

**University District Zoning and Planning Regulatory Review Task Force  
Development Potential Implementation Strategies – 10/28/08 Draft**

Potential strategy	Issues to be addressed
<b>Planning consistency</b>	
Rezone properties to better match desired development patterns, in line with neighborhood, district, and citywide objectives	<ul style="list-style-type: none"> <li>• What parcels need to be targeted?</li> <li>• What will be the criteria for rezoning?</li> </ul>
Evaluate neighborhood, district, and citywide land use plans to determine context for decision making, and support planning efforts to fill in any policy “gaps”	<ul style="list-style-type: none"> <li>• What is the best approach to implementing this?</li> <li>• How consistent should policies be across the District?</li> <li>• How does this relate to District’s urban design plan (scope now underway)?</li> </ul>
<b>Design and development standards</b>	
Consider higher standards for building quality and construction	<ul style="list-style-type: none"> <li>• What would be specific standards (materials, architectural elements, etc?)</li> <li>• Need to determine what is enforceable under current building code</li> <li>• Would desired character/style vary by neighborhood?</li> </ul>
Make administrative review process more stringent by requiring more points for approval, possibly more points available	<ul style="list-style-type: none"> <li>• Need to be aware of 60/120 law for project approval, related constraints</li> <li>• Would this be an attempt to change citywide standards, or just for District?</li> <li>• What are most important criteria?</li> </ul>
Discourage construction of “mini dorm” style developments that create concentrations of unsupervised students, such as disincentives for 3-4 unit buildings with maximum occupancy in bedrooms, or incentives for housing that is more readily convertible to non-student housing	<ul style="list-style-type: none"> <li>• What are unforeseen consequences of this direction? (e.g. disguising bedrooms, over occupancy, etc.)</li> <li>• What are other strategies for managing these properties?</li> </ul>
Create incentives for the construction and proper maintenance of well-managed and supervised student housing	<ul style="list-style-type: none"> <li>• Is it better to have students in large buildings with staff, or spread out in low density properties?</li> <li>• How can good management be incentivized, bad penalized?</li> </ul>
Consider use of conservation district or other tools to define community character and encourage development to comply with identified character (somewhat like a historic district, but less restrictive)	<ul style="list-style-type: none"> <li>• Would need research, as this would be fairly new direction for the city</li> <li>• What areas of the District would be most appropriate? Unlikely to be a “one size fits all” approach.</li> </ul>
Investigate strategies to limit number of	<ul style="list-style-type: none"> <li>• Need to avoid unforeseen consequences</li> </ul>

unrelated individuals living together in certain areas (NOTE: research suggests there is no direct relationship between reducing occupancy and decreased disturbances)	<p>for larger non-student households which might be caught by this</p> <ul style="list-style-type: none"> <li>• How to handle difficult legal issues of definition of family or functional family households?</li> <li>• Could this be addressed more effectively through other means?</li> </ul>
<b>Public process</b>	
Incorporate public notification more directly into administrative review process by strengthening requirements	<ul style="list-style-type: none"> <li>• Could this be strengthened by adding admin review points for consultation?</li> <li>• What would be purpose of consultation and/or notification?</li> <li>• How can this be effectively synched with legal limits of review time?</li> </ul>
Improve outreach – through student, neighborhood, and U of M groups – to improve student-community relations	<ul style="list-style-type: none"> <li>• Who should take the lead on these initiatives?</li> <li>• What is the most important information to convey?</li> <li>• How can this be used in coordination with enforcement efforts?</li> </ul>
Improved communication with landlords regarding community expectations and standards for development and management	<ul style="list-style-type: none"> <li>• What is the appropriate way to work with them, and who initiates?</li> <li>• Is there a way to make this more positive/cooperative, rather than strictly confrontational?</li> </ul>
Support role of District as reviewer of larger projects (i.e. ones that go through public hearing process)	<ul style="list-style-type: none"> <li>• What is the appropriate role for the District, and what types of projects should be considered?</li> <li>• What is the relationship between District and neighborhood level review and comments?</li> <li>• How should timing issues be addressed, especially when comments needed with fairly quick turnaround?</li> </ul>
<b>Enforcement</b>	
Increase regulatory enforcement actions in District related to livability violations	<ul style="list-style-type: none"> <li>• How will additional enforcement be funded to give this area priority over others in the city?</li> <li>• What areas/issues are of the most concern?</li> <li>• What is role of neighborhoods, residents in reporting violations?</li> </ul>
Require disclosure of additional information for landlords regarding occupancy, maintenance, conduct, etc.	<ul style="list-style-type: none"> <li>• When will this be collected?</li> <li>• How much of this can be effectively enforced?</li> </ul>

