

EL PASO  **COUNTY**
COLORADO

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

**TO: El Paso County Planning Commission
Brian Risley, Chair**

**FROM: Nina Ruiz, Planning Manager
Craig Dossey, Executive Director**

**RE: LDC-21-005 Land Development Code Amendment -
Group Home Amendments to Chapters 1 and 5 of the El Paso County
Land Development Code (2021)**

Commissioner District: All

Planning Commission Hearing Date	1/6/2022
Board of County Commissioners Hearing Date	1/18/2022

EXECUTIVE SUMMARY

A request by the El Paso County Planning and Community Development Department to amend Chapters 1 and 5 of the El Paso County Land Development Code (2021) to revise the regulations for group homes.

The proposed amendments include:

- Making amendments throughout to remove the term “handicapped” from all portions of the group home regulations;
- Amending the definition of “Group Home for Disabled Persons” to align with the definition included within C.R.S. § 25-1.5-108.5;
- Amending the allowance for a Group Home as a permitted use from a maximum of five (5) occupants to a maximum of eight (8) occupants;
- Removing the annual reporting requirements for group homes;
- Removing language describing the types of activities traditionally associated with residential uses that may also be permitted within a group home; and
- Amending footnote no. 3 of Table 5-3 to clarify what persons are included in the maximum occupancy count.

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Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the Board of County Commissioners.

A. PLANNING COMMISSION SUMMARY

Request Heard:

Recommendation:

Waiver Recommendation:

Vote:

Vote Rationale:

Summary of Hearing:

Legal Notice:

B. APPLICABLE RESOLUTIONS:

Approval Page 7

Disapproval Page 8

C. REQUEST

A request by the El Paso County Planning and Community Development Department to amend the El Paso County Land Development Code (2021) to include:

- Making amendments throughout to remove the term “handicapped” from all portions of the group home regulations;
- Amending the definition of “Group Home for Disabled Persons” to align with the definition included within C.R.S. § 25-1.5-108.5;
- Amending the allowance for a Group Home as a permitted use from a maximum of five (5) occupants to a maximum of eight (8) occupants;
- Removing the annual reporting requirements for group homes;
- Removing language describing the types of activities traditionally associated with residential uses that may also be permitted within a group home; and
- Amending footnote no. 3 of Table 5-3 to clarify what persons are included in the maximum occupancy count.

Staff is also requesting authority to make all other conforming amendments necessary to carry out the intent of the Board of County Commissioners.

D. BACKGROUND

The El Paso County Land Development Code is routinely amended to respond to current land use trends, recurring issues, changes in legislation, and errors/oversights. The Planning and Community Development Department staff

maintains a running list of necessary and recommended revisions to the Code as issues arise.

El Paso County is a statutory County, which requires the County regulations to align with those rules and regulations included within the Colorado Revised Statutes (C.R.S). The C.R.S, in most instances, is flexible enough to allow each jurisdiction the ability to customize their rules and regulations in ways that best suit the needs of the local community as well as those challenges present in each community.

The group home regulations that are currently in place were adopted by the BoCC in 2014 and were based upon C.R.S. § 30-28-115(2)(c). These regulations include allowing up to 5 occupants as a permitted use, requirements for reporting, as well as other use specific standards designed to further define the allowances and process. Statute did not include an occupancy limitation, requirements for reporting, or many of the other aspects of the current El Paso County regulations.

On January 1, 2020, C.R.S. § 25-1.5-108.5 became effective. This section of state statute addresses “recovery residence”, “sober living facility”, or “sober home” which means any premises, place, facility, or building that provides housing accommodation for individuals with a primary diagnosis of a substance use disorder. The County’s current regulations do not align with the definitions included within the statute.

In addition to the proposed amendments related to the amended state statute, staff is also proposing to increase the number of occupants as a use by right from 5 to 8. The current statute does not include a limitation regarding the number of occupants. The revised number will be consistent with other counties within Colorado which have set their use by right allowance to 8 occupants.

The Planning and Community Development Department has prepared the recommended amendments to the Land Development Code in an effort to comply with the amendments to state statute.

E. RECOMMENDED AMENDMENTS

The amendments being proposed by staff are included above in Request section of this report.

F. APPROVAL CRITERIA

The statutory role of the Planning Commission and Board of County Commissioners is identified below:

30-28-116. Regulations may be amended.

