

## **ORDINANCE NO. 2023-03**

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF YOUNGTOWN, ARIZONA, DECLARING THE DOCUMENT ENTITLED "CODE AMENDMENTS, 2023" AS A PUBLIC RECORD; ADOPTING THE CODE AMENDMENTS, 2023 BY REFERENCE; AND AMENDING THE TOWN CODE OF THE TOWN OF YOUNGTOWN, ARIZONA, BY REVISING TITLE 17 ZONING BY REPEALING REQUIREMENTS FOR GROUP HOMES FOR THE HANDICAPPED AND REPLACING THEM WITH REQUIREMENTS FOR GROUP HOMES; AND ADDING A DEFINITION OF "FAMILY," ALL RELATED TO ZONING REQUIREMENTS FOR GROUP HOMES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES; AND DECLARING AN EMERGENCY.

WHEREAS, that certain document entitled "Code Amendments, 2023," three copies of which, or one paper and one electronic copy, are on file in the office of the Town Clerk in compliance with A.R.S. § 9-802, is declared to be a public record and said copies are ordered to remain on file with the Town Clerk; and

WHEREAS, the Town Council has determined that the proposed amendments are necessary to protect public health, safety, and welfare of Town residents;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Youngtown, Arizona, as follows:

### **Section I. In General.**

The Code of Youngtown, Arizona, is amended by repealing Section 17.52.140 – Group Homes for the Handicapped and replacing it with a new Section 17.52.140 – Group Homes and amending Section 17.04.030 – Definitions, all to read as set forth in that certain document entitled "Code Amendments, 2023," which document is hereby adopted and incorporated by reference.

### **Section II. Providing for Repeal of Conflicting Ordinances.**

All Ordinances and parts of Ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference are hereby repealed.

### **Section III. Providing for Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**Section IV. Providing for Penalties.**

Any person, firm, company or corporation, whether as principal, owner, agent, tenant, employee or otherwise, violating, disobeying, omitting, neglecting or refusing to comply with any provision of this Title, or violating or failing to comply with any order or regulation made hereunder, is guilty of a class one misdemeanor, punishable upon conviction by a fine of not less than five hundred dollars (\$500) nor more than twenty-five hundred dollars (\$2,500), imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

**Section V. Zoning Considerations.**

In accordance with Article II, Sections 1 and 2, Constitution of Arizona, and the laws of the State of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town and the probable impact of the proposed ordinance to the cost to construct housing for sale or rent before adopting this ordinance.

**Section VI. Declaring an Emergency.**

The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, and safety of the Town of Youngtown, and an emergency is hereby declared to exist. This Ordinance shall be in full force and effect from and after its passage, adoption, and approval by the Common Council of the Town of Youngtown.

PASSED AND ADOPTED by the Common Council of the Town of Youngtown, Arizona, this 15<sup>th</sup> day of June, 2023, by the following vote:

AYES: 7

NAYES: 0 ABSENT: 0

EXCUSED: 0 ABSTAINED: 0

APPROVED this 15<sup>th</sup> day of June, 2023.

Michael E. LeVault, Mayor

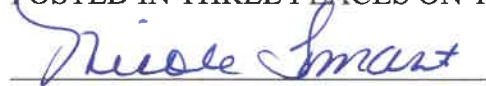
ATTEST:

Nicole Smart  
Nicole Smart, Town Clerk

APPROVED AS TO FORM:

Trish Stuhan  
Trish Stuhan, Town Attorney  
Michelle Stinson

I, NICOLE SMART, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF ORDINANCE NO. 2023-03 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF YOUNGTOWN ON THE 15<sup>th</sup> DAY OF JUNE, 2023, WAS POSTED IN THREE PLACES ON THE 16<sup>TH</sup> DAY OF JUNE, 2023.



Nicole Smart, Town Clerk

## CODE AMENDMENTS, 2023

The Code of Youngtown, Arizona, is hereby amended by amending Title 17 Zoning, by repealing Section 17.52.140 Group Homes for the Handicapped, and replacing it with Section 17.52.140 Group Homes to read as follows:

### **17.52.140 - Group Homes.**

The purpose of this section is to permit the establishment of group homes while preserving the residential character of the community.

A. Homes of six or fewer persons receiving care on a 24-hour-per-day basis shall be considered a single-family residence for the purposes of this title. The limitation of six or fewer persons does not include the operator or members of the operator's family or staff.

B. Group homes shall be permitted in the R-43 rural residential zoning districts, R-3 single-family dwelling districts, R-2 two-family dwelling districts, and R-1 multiple-family dwelling district if they are in compliance with the requirements of this subsection.

1. Maintain copy of license or certification through one or more of the following groups or agencies, or produces such license or registration within 90 days:

- a. License or certification by the State of Arizona Department of Health; or
- b. License or certification by the Arizona Recovery Housing Association; or,
- c. "Permanent" Oxford House, Inc. Charter. Chartered Oxford Houses (1) must be democratically self-run; (2) must be financially self-supporting; and (3) must immediately expel any resident who returns to using alcohol or drugs.

2. If licensing or certification is required by the State of Arizona, group homes shall present evidence of a current state license or certification annually to the Youngtown clerk.

3. Comply with all applicable building and fire safety regulations, and if a new building or reconstruction or alteration of an existing building, the establishment must obtain a certificate of occupancy.

4. No group home shall be located on a lot with a property line within a one-thousand (1,000) foot radius of another group home, for the purpose of avoiding clustering.