<p>Review existing and potential penalties for violations (e.g. rental license revocation, loss of nonconforming rights, fines and fees, etc.)</p>	<ul style="list-style-type: none"> <li>• Are current penalties appropriate and effective as deterrents?</li> <li>• How should landlords and tenants be held accountable?</li> </ul>
<p>Register and/or track landlords – possibly through licensing program – to determine which ones</p>	<ul style="list-style-type: none"> <li>• Exceptions for small-scale renters (e.g. own just one rental property, or live on the site as primary residence)?</li> <li>• Need to explore legal limitations on this approach</li> <li>• Potential unofficial process to just document who is responsible</li> <li>• Problem: landlord may have both good and bad properties</li> <li>• Could landlord performance be used as a criteria for approval of new projects?</li> </ul>
<p>Improved enforcement in response criminal complaints (drugs, alcohol, noise, etc.)</p>	<ul style="list-style-type: none"> <li>• How should problems be reported and documented?</li> <li>• Link between regulatory and criminal enforcement around rental properties?</li> <li>• Role of University Police?</li> <li>• Additional resources needed to implement?</li> </ul>

## **Administrative Review (of residential projects under 5 units)**

**Additional considerations suggested at recent SE neighborhood meetings** (collected by Katie Fournier)

April 23, 2008

- \* Parking requirements ( 1 parking place per unit is not adequate when the units have 5 bedrooms)
- \* Include a review for code violations of other properties owned by the applicant (good record receives points; bad record gets no points or subtraction of points) The City Attorney could advise on language to use.
- \* Use of raw lumber in exterior finishing (porches, trim, etc.) should be given a big disincentive in point system
- \* Permits are issued without considering the context in which the new project will be built, i.e., points should be awarded for demonstrating how new project fits the existing neighborhood
- \* More points needed for permit in target areas (high rental percentage, blight, etc.)
- \* Higher requirement to receive permit (Already among Council Member Gordon's suggestions, but this was emphasized by community members)
- \* The need for community consultation is raised at every discussion of this administrative review (Community comment would help project to conform to context of neighborhood)
- \* Disincentive for "modular home" construction
- \* ***Impact Report recommendations, p. 24***
  - c) Raise quality of recent in-fill housing and raise standard where necessary; review zoning, housing and site review standards in the district, related to the pattern of density, low quality in-fill housing**
  - OUTCOMES: Improve quality of new, in-fill housing; avoid future blight**
  - PARTY (IES) RESPONSIBLE TO IMPLEMENT: City of Minneapolis**

**University District Zoning and Planning Regulatory Review Task Force  
Design/Development Issues – 10/9/08 Draft**

<b>Issue</b>	<b>1-4 units</b>	<b>5+ units</b>
<b>Dimensions</b>		
Overall lot size	Minimum standards for lot area or width by use/zone	Minimum standards for lot area or width by use/zone
Overall size/bulk or square footage	Maximum standards for floor area ratio (FAR) by use/zone	Maximum standards for floor area ratio (FAR) by use/zone
Height or number of stories	Maximum height or stories by use/zone. FAR incentives for homes (1 <sup>st</sup> floor plate) at 4' from grade.	Maximum height or stories by use/zone.
Building lot coverage	Maximum FAR, required yards/setbacks by use/zone, maximum building lot coverage by zone	Maximum FAR, required yards/setbacks by use/zone, maximum building lot coverage by zone
Impervious surface coverage	Maximum impervious surface coverage by zone	Maximum impervious surface coverage by zone
Density	Units/acre or units/structure regulated by zone	Units/acre or units/structure regulated by zone
<b>Design</b>		
Historic/conservation issues	Historic properties/districts have designated standards; demolitions all reviewed in light of historic value	Historic properties/districts have designated standards; demolitions all reviewed in light of historic value
Compatibility with surrounding buildings	Assessed during site plan review; buffers or specific setbacks may be required	Assessed during site plan review; buffers or specific setbacks may be required
Building materials and design elements (new construction)	High quality materials architectural details encouraged in site plan review process, including: <ul style="list-style-type: none"> <li>• front porches</li> <li>• steeper roof pitch</li> <li>• materials other than vinyl siding</li> </ul> FAR incentives encourages following details: <ul style="list-style-type: none"> <li>• front porches</li> <li>• half stories</li> <li>• detached garages</li> </ul>	High quality materials architectural details encouraged in site plan review process.
Window number and placement	Window coverage and placement directed through minimum requirements and site plan review gives points	Window coverage and placement directed through minimum requirements and site plan review process.

