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**LONG RANGE PLANNING**  
**ISSUE PAPER NO. 2018-02**

**Revised - Fair Housing Code Updates**  
**For Presentation at the April 17, 2018 Board Work Session**

**Issue**

Some sections of Washington County's Community Development Code (CDC) are outdated and may not fully comply with state law and fair housing recommendations. Updates may be needed to revise definitions of group care, modify land use districts where group care is an allowed use and clarify the type of development review procedure needed to process group care development applications in order to better comply with fair housing best practices and state law.

In addition, and related to fair housing, current CDC regulations do not clearly allow temporary shelter operations in nonresidential buildings (such as schools or religious institutions). The County has received inquiries from places of worship and other service providers (such as Tualatin Hills Park & Recreation District [THPRD]) regarding if and how the County could allow temporary shelter activities in some locations, without requiring a full development application. The County may wish to consider an ordinance to amend the CDC to explicitly allow temporary shelter operations in non-residential buildings as a temporary use.

**Staff Recommendation**

Direct staff to prepare draft CDC amendments as described in this issue paper to remove identified barriers to providing fair and equitable access to housing, provide options for temporary shelter operations as an allowed temporary use, and better comply with best practices recommendations to affirmatively further fair housing in Washington County.

**Background**

During work on the Aloha-Reedville Study and Livable Community Plan, staff used recommendations from the federal Fair Housing Council of Oregon (FHCO) to identify County code issues that could impede fair housing access and development in Washington County. The 2013 final report for the Aloha-Reedville Study included a recommendation to update the CDC to better conform to federal fair housing law, state law, and FHCO recommendations. This task was originally identified as an issue in 2011, and was added to the annual Long Range Planning (LRP) work program as a tier two task in 2014. "Group Care and Fair Housing updates" were included as a tier one work program task in 2016, with the expectation that the work would likely occur over multiple years.

### Fair Housing Act (FHA)

The Federal Fair Housing Act (FHA) was first enacted by Congress as Title VIII of the Civil Rights Act of 1968. Under this Act, discrimination based on protected class status in any housing situation is prohibited. Federal protected classes include:

- race,
- color,
- national origin,
- religion,
- gender,
- familial status, and
- disability.

Additional Oregon state protected classes include:

- marital status,
- source of income,
- sexual orientation including gender identity, and
- domestic violence victims.

Fair housing laws apply to sales, rentals, mortgage lending, building and construction, home insurance, appraisals, and inspections for individual homes, and all types of housing, including detached dwellings, duplexes, townhomes, multifamily housing (apartments, condos), retirement housing, adult foster homes and long-term care facilities, homeless shelters and other housing types. Fair housing laws also apply to land use and zoning regulations that impact housing development, and neighbor-on-neighbor harassment.

Governmental entities such as Washington County that receive federal housing or community development funds are required to *affirmatively further fair housing*. This includes identifying local public and private sector impediments to housing choice and developing a plan to address them over time. The Federal Department of Housing and Urban Development (HUD) issued its Final Rule regarding Affirmatively Furthering Fair Housing (AFFH) July 16, 2015.<sup>1</sup> The Final Rule clarifies government obligations to affirmatively further fair housing, and provides guidelines and data to assist in achieving these goals. AFFH also emphasizes the need to address fair housing barriers in local codes and regulations, including zoning regulations and development codes. The Federal Department of Justice (DOJ) and HUD also released updated FHA guidance on state and local land use laws Nov. 10, 2016.<sup>2</sup> This guidance covers information about how the Fair Housing Act applies to local land use and zoning.

The FHA applies to public entities, private businesses, nonprofits and individuals, and covers both intentional acts of discrimination and unequal treatment, as well as policies and practices which may not appear discriminatory but, in fact, have a discriminatory impact on one or more protected classes (“disparate impact”). Many fair housing issues with land use plans, development codes and practices fall into the “disparate impact” category.

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<sup>1</sup> [https://www.huduser.gov/portal/affht\\_pt.html#final-rule](https://www.huduser.gov/portal/affht_pt.html#final-rule)

<sup>2</sup> <https://www.justice.gov/opa/file/912366/download>

Under the FHA, it is unlawful to:

- Use land use policies or actions to treat groups of persons in protected classes less favorably than groups of other persons;
- Take action against, or deny, a permit for a residence based on the fact that individuals who are members of a protected class live or would live there; and
- Refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

Federal fair housing law states that housing serving people in protected classes may not be subject to additional process requirements or fees beyond those that are required for similar housing types serving any other type of resident. For example, a multifamily development that will house people with disabilities may not be subject to additional review or approval criteria than a similar multifamily development that will house members of the general population. **In order to comply with fair housing best practices, allowed land use districts, review processes and approval criteria for any residential development should be based on physical design, land use, and potential impacts of that use, *not* the characteristics of the people who will reside in the housing units.**

The Fair Housing Act defines persons with disabilities very broadly, including:

- 1) People with a physical or mental impairment that substantially limits one or more major life activities;
- 2) Individuals who are regarded as having such an impairment; and
- 3) Individuals with a record of such an impairment.

Physical or mental impairments include, but are not limited to, diseases and impairments, developmental disabilities, mental illness, drug addiction, and alcoholism.<sup>3</sup> Any person who has a disability, is regarded as having a disability, or has a history of having a disability, is considered a member of a protected class for the purposes of fair housing laws.

