



Joint Denver Zoning and Building Code Policy, Interpretation, and Clarification — Residential Structures Containing a Second Complete and Independent Dwelling Unit

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Denver Zoning Code (DZC) Sections Affected:

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| §11.2.6 One Full Kitchen Allowed per Dwelling Unit | §11.7.1 Accessory Uses |
| §11.12.7.1 Accessory Dwelling Unit | §11.12.2.1.B Dwelling Unit |
| §11.8.9 Permit for Second Full Kitchen Accessory to Single Unit Dwelling Use | §13.3 Definitions |

Former Chapter 59 (FC59) Sections Affected:

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| §59-2(98) Dwelling unit, accessory, attached | §59-2(99) Dwelling unit, accessory, detached |
| §59-38(j) Second kitchen in a single unit dwelling | |

Denver Building Code (2015 IRC) Sections Affected:

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|------------------------------|---------------------|
| §R101.2 Scope | §R101.3 Intent |
| §R202 Dwelling | §R202 Dwelling Unit |
| §R202 Habitable Space | §R202 Kitchen |
| §R302.3 Two-family dwellings | §R311.2 Egress door |
| §R311.6 Hallways | §R311.7 Stairways |

Authority for Zoning Code Interpretation: Denver Zoning Code (DZC), §12.4.6, Former Chapter 59, §59-38(10)a

Authority for Building Code Policy: Denver Building and Fire Code (DBC) §104.6
Note: For purposes of this policy and interpretation and unless otherwise specified, references to the DBC refer only to the IRC, and not the International Fire Code (IFC).

Joint Policy: Criteria for Evaluating Whether a Residential Structure Contains a Second Complete & Independent Dwelling Unit

Finding of a Second Complete and Independent Dwelling Unit:

In a residential structure that already contains one Dwelling Unit (the “Primary Dwelling Unit”), such structure shall be **deemed to contain a second Complete and Independent Dwelling Unit** (“CIDU”) when such structure contains **all of the following elements accessible to each other** (in addition to similar elements comprising the Primary Dwelling Unit):

1. Provisions for living.
2. A Full or Partial Kitchen, as those terms are defined in the DZC, Article 13.
3. A ¾ or full bathroom(s).
4. A bedroom(s) or other area designed or designated for sleeping. This policy and code clarification use the terms ‘bedroom,’ ‘sleeping room,’ and ‘facility for sleeping’ interchangeably.
5. Independent Egress. “Independent Egress” means egress to the exterior of the residential structure from the potential CIDU can be achieved without accessing any part of the Primary Dwelling Unit’s habitable space, as “habitable space” is defined in the Denver Building & Fire Code (IRC). Independent Egress consists of an egress door as specified in §R311.2 of the IRC. A fire escape or egress window is not considered Independent Egress.

Exception to a Second Complete and Independent Dwelling Unit Finding:

The following condition, if present, shall mean the residential structure contains only one Dwelling Unit (no CIDU will be found), even when all five of the elements listed above (Provision for living, Kitchen, bath, sleeping area/bedroom, and Independent Egress) exist:

1. A **Non-separated, Continuous, and Open Access** exists between what would otherwise be deemed a second CIDU and the living room or Kitchen of the Primary Dwelling Unit.
2. For purposes of this policy and code clarification, a “Non-separated, Continuous, and Open Access” may be provided through either:
 - a. A minimum 48-inch wide cased opening, or
 - b. The standard width of a connecting corridor or stairway.

Doors are NOT allowed to close off a connecting opening, corridor, or stairway.

Zoning Code Rationale Behind Exception:

A single unit Dwelling may only be occupied by a single “household”, which is defined to mean all persons living in the Dwelling must act as a “single non-profit housekeeping unit.” The introduction of a Complete and Independent Second Dwelling Unit into a structure already containing a Primary Dwelling Unit would allow residency by a second household in the structure. Whether provided to facilitate short-term rentals or for other purposes, a second Full Kitchen, or any number of Partial Kitchens, is allowed by zoning in a single unit dwelling structure if the additional Kitchen(s) does not trigger a finding of a second CIDU. This joint policy clarifies how to ensure the entirety of the dwelling space within a permitted single unit structure is still useable and accessible by only a single household, and clarifies when a physical design results in creation of a second CIDU contrary to this intent.

Building Code Rationale Behind Exception:

Past practice allowed issuance of a second kitchen building permit even when indicators pointed to a second CIDU, provided the second dwelling area did not contain Independent Egress. With this joint policy and code clarification, which is consistent with the City’s goals to facilitate short term rentals, Independent Egress can now be allowed to the second dwelling area which will not trigger application

of the IRC for a second CIDU. Additionally, this additional independent access to the exterior facilitates a safer means of egress in an emergency for any occupants (including short-term rental users).

