



AGENDA

**PRESCOTT CITY COUNCIL
STUDY SESSION
Tuesday, July 26, 2016
1:00 PM**

**Council Chambers
201 South Cortez Street
Prescott, Arizona 86303
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its **Study Session Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending this meeting through the use of a technological device.

◆ **CALL TO ORDER**

◆ **ROLL CALL**

MAYOR AND CITY COUNCIL

Mayor Oberg

Mayor Pro Tem Lamerson

Councilman Blair

Councilman Lazzell

Councilwoman Orr

Councilman Sischka

Councilwoman Wilcox

I. DISCUSSION ITEMS

- A. Public comment re possible regulations for structured sober living homes
- B. Requests for information re July 26, 2016, Voting Meeting agenda items

II. ADJOURNMENT

EXECUTIVE SESSION

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (ii) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (iii) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (iv) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. §38-431.03(A)(4));
- (v) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (vi) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6));
- (vii) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. §38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys' fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced for violation of the statute unless City Council takes a legal action at a properly noticed open meeting to approve of such expenditures prior to incurring any such obligation or indebtedness. A.R.S. §38-431.07(A)(B).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on _____ at _____ m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

Dana R. DeLong, CMC, City Clerk

MEETING DATE/TYPES: STUDY SESSION 7-26-16

DEPARTMENT: Legal

AGENDA ITEM: Public comment re possible regulations for structured sober living homes

Approved By:	Date:
City Attorney: Jon Paladini	07/18/2016
City Manager: Craig McConnell	07/20/2016

Item Summary

A.R.S. §9-500.38 (formerly HB 2107) authorizes cities and towns to adopt by ordinance standards for structured sober living homes that comply with state and federal Fair Housing laws and the Americans With Disabilities Act.

The City Attorney discussed the attached Power Point presentation outlining options for possible areas of regulation at the July 12, 2016, Council Study Session.

The City Attorney's Office will carefully craft a draft ordinance that protects residents of sober living homes and the neighboring community from operators who fail to provide the supportive, residential family-like living environment necessary to achieve and maintain sobriety.

The City's interest is in protecting sober home living residents from operators that engage in abuse, neglect, mistreatment, fraud, inadequate supervision, failure to provide a family-like living environment and structure, and inadequate support for maintaining sobriety.

It will be crucial to carefully craft the language of the ordinance to avoid conflict with applicable federal and state laws. Any ordinance adopted by Prescott must comply with the Fair Housing Act, ADA, and Equal Employment Opportunity statutes and provisions:

- Be intended to achieve a legitimate government interest;
- Actually achieve that legitimate government interest;
- Be the least drastic means needed to actually achieve that legitimate government interest.

Agenda Item: Public comment re possible regulations for structured sober living homes

An ordinance that meets these objectives requires careful evaluation of every provision to make sure that the regulations adopted in the ordinance achieve the city's legitimate goals and objectives using the least drastic means necessary.

The purpose of this study session is to obtain input, comments, questions and suggestions from the general public and the rehabilitative industry providers, and further direction from the Council.

Attachments

1. July 12, 2016, Structured Sober Living Operational Regulations PowerPoint presentation

Recommended Action: For public comment and Council discussion only.

Structured Sober Living Operational Regulations A.R.S. §9-500.38

July 12, 2016



Purpose

Carefully craft an ordinance that protects residents of Structured Sober Living Homes and the neighboring community from operators who fail to provide the supportive, residential family-like living environment necessary to achieve and maintain sobriety.

Intent

The city's intent is to protect structured sober home living residents from operators that engage in abuse, neglect, mistreatment, fraud, inadequate supervision of a vulnerable population.

The ordinance must comply with the Fair Housing Act, ADA, and Equal Employment Opportunity statutes and its provisions must:

- Be intended to achieve a legitimate government interest
- Actually achieve that legitimate government interest
- Be the least drastic means needed to actually achieve that legitimate government interest.

