



# City of Portland Code Audit

**To:** City of Portland Project Management Team  
**From:** Cathy Corliss and Jamin Kimmell, APG  
**Date:** March 29, 2019  
**Re:** Final Code Audit (Task 2)

---

## INTRODUCTION

---

Portland’s 2035 Comprehensive Plan is carried out, in part, by land use regulations contained in the City’s Zoning Code (Title 33 of the City Code of the City of Portland, Oregon (Planning and Zoning)). This Code provides a continuum of allowed housing and shelter types that accommodate the needs of Portlanders at risk for homelessness, but despite a sufficient land supply and explicit Code allowances, an adequate supply of housing needed by very low-income Portlanders is not being produced. While market factors and insufficient resources for public subsidies are probably the most important factors responsible for this underproduction, Title 33 provisions may also be playing a part.

APG reviewed the provisions of Title 33 to identify those provisions which might be hindering the production or retention of:

- Single room occupancy housing (SROs) and micro-apartment housing (as Group Living use)
- Single room occupancy housing (SROs) and micro-apartment housing (as Household Living use)
- Shelters and transitional housing (as Community Service use)
- Transitional housing (as Retail Sales And Service use)

Provisions that were audited include:

- Definitions
- Use category descriptions
- Structure type descriptions
- Conditional use thresholds
- Development standards
- Quasi-judicial approval criteria

For comparison, regulations from the following cities were evaluated (web sources noted). Additional information from Seattle was added to the final audit at the request of the TAC.

San Diego: <https://www.sandiego.gov/city-clerk/officialdocs/legisdocs/muni>

Austin: [https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT25LADE](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE)

New York: <https://www1.nyc.gov/site/planning/zoning/access-text.page> and <https://www1.nyc.gov/assets/buildings/pdf/HousingMaintenanceCode.pdf>

This final draft of the Code Audit reflects the direction provided by the project’s Technical Advisory Committee (TAC) at its meeting on February 19, 2019 and in subsequent emails dated March 7, March 12, and March 25, 2019.

---

*The recommendations contained herein are the product of the consultant and resulted from technical assistance provided by the Oregon Department of Land Conservation and Development (DLCD) to review City code provisions regulating Group Living, Single Room Occupancy Living, Short Term Living and Mass Shelters.*

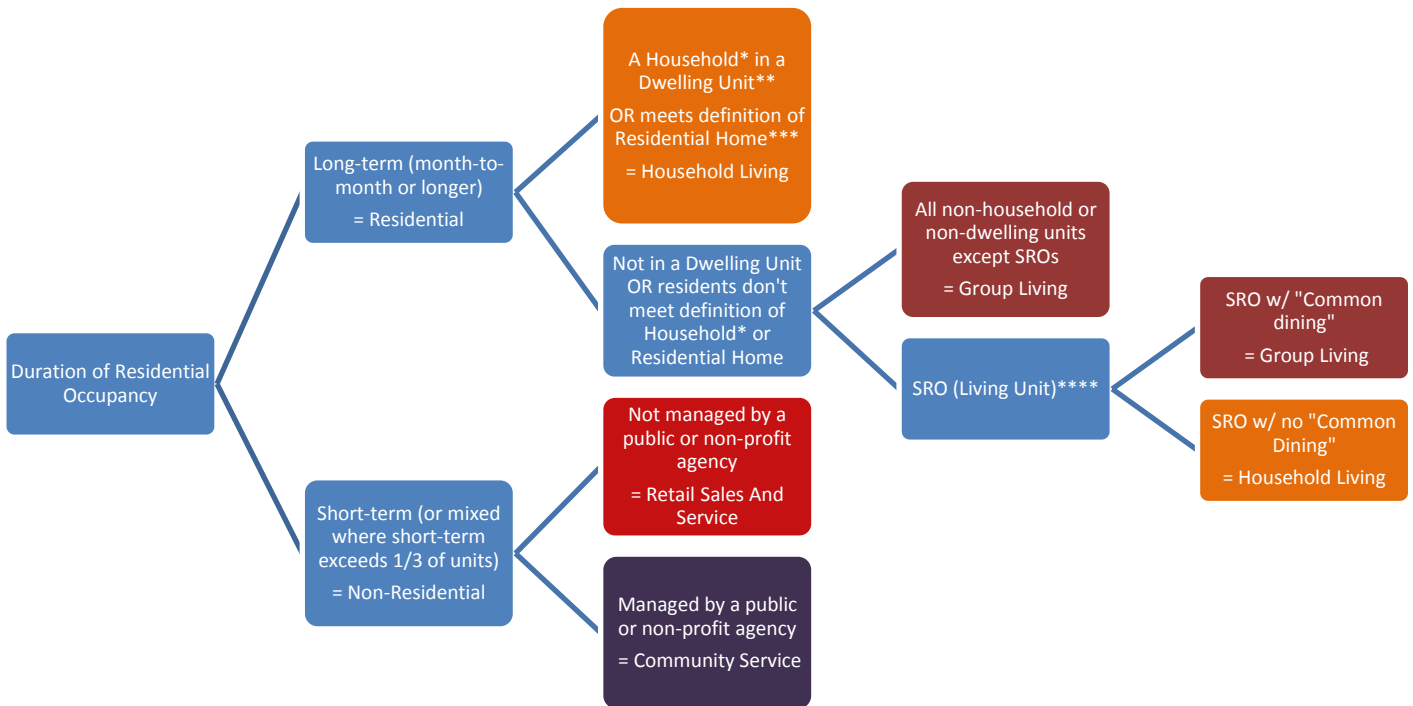
*The recommendations are not a final determination, legal opinion or evaluation of these code provisions by DLCD. The recommendations have not been adopted by and are not a final decision of the City. The City is not obligated to initiate legislative action to adopt the recommendations; that any forthcoming code revisions are subject to the City’s legislative procedures.*

---

## USE CATEGORIES AND DEFINITIONS

Currently the use categories in 33.920 define “residential” uses by the duration of the residents’ stay. Long-term (month-to-month or longer) occupancy is a fundamental attribute of the two Residential Use Categories: Group Living and Household Living. When that long-term occupancy takes place in a “Dwelling Unit” or the facility meets the definition of a “Residential Home” it is classified as Household Living. The definition of “Household” refers to residents living together in a “Dwelling Unit.” All other forms of long-term occupancy are categorized as “Group Living,” except for Single Room Occupancy (SRO) Housing. SROs provide “Living Units” rather than “Dwelling Units” and have “some combination of shared bath or toilet facilities.” SROs are classified as Household Living if there is no program offering communal dining (i.e., residents prepare their meals individually), otherwise they are considered Group Living. Short-term occupancy is either classified as “Retail Sales And Service” or “Community Service” depending on who is managing it.

**FIGURE 1. DECISION TREE: DETERMINING USE CATEGORY**



\* Household. One or more persons related by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; or one or more handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit.

\*\* Dwelling Unit. A building, or a portion of a building, that has independent living facilities including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by a group of people. Kitchen facilities for cooking are described in Section 29.30.160 of Title 29, Property and Maintenance Regulations. Buildings with more than one set of cooking facilities are considered to contain multiple dwelling units unless the additional cooking facilities are clearly accessory, such as an outdoor grill.

\*\*\* Residential Home. A residence for five or fewer physically or mentally disabled persons, and for staff persons. The residence may provide residential care alone, or in conjunction with training or treatment. This definition includes the State definition of Residential Home.

\*\*\*\* Single Room Occupancy Housing (SRO). A structure that provides living units that have separate sleeping areas and some combination of shared bath or toilet facilities. The structure may or may not have separate or shared cooking facilities for the residents. SRO includes structures commonly called residential hotels and rooming houses.

## Residential Occupancy vs. Transient Accommodation – Does it Matter?

A fundamental distinction in Title 33 is the concept that “residential use” must entail long-term occupancy (month-to-month or longer). Community interest in long-term occupancy, particularly in residential zones, tends to be related to Crime Prevention Through Environmental Design (CPTED) principles and practices<sup>1</sup> such as:

- “Territorial Reinforcement Fosters A Sense Of Ownership: People take more interest in something they own or when they feel intrinsically involved.”
- “The principle here is ‘know thy neighbor’. Promote neighborhood watch programs and design streets and homes to encourage interaction between neighbors.”
- “When neighbors take responsibility for themselves and each other it creates a safer environment.”

This interest in neighborhood stability is at the root of community concerns about a range of uses in residential zones. For example, duration of occupancy is the basis of the City’s Accessory Short-Term Rental regulations.

Title 29 of the City Code, which establishes minimum standards for residential structures regarding basic equipment, facilities, sanitation, fire safety, and maintenance, defines a wider range of occupancies as “residential.” For the purposes of this title, only hotels that are used exclusively for transient occupancy are excluded from this definition of residential property. The definition of “transient occupancy” in Section 29.10.020 (provided below) includes elements such as maid service, which serve to narrow it somewhat from the definition in the Oregon Revised Statutes (ORS) Chapter 699 (provided on the next page).