Code Compliance Consequences of a Second Complete and Independent Dwelling Unit Finding:

If a second CIDU is found:

1. The Denver **zoning** codes will apply to determine whether a second Dwelling Unit is permitted in the subject zone district. A second Dwelling Unit is allowed in the following scenarios:
 - a. In a zone district that allows the Accessory Dwelling Unit (ADU) use as accessory to a primary single unit dwelling use (e.g., U-SU-C1 or R-MU-20), the second CIDU would be considered an attached ADU zoning use, and must be permitted as such.
 - b. In a zone district that allows Two-Unit Dwelling use (e.g., E-TU-B or R-2), the second CIDU would be considered part of a Two-Unit Dwelling use of the entire structure, and must be permitted as such.
2. Where a second Dwelling Unit is allowed by zoning, the IRC shall apply to require, among other things, any necessary fire safety separation between the Primary Dwelling Unit and the second CIDU.

If a second CIDU is NOT found:

1. If the project contains a second Full Kitchen as that term is defined in the zoning code, a zoning permit is required as part of the project permitting. A terms and conditions document must be executed and recorded for the zoning approval of the second Kitchen to be valid. See DZC, §11.8.9, Second Full Kitchen Accessory to Single Unit Dwelling Use, and similar provisions in FC59, §59-38(j).
2. If the project contains a Partial Kitchen as that term is defined in the zoning codes, a terms and conditions document must be executed and recorded prior to issuance of a zoning permit for the project. Such document, in a form approved by the City Attorney, Zoning Administrator and Building Official, shall state and describe the conditions ensuring the single-unit dwelling use and occupancy is retained and maintained over time.

Key Zoning & Building Code Terms Defined and/or Distinguished

There are several terms in Denver’s zoning and building codes that describe the characteristics of dwelling space within a residential structure. These terms, listed in the table below, provide a rational basis for defining the related but slightly different terms used in this policy. The new terms used in this policy (e.g., CIDU and Independent Egress), like the defined terms in the table below, also clarify the function and layout of space intended for residential dwelling purposes, but to the slightly different end of discerning when such space constitutes a second CIDU in a structure already containing a Primary Dwelling Unit.

| Term | Zoning Code Definition | DBC/IRC Building Code Definition |
|----------------------|---|---|
| Dwelling | DZC §13.3 defines a Dwelling as: “Any building or portion of building that is used as the residence of one or more households...” A “dwelling” may contain one, two, or more independent living units; these are denoted as Single Unit Dwelling, Two Unit Dwelling, and Multi-Unit Dwelling. Dwelling is not a defined term in FC59. | “Any building that contains one or two dwelling units, used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.” §R202 |
| Dwelling Unit | DZC§11.12.2.1.B defines a Dwelling Unit as “One or more habitable rooms constituting a unit for permanent occupancy, having but one kitchen together with facilities for sleeping, bathing, and which unit occupies a structure or a portion of a structure.” | The 2015 International Residential Code §R202 defines a dwelling unit as: “a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, |

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| Dwelling Unit — Continued | <p>Per DZC§11.2.6.1.A, a Dwelling Unit occupied by a Household Living use <u>must</u> contain <u>either</u> a Full Kitchen and/or Partial Kitchen.</p> <p>FC59 uses a similar definition to the DZC: “One or more rooms constituting a separate, independent housekeeping unit for permanent occupancy with facilities for sleeping, bathing and cooking, and which unit occupies a portion of a structure containing other dwelling units, other uses by right, or a combination of these uses.” §59-2(97)</p> | <p>sleeping, eating, cooking and sanitation.” In other words, if the unit does not include permanent provisions for any of these activities, it would not be considered a dwelling unit under the IRC.</p> |
| Kitchen | <p>DZC §13.3: Any Room or portion of a Room used, intended to be used, or designed to be used either wholly or partly for preparing and cooking food. FC 59-2(152) has a similar definition.</p> <p>Kitchen, Full: A Kitchen that contains either (1) a stove/cook top, range, or oven, or (2) one or more 220-volt or greater electrical outlets or a gas line connection. DZC §13.3</p> <p>Kitchen, Partial: A Kitchen that does not contain either (1) a stove/cook top, range or oven, or (2) one or more 220-volt electrical outlets or a gas line connection. A Partial Kitchen may contain a collection of individual countertop food cooking equipment and appliances (e.g., a microwave, toaster-oven, or plug-in hot plate). A Partial Kitchen may also include a sink and refrigerator. A Kitchen is a Partial Kitchen when the electrical outlet or gas line connection is <u>not</u> designed or intended to service a stove/cooktop or range. DZC §13.3</p> <p>FC59 has a definition of “Kitchen” like that in the DZC. §59-2(152). However, it does not distinguish between Full versus Partial Kitchens.</p> | <p>“An area used or designated to be used for the preparation of food.” IRC §R202</p> |
| Bedroom (sleeping room, facility for sleeping) — all terms used interchangeably in this document | <p>Bedroom or facility for sleeping is not defined in the DZC or FC59.</p> | <p>2016 DBC amendments to the 2015 IRC modifies §R202 by adding the definition of Sleeping Room as follows: “Any habitable room with a closet; however, if an adjoining room with a closet is accessed through this room then it need not be considered a sleeping room unless otherwise approved by the Building Official or designee.” (p. 439)</p> <p>The IRC also has requirements regarding minimum space and egress for habitable rooms. The DBC does not address the addition of an armoire or stand-alone closet to a room which could make it effectively function as a sleeping room.</p> |

