


INC ZAP Letter to Andrew Webb (CPD)

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March 30, 2020



INC ZAP Letter to Andrew Webb (CPD) Regarding Proposed Changes to Group Living
March 27 2020

Andrew Webb, Senior City Planner
Denver Community Planning & Development
201 W. Colfax Avenue
Denver, CO 80203

March 27, 2020

Re: ZAP Feedback on Group Living Recommendations

Andrew,

Thank you for the opportunity to provide this feedback to CPD staff and members of the Group Living Advisory Committee (GLAC) on this complex set of issues. We recognize the breadth of problems identified by the GLAC in its Problem Statement and its work on proposed solutions.

We hesitated before submitting this list of concerns and questions regarding the GLAC recommendations, all too aware of the chaos we have been thrown into and the difficulties facing all of us in going about ongoing work while we are hyper focused on the news and our daily lives. For those charged with governance, we know crisis management and figuring out steps to protect all of us is forefront in your work.

However, given that you indicated that CPD has not made any decisions regarding pausing this work on preparing a text amendment, we feel obligated to submit some questions and concerns raised by ZAP members and its Co-Chairs in the event CPD does proceed. We feel answers and discussion of these issues is essential before city leaders, and residents, can make informed decisions about impacts of the anticipated sweeping zoning change.

We also note that while most of these questions focus on the household definition portion

of the committee's work – the part of the proposed changes that neighborhoods register on first hearing – we have heard concerns on residential care but will not be able to address them here except in passing. Further, without a redline version of the proposed text amendments to Chapter 11, neither ZAP nor INC takes an official position in this letter. ZAP appreciates the opportunity to submit this letter and we request that written responses to the following questions and concerns be addressed prior to finalizing any draft text amendment and prior to its being sent to the Denver Planning Board.

As the umbrella entity in Denver for neighborhood representation, our view is that the resident perspective in the formation of possible text amendments to Chapter 11 has been far too limited,^[1] calling into question whether GLAC has fulfilled its Charter^[2] obligations to inform and gather feedback from affected residents in all eleven council districts. For a citywide legislative zoning change that will affect every neighborhood to be smartly and equitably done, a broader and more inclusive process with early neighborhood awareness and helpful input should have been followed. Very limited information was not shared with residents (with a couple of exceptions) until late 2019 and early 2020, and this was after the GLAC had settled on its recommendations in mid-summer 2019.

The Denveright process, which overlapped with the GLAC process, provided ample opportunity to broach these complex issues and obtain input, but these potential changes were not explored in public meetings and surveys.^[3]

We have first listed questions and then concerns, but ask that CPD consider all input contained in this letter.

Questions

Health & Safety:

- What regulatory steps (existing and proposed) will be implemented along with this text amendment to ensure the health & safety of Denver residents? Will the city add safety inspections on the larger households under the new proposal?
- Has the City completed a fiscal impact statement for covering the additional safety/health inspections that will follow the anticipated changes?
- What funding mechanisms will be put in place to do this?
- If there are no concurrent regulatory additions regarding health and safety, what written analysis did CPD use to reach its determination that existing codes and regulations are sufficient for such a major revision to the Zoning Code?

- Given the likelihood that this broad change will impact the rental market, will a regulation^[4] for licensing/registering/inspecting rentals (see e.g., Seattle's Rental Registration & Inspection Ordinance) be adopted concurrently to strengthen protection for renters? We are aware of the recent changes at the state level to provide additional renters' protections. However, this system puts the entire burden on tenants to seek enforcement and to take affirmative steps to exercise their rights and find legal services to assist them.

Denver's Complaint Based System:

- What alternatives to the current complaint-based system did CPD study, and did GLAC and CPD make any recommendations regarding alternatives?
- Was a concurrent regulation for a licensing/registration/inspection of rentals proposed?

Peer City Studies by CPD/GLAC:

- Which peer cities expanded their household definition to the degree proposed by GLAC and saw increased access to, and increased affordability in, housing?
- Which cities implemented such a change and saw no effect or found it made housing less affordable and accessible?
- Which cities saw an increase in investors buying up housing stock? Did CPD ask this question in conducting its research?
- What municipal services, infrastructure and/or regulations were developed to accompany these changes?
- How were budgets adjusted to accommodate such changes?

