

COUNCIL MINUTES

June 21, 2021

The City Council of the City of Mesa met in a Study Session in the lower-level meeting room of the Council Chambers, 57 East 1st Street, on June 21, 2021, at 5:00 p.m.

COUNCIL PRESENT

John Giles
Jennifer Duff
Mark Freeman
Francisco Heredia
David Luna
Julie Spilsbury
Kevin Thompson

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Dee Ann Mickelsen
Jim Smith

Mayor Giles conducted a roll call.

1. Review and discuss items on the agenda for the June 21, 2021, Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflict of interest: None

Items removed from the consent agenda: None

2-a. Hear a presentation, discuss, and provide direction on proposed text amendments, including but not limited to Chapters 7, 31, 86, and 87 of Title 11 of the Mesa Zoning Ordinance pertaining to marijuana facilities.

Planning Director Nana Appiah introduced Assistant City Attorney Charlotte McDermott and Principal Planner Rachel Prelog, who displayed a PowerPoint presentation. **(See Attachment 1)**

Ms. Prelog stated Proposition 207 was passed in November, which legalized the use of recreational marijuana in Arizona. She reported as of late January, the Department of Health Services has begun issuing approvals for operations of the facilities and the City of Mesa has adopted amendments to the police ordinance in response to limit recreational marijuana establishments to dual licensees. (See Page 2 of Attachment 1)

Ms. Prelog remarked currently the City regulates medical marijuana in the zoning ordinance which permitted facilities in light industrial and general industrial zoning districts, with hours of operation

from 8:00 a.m. to 9:00 p.m., and size restrictions for the different types of facilities. (See Pages 3 and 4 of Attachment 1)

Ms. Prelog indicated there are also spacing requirements for medical marijuana dispensaries, cultivation, and infusion facilities. She provided the specific spacing requirements for each use. (See Page 5 of Attachment 1)

In response to a question from Councilmember Freeman related to whether the distance is a pin drop and a mile radius around the pin drop, Ms. Prelog confirmed that is the buffer from the existing property.

Ms. Prelog added when the City evaluates the spacing requirement, adjacent jurisdictions are considered and counted as part of the spacing regulations.

In response to a question from Councilmember Thompson, Ms. Prelog stated residential facilities with over five residents are required to register with the City either as a group home for the handicapped or as a social service facility. She agreed if the threshold is not met, that facility would not have to register and would not be counted in the measurement.

Ms. Prelog mentioned cultivation and infusion facilities would have their own specific spacing requirements and she outlined those requirements. She explained for a cultivation or infusion facility that services a specific dispensary, the specific requirements do not pertain. (See Page 6 of Attachment 2)

Ms. Prelog remarked the proposed amendments include modifying the definitions and modifying Section 11-31-34. She said the hours of operation, permitted zoning, and facility size limitations will remain the same. (See Page 8 of Attachment 2)

Ms. Prelog presented the definitions that are being removed, added, or modified to be more general to marijuana instead of specifically for medical marijuana. (See Page 9 of Attachment 2)

Ms. Prelog stated the amendments were brought before the P&Z Board in May and the Board recommended approval. She indicated concerns brought up by boardmembers were placing limitations on the size of the facilities as they are legal businesses. (See Page 10 of Attachment 2)

In response to a question from Mayor Giles regarding the Board asking Council to reevaluate the size limits of the facilities, Ms. Prelog clarified some boardmembers preferred to remove the size limitation on the facilities and staff informed the Board that more evaluation was needed due to the recent changes of the laws and how the community would be affected. She added the Board encouraged staff to do the evaluation sooner rather than later.

In response to a question from Councilmember Luna related to whether the hours of operation will be reconsidered, Mr. Appiah advised that staff will continue to evaluate, seek input from neighborhoods, and return to Council with recommended changes. He indicated one of the concerns from boardmembers were the long lines outside of the facilities; however, most of the lines were due to COVID restrictions and limiting the number of people inside of the facilities. Vice Mayor Duff summarized her understanding from listening to the P&Z meeting that previously these were medical marijuana dispensaries and now they are doubling their customer base with the addition of recreational users. She stated the safety issues need to be resolved with having so many people in line as their offerings increase.

Mr. Brady pointed out that the recreational use is not increasing, the medical side is doubling based on the taxes on recreational marijuana.

