

Rental Housing in Family Neighborhoods

A College Station Discussion

Overview and Disclaimer

This document has been prepared by Eric Damian Kelly, Ph.D., FAICP, of Duncan Associates, an Austin-based planning firm. Dr. Kelly was hired by the City to facilitate two workshops conducted with neighborhood leaders, student leaders, landlords and City officials and staff, to discuss issues related to rental housing in single-family neighborhoods. Dr. Kelly has worked in a number of university towns and addressed this issue frequently.

This document, however, is not a set of recommendations. It includes the consultants' thoughts and attempts at synthesizing the information and comments that came out of the two days of workshops. Much of this document is simply synthesis and summary. In some cases, however, it goes beyond simple synthesis and includes comments that may (or may not) be helpful to Council in addressing this complex issue.

The consultant submits this document in the hope that it will be helpful to City Council members. In doing so, however, Dr. Kelly and the firm recognized that it is the members of the College Station City Council who were elected to make policy for the City, and it is they who are in the best position to resolve difficult issues like this.

Geography of Rules

Policy

There appears to be a consensus that some of the issues related to rental housing should be addressed on a city-wide basis, but others should be addressed only in neighborhoods where residents express both a desire and a commitment to maintenance of a family life-style. There are a few neighborhood advocates who believe that new rules should be applied in the whole city and a few students who appear to believe that there should be no new rules anywhere in the city. Most of the neighborhood participants, however, and all of the landlords involved in the discussion seem to support an approach that would impose the strictest new rules (such as limitations on occupancy) only in select neighborhoods. A logical extension of this policy position would be that new restrictions should be imposed only on neighborhoods where a substantial number of property owners believe such regulations are both necessary and desirable. Most who spoke appeared to accept the concepts of neighborhood petitions and some degree of neighborhood self-determination, policies that underlie the City's new Neighborhood Conservation District; many seemed to believe that the Neighborhood Conservation process could be expanded to include limitations on future rental housing.

Rules That Should Apply Citywide

There appears to be consensus that the following rules, many of which are already in effect, should apply City-wide:

- Streets accessible to private, emergency and delivery vehicles at all times [note that this is really a policy determination that will guide the application of other rules, primarily related to parking]
- No parking on yards or lawns [current ordinance]
- No parking on unapproved surfaces [current ordinance, but see note below]
- No trash accumulation in yards [current ordinance]
- Trash barrels taken in promptly [current ordinance]
- Noise limits (using current measure of whether they are heard from other property) [current ordinance, but see discussion below]
- Occupancy limit of not more than four unrelated individuals [current ordinance]

Notes:

Parking: *In the course of discussing this issue, the group sidetracked briefly to concerns about the parking of RVs and boats in yards. The current ordinance allows boats and RVs to be parked in yards even on the grass. There appeared to be a broad consensus that the portions of the parking ordinance relating to RVs and boats should be fixed – probably by requiring that they, also, be parked on an approved surface and that there be additional screening for them.*

A related issue that was not resolved was the effect of parking a boat or RV in a driveway on the availability of parking for cars and trucks; if one part of a new ordinance on rental housing relates to the availability of parking spaces, the ordinance should probably prohibit parking of boats or RVs in any of the required off-street parking places. If revisions to the rental housing ordinance do not address required off-street parking, then this comment can be disregarded.

Noise. *See separate discussion of under the general issue of “Enforcement” later in these notes.*

Rules That Should Apply only in Specific Neighborhoods

- Possible lower occupancy limits [there is considerable neighborhood interest in a limit of two unrelated persons]
- Party ordinance or stronger noise ordinance [see separate discussion of noise, below]

Notes: *Occupancy limits are difficult to enforce, and the issue of occupancy addresses few of the real issues that neighbors identified. Nevertheless, there is considerable interest among neighborhood advocates in seeing lower occupancy limits, at least in selected neighborhoods, and the Council may have to consider that for any new ordinance(s) to have credibility with neighborhood groups.*

What is a Neighborhood?

Although some neighborhood activists would like to be able to designate a block or a couple of blocks as a “neighborhood” for purposes of petitioning the City Council for new restrictions on rental housing, the most reasonable approach to this issue appears to be to use neighborhoods already designated by the

City for other purposes. The City Council should retain some flexibility to accept a petition from part of a neighborhood where that neighborhood is separated by a major geographic barrier, such as a major roadway, effectively dividing it into more than one neighborhood.

Thoughts on Neighborhood Rules

The Neighborhood Conservation District ordinance adopted by the City gives neighborhoods great flexibility to determine what rules they want to have applied to their respective neighborhoods. That may be a workable approach for building restrictions that are enforced primarily through administrative plan review in a City office. That is probably not a workable approach for rules that will be enforced in the field and sometimes at odd hours, when City Hall is closed. Although there was little discussion of this issue at the 23 February workshop, the consultant would recommend that any new ordinance on this issue include very standard additional rules that apply in designated neighborhoods; under that approach, the Code Enforcement staff only has to keep track of two sets of rules, not eight or ten or 12.

