



Bureau of Planning and Sustainability
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January 8, 2021

MEMORANDUM

To: Members of the Planning and Sustainability Commission
From: Al Burns, AICP, Senior City Planner
Subject: First Work Session on the Shelter to Housing Continuum Project

Introduction

This memorandum begins with a topical summary of Commissioner amendments to the Shelter to Housing Continuum package, along with analysis and recommendations. It also describes the actions requested, provides updates on information requested by the commission and answers some questions.

Commission Actions Requested

For the zoning code amendments, the Bureau asks the Commission to identify which of the proposals it wishes to consider for possible recommendation to City Council during its January 26, 2021. This identification will aid the Bureau in drafting necessary code amendment language for the Commission’s consideration.

For the amendments to other city codes, the Bureau asks the Commission to identify its issues and concerns. This identification will guide the Bureau of Planning and Sustainability’s engagement with other City Bureaus in the development of a coordinated, multi-bureau proposal for consideration by the City Council. If requested, this identification will also aid the Bureau in rough drafting the Commission’s transmittal letter to City Council for the entire project.

The Bureau also requests the Commission to identify any further information or analyses it needs for its January 26, 2021 work session.

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Commission Proposed Amendments to Title 33 of the Portland City Code

Development Standards Applicable to Outdoor Shelters

1. Minimum sanitary service standards.

Analysis

The *2019 Oregon Structural Specialty Code*, which is administered by the Bureau of Development Services as the City's Building Code, contains requirements for sanitary facilities. Connections to city sewer are required by Title 17 of the City Code and administrative rules adopted by the Bureau of Environmental Services. In general, any development accessing City water has to connect to sanitary sewer, although it may be possible for the Bureau of Environmental Services to authorize alternative portable sanitary service for temporary outdoor shelters for up to 180 days.

The City's *2035 Comprehensive Plan and Zoning Code* authorizes different intensities of allowed land use based, in part, on the availability of services. Requirements for development to avail themselves of available services are not needed in the zoning code and adding them there might conflict with the City's actual service codes.

Recommendation

- Do not add service standards for outdoor shelters sited for more than 180 days.
- After presentations from expert panels consider whether standards for shelters sites less than 180 days are needed.

2. Designated supervisor

Analysis

The proposed code at 33.285.050.C.4 already requires a designate supervisor.

Recommendation

No changes are needed.

3. Name and contact information designated supervisor readily available.

Analysis

Since supervisor designations can change, providing contact information for the operating agency or nonprofit is more practicable.

Recommendation

Consider the presentation of the expert panels. If notification is needed provided information should be for the operator rather than the supervisor.

4. Designated supervisor to be onsite 24 hours a day.

Analysis

The zoning code does contain an on-site supervisor requirement for mass shelters, but 24-hour supervision is not a usual operating procedure for existing outdoor shelters. Few



operating standards are included in the proposed code, because the equivalent of such is usually provided in contracts between funding agencies and nonprofit operators. Standards at this level of operational detail are difficult to enforce through the standard mechanisms of zoning enforcement. In general, zoning code standards are more practical if they focus on things that can be measured on plans, or if they address broad land use categories – such as a distinction between residential and commercial activities. That said, there is a need for a responsible party to know about and be able to effectively respond to problematic situations whenever they might occur.

Recommendation

Consider the presentation of the expert panels. If a continuous supervision standard is needed it could be added to 33.285.050.C.4.

5. Require meeting between the shelter operator and the neighborhood, even when shelter siting does not require a land use review.

Analysis

The City's Zoning Code is a place for land use regulations. It is unclear what regulatory purpose would be served for a meeting if the outcome of which could not affect the siting of a use allowed by right. The Bureau of Development Services does not support this amendment or any further expansion of pre-permitting signage and meeting requirements. The existing neighborhood contact regulations should be probably examined for effectiveness before they are expanded. That said, it is a widely observed best practice for providers to meet with neighbors during the shelter siting process, but not every best practice should be made into a land use regulation.

Recommendation

This amendment is not recommended.

6. Allow 60 accommodations in outdoor shelters without a conditional use in the RM1 through RMP, RX, IR, C, EX, CI, and IR zones, without regard to whether there is an existing institutional use.

