



TO: Planning Commission

FROM: Scot Siegel, Planning and Building Services Director

SUBJECT: Affordable Housing Community Development Code Review (PP 18-0008)

DATE: October 18, 2018 **MEETING DATE:** October 22, 2018

ACTION

Review code incentives/exceptions used by other jurisdictions to encourage development of affordable housing; identify tools for further study.

EXECUTIVE SUMMARY

At its study session on July 17, 2018, the City Council provided direction on developing incentives for affordable housing, consistent with the Council's 2018 Goal: "Adopt the tools identified in 2017 for more economical workforce housing."

In addition to financial incentives (fee exemptions for Accessory Dwelling Units, fee exemptions and property tax relief for below-market rate affordable housing), the Council wanted the Planning Commission to explore possible exceptions to some development standards as an incentive for developers to include some below-market rate/affordable housing units in multifamily developments. This report provides a survey of incentives used by other cities, as requested by the Commission.

DISCUSSION

The Planning Commission has been tasked with reviewing the Community Development Code and advising Council on possible code incentives/exceptions that the City may use to encourage development of affordable housing. This is in addition to the financial incentives that the City Council is considering separately with the proposed 2019 Master Fees and Charges Schedule.

For purposes of this research, staff recommends the Planning Commission use the following definition (or eligibility criterion) for Affordable Housing, which is also provided with the proposed amendments to the Master Fees and Charges Schedule for review by the City Council:

"Multifamily developments of 20 or more units where at least 10% of the proposed dwelling units are affordable to those earning 80% or less of Area Median Income and spending not more than 30% of household income on housing, consistent with Clackamas County Housing Authority's "[Income Limits for Affordable Housing](#)."

The Planning Commission has expressed interest in learning how other jurisdictions have approached code incentives for affordable housing. **Attachment 1** summarizes current policy and on-going work by neighboring communities, among others. The tools listed in the attachment are described below:

“Missing Middle” Housing in Low- and Medium-Density Zones

Accessory Dwelling Units (ADUs) – Ministerial Permit (No Land Use Decision)

Lake Oswego already permits ADUs without a land use decision, which saves approximately two to four months on the permit process. This change went into effect earlier this year with adoption of Ordinance 2784.

Accessory Dwelling Units – System Development Charges Exemption

System Development Charges for ADUs can be upward of \$20,000, not an insignificant fee for what is typically a 600-800 square foot dwelling. This is on top of building permit fees, which can add another \$6,000 to the cost of a detached ADU; internal conversions can run more or less depending on the complexity of the remodel. Currently the City charges no planning or development review fees for ADUs.

Review of SDCs is outside the Planning Commission’s purview. However, the City Council is considering making ADUs exempt from paying SDCs as part of its review of the 2019 Master Fees and Charges Schedule. Staff has recommended that a covenant be required upon permit approval of an ADU, which would require payment of SDCs if an ADU is converted to a short-term rental (STR), if STRs are made legal.

Accessory Dwelling Units – Allow 2 per Single Family Dwelling

Some jurisdictions have amended their low-density residential zoning district regulations to allow two ADUs per single family dwelling, or three total dwellings on a lot. This approach would require a code amendment. In the low-density residential zones, it would also be necessary to amend the Comprehensive Plan, which is an expensive, time consuming, and unpredictable public process. For these reasons, this approach is not recommended on an ad hoc basis but could be considered with an overall strategy for affordable housing during the next review and update of the Comprehensive Plan.

Attached or Zero Lot Line Single-Family Dwellings – Allow in Residential Zones

Lake Oswego already allows townhomes and zero lot line dwellings in residential zones subject to minimum lot area and density standards. One way to encourage affordable housing is to allow townhomes on smaller lots/at higher densities where the developer enters into an agreement to develop a percentage of the units at below-market rates. In Lake Oswego any rezoning would also require an amendment to the Comprehensive Plan, which is an expensive, time consuming, and unpredictable public process. For these reasons, this approach is not recommended on an ad hoc basis but could be considered with an overall strategy for affordable housing during the next review and update of the Comprehensive Plan.

Duplexes in Medium Density Zones

Duplexes are already allowed in Lake Oswego's medium- and high-density residential zones (R-5, R-DD, R-3, R-2, and R-0).