From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, disapproval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least fourteen days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

G. PUBLIC COMMENT AND NOTICE

A summary of the proposed Code amendments and the date of the Board of County Commissioner hearing will be published in The Fountain Valley News pursuant to Colorado Revised Statute 30-28-116. A copy of this publication will be included in the backup materials for the Board of County Commissioners hearing. All the stakeholders were notified electronically of proposed amendments to the Land Development Code through the County's EDARP system on November 28, 2021.

H. ATTACHMENTS

Proposed Amendments to the Land Development Code (2021) (redline version)
Proposed Amendments to the Land Development Code (2021) (clean version)
All Comments Received

• **Group Home** — A home intended to provide a normal residential family setting for certain unrelated groups of people and limited to group homes for persons with mental illness, group homes for developmentally disabled persons, group homes for the aged, and group homes for ~~handicapped or~~ disabled persons.

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Group Home for ~~Handicapped or~~ Disabled Persons — A group home for ~~handicapped and disabled~~ persons ~~with mental or physical impairments which substantially limit 1 or more major life activities~~ and ~~including for~~ such additional ~~necessary~~ persons required for their care and supervision ~~of the permitted number of handicapped or disabled persons.~~ ~~“Handicap” and “disability” have the same legal meaning.~~ A ~~disabled person with a disability~~ is any person who has a physical or mental impairment that substantially limits 1 of more major life activities; has a record of such impairment; or is regarded as having such an impairment. A physical or mental impairment includes, but is not limited to, hearing, visual, and mobility impairments, alcoholism, drug addiction, mental illness, mental retardation, learning disability, head injury, chronic fatigue, HIV infection, AIDS, and AIDS Related Complex. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. ~~Group homes for handicapped or disabled persons, particularly as they relate to recovering (not currently using) alcoholics and persons with drug addictions, may also be known as sober living arrangements. A group home for disabled persons shall include a sober living facility, recovery residence, or sober home as those terms are defined in C.R.S. § 25-1.5-108.5 and shall be free from alcohol and nonprescribed or illicit drugs, promote independent living and life skill development, and provide structured activities and recovery support services that are primarily intended to promote recovery from substance abuse disorders.~~

Commented [LS1]: Can we just use “disability” then and delete “handicap?”

Commented [NR2R1]: NINA TO DELETE HANDI IN ALL

Chapter 5 USE AND DIMENSIONAL STANDARDS

5.2.16. Cemetery, Personal

A document, identifying the existence and location of a personal cemetery which may consist of an official survey or other type of map, shall be recorded against the subject property.

5.2.17. Child Care Centers, Family Care Homes, and Group Homes

The following standards apply, subject to the provisions and limitations of the County and State Department of Human Services and Department of Public Health and Environment.

- (A) **Separation Requirements.** No family care homes, child care centers, or group homes, excluding group homes for ~~handicapped or~~ disabled persons, shall be located on an adjacent lot or parcel or within 500 linear feet along the same road from the lot or parcel boundary lines as another family care home, child care center, or applicable group home except for those facilities that: (1) qualify as a single-family dwelling and have an occupancy in the family care home, child care center, or group home of fewer than 6; or (2) where the family care home, child care center, or group home is located within a commercial zone district.
- (B) **Parking, Screening and Buffering.** The facility shall comply with the parking standards of the Land Development Code. All commercial components, such as parking lots and playgrounds, shall be screened and buffered from neighboring residences and uses. For family care homes, child care centers, or group homes, excluding group homes for ~~handicapped or~~ disabled persons, the County may request a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan may be considered by the County in reviewing an application but may not, by itself, constitute grounds for denying the application. See, C.R.S. § 30-28-115(2.5).
- (C) **Facility Allowances and Applicable Review Processes.**
 - (1) A family care home, child care center, or group home shall be considered an allowed use or may require a special use permit depending on the specific facility type and number of residents/enrollment as shown in Table 5.3 when located within a forestry, agricultural, and residential zone district, and shall not be considered a second principal use when operated in conjunction with or within a residence on the property. Additional necessary persons required for the care and supervision of the permitted number of ~~handicapped or~~ disabled persons are allowed.
 - (2) A family care home, or group home shall not include any person required to register as a sex offender pursuant to C.R.S. § 18-3-412.5, as amended, unless related by blood, marriage or adoption or in foster care.
 - (3) A family care home, child care center, or group home shall maintain compliance with any building codes, fire codes, and health codes based upon the occupancy classification and number of residents and necessary persons for care of the residents.
 - (4) Copies of any applicable current state or local certifications, licenses or permits for the group home shall be maintained on the premises.
 - (5) All existing family care homes, child care centers, and group homes shall meet these standards, except separation requirements at Section 5.2.16(A), by December 31, 2014, regardless of pre-existing circumstances, and no nonconforming rights are hereby established.
- (D) **Standards Applicable Only to Group Homes.** The Colorado General Assembly has declared that state-licensed group homes for no more than 8 intellectually and developmentally disabled persons is a matter of statewide concern and is a residential use of property for zoning purposes, specifically including single-family residential zoning. C.R.S. § 30-28-115(2)(a). The Colorado General Assembly has declared that state-licensed group homes for no more than 8 persons with mental illness is a matter of