Analysis

The number of accommodations allowed under clear and objective standards in the proposed code was set in consultation with City Bureaus and the Joint Office of Homelessness Services. Compatibility with the scale of adjoining uses was taken into account, as was the fact that most operators in residential zones would be religious institutions that would prefer a smaller sized and thus more manageable shelter. The consequences of allowed by right shelters on all properties in multi-dwelling residential zones has not been examined, nor have consequences of a new allowed use in the RMP zones been examined.

There are only a few properties in the RMP zone which functions as a sanctuary for manufactured homes by restricting other allowed uses and thus limiting conversion pressure. Allowing other uses could cause displacement of existing manufactured home park residents.



If increased allowances are provided for outdoor shelters in residential zones without a conditional use, conditional use thresholds for other similarly scaled institutional uses should be reconsidered as well so as to carry out a uniform approach on what constitutes a compatible list of uses in residential zones.

Recommendation

Do not increase by right allowances in the RMP zone. Consider the opinions of the expert panelist on the optimum size of an outdoor shelter and consider increasing by-right allowances in the other zones should an optimum-sized outdoor shelter require a conditional use.

Conditional Use Approval Criteria for Outdoor Shelters

7. Require certification from the Joint Office of Homelessness that the public agency or nonprofit corporate applicant is sufficiently experienced and capable of operating a shelter for the benefit persons who have experienced a loss of housing.

Analysis

Although funded by both the City and County, the Joint Office of Homelessness Services is a county agency staffed solely by Multnomah County employees. The City should not delegate a determination as to whether or not a City approval criterion has been met to another local government. There is a legitimate concern that all shelter operators be capable and willing to provide community services with a commitment to help transition their clients to stable, permanent housing. This is one reason the zoning code limits operators to public agencies and nonprofits. Another check on competency is that many shelters are dependent on public funding and the funding agencies, like the Joint Office, can refuse to fund unproven operators. We believe that the funding process is a more practical way to control this.

Earlier in project development City staff discussed the potential problems that might arise from a well-meaning but incompetent operator or from a newly incorporated nonprofit formed with a purpose to simply perpetuate outdoor camping opportunities with no accompanying intent to provide on-site supportive services and transition to housing. The consensus emerged that if City desired greater controls on operators these would need to be the type of controls that could be exercised quickly, with a minimum of notice, hearing and appeal opportunities. So, the City Zoning Code was not the place for such controls. The idea of a City training or licensing requirement for operators was discussed, but no bureau was in a position to host such a program currently. As a practical matter, the most realistic problem the City may face is from a sincere but overwhelmed operator, and that would be a problem might be better handled by technical assistance than regulation.

Recommendation

Do not adopt the proposed amendment. If incompetent or bad acting operators remain a concern, request staff to further investigate the operator licensing proposal.



Shelters in Open Space

8. Allow Permanent Shelters in Open Space.

Analysis

Neither housing nor shelters are allowed uses in open space zones. Allowing them by right or conditionally would require amending the purpose statement for the open space zone, which in turn would require amending or repealing provisions of *Portland's 2035 Comprehensive* that provide the policy basis for this purpose statement.

Comprehensive plan policies are informed by background documents that are adopted by City Council and acknowledged by the Oregon Land Conservation and Development Commission. These studies comprise the factual basis of the plan. The proposed amendment would require an extensive reexamination and possible adjustment of facts and reason that inform the Comprehensive Plan. The supporting documents underlying the 2035 Comprehensive Plan found that there was more than an adequate supply of land for housing and related uses.

The 2035 Plan allowed for an increased level of development with the understanding that a City-wide system of publicly owned and protected parks, natural areas and greenways would exist. Supporting facts included a projected need for more City parkland and open space as the City grows, not less.

Such a change may also require an examination of the covenants for the bonds sold to purchase park land and construct community centers. Recorded deed restrictions in instruments dedicating land to the City for park, recreation, and conservation purposes would need to be checked. If the terms of the dedication were violated the heirs of the donors could reclaim the dedicated land.

The above said, shelters are allowed in parks and community centers as temporary activities (either via 33.296.030.G or H). The reasoning for this allowance is that the effects of a temporary uses are reversible and place no long-term constraints on the availability of land identified as needed for their zoned purposes.

Recommendation

Do not amend the open space zone to allow permanently sited shelters. Nothing in this recommendation precludes individual proposals to re-zone a particular parcel of open space for shelter purposes if the controlling agency agrees.

