the students' fundamental rights of association and privacy guaranteed by the First and Fourteenth Amendments."[54] Conflating the right of privacy with the right to "establish a home," he reasoned that:

> The choice of household companions—of whether a person's "intellectual and emotional needs" are best met by living with family, friends, professional associates, or others—involves deeply personal considerations as to the kind and quality of intimate relationships within the home. That decision surely falls within the ambit of the right to privacy protected by the Constitution.[55]

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49. 416 U.S. at 2 (alteration in original).

50. *Id.* at 7.

51. *Id.* at 8. The Court rejected the right to travel argument, because the ordinance "is not aimed at transients," and also found that no right of privacy was implicated. *Id.* at 7 (citing Griswold v. Connecticut, 381 U.S. 479 (1965)).

52. *Id.* at 9.

53. *Id.*

54. *Id.* at 13 (Marshall, J., dissenting).

55. *Id.* at 15–16 (citing Roe v. Wade, 410 U.S. 113, 153 (1973)); Eisenstadt v. Baird, 405 U.S. 438, 453 (1972); Stanley v. Georgia, 394 U.S. 557, 564–65 (1969); Griswold v.

Because the zoning ordinance impinged on the fundamental right of privacy, Justice Marshall went on to say, strict scrutiny required that the burden imposed on the students be necessary, and narrowly drawn, to protect a compelling and substantial governmental interest.[56] He found that the *Belle Terre* ordinance did not survive constitutional scrutiny because it was not narrowly drawn to achieve the purpose of controlling population density, noise, traffic, and parking problems.[57] Among other things, he noted that "[w]hile an extended family of a dozen or more might live in a small bungalow, three elderly and retired persons could not occupy the large manor house next door."[58] Justice Marshall concluded his dissent by suggesting that the town restrict population density by limiting each household to a specific number of adults, whether related or unrelated, place controls on rent, or limit the number of vehicles per household.[59]

2. *Moore v. City of East Cleveland*

With Justice Marshall's suggestions in mind, we pivot now to a case decided by a plurality of the Court three years after *Belle Terre*: *Moore v. City of East Cleveland*.[60] At issue was a challenge to a zoning ordinance's highly restrictive definition of family, which prohibited a grandmother from living with her son and two grandsons (who were cousins).[61] The *Moore* Court struck down the ordinance because it infringed on the right to privacy and failed to promote the "family values" deemed so important in *Belle Terre*.[62] Observing that the regulation of allowable and prohibited categories of relatives "slic[ed] deeply into the family itself,"[63] the Court took judicial note of the fact that "millions of our citizens" grow up in households

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Connecticut, 381 U.S. 479, 486 (1965); Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); Moreno v. Dep't of Agric., 345 F. Supp. 310, 315 (D.C. 1972), *aff'd*, 413 U. S. 528 (1973)).

56. *Id.* at 12–14, 18.

57. *Id.* at 18–20.

58. *Id.* at 19.

59. *Id.* at 19–20.

60. 431 U.S. 494 (1977).

61. *Id.* at 496 n.2 (citing the city's ordinance as stating: "'Family' means a number of individuals related to the nominal head of the household or to the spouse of the nominal head of the household living as a single housekeeping unit in a single dwelling unit, but limited to the following: (a) Husband or wife of the nominal head of the household. (b) Unmarried children of the nominal head of the household or of the spouse of the nominal head of the household, provided, however, that such unmarried children have no children residing with them. (c) Father or mother of the nominal head of the household or of the spouse of the nominal head of the household. (d) Notwithstanding the provisions of subsection (b) hereof, a family may include not more than one dependent married or unmarried child of the nominal head of the household or of the spouse of the nominal head of the household and the spouse and dependent children of such dependent child. For the purpose of this subsection, a dependent person is one who has more than fifty percent of his total support furnished for him by the nominal head of the household and the spouse of the nominal head of the household. (e) A family may consist of one individual.").

62. *Id.* at 498.

63. *Id.* at 498–99.

containing extended family members, stating that "the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, . . . supports a larger conception of the family."[64] A concurring opinion written by Justices Brennan and Marshall underscored this point; it noted that while the nuclear family was dominant in "white suburbia," there was a striking "prominence of other than nuclear families among ethnic and racial minority groups, including our black citizens."[65] In their view, the Court's decision properly recognized the need for sensitivity in respecting diverse preferences.

Citing many of the cases Marshall cited in *Belle Terre*, the Court affirmed a due process right of intimate association in family living arrangements and the consequent need of courts to consider how well a privacy-constraining regulation achieves the purported governmental interest.[66] The Court discredited the purported governmental interests of the East Cleveland regulation—"preventing overcrowding, minimizing traffic and parking congestion, and avoiding an undue financial burden on [the] school system"—by presenting scenarios in which the definition of family would allow higher numbers of adults and children than allowed in the case of the grandmother and her relatives at issue.[67] In this key argument, the *Moore* plurality parroted Justice Marshall's *Belle Terre* dissent, which argued that the Belle Terre ordinance was not narrowly drawn to control density, one of the claimed governmental interests justifying that regulation, because it allowed an unlimited number of related persons to live together.[68]

The most interesting opinion in *Moore* for our purposes may be the concurrence of Justice Stevens, new to the Court since the *Belle Terre* decision. In his view, zoning could not regulate the identities of those comprising a household, whether related or unrelated, unless the regulation was aimed at reducing the transiency of a community.[69] Because the Belle Terre ordinance was "primarily concerned with the prevention of transiency in a small, quiet suburban community," he explained, it was justifiably upheld.[70] Because the East Cleveland ordinance infringed on the makeup

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64. *Id.* at 504–05. The Court concluded the opinion by saying that "the Constitution prevents East Cleveland from standardizing its children—and its adults—by forcing all to live in certain narrowly defined family patterns." *Id.* at 506.

65. *Id.* at 508–10 (Brennan, J., concurring). Justice Brennan had also issued a dissent in *Belle Terre*. Vill. of Belle Terre v. Boraas, 416 U.S. 1, 521 (1974) (Brennan, J., dissenting).

66. *Moore*, 431 U.S. at 498–99 (recognizing that living as an extended family falls within the "freedom of personal choice . . . [that] is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment") (citing Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–640 (1974)).

67. *Id.* at 499–500.

68. *See Belle Terre*, 416 U.S. at 18 (Marshall, J., dissenting).

69. Note that Justice Stevens's use of the "transiency" concept differed from Justice Douglas's use of that word in the *Belle Terre* majority opinion. In *Belle Terre*, Justice Douglas said, "It [the ordinance] is not aimed at transients," presumably in response to, and as a means of rejecting, the challenge based on the right to travel. *Id.* at 7 (majority opinion). By implication, the right to live in a particular place does not bear legal relation to the right to travel. In *Moore*, Justice Stevens sanctions restrictions on transient living arrangements, but does not opine on individuals' right to move from one place to another, which is the more common explanation of the right to travel. *Moore*, 431 U.S. at 519 (Stevens, J., concurring).

70. *Moore*, 431 U.S. at 494, 519 n.15.

of the household without addressing the transiency issue, it was justifiably struck down. Justice Stevens' opinion went beyond this attempt to harmonize Supreme Court cases, taking a perhaps surprising detour into "well-reasoned" state judicial decisions that struck down ordinances "prohibiting, either expressly or implicitly" unrelated persons from cohabitating.[71] Justice Stevens used these cases to underscore the far-reaching intrusion of the East Cleveland ordinance and to demonstrate judicial support for his notion that regulation should only survive judicial scrutiny if it aimed to prevent transiency.[72] If state courts were striking down laws limiting unrelated persons, there seemed to be little justification for the Supreme Court to uphold one preventing blood relatives from cohabitating.

3. *U.S. Department of Agriculture v. Moreno*

A third Supreme Court case, unrelated to zoning and decided just before *Belle Terre* and *Moore*, may add a dimension to this discussion: *U.S. Department of Agriculture v. Moreno*. The case dealt with recent amendments to the federal food stamp law, which declared ineligible for benefits certain people who lived with unrelated individuals.[73] In that case, the Court held that the statutory amendment redefining "household" to include only groups of related individuals denied equal

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71. *Id.* at 516–19 nn.7–14 (citing, among other cases, Women's Kansas City St. Andrew Soc. v. Kansas City, 58 F.2d 593, 594, 606 (8th Cir. 1932) (finding application of a zoning ordinance to block occupancy of a single-family home by "elderly white ladies" "is not an essential of the general zoning plan, and is in its application to plaintiff's property so arbitrary and unreasonable as to be void"); Brady v. Superior Court, 200 Cal. App. 2d 69, 81 (1962) (allowing two unrelated students to constitute a single housekeeping unit); Neptune Park Ass'n v. Steinberg, 84 A.2d 687, 689 (Conn. 1951) (allowing four related families to rent a summer home because they shared lodging, cooking, and eating facilities); City of Des Plaines v. Trottner, 216 N.E.2d 116 (Ill. 1966) (rejecting a definition of family that allowed only related persons in a challenge by four unrelated young men); Kirsch Holding Co. v. Borough of Manasquan, 281 A.2d 513, 518 (N.J. 1971) (rejecting a definition of family that allowed only related persons as "sweepingly excessive"); City of White Plains v. Ferraioli, 313 N.E.2d 756 (N.Y. 1974) (rejecting a definition of family that allowed only related persons in a challenge by a group home); Missionaries of Our Lady of LaSalette v. Vill. of Whitefish Bay, 66 N.W.2d 627 (Wis. 1954) (finding that six priests and two lay brothers constituted a family for zoning purposes); Carroll v. City of Miami Beach, 198 So. 2d 643, 644 (Fla. App. 1967) (allowing a group of religious novices to occupy a home in a single-family neighborhood because: "Under the terms of the ordinance any number of persons occupying the premises and living as a single housekeeping unit are entitled to the status of a family. There is no requirement that they be related by consanguinity or affinity."); Robertson v. Western Baptist Hosp., 267 S.W.2d 395, 396 (Ky. App. 1954) (holding that about twenty nurses living together with limited kitchen facilities and centralized housekeeping were a "family" as defined by the zoning ordinance, and stating that "[t]he word 'family' is an elastic term and is applied in many ways.").

72. *Moore*, 431 U.S. at 519 (Stevens, J., concurring).

73. U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 530 (1973) ("As initially enacted, [the law] defined a 'household' as 'a group of related or non-related individuals, who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common.' In January 1971, however, Congress redefined the term 'household' so as to include only groups of related individuals.").

protection to unrelated individuals based on private matters of free association within the home.[74] The definition in question had originally been codified as "a group of related or non-related individuals, who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common."[75] In 1971, however, Congress redefined the term "household" to mean:

> a group of related individuals (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common.[76]

The government attorneys in that case did not deny that the congressional record contained information suggesting that the amendment was intended to prevent "hippie communes" from participating in the food stamp program.[77] The Court found that there was no rational reason to discriminate against "hippie communes," and that the amendment was motivated by animus and did not have any other legitimate purpose, such as combating fraud.[78] Rather, the Court found, "mothers who try to raise their standard of living by sharing housing will be affected" and the amendment excludes "only those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility."[79]

The Supreme Court's decisions in *Belle Terre* and *Moore* acknowledged *Moreno*, but only in passing. The *Moore* plurality cited to *Moreno* in a footnote focused on whether the East Cleveland ordinance was advancing legitimate purposes.[80] In another footnote, the *Belle Terre* Court rejected the applicability of *Moreno*, saying that the Belle Terre ordinance did not appear to be motivated by animus toward unfavored groups.[81] We will revisit the rational basis test used in *Moreno* in future discussion.