	for greater windows coverage.	
Construction quality	Building code issue; not directly enforced otherwise	Building code issue; not directly enforced otherwise
Transportation features (bicycle, pedestrian, transit, etc.)	Incentivized but not generally required during development review	Incentivized but not generally required during development review
Landscaping	Amount, type, and placement directed through site plan review, including minimums for trees, shrubs, fences/walls, and green space. Site plan review point for new front yard tree.	Amount, type, and placement directed through site plan review, including minimums for trees, shrubs, fences/walls, and green space.
Signage	Number, size, style, and placement of signs regulated	Number, size, style, and placement of signs regulated
Entrances	Principal entrance to face street or have vestibule w/ side facing door not more than 8 ft. from bldg façade. Walkway connecting bldg to sidewalk.	Type and placement directed through site plan review process.
Parking facilities	Detached garages encouraged through site plan review and FAR. Front facing attached garage limitations (% of bldg width and amount projecting past habitable space). Surface parking of 4 space be screened, 10 spaces or more to have landscaping.	Size, type and placement directed through site plan review process.
Accessibility issues	Alternative compliance design w/ site plan review for including accessible features in bldg design	Alternative compliance design w/ site plan review for including accessible features in bldg design
<b>Capacity</b>		
Parking requirements	Minimum and some maximum standards by use/zone	Minimum and some maximum standards by use/zone
Occupancy	Maximum occupancy per unit by families or unrelated persons by use/zone	Maximum occupancy per unit by families or unrelated persons by use/zone
Number of bedrooms	Regulated via occupancy standards (not zoning code)	Regulated via occupancy standards (not zoning code)
Unit mix	Not directly regulated; indirectly through occupancy standards and units/acre	Not directly regulated; indirectly through occupancy standards and units/acre

Licensing		
Residential rental	Allowed in all residential districts, if meets licensing standards	Allowed in all residential districts, if meets licensing standards
Businesses	Not applicable	Permitted in certain districts (by right or conditional), must meet licensing standards
Liquor sales	Not applicable	Permitted in certain districts (by right or conditional); must meet licensing standards (multiple tiers)

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## Coping with Colleges How Communities Address the Problems of Students Living Off-Campus

By Craig Raborn

MAY 21 2002

Communities with colleges and universities have long struggled to develop effective methods for coping with the pressures of students living in off-campus housing, particularly the encroachment of student rental housing into nearby single-family neighborhoods and the negative effects of this encroachment. These impacts include a number of issues, such as rising rental prices and loss of affordable housing, major shifts in property values, increased nuisance and noise complaints, traffic congestion, and reduced parking availability. As communities and neighborhoods experience these potentially negative impacts, citizens may begin to bring pressure on elected officials to take some type of corrective and preventative action. Planners must give careful consideration to these issues and to the full range of immediate and long-term solutions so that they might effectively solve these problems and create frameworks for preventing their reoccurrence.

Effective regulatory approaches to student housing issues almost always involve some level of increased effort in code enforcement.

College enrollment in the United States is projected to increase 12.4 percent between 2002 and 2010 (National Center for Education Statistics, 2002). In most cases, college enrollments will significantly outpace schools' ability to offer on-campus housing. This will accelerate the pressure on nearby neighborhoods to offer off-campus student housing, and consequently will force these communities to deal with the range of subsequent issues. Furthermore, most college and university campuses are located within the heart of their host communities, where there is little room for additional housing capacity. This combination of projected enrollment growth and lack of existing housing facilities will concentrate and increase the impacts of college students living off-campus in coming years.

There have historically been two basic approaches to addressing the affects of college students that over-occupy rental dwellings in single-family neighborhoods. These have been to either resist encroachment of student-occupied housing or to adjust regulations to accommodate growing student housing requirements. Innovative techniques to solving off-campus student residence problems have been implemented by some cities, and new approaches are continually being explored. Effective regulatory approaches to student housing issues almost always involve some level of increased



Craig Raborn

*Students living off-campus often results in significant conversions of single-family homes. This example in Austin, Texas, shows the driveway replacing the front yard, a side stairway leading to an upstairs apartment, and a "party patio" attached to the front of the house. Also note the semi-permanent "For Rent" sign.*

### QUESTIONS ABOUT THIS ARTICLE? JOIN US ONLINE!

During the week of June 10-14, go online to participate in our "Ask the Author" forum, a new interactive feature of *Zoning News*. Craig Raborn will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the "Ask the Author" section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This new feature will be available following selected issues of *Zoning News* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning News* webpages.

effort in code enforcement. Ensuring strong and effective code enforcement in neighborhoods may reduce much of the opposition to student housing.

