

Illegal Drug Enforcement, Substance Abuse Treatment Centers, and Community Residences Phase II Action Plan

January 27, 2014



These Topics All Relate to Community, and What We Value

- As a city and community, we value the quality of life afforded to our residents and visitors
- Prescott's General Plan, ratified May 18, 2004, presents a vision "based on fundamental values endorsed by the community," including:
 - "Balance: between developed and undeveloped areas; between types of land uses including diversity of housing options; between young and old residents, current families and future families; between private property, neighborhood and community-wide interests."
 - "Sustainability: of the economic foundations of the community; of the neighborhoods within the community"
 - "Preservation of community character including environmental, economic, cultural and historic community assets."
 - "Ethic of equity for all community members."
- Illegal drugs, a disproportionate number of substance abuse treatment centers (by some estimates 1 in 40 persons in our city of 40,000 are now in these programs—with constant turnover, varying success of treatment, and many lacking "exit strategies"), clustering of such centers, and the proliferation of community residences within single-family zoning districts, are all influences adverse to the balance envisioned by the General Plan.

Background

- Prescott is recognized throughout the state of Arizona as having a large number and concentration of substance abuse treatment centers
- Shared living arrangements of groups of people can be categorized as a “single family residence” or “community residence”; the basis for distinguishing between the two types is whether the arrangement functions like the housekeeping unit of a traditional family dwelling
- To address issues related to community residences—notably the proliferation of them in single-family residential neighborhoods—in September 2013, the City Council adopted Ordinance No. 4866-1404 amending the Land Development Code, which was carefully crafted to avoid federal Fair Housing Act challenges of being discriminatory toward disabled persons
- At the time Ordinance No. 4866-1404 was adopted, there were 110 known licensed and unlicensed community residences in the City providing medical and non-medical recovery, treatment and detoxification services for users of alcohol and/or other drugs, or other care services where residents agree to stay “clean and sober” during their residency (i.e., “sober living” homes, wherein residency is less permanent than in traditional single family home uses)

- The ordinance further: (1) introduced a dispersal requirement of 1,200 feet between non-housekeeping residences in residential zones; and (2) afforded the opportunity for voluntary registration of existing community residences both as a means to document their legal or legal non-conforming status, and to assist the City in evaluating new applications for compliance with the spacing/distance requirement
- Arizona Department of Health Services (ADHS) adopted new rules for drug and alcohol rehabilitation operations, including the manner and type of licensing needed for associated residential components, during Spring 2013, and began implementing them on October 1, 2013
- ADHS licenses are required for facilities providing supervision, protective, preventive, or personal care services, including controlling client medications
- While state licensing requires facilities to be in compliance with local residential zoning and privilege tax requirements, there continues to be a lack of clarity with ADHS as to their role, rules, and enforcement
- A 60-day checkpoint was presented to the City Council in November 2013 summarizing progress of **“Phase I Action”** in addressing issues, oriented toward striking an appropriate and legal balance between the housing rights of individuals and reasonable interests and quality of life of our community

- The checkpoint included reports of privilege tax compliance efforts for rental uses, including community residences, law enforcement at locations of reported disruptive and/or criminal activity, relocation of the Code Enforcement Division to the Police Department to streamline and provide a new emphasis for ordinance enforcement activities, and the following summary of recommended actions going forward:

- Assist public via contact points staffed by knowledgeable City personnel
- Register new community residences and keep current maps
- Collect City privilege tax on rentals and enforce through audits
- Press ADHS on effective implementation of new state regulations
- 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 (an important tool in identifying and being able to communicate with various business sectors and types; equipping public safety responders with information regarding hazardous materials locations; access to statistical information for economic development, and a level playing field for the collection of City privilege tax including that on sales, rentals, and transient occupancy)

