

# Zoning Principles for Community Residences for People With Disabilities and for Recovery Communities in Mesa, Arizona



**Prepared by  
Daniel Lauber, AICP**

**March 2021**

## **Law Office** **Daniel Lauber**

Attorney/Planner: Daniel Lauber, AICP

Published by:

## **PLANNING/COMMUNICATIONS**

Copyright © 2021 by Daniel Lauber. All rights reserved. Permission is granted to the City of Mesa, Arizona to use, reproduce, and distribute this report solely in conjunction with the City of Mesa, Arizona. Reproduction and use by any other entity or government jurisdiction is strictly prohibited.

Cite this report as:

Daniel Lauber, *Zoning Principles for Community Residences for People With Disabilities and for Recovery Communities in Mesa, Arizona*  
(River Forest, IL: Planning/Communications, March 2021)

# Table of Contents

<b>Introduction</b>	<b>1</b>
<b>Community residences</b>	<b>7</b>
Types of community residences	10
Family community residences	10
Transitional community residences	15
<b>Rational bases for regulating community residences</b>	<b>16</b>
<b>Concentrations and <i>de facto</i> social service districts</b>	<b>25</b>
Observations	30
<b>Recommended zoning approach</b>	<b>30</b>
When a “community residence” is legally a “family”	31
General principles for making a zoning reasonable accommodation	33
Community residences	34
Zoning guidelines for “family community residences”	35
Zoning guidelines for “transitional community residences”	36
Recovery communities	37
Zoning guidelines for recovery communities	41
“Conditional use permit backup”	42
<b>Additional issues to consider</b>	<b>43</b>
Maximum number of occupants	43
Other zoning regulations for community residences	44
Licensing of sober living homes and recovery communities	44
<b>Summary</b>	<b>45</b>
<b>Appendix A: Representative studies of community residence impacts</b>	<b>47</b>

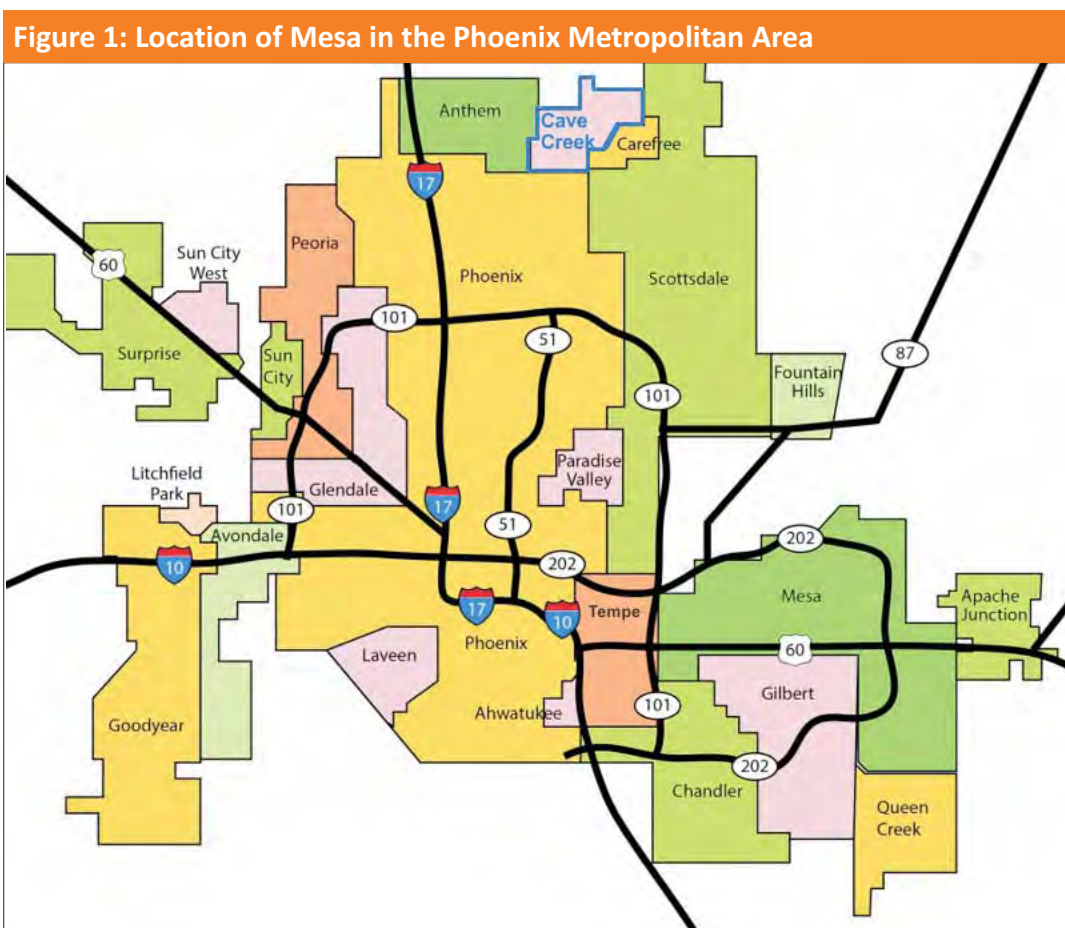


## Introduction

For more than a decade, the United States has struggled to win the War on Drugs and Alcohol Abuse while in the midst of an opioid, drug, and alcohol addiction epidemic of unprecedented proportions. One of the most essential weapons in the War on Drugs and Alcohol Abuse is the sober living home. Properly operated and located, this kind of community residence offer a supportive family-like living environment that fosters the normalization and community integration essential to attaining long-term, permanent sobriety for its residents.

An “Opioid Crisis,” along with ongoing widespread addictions to other drugs and alcohol, has engulfed the nation with especially intense concentrations in warm climate states like Arizona and Florida. It is a crisis that does not respect state or municipal boundaries.

In Arizona, much of the crisis is concentrated in the Phoenix metropolitan area. The City of Mesa is 20 miles east of Phoenix, separated only by the City of Tempe.



In response to this crisis, sober living homes and somewhat similar recovery communities have been opened throughout Arizona and the Phoenix metropolitan area. The Arizona Recovery Housing Association reports that throughout the state its members operate 195 sober living homes and recovery communi-

ties housing 2,270 individuals in recovery. Eighty-seven percent (169) of those locations housing 1,996 people in recovery are in Maricopa County.<sup>1</sup> But the Arizona Recovery Housing Association tends to attract *legitimate* sober homes operators as members, *not* the scam operators that have proliferated especially in attractive warmer climates. There remains an unknown number of sober homes and recovery communities in the Phoenix metropolitan area that are operated by housing providers that are *not* members of the Arizona Recovery Housing Association.

In the City of Phoenix alone, 30 association members operate sober living homes and recovery communities that house over 926 people in recovery from drug and/or alcohol addiction.<sup>2</sup>

Community residences for people with disabilities include “group homes.” These include group homes for people in recovery from drug and/or alcohol addiction. Terms describing these homes include “sober home,” “sober living home,” “halfway house,” “three-quarter house,” and “recovery home.” The key features common to all group homes is that they function like a biological family (staff in the role of parents and residents with disabilities in the role of siblings) to provide as “normal” a life for their residents and integrate them into community life. The nature of community residences for people with disabilities is explained in detail beginning on page 7. A related use is the recovery community where an entire apartment building is occupied by people in recovery — as explained in detail beginning on page 37.

In early 2018, Phoenix city staff estimated there were about 1,126 community residences serving people with all types of disabilities in the city that were licensed by the State of Arizona or registered with the City of Phoenix.<sup>3</sup> About 470 of these house up to five individuals while about 656 are occupied by six to ten people with disabilities. These figures, however, were incomplete because they did not include any unlicensed and unregistered community residences, largely believed to be sober living homes, the number of which is unknown.

Sober living homes are just one type of “community residence” for people with disabilities. Other community residences include group homes, assisted living homes that emulate a family, and residential care homes that emulate a

1. Emails from Michelle Siwek to Daniel Lauber, Law Office of Daniel Lauber (Sept. 22, 2020, 7:29 p.m. Central time and Sept. 24, 2020 10:16 p.m. Central) (on file with the Law Office of Daniel Lauber).
2. Ibid.
3. Daniel Lauber, *Phoenix, Arizona: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, Feb. 2018) 18.

family — generally housing up to ten or 12 residents. Also included in the data are three types of community residences the Arizona Department of Health Services licenses: assisted living homes for up to ten people, behavioral health residential facilities for up to ten residents, and group homes for up to six people with developmental disabilities as well as larger group homes.

The total number of all these community residences for people with disabilities in the Phoenix area is not readily available.

Mesa's City Code requires community residences and recovery communities to register with the city. At least 355 community residences for people with disabilities have registered over the past 15 or more years.<sup>4</sup> These include group homes for people with developmental disabilities, mental illness, physical disabilities, and for the frail elderly as well as sober living homes and possibly recovery communities. However, this figure does not include unlicensed sober homes and recovery communities that have never registered with the city.

Comparable municipal concentrations of community residences exist in Florida cities which have long been considered to be the epicenter of the sober home industry.<sup>5</sup> Delray Beach, 68,700 population, had 183 verified sober homes and another 64 thought to be sober homes in 2017.<sup>6</sup> In early 2018, Pompano Beach, population 100,000, had 66 certified or licensed community residences for people with disabilities within its borders plus another 102 locations that the Broward County Sheriff confirmed are recovery residences. There were another 102 locations thought to be recovery residences but not confirmed as such.<sup>7</sup> Late in 2017, Fort Lauderdale, population 180,072, was home to at least 83 certified or licensed community residences with another 17 locations thought to be sober living homes or recovery communities.<sup>8</sup>

As this report explains, clustering community residences — especially sober living homes — on a block and concentrating them in neighborhood reduces their efficacy by obstructing their ability to foster normalization and commu-

- 
4. The Mesa Development Services Department provided this figure of 355. However, this is an “historical” number. These registration numbers have not been updated and the city has not confirmed the continuing presence of these community residences and recovery communities. Some may have closed and others may have moved since registering. In addition it is believed that an unknown number of community residences and recovery communities that have never registered with the city are operating within the city. Some of these may have been licensed by the State of Arizona since July 1, 2019 when licensing went into effect. The ordinance to be based upon this study will contain provisions to address this situation and enable the city to update its records on community residences and recovery communities.
  5. Jane Gross, “In Florida, Addicts Find an Oasis of Sobriety,” *New York Times*, Nov. 11, 2007. Available online at <http://www.nytimes.com/2007/11/16/us/16recovery.html>.
  6. Daniel Lauber, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, 3rd ed. August 2017) 23.
  7. Daniel Lauber, *Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* (River Forest, IL: Planning/Communications, June 2018) 24.
  8. Daniel Lauber, *Principles to Guide Zoning for Community Residences for People With Disabilities in Fort Lauderdale, Florida* (River Forest, IL: Planning/Communications, Feb. 2018) 24.



nity integration. For the residents of these homes to achieve long-term sobriety, it is critical to establish regulations and procedures that assure a proper family-like living environment free of drugs and alcohol through licensing or certification to weed out incompetent and unethical operators and protect these vulnerable populations from abuse, mistreatment, exploitation, enslavement, and theft.

*The Florida experience is not an isolated one and it is quite relevant to Arizona. It helps explain the critical need to require licensing or certification for sober living homes and recovery communities allowed as of right.*

The lessons learned in Florida are valuable ones to remember in Arizona. The southeast Florida media have been reporting<sup>9</sup> on ongoing criminal investigations of sober living operators in Broward and Palm Beach Counties. These investigations have found so-called sober homes that kept residents on illegal drugs, patient brokering, enslavement of residents into prostitution, kickbacks, bribery, and other abuses.

These illegitimate “sober homes” almost certainly do not comply with the minimum “Quality Standards” that the National Alliance of Recovery Residences has promulgated.<sup>10</sup>

This failure to comply with even minimal standards of the recovery industry and the clustering of community residences may help explain high recidivism rates and the inability of so many sober living homes to achieve sobriety among their residents. These failures are in contrast to the much lower recidivism rates around the country of residents of certified sober living homes and of homes in the Oxford House network which are subject to the requirements of the Oxford House Charter and an inspection regime Oxford House maintains.<sup>11</sup>

- 
9. A sampling of articles: “Kenny Chatman pleads guilty to addiction treatment fraud,” *mypalmbeachpost.com* (March 16, 2017); Christine Stapleton, “Three more sober home operators arrested in Delray Beach,” *Palm Beach Post* (Feb. 27, 2017); Lynda Figueredo, “Two Delray Beach sober home owners arrested for receiving kickback,” *cbs12.com* (Nov. 19, 2016); Pat Beall, “Patient-brokering charges against treatment center CEO ramped up to 95,” *mypalmbeachpost.com* (Dec. 27, 2016).
  10. These standards are available online at <http://www.narronline.org>.
  11. L. Jason, M. Davis, and J. Ferrari, The Need for Substance Abuse Aftercare: Longitudinal Analysis of Oxford House, 32 *Addictive Behaviors* (4), (2007), at 803-818. For additional studies, *also see* Office of Substance Abuse and Mental Health, *Recovery Residence Report Fiscal Year 2013–2014 General Appropriations Act*, Florida Department of Children and Families (Oct. 1, 2013), 21–25. Since the report focused on Palm Beach County, it did not provide similar data for cities outside that county.

Oxford House is discussed throughout this study. The later discussion of Oxford House will make it clear that, unlike the recovery residences so prevalent in the Phoenix metropolitan area, each



The failure to comply with minimal standards was a focus of a grand jury that the Palm Beach County State Attorney's Office convened to investigate fraud and abuse in the addiction treatment industry. The grand jury reported:<sup>12</sup>

The Grand Jury received evidence from a number of sources that recovery residences operating under nationally recognized standards, such as those created by the National Alliance for Recovery Residences (NARR), are proven to be highly beneficial to recovery. The Florida Association of Recovery Residences (FARR) adopts NARR standards. One owner who has been operating a recovery residence under these standards for over 20 years has reported a 70% success rate in outcomes. The Grand Jury finds that recovery residences operating under these nationally approved standards benefit those in recovery and, in turn, the communities in which they exist.

