

**PLANNING COMMISSION REPORT**  
**Regular Agenda -- Public Hearing Item**

PC Staff Report  
04/25/2016

**ITEM NO. 6      TEXT AMENDMENT TO ZONING REGULATIONS & SUBDIVISION  
REGULATIONS; ACCESSORY DWELLING UNITS (MKM)**

**TA-15-00461:** Consider Text Amendments to the *Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas* and the *Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, KS* to add Accessory Dwelling Units as a permitted use and to establish standards for the use. *Initiated by County Commission on 9/2/15.*

**RECOMMENDATION:** Staff recommends approval of the proposed amendment, TA-15-00461, to revise Sections 12-303, 12-306, 12-307, 12-308, and to add Section 12-319.9 in the Zoning Regulations and to revise Sections 11-104 and 11-106 in the Subdivision Regulations [20-804 and 20-806, City Code] and that the Planning Commission forward a recommendation for approval to the Board of County Commissioners.

**Reason for Request:** Accessory Dwelling Units would provide a living area for elderly family members, or persons with health issues or disabilities in close proximity to a caregiver while allowing a degree of independence. In addition an Accessory Dwelling Unit would provide an alternative to mobile homes for farm employee housing.

**RELEVANT GOLDEN FACTOR:**

- Conformance with the comprehensive plan.

**ATTACHMENTS**

- Attachment A – Draft language

**OVERVIEW OF PROPOSED AMENDMENT**

The amendment adds an accessory residential use in agricultural and residential zoning districts that permit *Residential Detached Dwellings*, *Single Family Dwellings*, or *Residentially Designed Manufactured Homes*. These uses are permitted in the A (Agriculture), A-1 (Suburban Home Residential), and R-1 (Single Family Residential) Districts.

The amendment also provides an alternative to the farm housing provision in Section 12-306-2.17.

**CURRENT ZONING REGULATIONS PROVISIONS FOR ACCESSORY DWELLING UNITS:**

**Section 12-306-2.17:** *"One or more mobile homes shall be allowed as an accessory use to a farm so long as they are occupied by a family related by blood, or marriage, to the occupant of the main dwelling or by a person or persons employed on the farm. This mobile home must be at least 150 feet from another dwelling, and must be provided with a water supply and sanitary sewerage facilities, and may not be used as a rental income property. Mobile homes shall not be located within the 'F-W' or 'F-F' Overlay Districts."*

No changes are being proposed to this provision, but the Accessory Dwelling Unit is being included as another option for farm employee housing.

**Existing definitions**

**Section 12-303-1.02:** "Accessory Use: *An accessory use is one, which is clearly incidental to or customarily found in connection with, and (except as otherwise provided in this Resolution) on the same lot as the principal use of the premises. 'Accessory Use' includes, but is not limited to, the following:*

- a. Residential accommodations for domestics or guests and not rented or otherwise used as a separate domicile and containing no kitchen facilities or separate utility meters.*
- b. Residential accommodations for caretakers or proprietors on the same lot with any use listed in section 12-309-2. When 'accessory is used in the text, it shall have the same meaning as 'Accessory Use'."*

Accessory Dwellings are permitted in several Business and Industrial Zoning Districts as caretaker or manager units and accessory farm dwellings are permitted in the I-1, I-2 I-3 and I-4 Industrial Zoning Districts provided they are on lots of 10 acres or greater. The following table lists the various types of accessory residential uses that are currently permitted in Douglas County.

Accessory Residential Use	Standards	Zoning District
Guest House/Servant Quarters	<ul style="list-style-type: none"><li>• Guest or servant use</li><li>• No kitchen facilities or separate utility meters</li><li>• No rentals</li></ul>	A, A-1, R-1, B-1, B-2, I-2,
Caretaker/Manager House	<ul style="list-style-type: none"><li>• Caretaker/manager must be employed on the premise</li></ul>	B-1, R-T, I-1 ,I-2, I-3, I-4
Mobile Home	<ul style="list-style-type: none"><li>• Farm Employee or</li><li>• Farm Relative—accessory to existing dwelling</li></ul>	A
Accessory farm dwelling	<ul style="list-style-type: none"><li>• On farms with minimum of 10 acres</li></ul>	I-1, I-3, I-4
Accessory Residential Uses	--	B-3
Accessory Dwelling	<ul style="list-style-type: none"><li>• When part of a 'living museum'</li></ul>	R-T

Accessory dwellings are currently permitted in Douglas County but are limited to caretaker or manager dwellings with commercial or industrial uses and mobile homes on farms for employees or members of the farmer's family. There are no limits on the number of mobile homes that can be installed on a property but they must be connected to water and a sewerage system approved by the Douglas County Health Department. The Health Department has typically required the mobile homes to have separate water source and septic systems.