Experience Since November 2013

- We know a lot more about the local scale of community residences – the number of those associated with substance abuse rehabilitation has increased to over 150
- On December 23, 2014, a complaint was received from the U.S. Department of Housing and Urban Development (HUD), objecting to Ordinance No. 4866-1404, alleging that it discriminates against “group homes for the disabled” (the federal government has extended the definition of “disabled” to include persons who suffer from substance abuse); the City’s response to the complaint was sent to HUD on January 15, 2015
- Various discussions have occurred between the City and substance abuse rehabilitation “industry” groups, namely the Northern Arizona Recovery Association (NARA) and Arizona Recovery Housing Association (AzRHA) which represent a number of industry members, on topics including proposals for new state legislation oriented to standards of care and licensing
- A number of specific questions regarding licensure and inspection of recovery facilities were sent to ADHS; the reply received (9/2/14) provided only general information; ADHS has not taken an active role in addressing local issues generated by the rehabilitation industry

- Against the backdrop of the unprecedented concentration of substance abuse rehabilitation facilities in Prescott, an investigative report by the Walter Cronkite School of Journalism and Mass Communication at ASU, “Hooked: Tracking Heroin’s Hold on Arizona,” aired January 13, 2015, describing a “growing problem ... reaching epidemic levels”
- The implications of the heroin problem for Prescott, given the very high rate of substance abuse rehabilitation failures (estimated to be over 90% of those who begin treatment), cannot not be overstated:
 - Narcotic cases of the Prescott Police Department and Partners Against Narcotics Trafficking (PANT) are increasing
 - “We see those who wash out of the (rehabilitation) programs on the street” (Police Chief Jerald Monahan)
 - The rehabilitation failures comprise a ready, concentrated, highly lucrative market for heroin and other illegal drugs
 - Given that market, increased crime to supply and maintain drug habits is inevitable

Phase II – Action on Three Fronts

To counter and prevail over the current challenges associated with illegal drugs, substance abuse treatment centers, and community residences proliferating within and threatening to overrun single-family zoned areas, action on three fronts is called for:

- New State Legislation and Collaboration with other Arizona Communities
- New City Ordinances/Code Amendments
- Increased Enforcement – Civil and Criminal

New Legislation and Collaboration with Other Arizona Communities

- Proposed revisions to Title 36, Arizona Revised Statutes, drafted by the City Legal Department, have been provided to our state legislative delegation
- The legislative intent is to expand state licensure of substance abuse treatment facilities and recovery counseling and support, to include “... any residential property owned, operated, or affiliated with a health care institution even if services are not offered at those locations”
- The outcome desired is to improve the standard of care offered by these facilities, enhancing the success of their client rehabilitation programs
- A bill draft has been prepared by the Arizona Legislative Council for Rep. Noel Campbell, who may introduce it this week, for hearing by the House Health Committee
- If a bill expanding/tightening up licensure of treatment facilities is successful, ADHS must be held accountable for successful implementation, including compliance—the City will assist ADHS by providing information, but we need the state to lead—and provide clarity to their rules
- The League of Arizona Cities and Towns has also been contacted to elevate the issues, and to determine the interest of other municipalities in moving the legislation forward; at this time, a number of cities, both rural and urban (outside Maricopa County), have expressed such interest
- NARA has indicated that they will seek legislation to expand licensure as well, but on a tiered basis, with lesser requirements for facilities not specifically providing medical services

New City Ordinances/Code Amendments

Ordinance No. 4866-1404 – Land Development Code Amendments re Community Residences

In consultation with Daniel Lauber, a legal expert on zoning for community residences, feasible refinements to Ordinance No. 4866-1404 have been identified for consideration:

- Reduce the number of unrelated persons in a small community residence from 6 to 4, and allow them in residential districts without restriction
- On a permit-required basis, allow from 5 to 12 persons in a large community residence in single-family residential zoning, but subject to existing Building Code requirements relating to occupancy (the number and sizes of bedrooms); the permit would enable the City to perform compliance inspections upon proper notice
- Reduce the spacing (buffer) between large community residences from 1,200' to 800' (to better align this criterion with prevailing practice/case law)
- In single-family zoning, distinguish between residencies on the basis of duration—longer-term residency is the undisputable norm in such districts, shorter-term is not; require a special use or conditional use permit for the latter



Other City Ordinances

Note: The following ordinances, which have already been drafted, should be considered as additional tools to help deal with these issues (not all of the ordinances are necessarily being recommended for Council adoption). Applicability to uses not presently causing problems may create new issues such as being seen as unnecessary regulation.