In contrast, the Grand Jury has seen evidence of horrendous abuses that occur in recovery residences that operate with no standards. For example, some residents were given drugs so that they could go back into detox, some were sexually abused, and others were forced to work in labor pools. There is currently no oversight on these businesses that house this vulnerable class. Even community housing that is a part of a DCF [Department of Children and Families] license has no oversight other than fire code compliance. This has proven to be extremely harmful to patients.

The grand jury reported 484 overdose deaths in nearby Delray Beach in 2016, up from 195 in 2015.<sup>13</sup> It recommended certification and licensure for "commercial recovery housing."<sup>14</sup> For full details on the grand jury's findings and recommendations, readers should see the grand jury's report.<sup>15</sup>

Thanks in large part to the crackdown on patient brokering and other discordant practices of illegitimate predator sober homes in Palm Beach County, it has

---

Oxford House is a self-run and self-governed sober home completely independent from any treatment center. Also see footnote 8 below.

12. Palm Beach Grand Jury in the Circuit Court of the 15th Judicial Circuit In and For Palm Beach County, Florida, *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry*, (Dec. 8, 2016) 16–17.
13. *Ibid.* 99–101.
14. *Ibid.* 18. In contrast to the self-governed Oxford Houses that adhere to the Oxford House Charter and are subject to inspections by Oxford House, "commercial recovery housing" is operated by a profit-making third party entity, sometimes affiliated with a specific treatment program, complete with supervisory staff like most community residences for people with disabilities. In Arizona, as elsewhere, such homes are almost always required to obtain a license from the state.
15. The grand jury's report is available online at: <http://www.trbas.com/media/media/acrobat/2016-12/70154325305400-12132047.pdf>.

been noted that there is a migration of patient brokering and of sober homes to other counties in southeast Florida. Authorities believe that illegitimate operators are leaving cities like Delray Beach, Pompano Beach, and Fort Lauderdale where the zoning requires existing and proposed recovery residences and recovery communities to obtain certification from the Florida Association of Recovery Residences (FARR).

According to the head of the Florida Association of Recovery Residences, requiring certification or licensing of sober homes appears to deter “those who are driven to enter the recovery housing arena by opportunities to profit off this vulnerable population. When seeking where to site their programs, this predator group evaluates potential barriers to operation. For them, achieving and maintaining FARR Certification is a significant barrier.”<sup>16</sup>

Cities and towns in Arizona need to take these lessons into account when determining their approaches to regulating community residences for people with disabilities, especially sober living homes and recovery communities.

\*\*\*\*\*

This report explains the basis for text amendments that will be proposed to revise the sections of Mesa’s *Zoning Ordinance* that govern community residences for people with disabilities and recovery communities as well as other sections that affect the city’s ability to zone for these uses. The proposed amendments based on this study will seek to make the reasonable accommodations for community residences for people with disabilities and for recovery communities that are necessary to protect the residents in these homes in accord with sound zoning and planning practices and policies. The recommended zoning approach is based upon a careful review of:

- ◆ The functions and needs of community residences and the people with disabilities who live in them
- ◆ Sound city planning and zoning principles and policies
- ◆ The Fair Housing Amendments Act of 1988 (FHAA) and amended Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601–3619 (1982)
- ◆ Report No. 100–711 of the House Judiciary Committee interpreting the FHAA amendments (the legislative history)
- ◆ The HUD regulations implementing the amendments, 24 C.F.R. Sections 100–121 (January 23, 1989)
- ◆ Case law interpreting the 1988 Fair Housing Act amendments relative to community residences for people with disabilities
- ◆ Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*

---

16. Email from John Lehman, past CEO and current board member, Florida Association of Recovery Residences to Daniel Lauber, Law Office of Daniel Lauber (Nov. 16, 2017, 9:34 a.m. CST) (on file with the Law Office of Daniel Lauber).

(Nov. 10, 2016)<sup>17</sup>

- ♦ Arizona state statutes governing local zoning for different types of community residences: §§36–581 and 36–582
- ♦ Arizona state statutes governing licensing of community residences and recovery communities including the licensing of sober homes and recovery communities authorized by Senate Bill 1465 that amended §§9–500.39, 9–550.40, 11–269.17, 11–269–18, and adding Article 4 to Title 36, chapter 18, §§36–2061 through 2067
- ♦ The existing provisions of Mesa’s *Zoning Ordinance*.

## Community residences

Community residences are crucial to achieving the adopted goals of the State of Arizona and the nation to enable people with disabilities to live as normal a life as possible in the least restrictive living environment. The nation has made great strides from the days when people with disabilities were warehoused in inappropriate and excessively restrictive institutions, out of sight and out of mind.

People with substantial disabilities often need a living arrangement where they receive staff support to engage in the everyday life activities most of us take for granted. These sorts of living arrangements fall under the broad rubric “community residence” — a term that reflects their *residential nature and family-like living environment* rather than the institutional nature of a nursing home or hospital or the non-family nature of a boarding or lodging house. Their primary use is as a residence or a home like any family, not a treatment center, an institution, nor a boarding house.

One of the core elements of community residences is that they seek to emulate a family in how they function. The staff (or the officers in the case of a self-governing recovery residence like Oxford House) function as parents, doing the same things our parents did for us and we do for our children. The residents with disabilities are in the role of the siblings, being taught or retaught the same life skills and social behaviors our parents taught us and we try to teach our children.

Community residences seek to achieve “normalization” of their residents and incorporate them into the social fabric of the surrounding community, often called “community integration.” They are operated under the auspices of a

### Recovery communities

As explained beginning on page 37, “recovery communities” serving people in recovery from addiction to drugs and/or alcohol are a different land use than community residences. The characteristics of the two land uses are sufficiently different that they warrant a different zoning treatments.

---

17. At <http://www.justice.gov/crt/page/file/909956/download>.

legal entity such as a non-profit association, for-profit private care provider, or a government entity.

The number of people who live in a specific community residence tends to depend on its residents' types of disabilities as well as therapeutic and financial needs.<sup>18</sup>

*Since 1989, the nation's Fair Housing Act has required all cities, counties, and states to make a "reasonable accommodation" in their zoning when the number of residents exceeds the local zoning code's cap on the number of unrelated people who can live together in a dwelling so that community residences for people with disabilities can locate in all residential zoning districts.*<sup>19</sup>

When President Reagan signed the Fair Housing Amendments Act of 1988 (FHAA), he added people with disabilities to the classes protected by the nation's Fair Housing Act (FHA). The 1988 amendments recognized that many people with disabilities need a community residence (group home, recovery residence, sober living home, halfway house) in order to live in the community in a family-like environment rather than being forced into an inappropriate institution.

### Populations not covered by the Fair Housing Act

*People without disabilities and people with disabilities who pose "a direct threat to the health or safety of others" such as prison pre-parolees and sex offenders are **not** covered by the 1988 amendments to the Fair Housing Act. Therefore, cities do not have to make the same reasonable accommodation for them as cities must for people with disabilities who do not pose "a direct threat to the health or safety of others." The zoning amendments to be based on this study will not allow as a permitted use halfway houses for people who fall into these categories of dangerous people.*

Consequently, the act requires all cities, counties, and states to allow for community residences for people with disabilities by making some exceptions in their zoning ordinance provisions that, for example, may limit how many un-

- 
18. While the trend for people with developmental disabilities is toward smaller group home households, valid therapeutic and financial reasons lead to community residences for people with mental illness or people in recovery from drug and/or alcohol addiction to typically house eight to 12 residents.
  19. As explained in this study, "family community residences" should be allowed as a permitted use in all residential zoning districts where dwellings are allowed when located outside a rational spacing distance from the nearest existing community residence or recovery community and if licensed or certified. "Transitional community residences" should be allowed as of right in multifamily zoning dwellings as permitted uses (subject to spacing and licensing) and as a conditional use in other residential districts. A conditional use permit is needed for proposed community residences that want to locate within the spacing distance or for which a license or certification is not available.

related people can live together in a dwelling unit.

The Fair Housing Amendments Act's (FHAA) legislative history states that:

“The Act is intended to prohibit the application of special requirements through land–use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice within the community.”<sup>20</sup>

While many advocates for people with disabilities suggest that the Fair Housing Amendments Act prohibits all zoning regulation of community residences, the Fair Housing Amendments Act's legislative history suggests otherwise:

“Another method of making housing unavailable has been the application or enforcement of otherwise neutral rules and regulations on health, safety, and land–use in a manner which discriminates against people with disabilities. Such discrimination often results from false or overprotective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.”<sup>21</sup>

Many states, counties, and cities across the nation continue to base their zoning regulations for community residences on these “unfounded fears.” The 1988 amendments require all levels of government to make a *reasonable accommodation* in their zoning rules and regulations to enable community residences for people with disabilities to locate in the same residential districts as other residential uses.<sup>22</sup>

It is well settled that for zoning purposes, a community residence is a residential use, not a business use. The Fair Housing Amendments Act of 1988 specifically invalidates restrictive covenants that would exclude community residences from a residential district. The Fair Housing Act renders these restrictive covenants unenforceable against community residences for people with disabilities including sober living homes.<sup>23</sup>

---

20. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173.

21. Ibid.

22. 42 U.S.C. §3604(f)(B) (1988).

23. H.R. Report No. 711, 100th Cong., 2d Sess. 311 (1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2184. The overwhelming majority of federal and state courts that have addressed the question have concluded that the restrictive covenants of a subdivision and the by–laws of a homeowner or condominium association that exclude businesses or “non–residential uses” do *not* apply to community residences for people with disabilities — even before passage of the Fair Housing Amendments Act of 1988.

## Types of community residences

Within the broad category of community residences are two types of living arrangements that warrant slightly different zoning treatments tailored to their specific characteristics:<sup>24</sup>

- ◆ **Family community residences** which include uses commonly known as group homes and those recovery residences and sober living homes that offer a relatively permanent living environment that emulates a biological family
- ◆ **Transitional community residences** which include such uses commonly known as recovery residences and sober living homes that offer, in practice, a relatively temporary living environment like a small halfway house does.

The label an operator places on a community residence does *not* determine whether it is a family or a transitional community residence. That is ascertained by the relevant performance characteristics of each community residence.

A jurisdiction can choose not to distinguish between these two types of community residences. Such jurisdictions would need to apply to all community residences the zoning recommended here for “family community residences.”

### Family community residences

A *family community residence* offers a relatively permanent living arrangement for people with disabilities that emulates a family. They are usually operated under the auspices of an association, corporation, or other legal entity, or the parents or legal guardians of the residents with disabilities. Some, like recovery residences for people in recovery from alcohol and/or drug addiction, are self-governing.

Residency, not treatment, is the home’s primary function. *There is no limit to how long an individual can live in a family community residence. Depending on the nature of a specific family community residence, there is an expectation that each resident will live there for as long as each resident needs to live there. Tenancy is measured in years, not months.* Family community residences are most often used to house people with developmental disabilities (mental retardation, autism, etc.), mental illness, physical disabilities including the frail elderly, and individuals in recovery from addiction to alcohol or drugs (legal or illegal) who are *not* currently “using.”

Family community residences are often called *group homes* and, in the case of people with alcohol or drug addictions, *recovery residences*, *sober living*

---

24. Recovery communities which are significantly different in nature than community residences are discussed in detail beginning on page 38.



*homes, or sober homes.*<sup>25</sup> Their key distinction from transitional community residences is that people with disabilities can reside, are expected to reside, and actually do live in a family community residence for a year or longer, not just months or weeks. In a nation where the typical household lives in its home five to seven years, these are long-term, relatively permanent tenancies. There is no limit on how long someone can dwell in a family community residence as long as they obey the rules or do not constitute a danger to others or themselves, or in the case of recovering alcoholics or drug addicts, do not use alcohol or illegal drugs or abuse prescription drugs.

To be successful, a community residence needs to be located in a conventional residential neighborhood so that normalization can take place. The underlying rationale for a community residence is that by placing people with disabilities in as “normal” a living environment as possible, they will be able to develop to their full capacities as individuals and citizens. The atmosphere and aim of a community residence is very much the *opposite* of an institution.

The family community residence emulates a family in most every way. The activities in a family community residence are essentially the same as those in a dwelling occupied by a biologically-related family. Essential life skills are taught, just like we teach our children. Most family community residences provide “habilitative” services for their residents to enable them to develop their life skills to their full capacity. *Habilitation* involves learning life skills for the first time as opposed to *rehabilitation* which involves relearning life skills.

While recovery residences are like group homes in most respects, they tend to engage more in rehabilitation where residents relearn the essential life skills we tend to take for granted, although for some very long-term alcoholics or drug addicts in recovery, they may be learning some of these life skills for the first time. Recovery residences have been referred to as *three-quarter houses* because they are more family-like and permanent than the better known *halfway house* which falls under the *transitional community residence* category.

The original recovery residence concept popularized by Oxford House does not limit how long somebody can live in one. In an Oxford House, the residents periodically elect officers who act in a supervisory role much like parents in a biological family while the other residents are like the siblings in a biological family.<sup>26</sup> In a group home and in structured sober living homes, the staff functions in the supervisory parental role.

---

25. For example, those “sober living homes” that limit how long occupants may live there are most accurately characterized as “transitional community residences.” *It is crucial that a jurisdiction evaluates each proposed community residence on how it operates and not on how its operator labels it.*

26. Each Oxford House is subject to the demanding requirements of the Oxford House Charter which includes a monthly financial accounting and at least an annual inspection. This procedure constitutes a functional equivalent of licensing and for the purposes of zoning ordinances, would serve as a proxy for formal licensing or certification.