*Transient Occupancy. Occupancy of a dwelling unit in a hotel where the following conditions are met:*

1. *Occupancy is charged on a daily basis and is not collected more than six days in advance;*
2. *The lodging operator provides maid and linen service daily or every two days as part of the regularly charged cost of occupancy;*
3. *The period of occupancy does not exceed 30 days; and*
4. *If the occupancy exceeds five days, the resident has a business address or a residence other than at the hotel.*

Chapter 6.04 (Transient Lodgings Tax) of the City Code includes the following definitions of “hotel” and “transient”. The Code includes an exemption for occupants who stay for more than 30 successive calendar days or who pays for lodging on a calendar month basis.

*H. “Hotel” means any structure, or any portion of any structure which is used, occupied, intended or designed for transient occupancy for 30 days or less for dwelling, lodging, or sleeping purposes, and includes, but is not limited to, any hotel, inn, tourist home or house, motel, studio hotel, boutique hotel, lodging house, rooming house, apartment house, single family house or any portion of such house, duplex, condominium, bed and breakfast facility, vacation home, multi-dwelling structure, accessory dwelling unit, trailer home, houseboat, public or private dormitory, hostel, fraternity, sorority, public or private club, corporate housing or executive housing space or facility, and also means space in a mobile home or trailer park or portion thereof so occupied, provided such occupancy is for less than a 31 -day period. All Hotels must comply with all local codes applicable to their location and use, including but not limited to zoning and building codes.*

*Q. “Transient” means any individual who exercises Occupancy or is entitled to Occupancy in a Hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a Transient checks out of the Hotel is not included in determining the 30 -day period if the Transient is not charged rent for that day by the Operator. Any such individual so occupying space in a Hotel is deemed to be a Transient until the period of 30 days*

---

<sup>1</sup> <https://www.vbgov.com/government/departments/planning/areaplans/Documents/Citywide/Cpted.pdf>

*has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of Occupancy, and the tenancy actually extends more than 30 consecutive days.*

Transient accommodations are also regulated differently under State law. The 2014 Oregon Structural Specialty Code defines “Transient” as the “occupancy of a dwelling unit or sleeping unit for not more than 30 days.” ORS Chapter 699 (Innkeepers and Hotelkeepers), applies to hotels and inns which are defined in the ORS as follows:

*“Hotel” or “inn” means a property, however owned and including a condominium under ORS chapter 100, in which rooms or suites of rooms generally are rented as transient lodgings and not as principal residences.*

*“Transient lodging” means a room or suite of rooms that is not occupied as a principal residence:*

*(a) By persons for periods of less than 30 consecutive days; or*

*(b) With which the services normally offered by hotels, including but not limited to daily or bidaily maid and linen service, a front desk and a telephone switchboard, are provided, regardless of the length of occupancy of a person.*

The federal Fair Housing Act (FHA) makes a distinction between short- vs long-term occupancy, although it is not based on a set number of days. The FHA applies to “dwellings which are occupied as, or designed or intended for occupancy as, a residence. While the term “residence” is not defined in the FHA, courts have interpreted it to mean “a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit.”<sup>2</sup>

The Americans with Disabilities Act (ADA) also makes a distinction between short- vs long-term occupancy. The ADA requires “public accommodation” for lodging operated by a private entity including inns, hotels or motels or facilities that provides short-term rentals that function like hotels. The “public accommodation” requirement does not apply to a lodging with fewer than five rooms that is occupied by the proprietor as a primary residence.

**Audit:** If recent discussion of Airbnbs and other short-term vacation rentals is an indication, the requirement that “residential use” must entail long-term occupancy (month-to-month or longer) is important to many in the community. Other jurisdictions make a similar distinction and the current requirement of 30 days duration is not inconsistent with comparable cities (see below).

#### **Comparable Cities:**

- **San Diego** – Hotel/Motel means a building containing six or more guest rooms that are rented for less than **30 days** and used or designed to be used for sleeping purposes.
- **Austin** – Defines “residential uses” as the occupancy of living accommodations on a **non-transient basis**. The Code does not define the term “transient;” however, in other sections the Code references “a weekly or longer basis” when describing residential uses.
- **New York** – For the purposes of the City’s Multiple Dwelling Law, “‘permanent residence purposes’ shall consist of occupancy of a dwelling unit by the same natural person or family for **thirty consecutive days** or more....”

---

<sup>2</sup> <http://www.bhgrlaw.com/blog/housing-provider-obligations-under-the-fha-and-ada-do-i-need-to-allow-service-assistance-animals-in-my-short-term-vacation-rental/>

**Direction from the TAC:**

- Retain the status quo.
- Tenure arraigned for periods of 30 days or more is a Residential Use.
- Tenure arraigned for periods of less than 30 days is not a Residential Use.

**Group Living vs Household Living – What’s the Difference?**

The classification of a use as Group Living or Household Living significantly changes the applicable regulations and thus are based on clear and objective criteria. With the exception of SROs, the current system is (or should be) binary. Household Living is the residential occupancy of a dwelling unit by a household with tenancy arranged on a month-to-month or longer period. Every other form of residential occupancy (with a few exceptions) should be classified as Group Living. In determining whether a residential use is Household Living there are two elements to consider under the current paradigm:

1. Number of residents. If there are too many people living in a dwelling unit to meet the definition of “household,” the use is classified as Group Living. The maximum size of a household is one or more persons related by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit; or one or more handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who live together in one dwelling unit.
2. Type of structure. If the residential occupancy is in a structure that is not in a dwelling unit (i.e., a unit with independent living facilities including provisions for sleeping, cooking, and sanitation), the use is generally classified as Group Living.

This binary approach breaks down with SROs. How SROs fit (or don’t fit) within this construct is addressed in the next section of this Audit. In addition, the Title 33’s exception #2 to Group Living also creates confusion, as it is inconsistent with the description of Household Living.

*33.920.100 Group Living*

*A. Characteristics. Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living. The size of the group will be larger than the average size of a household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales And Service and Community Service categories). Generally, Group Living structures have a common eating area for residents. The residents may or may not receive any combination of care, training, or treatment, as long as they also reside at the site. Group Living may include the State definition of residential facility (see Chapter 33.910, Definitions).*

*D. Exceptions.*

*1. Lodging where tenancy may be arranged for periods less than one month is considered a hotel or motel use and is classified in the Retail Sales And Service category. However, in certain situations, lodging where tenancy may be arranged for periods less than one month may be classified as a Community Service use such as short term housing or mass shelters.*

***2. Lodging where the residents meet the definition of Household, and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as Household Living.***

*3. Facilities for people who are under judicial detainment and are under the supervision of sworn officers are included in the Detention Facilities category.*

33.920.110 Household Living

A. *Characteristics.* Household Living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales And Service and Community Service categories). Apartment complexes that have accessory services such as food service, dining rooms, and housekeeping are included as Household Living. **Single Room Occupancy housing (SROs), that do not have totally self-contained dwelling units are also included if at least two thirds of the units are rented on a monthly basis. SROs may have a common food preparation area, but meals are prepared individually by the residents.** In addition, residential homes as defined by the State of Oregon are included in the Household Living category (see Chapter 33.910, Definitions).

D. *Exceptions.*

1. Lodging in a dwelling unit or SRO where less than two thirds of the units are rented on a monthly basis is considered a hotel or motel use and is classified in the Retail Sales And Service category.
2. SROs that contain programs which include common dining are classified as Group Living.
3. Guest houses that contain kitchen facilities are prohibited as accessory to Household Living uses.
4. In certain situations, lodging where tenancy may be arranged for periods less than one month may be classified as a Community Service use, such as short term housing or mass shelter.

**Audit:** The description of Group Living characteristics, instead of just simply stating that any residential use that doesn't meet the definition of Household Living is Group Living, creates ambiguity by the phrase "...residential occupancy of a **structure** by a group of people who do not meet the definition of Household Living..." Whereas, Household Living is evaluated relative to **dwelling units within a structure**, not to the entire structure.

Group Living Exception #2 is inconsistent with the Household Living characteristics and does not cover SROs as they do not meet the definition of Household.

The distinction between Household Living and Group Living categories could be clarified (e.g., how are "programs which include common dining" defined?).

The following alternatives might improve the clarity of these sections:

- If Group Living is intended to include all non-Household Living residential uses, it should be renamed "Other Residential" or something more reflective of the wide array of living arrangements that can be classified as Group Living and the description of the characteristics revised to make this point more clearly. Exception #2 in Group Living should be amended.
- Household Living could be amended to include all forms of "independent" housekeeping provided the definition of Household is met (whether or not it takes place in a dwelling unit). This would leave Group Living with dormitories, congregate living facilities and all other situations where the definition of Household is exceeded. This would be consistent with exception #2 in Group Living. The reference to "dwelling units" in the definition of Household would need to be amended
- The definition of Household and the Household Living use category could be amended to include all forms of "independent" housekeeping (regardless of whether it takes place in a dwelling unit **OR** meets the current size standard in the definition of Household); thus, leaving Group Living with dormitories, congregate living facilities and other situation where there is no independent housekeeping. (see San Diego definition of Family).

- Another approach would be to have three residential categories: Households in Dwelling Units; Households in Non-Dwelling Units (SRO, etc.), and Other Residential (dormitories, congregate living facilities).

**Comparable Cities:**

- **San Diego** – The definition of “family” below does not set a maximum limit on the number of unrelated individuals living together. The definitions of Lodger and Boarder address other situations where individuals may be living together.

