



PREPARED FOR THE PLAN COMMISSION

**Proposal:** Zoning Text Amendment

**Legistar File ID #:** [74885](#) (Family Definition)

**Prepared By:** Matt Tucker and Katie Bannon, Building Inspection - Zoning

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[74885](#) – This zoning code amendment revises the family definition to have equal standards for renters and homeowners regarding the maximum number of residents allowed to live in a housing unit.

## **Summary of Proposal**

The proposed legislation will:

- Allow the same number of people to live together, regardless of ownership status (up to five unrelated adults)
- Allow the same number of people to live together, regardless of housing location
- Remove the non-safety limit on number of children/dependents
- Allow dependency living arrangements and second kitchens, regardless of ownership status and whether a homeowner has roommates

Some effects of the change:

- Allows two couples with children to live together as one household
- Allows three to five unrelated people to rent together
- Allows renters with disabilities to have a live-in attendant or relative with their own living space

A public-facing webpage about the proposal, which includes data collected during this project, maps, recordings of community meetings, and frequently asked questions is available here:

<https://www.cityofmadison.com/dpced/bi/family-definition-revision/3897/>

## **Current Zoning Code Occupancy Restriction**

The zoning code currently restricts occupancy of a housing unit based on:

- Zoning district;
- Whether residents are renters or homeowners; and
- Whether residents are all related to one another.

From Madison General Ordinance 28.211:

*Family.*

- (a) *A family is an individual, or two (2) or more persons related by blood, marriage, domestic partnership, or legal adoption, living together as a single housekeeping unit in a dwelling unit, including foster children, and up to four (4) roomers, with the following exceptions:*

1. *Within the SR-C1, SR-C2, SR-C3, TR-C1, TR-C2, TR-C3, TR-C4, TR-R and TR-P residential districts, dwellings that are not owner-occupied are limited to one (1) roomer.*
  2. *In any residence district, a family may consist of two (2) unrelated adults and the minor children of each. Such a family may not include any roomers except where the dwelling unit is owner-occupied. For the purpose of this section, "children" means natural children, grandchildren, legally adopted children, stepchildren, foster children, or a ward as determined in a legal guardianship proceeding.*
  3. *In any district, a family also may consist of up to four (4) unrelated persons who have disabilities/are disabled or handicapped under the Fair Housing Amendment Act (FHAA) or the Americans with Disabilities Act (ADA), are living as a single household because of their disability and require assistance from a caregiver.*
  4. *In any district, up to two (2) personal attendants who provide services for family members or roomers who are disabled or handicapped under the FHAA or ADA and need assistance with the activities of daily living shall be considered part of a family. Such services may include personal care, house-keeping, meal preparation, laundry or companionship.*
- (b) *For the purpose of this definition, an owner-occupied dwelling unit shall mean any dwelling unit where an individual or two or more persons who reside in such unit constitute one hundred percent (100%) of the owners of either the entire fee simple interest or the entire land contract vendee's interest in said dwelling unit.*
- Provided, however, dwelling units occupied by owner-occupants holding less than one hundred percent (100%) interest in the fee simple shall nonetheless be considered owner-occupied for the purposes of this definition where the remainder of said interest is held by an investor pursuant to a shared equity purchase arrangement and the owner-occupant has continuously resided in said dwelling unit for at least four (4) years;*
- (c) *Absence of any owner from the dwelling unit for health reasons or by virtue of a marital separation or divorce or any temporary absences of any owner from the dwelling unit shall not constitute a reduction in the number of owners who reside in such unit for the purpose of determining whether such unit continues to be owner-occupied.*

**Maximum Number of Residents Allowed by Zoning District (Simplified)**

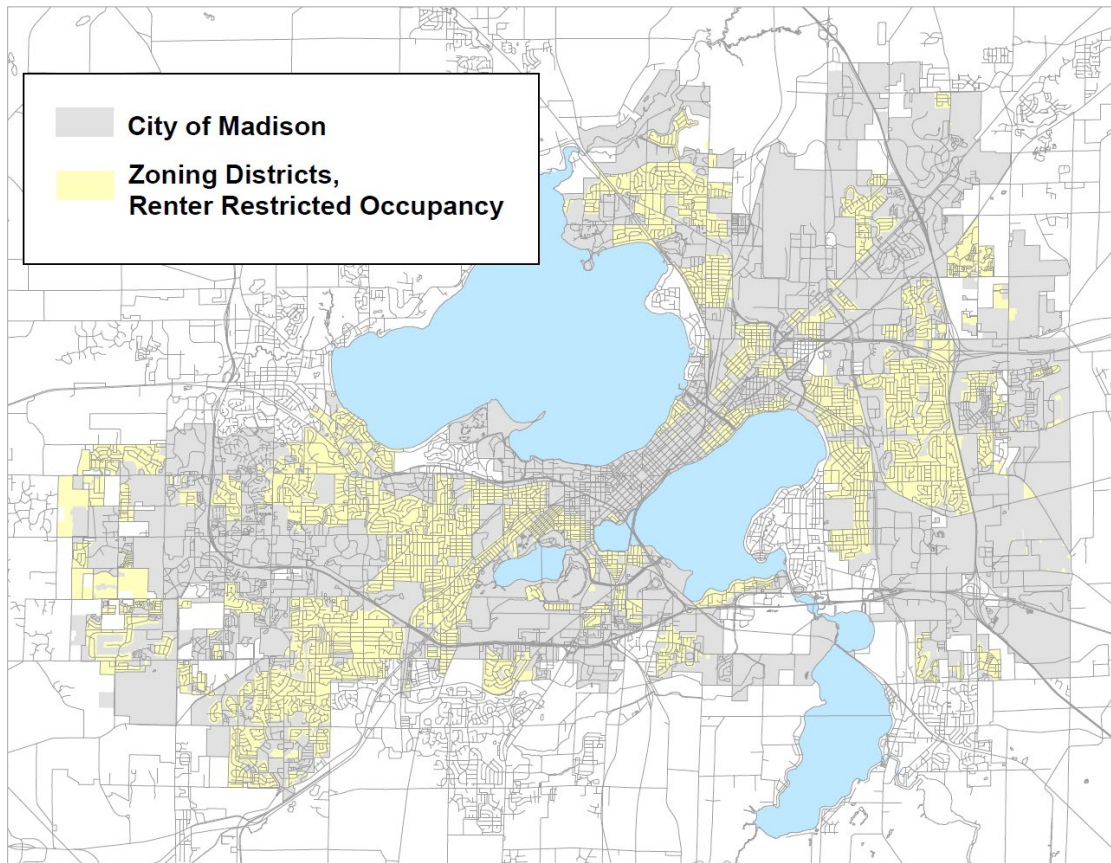
|                               | <i>All Low Density, 1-3 Family<br/>Zoning Districts (SR-C1, SR-<br/>C2, SR-C3, TR-C1, TR-C2, TR-<br/>C3, TR-C4, TR-R and TR-P)</i> | <i>Other Zoning Districts where<br/>Housing is Allowed</i> |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| <b><i>Renter-Occupied</i></b> | Related + 1<br>(2 unrelated)                                                                                                       | Related + 4<br>(5 unrelated)                               |
| <b><i>Owner-Occupied</i></b>  | Related + 4<br>(5 unrelated)                                                                                                       | Related + 4<br>(5 unrelated)                               |

