



MEMORANDUM

Date: August 5, 2009

To: Planning Commission

From: Dawn Nelson, Planning Supervisor
Dorian Collins, Senior Planner

Subject: **ZONING CODE AMENDMENTS FOR AFFORDABLE HOUSING (File ZON09-00005)**

RECOMMENDATION

Staff recommends that the Planning Commission provide direction on items not covered during the discussion on housing incentives at the meeting on this topic in May. This guidance will allow staff to incorporate these additional areas for study in the current scope of work to be completed in early 2010. Staff also suggests that the Planning Commission clarify its direction for the TL 10 subareas.

I. Housing Incentives

The Planning Commission provided direction on subject areas discussed in Enclosure 1 (the staff memo for the May 14th meeting) with the exception of the following:

- Totem Lake and Rose Hill Business Districts (see middle of page 5 of Enclosure 1)
 - Replacing the affordable housing *incentives* with *requirements* in these areas.
 - The chart in Enclosure 2 shows the magnitude of height increases that are provided as incentive for the creation of affordable housing in the TL and RH zones.
- Adding Affordable Housing Regulations (see page 6 of Enclosure 1)
 - Adding affordable housing incentives or requirements in multifamily and mixed use zones that do not currently have incentives in place.

Several options are available for the study of these additional housing incentives. The Planning Commission could either:

- Include the study of the Totem Lake, RHBD and all of the potential affordable housing amendments noted in Attachment 4 to Enclosure 1 in the current scope of study, or

- Include some combination of the additional housing incentives, or
- Postpone the study of any of these incentives until after the first round of changes, discussed at the meeting on May 14th is completed.

Staff is working on the analysis of the cost of providing affordable housing units relative to the value of the benefits that the City can provide. We anticipate bringing this information and a proposed work program for the package of housing tasks recommended by the Planning Commission to the September 24th meeting.

II. TL 10 – Stand-Alone Housing

When the City Council met last September to discuss possible opportunities for additional incentives for affordable housing, they agreed that expansions to the areas where “stand-alone” housing is permitted in the TL 10 subareas of Totem Lake should be explored. The Planning Commission discussed this topic at their meeting last May, but asked for additional background information before providing specific direction to staff.

Original Planning Commission Recommendation – Zoning

When the Totem Lake Neighborhood Plan was adopted, the TL 10B, TL C and TL 10D subareas were designated as Housing Incentive Areas (see Enclosure 3). Following Plan adoption, the Planning Commission moved forward with the development of regulations to implement the policies contained in the Plan.

The Planning Commission’s recommendation to the City Council included zoning regulations that expanded permitted uses in the new subareas TL 10B, TL 10C and TL 10D to include residential throughout the zones. The proposed regulations encouraged residential use, through an increase to maximum building height from 35’ to 55’, and included requirements for affordability in developments larger than 10 units.

City Council Adoption of Zoning Code Amendments

Economic conditions had shifted somewhat when the Zoning regulations for Totem Lake were considered by the Council, and Council members raised concerns about the need to preserve land for commercial (primarily office) development and to prevent displacement of commercial use with residential development. The Council addressed these concerns through studying the Parmac area (TL 10B-TL 10D) in particular, and by revising the recommendation from the Planning Commission. The regulations adopted by the Council allow residential use in these areas, but only when located within the westernmost parts of the zones, or when included in mixed use projects (see Attachment 5 to Enclosure 1).

Enclosures

1. Staff Memo to Planning Commission for 5/14/09
2. Height Increases as Affordable Housing Incentives in TL and RH Zones
3. Map of Affordable Housing Incentive Areas

cc: ZON09-00005
Arthur Sullivan, asullivan@bellevuewa.gov
Klaas Nijhuis, KNijhuis@bellevuewa.gov



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425.587.3225
www.ci.kirkland.wa.us

MEMORANDUM

Date: May 12, 2009

To: Planning Commission

From: Dawn Nelson, Planning Supervisor
Dorian Collins, Senior Planner

Subject: **ZONING CODE AMENDMENTS FOR AFFORDABLE HOUSING (File ZON09-00005)**

RECOMMENDATION

Staff recommends that the Planning Commission provide direction on key questions identified throughout the body of this memo. This input will allow staff to begin drafting code amendments for the Planning Commission to review in June.

OVERVIEW

At the March 26th meeting, staff presented an overview of this project to amend the City's affordable housing regulations and received input from the Planning Commission on the draft work program and public involvement component. The project has three primary elements:

- Replacing the affordable housing incentives with requirements in most, if not all, zones that currently provide incentives;
- Adding affordable housing incentives or requirements in multifamily and mixed use zones that do not currently have incentives in place; and
- Examining the limitations within the TL 10 subareas where "stand-alone" housing may be located.

