

**CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER HOPPE
COUNCIL BILL NO. 02
ORDINANCE NO. 1684
Series of 2020**

**TITLE: AN ORDINANCE AMENDING CHAPTER 26 OF THE WHEAT
RIDGE CODE OF LAWS, CONCERNING RESIDENTIAL
GROUP HOME AND SUBSTANCE ABUSE CLINIC ZONING
REQUIREMENTS**

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and Article 23 of Title 31 of the Colorado Revised Statutes, the City, acting through its City Council (the "Council"), previously adopted planning and zoning regulations, codified as Chapter 26 of the Wheat Ridge Code of Laws (the "Code"); and

WHEREAS, said Chapter 26 currently regulates the zoning of group homes of various types but it fails to regulate group homes for disabled persons; and

WHEREAS, the Wheat Ridge City Council ("Council") finds that it is permissible under current case law to impose neutral nondiscriminatory zoning regulations upon residential group homes for disabled persons; and

WHEREAS, the Council further finds that it is desirable and equitable to regulate all types of residential group homes in a similar fashion; and

WHEREAS, the Council therefore desires to amend certain provisions of Chapter 26 of the Code to regulate group homes for disabled persons in the same manner as other group homes, as permitted by law, to regulate substance abuse clinics for drug abuse and clinics for alcohol abuse in the same manner, and to eliminate certain other distinctions between group homes that no longer have a meaningful land use planning purpose.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 26-123 of the Wheat Ridge Code of Laws, defining certain terms applicable to Chapter 26 of the Code concerning zoning, is hereby amended by amending the definition of "Family" set forth therein as follows:

Family. One (1) or more persons related by blood, marriage, adoption, or legal custody plus domestic servants employed for service on the premises, or a group of not more than three (3) persons who need not be so related living together as a single housekeeping unit. ~~Five (5) people over the age of~~ **Four (4) or five (5) unrelated people** sixty (60)

years of age or over sharing one (1) housekeeping unit shall also be deemed to be a family. ~~Notwithstanding the foregoing, a family shall be deemed to include four (4) or more persons that are not related by blood, marriage, adoption, or legal custody occupying a residential dwelling unit and living as a single housekeeping unit if the occupants are handicapped persons as defined in title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by § 24-34-301, C.R.S. A family shall not include more than one (1) person required to register as a sex offender pursuant to § 18-3-412.5, C.R.S., as amended, unless related by blood, marriage, or adoption~~ or legal custody.

~~A household that includes four (4) or more persons identified above shall not be excluded from the definition of "family" by the residence in the household of additional necessary persons (and their families) employed in the care and supervision of such handicapped or disabled persons.~~

Section 2. Section 26-123 of the Wheat Ridge Code of Laws, defining certain terms applicable to Chapter 26 of the Code concerning zoning, is hereby amended by amending the definition of "Residential group homes" set forth therein as follows:

Residential group homes. This term includes the following categories:

- (a) Group home for children: A facility licensed by the Jefferson County or State Department of Human Services as a residential child care facility or specialized group facility, as defined by and pursuant to Article 6 of Title 26, Colorado Revised Statutes, as existing or hereafter amended. The age of a child placed in a group home for children may not exceed eighteen (18) years or, in the case of a child placed in a group home by court order prior to his or her eighteenth birthday, twenty-one (21) years. Group homes for children do not include facilities for the placement of children operated directly by the division of youth corrections of the Colorado Department of Human Services, the mental health division of the Colorado Department of Human Services, or the alcohol and drug abuse division of the Colorado Department of Public Health and Environment, even if licensed by Jefferson County Department of Human Services. See section 26-612. A group home for children shall not include more than one (1) person required to register as a sex offender pursuant to § 18-3-412.5, C.R.S., as amended.
- (b) Group home for elderly persons: A residential facility for the exclusive use of persons sixty (60) years of age or older who do not need skilled and intermediate care, plus ~~no more than two~~ (2) live-in staff persons employed in the care and supervision of such elderly persons.