| Term | Zoning Code Definition | DBC/IRC Building Code Definition |
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| Bathroom | This term is not defined in the DZC, FC59, or IRC. The DZC defines a Dwelling Unit, in part, as including a “facility for bathing,” whereas the IRC uses the term “facilities for...sanitation.” As clarified here, a “facility for bathing” for zoning purposes is a bathroom that includes either a tub and/or a shower. This would commonly be referred to as a ¾ or full bathroom. In comparison, a “powder room” or half-bath containing only a toilet and sink is not a “facility for bathing” for zoning purposes, although it might be considered a facility for “sanitation” per IRC. | |
| Living, (Provisions for) | This term is not addressed in the DZC or FC59. The IRC defines a dwelling unit as including ‘provisions for living’. ‘Living space’ is defined in the IRC as “Space within a dwelling unit utilized for living, sleeping, eating, cooking, bathing, washing and sanitation purposes.” The term ‘provisions for living’ could include space for any of these above purposes, and need not be limited to a living room. | |
| Dwelling Unit: Clarification of Term under Denver Zoning & Building Codes | Based on the above defined terms, a “Dwelling Unit” that complies with both the Denver zoning and building codes will contain: (1) Provisions for living; (2) a Kitchen (either a Full or Partial Kitchen, as defined in the DZC); (3) a full or ¾ bathroom (aka “facility for bathing”); and (4) one or more bedroom(s) (aka “facility for sleeping”). <ul style="list-style-type: none"> • Consistent with this clarification, space inside a residential structure can be considered a “Dwelling Unit” even if it only contains a Partial Kitchen and not a Full Kitchen. • However, if the space inside a residential structure does <u>not</u> contain <u>all</u> of these elements (provisions for living, Kitchen, ¾ or full bath, and bedroom), it is not a Complete and Independent Dwelling Unit (CIDU) as defined in this policy and clarification. | |

Definition of Terms Used in this Policy and Code Interpretation/Clarification

This document provides definitions of the following key terms used in this policy and code interpretation/clarification, and not otherwise defined in Denver’s zoning or building codes. These definitions apply to both the DZC and FC59, as well as to the IRC:

Complete and Independent Dwelling Unit (CIDU)

The term “Complete and Independent Dwelling Unit” does not appear in the DZC, nor is the word “unit” (apart from the term “Dwelling Unit”) defined in the DZC. However, the definition of “Dwelling Unit” implies that a “unit” must contain habitable room(s) that include a Kitchen, sleeping area, and bathing facilities, and that it must be independent or separate in some way from other units in the same structure, such that only one household resides in the unit. For example, if a unit occupies only a part of a structure (like in a duplex building), it must be independent or separate from other units or uses in the structure. The IRC’s definition of “Dwelling Unit” uses the phrase “single unit providing complete independent living facilities,” which is more descriptive than the corresponding terms in the DZC.

For purposes of this policy, the term “Complete and Independent Dwelling Unit” is used only in the context of a residential structure that already contains one Dwelling Unit, called the “Primary Dwelling Unit”, to determine whether such structure contains a second independent Dwelling Unit.

Relying on both the DZC and IRC definitions of related terms, a **Complete and Independent Dwelling Unit (CIDU)** is defined as:

A single Dwelling Unit providing permanent provisions for living, sleeping, eating, cooking, bathing, and sanitation. More specifically, a CIDU contains, at a minimum, provisions for living, a Kitchen (Full or Partial), ¾ or full bathroom, and sleeping area/bedroom(s). All such spaces within the CIDU are accessible to each other without passing through the Primary Dwelling Unit.