Duplexes on Corner Lots in Low Density Zones

Duplexes (2 dwellings in a building on one lot) are not allowed in Lake Oswego's low-density residential zones. If the code were amended to allow them, minimum lot area, setbacks, and other dimensional standards would have be updated to make duplexes compatible with the neighborhoods where they were allowed. Some cities have allowed duplexes on corner lots but only where the structures are designed to blend in with the neighborhood, for example, by applying clear and objective building design standards and limiting garages/driveways to one per street frontage. The same principle could be applied to projects that meet affordability criteria.

Conversion of Single Family Dwellings to Multifamily in Low Density Zones

In Lake Oswego, multifamily development (3 dwellings in a building on a single lot) may occur only in high-density zones. Any rezoning to allow multifamily development would also require an amendment to the Comprehensive Plan, which is an expensive, time consuming, and unpredictable public process. For these reasons, this approach is not recommended on an ad hoc basis but could be considered with an overall strategy for affordable housing during the next review and update of the Comprehensive Plan.

2. RESIDENTIAL USE TABLE

TABLE 50.03.002-1: RESIDENTIAL DISTRICTS USE TABLE												
P = Permitted Use Blank = Not Permitted C = Conditional Use A = Accessory Use												
[x] Table notes located at the end of the table												
Use Category	Use Type	Residential									Use-Specific Standards	
		R-15	R-10	R-7.5	R-6	R-5	R-DD	R-W	R-3 [3]	R-2 [4]		R-0 [3] [4]
RESIDENTIAL USES												
Household Living	Dwelling, single-family detached dwelling (one per lot)	P	P	P	P	P		P [1]	P		P	
	Dwelling, zero lot line (one per lot)	P	P	P	P	P			P	P	P	
	Dwelling, duplex (one per lot)					P	P		P	P		
	Dwelling, attached townhome (one per lot)					P	P		P	P	P	
	Dwelling, multi-family					P	P		P		P	
	Manufactured home (one per lot)	P	P	P	P	P	P	P	P	P	P	50.03.003.1.b
	Manufactured home park or subdivision					P			P		P	50.03.003.1.c
Group and Institutional Housing	Congregate housing	C	C	C		P			P	P	P	50.03.003.4.a and b; R-2 zone: 50.03.003.3
	Group care home	P	P	P	P	P	P		P	P	P	
	Residential care housing	C	C	C		P			P	P	P	50.03.003.4.a and b; R-2 zone: 50.03.003.3
	Skilled nursing facility					C	C		C	C	C	50.03.003.4.c; R-2 zone: 50.03.003.3

Residential uses allowed in residential zones (accessory dwelling units also allowed but not shown)



Duplex on corner lot in Old Town (R-DD Zone)

Cottage/Cluster Housing

Cottage cluster housing consists of multiple small (typically <1,400 sq. ft.) detached homes or cottages clustered around a common open space area. Parking is oriented at the periphery. The units may be owned individually and certain areas are held in common (e.g., central green, community building, storage, etc.). A planned development process may be required but is not necessary where a city has adopted cottage cluster development standards.



Cottage cluster housing (12 units per acre, or net 3,000 sq. ft. per unit)

This option was discussed during the Planning Commission’s review of the definition of Duplex and consideration of standards for allowing multi-unit development. While it offers a type of “middle housing” that is currently missing from Lake Oswego, it would require an amendment to the Comprehensive Plan to allow this level of development in the city’s low density residential zones. The prior discussion on multi-unit development focused on the city’s high-density zones and did not consider cottage housing as an incentive for affordable housing.

Due to concerns about increased density in areas that are primarily single-family residential in character, this approach is not recommended on an ad hoc basis but could be considered with an overall strategy for affordable housing during the next review and update of the Comprehensive Plan. See also, the case file on multi-unit development, [LU 15-0010](#).

Incentives for Affordable (Below-Market Rate) Housing

Dimensional Standards, Density and Design

Some jurisdictions might allow increases in lot coverage, building height, and number of stories, along with reductions in required parking, open space, setbacks, and other development and design standards to reduce development costs for affordable housing projects. However, this raises an important policy issue. Why should residents of affordable housing be deprived of well-designed living environments, and if certain development standards are not necessary for one class of multifamily housing, why not all multifamily housing? If the Commission believes this approach is valid, the key challenge is in finding the appropriate levers that can make a difference to the financial feasibility of affordable housing developments, which typically rely on a complex package of incentives, including tax credits, fee waivers, and land cost write-downs by government agencies.

