

BOCC

RESOLUTION NO. 14-243

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

RESOLUTION AMENDING SECTIONS 5.2.2, TABLE 5-1, TABLE 5-3, AND DEFINITIONS OF THE EL PASO COUNTY LAND DEVELOPMENT CODE REGARDING GROUP HOMES FOR HANDICAPPED AND DISABLED PERSONS PURSUANT TO THE FAIR HOUSING ACT AMENDMENTS OF 1988, THE AMERICANS WITH DISABILITIES ACT, AND THE REHABILITATION ACT.

WHEREAS, pursuant to C.R.S §§ 30-11-101(1)(e), 30-11-103, and 30-11-107(1)(e), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board" or "County"), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the best interests of the County and its inhabitants, and is further authorized by *inter alia*, C.R.S. §§ 30-28-101, *et seq.*, C.R.S. §§ 30-28-201, *et seq.*, and C.R.S. §§ 29-20-101, *et seq.*, to adopt regulations for the protection of the public health, safety, and welfare of the inhabitants of El Paso County; and

WHEREAS, the Board has specific authority to regulate group homes for handicapped and disabled persons through zoning regulations and resolutions to allow the same in residential districts in El Paso County pursuant to C.R.S. § 30-28-115(2)(c); and

WHEREAS, the Board has determined, based on advice from legal counsel, that its zoning regulations in the El Paso County Land Development Code ("LDC") need to be revised to bring the County into better compliance with federal law regarding group homes for handicapped and disabled persons including the Fair Housing Act (Title VIII of Civil Rights Act of 1968) as amended by the Fair Housing Act Amendments of 1988 ("FHAA"), 42 U.S.C. § 3601, *et seq.*; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*; and the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, which prohibit local governments like the County from discriminating against handicapped and disabled persons through zoning; and

WHEREAS, on May 20, 2014, after a public hearing was held on the matter, a majority of the El Paso County Planning Commission recommended approval of the proposed revisions to the LDC with modifications; and

WHEREAS, legal notice of the hearing, in conformance with the requirements of C.R.S. § 30-28-116, was published in the *El Paso County and Fountain Valley Advertiser and News* on May 28, 2014, and said notice and proposed revisions to the LDC, were made available online at the following web address: <http://adm.elpasoco.com/Development%20Services/Pages/default.aspx>. In compliance with statute, copies of the same were made available on May 28, 2014, for public examination at the El Paso County Development Services Department and at the Board of County Commissioners Office; and

WHEREAS, on June 17 and July 1, 2014, the Board conducted the public hearing to consider amending Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code regarding group homes for handicapped and disabled persons, at which hearing various witnesses were heard and exhibits were presented for the Board's consideration, and testimony was taken from the general public and any and all persons desiring to appear and give such testimony and present evidence (the Board also held a public Work Session on June 24, 2014); and

WHEREAS, based on the evidence, testimony, exhibits, and presentations by County representatives, the general public, any and all interested persons, and comments by the County Commissioners at the hearing, **THE BOARD DOES FIND AS FOLLOWS:**

1. That the proposed amendments to the LDC were properly submitted for consideration and approval by the Planning Commission.
2. That proper publication and public notice were provided as required by law for the hearing before the Board.
3. That the public hearing was extensive and complete, that all pertinent facts, matters, and issues were submitted, and that the general public and all interested persons were heard at the hearing.
4. That all exhibits were received into evidence.
5. That the Board incorporated by reference and received into evidence the documents and testimony of the public hearing on June 17 and July 1, 2014, which included the following:
 - a. Copy of the legal notice of the hearing.
 - b. Draft amendments and additional revisions to the LDC regarding Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code regarding group living facilities for handicapped and disabled persons.
 - c. Testimony and exhibits presented by the general public and all interested persons.
 - d. Presentation made by Gerald Dahl, special counsel hired by the Board to draft and advise the Board concerning the amendments proposed for the LDC, including any additional revisions identified during the public review and hearing process.
6. That this is a legislative action by the Board to amend its LDC reflective of public policy relating to matters of a general character, prospective in nature, and not restricted to identifiable persons or groups or properties.

7. That the standards in Section 5.2.2 benefit handicapped or disabled persons and respond to legitimate safety concerns of handicapped or disabled persons and are not based on stereotypes of this protected class of persons.
8. That the Board has taken into consideration the following:
 - a. All the testimony, evidence, and documents taken into evidence at the hearing; and
 - b. Reasons why the amendments to the LDC are in the best interest of the public health, safety, and welfare of the citizens of El Paso County, Colorado.
9. That based on the above considerations, the Board has determined that it would serve the best interests of the public and is in the best interests of the health, safety, and welfare of the citizens of El Paso County to approve and adopt the proposed amendments to Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the LDC regarding group homes for handicapped and disabled persons pursuant to applicable federal laws indicated herein, and to make such amendments effective immediately.
10. That all requirements of law have been met.

NOW THEREFORE, BE IT RESOLVED AND ORDERED:

That Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the LDC regarding group homes for handicapped and disabled persons are hereby amended, with Section 5.2.2 repealed and replaced, to read in their entirety as set forth on the attached **Exhibit 1**, which is attached hereto and incorporated herein by this reference.

That the said amendments to the LDC are hereby declared to be effective upon the effective date of this Resolution.

That the County Attorney's Office is authorized to make additional form and style revisions including but not limited to spelling, numbering, statutory references and other conforming and non-substantive corrections, prior to public distribution and recording.

That a copy of these amendments to the LDC shall be kept at the offices of the El Paso County Development Services Department and there made available for public inspection and further, that a copy of the same shall be filed for recording with the Office of the El Paso County Clerk & Recorder.

