



The Corporation of the City of Courtenay

Staff Report

To: Council
From: Director of Development Services
Subject: Small-Scale Multi-Unit Housing Regulations

File No.: 3360-20-2402
Date: May 8, 2024

PURPOSE:

To introduce proposed amendments to Zoning Bylaw No. 2500, 2007 (the “Zoning Bylaw”) to align densities permitted by the City with recent amendments to the *Local Government Act*. These amendments require Council to adjust the Zoning Bylaw so that Small-Scale Multi-Unit Housing (SSMUH) is permitted in accordance with the requirements of Bill 44, *Housing Statutes (Residential Development) Amendment Act, 2023* (“Bill 44”). As a preliminary step, staff is seeking Council’s comments with respect to proposed amendments to the Zoning Bylaw. The Zoning Bylaw amendments to permit SSMUH must be adopted by June 30, 2024.

EXECUTIVE SUMMARY:

This report summarizes the Small-Scale Multi-Unit Housing (SSMUH) legislation requirements implemented by the Province, and proposes Council provide guidance to staff prior to their preparation of amendments to the Zoning Bylaw as described below. There are amendments proposed to the following sections of the Zoning Bylaw:

- Division 3 Interpretation
- Division 6 General Regulations
- Division 7 Off-Street Parking and Loading Spaces
- Division 8 Classification of Zones, and
- Schedule 8 Zoning Map

The report also explains how the provincial requirements are proposed to be incorporated into the Zoning Bylaw by means of a new R-SSMUH zone. This zone would completely replace the 16 existing zones in the Zoning Bylaw that meet the definition of “Restricted Zone”. A “Restricted Zone” limits the permitted residential uses to single residential dwellings (with or without a second accessory housing unit) or duplex dwellings (with or without a second accessory “housing unit”). Staff has identified that the following zones meet the definition of “Restricted Zone”; R-1, R-1B, R-1C, R-1D, R-1E, R-1S, R-2, R-2A, R-2B, RR-1, RR-2, RR-2S, RR-3, RR-4, RR-5, and R-RU zones. These 16 zones comprise approximately 5662 individual parcels of varying size, distributed throughout the city, and include the R-RU zone which references a former Comox Valley Regional District (CVRD) Zoning Bylaw applicable to lands that were subject to a boundary extension.

As authorized by the new section 582.1 of the *Local Government Act*, the Province released a 95-page Policy Manual and Site Standards document (“Policy Manual”) intended to aid local governments with the implementation of the Small-Scale Multi-Unit Housing (SSMUH) legislation. In addition to an overview of the legislation and implementation process, the Policy Manual contains recommended zoning site standards and other detailed suggestions for development regulations.

While local governments retain the discretion to set Zoning Bylaw regulations that have considered local conditions, amended zoning regulations must not undermine the spirit or intent of the legislation. Local governments must consider applicable guidelines in the Policy Manual in setting local standards. (*LGA, Sec. 481.3 (7)*). Given the number of lots being rezoned and the diversity of individual lot sizes, configurations, and other lot characteristics, not every parcel will be able to achieve the maximum density of four units. The proposed R-SSMUH zone regulations will allow an increase in density and available housing units across the municipality, consistent with local conditions and provincial intent. Where lots are not on community services, Bill 44 mandates that a single residential dwelling use on a lot must be able to have at least a secondary suite.

BACKGROUND:

The Province considers that the current approach to zoning regulation limits the availability and diversity of housing supply required in BC communities. Bill 44 received Royal Assent on December 11, 2023. Through this legislation, the Province intends to increase the housing supply, create more diversity in housing choices and over time, contribute to more affordable housing across BC.

Bill 44 also sets expectations that public water and sewer infrastructure will be available to support SSMUH requirements by the end of 2030. This requirement has significant implications for City infrastructure and will require a funding strategy and capital program over the next 5 years.