System Development Charge Exemption/Deferral

Review of SDCs is outside the Planning Commission’s purview. However, the City Council is considering making multifamily affordable housing exempt from paying SDCs as part of its review of the 2019 Master Fees and Charges Schedule. Staff has recommended that a covenant

be required upon approval of SDC exemptions, which would require payment of SDCs where a dwelling is converted to a short-term rental (STR), if STRs are made legal.

Procedures – Fast-Track Development Review (beyond ORS 100-day rule)

Streamlining the permit process is one of the simplest and most effective tools for reducing development costs, and it can be implemented administratively without a code change. The only requirement is that the city maintains compliance with the 120-day clock (statutory requirement) for processing other land use permits.

High Density Housing Alternatives

With the exception of Tiny Homes, city code already allows the high-density alternative housing types included in the survey. Lake Oswego could further facilitate development of congregate care housing, including affordable assisted living and transitional housing, by permitting these housing types through a minor development process instead of the current conditional use permit (major development) procedure. Tiny homes, which are typically less than 400 sq. ft., are not recommended due to safety concerns, see **Attachment 2**.



NW Housing Alternative's Oakridge Park Apartments in Lake Grove.

Options for Retaining Existing Housing Stock

The City Council is considering adopting a demolition fee or system development charge that would indirectly discourage teardowns and encourage remodeling of existing dwellings. While this approach does not assure the retention of affordable housing, it can mitigate the impact of redevelopment on housing prices. Lake Oswego already has several other tools for encouraging retention of existing housing stock, including minor variances and the Residential Infill Design (RID) Variance procedure. In addition, as the Commission and City Council consider adopting regulations for short-term rentals (STRs), impacts on the supply of rental housing should be considered, for example by requiring owner-occupancy of STR properties.

RECOMMENDATION

Review the attached research and provide direction on any incentives that merit further study.

ATTACHMENTS

1. Code Incentives/Relief for Targeted Housing Opportunities, 10/18/18
2. Letter from State Department of Consumer and Business Affairs on Tiny Homes, 04/04/17 (due to size, only the cover letter is included; to access letter with attachments, use the link provided below to visit the Planning Project webpage)

<https://www.ci.oswego.or.us/all-projects>

(Under Search enter PP 18-0008 and press Enter)

