

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 04/27/2021
Agenda Item: 15**

ACTION: Request a Code Text Amendment for GROUP HOME REGULATIONS, consisting of changes within Section 3-409 of the Zoning and Development Code for modifications and update to group home standards and related definitions. The applicant is the City of Tempe.

FISCAL IMPACT: There is no fiscal impact on City funds.

RECOMMENDATION: Approve

BACKGROUND INFORMATION: GROUP HOME REGULATIONS (PL210105) This code text amendment consists of changes to Tempe's existing group home regulations and sets forth revised standards for capacity limitation, sign restrictions, parking management, maintenance, and a new reasonable accommodation waiver. Staff conducted research and evaluated direction provided from City Council's first presentation provided on August 20, 2020. On March 18, 2021, city staff presented City Council with proposed changes and a draft ordinance on Tempe's Group Home regulations. Staff received direction from City Council to proceed forward with the public hearing process on the draft, including outreach to previous neighborhood resident involvement, Neighborhood Advisory Commission and any additional community feedback and input. The request includes the following:

ZOA210002 Code Text Amendment for changes within the Zoning and Development Code, Sections 3-409, 7-102, 7-105, 7-108, 7-110, 7-114, 7-119, 3-102, and 3-202.

ATTACHMENTS: Ordinance, Attachment File

STAFF CONTACT(S): Ryan Levesque, Deputy Community Development Director (480) 858-2393

Department Director: Shelly Seyler, Interim Community Development Director

Legal review by: Elizabeth Higgins, Assistant City Attorney

Prepared by: Ryan Levesque, Deputy Community Development Director

HISTORY AND FACTS:

- August 20, 2020 City Council Work Study Session and presentation on Tempe’s Group Home Regulations.
- March 18, 2021 City Council Work Study Session update and presentation on proposed changes to Group Home Regulations. Consensus direction provided by City Council.
- April 7, 2021 Neighborhood Advisory Commission provided a presentation and overview of Group Home Regulations and the draft proposed ordinance. Provide response to questions and recommendation to provide additional notification to existing group homes in Tempe. As a part of the noticing process, staff provided postcards to all site address and the mailing address of the property owners regarding the scheduled hearings proposed for the code text amendment.
- April 27, 2021 Development Review Commission recommendation hearing for this request.
- May 27, 2021 City Council introduction and first public hearing for this request.
- June 10, 2021 City Council second and final public hearing for this request (decision).

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.

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.

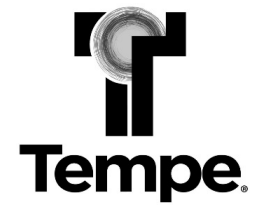
Corey D. Woods, Mayor

ATTEST:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney



DEVELOPMENT PROJECT FILE
for
GROUP HOMES REGULATIONS
(PL210105)

ATTACHMENTS:

1-5 Issue Review Memo

Ordinance for Group Home Regulations

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>	-	-

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.

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:

Carla R. Reece, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

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>	-	-