Recovery residences are essential for people in recovery for whom a supportive living environment is needed to learn how to maintain sobriety — *before* they can return to their family. Tenancy in a recovery residence can last for years in contrast to tenancy in a sober living environment or small halfway house where there is a limit on length of tenancy measured in weeks or months.

Interaction between the people who live in a community residence is essential to achieving normalization. The relationship of a community residence's inhabitants is much closer than the sort of casual acquaintances that occur between the residents of a boarding or lodging house where interaction between residents is merely incidental. In both family and transitional community residences, the residents share household chores and duties, learn from each other, and provide one another with emotional support — family-like relationships not essential for, nor present in lodging houses, boarding houses, fraternities, sororities, nursing homes, or other institutional uses.

Interaction with neighbors without severe disabilities is an essential component to community residences and one of the reasons planners and the courts long ago recognized the need for them to be located in residential neighborhoods. Their neighbors serve as role models which helps foster the normalization and community integration at the core of community residences.

As was realized a century ago, being segregated away in an institution only teaches people how to live in an institution. It does nothing to facilitate learning the skills needed to be all you can be and live as independently as possible and be integrated into community life.

For example, filling an apartment building with people in recovery — a recovery community — segregates them away with other people in recovery as their neighbors, depriving them of the interaction with sober neighbors that fosters normalization and community integration. Placing recovery residences in a series of adjacent single-family homes or town houses has the same effect as a recovery community. While these arrangements possess some of the characteristics of community residences, they also possess many institutional characteristics and function more like mini-institutions than the biological family a community residence is supposed to emulate.

As the courts have consistently concluded, community residences foster the same family values that even the most restrictive residential zoning districts promote. Family community residences comply with the purposes of the Mesa zoning districts that allow residential uses.

Even before passage of the 1988 amendments to the Fair Housing Act, most courts concluded that family community residences for people with disabilities must be allowed as of right in all residential zones. Under the Fair Housing Act, a city can require a spacing distance between community residences and a license of community residences allowed as permitted uses when the number of residents in a proposed community residences exceeds the cap on unrelated occupants in the city's zoning code definition of "family."

On the next two pages, Table 1 illustrates the many functional differences between community residences for people with disabilities, institutional uses (including nursing homes), and rooming or boarding houses. These functional

differences help explain the rational basis for treating these uses differently in a land-use or zoning code.

**Table 1: Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses**

<b>Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses</b>			
<b>Characteristic</b>	<b>Community Residence for People With Disabilities</b>	<b>Institutional Uses (Includes Nursing Homes)</b>	<b>Rooming or Boarding House</b>
<b>Proper Environment</b>	Residential Home—like	Institutional Hospital—like	Residential Hotel—like
<b>Appropriate Zoning Districts</b>	Single-family residential preferred Multiple-family in some instances	Institutional, commercial, mixed use, medical	Multiple-family residential
<b>Relationship of Residents</b>	Single housekeeping unit emulating a biological family Sibling-like relationships essential Bonding between residents highly desirable	Relationships not planned nor essential Incidental friendships may develop	No dependency on other residents Incidental friendships may develop Relationships not planned nor essential
<b>Supervision</b>	Staff in the role of the parents; officers in self-governed homes in role of parents	Total staff supervision	Landlord-tenant relationship
<b>Values Fostered</b>	Family values	None	None
<b>Purpose</b>	Achieve normalization and community integration Habitatation or rehabilitation	No effort to achieve normalization or community integration	No effort to achieve normalization, community integration, habilitation or rehabilitation
<b>Relationship to Neighbors On the Block</b>	Interaction with nondisabled neighbors is an essential component of normalization and community integration; neighbors without disabilities serve as role models to foster normalization and community integration	Interaction with neighbors not facilitated; use is largely self-contained. Neighbors have no role related to the occupants of the institutional use	Interaction with neighbors is hit or miss
<b>Residential Integration</b>	Integration with the surrounding community is essential in contrast to the segregation of living in an institution surrounded by people with the same disability	Essentially segregated from the surrounding community such that immediate neighbors are people with the same disability	Not applicable

— Table continued on next page

Table 1 continued from previous page

Differences Between Community Residences, Institutional Uses, and Rooming or Boarding Houses			
Characteristic	Community Residence for People With Disabilities	Institutional Uses (Includes Nursing Homes)	Rooming or Boarding House
Primary Functions	<p>Emulate a biological family</p> <p>Provides support in a family-like residential setting; residents dependent on each other like in a biological family</p> <p>Share family and household tasks</p> <p>Educate residents in many of the areas in which parents normally educate their children:</p> <ul style="list-style-type: none"> <li>Personal health and hygiene</li> <li>Eating habits</li> <li>Dressing/clothing care</li> <li>Household duties and chores</li> <li>House maintenance</li> <li>House safety</li> <li>Developing social and interpersonal skills</li> <li>Developing shopping skills</li> <li>Developing public behavior skills</li> <li>Developing recreational skills</li> <li>Using public transportation</li> <li>Use and value of money</li> <li>Using public facilities (stores, restaurants, theaters, recreational facilities, banks)</li> </ul>	<p>Provide medical treatment and institutional care</p> <p>No family-like living; not a residential nature</p> <p>Patients not expected to perform household tasks; patients are cared for</p> <p>No educational role</p>	<p>Lodging for unrelated individuals</p> <p>Residents are completely independent of each other</p> <p>Residents do not share household tasks; each boarder functions as an individual; no attempt to emulate a biological family</p> <p>No educational role</p>

Copyright © 2020 by Daniel Lauber. All rights reserved. Used by permission.



## Transitional community residences

In contrast to the group homes and recovery residences that fit in the category of family community residences, *transitional community residences* are a comparatively temporary living arrangement that is more transitory than a group home or recovery residence and a bit less family-like. Residency is measured in weeks or months, not years. A recovery residence or sober living residence that in practice limits how long someone can live there exhibits the performance characteristics of a transitional community residence, much like the better known small halfway house.<sup>27</sup>

### “Direct threat” exclusion

Individuals with disabilities who “constitute a direct threat to the health or safety of others” are not covered by the Fair Housing Amendments Act of 1988. 42 U.S.C. § 3602(f)(9) (1988). Consequently, municipal ordinances that prohibit such individuals from living in community residences do not run afoul of the Fair Housing Act.

Typical of the people with disabilities who need a temporary living arrangement like a halfway house are people with mental illness who leave an institution and need only a relatively short stay in a halfway house before moving to a less restrictive living environment. Similarly, people recovering from addictions to alcohol or drugs move to a halfway house, short-term recovery residence, or sober living home following detoxification in an institution until they are capable of living in a relatively permanent long-term recovery residence or other less restrictive environment.

Halfway houses are also used for prison pre-parolees. *However, such individuals are not, as a class, people with disabilities.* Zoning can be more restrictive for halfway houses for people *not* covered by the Fair Housing Act. Consequently zoning codes can and should treat halfway houses for prison pre-parolees or other populations not covered by the Fair Housing Act differently than classes that the Fair Housing Act protects.

The community residences for people with disabilities that limit the length of tenancy are residential uses that need to locate in residential neighborhoods if they are to succeed. But since they do not emulate a family as closely as a more permanent group home or recovery residence does, and the length of tenancy is relatively temporary, it is likely that a jurisdiction can require a conditional use for them in single-family districts while allowing them as a permitted use in multiple family

---

27. As used in this study, the term “halfway house” refers to the original halfway house concept that is small enough to emulate a biological family; not to the large halfway houses occupied by 20, 50, or 100+ people. The latter are mini-institutions and *not* residential uses. Consequently, sound zoning principles call for them to be located in commercial or institutional zoning districts. A residential neighborhood is not essential for them to function successfully nor is it an appropriate location for such an institutional use.

districts subject to the two requisite conditions explained later in this report. *However, it is important to remember that a conditional use permit cannot be denied on the basis of neighborhood opposition rooted in unfounded myths and misconceptions about the residents with disabilities of a proposed transitional community residence.*<sup>28</sup>

## Rational bases for regulating community residences

Community residences have probably been studied more than any other small land use. To understand the rationale for the guidelines to regulate community residences that are suggested in this report, it is vital to review what is known about community residences, including their appropriate location, number of residents needed to succeed both therapeutically and financially, means of protecting their vulnerable populations from mistreatment or neglect as well as excluding dangerous individuals from living in them, and their impacts, if any, on the surrounding community. Most of the principles discussed in this section apply to both community residences and recovery communities.

**Relative location of community residences.** For at least 40 years, researchers have found that some community residence operators will locate their community residences close to other community residences, especially when zoning does not allow community residences for people with disabilities as of right in all residential districts. They tend to be concentrated in a community's lower cost or older neighborhoods and in areas around colleges.<sup>29</sup> In every jurisdiction for which Planning/Communications has conducted an Analysis of Impediments to Fair Housing Choice, there were concentrations of community residences when the zoning did not require a rationally-based spacing distance between community residences allowed as of right. As discussed later in this study, it appears that community residences have tended to locate over the past

---

28. Note that the proposed definitions of "community residence," "family community residence," and "transitional community residence" all speak of a family-like living environment. These definitions *exclude* the large congregate living arrangements housing more than ten individuals and recovery communities.

The proposed zoning changes, however, will provide for a "reasonable accommodation" process under which the operator of a proposed "community residence" for more than ten individuals with disabilities can seek a conditional use permit if it can prove therapeutic and/or financial need for more than ten residents and demonstrate that the home will emulate a biological family. Spacing and licensing/certification requirements would still apply.

29. See General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled* (August 17, 1983) 19. This comprehensive study found that 36.2 percent of the group homes for people with developmental disabilities surveyed were located within two blocks of another community residence or an institutional use. *Also see* Daniel Lauber and Frank Bangs, Jr., *Zoning for Family and Group Care Facilities*, American Society of Planning Officials Planning Advisory Service Report No. 300 (1974) at 14; and *Family Style of St. Paul, Inc., v. City of St. Paul*, 923 F.2d 91 (8th Cir. 1991) where 21 group homes housing 130 people with mental illness were established on just two blocks.

15 or more years in some portions of Mesa.

**Why concentrations are counterproductive.** Placing community residences (and recovery communities) too close to each other can create a *de facto* social service district and can seriously hinder their ability to achieve normalization for their residents — one of the core foundations upon which the concept of community residences is based. In today's society, people tend to get to know nearby neighbors on their block within a few doors of their home (unless they have children together in school or engage in walking, jogging, or other neighborhood activities). The underlying precepts of community residences expect neighbors who live close to a community residence (and recovery community) to serve as role models to the occupants of a community residence (and recovery community) — which requires interacting with them.

As noted earlier, for normalization to occur it is essential that occupants of community residence interact with neighbors without disabilities as role models. But when another community residence opens very close — within a few doors — to an existing community residence there is a good chance that the residents of the existing community residence will interact and socialize almost exclusively with the occupants of the new community residence, especially if they house the same populations, instead of with the role models without disabilities on the block. This would hamper the efforts of both community residences to facilitate the normalization and community integration that is at their core.

At the neighborhood level, concentrating numerous community residences — no matter what populations they house — in the same neighborhood is extremely likely to not only undermine normalization, but also produce a *de facto* social service district that alters the residential character of the neighborhood.<sup>30</sup>

The research strongly suggests that community residences not concentrated in a neighborhood, do *not* generate these adverse impacts. Consequently, when community residences are allowed as a permitted use, it is most reasonable to impose a spacing distance between community residences that will keep the homes far enough apart to increase the likelihood that their occupants with disabilities will interact and socialize with neighbors without disabilities rather than with residents of nearby community residences or recovery communities — thus fostering the commu-

- 
30. A *de facto* social service district forms when enough of the structures in a neighborhood housing service-dependent people recreates an institutional atmosphere where those living in the community residences are mostly limited to socialization primarily with people from other nearby community residences— which is the exact opposite of the sort of neighborhood where community residences need to locate to be effective. The presence of a reasonable number of facilities will not alter the character of a neighborhood, but the entry of a substantial number of these homes can. Daniel Lauber and Frank Bangs, Jr., *Zoning for Family and Group Care Facilities*, American Society of Planning Officials Planning Advisory Service Report No. 300 (1974) 23. The exact number or percentage of structures occupied by service-dependent people that would constitute a *de facto* social service district cannot be quantified. It will vary on a case-by-case basis. Also see General Accounting Office, *Analysis of Zoning and Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled*, 27 (August 17, 1983).

nity integration, normalization, and role modeling that are at the heart of the community residence concept.

If the operator of a proposed community residence wishes to locate it within the spacing distance, then the heightened scrutiny of a conditional use permit is warranted. The conditional use permit process allows a jurisdiction to evaluate the cumulative effect of locating so close to an existing community residence and whether the proposed community residence would interfere with normalization at the existing community residence or alter the character of the neighborhood. For example, if there is a geographic feature such as a freeway, drainage channel, or hill between the proposed and existing community residences that acts as a barrier between the two, it is unlikely that allowing the proposed community residence would interfere with normalization or alter the community's character — and the conditional use permit should be granted.

To implement the spacing distance requirement for community residences and recovery communities allowed as of right, the city will need to require the operator of every proposed and existing community residence and recovery community to complete a “Community Residence and Recovery Community Zoning Application” form. This practice will enable the city to maintain a map and database<sup>31</sup> of locations of community residences and recovery communities so it can apply the spacing distance to any proposed community residence or recovery community.<sup>32</sup>

**The more in-depth technical explanation.** This section speaks solely of community residences. The research upon which it is based was conducted before recovery communities came into use.

Normalization and community integration require that persons with disabilities substantial enough to need a supportive living arrangement like a community residence be absorbed into the neighborhood's social structure. Neighborhoods seem to have a limited absorption capacity for service-dependent people that, if exceeded, can shift a neighborhood's character from residential to institutional.<sup>33</sup>

Social scientists note that this capacity level exists, but an absolute, precise level has not been identified. Writing about service-dependent populations in general, Jennifer Wolch notes, “At some level of concentration, a community may become saturated by services and populations and evolve into a service—

---

31. Pursuant to Arizona's public record statutes, certain information in such a database would not be a matter of public record.