### Comparison of College Towns

This issue of *Zoning News* examines 12 communities with similar "town and gown" characteristics to determine and compare the range of regulatory approaches used. Examined cities and a survey of their approaches are shown in the table on page 3. The approaches range from essentially taking no action to adopting nearly all available solutions.

The survey suggests no universally accepted approach to addressing off-campus student housing issues. There are, however, a combination of approaches used in a variety of cities that indicate one of two overall strategies: 1) restrict student housing or 2) accommodate it while mitigating its impact. Many of the communities also combined several regulatory techniques to comprehensively address the issue.

Cities that recognize the issue of off-campus student housing and its effect on single-family neighborhoods in either their comprehensive plans or other planning documents appear more likely to have taken the "accommodate-mitigate" approach.



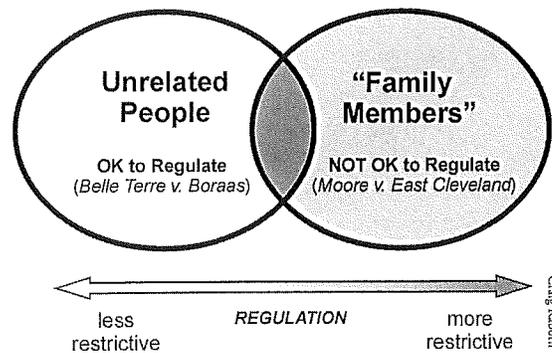
*Incompatibility between housing often results from conversion of single-family neighborhoods into student neighborhoods. Here a two-story apartment looms over a single-family house in Austin, Texas, with little protection afforded by the "privacy fence."*

### Regulatory Toolkit

**Restrictive family definition.** Narrowly defining the term "family" is perhaps the most common method of attempting to deal with over-occupation of rental properties in single-family districts. It is also usually the first regulatory technique that cities consider. At its core, this approach is an attempt to limit overall population density in residential districts. By limiting the number of unrelated individuals that may live in single-family dwellings, college communities seek to reduce the impact of students in residential neighborhoods. Homes rented to unrelated tenants are considered more likely to have full occupancy (a tenant for every available room) than homes rented to families or occupied by owners.

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## Regulating Occupancy People Living in a Dwelling



Definitions of family have been widely litigated. Common definitions in college communities range from no more than two unrelated persons up to five unrelated persons. Some localities simply define family as "one or more persons living as a single housekeeping unit." Las Cruces defines the term but does not use the definition to place limits on total occupancy in single-family dwellings.

Although using a narrow definition of family was upheld by the U.S. Supreme Court in *Belle Terre v. Boraas* (416 U.S. 1, 94 S. Ct. 1536, 1974), a number of state courts across the country have since rejected using narrow family definitions to solve problems associated with over-occupancy. A 1985 New York Court of Appeals case rejected a restrictive definition that no more than two unrelated persons constituted a family by deciding:

Manifestly, restricting occupancy of single-family housing based generally on the biological or legal relationships between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance (citations omitted, emphasis added). Their achievement depends not upon the biological or legal relations between the occupants of a house but generally upon the size of the dwelling and the lot and the number of its occupants. Thus, the definition of family employed here is both fatally overinclusive in prohibiting, for example, a young unmarried couple from occupying a four-bedroom house who do not threaten the purposes of the ordinance and underinclusive in failing to prohibit occupancy of a two-bedroom home by 10 or 12 persons who are related in only the most distant manner and who might well be expected to present serious overcrowding and traffic problems. (*McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544, 498 N.Y.S.2d 128, 1985)

Reducing density may control some impacts of student over-occupation, as the approach is intended to do. However, the impacts that are influenced by reducing density might not be the impacts that generate the most concern from neighbors and residents. For example, if a primary concern of residents is noise from late-night parties or the behavior of tenants, linking a reduction in density to a reduction of these impacts is tenuous and speculative. A review of research and planning literature finds no indication of links between density of occupancy and a reduction in the type of disturbances that often lead to cities narrowing the definition of family. In other words, this is an approach that likely will not fix the problem.

