

# ATTACHMENTS

## AGENDA ITEM #5

### GROUP DWELLING TEXT AMENDMENT

**From:** "Steve Huffman" <steve@tucsonrealtors.org>  
**To:** <cityclerk@tucsonaz.gov>  
**Date:** 11/1/2011 12:19 PM  
**Subject:** Agenda Item 5 11/02/11 Planning Commission Meeting  
**Attachments:** Group Dwelling Letter.doc

CITY OF TUCSON  
 RECEIVED  
 11 NOV -1 PM 1:50  
 OFFICE OF THE  
 CITY CLERK

Please see our attached letter regarding our concerns about agenda item 5 on tomorrow's Planning Commission Agenda. We have distributed this letter to Mayor and Council.

Thank you,

Steve Huffman

*11/2/11 JAC*

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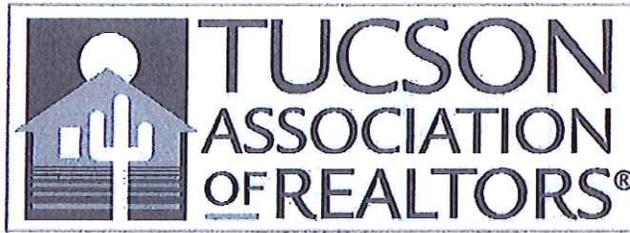
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letter given to Commissioners  
 @ PC Hearing 11-2-11



The Voice for Real Estate® in Tucson  
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www.tucsonrealtors.org

November 1, 2011

Honorable Mayor and Council  
City of Tucson  
255 W. Alameda Street  
Tucson, AZ 85701

RE: 11/02/11 Planning Commission Agenda Item 5 "Group Dwelling Text Amendment"

Dear Mayor Walkup & Council Members:

The Tucson Association of REALTORS® has serious concerns regarding the potential changes to the land use code regarding the definition of a group dwelling.

The proposed changes to the land use code appear to stem from a civil compromise between the City of Tucson and one private developer. Without discussing the merits of that compromise, we do not believe it should be formalized as policy for our entire city until there has been a more extensive public discussion with all impacted stakeholders.

Placing limitations on living arrangements through zoning based on arbitrary definitions of familial status can have significant impacts on many parts of our community. Major employers such as Davis Monthan Air Force Base and the University of Arizona could face real housing challenges as a result of this policy. At this point, we do not feel that the potential unintended consequences of such a change will be fully known or appreciated until all stakeholders are consulted.

Additionally, the potential legal liability from Proposition 207 lawsuits brought by property owners for damages to property values should be more closely examined in this time of strained financial resources in Tucson.

Thank you for your consideration,  
Steve Huffman  
Government Affairs Director  
Tucson Association of REALTORS®  
cc: Tucson City Clerks Office

**2011 Officers** President: Jill Knox, ABR, CRS, SRES, e-PRO President-elect: Timothy Bott, GRI Vice President: Cathy Erchull, ABR, GRI  
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November 1, 2011

To: City of Tucson Planning Commission

Hello,

I'd like to speak to you about concerns with the impending LUC text amendments. My partner, Layne Bogulas, and I have been developing and managing student properties around the UofA for the past 16 to 17 years. If you haven't heard of us or don't know much about us, I guess that is a good thing. It demonstrates that there is more than one way to develop student housing.

We are in agreement that the issues surrounding student housing needs to be addressed. Students, families and everyone, have a right to live peacefully and respectfully within the City core around the University. The University has been here for a long time. The art, sports, entertainment, vibrancy, cultural, educational and employment opportunities that the University brings, is what draws people to the area to begin with. The place for students to live is not out in Starr Pass or up at River, where they are forced to commute, clog our streets and dirty the air on their way to insufficient parking. It is possible for students to reside in a neighborhood and coexist compatibly with their neighbors.

We have grave concerns with the impending changes to the LUC. The fundamental issue of attempting to control behavior through the Land Use Code is improper. There are already numerous tools (red tag, noise, parking, and landlord accountability ordinances, etc.) available to regulate behavior.