A.R.S. §9-500.38

DEFINITIONS

STRUCTURED SOBER LIVING HOME

Any premises, place or building that provides alcohol-free or drug-free housing, promotes independent living and life skill development and provides structured activities that are directed primarily toward recovery from substance use disorders in a supervised setting to a group of unrelated individuals who are recovering from drug or alcohol addiction and who are receiving outpatient behavioral health services for substance abuse or addiction treatment while living in the home.

WHAT DOES A.R.S. §9-500.38 AUTHORIZE?

Cities and towns may adopt by ordinance standards for structured sober living homes that comply with State and Federal Fair Housing laws and the Americans With Disabilities Act.

WHAT DOES A.R.S. §9-500.38 AUTHORIZE?

A written notification from all structured sober living homes that includes the name and address of the structured sober living home, information about the property such as the property owner's name, address and contact telephone number, if the property is leased, a copy of the lease that states that the property will be used as a structured sober living home.

Supervision requirements in the structured sober living home for the residents during all hours of operation.

The establishment and maintenance of an operation plan that facilitates the rehabilitative process, including discharge planning, and that addresses the maintenance of the property and noise abatement consistent with local ordinances.

WHAT ELSE DOES ARIZONA LAW ALLOW?

A.R.S. §9-240.B.21 and A.R.S. §9-276.A.16

Define, abate and remove nuisances, and punish persons committing nuisances.

Prescott City Charter Article I, Section 2

Enact local legislation and determine policies deemed necessary and proper for the orderly government and administration of the affairs of the city; and

Prescott City Charter Article I, Section 3

All the powers granted to municipal corporations and to cities by the constitution and laws of this state and by this charter, together with all the implied powers necessary to carry into execution all the powers granted; and

WHAT ELSE DOES ARIZONA LAW ALLOW?

Arizona Supreme Court - Article 13, § 2 of the Arizona Constitution

The City of Prescott, as a charter city, may exercise all powers granted by its charter, provided that such exercise is not inconsistent with either the constitution or general laws of the State of Arizona. As such, the City of Prescott is granted autonomy over matters of local interest, and although a city ordinance on a matter of local and statewide concern must not conflict with a statute, an ordinance may be more restrictive than the statute, may parallel it, or even go beyond it; and

Arizona Supreme Court and United States Supreme Court

Cities have the right to regulate both the number of unrelated people who may reside in a single family home and the manner in which the single family is used as long as such regulations do not unfairly discriminate or impair an individual's rights of privacy and association.

WHAT DOES THE LAW REQUIRE?

When applying the City's ordinances and regulations, it is Prescott's policy to provide a "reasonable accommodation" in accordance with federal and state fair housing laws (42 USC §3600 et seq) for persons with disabilities.

APPLICATION

An application for a structured sober living home permit must be submitted to the City by the owner/operator of the group home.

Existing structured sober living homes will have a deadline within which to file for a permit – tied to business license requirements taking effect.

Structured sober living homes in existence upon the effective date of the ordinance would have up to one year from the effective date of the ordinance to comply with its provisions.

PERMIT

The permit is issued by the city as a ministerial/administrative matter if the applicant is in compliance or has agreed to comply with ordinance's requirements. The permit may be denied, and if already issued, may be denied or revoked under certain circumstances or a violation of the rules and regulations of the ordinance.

DENIAL/REVOCACTION OF PERMIT

Owner/operator or staff person has provided materially false or misleading information on the permit application or omitted any pertinent information.

Owner/operator or staff person has an employment history in which he or she was terminated during the past two years because of physical assault, sexual harassment, embezzlement or theft; falsifying a drug test; and selling or furnishing illegal drugs or alcohol.

DENIAL/REVOCACTION OF PERMIT

Any owner/operator or staff person has been convicted of or pled no contest within the last seven to ten years of certain criminal offenses.

DENIAL/REVOCACTION OF PERMIT

A permit for a structured sober living home shall also be denied, and if already issued, revoked under other additional circumstances.

