

ORDINANCE NO. 02021.xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE CITY OF TEMPE ZONING AND DEVELOPMENT CODE, PART 3 – LAND USE, SECTIONS 3-102 AND 3-202, SECTION 3-409, GROUP HOMES FOR ADULT CARE, PERSONS WITH DISABILITIES, AND CHILD SHELTER; ESTABLISHING REVISED LANGUAGE THAT ADDRESS THE VARIOUS GROUP HOMES THAT ARE REGULATED BY THE STATE; SETTING FORTH DEFINITIONS; AND ESTABLISHING APPROPRIATE REGULATIONS WITHIN RESIDENTIAL AREAS. AMENDING PART 7 – DEFINITIONS, SECTIONS 7-102, 7-105, 7-108, 7-110, 7-114, AND 7-119.

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NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**SECTION 1.** That Section 3-409 of the Zoning and Development Code, pertaining to Group Homes for Adult Care, Persons with Disabilities, and Child Shelters, is hereby amended to read as follows:

**Section 3-409 - Group Homes for Adult Care, Persons with Disabilities, and Child Shelter.**

*Group homes for adult care, persons with disabilities, and child shelters shall comply with the following provisions:*

- ~~A. **Distribution of Uses.** No such home or shelter is located on a lot within one thousand two hundred (1,200) feet, measured by a straight line in any direction, from the lot line of another group home;~~
- ~~B. **Occupancy.** The number of residents is limited by applicable state laws, including any minimum square footage requirement per person, but in no event shall the number of residents exceed ten (10);~~
- ~~C. **License.** Such home is licensed by, or certified by, or approved by, or registered with, funded by or through, or under contract or subcontract with, the State of Arizona. See Arizona Revised Statutes, Division 36; and~~
- ~~D. **Administrative Review Required.** Such home must be reviewed and approved by the Community Development Director, or designee, for building code and land use compliance prior to the use commencing.~~

**A. PURPOSE.** THE PURPOSE OF THESE REGULATIONS IS TO PERMIT CHILD SHELTERS, AND A GROUP OF UNRELATED PERSONS WITH DISABILITIES, TO RESIDE TOGETHER IN RESIDENTIAL NEIGHBORHOODS IN COMPLIANCE WITH THE FEDERAL FAIR HOUSING ACT (SECTION 3601 OF TITLE 42 OF THE UNITED STATES CODE), WHILE PRESERVING AND MAINTAINING THE RESIDENTIAL CHARACTER OF THE NEIGHBORHOOD. THE FEDERAL FAIR HOUSING ACT PROHIBITS DISCRIMINATION IN HOUSING ON THE BASIS OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, FAMILIAL STATUS, AND DISABILITY.

**B. APPLICABILITY AND REGISTRATION. GROUP HOMES ARE PERMITTED IN AN INDIVIDUAL DWELLING UNIT ON A LOT WITHIN ANY DISTRICT THAT ALLOWS RESIDENTIAL USES, SUBJECT TO THE REQUIREMENTS PROVIDED HEREIN. GROUP HOMES SHALL SUBMIT A COMPLETED VERIFICATION APPLICATION AND REQUIRED SUPPLEMENTAL MATERIALS TO THE COMMUNITY DEVELOPMENT DEPARTMENT ON A FORM ESTABLISHED BY THE ZONING ADMINISTRATOR. A GROUP HOME ZONING CLEARANCE LETTER MAY BE ISSUED UPON VERIFYING THE APPLICATION COMPLIES WITH THE STANDARDS LISTED IN SUBSECTION C.**

- 1. GROUP HOMES THAT ARE LICENSED BY THE STATE, COUNTY OR OTHER GOVERNMENTAL AUTHORITY, SHALL BE CONSIDERED TO BE REGISTERED WITH THE CITY AT THE TIME THEY RECEIVE TENTATIVE GROUP HOME ZONING CLEARANCE AND SHALL SUBMIT A COPY OF THE LICENSE ISSUED BY THE STATE, COUNTY OR OTHER GOVERNMENTAL AUTHORITY TO THE CITY WITHIN NINETY (90) DAYS, OR SAID REGISTRATION SHALL BE AUTOMATICALLY WITHDRAWN.**
- 2. FOR GROUP HOMES THAT ARE NOT LICENSED BY THE STATE, COUNTY OR OTHER GOVERNMENTAL AUTHORITY, GROUP HOME ZONING CLEARANCE MAY BE PROVIDED IN PLACE OF A TENTATIVE ZONING CLEARANCE AT WHICH TIME THE GROUP HOME SHALL BE CONSIDERED TO BE REGISTERED WITH THE CITY.**
- 3. IN ALL CASES, REGISTRATION FOR GROUP HOMES SHALL EXPIRE WHEN THE GROUP HOME USE CEASES. THE OPERATOR SHALL NOTIFY THE COMMUNITY DEVELOPMENT DEPARTMENT WITHIN THIRTY (30) CALENDAR DAYS OF THE GROUP HOME CEASING OPERATION. ANY NEW GROUP HOME SEEKING REGISTRATION OF A PRIOR GROUP HOME SITE SHALL REQUIRE A NEW APPLICATION IN COMPLIANCE WITH THE REGULATIONS SET FORTH.**