*Family means two or more persons related through blood, marriage, or legal adoption or joined through a judicial or administrative order of placement of guardianship; or unrelated persons who jointly occupy and have equal access to all areas of a dwelling unit and who function together as an integrated economic unit.*

*Lodger means any person renting a room in a residential structure for living or sleeping purposes without having free access to and use of the rest of the structure.*

*Boarder means an individual resident who is furnished sleeping accommodations and meals in a residential structure.*

- **Austin** – Family or Household are not defined; however, “group residential” use is the use of a site for occupancy by a group of more than six persons who are not a family, so presumably a up to six unrelated persons is acceptable.
- **New York** – The definition of “family” in the Zoning Code is more restrictive than Portland in terms of the number of residents. However, in common with San Diego, the definition includes the concept that a common household exists if all members have access to all parts of the dwelling.

*A "family" is either:*

*(a) a single person occupying a dwelling and maintaining a household, including not more than one "boarder, roomer, or lodger" as defined in the Housing Maintenance Code; or*

*(b) two or more persons related by blood or marriage, occupying a dwelling, living together and maintaining a common household, including not more than one such boarder, roomer, or lodger; or*

*(c) not more than four unrelated persons occupying a dwelling, living together and maintaining a common household. A common household shall be deemed to exist if all members thereof have access to all parts of the dwelling.*

**Direction from the TAC:**

Household Definition. The existing definition could be amended by removing the “in a dwelling unit” qualification and adding a functional economic unit qualification. The revised definition should make clear that a “household” is only the following:

1. One person, or
2. Six or fewer persons who share living expenses and function together as an integrated economic unit, or
3. Any number of persons related by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than five additional persons, who all share living expenses and function together as an integrated economic unit, or

4. Any number of handicapped persons as defined in the Fair Housing Amendments Act of 1988, plus not more than 5 additional persons, who all share living expenses and function together as an integrated economic unit.

#### Residential Use Types

- Retain the status quo.
- There are only two Residential Use categories, Household Living and Group Living.

Household Living Use Category. The use category description should be revised to clearly state that household living is one household, living in one dwelling unit, in one residential structure, where each member of the household has equal access to the cooking and sanitary facilities within the dwelling.

Group Living Use Category. Are persons other than households living in a residential structure. Perhaps the city code could also be amended in several places to make the point more clearly that households and groups living in non-residential structures, or no structures at all, are either:

1. Beneficiaries of a community service, or
2. Guests in a hotel, or
3. Patients in a hospital, or
4. Overnight car camping at a religious institution, or
5. Violating the city code

These clarifications are usually found in the examples and exceptions components of the use category description. Also, there is a poor choice of words in the examples of group living. Please replace the word “retarded” with something more suitable.

LUBA has noted that PCC 33.920.100, the Group Living use category description, has tenancy as being “arranged on a month to-month basis, or for a longer period” and that “uses where tenancy may be arranged for a shorter period are not considered residential.” Similarly, PCC 33.920.420, the Community Service use category description that includes Short Term Living, includes an exception that states “uses where tenancy is arranged on a month-to-month basis, or for a longer period are residential, and are classified as Household or Group Living.” Before this decision, the City’s view was that the non-exception part of PCC 33.920.420 and the part of the PCC 33.910 definition of Short Term Housing providing, “tenancy of all rooms may be arranged for periods of less than one month,” allowed tenancy to also be arranged for periods more than a month because the word “may” was permissive, and that an allowance for tenancy of less than a month did not amount to a prohibition of tenancy greater than a month. In light of the arguably clearer language to the contrary in the use category descriptions, LUBA did not find the City’s view of its own code to be plausible. That said, to serve certain client needs, the City Code should allow stays in short term living facilities operated by public agencies and nonprofits to be able to exceed thirty days. Thus, we need to amend the code to remove the explicit 30-day stay cap on short term living in PCC 33.920.100, PCC 33.920.420 and the implied one in PCC 33.910.

## SINGLE ROOM OCCUPANCY HOUSING AND MICRO APARTMENTS

“Micro apartment” is an informal term not defined by the City code that usually means very small units, possibly with shared bathing or cooking facilities. While micro apartments typically rent at market rate, there is nothing in the definition of micro apartments or SROs that ties either of them to any particular price point. As noted



above, SROs (and micro apartments) are neither fish nor fowl when it comes to the use classification system. SROs are the only use in Household Living that does not occur in a “dwelling unit.”

The first question is: does the micro apartment unit meet the definition of an SRO? While the definition of SRO in Title 33 may have been intended for accommodations that have only shared bath or toilet facilities, the language is vague enough to allow units that have a private bathroom to be considered SROs if the building also has shared bathroom facilities.

*Title 33: Single Room Occupancy Housing (SRO). A structure that provides **living units** that have separate sleeping areas and **some combination of shared bath or toilet facilities**. The structure may or may not have separate or shared cooking facilities for the residents. SRO includes structures commonly called residential hotels and rooming houses.*

	<b>Private Bath/Toilet Facility (no shared facilities)</b>	<b>Shared Bath/Toilet Facility (units may also have private facilities)</b>
<b>Private Full Kitchen</b>	Dwelling Unit	SRO
<b>Shared Full Kitchen</b>	Group Living (unless building also has shared bath/toilet facility)	SRO

Title 29 also includes a definition of SRO, although it differs significantly from the definition in Title 33.

*Title 29: Single-Room Occupancy Housing Unit. A one-room **dwelling unit** in a **hotel** providing sleeping, cooking, and living facilities for **one or two persons** in which some or all sanitary or cooking facilities (toilet, lavatory, bathtub or shower, kitchen sink, or cooking equipment) may be shared with other dwelling units.*

*Hotel. Any structure containing six or more dwelling units that are intended, designed, or used for renting or hiring out for sleeping purposes by residents on a daily, weekly, or monthly basis.*

Title 29 also establishes the required elements of an SRO and minimum dimensions.

*29.30.290 Special Standards for Single-Room Occupancy Housing Units.*

*In addition to meeting requirements for residential structures defined elsewhere in this Title, hotels containing single-room occupancy housing units shall comply with the following:*

- A. The unit shall have at least 100 square feet of floor area, except that any single-room occupancy housing unit constructed pursuant to permit or lawfully constructed prior to permit requirements shall be deemed in compliance with respect to floor area provided it has at least 85 square feet of floor area. This exception shall not apply where any occupancy has been changed or increased contrary to the provisions of this Title.*
- B. Either a community kitchen with facilities for cooking, refrigeration, and washing utensils shall be provided on each floor, or each individual single-room occupancy housing unit shall have facilities for cooking, refrigeration and washing utensils. In addition, facilities for community garbage storage or disposal shall be provided on each floor.*
- C. Where cooking units are provided in individual single-room occupancy housing units, they shall conform to the requirements set forth below.*
  - 1. All appliances shall be hard-wired and on separate circuits or have single dedicated connections;*
  - 2. All cooking appliances shall be fixed and permanent;*
  - 3. The Mechanical Specialty Code, as adopted by Section 27.01.030, shall be used for setting standards for cooking appliances. Cabinets over cooking surfaces shall be 30 inches above the cooking surface, except that this distance may be reduced to 24 inches when a heat shield with 1-inch airspace and extending at least 6 inches horizontally on either side of the cooking appliance is provided. Cooking*

*appliances are limited to two cooking elements or burners and located with at least a 6-inch clear space in all directions from the perimeter of the cooking element or burner. In lieu of two-burner cooking appliances, standard third-party tested and approved ranges with ovens are acceptable, provided that the units are fixed and hard-wired or have single dedicated connections;*

4. *All cooking appliances shall be installed under permit from the Bureau of Development Services; and*
5. *All cooking appliances shall be installed so as to provide a minimum clear workspace in front of the appliance of 24 inches.*

If a micro apartment unit does not meet the definition of SRO, it must be classified as Group Living. If it is an SRO it can be classified as Household Living. However, exception #2 to Household Living (33.920.110.D.2) states that “SROs that contain programs which include common dining are classified as Group Living.”

It appears that SROs do not qualify under Chapter 33.229 Elderly and Disabled High Density Housing.

*33.229.030.A. Residential uses and structures. Only uses in the Household Living use category are allowed. Only structures with fully self-contained dwelling units are allowed.*

**Audit:** The current classification of units in Title 33 is very confusing and the distinctions are potentially unhelpful in terms of how the structures are used in practice and their subsequent impacts.

- If a unit has a full kitchen and a private bath, regardless of size or whether it also has some shared facilities, it’s a “dwelling unit” for the purposes of Title 33.
- If a unit has a shared kitchen, but no shared bath, it’s not an SRO but is classified as Group Living.
- If a unit “some combination of shared bath or toilet facilities” regardless of whether it also has a private bath and a private kitchen, it’s an SRO under Title 33. SROs may be classified as Group Living or Household Living. SROs that contain “programs which include common dining” are classified as Group Living.

As a result, a building that shares some kitchen facilities but has private bathrooms has been considered a group living structure and use, while the inclusion of “some sort of shared bath/toilet” has turned that same building into an SRO structure; and thus, a Household Living use.