RULES/REGULATIONS

All occupants, other than the house manager(s), must be actively participating in legitimate recovery programs, and the structured sober living home must maintain current records of meeting attendance. Under the structured sober living home's rules and regulations, refusal to actively participate in such a program shall be cause for eviction.

RULES/REGULATIONS

The group home must have a house manager who resides at the group home or any number of people acting as a house manager who work on a shift basis that are present at the group home on a 24-hour basis who are responsible for the day-to-day operation of the group home.

Occupants must not require and operators must not provide “care and supervision” as those terms are defined by state law and DHS regulation.

RULES/REGULATIONS

If the structured sober living home operator is not the property owner, written approval from the property owner to operate a group home at the property.

The property must be fully in compliance with all building codes, municipal codes and zoning codes.

PROHIBITING USE OF ALCOHOL AND NON-PRESCRIPTION DRUGS

The home's rules and regulations must prohibit the use of any alcohol or any non-prescription controlled substances at the home or by any recovering addict either on or off site. The home must also have a written policy regarding the possession, use and secure storage of prescription medications and non-prescription medications that may be misused or abused. The home cannot dispense such medications but must make them available to the residents. The possession or use of prescription medications is prohibited except for the person to whom they are prescribed, and in the amounts/dosages prescribed.

RULES/REGULATIONS

Rules and regulations shall be posted on site in a common area inside the dwelling unit. Any violation of this rule must be cause for eviction under the structured sober living home's rules for residency and the violator cannot be re-admitted for at least 90 days. Any second violation of this rule shall result in permanent eviction. Alternatively, the structured sober living home must have provisions in place to remove the violator from contact with the other residents until the violation is resolved.

OTHER RULES

Persons required to register as a sex offender and classified as a Level II or Level III community risk (intermediate to very high risk) under Arizona law are not permitted to live in a structured sober living home.

The structured sober living home shall have a written visitation policy that shall preclude any visitors who are under the influence of any drug or alcohol.

The structured sober living home shall have a good neighbor policy that shall direct occupants to be considerate of neighbors, including refraining from engaging in excessively loud, profane or obnoxious behavior that would unduly interfere with a neighbor's use and enjoyment of their dwelling unit. The good neighbor policy shall establish a written protocol for the house manager/operator to follow when a neighbor complaint is received.

PROHIBITED SERVICES

The structured sober living home shall not provide any of the following services: detoxification; educational, individual or group counseling sessions for persons other than the residents of the structured sober living home; and treatment or recovery planning.

HOUSE MANAGER QUALIFICATIONS AND TRAINING

Certification Program Purpose

To ensure that house managers are properly trained and capable of performing their jobs in a safe, knowledgeable manner, including general oversight of the house, both internal and external to the premises to prevent disruptive client and neighborhood activities, basic first-aid and CPR, effective management of crises, medical and medication issues, and other interpersonal and behavioral matters.

HOUSE MANAGER QUALIFICATIONS AND TRAINING

Minimum Qualifications:

- High school or general equivalency diploma.
- A minimum age of twenty-one.
- Upon the date of employment has enough time in sobriety needed to minimize the chances of relapse or recidivism by the house manager
- The ability to demonstrate an understanding of the disease model of addiction
- Successful completion of training that includes:
 - First aid and CPR training and certification
 - Infectious disease control and prevention
 - Crisis prevention and intervention
 - Assisted self-administration of medication certification

DECEPTIVE MARKETING PRACTICES

A structured sober living home operator who refers residents for any healthcare services provided by an entity owned or operated by such operator or any affiliate of such operator shall (a) notify patients, clients, consumers and facility residents in writing of the ownership interest or affiliation, (b) include the foregoing on marketing and advertising materials, and (c) post written notice of the foregoing in the common area of the structured sober living home.

REPORTING VIOLATIONS

Allow for the disclosure by an employee or resident of a structured sober living home if the employee or resident has information or a reasonable belief that the operator or an employee of the operator has violated or is violating City Code without reprisal or retaliation.

Questions and Discussion