The joint statement DOJ and HUD released in November 2016 regarding the application of the FHA to local land use laws and practices explicitly states that *discriminatory intent* is not necessary in order for a law or practice to have a *discriminatory impact* that violates fair housing law. The statement further asserts that enacting or applying land use laws based on “fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have about current or prospective residents because of the residents’ protected characteristics” is a violation of fair housing laws.

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<sup>3</sup> It should be noted that addiction caused by current, illegal use of a controlled substance is not protected, and people in protected classes, including people with disabilities, must follow the rules and regulations that govern the population as a whole. However, joint DOJ and HUD guidance states that “the fact that a resident of a group home may currently be illegally using a controlled substance does not deprive the other residents of the protection of the Fair Housing Act.”

The DOJ and HUD joint statement also discusses group homes. The term “group home,” like many other terms that have both general and land use implications, does not have a specifically defined legal meaning. “Group home” can refer to any dwelling that is occupied by unrelated persons with disabilities. Care, services, training, and treatment may or may not be provided, depending on the needs and desires of the residents. Group homes may also serve persons in recovery from alcohol or substance abuse issues, who are treated no differently than persons with other types of disability and are entitled by law to the same fair housing protections. The statement also notes that “persons with disabilities have the same FHA protections whether or not their housing is considered a group home” and that governments “may not discriminate against persons with disabilities who live in group homes.”

In addition, the DOJ has advised that setting quotas or limits on the number of housing units that serve people with disabilities in a geographic area is a violation of fair housing law. Oregon Revised Statutes (ORS 197.665 and 197.667, discussed below) also requires local jurisdictions to allow housing for persons with disabilities in locations that allow housing for the general population.

Group care and specialized housing is not the only type of shelter that serves people who may be members of protected classes. People with disabilities and people who may be subject to discrimination based on sexual orientation and/or identity are particularly likely to be at increased risk of homelessness and in need of short-term emergency shelter, or short-term shelter included as part of a service program. Shelter, like other types of housing, is subject to fair housing laws and guidance. Providing a defined path for temporary homeless shelters may increase available shelter options and affirmatively further fair housing for Washington County residents.

### Needed Housing

ORS Section 197.303 was updated in 2017 (via Senate Bill 1051) to define needed housing as:

*“...all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 U.S.C. 1437a.”*

The definition of needed housing specifically includes a variety of housing types, such as attached and detached single-family housing and multiple family housing for owner and renter occupancy, government-assisted housing, mobile home parks, manufactured homes on individual lots, and housing for farmworkers. The Washington County Consolidated Plan<sup>4</sup> includes a Housing Needs Assessment that estimates housing needed by various populations in Washington County. The Consolidated Plan’s analysis indicates that Washington County has a significant

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<sup>4</sup> <https://www.co.washington.or.us/communitydevelopment/planning/2015-2020-consolidated-plan.cfm>

unmet need for housing units serving persons with disabilities, including people with mental and physical impairments and persons with substance issues. Housing that includes services and care, including various types of group care, can certainly be considered needed housing in Washington County.

Washington County is consistent with ORS 197.303 through land use plans (community plans) and land use districts (CDC) that provide for a variety of housing types, including single-family detached and attached, multifamily, mixed use residential, cottage housing (currently only in allowed in the North Bethany Subarea) and a range of housing densities. These provisions allow for various types of needed housing that meet density requirements of land use districts.

ORS 197.307, which discusses standards, conditions and procedures regulating the development of housing, including needed housing, states that local governments may “adopt and apply only clear and objective standards.” These standards may include provisions regulating density or height, but may not discourage needed housing through “unreasonable cost or delay.” Washington County is consistent with ORS 197.307, offering at least one clear and objective path for housing development in land use districts that allow residential uses.

#### Other regulations governing housing and group care/definitions

Oregon state regulations governing residential care, foster homes, and similar uses are included in ORS Chapter 443. ORS 443 covers home health agencies, domiciliary care facilities, in-home care agencies, residential facilities and homes, community-based structured housing facilities, adult foster homes, developmental disability child foster homes, and hospice programs. All types of residential care under ORS 443 require licensing, certification, or registration through the Department of Human Services or the Oregon Health Authority.

ORS 443.400-443.455, Residential Facilities and Homes, includes definitions for residential homes and facilities. In general, *residential homes* provide services and/or care to five or fewer residents, and *residential facilities* provide services and/or care to six or more residents. In either case, services may be provided in one or more buildings on contiguous properties. “Residential care” is broadly defined to include assistance with daily tasks and activities. Residential facilities and homes may also provide training and/or treatment to residents.

Residential facilities as defined in ORS 443 exclude schools, correctional and detention facilities, nursing homes, and places providing care and treatment on less than a 24-hour basis.<sup>5</sup>

ORS 197.660-197.670 establishes that “persons with disabilities and elderly persons are entitled to live as normally as possible within communities and should not be excluded from communities because their disability or age requires them to live in groups,” and that it is “the policy of this state to integrate residential facilities into the communities of this state.” Oregon law generally requires that residential homes and facilities be permitted in any residential or commercial zone that allows residential uses. Residential homes must be allowed in districts that

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<sup>5</sup> It should be noted that ORS 169.690 requires residential homes/facilities serving residents who are required to live in a secure home or facility as a condition of release to provide the local public safety coordinating council with relevant information prior to establishment.

allow single-family dwellings, residential facilities must be allowed in any zone that permits multifamily dwellings. ORS 197.670 further prohibits denying an application for residential homes or facilities in locations that allow residential uses as described in ORS 197.665 and 197.667.

