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Date: October 21, 2024
To: Staff and Users of the El Paso County Land Development Code
From: Meggan Herington, AICP, Executive Director
Re: Interpretation of the Land Development Code related to Residential Occupancy Limits and the Occupancy of Group Homes

This memo is intended to clarify the interpretation of the El Paso County Land Development Code related to the following Sections:

- 1.15 - Definitions of Specific Terms and Phrases
- Chapter 5 - Use and Dimensional Standards, Table 5-1, Principal Uses
 - ⁴ Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.
- 5.2.17 - Child Care Centers, Family Care Homes, and Group Homes
- 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

Two recent pieces of State legislation impact residential occupancy limits and occupancy of group homes as currently regulated within the El Paso County Land Development Code.

House Bill HB24-1007 prohibits residential occupancy limits. This bill prohibits local governments from enacting or enforcing residential occupancy limits based on familial relationships. Local governments may still limit residential occupancy based on “demonstrated health and safety standards,” such as the International Building Code, fire code, Colorado Department of Public Health & Environment wastewater and water quality standards, or affordable housing program guidelines. The bill applies to all Colorado municipalities regardless of population and all Colorado counties regardless of population and went into effect on July 1, 2024.

Senate Bill SB 24-048 includes several sections, with sections 6 and 7 impacting local county zoning and land use. The bill renames a sober living home or sober living facility (group home) as a recovery residence and provides direction on the number of occupants living in a group home or recovery residence. Current law establishes the requirements a facility must meet before operating as a recovery residence and charges the Behavioral health Administration in the State Department of Human Services with the enforcement of recovery residences operating unlawfully. This bill went into effect June 5, 2024.

Specific Sections of State Statute amended by this bill include:

SECTION 6. Amends Colorado Revised Statutes, § 27-80-129, paragraphs (1)(b)(l) introductory portion, (3), and (4) to, among other things, rename a sober living facility or sober living home as a recovery residence.

SECTION 7. In Colorado Revised Statutes, § 30-28-115, add (2)(b.7) as follows:
30-28-115. Public welfare to be promoted – legislative declaration - construction. (2) (b.7)

The General Assembly finds and declares that it is the policy of the State to encourage, promote, and assist persons who are in recovery from substance use and disorders to live in residential neighborhoods. Further, the General Assembly declares that the use of recovery residences, as defined in Section 27-80-129 (1)(B), by persons in recovery from substance use disorders is a matter of statewide concern and that recovery residences are a

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residential use of property for zoning purposes **and subject only to the regulations of like dwellings in the same zone** (emphasis added).

Therefore, the El Paso County Planning and Community Development Department can no longer enforce the following sections of the Land Development Code:

1.15 – Definitions of Specific Terms or Phrases

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 1 person required to register as a sex offender pursuant to Section 16-22-103, C.R.S., as amended, unless related by blood, marriage or adoption, or in foster care.

Impact: The Planning and Community Development Department will no longer apply the following portion of the definition of family:

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,

This includes application to the definition of family as it relates to allowances for group homes.

Chapter 5 - Use and Dimensional Standards, Table 5-1, Principal Uses

- ⁴ Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.

This table lists allowed and special uses in each of the zone districts. The use of “Group Home” is a listed use with notation number 4 as referenced above.

Impact: Group homes continue to be an allowed use in all agricultural and residential zone districts, but notation number 4 will no longer apply.

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

(A) Separation Requirements. No family care homes, child care centers, or group homes, excluding group homes for 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.

Impact: There is no longer an enforceable separation in agricultural or residential zone districts for family care homes, or group homes where 24-hour care or permanent living is part of the function.

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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	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
Notes: ¹ <u>Child care</u> centers are allowed as an accessory use when operated in the same building as a religious institution. ² As defined by State law and rules and regulations. 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. 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.		

This table lists allowed and special uses is each of the zone districts specifically based on occupancy limits.

Impact: The current Land Development Code establishes the number of residents for group homes and establishes a threshold for when a Special Use approval is required. Until the Code update is complete in 2026, staff will not apply the Special Use requirement nor the maximum occupancy limit for uses that allow 24-hour care and any use listed that is a permanent living arrangement.

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OTHER CODES AND REGULATIONS THAT ARE APPLICABLE

While not falling under County zoning authority, occupancy limits may still be applied by other means. For example, recovery residences that require certification through Colorado Department of Health and Environment's (CDPHE) Behavioral Health Administration are inspected and reviewed by the Colorado Association for Recovery Residences (CARR) to ensure premises, place, facility or building meets minimum standards established by the National Alliance for Recovery Residences (NARR). Links to these resources are listed below. El Paso County expects all recovery residences to follow State required certification procedures and requirements.

- The certifying body is the Colorado Association for Recovery Residences ("CARR"). <https://carrcolorado.org/>.
- CARR ensures premises, place, facility, or building meets minimum standards applying minimum standards established by the National Alliance for Recovery Residences (NARR) <https://narronline.org/>.
- NARR standards are located here: <https://narronline.org/wp-content/uploads/2024/05/NARR-Standard-3.0.pdf>.

The Pikes Peak Regional Building Department (PPRBD) is responsible for enforcement of building codes within the City of Colorado Springs, Unincorporated El Paso County, Fountain, Monument, Manitou, Palmer Lake, Green Mountain Falls, and Woodland Park. PPRBD does not have jurisdiction on state or federal owned property. These jurisdictions have adopted the Pikes Peak Regional Building Code (PPRBC) which adopts the International family of codes by reference.

The International Building Code (IBC) requires all building or tenant spaces be assigned an "occupancy classification" based upon the use(s) of the space. The IBC uses this occupancy classification to address requirements specific to the intended use. If the new use falls within a different occupancy classification, the building or tenant space will require a new Certificate of Occupancy. It is highly suggested that a licensed design professional (Architect or Engineer) familiar with building codes be consulted. The process of changing the occupancy classification of an existing building is not always a difficult process but can be very frustrating when it is not anticipated.

HOW TO FILE A COMPLAINT RELATED TO A RESIDENTIAL RECOVERY RESIDENCE

State Legislation approved in 2024 prevents El Paso County from enforcing rules related to occupancy and function of the residence. In filing a grievance related to a recovery facility within a neighborhood, we encourage you to reach out to your State representative. The link below is to the State website application that allows you to find state Senator and Representative in the Colorado State Legislature. To use the search, enter your address information in the search bar located on the left side of the screen and click the search button. You may also click anywhere on the map to bring up legislative member information for that area, including contact information.

<https://leg.colorado.gov/FindMyLegislator>

Complaints related to occupancy and function of the recovery residences should be sent to Colorado Agency for Recovery Residences (CARR.) It is the policy of the CARR to ensure Certified Residences and stakeholder grievances are handled respectfully, appropriately, and professionally. The Formal Grievance Procedure should be used to resolve interpersonal conflict between individuals and to report issues with existing CARR policy that a Certified Residence believes should be examined prior to the next scheduled annual policy review meeting. The Formal Grievance Procedure should not be used for retribution or personal/agency gain. The Formal Grievance Procedure includes but is not limited to the investigation, validation, and recommendation of the Ethics Committee as to the standing of the Certified Residence and sanctions and/or disqualification of their certification to the CARR Board, when necessary.

<https://carrcolorado.org/file-a-grievance/>