

# Community Residences

Land Development Code Amendment  
and Privilege Tax Enforcement  
60-Day Checkpoint

City of Prescott  
November 19, 2013

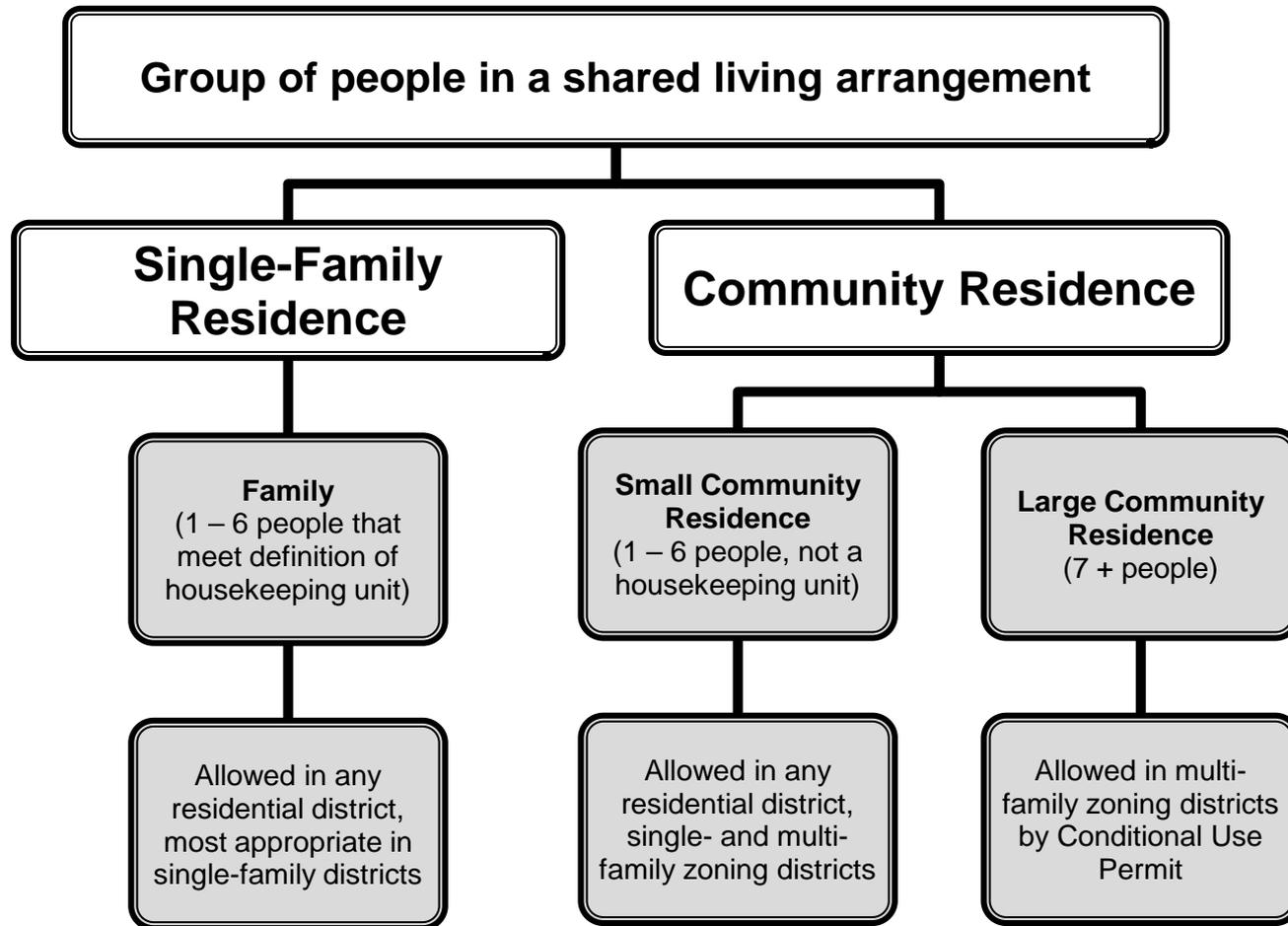
# Community Residences Chronology

- ❑ Community Residences were addressed in the 2003 adoption of the Land Development Code (LDC).
- ❑ The City was notified in 2005 by the Center for Disability Law that the LDC would be challenged as violating the Fair Housing Act.
- ❑ The Legal Department advised that those provisions in question should not be applied. The proscribed provisions included distance separation and registration of facilities.
- ❑ In March 2011 the Council adopted changes to address group residences to bring the LDC into line with certain federal laws.
- ❑ The issue was next discussed at a Council caucus on June 18, 2013, to address concerns of Council members and the public.
- ❑ Community Residences were the subject of a joint Council workshop with the Planning and Zoning Commission on July 16, 2013, to determine a course of action. Staff was directed to research further and prepare an ordinance.
- ❑ A draft ordinance was considered at the Planning and Zoning Commission meeting of August 29, 2013. The Commission unanimously recommended approval to the Council.
- ❑ The draft ordinance was placed on the Council's study session of September 17, 2013, for discussion and acceptance of public testimony.
- ❑ The current ordinance was adopted on September 19, 2013, with the emergency clause (becoming effective immediately)