#### Fair Housing Council of Oregon (FHCO) Best Practices recommendations

The Fair Housing Council of Oregon developed a guide to assist land use planners to evaluate land use practices and codes to comply with fair housing law and affirmatively further fair housing. The 2016 guide titled “*Examining Local Land Use with a Fair Housing Lens*” includes discussion of fair housing, affordable housing, and needed housing, and indicates areas where local regulations and practices could be changed in order to “both comply with fair housing law and affirmatively further fair housing through adopting best practices.” This guide is an important tool for use in examining current CDC regulations in close association with the Fair Housing Act, ORS 197.303 and other applicable ORS provisions, and was used for staff analysis described below.

#### Washington County Community Development Code (CDC)

The County’s CDC currently regulates group care through Section 430 (Special Use Standards). As a result, residential homes and facilities, as well as other types of housing that provide care and services, are subject to standards in CDC Section 430-53 (Group Care).

The standards in Section 430-53 were first adopted in 1983 and revised in 1986 (via Ordinance Nos. 279, 293 and 308). Subsequent nonsubstantive updates have occurred, with a more substantive change occurring in 2000 with the addition of the Retirement Housing Community to the list of allowed Group Care uses (added via Ordinance No. 537). The Retirement Housing Community section was updated in 2017 (via Ordinance No. 823). With these exceptions, CDC descriptions and standards for Group Care types are substantially the same as first adopted.

#### **Analysis**

During preliminary review in 2013, staff identified some CDC provisions as potential barriers to affordable and special needs housing, based on the FHCO recommendations. These were further explored through the Aloha-Reedville Study, and the final report from the study included a recommendation to update the CDC to better conform with Fair Housing Council recommendations, in particular, Section 413 (Parking and Loading), Section 430 (Special Use Standards), and Section 435 (Variances and Hardship Relief). Parking and Loading standards were updated in 2017, and potential amendments to Section 435 (Variances and Hardship Relief) may be considered as part of future housing affordability work.

Barriers identified in Section 430-53 include, but are not necessarily limited to:

- Outdated or incomplete definitions and types of group care uses.
- Requiring a Type III land use review procedure (while attached/multifamily residential uses in many land use districts are permitted through the Type II procedure).
- Prohibition of Resident Care Facilities in most commercial districts and in Transit Oriented Districts.

The intent and purpose of considering CDC amendments is primarily to remove barriers to developing group care facilities and other residential developments that serve protected classes, and improve consistency with state law, federal fair housing law, and recommendations from the Fair Housing Council of Oregon.

Staff conducted a preliminary analysis to begin assessing the impacts of amending the CDC for these purposes. The analysis considered the following questions:

- 1) *What updates are needed to bring group care standards into better compliance with fair housing laws and best practices?*
- 2) *What criteria should be used to distinguish group care from other residential uses?*
- 3) *Which land use districts should include group care as an allowed use?*
- 4) *What development review procedure should be used to process group care development applications?*
- 5) *Should there be a process to explicitly allow temporary shelter operations?*

The results of this analysis are summarized below.

- 1) *What updates are needed to bring group care standards into better compliance with fair housing laws and best practices?*

As noted above, current group care standards in the CDC date to the 1980s. New types of group care uses have evolved over time, as have state and federal guidelines and regulations. Outdated or incomplete definitions and types of group care uses can result in uncertainty about the classification of new facilities servicing special-needs populations and the process requirements for approval of such facilities. Updates to current definitions and the list of allowed group care uses are needed to improve consistency with state law, and to better reflect current types of residential care facilities and/or homes. Updates are also needed to provide more clarity and certainty for developers and operators of housing serving special needs populations, as well as the community in general.

CDC Section 430-53 begins with the following statement:

*Community based care is divided into medical and nonmedical care. Group care homes, residential care facilities, and halfway houses provide care and training to small groups of more than five (5) people living together in a homelike setting. The clients and staff function as a single housekeeping unit and, act in many ways as a family providing support, care and supervision. The goal of these facilities is the integration of their clients into society. Other types of group care include facilities for day care, convalescent (nursing) homes, and retirement housing communities.*

The types of group care currently allowed in most Residential and Institutional land use districts (typically through a Type III procedure) include:

- Convalescent (Nursing) Homes (Section 430-53.1) “... for the care of children, the aged or infirm, or a place of rest for those suffering bodily disorders, but not including facilities for surgical care or institutions for the care and treatment of mental illness, alcoholism or narcotics...”
- Detention Facilities (Halfway House) Mental and Remedial (Section 430-53.3) “licensed or certified by the state and operated with twenty-four (24) hour supervision for the purpose of providing planned treatment and/or care to individuals who are criminal offenders, alcoholics, drug abusers, mentally ill or who require planned care while living together as a single housekeeping unit.”
- Home for Aged (Retirement Home) (Section 430-53.4 ) “for the care of individuals who are not in need of hospital or nursing care but who are in need of assistance with everyday activities of living, in a protected environment.”
- Resident Care Facility (Section 430-53.5 ) “licensed or certified by the state and operated with twenty-four (24) hour supervision for the purpose of providing planned treatment and/or care for the aged, convalescent, mentally handicapped or retarded, and remedial service clientele and/or victims of domestic violence and their children, as a single housekeeping unit.”
- Retirement Housing Community (Section 430-53.7) (updated in 2017) for persons “age fifty-five (55) years and older that includes a variety of housing options and services. Private dwelling units, including apartments or single family attached/detached homes, may be provided for independent residents (independent living) and/or residents requiring a range of supportive personal and health services (assisted living). The community may also include a care facility licensed or certified by the state (as applicable) for the purpose of providing planned treatment and/or care.”