- (c) Congregate care home: A residential facility established for the exclusive use of ~~more than eight (8)~~ elderly persons, sixty (60) years or older, where intermediate nursing care may or may not be available, and where living and sleeping quarters are provided for individuals or couples; where, however, kitchen facilities are not provided. Meals are prepared by a central kitchen and may be served in a central dining room or taken in the living quarters. For the purpose of meeting the residential density provisions of the Wheat Ridge Home Rule Charter, each three (3) persons, based upon maximum designed occupancy load, shall constitute one (1) family unit.
- (d) Nursing home: A state-licensed health care facility which provides essential care on a twenty-four (24) hour basis by medical professionals to provide short-term convalescent or rehabilitative care or long-term care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

~~For purposes of this chapter, a "residential group home" shall not include a household of four (4) or more persons occupying a residential dwelling unit and living as a single housekeeping unit if the occupants are handicapped persons as defined in title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by § 24-34-301, C.R.S., and such additional necessary persons (and their families) employed in the care and supervision of such handicapped or disabled persons. A group home for handicapped or disabled persons shall not include more than one (1) person required to register as a sex offender pursuant to § 18-3-412.5, C.R.S., as amended.~~

(e) Group home for the disabled: A residential facility for the exclusive use of persons who are handicapped as defined in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by § 24-34-301, C.R.S., and such additional necessary persons employed in the care and supervision of such handicapped or disabled persons. "Handicap" and "disability" have the same legal meaning. A group home for the disabled shall not include more than one (1) person required to register as a sex offender pursuant to § 18-3-412.5, C.R.S., as amended. Residential group homes for disabled persons, particularly as they relate to recovering (not presently using) alcoholics and persons with drug addictions, may also be known as group home living arrangements.

Section 3. The definition of “substance abuse clinic” set forth in Section 26-123 of the Wheat Ridge Code of Laws is hereby amended as follows:

Substance abuse clinic. A clinic, office or other facility which exclusively provides outpatient or residential treatment for substance abuse ~~other than alcoholism, involving,~~ which may involve in whole or in part, the dispensation of medication or other controlled substances as part of addiction therapy or management, excluding clinics operated in association with a medical practice for other purposes.

Section 4. The “Table of Uses – Residential” set forth in Section 26-204 of the Wheat Ridge Code of Laws, concerning uses in residential zone districts, is hereby amended by amending the rows concerning residential group homes as follows:

Uses	Notes	R-1	R-1A	R-1B	R-1C	R-2	R-2A	R-3	R-3A
Residential group home for children	See § 26-612	S	S	S	S	S	S	S	S
Residential group homes, nursing homes, and congregate care facilities for 8 or fewer elderly persons, <u>plus staff</u>	See § 26-612	P	P	P	P	P	P	P	P
Residential group homes, nursing homes, or congregate care facility for 9 <u>to 14</u> or more elderly persons, <u>plus staff</u>	See § 26-612	S	S	S	S	S	S	S	S
<u>Residential group homes for 15 or more persons, plus staff</u>									

Section 5. The “Table of Uses – Agricultural and Public Facilities” set forth in Section 26-204 of the Wheat Ridge Code of Laws, concerning uses in agricultural and public facility zone districts, is hereby amended by amending the rows concerning residential group homes as follows:

Uses	Notes	A-1	A-2	PF
Residential group homes for 8 or fewer elderly persons, <u>plus staff</u>	See § 26-612	P	P	
Residential group or nursing homes, or congregate care facilities for 9 <u>to 14</u> or more elderly persons, <u>plus staff</u>	See § 26-612	<u>S</u>	S	
Residential group homes for children	See § 26-612		S	

<u>Residential group homes for 15 or more persons, plus staff</u>				
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Section 6. The “Table of Uses - Commercial and Industrial Districts” set forth in Section 26-204 of the Wheat Ridge Code of Laws, concerning uses in commercial and industrial zone districts, is hereby amended by amending the row concerning counseling and treatment clinics as follows:

<i>Uses</i>	<i>Notes</i>	<i>NC</i>	<i>RC</i>	<i>C-1</i>	<i>C-2</i>	<i>I-E</i>
Clinics and offices for the counseling and treatment of psychological, social, marital, developmental or similar conditions, excluding substance abuse clinics	C-1, C-2 & I INCLUDE: Residential facilities. NC & RC EXCLUDES: Residential facilities ALL districts INCLUDE: Counseling and treatment for alcoholism	<u>PS</u>	P	P	P	P

