

# PRIOR ADOPTED ORDINANCES, RESOLUTIONS, AND TOWN ENFORCEMENT ACTIONS

## ASSISTED LIVING HOMES

**Assisted Living Homes: Ordinance No. 567** adopted November 17, 2005 provided for the regulation of Assisted Living Homes:

### Key Provisions/Regulations:

- Section 201 defines an “Assisted Living Home” as:  
“A dwelling shared as a primary residence by persons who are disabled, as defined in Arizona Revised Statutes §41-1491, who do not meet the definition of “family” as set forth in this section, who live together as a single housekeeping unit in an environment in which staff persons provide supervisory care, personal care and/or custodial care for the residents. This definition shall not apply to a home for the developmentally disabled as regulated by Arizona Revised Statutes §36-582.”
- Section 1701 of the Zoning Ordinance contains most of the key regulations for Assisted Living Homes, which include:
  - A. Distribution of Uses. No assisted living home shall be located on a lot within one thousand three hundred and twenty (1,320) feet, measured by a straight line in any direction, from the lot line of another assisted living home located within the Town of Paradise Valley or any other adjacent jurisdiction.
  - B. Occupancy. The number of residents at such home shall be limited by applicable state laws, including any minimum square footage requirement per person, but in no event shall the number of residents exceed ten (10), not including staff.
  - C. Licensure. Such home shall be licensed or certified by the State of Arizona, and satisfactory evidence thereof shall be on file with the Town. In the event that the State of Arizona revokes or terminates the license or certification to operate such a home, the person operating the home shall immediately cease operations and inform the Town of such revocation or termination.
  - D. Administrative Review. Such home shall be reviewed and approved by the Planning Department Director, or designee, for building code and land use compliance prior to the use commencing.
  - E. Code compliance. Such home shall comply with all applicable Town codes, including building codes, fire safety regulations, zoning and subdivision codes.
  - F. Compatibility. Such home and its premises shall be maintained in a clean, well-kept condition that is consistent in materials and design style with homes in the surrounding or adjacent neighborhood.
  - G. Threat to Community. Such home shall not house any person whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.
  - H. All parking by staff associated with such home shall be on site.

### **History of Enforcement:**

There have been no complaints or enforcement actions against any of the 7 Assisted Living Homes in the Town. There have been recent complaints about noise and construction activity without proper permits at a property in Town that is being remodeled by an owner who has stated that he plans to apply for an assisted living home license in the future, but such complaints are not related to the actual operation or use of the property for an Assisted Living Home.

### **Other Issues to Consider:**

- *Fair Housing Act prohibits discrimination by entity limiting who lives in a residence if a protected class*
- *American Disability Act prohibits discrimination of individuals based on disability.*
- *Assisted Living home shall be licensed by the State of Arizona Department of Health Services and must maintain a valid license for as long as the assisted living home is in operation.*
- *Since federal laws override local regulations, Council has limited policy discretion and can only monitor local codes.*

## **SOBER LIVING HOMES**

**Resolution No. 1252** adopted March 22, 2012 Establishing Reasonable Accommodation Guidelines and RA Process.

**Resolution 2017-15** adopted on June 22, 2017 modifying the application process for reasonable accommodation requests and approving changes to the reasonable accommodation process guide and forms.

### **Key Provisions of the RA Process:**

- Pursuant to federal law, a request for a reasonable accommodation (RA) may be made by any person with a disability, their representative, or a developer or provider for housing for individuals with a disability in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling.
- Whether an accommodation can be granted is determined by the Town's Accommodation Hearing Officer (who is appointed by the Town Manager) on a case-by-case basis.
- To request a RA, applicants must complete the Town's Request for a RA Form and return it with the filing fee of \$500.00.
- If additional information is needed for the Hearing Officer to properly evaluate the RA request, the Accommodation Hearing Officer may ask that medical and other health

information be submitted; however, the name or extent of the disability will not be required.