# Key Changes

**The Land Development Code, as amended, effected a number of significant changes:**

- ❑ Introduced a definition of “Housekeeping Unit” that includes up to six unrelated persons**
- ❑ Introduced a dispersion requirement of 1200 feet between non-housekeeping residences in residential zones**



**“Housekeeping Unit” is key to the differentiation of those Community Residences which function like traditional family dwellings (and are therefore treated as such) from those which do not.**

**The separation distance requirement between small Community Residences applies to those which do not resemble traditional family residences, and is intended to encourage the distribution of these uses throughout Prescott, reducing the impacts of incompatible or more intensive uses in cluster areas.**

# Registration

**The ordinance afforded the opportunity for existing Community Residences to voluntarily register with the Community Development Department as a means of documenting their legal or legal non-conforming status and to assist the City in evaluating new applications for compliance with the distance requirement.**

# Keeping the Land Development Code Current

**Planning staff is continuing to research how other communities are addressing Community Residence-type uses, and may suggest further changes to the Code in the future. No issues requiring immediate action have been identified at this time.**

**Because case law varies from state to state and federal circuit to federal circuit, the Legal Department is also tracking ongoing cases for indications of how the courts are treating municipal efforts to address these issues.**

# Implementation and Enforcement

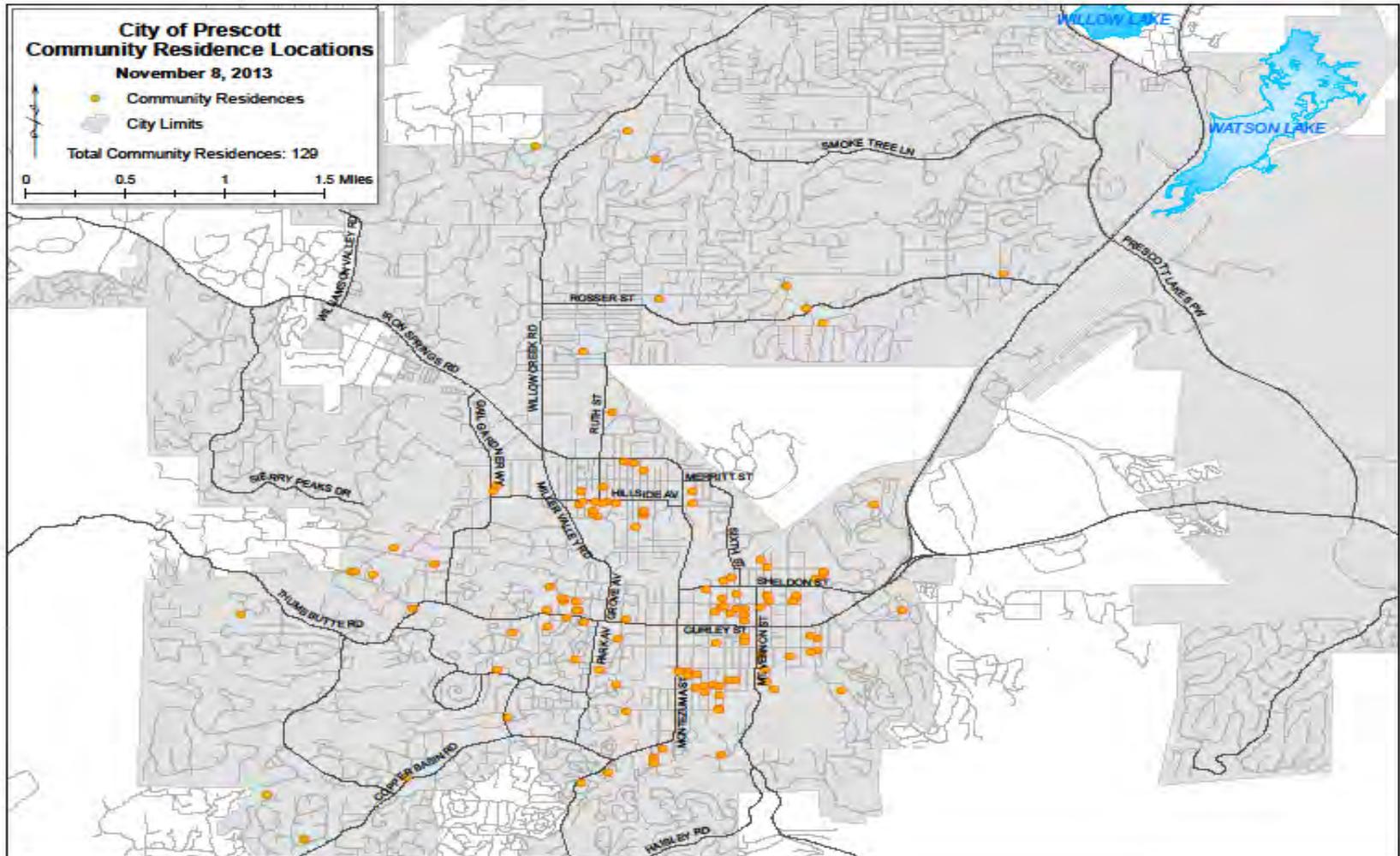
## Implementation and Enforcement

- ❑ Land Development Code
- ❑ City Tax Code (taxability or rentals and collection)
- ❑ Public Safety

### Land Development Code

- ❑ Registration and Application forms were distributed to known Community Residence operators
- ❑ Contact was made with operators to encourage use of the voluntary registration option for existing facilities and to answer questions about the code changes and the forms
- ❑ 27 registrations were received during the 60-day period

# Community Residences Map



## **Rental (Privilege) Tax**

**As part of our ongoing compliance efforts and unrelated to the Community Residence regulations, the Finance Department has been working with operators to assure appropriate privilege taxes are being paid. The privilege tax requirements are neither part of the Community Residence regulations nor new. In order to bring their operations into compliance, the following actions have been taken:**

- ❑ Preliminary letters were sent making the rental property owners/operators aware of their tax and licensing responsibilities**
- ❑ Licensing demand letters were sent to non-complying operators**
- ❑ At a NAHA meeting the taxability of the rental activity was reviewed**
- ❑ Many of the operators came into City Hall with documents which were reviewed to determine their tax obligations**