32. While this is discussed in depth beginning on the next page, it is critical to note now that when the number of occupants of a community residence falls within the zoning code's cap on the number of unrelated individuals permitted in the city's definition of “family,” “household,” or “single housekeeping unit,” the *zoning ordinance* must always treat the community residence as a “family” or “household.”

33. Kurt Wehbring, *Alternative Residential Facilities for the Mentally Retarded and Mentally Ill*, 14 (no date) (mimeographed).



dependent ghetto”<sup>34</sup> also known as a *de facto* social service district.

According to one leading planning study, “While it is difficult to precisely identify or explain, ‘saturation’ is the point at which a community’s existing social structure is unable to properly support additional residential care facilities [community residences]. Overconcentration is not a constant but varies according to a community’s population density, socio-economic level, quantity and quality of municipal services and other characteristics.”<sup>35</sup>

*This research strongly suggests that there is a legitimate government interest to assure that community residences do not concentrate.* The research on the impact of community residences makes it abundantly clear that concentrations of community residences can generate adverse impacts on both the surrounding neighborhood and on the ability of the community residences to facilitate the normalization of their residents, which is, after all, their *raison d’être*.

**Limitations on number of unrelated residents.** The majority view of the courts, both before and after enactment of the Fair Housing Amendments Act of 1988, is that community residences constitute a functional family and that zoning should treat the occupants of a community residence as a “family” even if the community residence does not fit within a jurisdiction’s zoning code’s definition of family.<sup>36</sup> Zoning codes typically tend to allow from three to five unrelated individuals to constitute a “family” or “household,” with four being the sweet spot. Four still allows enough college and post-college roommates, assuming the dwelling unit is large enough under the code provisions a city may have to prevent overcrowding.

At first glance, that approach appears to fly in the face of a 1974 Supreme Court ruling that allows cities and counties to limit the number of unrelated people that constitutes a “family” or “household.” Zoning ordinances typically define “family” or “household” as (1) any number of related individuals and (2) a limited number of unrelated persons living together as a single housekeeping unit. As explained in the paragraphs that follow, the U.S. Supreme Court ruled that a local zoning code’s definition of “family” can place this cap on the number of unrelated persons living together as a single housekeeping unit.<sup>37</sup> *But the Fair Housing Act requires jurisdictions to make a **reasonable accommodation** for community residences for people with disabilities by making narrow ex-*

---

34. Jennifer Wolch, “Residential Location of the Service-Dependent Poor,” 70 *Annals of the Association of American Geographers*, at 330, 332 (Sept. 1982).

35. S. Hettinger, *A Place They Call Home: Planning for Residential Care Facilities* 43 (Westchester County Department of Planning 1983). See also D. Lauber and F. Bangs, Jr., *Zoning for Family and Group Care Facilities* at 25. Establishing a conditional use permit for community residences for people with disabilities to locate within the spacing distance allows for this case-by-case review.

36. The principles discussed here are applicable to community residences, but *not* to recovery communities, a land use that does *not* emulate a family and is essentially a mini-institution.

37. *Belle Terre v. Borass*, 416 U.S. 1 (1974).

*ceptions to these caps on the number of unrelated people living together that qualify as a “family” or “household.”*<sup>38</sup>

In *Belle Terre*, the U.S. Supreme Court upheld the resort community’s zoning definition of “family” that permitted no more than two unrelated persons to live together. It’s hard to quarrel with the Court’s concern that the specter of “boarding housing, fraternity houses, and the like” would pose a threat to establishing a “quiet place where yards are wide, people few, and motor vehicles restricted.... These are legitimate guidelines in a land–use project addressed to family needs....”<sup>39</sup> Unlike the six sociology students who rented a house during summer vacation in Belle Terre, Long Island, a community residence emulates a family, is not a home for transients, and is very much the antithesis of an institution. In fact, community residences for people with disabilities foster the same goals that zoning districts and the U.S. Supreme Court attribute to single–family zoning.

One of the first community residence court decisions to distinguish *Belle Terre* clearly explained the difference between community residences and other group living arrangements like boarding houses. In *City of White Plains v. Ferraioli*,<sup>40</sup> New York’s highest court refused to enforce the city’s definition of “family” against a community residence for abandoned and neglected children. The city’s definition limited occupancy of single–family dwellings to related individuals. The court found that it “is significant that the group home is structured as a single housekeeping unit and is, to all outward appearances, a relatively normal, stable, and permanent family unit....”<sup>41</sup>

Moreover, the court found that:

“The group home is not, for purposes of a zoning ordinance, a temporary living arrangement as would be a group of college students sharing a house and commuting to a nearby school. (c.f., *Village of Belle Terre v. Boraas*, [citation omitted]). Every year or so, different college students would come to take the place of those before them. There would be none of the permanency of community that characterizes a residential neighborhood of private homes. Nor is it like the so–called ‘commune’ style of living. *The group home is a permanent arrangement and akin to the traditional family, which also may*

---

38. If a jurisdiction’s zoning doesn’t explicitly or implicitly define “family,” community residences for people with disabilities need to be treated the same as any other group of unrelated people. Similarly, if a definition of “family” does not place a cap on the number of unrelated people that can constitute a family, it needs to treat community residences for people with disabilities the same as all families. For more detail on this legal principle from the case law, see Daniel Lauber, “A Real LULU: Zoning for Group Homes and Halfway Houses Under the Fair Housing Amendments Act of 1988” in *The John Marshall Law Review* (Vol. 29, Winter 1996, No. 2) 369, at 398–399.

39. *Ibid.* at 7–9.

40. 313 N.E.2d 756 (N.Y. 1974).

41. *Ibid.* at 758–759.

*be sundered by death, divorce, or emancipation of the young.... The purpose is to emulate the traditional family and not to introduce a different 'life style.'*"<sup>42</sup>

The New York Court of Appeals explained that the group home does not conflict with the character of the single-family neighborhood that *Belle Terre* sought to protect, "and, indeed, is deliberately designed to conform with it."<sup>43</sup>

In *Moore v. City of East Cleveland*,<sup>44</sup> Justice Stevens favorably cited *White Plains* in his concurring opinion. He specifically referred to the New York Court of Appeals' language:

"Zoning is intended to control types of housing and living and not the genetic or intimate internal family relations of human beings. So long as the group home bears the generic character of a family unit as a *relatively permanent household*, and is not a framework for transients or transient living, it conforms to the purpose of the ordinance."<sup>45</sup>

Justice Stevens' focus on *White Plains* echoes the sentiments of New York Chief Justice Breitel who concluded that "the purpose of the group home is to be quite the contrary of an institution and to be a home like other homes."<sup>46</sup>

Since 1974, the vast majority of state and federal courts have followed the lead of *City of White Plains v. Ferraioli* and treated community residences as "functional families" that should be allowed in single-family zoning districts despite zoning ordinance definitions of "family" that place a cap on the number of unrelated residents in a dwelling unit. In a very real sense, the Fair Housing Amendments Act of 1988 essentially codifies the majority judicial treatment of zoning ordinance definitions with "capped" definitions of "family."

Mesa's *Zoning Ordinance* does *not* directly define family" or "household." Instead the city has used a series of residential use classifications in Chapter 86 of its ordinance to regulate occupancy and community residences.

These include:<sup>47</sup>

**Single Residence.** A dwelling unit designed for occupancy by one household, and located on a separate lot from any other unit (except accessory dwelling units, where permitted). This classification includes individual manufactured housing units and individual recreational vehicles when used as residences in RV parks and subdivisions.

---

42. Ibid. at 758 [citation omitted]. *Emphasis added.*

43. Ibid.

44. 431 U.S. 494 (1977) at 517 n. 9.

45. Ibid. *Emphasis added.*

46. *City of White Plains v. Ferraioli*, 313 N.E. 2d at 758.

47. City of Mesa, Arizona, *Zoning Ordinance*, Chapter 86, §11-86-2.

**Group Residential.** A residential facility of 6 or more unrelated persons providing living facilities, sleeping rooms, and meals, and which shall have a permit issued by the Maricopa County Health Department as a boarding home.

**Boarding House.** A dwelling in which the owner(s) or primary occupant(s) provides 3, 4, or 5 bedrooms as lodging for compensation and in which food may be served to the occupants thereof. The occupancy of 1 or 2 bedrooms for compensation shall not be considered a boarding house, provided not more than 2 guests shall occupy each bedroom. The term shall include group homes, dormitories and similar congregate-living arrangements but shall not include hospitals, nursing homes, hotels, group homes for the handicapped, social service facilities as specified in this Zoning Ordinance, hotels and motels, bed and breakfast establishments or a dwelling occupied by 1 or more individuals living together without supervision as a single housekeeping unit.

**Correctional Transitional Housing Facility (CTHF).** A supervised residential center where individuals who are completing a sentence, reside for a defined period of time for counseling, job placement assistance, and similar services that assist in transitioning from institutional to community living. A CTHF is not exempt from the tax imposed under Mesa City Code §5-10-445. The term shall include any boarding house, dormitory, or apartment building or other dwelling when developed, promoted, advertised, or operated as a CTHF, but shall not include group homes for the handicapped, or any facility providing counseling or other services to individuals who do not reside on the premises. The maximum number of residents is limited to 30.

**Group Home for the Handicapped (GHH).** A dwelling shared as a primary residence by handicapped persons living together as a single housekeeping unit, in which staff persons may provide on-site care, training, or support. Group Homes for the Handicapped shall not include nursing homes, boarding houses, personal care homes, recovery homes, other kinds of group homes, foster homes or homes for the developmentally disabled. GHH or service provided therein shall be licensed and certified, as may be required by the applicable federal, state, or county agency.<sup>48</sup>

**Group Housing.** A residential facility of 6 or more unrelated persons providing living facilities, sleeping rooms, and meals and which shall have a permit issued by the Maricopa County Health Department as a boarding home.

---

48. Also defined in Chapter 64, Definitions of Land Uses, §11-64-4, G. Definitions.

However, “group residential” is also defined in Chapter 64, the form-based section of the zoning code as:

**Group residential.** A residential facility of 6 or more unrelated persons providing living facilities, sleeping rooms, and meals. The term shall include dormitories and similar congregate-living arrangements but shall not include hospitals, nursing homes, hotels and motels, bed and breakfast establishments, group homes for the handicapped, social service facilities as specified in this Zoning Ordinance, correctional transitional housing facilities as specified in this Zoning Ordinance, prisons or jails, or a dwelling occupied by 1 or more individuals living together without supervision as a single housekeeping unit.<sup>49</sup>

The ordinance that will be based on this study will update these definitions and replace some of them.

Instead of using the term “group residential” to establish a cap on the number of unrelated individuals that can dwell together as a single housekeeping unit, the ordinance that will be based on this study will recommend replacing this definition with a definition of “family” or “household” that establishes a cap on the number of unrelated individuals that can dwell together as a single housekeeping unit.

**The U.S. Supreme Court brought this point home in its 1995 decision *City of Edmonds v. Oxford House*.**<sup>50</sup> The Court ruled that housing codes that “ordinarily apply uniformly to all residents of all dwelling units ... to protect health and safety by preventing dwelling overcrowding” are legal.<sup>51</sup> Zoning ordinance restrictions that focus on the “composition of households rather than on the total number of occupants living quarters can contain” are subject to the Fair Housing Act.<sup>52</sup>

**Protecting the residents.** People with disabilities who live in community residences and recovery communities constitute a vulnerable population that needs protection from possible abuse and exploitation. Community residences and recovery communities for these vulnerable individuals need to be regulated to assure that their residents receive adequate care and supervision. Licensing and certification which are done at the state level in Arizona are the regulatory vehicles used to assure adequate care and supervision.<sup>53</sup>

---

49. Mesa, Arizona, *Zoning Ordinance*, Chapter 64, Definitions of Land Uses, §11-64-4, G. Definitions.

50. 514 U.S. 725, 115 S.Ct. 1776, 131 L.Ed.2d 801 (1995).

51. *Ibid.* at 1781[emphasis added]. See the discussion of minimum floor area requirements beginning on page 18.

52. *Ibid.* at 1782.

53. Any local or state licensing must be consistent with the Fair Housing Act. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) 13.



Therefore, there is a legitimate government interest in requiring that the operator of a community residence or recovery community be licensed by the state or a designated entity in order to be allowed as of right as a permitted use under local zoning. If state licensing does not exist for a particular type of community residence or recovery community, the residence can meet the certification of an appropriate state or national certifying agency, if one exists, or is otherwise sanctioned by the federal or state government — if the governing jurisdiction so chooses.<sup>54</sup>

In April 2018, the State of Arizona adopted Senate Bill 1465 which directed the Arizona Department of Health Services to establish state licensing of sober living homes. The new rules governing sober home licensing went into effect on July 1, 2019.<sup>55</sup> *There does not appear to be anything in state law that would prohibit an Arizona municipality from requiring sober homes housing more than four unrelated people and recovery communities not subject to the state's licensing requirement to obtain certification from the Arizona Recovery Housing Association.*

In addition, as the therapeutic use of community residences expands to additional types of disabilities, there will be instances where there is no licensing or certification available for a specific type of community residence. For example, community residences for young women with eating disorders (legally, a disability) are being established around the nation. The author of this study, who has worked on the zoning for such a community residence, has yet to encounter any state that offers a license for such homes. In this situation, the heightened scrutiny of a conditional use permit is warranted so a city can determine whether the operator of the proposed community residence will provide the protections to its residents that licensing or certification typically provides.