This memo will address each of these elements. Each section below provides background information and highlights questions where Planning Commission input is requested.

I. REPLACING AFFORDABLE HOUSING INCENTIVES WITH REQUIREMENTS

On April 13, 2009, Governor Gregoire signed Engrossed House Bill 1464, which made some minor amendments to RCW 36.70A.540 related to affordable housing incentive programs (see Attachment 1). Subsection 3 of the statute requires cities that are enacting or expanding affordable housing incentive programs to "... provide increased residential development capacity

through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives" (RCW 36.70A.540(3)(b)). Subsection 3(d) authorizes cities to adopt mandatory affordable housing requirements to address the need for increased residential development.

The map in Attachment 2 shows all of the zones in the City that allow multifamily development, either as a primary use allowed in the zone or as part of a mixed use development. Those areas that are identified only by a solid color have affordable housing incentives in place. The majority of property in the City that allows multifamily development has some level of incentive for affordable housing. Those areas that are outlined in yellow and have black cross-hatching do not have any regulations that would encourage or require affordable housing. They are discussed further beginning on page 6 of this memo. The following subsections talk about some of the considerations that should be addressed in converting existing affordable housing incentives to requirements.

Existing Incentives

The City of Kirkland adopted a package of incentives, including generous density bonuses, site development flexibility, tax exemptions, and fee waivers in May 2004 to encourage development of affordable housing as part of market rate housing developments in multifamily zones. (See [Zoning Code Chapter 112](#).) The program is entirely voluntary and was set up so that the value of the available incentives would exceed the cost to the developer of providing the affordable housing units. The affordability requirements are stringent, with rental units required to be affordable to households earning no more than 50% of King County median income and for sale units required to be affordable to households earning no more than 70% of King County median income.

The density bonus and development flexibility incentives apply only in zones that have an established maximum density, such as the RM and PR zones. For example, in the RM 3.6 zone, 3,600 square feet of land area is required for every residential unit and a property that is 36,000 square feet in size could be developed with 10 units. If one affordable housing unit is provided in the 10 units, then two additional market rate units could be built for a total of 12 units (one affordable and 11 market rate).

As major rezoning occurred in the Totem Lake and Rose Hill business districts, the City has offered the option of significant height increases in some areas in exchange for 10% of residential units being affordable. For example, in the TL6A zone, the basic height limit is 35 feet but residential development is allowed to build to 65 feet if at least 10% of the units are affordable housing units. Different subareas were allowed different height bonuses based on locational context and the City's desire to incentivize housing in that area.

Value of Incentives

When the incentives in multifamily zones were developed in 2004, staff analysis included a "balance sheet" of the cost of providing an affordable housing unit versus the value of the incentives available for providing the units. Attachment 3 is an example of the analysis. The highlighted rows on the first page show the cost of providing an affordable unit in different rental and sales scenarios. The highlighted rows on the second page show the values of the incentives available. When the bottom lines of the two pages are compared, the value of the

incentives far exceed the cost of providing an affordable unit. This analysis was discussed and confirmed with market rate housing developers.

Staff intends to pursue this same type of analysis with any amendments that are proposed to the affordable housing regulations.

- **Does the Planning Commission agree that this is a valuable tool in the discussion?**
- **Are there changes that should be made in the technical analysis or the presentation of the analysis that would make it more valuable?**

Minimum Threshold for Affordable Housing Requirement

Because they are voluntary, the Affordable Housing Incentives in Chapter 112 do not have an explicit minimum threshold where they are available. To achieve the additional height allowed in the TL and RH zones, developments that include 10 or more residential units must provide at least 10% affordable units. The primary questions here are:

- **Should the City establish a minimum development size where affordable housing would be required?**
- **If not, should a payment in-lieu of developing units be established for developments required to provide less than one affordable unit?**

Establishing a 10 unit minimum with a 10% affordability requirement, for example, would make the regulations relatively easy to administer. However, projects that are right around the threshold may choose to develop fewer units to avoid the requirement or larger developments may choose to build in phases to avoid affordable housing requirements. In addition, some capacity for affordable housing from smaller developments would be lost if a threshold is set. If no threshold is set, all developments would be required to provide or pay for the provision of some affordable housing. The Planning Commission recommended a payment in-lieu of providing affordable housing option for the incentives that were developed in multifamily and mixed use zones, but the City Council removed that option from the code before they approved it. They wanted to ensure that affordable units got built in exchange for the density bonuses being provided and felt uncomfortable that payments in-lieu would result in actual units.

