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El Paso County, CO



**RESOLUTION NO. 22-44**

**EL PASO COUNTY BOARD OF COUNTY COMMISSIONERS, STATE OF COLORADO**

**APPROVAL OF AMENDMENT TO THE LAND DEVELOPMENT CODE (LDC-21-005) – Group Homes – to Chapters 1 and 5 of the El Paso County Land Development Code (2021)**

**WHEREAS**, the Planning and Community Development Department of El Paso County requests approval of Amendment to Chapters 1 and 5 of the Land Development Code as herein described, to revise the regulations for group homes. The proposed revisions, in their entirety, are on file with the El Paso County Planning and Community Department

**WHEREAS**, a public hearing was held by the El Paso County Planning Commission on January 6, 2022, upon which date the Planning Commission did by formal resolution recommend approval of the proposed amendments, and

**WHEREAS**, a public hearing was held by this Board on February 8, 2022; and

**WHEREAS**, based on the evidence, testimony, exhibits, consideration of the master plan for the unincorporated area of the County, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, comments by the El Paso County Planning Commission Members, and comments by the Board of County Commissioners during the hearing, this Board finds as follows:

1. The proposed amendment(s) to the El Paso County Land Development Code were properly submitted for consideration by the Planning Commission.
2. Proper publication and public notice were provided as required by law for the hearing before the Planning Commission.
3. The hearing before the Planning Commission was extensive and complete, that all pertinent facts, matters and issues were submitted and that all interested persons were heard at that hearing.
4. All data, surveys, analyses, and studies, as are required by the State of Colorado and El Paso County have been submitted, reviewed, and were received into evidence and found to meet the intent of the Introductory Provisions of the Land Development Code.

5. For the above-stated and other reasons, the proposed Amendment(s) are in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

**NOW, THEREFORE, BE IT RESOLVED** the El Paso County Board of County Commissioners hereby approves the amendment to Chapters 1 and 5 of the El Paso County Land Development Code, including other conforming amendments throughout the Code, as represented on the attached Exhibit "A" by underlining (additions) and strike-through (deletions):

**AND BE IT FURTHER RESOLVED** that the Executive Director of Planning and Community Development is hereby authorized and directed to develop procedures for the provision of public notice of and opportunity to submit comments on applications for administrative plat approval and for the appeal of administrative plat approval or denial to the Board of County Commissioners.

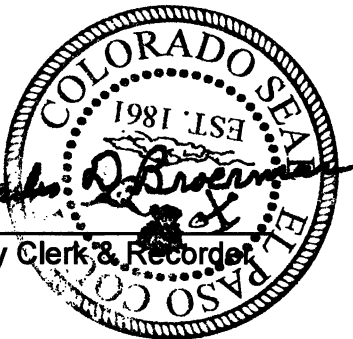
**AND BE IT FURTHER RESOLVED** the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

DONE THIS 8<sup>th</sup> day of February 2022 at Colorado Springs, Colorado.

ATTEST:

By:

County Clerk & Recorder



BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By:

Chair

A handwritten signature in black ink, appearing to read "Hank VanderWeil", is written over a horizontal line. The signature is cursive and stylized.

**EXHIBIT A**

See attached.

**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.

**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.~~

## Chapter 5

### USE AND DIMENSIONAL STANDARDS

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### **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 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 six 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:
    - ~~ai)~~ 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**

<b>Family Care Home</b>		
Family Foster <sup>2</sup>	8	NA
Day Care Home <sup>2</sup>	12	NA
Adult Day Care	8	9-12
Specialized Group Facility <sup>2</sup>	8	9-12
<b>Child Care Center<sup>1</sup></b>		
Large Day Care Center <sup>2</sup>	NA	13 or more
Small Day Care Center <sup>2</sup>	NA	12 or fewer
Nursery <sup>2</sup>	NA	As Limited by State
Day Camp <sup>2</sup>	NA	As Limited by State
Center for Developmentally Disabled <sup>2</sup>	8	9 or more
Crisis Center <sup>2</sup>	8	9 or more
Residential Camp <sup>2</sup>	NA	5 or more
Trip Camp <sup>2</sup>	NA	5 or more
Day Treatment Center <sup>2</sup>	8	9 or more
Residential Child Care Facility <sup>2</sup>	8	9 or more
<b>Group Homes</b>		
Persons with Mental Illness <sup>2</sup>	5-8 <sup>3</sup>	9 or more 6-10 <sup>3</sup>
Developmentally Disabled <sup>2</sup>	5-8 <sup>3</sup>	9 or more 6-10 <sup>3</sup>
Aged (Assisted Living Residence) <sup>2</sup>	8 <sup>3</sup>	9 or more <sup>3</sup>
Group Home for Handicapped or Disabled Persons	5-8 <sup>3</sup>	9 or more 6-10 <sup>3</sup>
<p><b>Notes:</b></p> <p><sup>1</sup> Child care centers are allowed as an accessory use when operated in the same building as a religious institution.</p> <p><sup>2</sup> As defined by State law and rules and regulations.</p> <p><sup>3</sup> <del>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.</del></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;