

The answers below are correct to the best of our knowledge as of the publication of this document. Since much of the implementation will be subject to administrative interpretation, and since the codes will continue to change, we will continue to monitor code changes and their implementation. Nothing in this document is guaranteed, and these answers do not constitute legal advice.

The questions here have been collected from various sources, including a form set up to collect questions and experience. If you have additional questions or if you find additional information, please use the QR code at the right to share them with us!

Additional questions, particularly those related to utilities and other departments beyond DSD, are still in progress.



**SUBMIT YOUR  
QUESTIONS  
AND EXPERIENCE**

## **PROCESS & APPLICATIONS**

### **When can I submit a permit?**

05 February 2024. DSD is working on updating the forms, instructions, and policies to align with the new ordinance. See their site (linked below) for information.

### **If I build 2 or 3 units, will it be reviewed under IRC and Commercial Review?**

The HOME Ordinance does not determine this. If the buildings as designed are allowed under IRC (three separate structures, duplexes, attached townhouses, etc), then they can be reviewed under IRC. Other forms may require IBC.

### **We have a 2-unit project ready for a permit under Subchapter F that achieves a greater FAR with the exemptions than would be allowed with the new two-unit 0.55 FAR. Do we need to rush the permits through before adoption?**

The new FAR Gradient for two and three-unit projects exceeds the vast majority (more than 97%) of two-unit projects permitted under Subchapter F in the previous ten years. But there will be outliers. The most significant outliers are full basements on sloped sites, but a two-unit project with multiple exemptions may be able to exceed the new FAR limits.

In these cases, there are multiple options to explore. In the short term, applicants have one year to complete the Fair Notice application to have the plans reviewed under the previous code. Depending on the particulars of the lot, a site that can exceed 0.55 with garage and attic exemptions would often be able to support a third unit and get the 0.65 FAR. Unenclosed spaces (carports, patios, and balconies) may make up some of that area; double-height spaces also no longer double-count, so that may change the calculations.

### **What do we tell our clients about the likelihood that HOME gets hung up in legal fights and projects get stalled?**

There is no easy answer to this, and it is an important conversation to have with clients. We cannot and do not offer legal advice here, but based on what has been happening and discussion with various people involved, here is some context that may help in the considerations.

Certain individual homeowners threatened the City Council with legal action and other threats during the HOME Initiative hearings. The City took additional steps during the process to go above and beyond what had been understood in the past to comply with State law regarding the execution of their appointed duties. A challenge to the HOME ordinance would, therefore, be more difficult, but given the unpredictable nature of the courts and the bad precedents of past decisions, there is no guarantee that HOME will survive legal challenges.

We are monitoring the situation with the previous lawsuit that struck down VMU2 and other programs to confirm what effect that will have on projects in progress. We have been told that projects with permits should proceed.

Therefore, the recommendation at this time would be to proceed and file for the permit as soon as possible. A legal challenge should take time, so there would be some time to file between initiating a lawsuit and its conclusion (barring a summary judgment or injunction).

Ultimately, this will need to be a case-by-case consideration and the property owner's decision.

## **REGULATION CONFLICTS**

### **Does the HOME ordinance override restrictive covenants, HOA regulations, or deed restrictions?**

No, city regulations do not override private agreements imposed upon parcels and "ride with the land." The city cannot force the modifications of enforceable restrictive covenants and deed restrictions. If a private

agreement limits the number of dwelling units or density, this has not been changed.

### **What happens when a Neighborhood Plan limits the number of dwelling units?**

The provisions of Neighborhood Plans are implemented in a variety of ways. Land use restrictions are most commonly in the form of an Overlay (such as a Conditional Overlay) or a Combining District (such as a Neighborhood Conservation Combining District). In the event of a conflict, the regulations in 25-2-773 “supersedes the base zoning district regulations.” Critically, explicitly stating “base zoning” excludes other types of districts, such as Overlay and Combining Districts, which remain in place and are not superseded by the HOME ordinance.

## **SITE PLANS & EXEMPTIONS**

### **Do I need a site plan for two or three units?**

Site Plan Exemptions are available to residential uses of four or fewer units on a legal lot and outside the floodplain. See 25-5-2.

### **Will there be a precursor site plan exemption process for three units, or will 3 unit projects be submitted through regular residential intake like one and two-unit projects?**

At this time, we understand that three-unit projects will follow the same process: one- and two-unit projects. DSD has not yet confirmed this on the FAQ page, but the web forms have been updated to include the new uses.

## **MEASUREMENTS (FAR & HEIGHT)**

### **Do covered porches or balconies count towards FAR for Duplex, Two-Unit, or Three-Unit uses?**

No, the definition of Gross Floor Area now follows the standard definition in 25-1-21 with the exclusions removed. That means it only counts the “total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls.”