**Impacts of community residences.** The impacts of community residences have been studied more than those of any other small land use. Over 50 statistically-valid studies have found that *licensed or certified* community residences *not clustered* within a few blocks of each other do not generate adverse impacts on the surrounding neighborhood. They do not affect property values, nor the ability to sell even the houses adjacent to them. They do not affect neighborhood safety nor neighborhood character — *as long as they are licensed or*

- 
54. For example, the U.S. Congress has recognized and sanctioned the recovery residences that operate under the auspices of Oxford House. Oxford House maintains its own procedures and staff to inspect and monitor individual Oxford Houses to enforce the organization's strict charter and standards designed to protect the residents of each Oxford House and foster community integration and positive relations with its neighbors. An Oxford House can lose its authorization if found in violation of the Oxford House Charter. The charter and inspections are the functional equivalent of licensing or certification.
55. The final rules amended Title 9, Health Services; Chapter 12, Department of Health Services; Sober Living Homes; Articles 1 and 2. As of this writing, the final rules are available online at: <https://www.azdhs.gov/documents/director/administrative-counsel-rules/rules/rulemaking/sober-living/nfr-as-filed.pdf> and was in the *Arizona Administrative Register*, Vol. 25, Issue 6 (Feb. 8, 2019) 289–302 published by the Office of the Secretary of State.

certified and not clustered within a few blocks of one another. They do not create excessive demand on public utilities, sewer systems, water supply, or street capacity. They do not produce any more noise than a conventional family of the same size. All told, *licensed or certified*, group homes, recovery residences, and small halfway houses that are not concentrated have consistently been found to be good neighbors just like biological families.

Clustering community residences only undermines their ability to achieve their core 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 lots 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 who, under the theory and practice that provide the foundation for the community residence concept, are to serve as role models.

Appendix A is an annotated bibliography of representative studies. The evidence is so overwhelming that few, if any, studies have been conducted in recent years since the issue is well settled: *Community residences that are licensed or certified and not clustered or concentrated, do not generate adverse impacts on the surrounding community.*

## Concentrations and *de facto* social service districts

As explained earlier, Mesa’s City Code requires community residences and recovery communities to register with the city. During the past 15 or more years, 355 are known to have registered and it is believed that there is an unknown number of community residences and recovery communities that have never registered. It is believed that during these 15 or so years, an unknown number of the registered and unregistered community residences and recovery communities have closed or moved *without* notifying the city.

Solely for this study, the city has been divided into four large study areas labeled 1 through 4 (see Figure 2 below). For purposes of the analysis that follows, each study area is divided into lettered subareas. These maps show the relative locations of where the 355 known community residences and recovery communities are or have been located in Mesa over the past 15 or more years. Keep in mind that this is an historical record that simply shows the areas of the city that operators have favored over time and where, if all of the homes were still operating, would reflect a cluster or concentration.

As explained in this report, clustering or concentrations in a neighborhood threaten the ability of the people with disabilities living in community residences and recovery communities to achieve the normalization, community integration, and use of non-disabled neighbors as role models that are among the essential core components of community residences and, to a somewhat similar extent, recovery communities.

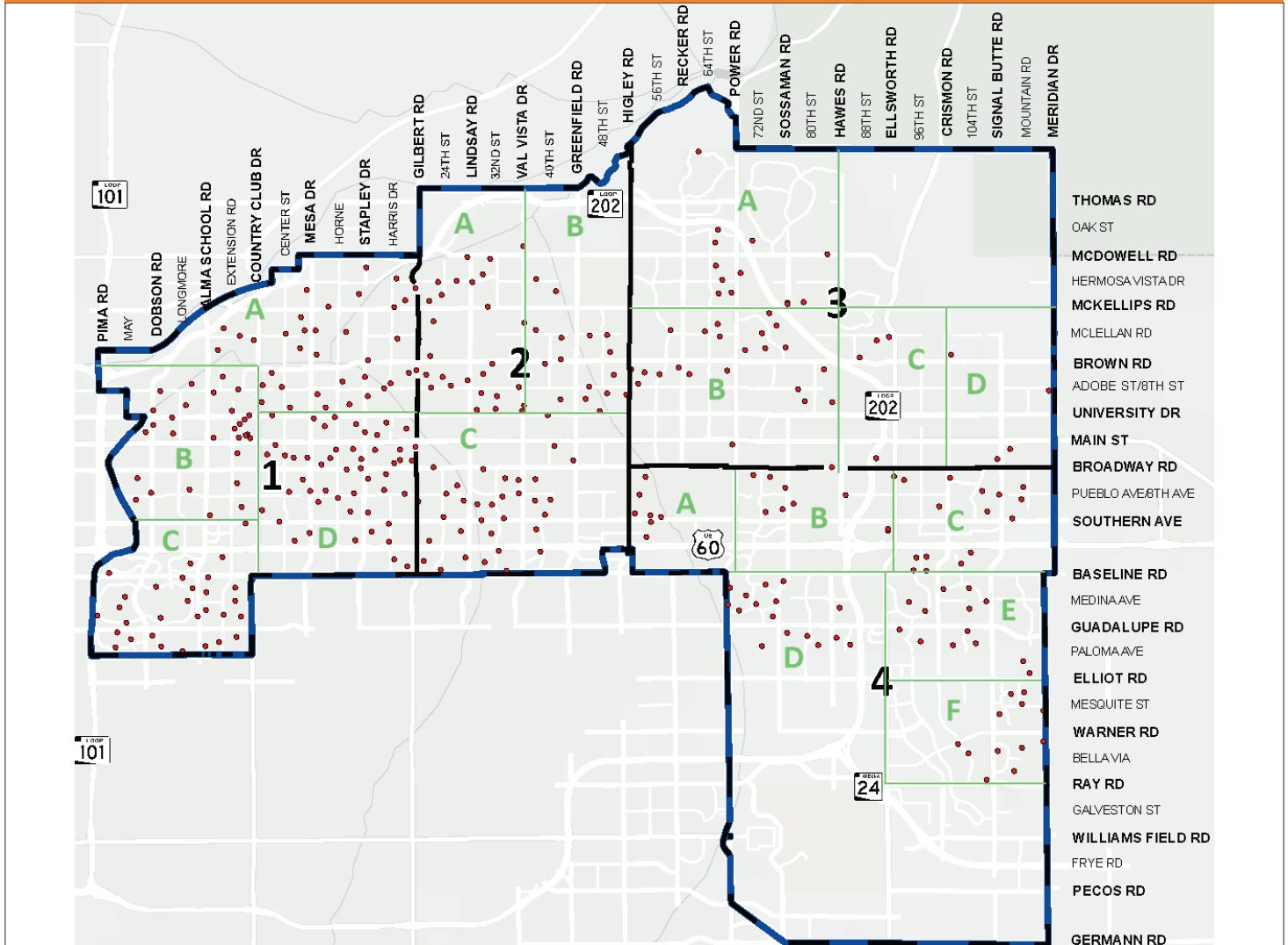


Please remember that the following map shows the relative locations — not the precise locations — of community residences and recovery communities that are known to have existed at some time during the past 15 or more years.

This map includes group homes for the elderly and for people with developmental disabilities, mental illness, or physical disabilities, as well as sober living homes and possibly recovery communities. This number, however, is incomplete because it does *not* include any unlicensed and unregistered community residences, largely believed to be sober living homes, the number of which is unknown. Keep in mind that this map is an historical record. Some residences may have ceased operations or relocated within or outside the City of Mesa during this time period.

Some of the sites may be “drug and alcohol rehabilitation facilities.”

**Figure 2: Relative Locations of Community Residences and Recovery Communities in Mesa Over 15 Years**



See pages 25–26 for a detailed explanation of the sites shown on this map. This is an historical record with locations known to have existed at some point in time over the past 15 years. Locations may be active or inactive as of 2020.

Source: City of Mesa, Development Services, October 2020.

## Study Area 1

While community residences and/or recovery communities have been pretty scattered over the years in much of Study Area 1, a significant proportion of them are located within two blocks of one another, in small clusters, or in concentrations. In Subarea 1–A, for example, there is a community residence or recovery community just three lots from a drug and/or alcohol rehabilitation facility. There are or have been two more sites about two blocks away, one directly west near Country Club Road and the other northwest near Brown Road. Separated by Mesa Drive, there are two community residences and/or recovery communities within a block of each other with a third just a block and a half west.

Just south in Subarea 1–B, eight sites have been concentrated west of Country Club Drive with four of them less than a block apart and two located within two lots of each other with two more within a block. Just south of this cluster are six adjacent lots devoted to what may be or have been a recovery community. This *may* constitute a concentration of community residences and/or recovery communities that extends into Subarea 1–D.

At least ten of the community residences and/or recovery communities in Subarea 1–D are or have been located within a block or block and a half of another one. A drug and/or alcohol rehabilitation facility is or was adjacent to a community residence or recovery community. There have been four drug and/or alcohol rehabilitation facilities in Subarea 1–D plus one nearby in each of Subarea 1–B and in Subarea 2–A.

While many community residences and recovery communities have been pretty well scattered in Subarea 1–C during the past 15 or so years, there has been a drug and/or alcohol rehabilitation facility just three lots north of one community residence and seven lots east of another community residence. Nearly all of the 26 other community residences and/or recovery communities are or have been located within two or three blocks of another one.

## Study Area 2

During the past 15+ years, two concentrations of community residences and/or recovery communities *may* have been developing in Subarea 2–A. North of East McKellips Road, more than half of the community residences and/or recovery communities are or have been located within two or three blocks of another one. A second concentration *may* be developing south of East Brown Road where all but two of the community residences and/or recovery communities are located within one to three blocks of another one. Just seven lots separate the sites of two community residences and/or recovery communities.

Nearly every community residence or recovery community in Subarea 2–B to the east has been located or is located within two or three blocks of another one. Two community residences and/or recovery communities near Adobe Street are separated by just three lots. In the southwest corner of Subarea 2–B has been a pair of sites on large lot sites separated by just two lots.

The same pattern of community residences and/or recovery communities having been located within one to three blocks of another one holds true in most of Subarea 2–C.

## Study Area 3

Over the past 15 and more years, there have been just three widely separated community residences and/or recovery communities east of the 202 Red Mountain Freeway in Subarea 3–A.

Eight community residences and/or recovery communities are or have been located in Subarea 3–A. Seven of them are or have been set south and west of the freeway. Two of these are or have been located about a block apart.

Over the past 15 years, the southwest corner of Subarea 3–B has been home to three drug and/or alcohol rehabilitation facilities with one community residence or recovery community two very short blocks from one of the rehabilitation facilities. Two of the drug and/or alcohol rehabilitation facilities are or have been separated by a single large lot.

Each of the nine community residences and/or recovery communities north of East Brown Road is or has been located within one to three blocks of another one. It is possible that a nascent concentration *could* be developing.

Just four community residences and/or recovery communities have graced Subarea 3–C during the past 15 or so years. Three are in the northwest corner of the subarea with two located two short blocks from each other.

In the past 15 year or so, four largely scattered community residences and/or recovery communities have located in the largely undeveloped Subarea 3–D. Two of these, however, are a little more than two blocks apart.

Nearly all of the unnumbered northeast quadrant of Study Area 3 is outside Mesa and beyond the scope of this study. During the past 15 years, no community residences or recovery communities have been located in the small area of Mesa that is within this quadrant which has not been assigned a sub-area on the map.

## Study Area 4

There is a precipitous drop in the number community residences and recovery communities in the newer portions of Mesa like Study Area 4.

Seven community residences or recovery communities have located in the center of Subarea 4–A over the past 15 years. Four are or have been located within two blocks of each other east of Highley Road and around Southern Avenue. Another is or has been located about three blocks south of that group. The other two have been scattered.

In Subarea 4–B, two community residences and/or recovery communities are sited within three lots of each other with no other ones remotely close to them. However there are three north of East Southern Avenue each of which is or has been within two blocks of another one. A fourth has been sited three blocks north. Another pair are less than two blocks apart.

Just two of the 15 community residences and/or recovery communities have not been not close to another one in Subarea 4–C. The others are or have been within two to three blocks of another site during the past 15 years. Two of these have been separated by less than a block and two of them by two blocks.

Of the 15 community residences and/or recovery communities that are or have been located in Subarea 4–D, only two are or have been more than two or three blocks from another one.

None of the 13 community residences and/or recovery communities in Subarea 4–E is or has been located more than two or three blocks from another one.

Of the dozen community residences and/or recovery communities that are or have been located in Subarea 4–F five have been located within two or three blocks of another community residence or recovery community.

## Observations

Not surprisingly, most of Mesa’s community residences and/or recovery communities are located in western half of Mesa where the housing is older and less expensive. In all four study areas, there is a consistent pattern of community residences and/or recovery communities locating within one to three blocks of another one. There is at least one possible nascent concentration developing in each of Study Areas 1, 2, and 3.

However, so far no *de facto* social service districts appear to have existed during the past 15 or so years. Keep in mind, though, that these maps are based on incomplete historical data. Some of the community residences or recovery communities may no longer exist and it is likely that there are community residences and/or recovery communities that have never registered with the city and, therefore, could not be shown the map.

Without adequate zoning safeguards, these possible emerging concentrations can grow more intense and expand geographically to become *de facto* social service districts that alter the character of the residential neighborhoods in which they are located.

*Mesa, however, is well positioned to prevent the sorts of concentrations that have led to de facto social service districts in other Arizona and Florida jurisdictions.* If the zoning recommended in this report is adopted, it will very likely prevent serious clusters or concentrations from arising. Implementing the recommended zoning changes will help enable people with disabilities who live in community residences and recovery communities to achieve the normalization, community integration, and use of non-disabled neighbors as role models that are among the essential core goals of community residences and, to a somewhat similar extent, recovery communities.

## Recommended zoning approach

The 1988 amendments to the nation’s Fair Housing Act require all government jurisdictions to make a “reasonable accommodation” in their zoning codes and other rules and regulations to enable group homes and other community residences for people with disabilities — such as sober living homes — to locate in residential districts which are essential to them succeeding. The act also requires allowing recovery communities in the appropriate residential zoning districts. The zoning ordinance amendments that will be proposed for Mesa formalize Mesa’s reasonable accommodation process.