The City attempting to redefine what is a family is extremely slippery territory on its own. The changing of the definition for Family Dwelling vs. Group Dwelling, resulting in reduction of current use, the arbitrary effective date, and the lack of true grandfathering all serve to diminish property rights and certainly constitute takings. The City will undoubtedly face legal challenges that will cost the citizens/taxpayers millions! This is not smart!

Next consider some of the unintended consequences. What about Hispanics, Asians, and other emigrant groups often with more than four unrelated individuals residing together? What about the elderly or military personnel who share a residence for economic reasons? What about small hospice or assisted care homes where more than four unrelated people reside? Many exist in the R-2 zone.

What about homeowners in the R-1 zone who have a guesthouse that they rent out, where the combined occupancy of the two dwellings is more than four people who are unrelated?

Think about the nightmare that is already starting with enforcing such regulations. What do you intend to do, go into their homes or march people out, line them up and demand their papers? Thousands upon thousands of such examples exist. How is the City going to handle this? Is enforcement going to be consistent or selective? What are the consequences?

Next give some thought to the implications of the Arizona Residential Landlord and Tenant Act.

letter given to Commissioners  
© PC Hearing 11-2-11

- ARS 33-1317 (F), "An occupancy limitation of two persons per bedroom residing in a dwelling unit shall be presumed reasonable for this state and all political subdivisions of this state."
- ARS 33-1310 (4), "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit" excludes real property used to accommodate a mobile home, unless the mobile home is rented or leased by the landlord.
- ARS 38-382, "Political subdivision" means a county, city or town.
- In the event that there is question of applicability of 33-1317, since it falls under Discrimination by a Landlord against Tenants with Children, refer to ARS 1-212, Except as provided in section 47-1107, headings to sections, source notes, reviser's notes and cross references are supplied for the purpose of convenient reference and do not constitute part of the law.

As a landlord, we are bound by this requirement. If five (more than four) people apply to me to rent a three bedroom home and otherwise qualify, per the statute I must rent to them. The City's proposed revisions place me in jeopardy.

At a time with limited resources, extensive challenges, a terrible housing market and crippling unemployment, now is not the time for legislative change that will only serve to make matters worse. Uncertainty and ambiguity are deterrents to investment in a community. This is not what Tucson needs.

I trust that this gives you food for thought and pause before you consider recommending this matter to Mayor and Council. This definitely is not well thought out, will be a nightmare to enforce and will undoubtedly generate several lawsuits that will cost the people of Tucson \$\$\$millions!

We appreciate your thoughtful consideration and would welcome the opportunity to engage in dialogue towards meaningful change.

Respectfully,

Mike Finkelstein

Layne Bogulas



**Southern Arizona  
Home Builders  
Association**

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Tucson, Arizona 85716  
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**SENT VIA ELECTRONIC MAIL**

November 2, 2011

The Honorable Craig Wissler  
Acting Chair  
City of Tucson Planning Commission  
255 W. Alameda St., 10<sup>th</sup> Floor  
Tucson, AZ 85701

RE: 11/2/11 Agenda Item #5, Group Dwelling Text Amendment

Dear Mr. Wissler:

For years, our community – particularly the neighborhoods in the vicinity of the U of A – has been wrestling with meeting the expanding needs for student housing and preserving the traditional single family residence lifestyle of our neighborhoods. As SAHBA has previously stated we believe policies/regulations can be created that maintain balances the interests of existing homeowners, future homeowners and developers/home builders.

With respect to the Group Dwelling Text Amendment before you, we feel it requires improvement and further discussions with a broad group of stakeholders including SAHBA. Specifically, we have concerns about placing limitations on living arrangements through zoning based on an arbitrary definition of familial status. This could have unintended consequences for “co-housing” arrangements that extends beyond students. We are also concerned about how the complaint and enforcement process would work and the potential conditions that could be applied upon previously approved, permitted and built homes.

If left unaddressed, these issues could have a negative impact on use and potential income of properties and leave the potential for future administrative actions that could further diminish property rights. We ask the Commission will take the appropriate steps to address these and other issues before voting to forward this amendment to Mayor & Council for approval.

If you have any questions, I can be reached at 795-5114.