Shelters in Certain Areas

9. Permanent Shelters in Open Space Zones within Certain Areas.

Analysis

The Bureau does not recommend the permanent siting of shelters in open space zones, but if allowed, an alternate proposal would allow the use generally but exclude it in certain areas. Exclusion areas might include any land within an environmental protection or conservation designation, floodplains, other hazard areas, parks designated and managed as natural areas, and land adjoining recreational trails. This



exclusion seems prudent, but some of the areas described are not depicted on a readily available map adopted by City Council for a regulatory purpose.

Recommendation

Do not amend the open space zone to allow permanently sited shelters, but if allowed exclude shelter siting in Environmental overlay zones, the River Natural overlay zone, the River Environmental overlay zone, and the Pleasant Valley Natural Resource overlay zone.

10. Temporary Shelters in Any Base Zone within Certain Areas.

Analysis

The expressed language of the proposed code would allow the temporary siting of a shelter in a protected natural area or a known hazard area any place in the City. While this allowance might well be precluded by another provision of Title 33 or another Title of the City Code, the proposal should not have established a seeming conflict.

Recommendation

Amend temporary use allowances to exclude shelters from land within Environmental overlay zones, the River Natural overlay zone, the River Environmental overlay zone, and the Pleasant Valley Natural Resource overlay zone.

Shelters as Temporary uses

11. Clarify Emergency and Shortage Declarations for Temporary Shelter Uses.

Analysis

Existing Section 33.296.030 G would allow shelters as temporary uses for any Council declared emergency, and these uses would be allowed to continue until the emergency expired. Shelters being allowed in open space community centers under the present COVID-19 emergency is an example of the use of this section.

Proposed Section 33.296.030 H would allow shelters for 180 days without any council declaration. Adoption of this amendment would, for example, relive Council from having to make declarations for each occurrence of inclement weather requiring shelter. A companion amendment to Title 15 would allow the 180-limit to be extended if Council declared a shelter shortage. Unlike emergency declarations that have set expiration dates requiring extensions, a shortage declaration would stay in place until repealed by Council, and a temporary shelter could remain in place during the full extent of the shelter declaration.

A shelter could be temporarily sited under either section and no shelter would need to meet the requirements of both sections. Temporary shelters would be allowed in any zone by either section unless excluded by development standards.

In zones that allow shelters as a conditional use, a temporary shelter could be made permanent through a conditional use approval. In zones that allow shelters by right, shelters would not need to resort to temporary use allowances.



Recommendation

The proposed code does not require clarifying amendments, but the accompanying code commentary should be clarified with the information provided above.

Group Living Allowances

12. Categorize Dwellings with More than Eight Bedrooms as Group Living

Analysis

Both the existing code as currently administered, and the proposed code would categorize a dwelling unit with more than six bedrooms as group living. While they need not be, for decades the zoning code and building code have been in sync in that crossing the threshold from household to group living under the zoning code also crossed the threshold from residential to commercial construction under the building code. Application of the commercial code requires fire and sound barriers in the walls between bedrooms and possibly the installation of a sprinkler system.

The proposed amendment would shift the proposed zoning threshold so that only dwelling units with more than nine bedrooms would be categorized as group living. This zoning code change would not affect how the Bureau of Development Services administers the 2019 Oregon Structural Specialty Code. Nor would the zoning code amendment provide an effective nudge in persuading the Bureau of Development Services to change its reading of the state code. The City no longer has its own building code; it now administers the state code as a delegated program, and the city cannot change the state code. The six-bedroom threshold is a well-reasoned and plausible reading of the 2019 Oregon Structural Specialty Code. While the 2019 code may admit to other plausible readings, those alternate readings will be precluded by an amendment to the state code set to take effect in March of 2021, leaving the Bureau of Development Service’s existing reading as the only plausible one.

The advantages of keeping the zoning and building codes in sync seem to outweigh any advantages of categorizing eight-bedroom dwelling units as household living, even though the compatibility between the two codes is a convenience rather than a necessity.

In addition, please note that the proposed code would allow Group Living by right up to 3,500 square feet. Changing the threshold to a higher number of bedrooms would not change where such a structure is allowed, because both Household and Group Living are allowed without a Conditional Use at a similar scale.

Recommendation

Do not amend the proposed code.