Independent Egress

The term **Independent Egress** is defined as:

Egress to the exterior of a residential structure from the potential second CIDU that can be achieved without accessing any part of the Primary Dwelling Unit's habitable space, as "habitable space" is defined in the IRC. Independent Egress consists of an egress door as specified in §R311.2 of the IRC. A fire escape or egress window is not considered Independent Egress.

Non-separated, Continuous, and Open Access

The term "Non-separated, Continuous, and Open Access" does not appear in either the DZC or IRC. This term is provided here to distinguish the type of access that must exist between a Primary Dwelling Unit and a potential CIDU for a finding that a structure contains only one Dwelling Unit and not two.

Accordingly, the term "**Non-separated, Continuous, and Open Access**" is defined as:

An uninterrupted path between either the living, sleeping, eating, or cooking areas of the Primary Dwelling Unit and space within a potential second Complete and Independent Dwelling Unit (CIDU).

More specifically, as applied in this policy, the access path shall have cased openings of at least 48 inches wide, or be the width of the corridor at the connections in the path between the Primary Dwelling Unit and a potential CIDU. The intent is to avoid having existing door frames and hinges remain in place such that a door could easily be added to block the access path and create complete separation between the two dwelling areas. When Non-separated, Continuous, and Open Access is provided between the Primary Dwelling Unit and a potential second CIDU area, an additional Dwelling Unit is NOT created. On the other hand, two Dwelling Units exist in the same residential structure when there is *no* Non-separated, Continuous, and Open Access between the Primary Dwelling Unit and the second CIDU.

Note: Independent Egress to a potential CIDU space from the exterior of the structure *is permitted* but only if Non-separated, Continuous, and Open Access to the Primary Dwelling Unit is also provided.

Relationship to Previously Issued Zoning Code Interpretation

An ADU use is only allowed in certain zone districts as stipulated in the relevant Use and Parking Tables in the DZC, Articles 3-9. Per the [Interpretation](#) issued by the Zoning Administrator on December 17, 2017, only one Accessory Dwelling Unit use is permitted as accessory to a primary Single Unit Dwelling use in all zone districts where the ADU use is allowed.

Other Relevant Zoning Code Standards

Please see DZC §11.8.2 for requirements for ADU uses by zone district. FC59 defines ADUs differently. Please see §59-2(98, 99) for definitions of attached and detached ADUs applicable to areas zoned under FC59.

Zoning Code Appeals from this Policy, Interpretation, and Clarification

This zoning code policy, interpretation, and clarification is a final decision of the Zoning Administrator and zoning code provisions may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this policy and clarification, according to Denver Zoning Code, §12.4.8, Appeal of Administrative Decision.

Examples

1. In a house already containing a Primary Dwelling Unit on the main and second stories, the homeowner wants to add a Partial Kitchen, 3/4 bath, a den, and two bedrooms in the basement. The Partial Kitchen is in the den and includes a sink and refrigerator. There is sufficient counter space and electrical outlets for a hot plate, toaster oven, and microwave, however these appliances are not shown on the plans. There is Independent Egress to the basement, and there is an interior stairway connecting the basement area to the main floor of the structure. The interior stairway is 38" wide and has a door at the top of the stair connecting to the main floor. Without Non-separated, Continuous, and Open Access between the basement and the main floor, the basement area is considered a second Complete and Independent Dwelling Unit (CIDU).
2. In a house already containing a Primary Dwelling Unit on the main and second stories, the homeowner wants to add a Partial Kitchen, 3/4 bath, recreation room, and two bedrooms in the basement. There is Independent Egress to the basement, and there is an interior stairway connecting the basement area to the living room on the main floor of the structure. The interior stairway is 4' wide and does not have a door at either connecting end. Because the basement area has Non-separated, Continuous, and Open Access to the main floor and Primary Dwelling Unit, it is not considered a Second CIDU.
3. In a house already containing a Primary Dwelling Unit, the homeowner wants to construct an addition to main floor. The addition will include a living room with a "wet bar" (sink and refrigerator only), 3/4 bathroom, two bedrooms, and Independent Egress; the only connection between the space in the addition and the Primary Dwelling Unit on the main floor is provided through a shared mudroom attached to the garage. The new addition creates a second CIDU because there is no Non-separated, Continuous, and Open Access between the two dwelling spaces (a mudroom is not "living space.")
4. In a house already containing a Primary Dwelling Unit, the homeowner wants to construct an addition to provide living space for short-term rentals. The addition is attached to the side of the main floor of the house. The added living space has Independent Egress, one bedroom, and a 3/4 bathroom. It does not contain a Kitchen of any kind (no 'wet bar' shows on the plans). Because the living space does not have a Kitchen, it is not a CIDU. This scenario may also occur in a detached accessory structure built under an allowed building form, and the result would be the same — it would not be considered a CIDU.