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74. *Id.* at 534.

75. *Id.* at 530.

76. *Id.* at 530 n.2 (also including "(1) a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption, or (2) an elderly person who meets the requirements of section 2019(h) of this title").

77. *Id.* at 534–35.

78. *Id*. at 535–38.

79. *Id.* at 537–38.

80. Moore v. City of East Cleveland, 431 U.S. 494, 500 n.7 (1977).

81. Vill. of Belle Terre v. Boraas, 416 U.S. 1, 8 n.6 (1974). *But see id.* at 18 (Marshall, J., dissenting) (using Justice Douglas's concurrence in *Moreno* to argue that freedom of association allows anyone to invite others to join a household). Other decisions have also rejected *Moreno* as applicable. *See, e.g.*, Lyng v. Castillo, 477 U.S. 635, 637–39 (1986) (applying rational basis scrutiny to the distinction between parents, children, siblings, and all other groups of individuals and finding that the Food Stamp Act statutory definition of "household" had a rational basis). The Court opined: "Congress could reasonably determine that close relatives sharing a home—almost by definition—tend to purchase and prepare meals together while distant relatives and unrelated individuals might not be so inclined. In that event, even though close relatives are undoubtedly as honest as other food stamp recipients,

B. In State Courts

As Justice Stevens's concurrence in *Moore* pointed out, a number of state courts had recognized, even before *Belle Terre* and *Moore*, that local governments could not limit the number of unrelated persons occupying single-family residences, unless such limitation prohibited transient occupancy. Since those decisions, state courts have continued to grapple with the extent to which local governments should be allowed to regulate household composition through zoning. Some state courts have rejected strict definitions of family, while others have upheld them.

Often, these decisions are decided on state constitutional grounds. While each state's body of constitutional law has its own idiosyncrasies, the differences are not great. The constitutional language at issue in each case is nearly identical to that of the Federal Constitution. States whose courts distinguish themselves from the Supreme Court in *Belle Terre* do so because they find that the distinctions made between families as traditionally defined and functional families are not rationally related to the interests advanced. States that reject challenges to zoning codes, as *Belle Terre* did, usually do not have a functional family at bar, and the localities before them rationally justify the restrictive definitions.

As the analysis below will describe in greater detail, so far five states recognize a constitutional right to living as a functional family. Each of these five states considered what we have been calling a "privacy model regulation"—not requiring an advance permit but applied primarily upon request (either a declaratory request by the property owner or a request for enforcement by a disgruntled neighbor).

1. Cases Rejecting Strict Definitions of Family

Since *Belle Terre*, four state high courts—California, Michigan, New York, and New Jersey—have stuck down zoning ordinances that limited the number of unrelated individuals who may live together and failed to provide for functional families.[82] One lower court in Rhode Island also struck down such limits.[83]

The factual settings of these cases have several things in common that are important when comparing them to cases upholding restrictive definitions of family. In all but one of the cases, the residents were party to the case.[84] Additionally, three

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the potential for mistaken or misstated claims of separate dining would be greater in the case of close relatives than would be true for those with weaker communal ties, simply because a greater percentage of the former category in fact prepare meals jointly than the comparable percentage in the latter category." *Id.* at 642.

82. *See* City of Santa Barbara v. Adamson, 610 P.2d 436 (Cal. 1989); Charter Twp. of Delta v. Dinolfo, 351 N.W.2d 831 (Mich. 1984); State v. Baker, 405 A.2d 486 (N.J. 1979); McMinn v. Town of Oyster Bay, 488 N.E.2d 1240 (N.Y. 1985).

83. Distefano v. Haxton, No. C.A. NO. WC 92-0589, 1994 WL 931006 (Super. Ct. R.I. Dec. 12, 1994).

84. McMinn involved only the landlord. *McMinn*, 488 N.E.2d at 1240; *see also Adamson*, 610 P.2d at 436; *Dinolfo*, 351 N.W.2d at 831; *Baker*, 405 A.2d at 368; *Distefano*, 1994 WL 931006, at *1 (contrasting with the cases upholding limits that typically included only the landlord or a landlord association).

of the five cases involved groups that would be considered functional families.[85] The plaintiff families in *Township of Delta v. Dinolfo* each consisted of a household of six unrelated, single individuals and a married couple with children intending to reside together permanently while functioning as a single household unit.[86] In *City of Santa Barbara v. Adamson*, the family was composed of twelve adults in their twenties and thirties who lived together for social, economic, and psychological support.[87] The family "include[d] a business woman, a graduate biochemistry student, a tractor-business operator, a real estate woman, a lawyer, and others."[88] Finally, the family in *State v. Baker* included the homeowner, his wife, and three daughters, as well as an unrelated woman and her three children living together as one family and contributing to the whole.[89] *Baker* and *Dinolfo* also involved people who came together based, in part, on religious belief.[90]

The parties in all of these cases challenged the zoning ordinances on a range of state constitutional grounds. The courts hearing the challenges primarily made decisions on due process grounds, though two also considered the right to privacy. One of those two cases was determined only on the right to privacy issue: in *City of Santa Barbara v. Adamson*, the California Supreme Court struck down an ordinance limiting the number of unrelated individuals living in a housekeeping unit to five on the ground that it violated the right to privacy contained in the California Constitution.[91] In that case, the occupants claimed to have been "a close group with social, economic, and psychological commitments to each other . . . [who] share expenses, rotate chores, and eat evening meals together."[92] The court stated that the state constitutional right to privacy protects intrusions to individual privacy, unless they are justified by a compelling public interest. In reviewing the city's interests in enacting the zoning code, the court reviewed whether the "rule-of-five truly and substantially help[s] effect" goals of maintaining the character of the district and prohibiting commercial activities, among other goals.[93] Relying on the U.S. Supreme Court's 1973 decision in *U.S. Department of Agriculture v. Moreno*, the California court noted that the enforcement of a morality standard would not be a legitimate goal.[94] It also observed that there were other, less restrictive means of achieving the stated goals, such as floor space, noise, traffic, and parking limitations. *Adamson* is

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85. *See Adamson*, 610 P.2d at 438; *Baker*, 405 A.2d. at 370; *Dinolfo*, 351 N.W.2d at 834. The New York case involved four unrelated men in their early 20s who were childhood friends, *McMinn*, 488 N.E.2d at 1240, and the Rhode Island trial court case involved indeterminate unrelated individuals exceeding the ordinance. *Distefano*, 1994 WL 931006, at *2.

86. *Dinolfo*, 351 N.W.2d at 834.

87. *Adamson*, 610 P.2d at 438.

88. *Id.*

89. *Baker*, 405 A.2d at 370.

90. *See id.* at 370; *Dinolfo*, 351 N.W.2d at 834.

91. CAL. CONST. art. I, § 1 ("All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."); *Adamson*, 610 P.2d at 439–41.

92. *Adamson*, 610 P.2d at 438.

93. *Id.* at 441.

94. *See supra* Section II.A.3.

the only state supreme court case to apply strict scrutiny to the challenged ordinance because a fundamental right was contained in the state constitution.[95]

Each of the other courts based their decisions on interpretations of the due process clauses of state constitutions that did not vary greatly from the Due Process Clauses in the United States Constitution. In each case, the state court distinguished its holding from that in *Belle Terre* and analyzed the rational relationship between the ordinance and the municipalities' stated goals. The courts held, in each case, that the limits on unrelated household members failed to rationally address the harms advanced.

While holding that the goals of "preserv[ing] . . . traditional family values, maint[aining] . . . property values and population and density control" were legitimate governmental interests, the Michigan Supreme Court held in *Township of Delta v. Dinolfo* that the court could not assume, as the town argued, that different and undesirable behavior was to be expected of functional families.[96] Therefore, the court held that the legitimate governmental interests described were not related to the limits on unrelated family members in the ordinance, and the ordinance was capricious and arbitrary under the due process clause of the state constitution.[97] The court also clarified the role of the government's police power with respect to constitutional rights:

> We agree that it would be easier for the plaintiff, with one broad stroke of its legislative brush, to sweep out of its residential neighborhoods a whole class of persons desiring residential accommodations than to have to legislate and enforce against the specific behavior it finds offensive and finds associated with the unrelated class. But protecting the constitutional rights of citizens comes before making life easy for government.[98]

The court expressed confidence that its ruling would not restrict the municipality's police power so as to render it ineffective in preserving the desirable qualities of a single-family residential district. The township "need not open its residential borders to transients and others whose lifestyle is not the functional equivalent of 'family' life."[99] Going further, the court noted that nothing precluded the government "from distinguishing between the biological family and a functional family when it is rational to do so, such as in limiting the number of persons who may occupy a dwelling for such valid reasons as health, fire safety, or density control."[100] The court went on to state, "one factor which distinguishes families from groups of unrelated persons" is that "[i]f an unrelated household group exceeds the designated density requirement it is by voluntary action of the group. The blood related family by its natural growth may become in excess of the density limit."[101]

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95. *Adamson*, 610 P.2d at 440–41.
96. 351 N.W.2d 831, 840–43 (Mich. 1984).
97. *Id.* at 844.
98. *Id.* at 842.
99. *Id.* at 843.
100. *Id.* at 843–44.
101. *Id.* (quoting Town of Durham v. White Enters., Inc., 348 A.2d 706, 709 (N.H. 1975)).

The Supreme Court of New Jersey similarly recognized that zoning regulations prohibiting more than four unrelated people from living together violated the constitutional rights to privacy and due process. The court in *State v. Baker* reasoned that "[r]egulations based upon biological traits or legal relationships necessarily reflect generalized assumptions about the stability and social desirability of households comprised of unrelated individuals—assumptions which in many cases do not reflect the real world[,]"[102] and that functional families may fit in, and even fit in better than biological or legal families. In the facts presented, the group of individuals "was of sufficient permanence so as to resemble a more traditional extended family."[103] The court observed:

> The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. Moreover, such a classification system legitimizes many uses which defeat that goal.[104]

Further, the court acknowledged that the legitimization of unlimited related persons conflicts with the goals of controlling density, traffic, and character of the neighborhood: "Municipal officials remain free to define in a reasonable manner what constitutes such a unit. Moreover, space-related occupancy limitations . . . may be used to preclude the possibility of household groups of 'unrestricted' size. Thus, *only groups compatible with a residential area will benefit* by today's opinion."[105] Indeed, the *Baker* court confirmed the goals of preserving a family style of living and controlling overcrowding and congestion could more sensibly be achieved through size and area restrictions.[106]

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102. 405 A.2d 368, 372 (N.J. 1979). Note that two years prior, a lower New Jersey state court had held that an ordinance was unconstitutionally restrictive, legally unreasonable, and void to the extent that it limited occupancy on the basis of biological relationship or to single, nonprofit household units. *See* Holy Name Hosp. v. Montroy, 189, 379 A.2d 299, 303 (N.J. Super. Ct. Law Div. 1977) (citations omitted) ("[I]t is beyond the outer perimeter of permissible municipal control to consider mere habitation by a group of nuns as a zoning violation. If the regulation were to restrict occupancy of single-family dwellings to persons constituting a bona fide housekeeping unit, it would withstand judicial scrutiny and still carry out the legislative purpose. Any numerical limitation would have to be of general application and reasonably related to habitable floor area or sleeping and bathroom facilities.").

