

**ORDINANCE NO. 4866-1404**

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AMENDING TITLE X, *LAND DEVELOPMENT CODE*, OF THE PRESCOTT CITY CODE BY PROVIDING FOR CHANGES TO TABLE 2.3, SECTIONS 2.4.7 THROUGH 2.4.53, TABLE 6.2.3, SECTION 11.1.3, AND TABLE 11.2.5; PROVIDING A PROCESS ESTABLISHING DEFENSES FOR LEGAL NON-CONFORMING USES; ESTABLISHING PENALTIES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

**RECITALS:**

WHEREAS, the City of Prescott recognizes that the Fair Housing Act as amended (42 U.S.C. §3601) provides protections for persons with disabilities; and

WHEREAS, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment or enforcement of zoning regulations by the City of Prescott pursuant to its local police powers so long as such zoning regulations are consistent with state and federal laws, including the Fair Housing Act as amended; and

WHEREAS, the adoption of zoning ordinances and land use planning is a fundamental function and police power of local government; and

WHEREAS, zoning regulations are adopted and enforced in the City of Prescott for the protection of the health, safety and welfare of the public; and

WHEREAS, the State of Arizona licenses certain Community Residences for the disabled including certain addiction treatment facilities, which licensing necessitates the involvement of local jurisdictions in determining life safety code compliance of said Community Residences; and

WHEREAS, the requirement of additional scrutiny of Community Residences by the City of Prescott to meet the state requirements for licensing necessitates the adoption or amendment of certain zoning definitions and regulations; and

WHEREAS, the State of Arizona pursuant to A.R.S. Sec. 36-582(A) requires that, unrelated persons living together notwithstanding, a residential facility which serves six or fewer persons with certain enumerated developmental disabilities including autism, cerebral palsy, epilepsy or cognitive disability must be considered a residential use of property for the purposes of all local zoning ordinances and that the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property.

WHEREAS, the State of Arizona pursuant to A.R.S. Sec. 36-582(H) requires no residential facility with six or fewer residents with developmental disabilities be located within a twelve hundred foot radius of an existing residential facility in a residential

zoning district ; and

WHEREAS, the Fair Housing Act makes it unlawful to utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons, and

WHEREAS, the Fair Housing Act makes it unlawful to utilize land use policies or actions that treat groups of persons with certain enumerated disabilities less favorably than groups of with other disabilities, and

WHEREAS, credible evidence indicates clustering of Community Residences in certain geographical areas in the City of Prescott; and

WHEREAS, clustering of Community Residences undermines the ability of disabled residents to achieve normalization and community integration; and

WHEREAS, Single-family zoning districts in the City of Prescott permit only Single-family residences, parks, playgrounds and necessary utilities; and

WHEREAS, it is in the interest of public health, safety and welfare to establish specific criteria to be used to clarify that certain Community Residences are equivalent to Single-family residences and that certain Community Residences are not equivalent to Single-family residences; and

WHEREAS, the presence of a Housekeeping Unit is the defining characteristic of a family as defined by the Land Development Code; and

WHEREAS, Community Residences functioning with the presence of a Housekeeping Unit are equivalent to a Single-family residence; and

WHEREAS, Community Residences without the presence of a Housekeeping Unit are not the functional equivalent of Single-family residences; and

WHEREAS, a Single Housekeeping Unit definition limiting unrelated persons living as the functional equivalent of a traditional family to six (6) people reflects recent United States Census data showing a 20% overall decrease in household size; and

WHEREAS, Prescott is recognized throughout the state as having a disproportionate share of Community Residences, many located in Single-family zoning districts; and

WHEREAS, it is the desire of the City of Prescott to provide for adequate and appropriate districts for Community Residences that are equivalent to Single-family residences and adequate and appropriate districts for Community Residences that are not equivalent to Single-family residences; and

WHEREAS, current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status, and

WHEREAS, the Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others, provided however, that determining whether someone poses such a direct threat must be made on an individualized basis, and cannot be based on general assumptions or speculation about the nature of a disability, and

WHEREAS, the City Council makes the following findings in conjunction with this Ordinance:

1. The recitals set forth above are true and correct and are hereby incorporated by reference.
2. There are 110 known licensed and unlicensed community residences in the City of Prescott that provide medical and nonmedical recovery, treatment and detoxification services for users of alcohol and other drugs, or other care services where the residents agree to stay “clean and sober” during their residency. The latter facilities are commonly known as “sober living” homes. The residents of these facilities are transitory in nature.
3. Evidence has been presented that there is a high degree of transiency among persons living in treatment and sober living community residence settings and that transiency (either due to the failure of an occupant to comply with rules or the successful completion of a program) is an important element of certain community residence living arrangements.
4. Prescott has a disproportionately high number of licensed and unlicensed community resident facilities serving the disabled recovering from alcohol and other drug use. Specifically, Prescott has at least 880 licensed and unlicensed recovery beds, or 22 beds per thousand residents. The City is likely to have the highest ratio of beds per 1000 residents in Yavapai County and possibly the State of Arizona.
5. The fundamental precept of the Prescott’s Land Development Code provisions related to single-family residential zones is that individual dwelling units are intended for the occupancy of single housekeeping units in order to ensure adequate light, air, privacy and open space for each dwelling, and to protect residents from the harmful effects of excessive noise, population density, traffic congestion, or other adverse effects. Accordingly, the City prohibits assisted living facilities, dormitories, sororities, fraternities, multi-family units and large community residences in single-family residential zoning districts because such uses are frequently transient and institutional in nature and differ in character

and created impacts on residential neighborhoods from single housekeeping units.

6. The City is concerned with the impacts of community residences on the residential character of the neighborhood and how it impacts the disabled. The loss of residential characteristics of a neighborhood in which community residences serving the disabled cluster has an adverse effect on the welfare of the individuals receiving services from the facility and defeats the purpose of community-based recovery.
7. The Joint statement of the Department of Justice and the Department of Housing and Urban Development states that “density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community.”
8. The American Planning Association’s Policy Guide on Community Residences, which supports community residences, states that “Community residences should be scattered throughout residential districts rather than concentrated in any single neighborhood or on a single block. For a group home to enable its residents to achieve normalization and integration into the community, it should be located in a normal residential neighborhood. If several group homes were to locate next to one another, or be placed on the same block, the ability of the group homes to advance their residents’ normalization would be compromised. Such clustering would create a defacto social service district in which many facets of an institutional atmosphere would be recreated and would change the character of the neighborhood. . . . There is a legitimate government interest to assure that group homes do not cluster. While the research on the impact of group homes makes it abundantly clear that group homes a block or more apart produce no negative impacts, there is concern that group homes located more closely together can generate adverse impacts on both the surrounding neighborhood and on the ability of the group homes to facilitate the normalization of their residents, which is, after all, their raison d’ tre.”
9. Dr. Daniel Lauber (legal expert on zoning for community residences) states that “Clustering community residences only undermines their ability to achieve their central goals of normalization and community integration. A community residence needs to be surrounded by so-called “normal” or conventional households, the sort of households this living arrangement seeks to emulate. Clustering community residences adjacent to one another or within a few doors of each other increases the chances that their residents will interact with other service-dependent people living in a nearby community residence rather than conventional households with non-service dependent people.”
10. The California Research Bureau similarly found that facilities should be scattered

throughout residential districts, and facilities so densely clustered as to recreate an institutional environment would defeat the purpose of community-based care.

11. The City desires to maintain zoning provisions benefitting disabled persons by allowing disabled persons to live in residential districts in community residences, but desires to ensure that the uses are consistent with the residential character of neighborhoods and do not recreate an institutional environment that would defeat the purpose of community-based care.
12. The City desires to not distinguish between community residences for the disabled and able-bodied by adopting zoning regulations that treat all unrelated persons living together that do not meet the definition of a single housekeeping unit in the same manner
13. To ensure the City complies with federal and state law, the proposed ordinance contains provisions for granting a reasonable accommodation to its zoning and land use regulations, policies and practices, when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such an accommodation does not cause undue financial or administrative burden or does not result in a fundamental alteration in the nature of the City's zoning and land use regulatory scheme.

WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Prescott to have this Ordinance become effective immediately due to an emergency.

**ENACTMENTS:**

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. Table 2.3 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

