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P.C. Case #10-1-028

ORDINANCE NO. 10-__

**ORDINANCE AMENDING CHAPTER 1 (DEFINITIONS),
CHAPTER 2 (GENERAL ZONING PROVISIONS), CHAPTER 6
(RESIDENCE DISTRICTS), CHAPTER 7 (BUSINESS DISTRICTS)
CHAPTER 9 (OFF-STREET PARKING) AND CHAPTER 10
(NONCONFORMING USES) OF TITLE 6 (ZONING
REGULATIONS) OF THE NAPERVILLE MUNICIPAL CODE
PERTAINING TO BOARDING ROOMS, BOARDING HOUSES
AND NONCONFORMING USES**

WHEREAS, the City of Naperville, in its authority as a Home Rule community, has enacted Zoning Regulations for the purpose of improving and protecting the public health, safety, comfort, convenience and general welfare of the people; and

WHEREAS, the City of Naperville has legitimate and reasonable government interests in implementing zoning regulations that protect properties from fire and other dangers, that enhance and conserve the taxable value of land and buildings, to lessen or avoid congestion in the public streets; and

WHEREAS, the City of Naperville has the lawful authority to implement regulations to limit the intensity of areas, to classify, regulate and restrict the location of different uses including business and residential, to prohibit uses that are incompatible with the character of specific zoning districts; and

WHEREAS, the City of Naperville has the lawful authority to classify, to regulate and restrict the use of property on the basis of family relationship; and

WHEREAS, it is a legitimate government interest and an appropriate application of zoning to establish residential zoning districts, which exclude business and trade to prevent congestion, preserve property values, secure quiet residential districts, increase the safety of home life, and prevent street accidents; and

WHEREAS, the Comprehensive Plan of the City of Naperville provides that the environment and livability of neighborhoods within the community must be preserved, including protection from incompatible activities or land uses which have a negative impact on the residential environment; and

WHEREAS, the City of Naperville has a legitimate government interest in protecting property values, ensuring orderly development and regulating land uses for the purposes of density; and

WHEREAS, the American Planning Association, in its “Land-Based Classification Standards” has established a functional distinction between private households and boarding or rooming houses, classifying the latter in the category of “hotels, motels or other accommodation services”; and

WHEREAS, full service hotels, hotels and motels are currently permitted in commercial zoning districts; and

WHEREAS, Section 15 (Boarding Rooms in Residential Structures) of Chapter 2 (General Zoning) of Title 6 (Zoning Regulations) of the Naperville Municipal Code establishes regulations governing the rental of boarding rooms in single-family, duplex, single-family attached and multiple-family dwellings; and

WHEREAS, under the current zoning regulations established in 1980, boarding houses may only be established through approval of a conditional use in the R2 (Single-Family and Low Density Multiple-Family Residence) District and the CU (College and University) District pursuant to Article C (R2 Single-Family and Low Density Multiple-Family Residence District) of Chapter 6 (Residence Districts) and Article G (College/University District) of Chapter 7 (Business Districts) of Title 6 (Zoning Regulations); and

WHEREAS, boarding and rooming houses present similar characteristics to hotels, motels through provision of temporary accommodations, generation of parking demand in excess of that typically associated with a residential home, and general commercial intent; and

WHEREAS, the Supreme Court of the United States stated in *Village of Belle Terre v. Boraas* that “boarding houses, fraternity houses and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds” and acknowledged that it is justifiable for municipalities to establish land

use guidelines addressing family needs, and to provide zones where family values, youth values and the blessings of quiet seclusion and clean air make the area a sanctuary for people; and

WHEREAS, the activities and functional characteristics of boarding and rooming houses are in conflict with the intent of the City of Naperville's residential districts to provide primary residence for the quiet enjoyment of property owners and tenants by minimizing negative impacts associated with noise, traffic, parking, density and land use intensity; and

WHEREAS, the City Council has determined that some persons who own or control real property for the purpose of operating a boarding or rooming facility have allowed their property to be used for illegal purposes and have otherwise failed to properly maintain their property, and such property has become a chronic nuisance which has created significant impact upon the living conditions of the city's neighborhoods and has raised justifiable and reasonable concerns about public safety; and

WHEREAS, conversion of residential dwelling units to boarding houses has been found to burden existing residential water and electric services to such an extent that it has presented a life safety danger in violation of the Municipal Code; and