**C. STANDARDS. GROUP HOMES SHALL COMPLY WITH THE FOLLOWING STANDARDS:**

- 1. CAPACITY. THE NUMBER OF RESIDENTS WITHIN A GROUP HOME, EXCLUDING STAFF, SHALL NOT EXCEED FIVE (5).**
- 2. LOCATION. GROUP HOMES SHALL NOT BE LOCATED ON A LOT THAT IS WITHIN ONE THOUSAND TWO HUNDRED (1,200) FEET, MEASURED BY A STRAIGHT LINE IN ANY DIRECTION, FROM THE LOT LINE OF ANOTHER REGISTERED GROUP HOME.**
- 3. SIGNS. A GROUP HOME SHALL HAVE NO IDENTIFICATION FROM A PUBLIC STREET BY SIGNAGE, GRAPHICS, DISPLAY, OR OTHER VISUAL MEANS, EXCEPT FOR SIGNAGE PERMITTED UNDER TABLE 4-903B. SIGN TYPE B OF THIS CODE.**
- 4. CODE COMPLIANCE. A GROUP HOME SHALL BE IN COMPLIANCE WITH ALL APPLICABLE CITY CODES, INCLUDING BUILDING CODES, FIRE SAFETY REGULATIONS, ZONING AND SUBDIVISION CODES.**
- 5. PARKING. ANY PARKING FOR THE GROUP HOME SHALL BE MAINTAINED ON SITE AND COMPLY WITH REQUIREMENTS SET FORTH IN PART 4, CHAPTER 6 – PARKING OF THIS CODE, AND SECTION 21-3(B)(4), OF THE TEMPE CITY CODE.**
- 6. MAINTENANCE. THE EXTERIOR OF THE DWELLING AND YARDS SHALL BE KEPT IN A CONDITION THAT IS CONSISTENT WITH REQUIREMENTS SET FORTH IN SEC. 21-3 OF THE TEMPE CITY CODE.**
- 7. EXCLUSIVE USE. ALL ADMINISTRATIVE ACTIVITIES, INCLUDING STAFFING, COUNSELING, AND OTHER VISITATIONS, SHALL SERVE ONLY THE RESIDENTS OF THE GROUP HOME.**

**D. REASONABLE ACCOMMODATION WAIVER. THE PURPOSE OF THIS SECTION IS TO ESTABLISH A PROCEDURE FOR PERSONS WITH A DISABILITY TO MAKE A REQUEST**

FOR REASONABLE ACCOMMODATION IN THE APPLICATION OF TEMPE'S ZONING RULES, POLICIES, PRACTICES AND PROCEDURES PURSUANT TO SECTION 3604(F)(3)(B) OF TITLE 42 OF THE FAIR HOUSING ACT WHICH PROHIBITS LOCAL GOVERNMENT FROM REFUSING TO MAKE REASONABLE ACCOMMODATIONS WHEN THESE ACCOMMODATIONS ARE NECESSARY TO AFFORD PERSONS WITH DISABILITIES EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING. A REASONABLE ACCOMMODATION FOR A GROUP HOME WILL BE GRANTED OR DENIED, IN ACCORDANCE WITH THE REQUIREMENTS STATED HEREIN. A REQUEST FOR SUCH A REASONABLE ACCOMMODATION WAIVER MUST BE IN WRITING AND FILED WITH THE ZONING ADMINISTRATOR (EXCEPTIONS FOR THE WAIVER REQUEST TO BE IN WRITING MAY BE MADE ON A CASE-BY-CASE BASIS). IN ALL CASES, THE ZONING ADMINISTRATOR, OR DESIGNEE, SHALL MAKE FINDINGS OF FACT IN SUPPORT OF THEIR DETERMINATION AND SHALL RENDER A DECISION IN WRITING. THE ZONING ADMINISTRATOR MAY MEET WITH THE PERSON MAKING THE REQUEST FOR ADDITIONAL INFORMATION OR DISCUSS AN ALTERNATIVE ACCOMMODATION, IN ORDER TO ASCERTAIN OR CLARIFY INFORMATION SUFFICIENTLY TO MAKE THE REQUIRED FINDINGS. TO GRANT A REASONABLE ACCOMMODATION WAIVER, THE ZONING ADMINISTRATOR SHALL FIND AFFIRMATIVELY ALL OF THE FOLLOWING:

