

Community Development Division Director's Administrative Code Interpretation

File No. MIS20-0014

Date Issued: December 22, 2020

Subject: Hotels, Supportive Housing, and Assisted Living Facilities

Code References: Title 15, BUILDINGS AND CONSTRUCTION
Title 18, ZONING

Zoning Designation(s): The subjects and decisions of this Interpretation apply in all referenced zoning designations.

Background

Within the last several months several Hotels in the region have been purchased, leased, or rooms rented with the intent to utilize all, or a portion of rooms as Supportive Housing that serves individuals experiencing homelessness, for individuals to quarantine as a result of exposure to COVID 19, or other similar purposes. The purpose of this interpretation is to articulate the difference between Hotels, Supportive Housing, and Assisted Living Facilities under the zoning code by memorializing how Hotels may be used, the method for converting a Hotel to Supportive Housing or an Assisted Living Facility, and where and how Hotels, Supportive Housing, and Assisted Living Facility may be established within Auburn.

Findings/Interpretation:

1. Zoning and Land Use Code related Findings
 - a. ACC 18.02.030 "Purpose" (of the zoning code) in Subsection A The purpose of this title is to implement the city's comprehensive plan. This title will be used to further the growth and development of the city consistent with the adopted comprehensive plan and its implementing elements. This title will also further the purpose of promoting the health, safety, morals, convenience, comfort, prosperity, and general welfare of the city's population and to prevent and abate public nuisances.
 - b. ACC 18.02.030 "Purpose" (of the zoning code) in Subsection C provides guidance and intent for establishing zoning designations. The purpose for establishing zones includes regulating location, height, and use of buildings, use of land, transition between uses, setbacks, parking, and a variety of other standards and features on private and public property. It is also stated that zones and regulations are necessary for considering the character, suitability of specific uses, the need for such uses, the common rights and interests of all parties within the zone as well as those of the general public to further the growth and development of the city consistent with the adopted comprehensive plan.

- c. ACC 18.02.040, "Applicability" (of the zoning code) in Subsection B states that no use shall be conducted, and no building, structure and appurtenance shall be erected, relocated, remodeled, reconstructed, altered or enlarged unless in compliance with the provisions of this title, and then only after securing all permits and approvals required hereby. It shall be unlawful to build or use any building or structure or to use premises in the city for any purpose or use other than the uses listed as being permitted in the zone in which such building, land, or premises is located.
- d. ACC 18.02.120, "Permitted land uses established" in Subsection C.6 establishes that ". . . to determine if a proposed use not specifically listed in any zone use table is allowed within a specific zone", an interpretation is appropriate. This section also establishes the authority to make an interpretation utilizing the purpose and intent of the zone, comprehensive plan policy guidance, and similarity to allowed uses. However, these land uses are specifically defined in the city's code and therefore are "listed" and not "unlisted".
- e. ACC 18.04.490 establishes a definition for "Hotel." It states that a Hotel "means any building containing six or more guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests, and includes additional amenities such as banquet halls and meeting facilities. Hotels include but are not limited to motels and extended stay Hotel accommodations. Hotels do not include renting of rooms, boardinghouses, or bed and breakfast accommodations."
 - i. The subsequent section, ACC 18.23.030, identifies the uses that are allowed within each of the commercial and industrial zoning designations. It states that Hotels are permitted in the C-1, C-2, C-3, and C-4 commercial zones, are allowed in the M-1 and M-2 industrial zones when an administrative use permit has been secured, and are prohibited in the C-N commercial zone.
 - ii. The subsequent section, ACC 18.07.020, identifies the set of uses that are allowed within each of the residential zoning designations. While Hotels are a specifically defined land use in the zoning code, they are not a listed land use type within the Chapter 18.07, addressing the residential zoning designations and therefore they are not a use that is allowable within a residential zone.
- f. ACC 18.04.891 provides a definition for "Supportive Housing." It states that Supportive Housing "means a multiple-family dwelling owned or sponsored by a nonprofit corporation or government entity, designed for occupancy by individual adults that are either (A) homeless or at risk of homelessness; (B) are experiencing a disability that presents barriers to employment and housing stability; or (C) generally require structured supportive services to be successful living in the community; is permitted at a greater unit density than otherwise allowed within a particular zone; and is intended to provide long-term, rather than transitional, housing. Long-term housing is approximately longer than two years, whereas transitional housing is no more than two years. Supportive Housing is not a communal residence."
 - i. The subsequent section, ACC 18.23.030, identifies the uses that are allowed within each of the commercial and industrial zoning designations. While Supportive Housing is a defined use in the zoning code, it is not a use that is listed within the commercial and industrial use tables and is therefore not an allowable use within a commercial or industrial zones.