A family can be two or more person all related by blood, marriage, domestic partnership, or legal adoption, including foster children. There is no limit on the number of related people allowed.

A group of related individuals can live with up to four roomers (or unrelated roommates), except in the listed districts. In these low density residential zoning districts of primarily single family houses, a group of related individuals who rent may have only one unrelated roommate.

If all residents are unrelated, a maximum of five unrelated people is allowed, except in the listed districts. In these low density districts, if one of the residents owns the house, then five residents are allowed. If they rent, then only two residents are allowed. About 1/3 of land area in Madison has the renter-restricted occupancy of a maximum of two unrelated people, not including the Planned Development (PD) single family districts that often have similar restrictions.

**Map of Zoning Districts with Renter Restricted Occupancy of Maximum Two Unrelated**



There are exceptions in the zoning occupancy limits for:

- Two unrelated individuals to live together with the children of each as long as they don't live with any other roommates
- Residents living together living together due to their disabilities
- Residents with disabilities living with a personal attendant

**Proposed Maximum Number of Residents Allowed by Zoning District (Simplified)**

|                                              |                                                          |
|----------------------------------------------|----------------------------------------------------------|
|                                              | <i>All Zoning Districts where<br/>Housing is Allowed</i> |
| <b><i>Renter- or Owner-<br/>Occupied</i></b> | Related + 4<br>(5 unrelated)                             |

### **Background on Family Definition**

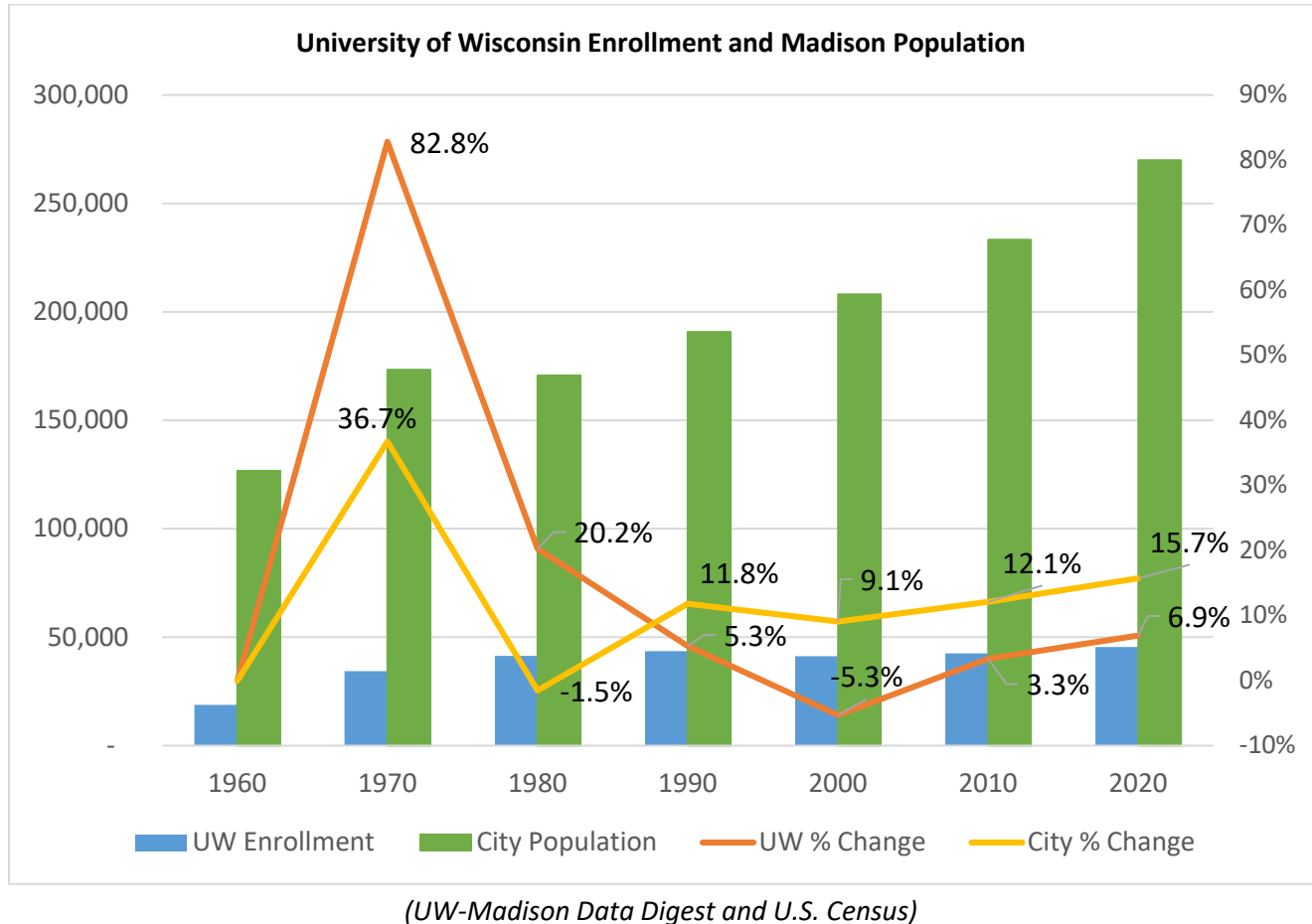
Defining family by blood and marriage and adding a limit of five unrelated people appears to have been added to Madison's zoning code in 1966, at the same time as a major rewrite of our code. Zoning occupancy restrictions based on family relationships were a common addition to zoning codes during this time, particularly in communities with colleges and universities. The City does not have documentation about the specific local reasons this was added to the code. However, based on reviewing case law from the time, restrictions like these were typically added to zoning codes to response to increasing college student enrollment and interest among younger adults of living in more communal, unrelated households.