Code Incentives/Relief for Targeted Housing Opportunities - 10/18/18	Lake Oswego	Bend	Milwaukie	Newberg	Oregon City	Tigard	Tualatin	West Linn	Wilsonville	Consistent with Lake Oswego Comp Plan Policies and Notes
Note: For affordable/below-market rate housing, these strategies are typically combined with financial and other incentives. Key: ●= Allows; ○= In Progress; x= Not Appropriate or Feasible as deemed by city planners. Focus of incentives study.										
<i>“Missing Middle” Housing in Low- and Medium-Density Zones</i>										
Accessory Dwelling Units – Ministerial Permit (No Land Use Decision)	●	●	●	x	●	●	●	●	●	Yes: CNH B-1, B-2
Accessory Dwelling Units – System Development Charges Exemption	○	●	○	x	x	○	x	x	●	Yes: RAMs I, K
Accessory Dwelling Units – Allow 2 per Single Family Dwelling	x	●	○	x	x	○	x	x		No: CNH A-1-A-3; LU B-7, E-2
Attached or Zero Lot Line Single-Family Dwellings – Allow in Residential Zones	●		○	x	x	x	●	x	●	Yes: CNH B-1 (except not in R-W Cabana zone)
Duplexes – Allowed in Medium Density Zones	x	●	●	●	●	○	●	●	●	No: CNH A-1-A-3; LU B-7, E-2
Duplexes – Allowed on Corner Lots in Low Density Zones	x	●	●	○	○	○	●	x	●	No: CNH A-1-A-3; LU B-7, E-2
Conversion of Single Family Dwellings to Multifamily in Low Density Zones	x	x	○	x	○	x	●	x	●	No: CNH A-1-A-3; LU B-7, E-2
Cottage/Cluster Housing – Allowed in Medium and High Density Zones			●	●	●	○	x	x	●	Maybe: CNH C-8/RAM I
Cottage/Cluster Housing – Allowed in Low Density Zones	x		○	○	●	○	x	x	●	No: CNH A-1-A-3; LU B-7, E-2
<i>Incentives for Affordable (Below-Market Rate) Housing</i>										
Dimensional Standards – Increase Allowed Lot Coverage		●	○	●	x					Maybe: CNH B-1; LU A-1-A-3
Dimensional Standards – Increase Allowed Height/Number of Stories	x	●	○	x	x					Maybe: CNH B-1; LU A-1-A-3
Dimensional Standards – Reduce Required Setbacks and Buffers		x	○	x	x					Maybe: CNH B-1; LU A-1-A-3
Density – Increase Allowed Density/Floor Area	●	●	○	x	○					Public Housing in R-5 & R-DD Zones
Design – Reduce Building Standards (Articulation, Materials, Detailing)		x	○	x	x					Maybe: CNH B-1; LU A-1-A-3
Design – Reduce Site Improvement (e.g., Landscape, Gravel Parking Lot)		x	○	x	x			x		Maybe: CNH B-1; LU A-1-A-3
System Development Charge Exemption/Deferral	○	●	○	●	x	●		x		Yes: RAMs I, K
Open Space – Decrease Required Open Space		●	○	x	x			x		Maybe: CNH B-1; LU A-1-A-3
Parking Standards – Reduce Required Parking	x	●	○	●	x	○		x		“Adequate Parking” policy
Procedures – Fast-Track Development Review (beyond ORS 100-day rule)		●	○	○	x					Yes - Could be Admin. Policy
<i>High Density Housing Alternatives</i>										
High Density Res/Live-Work in Commercial Zones w/Siting Standards	●	●	●	●	●	●	●	●	●	LGVC0 lot coverage bonus
Special Needs – Allow Boarding Houses or Single-Room Occupancy (SROs)	●	x	●	x			x	x	●	Yes: CNH B-3 w/CUP
Special Needs – Allow Transitional and Emergency Shelters	●	●	●	●	○	○	●		●	Yes: CNH B-3 w/CUP
Tiny Homes – Allow “Tiny Home Villages”	x		○	○	○		x	x	●	No: CNH A-1-A-3; LU B-7, E-2
<i>Options for Retaining Existing Housing Stock</i>										
Tear-Down Fee – For Demolitions of Existing Homes	○	x	x	x	●		x	●		Yes: RAM B
Dimensional Standards Flexibility for Remodels – e.g., Minor Variances	●	x	●	●	●	○	x	●	●	Yes: CNH C-7, RAM B
Short-Term Rentals – Require Owner-Occupancy in Residential Zones	○	x	●	x	x	x	x	●		Yes: LU E-3

Bend Notes:

Attached in all SF zones—we allow attached duplexes and triplexes in nearly all zones with the exception of our lowest density zone, RL, where it is CUP. Fourplexes are not allowed in our RS or RL zones.

Cottage/ cluster not allowed in RH because it is not dense enough, not allowed in RL because maximum density is 4 units/ acre

Tiny homes allowed on foundations.

Tigard Notes:

Duplexes are proposed to be removed as a housing type, replaced with ADUs. Internal or attached ADUs may not exceed size of primary unit.

A parking reduction is proposed for missing middle housing proximate to transit, and an on-street credit has been proposed for low and medium density zones. No AH-specific parking reductions have yet been considered.

A general adjustment has been proposed that would allowed adjustment to any standard, but not explicitly just for remodels.

Short term rentals are not allowed in any residential zone.

Oregon City Notes:

ADUs charged same SDC as apt/condo = half a single-family dwelling

Duplexes currently allowed in 1 of 2 medium density zones, working on project allowing in the other.

Working on a project to allow up to 4 dwelling units per single-family dwelling (convert single family to multifamily)

Cottage cluster allowed in medium density, working on project to allow in high density.

Lot coverage increase not allowed for affordable housing, but working on a project to increase lot coverage for ADU's.

Setback reduction not allowed for affordable housing, but working on a project to reduce setbacks for ADU's.