- ii. The subsequent section, ACC 18.07.020, identifies the uses that are allowed within each of the residential zoning designations. It states that Supportive Housing is permitted in the R-16 and R-20 residential zoning designations and that it is prohibited in all other residential zones. It also provides certain zoning development standards which apply.
 - g. ACC 18.04.125 provides a definition for “Assisted Living Facility.” It states that Assisted Living Facility “means a combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living. An establishment with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential. An Assisted Living Facility is not a communal residence.”
 - i. The subsequent section, ACC 18.07.030, identifies the uses that are allowed within each of the residential zoning designations. It states that Assisted Living Facilities are permitted in the R-C, R-1, R-16, and R-20 residential zones, are allowed in the R-10 zone when an administrative use permit has been secured, and are prohibited in the R-5 and R-7 residential zones.
 - ii. The subsequent section, ACC 18.23.030 identifies the set of uses that are allowed within each of the commercial and industrial zoning designations. It states that Assisted Living Facilities are permitted in the C-1, C-2, and C-3 commercial zones that they are allowed in the C-4 zone when a conditional use permit has been secured, and that they are prohibited in the C-N, M-1 and M-2 zones.
 - iii. The Washington State Department of Social and Health Services (DSHS) provides additional guidance on what constitutes Assisted Living Facilities. DSHS states that an Assisted Living Facility “means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with Chapter 388-78A WAC to seven or more residents after July 1, 2000.”
2. Building Code related Findings
- a. Pursuant to Section 310.3 of the 2015 International Building Code (IBC), Hotels with transient occupants are listed as a “Residential Group R-1” Occupancy Classification.
 - b. Pursuant to Section 310.4 of the 2015 IBC, congregate living facilities, dormitories, and Hotels with non-transient occupants are listed as a “Residential Group R-2” Occupancy Classification.
 - c. Pursuant to Section 308.3 of the 2015 IBC, structures and buildings designed for more than 16 persons (excluding staff) who reside on a 24-hour basis in a supervised environment and that receive custodial care are listed as an “Institutional Group I-1” Occupancy Classification.
 - d. Pursuant to Section 105.1 of the 2015 IBC, any owner who intends to change the occupancy of a building shall first make application to the building official and obtain the required permit.

- e. Pursuant to Section 111 of the 2015 IBC, a change in the existing use or occupancy classification of a building shall not be made until the building official has issued a certificate of occupancy.
- f. Section 203 of the 2015 IBC defines a Change of Occupancy as “a change in the purpose or level of activity within a building that involves a change in application of the requirements of this code.”