The Group Care section also includes Section 430-53.2 Day Care Facility and Section 430-53.6 Family Day Care Provider (AF-10, AF-5, and RR-5), which are not residential group care and not addressed in this issue paper.

Currently, standards for several types of group care standards state that they serve residents with a specific set of characteristics (“aged” or “convalescent”) and exclude others. In addition to using outdated and potentially offensive terminology to describe residents, using resident characteristics (including type of disability, mental illness, drug addiction, and alcoholism) to determine how a development is regulated under the CDC may be in conflict with fair housing law.



Further, grouping persons with disabilities with criminal offenders in Section 430-53.3 (Detention Facilities) encourages fears that persons with disabilities are dangerous or likely to engage in criminal activity, which is not supported by research.

Fair housing law and personal and medical confidentiality regulations protect the privacy of persons with disabilities, just as they protect the general population. Housing providers may develop residential facilities or dwellings that are suited to serve persons with particular disabilities, but are not permitted to disclose the specific disabilities of individual residents. Therefore, classifying group care type by specific resident disability is not only a violation of fair housing best practices, it may violate medical confidentiality regulations for current or future residents.

#### Comparison with other jurisdictions

When considering the appropriate way to address these issues, staff researched how other jurisdictions address group care and residential care. A review of development codes in other jurisdictions (including Clackamas County, Beaverton, Hillsboro, and Tigard) indicates that some development codes define residential care and/or congregate housing facilities more broadly than Washington County. See Table 1 for a comparison of group care regulations of several adjacent jurisdictions).

The city of Hillsboro regulates “Residential Services for six (6) or more persons” using the definitions in ORS 443.400 and regulations in ORS 197.660 and ORS 197.670, “who receive State licensed and/or permitted provision of care, treatment or training such as medical, rehabilitative, palliative, acute or respite care,” and permits this use in most multifamily residential, mixed-use, and commercial zones. Hillsboro has a separate Group Living Structure housing type that does not include “Residential Facilities that are licensed and/or permitted by the State” which is allowed as a limited or conditional use in other zones.

The city of Beaverton allows “Care Facilities” and “Residential Care Facilities.” Care Facilities include “general care located within a dwelling accommodating not more than five nonrelated persons.” Care facilities are considered a residential use and allowed outright in residential zones. Residential Care Facilities include “a living facility for more than five (5) non-related persons, which provides specialized care, supervision, treatment or training, or a combination of these...” Residential Care Facilities are considered a commercial use, and allowed outright in transit-oriented, mixed-use, and high-density residential zones, and allowed as a conditional use in other residential zones.

The city of Tigard allows “Group Living,” which is defined as “a living facility for groups of unrelated individuals that includes at least 1 person residing on the site who is responsible for supervising, managing, monitoring, and/or providing care, training, or treatment of residents.” Group living is permitted outright in most locations when the residence includes 5 or fewer residents, and group living with 6 or more residents is allowed as a conditional use in all residential zones.

Clackamas County allows “Congregate Housing Facilities,” which are defined as “a building that contains more than one dwelling unit and provides common facilities and services...” with “regular on-premise supervision by a... health care provider” as a primary use in all designations that allow multifamily dwellings as a primary use.

While jurisdictions frequently distinguish between day care facilities and residential facilities, none of these jurisdictions use resident characteristics (aside from age, in the case of some senior housing developments) to regulate housing development. In addition, though jurisdictions do not consistently defer to state law to distinguish between a “residential facility” and a residence that may or may not include services, they do use much broader categories to capture this type of land use.

It would be possible to update Section 430-53 and retain some of the existing differentiation between types. However, the degree of overlap between existing definitions has resulted in somewhat inconsistent classification of group care developments in the past. For example, the 2011 development application for the Laurel Parc expansion at Bethany Village (Casefile 11-176-M/SU/SU/D(R)/D/D/D/D/P) was processed under 430-53.4 Home for Aged (Retirement Home), while the 2015 development application for Cornell Road Senior Living Center (Casefile 15-275-SU/D/DHA/AMP/PD) was processed under 430-53.5, Resident Care Facility, though both applications included similar housing and services. Further, using resident characteristics to differentiate between types of group care does not comply with fair housing laws.

Expanding the definition of Resident Care Facility to include a wider range of residents and type/level of residential care available may be a better option. An expanded Resident Care Facility definition could be sufficiently broad to include the current uses of Convalescent (Nursing) Homes, Home for Aged (Retirement Home), (portions of) Detention Facilities (Halfway House), and Resident Care Facilities. This approach would consolidate most of the types of group care that require licensing or certification, and include 24-hour care. Secure Housing (for persons under judicial detainment), Day Care Facilities, and Retirement Housing Communities would remain separate uses.