Density Bonuses

One question that is related to the minimum threshold question is:

- **How much additional density is acceptable in multifamily and mixed use areas in exchange for affordable housing?**

The incentives in ZC Chapter 112 apply only to properties with an established density limit. They allow two additional units for every one unit of affordable housing that is provided. Neighborhood representatives that were consulted during the development of those regulations were comfortable with a 25% density bonus above allowed densities without any public review process. Density bonuses between 25% and 50% were determined to be acceptable with a

hearing process. If the City adopts mandatory requirements for affordable housing, it must include increases in development capacity in that program.

Density and additional height are the two most common capacity limiters and the logical choice for increasing development capacity. The City does not need to provide additional capacity beyond what was allowed in its voluntary program. However, if we want to set a low threshold for requiring affordable housing units, then we must be prepared to allow an appropriate increase in capacity without imposing additional permitting requirements. For example, retaining the current two to one density bonus ratio and establishing a minimum development threshold of five units would mean that a 40% density bonus would be allowed. (One of five units is affordable and two additional units are built in exchange for a total of seven units where five would normally be allowed.) Establishing a minimum development threshold of 10 units with a two to one density bonus would mean that a 20% density bonus would be allowed.

Another question that is related to the minimum threshold question is:

- **Should the City provide additional, voluntary, density incentives for those wishing to provide more affordable housing than is required?**

Two scenarios come to mind where this question might be applicable. First, a developer of a project that is smaller than the minimum threshold (assuming that one is set) wants to provide affordable housing even though it is not required. Second, a developer wants to provide more affordable housing than the minimum required. This second scenario assumes that a maximum density would be established, similar to the existing code structure that allows density bonuses up to 25% without a public review process and up to 50% with a public review process.

Affordability Level

When the voluntary incentives were developed in 2004, the City chose to pursue aggressive affordability levels for its affordable housing units. To achieve the maximum density bonus, rental units are required to be affordable to people earning 50% of the King County median income and for sale units are required to be affordable to people earning 70% of the King County median income. These same limits apply in Totem Lake and Rose Hill where additional height is offered in exchange for affordable housing.

Affordable rental housing in other jurisdictions is usually targeted to 50% or 60% of median income. Affordable sales prices are often targeted to 80% of median income, with some areas targeting up to 100% of median. Kirkland chose to be aggressive, in part, because the economic analysis of the cost of providing affordable housing compared to the value of incentives indicated that the chosen affordability levels were reasonable. Some developers that were consulted were uncomfortable with the affordability levels because they thought that there would be too much disparity between the affordable units and market units.

The following chart shows what rents and sales prices would be at various levels of affordability, based on the 2009 median income for King County.

	50% Median	60% Median	70% Median	80% Median	100% Median
Single Person (Studio)					
Income	\$29,505	\$35,406	\$41,307	\$47,208	\$59,010
Affordable Rent	\$701	\$848	\$985	\$1,143	\$1,438
Affordable Sales Price*	\$91,450	\$114,500	\$137,500	\$160,550	\$201,050
Family of 4 (3 Bedroom)					
Income	\$42,150	\$50,580	\$59,010	\$67,440	\$84,300
Affordable Rent	\$961	\$1,172	\$1,367	\$1,593	\$2,015
Affordable Sales Price*	\$128,950	\$161,850	\$194,750	\$227,650	\$285,550

*Affordable Sales Price assumes: 10% down payment, 30 year fixed mortgage at 5.5%

This project provides an opportunity to check the affordability levels required and ensure that they are appropriately targeted to provide meaningful levels of affordability for our community.

- **Does the Planning Commission agree that the City should take this opportunity to verify affordability levels required with the implementation of affordable housing requirements?**

Totem Lake and Rose Hill Business Districts

The incentives for affordable housing that currently exist in a number of Totem Lake and Rose Hill business district zones would be replaced with requirements. The approach would be similar to that discussed above for the City's multifamily zones, with potential amendments to require affordability in development whether or not the additional building height incentive is used. Zones to be studied for mandatory requirements include TL 1, TL 6 and TL 10 in Totem Lake, and RH 1A, RH 2A and 2B, RH3 and RH 7 in the Rose Hill Business District.

Non-Conformance Threshold

Chapter 162 of the Zoning Code includes a series of provisions that establish when items that do not conform to the current regulations must be made to conform. Most of the thresholds are related to additional development on a property, a change in use on a property, or a significant redevelopment of a property. The catch all provision, which would apply if a specific provision does not exist for a situation is in Section 162.35.12 and basically requires conformance when changes to a property in a 12 month period exceed 50% of the replacement cost of the improvements, or when the use of the property is changed. Staff will be examining this threshold to determine if it is equitable for situations where affordable housing does not exist and would be required under modified regulations.