Analysis and Conclusions

1. General

- a. Chapter 18.04 ACC provides discrete and different definitions for the terms: Hotels, Supportive Housing, and Assisted Living Facilities.
- b. Hotels and Assisted Living Facilities as defined are specifically listed in the land use tables for commercial and industrial zones found in Chapter 18.23 ACC. Supportive Housing and Assisted Living Facilities as defined, are listed in the land use tables for residential zones found in Chapter 18.07. This is important because it leaves no doubt that each type of use was intentionally and purposefully established as allowed or not allowed within the various commercial and residential zoning designations.
- c. When making interpretations of the land uses that are allowed within the various zoning designations, the Director is bound to utilize the principals of Section 18.02.120 ACC. This section of code provides guidance on how to evaluate “unclassified uses”. Hotels, Supportive Housing, and Assisted Living Facilities are not unclassified uses. They are classified uses that are specifically listed in the commercial and residential land use tables. The omission of a classified use within one of these tables cannot be interpreted in any other way than to conclude that it was intentionally and purposefully left out of a table because it is not an appropriate use within a commercial or residential zone. Therefore, the decision rendered under this interpretation document affirms the following facts: (1) that the zoning code clearly intends that Hotels are permissible within some commercial zoning designations but intends to prohibit them within any residential zoning designation, (2) that Supportive Housing is intended to be permissible within some residential zoning designations but are not to be permitted within any commercial zoning designation, and (3) that Assisted Living Facilities may be permitted within some commercial zoning designations and some residential zoning designations.

2. Supportive Housing. Supportive Housing is listed as a permitted use only in the R-16 and R-20 residential zoning designations. The definition of Supportive Housing provides a clear description of its various components.

- a. It is a multiple family dwelling that is owned or sponsored by a non-profit corporation or government entity.
- b. It serves adult individuals that are experiencing or facing homelessness or barriers to accessing housing and housing stability.
- c. It includes structured supportive services.
- d. It is at a greater density than what is typically allowed in the underlying residential zone.

- e. And it provides long term housing (beyond 2 years).
3. Hotels. Hotels are listed as a permitted use only in the C-1, C-2, C-3, and C-4 commercial zones. They are also listed as allowed with an administrative use permit in the M-1 and M-2 industrial zones.
 - a. Hotels are privately owned and operated for profit enterprises. They function differently than Supportive Housing. They provide transitional, short-term housing, and do not require on site supportive services.
 - b. Additionally, a Hotel is not a multiple family dwelling. Multiple family dwellings are independent living units with their own kitchen facilities where occupants tend to live for longer periods of time.
 - c. Based on the adopted Valley Regional Fire Authority (VRFA) Impact fees, a Hotel has an impact on fire service that equates to \$0.42 per square foot which is one of the lowest fire impact fees adopted by VRFA. By contrast, Supportive Housing generates a fire impact fee that is between 2 and 5 times the amount of a Hotel. This is because Supportive Housing results in a much greater emergency service demand than a Hotel.
 4. Assisted Living Facility. Assisted Living Facilities are listed as a permitted use only in the R-C, R-1, R-16, R-20, C-1, C-2, and C-3 zones. They are also listed as an administrative use permit in the R-10 zone and a conditional use permit in the C-4 zone.
 - a. An Assisted Living Facility provides a combination housing, support, assistance and health care services that serve the individual needs of residents who require help with daily living. The facility has centralized amenities for dining, food preparation, and recreation.
 - b. Assisted Living Facilities are defined by Washington State and include a particularly important passage within the written description provided by DSHS. They are "...for the express or implied purpose of providing housing, basic services, *and assuming general responsibility for the safety and well-being of the residents.*" In order to be considered an Assisted Living Facility the owner or operator of the facility will assume responsibility for the safety and well-being of the residents. This portion of the definition is important because it means that an Assisted Living Facility does not offer independent living arrangements. In order to qualify as an Assisted Living Facility 24/7 care must be provided to each resident. Assisted Living Facilities are also specifically licensed by the State of Washington. Per the DSHS website, Assisted Living Facilities in addition to providing daily living assistance to the elderly, typically specialize in serving people with mental health problems, developmental disabilities, or dementia and offer nursing services.
 - c. An Assisted Living Facility is not listed in the VRFA impact fee schedule. But other similar uses are charged between 2 and 5 times the amount charged to a Hotel. This fact supports the conclusion that an Assisted Living Facility has a greater public emergency service demand than a Hotel.
 5. International Building Code Relevance. The International Building Code (IBC) establishes separate occupancy classifications for Hotels with transient occupants, congregate living facilities with non-transient occupants, and buildings that provide 24/7 supportive services for occupants that reside within the building.