For example, Washington County could amend the Resident Care Facility definition to something similar to:

*An establishment licensed or certified by the state or applicable federal authority that provides housing and 24-hour access to services, including care, training, and/or treatment for individuals who are not in need of hospital care, but who may need assistance with everyday activities. Residents may live in separate units in a planned community, or as a single housekeeping unit. Facilities may include accessory uses and amenities, such as facilities for shared eating, socializing, recreation, laundry, training or treatment. Residential units and common facilities, including sleeping areas, kitchens, bathrooms, and other amenities, must meet all applicable state and federal requirements.*

*The resident care facility must meet the following requirements:*

- (1) Not include hospital or treatment facilities otherwise provided in Article IV;*
- (2) Maintain all applicable licenses required by the state and county; and*
- (3) Meet and maintain all applicable state and federal requirements.*

This approach would have the benefit of eliminating resident characteristics from the County's development regulations, which conforms to fair housing best practices. It would also bring the CDC more in line with other local jurisdictions and defer to state and federal regulations, which may reduce instances of overlapping or conflicting standards. Notice would still be provided for secure housing serving persons exiting institutional care, as required by Oregon law.

This would also eliminate additional requirements currently in place for some types of group care, such as minimum lot size, additional yard and setback requirements, and lot coverage maximums. The CDC does not require other types of residential development to meet special lot size or setback standards, and requiring group care to do so may not comply with fair housing laws and best practices. Eliminating these additional standards for group care would mean that lot size, setback and yard requirements, and lot coverage standards of the underlying land use district would apply to group care, just as they apply to other types of development.

*2) What criteria should be used to distinguish group care from other residential uses?*

Residential development that serves persons who are engaged with care, treatment, training, or other types of supportive services is not automatically considered group care under Section 430-53. Much of the housing that serves persons with disabilities does not require licensing by OHA or DHS, and is therefore not considered a Resident Care Facility (or any type of group care) under the current CDC. Programs like Stepping Stones (a CODA program that provides alcohol- and drug-free housing to women receiving outpatient treatment) provide supportive services and housing with a resident manager, but do not require licensing and are simply treated as residential uses under the CDC. Similarly, the Luke-Dorf Clover Court development, which will serve persons with disabilities living independently with access to services, does not require a state license and is considered a residential use under the CDC.

In order to comply with fair housing laws and best practices, development should not be classified or treated differently merely because it serves residents who are members of a protected class. Therefore, the determination that a more intensive development process or increased level of scrutiny is required should be based on an objective evaluation of likely impacts of the use on surrounding neighbors and the community.

Currently, ORS and the County CDC uses state licensure by Oregon Health Authority (OHA) or the Department of Health Services (DHS) to determine whether or not a place that provides housing and services is considered a "residential facility." If a location does not require a license from OHA or DHS, it is not considered a residential facility and is treated as a residence, just as any other residence that may or may not include some kind of on-site services or amenities. According to the Oregon Administrative Rules (OARs) that govern residential treatment facilities for adults with mental health disorders (OAR Chapter 309 Division 035) and OHA

guidance, residential facilities that require an OHA license are facilities that provide, at minimum:

- 24-hour residential care and treatment; and
- 24-hour access to direct care staff

Other requirements vary, but in many cases licensed facilities must also provide room and board for residents. Oregon law also requires that residential homes/facilities serving residents who are required to live in a secure home or facility as a condition of release from an institution or detainment to provide the local public safety coordinating council with relevant information.

Staff considered alternative evaluation metrics such as estimated trip generation or the presence of an on-site manager as potential options for determining when a residential development should be considered group care under the CDC. However, because metrics would need to be applied to all new residential development applications, this would likely result in some number of “standard” multifamily residential developments being classified as group care.

In order to avoid violating fair housing law, staff recommends continuing to use applicable state or federal licensing or certification as the standard for determining if and when a residential use (that may or may not provide services) should be considered a Resident Care Facility. In addition, staff recommends adding language to the CDC to clearly articulate that a residential development that is not a licensed facility should be considered attached, detached, or multifamily housing (based on physical design), even if there is some level of on-site management or care (that does not require state or federal licensing), and regardless of the population being served.

The introduction of the group care section could be revised to include language similar to:

*Housing that provides on-site management and/or care that does not require state or federal licensing is not classified or regulated as group care for the purposes of this code, regardless of the population residing or being served at that location.*

3) *Which land use districts should include group care as an allowed use?*

There are two issues related to where group care facilities should be allowed: the specific land use districts where they are permitted and the approval procedure type required. An analysis of these two issues is inextricably linked, since fair housing law applies both to *where* these facilities are allowed and by *what process*. Fair housing law and state law require that group care and residential facilities must be allowed in land use districts that permit multifamily dwellings, and should not be subject to additional regulations based on type of resident. As noted earlier, allowed land use districts, review processes and approval criteria should be based on physical design, land use, and potential impacts of that use, *not* characteristics of the residents.

Currently, the CDC allows detached housing in most residential districts, and attached housing in all residential districts (though some land use districts have additional requirements such as nonresidential uses on the ground floor). This analysis will discuss where group care should be permitted, followed by a discussion of the required development process (in the next section).