There are several mobile homes in place today for the housing of farm employees or relatives of the property owner. This amendment does not intend to remove this option as that would make these residences nonconforming uses. Rather, this amendment would expand the options to allow an Accessory Dwelling Unit on residential properties (including non-farm properties), to allow permanent structures as an option for farm employee housing or housing for relatives of farm owners.

The amendment includes standards for the Accessory Dwelling Units and provides the review and approval process. Revisions to the Subdivision Regulations are also being proposed to allow the placement of an accessory dwelling on a Residential Development Parcel created through the Certificate of Survey process as the current language restricts development to one dwelling and associated accessory structures.

### **CONFORMANCE WITH THE COMPREHENSIVE PLAN**

*Horizon 2020* promotes the clustering of rural residences to minimize impacts on the rural character of Douglas County and to protect existing agricultural and natural uses in the rural areas. The Accessory Dwelling Unit will allow the installation of a smaller residence in association with a principal dwelling. The residence may be detached from the principal dwelling or located within the interior. This clustering will allow for additional residences without requiring any division of land; thereby protecting the rural character and reducing impact on agricultural and natural uses in the area.

### **CRITERIA FOR REVIEW AND DECISION-MAKING**

Section 12-324 of the Zoning Regulations provides the process for proposed text amendments but does not include criteria for review and decision-making. The text amendment was reviewed with the following criteria which are similar to those in the City of Lawrence Development Code:

#### **1) Whether the proposed text amendment corrects an error or inconsistency in the Zoning Regulations or meets the challenge of a changing condition;**

The proposed text amendment is in response to a changing condition. As the county develops, citizens are interested in options that would allow an aged or disabled family member to live independently, but in close proximity to the main residence. In addition, farmers who are handing over their land to younger generations may want to have housing for them or have permanent housing, rather than mobile homes, for their farm help. This amendment is drafted in response to changing demographics, economics, and changing community goals.

#### **2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of the Zoning Regulations**

The proposed amendment is consistent with the Comprehensive Plan and the purpose of the Zoning Regulations in that it includes standards and processes to insure the compatibility with nearby land uses which allowing the clustering of residential uses as recommended in Chapter 4, Goal 2 '*Conserve the Rural Character of Douglas County*'.

## **SECTION 1: NEW LANGUAGE PERTAINING TO ACCESSORY DWELLING UNITS**

### **DEFINITIONS**

#### **12-303 Definitions**

**12-303-1.95 ACCESSORY DWELLING UNIT:** A dwelling unit that is incidental to and located on the same lot, vested parcel, or Residential Development Parcel as the principal dwelling.

**12-303-1.96 VESTED PARCEL:** a parcel lawfully created within the A (Agricultural) District, A-1 (Suburban-Home Residential) District, or R-1 (Single-Family Residential) District in the Unincorporated Area of Douglas County on or before December 31, 2006, that has been maintained in individual ownership (that is, not further divided). (See Section 11-108(e) of the *Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, KS*.)

### **DISTRICTS**

#### **12-306 'A' Agricultural District**

##### **12-306-2.27** Accessory Dwelling Unit.

One Accessory Dwelling Unit is allowed when it is accessory to a principal dwelling on the same vested parcel, Residential Development Parcel or platted lot subject to the supplemental use regulations in Section 12-319.9

#### **12-307 'A-1' Suburban Home Residential District**

##### **12-307-2.17** Accessory Dwelling Unit.

One Accessory Dwelling Unit is allowed when it is accessory to a principal dwelling on the same platted lot or vested parcel, subject to the supplemental use regulations in Section 12-319.9.

#### **12-308 'R-1' Single-Family Residential District**

##### **12-308-2.16** Accessory Dwelling Unit.

One Accessory Dwelling Unit is allowed when it is accessory to a principal dwelling on the same platted lot or vested parcel, subject to the supplemental use regulations in Section 12-319.9.

