



**Testimony of
Amy Nelson, Executive Director
Fair Housing Center of Central Indiana
on SB 558
House Judiciary – April 3, 2017**

Mr. Chairman, and members of the Committee, my name is Amy Nelson and I am the Executive Director of the Fair Housing Center of Central Indiana (FHCCI). The FHCCI is a nonprofit organization working to promote fair housing and address incidents of housing discrimination. We urge a Do Not Pass on SB 558 due to its occupancy standard restriction and inclusionary zoning ban.

SB 558 would allow housing landlords in Indiana to limit occupancy to two persons per bedroom *regardless* of the size of the overall rental unit including living rooms and dining rooms, size of the bedrooms, or any local safety code allowing additional occupants. The passage of SB 558 would increase discrimination against families with children who are protected under state and federal fair housing laws by decreasing their housing opportunities. The bill's language is also in direct conflict with court rulings and guidance from the U.S. Department of Housing & Urban Development (HUD). It is likely to impact our state's fair housing substantial equivalency if passed.

Shortly after the addition of families with children as a group protected from unlawful discrimination in 1988, HUD issued guidance, commonly called the Keating Memo, on the factors it would evaluate to determine if an applied occupancy standard unfairly impacted housing choice for families with children. HUD notes in this Memo that a two person per bedroom policy is considered reasonable, *as a general rule*, but also stated in the Memo that the reasonableness of any occupancy standard is rebuttable and compliance with the federal Fair Housing Act will not *solely* be based upon the number of people allowed per bedroom. In fact, HUD notes explicitly in the attached Memo that to determine a fair housing violation, a ruling agency must review:

- Size of bedrooms and unit
- Age of children
- Configuration of unit
- Other physical limitations of housing
- State and local law
- Other relevant factors

Regarding size of bedrooms and unit, the Memo states that an example of a discriminatory policy would be a refusal to "permit a family of five to rent a two-bedroom dwelling based on a 'two people per bedroom' policy" which is "an apartment with two large bedrooms and a spacious living areas." SB 558 does not take into account the size of any bedroom(s) and specifically limits consideration of living rooms and dining rooms. Although not specifically noted in the Memo, persons with disabilities who live with housemates in waiver situations may also be impacted if this legislation is passed as could those with disabilities needing to use living rooms or dining rooms for sleeping areas due to accessibility issues.

SB 558, as currently worded, gives a housing provider the *option* to choose a two person per bedroom occupancy limitation. The federal Fair Housing Act, and guidance issued through HUD and the Department of Justice, are designed to ensure consistency in the law. If a housing provider can choose or not choose under state law to follow or not follow a two person per bedroom rule, there is going to be inconsistent application of the law, and, likely, additional forms of housing discrimination. This will lead to more litigation because the state law will be providing different guidance than federal law provides. It also opens the door for housing providers who wants to discriminate due to other protected factors, to use an occupancy restriction as a means to do so.

HUD has issued charges of discrimination against housing providers for enforcing a two-person per bedroom occupancy policy, particularly where the occupancy policy at issue was more restrictive than the local occupancy code. See, e.g., *Sec'y v. Draper and Kramer, Inc.*, 2006 WL 2848628 (HUDALJ Sept. 21, 2006) (HUD charge of discrimination alleging that respondents' no more than two-person per bedroom policy was unreasonable, which resulted in a consent order); *Sec'y v. Insignia Fin. Grp., Inc.*, 1997 WL 768229 (HUDALJ Dec. 12, 1997) (HUD charge of discrimination alleging that respondents' refusal to rent a two-bedroom unit to a couple with three minor children constituted unlawful discrimination under the FHA, which resulted in a consent order); *Sec'y v. Peppertree Apartments*, 1994 WL 681054 (HUDALJ Nov. 10, 1994) (consent order defining "unreasonable" occupancy policy as a policy that is more restrictive than the local occupancy code and enjoining respondents from adopting such a policy). There has also been separate private court action as well.

Over the past two decades, dwelling units have increasingly been built with more square footage to accommodate changing housing needs. These units have more habitable space, often with larger master suites, larger family rooms, and the additions of dens, lofts, and offices. Developers have overwhelmingly targeted so-called "young professionals" with large one- and two-bedroom units and a decreasing emphasis on three- and four-bedroom units. This change in design has unfairly impacted families with children, who are protected under fair housing laws, due to their larger family sizes. Families with three, four, or more children already face extreme difficulties in finding affordable housing options. Two person per bedroom policies unfairly limit the housing opportunities for families with three or more children in an already difficult housing market. Essentially, what is available to these families costs more, because there is less of it available.

Our state is already challenged with an affordable housing crisis for most Hoosier families. The United Way ALICE report rated many counties in Indiana with "poor" ratings due to the lack of affordable housing options.¹ For example, in just the last week, an article was published about the lack of affordable housing options in southern Indiana noting: "The Courier-Journal has reported that on any given day, there are probably fewer than 15 vacant rental units in Southern Indiana that would be affordable to people living below the poverty level."² The National Low Income Housing Coalition ranks Indiana 38th in the country for housing affordability.³ The head of household of a family needing a three-bedroom unit would need to work, on average, 108 hours *per week* at minimum wage to afford the average three-bedroom in Indiana. A head of household needing the average four-bedroom unit in Indiana would need to work 122 hours per

¹ http://www.unitedwayalice.org/documents/14UW%20ALICE%20Report_IND_Lowres_10.24.15.pdf

² <http://www.courier-journal.com/story/news/2017/03/25/facing-eviction-pleasant-ridge-renters-move-out-over-weekend/99622836/>

³ <http://nlihc.org/oor/indiana>

week. In Marion County, the hours increase to 115 hours for a three-bedroom and 131 hours for a four-bedroom unit. SB 558 will mean, for most families, the payment of hundreds if not thousands of dollars in additional rent each year.

