THE CONGREGATE LOOPHOLE AND WHY IT MUST BE CLOSED SOON

The “congregate loophole” since 2010 has allowed in multifamily zoned neighborhoods “congregate housing facilities” with unlimited numbers of bedrooms and without adequate kitchens, dining, living rooms, laundry rooms, or other places for the residents to congregate. This loophole must be closed soon, first and immediately by an emergency ordinance and then by permanent amendments to the Building Code and the Land Use Code.

The beginnings of the congregate loophole were in Ordinance 117202 (passed unanimously by the City Council in 1994) which amended the Land Use Code. The amendment stated that congregate residences are “permitted outright in all multifamily zones,” and defined them as “nine or more nontransient persons not constituting a single household.” However, a project that in theory is allowed by the Land Use Code cannot be built or occupied unless the Building Code lists its type of occupancy as among the allowed residential uses. Once the Building Code defines something as a residential use, the Land Use Code (SMC 23.45.504) permits it outright in multifamily zones.

The congregate loophole began to open when sometime in the 1990s the Building Code was amended to define as a residential use those congregate housing projects with 15 or fewer units. But the loophole was fully opened in 2010 when Ordinance 123384 (excerpted below) amending the Seattle Building Code by, for the first time, defining congregate living facilities with 16 or more occupants as a residential use (in the Building Code’s R-2 residential use category). This 2010 change in the Building Code, paired with the 1994 Land Use Code amendment, for the first time allowed congregate projects of any size.

The meaning of the above is that without the slightest open discussion in full City Council or in the committee that recommended this change, a unanimous City Council in 2010 made it possible to build or operate in any multifamily zone a congregate housing facility with no limit on the number of bedrooms. Plus, neither in the Land Use Code nor the Building Code did the City Council impose any requirements for on-site management of congregate living facilities, for common facilities or services, or for their occupants to be those with special needs such as is required for nursing homes or assisted living, residential uses which are separately regulated by the Building Code and the Land Use Code.

Formerly, congregate housing projects of 16 bedrooms or more with or without these features were not defined as a residential use and could be built and operated only on college campuses, where the Major Institutions Ordinance (overriding the Land Use Code) allows colleges and universities to build them. These dormitories, fraternities, and sororities generally have ample on-site management and large kitchens, dining halls, meal plans, living and study rooms, and other common facilities and services.

Under the current Land Use Code in the definitions for “residential use” (SMC 23.84A.032 "R"), a "congregate residence" is defined only as “a use in which rooms or lodging, with or without meals, are provided for nine or more non-transient persons not constituting a single household.” The Building Code defines “Congregate living facilities” as follows: “A building or part thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.” In both cases, the loophole is complete—no real standards or limitations that can assure that congregate housing has any real congregate features.

Because congregate housing is not defined as constituting even one dwelling unit, it escapes thresholds for design review, housing density, housing targets, or the citizen right to notice, comments, and appeal
under the State Environmental Policy Act. Yet congregate housing receives special treatment in the allocation of residential parking zone permits which normally are limited by the number of dwelling units. And while sold as “affordable,” congregate projects are not suited for those on low incomes or for families because there are not sufficient kitchen, dining, or laundry facilities.

Below is an excerpt of the 2010 legislation that most seriously opened up the congregate loophole. That loophole must be closed soon, first and immediately by an emergency ordinance and then by permanent amendments to the Building Code and the Land Use Code.

The above analysis benefited greatly from legislative research by Dennis Saxman. Research is not easy, as the City government has not digitized or posted on its web site the ordinances that passed prior to the mid 1990s. Also, past copies of the Building Code are available only on paper, and the current on-line version is user-unfriendly and available only on the web site of the Department of Planning and Development, not on the City Clerk’s web site where other parts of the Seattle Municipal Code (SMC) are found. Most welcome are comments on anything in this document, or help in securing the needed changes. Contact Chris Leman, cleman@u.oo.net or 206-322-5463.

Council Bill Number: 116934  
Ordinance Number: 123384

Status: Passed  
Date passed by Full Council: August 16, 2010  
Vote: 8-0 (Excused: Godden)  
Date filed with the City Clerk: August 23, 2010  
Date of Mayor's signature: August 23, 2010

Date introduced/referred to committee: July 26, 2010  
Committee: Built Environment  
Sponsor: CLARK

Members of the Committee on the Built Environment: Sally Clark (Chair); Tim Burgess (Vice Chair); Sally Bagshaw (Member); Tom Rasmussen (Alternate)

References/Related Documents: Related: Clerk File 310942; Clerk File 312313 Partially repealed by Ordinance 124273

Text

AN ORDINANCE relating to Seattle Building Code, amending Section 22.100.010, and adopting by reference Chapters 2 through 28, Chapters 31 through 35 of the 2009 International Building Code; and amending certain of those chapters; and adopting a new Chapter 1 for the Seattle Building Code related to administration, permitting and enforcement, a new Chapter 29 related to plumbing systems, and a new Chapter 30 related to elevators and conveying systems; and repealing Sections 2-30 of Ordinance 122528 and Sections 2-13 of Ordinance 122773.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:
SECTION 310

RESIDENTIAL GROUP R

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the International Residential Code in accordance with Section 101.2. Residential occupancies shall include the following:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient) with more than ten occupants

Congregate living facilities (transient) with more than ten occupants

Hotels (transient)

Motels (transient)

(((Congregate living facilities (transient) and with 10 or fewer occupants are permitted to comply with the construction requirements for Group R-3.)))

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses

Boarding homes as licensed by Department of Social and Health Services under Chapter 388-78A WAC

Boarding houses (nontransient) with more than 16 occupants

Congregate living facilities (nontransient) with more than 16 occupants

Convents

Dormitories

Fraternities and sororities

Hotels (nontransient)

Live/work units

Monasteries

Motels (nontransient)

Residential treatment facilities as licensed by Washington State Department of Health under Chapter 246-337 WAC
Vacation timeshare properties

((Congregate living facilities with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.))

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, (R-4) or I, including:

Buildings that do not contain more than two dwelling units.

Adult care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.

Boarding houses (nontransient) with 16 or fewer occupants.

Boarding houses (transient) with ten or fewer occupants.

((Child care facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.))

Congregate living facilities (nontransient) with 16 or fewer occupants.

Congregate living facilities (transient) with ten or fewer occupants.

Adult family homes, family child day care homes, and adult care and child care facilities that are within a single-family home are permitted to comply with the International Residential Code.

Foster family care homes licensed by Washington State are permitted to comply with the International Residential Code, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

((R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff. Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code or shall comply with the International Residential Code provided the building is protected by an automatic sprinkler system installed in accordance with Section 903.2.7.))

[W] 310.2 Definitions. The following words and terms shall, for the purposes of this section and as used elsewhere in this code, have the meanings shown herein.

ADULT FAMILY HOME. A dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

BOARDING HOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

CHILD DAY CARE. For the purposes of these regulations is the care of children during any period of a 24-hour day.
CHILD DAY CARE HOME, FAMILY. A child day care facility, licensed by the state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of 12 or fewer children, including children who reside at the home.

CONGREGATE LIVING FACILITIES. A building or part thereof that contains sleeping units where residents share bathroom and/or kitchen facilities.

DORMITORY. A space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

PERSONAL CARE SERVICE. The care of residents who do not require chronic or convalescent medical or nursing care. Personal care involves responsibility for the safety of the resident while inside the building.

(( RESIDENTIAL CARE/ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This classification shall include, but not be limited to, the following: residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.))

TRANSIENT. Occupancy of a dwelling unit or sleeping unit for not more than 30 days.