**Use Table**

PERMITTED USE TABLE																								
SPECIFIC USE	RESIDENTIAL BASE ZONING DISTRICTS								NONRESIDENTIAL BASE ZONING DISTRICTS								Use Standards							
	RE-2	SF-35	SF-18	SF-12	SF-9	SF-6	RT	MF-M	MF-H	SPC <sup>1</sup>	NOS	RS	MU	RO	NOB	BG		BR	DTB	IT	IL	IG		
<b>Residential Use Categories (Sec. 11.1.3)</b>																								
<b>Assisted Living (Sec. 11.1.3 A)</b>																								
Assisted Living	C						P	P	P				P	P	P	P	P	P						2.4.7
Nursing Home														P	P	P	P	P						2.4.7
<b>Accommodations (Sec. 11.1.3 B)</b>																								
Bed and Breakfasts	P						C	P	P				P	P	P	P	P	P						2.4.12
Casitas, Cabins, or Cottages	C													C	P	P	P	P	P					2.4.14
Motels or Hotels														C	P	P	P	P	P	P	P	P		--
<b>Congregate Living (Sec. 11.1.3 C)</b>																								
Boarding Houses							C	P	P					P	P	P	P		P	P				--
Community Residence, Small	P	P	P	P	P	P	P	P	P					P	P	P	P	P	P					2.4.17
Community Residence, Large							C	C	C					P	P	P	P	P	P					2.4.17
Community Residence, Family <sup>2</sup>	P	P	P	P	P	P	P	P	P					P	P	P	P	P	P					2.4.17
Community Residence, Transitional <sup>2</sup>	C	C	C	C	C	C	P	P	P					P	P	P	P	P	P					2.4.17
Community Residence <sup>2</sup>	C	C	C	C	C	C	C	C	C					P	P	P	P	P	P					2.4.17
Congregate Living	C						C	P	P					P	P	P	P	P						2.4.18
Dormitories / Fraternities / Sororities							C	C	C					C	C	P	P	P	P	P				2.4.18
Fraternities or Sororities							C	P	P					P	P	P	P	P	P					2.4.18
Senior Family Home (9 – 10 residents)	C	C	C	C	C	C	P	P	P					P	P	P	P	P	P					2.4.46
<b>Household Living (Sec. 11.1.3 D)</b>																								
Single-family Dwellings / Modular Homes <sup>2</sup>	P	P	P	P	P	P	P	P	P					P	P	P	P	P	P					2.4.46
Duplex Dwellings							P	P	P					P	P	P	P	P						2.4.20
Multi-family Dwellings (Apartments & MF Condos)							P	P	P					P	P	P	P	P	P					2.4.32
Patio Homes <sup>3</sup>							P	P	P					P										2.4.35
Townhouses <sup>4</sup>							P	P	P					P										2.4.51
Manufactured Housing <sup>5</sup>																								2.4.29
Manufactured Home Parks							C	C	P								C	C						2.4.30
Foster Group Home (6 – 10 children)	C	C					C	P	P					C	P	P	P	P	S	P				2.4.18
Foster Homes (≤5 children)	P	P	P	P	P	P	P	P	P					P	P	P	P	P	P					2.4.18

<sup>1</sup> See Section 3.11.5 / Allowed Uses.

<sup>2</sup> Modular Homes must meet the Uniform Building Code (UBC) or International Building Code (IBC) Standards.

<sup>3</sup> Patio homes may also be allowed on individual lots in the RO, NOB, BG and BR Districts and in the RE and SF districts in accordance with the Planned Area Development (PAD) procedures of

Sec.9.5.9.i.

4 Townhouses may also be allowed on individual lots in the RO, NOB, BG and BR Districts and in the RE and SF districts in accordance with the Planned Area Development (PAD) procedures of Sec. 9.5.9.i.

5 Manufactured housing may be permitted only in approved manufactured home parks and in zoning districts with the “-MH” floating zone designation (See Sec. 3.12, Manufactured Home Floating Zone).

6 “Stand Alone Professional Practice” (practices not having a residential component) are possible subject to the processing of a Conditional Use Permit.

~~7 Refers to residences for the disabled of greater than 8 persons. Any residence of 8 or fewer people is permitted as a single family dwelling.~~

SECTION 2. Sections 2.4.7 through 2.4. 53 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

**2.4.7 / Assisted Living and Nursing Homes (Residential Use Categories; Assisted Living)**

Assisted living ~~facilities~~ and nursing home **facilities** shall be subject to the following standards:

- A. All ~~assisted living~~ facilities shall comply with all applicable federal, state and local requirements for the location and operation of such facilities and the provision of safe outdoor recreation areas and gross floor areas for every person that the facility is licensed to accommodate.
- B. ~~Assisted living~~ **Facilities** shall include 24-hour caregivers on site. ~~(See Sec. 11.1.3A)~~
- C. The ~~assisted living~~ structure shall contain a common food preparation area and may contain individual kitchenettes for occupants.
- D. The facility shall be in full compliance with all applicable requirements of the Americans with Disabilities Act.

