

**ORDINANCE NO. 4925-1463**

**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 legislative history of the Fair Housing Amendments Act of 1988 cautions that local zoning regulations are prohibited that result "*from false or over-protective assumptions* about the needs of handicapped people, as well as *unfounded fears of difficulties* about the problems that their tenancies may pose." H.R. Rep. No. 711, 100th Cong. 2D Session, Reprinted in 1988 U.S.C.C.A.N. 2173, 2192 (1988); and

WHEREAS, zoning regulation of community residences for people with disabilities should seek to achieve a legitimate government interest, actually achieve that legitimate government interest, and be the least drastic means of actually achieving that legitimate government interest; and

WHEREAS, the State of Arizona licenses certain community residences for people with disabilities including certain residential addiction treatment facilities, which licensing necessitates the involvement of local jurisdictions in determining life safety code compliance of said Community Residences; 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 does not allow local land use policies or actions that treat groups of persons with some disabilities less favorably than groups of people with other disabilities; and

WHEREAS, a study of the location of community residences in the City of Prescott found clustering of community residences in certain geographical areas of the city; and

WHEREAS, clustering of community residences undermines the ability of community residences to achieve normalization and community integration for their residents which is one of the essential purposes of a community residence; and

WHEREAS, the City commissioned the February 2015 study "Prescott, Arizona: Principles to Guide Zoning for Community Residences" by the planning and law expert on community residences whom HUD has recommended to challenged communities; and

WHEREAS, the study identifies guidelines and policies that are directing the city's revisions to its zoning for community residences that mitigates the problems HUD has expressed with the city's current zoning treatment; and

WHEREAS, the study provides the legal justification for the zoning treatment the City of Prescott is pursuing as mandated by the case law; and

WHEREAS, the study reports on and examines:

The reasonable accommodation requirements that the Fair Housing Amendments Act of 1988 established-

The core nature of community residences for people with disabilities and why they have long been regarded to be residential uses: emulating a family as a key component to achieving normalization and community integration of their residents-

How different types of community residences function-

The functional differences between community residences for people with disabilities, boarding or lodging houses and institutional uses such as nursing homes-

The rational foundations for regulating community residences based on actual research-

A review of the research on the impacts (or lack thereof) of community residences for people with disabilities on property values, property turnover rates, and neighborhood safety-

A review of the locations of community residences in the City of Prescott that found clustering of community residences on blocks and in neighborhoods that are creating *de facto* social service districts in the City

of Prescott that interfere with the ability of community residences for people with disabilities to achieve their core goals of normalization and community integration of their residents-

A review of the need to protect the vulnerable populations of people with disabilities from unscrupulous operators of community residences through licensing, certification, or recognition by Congress-

An evaluation of current zoning treatment of community residences in Prescott-

Enunciation of the general principles for zoning for community residences derived from the case law under the Fair Housing Act-

Recommended regulatory approach and guiding principles for zoning for community residences for people with disabilities-

Sample zoning application form-

Annotated bibliography of representative studies of the impacts of community residences for people with disabilities on property values, property turnover, and neighborhood safety; and

WHEREAS, to implement the guidelines of this study, the City of Prescott is hereby amending its zoning ordinance to make the reasonable accommodations required by the Fair Housing Act by removing any terms and conditions that have the effect of limiting or making housing unavailable to people with disabilities while preserving the ability of community residences to emulate a family and achieve normalization and community integration of their residents; and

WHEREAS, the definition of "disability" is replaced one commonly used in jurisdictions throughout the country based on the definition of "handicapped" in the Fair Housing Amendments Act of 1988; and

WHEREAS, the definition of "single housekeeping unit" currently in use in the City of Prescott's Land Development Code is to be repealed; and

WHEREAS, under the newly proposed definition of "family," any community residence that fits within the cap of four unrelated people will be treated exactly the same as any other family; and

WHEREAS, no spacing requirement or licensing requirement applies to community residences for people with disabilities that fit within the cap on unrelated occupants that constitutes a family; and

WHEREAS, while no aggregation of more than four unrelated people will constitute a "family," the new zoning provisions make the requisite reasonable accommodation by allowing the relatively permanent living arrangement of a "family community residence" for five or more people with disabilities as a permitted use in all residential districts and all other zoning districts where residential uses are allowed, subject to a rationally-based spacing distance of a typical Prescott block of 800 linear

feet from an existing community residence and a licensing or certification requirement for the operator or the home itself; and

WHEREAS, a reasonable accommodation is made for the more multi-family performing transitional community residences for five or more people with disabilities that allows them as a permitted use in all multi-family residential districts and all other zoning districts where multi-family residential uses are allowed, subject to a rationally-based spacing distance of a typical Prescott block of 800 linear feet from an existing community residence and a licensing or certification requirement for the operator or the home itself; and