13. Define Bedroom

Analysis

Chapter 33.910 provides that terms not defined by Title 33 carry their ordinary dictionary meaning. Title 33 has employed the term “bedroom” for decades without a 33.910 definition, and this has not proven to be a problem. There is no obvious need to



define bedroom for the purpose of distinguishing household from group living. City housing and property management codes define “bedroom” or “sleeping room” for the purposes of other code titles. While there is no requirement or need for the same term to carry the same meaning in various titles of the City Code, adding an arguably unnecessary term to the zoning code could cause confusion.

Recommendation

Do not add a definition of “bedroom” because the dictionary definition is adequate.

Residency in Tiny Houses on Wheels and Recreational Vehicles

12. Allow Residency Without Sewer Hook-ups

Analysis

Title 17 of the City Code requires sewer hook-ups for any development that generates, or is expected to generate, sewage. This means any development that avails itself of a water supply must also connect to sewer whenever the site is proximate to a sanitary or combined sewer line, which is most of the City.

The proposed code would allow residential occupancy of tiny houses on wheels and recreational vehicles, but only with a campground-style utility service, including a sewer hook-up. The sewer hook-up is usually the most expensive element to provide.

The Bureau of Environmental Services and the Bureau of Development Services staff have reached a tentative recommendation on how to reconcile the conflict by the following provisions:

- The proposed Title 29 requirement for sewer hook-ups should be retained.
- One additional exception should be provided, but only for tiny houses on wheels and recreational vehicle that are not connected to water, and do not contain plumbing such as toilets or sinks (*de facto* external bedrooms).
- The Bureau of Development Services will limit costs of providing required sewer hooks-up by approving them by trade permits rather than full building permits.
- The Bureau of Development Services will lower the costs of providing sewer hook-ups by exempting them from its system development charge. This would be done as part of the adopting ordinance for S2HC.

Recommendation

Endorse the general direction described above. Note that this is a Title 17 and 29 issue, so we are not seeking Commission recommendations on specific code language.



Visitability Standards

13. Recommend Standards the Commission Previously Recommended as Part of the Residential Infill Projects.

Analysis

This amendment addresses a topic not currently within the scope of the Shelter to Housing Continuum Project; it is nevertheless being considered in response to the Bureau of Development Services comments.

During the Residential Infill Project some of the new units allowed by the code were to have to meet accessibility standards, similar to Americans With Disabilities Act requirements. A consensus rose that a lesser standard described as “visitability” rather than “accessibility” should apply to at least one unit under certain circumstances. Requirements that a person with a mobility impairment be allowed to enter and move about a part of a dwelling were recommended as amendments to Title 33.

Rather than accepting the Commission’s visitability recommendation, City Council adopted an alternative solution that relied on references to an external code. Applying this external code by building officials has proven to be problematic because the external code has not been adopted as part of the *2019 Oregon Structural Specialty Code*. The Bureau of Development Services is now asking that the City return to the visitability approach recommended by the Commission.

Recommendation

The Commission should recommend again the Title 33 visitability standards it originally recommended as part of the Residential Infill Project.



Response to Information Requested by the Commission

Two panels one composed of shelter providers and the other composed of and persons with lived shelter experience have been assembled and will be ready to present at the January 12, 2021 work session. The panelist are:

Panel One

Brandi Tuck, Executive Director at Portland Homeless Family Solutions (PHFS)
Chris Aiosa, Executive Director at Do Good Multnomah
Tony Bernal, Senior Director of Public Policy & Funding at Transition Projects

Panel Two

Angi Eagan, PHFS
Jonathan Hill, C(3)PO
Lisa Larson, Dignity Village

A matrix of which shelter types that are allowed by the present code, have been allowed by code waiver, and could be allowed under the proposed code is prepared and will be transmitted with this memorandum.

The Bureau has assembled data of how many sites would be available for shelters in each neighborhood if siting in open space were not an option is prepared and transmitted with this memorandum. The data is contained within pivot tables in a large spreadsheet. This information can be briefly described during the January 12 work session, but it would be better to wait until January 26, 2021 work session to allow presentation of a report in a more digestible format.

Response to Questions

Q1. There is only one proposed conditional use approval criteria specifically addressing shelters, why aren't others proposed as well?

A1. Others were initially considered, but the Joint Office noted that all of these seemed to deal with livability and offsite impacts, which were already addressed by existing criteria. Also, there was no public purpose in singling out shelters for what might appear to be especially harsh treatment. Existing broad criteria, such as livability, already allow the City to craft any reasonably necessary condition of approval.