- a. Where a Hotel is proposed to be used for purposes other than a Hotel, a building permit application must be submitted in order to evaluate the change in use and/or the change in occupancy.
- b. The building official has the authority to evaluate the change and determine the appropriate occupancy classification. If the occupancy classification is determined to be different than the current classification, the building official has the authority to determine appropriate modifications that are necessary to the building to serve the new occupancy classification.
- c. Under the definition of an R-1 occupancy classification occupants are considered transient. This means that occupants are remaining in a room for a short period of time.
- d. Under the definition of an R-2 occupancy classification occupants are considered non-transient. This means that occupant are remaining in a room for an extended period of time.
- e. Under the definition of an I occupancy classification, occupants remain on site 24/7 and on-site supervisory or custodial services are added to serve the residents.

Decision

1. Operating a Hotel as a Hotel, or operating a building designed and constructed to be a Hotel as any other type of use, first requires a City of Auburn business license to have been applied for, approved, and issued. Governmental entities and non-profits are not exempt from this requirement as evidenced by the requirements for the School District to have a business license and all non-profit agencies that have an office located in Auburn.
2. Supportive Housing, as it is defined in ACC 18.04.891, is prohibited within the C-N, C-1, C-2, C-3, C-4, commercial zoning designations and M-1 and M-2 industrial zoning designations. Within residential zones, it is only permitted in the R-16 and R-20 residential zoning designations. The R-16 and R-20 zones are the only zoning designations within the City of Auburn where Supportive Housing is permissible. Through its definition and the corresponding zoning use tables, the City intends Supportive Housing to be a residential land use in a residential setting and not allowed within commercial zones.
3. Assisted living facilities, as they are defined in ACC 18.04.125, are prohibited in the R-5 and R-7 residential zoning designations. They are only permissible in the R-C, R-1, R-16, R-20, C-1, C-2, C-3 and C-4 zoning designations (and only as a conditional use in the C-4 zone). Assisted Living Facilities are a very specific type of use that requires a license issued by Washington State and are not to be construed as something broader than the definitions and guidance contained in the Auburn City Code and by DSHS.
4. Conversion of a Hotel to Supportive Housing:
 - a. Title 18 (zoning code) allows Hotels in some commercial zones yet prohibits Supportive Housing in all commercial zones. Within a commercial zone, Title 18 prohibits the conversion of a Hotel (or any other use that either exists or is allowed within any commercial zoning designation) to Supportive Housing because

Supportive Housing is a prohibited use. Supportive housing is only allowed in the R-16 and R-20 zones, however, Hotels are prohibited in these zoning designations.

- b. If a non-profit or governmental entity purchases or leases a Hotel and intends to activate supportive services that benefit the occupants, by this action, the use of the building is changing from a Hotel to Supportive Housing. Pursuant to Title 18, this activity is not permitted in a commercial zone.
 - c. Converting a Hotel to Supportive Housing is not allowed without an approved building permit that authorizes a change in the occupancy classification. While this request may be approvable under the IBC the request will be denied for failure to comply with Title 18 under authority of Section 105.4 (Validity of Permit) of the IBC.
5. Conversion of a Hotel to an Assisted Living Facility:
- a. In the C-1, C-2, C-3 and C-4 commercial zones, Title 18 would allow the conversion of an existing Hotel to an Assisted Living Facility when licensed by Washington State DSHS and all other requirements met.
 - b. Converting a Hotel to an Assisted Living Facility (or any other use that is different than a Hotel, irrespective of how it is categorized), will require a building permit application and approval for purposes of evaluating a change in occupancy classification. Based on that review, building or site improvements may be triggered as well as impact fees and utility system development charges required.
6. When evaluating whether a Hotel is changing use, the City will consider, at a minimum, the following factors:
- a. Ownership: Does a governmental entity or non-profit own or control the property.
 - b. Services: Are services being provided that are not customarily associated with a Hotel.
 - c. Transient vs. Non-Transient: Are occupants present at the site on a short term basis (transient) or are they present for longer durations (non-transient).
 - d. Occupants: Is it the intent of the owner to serve individuals experiencing homelessness, individuals needing to be quarantined, or other populations that require support.
 - e. Public Service Demand: Is there a likelihood that police, fire and other community services will experience an increase in demand.
 - f. Building safety: Based on the proposed operation does the building and site meet all current building, fire and safety codes.
7. It is a false and incorrect conclusion to assume that a Hotel is still a Hotel when it has been purchased, leased, operated or sponsored by a non-profit or governmental agency for the purposes of housing individuals that require supportive services. This series of actions fundamentally changes the land use activity of the building and site.
8. Under the IBC, converting a Hotel to a land use that offers long term housing to occupants is a change in occupancy classification from R-1 to R-2. Providing on-site support to the occupants changes the occupancy from R-1 to I. A building permit application shall be submitted to and approved by the building official prior to changing the use of a Hotel.

