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TRINITAS

RESPONSE TO ORDINANCE NO. 03-09

INTRODUCTION

Good evening, my name is Loren King, I reside at 4106 Amesbury Drive, West Lafayette. I am one of the principals and the chief operating officer and general counsel for Trinitas Ventures; we own, develop, construct, and manage commercial real estate, including student housing. We currently own and manage property here in West Lafayette, Bloomington, Indiana and Champaign, Illinois.

THE BIG PICTURE

The main purpose for an housing inspection regime is to reduce nuisances like noise, trash and litter, parking and traffic issues, and poorly maintained/appearing residences. It is no secret that West Lafayette's regime is aimed at controlling the impact of Purdue students on local neighborhoods, as well as controlling the landlords that rent to them.

My company works hard to maintain and manage our properties well and have an excellent code and maintenance inspection record with the city inspectors, but we live in fear of the overoccupancy sections of the city code—and we shouldn't have to. My company is diligent about having our units certified, we are diligent about renting only to the legally allowed number of residents, we keep our eye out for the signs of overoccupancy, but that is not good enough under the code as written or as proposed.

The current city code makes owners and managers into policemen and spies against our own residents and makes owners and managers the enemy of the city...it shouldn't be that way and it doesn't have to be.

The main purpose of the ordinance—elimination of the nuisances—could be accomplished by a well-crafted ordinance drafted with local landlord input. If local landlords had a seat at the table, you would have already heard many or all of the commonsense things that I am about to say.

CONTINUING DUTY OF THE OWNER AND MANAGER TO PERSONALLY MONITOR OCCUPANCY

The existing ordinance provides that it shall be the continuing duty of the owner and manager to personally monitor the occupancy of the dwelling unit and to ensure that it is not occupied by more persons than the maximum allowable occupancy.

If the owner and manager fails to diligently monitor the overoccupancy, then the owner and manager are subject to huge daily fines.

This begs the question, how is an owner or manager supposed to detect overoccupancy? Well, it's easy if the maintenance man or leasing agent spots an extra bed...that's a no brainer. But, what if the overoccupancy is not so obvious. What if the extra occupant is sharing a bed or is on a couch and there aren't telltale signs? How is the maintenance man or leasing agent supposed to differentiate a guest from an illegal occupant? A guest is someone who resides in the dwelling unit less than 25% of the time. How is an owner or manager supposed to

sufficiently observe this suspect individual sufficiently to determine if they are present more than 25% of the time? Not to mention that the code is unclear as to whether that is 25% within a week, a month, a year or over the lease term, or some other measure of time... Should the maintenance man or leasing agent interrogate the suspect individual? What if he or she lies?

These questions are raised by the significant ambiguity present as the code is currently written. The proposed modification to Code Section 117.08 attempts to clarify what is expected from a owner and manager but the proposed language regrettably raises more questions than it answers.

First, it sets a problematic minimum threshold of seven activities a owner and manager must satisfy and adds, explicitly, that they must also take other steps based upon the particular circumstances but gives no guidance as to what other types of monitoring activities might be required. Are we talking video surveillance? I don't know but am being required to guess. This ambiguity is unnecessary and problematic.

Second, steps 4, 6, and 7, are seriously ambiguous and problematic.

Step No. 4 provides that an owner and manager must monitor cars regularly parked at the property for additional occupants. How do the owner and manager know what cars are parked regularly? Do they have to keep a log? How often? Once day, once a week, every thirty minutes? And, what frequency of detection of an unknown car, necessitates an investigation? Who investigates? Are they supposed to track the person back to an apartment and then confront them? Then what?

Guests drive cars—do I need to register the guests of all my residents so that I can distinguish between a guest and an occupant. How do I distinguish between a guest and an occupant? How do I distinguish between a girlfriend that stays over a lot (but less than 25% of some ambiguous period) and a girlfriend that stays over more than 25% of the time? When an owner and manager determine that the girlfriend is no longer a guest and is an illegal occupant, then what? How do you evict a person that has her own apartment two blocks away. Do we get a restraining order against our resident's girlfriend?

