

NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT

RE: **ZONING ORDINANCE TEXT AMENDMENT.** Amendments to Title VI, Volume III, New Haven Zoning Ordinance, of the Code of Ordinances re: temporary moratorium on the conversion, demolition, and rehabilitation of boarding rooms and boarding room units. (Applicant: Alders Colón, Douglass, Eidelson, and Greenberg)

REPORT: 1539-04
ADVICE: Reconsider, Form Task Force

BACKGROUND

The applicants are proposing to amend the Zoning Ordinance essentially as described Sections 3 through 6 of the Legislative Order accompanying submitted language as follows:

3. Temporary Moratorium. For a period of six (6) months from the effective date of this Ordinance, or until such time as the Board of Alders adopts a new, permanent ordinance or ordinances addressing the conversion, demolition, or rehabilitation of boarding-room units into non-residential uses, including hotel use, whichever comes first, the City of New Haven hereby declares a moratorium on the conversion, demolition, and rehabilitation of boarding-rooms and boarding-room units (the "Moratorium"). During the term of this Moratorium:

- (a) No site plan approval or permit, including building permits, shall be granted to convert, demolish, or rehabilitate a boarding house or boarding-house unit;*
- (b) No site plan approval or permit, including building permits, shall be granted for any new construction, demolition, or rehabilitation on a lot where a resident of such boarding room or boarding room unit has been or will be displaced for more than two (2) weeks;*
- (c) No new rooming house license shall be granted for a rooming house that has converted, demolished, or rehabilitated a boarding house or boarding-house unit during the pendency of this moratorium, and any rooming house license issued subsequent to the passage of this ordinance shall be deemed null and void if the holder of the license subsequently converts, demolishes, or rehabilitates the boarding house or boarding-house unit during the pendency of this ordinance.*

4. Exceptions. This Ordinance shall not apply to:

- (a) Any boarding house that has been or shall be converted into an Affordable Housing Development, as determined by the Fair Rent Commission; or*
- (b) Any boarding house that must comply with a City order (1) to repair or demolish all or part of the boarding house that is unsafe, uninhabitable, or in substandard condition; (2) to rebuild due to destruction by fire or natural disaster; or (3) to comply with administrative nuisance abatement proceedings.*

5. Petition for Relief from Moratorium. The Board of Alders, acting in its legislative capacity and by resolution, may grant an exception from this Ordinance in cases (1) where the Moratorium's application would be unlawful under and/or conflict with Federal or State law; or (2) where it has been shown to the satisfaction of the Board of Alders that application of the moratorium to the boarding-room house would deny the owner of the boarding-room house all economically beneficial use of the property. An application for exemption shall be filed with the City Clerk on forms provided by the City.

6. Implementing Interpretations and Regulations. The City Plan Commission has authority to issue interpretations of and regulations to implement this Ordinance, including without limitation to develop a list of boarding houses that are subject to the Moratorium. Such interpretations and regulations shall be subject to revision by resolution of the Board of Alders.

PUBLIC HEARING

A public hearing was held on January 17, 2018. Transcripts of the hearing are available at the City Plan Department.

PLANNING CONSIDERATIONS

Although not a power specially expressed in either the Special Act or the General Statutes, Connecticut courts have upheld the limited use of zoning related moratoria over recent decades. There are, however, certain general conditions that need to exist before a moratorium that could withstand any type of legal challenge could be enacted. Most importantly, there needs to be a demonstrated need for such an action. For example, in this case, the number of rooming and boarding houses in the City today as opposed to that of the recent past, recent rates of removals, and how many may have been created in the recent past needs to be determined and presented as quantifiable evidence of the need for the legislation.

It should be noted here that the proposed legislative order references boarding-rooms, rooming houses and boarding-room units. Common terminology would also include single-room occupancy units (SROs) in assisted settings (1465 State Street for example) and unassisted settings as might be found in converted houses. For the purposes of this report, the terminology is used interchangeably.

The applicant did not provide any material background information as part of the communication. Without any such information it is simply not possible to determine the overall risk and impact associated with conversions to SROs in the City. This in turn makes impossible an objective determination as to whether or not the proposed moratorium is either a necessary or legally defensible measure. Furthermore, proposed language calling for the City Plan Commission to develop a list of boarding houses is overly broad and nearly impossible to ascertain without site inspections. The Building Department has rooming house records that go back for decades, however, any illegal conversions or informal arrangements would not be captured by the permit data.

This proposal also differs from most other moratoria in that it compels the continuance of a particular use with no other alternative except for conditions of Section 5. This differs from most other moratoria in that they generally prohibit a use or type of use but not all new use for a specific period of time. The Commission believes that the limiting of a property to its existing use is excessive and unjustifiable without evidence of imminent risk to the public welfare as described above. It is also important to note that the proposed legislation weaves in sections of the Code of General Ordinances (pertaining to licensing) even though the communication is titled an amendment to the Zoning Ordinance.