Responding to an inquiry from Mayor Giles, Mr. Brady elaborated that part of the negotiations for recreational marijuana included adding an extra 16% tax for a variety of different programs, public safety being one of them.

In response to a question posed by Councilmember Heredia, Ms. Prelog stated a facility can have a dispensary, cultivation, and infusion within the same property and are not subject to the separation requirements; however, the size of each would be regulated by the size limitations.

Further discussion ensued related to what changes surrounding cities are making in response to the passage of Prop 207 and the tax rate difference between medical and recreational marijuana.

Mayor Giles thanked staff for the presentation.

2-b. Hear a presentation, discuss, and provide direction on proposed text amendments to Title 11, the Mesa Zoning Ordinance, pertaining to Community Residences (i.e., currently known as Group Homes or Group Homes for the Handicapped in the Zoning Ordinance), Correctional Transitional Housing Facilities, and Administrative Use Permits.

Planning Director Nana Appiah introduced Senior Planner Rachel Prelog and Assistant City Attorney II Charlotte McDermott, who displayed a PowerPoint presentation. **(See Attachment 2)**

Ms. Prelog provided background on the proposed amendments for community residences, formerly known as group homes for the handicapped. She recapped the purpose and goals of the amendments. (See Pages 2 and 3 of Attachment 2)

Ms. Prelog shared the current regulations broken down into three tiers depending on the number of residents. (See Page 5 of Attachment 2)

Ms. Prelog commented the changes to the zoning ordinance would be amending definitions by removing outdated or duplicative definitions, replacing those with new terminology, adding and modifying definitions. (See Page 7 of Attachment 2)

Ms. Prelog explained the definition of a family would be added and is two or more individuals related by blood, marriage or adoption, or a group of no more than four unrelated individuals. She noted this definition changes the threshold for the registration which used to be six or more unrelated individuals living in a group home. She continued by saying the definition of community residences is 5 to 10 individuals with disabilities and noted the two distinguishing categories being family community residence and transitional community residence. (See Page 8 of Attachment 2)

Ms. Prelog stated the family community residence is treated similar to single residence uses and the transitional community residences are treated like multiple residence uses. She highlighted the distinguishing features within the land use of where each residence is allowed. She said transitional would require a special use permit within three of the zoning districts to allow additional oversight of the impacts to the surrounding neighborhood. (See Pages 10 and 11 of Attachment 2)

Ms. Prelog noted the development standard amendments encompass spacing, occupancy, and registration. She mentioned in order to strengthen the requirements, a license from the State or equivalent certification from a recognized organization showing a high-level of care is being provided will be necessary. (See Page 13 of Attachment 2)

Ms. Prelog reviewed the reasonable accommodation that is required by federal law and allows considerations of modifications to different development standards to allow persons with disabilities equal access to housing. She expanded that reasonable accommodation may be sought under spacing, occupancy, and licensing requirements, adding each would require a special use permit and follow the recommended approval criteria. (See Pages 14 and 15 of Attachment 2)

Ms. Prelog reported staff met with the Arizona Recovery Housing Association (AZRHA) to discuss the amendments and there were no concerns. (See Page 16 of Attachment 2)

In response to a question from Mayor Giles asking about a scenario of five unrelated individuals living together and whether they will need to register with the City, Ms. McDermott advised the registration requirement only pertains to community residences that serve people who are disabled. She mentioned the proposal is to reduce the number of unrelated individuals living together to four in a residential home. She clarified those five unrelated individuals are not considered a family and would be considered group housing which is only allowed in certain zoning districts.

In response to a question from Vice Mayor Duff regarding whether an Airbnb would fall under the proposed ordinance, Ms. McDermott agreed if the ordinance is adopted reducing the number of unrelated individuals that can live together under the definition of family, short-term or vacation rentals would be affected.

Mr. Appiah clarified the distinction is individuals living in community residences must be disabled and fall under the federal definition of a disability which is different from an occupancy where you have five friends living together.

Ms. McDermott added community residences housing the disabled is when the spacing, licensing, and registration requirements are necessary. She said five college students living together would be considered group housing and are allowed in certain zoning districts but do not have to register with the City.

Councilmember Thompson asked about oversight and what the penalty is for not following the regulations.