WHEREAS, boarding houses impose life safety and habitability concerns with respect to the adequacy of construction, including appropriate utility sizing and fixture counts, egress, ventilation and fire suppression, as well as appropriate inspections to ensure Building and Property Maintenance Code compliance; and

WHEREAS, boarding houses present observable exterior impacts related to refuse and parking, including overflow of refuse from inadequate residential refuse or dumpster facilities, parking in required yards and paving of rear yard areas for a parking lot; and

WHEREAS, the Naperville Police Department reports that boarding houses and properties used as boarding houses have a higher incidence of police calls than other properties in the surrounding residential district, resulting in at least two times more police calls for service, and often substantially more; and

WHEREAS, the City of Naperville has a legitimate government interest in classifying boarding houses as a commercial use consistent with the city's experience and the existing zoning of hotels, and motels; and

WHEREAS, the letting of individual boarding rooms as an accessory use within an owner-occupied single household in a limited manner, however, is incidental to the primary use of the structure as a residence and therefore is not a detriment to the overall character of a residential neighborhood; and

WHEREAS, current ordinances allow two (2) boarding rooms per dwelling unit for not more than two (2) persons per dwelling unit; and

WHEREAS, the City of Naperville’s current ordinances pertaining to boarding houses and boarding rooms create ambiguities associated with the classification of land use and appropriate enforcement of zoning; and

WHEREAS, the current boarding room provisions create instances in which the occupancy of dwelling units by persons unrelated to the primary household may be doubled, thus imposing disproportionate impacts associated with parking, activity and land use intensity for two-family and multiple-family dwelling units and in these instances, boarding room cease to be an accessory function of the single household residential use; and

WHEREAS, the City has a legitimate interest in decreasing congestion, traffic, noise in residential areas and to assure that residential zones are preserved for their intended uses; and

WHEREAS, the City Council has determined that it is appropriate and in the best interest of the city to promote the public health, safety and welfare by amending the Naperville Municipal Code as provided herein; and

WHEREAS, the City of Naperville has given individual notices and general public notice and conducted public hearings with respect to the amendment as required by law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority, as follows:

SECTION 1: Section 6 (Definitions) of Chapter 1 (Zoning Title, Purpose, Definitions) of Title 6 (Zoning Regulations) is hereby amended by deleting the stricken language and adding the underlined language as follows:

6-1-6: DEFINITIONS: In the construction of this Title the definitions contained in this Section shall be observed and applied, except when the context clearly indicates otherwise. The following definitions of word use shall apply:

BOARD * * *

BOARDING HOUSE: A ~~residential~~ building, structure or portion thereof which contains boarding rooms for rent on a short term, in which occupants reside in separate living spaces under individual rental arrangements and for varying periods of time. Some services, such as laundry and cleaning, may be supplied. The presence of certain structural features to the dwelling unit shall constitute evidence that the structure is operating as a boarding house, including, but not limited to, (1) separate double key or other locking mechanisms on internal bedroom doors which have the purpose of preventing access while the bedroom is not occupied; or (2) multiple mailboxes on the house or property; or (3) locked or partitioned inside stairwells or doors physically separating parts of the house; or (4) separate electrical meters; or (5) separate kitchens or

food preparation appliances in individual living spaces; or (6) multiple exterior entrances to living spaces in addition to the common entrance; or (7) lack of access to living areas which accommodate residents for a household purpose (i.e., living room, kitchen). Except as provided above, a boarding house does not encompass a situation where a property owner rents a residential structure through provision of a single lease to tenants who intend to occupy it as a shared home for an extended duration. ~~accommodating those who are not members of the owner's family and which is other than an apartment hotel, bed and breakfast establishment, dormitory, hotel or motel.~~

BOARDING ROOM: This term refers to a A room within a principal residential structure that is rented as sleeping and living quarters, but without cooking facilities and with or without an individual bathroom, which provides access to common areas of the home including the entry, living, kitchen and bathroom areas and does not possess characteristics of a Boarding House.

