

RESOLUTION 2024-051

A resolution approving Boulder County Community Planning & Permitting Docket DC-24-0002: Text Amendments to the Land Use Code Related to Residential Occupancy

Recitals

A. The Board of County Commissioners of Boulder County (the “Board”) is authorized to amend the text of the County’s Zoning Regulations according to the procedures in Article 16 of the Boulder County Land Use Code and C.R.S. § 30-28-112, -116 and -133.

B. Under other statutory authority, the Board is empowered to adopt regulations related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.

C. By Resolution 94-185, adopted October 18, 1994, the Board approved a unified Boulder County Land Use Code (the “Code”), which the Board has amended on subsequent occasions.

D. In the present docket, DC-24-0002 (the “Docket”), authorized by the Board at a public meeting on May 14, 2024, Boulder County Community Planning & Permitting staff proposed text amendments to the Code (the “Proposed Amendments”) related to Residential Occupancy, as set forth in the Boulder County Community Planning & Permitting Department’s memorandum and recommendation dated June 27, 2024, with its attachments (the “Staff Recommendation”).

E. On April 15, 2024, Governor Jared Polis signed HB24-1007, the Harmonizing Occupancy Measures Equitably (HOME) Act into law in Colorado. This act prohibits local governments from limiting residential occupancy in a dwelling unit based on familial relationship, while retaining the right to limit residential occupancy based on demonstrated health and safety standards. The HOME Act took effect on July 1, 2024.

F. The Proposed Amendments will revise the Code to comply with the enactment of the HOME Act by updating the method of regulating residential occupancy to no longer rely on familial relationship as a guide for occupancy limits, which the Act prohibits. Additionally, re-envisioning how Boulder County regulates residential occupancy through the Code will remove biases surrounding the current definition of Family and improve equity in the Code by employing a more objective standard related to legitimate government interests of preserving and promoting public health and safety within residential dwelling units.

G. As outlined in **Exhibit A**, the Proposed Amendments include updates to Article 18 Family and Dwelling Unit Definitions and related sections of Article 4 of the Code. The

Proposed Amendments strike all language regarding the definition of Family, add a new definition for Household, and replace use of the word Family with Household or Unit.

H. The Boulder County Planning Commission (the “Planning Commission”) held a duly noticed public hearing on the Proposed Amendments on June 12, 2024. The Planning Commission recommended approval of the Proposed Amendments as presented by staff and certified the Docket for action to the Board. Additionally, the Planning Commission requested that staff and the Board consider the inclusion of other related updates to the Code, such as the Boarding House and Group Care or Foster Home uses, where the word “family” may be used, as further summarized in the Staff Recommendation.

I. On June 27, 2024, the Board held a duly noticed public hearing on the Docket (the “Public Hearing”) and considered the Staff Recommendation, documents, and testimony presented by County Community Planning & Permitting Department staff. No members of the public spoke at the Public Hearing.

J. Based on the Public Hearing, the Board finds that the Proposed Amendments outlined in **Exhibit A** meet the criteria for text amendments contained in Article 16-100.B of the Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Code; and the Proposed Amendments are in accordance with the Boulder County Comprehensive Plan, subject to the conditions stated below.

Therefore, the Board resolves:

1. The Proposed Amendments in **Exhibit A** are approved, effective as of July 1, 2024.
2. Under § 30-28-125, C.R.S., the Board authorizes the Clerk to the Board to transmit this Resolution, with its **Exhibit A**, to the County Clerk and Recorder for filing and appropriate indexing.

A motion to approve the Docket was made by Commissioner Claire Levy, seconded by Commissioner Ashley Stolzmann, and passed by a 2-0 vote. Commissioner Marta Loachamin was excused from the Public Hearing.

[Signature Page to Follow]

ADOPTED as a final decision of the Board on this 30th day of July 2024.