Ms. Prelog stated the licensing is a two-step process with the State; however, the residence must be in compliance with zoning, or the license will not be issued. She indicated zoning administration will address issues through the revocation process.

Mr. Brady added the enforcement side will come from Code Compliance.

In response to a series of questions from Councilmember Heredia, Mr. Appiah explained the City is only looking at the land use and building requirements and the State issues the licensing to operate the business. He elaborated the registration with the City is to ensure the zoning requirements are met every year, updated contact information is maintained, as well as current licensing with the State. He mentioned notification was sent out to all the current operators to

build the database and determine which businesses were not in conformance and that they will be given six months to register with the City.

Responding to an additional question by Councilmember Heredia, Deputy Director of Development Services John Sheffer answered there are regulations within the building code requiring disabled individuals receive equal access to housing. He added State licensing requires the same.

In response to a question posed by Councilmember Spilsbury, Mr. Smith discussed that the City did not previously have a technical definition of family, but effectively characterized a family as five or more unrelated individuals and now are decreasing that number to four.

In response to a question from Councilmember Spilsbury inquiring about how public outreach will occur to inform the public about the changes and who keeps track of the registration with the City, Mr. Appiah explained if a community residence does not have a permit from the City, they are not qualified to be classified as non-conforming.

Mr. Brady added the purpose of the letter was to establish the facilities that existed prior to the changes to establish their non-conforming rights.

In response to a question from Councilmember Spilsbury related to the definition of disability, Ms. McDermott stated the definition used in the proposed amendments is the same as the definition under the Federal Fair Housing Act which is a mental or physical impairment that affects a major life activity.

Responding to a question from Councilmember Spilsbury, Ms. Prelog confirmed live-in help such as employees or caretakers are not counted in the number towards occupancy.

In response to a question from Vice Mayor Duff regarding whether a special use permit or Council use permit is ever revoked after issuance due to non-conformance, Mr. Appiah explained he is uncertain of whether a permit has been revoked before; however, the code is clear on the revocation process if there is a violation of the permit.

In response to a question from Councilmember Freeman regarding whether a community residence registration would transfer to a new owner if the facility were sold, Mr. Appiah remarked the use would transfer, but the registration would have to be updated with the new owner information. He added the community residence use is attached to the land; and per code requirements, if operation was ceased for a year the operator would lose the non-conforming use rights. He added based on the ordinance, letters will be sent to the owners giving them six months to register; and if they do not register, their land use permit will be revoked.

Councilmember Freeman inquired how to protect the character of the neighborhoods from having someone purchase multiple properties and putting four or less individuals in the homes.

Mr. Appiah noted having a community residence with four or less individuals would be very difficult to be financially feasible to an owner, and 6 to 10 residents are more common. He reported a special use permit would be administered by the Board of Adjustment.

Ms. Prelog stated correctional transitional housing facilities are for people serving out the remainder of their sentence and are providing job support. She said the amendments will add a

separation requirement of 1,200 feet from community residences and assisted living facilities, as well as a registration and renewal requirement.

In response to a question from Vice Mayor Duff, Ms. Prelog advised the registration and renewal requirements will pertain to any number of individuals living in a correctional transitional housing facility.

Ms. McDermott stated the correctional transitional housing does not have to follow the spacing criteria because prison parolees are not protected by the Fair Housing Act.

Ms. Prelog stated an additional recommended change is the establishment of approval criteria for administrative use permits, which is similar to other conditional use permits, in order to prevent negative impacts to the surrounding community. (See Page 18 of Attachment 2)

Ms. Prelog remarked the changes were presented to the P&Z Board on May 12, 2021, and the Board recommended approval. (See Page 19 of Attachment 2)

In response to multiple questions from Councilmember Spilsbury, Ms. Prelog implied assisted living facilities and community residences are defined differently but are treated similar as far as registration and separation requirements. She mentioned in December amendments were brought to Council regarding the assisted living facility ordinance.

Responding to a question from Councilmember Thompson regarding adding fees for medical units being frequently dispatched to certain residential housing facilities, Mr. Brady advised staff investigated the concept and after several attempts at figuring out how to implement, it became impractical to try and calculate a number and how to determine when to respond to calls.

Mayor Giles thanked staff for the presentation.