Catalyst for displacement, outside investors:

- What steps will be in place to prevent scraping and displacement of existing housing stock, a goal set forth in Blueprint?
- What research/evidence was accessed to underpin GLAC's recommendation that these zoning changes will add to and strengthen affordable housing stock and avoid price gouging?

Parking:

- What research did CPD conduct on parking impacts of this proposed change?
- What research verifies that the recommendation to greatly increase the number of people allowed in all household units will not translate into a significant increase in cars and impact parking?

- What procedures to effectively reduce these predictable impacts will be implemented, other than the promise to solve for parking issues later via Parking Area Management Plans?
- What evidence does CPD have that a significant jump in transit buildout, accessibility and use will accompany this change?

The number 8:

- Why is the city applying the number 8 to all units throughout the city when the Colorado statutes only address 4 specific protected classes?
- Did the GLAC and CPD consider adopting a lower number such as 4 and then requiring a permit and inspection process and other applicable requirements for owners who want to exceed that 4-person occupancy, while the city continues to allow 8 for protected classes?
- What would be the cost of such a provision?

Unintended Consequences:

- What analysis of potential positive and negative consequences of the GLAC recommendations was conducted? What written documentation of this analysis exists?
- What written provisions have been drafted to be put into place to prevent and/or remedy potential negative consequences?

Good Neighbor Agreements:

- If the proposed code changes grant new “uses by right,” what would applicants be giving up as consideration in a GNA and what leverage would neighbors have to encourage applicants to enter into a GNA or to abide by its terms?

CONCERNS FROM MEMBERS

- Non-profit Housekeeping Unit: We have heard various interpretations of the phrase “non-profit housekeeping unit,” and it is unclear whether CPD will retain language presented in on page 38 of the January 2020^[5] presentation regarding the characteristics of a typical non-profit household unit. This needs to be clarified before proceeding.
- Shortcomings of Complaint Based System: Concerns were expressed about Denver’s ability to adequately handle code violations and enforcement – both under current code and with anticipated changes. Denver currently bases enforcement on a complaint-based

system rather than licensing/registration/inspection system. This complaint-based system puts the onus on residents to contact Neighborhood Inspection Services (NIS) to seek enforcement of alleged code violations.

- Underrepresentation by neighborhoods on GLAC: Only 10 neighborhood representatives were appointed to the GLAC. The majority of GLAC appointments represent providers and individuals interested in group living, chosen to provide insight on how the code functions and where these regulations fall short. Gathering information from those who have been working as providers, or have been studying alternative household arrangements, provided CPD with important feedback, but decisions and changes of this magnitude also need to be vetted and created with input from the hundreds of thousands of residents of neighborhoods.
- Catalyst for displacement, outside investors: The 400% increase in the household definition could be a catalyst for developers to scrape household stock in order to build larger homes/units for larger profit which, in turn, could potentially lead to increased displacement.^[6] There have been several articles regarding investors and large rental companies purchasing stock in cities that can be turned around and rented out at rates far from affordable.^[7] Given CPD's and GLAC's desire to increase access to affordability, Blueprint's goal of preserving what is still affordable in Denver, and Denveright's findings that >20% of those surveyed named the #1 issue as "people can't afford to live here," there is concern that the GLAC recommendation may inadvertently serve as an opportunity for investors and companies to buy housing stock and/or price gouge. This would reduce the housing stock available for renters attempting to purchase and reside in homes, which is still a primary wealth-building tool for people in this country.
- Regulations to protect health and safety and prevent overcrowding: We understand the Committee and CPD took into account HUD's guidelines on occupancy standards as well as the Fair Housing Act and Colorado's statute regarding licensed group homes, but concerns remain about Denver adopting an occupancy standard based solely on total sq. footage of the unit, with no consideration of the number of bedrooms, bathrooms etc. as well as concerns about adding more unrelated persons based upon additional square footage regardless of the size of the dwelling unit. CPD cites an article titled *More and More Families Are Doubling Up in Colorado Homes*^[8] as support for revising the household definition, yet in addition to reporting on the rising trend of doubling up, that article references the findings of Shift Research Lab and Colorado Futures Center researchers who point out that doubling up can be beneficial but there can be increased risks to children's health and school performance. Problems identified by GLAC, and documentation of harm historically linked to overcrowding/doubling up,^[9] underscore that every effort must be made to ensure that whatever regulatory change is implemented, regulations are in place to safeguard health and safety.
- Infrastructure Issues: Our existing roads, alleys, sewer/water systems and

trash/recycling systems could potentially be overtaxed by allowing crowding in dwelling units not designed and planned for this occupancy.