# Results of Compliance Actions

The compliance efforts have resulted in many of the properties in question coming forward to obtain licensing for their rental activities. Of the 115 addresses identified:

- ❑ 52 locations operated by 12 different entities are licensed or working cooperatively to come into compliance. They will be paying tax on the residential rental income they receive from their clients.
- ❑ 35 locations are operated by 12 different non-profit entities. These entities have provided proof of their non-profit status and since their rental to their clients is in the scope of their non-profit exemption they are not taxable by the City. However, a property owner who leases to a non-profit is responsible for tax on the rental property; it is their decision whether to pass that responsibility onto their non-profit tenant.
- ❑ 28 locations are operated by four companies which have been unresponsive to City attempts to contact them regarding taxability.

# Noncompliance – Privilege Tax

The locations that have refused to respond to City contact attempts are subject to progressive enforcement measures including:

- ❑ The immediate issuance of estimated tax assessments for each location.
- ❑ The filing of real property and UCC liens on the entity operating the location for the assessed tax.
- ❑ Collection efforts through the Legal Department of the City's third party collection agent.

Additionally, information on these locations has been sent to the Legal Department to pursue action for operating a business without a valid privilege tax license. This violation constitutes a Class One Misdemeanor and is subject to a fine of up to \$2,500 and/or imprisonment for up to six months for each location and each day they remain in operation without the proper licensing.

## Public Safety

**The Police Department is responding to complaints by conducting enforcement at locations of reported disruptive and/or criminal activity:**

<input type="checkbox"/> Traffic Stops	37
<input type="checkbox"/> Narcotics Arrest	4
<input type="checkbox"/> Firearms Seized	2
<input type="checkbox"/> Marijuana Seized	0.25 lbs
<input type="checkbox"/> Vehicle Seized	1989 Toyota P/U
<input type="checkbox"/> Other Seizures	Ballistic vest
<input type="checkbox"/> In Custody Arrests	
- Misdemeanor	5
- Felony	3

## **Community Development**

- ❑ Assisting facility operators to complete Registration and Application forms**
- ❑ Updating the location map with newest information**
- ❑ Verifying suspected Community Residence locations**
- ❑ Investigating violation complaints about residential facilities**
- ❑ Updating the database of Community Residences to be used for enforcement of new requirements**

# Meeting with NAHA

- ❑ **The Community Development, Finance and Legal Departments met with the Northern Arizona Housing Association (NAHA) to provide information and answer questions about the ordinance and related regulations**
- ❑ **Questions touched on the benefits of registration, the tax and licensing implications of registration, and whether the registration documents are public records**
- ❑ **NAHA pledged to continue to participate with the City in the implementation of the ordinance.**

