

### 7.3.105: ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES:

Individual standards are designed to mitigate impacts that apply to many uses allowed in the residential zone districts. Complete descriptions of these uses and standards are as follows. These standards are in addition to the residential development standards and the general site design standards contained in this chapter.

**M.** Accessory Dwelling Units : Accessory dwelling units are permitted, or conditionally permitted, as an accessory use to a principal dwelling subject to the following requirements.

1. Detached and Integrated Standards: The following standards apply to the establishment of both a detached and/or integrated accessory dwelling unit:

a. Owner-occupancy Requirement:

(1) In the R, R-1 9000, and R-1 6000 zones, except as otherwise provided in this section, for an accessory dwelling unit to be occupied, either the principal dwelling unit or the accessory dwelling unit must be occupied by the owner as defined.

(2) Declaration of Restriction:

(A) Before a building permit may be issued for an accessory dwelling unit, the owner shall record with the El Paso County Clerk and Recorder a declaration of restrictions in a form prescribed by the Manager.

(B) The declaration of restrictions shall require the property owner to reside on the property in accordance with the definition of "owner occupied" in order to lease one of the two units.

(C) The declaration of restrictions shall lapse upon removal of the accessory dwelling unit. Upon request of the owner and confirmation by the City that the accessory dwelling unit has been removed, the Mayor shall execute a recordable release of the declaration of restrictions and provide the release to the owner. The owner shall be responsible for recording the release and paying all costs of recordation.

(3) No zoning enforcement action pursuant to section 7.5.1001, et seq., of this Code, may be brought against a tenant by the City for a failure of the owner to meet the owner-occupancy requirement.

(4) In the A (Agriculture) zone district, the owner shall not be required to occupy either the principal structure or the accessory dwelling unit.

b. Waiver of Owner-occupancy Requirement: The Manager may waive the owner-occupancy requirement for temporary absences of up to two (2) years, upon a determination that failure to waive the requirement would create an unreasonable hardship. The Manager may grant an additional one (1) year extension to the original waiver upon the expiration of the original waiver.

(1) The Manager may determine failure to waive the occupancy requirement is an unreasonable hardship if:

(A) Enforcement of the requirements would create a temporary economic hardship that could be resolvable within two (2) years;

(B) The property is listed and actively marketed for sale; or

(C) The occupancy requirement is unreasonable due to temporary relocation by the owner for employment (including temporary relocation for military service members) or medical treatment, death of the owner, divorce or legal separation of the owner and a non-owner spouse or similar circumstances.

c. Restriction on Subdivision: In the R, R-1 9000, R-1 6000, PBC, C-6, and M-1 zone districts, the accessory dwelling unit shall not be sold separately from the principal dwelling unit, nor shall the lot on which an accessory dwelling unit is situated be subdivided unless subdivision is permissible in accordance with all provisions of Article 3 and Article 7 of this chapter.

(1) Before a building permit may be issued for an accessory dwelling unit, the owner shall record with the El Paso County Clerk and Recorder a declaration of restrictions in a form prescribed by the Manager.

(2) The declaration of restrictions shall prohibit the owner and the owner's heirs or assigns from selling the accessory dwelling unit separately from the principal dwelling unit. Such restriction shall be binding upon and run with the land.

(3) The declaration of restrictions shall lapse upon removal of the accessory dwelling unit. Upon request of the owner and confirmation by the City that the accessory dwelling unit has been removed, the Mayor shall execute a recordable release of the declaration of restrictions and provide the release to the owner. The owner shall be responsible for recording the release and paying all costs of recordation.

d. Off-Street Parking: A minimum of one (1) off-street parking space in addition to the minimum parking required for the principal structure shall be required.

e. Access: All accessory dwelling units shall have a thirty-six (36) inch wide clear access path from the front property line or from the property line where the principal dwelling unit gains its access. The clear access path may be gated. An accessory dwelling unit may share a clear access path with the principal dwelling unit.

f. Prohibited Units: Mobile homes, travel trailers and recreational vehicles shall be prohibited for use as an accessory dwelling unit.

g. No more than one (1) accessory dwelling unit shall be located on any lot.