There is no definition of “living unit” in Title 33. This has potentially led to confusion in how/whether density is calculated for an SRO (i.e. is living unit the same as dwelling unit for density purposes?). The 2014 Oregon Structural Specialty Code includes the following definitions: “Sleeping Unit” as “a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.” “Congregate Living Facilities. A building or part thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.”

Title 33 uses the term “Group Structures” under the Table for Housing Types Allowed (120-2). Chapter 33.910, Definitions, includes the term “Group Living Structure” appears, with a directional note to “See Residential Structure Types”. However, under Residential Structure Types, there is a definition for a “Group Living Facility”. It appears that there are three terms (Group Structure, Group Living Structure, and Group Living Facility) describing the same use.

The differing definition of SRO in Titles 29 and 33 could create confusion regarding when the standards in Title 29 apply. Also, the standards in Title 29 regarding appliances are somewhat confusing. For example, is a mini-refrigerator a “fixed and permanent” appliance?

**Direction from the TAC:**

Dwelling Unit Definition. The definition of dwelling unit should be expanded and unlinked from Title 29. In the revised definition a “dwelling unit” would have to:

- Be a residential structure, or part of a residential structure, certified for residential occupancy, and
- Provide facilities for sleeping, cooking and sanitation.

Minimum facilities could include:

1. Sleeping Area (could be a murphy bed), and
2. Bathtub or shower, and
3. Bathroom sink, and
4. Toilet, and
5. Another sink separate from bathroom sink for food preparation (could be a bar sink), and
6. A dedicated circuit for a mini-refrigerator, and
7. Another dedicated circuit (for microwave, hot plate, electric kettle, etc.).

The code should also be amended to note that in the circumstances in which households in two or more dwelling units providing minimum facilities also have shared access to other cooking or sanitary facilities, the availability of these shared facilities does change the residential status from household living to group living.

Alternatively, rather than revising the definition of dwelling unit to include micro-apartments with shared kitchens, could the changes focus on the relationship between the household and the building owner? For instance, residents of a dorm live there because there is an association with the college or university, residents of an assisted living facility live there in association with the nursing home; but residents of Footprint Hollywood don’t have this type of association with the building owner, they are tenants who aren’t receiving any additional services. [Also, see below for excerpts from Seattle’s Land Use Code (Title 23) and Housing Code (Title 22)].

Classifying micro-apartments with shared kitchens as living area but not dwelling units is a problem for how the City applies certain rules i.e. the new raised ground floor windows and revised outdoor area standards apply to dwelling units and micro-apartments with shared kitchens don’t trigger Inclusionary Housing requirements (although they may already be affordable). Dwelling units and non-dwelling units have different ways of calculating parking requirements and some affordability exceptions wouldn’t apply to non-dwelling units.

The classification of micro-apartments with shared kitchens isn’t a significant issue for SDCs, according to Sarah Huggins with the Water Bureau. If something qualifies as a dwelling unit, SDCs are calculated based on the square footage of the dwelling units (there are 5 size tiers). If something does not qualify as a dwelling unit, SDCs are calculated based on the square footage of the new floor area.

Trying to fix the micro-apartment problem probably isn’t worth creating other code problems. For example, it’s not clear who would be responsible for checking for dedicated circuits for mini-refrigerators and microwaves, etc.

### Comparable Cities (Seattle):

*Per the TAC: Is it possible to look into how Seattle has addressed micro-apartments with shared kitchens or how they define dwelling unit?*

Key points:

- *Small efficiency dwelling units (SEDU) are single, independent, residential units consisting of one habitable room (excluding kitchen, bath, closets, storage areas, and built-ins).*
  - *Living room floor area of 150 to 220 square feet and a total gross unit size of 220 - 320 square feet measured to the interior face of unit bounding walls.*
  - *Food preparation area with a cooking appliance that may be portable, such as a microwave, a refrigerator, a sink, and not less than 4 square feet of contiguous countertop work area.*
  - *Bathroom with a toilet, sink, and a shower or bathtub.*
- *Small efficiency dwelling units are considered dwelling units but are entitled to reduced parking requirements and a few other modification.*
- *The Housing Code (Title 22) refers to SROs and does not refer to efficiency dwelling units (small or otherwise). SROs are between 70 – 130 sf.*
- *The Housing Code (Title 22) requires that dwelling units have entrance doors capable of locking and equipped with a dead bolt or deadlatch with at least a 1/2-inch throw which penetrates the striker not less than 1/4 inch.*
- *The Housing Code (Title 22) requires every dwelling unit to contain a toilet, a bathroom sink, and a bathtub or shower in a separate room or rooms which shall be accessible from inside the dwelling unit. The only access from a bedroom to the only bathroom shall not be through another bedroom. No toilet shall be located in any room or space used for the preparation of food, nor shall a room containing a toilet open directly into any such room or space unless the toilet room has a tight-fitting door.*

<http://www.seattle.gov/dpd/codes/dr/DR2017-9.pdf>

*NOTE: Per SBC Section 1208.4, an “efficiency dwelling unit” shall have a living room of not less than 220 square feet of floor area. An additional 100 square feet of floor area shall be provided for each occupant of such unit in excess of two. The unit must have a separate closet, kitchen sink, cooking appliance and refrigeration facilities, a separate bathroom with a water closet, lavatory and bathtub or shower.*

### Title 23 - LAND USE CODE

"Dwelling unit" means a room or rooms, located within a structure or vessel, designed, arranged, occupied, or intended to be occupied as living accommodations independent from any other household. The existence of a food preparation area within the room or rooms shall be evidence of the existence of a dwelling unit.

"Dwelling unit - small efficiency" means a dwelling unit with an amount of square footage less than the minimum amounts specified for Efficiency Dwelling Units in the Seattle Building Code, and that meet the standards prescribed in Section 23.42.048.

[https://library.municode.com/wa/seattle/codes/municipal\\_code?nodeId=TIT23LAUSCO\\_SUBTITLE\\_IILAUSRE\\_CH23.60A\\_SESHMAPRRE\\_SUBCHAPTER\\_XVIDE](https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT23LAUSCO_SUBTITLE_IILAUSRE_CH23.60A_SESHMAPRRE_SUBCHAPTER_XVIDE)

### 23.42.048 - Configuration of dwelling units

A. Dwelling units. In all zones a dwelling unit exists if the use meets the requirements of subsection 23.42.048.A.1 or 23.41.048.A.2 and if the use is not an adult family home, congregate residence, assisted living facility, or nursing home.

1. A separate or separable area within a building, including:
  - a. a complete food preparation area. A room or portion of a room designed, arranged, intended or used for cooking or otherwise making food ready for consumption that contains a sink, and a stove or range, a refrigerator, and a countertop, shall be considered a complete food preparation area; and
  - b. a bathroom containing a toilet, and a shower or bathtub; and
  - c. one or more sleeping rooms.
2. A sleeping room with an associated private bathroom including a toilet, and a shower or bathtub, within a separate or separable area of a building that contains more than 4 sleeping rooms, if:
  - a. fifty percent or more of the sleeping rooms in the separate or separable area have an associated private bathroom including a toilet, and a shower or bathtub; or
  - b. less than 30 percent of the floor area of the separate or separable area is in shared space such as a living or dining room.
3. For the purposes of this subsection 23.42.048.A, a separate or separable area is an area having direct access to the exterior of the building or access to the exterior via hallways and stairways that are primarily ingress/egress routes to the exterior rather than leading to common kitchens and living areas.

B. Small efficiency dwelling units. In all zones, small efficiency dwelling units are subject to the following standards. Small efficiency dwelling units are also subject to additional standards specified in the Seattle Building Code and any Director's Rule making interpretation thereof.

1. Living room net floor area. Each small efficiency dwelling unit shall have a living room that has at least 150 net square feet of floor area as specified in the rules promulgated by the Director. The floor area occupied by storage, bathrooms, cabinets, closets, appliances, and structural features is not included in calculating the net floor area.
2. Total floor area. The total floor area of a small efficiency dwelling unit, inclusive of bathrooms, cabinets, closets, appliances, and structural features, shall be at least 220 square feet.
3. Food preparation area. Each small efficiency dwelling unit shall contain a food preparation area with a cooking appliance that may be portable, such as a microwave, a refrigerator, a sink, and not less than 4 square feet of contiguous countertop work area.
4. Bathroom. Each small efficiency dwelling unit shall contain a bathroom with a toilet, sink, and a shower or bathtub.

#### **23.42.049 - Congregate residences**

Congregate residences are subject to the development standards for the zone in which they are located, to the development standards for apartments where such housing type standards are specified, and to the following requirements:

- A. Common food preparation area. At least one complete common food preparation area is required within the congregate residence, and all residents shall have access to either a common complete food preparation area or a food preparation area within a sleeping room.

B. Food preparation areas in sleeping rooms. Within a congregate residence not more than 25 percent of sleeping rooms shall have complete food preparation areas, where a complete food preparation area is identified by the presence of a plumbed sink, a stove or range, a refrigerator, and a counter top. The Director has discretion to increase the percentage up to 100 percent of sleeping rooms if the congregate residence is owned by a college or university, is a sorority or fraternity, or is owned by a not for profit entity or charity, or is a congregate residence that is licensed by the State and provides on-site supportive services for seniors or persons with disabilities. Supportive services include meal service, cleaning service, health services or similar services.