**2.4.17 / Community Residence for the Disabled, Small and Large Family and Transitional (Residential Use Categories, Community Residence Congregate Living)**

**Small and Large Family Community Residences and Transitional Community Residences** ~~greater than 8 residents~~ shall be subject to the following standards:

- ~~A. Community Residences for persons with disabilities for which a license or certification is required by any state, federal, or responsible accrediting agency is permitted as designated in Table 2.3. If a license or certification is required and denied to the applicant then the use is not permitted.~~

- ~~B. Community Residences for persons with disabilities for which a license or certification is not required by any state, federal, or responsible accrediting agency will be subject to a Conditional Use Permit requirement.~~
- ~~C. Live-in or shift staff are not counted towards the permitted number of residents.~~
- A. A complete application to permit a Community Residence shall be submitted to the Community Development Director. If a Conditional Use Permit is required, a separate application must be submitted as set forth in Section 9.3.**
- B. No Community Residence in a residential zone shall be located within 1200 lineal feet of another Community Residence, whether in a residential or non-residential zone, and no Community Residence in a non-residential zone shall be located within 1200 lineal feet of another Community Residence in a residential zone, as measured from the primary entrances, along the shortest legal pedestrian route.**
- C. If the facility is not required to be licensed by the State of Arizona, owners, managers, operators, and residents shall not provide any services onsite, which would require licensure of the facility under state law.**
- D. No staff, clients, guests, or any other users of the facility may smoke in an area from which the second hand smoke may be detected on any parcel other than the parcel upon which the facility is located.**
- E. The Community Residence shall not involve changes in the exterior appearance of any structure or necessitate equipment that is not related to the primary residential use.**
- F. The Community Residence shall not create a traffic or parking problem.**
- G. Waivers for the reasonable accommodation of Community Residences for persons with disabilities, that do not otherwise meet the strict requirements of the LDC are considered and acted upon by the Community Development Director, or his designee. In all cases the Community Development Director shall make findings of fact in support of his determinations and shall render his decision in writing. The Community Development Director may meet with and interview the applicant to ascertain or clarify information sufficiently to make the required findings. To grant a Waiver for Reasonable Accommodation, the Community Development Director shall find affirmatively all of the following:**
- 1. The request will not increase the residential occupancy of the residence to more than 8 persons if such change will result in the inability to comply with the requirements of sections 2 through 4 below.**
  - 2. The request will be in compliance with all applicable Building and Fire codes.**
  - 3. The request will not create a substantial detriment injurious to neighboring properties by creating traffic impacts, parking impacts,**

impacts on the water or sewer systems, or other similar adverse impacts.

- 4. The request will not create impacts such as smoke, fumes, fire hazards and other injurious or noxious impacts to neighboring properties.

Profitability or financial hardship of the owner/operator of a facility shall not be considered by the Community Development Director in determining to grant a Waiver for Reasonable Accommodation. Appeals of administrative decisions of the Director may be made regarding reasonable accommodations, pursuant to Section 9.17.

**2.4.18 / Congregate Living Facilities (Residential Use Categories; Congregate Living)**

Congregate living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living (See 11.1.3C). Examples include dormitories, fraternities, sororities, foster group homes, monasteries, and convents. All Congregate Living facilities shall be subject to the following standards:

- A. Tenancy shall be arranged on a monthly or longer basis.
- B. The following shall not be considered Congregate Living:
  - 1. Lodging where tenancy may be arranged for periods of less than 30 days is to be considered hotel or motel use and classified in the Retail Sales and Service category.
  - 2. See Sec. 2.4.7, Assisted Living.
- C. All foster group homes may house up to a maximum of 10 foster children.

~~2.4.19~~ 2.4.18 . . .

~~2.4.20~~ 2.4.19 . . .

~~2.4.21~~ 2.4.20 . . .

~~2.4.22~~ 2.4.21 . . .

~~2.4.23~~ 2.4.22 . . .

~~2.4.24~~ 2.4.23 . . .

~~2.4.25~~ 2.4.24 . . .

~~2.4.26~~ 2.4.25 . . .

~~2.4.27~~ 2.4.26 . . .

~~2.4.28~~ 2.4.27 . . .

~~2.4.29~~ 2.4.28 . . .

~~2.4.30~~ 2.4.29 . . .

~~2.4.31~~ 2.4.30 . . .

~~2.4.32~~ 2.4.31 . . .

~~2.4.33~~ 2.4.32 . . .

~~2.4.34~~ 2.4.33 . . .

~~2.4.35~~ 2.4.34 . . .

~~2.4.36~~ 2.4.35 . . .