The CDC currently allows a range of group care in most residential districts. Some types of group care (Convalescent Homes, Home for Aged, and Retirement Housing Community) are allowed in Transit-Oriented residential districts. Other types of group care (Detention Facility, Resident Care Facility) are not currently allowed in Transit-Oriented residential districts. Refer to Table 2 for a list of all land use districts, a comparison of where detached housing, attached housing, and residential group care is currently allowed, and proposed changes.

State law (ORS 197.667) requires that residential facilities<sup>6</sup> be allowed in any district that permits multifamily dwellings, and states that residential facilities may be allowed in other residential districts, including single-family districts. The current prohibition of some types of group care in land use districts such as Transit-Oriented residential may be in violation of this regulation. Excluding some types of group care from locations that allow other types of residential development may also violate fair housing laws.

Further, excluding some group care uses from Transit-Oriented districts may result in a disproportionate impact on persons in protected classes, by effectively reducing access to pedestrian-friendly and transit-supportive areas as a result of disallowing housing that serves special-needs populations.

Group care developments that provide housing and 24-hour care can exist in a wide variety of housing types, from buildings that look very similar to detached single-family homes, to small complexes, to large multifamily developments with a variety of on-site care and services. Some group care facilities provide shared kitchens instead of complete in-unit kitchens. In these cases, resident rooms are not considered complete dwelling units, and are not counted as dwelling units when calculating residential density. Small and mid-sized group care developments that include some amount of accessory uses may not have a significantly greater impact on neighbors and the surrounding community than other types of multifamily residential development. Larger facilities that serve residents who require more services, or that have a high number of residents, may have a more substantial impact. Because group care can be so varied, it is difficult to make an accurate generalization about the level of impact these uses are likely to have.

To affirmatively further fair housing, conform to best practice recommendations, and adhere to the spirit of state law encouraging the equitable distribution of housing, staff recommends allowing group care in those land use districts that allow residential development. Table 2 contains the full list of land use districts where staff recommends residential group care be allowed.

In order to mitigate the potential impact of more intensive use as a result of 24-hour care and service provision for larger group care facilities, staff recommends allowing group care in lower-density residential districts (e.g., R-5, R-6, and possibly R-9) through a Type III review process that allows more consideration of potential community impacts. Discussion of the process types that may be considered for group care uses in different land use districts is continued below.

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<sup>6</sup> As defined in ORS 443.400

4) *What development review procedure should be used to process group care development applications?*

Washington County development applications are processed under one of three primary procedure types:

- Type I: Administrative
- Type II: Administrative with notice
- Type III: Quasi-Judicial

In general, Type I is the simplest process, with the lowest fees and least discretion, and Type III is the most complex, with the highest fees and greatest discretion. Decisions on Type I and II applications are issued by the LUT Director, with recommendations through the staff report, and decisions on Type III applications are issued by the Hearings Officer. Type III procedures also include longer public comment periods and can provide more opportunities for community members to address concerns about potential development—though it should be emphasized that land use decisions must still be based on fact-based concerns and clear and objective standards, regardless of procedure type to comply with fair housing law and state requirements for needed housing. The flow chart on the following page provides more detail about Type II and Type III procedures.

Currently, the CDC allows *detached* housing through a Type I or II process in most residential districts, and *attached* housing through a Type II process in all residential districts (except R-5.) These land use districts have residential density minimums and maximums, as well as minimum lot size requirements that apply to most development applications.

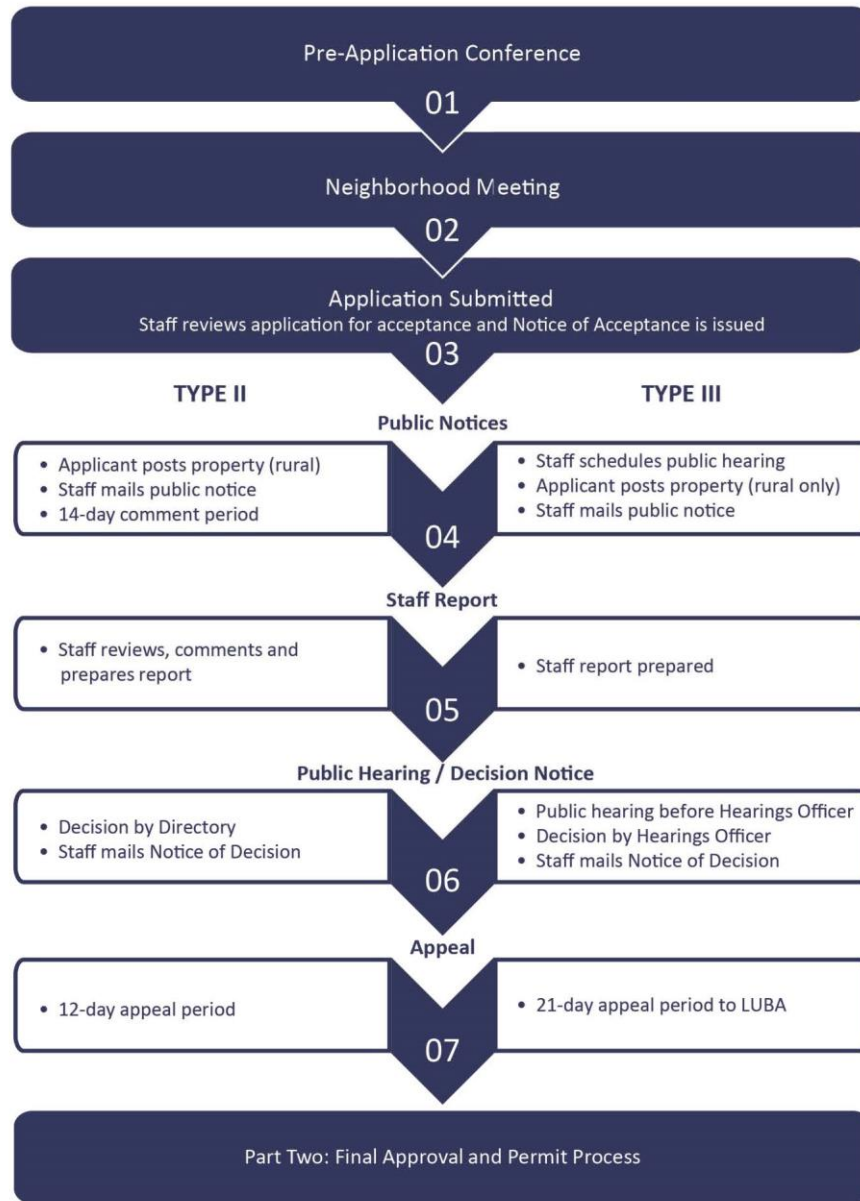
In contrast, most types of group care are currently allowed through a Type III process in most residential districts. Some types of group care (Convalescent Homes, Home for Aged, and Retirement Housing Community) are allowed in Transit-Oriented residential districts through a Type II process and in North Bethany residential districts through a Type III process. Other types (Detention Facility, Resident Care Facility) are not currently allowed in Transit-Oriented residential districts, but are allowed in North Bethany residential districts through a Type II process. The process type required for group care in different land use districts is summarized in Table 2.