- Unless the Accommodation Hearing Officer has previously requested additional information, the accommodation request shall be deemed complete ten days after it is received (Note: Town staff still does an initial review of the application for completeness prior to accepting the application and transmitting it to the Hearing Officer).
- To ensure applicants have an actual, vested interest in the property where a RA is requested, proof of property ownership or written notarized authorization from the property owner is required.
- After receipt of a complete application, the Hearing Officer may seek comments from Town staff or adjacent landowners before issuing a decision, depending on the type of accommodation requested. By way of example, if the accommodation request concerns the zoning of the subject property, comments may be sought from the Town's Planning Division or landowners within 1,000 feet of the property; if the accommodation request concerns a building code provision, comments may be sought from the Town's Building Department.
- If the Accommodation Hearing Officer seeks comments, they will be due no less than five days before the decision deadline.
- Copies of any comments received will be provided to the applicant.
- Regardless of whether the Hearing Officer seeks comments, all Town property owners within 1,000 feet of the property will receive notice of the RA request and the Hearing Officer's decision.
- Depending on the type of accommodation requested and comments received, if any, the Accommodation Hearing Officer may issue a decision, seek additional information from the applicant, or conduct a public hearing after providing at least seven-day advance notice to the applicant and those providing comments, unless the Accommodation Hearing Officer determines a shorter notice period is necessary or reasonable.
- Within 30 days after receipt of a complete application, the Hearing Officer shall issue a written decision either granting the request, conditionally granting the request, offering an alternative accommodation, or denying the request with the reason for the denial stated.
- If the Hearing Officer requests additional information during the initial 30-day period, the time for making a decision shall be tolled until the additional information is received
- The Hearing Officer's decision will be considered final.
- The RA request and accompanying information will be kept with a record of the decision, will be a matter of public record, and will be made available to the public upon request.

RA Requirements: The following requirements must be met for the Hearing Officer to grant a RA:

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under Fair Housing Law.
2. The requested accommodation is reasonable and necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
3. The requested accommodation will not impose an undue financial or administrative burden on the Town as “undue financial or administrative burden” is defined in Fair Housing Law.
4. The requested accommodation will not result in a fundamental alteration in the nature of the Town’s land use and zoning scheme, as “fundamental alteration” is defined in Fair Housing Law.
5. The requested accommodation complies with all other applicable Town Code provisions, zoning regulations, and development standards.
6. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.
7. The applicant owns the property for which a reasonable accommodation is requested or has notarized written consent from the property owner to apply for the requested accommodation.
8. The requested accommodation site is not located on a lot within one thousand three hundred twenty (1,320) feet, measured by a straight line in any direction, from any lot line of another group home or any assisted living home located within the Town of Paradise Valley or any other jurisdiction.

### **History of Enforcement/Applications:**

On two occasions sober living homes have been cited for violations of the Town Zoning Ordinance for not obtaining a reasonable accommodation prior to commencing operations. Both operators later chose to relocate their operations to locations outside of the Town. Applications have been made for several other locations in the Town, many of which were withdrawn prior to a hearing before the Hearing Officer.

### **Other Issues to Consider:**

- *Fair Housing Act prohibits discrimination by entity limiting who lives in a residence if a protected class*
- *American Disability Act prohibits discrimination of individuals based on disability.*
- *The Town only allows more than 5 unrelated individuals to live together if they are protected under the Fair Housing Act and obtain a “reasonable accommodation” from an independent judge.*
- *Since federal laws override local regulations, Council has limited policy discretion and can only monitor local codes.*

## SHORT TERM RENTALS

**A. Home Occupation Regulations:** Short term rentals (STRs) have been included as “home occupations” for over 14 years and there are several key provisions in the Home Occupation Regulations that apply to the operation of STRs. **Ordinance 566** adopted January 12, 2006 applies to STRs.

Key Provisions:

- Renting or use of residential properties as a commercial venue for weddings, luncheons, dinners, auctions, sales or similar events, is prohibited;
- all parking associated with the home occupation shall be on site.

**B. Unruly Gatherings:** The Unruly Gathering (UG) regulations apply both to STRs and any other property in the Town, although recent experience has seen a significant uptick in UGs at STRs.

1. **Ordinance No. 2018-05** adopted March 8, 2018 adding a new Section 10-13 Unruly Gatherings to the Town Code.
2. **Ordinance No. 2020-10** adopted September 11, 2020 amending certain portions of the Unruly Gathering Ordinance.

Key Provisions:

- An “Unruly Gathering” is defined as “a gathering of five (5) or more persons on any private property, including property used to conduct business, which constitutes a threat to the public peace, health, safety or general welfare including, but not limited to: excessive noise, impeding traffic, obstruction of public streets by crowds or vehicles, use or possession of illegal drugs, drinking in public areas, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and/or littering.”
- A “Responsible Person” for a UG includes any person in attendance at an UG including any Owner, occupant, tenant, or tenant's guest or any sponsor, host or organizer of a social activity or special occasion or Owner that was aware of the social activity or special occasion constituting the s even if such person is not in attendance, or any Owner who had been notified that an UG had previously occurred on the same Premises within one hundred eighty (180) days prior to a subsequent UG. Responsible Person does not include Owners or persons in charge of Premises where an UG takes place if the persons in attendance obtained use of the Premises through illegal entry or trespassing. A person need not be present at the time of the party, gathering or event to be deemed responsible.
- “UG Notice (Notice)” means be a document identifying the Premises as the site of an UG in which a citation was issued and advising the Owner, occupants, guests or other persons entering the Premises that any future UG upon the Premises shall have additional consequences; the PD calls these notices “green tags” and there are penalties

assessed for removing them, as well as provisions for an Owner to appeal the posting of the UG Notice if the Owner believes it was posted in error.