Housing providers who enforce occupancy policies without regard to any of the factors that HUD has instructed housing providers to consider—such as the size of the unit, the configuration of the unit, or any limitations imposed by the local occupancy code—have a predictable and disparate impact on families with children. This is due to families with children being significantly more likely to be affected by policies that limit the number of people who can live in an apartment unit. SB 558 states that children under one year should not be counted toward occupancy restrictions. This is problematic. For example, a housing provider with a two person per bedroom rules rents a two bedroom to a couple with three children, one of which is 10 months old. The baby turns one and the family has to leave or be evicted even though local code says there is sufficient space for a family of five. Family has to find one of the limited three bedroom units, take on additional cost and deposit for the larger unit, plus moving related expenses. SB 558 will be expensive to families.

There is simply no legitimate business necessity for two-person per bedroom policies which would be allowed under this legislation. While preventing overcrowding is a legitimate concern for a housing provider, local occupancy codes are similarly enacted to prevent overcrowding and protect the health and safety of occupants of a dwelling and, in some situations, a housing provider's policy may be allowed to be more restrictive due to local occupancy codes. Certainly, a housing provider conforming their policy to the limitations imposed by the local occupancy code would be a less discriminatory alternative to a two-person per bedroom policy, as it would increase the number of families with children eligible to rent units in its communities. Further, as tenants at most properties are responsible for paying their own utilities, housing providers with restrictive occupancy policies cannot argue that any additional costs associated with tenants' use of water or other utilities justifies its restrictive policy. If there is concern about damage, families are responsible for any damage above and beyond reasonable wear and tear like any tenant. Absent any legitimate business necessity for its practices, a rigid two person per bedroom occupancy policy violates federal and Indiana state fair housing laws.

The Indiana Fair Housing Law was deemed by the U.S. Department of Housing & Urban Development (HUD) to be a substantially equivalent fair housing law to the federal Fair Housing Act. With this designation came funding to the Indiana Civil Rights Commission and other equivalent local Human Rights Commissions to enforce fair housing laws on HUD's behalf. In conversations with HUD personnel, HUD is extremely concerned that if SB 558 is passed it could mean a loss of the state and locality substantial equivalency. This would mean a substantial loss of funds to our state and cities, including job loss, at the Indiana Civil Rights Commission, City of Evansville-Vanderburgh County Human Relations Commission, South Bend Human Relations Commission, and human rights/relations commissions in Gary, Hammond, Fort Wayne, and Elkhart. In addition, filed fair housing complaints would then be handled by HUD-Chicago's Regional Office instead of with these Indiana agencies.

As noted previously, Indiana has a serious affordable housing crisis. As areas have changed, housing prices have increased and cities are considering inclusionary zoning to ensure there are some affordable units. Otherwise, people are forced further and further away from jobs which impacts the ability of employers to find an adequate workforce. We have seen this happen in Hamilton County where employers are closing early due to a lack of workforce because employees can't find anywhere nearby to live and there's insufficient transit to commute long distances.

Inclusionary housing programs (a.k.a. inclusionary zoning) make housing affordable for low and moderate-income families typically earning between 60 and 120 percent of the Area Median Income. This workforce housing provides homes to nurses, teachers, police officers and other moderate-income households where reasonably priced options would not otherwise be available. Inclusionary developments near places of employment improves access to jobs and helps workers avoid long distance commutes. Employers benefit from having a stable and reliable workforce, and everyone benefits from reduced traffic. Some inclusionary housing programs require that developers provide reasonably priced workforce housing onsite, while others allow developers to opt into participation. Both types of programs typically provide cost-offsetting incentives to developers. Research shows that purely incentive driven non-mandatory programs are not very productive at creating workforce housing. In addition to being more productive, mandatory programs reduce developer's financial risks by providing predictability in the planning process.

We have cities across our nation use inclusionary zoning policies to face affordable housing barriers. These cities have successfully won in court when challenged.⁴ Judges have ruled it is within the city's right to ensure affordable housing for its residents. Consequently, we need to allow cities to have options in their toolkits to face the needs of their particular city, especially around affordable housing. The FHCCI opposes the language in this bill which would limit the ability of an Indiana city to pass an inclusionary zoning policy to advance affordable housing options for low- to moderate-income families.

Every April, we celebrate as a nation the passage of the federal Fair Housing Act, originally passed in April 1968 following the tragic death of Rev. Dr. Martin Luther King, Jr. Let's not honor Fair Housing Month by passing a law which increases housing discrimination.

The Fair Housing Center of Central Indiana (FHCCI) urges Do Not Pass on SB 558. Let's make sure families with children and those with disabilities have access to safe, affordable housing that meets the needs of their families and is free from discrimination.

⁴ <http://www.mercurynews.com/2016/02/29/u-s-supreme-court-leaves-san-jose-housing-law-in-place/>