C. Communal area. Communal areas such as common kitchens, lounges, recreation rooms, dining rooms, living rooms, foyers and lobbies, that are accessible to all residents of the congregate residence with sufficient accommodations for socializing and meeting shall be provided, and shall meet the following standards:

1. The total amount of communal area shall have a floor area that is at least 15 percent of the total floor area of all sleeping rooms. In calculating the total floor area of sleeping rooms, the abutting ancillary areas associated with sleeping rooms shall be included, such as: sleeping lofts, counters, closets, built-ins, and private bathrooms;
2. Service areas, including, but not limited to hallways and corridors, supply or janitorial storage areas, operations and maintenance areas, staff areas and offices, and required bicycle parking areas may not be counted toward the communal area requirement;
3. Communal areas are required in addition to any residential amenity area that is required in the zone.

[https://library.municode.com/wa/seattle/codes/municipal\\_code?nodeId=TIT23LAUSCO\\_SUBTITLE\\_IIILAUSRE\\_CH23.42G\\_EUSPR](https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT23LAUSCO_SUBTITLE_IIILAUSRE_CH23.42G_EUSPR)

## **Title 22 - BUILDING AND CONSTRUCTION CODES / Subtitle II - Housing Code**

"Dwelling unit" means a building or portion of a building intended to be occupied by one (1) family and containing sleeping, eating, cooking and sanitation facilities required by this Code.

"Family" means any number of related persons or eight (8) or fewer unrelated persons.

"Housing unit" means any dwelling unit, housekeeping unit, guest room, dormitory, or single room occupancy unit.

"Single-family dwelling unit" means a detached structure containing one (1) dwelling unit and having a permanent foundation.

"Single room occupancy unit (S.R.O. unit)" means an existing housing unit with one (1) combined sleeping and living room of at least seventy (70) square feet but of not more than one hundred thirty (130) square feet. Such units may include a kitchen and a private bath.

### **Chapter 22.206 - HABITABLE BUILDINGS**

#### **22.206.020 - Floor area**

A. Every dwelling unit shall have at least one habitable room, which shall have not less than 120 square feet of floor area.

B. No habitable room except a kitchen may be less than 7 feet in any floor dimension.

C. Every room used for sleeping purposes, including an SRO unit, shall have not less than 70 square feet of floor area. Every room, except an SRO unit, which is used for both cooking and living or both living and sleeping quarters shall have a floor area of not less than 130 square feet if used or intended to be used by only one occupant, or of not less than 150 square feet if used or intended to be used by two occupants. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two.

D. In a dormitory, minimum floor area shall be 60 square feet per single or double bunk, and aisles not less than 3 feet in width shall be provided between the sides of bunks and from every bunk to an exit. The requirements of this subparagraph shall not apply to SRO units.

E. The required floor area square footage of all dwelling units, dormitories, and SRO units shall not include built-in equipment which extends from the floor to 30 inches above the floor, including but not limited to wardrobes, cabinets, and kitchen sinks or appliances.

**22.206.050 - Sanitation.**

A. Dwelling Units. Every dwelling unit shall contain a toilet, a bathroom sink, and a bathtub or shower in a separate room or rooms which shall be accessible from inside the dwelling unit. The only access from a bedroom to the only bathroom shall not be through another bedroom. No toilet shall be located in any room or space used for the preparation of food, nor shall a room containing a toilet open directly into any such room or space unless the toilet room has a tight-fitting door.

B. Hotels. ...

C. Other Buildings. Every building, other than a hotel, containing housing units that do not have private toilets, bathroom sinks, and bathtubs or showers shall contain at least one toilet, one bathroom sink, and one bathtub or shower, accessible from a public hallway, for each eight occupants or portion thereof. On floors with fewer than eight housing units, the required sanitary facilities may be provided on an adjacent floor if the floor on which facilities are provided is directly and readily accessible to such occupants and if such use does not cause the facilities to be used by a total of more than eight persons.

D. Kitchens. Every dwelling unit shall have a kitchen. Every kitchen shall have an approved kitchen sink with at least 30 inches of floor space in front, hot and cold running water, counter work-space, and cabinets for storage of cooking utensils and dishes. A kitchen shall also have approved cooking appliances and refrigeration facilities or adequate space and approved gas or electric hookups for their installation....

E. Fixtures. ...

F. Water Supply. ....

G. Maintenance. ....

H. Fuel Shutoff Valves. ...

**Subchapter V - Minimum Security Standards 22.206.140 - Requirements**

1. Building entrance doors shall be capable of locking and shall be equipped with a dead bolt or deadlatch with at least a 1/2-inch throw which penetrates the striker not less than 1/4 inch. The lock shall be so constructed that the dead bolt or deadlatch may be opened from the inside without use of a key.

[https://library.municode.com/wa/seattle/codes/municipal\\_code?nodeId=TIT22BUCOCO\\_SUBTITLE\\_IHOCO\\_CH22.206H\\_ABU\\_SUBCHAPTER\\_IMISPOCST\\_22.206.010RE](https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT22BUCOCO_SUBTITLE_IHOCO_CH22.206H_ABU_SUBCHAPTER_IMISPOCST_22.206.010RE)

The table below summarizes the use standards for micro apartments and SROs when regulated as either Household Living (as an SRO or multi-dwelling structure) or Group Living

Zones	SROs and micro apartments when regulated as Household Living (HL) or Group Living (GL)	
	Allowed Use	Conditional Use
<b>Single-Dwelling Residential Zones</b> <i>RF, R20, R10, R7, R5, R2.5</i>	HL – SROs not an allowed housing type. Multi-dwelling structures only allowed in Planned Developments	GL – Conditional use required. RF, R20, R10, R7, R5 1.5 residents per 1,000 sf R2.5 2 residents per 1,000 sf
<b>Multi-Dwelling Residential Zones</b> <i>R3, R2, R1, RH, RX, RMP</i>	HL – SROs allowed in all zones except R3, R2 or RMP. Multi-dwelling structures allowed in all zones except RMP. Limited to 8 units per building in R3. R3 1 unit per 3,000 sf R2 1 unit per 2,000 sf R1 1 unit per 1,000 sf RH, RX – Density not limited (must comply with FAR of the base zone)  GL – 7 to 15 residents are allowed by right. Subject to the regulations of Chapter 33.239	GL – more than 15 residents is conditional use. Subject to the regulations of Chapter 33.239 and 600 ft spacing required between conditional uses R3 2 residents per 1,000 sf R2 2.5 residents per 1,000 sf R1 3 residents per 1,000 sf RH, RX – Density not limited (must comply with the building or housing code, and the FAR of the base zone)
<b>Commercial/Mixed Use Zones</b> <i>CR, CM1, CM2, CM3, CE, CX</i>	HL – No restriction on housing type – SROs and multi-dwelling structures allowed GL – Allowed subject to the regulations of Chapter 33.239	
<b>Employment and Industrial Zones</b> <i>EG1, EG2, IG1, IG2, IH</i>	HL – Not allowed GL – Not allowed	
<i>EX</i>	HL – No restriction on housing type – SROs and multi-dwelling structures allowed GL – allowed subject to the regulations of Chapter 33.239	
<b>Campus Institutional Zones</b> <i>C1</i>	HL – Not allowed GL – Not allowed	
<i>C12, IR</i>	HL – HL – No restriction on housing type – SROs and multi-dwelling structures allowed	



Zones	SROs and micro apartments when regulated as Household Living (HL) or Group Living (GL)	
	Allowed Use	Conditional Use
	GL – allowed in I2; in IR must be included in the mission statement of the campus’s impact mitigation plan	

**Audit:** Assuming a developer wished to build some form of SRO or micro apartment in the Single-Dwelling Residential Zones, they could seek a Conditional Use permit for Group Living Use (although the permitted density is very low). Alternatively, they could build a multi-dwelling structure in a Planned Development; however, this option is not available to SROs.

In the R3, R2, and R1 Zones there is a bias in favor of dwelling units rather than SROs or Group Living. SROs are not allowed in R3 and R2. Group Living is allowed but requires conditional use for more than 15 residents.

If the definition of Dwelling were expanded so that SROs and micro-apartments were considered Dwellings, they would be included in the definition of Multi-Dwelling Structure. If the City wished to continue to offer benefits to SROs (e.g., reduced parking), it could do so based on unit size rather than whether the units happen to have some form of shared facilities.

The calculation of Group Living density on a residents-per-site basis is challenging for SROs and micro apartments, although Title 29 defines SROs as for 1 or 2 persons, which could provide a reasonable basis if there were also a maximum size on SROs and micro apartments. Oddly, there is also an inverse relationship between the density of the zone and the number of individuals allowed in a Group Living facility. Group Living in R3 would allow 6 residents per 3000 sf which is potentially more than would live in a typical dwelling unit, but in R1 there can be only 3 residents per 1,000 sf, which is potentially less than would live in a typical dwelling unit.

**Direction from the TAC:**

Single Room Occupancy (SRO). All references to SRO’s should be removed from the code. SRO’s in residential structures will become either household living or group living. Some SRO’s in non-residential structures may become hotels.

Some of the key standards applicable to micro apartments and SROs are summarized in the table below using the **R1 zone** for comparison purposes.