1. THE REQUESTING PARTY OR FUTURE OCCUPANTS OF THE HOUSING FOR WHICH THE REASONABLE ACCOMMODATION HAS BEEN MADE ARE PROTECTED UNDER THE FAIR HOUSING ACT AND/OR THE AMERICANS WITH DISABILITIES ACT;
2. THE REQUEST IS REASONABLE AND NECESSARY TO AFFORD AN INDIVIDUAL WITH A DISABILITY AN EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING;
3. THE REQUEST WILL BE IN COMPLIANCE WITH ALL APPLICABLE BUILDING AND FIRE CODES;
4. THE REQUEST WILL ALLOW FOR THE MAINTENANCE AND PRESERVATION OF THE RESIDENTIAL CHARACTERISTICS OF THE NEIGHBORHOOD AND WILL NOT CREATE A SUBSTANTIAL DETRIMENT TO NEIGHBORING PROPERTIES BY CREATING TRAFFIC IMPACTS, PARKING IMPACTS, IMPACTS ON WATER OR SEWER SYSTEM, OR OTHER SIMILAR ADVERSE IMPACTS; AND
5. PROFITABILITY OR FINANCIAL HARDSHIP OF THE OWNER/SERVICE PROVIDER OF A FACILITY SHALL NOT BE CONSIDERED BY THE ZONING ADMINISTRATOR IN DETERMINING TO GRANT A REASONABLE ACCOMMODATION WAIVER.

**E. APPEAL.** AN APPEAL OF THE DECISION BY THE ZONING ADMINISTRATOR MAY BE MADE REGARDING REASONABLE ACCOMMODATION TO THE BOARD OF ADJUSTMENT PURSUANT TO PART 6, CHAPTER 8, APPEALS.

**SECTION 2.** That Section 7-102 of the Zoning and Development Code, pertaining to "A" definitions, is hereby amended to add the following definition:

ASSISTED LIVING FACILITY MEANS A RESIDENTIAL CARE INSTITUTION, INCLUDING ADULT FOSTER CARE, THAT PROVIDES OR CONTRACTS TO PROVIDE SUPERVISORY CARE SERVICES, PERSONAL CARE SERVICES OR DIRECTED CARE SERVICES ON A CONTINUING BASES THAT PROVIDES RESIDENT ROOMS OR DWELLINGS NOT WITHIN AN INDIVIDUAL HOME.

**SECTION 3.** That Section 7-105 of the Zoning and Development Code, pertaining to "D" definitions, is hereby amended to read as follows:

Disabilities, person with INCLUDES (1), ANY INDIVIDUAL WITH A PHYSICAL OR MENTAL IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE OR MORE "MAJOR LIFE ACTIVITIES"; (2), ANY INDIVIDUAL WITH A RECORD OF SUCH "IMPAIRMENT"; OR (3), ANY INDIVIDUAL WHO IS REGARDED AS HAVING SUCH AN "IMPAIRMENT". ~~means a person who:~~

~~1. Has a physical or mental impairment which substantially limits one (1) or more of such person's major life activities;~~

~~2. Has a record of having such an impairment; or~~

~~3. Is regarded as having such an impairment.~~ However, "person with disabilities" shall not include current users of illegal controlled substances, but does provide protections for individuals with drug or alcohol addiction ~~current, illegal use of or addiction to a controlled substance~~ (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802]), nor shall it include any person whose residency in a group home would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.

**SECTION 4.** That Section 7-108 of the Zoning and Development Code, pertaining to "G" definitions, is hereby amended to read as follows:

Group home for adult care, persons with disabilities and child shelter means a dwelling shared as a primary residence by adult persons or used as a child shelter, ~~and including resident staff~~ who live together as a single housekeeping unit in an environment ~~in which~~ THAT MAY PROVIDE SELF-SUPPORT OR RESIDENT staff persons provide PROVIDING care, education and OR activities for the residents. A GROUP HOME'S PRIMARY PURPOSE IS TO PROVIDE SAFE, LONG TERM SHELTER IN A RESIDENTIAL FAMILY-LIKE ENVIRONMENT. THIS SECTION DOES NOT ~~include but not including~~ medical institutional uses, alcoholism or drug treatment centers, community corrections facilities and adult shelter care facilities. This definition shall not apply to a GROUP home for the developmentally disabled as regulated by A.R.S. § 36-582 to the extent of state preemption of local zoning regulations. For the purpose of this definition, children WITHIN A CHILD SHELTER are under the age of eighteen (18). A GROUP HOME FOR PERSONS WITH DISABILITIES INCLUDES, BUT IS NOT LIMITED TO, "ASSISTED LIVING HOME", "ADULT FOSTER CARE HOME" AND "ADULT BEHAVIORAL HEALTH THERAPEUTIC HOME" AS DEFINED IN A.R.S. § 36-401, AND "SOBER LIVING HOME" AS DEFINED IN A.R.S. § 36-2061.

