

**AGENDA
LEBANON CITY COUNCIL
FEBRUARY 20, 2019**

8. OLD BUSINESS:

8.A – ZONING AMENDMENT #7 – TO REVISE DEFINITION OF “FAMILY”

BACKGROUND

At the October 17, 2018 meeting, the City Council was presented with a number of proposed amendments to the Zoning Ordinance and Zoning Map. The Council took action to accept the amendments as presented and forwarded them for review and comment by the Planning Board, Conservation Commission, and Zoning Board of Adjustment. Legal review was obtained, and all boards completed their review.

A public hearing on all proposed amendments was held on January 16th, at which time the action on Amendment #7 – to revise the definition of “Family” (Zoning Ordinance Appendix A) - was tabled to allow staff time to review a potential change to the proposed definition.

Planning Staff has since reviewed the definition with members of the Fire Department and Attorney Christine Fillmore and have crafted a revision to the proposed definition which expands the number of unrelated individuals that may share a “single housekeeping unit”; and further clarifies what a single housekeeping unit is.

Please see attached memo from Planning Director David Brooks for details. Planning Director David Brooks will be present to answer any questions.

ACTION

As noted in the memo from Planner Brooks, the proposed amendment to the original definition will require a new public hearing but does not necessarily trigger the need for additional Land Use Board review. That is, additional review may not be required, but the Council maintains the ability to choose to seek additional input from the Planning Board and Zoning Board of Adjustment prior to a second public hearing.

Should the Council decide to consider the proposed amendments to the definition of “Family” without seeking additional input from the Land Use Boards, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby sets a public hearing for Wednesday, March 6, 2019, beginning at 7:00pm in Council Chambers, City Hall, for the purpose of receiving public input and taking action to amend the definition of “Family” as contained in Appendix A of the Lebanon Zoning Ordinance.

OR...

Should the Council decide to seek additional input from the Land Use Boards, the following motion is offered for consideration:

MOVED, that the Lebanon City Council hereby submits the proposed amendments to the definition of "Family" as presented in the February 20, 2019 City Council Agenda Packet to the Planning Board and Zoning Board of Adjustment for review and comment, and sets the following tentative review schedule:

Zoning Board of Adjustment – March 4, 2019

Planning Board – March 11, 2019

City Council Public Hearing – April 17, 2019

Included in this Section:

1. February 11, 2019 Memo from Planning Director David Brooks, re: Proposed Zoning Amendment – Definition of 'Family'



CITY OF LEBANON ~ PLANNING & DEVELOPMENT

MEMORANDUM

TO: Lebanon City Council

CC: Shaun Mulholland, City Manager
Paula Maville, Deputy City Manager

FROM: David Brooks, Planning Director

RE: Proposed Zoning Amendment - Definition of '*Family*'

DATE: February 11, 2019

Honorable Mayor and City Councilors,

On January 16, 2019, the City Council held a public hearing to consider nine separate amendments to the Zoning Ordinance and Zoning Map. One of the proposed amendments involved a change to the definition of "*Family*" in the Zoning Ordinance. The amendment under consideration during the public hearing was as follows:

FAMILY: One person or any number of persons related by blood, adoption, marriage, or by civil union and up to two unrelated individuals; or not more than three persons not related by blood, adoption, marriage or by civil union, living together as a single housekeeping unit.

During the hearing, a member of the public suggested that the City should use the definition from the New Hampshire Fire Code as documented in NFPA 24.1.1.1. More specifically, the recommendation was that the City simply change the highlighted "or" to "and" and eliminate the red-line addition, with the goal of having the City's definition match that of the Fire Code.

After the close of the public hearing and some deliberation, the Council decided to table the proposed amendment to February 20, 2019 to allow staff time to review and consider the proposed change, consult with legal counsel, and bring back a revised proposal, if appropriate.

Planning staff reached out to the Fire Department for clarification on the NFPA reference. Fire Inspector Duane Egnor responded that there is no definition of "*Family*", per se, in NFPA 101, *The Life Safety Code*. Instead, the term "*One- and Two- Family Dwellings*" is defined in the 2015 Edition of NFPA 101 as follows:

"One- and two-family dwellings shall be limited to buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than three outsiders, if any, accommodated in rented rooms."

Planning staff also communicated with legal counsel on the suggested change. The City's attorney noted that there is no obligation on the part of the City to match its zoning definition of *Family* with that of NFPA or any other community or organization. The City's attorney also noted that simply changing "or" to "and" would result in confusion.

Subsequently, Planning staff reviewed various definitions of the term compiled by the American Planning Association. Based on these sample definitions, Planning staff is prepared to suggest a revised amendment to the definition of *Family* as follows:

FAMILY: ~~One person or a~~ Any number of persons related to each other by blood, adoption, marriage, or by civil union, along with not more than three (3) unrelated individuals, living together as a single housekeeping unit; or, not more than ~~three~~ four (4) persons not related to each other by blood, adoption, marriage, or by civil union, living together as a single housekeeping unit. A single housekeeping unit means that all such persons have common access to, and common use of, all living and eating areas within the dwelling unit. This term shall not include any Group Residence, Lodging House, Hotel, or Motel as defined herein.

The City's attorney has reviewed this newly-proposed definition and believes it represents an improvement over both the existing definition and the original proposed amendment. In the attorney's opinion, the proposed red-line additions, including the clarification of what a "single housekeeping unit" implies, would help make the definition clearer.

It should be noted, however, that the numbers of unrelated individuals referenced in the definition are primarily a matter of policy. Based on the sample definitions reviewed by staff, other communities appear to allow various numbers of unrelated individuals, typically ranging from two to six persons, to meet the definition of family. The numbers proposed in the revised amendment are based on comments made during the Council's deliberation following the public hearing on January 16th, but should be a point of further discussion by the Council.

Procedurally, the City's attorney advised that any substantive change to the original proposed amendment would require new notice and a new public hearing and that a change in the numbers referenced in the definition should be considered 'substantive'. However, such a change would not necessarily trigger additional Land Use Board review per Zoning Ordinance Section 1000 or City Code Chapter 115. Nevertheless, the Council could choose to seek additional input from the Planning Board and Zoning Board of Adjustment, if desired.

The Planning Department recommends that the City Council act to take the proposed amendment "off the table" on February 20th for the purpose of discussing the revised amendment above. If the Council elects to proceed with a new public hearing on the definition, the public hearing could be scheduled for March 6, 2019. However, if the Council decides to seek additional input from the Planning Board and ZBA on the revised amendment, the public hearing should be scheduled for April 17, 2019.