Standards	Standards by Use Category	
	Household Living	Group Living
Density	1 unit per 1,000 sf of site area	3 residents per 1,000 sf of site area
Parking	Parking is required if more than 30 units @ 1 per unit even if near transit; affordable housing exceptions apply; SROs are exempt from providing parking	No parking required if near transit (500’ – 1500’), otherwise 1 space per 4 residents

Standards	Standards by Use Category	
	Household Living	Group Living
Required Outdoor Area	At least 48 sf of outdoor area is required for each dwelling unit on the site	Larger areas may be required as part of a conditional use review. The outdoor area requirement is 48 sf for every 3 residents, with a minimum dimension of 6' by 6'. Individual outdoor areas may be combined. The minimum size of a combined area is 500 sf and the minimum dimension is 15' by 15'
Spacing	No spacing required	Group living facilities that are conditional uses must be at least 600' from a site with any other group living facility that is also a conditional use
Inclusionary Housing	Required for new buildings with 20 or more dwelling units	Not required
Amenity bonus options	Applicable	Not applicable

**Audit:** Given that there is no size limit on square footage of an SRO unit or requirement that the unit be affordable, the exception to required parking for SROs seems like a potential loophole. As currently written, under the definition of SRO, one could build luxury apartments and call them SROs merely by not including a full kitchen, but including some sort of shared bath facilities. Potentially the City should consider a maximum square footage size limit for SROs (and micro apartments). Austin defines an efficiency unit as 400 sf or smaller (see below). Alternatively, the City could only provide the exemption to micro apartments and SROs that have shared bathrooms but no private facilities. This would limit the types of units that could qualify for the exemption and would likely help ensure that those units are affordable.

Similarly, in zones where Group Living and Household Living are both permitted outright and have similar standards (e.g., RH, RX, and EX where density is based on FAR), defining the use as Group Living would avoid both the parking requirements and the inclusionary housing provisions.

**Comparable Cities:**

- **San Diego –**

Rooming House [See Section 131.0112(a)(3)(A)] is a permitted use in the RM zones

*Rooming house means a dwelling unit where three or more rooms, excluding kitchens and bathrooms, are rented to three or more individuals under three or more separate rental agreements or leases.*

*Housing protected by federal or state law, including housing for persons protected under the Fair Housing Act (42 U.S.C. section 3604(f) and the California Fair Employment and Housing Act (California Government Code section 12900 et seq.), or housing otherwise subject to the City's Separately Regulated Use regulations in Chapter 14, Article 1, shall not constitute a rooming house.*

Boarder & Lodger Accommodations are a limited use in the RM zones

Fraternities, Sororities and Student Dormitories are a conditional use in the RM zones

- **Austin –** The Development Code doesn't seem to have any provisions for residential uses other than within a dwelling unit, which is defined as having complete independent living facilities.

*DWELLING UNIT means a residential unit other than a mobile home providing complete, independent living facilities including permanent provisions for living, sleeping, eating, and cooking.*

The Code defines efficiency units and establishes density based on the number of bedrooms rather than units. While potentially complicated to calculate, this approach does seem like it would more equitably address the impacts.

*EFFICIENCY, when used in reference to a dwelling unit, means a dwelling unit containing not more than 400 square feet of floor area, and not having a bedroom or sleeping area separate from the principal living area.*

*MULTIFAMILY RESIDENCE MEDIUM DENSITY (MF-3) DISTRICT REGULATIONS.*

*(B) The minimum site area for each dwelling unit is:*

- (1) 1,200 square feet, for an efficiency dwelling unit;*
- (2) 1,500 square feet, for a one bedroom dwelling unit; and*
- (3) 1,800 square feet, for a dwelling unit with two or more bedrooms.*

Austin's S.M.A.R.T program helps provide dwelling units that are safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's Green Building Standards through fee waivers and other benefits. Compliance may be required in some circumstances.

- **New York** – The Code considers “rooming units” as a residence and appears to treat them similarly to dwelling units.

*Residence, or residential (3/22/16) A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include: (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#; (b) #non-profit hospital staff dwellings#; or (c) student dormitories, fraternity or sorority student houses, monasteries or convents, #long-term care facilities#, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.*

*Rooming unit (7/26/01) A "rooming unit" consists of any "living room," as defined in the Multiple Dwelling Law, in a #residential building# or a #residential# portion of a #building#, that is:*

- (a) in a "class B multiple dwelling," a "rooming house," or a "furnished room house" as defined in the Multiple Dwelling Law; or*
- (b) used "for class B occupancy," as defined in the Housing Maintenance Code; or*
- (c) used for "single room occupancy," as defined in the Multiple Dwelling Law; or*
- (d) occupied by a "boarder," "roomer" or "lodger," as defined in the Housing Maintenance Code, provided, however, that if not more than two such boarders, roomers or lodgers reside within a #dwelling unit#, the #room# or #rooms# occupied by such boarders, roomers or lodgers shall be counted as part of the #dwelling unit# and shall not be counted as #rooming units#; or*
- (e) any other "living room" in a #residential building# or a #residential# portion of a #building# which is not a #dwelling unit# or part of a #dwelling unit#.*

**Direction from the TAC:**

There is a circumstance in which household living qualifies for a voluntary inclusionary housing FAR bonus, but group living would not. The code update should consider this.

Classifying micro-apartments with shared kitchens as living area but not dwelling units is a problem for how the City applies certain rules i.e. the new raised ground floor windows and revised outdoor area standards apply to dwelling units and micro-apartments with shared kitchens don't trigger Inclusionary Housing requirements (although they may already be affordable). Dwelling units and non-dwelling units have different ways of calculating parking requirements and some affordability exceptions wouldn't apply to non-dwelling units.

## SHELTERS AND TRANSITIONAL HOUSING (AS COMMUNITY SERVICE)

As noted above, long-term occupancy of residents is fundamental to the classification of a use as "residential" In Title 33. Shelters and other transitional housing, which are managed by a public or non-profit agency are classified as a "**Community Service**" use. There are two related definitions:

*Short Term Housing. A structure that contains one or more individual sleeping rooms, and where tenancy of all rooms may be arranged for periods of less than one month. The short term housing facility may or may not have food preparation facilities, and shower or bath facilities may or may not be shared. The facility is managed by a public or non-profit agency to provide short term housing, with or without a fee. Examples include transitional housing, and emergency shelter where individual rooms are provided. Where individual rooms are not provided, the facility may be a mass shelter.*

*Mass Shelter. A structure that contains one or more open sleeping areas, or is divided only by nonpermanent partitions, furnished with cots, floor mats, or bunks. Individual sleeping rooms are not provided. The shelter may or may not have food preparation or shower facilities. The shelter is managed by a public or non-profit agency to provide shelter, with or without a fee, on a daily basis.*

In zones where Retail Sales And Service uses are allowed, limited, or conditional uses, the applicant may choose to classify a short-term housing facility as a hotel, which is included in the Retail Sales And Services category.

**Audit:** The distinction between the two definitions is somewhat confusing. When do "individual sleeping rooms" with multiple bunks become an "open sleeping area?" The applicable standards differ in terms of how the two facility types are managed – short-term housing is by reservation, whereas mass shelters are designed for drop-in use. Focusing on that distinction in the definitions would better reflect the differing impact of the uses.

The option to choose between the Retail Sales And Service use category and the Community Service use category does not apply to mass shelters (regardless of size). However, if hostels, which have shared sleeping areas, were permitted in the Retail Sales And Service use category; this could potentially be discriminatory toward mass shelters.

**Direction from the TAC:**

Community Service Use Category. The use category should be revised to make the point that transitional housing is an allowed community service without regard to length of tenure. Also, when certain services are provided to what otherwise would be household or group living, the use becomes a community service. It would probably worth examining whether these should be pared back. When retained, the service that

changes the use should be described in greater detail as in the example sections of community service, and only briefly referenced in the exceptions sections of household and group living.

1. Many, but not all, shelters require their clients to vacate the premises for a set time each day.
2. Of those that do require vacation, many allow clients to leave their belongings, however many clients take their belongings with them anyway so they will have access to them.
3. The 24-hour open requirement is to prevent Short Term Housing providers from doing what Mass Shelter providers do – say that their clients have to be off premises during certain times of the day.

The table below summarizes the use standards for short term housing (STH) and mass shelters (MS) by zone when classified as Community Service.