In 1969, the family definition was revised to set lower occupancy limits for renters in lower density residential districts throughout the city. The intent of this change in the family definition appears to be to give priority to homebuyers so they would not have competition for housing in these areas from a household of more than two unrelated renters.

"Family. A 'family' is an individual, or two or more persons related by blood, marriage or legal adoption living together as a single housekeeping unit in a dwelling unit, including foster children, domestic servants and not more than four roomers, except that the term 'family' shall not, in R1, R2 and R3 Residence Districts, include more than one roomer except where such dwelling unit is owner occupied.

(MGO 28.03, 1969)

Between 1960 and 1970, University of Wisconsin enrollment increased by 82.8% while Madison's overall population increased by 36.7%. No ten year period following has had an increase near that scale.



Some additional changes were made more recently to the family definition to:

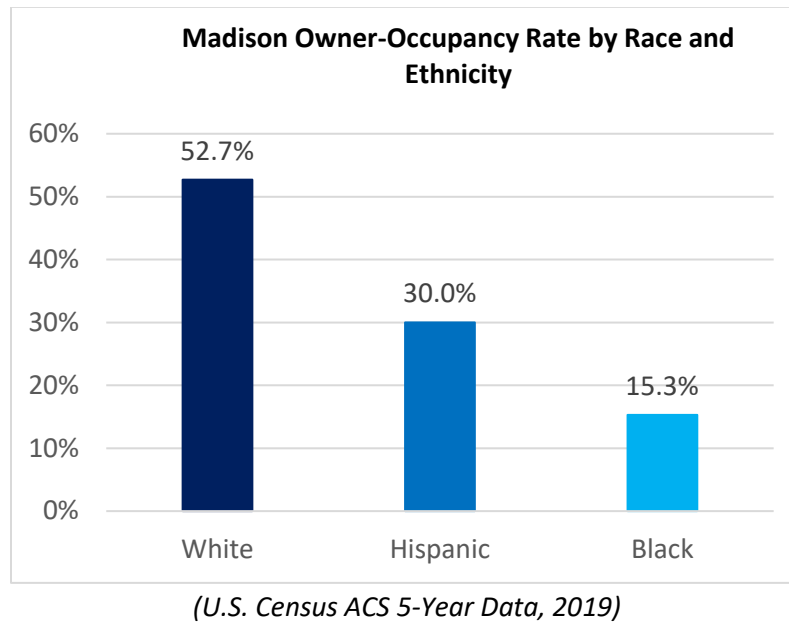
- accommodate the housing needs of people with disabilities and meet fair housing requirements; and
- allow same-sex couples to live together as a related family prior to the legalization of gay marriage by adding domestic partnerships.

## **Catalysts for Change**

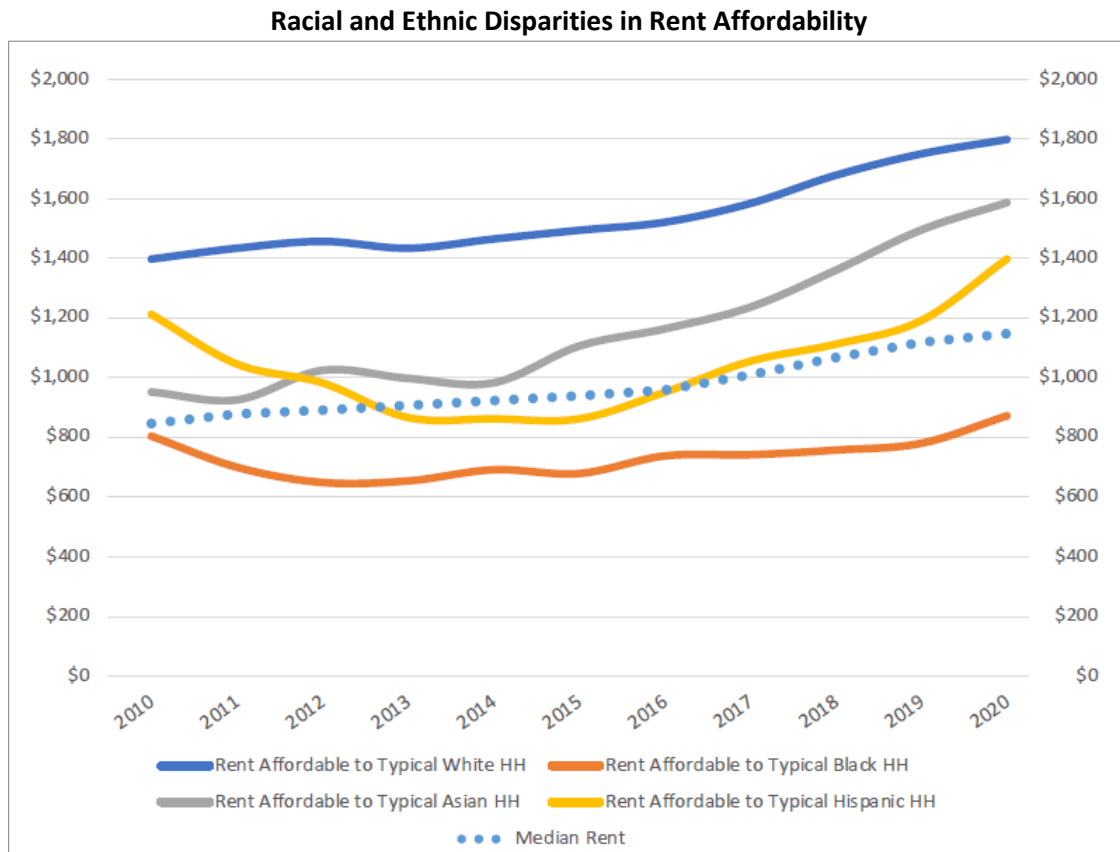
### **Improve Equity**

City staff has been reviewing all our programs, policies, and laws with an equity lens to determine if there are opportunities to make change to improve equity. Based on the family definition's greater restrictions on renters, who are more likely to be lower income and more likely to be people of color, and based on staff's experience enforcing the law, City staff believed that a change should be considered.