The signatures below indicate approval of the text of the Resolution but are not necessarily reflective of the votes taken at the Public Hearing.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Ashley Stolzmann
Ashley Stolzmann, Chair

Marta Loachamin
Marta Loachamin, Vice Chair

Claire Levy
Claire Levy, Commissioner

ATTEST:

Matthew Ramos
Clerk to the Board

Exhibit A

DC-24-0002: Text Amendments to the Land Use Code Related to Residential Occupancy

Table of Contents

- 4-1300 Expanded TDR Program and Structure Size Thresholds for Single Family Uses Unit Dwellings
- 4-1302 Single Family Residential Unit Dwelling Size Threshold

Article 4 Zoning

4-101 Forestry (F) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. Single Family Unit Dwelling

4-102 Agricultural (A) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. Single Family Unit Dwelling

4-103 Rural Residential (RR) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. Single Family Unit Dwelling

4-104 Estate Residential (ER) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. Single Family Unit Dwelling

4-105 Suburban Residential (SR) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. Single Family Unit Dwelling

4-106 Multifamily (MF) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - c. Multifamily Unit Dwelling
 - d. Single Family Unit Dwelling
- E. Lot, Building, and Structure Requirements
 - 1. Minimum lot size
 - a. In a community service area on subdivided land where the principal structure is a Single family Unit Dwelling, educational facility, or Church connected to public water and sewer facilities . . . 7,500 square feet

4-107 Manufactured Home Park (MH) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - c. Single Family Unit Dwelling

4-108 Transitional (T) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - c. ~~Multifamily Unit Dwelling~~
 - d. ~~Single Family Unit Dwelling~~
- F. Additional Requirements
 - 4. An exemption plat is required for any ~~Single family Unit Dwelling residential~~ development on vacant land proposed for subdivided land with a final plat approved prior to March 22, 1978.

4-109 Business (B) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - c. ~~Single Family Unit Dwelling~~
- F. Additional Requirements
 - 4. An exemption plat is required for any ~~Single family Unit Dwelling residential~~ development on vacant land proposed for subdivided land with a final plat approved prior to March 22, 1978.

4-110 Commercial (C) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. ~~Single Family Unit Dwelling~~
- F. Additional Requirements
 - 4. An exemption plat is required for any ~~Single family Unit Dwelling residential~~ development on vacant land proposed for subdivided land with a final plat approved prior to March 22, 1978.

4-111 Light Industrial (LI) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - a. ~~Single Family Unit Dwelling~~
- E. Lot, Building, and Structure Requirements
 - 1. Minimum lot size
 - a. In a community service area on subdivided land where the principal structure is not a ~~Single family Unit Dwelling~~ and is connected to public water and sewer facilities . . .no minimum requirement
- F. Additional Requirements
 - 4. An exemption plat is required for any ~~Single family Unit Dwelling residential~~ development on vacant land proposed for subdivided land with a final plat approved prior to March 22, 1978.

4-112 General Industrial (GI) District

- B. Principal Uses Permitted
 - 11. Residential Uses (see 4-511)
 - b. ~~Single Family Unit Dwelling~~
- E. Lot, Building, and Structure Requirements

1. Minimum lot size
 - a. In a community service area on subdivided land where the principal structure is not a Single family Unit Dwelling and is connected to public water and sewer facilities . . .no minimum requirement

F. Additional Requirements

4. An exemption plat is required for any Single family Unit Dwelling residential development on vacant land proposed for subdivided land with a final plat approved prior to March 22, 1978.

4-116A Niwot Rural Community District I (NRCD I)

B. Principal Uses Permitted [NH = Nonhistoric district only]

6. Residential Uses
 - a. Single Family Unit Dwelling [NH]

4-117 Mountain Institutional (MI) District

B. Principal Uses Permitted

11. Residential Uses (see 4-511)
 - b. Single Family Unit Dwelling

Use Tables • 4-511 Residential Uses [TO BE UPDATED]

4-501 Agri-Business Uses

B. Commercial Feed Yard

5. Additional Provisions:
 - a. One Single family Unit Dwelling, occupied by the owner, operator, or manager of the feed yard will be considered customary and incidental as a part of this use

C. Commercial Nursery

5. Additional Provisions:
 - b. One Single family Unit Dwelling, occupied by the owner, operator, or manager of the nursery will be considered customary and incidental as a part of this use.