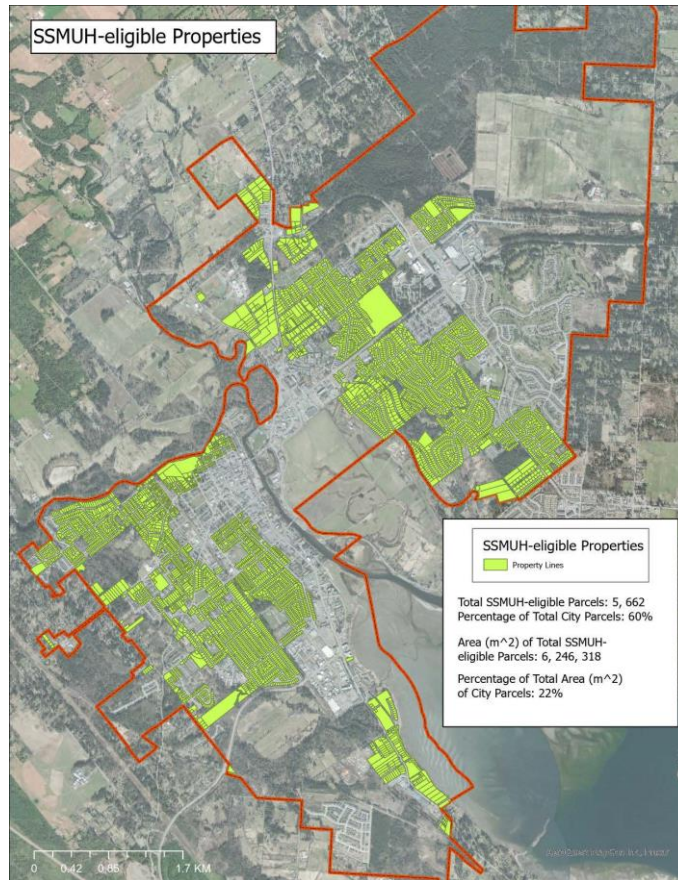
Exemptions from the three- to six-unit minimum requirements on lots in a Restricted Zone include:

1. Lands that are not connected to a community water or sewer system;
2. Parcels of land that are larger than 4,050 m² or lands in a zone for which the minimum lot size that may be created by subdivision is 4,050 m²;
3. Land that was protected, as of December 7, 2023, under the *Heritage Conservation Act*, or by bylaw under s. 611 of the *Local Government Act*;
4. Land within a designated Transit-Oriented Area; and
5. Lands subject to a hazardous condition are exempted from the SSMUH legislation, including the requirements to allow either a secondary suite or accessory dwelling unit, providing the local government has obtained a report in which a qualified professional certifies increasing the density of use would significantly increase the threat or risk from the hazardous condition, and the threat or risk from the hazardous condition cannot be practically mitigated.

Items 3 and 4 are not applicable to Courtenay, as the City does not have any SSMUH eligible properties that are protected by Heritage Designation Bylaw, nor does it have any lands within a Transit-Oriented Area as

