



Legislation Text

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TO: Mayor Bien-Willner and Town Council

FROM: Andrew Miller, Town Attorney
Jill Keimach, Town Manager

DATE: November 5, 2020

CONTACT:

AGENDA TITLE:

Discussion of Sober Living Homes/Reasonable Accommodation Process, Assisted Living Homes, Short Term Rentals, and Timeshares/Fractional Ownership

BACKGROUND:

Town Manager Jill Keimach provided an update to the Council on October 8, 2020 regarding some of the code enforcement activities and other matters of note over the summer months, including a summary of issues related to Assisted Living, Group/Sober Living Homes and Short-Term Rentals impacting the quiet enjoyment of neighborhoods. This report is a follow-up to that presentation with a focus on four specific land use-related matters that have one factor in common, that is, they are occurring in residentially zoned neighborhoods. The four matters to be addressed in the report include: 1) Assisted Living Homes, 2) Sober Living Homes and the related Reasonable Accommodation Process, 3) Short-Term Rentals, and 4) Time Shares/Fractional Ownership issues.

The attached memo goes into significant detail on each of these areas, including the prior Town ordinances and resolutions related to each of these uses, a brief history of Town staff enforcement of these ordinances and resolutions, prior enforcement efforts, and other issues to consider (see "Prior Adopted Ordinances, Resolutions, and Town Enforcement Actions" attached hereto). One fact pattern that is common to three of these four "land uses" is that they have some form of protection or preemption under federal or state law, which makes responding to neighborhood concerns regarding the impacts of each "use" problematic. The sections below provide a summary of the prior ordinances, enforcement efforts, and preemption issues along with recommendations on changes to the existing ordinances, resolutions, or processes related to each of these four land uses:

Assisted Living Homes:

- Assisted living homes are protected by the Fair Housing Act and the ADA, both of which "preempt" local codes, ordinances, and processes
- Any person with a disability, their representative, or a developer or provider of housing for individuals with a disability may request from a municipality a "reasonable accommodation" in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling
- The Town adopted Ordinance No. 567 in November 2005 to provide for the regulation of Assisted Living Homes

- Spacing requirements apply
 - Occupancy limited
 - DHS Licensing required at all times
 - Code compliance and parking requirements also apply
- No complaints about violations by Assisted Living Homes
- Based on a recent review of the regulations in other municipalities, the staff would recommend four changes to the current ordinance provisions and review process:
 - 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/Reasonable Accommodation:

- Sober living homes are protected by the Fair Housing Act (“Act”) and the Americans with Disabilities Act (“ADA”) for “preemption” of local codes, ordinances, and processes
- Similar to an Assisted Living Home, any person with a disability, their representative, or a developer or provider of housing for individuals with a disability may request from a municipality a “reasonable accommodation” in order to provide disabled individuals with an equal opportunity to use and enjoy a dwelling
- The Town adopted Resolution 1252 in March 2012 (modified by Resolution 2017-15 in June 2017) to establish a reasonable accommodation process to address the requirements of the Act and the ADA related to existing sober living homes and any future requests for sober living homes in the Town
- The Town has had several applications for a reasonable accommodation in the past, many of which were withdrawn prior to a hearing
- There are no known sober living homes in the Town today
- Based on the experience with a recent application, Town staff would recommend the following changes in the Town’s processing of Reasonable Accommodation applications and in one of the RA “Requirements”:
 - 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
 - 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

Short Term Rentals:

- Short Term Rental (STR) properties can look to the state statutes first adopted in May 2016 with SB1350 for “preemption” of local codes and ordinances
 - Town may not prohibit STRs
 - Town may not restrict the use of or regulate STRs based on their classification, use or occupancy; meaning the Town should treat them the same as other residential properties and not have special regulations that apply only to STRs
 - Can regulate nuisances (such as unruly gatherings), limit commercial use, and require responsible person/emergency contact
- Several ordinances have been adopted over time to address the impacts of STRs in the Town, including:
 - Home Occupation -no commercial use and parking must be on site and not in dirt or grass yard areas
 - Unruly Gatherings - significant penalties and fees can be assessed when such events happen and can be proven
 - Short Term Rentals - responsible party “registration,” prompt response to any PD emergency contact of owner or responsible person, requirement to obtain a tax license and list the license # on any online platform, along with registering STRs as “rental property” at the County Assessor
- 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; and most recently for Unruly Gatherings and to require identification of a “responsible person”
- Based on a recent review of the regulations in other municipalities and in-depth staff discussion on how to address some of the current hard to prosecute STR-related cases, the staff would recommend two changes to the current Unruly Gathering Ordinance provisions:
 - 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
- Additionally, staff would recommend modifying 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.

Time Shares/Fractional Ownerships:

- Ordinance No. 204 adopted April 1983 added Section 1026 to the Zoning Ordinance and prohibiting “time share projects” in any use district in the Town
- This applied to all SUP-zoned properties and to all residential use zoned properties
- 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
- No changes to Town Codes or ordinances are recommended at this time

Staff desires Council input on the recommended changes to the Town codes and processes related to each of the four “uses.” This may be done either at the study session on November 5, 2020 (time permitting) or by Town staff bringing back each of these “use” issues to the Council separately with draft ordinance language relating to each of the recommended code or ordinance changes.

NEXT STEPS

Council discussion on each of the four matters and feedback on next steps and timing of bringing back further information or recommended code, ordinance or process changes back to the Council.

ATTACHMENTS:

Memo regarding “Prior Adopted Ordinances, Resolutions, and Town Enforcement Actions”
PowerPoint Presentation