Q2. The report's introduction states the project is about more than shelters, and the project purpose includes facilitating permanent affordable housing. Where are these affordable housing provisions?

A2. A fair question. The report should have done a better job explaining that the new group living allowances are the housing affordability provisions, and it is these provisions that will facilitate both market rate affordable housing and supportive housing needing a lower public subsidy. The Bureau used part of a grant provided by the Oregon Department of Land Conservation and Development to have Jonson Economics perform a prospectus market-based feasibility analysis for various prototypes. Some of the prototypes nicknamed the "adult dormitory," the "group duplex" and the "group cluster" penciled out as marked feasible in some parts of the City, and where they did not only a small public subsidy was required to bring them up to feasibility. These background documents are posted on the project website and informed the group living code proposals.

In summary, the proposal to allow Group Living by right in more places facilitates a wider variety of housing



configurations; including giving the Housing Bureau more flexibility to mix SRO-style housing in with traditional units in regulated affordable housing projects; and giving market-rate developers the option to develop lower-cost group living buildings. Group Living can reduce housing cost because the cost of kitchens and bathrooms is spread out over a larger number of people.

Q3. What are the bicycle parking requirements for outdoor shelters, for both clients and employees?

A3. Required long-term bike parking would be accessible to both staff and clients. Existing code provides “Long-term bicycle parking is in secure, weather protected facilities and is intended for building and site occupants, and others who need bicycle parking for several hours or longer.” Permanent outdoor shelters would include buildings containing storage, office, hygiene and office facilities, and the permits for these buildings would trigger a requirement for two long term bicycle parking spaces. These spaces could be accommodated in a common building, or if that were not feasible, in a two-unit bike locker or by placing two stable racks in a fenced and gated enclosure covered by an eight-foot by ten-foot roof. Temporary shelters would not require bicycle parking.

Q4. Why not retain the existing Title 15 Housing Emergency provisions in addition to proposed Title 15 affordable housing and shelter shortage amendments.

A4. Staff is considering testimony and is amenable to retaining most, if not all, the existing Title 15 Housing Emergency authorities.

The initial project charge was to have enough new permanent code in place, so that City Council would not have to extend the housing emergency again in April 2021 in order to authorize the continuing use of code waivers to site needed shelters. The project delivers this requested new code, but a question remains as to whether Council should retain its existing Title 15 waiver authority and adopt code designed to make use of waiver authority unnecessary, or adopt the new code and repeal its existing waiver authority, which is only one of several authorities listed in the Title 15 Housing Emergency code. This question merits further discussion but should be sufficiently resolved to make a more complete report during the Commission’s January 26, 2021 work session.

It should also be noted that even if the present housing emergency expires in April, code waivers could still be issued for as long as the COVID-19 emergency persisted.

Q.5. Why not allow two or more tiny houses on wheels or recreational vehicles on residential lots?

A.5. Oregon Revised Statutes 197.492 (3) defines two or more recreational vehicles occupying the same lot as a “recreational vehicle park” requiring a state license and regulation by the Oregon Health Authority. The 2019 Legislature reclassified tiny houses on wheels from buildings to vehicles, and under state law taking the wheels off a tiny house makes it subject to the state building code. Under Title 33 a tiny house on wheels and a recreational vehicle are the same thing, and recreational vehicle park is a commercial retail sales and service use not allowed in residential zones. While the City could amend some or all residential zones to allow commercial uses, this change would not relieve recreational vehicle parks from state regulation. In short, expanding the number of vehicles introduces a number of complicating regulatory considerations that cannot be resolved quickly. In the interest of adopting this code quickly, we have recommended a limitation of one.



Q.6. Should the City grant an amnesty for existing tiny houses on wheels not constructed to a building code or ASCII standard?

A.6. There are fire and life safety consequences to allowing residential occupancy of a tiny house on wheels not benefiting from the employ of a licensed plumber or electrician or documented as meeting the ASCII standard. HUD regulations require manufactures of tiny houses on wheels meeting the ASCII standard to provide written notices to their customers that they are built for recreational purposes and not intended for long term residential occupancy, but HUD leaves decisions on whether to enforce its restrictions on residential occupancy to state and local governments. So, the City would have to weigh and balance the liability it might accrue by allowing occupancy of an uninspected or uncertified home against the hardship resulting from prohibiting occupancy. We are evaluating options, but these are not Title 33 requirements. The Commission may express an opinion in your transmittal letter.