E. Keeping of Nondomestic Animals

5. Additional Provisions:
 - b. One Single family Unit Dwelling, occupied by the owner, operator, or manager of the business will be considered customary and incidental as a part of this use.

4-502 Agricultural Uses

A. Equestrian Center

5. Additional Provisions:
 - e. One Single family Unit Dwelling, occupied by the owner or manager of the equestrian center, will be considered customary and incidental as a part of this use.

B. Farm Store

5. Additional Provisions:
 - a. One Single family Unit Dwelling, occupied by the owner, operator, or manager of the business may be considered customary and incidental as a part of this use.

C. Intensive Agricultural Uses

5. Additional Provisions:
 - a. One Single family Unit Dwelling may be considered customary and incidental as a part of this use.

D. Open Agricultural Uses

5. Additional Provisions:

- c. One ~~Single family Unit Dwelling~~, occupied by the owner or manager of the farm, may be considered customary and incidental as a part of this use. ~~Single family Unit Dwellings~~ must be located on building lots.

4-503 Commercial/Business Service Uses

F. Kennel

5. Additional Provisions:

- c. If a ~~Single family Unit Dwelling~~ is used as the holding facility for boarded animals, the use shall be limited to no more than 12 boarded animals but in no case shall there be more than 15 dogs including household pets or no more than 15 total cats including household pets, and the requirements of 5 (a) above shall apply.
- d. One ~~Single family Unit Dwelling~~, occupied by the owner, operator, or manager of the business will be considered customary and incidental as a part of this use.

4-504 Community Uses

D. Church

5. Additional Provisions:

- b. One ~~Single family Unit Dwelling~~ for the housing of the pastor or similar leader of the church and their ~~family Household~~ will be considered customary and incidental as a part of this use.

4-505 Forestry Uses

A. Forestry

5. Additional Provisions:

- b. One ~~Single family Unit Dwelling~~, occupied by the owner, operator, or manager will be considered customary and incidental as a part of this use.

4-507 Lodging Uses

E. Vacation Rental

1. Definition: A ~~Single-family Unit Dwelling unit~~ offering transient lodging accommodations to a single booking party at a time within that dwelling unit for a rental duration of fewer than 30 days where the entire dwelling unit is solely occupied by the rental party during the duration of the rental period.

4-511 Residential Uses

D. ~~Multifamily Unit Dwelling~~

1. Definition: A building or buildings that are occupied or are arranged, designed, and intended to be occupied, by two or more ~~families Households~~, and contains more than one dwelling unit, but not including hotels, motels, or boarding houses.
5. Additional Provisions:
 - a. Approval under the Subdivision Regulations is required prior to the development of ~~Mmultifamily Unit Dwellings~~ unless part of a mixed-use project that receives approval under another Community Planning & Permitting review process.

E. Single ~~Family Unit Dwelling~~

1. Definition: A detached building which is occupied or which is arranged, designed, and intended to be occupied, by not more than one ~~family~~ Household, and which contains not more than one dwelling unit.

4-516 Accessory Uses

L. Accessory Solar Energy System

5. Additional Provisions:

- e. Ground-Mounted Solar Energy Systems do not require Site Plan Review if the Director determines all of the following parameters are met:

- (iii) The panels of the system are located within 100 feet of the use the system is accessory to (e.g., Single ~~Family Unit Dwelling~~, agricultural facility) as measured from the furthest extent of the panel(s) to the closest point of the structure or facility that the system is providing power to;

T. Residential Marijuana Processing and Cultivation

6. Additional provisions:

- c. Marijuana plants shall not be cultivated, produced processed or possessed in the common areas of a ~~Multi-family Unit Dwelling~~ or attached residential development.

4-1300 Expanded TDR Program and Structure Size Thresholds for Single ~~Family Unit Uses Dwellings~~

A. Introduction and Purposes

1. This Section 4-1300 establishes a structure size threshold for ~~Ssingle family Unit residences Dwellings~~, above which additional Development Credits must be obtained to offset the impacts of larger scale homes, and below which Development Credits can be severed to preserve a supply of smaller scale homes. These regulations also provide for the transfer of Development Credits to maintain rural character through the preservation of vacant land.