### **STANDARDS**

#### **12-319.9 Accessory Dwelling Units**

- a. Accessory Dwelling Units are allowed in certain situations to
  - 1) Create additional housing options while maintaining the rural character of unincorporated Douglas County;
  - 2) Provide an independent living area for residents with health issues or disabilities, in close proximity to a caretaker; and
  - 3) Provide housing for persons employed on a farm.
- b. One Accessory Dwelling Unit is permitted on a vested parcel, platted lot or a Residential Development Parcel, which contains a dwelling. This dwelling would be considered the principal dwelling.
- c. An Accessory Dwelling Unit may be established by one of the following means:
  - 1) Conversion of existing space within a principal dwelling or construction of an addition to a principal dwelling.
  - 2) Conversion of existing space within an accessory structure or construction of an

- addition to an accessory structure.
- 3) Construction of a separate accessory structure which will include the Accessory Dwelling Unit.
- d. An Accessory Dwelling Unit shall not be allowed within or attached to a mobile home but may be allowed within a manufactured home.
  - e. There shall be no more than one Accessory Dwelling Unit per vested parcel, Residential Development Parcel or platted lot.
  - f. All Accessory Dwelling Units, whether new construction or conversion of existing space, shall comply with the Douglas County Construction Codes.
  - g. An Accessory Dwelling Unit may be located in a structure which the Zoning and Codes Director has determined is a legal nonconforming structure with respect to building height or setbacks provided any addition to the structure does not extend or increase the degree of nonconformity.
  - h. The following standards apply to all Accessory Dwelling Units:
    - 1) The Accessory Dwelling Unit, if located in a newly constructed detached accessory structure, shall be located a minimum distance of 25 ft from the primary structure.
    - 2) An Accessory Dwelling Unit that is located within or attached to the principal dwelling may utilize the same septic system and water source as the principal dwelling provided the septic system is adequately sized per the Douglas County Health Department requirements.
    - 3) A detached Accessory Dwelling Unit shall have a water source and septic system that are separate from those serving the principal dwelling.
    - 4) The following area requirements apply to a detached Accessory Dwelling Unit:
      - a) A minimum of 3 acres outside the regulatory floodplain must be provided for the septic systems of the principal dwelling and Accessory Dwelling Unit (6 acres total) if the dwellings are served by Rural Water or other public water source.
      - b) A minimum of 5 acres outside the regulatory floodplain must be provided for the septic systems of the principal dwelling and Accessory Dwelling Unit (10 acres total) if the dwellings are served by well water.
    - 5) The Accessory Dwelling Unit and the principal dwelling unit shall share a common access drive unless a new access is approved by the County Engineer. To the greatest extent feasible, existing driveways shall be utilized.
    - 6) An Accessory Dwelling Unit may have an area of up to 1,000 sq ft provided the area of the Accessory Dwelling Unit is not greater than that of the primary dwelling.

- 7) Separate sale or ownership of an Accessory Dwelling Unit is prohibited, unless the parcel or lot is subdivided in accordance with the Subdivision Regulations, creating a separate lot or Residential Development Parcel for each dwelling.
  - 8) The Accessory Dwelling Unit may be rented, but shall not be used as a short term lodging use such as a Bed & Breakfast or motel.
  - 9) An Accessory Dwelling Unit is subject to the same occupancy limits as the principal dwelling. (one family, or group living as a household unit--limited to 4 adults if any of the residents are not related)
- i. The following standards also apply to Accessory Dwelling Units in the A-1 and R-1 Districts:
- 1) The Accessory Dwelling Unit should be located behind the front plane of the principal dwelling whenever possible.
  - 2) The Accessory Dwelling Unit or the principal dwelling shall be occupied by the owner of the property.
- j. Accessory Dwelling Unit Administrative Registration:**
- 1) Accessory Dwelling Units must be registered with the Zoning and Codes Director prior to their establishment. The Registration application, available from the Zoning and Codes Office, shall be provided to the Zoning and Codes Office along with a plot plan with the following information, at a minimum:
    - a) Locations of both the principal and accessory dwellings;
    - b) Property boundaries. For large properties, the boundaries in the area of the dwellings may be shown;
    - c) The distance between the structures and the property boundaries.
    - d) Location of access drive.
    - e) Area and height of the principal and accessory dwellings.
    - f) Locations of the septic system(s);
  - 2) The Zoning and Codes Director shall review the registration application to insure compliance with the Accessory Dwelling Unit Standards, the required setbacks, and to insure adequate access is provided for Fire/Medical emergency vehicles.
  - 3) When approved, the registration is completed with the filing of an affidavit with the Register of Deeds that includes the legal description of the property and identifies the structure as an Accessory Dwelling Unit subject to the standards in Section 12-319.9 of the Zoning Regulations. In the A-1 and R-1 Districts, the affidavit shall also note the requirement that one of the dwelling units is to be occupied by the owner of the property.