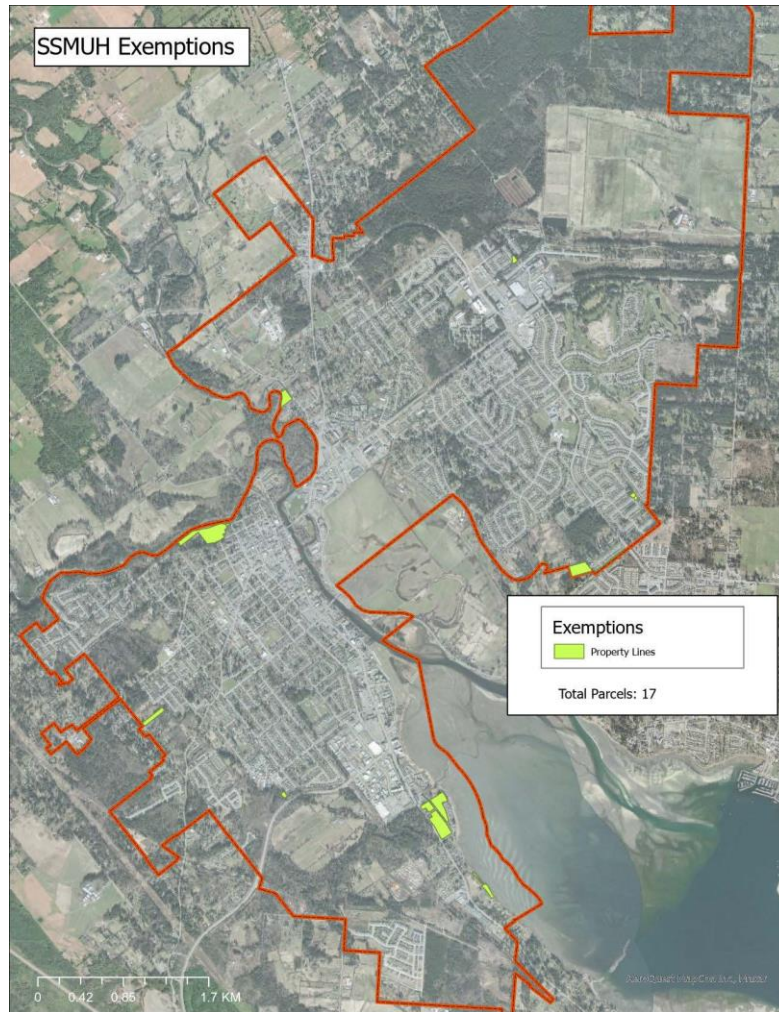
defined by provincial legislation. Staff have reviewed the City's GIS data and have identified 5662 properties that meet the definition of *Restricted Zones* that are currently zoned one of the following 16 zones: R-1, R-1B, R-1C, R-1D, R-1E, R-1S, R-2, R-2A, R-2B, RR-1, RR-2, RR-2S, RR-3, RR-4, RR-5, and R-RU zones that are eligible to be re-zoned to the proposed R-SSMUH zoning (Figure 1).

Figure 1: Properties within SSMUH-eligible zones



Of the 5662 properties that are currently within a *Restricted Zone*, 17 have been identified as not appropriate for the proposed R-SSMUH zoning (Figure 2). Most are City owned parks that will be zoned to park at the same time as the adoption of the amendment to the Zoning Bylaw to create the proposed R-SSMUH zone or other bylaw to amend the Zoning Bylaw based on direction from Council. One property is clearly located within the floodplain and was designated as agricultural during the OCP update in order to ensure additional residences are not permitted. A table will be created to identify the criteria why R-SSMUH does not apply and will be provided to the Province as part of the City's submission to the Province of notification of R-SSMUH adoption.

Figure 2: Properties exempt from SSMUH requirements



Hazard Lands

Bill 44 allows that lands subject to a hazardous condition may be exempted from the development of land to the density of use required by the new provisions of the *Local Government Act*, provided that the local government has obtained a report in which a qualified professional certifies for the local government that increasing the density would significantly increase the threat or risk from the hazardous condition and the threat or risk from the hazardous condition cannot be practically mitigated. The City is currently undertaking a Flood Management Plan to better evaluate flooding risks and identify options for development where appropriate, and a Development Permit Area for flood hazard lands to increase development controls. Staff will continue to develop a Development Permit Area for Flood Management to guide development applications within the Flood Management Plan versus applying to the Provincial government for an exception. Currently the existing Flood Management Bylaw No. 1743, 1994 applies to development applications.

City Master Plans

A number of other City master plans, regulations and bylaws will have to be reviewed and amended to support the proposed SSMUH zoning. These include but are not limited to: all servicing master plans, Development Cost Charge Bylaw, Subdivision and Development Servicing Bylaw, and Flood Management Bylaw. This is being undertaken with the Complete Communities grant along with the 2024 workplan.

Development Permit Areas (DPA)

Section 457.1(a) of the *Local Government Act* now requires that the use of Development Permit guidelines not unreasonably prohibit or restrict the use or the density of use discussed elsewhere in this Council Report. Despite this requirement, the amendments to the *Local Government Act* have not altered the authority of local governments to create development permit areas and to establish guidelines for meeting the policies applicable within these areas. The Policy Manual discourages the use of development permits except where there are hazardous conditions. Staff are reviewing the Development Permit Areas Guidelines (Schedule A to Zoning Bylaw No. 2500) in the context of legal advice and information received from Ministry staff to determine applicability and how Courtenay's Development Permit Guidelines might be amended to align with the new legislation.