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statewide concern and is a residential use of property for zoning purposes. C.R.S. § 30-28-115(2)(b.5). The following standards apply to group homes for ~~handicapped or~~ disabled persons and state-licensed group homes for mentally ill or intellectually and developmentally disabled persons requesting special use approval to house, all with six-9 or more occupants/enrollees as a reasonable accommodation under federal law:

- ~~(1) A group home for handicapped or disabled persons shall quarterly (by March 31, June 30, September 30 and December 31 of each year), and otherwise upon request by the County, provide evidence and/or demonstrate to the Planning and Community Development Department that the residents in the group home are handicapped individuals and entitled to protection under the FHAA, ADA, or the Rehabilitation Act.~~
- ~~(2) Meetings or gatherings on site at a group home for handicapped or disabled persons that are consistent with a normal residential family setting shall be allowed and shall only be for residents, family of residents, and necessary persons required for the support, care and supervision of the handicapped or disabled persons. This does not permit conducting ministerial activities of any private or public organization or agency or permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. See, C.R.S. § 30-28-115(2)(c).~~
- ~~(13) A group home for handicapped or disabled persons and state-licensed group homes for mentally ill or intellectually and developmentally disabled persons, all with 9six or more occupants/enrollees, may apply for a special use, which is considered as a request for reasonable accommodation pursuant to the following process:~~

~~a)(1)~~ Pursuant to the Fair Housing Amendments Act ("FHAA"), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford disabled ~~or handicapped~~ persons equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Therefore, a reasonable accommodation is required whenever it may be necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.

~~(2b)~~ Reasonable accommodation requests will follow the applicable special use process and procedures pursuant to the Group Home and Special Use sections of Chapter 5 of this Code, except that if the PCD Director elevates the application to a public hearing, that hearing shall be exclusively before the BOCC, and except that such requests will follow review criteria based on the FHAA for reasonable accommodations as follows rather than special use review criteria:

~~a) i.~~ An accommodation request must be reasonable and necessary. A necessary accommodation is reasonable unless it requires a fundamental alteration in the nature of a program or imposes undue financial and administrative burdens on the County. For example, an applicant could show that the group home is one way of ameliorating the effects of disabled persons' disabilities and that the request to locate in a given location is reasonable. Whether a requested accommodation is reasonable requires balancing the needs of the parties involved.

~~b) ii.~~ In order to impose special restrictions on either a special use or a reasonable accommodation approval, the County must show either: (1) that the restriction benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected, and is not based upon stereotypes.

Table 5-3. Use Table and Occupancy Limits for Family Care Home, Group Home and Child Care Facilities in Forestry, Agricultural, and Residential Zone Districts