9. Approval of the business license is also required before initiating the use. In accordance with section ACC 5.10.040 (General business license required), "It is unlawful for any person to operate or physically conduct any business within the city without having first obtained a general business license."
10. Moving occupants from one room to another as an attempt to classify occupants as transient is an attempt to circumvent the intent of the International Building Code. Non-transient shall be interpreted to mean that the occupant remain on the property for an extended period of time, irrespective of which room they occupy. This practice will not be accepted as a means of avoiding a change in occupancy classification.
11. Requiring occupants to check out in the morning and re-check in later in the day as an attempt to show that occupants are not on site 24/7 and/or that they meet the definition of transient is an attempt to circumvent the intent of the International Building Code. This practice will not be accepted as a means of avoiding a change in occupancy classification.
12. This decision does not preclude a private, for profit Hotel proprietor from renting out Hotel rooms to individuals experiencing homelessness (or anyone else). It is not the City's intent to interrupt a private, for profit Hotel proprietor's ability to obtain funds from individuals, non-profit agencies, or governmental entities who seek to pay for a homeless individual (or anyone else) to stay at a Hotel as a transient guest.

Signature: _____


Jeff Tate, Director

Date Issued: _____

December 22, 2020

Appeals

Any person aggrieved of this decision may file an appeal with the Planning and Development Director within fourteen (14) days of mailing of the City's written code interpretation. This decision was rendered on December 22, 2020. The appeal must be filed at the Planning and Development Department at second floor, 1 East Main Street, Auburn, WA 98001 prior to 5:00 PM on or before January 6, 2021. The appeal must be accompanied with justification for the appeal required per ACC 18.70.050.E and include the required filing fee payable to the City of Auburn. Once filed, a hearing on the appeal is scheduled with the Hearing Examiner as prescribed in ACC 18.70.050.B.

Code References

ACC 18.02.060 Rules for administrative interpretations.

- A. The planning director shall be authorized to interpret the meaning of words, phrases and sentences which relate to the determining of uses permitted in the various zones, approval or disapproval of development plans, or other related zoning actions. Any interpretations regarding implementation of this title shall be made in accordance with the intent or purpose statement of the specific regulation and the comprehensive

plan. Life, safety and public health regulations are assumed to prevail over all other regulations.

- B. The planning director may authorize uses in a zone other than those which are listed, if the planning director determines the use is consistent with the intent of the zone and is of the same general character of the uses permitted within the zone. Further guidance on administrative interpretations of land uses can be found in ACC 18.02.120.
- C. Administrative interpretations may be appealed to the hearing examiner as prescribed in Chapter 18.70 ACC.
- D. Administrative interpretations made by the planning director shall be documented, made available for public review, and docketed for inclusion to this title, when consistent with the title format and level of detail required. The city shall incorporate administrative interpretations upon approval of the legislative authority.