Working on a project to allow increased density (up to 20%) for affordable projects.

Short-term rentals under 30 days are a conditional use in residential zones; no owner-occupancy required. If 30 days or more outright permitted if full dwelling unit or just a room within a dwelling unit.

Working on project to allow shelters in 2 zoning designations as a Conditional Use

Working on allowing tiny homes if hooked up to utilities under our cottage/cluster standards (by reducing our min home size). Local churches have shown interest in building in their parking lots (group homes allowed as a CU).

Tear-down fee: This should be a small circle. We charge a demolition fee in the Building department, and also we have demolition denial for historic resources.

Variances to dimensional standards for remodels: Working on a project to expand our minor variance list to include some design elements required for homes.

Less than 30 days requires a conditional use in residential zones. No owner occupancy requirements.

West Linn Notes:

	West Linn Comments
Accessory Dwelling Units – Ministerial Permit (No Land Use Decision)	Yes: outright permitted
Accessory Dwelling Units – System Development Charges Exemption	No: SDC fees apply
Accessory Dwelling Units – Allow 2 per Single Family Dwelling	No: 34.030.A(4) only allows 1
Attached Single-Family Dwellings – Allow in All Residential Zones	No: only allowed in R7 through R2.1
Duplexes – Allowed in Medium Density Zones	Yes: 5.020 medium/medium high density residential zones R5, R4.5, R3, & R2.1
Duplexes – Allowed on Corner Lots in Low Density Zones	No: only medium density zones
Conversion of Single Family Dwellings to Multifamily in Low Density Zones	No: only high density res.
Cottage/Cluster Housing – Allowed in Medium and High Density Zones	Maybe: w/ CUP or PUD
Cottage/Cluster Housing – Allowed in Low Density Zones	Not outright/option PUD

Incentives for Affordable (Below-Market Rate) Housing

Dimensional Standards – Increase Allowed Lot Coverage	
Dimensional Standards – Increase Allowed Height/Number of Stories	Maybe: w/PUD
Dimensional Standards – Reduce Required Setbacks and Buffers	Maybe: w/variance
Density – Increase Allowed Density/Floor Area	Maybe: w/Class I variance
Design – Reduce Building Standards (Articulation, Materials, Detailing)	Maybe: w/ PUD
Design – Reduce Site Improvement (e.g., Landscape, Gravel Parking Lot)	No: in historic district
System Development Charge Exemption/Deferral	No: Engineering Standards
Open Space – Decrease Required Open Space	No: SDC fees always req.
Parking Standards – Reduce Required Parking	Maybe: w/ PUD
Procedures – Fast-Track Development Review (beyond ORS 100-day rule)	Adequate Parking req. under 46.090
	Maybe: w/ admin policy change

High Density Housing Alternatives

High Density Res/Live-Work in Commercial Zones w/Siting Standards	
Special Needs – Allow Boarding Houses or Single-Room Occupancy (SROs)	Yes: first floor commercial
Special Needs – Allow Transitional and Emergency Shelters	Yes: not multifamily application
Tiny Homes – Allow “Tiny Home Villages”	
	No provisions

Options for Retaining Existing Housing Stock

Tear-Down Fee – For Demolitions of Existing Homes	Yes: w/ building permit
Dimensional Standards Flexibility for Remodels – e.g., Minor Variances	Yes: Class I variance
Short-Term Rentals – Require Owner-Occupancy in Residential Zones	Yes: w/ home occ permit

Tualatin Notes:

ADU is Type I Review: (Ministerial) TDC 34.310
Limited to 1 ADU per TDC34.310(1)(c)
Attached single-family and conversion of single-family to multifamily allowed in RL low density zone with CUP, TDC40.030(1) (Common Wall Dwelling per TDC 31.060)
TDC 41.020(1)
Increased lot coverage for affordable housing: Council Direction this section; housing studying pending.
Mixed-use development allowed by TDC 43.040 & 57.050 in Central City / MUCOD overlay
Religious Institution uses; subject to ORS/ State Fire Marshall TA No. 11-14
Dimensional standards flexibility allowed by TDC 33 Variance approval subject to hardship



April 4, 2017

To: Oregon Building Officials

Subject: Tiny houses – What consumers, local government officials, and policy-makers need to know

Last year, the Building Codes Division, the state agency responsible for overseeing safe, reliable building codes opened several investigations into tiny house/park model RV builders. The investigation focused on three questions:

- Were state licensing laws followed?
- Did builders build to appropriate safety codes?
- Did local government review the work?