3. Current events summary including meetings and conferences attended.

Vice Mayor Duff –	Police ride-along with Sgt. Leo Davila Zen Nights festival
Councilmember Freeman –	Police Academy graduation
Councilmember Thompson –	Janice Vaincre Boutique - grand opening

Vice Mayor Duff and Mayor Giles attended the Youth Public Safety Academy.

4. Scheduling of meetings.

City Manager Christopher Brady stated that the schedule of meetings is as follows:

Thursday, June 24, 2021, 7:30 a.m. – Community Facilities District

Thursday, June 24, 2021, 7:30 a.m. – Study Session

5. Adjournment.

Without objection, the Study Session adjourned at 6:08 p.m.


JOHN GILES, MAYOR

ATTEST:


DEE ANN MICKELSEN, CITY CLERK



I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 21st day of June 2021. I further certify that the meeting was duly called and held and that a quorum was present.


DEE ANN MICKELSEN, CITY CLERK

la
(Attachments - 2)

RECREATIONAL MARIJUANA TEXT AMENDMENTS

Nana Appiah, Planning Director
Rachel Prelog, Principal Planner

June 21, 2021

BACKGROUND

PROPOSITION 207

- Passed by voters November 3, 2020
- Department of Health Services (DHS) issued first approvals to operate (ATO) in late January

POLICE ORDINANCE

- Adopted December 8, 2020
- Limited recreational marijuana establishments to dual license facilities

CURRENT REQUIREMENTS

Section 11-31-34 of Mesa Zoning

Ordinance: Medical Marijuana Facilities

DEVELOPMENT STANDARDS



Permitted in Light Industrial (LI) and General Industrial (GI) zoning districts



Hours of operation - 8:00 a.m. to 9:00 p.m.



Size limitations:

Facility		Size
Medical Marijuana Dispensaries		2,500 sq. ft.
Marijuana Cultivation Facility		25,000 sq. ft.
Marijuana Infusion Facility		10,000 sq. ft.

DEVELOPMENT STANDARDS



Medical Marijuana Dispensary spacing requirements:

Distance	Use
5,280 feet	Medical Marijuana Dispensary
2,400 feet	Correctional Transitional Housing Facility, Residential Substance Abuse Facility, Alcohol Rehabilitation Facility, and Off-site Cultivation
1,200 feet	Church, Library, School, Public Parks (LI & GI)
500 feet	Day Care Center, Pre-school, Public Parks (all other zoning districts), and privately owned open space maintained by an HOA

DEVELOPMENT STANDARDS



Medical Marijuana Cultivation or Infusion Facility spacing requirements:

Distance	Use
2,400 feet*	Medical Marijuana Dispensary
1,200 feet	Church, Library, School, Public Parks (LI & GI)
500 feet	Day Care Center, Pre-school, Public Parks in all other zoning districts, and privately owned open space maintained by an HOA

PROPOSED AMENDMENTS

*Section 11-31-34 of Mesa Zoning
Ordinance: Marijuana Facilities*

AMENDMENTS TO ZONING STANDARDS

- Modify definitions
- Modify Section 11-31-34 to include dual licensee facilities and add Community Residence and Social Service Facilities to separation requirements
- Hours of operation to remain the same
- Permitted zoning to remain the same
- Facility size limitations to remain the same

DEFINITIONS

 REMOVE

 ADD

 MODIFY

- Medical Marijuana Designated Caregiver
- Medical Marijuana Qualifying Patient

- Dual Licensee Facility
- Marijuana Concentrate
- Marijuana Establishment
- Marijuana Manufacturing
- Marijuana Processing
- Marijuana Products