Section 219 Covenants

If there is a 219 covenant registered on title that restricts the residential housing form to a single residential dwelling or duplex, this interest in land continues to apply and the higher densities contemplated by the Zoning Bylaw are not available until such time that the covenant is discharged. This is often a building scheme placed on title by the developer or land owner.

Official Community Plan (OCP) Land Use Designation

A number of the 5662 properties are currently within land use designations identified for higher density such as: Town Centre, Downtown, Urban Corridor, and Multi-Residential of these properties as a means to support higher densities than the SSMUH minimums. As part of the OCP updates, these properties will be zoned to a higher density no later than December 31, 2025.

Bill 16

Recently, the Legislature introduced a new Bill 16 including legislative tools for inclusionary zoning, density bonus and tenant protection that the City will be able to utilize once adopted by the Province to support dedicated affordable housing and enhanced community amenities as part of new development. These planning tools will be reviewed as part of the provincially established deadlines to conduct 20-year housing needs assessments by December 31, 2024, and updating the OCP and Zoning Bylaw to plan and pre-zone for these housing needs by December 31, 2025. This will provide an opportunity to evaluate the proposed R-SSMUH zone and amend as necessary.

DISCUSSION:

Staff have reviewed the legislation and accompanying policy documents in detail, attended provincial ministry webinars, and sought legal advice where applicable to determine how the legislation applies to

the City of Courtenay. This research was undertaken in order to develop a rational, realistic approach based on local conditions.

Staff have laid out the proposed amendments by sections in the zoning bylaw below and have engaged Ekistics to test the SSMUH zoning regulations and develop various housing massing graphics to illustrate the variety in housing forms that may result. Figures 5-8 below are four examples and Ekistics will provide an interactive presentation at the regular Council meeting to demonstrate the impact of parking and other regulations on housing form.

Staff are seeking comments from Council on proposed amendments to the zoning bylaw generally and R-SSMUH zone specifically. These comments will assist in Staff finalizing the proposed zoning bylaw amendments for Council's consideration at a future Council meeting. The amendments for Council's consideration are provided in Attachment 1 and outline proposed text amendments to align with Small-Scale Multi-Unit Housing Requirements

Proposed Amendments to Zoning Bylaw No. 2500, 2007

DIVISION 3 INTPRETATION Part 1 Definitions

1. New definition "Accessory Dwelling Unit" to replace "Carriage House"
2. Revised definition of "Townhouse" to include stacked townhouses
3. Delete "granny flat" as it is incorporated into the new definition of Accessory Dwelling Unit
4. New definition of "Impermeable Surface"
5. Delete definition of "Secondary residence"
6. Revised definition of "Secondary Suite"
7. Revised definition of "Yard"

