

MEMORANDUM – ISSUE REVIEW SESSION

TO: Mayor and City Council
THROUGH: Andrew Ching, City Manager
Shelly Seyler, Interim Community Development Director
FROM: Ryan Levesque, Deputy Community Development Director-Planning
DATE: March 18, 2021
SUBJECT: Group Home Regulations – Update



AGENDA ITEM: 2E

PURPOSE:

The purpose of the presentation on Group Home Regulations is to provide City Council with an update from the August 20, 2020 Work Study presentation. Following this meeting staff conducted research and evaluated the direction provided by City Council. This presentation will provide an overview of draft changes considered for a formal hearing process, and a potential schedule outline. Staff is seeking direction from City Council to move forward with next steps in a public hearing process for an ordinance amendment to Group Homes, as presented.

CITY COUNCIL STRATEGIC PRIORITY AND RELATED PERFORMANCE MEASURE:

City Council Priority #2, Developing and maintaining a strong community connection by emphasizing the importance of open government, customer service and communication with community members.

Proposed changes with draft ordinance for Section 3-409, Group Homes for Adult Care, Persons with Disabilities and Child Shelters, See Attachment 2.

Key changes include the following:

1. Revised language within Section 3-409 and other related definitions.
2. Limit the total occupancy of a Group Home to no more than 5 residents (excluding staff);
3. Require staff/resident vehicles be parked on-site, in compliance with City Code (parking on improved surfaces);
4. Establish an expiration period of 90 days from the application of a Group Home, requiring the applicant to provide the City with a copy of the license from State.
5. Additional clarifying standards pertaining to restrictions on signs, compliance with codes, and on-going maintenance of the house.
6. New “Reasonable Accommodations Waiver” process for providing relief to Subsection (C) Standards, with specific evaluation criteria. Such decision, if aggrieved, is appealable to the Board of Adjustment.
7. Improve awareness on Tempe’s Group Home regulations and the procedural steps, establishing a web page of information FAQs and how applications are processed.
8. Application form updates, includes the above related changes; and
 - a. A new acknowledgement statement box regarding whether the home is within an area controlled by CC&Rs, and if the use and/or changes have been reviewed to be in compliance with the subdivision’s regulations (Yes or No, signature for acknowledgement of compliance)

Regulation changes not considered at this time:

1. Maintain the current Group Home separation requirements (1,200 feet from Group Home to Group Home). Only two other municipalities within the comparisons provided have separation requirements greater than 1,200 feet. Both City of Phoenix and Glendale have separation requirements of 1,320 feet (or a quarter mile). Other municipalities have a 1,200 foot separation, but allow additional exceptions such as freeways and arterial roads, as well as relief allowed through a reasonable accommodations waiver. With the concern of being more restrictive than our current separation standards or other municipalities in Arizona, it is recommended we maintain the current separation standards at this time.

2. Maintain the current administrative review procedures. Avoid requiring a form of notice that is not otherwise required for any other administrative process. The purpose is to treat group homes in a similar manner that is allowed for a homeowner to make modifications to their home, as long as they comply with the standards and procedures. Disability advocates also warn that public notice could subject the person with a disability to further discrimination and stigma. The acknowledgement statement box for CC&Rs is an alternative approach to having the applicant conduct their due diligence and make sure that they have satisfied any Associations or subdivisions CC&Rs.

3. Staff evaluated new regulations for “Boarding Houses” similar to City of Phoenix, based on occupancy and separate room rentals, with separation requirements from Group Homes and requirement of a Use Permit (a public hearing). Although staff thought this was a model that may be adapted to Tempe’s regulations, the boarding house concept brought up greater concerns with mandating and enforcement of unrelated people living in a house; difficult to prove that people are renting individually; creates additional exceptions to unrelated people inconsistent with the current definition of family; and opening this category up to other group living quarters that do not otherwise have a disability, currently prohibited within single-family zoning. Staff is continuing to evaluate provisions that may address some of the concerns pertaining to this issue.

RECOMMENDATION OR DIRECTION REQUESTED:

Staff is requesting direction from the Mayor and City Council on moving forward with scheduled public hearing, based on the presented changes in the draft ordinance for Group Homes. Staff has provided a tentative timeline for consideration.

ORDINANCE TIMELINE:

If direction provided to move forward, the following tentative hearing schedule would be as follows:

April 7 th	Neighborhood Advisory Commission feedback on draft ordinance
April 27 th	Development Review Commission recommendation hearing
May 27 th	City Council - Intro / 1 st public hearing
June 10 th	City Council – 2 nd / Final public hearing (adoption)

**NOTE: May need additional time for potential legislative items that impact group homes...*

BACKGROUND INFORMATION:

Section 3-409, within the Tempe Zoning and Development Code, regulates the use of an individual dwelling unit or single-family home that is used as a "Group Home" for the purpose of providing care services to those in need that are regulated by the State. The various types of Group Homes under this category include:

- Assisted Living Homes
- Adult Foster Care Homes
- Adult Behavioral Health Therapeutic Homes
- Child Shelters
- Sober Living Homes

Types of group homes that do not fall under this category:

- Homes for the developmentally disabled (regulated by Arizona DES, Division of Developmental Disabilities)
- Fraternity/Sorority Houses
- Other non-defined groups, without a disability, not licensed by the State

Current Procedures:

- An applicant completes a Group Home application form filed to Community Development, providing contact info, location, and number of residents. This is an administrative review process.
- The Planning Division is the first step, a review of the address site is conducted using our GIS data of existing or active Group Homes in the system, to ensure the proposed property is at least 1,200 feet away from other Group Home.
- The applicant either receives a denial notice for not meeting separation requirements, or a sign-off from Planning.
- With a sign-off, the application then moves to the Building Safety Division for an actual permit.
- The permit is reviewed based on the number of occupants proposed, excluding staff:
 - o Up to 5 residents is allowed under the R-3 occupancy (Building Code for most homes today). Only a field inspection for compliance is required.
 - o 6-10 residents require an R-4 occupancy, typically a change in the home's current occupancy. A building permit review is required with plans and increased life safety measures, such as fire sprinklers.
- Both Building Safety Inspections and Fire Medical Rescue conduct an inspection of the project site.
- Fire Medical Rescue conducts annual inspections for R-4 occupancies to ensure compliance.
- AzDHS requires a Residential Facility license, based on the type with required qualifications, monitoring and inspections. A complaint form is available on the AzDHS website.