103. *Baker*, 405 A.2d at 375.

104. *Id.* at 371.

105. *Id.* at 372 n.3 (emphasis added). *But see* Justice Mountain's dissent, mourning the loss of a homeowner's "relief" should a group of unrelated persons move in next door:

> As of this writing . . . there is no homeowner in New Jersey who can say with any assurance that his next door neighbor's house, or that of his friend down the street, may not at any time and without warning, either be occupied by two or more families or by a group of unrelated persons indefinite in number.

Id. at 376 (Mountain, J., dissenting) (footnote omitted).

106. *Id.* at 372–73 (majority opinion). Such accepted restrictions included restrictions on incompatible uses, limits on floor area per occupant, sleeping and bathrooms facilities per

Similarly, the Court of Appeals of New York held in *McMinn v. Town of Oyster Bay* that the due process clause of the state constitution was violated by a zoning ordinance that was defined to include only two unrelated people who were sixty-two years of age or older. Using the rational basis test, the court reasoned that there was "no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance," and restricting occupancy to biological and legal relationships.[107] Since the achievement of such goals depended "generally upon the size of the dwelling and the lot and the number of its occupants," restrictions on household composition were under- and over-inclusive.[108] Moreover, the court held that the legitimate governmental objective of preserving family character of a neighborhood was not achieved by limiting the definition of a family to exclude a "household which in every but a biological sense is a single family."[109] It went on to say:

> Zoning is "intended to control types of housing and living and not the genetic or intimate internal family relations of human beings" and if a household is "the functional and factual equivalent of a natural family" the ordinance may not exclude it from a single-family neighborhood and still serve a valid purpose.[110]

Therefore, the court held, the ordinance was facially unconstitutional.[111] Since *McMinn* was decided, New York courts have held the line at the functional family, including a 2018 decision that declined to expand the definition of family to include a group of college students.[112]

Note that in each case, except *Adamson*, the state's high court held that the challenged ordinance violated the state's constitution under the rational basis test. Each of these courts determined that the family definitions were not reasonably related to the interests advanced. In discussing the New York and New Jersey cases, a commentator observed that "these cases demonstrate a judicially imposed limitation on the zoning power: municipalities cannot create classifications distinguishing traditional families from domestic groups that, from a land use point of view, are their functional equivalents."[113]

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occupant, limits on the number of cars, and other use and area restrictions which were more closely tied to the goals advanced. *Id.*

107. McMinn v. Town of Oyster Bay, 488 N.E.2d 1240, 1243 (N.Y. 1985).

108. *Id.*

109. *Id.*

110. *Id.* (citations omitted).

111. *Id.* at 1244.

112. *See, e.g.*, Grodinsky v. City of Cortland, 82 N.Y.S.3d 192, 193–95 (N.Y. App. Div. 2018) (upholding as legitimate a zoning ordinance that allowed both a "family" and a "functional equivalent of a traditional family" and rejecting the arguments of landlords who rented properties primarily to college students).

113. J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761, 790–94 (1982).

2. Cases Upholding Strict Definitions of Family

For every case striking down limits on unrelated household members, there are several upholding such limits under *Belle Terre* or interrelated or independent state law. These cases are often factually analogous to each other. First, most cases are brought by, or defend an enforcement action against, a landlord alone.[114] Second, many cases upholding unrelated household limits involve college students as residents.[115] Others involve other tenants as residents.[116]

The courts upholding restrictive definitions of family lean into precedential language that emphasized the high burdens on challengers and the deference given to validity. These courts all emphasize the deferential nature of the rational basis test employed in such zoning cases.[117] Additionally, the zoning ordinances are presumed constitutional, and the burden is on the challenger to prove unconstitutionality, even to the extent of eliminating *every* possible reasonable basis for the enactment.[118]

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114. *See* Dinan v. Bd. of Zoning Appeals of Stratford, 595 A.2d 864 (Conn. 1991); Ames Rental Prop. Ass'n v. City of Ames, 736 N.W.2d 255 (Iowa 2007) (involving a landlord association as party); City of Baton Rouge/Parish of E. Baton Rouge v. Myers, 145 So. 3d 320 (La. 2014); State v. Champoux, 566 N.W.2d 763 (Neb. 1997); Town of Durham v. White Enters., Inc., 348 A.2d 706 (N.H. 1975); City of Brookings v. Winker, 554 N.W.2d 827 (S.D. 1996). A few cases have upheld unrelated household member limits with household members as parties. *See* Dvorak v. City of Bloomington, 796 N.E.2d 236 (Ind. 2003) (including the four unrelated college students as parties); City of Ladue v. Horn, 720 S.W.2d 745 (Mo. Ct. App. 1986) (involving the cohabitating couple alone as the parties); McMaster v. Columbia Bd. of Zoning Appeals, 719 S.E.2d 660 (S.C. 2011) (per curiam) (including one of the unrelated tenants as a party).

115. *See Dvorak*, 796 N.E.2d at 236; *Ames Rental*, 736 N.W.2d at 255; *Durham*, 348 A.2d at 706; *McMaster*, 719 S.E.2d at 660; W*inker*, 554 N.W.2d at 827.

116. *See Dinan*, 595 A.2d at 864; *Myers*, 145 So. 3d at 320; *Horn*, 720 S.W.2d at 745; *Champoux*, 566 N.W.2d at 763.

117. *See Ames Rental*, 736 N.W.2d at 259, 261 ("Under this deferential standard, the zoning ordinance is valid unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious. . . . [Deference is given to council members to] legislate based on their observations of real life."); *Horn*, 720 S.W.2d at 752 ("In making such a determination [of whether there is a reasonable basis for the ordinance], if any state of facts either known or which could reasonably be assumed is presented in support of the ordinance, we must defer to the legislative judgment."); *McMaster*, 719 S.E.2d at 662–63 ("[E]very presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.").

118. *See Ames Rental*, 736 N.W.2d at 259 ("A statute or ordinance is presumed constitutional and the challenging party has the burden to 'negat[e] every reasonable basis that might support the disparate treatment.'") (alteration in original) (quoting Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 8 (Iowa 2004)); *Myers*, 145 So. 3d at 327 ("An ordinance, like a state statute, is presumed to be constitutional."); *Horn*, 720 S.W.2d at 747–48 ("A zoning ordinance is presumed valid. . . . The legislative body is vested with broad discretion and the appellate court cannot interfere unless it is shown that the legislative body has acted arbitrarily. . . . If the council's action is fairly debatable, the court cannot substitute its opinion." (citations omitted) (first citing Deacon v. City of Laude, 294 S.W.2d 616, 624

Iowa's rational basis test is so deferential that it stretches the bounds of the rational basis test: "For legislation to be violative of the Iowa Constitution under the rational basis test, the classification must involve '*extreme* degrees of overinclusion and underinclusion in relation to any particular goal.'"[119] Unlike those courts striking down restrictive definitions of family, courts upholding restrictive definitions find a legitimate governmental interest.

Reading cases upholding restrictive definitions of family, one starts to feel that they have "heard the song before." In evaluating whether a definition of family is rationally related to a legitimate state interest, state courts often fail to even evaluate whether the interest advanced is related to the definition of family.[120] Courts often justify restrictive definitions by quoting from *Belle Terre* that "every line drawn by a legislature leaves some out that might well have been included."[121] Nevertheless, the line drawn may focus on the presumed permanency of related and unrelated households.[122] Some courts, however, leave the door open to what they consider functional families.[123]

(Mo. Ct. App. 1956); and then quoting Vatterott v. City of Florissant, 462 S.W.2d 711, 713 (Mo. 1971)); *Champoux*, 566 N.W.2d at 769 ("The validity of a zoning ordinance will be presumed in the absence of clear and satisfactory evidence to the contrary.") (quoting Gas 'N Shop, Inc. v. City of Kearney, 539 N.W.2d 423 (Neb. 1995)); *McMaster*, 719 S.E.2d at 662–63 ("'A municipal ordinance is a legislative enactment and is presumed to be constitutional. . . . [A] statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.'" (citations omitted) (first quoting Town of Scranton v. Willoughby, 412 S.E.2d 424, 425 (S.C. 1991); and then quoting City of Rock Hill v. Harris, 705 S.E.2d 53, 55 (S.C. 2011)).

119. *Ames Rental*, 736 N.W.2d at 260 (quoting Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 10 (Iowa 2004)).

120. *See Horn*, 720 S.W.2d at 750–52; *Champoux*, 566 N.W.2d at 68; *McMaster*, 395 S.C719 S.E.2d. at 664–65.

121. *Dinan*, 595 A.2d at 871; *Myers*, 145 So. 3d at 335; *Horn*, 720 S.W.2d at 750; *Champoux*, 566 N.W.2d at 766; *McMaster*, 719 S.E.2d at 664; City of Brookings v. Winker, 554 N.W.2d 827, 831 (S.D. 1996).

122. *See Ames Rental* Prop. Ass'n, 736 N.W.2d at 261 ("[A]lthough related persons may live together in large numbers, they normally live together in a more permanent status and remain in one place for a longer period of time."); *Horn*, 720 S.W.2d at 748–49 ("To approximate a family relationship, there must exist a commitment to a permanent relationship and a perceived reciprocal obligation to support and to care for each other . . . . Only when these characteristics are present can the conceptual family, perhaps, equate with the traditional family. In a traditional family, certain of its inherent attributes arise from the legal relationship of the family members. In a non-traditional family, those same qualities arise in fact, either by explicit agreement or by tacit understanding among the parties.").

123. *See Dinan*, 595 A.2d at 870–71 (stating "the five persons who occupy one floor of the plaintiffs' two-family house may well constitute a single housekeeping unit . . . an issue we need not decide" and "[o]ur determination in Part I that the restriction of 'family' use of a dwelling to occupancy by a traditional family of related persons is not invalid as applied to the plaintiffs and that the ten persons presently occupying the property do not qualify as such a family makes it unnecessary to address this issue, because the plaintiffs cannot prevail in this case whether or not relief may be available"); *Horn*, 720 S.W.2d at 748–49 ("In a traditional family, certain of its inherent attributes arise from the legal relationship of the family members. In a non-traditional family, those same qualities arise in fact, either by explicit agreement or

Challengers of local government regulation in these cases often fail to raise "winnable" arguments. Claims based on equal protection and privileges and immunities clauses invite an unfavorable judgment as those doctrines focus on the distinction between the groups, which courts often frame as families and non-families.[124] Others fail to frame their challenges under a specific constitutional provision.[125]

C. Observations

Outcomes of both the federal and state cases necessarily depend on the facts presented to the court and the nature of the local ordinance at issue. In general, though, the cases suggest courts will protect, or at least can find reasons to protect, true functional families—particularly when they find it irrational to distinguish between related families and unrelated functional families.