The current rule disproportionately affects people of color and lower-income residents. These groups are more likely to be renters and more likely to need to share housing to afford rent, especially with rents so high. In Madison, 52.7% of white households are homeowners, 30% of Latino households are homeowners, and 15.3% of Black households are homeowners (U.S. Census ACS 5-Year Data, 2019).

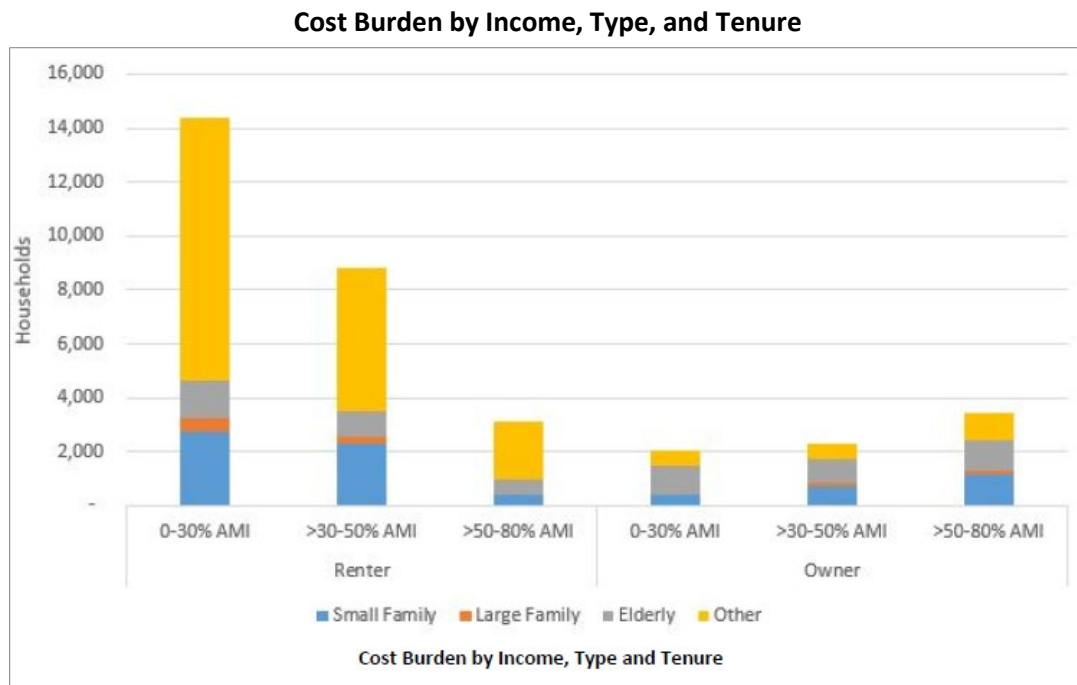


Among households in Madison, the median Black household is the only demographic by race or ethnicity unable to afford the median rent in the City. This ties into economic segregation of geographic opportunity, significantly limiting affordable housing access to certain areas of the City (Madison Housing Snapshot, 2022).



*(Madison Housing Snapshot, 2022)*

Whether a buyer or a renter, there are housing affordability issues in Madison, but renters are more likely to be low income than home owners. Renters are also more likely to be cost-burdened (2022 Madison Housing Snapshot). Renters are more likely to need to share housing costs by having roommates.



*(2020-2024 Madison Consolidated Plan)*

The American Planning Association’s 2022 Equity in Zoning Policy Guide also identified concerns with family definitions. It states “The definition of “family” is an important, and often overlooked, part of zoning regulations when it comes to disproportionate impacts on historically disadvantaged and vulnerable communities. Many definitions related to household composition are based on outdated assumptions about small, nuclear families and a largely white culturally-specific concept of family life that excludes other ways of living.” It recommends “[including] all living arrangements that function as a household living unit or [defining] residential units without reference to a family or household.”

### **Increase Housing Choice**

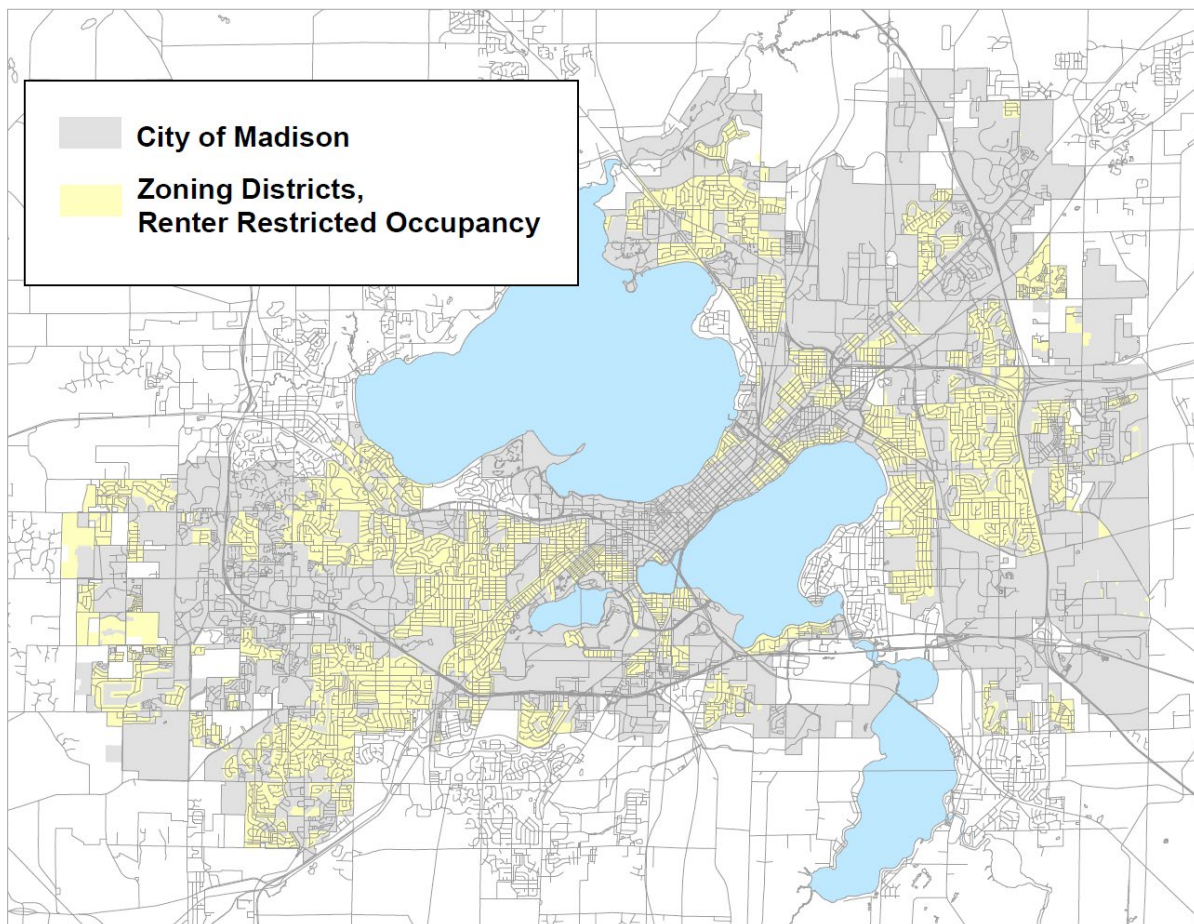
City staff has also been reviewing barriers to housing, both in access and in construction of additional units. While a change here will not increase the number of housing units available, it will increase access and opportunity.