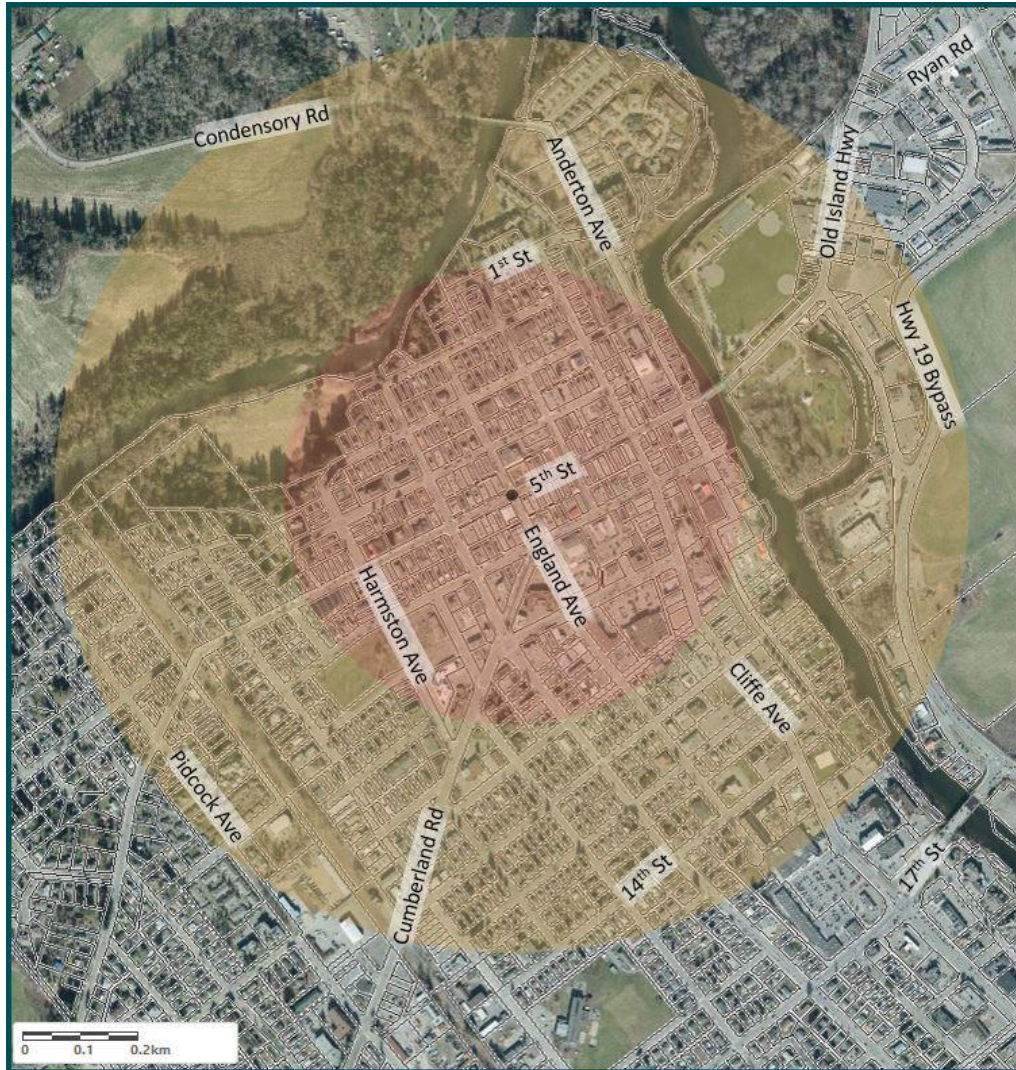
DIVISION 6 GENERAL REGULATIONS

1. New Section 6.19.1 containing Conditions of Use for Secondary Suites and Accessory Dwelling Units as an accessory use in single residential dwellings and duplexes in all zones, including CD or agriculture zones, where these low-density residential building forms are permitted as a principal use.

DIVISION 7 OFF STREET PARKING AND LOADING

1. Reduce parking requirements in Schedule 7A Required Number of Off-Street Parking Spaces to one parking space per residential unit.
2. Consider a parking reduction of 1 required space per residential unit within a prescribed walking distance radius (TBD) of the Downtown Core. For example, if the parking space requirement is 4, the requirement could be reduced to 3. Staff recommend that walkability be considered in determining a parking reduction and seeking comments from Council on 5- or 10-minute radius. See Figure 3 Walkability Radius below.
3. Consider use of on street parking, where conditions permit, to meet parking requirements for the units as per provincial regulation. Points to consider in defining appropriate streets would include road rights of way width, utilities and drainage, waste management, as well as provisions for bikes, raingardens, bus stops and fire prevention requirements. Staff is seeking Council comments on utilizing on-street parking to meet parking requirements and acknowledges there are logistics to address for implementation.