As explained below and earlier in this study, there are two types of community residences: “family community residences” and “transitional community residences.” A third community-based congregate living arrangement for people in recovery is called a “recovery community.” The differences in the nature

and performance of community residences and recovery communities warrant different treatments in a city's zoning code.

The legislative history of the Fair Housing Amendments Act of 1988 makes it clear that jurisdictions *cannot* require a conditional use permit for *family* community residences for people with disabilities — a relatively *long-term* living arrangement as explained in this study — to locate in residential districts. It does *not*, however, prohibit requiring a conditional use permit for *transitional* community residences — a relatively *short-term* living arrangement more akin to multifamily rental housing as explained in this study — to locate in single-family districts. It does not prohibit excluding recovery communities, which are mini-institutions, from single-family districts. Nor does the Fair Housing Amendments Act of 1988 require that a city allow community residences for persons who do *not* have disabilities in residential districts.

## When a “community residence” is legally a “family”

Like any other dwelling, when a community residence — whether it be “family” or “transitional” — fits within the cap on the number of unrelated persons the zoning definition of “family” or “household,” it must be allowed as of right in *all* residential districts the same as any other family or household.<sup>56</sup>

The case law is very clear: No additional zoning restrictions can be imposed on a community residence for people with disabilities when it fits within the cap on the number of unrelated individuals in the local zoning definition of “family.” And when local zoning does not directly or indirectly define “family” or allows any number of unrelated people to dwell together, the zoning ordinance *cannot* require licensing (or certification) or a spacing distance between community residences for unrelated individuals with disabilities.<sup>57</sup>

- 
56. The case law is clear that when a zoning code does not directly or indirectly define “family” or “household” or allows any number of unrelated people to constitute a family, it *cannot* impose any additional zoning requirements on community residences for people with disabilities. For zoning purposes, they are families like all other families.
57. When it comes to community residences for people with disabilities, there is a major distinction between what *local zoning* and *state licensing* (or certification) can regulate. The court decisions have made it abundantly clear that *local* city and county land-use regulations must treat a community residence for people with disabilities exactly the same as any other family *when* the number of occupants of community residence falls within the cap on unrelateds in the local zoning definition of “family.” So when a city’s zoning ordinance includes up to four unrelated individuals living as a single-housekeeping unit in its zoning definition of “family,” the *city cannot* require a community residence considered to be a family to be licensed (or certified) or to locate outside a spacing distance. It would be discriminatory on its face to treat it differently than other families due to their disabilities. But, in this example, a community residence that has more than four unrelated occupants is not classified as a family because it *exceeds* the number (four) of unrelated individuals that constitute a family under zoning. A local zoning ordinance certainly can require proof of such licensing (or certification) for community residences for people with disabilities that exceed the cap on unrelateds in a city’s zoning definition of “family.”



Consequently, cities need a definition of “family” (or “household”) in its zoning code that establishes a cap on the number of unrelated people living as a single housekeeping unit. Any community residence for individuals with disabilities that houses no more unrelated people than the definition of “family” allows is a family like any other and must be treated the same as any family in the zoning ordinance. So, when the definition of “family” allows up to four unrelated people, then a community residence for as many as four unrelated people with disabilities must be treated the same as any other family and the jurisdiction cannot require a license or certification or impose a spacing distance between such a home and any other community residence or recovery community.

Any community residence for people with disabilities that fits within this cap of four must be treated as a “family” and such a home *cannot* be used to *calculate* spacing distances required by *local zoning*, as explained in the sidebar on page 34.

But when a proposed community residence would house more than the maximum of four unrelated individuals in this example, zoning must make a “reasonable accommodation” to enable these larger homes to locate in the residential districts in which they need to locate to achieve their purpose. Making this reasonable accommodation is when a zoning code can establish a spacing distance and licensing/certification requirement for community residences (and recovery communities) *allowed as permitted uses*. A city must establish a case-by-case review process as a backup when these two requirements are not met. In Mesa, this backup process would be a conditional use permit.

---

---

**The consequences of capping unrelateds at six.** A cap of six unrelated people would be among the highest caps the author of this study has seen in decades of work on this issue. This high a cap would prevent the city’s zoning from regulating community residences housing as many as six people with disabilities — allowing them to exist without any of the protections licensing and certification provide and enabling them to cluster together and create *de facto* social service districts. As this report explains, preventing clusters and concentrations of community residences for people with disabilities actually does serve legitimate government interests. *It is recommended that the City of Mesa adopt a zoning ordinance definition of “family” or “household” that allows no more than three or four unrelated people living as a single housekeeping unit to constitute a “family” or a “household.”*

---

---

---

However, every *state* has the legal power to require all community residences, including sober living homes, with *any* number of residents to obtain a state license or certification. Licensing and certification are intended to protect the occupants of community residences of any size and weed out the most incompetent operators. A state can use its licensing or certification statute or rules to establish a rational spacing distance between community residences of *any* number of residents — even those that fit within a jurisdiction’s definition of “family.” This is a nearly universal practice by states across the nation. Enforcement responsibility rests with the state agency charged with issuing licenses.



## General principles for making a zoning reasonable accommodation

Taken as a whole, the case law suggests that any reasonable accommodation must meet these three tests:

- 🔴 The proposed zoning restriction must be *intended* to achieve a legitimate government purpose.
- 🟠 The proposed zoning restriction must *actually achieve* that legitimate government purpose.
- 🟠 The proposed zoning restriction must be the *least drastic means necessary to achieve* that legitimate government purpose.

In *Bangerter v. Orem City Corporation*, the federal Court of Appeals said the same thing a bit differently, “Restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefits to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them.”<sup>58</sup>

But the nation’s Fair Housing Act is not the only law that affects how cities and counties in Arizona can regulate community residences for people with disabilities. The State of Arizona has adopted several statutes that restrict local zoning of community residences for people with developmental disabilities that the state licenses.<sup>59</sup>

The proposed zoning amendments take into account both federal fair housing law and the legal provisions in the Arizona statutes that restrict local zoning.

The proposed zoning amendments seek to enable community residences to locate in all appropriate residential zoning districts through the least drastic regulation needed to accomplish the legitimate government interests of preventing clustering and concentrations (which undermine the ability of community residences to accomplish their purposes and function properly, and which alter the residential character of a neighborhood) and of protecting the residents of the community residences from improper or incompetent care and from abuse. They are narrowly tailored to the needs of the residents with disabilities to provide greater benefits than any burden that might be placed upon them. And they constitute the requisite legitimate government purpose for regulating community residences for people with disabilities.<sup>60</sup>

Key to establishing a zoning approach in compliance with the Fair Housing Act is classifying community residences on the basis of functionality rather than on the number of people living in the community residence — at least as much as the *legal* provisions of Arizona’s statutes allow.

---

58. 46 F.3d 1491 (10th Cir. 1995) 1504.

59. Ariz. Rev. Stat. §36–581, 582 (2017). This statute does not cover community residences for people with any other type of disability.

60. The proposed zoning provisions for recovery communities seek to achieve the same goals.

*Community residences for people with disabilities (both family and transitional) that house no more than the suggested definition of “family” with a cap of four unrelated residents in a single housekeeping unit would be treated the same as any other family and would not be included when calculating spacing distances between community residences for people with disabilities and recovery communities.*

*If Mesa implements the recommendation of this study to adopt a definition of “family” to allow up to four unrelated individuals living as a single housekeeping unit to constitute a “family,” then community residences housing more than four individuals can be regulated through the zoning approach proffered in this study.*

---

---

### When to apply a spacing distance

It is critical to remember that spacing distances are applied and measured *only* between community residences and/or recovery communities. As explained beginning on page 17, a *spacing distance is not applied to nor measured from a community residence that fits within the city’s cap on unrelated individuals that can constitute a “family” in its zoning code.* It is classified as a “family” under zoning and must be treated as a “family.” To do otherwise would constitute housing discrimination on its face.

If Mesa implements the recommendation of this report to adopt a definition of “family” to allow up to four unrelated people living as a single housekeeping unit to constitute a “family,” then city zoning provisions that require proof of licensing or certification and establish spacing distances would apply to community residences of five or more occupants (as well as recovery communities).

The spacing distance kicks in only when a “community residence” or a recovery community is proposed. A spacing distance is measured from the closest existing community residence and/or from the closest existing recovery community according to the measuring rules Mesa adopts.<sup>61</sup>

---

---

## Community residences

As emphasized throughout this report, emulating a biological family is an essential core characteristic of every community residence. It is difficult to imagine how more than ten to 12 individuals can successfully emulate a biological family. (For the sake of simplicity, this report will use ten as the maximum number of occupants in a community residence allowed as of right.) Once the number of occupants exceeds ten, the home tends to take on the characteristics of a mini-institution rather than a family or a residential use. Mesa should continue to allow up to ten occupants as of right in community residences, while al-

---

61. Current measuring rules are in Sec. 11–2–3 D of the city’s zoning code.

lowing for a case-by-case reasonable accommodation process — which can be handled through a conditional use permit or an administrative process — for community residences proposed to house more than ten people to demonstrate (1) they can emulate a family and (2) need more than ten residents to assure therapeutic and/or financial viability.

## Zoning guidelines for “family community residences”

Unlike the transitional community residences discussed below, tenancy in family community residences is relatively permanent. There is no limit on how long people can live in them. In terms of stability, tenancy, and functionality, family community residences for people with disabilities are more akin to the traditional owner-occupied single-family home than are transitional community residences for people with disabilities.

To make this reasonable accommodation for more than four people with disabilities who wish to live in a community residence, the proposed zoning ordinance amendments will make family community residences for five to ten people with disabilities a permitted use in all residential zoning districts where residential uses are currently allowed, subject to two objective, nondiscretionary administrative criteria:

- ♦ The specific community residence or its operator must receive authorization to operate the proposed family community residence by receiving the license that the State of Arizona requires, obtaining certification from the Arizona Recovery Housing Association, or a self-imposed set of operational criteria that are the functional equivalent of certification or licensing such as Oxford House;<sup>62</sup> and
- ♦ The proposed family community residence is not located within a rationally-based distance from an existing community residence or recovery community as measured from the nearest lot lines.

When a proposed family community residence does not meet both standards, the operator can apply for a case-by-case evaluation through a Conditional use permit as explained beginning on page 42.

---

62. Unstructured sober living homes (and recovery communities) are not currently subject to state licensing in Arizona. A city or county zoning ordinance can require unstructured sober living homes — self-governing homes without staff — that exceed the number of unrelated persons that constitute a “family” to obtain certification from the Arizona Recovery Housing Association, functionally the equivalent of licensing. There appears to be no legal reason that would prohibit a local jurisdiction from implementing this requirement. As noted earlier in this study, Oxford House, which is recognized by Congress, maintains its own standards and procedures under the Oxford House Charter that must be granted to an Oxford House to operate. The requirements of the Oxford House Charter are pretty comparable to the standards and procedures of licensing laws in jurisdictions in many states. Consequently, Oxford Houses, as well as sober living homes certified by the Arizona Recovery Housing Association, would meet this first criterion.

## Zoning guidelines for “transitional community residences”

Residency in a “transitional community residence” is more transitory than in a “family community residence” because transitional community residences either impose a maximum time limit on how long people can live in them or actually house people for a few months or weeks.<sup>63</sup> Tenancy is measured in months or weeks, not years. This key characteristic makes a transitional community residence more akin to multiple-family residential uses with a higher turnover rate typical of rentals than single-family dwellings with a lower turnover rate typical of single-family ownership housing. Even though multiple-family uses are not allowed in single-family districts, the Fair Housing Act requires every city and county to make a “reasonable accommodation” for transitional community residences for people with disabilities. This reasonable accommodation can be accomplished via the heightened scrutiny of a conditional use permit when an operator wishes to locate a transitional community residence in a single-family district.

However, in multiple-family districts, a transitional community residence for five to ten people with disabilities should be allowed as a permitted use subject to two objective, nondiscretionary administrative criteria:

- The specific community residence or its operator must receive authorization to operate the proposed transitional community residence by receiving the license that the State of Arizona requires, obtaining certification from the Arizona Recovery Housing Association, or a self-imposed set of operational criteria that are the functional equivalent of certification or licensing such as Oxford House; and
- The proposed transitional community residence is not located within a rationally-based distance from an existing community residence or recovery community as measured from the nearest lot lines.

When a proposed family community residence does not meet both standards, the operator can apply for a case-by-case evaluation through a conditional use permit as explained beginning on page 42.

---

63. Time limits typically range from 30 days to 90 days, and as long as six, nine, or 12 months, depending on the nature of the specific transitional community residence and the population it serves. With no time limit, residents of family community residences can live in them for many years, even decades.

## Recovery communities

Community residences are not the only housing option available for people in recovery from drug and/or alcohol addiction or abuse. “Recovery communities” offer a more intensive living arrangement with more people than can emulate a family that is in a more segregated, institutional-like atmosphere than a community residence. Due to their fundamental differences, recovery communities warrant somewhat different zoning treatment than community residences as explained below,<sup>64</sup>

A recovery community consists of multiple dwelling units in a multi-family structure (or structures) that are *not* available to the general public for rent or occupancy.<sup>65</sup> A recovery community provides a drug-free and alcohol-free living arrangement for people in recovery from drug and/or alcohol addiction. *But, unlike a community residence, a recovery community does not emulate a biological family.* As explained below, a recovery community is a different land use than a community residence and it warrants a different zoning treatment.