Use Type	Allowed Use (Max. Occupancy/Enrollment)	Special Use (Occupancy/Enrollment)
Family Care Home		
Family Foster ²	8	NA
Day Care Home ²	12	NA
Adult Day Care	8	9-12
Specialized Group Facility ²	8	9-12
Child Care Center¹		
Large Day Care Center ²	NA	13 or more
Small Day Care Center ²	NA	12 or fewer
Nursery ²	NA	As Limited by State
Day Camp ²	NA	As Limited by State
Center for Developmentally Disabled ²	8	9 or more
Crisis Center ²	8	9 or more
Residential Camp ²	NA	5 or more
Trip Camp ²	NA	5 or more
Day Treatment Center ²	8	9 or more
Residential Child Care Facility ²	8	9 or more
Group Homes		
Persons with Mental Illness ²	5-8 ³	9 or more 6-10 ³
Developmentally Disabled ²	5-8 ³	9 or more 6-10 ³
Aged (Assisted Living Residence) ²	8- ³	9 or more- ³
Group Home for Handicapped or Disabled Persons	5-8 ³	9 or more 6-10 ³
<p>Notes:</p> <p>¹ Child care centers are allowed as an accessory use when operated in the same building as a religious institution.</p> <p>² As defined by State law and rules and regulations.</p> <p>³ To the extent non-handicapped or disabled family members that reside are resident within the group home but are not themselves handicapped or disabled and are not required for the care or supervision of any handicapped or disabled resident shall be, such persons counted toward the maximum occupancy/enrollment limits. Special use applications are to be considered as requests for reasonable accommodation and shall be processed pursuant to the Child Care Centers, Family Care Homes, and Group Homes Section in Chapter 5 of this Code.</p> <p>The enrollment or occupancy numbers in this table do not include additional necessary persons required for the care and supervision of the enrollees or occupants. Enrollment or occupancy numbers may be affected by licensing or building code requirements.</p>		

5.2.18. Commercial and Industrial Accessory Structures and Uses

The following structures and uses are considered accessory to commercial and industrial use:

- Onsite parking garage or lot that provides required parking for a structure or commercial/industrial use;
- On-premise signs;
- Totally enclosed facilities for storing merchandise or materials needed for commercial/industrial use;
- Fuel storage;

Group Home — A home intended to provide a normal residential family setting for certain unrelated groups of people and limited to group homes for persons with mental illness, group homes for developmentally disabled persons, group homes for the aged, and group homes for disabled persons.

Group Home for Disabled Persons — A group home for disabled persons and for such additional persons required for their care and supervision. " A disabled person is any person who has a physical or mental impairment that substantially limits 1 of more major life activities; has a record of such impairment; or is regarded as having such an impairment. A physical or mental impairment includes, but is not limited to, hearing, visual, and mobility impairments, alcoholism, drug addiction, mental illness, mental retardation, learning disability, head injury, chronic fatigue, HIV infection, AIDS, and AIDS Related Complex. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. A group home for disabled persons shall include a sober living facility, recovery residence, or sober home as those terms are defined in C.R.S. § 25-1.5-108.5 and shall be free from alcohol and nonprescribed or illicit drugs, promote independent living and life skill development, and provide structured activities and recovery support services that are primarily intended to promote recovery from substance abuse disorders.

Chapter 5

USE AND DIMENSIONAL STANDARDS

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- (B) **Parking, Screening and Buffering.** The facility shall comply with the parking standards of the Land Development Code. All commercial components, such as parking lots and playgrounds, shall be screened and buffered from neighboring residences and uses. For family care homes, child care centers, or group homes, excluding group homes for disabled persons, the County may request a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan may be considered by the County in reviewing an application but may not, by itself, constitute grounds for denying the application. See, C.R.S. § 30-28-115(2.5).
- (C) **Facility Allowances and Applicable Review Processes.**
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 - (2) A family care home, or group home shall not include any person required to register as a sex offender pursuant to C.R.S. § 18-3-412.5, as amended, unless related by blood, marriage or adoption or in foster care.
 - (3) A family care home, child care center, or group home shall maintain compliance with any building codes, fire codes, and health codes based upon the occupancy classification and number of residents and necessary persons for care of the residents.
 - (4) Copies of any applicable current state or local certifications, licenses or permits for the group home shall be maintained on the premises.
 - (5) All existing family care homes, child care centers, and group homes shall meet these standards, except separation requirements at Section 5.2.16(A), by December 31, 2014, regardless of pre-existing circumstances, and no nonconforming rights are hereby established.
- (D) **Standards Applicable Only to Group Homes.** The Colorado General Assembly has declared that state-licensed group homes for no more than 8 intellectually and developmentally disabled persons is a matter of statewide concern and is a residential use of property for zoning purposes, specifically including single-family residential zoning. C.R.S. § 30-28-115(2)(a). The Colorado General Assembly has declared that state-licensed group homes for no more than 8 persons with mental illness is a matter of statewide concern and is a residential use of property for zoning purposes. C.R.S. § 30-28-115(2)(b.5). The following standards apply to group homes for disabled persons and state-licensed group homes for

mentally ill or intellectually and developmentally disabled persons requesting special use approval to house 9 or more occupants/enrollees as a reasonable accommodation under federal law:

