

RECORD OF ORDINANCES

Ordinance No. 3678

Passed: August 25,

2020

AN ORDINANCE ADOPTING AMENDMENTS TO CHAPTER 154 OF THE CODE OF ORDINANCES OF WEST CARROLLTON KNOWN AS THE "ZONING CODE," SECTION 154.02.01, DEFINITIONS, TO AMEND THE DEFINITIONS OF "FAMILY" AND "FUNCTIONAL FAMILY" IN ACCORDANCE WITH THE U.S. DISTRICT COURT DECISION IN YODER V. CITY OF BOWLING GREEN.

WHEREAS, the decision in *Yoder v. City of Bowling Green*, U.S. Dist. N.D. Ohio (2018) necessitates a change in the City of West Carrollton's definition of "family," which limits the number of unrelated people living together in a residential dwelling unit, to be based on physical space and public health, safety, and welfare considerations instead of the inhabitants' relationship; and

WHEREAS, an application has been filed by the City of West Carrollton proposing text amendments to Chapter 154 of the Code of Ordinances of the City of West Carrollton known as the "Zoning Code," Section 154.02.01, Definitions, to amend the definitions of "Family" and "Functional Family" in accordance with the *Yoder* decision; and

WHEREAS, a public hearing was held on June 18, 2020 by the West Carrollton Planning Commission, at which time all people who wished to testify gave their comments, and the Planning Commission unanimously recommends approval of the proposed amendments; and

WHEREAS, notification of a public hearing before the City Council regarding this matter was properly advertised in a newspaper of general circulation on July 2, 2020 in accordance with Section 154.08.01(D)(1) of the Zoning Code; and

WHEREAS, a public hearing was held by the West Carrollton City Council on August 11, 2020, at which time all people who wished to testify gave their comments; and

WHEREAS, Sections 154.05.05(C) of the West Carrollton Zoning Code specifies circumstances which justify amending the Zoning Code; and

WHEREAS, the City of West Carrollton has determined that adoption of the proposed text amendments to Chapter 154 of the Code of Ordinances of the City of West Carrollton known as the "Zoning Code," Section 154.02.01, Definitions, to amend the definitions of "Family" and "Functional Family" in accordance with the *Yoder* decision is in the best interest of the citizens of West Carrollton to preserve and enhance property values and protect the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, COUNTY OF MONTGOMERY, STATE OF OHIO:

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SECTION 1: That the City Council makes the following findings of fact with respect to the proposed text amendments pursuant to case T-20-2, said findings of fact based upon criteria found within Section 154.05.05(C) of the Zoning Code:

- a) The U.S. District Court decision in *Yoder v. City of Bowling Green* held that the City of Bowling Green's definition of "family" which limits the number of unrelated people living together in a residential dwelling unit is impermissibly arbitrary and does not bear any reasonable relationship to a compelling governmental interest, since the regulation is based on personal relationship and not on physical space. The decision indicates that limiting occupancy must be based on health/safety reasons.
- b) The *2009 West Carrollton Sustainable Comprehensive Plan* seeks to preserve and enhance the character and value of existing residential neighborhoods, to increase owner-occupancy, and to develop a wide, diverse mix of housing types. The proposed amendments ensure that the Zoning Code's definitions pertaining to residential neighborhoods are legally sound, thus ensuring that incompatible land uses are separated and the character of different types of residential neighborhoods is preserved. As such they support the plan's overall goals to achieve sound and orderly growth and protect residential property values within the community. The proposed amendments can be justified on the grounds that the change is in conformance with the Comprehensive Plan of the city.
- c) The city's Zoning Code is in error since it does not comply with Ohio law in the *Yoder* decision. The existing definitions for "*Family*" and "*Functional Family*" limit occupancy based on relationship, and not on public health, safety, and welfare considerations. As such, the proposal can be justified on the grounds that there is an error in the Zoning Code.

SECTION 2: That Chapter 154 of the Code of Ordinances of West Carrollton known as the "Zoning Code," Section 154.02.01, Definitions, be and hereby is amended to read as follows:

FAMILY. One or more persons related by blood, marriage, adoption, or legal guardianship residing in and maintaining a common household as their permanent residence, as distinguished from a group occupying a rooming house, motel or hotel, or fraternity or sorority house. A "family" shall also include a functional family, as defined herein. To protect the public health, safety, and welfare, the maximum occupancy of any residential unit shall be determined by the West Carrollton Property Maintenance Code, the West Carrollton Fire Prevention Code, and the Ohio Building Code.

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***FAMILY, FUNCTIONAL.** One or more persons who are not related by blood or marriage with a demonstrable and recognizable bond characteristic of a cohesive unit, residing in and maintaining a common household as their permanent residence. This bond typically involves the function of child-rearing (whether natural or foster) or group living arrangements for the disabled, elderly persons over 60 years of age, or mentally/developmentally disabled persons. To protect the public health, safety, and welfare, the maximum occupancy of any residential unit shall be determined by the West Carrollton Property Maintenance Code, the West Carrollton Fire Prevention Code, and the Ohio Building Code.*

SECTION 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4: That this Ordinance shall take effect from and after the earliest period allowed by law.

Passed: August 25, 2020

Attest:


Clerk of Council


Mayor

Effective Date: September 24, 2020

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CERTIFICATE

The undersigned, Clerk of Council of the City of West Carrollton, Ohio, hereby certifies the foregoing is a true and correct copy of Ordinance 3678, passed by said Council on the 25th day of August, 2020.

Clerk of Council

Dated: _____