Unlike a community residence with a maximum of roughly ten occupants whose essence is emulating a biological family, a recovery community can consist of dozens and even scores of people in recovery making it more akin to a mini-institution in nature and the number of occupants. The U.S. Department of Justice and Department of Housing and Urban Development have jointly noted that the U.S. Supreme Court’s decision in *Olmstead v. L.C.*:<sup>66</sup>

...ruled that the Americans With Disabilities Act (ADA) prohibits the unjustified segregation of persons with disabilities in institutional settings where necessary services could reasonably be provided in integrated, community-based settings. *An integrated setting is one that enables individuals with disabilities to live and interact with individuals without disabilities to the fullest extent possible.* By contrast, a segregated setting includes congregate settings populated exclusively or primarily by individuals with disabilities. Although *Olmstead* did not interpret the Fair Housing Act, the objectives of the Fair Housing Act and the ADA, as interpreted in *Olmstead*, are consistent.<sup>67</sup> [Emphasis added]

As will be explained on the following pages, a recovery community constitutes a relatively segregated setting that does not facilitate interaction with

---

64. It is conceivable that recovery communities *could* someday be added to the continuum of housing options for people with other addictions such as gambling. However, since that is pure speculation at this point in time, this analysis is limited to the recovery communities that actually exist today for people in recovery from drug and/or alcohol addiction.

65. A recovery community can also be established in a series of adjacent attached or detached single-family structures under the same operator.

66. 527 U.S. 581 (1999).

67. Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, 11 (Nov. 10, 2016).

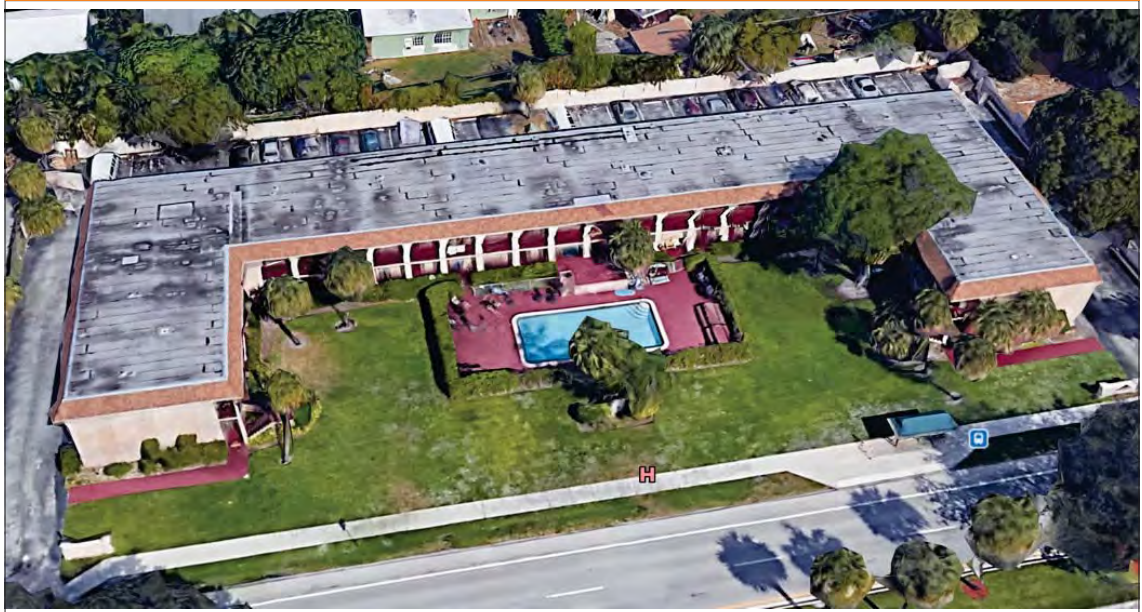


nondisabled people in the surrounding neighborhood — quite contrary to the core nature of community residences where interaction with neighbors without disabilities is a fundamental characteristic.

Some housing providers have established recovery communities in multi-family buildings in Arizona and elsewhere. Some have been located in multi-family buildings where the operators place several individuals in each apartment. Mesa staff report that during the past 15 or more years there may have been as many as 20 recovery communities in the city largely in four-plexes in west Mesa.<sup>68</sup> To maintain their anonymity, no photos of them are included in this report. Figures 3 and 4 do show recovery communities from elsewhere including one of the most intense recovery communities our research has seen which is shown in Figure 4 below.

The reality, however, is that *these are functionally segregated mini-institutions that do not emulate a family or foster integration into the surrounding community like a community residence does.*

**Figure 3: 84 Unit Recovery Community**



This recovery community which is *not* located in Mesa, consists of 84 apartments.

Operators of recovery communities are known to move residents from one apartment to another — unlike how a family or roommates behave. This sort of arrangement certainly does *not* constitute a community residence in any sense of the term — remember that the essence of a community residence is to emulate a biological family. The segregated housing a recovery community creates runs counter to the core purpose of a community residence: to achieve normalization

---

68. Email from Lisa Davis, AICP, Planner II, City of Mesa Development Services, to Daniel Lauber (June 13, 2019) (on file with author).



and community integration with the non-disabled neighbors as role models.

Few jurisdictions have adjusted their zoning provisions to account for recovery communities. In the absence of zoning provisions for recovery communities, some providers have skirted zoning provisions intended to prevent adverse concentrations by misusing the cap on the number of unrelated individuals in the local zoning code's definition of "family." In these instances, when a city has a cap of four unrelateds in its definition of "family," the operator places four people in recovery in each unit in an apartment building and sometimes several nearby buildings.

The people in recovery, however, function as a single large "community," *not* as individual functional families. Concentrations and clusters of these mini-institutions can and do alter the residential nature of the surrounding community, likely even more than a concentration of nursing homes would because the occupants of recovery communities are ambulatory and frequently maintain a motor vehicle on the premises.

Should recovery communities and community residences ever cluster or concentrate in Mesa, the situation would be very similar to the circumstances in other jurisdictions where the courts have concluded that an institutional atmosphere was recreated. In *Larkin v. State of Michigan Department of Social Services*, the Sixth Circuit Federal Court of Appeals arrived at this conclusion when it referenced the decision in *Familystyle*. In the *Familystyle* case, the operator sought to increase the number of community residences on one and a half blocks from 21 to 24 and the number of people with mental illness housed in them from 119 to 130. Referring to the federal district and appellate court decisions in *Familystyle*, the *Larkin* court noted, "The courts were concerned that the plaintiffs were simply recreating an institutionalized setting in the community, rather than deinstitutionalizing the disabled."<sup>69</sup>

That is what has been happening in many Arizona cities and in many southeast Florida jurisdictions like Pompano Beach, Delray Beach, and Palm Beach County. In fact, the density of these mini-institutions has often been greater than in the *Familystyle* case. The operators have recreated an institutional setting in the midst of a residential district. These mini-institutions not only interfere with the core goals of normalization and community integration, but also alter the character of the neighborhood and the city's zoning scheme.

As noted earlier, a key *raison d'être* for community residences locating in residential zoning districts has long been that the neighbors without disabilities living independently serve as role models for the people with disabilities. Consequently, this essential rationale for community residences expects the occupants of the community residences to interact with their neighbors. Filling apartment buildings with people in recovery is hardly conducive to achieving these fundamental goals. Instead the occupants of the recovery community will

---

69. *Larkin v. State of Michigan Department of Social Services*, 89 F.3d 285 6th Cir. (1996). *See also Familystyle of St. Paul, Inc. v. City of St. Paul*, 728 F.Supp. 1396 (D. Minn. 1990), *aff'd*, 923 F.2d 91 (8th Cir. 1991).

almost certainly interact nearly exclusively with the other people in recovery rather than with the “clean and sober” people in the surrounding neighborhood.

**Figure 4: Recovery Community in the Extreme**



This recovery community in Pompano Beach, Florida consists of the four buildings with the dark roofs in the center of this photo from Google Earth. Each building is occupied by 24 people in recovery, for a total of 96 people in 16 apartment units.

Introducing multiple mini-institutions such as these can alter and has changed the residential character of the surrounding neighborhood. In addition, there is no evidence that such arrangements do not affect property values, property turnover rates, or neighborhood safety. The studies of the impacts of community residences examined actual community residences that emulate a family, not these mini-institutions. The *de facto* social service districts that clusters of recovery communities produce fall far outside the foundations upon which the courts have long based their decisions to treat community residences as residential uses, including emulating a biological family and utilizing nearby neighbors without disabilities as role models to foster normalization as well as participation in the nondisabled community to achieve community integration.

It is important to remember that zoning is based on how each land use functions. The original community residence concept is based on the community residence behaving as a “functional family,” namely emulating a biological family. Such homes need to be in a residential neighborhood where the neighbors without disabilities serve as role models. Those are key cornerstones upon which the court rulings that require community residences to be allowed in residential districts rest.

But filling a multifamily building (or buildings) with people in recovery — or filling adjacent houses or town homes with people in recovery — hardly emu-

lates a biological family in a residential neighborhood. Instead of “clean and sober” people in the surrounding dwelling units serving as role models, everybody is surrounded by other people in recovery. It is difficult to imagine how such segregated living arrangements foster the normalization and community integration at the core of the community residence concept. Such arrangements are like a step back to the segregated institutions in which people with disabilities were placed before deinstitutionalization became the nation’s policy more than half a century ago.

These are among the reasons why spacing distances are so crucial to establishing an atmosphere in which community residences can enable their occupants to achieve normalization and community integration. And these are among the reasons why zoning should treat recovery communities as the mini-institutions that they functionally are.

Since recovery communities are appropriately located in multi-family buildings, it makes no sense for a zoning code to allow new recovery communities to be located in single-family districts where new multi-family housing is not permitted. But they should be allowed in zoning districts where multi-family housing is allowed.

### Zoning guidelines for recovery communities

As discussed above, recovery communities do not perform like single-family dwellings and they function as mini-institutions generally located in multifamily housing. Consequently, they should not be allowed in single-family districts like the RS and RSL where multifamily housing is not allowed at all. However, they should be allowed as permitted uses, subject to the spacing and certification/licensing criteria below, in multifamily districts such as the RM district. In addition, recovery communities should be allowed by conditional use permit in districts where multifamily housing is allowed by conditional use permit.

However, in multiple-family districts and other zoning districts where multifamily housing is allowed, a recovery community may be subject to two objective, nondiscretionary administrative criteria:

- ◆ The specific recovery community or its operator must be licensed by the State of Arizona or certified by the Arizona Recovery Housing Association, and
- ◆ The proposed recovery community would be located outside a rationally-based distance from the closest existing community residence or recovery community as measured from the nearest lot lines.

When a proposed recovery community does not meet both standards to be allowed as a permitted use, the operator can apply for a case-by-case evaluation through a conditional use permit as explained below on page 42.

## “Conditional use permit backup”

Sometimes an operator will seek to establish a new community residence or recovery community *within* the spacing distance of an existing community residence or recovery community. For some types of community residences, no license, certification, or accreditation may be available in the State of Arizona.<sup>70</sup> In these unlicensed situations, the heightened scrutiny of a conditional use permit is warranted to protect the occupants of the prospective community residence from the same mistreatment, exploitation, incompetence, and abuses from which licensing, certification, and accreditation protects them. There are two primary circumstances under which a conditional use permit could be sought:

- 💧 **Locating within the spacing distance.** To determine whether a community residence or recovery community should be allowed within the spacing distance from an existing community residence or recovery community, the city would need to consider such matters as whether allowing the proposed use will hinder the normalization for residents and community integration in the existing community residence or recovery community, whether the proposed use would alter the character of the neighborhood, and/or whether the proposed use would create or intensify a concentration of community residences and/or recovery communities.
- 💧 **When no local, state, or federal licensing, certification, or accreditation is applicable.** If an operator seeks to establish a community residence or recovery community in Mesa for which the city, State of Arizona, or the federal government does not require or offer a license or certification or is not under a self-imposed license equivalency like Oxford House, the operator must show information such as the proposed community residence or recovery community will be operated in a manner that protects the health, safety, and welfare of its residents in a manner comparable to typical licensing standards.

In evaluating an application for a conditional use permit, a city *can* consider the cumulative effect of the proposed community residence or recovery community because altering the character of the neighborhood or creating a *de facto* social service district interferes with the normalization and community integration at the core of a community residence. A city can consider whether the proposed community residence in combination with any existing community residences and recovery communities will alter the character of the surrounding neighborhood by creating an institutional atmosphere or by creating a *de facto* social service district by concentrating community residences in a neighborhood.

It is vital to stress that the decision on a conditional use permit must be based

---

70. Remember, even though the state has determined that recovery communities and unstructured sober living homes are not subject to its new sober home licensing rules, the Arizona Recovery Housing Association does offer certification for recovery communities and those sober living homes deemed excluded from the coverage of the new Arizona rules.



on a record of factual evidence and not on neighborhood opposition rooted in unfounded myths and misconceptions about people with disabilities. As explained earlier in this report, restrictive covenants *cannot* exclude a community residence for people with disabilities — and such restrictions are, of course, irrelevant when evaluating an application for the conditional use permit.

*When the required license, certification, or accreditation has been denied to a proposed community residence or recovery community or its operator, it becomes an illegal use under state law and cannot be located in Mesa.*

## Additional issues to consider

The precise language of the zoning amendments will need to make allowances for the legal provisions in the Arizona state statutes on zoning for certain types of community residences for people with specific disabilities.

Local zoning provisions for community residences need to also properly provide for the unstructured, self-governed recovery residences called “Oxford House.” Congress has recognized Oxford House which has its own internal monitoring system in place to maintain compliance with the Oxford House Charter.<sup>71</sup> The standards and procedures that Oxford House employs are functionally comparable to licensing requirements and procedures for recovery residences in some states. The zoning approach suggested here recommends that Oxford Houses operating in accord with the Oxford House Charter be treated the same as if they had a state license or certification from the Arizona Recovery Housing Association.

### Maximum number of occupants

**Assuring a community residence can emulate a “family.”** Given that emulation of a biological family is a core component to community residences for people with disabilities, it is reasonable for a jurisdiction’s zoning code to establish the maximum number of individuals in a community residence it is confident can emulate a biological family. When operated properly, it is very likely that a community residence for as many as ten unrelated individuals can emulate a biological family. It is highly doubtful if significantly larger aggregations can.