Figure 3 Walkability Radius: 5 minute and 10-minute radius



DIVISION 8 CLASSIFICATION OF ZONES

Most existing single family and duplex zoned properties will be consolidated into a single Small-Scale Multi-Unit Housing (SSMUH) zone for clarity and simplicity. The 16 zones, comprising approximately 5662 lots are: R-1, R1-B, R1-C, R1-D, R-1E, R-1S, R-2, R-2A, R-2B, RR-1, RR-2, RR-2S, RR-3, RR-4, RR-5, R-RU

These properties will be able to have up to four units of any configuration, such as:

- Four-unit townhouse building side by side or stacked.
- A single residential dwelling with a secondary suite and a duplex.
- Two houses with attached or detached accessory dwelling units (e.g. suites or carriage homes).
- Four small houses.
- Two duplexes with secondary suites or accessory detached dwelling.
- A single residential dwelling with one secondary suite and an accessory detached dwelling.

The number of units possible will depend on the size and configuration of the property, whether the lot is on a corner, or has a rear lane, and whether the property is subject to any restrictive covenants, applicable development permit areas, building schemes or strata bylaw provisions. Figures 5-8 below illustrate some examples.

While the density of up to four units per lot is prescribed by legislation, zoning provisions remain under municipal authority as long as the spirit and intent of the density changes is not undermined.

Zoning Analysis

The legislation states that municipalities must not “unreasonably” restrict density. For example, a zoning bylaw could be deemed non-compliant and subject to ministerial override if it allowed additional dwelling units but setback, height, coverage and parking restrictions, when considered together, did not allow the construction of any additional dwelling units.

Table 1 below identifies the Recommended Provincial Benchmark from the Provincial Policy Manual and Site Standards (page 68) and the proposed City of Courtenay regulations for R-SSMUH.

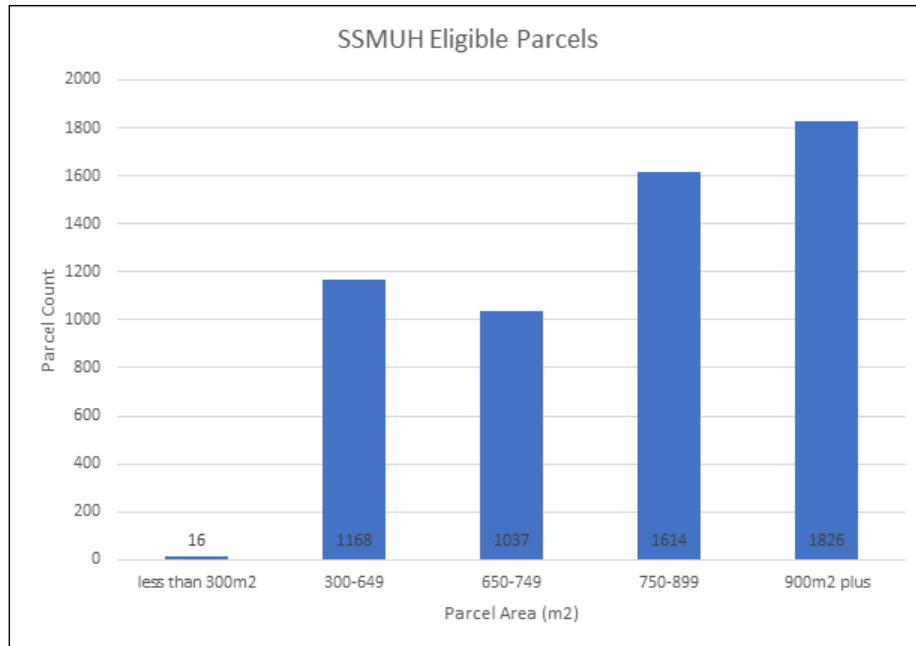
Table 1: Comparison of Provincial and proposed Courtenay Zoning Regulations		
Zoning Bylaw Parameter	Recommended Benchmark	Courtenay Proposed Regulation
Front yard setback	Minimum 5 - 6 m	Minimum 4 m with provision for garage/carport setback of 6 m
Rear yard setback	Minimum 6 m for principal bldgs. Minimum 1m for ADUs	Minimum 5.0 m for principal bldgs. Minimum 1.5 m for ADUs
Side yard setbacks	Minimum 1.2 m	Minimum: 1.5 m for interior side yards 3.0 m for exterior side yards
Height	Maximum 11 m to midpoint of sloped roof or flat roof on principal bldgs.	Maximum 11 m to midpoint of sloped roof or flat roof on principal buildings; Maximum 6.5 m to midpoint of sloped roof or flat roof for ADUs
Maximum No. of Storeys	3 storeys for principal bldgs. 2 storeys for ADUs	No regulations for storeys
Maximum Lot Coverage	25-40%	60% impermeable surfaces
Off Street Parking	1 space per dwelling unit	1 space per dwelling unit