Today over 1/3 of land area in Madison is zoned to prohibit more than two unrelated renters from living together. In these same areas, owner-occupied housing units can house up to five unrelated individuals. As I mentioned, these zoning districts are primarily lower density districts with single family houses. This map doesn’t even include the Planned Development districts within Madison that are primarily single family

zoning districts and often have the same restrictions. Today, for a group of three renter roommates, 1/3 of the city is not even available to them to choose.

Large 3 and 4 bedroom houses, commonly built today, are limited to two unrelated adults if they rent, and many households today are not the “traditional” family that Madison’s zoning code continues to prioritize and benefit. Many of these areas are walkable to employment opportunities. The family definition restricting occupancy negatively affects all types of renters including college students, young adults, and retirees.

**Map of Zoning Districts with Renter Restricted Occupancy of Maximum Two Unrelated**

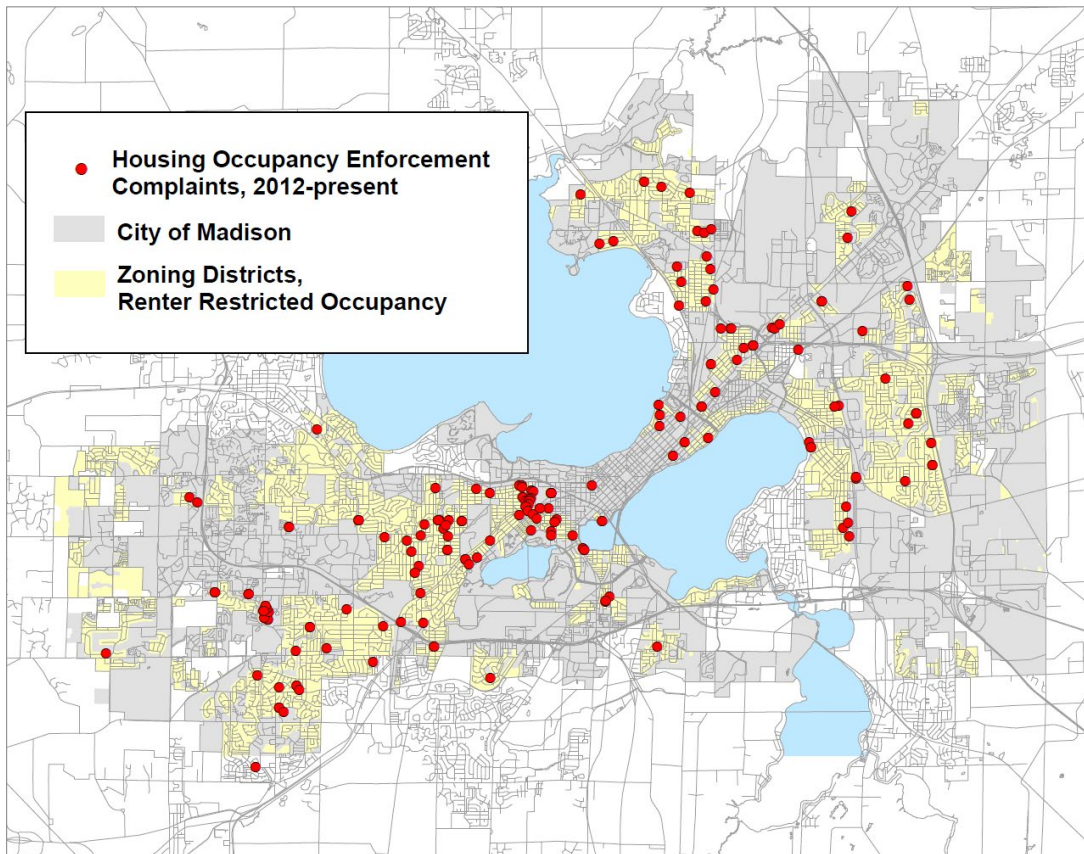


### **Negative Impacts of Current Practice**

The Building Inspection Division responds to complaints from the general public, referrals from alders and other city agencies, and performs some programmed inspections of select areas. Staff analyzed the complaints Zoning received about occupancy. Staff also considered our experiences enforcing the law.

For this summary, code enforcement activity data between 2012 and January 2023 was studied. 204 complaints or referrals for housing occupancy violations were addressed. This housing occupancy complaint data was captured from the City’s code enforcement dataset.

### Zoning Family Definition Occupancy Complaints, 2012 – January 2023



204 cases inspected

70 cases east of the Capitol (34%)

134 cases west of the Capitol (66%)

140 (69%) of the cases fall under the current more restrictive definition of family for rental occupancy, which allows a maximum of a family plus one roomer (2 unrelated). 33 (16%) of the cases fall under the family definition which makes no distinction in regard to owner vs renter occupancy. The remaining 31 cases (15%) fall into Planned Development zoning, where specific occupancy standards are unique to each PD zone.