WHEREAS, because transitional community residences for people with disabilities are more akin in terms of function and performance to multi-family uses than single-family residences, the heightened scrutiny of a conditional use permit would be required in single-family zoning districts; and

WHEREAS, the proposed ordinance specifies standards narrowly tailored to assuring that the proposed community residence will not interfere with normalization or community integration of the occupants of the nearby existing community residence or residences nor contribute to creating a *de facto* social service district that thwarts the purpose and successful functioning of community residences and segregates people with disabilities; and

WHEREAS, the heightened scrutiny of a conditional use permit is warranted when a proposed community residence for people with disabilities fails to meet both criteria to be allowed as a permitted use; and

WHEREAS, the proposed ordinance establishes standards narrowly tailored to assuring that the proposed community residence will not interfere with normalization or community integration of the occupants of the nearby existing community residence or residences nor contribute to creating a *de facto* social service district that thwarts the purpose and successful functioning of community residences and segregates people with disabilities; and

WHEREAS, a community residence for people with disabilities that has been denied required state licensing or certification would not be allowed due to the state's own licensing or certification laws; and

WHEREAS, these provisions do not apply if state law establishes a lesser zoning treatment; and

WHEREAS, community residences will be limited to 12 residents because it is highly unlikely that a larger group can successfully emulate a biological family which is a core principle and purpose of community residences for people with disabilities; and

WHEREAS, the revised zoning provisions set rational, performance-based standards for determining whether more than 12 occupants should be allowed to occupy a community residence for people with disabilities; and

WHEREAS, one of the standards allows the applicant to demonstrate financial or therapeutic need; and

WHEREAS, the proposed amendments would change the existing “reasonable accommodation” standards and replace them with standards based on how the proposed community residence would perform; and

WHEREAS, like all residential uses, the overcrowding provisions in the city’s building code determines the maximum number of occupants of a community residence for people with disabilities (no matter how many the zoning code would allow, with or without a reasonable accommodation request for house more than 12 people); and

WHEREAS, the City of Prescott has adopted the *2013 International Building Code* which establishes a minimum floor area of all bedrooms used for sleeping purposes at 70 square feet for the first bedroom occupant and 50 square feet for each additional bedroom occupant; and

WHEREAS, the proposed amendments establish off-street parking requirements for community residences for people with disabilities tailored to the actual need of the different types of community residences based on the population served; and

WHEREAS, the new off-street parking standards are based on the off-street parking requirements for the type of structure in which a community residence is located (single-family house, duplex, townhouse, apartment building), the number of staff present at a time, and whether residents with disabilities are permitted to have a motor vehicle on the premises; and

WHEREAS, the new off-street parking standards make further reasonable accommodation by allowing off-street spaces to be located off-premises as well as on the premises; 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, it is necessary for the preservation of the peace, health and safety of the City of Prescott to adopt the following amendments and 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 2.3

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	R5	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	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	P	--
<b>Congregate Living (Sec. 11.1.3(C))</b>																							
Boarding Houses							C	P	P				P	P	P	P		P	P				--
Family Community Residence <sup>7</sup>	P	P	P	P	P	P	P	P	P	P			P	P	P	P	P	P					2.4.17
Transitional Community Residence <sup>7</sup>	C	C	C	C	C	C	C	P	P	C			P	P	P	P	P	P					2.4.17
Dormitories / Fraternities / Sororities							C	C	C				C	C	P	P	P	P					
<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					2.4.47
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										2.4.50
Manufactured Housing <sup>5</sup>																							2.4.29
Manufactured Home Parks							C	C	P							C	C						2.4.30

- 1 See Section 3.11.5 / Allowed Uses.
- 2 Modular homes must meet the Uniform Building Code (UBC) or International Building Code (IBC) standards.
- 3 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 Section 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 Section. 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 Section 3.12, Manufactured Home Floating District (-MH)).
- 6 “Stand-alone professional practices” (practices not having a residential component) are possible subject to the processing of a conditional use permit.
- 7 A community residence is allowed as of right if it (1) is at least 800 linear feet from the closest existing community residence as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence along legal pedestrian right of ways, and (2) the operator or applicant is licensed or certified by the State of Arizona to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence, except as required by state law. Except as provided by state law, a conditional use permit must be obtained in accord with the Use Standards specified in Section 2.4.17 for any community residence that

does not meet both criteria (1) and (2).

SECTION 2. Section 2.4.17 of the Land Development Code, Title X of the Prescott City Code, is hereby amended as follows:

**2.4.17 / Community Residence, Family and Transitional (Residential Use Categories)**  
Family and transitional community residences shall be subject to the following standards:

- 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. A required conditional use permit may be issued only if the proposed community residence meets the following standards:
  1. The applicant demonstrates that the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence
  2. The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the proposed community residence
  3. The applicant demonstrates that the proposed community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating a de facto social service district by concentrating community residences on a block or in a neighborhood
- C. If the state of Arizona does not require the proposed community residence to be licensed, services that require licensure under state law may not be provided at the community residence.
- D. To establish a community residence for more than 12 individuals with disabilities, the applicant may apply for a Waiver for Reasonable Accommodation for community residences for persons with disabilities which are considered and acted upon by the Community Development Director, or her 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 standards:
  1. The applicant demonstrates that the proposed community residence can and will emulate a biological family and function as a residential use rather than an institutional or other nonresidential use.