Section 7. The “Table of Uses - Commercial and Industrial Districts” set forth in Section 26-204 of the Wheat Ridge Code of Laws, concerning uses in commercial and industrial zone districts, is hereby amended by amending the existing rows concerning residential group homes and inserting a new row in the appropriate alphabetical location concerning congregate care:

<i>Uses</i>	<i>Notes</i>	<i>NC</i>	<i>RC</i>	<i>C-1</i>	<i>C-2</i>	<i>I-E</i>
<u>Congregate care and nursing homes</u>		<u>S</u>	<u>S</u>	<u>P</u>	<u>P</u>	<u>P</u>
.						
.						
Residential group and nursing homes and congregate care facilities for 8 or fewer elderly persons, <u>plus staff</u>	<u>See § 26-612</u>	P	P	P	P	P
Residential group and nursing homes and congregate care facilities for 9 or more elderly persons, <u>plus staff</u>	<u>See § 26-612</u>	S	S	S		
Residential group home for children		S	S	S		

Section 8. Section 26-501 of the Wheat Ridge Code of Laws, concerning off-street parking and loading standards, is hereby amended by deleting the following rows from “Table 6: Schedule of Required Off-Street Parking” thereunder:

<i>TABLE 6: Schedule of Required Off-Street Parking</i>	
<i>Use</i>	<i>Requirement</i>
Elderly group home	0.5 space for each elderly occupant, plus the standard residential dwelling requirement

Section 9. Section 26-501 of the Wheat Ridge Code of Laws, concerning off-street parking and loading standards, is hereby amended by amending the parking standards for residential group homes under “Table 6: Schedule of Required Off-Street Parking” as follows:

<i>TABLE 6: Schedule of Required Off-Street Parking</i>	
<i>Use</i>	<i>Requirement</i>
Residential group homes for youths 18 years and younger <u>for up to 14 persons, plus staff</u>	2 spaces per home with street parking or 4 spaces per home without street parking plus 1 space per each eight beds <u>Single-family residential dwelling requirement plus 1 space per employee on maximum shift</u>

Section 10. The “Permitted Uses” Chart set forth in Section 26-1111 of the Wheat Ridge Code of Laws, concerning permitted uses in mixed use zone districts, is hereby amended by amending the existing row concerning residential group homes and inserting new rows concerning residential group homes as follows:

<i>Permitted Uses</i>				
<i>Use Group</i>	<i>MU-C</i>	<i>MU-C Int</i>	<i>MU-C TOD</i>	<i>MU-N</i>
Residential group homes <u>for 8 or fewer persons, plus staff</u>	P	P	P	P
<u>Residential group homes for 9 to 14 persons, plus staff</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
<u>Residential group home for 15 or more persons, plus staff</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>	<u>NP</u>

Section 11. Section 26-612 of the Code of Laws concerning supplementary regulations pertaining to residential group homes is repealed in full and reenacted to read:

Sec. 26.612. Residential group homes. The following supplemental requirements apply to residential group homes by category, as defined at section 26-123:

A. All group homes:

1. Shall maintain all required state and county licenses for occupation
2. Shall maintain compliance with all applicable fire, building and safety codes.
3. Separation requirements: No group home within any residential zone district shall be located on an adjacent lot or parcel or within the following distances to group homes:
 - a. For group homes with up to and including 8 residents: 750 feet;
 - b. For group homes with 9 to 14 residents: 1500 feet

The purpose for this requirement is to ensure that a residential setting is maintained for the persons resident in the home.

4. Parking, screening and buffering: For all group homes with 9 or more residents, a special or conditional use permit is required. Such permit shall require, in addition to any other conditions, that the facility shall comply with the parking standards of the Code. All commercial components, such as parking lots and playgrounds shall be screened and buffered from neighboring residences and uses to the extent practical. The city may also request a trip generation study.
5. In all residential zone districts, meetings or gatherings on-site at a residential group home that are consistent with a normal residential family setting shall be allowed, however shall only be for residents, family of residents, and necessary persons required for the support, care and supervision of the resident 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, CRS §30-28-115(2)(c).
6. The owner or operator of a group home shall semi-annually (by March 31 and September 30 of each year), and otherwise upon request by the City, provide a certificate to the city, in a form provided by the city, documenting compliance with this Chapter.