39 (19%) of the cases are in campus-adjacent areas or in the *UW Near Neighborhoods* area (Vilas, Greenbush, east and north sides of Regent, east end of Dudgeon-Monroe). These are addresses in close proximity to the University of Wisconsin. However, there have been student occupancy cases further from UW and non-student renter cases in the UW Near Neighborhoods. Nine of these cases relate to a single PD-Zoned property.

Seven cases pertain to a programmed inspection of dwellings in the PD-zoned Park Ridge and Park Edge Neighborhood near Elver Park.

49 cases were found to be in violation (24%)

30 properties had more than one case. Multiple cases accounted for 40% of total cases.

- 2 cases = 20 properties (40)
- 3 cases = 7 properties (21)
- 4 cases = 1 property (4)
- 5 cases = 1 property (5)
- 9 cases = 1 property (9)

**Complaints by Zoning District:**

| Zoning District | # of Complaints |
|-----------------|-----------------|
| PD              | 31              |
| SR-C1           | 49              |
| SR-C2           | 2               |
| SR-C3           | 10              |
| TR-C1           | 6               |
| TR-C2           | 26              |
| TR-C3           | 13              |
| TR-C4           | 12              |
| R1              | 5               |
| R2              | 9               |
| R3              | 6               |
| R4A             | 2               |
| TR-V1           | 12              |
| TR-V2           | 2               |
| R4              | 5               |
| R5              | 1               |
| NMX             | 1               |
| SE              | 2               |
| SR-V1           | 9               |
| SR- V2          | 1               |

Blue = PD, each PD has a unique occupancy restriction = 31 cases

Red = If renter, family plus one roomer (2 unrelated) allowed = 140 cases

Purple = Family plus four roomers (5 unrelated) allowed = 33 cases

Staff does not ask occupants their race, ethnicity, or student status so the data does not consistently include that information. Anecdotally, Building Inspection staff can share that the race or ethnicity of the household being complained about is sometimes shared by the complainant in phone calls and that complaints appear to be disproportionately about people of color, multi-generational households, and immigrant families. However, many complaints are also about white households and student households.

Some complaints are more about quality of life issues, such as the number of cars, number of visitors, or noise, rather than the number of occupants. However, other complaints seem to be driven by neighbors simply not wanting other neighbors there. Some neighbors will also use the occupancy restriction as leverage. They use their knowledge that a household is in violation to get the household to do or not do other things under threat of being reported. Staff has also found that some landlords use the occupancy limits to prevent renters from complaining about unsafe living conditions. Landlords know that if renters complain about living conditions, the renters can lose their housing.

### **Plan Commission Work Session and Meetings with Alders**

Staff presented information about the existing family definition at the September 29, 2022 Plan Commission work session. The purpose was to gauge interest in making a change to today's limits and to receive input about what to propose.

The Plan Commission reached a consensus that staff should propose a change because the existing rules were problematic and outdated. There were varying opinions about whether to change to a zoning occupancy limit based on square footage or number of bedrooms or to set a maximum number. Commissioners identified that they wanted to continue to allow multi-generational related families to live together. They also shared that at some number, there could be negative impacts, such as noise. The Plan Commission directed staff to propose a change and be prepared to explain to Plan Commission why staff thought the proposal was the best solution.

During this time, staff also met with alders who had expressed an interest in making a change to get their feedback and received feedback similar to the feedback the Plan Commission provided.

### **Research and Identification of Preferred Option**

After the Plan Commission work session and conversations with alders, staff did additional research into various options and considered how they would apply specifically within Madison, considering our legal environment and other unique factors.

### **Community Comparisons**

Staff determined that Madison's limit of two is lower than the most restrictive limit in most other communities. Most communities allow at least three unrelated occupants at their most restrictive. Of the Big Ten college communities, only East Lansing had as few as two. In addition, East Lansing has twenty rental restriction overlays which prohibit additional rentals in the neighborhoods. State College has a dispersion requirement for student rentals that is also quite restrictive.

Madison is also unique in having a different limit for renters than for homeowners. It is more common for communities instead to use housing provider/landlord licensing to manage rental housing and any associated issues. However, in 2018, the Wisconsin legislature and governor pre-empted local communities in Wisconsin from licensing landlords and doing proactive rental inspections.

Several communities have relatively recently changed their limits. Minneapolis removed their non-safety limit in 2021, and St. Paul, Minnesota increased theirs from four to six in 2021. In 2018, the State of Iowa preempted local communities from defining families and restricting occupancy based on it so Iowa City and Ames no longer have a family-based limit.

Of the Big Ten communities, Madison has one of the smaller percentages of student population compared to overall city population. Additionally, Madison has one of the larger overall city populations. Of the eighteen Big Ten communities, which includes both communities for the four universities located in a twin-city area, only Columbus, OH, Minneapolis, MN, St. Paul, MN, and Lincoln, NE have a larger population. Because Madison has a larger non-student population than many of these communities, our limit has impacts beyond the UW student population. Many Madison non-student residents are renters who live in unrelated households.

The below chart summarizes the most restrictive occupancy number in each Big Ten community. The full details of each community's rules are [available here](#).

**Big Ten Occupancy Limits (Simplified)**

| <i>Big Ten Community</i>             | <i># Limit if All Unrelated Renter Adults in Most Restrictive Zoning District</i> |
|--------------------------------------|-----------------------------------------------------------------------------------|
| Iowa City, Iowa                      | No limit                                                                          |
| Lafayette, Indiana                   | No limit                                                                          |
| Minneapolis, Minnesota               | No limit                                                                          |
| New Brunswick–Piscataway, New Jersey | No limit                                                                          |
| St. Paul, Minnesota                  | 6                                                                                 |
| College Park, Maryland               | 5                                                                                 |
| Columbus, Ohio                       | 5                                                                                 |
| Ann Arbor, Michigan                  | 4                                                                                 |
| Champaign, Illinois                  | 4                                                                                 |
| Urbana, Illinois                     | 4                                                                                 |
| Bloomington, Indiana                 | 3                                                                                 |
| Evanston, Illinois                   | 3                                                                                 |
| Lansing, Michigan                    | 3                                                                                 |
| Lincoln, Nebraska                    | 3                                                                                 |
| State College, Pennsylvania          | 3                                                                                 |
| West Lafayette, Indiana              | 3                                                                                 |
| East Lansing, Michigan               | 2                                                                                 |
| Madison, Wisconsin                   | 2                                                                                 |

### Preferred Alternative

After researching various options, staff proposed a limit of five unrelated adults with no non-safety limit for dependents as the preferred alternative.