~~LODGING HOUSE: A residential building, structure or portion thereof which contains lodging rooms for rent accommodating persons who are not members of the owner's family and which is other than an apartment hotel, bed and breakfast establishment, dormitory, hotel or motel.~~

~~ROOMING HOUSE: A residential building, structure or portion thereof which contains rooms for rent accommodating persons who are not members of the owner's family and which is other than an apartment hotel, bed and breakfast establishment, dormitory, hotel or motel and does not include a nursing home or residential care home~~

SECTION 2: Section 15 (Boarding Rooms in Residential Structures) of Chapter 2 (General Zoning Provisions) of Title 6 (Zoning Regulations) is hereby amended by deleting the stricken language and adding the underlined language as follows:

6-2-15: BOARDING FACILITIES ROOMS IN RESIDENTIAL STRUCTURES

1. Boarding Houses: New Boarding Houses established after MONTH DATE, 2010 shall be subject to approval of a conditional use in the B3 (General Commercial) Business District only, subject to provisions contained in Section 6-7C-3 (B3 District, Conditional Uses) of the Naperville Municipal Code. Nothing herein shall be construed as a prohibition on the property owner's ability to rent a residential structure through the provision of a single lease to an individual or group of individuals who intend to occupy the structure as a shared home, and which does not qualify as a Boarding House as defined in Section 6-1-6 of this Code.
2. Boarding Rooms in Residential Districts: The rental of Boarding Rooms in single-family detached dwellings, two-family dwellings, duplexes, single-family attached dwellings, and multiple-family dwelling units shall be permitted as accessory to the

principal residential use of the dwelling unit; provided, that there shall be not more than two (2) Boarding Rooms per single-family dwelling unit for not more than two (2) persons per dwelling unit and not more than one (1) Boarding Room per duplex, single-family attached dwelling, or multiple-family dwelling. Boarding Rooms as permitted in herein shall provide access to common areas of the home including the entry, living, kitchen and bathroom areas, and shall not possess characteristics of a Boarding House as defined in Section 6-1-6 of this Code. Boarding Rooms shall not be permitted to impose overflow parking impacts onto the public right-of-way or an unapproved surface.

3. Amortization of Boarding Houses and Structures with Boarding Rooms

3.1. Boarding Houses: Boarding Houses, as defined herein or lawfully established prior to MONTH DATE, 2010 shall be permitted to continue operating in accordance with provisions of law and the Municipal Code related to nonconforming uses. However, the use of all such structures for the purpose of operating a Boarding House shall cease on or before MONTH DATE, 2012 at which time structures may be converted to a use permitted by the zoning designation applicable to the property in question.

3.2. Structures with Boarding Rooms: All residential structures with two Boarding Rooms, as defined herein or lawfully established prior to MONTH DATE, 2010, shall be permitted to continue operating in accordance with provisions of law and the Municipal Code related to nonconforming uses. However, all such structures shall achieve compliance with the provisions of Section 6-2-15:2 on or before MONTH DATE, 2012.

SECTION 3: Sub-section 3 (Conditional Uses) of Article C (R2 Single-Family and Low Density Multiple-Family Residence District) of Chapter 6 (Residence Districts) of Title 6 (Zoning Regulations) is hereby amended by deleting the stricken language as follows:

6-6C-3: CONDITIONAL USES:

The following conditional uses may be permitted in specific situations in accordance with the procedures outlined in Section 6-3-8 and Chapter 4 of this Title, as appropriate:

1. Any conditional use in the R1A district.
2. ~~Boarding, lodging and rooming houses.~~
3. Clubs, lodges, and meeting places for organizations, not including any use that is customarily conducted as a gainful business.

2.-4.	*	*	*
5. Parking Class no. 5 – Services And Institutions			
Hotel	*	*	*
Motel			
Apartment Hotel		<u>5 parking spaces per each 1,000 square feet of gross floor area</u>	
<u>Boarding House</u>			
<u>Dormitory</u>			
<u>Fraternity</u>			
<u>Convalescent Home</u>		<u>1 parking space per each 4 beds based on rated design capacity</u>	
<u>Nursing Home</u>			

SECTION 7: Section 4 (Registration of Nonconforming Uses) of Chapter 10 (Nonconforming Uses) of Title 6 (Zoning Regulations) is hereby amended by deleting the stricken language as follows:

~~**6-10-4:REGISTRATION OF NONCONFORMING USES:** The Zoning Administrator shall maintain a system of registration of all nonconforming uses. Such registration system shall include provision for notification of owners by the City regarding the uses of buildings, structures, or parcels of land in their ownership which do not conform to the use regulations of the zoning districts in which they are located, of their status and of the regulations applicable to such nonconforming uses.~~

SECTION 8: This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2010.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2010.

A. George Pradel
Mayor

ATTEST:

Pam LaFeber, PhD
City Clerk

DRAFT