~~2.4.37~~ 2.4.36 . . .

~~2.4.38~~ 2.4.37 . . .

~~2.4.39~~ 2.4.38 . . .

~~2.4.40~~ 2.4.39 . . .

~~2.4.41~~ 2.4.40 . . .

~~2.4.42~~ 2.4.41 . . .

~~2.4.43~~ 2.4.42 . . .

~~2.4.44~~ 2.4.43 . . .

~~2.4.45~~ 2.4.44 . . .

~~2.4.46 / Senior Family Homes (Residential Use Categories, Household Living)~~

~~All Senior Family Homes of 9 – 10 residents shall be subject to the following standards:~~

- ~~A. Senior Family Homes are subject to the same use standards as Single-Family Dwellings.~~
- ~~B. Live-in or shift staff are not counted towards the permitted number of residents.~~

~~2.4.47~~ 2.4.45 . . .

~~2.4.48~~ 2.4.46 / Single-family Dwellings (Residential Use Categories, Household Living)

All single-family dwellings may be occupied by a single family **and housekeeping unit** or a maximum of 8 unrelated persons (See definition of “Family” and “Housekeeping Unit” in Sec. 11.2.5, General Terms).

~~2.4.49~~ 2.4.47 . . .

~~2.4.50~~ 2.4.48 . . .

~~2.4.51~~ 2.4.49 . . .

~~2.4.52~~ 2.4.50 . . .

~~2.4.53~~ 2.4.51 . . .

SECTION 3. Table 6.2.3 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

**Table 6.2.3**

<b>OFF-STREET PARKING REQUIREMENTS</b>	
<b>Use Type</b>	<b>Minimum Parking Requirements</b>
Assisted Living	0.5 per dwelling <b>bed</b> + 1 / employee / shift
Bed and Breakfasts	1 per guest room, in addition to spaces otherwise required
<b>Boarding House</b>	<b>1 per guest room, in addition to spaces otherwise required</b>
Casitas, Cabins, or Cottages	2 per dwelling
<b>Community Residence, Small</b>	<b>2 per dwelling + 1 / employee / shift</b>

<b>Community Residence, Large</b>	<b>0.5 per bed + 1 / employee / shift</b>
Congregate Living	1 per 3 beds + 2 for resident family
Dormitories	0.5 per bed + 1 / employee / shift
Foster Homes	2 per dwelling
Fraternity / Sorority or Boarding House	1 per bedroom + 1 / employee / shift
Hotels, Inns, Motels <b>Motels or Hotels</b>	1 per guest room + 1 / employee / shift
Nursing Home	1 per 2 beds <b>0.5 per bed + 1 / employee / shift</b>

SECTION 4. Section 11.1.3 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

**11.1.3 / Residential Use Categories**

**A. Assisted Living**

**1. Characteristics**

Assisted Living is characterized by **the residential** occupancy of a **building dwelling unit** by a group of aged people, those with disabilities, or those in immediate crisis not related to criminal or substance abuse conduct **persons requiring assistance with daily activities and who do not meet the definition of a single housekeeping unit. Assisted Living Facilities in single family dwelling units shall be considered a community residence (Congregate Living, Sec. 11.1.3 C). Tenancy is arranged on a month-to-month or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. The residents do not function as a single housekeeping unit, and may live in individual or shared apartments. The residents may receive care or medical treatment. Care givers are present at all times, and may reside at the on site. Generally, Assisted Living** These structures may or may not have a common eating area for residents.

**2. Accessory Uses**

Accessory uses include offices, cafeterias, parking, and maintenance facilities.

**3. Examples**

Examples of Assisted Living include **assisted living**, nursing **homes**, convalescent homes, and hospice facilities.

## B. Accommodations

### 1. Characteristics

**Accommodations are characterized by the occupancy of a dwelling units where tenancy is** arranged for short term stays of less than 30 days for rent, lease or interval occupancy.

### 2. Accessory Uses

Accessory uses may include pools and other recreational facilities, limited storage, and offices.

### 3. Examples

Examples include bed and breakfast establishments, **cabins**, hotels, motels, inns, and interval occupancy facilities. Also includes central reception and check-in facilities for resorts and interval occupancy facilities.