**Enforcement of existing codes and standards is critical.** The most common method for enforcing over-occupation violations is to respond to complaints from neighbors and other residents.

**SURVEY OF HOW COMMUNITIES REGULATE STUDENT HOUSING**

Bloomington, IN	3	2			!	!						!
Boulder, CO	4	1	!		!	!		!	!	!		!
Chapel Hill, NC	4	2		!		?	!		!	!		
College Station, TX	4	2					!		!			
Columbia, MO	3	2				!						
Fayetteville, AR	V	2						!				
Gainesville, FL	3	1			!	!			!	!		
Las Cruces, NM	N/A	2					!	!				
Lubbock, TX	2	2			!							
Manhattan, KS	4	2			!		!				!	!
Stillwater, OK	5	2									!	?
Tuscaloosa, AL	3	2	!									

- ! Used by community;
- ? Approach under consideration;
- V Variable number

*\*Additional approach descriptions:*

- Bloomington: varies occupancy limitations by zoning district;
- Boulder: inclusionary zoning for low-income housing;
- Manhattan: disorderly house ordinance;
- Stillwater: considering varied occupancy restrictions.

Maximum Per Single-family Dwellings  
 Off-Street Required Parking Spaces  
 Special Rental Parking Spaces  
 Modified Rooming Requirements  
 Residential Parking Program  
 Rental Inspection Permits  
 Potentially Related Overlay District  
 Accessory Dwelling Units  
 Transit System  
 Mentioned in Comprehensive or Other Plan  
 Additional Approach\*

According to Eric Kelly in *Enforcing Zoning and Land-use Controls* (PAS Report #409), most city code enforcement efforts are focused on administration, which, through effective review and inspections prior to permit approval, use changes, or occupancy should prevent violations before they occur. Cities should consider enforcing existing regulations before creating more restrictive regulations whose lack of enforcement will continue to frustrate citizens. If a city reduces the number of unrelated persons that may legally occupy a dwelling from four to two, the change will have no practical effect without adequate enforcement. Adequate enforcement might actually make changing the definition of family unnecessary.

Unfortunately, many cities are insufficiently staffed to adequately or realistically approach enforcement issues. Because enforcement is a critical concern in attempting to manage the effects of over-occupation, cities should develop approaches that are easily enforceable. This may include new programs such as neighborhood parking permit systems, enforceable through policing rather than through code inspection; rental licensing and inspection, which could be designed to have minimal administrative cost effects on the city; and modified rooming house programs, which require a smaller enforcement effort than rental inspections.

**Residential parking permits.** Neighborhood or residential parking permit systems have been used in Boulder, Colorado; Gainesville, Florida; Manhattan, Kansas, and numerous other college communities to reduce density and control over-

occupation of single-family dwellings. Parking permit systems allow cities to reduce the effects of residential density by limiting the availability of overnight parking on certain streets or in certain neighborhoods.

Manhattan allows property owners to claim two parking permits for each residential property in certain neighborhoods surrounding Kansas State University. Applicants must show ownership of the property and pay a minimal fee to get the permits. The owner becomes responsible for controlling the permits. Permits are individually numbered and lost permits are difficult to replace, preventing over-possession of permits. Overnight parking in the neighborhoods around campus without a permit is prohibited. Enforcement is accomplished through spot checks by police, and neighbor complaints can lead to repeated checks in certain areas. Only on-street parking is regulated, so fraternities, sororities, and rooming-type facilities must handle their parking through off-street means. Gainesville and Boulder use similar provisions.

**Rental inspection and landlord licensing programs.** Rental inspection and landlord licensing programs are the most intensive method of controlling the impacts of student encroachment into single-family neighborhoods. They offer the additional benefit of ensuring safe rental housing and allow the city to record responsible parties for each property in case nuisance or disturbance issues later arise. These programs exist in a number of forms, from only requiring landlords to file statements that a given property is rented to requiring annual

inspections to ensure compliance with building and zoning codes prior to allowing rental occupancy. Some programs also require landlords to acquire some type of landlord permit prior to entering into any rental agreement.