- When a police officer responds to any UG and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the police officer may issue a citation for UG to any Responsible Person; and if the Responsible Person is the Owner and the Owner is not present and was not the sponsor, organizer or host of the event and the Owner had notice that an UG had occurred on the Premises within the prior one hundred eighty (180) days, the Owner shall be charged with a civil citation. All other Responsible Persons shall be charged with a class one misdemeanor.
- A police officer may abate an UG by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes, and dispersing any remaining gathered participants. Any participant not a tenant on a lease document who fails to disperse may be deemed a Responsible Person and cited.
- UG Notices are made by:
  - personal service of any Responsible Person(s) being cited at the UG;
  - posting of the Notice on the door of the Premises of the UG; or,
  - mailing the Notice to the Owner by certified mail, return receipt.
- UG Notices have the following information:
  - that an UG has occurred at the Premises;
  - the date of the UG;
  - that any subsequent UG on the same Premises resulting in a citation, and subsequent conviction thereof, within certain time periods shall result in the Responsible Person(s) liability for enhanced penalties and fees;
  - the right to contest the posting;
  - and contact information at the police department.
- In the event that the Premises was already posted with a UG Notice at the time of a subsequent posting, the 90 day period from the date of the existing posting shall be extended an additional 120 days from the date of the subsequent posting.
- Any Responsible Person(s) receiving a citation for an UG requiring an increased police response shall be assessed a “Police Service Fee.”
- Upon request, the Owner must provide the names of any and all occupants listed on the leasing documents at any location where the Police Department responds to an UG.
- On a first offense, an Owner who was present at the UG and who made contact with the responding officers at the scene may apply retroactively for a special event permit under Article 8-8 of the Town Code of Paradise Valley by the close of business on the next business day. A special event permit may or may not be granted by the Town Manager retroactively.
- Penalties for UG violations increase for persons who are deemed to have subsequent violations within 90 days of a prior violation, which applies either at the same premises (each a “Consistent Premises” based upon a prior UG) or by the same person (each a

“Consistent Responsible Person” based upon having received a UG Notice or for any police response or responses necessary on any Premises involving the same Responsible Person; and upon a third response involving the same premises or same person over a 120 day period, the highest fines and the Police Service Fee will be assessed.

- “Police Service Fees” may be assessed by the Chief of Police to any Responsible Person, said fees an amount equal to the actual costs (essentially a reimbursement) of the law enforcement response to an UG, including salaries and benefits of the responding officers for the time actually spent in responding to and remaining at the UG; and similar costs for dispatcher time, costs of any medical treatment for officers or any damage to Town property, and vehicle and equipment costs as well.
- Penalties
  - Criminal Offenses - a Responsible Person convicted of an UG shall have a minimum mandatory fine of \$1000 for a first violation, \$2,000 for a second violation, and \$2,500 for a third or subsequent violation (which is the maximum currently permitted by law);
  - Civil Offenses - if the Responsible Person is an Owner that was not present at the UG, was not aware of the social activity or special occasion constituting the UG, and was not an organizer, host or sponsor of the UG, but had been notified that an UG had previously occurred on the property within one hundred eighty (180) days prior an UG, then the civil penalty shall be a minimum mandatory fine of \$1000 for a first violation, \$2,000.00 for a second violation, and a minimum mandatory fine of the maximum amount permitted by law for civil violations for a third or subsequent violation.

Other Issues to Consider:

- *Adopted and increased penalties from three ordinances that have to apply to all residences equally.*
- *Staff can enforce its nuisance laws but must be consistent regardless of owner.*

**C. Short Term Rentals Ordinance:**

**Ordinance 2019-12** was adopted January 10, 2020 after the Legislature added some additional exceptions to the state preemption on municipal regulations of STRs that permitted some additional regulatory control:

Key Provisions:

- STR and vacation rental do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or similar use.
- Before offering for rent or renting a STR within the Town the owner of a STR shall provide the Town with contact information for the owner or the owner’s designee who

is responsible for responding to complaints in a timely manner in person, over the phone or by e-mail at any time of day.