Neighborhood Commitments

At the suggestion of City staff, one of the topics discussed at this workshop was whether the City can and should expect any sort of commitment from those neighborhoods that are protected by new rules. There seemed to be at least moderate acceptance of this notion by neighborhood leaders. Students and landlords clearly supported the concept. Based on discussions at the two separate days of workshops, the kinds of commitments that might make the most difference would include:

- Agree to prepare “welcome” brochures to neighborhood, explaining rules and other expectations.
- Identify leadership contacts (with phone and e-mail info) for students and landlords with concerns. These should be included in “welcome packet” but should also be on-file with the City, so that City staff can make referrals.
- Agree to hold one or more annual educational sessions for all residents of neighborhood. Anecdotal reports suggest that the most successful of these are tied to informal social events, such as BBQs, but it is important that they also be used to open some formal lines of communication.
- Agree to participate in City-wide multi-cultural event(s). Graduate student representatives participating in the workshop pointed out that 90 percent of Aggie grad students are international. They suggested that some of the tensions between neighbors and graduate students may be cultural. It seems unrealistic to try to hold neighborhood-level multi-cultural events; the City, however, could coordinate such events, working with grad student leaders and University officials, and invite (and expect attendance by) neighborhood leaders.

Registration, Enforcement and Applicability

Applicability

There appeared to be a consensus on the following point:

To the extent that issues with rental housing may be attributable to landlords, not all landlords are equally responsible for the problems, and proposed solutions should target landlords who cause or allow problems without unduly burdening others.

There is thus broad support for applying tougher rules to problem landlords or problem properties (one major landlord clearly believes the effect of new rules should fall on problem properties and not on other properties owned by the same landlord). At least some landlords clearly believe that a rental registration program could become punitive and that adoption of a costly or difficult universal registration requirement would thus punish landlords who have not caused problems.

Interestingly, however, the landlords who participated in the discussion (as well as some City officials) clearly believe that most of the problems relate to non-resident landlords and that part of the solution is to “require local representation.” That is an eminently reasonable approach, but it is difficult to determine whether a landlord has local representation – or who that representation might be – without some sort of a registration program.

Registration

Landlords oppose some aspects, such as fees associated with universal registration requirements. Neighborhood leaders advocate them. Students generally had no position on the issue, although a registration program typically gives tenants some additional leverage in dealing with problem landlords.

If the City Council wants to avoid a showdown with landlords over rental registration fees, it essentially has two choices:

- Implement a registration program with no fee, absorbing the costs from the General Fund;
- Accept the landlords’ suggestion of requiring registration only after there is a documented violation at a property owned by that landlord. The landlords would apparently like to limit registration at that time to that specific property, but there would be some logic in requiring a landlord who has had documented problems to register all of his/her/its rental properties.

One landlord argues that registration is unnecessary because “they know where to find me.” That is a plausible argument in the Planning Department at 3 p.m. on Thursday. That is a less plausible position for the Code Enforcement officer who is working Saturday night and has only the name of the property owner. One landlord argued that it should be the City’s responsibility to obtain contact information from the property appraiser, who is also a government official. The problem with that approach is that many tax bills go to accountants, mortgage companies and business offices, meaning that the tax bill addresses may not provide a realistic way to get in touch with someone to help deal with a problem at a property at 9 p.m. on Friday. The job of Code Enforcement would be much easier if all landlords were required to register and if they were required to provide a phone number that would generally be answered 24 hours per day. Some landlords, however, will believe that is an unnecessary restriction, and some individual property owners may resent the fact that it will force them to turn management of their properties over to professional property managers (an action that would generally benefit neighborhoods and the City).

This will not be an easy issue to resolve. At some point, however, Council members will have to weigh the concerns of landlords against the practical issues involved in trying to provide effective enforcement of ordinances. Enforcement actions that deal with the landlord are far more likely to be effective over the long-run than those that deal only with tenants.

Effective Enforcement and Zero Tolerance

Although many neighborhood advocates believed before these workshops that the City has a “zero tolerance” policy toward certain code violations, the Code Enforcement staff at the workshop made it clear that zero tolerance is not the current policy. In fact, Code Enforcement officials take great pride in the fact that 96 percent of cases that they handle are resolved without any enforcement action beyond a warning stage. Achieving such a high degree of compliance through informal work and formal warnings is a remarkable achievement, in which the entire City should take pride. It may not, however, be adequate to deal with repeat violators and intransigent offenders.