Columbia, Missouri, established a "Rental Unit Conservation Law" in 1978 that requires compliance with numerous city codes before issuing a certificate of compliance required for rental use. A property owner wishing to rent property must submit a formal application, including a description of the property, owner and agent contact information, consent for inspection, and certification of heating and ventilation systems. The owner must also pay an inspection fee. The inspection checks for compliance with Columbia's building, planning, signs, subdivision, zoning, and fire prevention ordinances. Noncompliance identified through verification inspections or neighbor complaints can lead to revocation of the rental certificate. Columbia's rental inspection program was upheld by the Missouri Supreme Court in 1985 (*Frech v. City of Columbia*, 693 S.W. 2d 813; Mo.1985).

up to three unrelated persons in a single-family dwelling would therefore define a rooming house as any dwelling occupied by four or more unrelated persons. Rooming houses are then allowed by right in certain districts, usually all multi-family zones or in an overlay district. They might also be specifically prohibited in certain single-family districts.

Existing nonconforming uses are required to register within a reasonable time, and a minimal fee may be required at registration. Nonconforming uses that do not register within the allotted time and are later identified through inspections or complaints must give up the nonconforming over-occupancy. A set of criteria for monitoring these nonconforming rooming houses is developed that also specifies how those that create documented problems may lose their non-conforming status and cease over-occupancy. Enforcement is a critical part of making the rooming house program work and must be part of any attempt to regulate this use. One advantage of this program is that enforcement should be easier than code enforcement for over-occupancy because it unambiguously defines what is and is not allowed and how nonconforming uses are regulated.



(Left) Student housing often generates complaints about nuisances; here trash cans and recycle bins are in the unkept front yard of a supposedly single-family home in Austin, Texas. (Right) Another annoyance of student housing is the proliferation of leasing signs. These often remain up year-round, allowing the "pre-leasing" season to run without interruption.

Other communities have taken different rental inspection approaches: Gainesville provides its licensed landlord list on the city's website; Boulder exempts rentals where the owner occupies the dwelling and rents to one or two lodgers and temporary rentals such as faculty members renting homes while on sabbatical; and Mankato, Minnesota, developed an easy-to-use website describing landlord and tenant rights, and also providing details for owners wishing to convert properties to rental uses.

**Rooming house program.** Some communities have developed modified rooming house programs as a method of accommodating and mitigating student housing impacts. These programs establish new definitions for rooming houses, specify where they will be allowed in the future, and register and monitor existing nonconforming rooming houses. The cities that have adopted or are considering this approach believe that it is less costly and less difficult to administer than rental inspection and landlord licensing approaches or strictly enforcing over-occupancy codes.

The rooming house definition is typically changed to include any type of existing over-occupancy. A city that currently allows

**Disorderly house designation.** Manhattan created a Disorderly House Nuisance Code that allows the city to monitor violations of a broad range of ordinances by dwelling unit. Repeat violations as defined by the ordinance and failure to offer abatement can lead to severe penalties, and both tenant and property owner can be held responsible. Violations that are monitored include criminal offenses on the premises, alcohol-related offenses, animal and fowl violations, and health, weed, and environmental nuisance violations. Manhattan's ordinance does not include violations of the zoning code but such violations could be included by cities considering this approach. Used in connection with rental licensing or rooming house programs, a disorderly house nuisance code could be an enforcement tool with teeth.

**Other approaches.** There are several other approaches that cities and planners might consider in addressing the issues of student off-campus housing, including both modifications to traditional approaches and developing innovative ones.

Some cities have used historic preservation districts as a tool for managing the impacts of students living off-campus in single-family residential districts. Historic preservation districts provide communities with a method for controlling the appearance of property, such as front-yard parking, litter and debris restrictions, basic property upkeep, and the like. Enforcement is again critical to success, but also relies on self-enforcement solutions from within the neighborhood. A community also should permit existing nonconformances within the district to continue provided that the property meets the preservation district's standards.

Other overlay districts related to universities have been used. In some cases, these offer ways for cities to better regulate uses that might naturally occur near universities; alumni association offices, housing for visiting faculty, tutoring offices, art galleries, private or public parking lots, faculty-affiliated research facilities, and so on. Manhattan conditionally allows these types of uses within its University Overlay District. In one case, an overlay district is used to restrict student housing: Allentown, Pennsylvania, has a Student Residences Overlay District that decreases the number of unrelated students permitted to live in dwelling units in areas around campus. The ordinance is unique in that it specifically references student residences, and it was upheld in Pennsylvania court challenges. In addition to the basic question of whether this approach is good policy, planners also should consider the risk of a challenge as discriminatory against suspect classes in other settings. . . for instance, if the population of a college disproportionately represents a group of people that could be discriminated against, such as minorities or members of a certain faith.