2. The applicant demonstrates that the proposed community residence needs to house more than 12 residents for financial or therapeutic reasons.
3. The applicant demonstrates that the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence
4. The applicant demonstrates that it will operate the home in a manner similar to that ordinarily required by state licensing to protect the health, safety, and welfare of the occupants of the proposed community residence
5. The applicant demonstrates that the proposed community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating a de facto social service district by concentrating community residences on a block or in a neighborhood

E. An applicant may appeal denial of a Waiver for Reasonable Accommodation by the Community Development Director or her designee pursuant to Section 9.17.

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 bed + 1 / employee / shift
Bed and Breakfasts	1 per guest room, in addition to spaces otherwise required
Boarding House	1 per guest room, in addition to spaces otherwise required
Casitas, Cabins, or Cottages	2 per dwelling
Community Residence	The greater of (a) the number of off-street spaces required under this code for the type of dwelling unit (single family, duplex, multi-family, etc.) in which the community residence is located, or (b) 0.5 off-street spaces for each staff member on a shift and/or live-in basis plus, when residents are allowed to maintain a car on premises, the maximum number of occupants that is permissible under this land development code and the city's building and property maintenance codes. Off-street spaces may be provided on the premises or at an off-site location other than a street or alley.

Dormitories	0.5 per bed + 1 / employee / shift
Fraternity / Sorority	1 per bedroom + 1 / employee / shift
Motels or Hotels	1 per guest room + 1 / employee / shift
Nursing Home	0.5 per bed + 1 / employee / shift

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

11.1.3 / Residential Use Categories

C. Congregate Living

1. Characteristics

Congregate living is characterized by the residential occupancy of a dwelling unit by a group of people who do not meet the definition of a family. 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. Generally, congregate living structures have a common eating area for residents. The residents may receive care, training, or treatment and caregivers may reside on site.

D. Household Living

1. Characteristics

Household living is characterized by the residential occupancy of a dwelling unit by a family. Tenancy is arranged on a month-to-month or longer basis. Uses where tenancy is arranged for a shorter period are not considered residential.

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**

<b>Community Residence</b>	Except as required by state law, a community residence is a residential living arrangement for five to 12 unrelated individuals with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. Residents may be self-governing or supervised by a sponsoring entity or its staff which provides habilitative or rehabilitative services related to the disabilities of the residents. A community residence seeks to emulate a biological
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	<p>family to normalize its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment; treatment is incidental as in any home. Inter-relationships between residents are an essential component. A community residence shall be considered a residential use of property for purposes of all zoning and building codes. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders. A "community residence" can be a "family community residence" or a "transitional community residence."</p> <p>A family community residence is a relatively permanent living arrangement for more than four people with disabilities with no limit on how long a resident may live in the home. The length of tenancy is measured in years.</p> <p>A transitional community residence is a temporary living arrangement for more than four people with disabilities with a limit on length of tenancy that is measured in months, not years.</p>
<p>Disability</p>	<p>A disability is a physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include drug addicts or alcoholics when they are using alcohol, illegal drugs, or using legal drugs to which they are addicted nor individuals who constitute a direct threat to the health and safety of others.</p>
<p>Family</p>	<p>A family consists of any person living alone or any of the following groups living together as a single housekeeping unit that shares common living, sleeping, cooking, and eating facilities: (1) any number of people related by blood, marriage, adoption, guardianship, or other duly and legally authorized custodial relationship and no more than two unrelated individuals who provide care or</p>

	assistance or are domestic employees, (2) two unrelated individuals and their children related to either of them and their foster children, or (3) four unrelated individuals. A family does not include any society; nursing home; club; boarding or lodging house; dormitory; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house.
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	A building or group of two or more detached, semi-detached or attached buildings containing guest rooms or apartments for the purpose of transient occupancy.
Nursing Home	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.
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	The following relationships resulting from marriage, blood, adoption, or guardianship: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, and aunt.
Transient occupancy	Residential occupancy of a building or structure for a period of less than 30 days.
Treatment Center	A facility offering temporary housing which typically includes, but is not limited to, alcohol, drug/substance abuse or other treatment programs and which

	<p>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>
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**SECTION 6.** 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 7.** 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 8.** 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 24<sup>th</sup>  
day of March, 2015.

  
MARLIN D. KUYKENDALL, Mayor

ATTEST:

  
DANA R. DeLONG, City Clerk

APPROVED AS TO FORM:

  
JON M. PALADINI, City Attorney