The majority of SSMUH properties within the City fall within the urban residential land use designation which supports the full range of SSMUH building typologies listed including ground-oriented buildings, low-rise buildings and cluster development. Staff consider that the proposed zoning regulations meet both the spirit of the OCP and the spirit and intent of the Policy Manual. The proposed R-SSMUH zone creates a maximum density that is aligned with the requirements set out in Bill 44 and the Policy Manual. Not every development proposal will take advantage of the maximum density and not every property will be able to achieve the maximum four residential dwelling units because of limitations associated with the lot conditions like environment, steep slopes, flood management, and servicing.

Local context and development opportunities

Figure 4 below shows the relative sizes of parcels proposed to be rezoned to the new zone. As the minimum proposed lot size is 300m², lots greater than 600 m² may be able to be subdivided in accordance with applicable requirements and subdivision regulations.

Figure 4: Size of Parcels Proposed for Rezoning to R-SSMUH



Examples of Housing forms under proposed R-SSMUH regulations

Staff have engaged Ekistics to test the proposed SSMUH zone and prepare graphics that illustrate the possible massing configurations of dwelling types. An interactive presentation by Ekistics will be at the regular Council meeting to discuss implications of the proposed SSMUH zone to generate discussion and receive comments from Council to inform the proposed SSMUH zone regulations. The four scenarios are:

- A tri-plex on the proposed minimum lot size of 300 m² lot without a lane;
- A four-plex on the proposed minimum lot size of 300m² lot with a lane; and
- An existing standard 650m² lot subdivided into two properties, with stacked townhouse.
- An existing 650 m² lot with a four plex with no lane.

Figure 5: A tri-plex comprised of one two-bedroom ground level unit, and two units with 3-4 bedrooms, on a 300m² lot with no lane access, meeting full parking requirements



Figure 6: A four-plex (two front-back duplexes each with a suite) comprised of two ground level studios and two units with three bedrooms each, on a 300m² lot with lane access, meeting full parking requirements



Figure 7: 650 m² lot that can be subdivided into two (2) 325 m² lots that results in stacked Townhouses with parking from lane and street



Figure 8: An existing 650 m² lot with a four-plex (townhouse) with no lane and a garage for parking plus driveway.



It's important to note that the examples provided represent lot opportunities on the proposed 300 m² minimum lot size and the existing 650 m² lots in Courtenay. The proposed R-SSMUH zone does not set a

maximum lot size and therefore lots will be permitted to be subdivided to larger than the minimum 300m² proposed minimum lot size. It's also important to note that properties are not uniform and there are a wide variety of lot dimension (width, depth, shape) and access considerations (presence of lane or additional street frontage) that will ultimately inform the final configuration of proposed developments aligned with the proposed R-SSMUH zone.

By allowing for some residential parking needs to be met on-street, more land may be utilized for housing and allow for more landscaping and creativity in design. This aligns with provincial guidelines to encourage achieving 4 units on a lot. Staff will evaluate the City's street hierarchy and planned capital improvements for green infrastructure, active transportation and transit, as well as operational needs such as utilities, waste collection and snow clearing, in order to understand where on-street parking may be most appropriate.