4-1302 Single ~~Family Residential Unit Dwelling~~ Size Threshold

- A. The Size Threshold is the measure of ~~Ssingle family Unit Dwelling~~ residential floor area that is allowed on a legal building lot without having to purchase Development Credits, as further provided below. Building lots with residential floor area at a specified level less than the Size Threshold may sell Development Credits, as further provided below.

4-1303 Conveyance and Severance of Development Credits

C. Severance of Development Credits from Building Lots Where Restricted Residential Floor Area Is To Be Allowed

1. Development Credits may be severed from a building lot, whether or not the lot is a vacant building lot as defined in Article 18 of this Code, provided that the lot meets the following requirements and ~~Ssingle-family Unit Dwelling~~ residential floor area on the lot is limited as specified below:

- b. If the lot is not a vacant building lot, it must contain only legal ~~Ssingle-family Unit Dwelling~~ residential floor area and accessory structures (though other forms of existing floor area may be removed from the lot provided all such removal and any necessary land restoration is accomplished to the satisfaction of the Director pursuant to all applicable Land Use Code review and building permit requirements (including historic review if necessary), prior to the issuance and transfer of any Development Credits).

- c. The lot must not already be restricted to 2,000 square feet or less of ~~Ssingle-family~~ Unit Dwelling residential floor area through a conservation easement or other recorded instrument (although such lots can sever Development Credits as perpetually vacant lots if they follow the requirements of Subsection 4-1303.B. above).
- d. The lot must not already be firmly (vs. presumptively) restricted to 2,000 square feet or less of ~~Ssingle-family~~ Unit Dwelling residential floor area through a County land use approval (although such lots can sever Development Credits as perpetually vacant lots if they follow the requirements of Subsection 4-1303.B., above).
- f. The property owner must restrict ~~Ssingle-family~~ Unit Dwelling residential floor area on the eligible lot to the amount of residential floor area specified below, and if so done will receive the following Development Credits:

4-1304 Acquisition and Use of Development Credits for Construction

- E. Process for the Acquisition of Development Credits
 2. Any building permit application for a ~~Ssingle-family~~ Unit Dwelling residential structure greater than the applicable Size Threshold, or for an existing Community Use or Lodging Use approved through the Special Use Review process, shall not be considered complete without the submission of the necessary Development Credit certificates and completion of any required land use process.
- F. Relationship between Size Thresholds Existing ~~Single Family Residential Structures~~ Unit Dwellings
 1. ~~Single family residential structures~~ Unit Dwellings existing on the effective date of these regulations (August 8, 2008) are not subject to the Size Threshold requirement in this Article 4-1300; however, any addition of residential floor area to an existing structure which increases the total residential floor area to a size greater than the specified size threshold, will be subject to a requirement to purchase Development Credits to offset the portion of that additional new residential floor area above the threshold. Demolition and rebuilding of any existing residential structure or any portions thereof will not be counted toward the Size Threshold.

6-400 Nonurban Planned Unit Development

- B. Requirements
 2. Uses Allowed
 - a. Any use, or combination of uses, allowed in the underlying zoning district may be included in a NUPUD. The uses permitted in the NUPUD must be specifically defined and approved as a part of the development plan, with the following requirements:
 - (ii) Subdivided Lots . . . ~~Single family residential units~~ Unit Dwellings, homestead units, open or intensive agricultural uses, and any use requiring special review.

7-1304 Required School Dedications

- A. The following shall be required for subdivisions and exemptions.
 1. Dedication requirements shall be 750 square feet of land per dwelling unit for ~~Ssingle family residences~~ Unit Dwellings and 500 square feet per dwelling unit for ~~Mmultifamily~~ Unit residences Dwellings or other reasonable criteria approved by the specific school district and passed by Resolution of the Board of County Commissioners.