Regards,

A handwritten signature in black ink that reads "David".

David M. Godlewski  
President, SAHBA

CC: Mr. Ernie Duarte



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[www.tucsonchamber.org](http://www.tucsonchamber.org)

November 2, 2011

Mr. Craig Wissler  
Planning Commission, Acting Chair  
City of Tucson  
255 West Alameda Street  
Tucson, AZ 85701

RE: 02Nov11 Planning Commission Agenda Item #5 - Group Dwelling Text Amendment

Dear Mr. Wissler:

In the interest of supporting good public policy which advances Tucson businesses and the community, the Tucson Metro Chamber has a serious concern with the proposed change to the Land Use Code relating to the definition of a group dwelling.

Since the use of group dwellings is already prohibited within R-1 and R-2 residential zones, we are concerned that this definition is the result of a mediation process for a specific issue, within a specific area of the city, that will now be administered citywide. Furthermore, with the basis for violation of the proposed code changes being neighbor complaints, the city is setting up a system of retaliatory actions and possible violation of private property rights.

It is no secret this issue has arisen in trying to come to a settlement concerning "mini-dorms" in proximity to the University of Arizona. However, if this proposed change is approved, it will have unintended negative consequences. How will this affect members of the military living together to afford off-base housing? Will students putting themselves through post-secondary education be able to find affordable living options in close proximity to any school, not just the University of Arizona? Unfortunately, this proposed change makes these questions and others like them a reality in Tucson.

We find the change is further suspect since buildings built prior to September 28, 2011 which do not meet the proposed definition, are exempt. From the available information, this is an exemption to solely benefit one of the parties involved in the mediation process.



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[www.tucsonchamber.org](http://www.tucsonchamber.org)

We understand the issues surrounding student housing in proximity to the University of Arizona. However, attempting to control improper social behavior through the Land Use Code is ill conceived, and is a detriment to the entire city. There are numerous means by which improper behavior can be curbed. The city needs to increase the enforcement of those current ordinances rather than change a fundamental document.

I thank you for your consideration of our concerns.

Sincerely,

Robert Medler  
VP of Government Affairs

# AGENDA ITEM #5

FROM TOM MUELLER (VIA  
RICHARD STUJWELL)

NOV 22 2011 PM 4:43

- 1) Document does not provide grandfathering. Need to have true grandfathering.
- 2) Document is misleading, only protects house with 4, not 5. Needs to be clarified that 5 is okay under all circumstances.
- 3) Change should not apply to lot, but instead to each separate dwelling.
- 4) Standard to take away zoning is vague and left to the whim of zoning administrator. Any attempt to take away zoning or evict tenants should be through Pima County Superior Court only after finding of public nuisance.
- 5) The mixing of behavior and zoning is fraught with danger. Zoning and behavior should not be combined.
- 6) Zoning change will result in a taking and open the City to millions, if not billions of dollars in damages.
- 7) Changes are being made in violation of due process rights. No notice has been provided to affected property owners.
- 8) Zoning change will violate ARS § 9-462.02 which provides that no ordinance shall effect existing property rights or use.
- 9) Zoning change will violate ARS § 9-462.01 which provides that zoning should not be discriminatory.
- 10) Zoning change will violate ARS § 12-1134 which provides that just compensation must be paid for any action which affects the right to use property.
- 11) Zoning change will violate Arizona and United States Constitutions which prohibit the government from taking property.
- 12) The zoning change is discriminatory to Hispanics and other minorities who cannot afford their own separate homes.
- 13) The zoning change is misguided as the City already has adequate enforcement measures to address unruly behavior.
- 14) The zoning change creates the appearance of impropriety, as the City has funded the very group, the Jefferson Park Neighborhood Association, who has pushed the ordinance.
- 15) The zoning change will make housing expenses greater for University of Arizona students, pilots, Hispanics, and others who cannot afford their own homes. This is the last thing the City of Tucson should be doing in this economic recession.
- 16) The zoning change is anti-business, will cause a loss of even more construction jobs, because property owners will not build with the threat of losing existing property rights. Again, this is the last thing the City of Tucson should be doing in this economic recession.