The Supreme Court has not dealt squarely with whether a functional family may cohabitate in violation of a restrictive zoning code. Both Justice Marshall, dissenting in *Belle Terre*, and Justice Stevens, concurring in *Moore*, suggested that they would have extended rights granted in those cases to functional families.[126] In Justice Marshall's view, even the college students challenging the local ordinance should have received protection; a more intentional arrangement like the functional family would have merited such protection even more clearly. Justice Stevens, similarly, cited caselaw at the state and federal levels that supported protection for, among other arrangements: a half-dozen priests, a group home, two unrelated college students, four unrelated young men, an indeterminate number of elderly women, and others seeking to cohabitate. Of course, neither of these Justices wrote the majority opinion in the respective cases.

In parsing the language, however, it seems possible and even likely that a modern Supreme Court would protect a true functional family. The liberal justices may, like Justice Marshall, find a social justice element in expanding the zoning definition of family. The conservative justices may find that such an expansion can help protect the property rights and freedom of association they value. In the meantime, lower level federal courts seem reluctant to get involved. For example, a Connecticut district court rejected the attempt by the Scarborough 11 to federalize their claim of

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by tacit understanding among the parties.").

124. *See Dinan*, 595 A.2d at 865 (challenging the zoning ordinance as a violation of the state equal protection and due process clauses); Dvorak v. City of Bloomington, 796 N.E.2d 236, 237 (Ind. 2003) (challenging the zoning ordinance as a violation of the state equal privileges and immunities protection clause); *Ames Rental*, 736 N.W.2d at 257 (challenging the zoning ordinance as a violation of the federal and state equal protection clauses); *Myers*, 145 So. 3d at 332 (challenging the zoning ordinance as a violation his and his potential tenants' rights under the state equal protection clause, due process, and association clauses); *Winker*, 554 N.W.2d at 828 (challenging the zoning ordinance as a violation of the state equal protection clause).

125. *See, e.g.*, Town of Durham v. White Enters., Inc., 348 A.2d 706, 709–10 (N.H. 1975); *Horn*, 720 S.W.2d at 748–49.

126. *See* Moore v. City of East Cleveland, 431 U.S. 494, 520 (1977) (Stevens, J., concurring); Vill. of Belle Terre v. Boraas, 416 U.S. 1, 15–18 (1974) (Marshall, J., dissenting).

discrimination before granting a motion to reopen the case, which has since been withdrawn.[127]

State courts, as we have learned, have more squarely addressed the functional family. Several state courts have declared limitations on unrelated people to be unconstitutional when applied to functional families.[128] There may be a few reasons why there are not more state decisions holding similarly. First, it appears that few cases rise to the appellate level in state courts or are even brought challenging restrictive definitions of family.[129] Indeed, cases from fewer than twenty states are cited in this Article, despite an exhaustive search. Second, cases presented to appellate courts usually involve landlords, college students, or other individuals not living as a functional family. Courts will not generally declare the ordinances unconstitutional as applied to these groups. Moreover, many of the courts upholding limits on unrelated household members have refused to entertain hypothetical or facial challenges to the ordinances.[130] As noted above, some courts that have upheld restrictions as applied to particular groups have left open the possibility to reject them when applied to a functional family.

State judicial decisions protecting functional families are generally rooted in the rational basis review associated with the right to due process. The most prominent exception to this general rule is *City of Santa Barbara v. Adamson*,[131] the California Supreme Court decision that struck down, after a strict scrutiny review, an ordinance that infringed the right to privacy. Yet the legal scholar who has most directly and recently weighed in on the question of the functional family in zoning, Rigel Oliveri, suggests that legal protections for functional families are best supported by arguments for the rights of privacy and intimate association.[132] She argues that definitions of the "functional family" are problematic because they "create[] the potential for a tremendous invasion of privacy."[133] Although her paper on this topic

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127. De La Torre, *supra* note 3 ("U.S. District Judge Janet C. Hall initially ruled in the city's favor and dismissed the suit on Oct. 14, ruling that the Scarborough Street clan, embroiled in a bitter zoning fight with city officials, had not exhausted all local options before raising a constitutional challenge in federal court. But Hall, in a move that gave the plaintiffs hope, said she would reconsider the case if they could prove why seeking a variance from the city would have been futile. They apparently succeeded. On Tuesday, Hall granted the Scarborough 11's motion to reopen the case.").

128. *See supra* Section II.B.1.

129. One may also query whether the lack of appellate cases indicate a correlation between zoning enforcement and traditionally marginalized groups with fewer resources and political power.

130. *See, e.g.*, City of Baton Rouge/Parish of E. Baton Rouge v. Myers, 145 So. 3d 320, 330–31 (La. 2014); Ames Rental Prop. Ass'n v. City of Ames, 736 N.W.2d 255, 260–62 (Iowa 2007); McMaster v. Columbia Bd. of Zoning Appeals, 719 S.E.2d 660, 664 n.6 (S.C. 2011) (per curiam).

131. 610 P.2d 436, 439 (Cal. 1980).

132. Rigel C. Oliveri, *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, 67 FLA. L. REV. 1401, 1434–35 (2015); *see also* Kate Redburn, Note, *Zoned Out: How Zoning Law Undermines Family Law's Functional Turn*, 128 YALE L.J. 2412 (2019) (a student note dealing with similar issues and framing zoning laws excluding families against family law).

133. Oliveri, *supra* note 132 at 1435. She goes on to say, "Simply broadening the definition

delves deeply into many important issues, I remain skeptical that courts or communities are ready to do what her argument implies, which is to cast aside most or all regulations governing how people associate with each other within their homes.[134] Her work might be seen as an extension of the work of Rebecca Brown and Kenji Yoshino.[135] They have suggested that we should view government infringement on important rights (including privacy and due process) in terms of the extent to which it deprives someone of their liberty.[136] While this idea has proven to be popular among academics, it may be ahead of its time, at least in the zoning arena. Few courts seem to be ready to declare liberty, intimate association, or privacy as supreme over a community's right to govern who lives within the community. And no courts in my research have gone so far as to uphold challenges to zoning codes by groups of people who do not function at least in some ways as a single housekeeping unit. In other words, courts are still looking to the identity of the plaintiffs and the nature of their relationships in deciding zoning cases involving household units. Group of friends, or assemblies of roommates aiming to save money, need not apply.

There is a lot more to say on these points, but what struck me most is that it seems that at least some of the goals of these scholars can be achieved, even by courts who want to avoid expanding (or creating more) constitutional rights. I make three suggestions. First, we should focus exclusively on the functional family. Courts have already begun to recognize that the functional family has no distinct land use effects from the traditional related family. But not all courts have done so, so there is room for progress. Second, we should focus on exclusion, rather than regulation. No court has said that functional families should not be regulated; to the contrary, many of the courts striking down zoning challenges have recommended alternative ways to regulate for potential land use effects of these groups. Fighting for the absence of any regulation on liberty or other grounds seems futile—again, at least at this point in time. Third, we must spend more time thinking about the rational basis inquiry: whether zoning that excludes functional families is rational. This inquiry cuts across

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of family fails to question how local governments can use zoning to prevent people from living together based on their relationship to one another in the first place. These reforms require courts and zoning boards to make value judgments about whether particular households are acceptable family substitutes and to condition their ability to live together on how they measure up. While this approach allows more groups to live together than a restrictive regime, it still does violence to the concept of associational rights." *Id*.

134. *See id.* (saying that zoning regulations on household composition do "violence to the concept of associational rights. If it means anything, the right to choose household companions must protect *all* people who wish to live together—or coreside—regardless of their identities, relationship, or reason for doing so").

135. Oliveri does not cite this work in her article.

136. *See, e.g.*, Kenji Yoshino, *The New Equal Protection*, 124 HARV. L. REV. 747, 750, 760 (2011) (observing that the Supreme Court has "opened doors in its liberty jurisprudence" and citing to the 1973 decision in *U.S. Department of Agriculture v. Moreno* as an example of rational basis review); Rebecca L. Brown, *Liberty, the New Equality*, 77 N.Y.U. L. REV. 1491, 1500 (2002) (observing the "striking preference" in the Supreme Court for claims of equality over claims of liberty, and urging courts to "employ the lessons from equality jurisprudence to . . . the protection of liberty"). I have not fully explored their views in this paper, though I suggest zoning for families as a fertile topic of exploration in that context.

most analyses of constitutional rights, including the due process clause analysis that has been most commonly used to strike down restrictive definitions of family and to allow functional families. With that in mind, we turn now to Part III, which will flesh out the argument, in the way no court has yet done, that excluding functional families fails the rational basis test.

III. IS EXCLUDING FUNCTIONAL FAMILIES RATIONAL?

The question on which the exclusion of functional families seems to hinge on most—no matter what constitutional claim is made—is whether excluding the functional family is rational.[137] Published judicial decisions cited in Part II have already held that it is not rational for the law to distinguish between groups of people who function like a family and groups of people who do not.[138] Corresponding with this judicial trend is the fact that a growing number of communities have determined that the land use effects of functional families do not significantly differ from the land use effects of families, as traditionally defined. These communities have written or revised their ordinances to allow for functional families, as described in Part I.

Might excluding functional families be irrational for reasons other than the land use impact? This Part draws from sociological and anthropological literature demonstrating the rapid diversification in family structure since many zoning codes were written. In other words, there is a growing preference to live in configurations that depart from those anticipated by the traditional zoning code definition of family.

In the late 1950s, around two-thirds of children were raised in married-couple, male-breadwinner households.[139] However, the ubiquity of this "nuclear family" arrangement has been in decline for decades. As of 2012, only 22% of children lived in married, male-breadwinner families.[140] A wide variety of alternative family structures have gained ground. In 2012, 12% of children lived with a formerly married mother, 11% with a never-married mother, 7% with a parent cohabitating with a nonparent, 4% in a married-couple, female-breadwinner household, 3% with a single father, and 3% with grandparents only (small percentages also lived in married-couple households with both parents unemployed or with neither biological parents or grandparents).[141] The largest group of children, around 34%, lived with dual-earner, married parents (up from only 18% in 1960).[142]

Traditional two-parent households are being supplanted by a multiplicity of new arrangements. In 1960, 73% of all children lived with two parents in their first

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137. I focus on exclusion here, not the extent of regulation, for reasons described in the preceding paragraph.

138. After a diligent search, I have been unable to find studies showing that functional families cause real estate property values to decrease or other harms. Another point of reference: there have been no nuisance citations or police activity on the property occupied by the Scarborough 11.

