

TOWN OF PARADISE VALLEY

Discussion Regarding Assisted Living Homes, Group Homes, Short Term Rentals, and Time Shares

**Town Council Study Session
November 5, 2020**



KEY QUESTION

Does the Council desire to have the Staff explore any changes to the current Town Codes, processes and practices with respect to Assisted Living Homes, Group Homes, Short Term Rentals, and/or Time-shares/Fractional Sales?



FAIR HOUSING - BACKGROUND

- The Federal Fair Housing Amendments Act of 1988 (Act) prohibits discrimination against individuals with disabilities, including those in recovery for substance abuse, in housing and housing-related activities
- The Act also prohibits local and state land use and health and safety laws and practices which discriminate against individuals with handicaps
- The Ninth Circuit has recently affirmed this in the context of sober living homes and struck down, under the Act, Newport Beach zoning practices that discriminated against individuals with disabilities (Pac. Shores v. Newport Beach, 730 F.3rd 1142 (2013)).
- Federal law prohibits consideration of the prejudices or fears of a community; a city or county may be liable for denying housing opportunities for individuals with disabilities if its actions or decision-making are motivated by discriminatory intent or it adopted the discriminatory animus of those in the community



ASSISTED LIVING HOMES

Current Regulations:

- No assisted living home shall be located on a lot within 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
- 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 not including staff
- 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



ASSISTED LIVING HOMES

Current Regulations (cont'd.):

- 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
- Such home shall comply with all applicable Town codes, including building codes, fire safety regulations, zoning and subdivision codes; and obtain a business license
- 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
- 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

All parking by staff associated with such home shall be on site



ASSISTED LIVING HOMES

Recommended Changes to Regulations:

- Change the occupancy allowed from 10 residents “not including staff” to up to 10 residents and 2 staff members for a total number of residents and staff not to exceed 12 residing in the home at any given time
- Change the parking from a requirement that “all parking by staff...shall be on site” to “adequate parking for both residents and staff shall be provided on site,” thus making parking part of the analysis for approval of a particular application
- Increase the spacing between Assisted Living Homes from 1,320 feet to 2,000 feet and add sober living homes to the spacing requirement for consistency
- Police to provide Crime Prevention Through Environmental Design (CPTED) guidelines during the permitting process to encourage actions by owners/operators of the assisted living home to keep their residents secure and safe



SOBER LIVING HOMES – PV PROCESS

- A request for a reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of housing for individuals with a disability in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling
- Resolution 2017-15 adopted “standards and procedures for granting a reasonable accommodation to its zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling, where such an accommodation does not cause an undue financial or administrative burden or does not result in a fundamental alteration in the nature of the Town’s zoning program, as those terms are defined in fair housing laws and interpretive case law”
- Resolution 2017-15 also adopted a reasonable accommodation guide and forms to be completed by applicants for a reasonable accommodation, set a reasonable fee (\$500) for any application for a reasonable accommodation, as well as appointing a hearing officer to hear and consider applications for reasonable accommodations



SOBER LIVING HOMES – PV PROCESS

Town Reasonable Accommodation Guide:

- The term “reasonable accommodation” (RA) is the same as is contained in the Fair Housing Act and the ADA
- Grant of a RA by the Town’s Accommodation Hearing Officer is decided on a case-by-case basis
- Town Manager appoints the RA Hearing Officer – currently Ty Taber
- After the application is filed the RA Hearing Officer may request additional information; and unless the Officer requests additional information, the application is deemed complete 10 days after receipt
- Applicant must evidence an actual vested interest in the property (owner approval) and submit a current title report with all Schedule B exceptions
- The RA Hearing Officer “may seek comments from Town staff or adjacent landowners before issuing a decision, depending on the type of accommodation requested.”



SOBER LIVING HOMES – PV PROCESS

Town Reasonable Accommodation Guide (cont'd):

- “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 any request for comments, owners within 1,000 feet will receive notice of the RA request within 5 days of application filing
- Notice of Officer’s decision to be sent to owners within 1,000 feet w/in 5 days after the decision is made
- Hearing Officer has discretion to either:
 - issue a decision on the application as filed,
 - seek additional information from applicant, or
 - conduct a public hearing after providing at least 7 day advance notice to applicant and those providing comments



SOBER LIVING HOMES – PV PROCESS

Town Reasonable Accommodation Guide:

- Hearing Officer decision to be made w/in 30 days of receipt of a complete application, but may be tolled during time that Officer seeks more information on the application
- With or without a hearing, the Hearing Officer has discretion to:
 - grant the request,
 - conditionally grant the request,
 - offering an alternative accommodation, or
 - denying the request with the reason for the denial stated
- Hearing Officer shall issue a written decision
- Hearing Officer decision is final



SOBER LIVING HOMES – CHANGES SUGGESTED

Based on recent feedback the staff would recommend the following changes to the RA Process:

- Provide an overview of the process, printed and on the Town website
- Don't rely on the applicant to mail the notice of the RA application to residents within 1,000 feet. Instead, it should be sent out by the Town staff
- Mailings of the notice should be in envelopes that have the Town logo on the envelope in order to be noticeable when they arrive
- The initial notice should include a letter from the Town staff with a full description of the RA process, what to expect, timelines, and background on the Fair Housing Act in order to allay concerns and answer many of the initial “what if” questions



SOBER LIVING HOMES – CHANGES SUGGESTED

Recommended changes to the RA Process (cont'd):

- Have additional information and an “updates” link on the Town website, but do not rely on the Town website for notice of the application itself
- Have an experienced staff person ready and available to answer questions from residents on a timely basis
- Have staff available for neighborhood meetings with residents to answer questions and alleviate fears of the unknown
- Change Reasonable Accommodation Requirement #8 in Resolution No. 2017-15 from 1,320 feet spacing between other group homes or assisted living homes to 2,000 feet



TITLE 9 - SHORT TERM RENTALS

9-500.38. Limitations on regulation of vacation rentals and short-term rentals; state preemption; definitions

- A. A city or town may not prohibit vacation rentals or short-term rentals.
- b. 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:
 - 1. 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
 - 2. 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 21 42-12004
 - 3. 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



STR - ADOPTED ORDINANCES

The Town has adopted Two Ordinances to “police” Short Term Rentals

- Ordinance No. 2018-05 - Unruly Gatherings Section 10-13-1
 - The purpose of this article is to deter behavior associated with unruly gatherings and allow the Town to obtain reimbursement for expenses related to responses to unruly gatherings which have been determined to be a threat to the peace, health, safety, or welfare of the general public
 - “Unruly Gathering” means 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
 - Increased fines, assessment of police service fees, posting of notice of UG on the property, and notices to owners of the UG on their property are additional enforcement tools
 - Assessing responsibility to the Owners of the STRs often difficult as owners often not present, profess no knowledge of the “social gathering” that led to the violations, or have agents that handle the rental activity



STR-ADOPTED ORDINANCES

- Ordinance No. 2019-12 - A new Section 10-14 re Short-Term Rentals, Responsible Party Requirement, and Other Violations
 - Before offering for rent or renting a short-term rental or vacation rental within the Town the owner of a short-term rental or vacation rental 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
 - In addition to the information required above, the owner of a short-term rental or vacation rental 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
 - For purposes of this section "timely manner" shall mean: 1) within two hours after the initiation of contact with the owner's designee when the contact is made by a police department officer or employee for a complaint or incident that is reported to the police department and for which police officers have been called out to the owner's property due to such complaint or incident and where the police officers are at the owner's property at the time that such contact is initiated;
 - No STR may be used for a non-residential use, including a retail, restaurant, banquet space or other similar use (See ARS §9-500.39(F) also)



STR-CHANGES SUGGESTED

Staff Recommended Changes to STR Regulations:

- Change the definition of “responsible person” to include “property manager” or “rental agent”
- Provide for an appeal of any assessment of police service fees prior to commencing collection efforts
- Add an aggravating factor requiring that the mandatory fines shall be automatically increased to the next higher fine level should any of the following four violations or factors be found at an Unruly Gathering: 1) minor in possession, 2) minor in consumption, 3) illegal drugs or weapons, and 4) any felonious conduct
- Modify the provisions of the current “Special Event” provisions in Article 8-8 of the Town Code to include any event that takes place on private property that is anticipated to impact the neighborhood (i.e. required parking for more than 20 motor vehicles on the public rights-of-way or plans on hosting more than 50 attendees) and require conditions of approval to minimize neighborhood impacts, as well as requiring Special Event permits for STRs that have any outstanding code violations such as the failure to identify a responsible person



TOWN CODE - FRACTIONAL LIVING

- Section 1026. Prohibition of Time-Share Projects:
Time-Share Projects, as defined in Article II, Section 201 are hereby prohibited within any use district within the Town of Paradise Valley.
- Section 201 (ZO Definitions):
Time-Share Project: 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.
- Fairly new issue in Town; one such “fractional offering” on Maverick now withdrawn from the market; complaint filed with another such fractional offering located on Quail Run Place



TIME-SHARE/FRACTIONALS

State Law:

- Any division of an interest in land into over 6 fractions or interests would be a “subdivision” under state law (ARS 32-2181) and would fall under the investigative authority of the Arizona Department of Real Estate (AzDRE)
 - If properties are actually being offered as time shares (as defined in ARS 32-2197), AzDRE would investigate
 - Since AzDRE licenses realtors, it may be able to use that authority to gather information during an investigation
 - A link for filing complaints is available on the AzDRE site
 - The Town code enforcement staff has filed a recent complaint
- NO changes to the regulations on Time-shares is recommended



QUESTIONS? NEXT STEPS!

Does the Council desire to have the Staff explore any of the recommended changes to the current Town Codes and practices with respect to Group Homes, Assisted Living Homes, Short Term Rentals, Fractional Sales?