The proposal's lack of urgency and legal defensibility are further underscored by the fact that SROs are currently permitted by right in General High Density (RH-2) Residence Districts, General Business (BA) Districts and Central Business (BD) Districts. These three districts not only make up a significant percentage of total city area but also represent a fairly diverse set of physical settings (high density residential neighborhoods, neighborhood commercial areas and the central business district) within which the possibility of SRO development currently exists.

Finally, the lack of any substantive evidence of the idea that the loss of single room occupancy units is taking place in the city at an unreasonable rate along with other considerations discussed above leads the Commission back to the conversations about the Duncan Hotel, which was recently purchased and is undergoing renovations. In that particular instance, the renovations to the hotel are as-of-right pursuant to the City's Zoning Code and the new owners are working with the Glendower Group to relocate longstanding occupants. The Commission cannot support any legislative action that prohibits or delays any property owner's ability to exercise lawful use of land (in this instance permitted by right) retroactively. There are numerous instances whereby the outcomes of a particular lawful land use development may be undesirable, and this is why the Commission regularly puts forth

proposals to amend the Zoning Code in a manner consistent with the Comprehensive Plan of Development. These amendments are prepared in order to address certain issues or get ahead of issues that may arise over time.

Apart from the lack of demonstrated need for the proposed moratorium, the Commission also notes a number of serious defects in the proposed language of the amendment. In terms of the proposed language the Commission notes that there is absolutely no authority in either the Special Act or the General Statutes that grants the legislative body of any municipality the authority to grant relief from any portion of a zoning ordinance; it is a power that is specifically and solely delegated to the Board of Zoning Appeals. In addition it is noted that in any case where the moratorium is subject to State or Federal law the granting of an exception by the Board of Alders would be a completely meaningless and superfluous action.

The Commission also finds Section 6 particularly interesting in respect to basic due process issues. It is doubtful that the Board has the authority to direct the Commission to create implementation-related regulations on its own. That power is exclusive to the Board of Alders. Even more interesting is language that allows for the "issuance" of interpretations of this proposed language. Interpretations of zoning regulation are administrative actions assigned by Special Act and the Connecticut General Statutes to the City Plan Commission, Board of Zoning Appeals and the Zoning Enforcement Officer. The Commission views this section of the proposal as particularly challenging and creates an unnecessary entanglement of the responsibilities assigned to the various land use regulatory bodies.

SECTION 64(d)(2)c OF THE NEW HAVEN ZONING ORDINANCE

Section 64(d)(2) requires that the City Plan Commission take into consideration in evaluating any amendment to the Zoning Ordinance:

a. Errors in the existing ordinance, changes that have taken place in the city and in patterns of construction and land use, the supply of land and its peculiar suitability for various purposes, the effect of a map change on the surrounding area, the purposes of zoning and the comprehensive plan of the City of New Haven;

The concerns about the lack of single room occupancy dwelling units in the City of New Haven has been asserted but not demonstrated in any meaningful way.

b. Whether some other method or procedure under the zoning ordinance is more appropriate; and

The Commission is of the view that there is in all likelihood a shortage of SRO development in this city. It has not, however, been provided with any evidence that would justify the extreme set of measures embodied in the current proposal. Fortunately it would be a relatively easy matter to increase opportunities for SRO's in New Haven by means of alternative amendments to the Zoning Ordinance. Increasing the number of zoning districts where such use is permitted is certainly a reasonable and easily effectuated first step.

Given, however, that the most probable cause for the lack of such housing has much more to do with market forces than with the New Haven Zoning Ordinance directly it would seem to the Commission that in the longer term the City would need to work closely with not only the Housing Authority but also with nonprofit housing entities to create affordable SRO units in the City of New Haven.

SECTIONS(S) 181 and 182 OF THE CHARTER OF THE CITY OF NEW HAVEN

The City Plan Commission does not find that, based on submitted information the proposed ordinance amendment complies with Sections 181 and 182 of the Charter of the City of New Haven in that it is (i) not uniform for each class of buildings or structures, (ii) not made in accordance with the Comprehensive Plan, (iii) not designed to lessen congestion in the streets, secure safety from fire, panic, and other dangers, promote health and the general welfare, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, facilitate the adequate provisions for transportation, water, sewerage, parks, and other public requirements, and (iv) not made with reasonable consideration as to the character of the proposed district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City.

FINDINGS AND ADVICE

The City Plan Commission advises the Board of Alders to reconsider the legislation in light of the legal issues raised by the report and the robust public testimony given at the January 17 City Plan Commission meeting.

The City Plan Commission recommends the Mayor and Board of Alders appoint a taskforce of government officials, agencies that serve the homeless, landlords, bankers, potential tenants and other concerned parties to make recommendations within six months of actions the City can take which would increase the number of safe and sanitary SROs units and other low-income housing options. The Commission agrees that safe and affordable housing options are in critical demand and are an urgent need of the overall community.

ADOPTED: January 17, 2018
Edward Mattison
Chairman

ATTEST: MPD
Michael Piscitelli, AICP
Deputy Economic Development Administrator