Requiring one type of group care to go through a more intensive and costly<sup>7</sup> development application based on the resident characteristics may not comply with fair housing laws. Further, requiring group care to go through a Type III process when other similar types of residential development are subject to a Type II process may not comply with fair housing best practice recommendations. Fair housing best practices suggest that group care and other housing types that serve protected classes should ideally be evaluated using the same process as any other residential development with the same physical characteristics.

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<sup>7</sup> Special Use Type II application fee \$2,803, Special Use Type III application fee \$6,092

## Washington County, OR - Land Development Process



[www.co.washington.or.us/currplan](http://www.co.washington.or.us/currplan)

**Figure 1**

In addition, the Type III process currently includes denial criteria for developments within the Urban Growth Boundary (CDC 403-3.1). These criteria, as applied to residential group care, may not conform to state requirements for clear and objective standards for needed housing. Denying a development application for group care using criteria in CDC 403-3.1 may also violate ORS 197.670, which prohibits denying an application for residential homes or facilities in locations that allow residential uses.

A recent Hearings Officer Final Order<sup>8</sup> for Luke-Dorf's Planned Development application (Casefile No. 17-426-PD/D(R)/AMP) explicitly found that the standards in CDC 403-3.1 cannot serve as a basis to deny applications for needed housing development because those standards are not clear and objective. ORS 197.307(6) states that local jurisdictions may only apply subjective standards in the event that an alternative clear and objective development approval path is available. The County's development code currently includes only one development application path for all types of group care. Requiring these developments to use a Type III process that includes consideration of the denial criteria in CDC 403-3.1 may violate ORS 197.307(4), in addition to the state and federal laws discussed above.

To comply with federal fair housing laws and state law requirements, justification for requiring a Type III process and the approval criteria for group care should be based on reasonable, fact-based, and objective concerns about impacts of the development on the surrounding community. As discussed above, group care developments can exist in a wide variety of forms. Some may have similar impacts to other multifamily development with accessory uses, while others may include more intensive on-site services for care and treatment of residents.

Reducing development barriers to group care by allowing these uses through a Type II procedure in areas designated for higher-intensity uses may more effectively affirmatively further fair housing and increase housing options for Washington County residents that need housing and services, and better comply with state and federal law. In order to allow more discretion for evaluating and mitigating potential development impacts in areas with less intense land uses, allowing group care through a Type III procedure in R-5, R-6, and R-9 land use designations may be reasonable. However, to comply with state law requiring clear and objective standards for needed housing, these development applications may need to be exempt from the additional denial criteria in CDC 403-3.1, which do not meet the requirement for clear and objective standards for needed housing development.

*5) Should there be a process to explicitly allow temporary shelter operations?*

Group care and specialized housing is not the only type of shelter that serves people who may be members of protected classes. In Washington County, as in most other locations, persons who are members of protected classes are disproportionately homeless. People with disabilities and people who may be subject to discrimination based on sexual orientation and/or identity are particularly likely to be at increased risk of homelessness.

Places of worship and other institutions occasionally wish to provide temporary shelter for homeless persons during inclement weather (e.g., severe weather shelters) or on a short-term basis as part of a service program (e.g., Family Promise<sup>9</sup>). These locations may also be used for temporary shelter operations during emergencies. However, Washington County's CDC does not offer a clearly-defined process for establishing short-term or temporary shelters for homeless persons in locations that are not primarily intended for residential use.