**k. ADU Registration requiring Board of County Commission Approval.**

- 1) A registration for an Accessory Dwelling Unit on a property with a Conditional Use Permit or a Type 2 Rural Home Occupation Business may not be administratively approved, but requires approval by the Board of County Commissioners.
  - a. The registration application shall be reviewed by the Zoning and Codes Director for compliance with the standards in this section and a recommendation forwarded to the Board of County Commissioners.
  - b. The Board of County Commissioners may approve the Accessory Dwelling Unit in addition to the other uses on the property if they determine the combined uses are compatible with nearby land uses.
- 2) The applicant shall provide written notice of the Accessory Dwelling Unit as noted below:
  - a) The applicant shall obtain a list of property owners within 1000 ft of the vested parcel, Residential Development Parcel, or platted lot on which the Accessory Dwelling Unit is proposed from the Douglas County Clerk's Office. If the notification area includes land within the corporate limits of a city, the list shall extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.
  - b) The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed Accessory Dwelling use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have questions:

*"An Accessory Dwelling Unit at     ADDRESS     is in the process of being registered with Douglas County. The property at     ADDRESS     also contains     NAME OF BUSINESS     a Type 2 Rural Home Occupation Business or Conditional Use and therefore requires approval of the Douglas County Board of County Commissioners. Please contact me at     PHONE NUMBER, EMAIL ADDRESS     with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343 for information."*
  - c) A copy of the notification letter, the certified property owner list, and certification of the dates the letters were mailed to the addresses on the list shall be included with the Accessory Dwelling Unit registration materials noted in Section 12-3XX(i)(1).
  - d) The Accessory Dwelling Unit registration will be placed on a Board of County Commissioner's agenda for consideration a minimum of 20 days following the date of the letter.

- 3) When approved, the registration is completed with the filing of an affidavit with the Register of Deeds that includes the legal description of the property and identifies the structure as an Accessory Dwelling Unit subject to the standards in Section 12-319.9 of the Zoning Regulations. In the A-1 and R-1 Districts, the affidavit shall also note the requirement that one of the dwelling units is to be occupied by the owner of the property.

## **SECTION 2: REVISIONS TO EXISTING LANGUAGE IN OTHER PORTIONS OF THE ZONING REGULATIONS**

Proposed language in ***bold italics***, Deleted language shown as ~~*struckthrough*~~.

### **12-321-2 CONSTRUCTION REQUIREMENTS**

All new dwellings constructed, and all dwellings moved from one location to another shall;

**12-321-2.01** ~~Provide a minimum floor area of eight hundred square feet for each family.~~ ***Comply with the Construction Codes, Chapter 13 of the Douglas County Codes.***

## **SECTION 3: REVISIONS TO EXISTING LANGUAGE IN THE SUBDIVISION REGULATIONS:**

Proposed language in ***bold italics***, Deleted language shown as ~~*struckthrough*~~.

### **11-104 (d) Restrictive Covenant**

The Immediate Development Area and Future Development Area each shall be restricted by a separate instrument, satisfactory to the County Counselor, which shall:

- (3) For the Immediate Development Area, limit each Residential Development Parcel to one principal dwelling, ***one accessory dwelling unit, and accessory buildings until annexation into a city and municipal water and Sanitary Sewer service are extended to the property;***

### **11-106(d) Residential Development Parcel (RDP)**

- (2) Residential Development Parcels can be created through the Certificate of Survey process only when the Planning Director finds: the property is being divided for single-family residential purposes ***(limited to a maximum of one principal dwelling and one accessory dwelling unit for each Residential Development Parcel).***
- (3) With respect to any division made according to this Section, the subsequent Residential Development Parcels shall be considered Parcels but shall not be considered platted Lots created through a Major or Minor Subdivision/Replat process. Each Residential Development Parcel shall be eligible for the issuance of building permits for one single-family ***principal dwelling, one single-family accessory dwelling unit,*** and other permitted accessory uses, buildings, and structures. Use for any other purpose (other than agricultural use), construction of more than one single-family ***principal dwelling*** or ***one single-family accessory dwelling unit,*** ~~or further division of the Residential~~



~~Development Parcel~~ shall be prohibited. Development for any other use will require review through the Major Subdivision process.