Satisfying neighbors concerned about this issue will almost undoubtedly require some toughening of the enforcement practices of the City. Code Enforcement staff is understandably reluctant to adopt such a strategy without direction from City Council

Toughening the stance is not as simple as saying “we have zero tolerance” for specific offenses. As a practical matter, a true “zero tolerance” policy is probably not very practical, not very fair, and possibly not defensible. If someone has a 60th birthday party, invites two dozen friends over, and starts playing oldies on the stereo system, he would undoubtedly expect someone to tell him that the stereo is too loud before assessing a substantial citation. If someone who normally takes their trash cans in promptly has a heart attack and is taken to the hospital on trash day, she would probably be pretty unhappy with the City if she came home and found a citation, rather than a warning, for failing to take the trash barrel in. Although these are examples of people who are extremely unlikely to be repeat violators, code enforcement and police officers have no easy way of assessing who may and who may not voluntarily comply – and they should not be asked to do so.

The City could take two steps to make enforcement more effective. One is easier than the other to implement. The City could:

- Provide for the immediate assessment of a penalty for a violation of the same type for which a warning has been issued in the previous 30 (or 60) days;
- Eliminate the warning letter from the current enforcement procedure, so that a violation goes directly from a door-hanger or in-person warning to a citation if it is not timely corrected.

The immediate assessment of a penalty for repeat violations would be a particularly valuable tool for dealing with noise violations. Those are the violations that seem the most likely to recur. If someone cleans up their yard in response to a warning, he or she is unlikely to allow it to become trashed immediately. If someone gets a parking ticket or even a warning for parking on the grass, he will probably not do it again soon. But if someone is having a party and the nice police officer asks them to turn down the stereo, there is a pretty good chance that someone at the party may crank the stereo back up as soon as the officer drives out of sight. Having an immediate and significant penalty for a

repeat complaint of that type (whether the same night or the same week or the same month) would improve the effectiveness of enforcement.

A variation on this concept that was suggested at the workshop was that any property that had more than a specified number of verified complaints within a specified period would be deemed a public nuisance.

Several neighborhood advocates were intrigued by an enforcement point system used in Gainesville, Florida (and originally recommended there by the consultant for these sessions). That system is tied to a rental registration program, and points are assessed against the particular registration.

Civil Penalties

College Station currently relies exclusively on criminal penalties as enforcement tools. Texas law allows home-rule cities to impose civil penalties of up to of up to \$1000 per day. There are many advantages to civil penalties for violations such as those involved in rental housing issues. If a criminal penalty is contested, the City must prove the violation “beyond a reasonable doubt.” If a civil penalty is challenged, the standard is “by a preponderance of the evidence.” Further, judges who hear more serious cases are often somewhat reluctant to enforce criminal penalties for apparently victimless crimes. Criminal penalties do not involve that sort of exercise of judgment in the courts. The civil penalty is due as levied, unless the violator appeals the levy; even then, the court is generally limited to a question of determining whether there was a violation. In general, it is also easier to compound civil penalties than criminal ones.

Civil penalties have an additional advantage in dealing with rental housing issues. It is difficult to impose vicarious criminal liability – for example, charging a landlord with a crime for allowing repeated loud parties at a rental house that he owns. In contrast, property-related civil penalties can easily be assessed against property owners, with no requirement that the City prove criminal intent or even knowledge of the specific violation.

This was a suggestion of the consultant, but no one attending the workshop seemed to object to this suggestion.

Parking

Overview

Parking is probably the most visible aspect of this issue, and it is one that clearly gnaws at some residents every day. Effectively addressing the parking issue is likely to make more difference in the overall perception of the City’s efforts in this area than any other specific action.

Solutions

Some developments that have been built to be rented include extra parking behind the dwelling units. That is an excellent solution, but it is one that is not practical for older neighborhoods.

The City's one-side-of-street parking rules received excellent comment, both from enforcement staff and from neighbors. There was considerable support for the expansion of that program to additional streets.

A more cumbersome – but very practical – solution that was not discussed extensively is to limit occupancy of rental houses based on the number of available off-street parking places. Again, this is a back-up plan that the City may want to consider if expansion of the one-side parking rules does not make a significant dent in the current problem.

Property Maintenance

Overview

Next to parking, property maintenance was probably the substantive issue that was raised most frequently by neighborhood advocates. Complaints ranged from uncut lawns to inadequate attention to painting homes and making minor repairs. The City has adopted the International Property Maintenance Code, but staff is currently enforcing only selected portions of it.

Discussion

Fully enforcing this code would address a number of the issues that concern neighborhood residents. If rigorously enforced, however, it could lead to opposition from residents/property owners who may view such enforcement as too aggressive.

Contact Information

Eric Damian Kelly, Ph.D., FAICP

Vice President

Duncan Associates

2312 West Audubon Drive

Muncie IN 47304

Phone 765-289-5380

e-mail eric@duncanplan.com

web www.duncanplan.com