### **Are carports exempt from FAR?**

For projects using the Duplex, Two-Unit, or Three-Unit Uses, yes, carports are exempt. This leaves room for interpretation and some potential for abuse, which may need to be clarified in Phase 2.

### **Does the Basement now count as FAR and only exempted when on a single unit?**

For Single-Family Use subject to Subchapter F, the basement exemption remains. The calculations are the same for Single-Family Use outside Subchapter F. For Duplex, Two-Unit, and Three-Unit Uses, basements count as FAR as enclosed space if they are more than six feet tall.

### **In the Subchapter F calculation for Gross Floor Area, “an area with a ceiling height greater than 15 feet is counted twice” (3.3.5). Does this still apply to Duplex, Two-Unit, and Three-Unit Uses?**

No, the definition of Gross Floor Area used is now the same as the base definition with the exemptions removed. All special measurements imposed by Subchapter F are removed for the two and three units. Spaces with ceiling height greater than 15 feet do not count twice toward the Gross Floor Area for FAR calculations.

### **How is height measured? Do Parapets count toward height?**

For Duplex, Two-Unit, or Three-Unit Uses, the Subchapter F measurements do not apply. Since there are no specific height measurements in the Use regulations, height is measured according to the base code definition:

HEIGHT, when used in reference to a building, means the vertical distance from the average of the highest and lowest grades adjacent to the building to: (a) for a flat roof, the highest point of the coping; (b) for a mansard roof, the deck line; (c) for a pitched or hip roof, the average height of the highest gable; or (d) for other roof styles, the highest point of the building.

Since height is now governed by base zoning district limitations that were overwritten by Subchapter F, note that this also should include 25-2-531 HEIGHT LIMIT EXCEPTIONS under Subchapter C. Parapets are exempted, meaning that for a flat roof with a parapet, the height should be measured to the highest point of the coping, which would be the highest scupper outlet or where the coping would be without the parapet. Solar installations, chimneys, and other mechanical or safety features are also exempted.

## FAR GRADIENT

### Why are the FAR limits given as “the greater of” a percentage and a fixed value?

This is what we call the FAR FLOOR, and it is a recognition that smaller lots are more difficult to fit due to constraints. This is also a direct translation of what was in Subchapter F, so it was included so that no one (or at least the 97th percentile of projects) would LOSE entitlement compared to the existing regulations.

### Why is the FAR floor value for three units larger than 0.65 of a 5750 sf lot? All other values are based on the FAR available for 5750 sf lots.

The reason the FAR Floor is larger on the Three-Unit Use was in response to a requested amendment from developers. There was pushback that the FAR limits were too low overall, especially for three units. The increase to the floor for three units only was intended as an incentive to push for three units, making it more attractive on lots between 5750 and 6692 (the point where the floor equals the ratio). A ton of lots fall into that size range, and there was clear evidence in the modeling on that size, that such a bump particularly helps provide three garage-parked units without the garage exemptions.

### What if I can get more area for two units under Subchapter F?

With the FAR limits adopted by City Council, there will be some cases where two units under HOME are smaller than what can be achieved with extreme basement and attic exemptions. Based on existing permit data, this is under 2% of projects. Sites that support more than 0.55 FAR under Subchapter F are likely to support 3 units at 0.65 FAR under HOME.

## SETBACKS

### Front Yard Averaging on my lot results in a setback of less than 15'. If I do two or three units, can I use the front-yard setback.

Per the code as written, no. The Duplex, Two-Unit, and Three-Unit Uses do not include a provision for front yard averaging. We have not seen a direct answer from DSD on this yet, but based on other interpretations, they are likely to defer to the “most restrictive” condition. However, a variance might be sought as this would appear to be counter to the intent.

There will be sites for which this is a disadvantage, but there will be many more sites for which the reduced setback is more advantageous, including sites outside the Subchapter F area, which previously did not have access to Front Yard Averaging. Simplifying and allowing front yard averaging city-wide has been discussed as a potential component in a future HOME phase.

### If a porch can be 15' from the property line but the setback is reduced to 15', what does that mean?

It means the text was not sufficiently proofread. The only encroachment benefit for a porch is the additional 2' of overhang.

### When is the rear setback reduced to 5' in plain english?

If the lot backs up to an alley, then the setback is reduced to 5'; this is the same as Subchapter F currently. If the lot backs up to a lot containing a use that is permitted in any SF or MF zoning district (essentially all Residential and Civic uses), then the setback is reduced.