Zones	Short Term Housing (STH) and Mass Shelters (MS) as Community Service	
	Allowed Use	Conditional Use
<b>Open Space Zone</b>	MS & STH – Prohibited	
<b>Single-Dwelling Residential Zones</b> <i>RF, R20, R10, R7, R5, R2.5</i>	<p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses (1.5 residents per 1,000 sf)</p> <p>MS – CU required</p>	<p>MS &amp; STH – Type II CU if MS or STH is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria are in 33.815.107, Short Term Housing and Mass Shelters in R Zones.</p> <p>STH – must meet standards in 33.285.050.a, including density standard for Group Living of:                      RF through R5      1.5 residents per 1,000 sf</p> <p>MS – not required to meet standards in 33.285.050.b</p>
<b>Multi-Dwelling Residential Zones</b> <i>R3, R2, R1, RH, RX, RMP</i>	<p>STH – up to 15 beds if it is provided on the site of an existing Institutional Use and meets the standards of 33.285.050, including density standard for Group Living of:</p> <ul style="list-style-type: none"> <li>R3 and R2.5      2 residents per 1,000 sf</li> <li>R2                      2.5 residents per 1,000 sf</li> <li>R1                      3 residents per 1,000 sf</li> <li>RH, RX – Not limited (must comply with the building or housing code, and the FAR of the base zone)</li> </ul> <p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses (see above)</p> <p>MS – Allowed if meets the standards of Section 33.285.050, including:</p> <ul style="list-style-type: none"> <li>• RX, RH – 50 bed max</li> <li>• R3-R1, RMP – 15 beds max + must be on the site of existing Institutional Use</li> </ul>	<p>MS &amp; STH – Type II if MS or STH is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria in 33.815.107 require that the overall residential appearance and function of the area will not be significantly lessened.</p> <p>STH – must meet standards in 33.285.050.a</p> <p>MS – not required to meet standards in 33.285.050.b</p>

Zones	Short Term Housing (STH) and Mass Shelters (MS) as Community Service	
	Allowed Use	Conditional Use
<b>Commercial/Mixed Use Zones</b> <i>CR, CM1, CM2, CM3, CE, CX</i>	<p>STH – allowed if it meets the standards in Section 33.285.050, density not limited</p> <p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses (not limited)</p> <p>MS – allowed if it meets the standards in Section 33.285.050, including:</p> <ul style="list-style-type: none"> <li>• CX, CM3, CE – 200 bed max</li> <li>• CM2 – 50 bed max</li> <li>• CR, CM1 – 25 bed max</li> </ul>	<p>MS – Type II if MS or STH is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria are in 33.815.107. Approval criteria are in Section 33.815.140, Mass Shelters and Specified Group Living Uses in the C, E and CI zones. Not required to meet standards in 33.285.050.b</p> <p>STH – no CU option</p>
<b>Employment and Industrial Zones</b> <i>EG1, EG2</i>	<p>STH – allowed if it meets the standards in Section 33.285.050, density not limited</p> <p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses (not limited)</p> <p>MS – CU required</p>	<p>MS – Type II if MS is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria are in 33.815.107. Approval criteria are in Section 33.815.140, Mass Shelters and Specified Group Living Uses in the C, E and CI zones. Not required to meet standards in 33.285.050.b</p> <p>STH – no CU option</p>
<i>EX</i>	<p>STH – allowed if it meets the standards in Section 33.285.050, density not limited</p> <p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses (not limited)</p> <p>MS – allowed in EX zone if it meets the standards in Section 33.285.050, including:</p> <ul style="list-style-type: none"> <li>• EX – 200 bed max</li> </ul>	<p>MS – Type II if MS is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria are in 33.815.107. Approval criteria are in Section 33.815.140, Mass Shelters and Specified Group Living Uses in the C, E and CI zones. Not required to meet standards in 33.285.050.b</p> <p>STH – no CU option</p>
<i>IG1, IG2, IH</i>	<p>MS &amp; STH – Prohibited</p>	
<b>Campus Institutional Zones</b> <i>CI1, CI2</i>	<p>STH – allowed if it meets the standards in Section 33.285.050, density standard for Group Living (none noted for CI1; CI2 – not limited)</p> <p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses</p> <p>MS – allowed in if it meets the standards in Section 33.285.050, including:</p> <ul style="list-style-type: none"> <li>• CI1 – 25 bed max</li> <li>• CI2 – 75 bed max</li> </ul>	<p>MS – Type II if MS is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria are in 33.815.107. Approval criteria are in Section 33.815.140, Mass Shelters and Specified Group Living Uses in the C, E and CI zones. Not required to meet standards in 33.285.050.b</p> <p>STH – no CU option</p>

Zones	Short Term Housing (STH) and Mass Shelters (MS) as Community Service	
	Allowed Use	Conditional Use
IR	<p>STH – up to 15 beds if it is provided on the site of an existing Institutional Use and meets the standards of 33.285.050</p> <p>STH – exclusively serving victims of sexual or domestic violence if it meets the size limitations for Group Living uses (not limited)</p> <p>MS – Allowed if meets the standards of Section 33. 285.050, including:</p> <ul style="list-style-type: none"> <li>• 15 bed max + must be on the site of existing Institutional Use</li> </ul>	<p>MS &amp; STH – Type II if MS or STH is provided in an existing structure, or is on the site of an existing Institutional Use, otherwise Type III. Approval criteria are in 33.815.107.</p> <p>STH – must meet standards in 33.285.050.a</p> <p>MS – Not required to meet standards in 33.285.050.b</p>

**Audit:** Short term housing is only allowed outright in multi-dwelling residential zones up to 15 beds. In addition, the housing must be on the site of an existing institutional use and meet the standards of 33.285.050. This is stricter than the standards that apply to mass shelters in these zones. Mass shelters are allowed outright on all types of sites (not just those with an existing institutional use), and can be up to 50 beds in the RX and RH. Given that short term housing is more likely to be compatible with multi-dwelling residential uses, this seems to be an unnecessary barrier to short term housing.

Conversely, new short term housing is permitted in EG1 and EG2 if it meets the standards in 33.285.050, but new mass shelters always require conditional use review.

When short term housing requires conditional use review it is still subject to the standards in 33.285.050; however, mass shelters are not.

The special use standards for short term housing and mass shelters, which are in Section 33.285.050, are summarized in the table below. These standards do not apply to mass shelters reviewed as conditional uses.

Applicable Standards – 33.285.050	
Short term housing 33.285.050.A	Mass shelters 33.285.050.B
The development standards for residential development in the base zone, overlay zone, or plan district apply, unless superseded by standards in this subsection.	The development standards for residential development in the base zone, overlay zone, or plan district apply, unless superseded by standards in this subsection.
The density standards for Group Living in Section 33.239.030.A must be met.	Mass shelters may have up to one shelter bed per 35 square feet of floor area. Limit on maximum number of shelter beds allowed within a facility and within 600 feet of the facility noted above. If the site has split zoning, the smaller number applies.
The facility must be open 24 hours a day.	To limit outdoor waiting, the facility must be open for at least 8 hours every day between 7:00 AM and 7:00 PM.

Applicable Standards – 33.285.050	
Short term housing 33.285.050.A	Mass shelters 33.285.050.B
Lodging must be provided on a reservation or referral basis so that clients will not be required or allowed to queue for services.	On-site supervision must be provided at all times.
No parking is required.	No parking is required.
	At least one toilet must be provided for every 15 shelter beds.
	All functions associated with the shelter, except for children's play areas, outdoor recreation areas, parking, and outdoor waiting must take place within the building proposed to house the shelter. Outdoor waiting for clients, if any, may not be in the public right-of-way, must be physically separated from the public right-of-way, and must be large enough to accommodate the expected number of clients.

**Audit:**

It's not specified if the exemption for short term housing exclusively serving victims of sexual or domestic violence is subject to the standards in 33.285.050.A.

The requirement that short term housing facilities be open 24 hours a day is confusing. Is the intent that someone (a resident or staff?) be onsite 24 hours a day? That the doors be unlocked? That management be accessible by phone?

Mass shelters may have up to one shelter bed per 35 square feet of floor area. This standard is less than the sleeping room requirements in 29.30.210, which require a minimum area of at least 70 square feet of floor area plus 50 square feet for each person in excess of two.

The standards require at least one toilet for every 15 beds. Section 29.30.150 (Bathroom Facilities) states that in hotels and apartment houses where private toilets, lavatories, or baths are not provided, there shall be on each floor at least one toilet, one lavatory, and one bathtub or shower each provided at a rate of one for every twelve residents or fraction of twelve residents. Is the intention to be less strict with mass shelters?

The limit on maximum number of shelter beds allowed within a mass shelter and within 600 feet of the facility seems potentially discriminatory, as a similar limitation on distance is not applied to other types of short term lodging.

The number of mass shelter beds on a site with split zoning is based on the zone with the smaller number. This seems potentially discriminatory as a similar standard is not applied to other types of short term lodging. The number of beds could be pro-rated by the percentage of the site in each zone or a similar more equitable approach.



**Comparable Cities:**

- **San Diego –**

In most residential and commercial zones, Transitional Housing is permitted if 6 or fewer persons, conditional use if 7 or more. In RS zones all single dwelling units are limited to a maximum of six bedrooms on lots less than 10,000 square feet. Homeless Facilities (including Congregate Meal Facilities, Emergency Shelters, Homeless Day Centers) are not permitted in single family zones and are a conditional use in only two multi-family zones. They are also a conditional use in most commercial zones. For comparison, Visitor Accommodations are a permitted use in two multi-family zones and five commercial zones.

- **Austin –**

Group Residential is more restricted than multi-family in the residential zones, It is only allowed or conditional in a 4 out of 16 residential zones. It's allowed in the same commercial zones as multi-family.

*GROUP RESIDENTIAL use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.*

Other than Family Homes and Group Homes (Class I limited and Class I general), the civic uses (described below) are either not permitted or require a conditional use in all residential zones. However, Group and Family homes have ½ mile spacing requirement. Other than Transitional Housing (which includes overnight shelters for the homeless), civic uses are allowed in a number of commercial zones and conditional uses in most other others. Many of these civic uses are also permitted in the industrial zones. Transitional housing is only allowed in a limited number of commercial and industrial zones and requires conditional use approval in all cases. There are a total of 46 uses listed as Civic Uses, including those shown below which are related to short-term housing and mass shelters.