Restrictive covenants potentially offer an effective way for neighborhoods to prevent encroachment of rental impacts. While cities are not usually involved in enforcing restrictive covenants, they can provide information about covenants to neighborhoods, or even actively support neighborhoods in the development of covenants. Houston uses and enforces deed restrictions and covenants rather than zoning, and neighborhoods might be able to emulate some aspects of Houston's program. Theoretically, characteristics of a zoning district could be applied to a restrictive covenant, making enforcement largely a matter for neighbors to handle. There are many unanswered questions about applying areawide restrictions to existing neighborhoods, so if this approach were to be considered, cities should seek legal advice to properly implement any programs.

Close cooperation with neighboring universities might offer communities a method to more effectively influence the universities' development of on-campus housing, plan for spurts of growth in enrollment, and control disorderly student behavior.

Long-term solutions might involve relying on transit systems and incentive zoning to encourage development of remote student villages away from affected nearby neighborhoods, coordinating planning with the college or university, and creating "students-housing balance" programs based on the ideas of jobs-housing balance that have been used in many places to ensure adequate housing where jobs will soon develop.

Cities facing these pressures should not shy away from addressing them in comprehensive plans and other planning documents. Such preemptive attention will allow these communities to approach the impacts of students living off-campus with appropriate and effective planning solutions, rather than short-term or knee-jerk reactions. University growth is a fact of life for many communities—especially for the next few years—and they will encounter less trauma and more success if they develop strategies before the pressures are felt.

## NEWS BRIEFS

### Nebraska Supreme Court Upholds CAFO Zoning

In a unanimous decision with one justice not participating, the Nebraska Supreme Court in March rejected a challenge to one county's right to insist that a concentrated animal feeding operation comply with its new zoning ordinance. But the case, decided March 15, was clearly a test of whether the legislature, in a 1967 statute, had exempted farm buildings from all zoning requirements by counties.

The case began when Premium Farms, which was planning a 5,000-hog operation in Holt County, in north-central Nebraska, chose to challenge the county's 1997 zoning ordinance. The regulations stipulate that any confined livestock operation housing more than 1,000 animal units must obtain a conditional use permit. After inquiring about its applicability to the firm's project and being told that it was not exempt, Premium Farms, which owns four sites in the county, chose to begin construction in November 1998 without a permit. In July 1999, county zoning administrator Charles Fox notified the firm that it was in violation of county permit requirements. The company promptly filed an amended petition for declaratory judgment and a temporary injunction restraining enforcement of the zoning regulations. The district court sided with Premium Farms and granted the injunction.

The firm later filed a motion for summary judgment that the regulations were invalid. Nebraska counties have long had the power to regulate agricultural land uses through zoning. At issue, however, was the ambiguous wording of the 1967 statute. Premium Farms claimed that the following language exempted farm buildings:

Within the area of jurisdiction and powers established by section 23-114, the county board may . . . regulate, restrict, or prohibit the erection, construction, reconstruction, alteration, or use of nonfarm buildings or structures and the use, or occupancy of land . . . Nonfarm buildings are all buildings except those buildings utilized for agricultural purposes on a farmstead of twenty acres or more which produces one thousand dollars or more of farm products each year.

The district court sided with Premium Farms and invalidated the county's zoning regulation of farm buildings. This was a major blow for Holt County, whose code established a single zoning district but required conditional use permits for confined livestock operations, which it defined as "totally roofed buildings, which may be open-sided (for ventilation purposes only) or completely enclosed on the sides, wherein animals or poultry are housed over solid concrete or dirt floors, or slatted (partially open) floors over pits or manure collection areas in pens, stalls, or cages, with or without bedding materials and mechanical ventilation."

Holt County appealed directly to the Nebraska Supreme Court, bypassing the court of appeals, and the high court granted its petition. The county argued that the district court's interpretation was impractical and contrary to the statute's legislative history, which had the more limited aim of sparing farms the burden of applying for building permits for farm buildings that are often temporary in nature.