2. Accessory Dwelling Unit - Detached: The following standards apply to the establishment of a detached accessory dwelling unit:

a. Maximum floor area: The floor area of a detached accessory dwelling unit shall not exceed fifty percent (50%) of the floor area of the principal structure or one thousand two hundred and fifty (1,250) square feet, whichever is less; except that where the floor area of the principal structure is less than one thousand five hundred (1,500) square feet, the maximum size of the accessory dwelling unit shall not exceed seven hundred and fifty (750) square feet.

b. The floor area of a detached accessory dwelling unit, which may be located above a detached garage, may exceed the footprint of the principal structure but may not exceed the gross floor area of the principal structure.

c. Maximum height of standalone accessory dwelling units and other detached structures containing an accessory dwelling unit:

(1) With roof pitch of 6:12 or greater - twenty-eight feet (28') maximum (measured to roof peak)

(2) With a roof pitch less than 6:12 (including flat roof) - twenty-five feet (25') maximum (measured to top of roof line)

d. Setbacks:

(1) Rear Yard: Five feet (5'). If the dwelling unit is above a garage with overhead doors that are facing an alley then the setback shall be ten feet (10').

(2) Front Yard: Per zone district requirements for the principal dwelling unit.

(3) Side Yard: Per zone district requirements for the principal dwelling unit.

e. Pre-fabricated homes are permitted for use as an accessory dwelling unit if placed on a permanent foundation and connected to metered utility services.

f. Conversion of Existing Detached Garages into Detached Dwelling Units: The detached garage must meet the minimum setbacks for an accessory dwelling unit as required in this section.

3. Accessory Dwelling Unit - Integrated: The following standards apply to the establishment of an integrated accessory dwelling unit:

a. Permitted only within single-family dwelling detached, and are not permitted in any other structure, including but not limited to, single-family attached dwellings, two-family dwellings, multi-family dwellings, or commercial buildings.

b. Maximum floor area of integrated unit: In all zone districts where an integrated unit is allowed: floor area shall not exceed fifty (50%) of floor area of the principal structure.

c. Maximum height: Maximum height of the principal structure as determined by the zone district.

d. Design: In the R, R-1 6000, and R-1 9000 zone districts, integrated accessory dwelling units shall not involve design modifications to the exterior of the principal structure that indicates their presence from the front of the principal structure. Building additions shall be architecturally compatible with the primary dwelling unit. External stairs are not allowed to provide access to a second-story accessory dwelling unit unless it is from a second-story deck.

e. Setbacks: Minimum setbacks of the principal structure as determined by the zone district.

f. Exterior Access: An integrated unit may have a separate exterior access. Any separate exterior access shall be restricted to the side or rear of the principal structure.

4. In any case where a provision of this subsection is found to be in conflict with any other provision of this code, or any adopted secondary code, the provision which establishes the higher or more restrictive standard shall apply.

5. Covenant Compliance: The provisions of this subsection do not supersede private covenants regarding accessory dwelling units.

N. Transit Shelters: Transit shelters are allowed in all of the residential zone districts. Except for the provisions listed in article 4, part 4 of this chapter, whenever benches, shelters or kiosks have been placed for the convenience of patrons either within or outside of the public rights of way under proper permit or authority of the City, the placement and location of the benches, kiosks or shelters shall be exempt from the provisions of this Zoning Code.

O. Mobile Home Parks: Mobile home parks are allowed within the PUD zone when the use is specifically authorized with the PUD zone district establishment or change.

P. Personal Cultivation Of Marijuana And Medical Marijuana: Pursuant to Colorado Constitution article XVIII, sections 14 and 16, patients, caregivers, and persons over twenty one (21) years of age may lawfully grow a limited amount of marijuana. No more than twelve (12) medical marijuana plants, marijuana plants for personal use, or any combination thereof, with one-half (1/2) or fewer being mature, flowering plants can be grown in a single residential unit or an accessory structure to a single residential unit, regardless of the number of patients, caregivers, or persons over twenty one (21) years of age, or any combination thereof, that reside in the residential unit. These activities are allowed as accessory uses in all residential zone districts or residential units so long as:

1. No marijuana is dispensed, except to registered patients pursuant to Colorado Constitution article XVIII, section 14;
2. No marijuana or medical marijuana infused products are manufactured or sold;
3. No marijuana or medical marijuana is cultivated outdoors;
4. No signs regarding medical marijuana are displayed;
5. No more than one caregiver cultivating medical marijuana resides in the dwelling unit;
6. A ventilation and filtration system ensures odors from the cultivation activities are not detectible by a person with a typical sense of smell from any adjoining lot, parcel, tract, public right-of-way, building unit or residential unit;
7. Marijuana and medical marijuana plants are grown in an enclosed and locked space;
8. All personal cultivation of marijuana and medical marijuana shall be limited to an area of one hundred fifty (150) square feet for a single-family dwelling detached or seventy five (75) square feet for all other dwelling unit types and accessory structures;
9. The person growing, cultivating, or processing marijuana or medical marijuana within a residential or accessory structure owned by another person or entity obtains the written consent of the property owner. The written consent of the property owner must be furnished to any requesting City official. If the person growing, cultivating, or processing marijuana or medical marijuana does not provide the City official with the written consent of the property owner, the City may inform the property owner of the marijuana or medical marijuana related activities occurring on the property; and
10. The residential unit or accessory structure shall be and remain at all times in compliance with all applicable City regulations including, but not limited to, Zoning, Building, Housing and Fire Codes.