139. PHILLIP COHEN, FAMILY DIVERSITY IS THE NEW NORMAL FOR AMERICA'S CHILDREN 2 (2014), https://contemporaryfamilies.org/wp-content/uploads/2014/09/new-normal-family-diversity.pdf [https://perma.cc/N8X9-T6HJ].

140. *Id.*

141. *Id.*

142. *Id.*

marriage—that number declined to 61% by 1980 and had further shrunk to a mere 46% in 2014.[143] Children are increasingly born to mothers who are single or living with a non-marital partner, as is the case for fully four-in-ten born today.[144] Nonmarital cohabitation and divorce,[145] together with the prevalence of nonmarital re-coupling and re-marriage,[146] have resulted in an unprecedented level of fluidity and blending in family structure. A recent U.S. Census study found that between 2008 and 2011, 31% of children under 6 years old experienced a change in their family/household structure (i.e., at least one entrance or exit of a parent or parent's cohabitating partner).[147] As of 2015, 62% of all children lived with two married parents (an all-time low), and a sizeable 26% lived with only one parent (up from 22% in 2000 and 9% in 1960).[148] While around 7% of children currently live with cohabitating parents,[149] estimates suggest that a much larger proportion (perhaps as high as 39%) may experience a bout of maternal cohabitation with a nonparent by the time the child turns 12.[150] A study based on 2002 National Survey of Family Growth data concluded that about 20% of children born within a marriage and 50% of children born within a cohabitating, nonmarital union will experience the breakup of their parents by age 9.[151] Interestingly, the prevalence of multigenerational households is also on the rise, driven by a growing immigrant share of the population.[152]

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143. PEW RESEARCH CTR., PARENTING IN AMERICA: OUTLOOK, WORRIES, ASPIRATIONS ARE STRONGLY LINKED TO FINANCIAL SITUATION 15 (2015), https://www.pewsocialtrends.org/2015/12/17/parenting-in-america/ [https://perma.cc/Z5D2-FEY6] (locate the "Report Materials" column on the right side of the page; then click "Complete Report PDF" to view the report).

144. *Id.*

145. *See* Sheela Kennedy & Steven Ruggles, *Breaking Up is Hard to Count: The Rise of Divorce in the United States, 1980–2010*, 51 DEMOGRAPHY 587, 587–98 (2014) (arguing that there was a substantial increase in age-standardized divorce rates between 1990 and 2008).

146. *See* GRETCHEN LIVINGSTON, PEW RESEARCH CTR., FOUR-IN-TEN COUPLES ARE SAYING 'I DO,' AGAIN 4 (2014), https://www.pewsocialtrends.org/2014/11/14/four-in-ten-couples-are-saying-i-do-again/ [https://perma.cc/HM4M-BM5D] (locate the "Report Materials" column on the right side of the page; then click "Complete Report PDF" to view the report) (stating that in 2013, fully four-in-ten new marriages included at least one partner who had been married before, and two-in-ten marriage were between partners whom were both previously married).

147. LYNDA LAUGHLIN, U.S. CENSUS BUREAU, A CHILD'S DAY: LIVING ARRANGEMENTS, NATIVITY, AND FAMILY TRANSITIONS: 2011 (SELECTED INDICATORS OF CHILD WELL-BEING) 12–14 (2014), https://permanent.access.gpo.gov/gpo107044/p70-139.pdf [https://perma.cc/DG2Z-XF62].

148. PEW RESEARCH CTR., *supra* note 143, at 16; *see also id.* at 25 (40 percent of families with children under 18 at home include mothers who earn the majority of the family income).

149. *Id.* at 18.

150. Sheela Kennedy & Larry Bumpass, *Cohabitation and Children's Living Arrangements: New Estimates from the United States*, 19 DEMOGRAPHIC RES. 1663, 1680–83 (2008).

151. *Id.* at 1684–85.

152. *See* PEW RESEARCH CTR., THE RETURN OF THE MULTI-GENERATIONAL FAMILY HOUSEHOLD 1 (2010), https://www.pewsocialtrends.org/2010/03/18/the-return-of-the-multi-generational-family-household/ [https://perma.cc/QET9-PG76] (locate the "Report

The unified, nuclear family arrangement is no longer the norm. The new norm is diversity and a great deal of flux emanating from the expanding variety of pathways and transitions in and out of family arrangements.[153] As stated by Philip Cohen, a sociologist specializing in the area of household and family structure, "In sum, the dominant married-couple household of the first half of the twentieth century was replaced not by a new standard, but rather by a general increase in family diversity."[154]

There are a number of factors that have played a role in the appearance of increased variety, complexity, and fluidity among family arrangements in the United States. According to Cohen, the fanning out of family structures has been driven by: (a) technological innovations that concurrently reduced the difficulty of household tasks and allowed for women to control the timing and number of their births—thus boosting female market employment and giving women freedom within, and also from, their families; (b) the creation of pension and welfare programs post-Depression (e.g., social security & welfare support for children) that provided opportunities for people to structure their lives more independently of family members and other relatives; and (c) market forces that increased the ability of middle-class and educated women to delay, forgo, or leave marriage, while spurring on falling wages and job insecurity among less-educated men—making them risky as potential marriage partners.[155] The rise of family diversity has tracked with a marked growth in educational attainment and labor force participation, and substantial decline in marriage and fertility rates, among American women over the last fifty years.[156]

The rise of cohabitation among people outside of the "traditional" family may also result from feelings of loneliness in modern society. In his seminal work, *Bowling Alone*, Robert Putnam argues that Americans are increasingly disconnected and lonely due to an erosion of social capital.[157] Others have advanced similar arguments in recent years, such as Sherry Turkle's critique of technology's disintegrating effects on social bonds in *Alone Together*.[158]

While the question of whether Americans are truly lonelier today than ever before is highly debated,[159] the dangers of loneliness are becoming increasingly

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153. *See* COHEN, *supra* note 139, at 2–3.

154. *Id.* at 3.

155. *Id.* at 4–5.

156. *See id.* at 6.

157. ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000).

158. SHERRY TURKLE, ALONE TOGETHER: WHY WE EXPECT MORE FROM TECHNOLOGY AND LESS FROM EACH OTHER (3d ed. 2017).

159. *See* ERIC KLINENBERG, GOING SOLO: THE EXTRAORDINARY RISE AND SURPRISING APPEAL OF LIVING ALONE 57–59 (2012) (arguing that on average solo dwellers are deeply engaged in civic and social life rather than being lonely and isolated); *see also* CLAUDE S. FISCHER, STILL CONNECTED: FAMILY AND FRIENDS IN AMERICA SINCE 1970, at 98–99 (2011) (finding that Americans' contact with relatives and friends, as well as accompanying emotional connectedness, has changed relatively little since the 1970s); Claude S. Fischer, Comment, *The 2004 GSS Finding of Shrunken Social Networks: An Artifact?*, 74 AM. SOC.

clear through recent scientific research. The influence of social isolation on risk of death is comparable to other well-established risk factors such as smoking and actually exceeds risk factors like obesity and physical inactivity.[160] Loneliness has been proven to spur on inflammation, which is linked to conditions like coronary heart disease, type 2 diabetes, arthritis, and Alzheimer's disease.[161] Beyond increased risk of chronic disease and mortality,[162] loneliness is also "characterized by impairments in attention, cognition, affect, and behavior."[163] Psychologist Abraham Maslow posited that most "maladjustment and . . . more severe psychopathology" resulted from a failure to fulfill the human need to belong.[164] The bottom line: feelings of loneliness and social isolation have been proven to adversely impact health outcomes. Flexible and communal living arrangements may be more socially supportive and may combat our collective loneliness problem.

REV. 657, 657–659 (2009) (drawing on 2004 data from the General Social Survey to argue that it is unlikely that Americans' social networks changed much, if at all, between 1985 and 2004). But according to John Cacciopo, a leader in the relatively new interdisciplinary field of social neuroscience, best estimates—based on the long-running Health and Retirement Study—suggest a three to seven percent increase over the last two decades. JOHN T. CACCIOPPO & WILLIAM PATRICK, LONELINESS: HUMAN NATURE AND THE NEED FOR SOCIAL CONNECTION (2009).

160. *See* Julianne Holt-Lundstad, Timothy B. Smith & J. Bradley Layton, *Social Relationships and Mortality Risk: A Meta-analytic Review*, 7 PLOS MED. 1, 14 (2010).

161. *See* Lisa M. Jaremka, Christopher P. Fagundes, Juan Peng, Jeanette M. Bennett, Ronald Glaser, William B. Malarkey & Janice K. Kiecolt-Glaser, *Loneliness Promotes Inflammation During Acute Stress*, 24 PSYCHOL. SCI. 1089, 1090 (2013); *see also* Emily Caldwell, *Loneliness, Like Chronic Stress, Taxes Immune System*, SCIENCEDAILY (Jan. 19, 2013), https://www.sciencedaily.com/releases/2013/01/130119185019.htm [https://perma.cc/38YE-2ZY4].

162. *See* Steven W. Cole, John P. Capitanio, Katie Chun, Jesusa M. G. Arevalo, Jeffrey Ma & John T. Cacioppo, *Myeloid Differentiation Architecture of Leukocyte Transcriptome Dynamics in Perceived Social Isolation*, 112 PROC. OF THE NAT'L ACAD. OF SCI. OF THE U.S. 15142, 15142 (2015).

163. Louise C. Hawkley & John T. Cacioppo, *Loneliness Matters: A Theoretical and Empirical Review of Consequences and Mechanisms*, 40 ANNALS OF BEHAV. MED. 218, 224 (2010).

164. *See* Lindley A. Bassett, Note, *The Constitutionality of Solitary Confinement: Insights from Maslow's Hierarchy of Needs*, 26 HEALTH MATRIX 403, 415–16 (2016) (footnotes omitted) ("Maslow felt that most 'maladjustment and more severe psychopathology' could be traced to an unsatisfied need to belong. An individual seeking to belong: 'will feel keenly, as never before, the absence of friends, or a sweetheart, or a wife, or children. He will hunger for affectionate relations with people in general, namely, for a place in his group, and he will strive with great intensity to achieve this goal. He will want to attain such a place more than anything else in the world.' The need to belong therefore encompasses relationships among friends and family as well as an individual's relation to society at large.") (quoting Abraham H. Maslow, *A Theory of Human Motivation*, 50 PSYCHOL. REV. 370, 381 (1943)) (citing Roy F. Baumeister & Mark R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCHOL. BULL. 497, 507 (1995)).

* * *

Family arrangements are becoming substantially more diverse, and individuals are choosing to cohabitate at a higher rate than ever before. Yet, America's housing stock has not caught up with the times. In 1940, around 64% of the country's housing stock consisted of detached, single-family homes.[165] This undoubtedly reflected the dominance of the nuclear family and relatively low proportion of Americans living alone (only 7.8% of total households at the time).[166] In an era of a wide diversity of family arrangements and high number of single-person households (28% of total households), how much ground has the detached, single-family home lost?[167] Surprisingly—none. In 2013, the American Housing Survey reported that just over 64% of the country's housing stock consisted of detached, single-family homes.[168] Communities across the country must fill these detached homes with people who want to live in them—a challenge if that housing is restricted to just the nuclear "family."