- **Does the Planning Commission have any initial input on the redevelopment threshold for when properties without affordable housing units should be required to provide affordable units?**

II. ADDING AFFORDABLE HOUSING REGULATIONS

The chart in Attachment 4 provides information about each of the zoning districts shown in the map in Attachment 2 that do not currently have affordable housing incentives (those areas outlined in yellow, with black cross hatching). It includes the basic development allowances, notes about unique characteristics of the zones, and opportunities to create affordable housing incentives. Staff will review this chart with the Planning Commission at the meeting on May 14th to get input on appropriate approaches for affordable housing regulations within each zone.

III. "STAND-ALONE" HOUSING IN TL 10 SUBAREAS

Attachment 5 identifies the subareas within the TL 10 zone where stand-alone residential development is allowed. Direction from the Planning Commission as to where expansion of this type of development would be appropriate would be helpful in developing revised regulations.

A consideration in studying expansion of residential development in these areas is the conversion of office-zoned land to residential- or mixed-use zoning. Kirkland currently has sufficient capacity to meet its 2022 target for employment. Based on our previous housing capacity analysis, the 2022 target for housing, however, somewhat exceeds current capacity. This study will likely include an evaluation of the impact on the City's capacity for employment if the stand-alone housing provisions are expanded. Questions the Planning Commission may choose to discuss to help to clarify priorities regarding these changes may include:

- **Should staff explore more aggressive standards for affordable housing in these areas, such as a setback greater than 10% in light of the potential loss of employment capacity?**
- **Should caps on total housing units developed in the areas be considered as a means to allow for residential development, while preserving some development potential for office use?**

Attachments

1. Engrossed House Bill 1464
2. Map of Affordable Housing Incentive Areas
3. Economic Analysis of Affordability Incentives
4. Potential Affordable Housing Amendment by Zone
5. TL 10 – Stand-Alone Housing Areas

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1464

61st Legislature
2009 Regular Session

Passed by the House March 4, 2009
Yeas 63 Nays 32

Speaker of the House of Representatives

Passed by the Senate April 2, 2009
Yeas 26 Nays 19

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1464** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1464

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Representatives Springer, Ormsby, Orwall, Eddy, Ericks, Nelson, Kagi, Dickerson, Morrell, Wood, and Goodman

Read first time 01/21/09. Referred to Committee on Local Government & Housing.

1 AN ACT Relating to affordable housing incentive programs; and
2 amending RCW 36.70A.540.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 36.70A.540 and 2006 c 149 s 2 are each amended to read
5 as follows:

6 (1)(a) Any city or county planning under RCW 36.70A.040 may enact
7 or expand affordable housing incentive programs providing for the
8 development of low-income housing units through development regulations
9 or conditions on rezoning or permit decisions, or both, on one or more
10 of the following types of development: Residential; commercial;
11 industrial; or mixed-use. An affordable housing incentive program may
12 include, but is not limited to, one or more of the following:

- 13 (i) Density bonuses within the urban growth area;
14 (ii) Height and bulk bonuses;
15 (iii) Fee waivers or exemptions;
16 (iv) Parking reductions; or
17 (v) Expedited permitting(~~(, conditioned on provision of low income~~
18 ~~housing units; or~~
19 ~~(vi) Mixed use projects)).~~

1 (b) The city or county may enact or expand such programs whether or
2 not the programs may impose a tax, fee, or charge on the development or
3 construction of property.

4 (c) If a developer chooses not to participate in an optional
5 affordable housing incentive program adopted and authorized under this
6 section, a city, county, or town may not condition, deny, or delay the
7 issuance of a permit or development approval that is consistent with
8 zoning and development standards on the subject property absent
9 incentive provisions of this program.