- Parking: Since CPD does address parking in some sections of the proposed ordinance changes (for example reducing parking minimums to open up provision of additional services/uses in some residential care categories), concern was expressed that putting on blinders as to an almost-certain increase in need for parking, and waiting to take care of parking issues in Parking Area Management Plans, is shortsighted, will increase administrative costs for DODI and, in the meantime, will burden residents.
- The Number “8”: ZAP members present concur that the current definition needs to change, but the leap from 2 to 8 persons could create numerous potential problems and, yes, significantly change neighborhoods throughout Denver. The enormity of the increase in that number by 400% (and upwards of 400%) was noted. There were comments pointing out that City Council has discretion on choosing a number and choosing what occupancy is based on (so long as it complies with the FHA and HUD guidelines and is consistent with BP and the Comp Plan). Other comments noted that CPD’s chart shows that surrounding cities average 3.9 per household, but CPD has chosen to double that average number.
- Residential Care Facilities: While there was no time to cover the many issues regarding changes to the residential care portion of Chapter 11, we have heard concerns with placing all uses under one category of residential care facilities and regulating solely based on size. In particular, there are questions regarding changing the code definition of a “small” facility to 9-40 residents. CPD has included a community meeting for providers to inform neighborhoods and establish a relationship with neighbors, but zoning changes will have already been approved via this text amendment, not through a map amendment process.
- Evaluation of Unintended Consequences: GLAC’s charter required that unintended consequences be examined and published on the website. ¶4 of GLAC Charter^[10]. We note that unintended consequences of existing Chapter 11 are identified in each subgroup’s problem statement, but unintended consequences of the proposed changes are not carefully examined and reported on.

In conclusion, those present on Feb. 29th concur that this section of the Code needs fixes to many sections identified by the GLAC, that the current household definition does not reflect how Denverites live, and that accessibility to and affordability of a variety of housing is crucial. The work analyzing problem statements (22 pages) was critical to Denver beginning to address these issues. Whether so many disparate problems can be solved for in one amendment is less clear.

We would appreciate receiving answers to these questions prior to CPD drafting a text amendment.

Thank you for your work and for considering these important issues we are raising.

Christine O'Connor (303 906-6627)
Ean Thomas Tafoya (720 621-8985)
Co-Chairs Zoning & Planning Committee
Inter-Neighborhood Cooperation

[¹] Only 10 neighborhood representatives were appointed to the Group Living Advisory Committee, most Council Districts did not have a representative, and Denver's 78 neighborhoods were not brought into the discussion until quite recently. The majority of GLAC appointments represent providers and individuals interested in group living, chosen to provide insight on how the code functions and where these regulations fail clients.

[²] [GLAC Charter and GLAC Member Agreement](#)

[³] [Blueprint Denver](#) contains one applicable section on p. 42/152 in PDF (page 82 if looking at page numbers on bottom left).

[⁴] Excise & Licenses regulates short term rentals but Denver has no landlord registration/inspection regulation that can be enforced.

[⁵] Page 38 of [Meeting 7 Presentation](#)

[⁶] It is possible that some of the areas identified in [Blueprint maps](#) as most vulnerable to displacement will see further displacement.

[⁷] [When Wall Street is your Landlord, Investors Are Buying More of the U.S. Housing Market Than Ever Before](#)

[⁸] See Denverite article [here](#): "Studies have linked crowded housing to diseases such as asthma. Children in crowded housing are seen as especially at risk of illness and their academic performance and behavior also has been shown to be affected by poor living conditions."

[⁹] Richard Rothstein in [The Color of Law](#) describes the impact 20th Century discriminatory lending policies had and continue to have on African American families' ability to purchase homes or find places to live and includes discussion regarding the negative impact on children as a result of doubling up (and segregation of schools).

[¹⁰] [GLAC Charter and Member Agreement](#)

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