Investigation Findings. The results of the investigation were alarming. None of the 10 builders reviewed used qualified electricians or plumbers. None of the builders followed residential building code requirements and none of them sought permits from local government. The state review focused on tiny house builders who built under the recreational vehicle code (a substantially insufficient code for housing or dwelling use) and then marketed the product as a “tiny house” or home. All ten builders had information on their websites indicating their tiny home or park models could be used as permanent residences.

Licensing, Permits, and Zoning. Consumers need to be assured that builders of tiny houses are licensed by the Construction Contractors Board, that local building permits and inspections are obtained, and that electrical and plumbing systems are installed by qualified installers. These basic requirements will ensure that consumers have recourse for defects or unsafe work. Additionally, tiny houses that are not reviewed by local government inspectors may not be allowed because of local zoning ordinances. State investigators talked with consumers who were sold a product that could not be used or installed locally. The state has always warned and will continue to warn consumers that builders must follow basic building regulations whether the home is on wheels or not.

Safety Code Changes. Advocates of tiny house products are also seeking changes to safety codes for areas where children and adults sleep. The state is concerned that removal of basic emergency egress (escape) protections and allowing small sleeping spaces without adequate fire safety analysis may present an unsafe condition in case of fire or other catastrophic event. There are two national code-making bodies for building standards: The International Code Council



(ICC) and the National Fire Protection Association (NFPA). Oregon adopts standards from both these organizations. In review of tiny house code change proposals at the national level, Oregon found no evidence that empirical or scientific data was presented to ICC or NFPA regarding the safety of tiny house designs. **ICC did review changes for tiny house safety regulations and its technical committee rejected the proponent's proposal.** In the end, ICC modified its technical body's action and approved an appendix as an option for adoption by each governmental body. **Oregon has found the approach of reversing technical experts, approving sleeping lofts that are not allowed for traditional housing and the lack of scientific justification is less than adequate to protect consumers.**

The core issue here is whether tiny houses provide an adequate means of egress (escape) from a rapid accumulation of smoke and toxic gases in a small sleeping space that could incapacitate children and adults using areas (lofts) not allowed in larger homes due to the inherent dangers.

Oregon has found only one national scientific report on fire flashover and how fire travels in small structures. In 1979, the Center for Fire Research National Engineering Laboratory studied fires in mobile homes. Because of the smaller size of these structures, special attention to flame spread rating and flashover characteristics is necessary to protect occupants. **The report recommended extra fire safety protections for mobile homes than in traditional housing. These extra fire safety protections are missing from the current discussion of tiny home construction.** It appears the national body turned to an RV standard of care for housing instead of reviewing the work related to building small mobile homes. Additionally, both current national bodies require sprinkler systems for tiny home construction. We have seen no evidence of tiny house builders installing sprinkler systems.

Options for Builders. BCD developed a document identifying the legal path for RV/tiny house builders (see Attachment A).

Other Information. BCD wants to remind local government that living spaces or sleeping areas less than 7 feet are not allowed for agriculture labor housing facilities.

Conclusion. The Building Codes Division is providing this information so that policy-makers and local government maintain important safety protections for consumers. Until tiny house builders provide scientific evidence that supports that children and adults can sleep safely in loft spaces, local government should not allow that practice. Attached is the original code change proposal and justification of the ICC technical committee's report disapproving waiver of the safety codes for tiny houses (R168), a report from NFPA on tiny house codes and testimony provided at the national level and to the Oregon legislature.

Enclosures:

[Attachment A – Tiny House Builder Options](#)

[Attachment B – Original ICC Tiny House Code Change Proposal \(RB 168-16\)](#)

[Attachment C – ICC Technical Committee’s Safety Waiver Disapproval \(RB 168-16\)](#)

[Attachment D – Applying Building Codes To Tiny Homes \(NFPA\) – March, 2017](#)

[Attachment E – ICC Appendix V Floor Vote Testimony](#)

[Attachment F – Oregon Legislature Tiny House Testimony](#)