- Medical Marijuana Cultivation Facility
- Medical Marijuana Infusion Facility

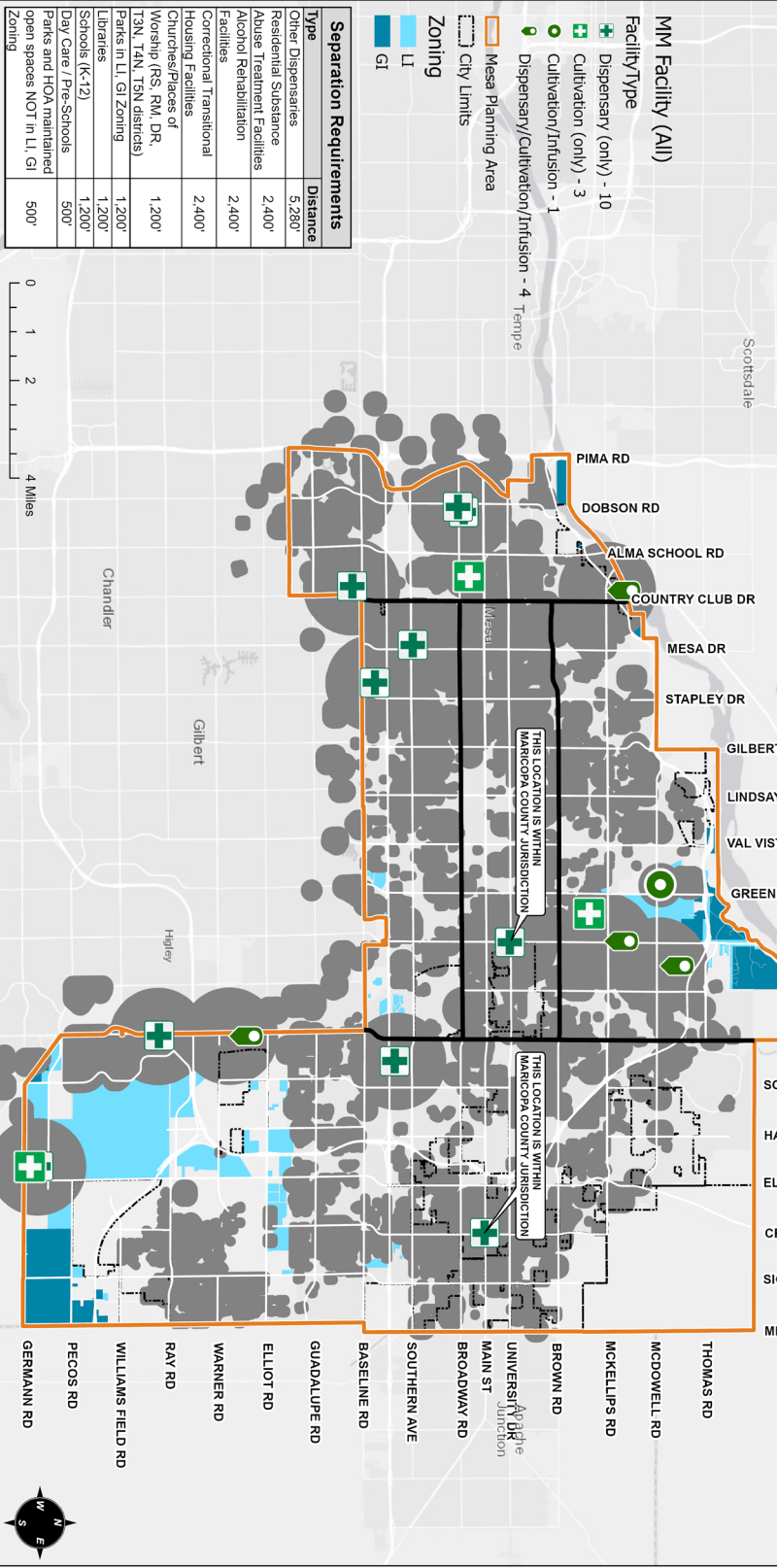
PLANNING & ZONING BOARD RECOMMENDATION

- May 12, 2021
- Recommended approval of adoption, 7-0
- Board members commented on the size limit of facilities
 - Understood the need to evaluate recent changes
 - Recommended staff pursue sooner than later



QUESTIONS

Medical Marijuana Dispensary Locations



m.e.s.a.·a.n



COMMUNITY RESIDENCE TEXT AMENDMENT



Nana Appiah, Planning Director
Rachel Prelog, Principal Planner
Charlotte McDermott, Assistant City Attorney

June 21, 2021

BACKGROUND

- Discussed proposed amendments to Section 11-31-14
 - March 4, 2021 - City Council Study Session
 - March 10, 2021 - Planning & Zoning Board Study Session
- Directed to proceed with amendments as proposed

• **PURPOSE AND GOALS** •

- Strengthen the City's registration process
- Review current City requirements for compliance with State and Federal law
- Provide residents with disabilities the opportunity to live in a family-like setting and integrate into the surrounding community
- Prevent overconcentration of facilities that may result in a de facto social service district