## ~~C. Community Residences for the Disabled~~

~~A Community Residence provides a living arrangement for a group of persons with disabilities. The intent of a Community Residence is to provide a residence that assists in normalization and community integration. The residence may provide socialization training, life skills instruction, incidental medical care, and help with personal living activities.~~

### ~~1. Family Community Residences for the Disabled~~

#### ~~a. Characteristics~~

~~Family Community Residences are characterized by the residential occupancy of a dwelling unit by a group of 9 or more disabled persons living as a single housekeeping unit and functioning as a family. Care givers and associated staff may or may not be present and may or may not reside at the site. Residents may receive care, training, or treatment. Tenancy is typically measured in years and is often permanent in nature.~~

#### ~~b. Accessory Uses~~

~~Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies, home occupations, greenhouses, storage of household goods, storage of supplies and equipment for maintaining the dwelling and associated yard, and parking and occasional maintenance of the occupants' vehicles.~~

#### ~~c. Examples~~

~~Examples of Family Community Residences include group homes for the disabled and residential living facilities for groups of disabled persons.~~

#### ~~d. Exceptions~~

~~Assisted living, nursing homes, institutions, congregate living, and any facility for sex offenders or juveniles.~~

### ~~2. Transitional Community Residences for the Disabled~~

**a. Characteristics**

~~Transitional Community Residences are characterized by the residential occupancy of a dwelling unit by a group of 9 or more disabled persons living as a single housekeeping unit and functioning as a family. Care givers and associated staff may or may not be present and may or may not reside at the site. Residents may receive care, training, or treatment. Tenancy is typically measured in months and is often transitional in nature.~~

**b. Accessory Uses**

~~Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies, home occupations, greenhouses, storage of household goods, storage of supplies and equipment for maintaining the dwelling and associated yard, and parking and occasional maintenance of the occupants' vehicles.~~

**c. Examples**

~~Examples of Transitional Community Residences are halfway houses, transitional homes, and recovery homes.~~

**d. Exceptions**

~~Boarding houses, treatment centers for alcohol and drug abuse, detoxification facilities, and any facility for sex offenders or juveniles.~~

**C. Congregate Living****1. Characteristics**

Congregate Living is characterized by the residential occupancy of a ~~structure~~ **dwelling unit** by a group of people who **do not meet the definition of a single housekeeping unit** ~~do not meet the definition of Household Living. The size of the group may be larger than the average size of a household. Tenancy is arranged on a monthly~~ **month-to-month** or longer basis. Uses where tenancy may be arranged for a shorter period are not considered residential. ~~They are considered to be a form of transient lodging (see Resort Accommodations and Community Service categories).~~ Generally, Congregate Living structures have a common eating area for residents. The residents may receive care, training, or treatment ~~as long as the~~ and caregivers may also reside at the on site.

**2. Accessory Uses**

Accessory uses commonly associated with Congregate Living are recreational facilities, dining facilities and parking of vehicles for occupants and staff.

**3. Examples**

Examples of Congregate Living include **boarding houses, community residences**, dormitories, fraternities and sororities, monasteries and convents, **and assisted living facilities in single family dwelling units.**

**4. Exceptions**

- ~~a. Lodging where tenancy may be arranged for periods of less than 30 days is classified in the Resort Accommodations category.~~
- ~~b. Lodging where the residents meet the definition of Household and where tenancy is arranged on a month-to-month basis or for a longer period is classified as Household Living.~~
- ~~c. Congregate care facilities where individual units meet the definition of a dwelling unit in Sec. 11.2 are classified as Household Living.~~
- ~~d. Foster homes where more than 4 children reside are classified as a Foster Group Home.~~

**D. Household Living**

**1. Characteristics**

Household Living is characterized by the residential occupancy of a dwelling unit by a household **single housekeeping unit**. Tenancy is to be arranged on a month-to-month or longer basis. Uses where tenancy is arranged for a shorter period are not considered residential. ~~They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories).~~

**2. Accessory Uses**

Accessory uses commonly associated with Household Living are recreational activities, raising of pets, hobbies, ~~home occupations~~, greenhouses, storage of household goods, storage of supplies and equipment for maintaining the dwelling and associated yard, and parking and occasional maintenance of the occupants' vehicles. Home occupations, caretaker's quarters and guest houses are accessory uses that are subject to additional regulations.

**3. Examples**

~~Examples of household living use (structure) types~~ include Single-family Dwellings, Attached Single Family Dwellings, Duplexes, Patio Homes, Multi-family Dwellings, Townhouses, Workforce Housing, Mobile Home Parks, ~~Group Homes~~, Retirement Center Apartments, manufactured housing and other structures with self-contained dwelling units.