In this new era of family diversity, local governments must examine how zoning codes—often written many decades ago, during the dominance of the nuclear family—can be updated to accommodate the diverse family structures people want and need. To refuse to do so would be irrational in the face of these clear trends.

IV. POSSIBLE REGULATORY FRAMEWORKS

If it is irrational and thus unconstitutional to exclude functional families, as judicial and demographic trends suggest, local governments must ensure their zoning codes accommodate them. To achieve this goal most directly, a local government can strip its zoning code of all regulation of household composition: say, deleting the definition of family, the concept of the housekeeping unit, and any maximum occupancy standards. Eliminating all regulation of the household would satisfy those scholars who prioritize liberty or the right of intimate association.[169] Yet it would dissatisfy many others, and it would be unlikely to be adopted given entrenched expectations of the people to whom decision-makers are politically accountable. (Indeed, I know of no zoning code that takes this approach.)

If we assume, then, that governments will choose to regulate for the functional family, then governments must identify the goals of regulation. Three come to mind: controlling density, protecting privacy, and ensuring compatibility with community character. No rule can achieve all of these goals, so communities will have to make choices. Three distinct regulatory frameworks highlight these choices: the density

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165. Census of Housing, *Historical Census of Housing Tables*, U.S. CENSUS BUREAU (Oct. 31, 2011), https://www.census.gov/hhes/www/housing/census/historic/units.html [https://perma.cc/2HVR-RJPJ].

166. Kreider & Vespa, *The Historic Rise of One-Person Households: 1850–2010*, at 24 (SEHSD Working Paper, Paper No. 2014-19).

167. *Id.*

168. U.S. CENSUS BUREAU, 2013 HOUSING PROFILE: UNITED STATES 1–2 (2015), https://www2.census.gov/programs-surveys/ahs/2013/factsheets/ahs13-1_UnitedStates.pdf [https://perma.cc/6ZV9-NLHA].

169. *See, e.g.*, *supra* note 136.

model, the privacy model, and the character model. Because we have already discussed the privacy and character models in Part I, we will explore the density model first here.

A. The Density Model

Regulations that prioritize density aim to control the number of people living in a particular type or size of dwelling unit, without regulating for character of the relationships of members of a household. In that respect, the density model of regulations protects privacy and avoids some of the more difficult questions explored in this Article. There is no need to define family, nor grapple with the question of how many unrelated people may constitute a household. Zoning officials need not ask for evidence of legal bonds or proof of voter registrations. Households need not submit applications with affidavits stating that they dine together or share a bank account.

While there may be benefits to this approach, I know of no jurisdiction that exclusively regulates on the basis of density. There may be significant practical barriers for doing so. For one thing, the density model infringes on personal choice in that it requires households to maintain membership below a maximum number—whether households consist of related or unrelated persons. For this reason, these regulations may be vulnerable to constitutional challenges. The U.S. Supreme Court has never said that density restrictions for related people are acceptable. In *Moore v. City of East Cleveland*,[170] the most recent case to deal with the issues of families in zoning, the Court invalidated a zoning rule prohibiting certain related people from living together. Whether this could be read as an absolute bar to regulating families is debatable and may depend on a number of factors. Chief among those factors may be whether the nature of the density-controlling regulation implicates some broader value. *Moore* could not be read as a bar to occupancy limits that threaten the health or safety of the occupants. For reasons explained in the next paragraph, however, it may be hard to set an occupancy limit that satisfies this criteria. For his part, Justice Marshall, dissenting in *Village of Belle Terre v. Boraas*, recommended that cities categorically limit the number of adults (whether related or unrelated) living in a single household to achieve density-limiting goals while avoiding running afoul of the equal protection clause.[171] He suggested limiting each household to a specific number of adults, placing controls on rent, or limiting the number of vehicles per household.[172] State courts have also suggested density controls in lieu of character model regulation.[173]

There are practical reasons as to why density controls may not work. Let's take the Scarborough 11 as an example. The house they occupy is about 5800 square feet in size, and maybe six bedrooms. If what neighbors really wanted to see was more like five people in the house, the rule would have to limit density to one person

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170. 431 U.S. 494 (1977).

171. 416 U.S. 1, 19–20 (1974) (Marshall, J., dissenting).

172. *See id.*

173. *See, e.g.*, State v. Baker, 405 A.2d 368, 372–73 (N.J. 1979) (suggesting restrictions such as limits on floor area per occupant, sleeping and bathrooms facilities per occupant, limits on the number of cars, and other use and area restrictions).

maximum per 1100 square feet, and one person per bedroom up to five. How would neighbors in more densely packed neighborhoods—say, downtown—fare in a density model? Applying the rule to downtown Hartford, where the average apartment may be closer to 800 square feet, would mean that most apartments would be single occupancy. However, such a limitation would fly in the face of what we have seen in practice, which is that people "double up" in the more expensive housing downtown. At the same time, in small units across the city—in our "triple deckers" or "perfect sixes"—there would be significant discrepancies between permitted density and actual density.

Yet setting the square footage lower to a more reasonable 400 square feet, say, or three people per bedroom, would allow for fifteen people to occupy the house at Scarborough using the square footage formula and eighteen using the per-bedroom formula. Meanwhile, building and housing codes—perhaps most likely to satisfy the rational basis test—hover around maximum occupancies of one per seventy square feet. At the Scarborough 11 house, eighty-three people could shack up if that formula were applied in Hartford. While the Scarborough 11 house is about twice as large as the average new house in the United States (around 2700 square feet)[174], it helps to illustrate the practical problems with a density model approach.

There are equity issues, too, with a density formula. Tying density to a number of kitchens, bathrooms, or square feet (of the dwelling unit or of the site) means that wealthy people can have more people in their household than poor people can.

In sum, there is no perfect way to simply limit the number of adults living in a particular type or size of dwelling. There are trade-offs for communities seeking to regulate for families by eliminating the definition of family and adhering strictly to a density formula.

B. The Privacy Model

The vast majority of jurisdictions addressing the functional family have chosen to do so through a privacy model. As discussed through examples in Section I.B.1, a privacy model prioritizes privacy. It generally establishes a broad, loose definition of a household without requiring a functional family to submit an application to be considered as such. There are no public hearings or proof in advance of relationships among members of a household. In a privacy model jurisdiction, density may be constrained by limitations on the number of unrelated persons that may constitute a household.

I acknowledge here that the name of this model may be misleading in that the density model approach may protect privacy better than the so-called privacy model, given that the density model only asks questions about the number of persons in a household, rather than their relationships with one another. But in any regulatory regime—including the density model—privacy of individual households will be constrained. There will always be an inherent tension between the desire to allow for

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174. U.S. DEP'T OF COMMERCE, 2015 CHARACTERISTICS OF NEW HOUSING 346 https://www.census.gov/construction/chars/pdf/c25ann2015.pdf [https://perma.cc/F6NW-X7MY] (identifying an average square foot for new U.S. Houses completed and built for sale of 1,660 in 1973 and 2,740 in 2015).

flexible living arrangements and the desire to have some limitations on household composition.

C. The Character Model

Finally, there are some jurisdictions that have chosen the character model. As discussed through examples in Section I.B.2, a character model sets forth regulatory requirements for the functional family focusing on the nature, length, and depth of their bonds. This approach protects the character of the community by delving deeply into individual households through a public process exposing information about them. In that sense, privacy is obliterated in favor of community character. Communities choosing this approach would need to ensure that the aim and content of the regulation was not of a discriminatory character and did not have discriminatory intent. They would need a rational basis for the criteria used, they would have to have a fair and uniform process, and they would have to have fair and neutral decision-makers.

* * *

The most important point in this discussion is that unless a jurisdiction declines to regulate for household composition or size altogether, there is no way to equally achieve the goals of controlling density, protecting privacy, and stabilizing community character. There may be other models of regulating for the functional family, but I have yet to find any jurisdiction that fails to use either the privacy or the character approach. Additionally, I cannot conceive of other paths to allow the functional family that satisfy the constitutional constraints of zoning law. Communities have to choose, and I hope this Article has highlighted the trade-offs among their choices.

CONCLUSION

Most zoning codes are fifty years old or older, and few have been significantly revised since being adopted.[175] Yet, during that same period, how we live our lives, how our cities develop, and how we relate to each other have all radically shifted. Thus, zoning codes must be modernized to accommodate the way many Americans choose to live today.

Although only a handful of courts have squarely tackled zoning regulation of functional families, and few scholars have addressed the issue, it is worth a careful study because it presents fundamental questions about the role of law in our private lives. Ultimately, I have contended that to avoid constitutional scrutiny, communities must allow for functional families. A court reviewing the land use impact of a true functional family will see no distinction between the functional family and the "traditional" family, and demographic trends have shifted so far from the

175. *See* Sara C. Bronin, *Comprehensive Rezonings*, 2019 BYU L. REV. (forthcoming 2019) (confirming that fewer than twenty-six cities over 100,000 persons have comprehensively rezoned in the last ten years).

"traditional" family that it would be irrational to exclude modern familial arrangements.

The vast majority of communities responding to this call will seek to regulate functional families by placing restrictions on their ability to locate in particular neighborhoods and by requiring satisfaction of certain criteria. In making these rules, communities must choose how to prioritize the potentially competing goals of density control, privacy, and community character. No community can achieve all of these goals while still accommodating fellow community members' increasingly diverse living arrangements and preferences. My guess is that most will opt for a model that imposes few up-front requirements on households, while a smaller number will choose prospective regulation that requires approvals before functional families may locate themselves within a neighborhood.

Let's return now to the Scarborough 11. A few months after becoming mayor, my husband withdrew the nearly two-year-old zoning enforcement suit that his predecessor had filed against the Scarborough 11. Around the same time, I had been circulating draft revisions to our zoning code that would have allowed for a limited number of "intentional communities" in Hartford using the character model approach. The proposed revisions were stymied both by local opposition to legitimize the Scarborough 11—and by the Scarborough 11 themselves, who were reluctant to subject themselves to external scrutiny. For now, the Scarborough 11 are living in legal limbo: not using their property in a manner expressly allowed by the zoning code, and yet not being fined or evicted for doing so. I suspect they are joined by thousands, if not tens of thousands, of functional families across the country—and will remain in limbo until the laws catch up.

From:	alshen@sbcglobal.net
To:	All Alders
Subject:	[All Alders] zoning definition of family
Date:	Monday, February 13, 2023 4:28:41 PM

Recipient: All Alders

Name: Anna Shen
Address: 210 green lake pass, madison, WI 53705
Phone: 608-347-5228
Email: alshen@sbcglobal.net

Would you like us to contact you? Yes, by email

Message:

The City Council on 1/17/23 voted 15 to 3 to adopt a schedule for Legistar #74885 regarding the definition of family for zoning purposes: Plan Commission recessed public hearing 2/13/23, Additional referral to Housing Strategy Committee public hearing 2/23/23, and for the Common Council to act on 2/28/23. This motion was sponsored by Satya V. Rhodes-Conway, Keith Furman, Brian Benford, Juliana R. Bennett, Nikki Conklin, Jael Currie, Grant Foster, Patrick W. Heck,Erik Paulson, and Matthew J. Phair. The mayor has now requested a delay. I ask you to maintain this timetable that you overwhelmingly supported less than a month ago. The issue of real estate speculators was brought up exhaustively during the discussion of multifamily zoning and dismissed. Do not turn around and flipflop, second-guessing your own discussion, because the mayor is afraid taking a stand before an election.