- Additionally, the owner of a STR shall provide to the Town the name and contact information of a person designated as an “emergency contact.”
- The owner or the owner’s designee is responsible for responding to complaints in a timely manner in person, by telephone, or by e-mail at any time of day or night, which means within 2 hours after the initiation of contact with the owner’s designee when the contact is made by a police department officer and where the police officers are at the owner’s property at the time that such contact is initiated, and within 24 hours after the initiation of contact with the owner’s designee when the contact is made by a police department officer or employee or a code enforcement officer and for which the police are not at the scene of the complaint or incident at the time that such contact is initiated.
- A STR must at all times comply with the federal, state and local laws, rules and regulations related to public health, safety, sanitation, solid waste, hazardous waste, tax privilege licensing including advertising requirements, property tax registration, traffic control, pollution control, noise, property maintenance, and nuisance abatement.
- No short-term rental or vacation rental may be used for any non-residential use or purpose including but not limited to any of the uses listed in ARS § 9-500.39(B)(3).

#### **History of Enforcement:**

- STRs have been subject to vigorous code enforcement efforts for the past 20 plus years, including criminal and civil citations for commercial uses of residential properties for wedding venues, corporate reception centers, temporary auction houses, corporate use during super bowls and other violations.
- Unruly Gathering Ordinance has been used frequently, with such use being even more frequent during the closure of bars under Executive Orders:
  - Changes to UG ordinance have been recently made to simplify the charging of UG violations and allow for additional means of pursuing all parties who may have some form of culpable conduct;
  - Owners frequently state that they were unaware that the renters planned for a party or other event that leads to an UG;
  - PD service fees now being assessed when appropriate and facts permit.
- Commercial use is often difficult to prove; however, the PVPD uses a “party house protocol” to help gather evidence of knowing rental for commercial uses by owners or property managers.
- Legislative changes needed to permit more vigorous enforcement alternatives.

#### **Other Issues to Consider:**

- *Significant Preemption under State Law (SB 1350): (See ARS § 9-500.38. Limitations on regulation of vacation rentals and short-term rentals; state preemption):*

- A city or town may not prohibit vacation rentals or short-term rentals;
- A city or town may not restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use or occupancy;
- A city or town may regulate vacation rentals or short-term rentals for the following purposes:
  - Protection of the public's health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and designation of an emergency point of contact, if the city or town demonstrates that the rule or regulation is for the primary purpose of protecting the public's health and safety;
  - Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance and other nuisance issues, if the ordinance is applied in the same manner as other property classified under sections 42-12003 and 42-12004;
  - Limiting or prohibiting the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a structured sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented businesses;
  - Vacation rental and short-term rental do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center or another similar use.
- A STR is residence that is rented for less than 30 days. May or may not be on a short-term rental platform such as VRBO, Airbnb, Expedia, etc.
- Also, no ability of staff to license home per State law.
- No federal protection to date.
- Summary, other than responsible person requirement and limiting “commercial uses” of STRs, no ability of Town to regulate or license short-term rentals per State Law.
- Since State laws (SB1350) and (SB 1487) override local laws, Council has limited policy discretion with the exception of nuisance laws.
- Town has been very involved in fighting against the preemption and in seeking changes to state law to restore ability of municipalities to regulate STRs.

## **TIME SHARES/FRACTIONAL OWNERSHIP**

**Time Shares:** Ordinance No. 204 adopted April 28, 1983 by adding a new Section 1026 prohibiting time share projects.

### **Key Provisions:**

- “Time-Share Project” is defined as “A project in which a purchaser receives the right in perpetuity, for life or for a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided.”
- Section 1026. Time-Share Projects...are hereby prohibited within any use district within the Town of Paradise Valley.

### **History of Enforcement:**

- No complaints or enforcement efforts needed until recent evidence gathered this summer indicated that one property in Town was being marketed as a “fractional offering” and after some added research, another property is currently marketed as part of an “investment portfolio of luxury properties that operates as a not-for-profit company utilizing a shared use model.”
- One of these properties has now been taken off the market, the other is under investigation for violation of state and town laws regarding time shares and the illegal subdivision of land.

### **Other Issues to Consider:**

- *No state law preemption; rather, state law has certain regulatory requirements placed on developers and realtors;*
- *No one can apply today for a permit for a time share project in PV;*
- *No changes to Town Codes are needed.*