That the County Administrator may schedule a review of these amendments to the LDC during calendar year 2014 or 2015 or as otherwise needed to enable the Board to consider amendments responsive to the County experience with these amendments to the LDC as applied.

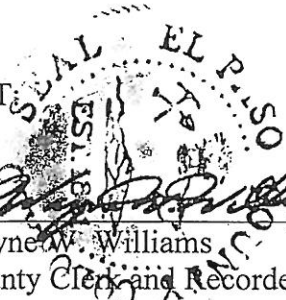

BE IT FURTHER RESOLVED, that Dennis Hisey, duly elected, qualified member and Chair of the Board of County Commissioners, or Amy Lathen, duly elected, qualified member

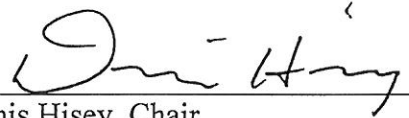
and Vice Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as expressed herein.

Upon motion duly made and seconded, the foregoing Resolution was adopted by the following vote:

Commissioner Hisey	Aye
Commissioner Lathen	Aye
Commissioner Clark	Aye
Commissioner Glenn	Aye
Commissioner Littleton	Aye

DONE AND EFFECTIVE this 1st day of July, 2014.

ATTEST: 
By:  _____
Wayne W. Williams
County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO
By:  _____
Dennis Hisey, Chair

Adult Care Home

~~A County-certified residential facility for the 24 hour care of no more than 15 residents in a non-medical facility for disabled adults, 18 years of age or over, who do not require 24 hour medical care and who are able to perform, with or without assistance, most activities of daily living.~~

Family

An individual, or 2 or more persons related by blood, marriage, adoption, or as guardian and ward, or a group of not more than 5 persons, excluding servants, who are not so related, living together in a dwelling unit. A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., as amended, unless related by blood, marriage or adoption, or in foster care.

Rehabilitation Facility

An institutional use-type facility, and not a group home, whether public, quasi-public, not-for-profit, providing accommodation, treatment and medical care for patients suffering from alcohol or drug-related illness.

Group Home

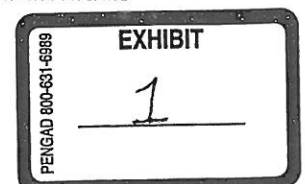
A home intended to provide a normal residential family setting for certain unrelated groups of people and limited to group homes for persons with mental illness, group homes for developmentally disabled persons, group homes for the aged, and group homes for handicapped or disabled persons.

Group Home for Handicapped or Disabled Persons

A group home for persons with mental or physical impairments which substantially limit one or more major life activities and including such additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons. "Handicap" and "disability" have the same legal meaning. A person with a disability is any person who has a physical or mental impairment that substantially limits one 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.

Group Home for the Aged (including Assisted Living Residences)

A group home for persons who are 60 years of age or older, do not need nursing facilities or skilled and intermediate care facilities, and who desire to live in normal residential surroundings. The criteria, requirements, and restrictions for group homes for the aged shall be those prescribed by C.R.S. §30-28-115(2) (b) (except for distance separations) and in this Code. Group homes for the aged include assisted living residences as defined in C.R.S. §25-27-102 (1.3). "Assisted living residence" means a residential facility that makes available to three (3) or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "assisted living residence" does not include any facility licensed in this state as a residential care facility for individuals



with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the Department of Public Health and Environment.

Group Home for Developmentally Disabled Persons (including Intellectually and Developmentally Disabled Persons)

A State-licensed group home for persons with developmental disabilities or intellectual and developmental disabilities, as those terms are defined in C.R.S. §§ 27-10.5-102(11)(a) and 25.5-10-202(26)(a). “Developmental disability” has the same meaning as “intellectual and developmental disability.” The criteria, requirements, and restrictions for group homes for developmentally disabled persons shall be those prescribed by C.R.S. §§ 30-28-115(2)(a), §27-10.5-109, and 25.5-10-214, and any regulations implemented by the Department of Public Health and Environment, the Department of Health Care Policy and Financing, and the Department of Human Services in support of this statutory provision, and elsewhere in this Code. This includes a community residential home as defined in C.R.S. § 25.5-10-202(5).

Group Home for Persons with Mental Illness

A State-licensed group home for persons with mental illness, as that term is defined in C.R.S. §27-65-102(14). The criteria, requirements, and restrictions for group homes for persons with mental illness shall be those prescribed by C.R.S. §30-28-115(2) (b.5) (except for separation requirements) and elsewhere in this Code. The term group home for persons with mental illness shall not include any facility licensed as a residential child care facility.

5.2.2. 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 or 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 5.2.2(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 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:

- (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 Development Services 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).
- (3) 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) 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.

(b) Reasonable accommodation requests will follow the applicable special use process and procedures pursuant to Sections 2.2.4, 5.3.2.G except that if the DSD 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:

(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.

(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	13 or more
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 Established by State
Day Camp ²	NA	As Established 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	6-10 ³
Developmentally Disabled ²	5	6-10 ³
Aged (Assisted Living Residence) ²	8	9 or more
Group Home for Handicapped or Disabled Persons	5	6-10 ³
<p>Notes:</p> <p>¹Child care centers are allowed as an accessory use when operated in the same building as a religious institution.</p> <p>²As defined by State law and rules and regulations.</p> <p>³To the extent non-handicapped or disabled family members are resident within the group home, such persons count toward the maximum occupancy/enrollment limits. Special use applications are to be considered as requests for reasonable accommodation and shall be processed pursuant to Section 5.2.2.D.(3).</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>		