#### Proposed Maximum Number of Residents Allowed by Zoning District (Simplified)

|                                         |                                                          |
|-----------------------------------------|----------------------------------------------------------|
|                                         | <i>All Zoning Districts where Housing<br/>is Allowed</i> |
| <b><i>Owner- or Renter-Occupied</i></b> | Related + 4 and their dependents<br>(5 unrelated)        |

Proposed language:

*Family .*

- (a) *A family is one of the following:*
- (1) *An individual; or*
  - (2) *Two (2) or more people related by blood, marriage, domestic partnership, or legal adoption, living together as a single household in a dwelling unit, including foster children; up to four (4) roomers, and their dependents; or*
  - (3) *Up to five (5) unrelated adults and the dependents of each, living together as a single household in a dwelling unit...*

Many parts of the city today have a limit of five unrelated individuals. As far as staff is aware, the areas of the city that allow up to five unrelated individuals today are not experiencing quality of life issues as a result of the occupancy limit. If there are negative impacts in these areas, staff believe the city should address those quality of life issues citywide, not just in areas with today's limit of two unrelated renters. In the areas with five, staff has not seen over-occupied units from a safety perspective. If the limit of two is being used a proxy to prevent quality of life issues, staff believes there are better ways to respond than by broadly discriminating against renters.

Some families with children are reported for zoning occupancy violations today, but in conversations with Plan Commissioners and alders, the number of children/dependents and their impacts were not a concern. In fact, a limitation on the number of children based on their relatedness to adults in the household was seen as problematic. Knowing that discrimination against multi-generational families and doubled up related families are a concern, the proposal eliminates non-safety limit on dependents. Safety limits will remain in place so that if so many people, including children, are living in a household that there is a safety concern, action could be taken.

Here is how this proposal addresses many of the concerns raised by Plan Commission, alders, and community members regarding a revision to the family definition:

| <b>Concern</b>                                                                                                                         | <b>How Proposal Addresses Concern</b>                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Discriminates against renters in housing access                                                                                        | Sets the same standard for renter- and owner-occupants                                                                                                                                                                          |
| Housing choices for renters are more limited in some areas of the city                                                                 | Sets the same standard for all areas of the city                                                                                                                                                                                |
| Multi-generational and immigrant families are often reported for occupancy. We should continue to allow them                           | Keeps current standard of no non-safety limit for number of residents in a related household                                                                                                                                    |
| Availability of housing for children is limited based on their relatedness with other members of the household                         | No limit on number of children/dependents, other than safety standard. Inspectors will no longer need to ask who child is related to                                                                                            |
| Occupancy limits are based on an outdated ideal of two-parent household with children. It doesn't allow for alternative ways of living | Limit of five unrelated adults will allow more communal living options with no limit on children/dependents in household                                                                                                        |
| There could be quality of life impacts if we allow too many unrelated residents in one household                                       | Five unrelated residents is the limit in other areas of the city with no quality of life impacts based on number. Proposal uses existing limit with known impacts and applies it evenly throughout the city                     |
| Enforcement intrudes on resident privacy. Inspectors have to ask personal questions about relationships between people                 | Inspectors can ask "How many adults live here?" and that answer will be enough information in the vast majority of cases. Inspectors will rarely need to know marital status and other personal information about relationships |

After staff drafted the proposal, staff met with all willing alders at small "Lunch and Learns" and one-on-one meetings. At the meetings, staff presented the proposal and answered questions. Several alders and the Mayor offered to sponsor the legislation. The proposal was introduced by Council on December 6, 2022.

## **Options Considered but Not Selected**

### **A Lower Limit than Currently Allowed for Other Zoning Districts**

If there are concerns about five unrelated adults having significant quality of life impacts, staff has not seen those impacts in the areas where five are currently allowed. Staff believe based on this experience with other zoning districts, that five is a logical and reasonable proposed number.

### **Functional Family**

Some cities use a functional family model instead of a blood or marriage family model or allow a functional family as an exception, such as through a Conditional Use or Special Use Permit. The intent of functional family definition still seems to exclude the typical renter household and especially student renter households. It would likely allow a unmarried couple in a long-term committed relationship to live together with children raised by both, two related families with children they are raising to live together, a throuple to live together, and a communal household that does not live in a cooperative living arrangement.

Ann Arbor, Michigan requires a functional family to receive a Special Exception Use permit. Here is their definition:

*A group of people plus their Offspring, having a relationship which is functionally equivalent to a Family. The relationship shall be of a permanent and distinct character with a demonstrable and recognizable bond characteristic of a cohesive unit. Functional Family shall not include any society, club, fraternity, sorority, association, lodge, organization or group of students or other individuals where the common living arrangement or basis for the establishment of the Housekeeping Unit is temporary.*

*(Ann Arbor, MI Unified Development Code, 5.37.2)*

Mansfield, Connecticut assumes that students enrolled at a college or university may not be a functional family. Here is their definition:

*Persons living together as a functional family as determined by the criteria listed below. For the purpose of enforcing these regulations, it shall be assumed (presumptive evidence) that students enrolled at a college or university and groups of more than three (3) persons living together, who do not qualify as a family based on categories one or two of this definition, do not constitute a functional family. To qualify as a functional family, the following criteria shall be met:*

*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.*
- (Mansfield, CT Zoning Regulations, Article 4. B)*

As St. Paul, Minnesota notes, these approaches “place a greater burden on the discernment of a city’s zoning administration, and can be challenging if not impossible to enforce in day-to-day life.” (Study on the Definition of *Family* in the St. Paul Zoning Code)

City staff would be required to collect even more personal information than already required regarding their finances, tenure at various locations, proof of employment, personal identification, and where children live most of the time and are enrolled in school. If the burden of proof is on occupants to prove that they are a functional family, this approach would be even more intrusive and potentially traumatic than today’s approach. If enforcement continues to be complaint-based, there will continue to be concerns about which households are reported and why and how neighbors will determine if they think there is a violation.

