



DATE: May 3, 2016

TO: Development Service Staff

FROM: Carmine DeBonis Jr., Development Services Director

SUBJECT: **Interpretation Regarding Pima County Zoning Code Provisions for Group Homes**



Group Home Definition and Provisions

The Pima County Zoning Code (PCC) defines a group home in Section 18.03.020 G.8.

Specifically, group home is defined as:

A licensed home suitable for accommodating more than five, but fewer than eleven minor children in addition to those minor children related to the operators in residence by blood or adoption; or a licensed home suitable for accommodating more than five but fewer than eleven persons who require special care for physical or mental reasons.

The provisions for group homes are contained in Pima County Code Section 18.09.020 E:

1. *Scope: Group homes shall be permitted in the RH, GR-1, ML, SR, SR-2, SH, CR-1, CR-2, CR-3, CR-4, CR-5, CMH-2, MU, TR and CMH-1 zones, subject to issuance of a use permit by the zoning inspector showing compliance with the requirements of this subsection;*
2. *Requirements:*
 - a. *The establishment must be licensed to operate as a group home by the state of Arizona;*
 - b. *The establishment must obtain a certificate of occupancy if required by county building codes.*

Group Home Interpretation

For the purposes of compliance with the PCC definition of a group home, the term “*special care for physical or mental reasons*” is interpreted to include the following services defined in ARS 36-401:

15. *"Directed care services" means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.*

22. *"Health-related services" means services, other than medical, that pertain to general supervision, protective, preventive and personal care services, supervisory care services or directed care services.*

23. *"Health screening services" means the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.*

36. *"Personal care services" means assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.*

40. *"Respite care services" means services that are provided by a licensed health care institution to persons otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.*

43. *"Supervisory care services" means general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications.*

45. *"Unscheduled medical services" means medically necessary periodic health care services that are unanticipated or cannot reasonably be anticipated and that require medical evaluation or treatment before the next business day.*

It is generally recognized that provision of the above services which are hereby interpreted to meet the definition of *"special care for physical or mental reasons"* do not require health professional license or certification pursuant to ARS Title 32.

Conversely, types of services that **do not** meet the provision of the group home definition related to *"special care for physical or mental reasons"* include the following as defined in ARS 36-401, which require a health professional license or certification pursuant to ARS Title 32:

10. *"Behavioral health services" means services that pertain to mental health and substance use disorders and that are either:*

(a) *Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services.*

(b) Performed on behalf of patients by behavioral health staff as prescribed by rule.

29. "Medical services" means the services that pertain to medical care and that are performed at the direction of a physician on behalf of patients by physicians, dentists, nurses and other professional and technical personnel.

33. "Nursing services" means those services that pertain to the curative, restorative and preventive aspects of nursing care and that are performed at the direction of a physician by or under the supervision of a registered nurse licensed in this state.

For the purposes of compliance with the PCC definition of a group home, it is the provision of services such as directed care, health-related, personal care, and supervisory care, which are non-behavioral health services, non-medical services and non-nursing services that generally differentiate a group home from other classes and subclasses of health care institutions that provide behavioral health services, medical services and nursing services as defined in ARS 36-401, or that are performed by or under the supervision of a professional licensed pursuant to ARS Title 32. Notwithstanding, a group home may arrange for periodic on-site services from an outside licensed health professional provided that the professional provides only limited intermittent services and does not maintain residence within the group home.

In this respect, health care institutions licensed by the State which provide behavioral health services, medical services and nursing services, as defined in ARS 36-401, including but not limited to hospitals, behavioral health inpatient facilities, nursing care institutions and behavioral health residential facilities do not meet the PCC group home definition. These types of health care institutions are generally allowed in TR "Transitional Zone" zones and not in other rural and residential zones.

Similarly, other classes and subclasses of health care institutions licensed by the State such as assisted living centers, assisted living homes, adult foster care homes, adult day health care facilities and substance abuse treatment facilities, and other State licensed facilities providing child care services are not classified as group homes under the PCC group home definition. These types of facilities typically have their own definitions or provisions within the PCC.

Reasonable Accommodation Requests

It is the policy of Pima County Development Services, pursuant to the federal Fair Housing Amendments Act of 1988 or the Arizona Fair Housing Act ("Act"), to provide individuals with disabilities reasonable accommodation to rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities.

The following establishes a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures to comply fully with the

intent and purpose of fair housing laws. This procedure is intended to apply to those persons who are defined as disabled under the Act.

A request for reasonable accommodation may be made by any person with a disability, the person's representative, or any entity, when the application of a zoning law or other land use regulation, policy or practice is perceived to act as a barrier to fair housing opportunities. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of his or her choice. For example, a health care institution that receives a license from the State other than a "group home" and which only provides non-behavioral health, non-medical and non-nursing services, may be granted a reasonable accommodation to operate as a group home provided that the services provided comply with the above interpretation regarding *special care for physical or mental reasons*".

Request for reasonable accommodation shall be submitted in the form of a letter to the Chief Zoning Inspector and shall contain the following information:

1. The applicant's name, address and telephone number.
2. Address of the property for which the request is being made.
3. The current use of the property.
4. The basis for the claim that the individual is considered disabled under the Act.
5. The code provision, regulation or policy from which reasonable accommodation is being requested.
6. What specific accommodation is requested and why the accommodation is necessary to make the specific property accessible to the individual.

The Chief Zoning Inspector, or designee, shall make a written determination on the request within 30 days and either grant, grant with modifications or deny a request for reasonable accommodation.

The written decision to grant, grant with modifications or deny a request for reasonable accommodation shall be based on consideration of the following factors:

- Whether the housing, which is the subject of the request, will be used by a disabled individual.
- Whether the accommodation requested is necessary to make specific housing available to a disabled individual.
- Whether the requested accommodation would impose an undue financial or administrative burden on the County, in which instance it would not be deemed to be reasonable.
- Whether the requested accommodation would require a fundamental alteration in the nature of a County program or law, including but not limited to land use and zoning, in which instance it would not be deemed to be reasonable.

- Potential impact on surrounding uses.
- Physical attributes of the property and structures.
- Alternative accommodations which may provide an equivalent level of benefit.

In granting a request for reasonable accommodation the Chief Zoning Inspector may impose conditions of approval deemed reasonable and necessary to ensure that the accommodation complies with the findings.

A determination by the Chief Zoning Inspector to grant, grant with modifications or deny a request for reasonable accommodation may be appealed, pursuant to Chapter 18.93 of the PCC.