10 (2) Affordable housing incentive programs enacted or expanded under
11 this section shall comply with the following:

12 (a) The incentives or bonuses shall provide for the
13 (~~construction~~) development of low-income housing units;

14 (b) Jurisdictions shall establish standards for low-income renter
15 or owner occupancy housing, including income guidelines consistent with
16 local housing needs, to assist low-income households that cannot afford
17 market-rate housing. Low-income households are defined for renter and
18 owner occupancy program purposes as follows:

19 (i) Rental housing units to be developed shall be affordable to and
20 occupied by households with an income of fifty percent or less of the
21 county median family income, adjusted for family size; (~~and~~)

22 (ii) Owner occupancy housing units shall be affordable to and
23 occupied by households with an income of eighty percent or less of the
24 county median family income, adjusted for family size. The legislative
25 authority of a jurisdiction, after holding a public hearing, may
26 establish lower income levels(~~(-)~~); and

27 (iii) The legislative authority of a jurisdiction, after holding a
28 public hearing, may also establish higher income levels for rental
29 housing or for owner occupancy housing upon finding that higher income
30 levels are needed to address local housing market conditions. The
31 higher income level for rental housing may not exceed eighty percent of
32 the county area median family income. The higher income level for
33 owner occupancy housing may not exceed one hundred percent of the
34 county area median family income. These established higher income
35 levels (~~(must be)~~) are considered "low-income" for the purposes of this
36 section;

37 (c) The jurisdiction shall establish a maximum rent level or sales
38 price for each low-income housing unit developed under the terms of a

1 program and may adjust these levels or prices based on the average size
2 of the household expected to occupy the unit. For renter-occupied
3 housing units, the total housing costs, including basic utilities as
4 determined by the jurisdiction, may not exceed thirty percent of the
5 income limit for the low-income housing unit;

6 (d) Where a developer is utilizing a housing incentive program
7 authorized under this section to develop market rate housing, and is
8 developing low-income housing to satisfy the requirements of the
9 housing incentive program, the low-income housing units shall be
10 provided in a range of sizes comparable to those units that are
11 available to other residents. To the extent practicable, the number of
12 bedrooms in low-income units must be in the same proportion as the
13 number of bedrooms in units within the entire ~~((building))~~ development.
14 The low-income units shall generally be distributed throughout the
15 ~~((building, except that units may be provided in an adjacent building.~~
16 ~~The low-income units shall))~~ development and have substantially the
17 same functionality as the other units in the ~~((building or buildings))~~
18 development;

19 (e) Low-income housing units developed under an affordable housing
20 incentive program shall be committed to continuing affordability for at
21 least fifty years. A local government, however, may accept payments in
22 lieu of continuing affordability. The program shall include measures
23 to enforce continuing affordability and income standards applicable to
24 low-income units constructed under this section that may include, but
25 are not limited to, covenants, options, or other agreements to be
26 executed and recorded by owners and developers;

27 (f) Programs authorized under subsection (1) of this section may
28 apply to part or all of a jurisdiction and different standards may be
29 applied to different areas within a jurisdiction or to different types
30 of development. Programs authorized under this section may be modified
31 to meet local needs and may include provisions not expressly provided
32 in this section or RCW 82.02.020; ~~((and))~~

33 (g) Low-income housing units developed under an affordable housing
34 incentive program are encouraged to be provided within ~~((market rate~~
35 ~~housing))~~ developments for which a bonus or incentive is provided.
36 However, programs may allow units to be provided in ~~((an adjacent))~~ a
37 building ~~((and))~~ located in the general area of the development for
38 which a bonus or incentive is provided; and

1 (h) Affordable housing incentive programs may allow a payment~~((s))~~
2 of money or property in lieu of low-income housing units if the
3 ~~((payment equals))~~ jurisdiction determines that the payment achieves a
4 result equal to or better than providing the affordable housing on-
5 site, as long as the payment does not exceed the approximate cost of
6 developing the same number and quality of housing units that would
7 otherwise be developed. Any city or county shall use these funds or
8 property to support the development of low-income housing, including
9 support provided through loans or grants to public or private owners or
10 developers of housing.

11 (3) Affordable housing incentive programs enacted or expanded under
12 this section may be applied within the jurisdiction to address the need
13 for increased residential development, consistent with local growth
14 management and housing policies, as follows:

15 (a) The jurisdiction shall identify certain land use designations
16 within a geographic area where increased residential development will
17 assist in achieving local growth management and housing policies;

18 (b) The jurisdiction shall provide increased residential
19 development capacity through zoning changes, bonus densities, height
20 and bulk increases, parking reductions, or other regulatory changes or
21 other incentives;

22 (c) The jurisdiction shall determine that increased residential
23 development capacity or other incentives can be achieved within the
24 identified area, subject to consideration of other regulatory controls
25 on development; and

26 (d) The jurisdiction may establish a minimum amount of affordable
27 housing that must be provided by all residential developments being
28 built under the revised regulations, consistent with the requirements
29 of this section.

--- END ---

Attachment 3
Affordable Housing Amendments
May 14, 2009 Planning Commission

ENCLOSURE 2
AFFORDABLE HOUSING AMENDMENTS
AUGUST 13, 2009 PLANNING COMMISSION