~~**4. Exceptions**~~

~~Lodging in a dwelling unit or where units are rented on a less than monthly basis is classified in the Accommodations category.~~

SECTION 5. Table 11.2.5 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

**Table 11.2.5 General Terms**

<p><b>Assisted Living</b></p>	<p><b>A combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of</b></p>
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	<b>those who need assistance with daily activities. A facility with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility remains residential.</b>
Bed and Breakfast	A dwelling <b>unit</b> , with a host or host family residing therein, where members of the public are lodged for compensation, with a morning meal provided as part of the normal charge for said room.
Boarding or Rooming House	A dwelling <b>unit</b> <del>or apartment</del> in which sleeping accommodations are provided, for any type consideration whatsoever, for 3 or more persons not members of the resident family, provided not more than 5 rooms in such building or apartment are used for such purpose.
Business or Commercial	The purchase, sale or other transaction involving the handling or disposition of any article, substance, service or commodity for profit, gain, livelihood (whole or partial), or consideration conducted at any location. ....
<del>Cabin</del>	<del>A building used, or designed, or intended for use or occupancy by not more than one family as living quarters, including all necessary domestic employees of such family, having only one (1) kitchen or kitchen facility, and not having a private indoor toilet. No space hereafter constructed or altered for such purpose shall be used for such purpose unless it comprises not less than 320 square feet of gross floor area.</del>
<b>Cabin, Casita or Cottage</b>	A small, detached house or dwelling unit that may be used for short-term rental purposes in the manner of a motel room.
<del>Cottage</del>	<del>See Casita.</del>
<b>Community Residence, Small</b>	<b>A dwelling unit for a group of one (1) to six (6) unrelated persons, who do not meet the definition of a single housekeeping unit. Two (2) additional supportive or supervisory staff person is allowed.</b>
<b>Community Residence, Large</b>	<b>A dwelling unit for seven (7) or more unrelated persons, who do not meet the definition of a single housekeeping unit. Additional supportive and supervisory staff are allowed.</b>
Community Residence for the Disabled	A residential living arrangement for 9 or more unrelated individuals with disabilities, who operate as the functional equivalent of a family, including such

	<p><del>supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. The purpose of a Community Residence is to integrate residents into the community and is considered a residential use of property for purposes of all zoning and building codes. There are two categories of Community Residences for the Disabled:</del></p> <p><del>1) Family Community Residence — Tenancy is typically measured in years and is often permanent in nature.</del></p> <p><del>2) Transitional Community Residence — Tenancy is typically measured in months, and is transitional in nature.</del></p>
<p>Dormitory</p>	<p>Any structure with 6 or more rooms specifically designed for the exclusive purpose of housing students of a university, college or school, excepting resident staff.</p>
<p>Disability</p>	<p>Mental or physical impairment which substantially limits one or more major life activities. The term mental or physical impairment may include, but are not necessarily limited to, conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, or working. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act or federal law, by virtue of that status.</p>
<p>Family</p>	<p><b>One or more persons living together as a single housekeeping unit, in a dwelling unit.</b></p> <p>A. An individual, or 2 or more persons related by blood, marriage, or adoption, including any live-in domestic help, living together as a single housekeeping unit in a dwelling unit; or</p> <p>B. A group of not more than 8 persons who need not be related, living together as a single housekeeping unit in a dwelling unit</p>
<p>Dwelling Unit</p>	<p>A residential unit providing complete, independent living facilities for one family including permanent</p>

	provisions for living, sleeping, cooking, eating and sanitation. <b>Tenancy is arranged on a month-to-month or longer basis.</b>
Dwelling, Attached Single-family	A dwelling unit on its own individual lot that shares one or more common or abutting walls with one or more dwelling units. An attached single-family dwelling (or townhouse) does not share common floors/ceilings with other dwelling units.
Dwelling, Duplex	A building, or portion thereof, having 2 dwelling units on a single lot designed or intended for use or occupancy by 2 families living independently of each other, including all necessary domestic employees of each family, and having both kitchen or cooking facilities and private, indoor toilet within each such housekeeping unit, and conforming to the IBC of the City of Prescott.
Dwelling, Multiple-Family	A building, or portion thereof, having 3 or more dwelling units on a single lot, used, or designed or intended for use or occupancy as living quarters by 3 or more families living independently of each other, including all necessary domestic employees of each family and having both kitchen or cooking facilities, private, indoor toilet within each such housekeeping unit, conforming to the IBC of the City of Prescott. This definition shall also include any number of dwelling units in a nonresidential structure, but shall not include recreational vehicle parks, motels, or hotels. No such unit hereafter constructed or altered for such purpose shall be used for such purpose unless it comprises gross floor area in conformance with that specified in the IBC.
Dwelling, Senior Apartment	An age-restricted (generally 55 years or older) multi-unit housing development with self-contained living units for older adults who are able to care for themselves. Usually no additional services such as meals or transportation are provided but may be offered as an option.
Dwelling, Single-Family	A detached dwelling unit designed for occupancy by one family and built to IBC-Standards.
Foster Home	<del>A home licensed by the Arizona Department of Economic Security maintained by persons having care or control of one to 5 minor children, other than those related by blood, marriage, or adoption.</del>
Foster Home,	<del>A foster home licensed by the Arizona Department of</del>