From: Erin Skarivoda
To: All Alders; pccoments@cityofmadison.com
Subject: SUPPORT for Zoning Text Amendment 74885 :)
Date: Friday, February 10, 2023 11:44:35 AM

Good afternoon,

I am writing in support of Zoning Text Amendment 74885, Amending Supplemental Regulations within Section 28.151 MGO and Definitions within Section 28.211 of the Madison General Ordinances to Update Definitions of "Family".

When neighbors file complaints about violating the current ordinance, it's almost always racially motivated. This policy change is anti-racist and pro-LGBTQ, and I would love to see this change put into effect.

Sincerely,
Erin

Erin Skarivoda
she/her
1252 Spaight St
Madison, WI 53703

From:	Jon standridge
To:	Bannon, Katherine J
Cc:	Doug Carlson; All Alders; Mayor
Subject:	comments on Family zoning definition change presentation
Date:	Saturday, February 4, 2023 8:56:02 AM

Katie Bannon,

Thanks for doing the presentations on the proposed family definition zoning change. It appears that your presentation mainly consisted of reading a document describing the proposed changes and change rationale. Please let me know who wrote and edited the document you read.

It appears to me that most of the “facts” and “data” that you presented were heavily slanted to support the proposed zoning change. One example of this would be your fact stating that 50% of Madison residents are renters. Assuming your number included students, a more complete analysis of this number might have included the information that 40,000 of those renters are transient students. If you subtract these 40,000 transient renters from the Madison population of 269,000 the percentage of permanent resident renters would actually be about 27%.

Another example of slanted information would be the cities with colleges that you chose to compare with Madison regarding family zoning. One example was Minneapolis. It seems to me that you should have pointed out that Minneapolis is a much larger city and that many of the University of Minnesota student population are commuters. One of the commenters during the discussion pointed out the fact that several other Wisconsin university towns, that were not included in your discussion, do in fact have family definition zoning.

There are numerous other examples from your presentation that slant towards supporting the proposed ordinance. To me, this indicates that your agency has not been very thorough in researching the possible negative and unintended consequences this zoning change might cause. Please reconsider the rapid steamroller like path the city is on to get this change made. This change needs a slow down to provide for more careful consideration.

Jon Standridge
Cell, 608-669-8770

From: garystebnitz@yahoo.com
To: All Alders
Subject: [All Alders] Zoning change
Date: Monday, February 6, 2023 12:32:09 PM

Recipient: All Alders

Name: Gary Stebnitz
Address: 915 waban hill madison, Madison , wi 53711
Email: garystebnitz@yahoo.com

Would you like us to contact you? No, do not contact me

Message:

I support this proposed change. The opposition voiced by near west and campus areas is an example of student bias and the epitome of nimbyism. It's important to use every tool we have to combat our very serious housing crisis,

From: Barbara STREIBEL
To: All Alders
Subject: legislation redefining "family"
Date: Friday, February 10, 2023 11:39:23 AM

I totally support the City's goals of improving housing equity and choice. To ensure the proposed new legislation which redefines 'family' achieves these goals, I request that City staff **first evaluate historical data** on the potential negative impacts of this ordinance change. (See comments from Paul Soglin and others on this issue). The current proposed zoning modifications apply a one-size-fits-all occupancy option for both tenant and homeowner households city-wide.

This is concerning for neighborhoods that already face significant pressure from conversions of owner-occupied homes to short-term rentals. I support an overlay district covering those portions of Regent, Dudgeon Monroe, Vilas, Greenbush and other city neighborhoods which are areas with the most pressure on owner-occupied homes to become absentee landlord rentals. The overlay would limit occupancy to 3 unrelated adults and their dependents. This would support home ownership from a wider range of family constellations. I also support switching to a "functional family" definition which would treat non-traditional families more fairly and keep neighborhoods more affordable for families of all types.

From:	Linda Szewczyk
To:	Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Tucker, Matthew
Subject:	Zoning Proposal to Change Family Definition
Date:	Tuesday, February 7, 2023 4:47:12 PM

Uh-Uh! I really cannot say enough my disagreement with this proposal. This will not provide affordable housing for those in need. With the areas directly involved it will just appeal to college student landlords and essentially those rental prices will be atronomical.

But more sadly this will destroy neighborhoods that still have high appeal. Madison is a beautiful city and is known for being a unique city. Please live up to what we have made it so far! Its already hard and discouraging to see how development has changed our cityscape and uniqueness!

Please listen to our voice.

Linda Szewczyk

From: Thanasorn C
To: Plan Commission Comments
Cc: All Alders
Subject: I oppose plan 74885 increasing single family home occupancy limits by 250%
Date: Saturday, February 4, 2023 11:17:21 AM

Since 2010 I've worked and invested years of sweat equity in my neighborhood near Monona Bay. I live there and am concerned because increasing occupancy limits so much will make it less affordable and less liveable.

From: J Tretow-Schmitz
To: All Alders
Subject: Proposed Zoning Ordinance Change--New Definition of Family
Date: Sunday, February 12, 2023 4:59:28 PM

Hello.

I write to oppose the City's effort to increase the housing supply by changing the definition of family.

On the Plan Commission agenda for tomorrow night's meeting, item 74885 refers to this zoning change.

My hope is that rather than change the definition of family to address equity and the shortage of housing, an overlay district be created for the near-UW campus neighborhoods to protect them from speculative housing economics which would push up rents and attract undesirable, absent landlords. This would identify special provisions in addition to those in the underlying base zone, maintaining current occupancy limits, and seems a much better solution for the affected neighborhoods and for the city as a whole.

Thank you,

Jean Tretow-Schmitz
502 Glenway St
Madison

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Jean Tretow-Schmitz

From:	Gregg Waterman
To:	Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Tucker, Matthew; mononabayneighborhoodassoc@gmail.com; madisonzoningproposal@gmail.com; vnapresident@gmail.com; shivabidarsielaff@gmail.com; president@dmna.org; jesse.j.czech@gmail.com; jenn.morgan23@gmail.com; tylerlark@gmail.com; joelusson@gmail.com; president@marquette-neighborhood.org; MNABoard@marquette-neighborhoood.org; srj29@cornell.edu; baycreek.contact@gmail.com
Cc:	Mary Berrymanagard
Subject:	Zoning Proposal 74885 redefining family to increase occupancy limits
Date:	Saturday, February 4, 2023 12:46:39 PM

I oppose Proposal 74885 for several reasons. First, it's too broadly drafted; it lacks provisions to accommodate the various characteristics of the 1/3 of the city's residential area it affects. Second, it lacks sufficient study; its perceived impacts are little more than hunches. Third, it's too rushed with voting by the Plan Commission and Council scheduled in February, both in the absence of adequate study and research of 74855's probable impacts. Fourth, there's little rationale and no empirical data to support the assertion the change will provide more equitable housing access. Consequently I think 74885 neglects the rights of affected property owners, particularly in near campus portions of neighborhoods between Midvale Avenue and John Nolen Drive, as well as pockets of affected east isthmus properties near the Yahara River.

The proposal may be a better fit in parts of the city farther from the isthmus and Lake Wingra. In its current draft and procedural status, however, 74885 deprives property owner rights without due process.

There may be hundreds of acres across many neighborhoods in which limits on unrelated occupancy increased from two persons to five, as 74885 proposes, could provide more equitable access to housing without diminishing the residential character, appeal, and liveability of the affected neighborhoods. Nonetheless 74885 fails to distinguish between vast residential swaths and the differing neighborhood characteristics contained in the affected 1/3 of the city.

I've owned four homes on Brittingham Place for the past 20 years, including the single family house where my wife and I reside. Our neighborhood is mixed in color, race, ethnicity and household income levels. Our neighbors include children, single adults, adult students, single professionals, married and unmarried couples, retirees, and blended and growing families, most of who've lived in the neighborhood for many years or decades. That stability fosters the appealing character of block after block of well-maintained mostly two story houses and well-tended yards surrounding them.

I also own a 3,000 square foot, six-bedroom house on Gilman Street near University Avenue, which was owner-occupied until 1989 when it was bought by upper income out-of-state parents for their child's undergraduate term. They sold it several years later to another short term owner, from whom I bought it. Since 1999 I've rented it to students – primarily undergraduates.

The locations on Brittingham and Gilman are less than a mile apart with west 'Miffland' and the Bassett District in between. The two neighborhoods my properties are in are strikingly different in character and composition. Proudfit Street marks a clear distinction between the two. The Monona Bay neighborhood consists substantially of single family homes occupied by long term residents of various ages and family structures.

The same character also is evident in other neighborhoods between Midvale Avenue and John Nolen Drive, as well as pockets of affected east isthmus properties near the Yahara River. The process to date in forwarding 74885 puts all those liveable neighborhoods at nisk.

Currently Proposal 74885 is too broad for the purpose of providing more housing access to

unmarried couples, blended families, people of color and nontraditional and economically disadvantaged residents. Indeed it likely will have the opposite effect as higher occupancy limits will infill the affected near-downtown residential neighborhoods with a homogeneous demographic of students primarily from affluent traditional families. Without overlays or some provisions to maintain current occupancy limits, soon those neighborhoods will lose their identity and character as a transient demographic displaces long term residents. Proposal 74885 unduly jeopardizes and arguably denies the property rights of similarly situated long term residents, and particularly in areas near the UW and Edgewood campuses.

I notice 63 Op Atty Gen. 34 (1974) has been offered as legal support for Proposal 74885. That offer is misplaced because it overlooks that ordinances *can* be written in such a way to define family in terms of the number of unrelated persons who may live in the same single family dwelling. The opinion acknowledges many such ordinances that limit nonrelated occupancy with "restrictive definitions" of "family" – although susceptible to constitutional attack - "would be upheld". Id. at 40.

The opinion responded to four questions asked by the Wisconsin Department of Social Services in the context of group foster home placement. Id. at 36.The questions arose because the department's authority to carry out a group foster home program was being thwarted by ordinances restricting foster homes to areas zoned for hotel, commercial, or boarding house use – areas which are generally inappropriate for foster homes. Id at 35.

The opinion does not address an ordinance defining the word family in the context of Proposal 74885. In answering the Fourth Question, however, the opinion does consider the equal protection issue: Often such ordinances define "family" and/or "single family dwelling" in terms of the number of unrelated persons that may live in the same dwelling. Id. at 42.

> For such ordinances the question becomes: (1) whether there is a reasonable nexus between limiting nonrelated occupancy of single family dwellings and the zoning purposes set out in [Wisconsin] Stats; and (2) whether a restrictive definition of "family" is an appropriate means to carry out the zoning objective if it is reasonable. Id.