5. Large and/or multiple trash receptacles not usually found in the area shall be blocked from public view.

6. There shall be no commercial exterior signage or other exterior indication that the property is being used as a group home. This shall not prevent improvements that are necessary for compliance with the Americans with Disabilities Act.

7. No applicant or operator shall:

- a. Have been convicted or pled *nolo contendere* to any sex offense committed within ten years prior to the date of the application for which the person is required to register as a sex offender;
- b. Have been convicted or pled *nolo contendere* to any arson offense committed within seven years prior to the date of the application for this permit;
- c. Have been convicted or pled *nolo contendere* to any violent felony which involved doing bodily harm to another person committed within ten years prior to the date of the application for this permit;
- d. Have been convicted or pled *nolo contendere* to the unlawful sale or furnishing of any controlled substances committed within seven years prior to the date of the application for this permit;
- e. Be on parole or formal supervised probation on the date of the submittal of the application for this permit or at any time thereafter.

8. No group home shall 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. An individual required to register under Arizona law as a sex offender and classified as a Level II or Level III community risk (intermediate to high risk) is not permitted to live in a group home.

9. Licensing. All licenses, certifications, and registrations required for the group home by the town or a state or federal agency shall be maintained. Failure to comply with applicable laws or rules shall be a violation of this section. Group homes that have allowed federal or state licenses to lapse shall be deemed non-compliant and will be removed from the administrative record. To reinstate a group home, the owner or authorized agent shall reinitiate the application and review process by filing a registration request, application, and all applicable fees for review and consideration. Refiling these materials does not guarantee approval.

10. The town reserves the right to revoke authorization to operate if it demonstrates that a group home cannot, or will not, operate in a manner that integrates with the existing community or operates in a manner that disrupts the character of the home or the community.

11. Group homes not licensed or certified by the state shall comply with the Environmental and Physical Plant Requirements set forth in Arizona Administrative Code Section R9-12-207.

C. Applicants may request a reasonable accommodation for a group home. The community development manager, or his/her designee, shall review the application and determine if the requested accommodation is reasonable and necessary.

1. In determining whether a reasonable accommodation request is reasonable, the following shall be considered:

- a. Whether the request was made by or on behalf of a person with a disability;
- b. Whether there is a disability-related need for the accommodation;
- c. Whether the proposed group home for people with a disability would cause a fundamental change in the purpose of the town's zoning;
- d. Whether the applicant has demonstrated that the proposed facility in combination with any existing similar facilities will not alter the residential character of the surrounding neighborhood by concentrating community facilities on a block or in a neighborhood;
- e. Whether the proposed facility will be operated in accordance with any required state or federal licensing to protect the health, safety, and welfare of the facility's occupants;
- f. Whether the proposed facility would cause any undue financial or administrative burden on the town or it would fundamentally alter the nature of the town's operations; and
- g. Any other factor bearing on the "reasonableness" of the accommodation under the federal Fair Housing Act.

2. In determining whether a request for a reasonable accommodation is necessary, the following shall be considered:

- a. The economics of the group home's operation;
- b. The need for residential opportunities for handicapped persons;
- c. The existence of other reasonably viable locations that the applicant can operate from that satisfy the town's distance requirements while still ensuring that people with disabilities may live in the community of their choice; and
- d. Any other factor bearing on the "necessity" of the accommodation under the federal Fair Housing Act.

D. To the extent permitted by law, the community development manager, or his/her designee, may request additional information necessary to evaluate the request for an accommodation.

E. The denial of a reasonable accommodation request may be appealed to the board of adjustment pursuant to town code 17.12.050.

F. Reasonable accommodation approvals made by the community development manager or the board of adjustment may be rescinded should it be determined that the applicant or subsequent facility owner is unable or unwilling to maintain the basis for an affirmative decision. The community development manager shall prepare a written appeal to the

board of adjustment requesting the previously issued statement of reasonable accommodation be rescinded. The effect of a rescinded statement of reasonable accommodation could include the initiation of a revocation of operational permits and permissions, reporting to state authorities, prevention of future statements of reasonable accommodations for the owner or applicant of record, or the initiation of other corrective actions as deemed necessary to ensure compliance with the criteria contained herein.

Further, the Code of Youngtown, Arizona, is hereby amended by amending Title 17 Zoning, by amending Section 17.04.030 Definitions to add a definition of "Family," to read as follows:

**Section 17.04.030 – Definitions.**

"FAMILY" MEANS AN INDIVIDUAL OR TWO (2) OR MORE INDIVIDUALS RELATED BY BLOOD, MARRIAGE OR ADOPTION, OR A GROUP OF NO MORE THAN SIX (6) UNRELATED INDIVIDUALS, LIVING TOGETHER AS A SINGLE HOUSEKEEPING UNIT.

"Group home ~~for the handicapped~~" means a dwelling shared by MORE THAN SIX AND NOT MORE THAN 10 ADULTS OR MINOR CHILDREN WHO ARE handicapped persons who reside together as a single housekeeping unit and who receive care, supervision, or counseling from one or more staff persons FOR PHYSICAL, MENTAL, OR DEVELOPMENTAL DISABILITIES. This definition includes assisted living homes, SOBER LIVING HOMES, homes for the mentally ill, group care agencies and similar residential living arrangements for handicapped persons, but shall not include boarding houses, nursing homes, or substance abuse treatment facilities.