1. Authority for Code Enforcement to issue Civil Citations into City Court

- Code Enforcement Officers do not presently have this authority
- The procedure for abating a code violation is laborious and ineffective (property owner has 30 days to abate the violation or appeal it to a code hearing officer or the Board of Adjustment, followed by the hearing process, in total consuming months)

2. Business License - for All Businesses and Occupations (including non-profits)

- Would enable identification of community residences
- Added benefits include identifying homes with greater than average numbers of occupants (public safety/response), commercial locations with on-site hazardous materials, and generation of useful statistical economic information

3. Abandonment of Nonconforming Uses

- Under the Land Development Code (LDC), abandonment of a legal nonconforming use is presumed if the use ceases for one year
- The one year timeframe could be reduced to six (6) months in all residential zones (but remain one year in non-residential zones)

4. Nuisance Residential Properties

- Action initiated upon multiple complaints being received by the Police Department (disruptive activities such as loud music, boisterous gatherings, altercations, illegal drug use)
- Property declared a public nuisance; property owner required to abate the activities

5. Neighborhood Preservation

- The current Property Maintenance Code focuses on structural safety, imminent hazards, and slum and blighted conditions
- A more comprehensive approach to addressing neighborhood conditions is possible

6. Residential Rental Inspection Program

- A tenant or landlord may request a City inspection of a rental property
- The City may obtain a court order/administrative warrant if the City becomes aware (either by complaint or observation) of a condition materially affecting the health and safety of the occupants of the rental unit/property



Increased Enforcement – Civil and Criminal

As a city, to sustain our quality of life while it is under challenge, we must not only acknowledge issues but take action:

- Problems and infractions in Prescott arising from illegal drug sales and use, substance abuse treatment centers, and community residences, will be most effectively addressed via concerted local efforts, not by reliance upon regional, state, or federal authorities
- There are costs associated with regulation and enforcement; if we want better outcomes, we must be prepared to pay for the means of delivering them
- Funding for regulation and enforcement comes from the General Fund, which is increasingly being stretched to the breaking point due to mandates, higher costs, and revenue reductions imposed by state and federal government, over which the City has no control
- Public safety and non-public safety services and amenities (parks, library) are in direct competition for funding—the reality is that financial resources in the General Fund will have to be augmented to successfully preserve Prescott's quality of life

Actions to achieve enhanced enforcement include the following (the costs of which can be discussed more fully at the February 12, 2015, Council meeting addressing FY 16 and longer-term budget priorities):

- Create a “next level” illegal drug enforcement unit in the Police Department
- Refocus more current manpower to enforcement (with concurrent de-emphasis in other public safety programs)
- Call upon regional and state partners for more (and more effective, visible enforcement)
- Authorize Code Enforcement to issue citations into City Court
- Partner with residents, businesses, and ADHS regarding treatment facilities, to create a simple way for licensing and other code infractions to be reported and monitored for follow-up (e.g., linked to the ADHS on-line complaint form)

Discussion/Direction – Phase II Action Checklist

Slide

Action

Immediate

- 9 Pursue new legislation to extend state licensure to more treatment facilities and their residential components
- 10 Refine Ordinance No. 4866-1404 (community residences) *
- 11 Create authority for Code Enforcement to issue citations into City Court *
- 14 Refocus (a component of) existing Police Department manpower to elevate illegal drug enforcement; call upon regional partners to augment efforts

Short-term – FY 16 Budget Process (February 12, 2015, Council Priorities Workshop)

- 14 Assess cost and implementation of “next level” illegal drug enforcement

Short-term – Council Direction re Action and Scheduling

- 11 Business license ordinance *

Short-term – Refer to Planning & Zoning Commission or UDC (as applicable)

- 11-12 Other ordinances listed *

* Approximately 60 days (minimum) required for ordinances to be adopted and become effective