If the city is concerned the current ordinance is susceptible to equal protection attack I suggest staff review and, if necessary, revise the ordinance to express such a reasonable nexus and zoning purpose. Without such diligence enacting 74885 exposes the action to an argument that 74885 deprives property owners without due process of law.

From:	Gregg Waterman
To:	Plan Commission Comments; All Alders; Mayor; Bannon, Katherine J; Tucker, Matthew; mononabayneighborhoodassoc@gmail.com; madisonzoningproposal@gmail.com; vnapresident@gmail.com; shivabidarsielaff@gmail.com; president@dmna.org; jesse.j.czech@gmail.com; jenn.morgan23@gmail.com; tylerlark@gmail.com; joelusson@gmail.com; president@marquette-neighborhood.org; srj29@cornell.edu; baycreek.contact@gmail.com Cc: Mary Berrymanagard
Cc:	Mary Berryman Agard; Jared Pelski; Chuck Erickson
Subject:	Zoning Proposal 74885 redefining family to increase occupancy limits
Date:	Monday, February 13, 2023 4:11:00 PM

I urge the city to remember Monona Bay - the neighborhood closest to the UW - as it considers 74885's impact on
the near campus neighborhoods of Regent, Vilas, Greenbush, and Dudgeon Monroe. Indeed the areas affected by 74885 that are closest to the easternmost UW campus are the two blocks bounded by West Main St, Proudfit St, and Brittingham Pl. These two affected Monona Bay blocks are located three short blocks from a UW research center at 625 W Washinton Av and 1/2 mile from the Kohl Center. These two affected blocks contain about 100 dwelling units on 90 parcels, of which 75 are single family houses occupied by long-term residents - both owners and renters.

Comments supporting 74885 point out the current definition of family is outdated. It's true; the definition should be revised to be fair to all residents, and to reflect the reality of our community's standards. Ald Evers suggested a "functional family" definition at the virtual information meeting hosted by Building Inspection staff February 6th. A functional family definition makes sense to those of us solely concerned about 74885's negative impacts of creating a significantly more transient demographic in the near campus neighborhoods.

Ald Evers also questioned how the city may respond if it becomes clear years from now that 74855 was a mistake. A written comment dated and submitted February 10 recalls that history shows us such a mistake is inevitable. I suggest the city consider a 'sunset law' under which 74885 automatically expires in several years unless it's affirmatively reenacted. This would force the city to justify 74885's status, give the city an opportunity to reexamine public priorities and propose adjustments to an otherwise worthy revision if unintended consequences such as housing unaffordability, suburban flight and depopulation of schools become apparent. Sunsetting also could chill what many opponents see as an inevitable overheating of speculative rental housing investment in the affected areas.

-------- Original message --------
From: Gregg Waterman
Date: 2/4/23 12:46 PM (GMT-06:00)
To: pccomments@cityofmadison.com, allalders@cityofmadison.com, Mayor@cityofmadison.com, kbannon@cityofmadison.com, mtucker@cityofmadison.com, mononabayneighborhoodassoc@gmail.com, madisonzoningproposal@gmail.com, vnapresident@gmail.com, shivabidarsielaff@gmail.com, president@dmna.org, jesse.j.czech@gmail.com, jenn.morgan23@gmail.com, tylerlark@gmail.com, joelusson@gmail.com, president@marquette-neighborhood.org, MNABoard@marquette-neighborhoood.org, srj29@cornell.edu, baycreek.contact@gmail.com
Cc: Mary Berrymanagard
Subject: Zoning Proposal 74885 redefining family to increase occupancy limits

I oppose Proposal 74885 for several reasons. First, it's too broadly drafted; it lacks provisions to accommodate the various characteristics of the 1/3 of the city's residential area it affects. Second, it lacks sufficient study; its perceived impacts are little more than hunches. Third, it's too rushed with voting by the Plan Commission and Council scheduled in February, both in the absence of adequate study and research of 74885's probable impacts. Fourth, there's little rationale and no empirical data to support the assertion the change will provide more equitable housing access. Consequently I think 74885 neglects the rights of affected property owners, particularly in near campus portions of neighborhoods between Midvale Avenue and John Nolen Drive, as well as pockets of affected east isthmus properties near the Yahara River.

The proposal may be a better fit in parts of the city farther from the isthmus and Lake Wingra. In its current draft and procedural status, however, 74885 deprives property owner rights without due process.

There may be hundreds of acres across many neighborhoods in which limits on unrelated occupancy increased from two persons to five, as 74885 proposes, could provide more equitable access to housing without diminishing the residential character, appeal, and liveability of the affected neighborhoods. Nonetheless 74885 fails to distinguish between vast residential swaths and the differing neighborhood characteristics contained in the affected 1/3 of the city.

I've owned four homes on Brittingham Place for the past 20 years, including the single family house where my wife and I reside. Our neighborhood is mixed in color, race, ethnicity and household income levels. Our neighbors include children, single adults, adult students, single professionals, married and unmarried couples, retirees, and blended and growing families, most of who've lived in the neighborhood for many years or decades. That stability fosters the appealing character of block after block of well-maintained mostly two story houses and well-tended yards surrounding them.

I also own a 3,000 square foot, six-bedroom house on Gilman Street near University Avenue, which was owner-occupied until 1989 when it was bought by upper income out-of-state parents for their child's undergraduate term. They sold it several years later to another short term owner, from whom I bought it. Since 1999 I've rented it to students – primarily undergraduates.

The locations on Brittingham and Gilman are less than a mile apart with west 'Miffland' and the Bassett District in between. The two neighborhoods my properties are in are strikingly different in character and composition. Proudfit Street marks a clear distinction between the two. The Monona Bay neighborhood consists substantially of single family homes occupied by long term residents of various ages and family structures.

The same character also is evident in other neighborhoods between Midvale Avenue and John Nolen Drive, as well as pockets of affected east isthmus properties near the Yahara River. The process to date in forwarding 74885 puts all those liveable neighborhoods at nisk.

Currently Proposal 74885 is too broad for the purpose of providing more housing access to unmarried couples, blended families, people of color and nontraditional and economically disadvantaged residents. Indeed it likely will have the opposite effect as higher occupancy limits will infill the affected near-downtown residential neighborhoods with a homogeneous demographic of students primarily from affluent traditional families. Without

overlays or some provisions to maintain current occupancy limits, soon those neighborhoods will lose their identity and character as a transient demographic displaces long term residents. Proposal 74885 unduly jeopardizes and arguably denies the property rights of similarly situated long term residents, and particularly in areas near the UW and Edgewood campuses.

I notice 63 Op Atty Gen. 34 (1974) has been offered as legal support for Proposal 74885. That offer is misplaced because it overlooks that ordinances *can* be written in such a way to define family in terms of the number of unrelated persons who may live in the same single family dwelling. The opinion acknowledges many such ordinances that limit nonrelated occupancy with "restrictive definitions" of "family" – although susceptible to constitutional attack - "would be upheld". Id. at 40.

The opinion responded to four questions asked by the Wisconsin Department of Social Services in the context of group foster home placement. Id. at 36.The questions arose because the department's authority to carry out a group foster home program was being thwarted by ordinances restricting foster homes to areas zoned for hotel, commercial, or boarding house use – areas which are generally inappropriate for foster homes. Id at 35.

The opinion does not address an ordinance defining the word family in the context of Proposal 74885. In answering the Fourth Question, however, the opinion does consider the equal protection issue: Often such ordinances define "family" and/or "single family dwelling" in terms of the number of unrelated persons that may live in the same dwelling. Id. at 42.

> For such ordinances the question becomes: (1) whether there is a reasonable nexus between limiting nonrelated occupancy of single family dwellings and the zoning purposes set out in [Wisconsin] Stats; and (2) whether a restrictive definition of "family" is an appropriate means to carry out the zoning objective if it is reasonable. Id.

If the city is concerned the current ordinance is susceptible to equal protection attack I suggest staff review and, if necessary, revise the ordinance to express such a reasonable nexus and zoning purpose. Without such diligence enacting 74885 exposes the action to an argument that 74885 deprives property owners without due process of law.

From:	Larry and Ginny White
To:	Mayor; All Alders; gloria@reyesformayor.com; president@dmna.org; vicepresident@dmna.org; Bannon, Katherine J; Plan Commission Comments; zoning@dmna.org
Subject:	We OPPOSE Change in Family Definition
Date:	Friday, February 10, 2023 12:31:21 PM

We are longtime Madison residents, homeowners and rental property owners and we **oppose** the city's proposed redefinition of "family" for single-family homes. It may be a well-intentioned effort to improve equity, but it will have unintended negative consequences.

The city administration is promoting several wide-ranging changes simultaneously and paying only cursory attention to the concerns of residents and neighborhoods. We urge you to slow the process down and seek sincere engagement with the public.

Respectfully,

Ginny and Larry White
71 Oak Creek Trail
Madison, WI 53717
608-821-0056

From: Olivia Williams
To: All Alders; Plan Commission Comments
Subject: Support family definition changes
Date: Monday, February 13, 2023 1:01:23 PM

Hi Plan Commission and Common Council,

I urge you to support the family definition changes to our zoning code at Plan Commission tonight and at Common Council on Feb 28.

I work in the field of affordable housing, particularly affordable homeownership at Madison Area Community Land Trust. I also have a PhD in Geography, where I studied urban change, displacement, and affordability. I've been involved in the Affordable Housing Action Alliance, who has already weighed in in support of this proposal, and I am very much in support of the change for many of the reasons that have been given by others.

I have noticed arguments in opposition stating that this change will reduce affordability for both homebuyers and renters, and nothing could be further from the truth. It clearly will provide greater housing access and choice for low-income people, and it needs to be passed. The longer we wait to pass this change, the more this ordinance can be weaponized against low-income renters, who are threatened into accepting sub-par living conditions or else evicted for violating this ordinance. Staff have provided clear data and anecdotes about the harm this ordinance causes to renters *right now*. It is fairly commonplace already to live in groups of unrelated people to afford rent in a housing market where housing costs outstrip incomes. The more prices increase in Madison, the more this change becomes necessary to allow for our existing housing to actually house the people who work here.

Passing this ordinance change is a no-brainer. It should have never been on the books at all, and it is very much related to old practices of exclusionary zoning and redlining. Madison should be a leader in Wisconsin in standing up for renters, who make up more than half of the population of the City and are statistically less white than homeowners.

thanks for your consideration,

Olivia

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Olivia R. Williams, PhD
oliviareneewilliams.com | Twitter

From: duckowinter@gmail.com
To: All Alders
Subject: [All Alders] Rezoning
Date: Tuesday, February 7, 2023 8:58:16 AM

Recipient: All Alders

Name: Donna Winter
Address: 4313 Major Avenue, Madison, WI 53716
Email: duckowinter@gmail.com

Would you like us to contact you? Yes, by email

Message:

I am opposed to the preposed rezoning code which changes the definition of "family." As a retired Madison police department I have seen the problems that can arise, including crime, traffic, and urban decay.