Consequently the proposed zoning amendments will cap community residences at ten occupants and establish a “reasonable accommodation” procedure to lift the cap on a case-by-case basis. This can be achieved either through a conditional use permit or an administrative process. The burden will be on the appli-

---

71. Oxford House does not allow its recovery residences to open in a state until Oxford House has established its monitoring processes to assure that Oxford Houses will operate within the standards of the Oxford House Charter.



cant to show it needs to house more than ten residents to assure therapeutic and/or financial viability as well as to convincingly demonstrate that the residents will be able to emulate a biological family. The proposed community residence will be subject to the same spacing and licensing/certification requirements applicable to all community residences for people with disabilities.

## Other zoning regulations for community residences

All regulations of the zoning district apply to a community residence or recovery community including height, lot size, yards, building coverage, habitable floor area, and signage. There is no need for the *Land Development Code* to repeat these requirements in its sections dealing with community residences for people with disabilities or recovery communities.

## Licensing of sober living homes and recovery communities

In April 2018, Arizona adopted legislation authorizing the Department of Health Services to establish a licensing system for sober living homes.<sup>72</sup> As noted earlier, the licensing requirement went into effect on July 1, 2019. The legislation, however, provided that any sober home “that is certified by a certifying organizations may operate in” Arizona. Certified sober homes must apply for state licensing within 90 days of the licensing rules going into effect.<sup>73</sup>

And as noted earlier, the state licensing statute defines “sober homes” as:

“Sober living home” means any premises, place or building that provides alcohol-free or drug-free housing and that:

- (a) Promotes independent living and life skills development.
- b) May provide activities that are directed primarily toward recovery from substance use disorders.
- c) Provides a *supervised* setting to a group of unrelated individuals who are recovering from substance use disorders.
- (d) Does not provide any medical or clinical services or medication administration on-site, except for verification of abstinence.<sup>74</sup>

Consequently, the licensing does *not* apply to unstructured sober homes nor to recovery communities. This is why this study recommends that Mesa require recovery communities and community residences for people with disabilities including sober living homes that do not meet the definition of “family” to be either licensed by the state or certified by the Arizona Recovery Housing

---

72. The governor signed Senate Bill 1465 on April 11, 2018.

73. Ariz. Rev. Stat. §36–2064 (A) (2018).

74. Ariz. Rev. Stat. §36–2061 3. (2018). *Emphasis added*.

Association.

The licensing rules for structured sober homes require that the license application include “[a]n attestation that the applicant is in compliance with local zoning ordinances, building codes, and fire codes.”<sup>75</sup> However, local zoning ordinances typically require a community residence to first be licensed in order to receive zoning approval — creating a classic Catch 22. This conflict is easily resolved by issuing zoning approval conditioned on the applicant receiving the required license, certification, or permanent Oxford House Charter within a reasonable specified time period of being awarded zoning approval.<sup>76</sup>

Additional discussion of Arizona licensing of sober homes starts on page 24.

## Summary

The proposed regulatory approach offers the least restrictive means needed to actually achieve the legitimate government interests of shielding people with disabilities from unscrupulous operators, protecting their health and safety, enabling normalization and community integration to occur by preventing clusters or concentrations of community residences from developing or intensifying, and preventing the creation of *de facto* social service districts. Protecting the residents of community residences for people with disabilities and recovery communities also protects the neighborhoods in which the homes are located. Adopting the zoning approach recommended in this report will help assure that adverse impacts will not be generated and people with disabilities will have access to safe, secure residential living environments throughout the city.

First, it is essential that Mesa amend its *Zoning Ordinance* to add a definition of “family” or “household” that sets a cap on the number of unrelated individuals functioning as a single housekeeping unit. A cap of three or four should provide for the vast majority of living arrangements among unrelated individuals including college students. The recommended zoning amendments would treat community residences that comply with a cap of, for example, four unrelated individuals in the city’s definition of “family” the same as any other family. As the case law requires, the amendments can impose no additional zoning requirements upon those community residences for people with disabilities that comply with the cap on unrelated individuals in a city’s definition of “family” or “household.”

Continuing with this example of a cap set at four, no more than four unrelated people could live together in a dwelling unit. But, as explained in this study, the nation’s Fair Housing Act requires cities and counties to make a “reasonable accommodation” in their regulations and rules — including their zoning codes — to enable people with disabilities to live in community resi-

---

75. Title 9. Health Services. Chapter 12. Department of Health Services. Sober Living Homes. Article 1. Licensure Requirements. R9–12–103.A.1.j. (2019).

76. Given the length of time it takes to obtain the state license, certification, or permanent Oxford House Charter, 120 days should provide adequate time to receive these approvals.

dences which need more than four occupants to be successful. Consequently, the City of Mesa would need to make a reasonable accommodation in its zoning to allow for community residences housing more than four people with disabilities. So if the city were to set the unrelateds cap at four, it is recommended that the City of Mesa allow the relatively permanent “family community residences” for more than four people with disabilities as a permitted use in all residential zoning districts when they meet the two objective, rationally-based licensing and spacing standards proffered in this study. Transitional community residences for more than four people with disabilities would be permitted as of right in all zoning districts where multifamily housing is a permitted use subject to these same two criteria. Transitional community residences for more than four people with disabilities would be allowed in single-family districts only via a conditional use permit issued on the basis of narrowly-crafted standards that are as objective as possible, including showing compatibility with the single-family neighborhood.

However, the heightened scrutiny of a conditional use permit is warranted when a proposed community residence housing more than four people with disabilities does not satisfy the spacing and licensing criteria to be allowed as of right. Consequently, an operator would need to obtain a conditional use permit to (1) locate a proposed community residence within the adopted spacing distance from an existing community residence for more than five people or from a recovery community, or (2) if the proposed home is not eligible for any licensing, certification, or accreditation available from the State of Arizona, is not operated under the Oxford House Charter, or is not certified by the Arizona Recovery Housing Association. The burden would rest on the operator to show that the proposed home would meet the very focused standards the City of Mesa would adopt for awarding a conditional use permit in each of these circumstances.

The requisite reasonable accommodation for recovery communities would be met by allowing them in zoning districts where multifamily housing is allowed as long as they meet the spacing and licensing/certification requirements recommended in this study. A conditional use permit would be required for a recovery community to be located within the spacing distance of an existing recovery community or community residence,

A community residence or recovery community that has not been issued a *required* license, certification, or accreditation would *not* be allowed in Mesa at all. But when no certification, licensing, or accreditation is required or available, then the community residence or recovery community operator can seek a conditional use permit under the conditional use permit backup provision.

Except when required by state law, an operator that wishes to house more than ten individuals in a community residence would need a conditional use permit issued under narrowly-focused criteria including showing that the community residence will be able to emulate a biological family and the additional occupants are essential for the home’s therapeutic or financial viability.

To implement and administer amendments of this nature, any jurisdiction would need to maintain an internal map and its own internal database of the community residences for people with disabilities and recovery communities within and around the jurisdiction — otherwise it would be impossible to imple-

ment the spacing distances the proposed zoning requires and existing state licensing mandates for some types of community residences.

# Appendix A: Representative studies of community residence impacts

More than 50 scientific studies have been conducted to identify whether the presence of a community residence for people with disabilities has any effect on property values, neighborhood turnover, or neighborhood safety. No matter which scientifically-sound methodology has been used, the studies have concluded that community residences that meet the health and safety standards imposed by licensing and that are concentrated have no effect on property values — even for the house next door— nor on the marketability of nearby homes, neighborhood safety, neighborhood character, parking, traffic, public utilities, nor municipal services.

The studies that cover community residences for more than one population provide data on the impacts of the community residences for each population in addition to any aggregate data. The studies do not cover recovery communities.

The following studies constitute a representative sample. Few studies have been conducted recently simply because this issue has been studied so exhaustively and their findings of no adverse impacts have been so consistent. Consequently, funding just isn't available to conduct more studies on a topic that has been studied so exhaustively.

Christopher Wagner and Christine Mitchell, *Non-Effect of Group Homes on Neighboring Residential Property Values in Franklin County* (Metropolitan Human Services Commission, Columbus, Ohio, Aug. 1979) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).

Eric Knowles and Ronald Baba, *The Social Impact of Group Homes: a study of small residential service programs in first residential areas* (Green Bay, Wisconsin Plan Commission June 1973) (disadvantaged children from urban areas, teenage boys and girls under court commitment, infants and children with severe medical problems requiring nursing care, convicts in work release or study release programs).

Daniel Lauber, *Impacts on the Surrounding Neighborhood of Group Homes for Persons With Developmental Disabilities*, (Governor's Planning Council on Developmental Disabilities, Springfield, Illinois, Sept. 1986) (found no effect on property values or turnover due to any of 14 group homes for up to eight residents; also found crime rate among group home residents to be, at most, 16 percent of that for the general population).

Minnesota Developmental Disabilities Program, *Analysis of Minnesota Property Values of Community Intermediate Care Facilities for Mentally Retarded (ICF-MRs)* (Dept. of Energy, Planning and Development 1982) (no difference in property values and turnover rates in 14 neighborhoods with group homes during the two years before and after homes opened, as compared to 14 comparable control neighborhoods without group homes).

Dirk Wiener, Ronald Anderson, and John Nietupski, *Impact of Community-Based Residential Facilities for Mentally Retarded Adults on Surrounding Property Values Using Realtor Analysis Methods*, 17 *Education and Training of the Mentally Retarded* 278 (Dec. 1982) (used real estate agents' "comparable market analysis" method to examine neighborhoods surrounding eight group homes in two medium-sized Iowa com-



munities; found property values in six subject neighborhoods comparable to those in control areas; found property values higher in two subject neighborhoods than in control areas).

Montgomery County Board of Mental Retardation and Developmental Disabilities, *Property Sales Study of the Impact of Group Homes in Montgomery County* (1981) (property appraiser from Magin Realty Company examined neighborhoods surrounding seven group homes; found no difference in property values and turnover rates between group home neighborhoods and control neighborhoods without any group homes).

Martin Lindauer, Pauline Tung, and Frank O'Donnell, *Effect of Community Residences for the Mentally Retarded on Real-Estate Values in the Neighborhoods in Which They are Located* (State University College at Brockport, N.Y. 1980) (examined neighborhoods around seven group homes opened between 1967 and 1980 and two control neighborhoods; found no effect on prices; found a selling wave just before group homes opened, but no decline in selling prices and no difficulty in selling houses; selling wave ended after homes opened; no decline in property values or increase in turnover after homes opened).

L. Dolan and J. Wolpert, *Long Term Neighborhood Property Impacts of Group Homes for Mentally Retarded People*, (Woodrow Wilson School Discussion Paper Series, Princeton University, Nov. 1982) (examined long-term effects on neighborhoods surrounding 32 group homes for five years after the homes were opened and found same results as in Wolpert, *infra*).

Julian Wolpert, *Group Homes for the Mentally Retarded: An Investigation of Neighborhood Property Impacts* (New York State Office of Mental Retardation and Developmental Disabilities Aug. 31, 1978) (most thorough study of all; covered 1570 transactions in neighborhoods of ten New York municipalities surrounding 42 group homes; compared neighborhoods surrounding group homes and comparable control neighborhoods without any group homes; found no effect on property values; proximity to group home had no effect on turnover or sales price; no effect on property value or turnover of houses adjacent to group homes).

Burleigh Gardner and Albert Robles, *The Neighbors and the Small Group Homes for the Handicapped: A Survey* (Illinois Association for Retarded Citizens Sept. 1979) (real estate brokers and neighbors of existing group homes for the retarded, reported that group homes had no effect on property values or ability to sell a house; unlike all the other studies noted here, this is based solely on opinions of real estate agents and neighbors; because no objective statistical research was undertaken, this study is of limited value).

Zack Cauklins, John Noak and Bobby Wilkerson, *Impact of Residential Care Facilities in Decatur* (Macon County Community Mental Health Board Dec. 9, 1976) (examined neighborhoods surrounding one group home and four intermediate care facilities for 60 to 117 persons with mental disabilities; members of Decatur Board of Realtors report no effect on housing values or turnover).

Suffolk Community Council, Inc., *Impact of Community Residences Upon Neighborhood Property Values* (July 1984) (compared sales 18 months before and after group homes opened in seven neighborhoods and comparable control neighborhoods without group homes; found no difference in property values or turnover between group home and control neighborhoods).

Metropolitan Human Services Commission, *Group Homes and Property Values: A Second Look* (Aug. 1980) (Columbus, Ohio) (halfway house for persons with mental illness; group homes for neglected, unruly male wards of the county, 12–18 years old).

Tom Goodale and Sherry Wickware, *Group Homes and Property Values in Residential Areas*, 19 Plan Canada 154–163 (June 1979) (group homes for children, prison pre-parolees).

City of Lansing Planning Department, *Influence of Halfway Houses and Foster Care Facilities Upon Property Values* (Lansing, Mich. Oct. 1976) (No adverse impacts on property values due to halfway houses and group homes for adult ex-offenders, youth offenders, alcoholics).

- Michael Dear and S. Martin Taylor, *Not on Our Street*, 133–144 (1982) (group homes for persons with mental illness have no effect on property values or turnover).
- John Boeckh, Michael Dear, and S. Martin Taylor, *Property Values and Mental Health Facilities in Metropolitan Toronto*, 24 *The Canadian Geographer* 270 (Fall 1980) (residential mental health facilities have no effect on the volume of sales activities or property values; distance from the facility and type of facility had no significant effect on price).
- Michael Dear, *Impact of Mental Health Facilities on Property Values*, 13 *Community Mental Health Journal* 150 (1977) (persons with mental illness; found indeterminate impact on property values).
- Stuart Breslow, *The Effect of Siting Group Homes on the Surrounding Environs* (1976) (unpublished) (although data limitations render his results inconclusive, the author suggests that communities can absorb a “limited” number of group homes without measurable effects on property values).
- P. Magin, *Market Study of Homes in the Area Surrounding 9525 Sheehan Road in Washington Township, Ohio* (May 1975) (available from County Prosecutors Office, Dayton, Ohio). (found no adverse effects on property values.)