Group	<del>Economic Security suitable for the placement of 6, but not more than 10, minor children.</del>
Fraternity or Sorority House	A residence hall or building used as living quarters for members of an approved college or university group while enrolled at an institution of higher learning
Medical Office	Including offices of Doctors, Dentists, Chiropractors, and similar offices.
Motel or Hotel	<del>A building or group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments with automobile storage space provided in connection therewith, which building or group is designed, intended or used primarily for the accommodation of automobile travelers.</del>
Nursing Home	<b>A combination of housing and health care designed to respond to individuals who require medical care because of illness, disease, or physical or mental infirmity. A facility with a central or private kitchen, dining, recreational, and other facilities, with separate bedrooms or living quarters, where the emphasis of the facility is inpatient services for persons requiring regular medical attention.</b>
Office, General and Professional	A place where a particular kind of business, excluding retailing, is transacted or a service is supplied according to the following: (1) Place in which the functions (such as consulting, record keeping, and clerical work) of a public or private agent are performed, or (2) A place in which a professional person conducts his professional business. (e.g., a psychologist, architect, or lawyer.)
Related	<b>The following relationships resulting from marriage, blood, adoption, or guardianship: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, and aunt.</b>
Senior Family Home	<del>A residence for 9 – 10 people age 60 and over, who function as a family and a single housekeeping unit, with supportive staff as necessary to meet the needs of the residents.</del>
Single Housekeeping Unit	<b>Any number of related, or up to six unrelated, persons living as the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and</b>

	<p><b>responsibility for common areas, and sharing household activities and responsibilities (e.g. meals, chores, household maintenance, expenses, etc.) and where, if the dwelling unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household and length of stay is determined collectively by the residents of the dwelling unit rather than the landlord or property manager.</b></p>
<p><b>Transient occupancy</b></p>	<p><b>Residential occupancy of a building or structure for a period of less than 30 days.</b></p>
<p>Treatment Center</p>	<p>A facility offering temporary housing which typically includes, but is not limited to, alcohol, drug/substance abuse or other treatment programs and which provides 1) on-site staff who may provide supervision, personal care, meals, education, participation in community activities, counseling, treatment, or therapy for the residents thereof; 2) Administration of an in-house program of guidelines and goals for the expected conduct, achievement, performance and participation of the residents in an established treatment program; 3) Dispensing, storage and/or oversight of prescription medications by responsible individuals who are properly trained to do so; 4) Is recognized by potential referral agencies, public or private; and 5) A facility may be required to be licensed by, certified by, registered with, or otherwise authorized, funded or regulated, in whole or in part, by an agency or the State or the Federal government.</p>

SECTION 6. Properties with a lawful, established community residence as of the effective date of this Ordinance may register such use with the City of Prescott Community Development Department within sixty (60) days of the effective date hereof. The registration of such use creates a rebuttable presumption of legal, non-conforming use status that a community residence exists as of the effective date. Any property owners claiming a legal, non-conforming community residence use who do not register with the Community Development Department pursuant to this Section will have the burden of proving such status pursuant to Section 10.1.2 of the City of Prescott Land Development Code in the event an action is taken against the property owner, occupant or operator to enforce the provisions of this Ordinance

SECTION 7. Any person who violates any provision of this Ordinance shall be

guilty of a civil violation subject to the provisions of Sections 1-3-2 and 10-1-2 of the Prescott City Code for each day the violation continues.

SECTION 8. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 9. THAT the immediate operation of the provisions of this Ordinance is necessary for the immediate preservation of the public peace, health or safety, and that an EMERGENCY is hereby declared to exist; and THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE , ADOPTION AND APPROVAL BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT.

**PASSED AND ADOPTED** by the Council of the City of Prescott, Arizona, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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MARLIN D. KUYKENDALL, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
LYNN MULHALL, City Clerk

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JON M. PALADINI, City Attorney