*(11) CONGREGATE LIVING use is the use of a site for the provision of 24 hour supervision and assisted living **for more than 15 residents** not needing regular medical attention. This use includes personal care homes for the physically impaired, mentally retarded, developmentally disabled, or persons 60 years of age or older, basic child care homes, maternity homes, and **emergency shelters** for victims of crime, abuse, or neglect.*

*(21) FAMILY HOME use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement with not more than two supervisory personnel and **not more than six residents** who are suffering from orthopedic, visual, speech, or hearing impairments, Alzheimer's disease, pre-senile dementia, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, autism, or emotional illness.*

*(22) GROUP HOME, CLASS I (GENERAL) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for more than **6 but not more than 15 residents** and not more than 3 supervisory personnel. This use includes foster homes, homes for the physically and mentally impaired, homes for the developmentally disabled, congregate living facilities for persons 60 years of age or older, maternity homes, **emergency shelters** for victims of crime, abuse, or neglect, and residential rehabilitation facilities for alcohol and chemical dependence.*

*(23) GROUP HOME, CLASS I (LIMITED) use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for **not more than 6 residents** and 2 supervisory personnel. This use includes foster homes, congregate living facilities for persons 60 years of age or older, maternity homes, and homes for persons with physical or mental impairments not listed in the description of family home use. Persons with physical or mental impairments are persons whose impairments substantially limit one or more of the persons' major life activities, who have a record of the impairment, or who are regarded as having the impairment, as defined in the Americans with Disabilities Act.*

(24) *GROUP HOME, CLASS II* use is the use of a site for the provision of a family-based facility providing 24 hour care in a protected living arrangement for **not more than 15 residents** and not more than 3 supervisory personnel. This use includes homes for juvenile delinquents, halfway houses providing residence instead of institutional sentencing, and halfway houses providing residence to those needing correctional and mental institutionalization.

(42) *RESIDENTIAL TREATMENT* use is 24 hour supervision, counseling, or treatment for **more than 15 residents** not needing regular medical attention. This use includes alcohol and chemical dependency rehabilitation facilities, facilities to which persons convicted of alcohol or drug-related offenses are ordered to remain under custodial supervision as a condition of probation or parole, and residential care facilities and halfway houses for the emotionally ill.

(45) *TRANSITIONAL HOUSING* use is the use of a site for the supervision or detention of **more than 15 residents** who are making the transition from institutional to community living. This use includes pre-parole detention facilities and halfway houses for juvenile delinquents and adult offenders, and **overnight shelters for the homeless**.

- **New York** –The City recognizes that an integral component of government agency sponsored programs to provide supportive housing for populations with special needs, is that the occupants have access to on-site support services to help them to live independently. In accordance with section 22-13 of the Zoning Resolution, such a facility shall be classified as a philanthropic or non-profit institution with sleeping accommodations, Use Group 3 provided:
  - The owner and operator of the facility is a non-profit organization; and
  - At least 60% of the units in such facility are designated for the special needs population and are dispersed throughout the facility

All units in such facility may be considered part of the Use Group 3 classification, provided that the sponsoring governmental agency attests that any units that are marketed to residents of the local community are a necessary component for the successful administration of the program. On-site support services located within the same facility may serve others not residing in the building.

Article II: Residence District Regulations Chapter 8 (The Quality Housing Program) establishes standards for multifamily housing and certain #community facilities# that are compatible, provide on-site amenities, promote the security and safety of residents. For the purposes of applying the provisions of this Chapter to philanthropic or non-profit institutions with sleeping accommodations and to #long-term care facilities#, the term “dwelling unit” shall include #dwelling units# and #rooming units#, as set forth in the New York City Housing Maintenance Code.

The NYC Zoning Code also includes some exceptions to the FAR and “bulk” standards in the R3 to R9 Districts and certain Commercial Districts for community facility uses containing “philanthropic or non-profit institutions with sleeping accommodations.” City Planning Commission approval is required, and the approval criteria are discretionary. The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

## TRANSITIONAL HOUSING (AS RETAIL SALES AND SERVICE)

In Title 33, hotels and other temporary lodging with an average length of stay of less than 30 days are included in the Retail Sales And Service use category. The subcategory of “entertainment-oriented” retail includes hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days. In zones where Retail Sales And Service uses are allowed, limited, or conditional uses, the applicant may

choose to classify a short-term housing facility as a hotel, which is included in the Retail Sales And Service

---

*Historically, the bottom of the scale for inexpensive housing was not the rooming house but the flophouse—essentially a hall of bunks or sleeping slabs. Aside from homeless shelters, North America no longer has flophouses. A century of regulation shut them down. But in Japan, they live on in modern form in “capsule hotels,” which rent enclosed sleeping spaces by the hour or the night.*

*<https://slate.com/business/2013/07/sros-flophouses-microapartments-smart-cities-are-finally-allowing-the-right-kind-of-housing-for-the-poor-young-and-single.html>*

---

category. A “for-profit” facility providing transitional housing facilities would be classified as a hotel. Something similar to a mass shelter that is provided on a “for-profit” basis would be akin to the historic “flop house.” The closest modern equivalent is Japan’s “capsule hotels.”

**Audit:** The option for the applicant to choose between the Retail Sales And Service use category and the Community Service use category does not apply to mass shelters (regardless of size). Are hostels that have shared sleeping areas or “bunk rooms” permitted in the Retail Sales And Service use category? If so, why not mass shelters?

The table below summarizes the use standards for short-term housing by zone when the use is classified as Retail Sales And Service.

Zones	Retail Sales And Service (Short term housing)	
	Allowed Use	Conditional Use
<b>Open Space Zone</b>		Prohibited unless it’s associated with a Park And Open Areas use, in which case it’s a Conditional Use.
<b>Single-Dwelling Residential Zones</b> <i>RF, R20, R10, R7, R5, R2.5</i>	Prohibited	
<b>Multi-Dwelling Residential Zones</b> <i>R3, R2, R1</i>	Prohibited	
<i>RH</i>	Retail Sales And Service or Office up to 20 percent of the net building area	
<i>RX</i>	Retail Sales And Service – up to 20% to 40% of net building area depending on whether use is entirely on the ground floor	Retail Sales And Service – up to 40% to 50% of net building area depending on whether use is on the ground floor and proximate to a transit station
<i>RMP</i>	Recreational vehicle parks are allowed by right in the RMP zone. All other Retail Sales And Service uses are prohibited	
<b>Commercial/Mixed Use Zones</b>	Each individual Retail Sales And Service use is limited to 5,000 sf of net building area, except	

Zones	Retail Sales And Service (Short term housing)	
	Allowed Use	Conditional Use
<i>CR, CM1</i>	that in the CM1 zone on sites that over 40,000 sf located on a Neighborhood Collector or higher, up to 40,000 sf of net building area is allowed. Retail Sales And Service uses can be open to the public 6:00 AM to 11:00 PM.	
<i>CM2, CM3, CE, CX</i>	Permitted	
<b>Employment and Industrial Zones</b> <i>EG1, EG2</i>	Retail Sales And Service uses limited to 20,000 sf or the square footage of the site area, whichever is less. Exception available for historic landmarks.	Retail Sales And Service uses that exceed the area limits are a conditional use.
<i>EX</i>	Permitted	
<i>IG1</i>	One Retail Sales And Service use is allowed per site, up to 3,000 square feet. Exception available for historic landmarks.	More than one Retail Sales And Service or Office Use on a site is a conditional use, or if more than 3,000 sf. May not exceed 20,000 square feet or the square footage of the site area, whichever is less.
<i>IG2</i>	Up to four Retail Sales And Service or Office uses are allowed per site. Each may be up to 3,000 sf. Exception available for historic landmarks.	More than four Retail Sales And Service or Office use on a site is a conditional use, or if more than 3,000 sf. May not exceed 20,000 square feet or the square footage of the site area, whichever is less.
<i>IH</i>	Up to four Retail Sales And Service or Office uses are allowed per site. Each may be up to 3,000 sf. Exception available for historic landmarks.	More than four Retail Sales And Service or Office use on a site is a conditional use, or if more than 3,000 sf. May not exceed 12,000 square feet or the square footage of the site area, whichever is less.
<b>Campus Institutional Zones</b> <i>CI1</i>	None	Up to 10,000 square feet of Retail Sales And Service use per site may be allowed as a conditional use in the CI1 zone.
<i>CI2</i>	Permitted	
<i>IR</i>	Retail Sales And Service allowed if identified in institution’s approved impact mitigation plan or conditional use master plan. If not identified in plan, then limited to no more than 50,000 sf of floor area or 10 percent of the campus floor area, whichever is less.	

**Audit:** When regulated as a Retail Sales And Service use, short term housing is a permitted use in CM2, CM3, CE, CX, EX and CI2, and is not subject to the special use regulations in 33.285. However, depending on the location, parking may be required.

Short term housing, which is prohibited in Industrial Zones when regulated as a Community Service, is allowed outright up to 3000 sf or conditionally up to 12,000 to 20,000 sf (depending on the zone) when regulated as a Retail Sales And Service use.