# Resistance to Registration

- ❑ **Although pledging to continue to work cooperatively with the City toward compliance with the amended Land Development Code requirements, NAHA members and other facility operators have been reluctant to voluntarily register existing facilities**
- ❑ **Reasons given included**
  - **No real benefit is perceived for them to do so**
  - **The information will be used to enforce rental tax**
  - **Concern about being identified on the cluster map**
  - **A desire to have their facilities blend in with surrounding residences**

# State Regulations

- ❑ The Arizona Department of Health Services (ADHS) adopted new rules during the spring and began implementing them on October 1, 2013
- ❑ The revised state rules apply to the manner and type of licensing needed for residential components of Drug and Alcohol rehabilitation operations
- ❑ ADHS licenses are required if they provide any supervision, protective, preventive or personal care services
- ❑ Having paid staff manage a residence and controlling client medications will now require state licensing
- ❑ State licensing requires facilities to be in compliance with local residential zoning and privilege tax requirements
- ❑ Communications with ADHS indicate a continuing lack of clarity within that organization as to their roles, rules, and enforcement intentions

# Going Forward - Next Steps

## Legal Department

- ❑ The Legal Department is tracking case law which may affect the City ordinance which amended the Land Development Code. A recent 9<sup>th</sup> Circuit decision related to the Newport Beach code that was used, in part, as a source for Prescott's ordinance.
- ❑ The Legal Department has also consulted an expert on regulation of Community Residences to seek assistance in identifying any parts of our ordinance that may need strengthening.

## **Public Safety**

**The Police Department will continue to implement focused enforcement details in areas identified by citizen complaints, and investigate complaints of criminal activity**

- ❑ The Traffic Section – focus on Parking Enforcement**
- ❑ Patrol Bureau – providing Extra Patrols**
- ❑ Crime Analysis – to determine patterns**

## **Code Enforcement**

- ❑ Activities of the Code Enforcement Division have been reprioritized to focus on implementation of the Community Residences ordinance**
- ❑ The Division has limited enforcement authority under the City Code with focus on property maintenance**
- ❑ The Division provides a first response to complaints outside of its jurisdiction to document conditions**

## **Other Action**

- During adoption of the ordinance creation of an ad hoc advisory group consisting of citizens, facility operators and City representatives was discussed. It is recommended that this group be formed.**
- Initiation of dialogue with state legislators to develop state-wide regulations for Community Residences is also recommended.**

## **Business License**

**A Citywide business license is key to identifying Group Residences which are being operated as or part of a business enterprise**

- ❑ Different circumstances now exist, not the least of which is higher and more continuous tension in the General Fund and what drives revenue in, making consideration of a business license timely**
  
- ❑ The approach to business licensing should**
  - demonstrate specific benefits**
  - be at minimum (cost recovery) level and no more**
  - consider, and to the extent legal, not duplicate other City licensing fees such as that for privilege tax**
  - avoid a requirement for multiple licenses at one business (e.g., at corporations, LLCs, PLLCs, such as realty, law, and medical offices)**
  - be a set, nominal fee, not a tax which varies depending upon the type and/or measure of business activity**

## Arguments in Favor of a City Business License

- ❑ An important tool in identifying, having knowledge of, and being able to communicate with various business sectors and types
  - Assuring use of property is consistent with zoning
- ❑ Safety of public and public safety personnel – when responding to an emergency situation having knowledge that a site does/does not contain hazardous materials
  - Hazardous materials registration
  - Alarm ordinance coordination
- ❑ Immediate access to baseline and other statistical information for economic development
- ❑ Privilege tax – revenue and a level playing field for all types of businesses collecting it; **this will become more important 1/1/15** when the Department of Revenue commences collection of privilege tax statewide (including sales, rental, transient occupancy taxes)

# Summary of Recommended Actions Going Forward

- ❑ Assist public via contact points staffed by knowledgeable City personnel
- ❑ Constantly update maps of Community Residences
- ❑ Register new Community Residences
- ❑ Collect City privilege tax on rentals and enforce through audits
- ❑ Enforce criminal and civil codes; Land Development Code requirements
- ❑ Press ADHS on effective implementation of new state regulations
- ❑ Create a City ad hoc advisory group to include “third party” community representation
- ❑ Identify and seek additional regulatory tools through state legislation
- ❑ Learn from/apply the experiences of other communities and case law
- ❑ Implement a City business license

# City Contact Information

**Persons with concerns, questions, or information are encouraged to contact the City.**

- ❑ For complaints not regarding alleged criminal activity or for general information contact the Community Development Department at 777-1207**
- ❑ For non-emergency matters involving possible criminal activity contact the Police Department at 777-1900**
- ❑ Citizens may also visit the Community Development Department at City Hall**

# State Contact Information

## Arizona Department of Health Services

**Licensing Services**

**150 North 18th Avenue**

**Phoenix, Arizona 85007**

**Phone: (602) 364-2536**

**Website: <http://www.azdhs.gov/als/>**

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# Questions and Comments