- (1) Pursuant to the Fair Housing Amendments Act ("FHAA"), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford disabled persons equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Therefore, a reasonable accommodation is required whenever it may be necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.
- (2) Reasonable accommodation requests will follow the applicable special use process and procedures pursuant to the Group Home and Special Use sections of Chapter 5 of this Code, except that if the PCD Director elevates the application to a public hearing, that hearing shall be exclusively before the BOCC, and except that such requests will follow review criteria based on the FHAA for reasonable accommodations as follows rather than special use review criteria:
 - a) An accommodation request must be reasonable and necessary. A necessary accommodation is reasonable unless it requires a fundamental alteration in the nature of a program or imposes undue financial and administrative burdens on the County. For example, an applicant could show that the group home is one way of ameliorating the effects of disabled persons' disabilities and that the request to locate in a given location is reasonable. Whether a requested accommodation is reasonable requires balancing the needs of the parties involved.
 - b) In order to impose special restrictions on either a special use or a reasonable accommodation approval, the County must show either: (1) that the restriction benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected and is not based upon stereotypes.

Table 5-3. Use Table and Occupancy Limits for Family Care Home, Group Home and Child Care Facilities in Forestry, Agricultural, and Residential Zone Districts

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Child Care Center¹		
Large Day Care Center ²	NA	13 or more
Small Day Care Center ²	NA	12 or fewer
Nursery ²	NA	As Limited by State
Day Camp ²	NA	As Limited by State
Center for Developmentally Disabled ²	8	9 or more
Crisis Center ²	8	9 or more
Residential Camp ²	NA	5 or more
Trip Camp ²	NA	5 or more
Day Treatment Center ²	8	9 or more

Residential Child Care Facility ²	8	9 or more
Group Homes		
Persons with Mental Illness ²	8 ³	9 or more ³
Developmentally Disabled ²	8 ³	9 or more ³
Aged (Assisted Living Residence) ²	8 ³	9 or more ³
Group Home for Disabled Persons	8 ³	9 or more ³
<p>Notes:</p> <p>¹ Child care centers are allowed as an accessory use when operated in the same building as a religious institution.</p> <p>² As defined by State law and rules and regulations.</p> <p>³ Family members that reside within the group home but are not themselves disabled and are not required for the care or supervision of any disabled resident shall be counted toward the maximum occupancy/enrollment limits.</p> <p>The enrollment or occupancy numbers in this table do not include additional necessary persons required for the care and supervision of the enrollees or occupants. Enrollment or occupancy numbers may be affected by licensing or building code requirements.</p>		

5.2.18. Commercial and Industrial Accessory Structures and Uses

The following structures and uses are considered accessory to commercial and industrial use:

- Onsite parking garage or lot that provides required parking for a structure or commercial/industrial use;
- On-premise signs;
- Totally enclosed facilities for storing merchandise or materials needed for commercial/industrial use;
- Fuel storage;
- Fence, wall and hedge;
- Antennas, radio facilities, and satellite dishes, subject to the requirements of this Code; and
- Any accessory structure, structure or related use expressly designated as accessory in a commercial or industrial zoning district established under this Code.

Accessory uses shall meet the general accessory structure and use standards, any applicable specific accessory use standards, and the general development standards in Chapter 6.

5.2.19. Commercial Mobile Radio Service Facility (CMRS) Facilities

(A) **General.**

(1) **Purpose.** The purposes of this Section are:

- To facilitate the provision of wireless telecommunication services, including personal wireless services, throughout the unincorporated area of El Paso County;
- To allow the location of commercial mobile radio service facilities (CMRS facilities) in El Paso County subject to certain standards;
- To encourage co-location of CMRS facilities; and
- To prevent unreasonable discrimination among providers of functionally equivalent services.

(2) **Applicability.** The standards in this Section apply to all CMRS facilities located, constructed or modified after the effective date of this Code.