B. Group homes for disabled persons: Reasonable accommodation procedure.

- a. Policy. It is the City's policy to provide a reasonable accommodation in accordance with federal and state fair housing laws (42 USC §3600 et seq. and CRS §29-34-301) for persons with disabilities seeking fair access to housing in the application of this chapter. The purpose of this section is to establish the procedure by which a person may request a reasonable accommodation and how the request is to be processed.
- b. Reasonable accommodation. Any person seeking to operate a residential group home that will substantially serve persons with disabilities may apply for a reasonable accommodation to obtain relief from a regulation policy, or condition of this chapter that poses a barrier to equal access to housing.

- c. Procedure.
 - i. Application required. An application for a reasonable accommodation shall be filed with and processed by the City Manager or designee. The application shall include the following information and be subject to the determinant factors required by this section.
 - ii. Submittal requirements. The application shall be made in writing, and shall include the following information:
 - (a) The specific provision, regulation, policy or conditions in this chapter from which the reasonable accommodation is being requested.
 - (b) The specific exception or modification sought from the application of the subject provision, policy, or condition of this chapter that the applicant seeks;
 - (c) Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence;
 - (d) Any other information that the City Manager or designee reasonably determines is necessary to evaluate the request for a reasonable accommodation;
 - (e) Any other information that the City Manager or designee reasonably concludes is necessary to determine whether the findings required by subsection (G) can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected.
- d. Fees. No application fee is required to request a reasonable accommodation.
- e. City Manager action. Within 60 days of receipt of a completed application, the City Manager or designee shall issue a written determination to approve, conditionally approve, or deny a request for the requested reasonable accommodation.
- f. Standards for granting a reasonable accommodation. The following factors may be considered in determining whether to grant a reasonable accommodation:
 - i. Whether a less drastic exception or modification to the applicable provision, regulation, policy, or condition that achieves the same end as the requested reasonable accommodation is available;
 - ii. Special needs created by the disability at issue;

- iii. Potential benefit that can be accomplished by the requested modification;
 - iv. Potential impact on properties within the vicinity;
 - v. Physical attributes of the subject property and structures;
 - vi. Alternative accommodations that may provide an equivalent level of benefit;
 - vii. Whether the requested accommodation is needed to enable the home to be located sufficiently proximate to services and facilities as convenience stores, commercial services, public transportation, and public recreation facilities.
 - viii. Whether the requested accommodation would impose an undue financial or administrative burden on the city;
 - ix. Whether the requested accommodation would require a fundamental alteration in the nature of a program of the city.
- g. Findings. The written decision to approve, conditionally approve, or deny a request for a reasonable accommodation shall be based on the following findings, all of which are required for approval. In making these findings, the City Manager or designee may approve alternative reasonable accommodations which provide the applicant with an equivalent level of benefit.
- i. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under federal and Colorado fair housing laws;
 - ii. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling;
 - iii. The requested accommodation will not impose an undue financial or administrative burden on the city, as "undue financial or administrative burden" is defined in federal fair housing laws (42 USC § 3600 et seq.) and interpretive case law;
 - iv. The requested accommodation will not, under the specific facts of the application, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others;
 - v. Whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting;
 - vi. The requested accommodation will not result in a fundamental alteration in the nature of the requirements of this chapter.

Section 12. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 13. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 14. Compliance Required – Schedule. Group homes for up to and including eight (8) disabled residents shall come into compliance with the requirements of Section 26-612.A.6 on or before July 1, 2020. Group homes for 9-14 disabled residents shall apply for and obtain a special or conditional use permit required by Section 26-204 and 26-612.A.4 on or before July 1, 2020. Group homes in existence on the effective date of this Ordinance which do not meet the separation requirements of Section 26-612.A.3 shall be permitted to continue operation as legal nonconforming uses with respect to such separation requirements, so long as said group homes are otherwise in compliance with this Code as amended hereby. Except as specifically described in this Section 14, all other requirements of this Ordinance shall apply upon the effective date of this Ordinance.

Section 15. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 8 to 0 on this 27th day of January, 2020, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for February 10, 2020, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 8 to 0, this 10th day of February, 2020.

SIGNED by the Mayor on this 10th day of February, 2020.



Bud Starker, Mayor



ATTEST:



Steve Kirkpatrick, City Clerk

Approved as to Form



Gerald E. Dahl, City Attorney

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Wheat Ridge Transcript
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