### **Overlay around the University of Wisconsin-Madison (UW) Campus**

Some communities have overlays around college campuses which have different limits occupancy limits within the overlay. City staff had several concerns about this approach. The City of Madison Equal Opportunity Ordinance states that housing discrimination based on student status and based on age is not allowed. If there was a different *renter* limit in an overlay around UW’s campus, although not explicitly illegal, staff had concerns that the spirit and intent would be to restrict student access to housing.

Additionally, the City of Madison 2019 Analysis of Impediments to Fair Housing Choice identified areas in Madison that have high concentrations of white persons who are members of high-income households. These areas have been referred to in academic research as “Racially Concentrated Areas of Affluence,” and research has pointed to such areas’ ability to “enhance the privileges, benefits, and opportunities of the most affluent, resulting in disproportionate advantage...” to residents in these areas. Staff had concerns about an overlay which restricted housing access in Vilas and Dudgeon-Monroe, which were two areas identified as Racially Concentrated Areas of Affluence.

### **Limit by Number of Bedrooms or Square Footage**

Limiting occupancy based on the number of bedrooms or square footage would be complex if decision makers still want a relatively limited number of occupants to be allowed. Occupants would have to provide accurate floor plans, and Madison might see housing providers remodeling to create many more bedrooms than typical in a single family house today. While this change could be considered in the future, the city may want some additional regulations in place regarding number of bedrooms before doing so.

### **No Zoning Occupancy Limit**

The City of Madison has a safety-based occupancy limit that requires a minimum of 150 square feet for the first occupant of a dwelling unit and 100 square feet for each additional occupant. Space used as a laundry, workshop, furnace room, bathroom, storage room, closets, and common halls does not count towards this minimums. In a typical single family house, removing the zoning occupancy limit and using the safety-based occupancy limit would result in a much higher occupancy limit than five adults.

At the Plan Commission work session, some Commissioners expressed the opinion that we should keep a reasonable zoning occupancy limit beyond safety minimums to mitigate potential impacts from too many residents, such as noise. Additionally, the State pre-empted local communities on licensing landlords/housing providers and doing programmed inspections of rental properties. Many other communities are able to revoke rental licenses when resident behavior is leading to excess police runs. Without that tool, it seemed prudent to keep some standard. While this change could be considered in the future, the city may want some additional regulations in place before doing so.

### **Other Changes Included with Family Definition Proposal**

#### **Fair Housing Update**

The current ordinance provisions that allow state-licensed community living arrangements are not being changed with this amendment. For other dwellings occupied by disabled individuals, the current “family definition” limits the number of disabled individuals living in a dwelling unit to four. The current language:

*In any district, a family also may consist of up to four (4) unrelated persons who have disabilities/are disabled or handicapped under the Fair Housing Amendment Act (FHAA) or the Americans with Disabilities Act (ADA), are living as a single household because of their disability and require assistance from a caregiver. (MGO 28.211)*

The proposal raises this number to six, which is consistent with a number from federal fair housing cases. The proposed language:

*Up to six (6) unrelated people who have disabilities under the Fair Housing Amendment Act (FHAA) or the Americans with Disabilities Act (ADA), who are living as a single household because of their disability and requiring assistance from a caregiver.*

### **Dependency Living Arrangements (Eliminate Second Kitchen / Roomer Prohibition)**

The proposal also makes a change which eliminates the need for the “Dependency Living Arrangement” zoning use, which is defined as follows:

*Dependency Living Arrangement . A living arrangement which permits a person with a physical or mental disability to live in a temporary separate living area within a single-family dwelling unit or permits a relative or paid attendant of a person with such a disability to live in a temporary separate living area within a single-family dwelling unit. Such living area may include a separate bath and separate kitchen facilities which permit a degree of independence. Ingress and egress for such a living area is from within the principal dwelling unit. (MGO 28.211)*

An on-site caregiver is considered an unrelated roommate to the occupants of the dwelling. A person with a disability may also wish to reside in a dwelling unit of a caregiver. With the current ordinance, if a dwelling unit has a second kitchen, the dwelling is prohibited from having any unrelated roommates beyond the related family occupants. This restriction necessitates a carve-out for caregivers or disabled occupants that reside in a semi-private space that often includes a second kitchen in a dwelling, called “Dependency Living Arrangement.”

Currently, establishing a Dependency Living Arrangement is a complicated zoning approval. The process involves an owner obtaining zoning approvals and recording the letter of approval with the Dane County Register of Deeds. Then, after the Dependency Living Arrangement is no longer needed, the ordinance requires the Dependency Living Arrangement area be dismantled/removed within six months. This can be a significant home modification, and the loss of valuable finished dwelling space. To avoid removing the Dependency Living, a new owner could be sought that also needs a Dependency Living Arrangement, but the zoning approval process still starts over from scratch with the new owner.

The proposed ordinance modifies the “dwelling unit” definition, to eliminate the “second kitchen” prohibition and associated prohibition of roommates if a second kitchen is present. The result will be that dwelling units with additional kitchens may include roommates. With this change, there is no longer a need for the exception for a Dependency Living Arrangement. Staff has sufficient existing tools to prevent a dwelling unit from being converted into multiple dwelling units.

### **Timeline and Public Participation**

- September 29, 2022 – Plan Commission Work Session
- October 3, 2022 – Wisconsin State Journal News Article
- October 2022 – Staff Research and Drafting
- November & December 2022 – Meetings with Alders
- December 6, 2022 – Legislation Introduced by Council
- December 19, 2022 – Near West Neighborhoods Meeting
- January 27, 2023 – Capital Times News Article
- February 2 and February 6, 2023 – Community Informational Meetings
- February 7, 2023 – Tone Madison Opinion Piece
- February 13, 2023 – Plan Commission
- February 2023 – Additional community meetings as requested by alders, two additional currently scheduled

Staff supports this amendment.

### **Referenced Documents**

[Full Summary - Comparison of Non-Safety Occupancy Restrictions in Big Ten College Communities Housing Snapshot Report \(2022\)](#)  
[Analysis of Impediments to Fair Housing Choice \(2019\)](#)  
[Consolidated Plan 2020-2024](#)