What is not clear at this time is whether “adjacent” means adjacent to the lot (as written) OR adjacent to the rear property line / rear setback. As literally written, as long as any one adjacent lot contains a use permitted in any SF or MF zoning district, then the rear setback is reduced. It remains to be seen if that will be honored or if DSD will modify via interpretation.

### If the neighboring use is light commercial (LO), then is the rear setback reduced?

It depends on the Use on the adjacent lot. The setback reduction is triggered by Use not by zoning district. If the Use on the LO-zoned lot would be allowed in any SF or MF zoning district, then the reduction would apply.

## PARKING

### What are the parking requirements for HOME?

All minimum off-street parking requirements (other than for accessible parking spaces) have been eliminated from the LDC. This applies to all Base Districts and all Uses, including the new Duplex, Two-Unit, and Three-Unit Residential Uses.

### If parking is provided (but not required) then does it have to meet transportation requirements for parking size?

There does not appear to be any modification to the standards or their applicability based on the modifications made by Ordinance 20231102-028.

### The recent removal of parking requirements for new construction projects seems to have the unintended consequence of eliminating the 200 sf exemption for an attached parking area because that code states: “Up to 200 square feet of an attached parking area if it used to meet the minimum parking requirement.” If there is no longer a parking requirement, does this exemption still apply?

Subchapter F 3.3.2.C has been modified to read: “An applicant who receives a 450-square foot exemption may receive an additional 200-foot exemption for the same site under paragraph B, but only for an attached parking area used to meet the minimum accessible spaces requirement.”

## LOT SIZE

### Does the 50 ft lot width still hold for a regular duplex?

No, all specific duplex regulations in the old Section 25-2-733 have been removed except for the minimum lot size of 5,750 sf, which is retained for Duplex, Two-Unit, and Three-Unit Residential uses.

Note that for the Residential Infill Special Use (Section 25-2-1535) would still require the 50' minimum width (and the remainder of those regulations) in that specific case.

## PRESERVATION INCENTIVE

### Can you move an existing house to the new 15' front and 5' side street set back line and still receive the preservation bonus?

Yes. The structure must remain on the same lot to receive the Preservation Bonus, but there is no requirement prohibiting its relocation on the same lot.

## TPOLOGY SCENARIOS

### If you want to build a duplex and a detached structure, which Use applies?

This would be a Three-Unit Residential Use. Since the duplex-specific regulations have been removed, the only factor defining the Use within the zoning code is the number of dwelling units. All rules governing the separation and attachment of those units are based on the relevant Building Code. In this case, this would be a valid IRC arrangement. The IRC would govern fire separation requirements.

### If you keep an existing house and build a duplex behind it, which Use applies?

This would be a Three-Unit Residential Use. In addition, the existing house could qualify for the Preservation or Sustainability Bonus, depending on the age of the structure and how it is maintained. The fact that the addition is a duplex is essentially irrelevant as far as the Use and zoning are concerned, as the duplex-specific regulations have been removed, and no distinction between Two-Unit and Duplex exists within 25-2-773. Any distinction would be within the IRC.

### HOME is suspiciously quiet about Triplexes; there is a distinction between Duplex and Two-Unit Residential, but why is there no distinction between Three-Unit and Triplex? Are Triplexes allowed?

Triplexes are permitted within the Use. The lack of distinction between attached and detached in the zoning code was discussed during the hearings and confirmed by both the Fire Marshall and the Building Official that the life-safety codes govern this distinction.

Although the Use contains the words “Duplex” and “Two-Unit Residential,” it makes no distinction between them in the regulations under Section 25-2-773. The word “Duplex” does not appear in the text other than in the header. The LDC is concerned only with the number of units, not the

arrangement. AIA Housing Advocacy advised that the word “Duplex” should also be removed from the LDC to clarify this question and to better enact the simplification effected by this ordinance. We assume it was kept in for familiarity and to prevent confusion for existing uses.

However, the Building Code is concerned with the arrangement of the units. A stacked Triplex is not currently allowed by the IRC, meaning this arrangement would need to be reviewed under IRC. Two stacked units with a detached third are valid under IRC, but two stacked units with an attached third are not. Three side-by-side dwelling units could be reviewed under IRC as townhouses (note that an IRC townhouse includes attached dwelling units on a single lot).

### **Will all one-, two-, and three-unit plans be reviewed under IRC?**

This is not set by the ordinance. This will be up to the applicant based on the design and configuration. Three-unit projects that meet the requirements of IRC scope will be reviewed under IRC; this could be three detached, two attached + one detached, or three IRC townhouses attached. Three stacked units is not currently allowed in IRC, nor is a stacked duplex with a third attached unit.