POLICY ANALYSIS:

This work has been mandated by the Province, and aligns with the Courtenay OCP Vision and Goals. The Policy Manual supports Courtenay's growth management principles of making more efficient use of land and servicing as a means of supporting choice in affordable housing, reducing cost of servicing, increasing active transportation and transit, reducing sprawl, protecting of ecologically sensitive and agricultural lands by delaying municipal boundary expansion, and ultimately lowering community greenhouse gas emissions. The relevant OCP policies are summarized here:

- supporting infill housing choices across the entire city within existing neighbourhoods outside of – and in support of – primary and secondary growth centres,
- supporting housing affordability and diversity,
- optimizing efficient use of existing infrastructure and municipal assets, coordinating infrastructure upgrades and system extensions with infill development needs,
- reviewing on-street parking opportunities in relation to zoning bylaw off-street parking standards, including dedicating on-street parking to residents through use of parking permits,
- minimizing the amount of land dedicated to parking by reducing parking requirements,
- reducing minimum lot sizes in the Urban Residential designation to support densification of existing and future neighbourhoods,
- encouraging the provision of 3+ bedroom units as part of a mix of unit types in new multi-residential buildings to create more housing choices for families,
- educating residents on the value of diversity of housing types distributed throughout Courtenay,
- limiting the extent of impervious surfaces in the zoning bylaw.

FINANCIAL IMPLICATIONS:

The Province has provided funding to each local government to support planning and capacity to meet the new provincial housing legislative requirements. Courtenay received \$286,000 from this fund earlier this year.

Bill 44 sets expectations expectations that public water and sewer infrastructure will be available to support SSMUH requirements by the end of 2030. This expectation has significant implications for the City's

infrastructure requirements and funding strategy over the next 5 years. The City has obtained a Complete Communities grant of \$150,000 to begin to assess the infrastructure needed to support SSMUH legislation, and other daily needs that form part of a complete community.

Additionally, a number of new planning tools have been and are being introduced by the provincial government that will allow for more opportunities to fund infrastructure and amenities (*Bill 46 Housing Statutes (Development Financing) Amendment Act*) and recently Bill 16 that will permit local governments to require the dedication of adjacent land and improvements during the building permitting phase rather than rezoning such as site-level works and services, including benches, transit bays, underground wiring, street lamps, parklets, rain gardens, bike parking facilities and active transportation along with a Transportation Demand Management measurements with new developments that can include charging stations or secure bicycle parking facilities.

ADMINISTRATIVE IMPLICATIONS:

The mandatory timelines imposed by the province are challenging and will require priority to be assigned to this project at the expense of other regular duties in addition to consultant services.

STRATEGIC PRIORITIES REFERENCE:

This initiative addresses the following strategic priorities:

- Buildings and Landscape - Update Zoning Bylaw - review maximum building heights
- Buildings and Landscape - Support investment and redevelopment in downtown core: Review and evaluate Downtown development incentives e.g. fast tracking/density bonuses/DCC
- Buildings and Landscape - Review and update land use regulations and bylaws for consistency with OCP
- Affordable Housing - Explore approaches to develop affordable housing: Clarify municipal role in housing affordability
- Good Governance - Review and streamline development process and set targets for application processing times

PUBLIC ENGAGEMENT:

Information on the new SSMUH legislation has been posted on the City's website.

The *Local Government Act* prohibits Council from holding a Public Hearing for zoning bylaw amendments that are for the purpose of implementing the Small Scale Multi Unit Housing (SSMUH) legislation. Notice of Council consideration of the amending bylaws will be given prior to first reading as required in Section 467 of the *Local Government Act* and the City's *Development Procedures Bylaw No. 3106* and written responses will be collected and provided for Council's information in the staff report to Council for consideration of first reading of the Bylaw.

In addition to an illustrative catalogue to support bylaw interpretation, staff anticipate preparing a tool kit for the public that would include Building Permit ready plans for various housing forms for purchase. Other communities such as the City of Kelowna have had success with this approach.

OPTIONS:

1. THAT Council receive for information the report from the Director of Development Services entitled “Small-Scale Multi-Unit Housing Regulations” and dated May 8, 2024;

AND THAT Council direct staff to bring forward amendments to Zoning Bylaw No. 2500, 2007 in substantially the form set out in the report dated May 8, 2024 and Attachment 1 , if applicable, other affected bylaws that will bring municipal regulations into conformity with the *Local Government Act*.

2. THAT Council provide alternative direction to staff.

ATTACHMENTS:

1. Attachment 1: Zoning Bylaw Table - proposed text amendments to align with SSMUH Requirements.

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