"It's the way counties always interpreted and enforced it," says attorney David Ptak, who represented Holt County. "Large livestock says you can't do anything. The test case reaffirmed that the statute said what we always thought it said." Ptak notes

## Housing Inspection Services Section 244.1910 Licensing Standards

**244.1910. Licensing standards.** *The following minimum standards and conditions shall be met in order to hold a rental dwelling license under this article. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation, or suspension of a rental dwelling license or provisional license.*

- (1) The licensee or applicant shall have paid the required license fee.
- (2) Rental dwelling units shall not exceed the maximum number of dwelling units permitted by the zoning code.
- (3) No rental dwelling or rental dwelling unit shall be over occupied or illegally occupied in violation of the zoning code or the housing maintenance code.
- (4) The rental dwelling shall not have been used or converted to rooming units in violation of the zoning code.
- (5) The owner shall not suffer or allow weeds, vegetation, junk, debris, or rubbish to accumulate repeatedly on the exterior of the premises so as to create a nuisance condition under section 227.90 of this Code. If the city is required to abate such nuisance conditions under section 227.100 or collect, gather up or haul solid waste under section 225.690 more than three (3) times under either or both sections during a period of twelve (12) months or less, it shall be sufficient grounds to deny, revoke, suspend or refuse to renew a license.
- (6) The rental dwelling or any rental dwelling unit therein shall not be in substandard condition, as defined in section 244.1920.
- (7) The licensee or applicant shall have paid the required reinspection fees.
- (8) The licensee or his or her agent shall allow the director of inspections and his or her designated representative to perform a rental license review inspection as set forth in section 244.2000(c).
- (9) The licensee shall maintain a current register of all tenants and other persons with a lawful right of occupancy to a dwelling unit and the corresponding floor number, and unit number and/or letter and/or designation of such unit within the building. The register shall be kept current at all times. The licensee shall designate the person who has possession of the register and shall inform the director of the location at which the register is kept. The register shall be available for review by the director or his or her authorized representatives at all times.
- (10) The licensee shall submit to the director of inspections or an authorized representative of the director, at the time of application for a rental dwelling license and for just cause as requested by the director, the following information: the number and kind of units within the dwelling (dwelling units, rooming units, or shared bath units), specifying for each unit, the floor number, and the unit number and/or letter and/or designation.
- (11) There shall be no delinquent property taxes or assessments on the rental dwelling.
- (12) There is no active arrest warrant for a Minneapolis Housing Maintenance Code or Zoning Code violation pertaining to any property in which the licensee, applicant or property manager has a legal or equitable ownership interest or is involved in management or maintenance.
- (13) Any person(s) who has had an interest in two (2) or more licenses revoked pursuant to this article shall be ineligible to hold a rental dwelling license or provisional license for a period of five (5) years.
- (14) No new rental dwelling license shall be issued for the property during the pendency of adverse license action initiated pursuant to section 244.1940.
- (15) The licensee or applicant must have a current, complete, and accurate rental dwelling application on file with the director of inspections in accord with the provisions of section 244.1840.

## **Housing Inspection Services Section 244.1910 Licensing Standards**

(16)

- a. Before taking a rental application fee, a rental property owner must disclose to the applicant, in writing, the criteria on which the application will be judged.
- b. Application forms must allow the applicant to choose a method for return of the application fee as either 1) mailing it to an applicant's chosen address as stated on the application form, 2) destroying it 3) holding for retrieval by the tenant upon one business-day's notice.
- c. If the applicant was charged an application fee and the rental property owner rejects the applicant, then the owner must, within fourteen (14) days, notify the tenant in writing of the reasons for rejection, including any criteria that the applicant failed to meet, and the name, address, and phone number of any tenant screening agency or other credit reporting agency used in considering the application.
- d. The landlord must refund the application fee if a tenant is rejected for any reason not listed in the written criteria.
- e. Nothing in this section shall prohibit a rental property owner from collecting and holding an application fee so long as the rental property owner provides a written receipt for the fee and the fee is not cashed, deposited, or negotiated in any way until all prior rental applicants either have been screened and rejected for the unit, or have been offered the unit and have declined to take it. If a prior rental applicant is offered the unit and accepts it, the rental property owner shall return all application fees in the manner selected by the applicant, pursuant to section (b).
- f. Violation of this subsection, 244.1910(16), may result in an administrative citation, or may contribute to the denial or revocation of a rental license.
- g. This subdivision shall become effective December 1, 2004. (90-Or-235, § 6, 9-14-90; 91-Or-220, § 1, 11-8-91; 94-Or-124, § 1, 9-16-94; 95-Or-097, § 2, 6-30-95; Ord. No. 97-Or-056, § 8, 6-27-97; 99-Or-163, § 5, 12-17-99; 2001-Or-074, § 1, 6-22-01; 2003-Or-070, § 2, 6-20-03; 2004-Or-122, § 1, 10-22-04)