NOTE: State law prohibits local government from restricting group homes that house six or fewer persons with developmental disabilities, so long as it meets the requirements set out in the law (ARS 36-582). Additional State and federal law may also apply to governing group homes.

The original Tempe zoning regulations for Group Homes were adopted by ordinance in 1992. Since that time an additional amendment was provided that incorporated "Child Shelters", from a Zoning Administrator's opinion decision back in 1997. In recent years, Senate Bill 1465 in 2018 passed introducing new regulations for licensing "Sober Living Homes". The Arizona Department of Health Services in July of 2019 introduced policies and rules concerning the deadline for application compliance for any existing Sober Living Homes. In concurrence, City of Tempe, Community Development issued a Zoning Administrator's Opinion identifying Sober Living Homes as a use requiring review and compliance under the City's Group Home regulations. To date, we have yet to receive an application for a Sober Living Home, only customer inquiries. Additionally, in 2019, House Bill 2070, enacted a category of adult foster care, called "Adult Behavioral Health Therapeutic Homes". Arizona Department of Health Services provided updated rules and application in November 2019. This definition also falls under the adult care category and Tempe's group home regulations.

Today in Tempe there are a total of 74 Group Homes within the City limits.

In addition, there are 68 Homes for the Developmentally Disabled, under State regulatory control only. These homes are commonly confused with Group Homes regulated by the City. A Developmentally Disabled home may be located within 1,200

feet of a regulated Tempe Group Home. The State has their own compliance for review and also have a 1,200-foot separation requirement from another developmentally disabled home.

In coordination with Tempe's Code Compliance section, in 2019, there were a total of 17 cases concerning group home properties. 14 of those cases were confirmed a violation. Most violations dealt with maintenance and overgrown landscape, weeds or debris. One major violation included a deteriorated/missing roof material. Some of the Group Homes received multiple violation notices in 2019, consisting of 16% of the total Group Homes. Of the complaints reported none were related to excessive parking or unauthorized parking. After discussion with Code Compliance on the data received, feedback was provided indicating no concerns or correlations to a specified issue with residence used as a Group Home. In comparison, 22% of all single-family properties had received a violation in 2019.

Community Resident Concerns

Since the beginning of the year community residents have expressed concerns over the current Group Home regulations in Tempe and the ability for a property owner to convert a single-family home for the purpose of an adult care business. And for a longer period of time there have been concerns over homes turned into various types boarding houses whether intended for short term rentals, student housing in the form of mini dorms, or the renting of separate rooms to unrelated people. Concerns expressed from the community include a lack of awareness or notice to the community on the regulations for Group Homes and potential uses that may be in a residential neighborhood. Concerns over mitigating the potential for increased traffic, parking or changes in the home not consistent with the characteristics of a single-family neighborhood were also expressed. While property maintenance and monitoring of unwanted activities in a Group Home were also identified, existing City Code regulations on property nuisances, and the Arizona Department of Health Services license inspections and complaint monitoring are already in place to address these concerns.

FISCAL IMPACT or IMPACT TO CURRENT RESOURCES:

There is no fiscal impact to the City's budget or current resources if the proposed changes to the Code were adopted by City Council. Only the standard cost for amending the Zoning and Development Code for online publishing.

ATTACHMENTS:

Attachment 1: Comparison of other Local Municipality Group Home Regulations

Attachment 2: Draft Ordinance for Group Home changes

ATTACHMENT 1

GROUP HOME - Comparison Chart of other Local Municipality Regulations

City/Town	Occupancy	Separation Requirements	Licensing Deadline	Area/Parking	Exceptions
Scottsdale	10 max. with 2 caregivers	1,200 feet from group home to group home	180 days or application withdrawn	Group Home limited to 35% of lot; Owner/staff parking must be on-site	-
Phoenix	1-5 residents 6-10 residents 11+ residents (excludes staff)	1-5 No separation 6-10 & 11+ = 1,320 feet separation; includes boarding houses	60 days to apply for building permit	25% lot coverage; 50 sf. outdoor area per bed; Alternate parking standards 6+ occupants	Disability accommodations waiver option. <i>Use Permits for 11+ residents & Boarding House 6+ residents</i>
Chandler	5 max. excludes staff	1,200 feet, w/ exceptions when separated by freeway, arterial street, canal or railroad.	90 days or application withdrawn	Parking for care home shall be on-site	May be eligible for reasonable accommodations waiver from standards.
Mesa	10 max.	1,200 feet or by physical features; Large group homes – 600 feet	-	-	-
Gilbert	5 max. excludes staff (unless permitted by the State for up to 10)	1,200 feet, w/ exceptions when separated by freeway, arterial street, canal or railroad	Required for record-keeping	Parking shall be on-site	Requests for accommodations, to comply with Fair Housing Act
Glendale	10 max. not related to owner/manager	1,320 feet from group home to group home	60 days	-	-
Tempe	10 max.	1,200 feet from group home to group home	- <i>(unless building permit expires)</i>	-	-