**SECTION 5.** That Section 7-110 of the Zoning and Development Code, pertaining to "I" definitions, is hereby amended to add the following definition:

IMPAIRMENT MEANS A PHYSICAL OR MENTAL IMPAIRMENT THAT INCLUDES, BUT IS NOT LIMITED TO, EXAMPLES OF CONDITIONS SUCH AS ORTHOPEDIC, VISUAL, SPEECH AND HEARING IMPAIRMENTS, CEREBRAL PALSY, AUTISM, EPILEPSY, MUSCULAR DYSTROPHY, MULTIPLE SCLEROSIS, CANCER, HEART DISEASE, DIABETES, HUMAN IMMUNODEFICIENCY VIRUS (HIV), DEVELOPMENTAL DISABILITIES, MENTAL ILLNESS, DRUG ADDICTION, AND ALCOHOLISM.

**SECTION 6.** That Section 7-114 of the Zoning and Development Code, pertaining to "M" definitions, is hereby amended to add the following definition:

MAJOR LIFE ACTIVITIES INCLUDES THOSE ACTIVITIES THAT ARE IMPORTANT TO DAILY LIFE. MAJOR LIFE ACTIVITIES INCLUDE, BUT ARE NOT LIMITED TO, WALKING, SPEAKING, HEARING, SEEING, BREATHING, WORKING, LEARNING, PERFORMING MANUAL TASKS, AND CARING FOR ONESELF. THERE ARE OTHER MAJOR LIFE ACTIVITIES THAT ARE NOT ON THIS LIST. MAJOR LIFE ACTIVITIES ALSO INCLUDE THE OPERATION OF MAJOR BODILY ACTIVITIES, SUCH AS THE FUNCTIONS OF THE IMMUNE SYSTEM, SPECIAL SENSE ORGANS AND SKIN, NORMAL CELL GROWTH, AND DIGESTIVE, GENITOURINARY, BOWEL, BLADDER, NEUROLOGICAL, BRAIN,

RESPIRATORY, CIRCULATORY, CARDIOVASCULAR, ENDOCRINE, HEMIC, LYMPHATIC, MUSCULOSKELETAL, AND REPRODUCTIVE SYSTEMS.

**SECTION 7.** That Section 7-119 of the Zoning and Development Code, pertaining to “R” definitions, is hereby amended to add the following definition:

REASONABLE ACCOMMODATION MEANS A CHANGE, EXCEPTION, OR ADJUSTMENT TO A RULE, POLICY, PRACTICE OR SERVICE THAT MAY BE NECESSARY FOR A PERSON WITH A DISABILITY TO HAVE AN EQUAL OPPORTUNITY TO USE AND ENJOY A DWELLING, INCLUDING PUBLIC AND COMMON USE SPACES.

**SECTION 8.** That Section 3-102, Table 3-102 of the Zoning and Development Code, is hereby amended to read as follows:

Table 3-102 identifies land uses according to permit status. See key below the table:

Table 3-102 - Permitted Land Uses (AG, SFR, MF, MH, RMH, TP)				
Uses	Status of Use in District			
	AG	SFR	MF	MH/RMH/TP
Accessory Dwellings [Section 3-402]	N	N	S	N
<u>ASSISTED LIVING FACILITIES [SECTION 3-413]</u>	<u>U(S)</u>	<u>N</u>	<u>U(S)</u>	<u>N</u>
Amateur Radio Antennas [Section 3-422]				
...				

**SECTION 9.** That Section 3-202, Table 3-202A of the Zoning and Development Code, is hereby amended to read as follows:

Table 3-202A identifies land uses according to permit status. See key below the table:

Table 3-202A - Permitted Land Uses (R/O, CSS, CC, PCC, RCC)	
Uses	Status of Use District

	R/O	CSS	CC	PCC-1	PCC-2	RCC
Accessory Use (see Section 7-102, Definitions)	P	P	P	P	P	P
<u>ASSISTED LIVING FACILITIES [SECTION 3-413]</u>	<u>N</u>	<u>U(S)</u>	<u>U(S)</u>	<u>U(S)</u>	<u>U(S)</u>	<u>U(S)</u>
Animal Kennel	N	U	U	U	U	U
...						

**SECTION 10.** Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

**PASSED AND ADOPTED** BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
 Corey D. Woods, Mayor

ATTEST:

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 Carla R. Reece, City Clerk

APPROVED AS TO FORM:

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 Judith R. Baumann, City Attorney