AIA Housing Advocacy is working on a proposal (based on language from Memphis and North Carolina) to amend IRC during the 2024 code adoption cycle to allow stacked units / “big house” / triple-decker typologies within IRC.

## **ZONING DISTRICTS SF-4 AND HIGHER**

### **If I have a site that is SF-5 but would benefit from HOME, can I use the new Uses, or would I need to down-zone?**

At this point, that would require a down-zoning to increase density. There is obviously a fundamental problem with that! It is unclear why the new Uses were not added to SF-5 since it previously allowed for Duplex and Two-Family. This will need to be fixed to include Two-Unit and Three-Unit.

### **Can I use HOME on SF-4 lots?**

No, the new Uses created or redefined by HOME were not added to SF lots. The only residential Use permitted on SF-4A or SF-4B is “Small Lot Single Family,” which is its own special use parallel to and unaffected by the other Residential Uses.

SF-4A is specific to small lots, and the Uses in Section 25-2-773 require a minimum lot size of 5,750. Although the regulations were designed to accommodate smaller lots in the future, how that will be applied is an ongoing discussion for future phases. Depending on how that shakes out, the uses may be added to SF-4A in the future.

It could be the case that down-zoning from an SF-4 district to SF-3 could allow for greater density, though the additional Impervious Cover would be lost.

### **I have a site that is zoned MF-4 but is noncompliant size and thus has been forced to an SF-3 use. Can I use the 3-unit residential?**

If the restriction is written as “a use allowed in SF-3,” then yes, that should be allowed by right. The Three-Unit Residential is a permitted use on SF-3.

## **SUBCHAPTER F AND SINGLE-FAMILY**

### **What changes do I need to make if I’m designing or building a single-family home under Subchapter F?**

Nothing at all. Proceed as before.

### **Did the new HOME Phase 1 ordinance remove Subchapter F restrictions for two and three-unit use, or is that coming in the future?**

Subchapter F is entirely waived in HOME Phase 1 for Duplex, Two-Unit, and Three-Unit Uses.

### **Does Subchapter F still apply to the primary dwelling unit in Two-Unit or Three-Unit Use?**

No, there is no longer any distinction between primary and secondary units, and Subchapter F is waived for all units within a Duplex, Two-Unit, or Three-Unit Use.

### **A rumor was passed to me from a builder that the garage exemptions in subchapter F are gone for single-family submittals as well. Please confirm.**

For Single-Family Uses, there are no changes to the code. Subchapter F was not changed, simply waived in the case of the new Duplex, Two-Unit, and Three-Unit uses.

**Do single residences get to use the new setbacks?**

For Single-Family Uses, there are no changes to the code, and they retain the existing setbacks contained in Subchapter F, including front-yard averaging and reduced alley setbacks. The new setbacks are part of the incentives to encourage additional units.

**What if I have a two-unit project in design under Subchapter F?**

Applicants who complete a Fair Notice Application are guaranteed a one-year extension for review under previous regulations.

**How will homes that currently utilize a basement exemption be considered when they want to add a second unit on their property?**

This is unknown at this time, but there are two considerations here. One is the overall FAR and the second is the FAR per single dwelling unit.

If there is FAR left with the existing dwelling unit recalculated under Section 25-2-773, then conversion to one of those uses should be possible.

This is a change of Use, so the existing unit would be taken as is, and the regulations of the new Use applied without reference to the previous regulations. If there is not FAR remaining, it is not clear how (or indeed why) additional units would be allowed. That is, unless the structure with the basement is more than 20 years old, it could qualify for the Sustainability or Historic Preservation Incentives, exempting the existing area.

Existing units (submitted for permit before 07 December 2023) are exempt from the 0.40 max for any single dwelling unit. This prevents circumventing that limitation by building a larger dwelling unit under the previous regulations to abuse the new regulations.

**UTILITIES**

**Is it possible to use existing infrastructure for three new meters?**

Standard detail 520-AW-02 provides for up to four residential meters from a single connection. Sizing of the infrastructure is dependent upon the completed WWWSPV form.

**How do I enter a Three-Unit Residential Use on the WWWSPV form? It is not set up for three units.**

We have been told this form is in the process of being updated. The Use categories on the current form also do not align with either the previous Uses or the current Uses in the LDC, so they will hopefully fix that at the same time. For now, add the information for the third meter along with the first two in the same format.

**STREET IMPACT FEES**

**Do the HOME changes mean that Street Impact Fees will now apply to the second or third unit on a lot?**

For development on existing lots, the SIF is triggered only if the building increases daily trips by more than 10 PM Peak Hour Trips from its current state. Three detached units generate less than 3 PM Peak Hour trip and attached units less than 2, so a Three-Unit Residential use will never generate more than the minimum required for the fee to be collected.



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