8-407 Specific Uses Exempted from the Permit Process in Areas of State Interest

- A. Open agriculture and ~~Single family Unit D~~wellings built or maintained on legal building lots.

18-137 Dwelling

- A. A building or portion thereof used exclusively for residential occupancy, including ~~one-family~~ Single Unit Dwellings and ~~multiple-family~~ Multi-Unit Dwellings, but not including hotels, motels, tents, camper trailers, or other structures designed or used primarily for temporary occupancy.

18-138 Dwelling Unit

- A. One or more rooms designed to accommodate one ~~family~~ Household and containing only one kitchen plus living, sanitary, and sleeping facilities.
- B. Maximum occupancy of a Dwelling Unit shall not exceed any of the following:
 - 1. The number of individuals permitted by the Onsite Wastewater Treatment System (OWTS) Regulations, as applicable.
 - 2. The number of individuals that can be accommodated within the bedroom(s) and guestroom(s), as defined by the Boulder County Building Code, of the Dwelling Unit.
 - a. A bedroom or guestroom occupied by one individual shall be at least 70 square feet. For each additional occupant the bedroom or guest room shall have an additional 50 square feet.
 - 3. Sixteen individuals.

~~18-148 Family~~

- ~~A. An individual, or two or more individuals related by blood, marriage, or adoption, and not more than two roomers or boarders; or~~
- ~~B. Two adults and any of their lineal descendants; or~~
- ~~C. A group of not more than three unrelated individuals; and who are living together as a single housekeeping unit.~~

[INSERT AND RENUMBER]

Household

A group of individuals who occupy a single Dwelling Unit and have established a cooperative living arrangement, where all members of the Household have free and unfettered physical access to the Dwelling Unit's kitchen, living areas, all utilities and mechanical equipment, and a bathroom which includes bathing facilities.

19-500 Marshall Fire (December, 2021)

- B. Temporary Structures on Fire-Affected Properties
 - 2. Temporary Housing Units
 - a. Temporary housing is intended to house those whose residence was destroyed by the Fire on a short-term basis while preparing for or rebuilding the new residence. Temporary housing units shall only be occupied by the property owner and the owner's ~~family~~ Household.
- F. Allowances and Requirements for Eligible Structures and Floor Area
 - 2. Disaster Recovery Unit
 - a. A single Accessory Dwelling may be constructed when the principal ~~Single family~~ Unit Dwellling was destroyed by the Fire according to Boulder County's damage assessment records. The Director may also consider an Accessory Dwelling allowance on properties with a damaged principal ~~Single family-Unit D~~wellling according to Boulder County's damage assessment records. In making this determination, the

Director will consider whether the effects of the damage were similar to those presented by homes that were destroyed.

b. Requirements:

(viii) The principal ~~Single family-Unit Dwelling~~ and the Accessory Dwelling shall remain in common ownership. Accessory Dwellings shall not result in the creation of additional building lots nor result in the change of the property to Condominium Ownership.

c. Special Provisions by Accessory Dwelling Building Type

(i) Detached

(A) Definition: A standalone Accessory Dwelling separate from the principal ~~Single family-Unit Dwelling~~ or other accessory structures.

(C) Location: If the structure is located more than 50 feet from the footprint of the ~~Single family-Unit Dwelling~~ destroyed by the Fire, as measured from the two closest points of the Accessory Dwelling and the footprint, Site Plan Review Waiver shall be required for a Detached Accessory Dwelling for the limited purpose of reviewing the structure's location and its impacts.

(ii) Attached to Accessory Structure

(C) If a new structure is located more than 50 feet from the footprint of the ~~Single family-Unit Dwelling~~ destroyed by the Fire, as measured from the two closest points of the Accessory Dwelling and the footprint, Site Plan Review Waiver shall be required for the new Structure for the limited purpose of reviewing the structure's location and its impacts.

(iii) Attached to the Principal Structure

(A) Definition: An Accessory Dwelling designed as part of the principal ~~Single family-Unit Dwelling~~ and sharing either a wall or a floor with the rest of the structure.