Q. Short Term Rental Units: A short term rental unit is allowed as an accessory use in all residential zone districts, however, all conditions and requirements for a short term rental unit permit listed in article 5, part 17 of this chapter shall be met for a short term rental unit to be operated.

R. Accessory Family Suites: Accessory family suites are permitted as an accessory use to a principal single-family detached dwelling and are subject to the following requirements:

1. Accessory family suites are permitted only within a single-family detached dwelling, and are not permitted in any other structure, including but not limited to, single-family attached dwellings, two-family dwellings, multi-family dwellings, or commercial buildings.

2. An accessory family suite cannot be located on the same lot where an accessory dwelling unit exists.
3. The total number of individuals collectively occupying both the principal dwelling unit and the accessory family suite can be no more than one family as defined in this code.
  - a. Affidavit Required: The owner shall complete and record an affidavit assuring the property owner's acknowledgement of the occupancy limitations as listed above.
  - b. No zoning enforcement action pursuant to section 7.5.1001, et seq., of this Code, may be brought against a tenant by the City for a failure of the owner to meet the one family requirement.
4. Off-Street Parking: A minimum of one (1) off-street parking space in addition to the minimum parking required for the principal structure shall be required.
5. Exterior Access: An accessory family suite may have a separate exterior access. Any separate exterior access shall be restricted to the side or rear of the principal structure. All accessory family suites with an exterior access shall have a thirty-six (36) inch wide clear access path from the front property line or from the property line where the principal dwelling unit gains its access. The clear access path may be gated and may share a clear access path with the principal dwelling unit.
6. Internal Connectivity: An accessory family suite must maintain interior access to the principal dwelling unit through either a common doorway or stairway. Interior accesses may be locked if an exterior access exists.
7. Maximum floor area: Floor area shall not exceed fifty (50%) of floor area of the principal structure.
8. Maximum height: Maximum height of the principal structure as determined by the zone district.
9. Setbacks: Minimum setbacks of the principal structure as determined by the zone district.
10. Design: Accessory family suites shall not involve design modifications to the exterior of the principal structure that indicates their presence from the front of the principal structure. Building additions shall be architecturally compatible with the principal structure. External stairs are not allowed to provide access to a second-story accessory family suite unless it is from a second-story deck.
11. Restriction on Subdivision: The accessory family suite shall not be sold separately from the principal dwelling unit, nor shall the lot on which an accessory family suite is situated be subdivided unless subdivision is permissible in accordance with all provisions of Article 3 and Article 7 of this chapter.
  - a. Before a building permit may be issued for an accessory family suite, the owner shall record with the El Paso County Clerk and Recorder a declaration of restrictions in a form prescribed by the Manager.
  - b. The declaration of restrictions shall prohibit the owner and the owner's heirs or assigns from selling the accessory family suite separately from the principal dwelling unit. Such restriction shall be binding upon and run with the land.
  - c. The declaration of restrictions shall lapse upon removal of the accessory family suite. Upon request of the owner and confirmation by the City that the accessory family suite has been removed, the Mayor shall execute a recordable release of the declaration of

restrictions and provide the release to the owner. The owner shall be responsible for recording the release and paying all costs of recordation.

12. Accessory family suites shall be permitted in PUD zones unless expressly prohibited by the PUD zone ordinance. Accessory family suites shall not be included as separate from the single-family detached dwelling when calculating the density of a PUD zone.

13. Covenant Compliance: The provisions of this subsection do not supersede private covenants. (Ord. 94-107; Ord. 01-42; Ord. 02-98; Ord. 02-125; Ord. 02-153; Ord. 03-74; Ord. 03-127; Ord. 03-157; Ord. 06-161; Ord. 09-70; Ord. 09-80; Ord. 10-42; Ord. 10-107; Ord. 11-19; Ord. 12-76; Ord. 14-8; Ord. 16-52; Ord. 18-4; Ord. 18-112; Ord. 20-37; Ord. 20-38)