

# **Occupancy Standards Enforcement / Minimum Housing Code**

## **Recommended Changes to Charlotte's Minimum House Code**

The current Minimum Housing Code for the City of Charlotte specifies the following:

- (a) At least one room in the dwelling shall contain not less than 150 feet.
- (b) A kitchen-dining room combination, if any, shall be not less than 100 square feet.
- (c) A first bedroom, if any, shall be not less than 100 square feet.
- (d) A second bedroom, if any, shall be not less than 70 square feet.
- (e) There shall be at least 70 square feet in each habitable room.
- (f) There shall be at least 150 square feet of floor space in habitable rooms for the first occupant in each dwelling unit; at least 100 square feet for each of the next three occupants; and at least 50 square feet for each additional occupant over the number of four. (Children one year of age and under shall not be counted).
- (g) There shall be at least 80 square feet of bedroom floor space for the first occupant; at least 20 square feet for the second occupant; and at least 30 square feet for each occupant over the number of two. (Children one year of age and under shall not be counted).

## **Recommended Changes**

- Subsection (f) – change from at least 50 square feet to at least 100 square feet for each additional occupant.
- Subsection (g) – change from 80 square feet of bedroom floor space to 70 square feet of floor space for the first occupant.
- Subsection (g) – change from 20 square feet to 50 square feet for each additional occupant.

The proposed changes will make occupancy standards within Charlotte's Minimum Housing Code more restrictive. The changes are generally consistent with other occupancy standards throughout the State. *Under the current ordinance regulations a 1000 sq. ft. dwelling could legally accommodate approximately 11 people. Upon Council approval of the proposed changes the 1000 sq. ft. dwelling would allow between 7 – 8 individuals.*

## **Commonly asked questions about occupancy standards enforcement and the Minimum Housing Code:**

### ***1.) What is the purpose of the City's Minimum Housing Code?***

The purpose of the Minimum Housing Code is “to arrest, remedy, and prevent the decay and deterioration of places of habitation and to eliminate blighted neighborhoods by providing standards for places of habitation for the protection of the life, health, safety, welfare and property of the general public and owners and occupants of places of habitation.

**2.) *How do you gather evidence that occupancy standards are being violated?***

Inspectors can count bodies and bedding material. Inspectors can measure room size. Inspectors can discuss occupancy with the property owner and /or tenants. Inspectors can ask for identification such as Drivers License or other I.D. cards. *Residents are not compelled by law to produce identification records. There are no existing state statutory provisions that guide code enforcement staff as to how to consider the issue of people who claim to be temporarily visiting a residence or are part of social events at a particular residence.*

**3.) *What limits exist for Code Enforcement gathering evidence of occupancy violations?***

The State Statute governing Minimum Housing Code inspections requires that inspections occur during reasonable times of the day. In fact, the current state statute governing inspection warrants indicate such warrants are valid from 8 a.m. to 8 p.m. *The reasonableness standard for inspections would not support surveillance activities or inspection processes outside normal Code Enforcement evidence gathering activities. Court cases in Virginia and Ohio as well as other states have concluded that occupancy enforcement can intrude on choices concerning family living arrangements protected by the Due Process Clause of the 14<sup>th</sup> Amendment and the strong constitutional protection of the sanctity of family established in numerous other decisions by the court. In a recent Virginia case involving occupancy enforcement, The American Civil Liberties Union referred to occupancy enforcement as an “unconstitutional government infringement on the right of family members to live together and was most likely if not solely, being used against Hispanic families.”*

**4.) *What are some of the practical considerations for occupancy inspections?***

Code staff must first ask for voluntary access to inspect any structure. The nature of this enforcement area changes from day-to-day and even hour- to- hour making it difficult to determine when a violation is corrected or when a new case would be opened. *Under the Minimum Housing Code, Code Enforcement cannot issue Civil Penalties to owner/occupants or to tenants. Only absentee owners can receive Civil Penalties for non-compliance.*

**5.) *What action can Code Enforcement take if occupancy standards are violated?***

There are two remedies to Minimum Housing Code violations as governed by the State Law.

1.) Repair, alter or improve the dwelling

2.) Vacate and close, and remove or demolish

*An order to repair for occupancy violations would suggest an expansion of the dwelling to support more occupants. An order to vacate, close and demolish must be approved by City Council as an ordinance before the city can implement that order.*

**6.) *How can citizens report possible residential occupancy violations?***

State Statute 160A-443 requires that a petition, signed by at least 5 citizens be filed with the Code Enforcement Division charging that a dwelling is unfit for human habitation. *Code Enforcement would conduct a preliminary investigation to determine if any basis exists for such charges. The submitted petition would be subject to all public records laws.*

*Code Enforcement will accept a public agency referral from Police, Fire, etc. requesting an inspection of a dwelling suspected as being unfit for human habitation. The public agency referral is also subject to all public record laws.*

**Summary**

Proving that a dwelling is overcrowded is difficult and controversial. The Court has consistently pointed out that occupancy restrictions for dwelling units are frequently unusual and complicated, and often fail to establish a relation to public health and safety. The nature of this type of violation is not constant such as the structural issues commonly addressed within Minimum Housing Codes. Tenants and property owners may lie about the number of occupants to avoid eviction and possible loss of revenue. The Federal Fair Housing Amendments Act (FHAA) also prohibits discrimination on the basis of familial status. Familial status discrimination is discrimination against families with minor children. Nationally, this issue as a whole lacks enforcement clarity as evidenced by the success of civil rights organizations successfully challenging enforcement of occupancy standards. The Supreme Court has recently ruled that some laws intended to alleviate overcrowding violated the “sanctity of family” and seemed to single out Latino families. The American Civil Liberties Union has even suggested that such laws may interfere with constitutional guarantees regarding contracts to rent rooms, families, equal protection and First Amendment issues such as freedom of association.