CURRENT • REGULATIONS

Group Home for the Handicapped

• DEVELOPMENT STANDARDS •

≤5 RESIDENTS

- Not required to register with City
- No separation requirements

6-10 RESIDENTS

- Register with the City
- 1,200 ft. from another group home for the handicapped
- 1,200 ft. from assisted living facilities
- Permitted in the AG, RS, RSL, RM, MX, DR1, DR-2, DR-3, and DB-1

>10 RESIDENTS

- Register with the City
- 1,200 ft. from another group home for the handicapped
- 1,200 ft. from assisted living facilities
- Requires a Special Use Permit
- Permitted in the RM, NC, OC, MX, DR2, and DR-3

PROPOSED • AMENDMENTS

Community Residence

AMEND DEFINITIONS

 REMOVE

- Group Residential
- Group Home for the Handicapped
- Group Housing
- Handicapped Person

 REPLACE

- Community Residence (Family & Transitional)
- Disability
- Group Foster Home

 ADD

- Family
- Single Housekeeping Unit

 MODIFY

- Boarding House
- Social Service Facility

DEFINITION SUMMARY



Family: An individual or **2 or more individuals** related by **blood, marriage or adoption** , or a group of no more than **4 unrelated individuals** ...



Community Residence: **5 to 10** unrelated individuals with **disabilities** ...

Family Community Residence: **Long-term, year or more**

Transitional Community Residence: Limited tenancy
less than a year

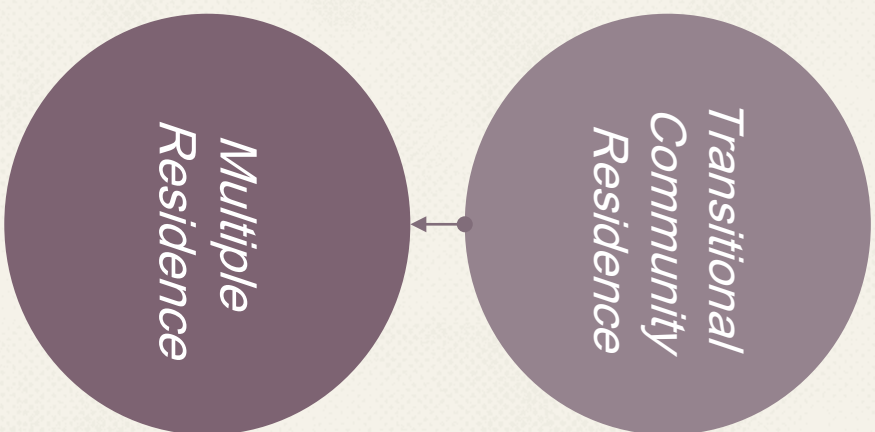
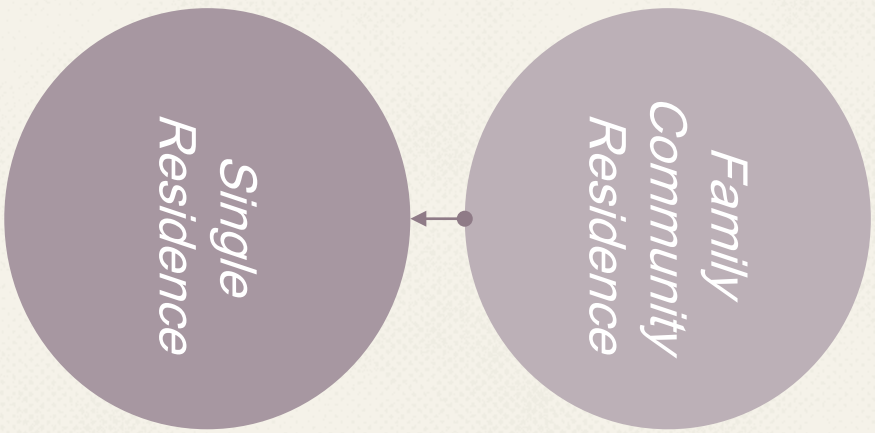


- **ZONING & LAND USE**

*Family Community Residences and
Transitional Community Residences*

ZONING

← Treated Similar →



ZONING & LAND USE

COMMUNITY RESIDENCE		
Zoning District	Family Community Residence	Transitional Community Residence
Agriculture (AG)	P	SUP
Single Residential (RS)	P	SUP
Residential Small Lot (RSL)	P	SUP
Multiple Residence (RM)	P	P