Compliance with this section is intrusive into the lives of our legal occupants and their guests, is impossible for an owner and manager to satisfy and creates an extremely poor living and working environment and would be bad for the community and Purdue.

Step No. 5 provides that an owner and manager shall not accept payment from non-parties to the lease. How extensively should an owner or manager question its residents upon receipt of payment on behalf of them from someone with a different last name? Parents and other relatives or sponsors of students have drastically different names than the student. What then? What about online payment where the information on the credit card owner is not transmitted to the property manager? What if I have a new employee that unknowingly accepts payment from a non-party to a lease?

Our banks sometimes will cash checks that are not even signed. Why? Even banks with high tech systems still occasionally miss things. The resident with an illegal occupant is not likely to admit anything if asked, "oh, that is from my illegal roommate." Does failure to accept payment once from a non-party constitute a

failure to be diligent? Must owners and managers require an affidavit from a payor that has a different last name? This is a tough business and setting up obstacles to accepting payment, especially in this economy, seems like a very bad idea.

Step 7 provides that an owner and manager shall monitor the number of occupants observable...I note first that the word "observable" is used, rather than "observed." The difference is significant. It doesn't matter how many occupants the maintenance man did see, what matters is how many he could have seen if he had what? Looked in every room, bathroom, closet? When? Every time he entered the dwelling unit. The maintenance man just got converted into a peeping tom.

So, let's assume that the maintenance guy sees four guys sitting on the couch playing on a Wii every time he enters an apartment, and let's assume that he has the names and faces of all 500 of his tenants memorized. He knows that two of the four are residents and the other two are not? What should he do? Should he interrogate them? Does he need to write an incident report every time he encounters a non-occupant on the property. Does that need to be entered into a database to be queried on a daily basis for any sign of a repeat guest that might visit more than 25% of the time? Should the maintenance man arrest the guest if he sees him one too many times?

This ordinance turns property management and maintenance staff into spies and police...when are they going to have time to do their real jobs?

What happens if we have a very stealthy illegal occupant that slips past my extremely paranoid maintenance and leasing staff and is in there for one day beyond the three month guest period? Do I get an $18,400 bill? Do I get

additional fines during the 2 to 3 month period it takes me to legally evict him? What if I have a second stealthy illegal occupant? Then that fine for the same period would be $230,000, plus another $230,000 for the time it takes us to evict. If I failed to do each and every one of the seven prescribed activities and other reasonable monitoring, then I am subject to the fine. This is an absurd result and it pits the city against owners and managers instead of creating an environment of teamwork.

SOLUTIONS

Crafting a reasonable ordinance that achieves the goals of eliminating nuisances like trash, noise, and overparking, which are related to overoccupancy, is not that difficult, especially if owners and managers are involved in crafting the ordinance. In a good ordinance:

1. Owners and managers would have explicitly defined duties—the broad and ambiguous provisions would be eliminated.

2. Owners and managers would not have civil liability for unknown overoccupancy—they would only be fined for known and tolerated overoccupancy. They would have only a duty to address overoccupancy upon learning of it. Owners and managers would not be required to act like policemen and spies.

3. Owners and managers, residents, and the City would be working as a team, cooperating to eliminate overoccupancy to the extent it is a problem.

4. Additional administrative burdens would not be placed upon owners and managers who are already facing cost increase pressures from property taxes, utilities, and labor, among other things.

5. Owners and managers would not be subjected to ridiculously high daily fines whether for the first time offense or for additional offenses, except perhaps, in the event of the intentional and willful violation of the legal occupancy limit. A stealth occupant should not subject an owner to fines in the hundreds of thousands of dollars. When a stealth occupant is discovered (by whomever), the owner and manager should be notified and the occupant should be evicted...that simple.

The goal is not to fine landlords, the goal is to reduce the nuisance...the goal is discovery of the problem and curing it. That is what the ordinance should do.

Thank you.