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<sup>8</sup> [http://washims.co.washington.or.us/casedocs/17/00426/Notice of Decision of The Hearings Officer.pdf](http://washims.co.washington.or.us/casedocs/17/00426/Notice%20of%20Decision%20of%20The%20Hearings%20Officer.pdf)

<sup>9</sup> <http://familypromisewashingtoncountyoregon.org/>



Absent clear direction in the CDC, staff has suggested that it may be possible to allow permanent shelter operations as a Day Care Facility (Group Care 430-53.2). However, this would require a Type II process, including a 120-day approval timeline and applicable fees (currently over \$4,000). Requiring a Type II process for intermittent and temporary shelter operations could be a major obstacle to organizations (especially not-for-profit or volunteer organizations) who wish to provide shelter. Establishing a simpler process for explicitly allowing short-term shelter operations as a temporary use could increase safe shelter options for homeless households or persons impacted by emergencies, and affirmatively further fair housing options in Washington County.

The type of temporary use currently allowed by the CDC that most closely aligns with intermittent and/or temporary shelter operations is the Type II temporary living accommodations where there is a finding of health hardship (CDC 430-135.2). While health hardship living accommodations are not exactly similar, this section does demonstrate that the County is occasionally willing to allow use of nonresidential structures as temporary dwelling units. CDC Section 430-135.2 A. (5)(b) states that converted existing structures may be used as temporary housing when the applicant demonstrates that there is “no reasonable housing alternative,” and the granting of the permit will:

- (a) Not be incompatible with adjacent properties; and
- (b) Not cause adverse environmental conditions in the immediate vicinity and will relate only to property under control of the applicant.

Although homelessness alone may not constitute an immediate health hardship, homelessness is an undesirable and unhealthy option, especially for vulnerable individuals such as elderly people and children. Based on Point-In-Time reports, Washington County does not have sufficient shelter capacity to prevent households from becoming unsheltered. The 2017 Point-in-Time Sheltered and Unsheltered Count<sup>10</sup> included 268 unsheltered households (369 persons, including 75 children), with 109 households (175 persons) sheltered in emergency, transitional, or Safe Haven shelters. The need for additional shelter, including temporary shelter operations, is clear.

Family Promise of Washington County operates the Interfaith Hospitality Network, using community resources to assist homeless families with lodging and services to address their challenges and regain stable housing. This program, like other, similar operations, uses places of worship as temporary lodging. The program has also recently considered using other institutional spaces, such as community centers, as temporary lodging options.

County staff has received questions about temporary shelter operations from religious institutions in partnership with Family Promise, including inquiries from members of the Planning Commission and the Board of Commissioners. Shelter operators have indicated a desire for an option that allows the County to explicitly recognize these operations through a less challenging process than a full Type II land use development application.

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<sup>10</sup> [https://www.co.washington.or.us/Housing/EndHomelessness/upload/2017-PIT-Federal-Sheltered-and-Unsheltered-PIT-2017\\_All-Populations.pdf](https://www.co.washington.or.us/Housing/EndHomelessness/upload/2017-PIT-Federal-Sheltered-and-Unsheltered-PIT-2017_All-Populations.pdf)

Allowing temporary shelter operations through a Type II Temporary Use process that allows shelter operations for a limited period of time (e.g., less than twelve weeks total per year, for up to two years) may be a reasonable option. A Type II Temporary Use would require some documentation of conditions for temporary residents and provide public notice and opportunities for public comment, with a simpler application process and lower cost for the applicant. Current fees for a Type II Temporary Use are about \$1600 (versus over \$4,000 for a Type II development review). This process could also ensure that temporary shelters provide reasonable access to necessary amenities such as restrooms and safety features such as emergency exits. A temporary use process that explicitly allows these types of shelter activities could provide protection and certainty for shelter operators, homeless families, and neighbors, and increase shelter options available for homeless households in Washington County.

### **Summary**

Sections of the Community Development Code (CDC) may not fully comply with state law and fair housing recommendations. Amendments to better comply with fair housing best practices and state and federal law include: updates to definitions of group care and consolidation of group care types, expanding locations that allow group care, and modifications to the type of development process used to approve group care developments.

In addition, and related to fair housing, current CDC regulations do not clearly allow temporary shelter operations in non-residential buildings (such as schools or places of worship). The County has received inquiries regarding if and how the County could allow temporary shelter activities in some locations, without requiring a full development application. Staff recommends allowing temporary shelter operations in institutional buildings not typically used as a residence as a Type II temporary use.

### **Recommendation**

Staff recommends additional research and outreach to develop an ordinance to:

- Update CDC Section 430-53 (Group Care) to:
  - Make general updates and remove outdated terminology
  - Expand the definition of Resident Care Facility to include all types of group care that require licensing or certification, and include 24-hour care
  - Amend Detention Facilities as Secure Housing Facilities for persons under judicial detainment with 24-hour supervision
  - Update Day Care Facilities and Retirement Housing Communities as appropriate
- Add language to articulate that a residential development that is not a licensed Resident Care Facility is not classified or regulated as group care under the CDC
- Allow all types of group care in land use districts that allow residential uses
- Allow group care through a Type II procedure in most land use districts, and through a Type III procedure in R-5, R-6, and R-9 districts.
- Add a Type II Temporary Use for temporary shelter operations in institutional buildings not typically used as residences.