DEVELOPMENT STANDARDS

AMENDMENTS TO STANDARDS



SPACING: 1,200 ft. from another Community Residence,
Assisted Living Facility, or Correctional Transitional Housing
Facility



OCCUPANCY: Required to register 5 or more residents



REGISTRATION: Licensing or certification requirements,
annual renewal, and revocation process



REASONABLE ACCOMMODATION

Allows consideration of modifications to development standards to afford persons with disabilities equal access to housing

• REASONABLE ACCOMMODATION •

- MAY SEEK ACCOMMODATION TO

Spacing, occupancy, and licensing requirements

- REQUIRES

Approval of a Special Use Permit

- APPROVAL CRITERIA

Specific approval criteria applicable to each accommodation



- **PUBLIC OUTREACH**

Arizona Recovery Housing Association (AZRHA) – May 4, 2021

CORRECTIONAL TRANSITIONAL HOUSING FACILITY & ADMINISTRATIVE USE PERMIT

Text Amendments

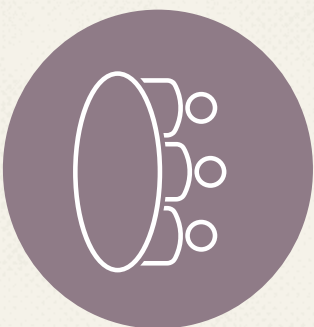
AMENDMENTS TO STANDARDS

CORRECTIONAL TRANSITIONAL HOUSING FACILITIES

- Add a 1,200 ft. separation from Community Residences and Assisted Living Facilities
- Add a registration and renewal requirements

ADMINISTRATIVE USE PERMIT

- Add approval criteria consistent with other Conditional Use Permits



- **RECOMMENDATION**

Planning & Zoning Board -- May 12th

Recommended approval of adoption, 7-0

QUESTIONS

ZONING & LAND USE

COMMUNITY RESIDENCE			
Zoning District	Family Community Residence		Transitional Community Residence
Agriculture (AG)	P		SUP
Single Residential (RS)	P		SUP
Residential Small Lot (RSL)	P		SUP
Multiple Residence	P		P
Neighborhood Commercial (NC)	CUP/P		CUP/P
Limited Commercial (LC)	CUP/P		CUP/P
General Commercial (GC)	CUP/P		CUP/P
Office Commercial (OC)	--		--
Mixed-Use (MX)	CUP/P		CUP/P
Downtown Residential-1 (DR-1)	P		P
Downtown Residential-2 (DR-2)	P		P
Downtown Residential-3 (DR-3)	P		P
Downtown Business-1 (DB-1)	P		P
Downtown Business-2 (DB-2)	CUP		CUP
Downtown Core (DC)	P		P
T3 Neighborhood (T3N)	P		P
T4 Neighborhood (T4N)	P		P
T4 Neighborhood Flex (T4NF)	P		P
T4 Main Street (T4MS)	P		P
T5 Neighborhood (T5N)	P		P
T5 Main Street Flex (T5MSF)	P		P
T5 Main Street (T5MS)	P		P
T6 Main Street (T6MS)	P		P

Family



An individual or two (2) or more individuals related by blood, marriage or adoption, or a group of no more than four (4) unrelated individuals, living together as a single housekeeping unit. A family includes a couple in a domestic relationship and biological, adopted, and foster children of either partner. The term family includes unrelated persons with developmental disabilities (as defined in A.R.S. §36-581) living together in compliance with A.R.S. § 36-582.



Community Residence

A Community Residence is a residential living arrangement for five to ten individuals with disabilities, excluding staff, living as a family in a single dwelling unit who are in need of the mutual support furnished by other residents of the Community Residence as well as the support services, if any, provided by the staff of the Community Residence. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services related to the residents' disabilities. A Community Residence seeks to emulate a biological family to foster normalization of its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment. Medical treatment is incidental as in any home. Supportive interrelationships between residents are an essential component. Community Residence includes sober living homes and assisted living homes but does not include any other group living arrangement for unrelated individuals who are not disabled nor any shelter, rooming house, boarding house or transient occupancy.

m.e.s.a.·a.n

