



COUNCIL MINUTES

October 2, 2023

The City Council of the City of Mesa met in a Study Session in the lower-level meeting room of the Council Chambers, 57 East 1st Street, on October 2, 2023, at 4:45 p.m.

COUNCIL PRESENT

John Giles
Francisco Heredia*
Jennifer Duff
Mark Freeman
Alicia Goforth
Scott Somers
Julie Spilsbury

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Holly Moseley
Jim Smith

(*Participated in the meeting through the use of video conference equipment.)

Mayor Giles conducted a roll call.

1. Review and discuss items on the agenda for the October 2, 2023, Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflict of interest: None

Items removed from the consent agenda: None

Responding to a request from City Manager Christopher Brady regarding Items 6-a, (**Resolution declaring as a public record that certain documents have been filed with the City Clerk titled “Exhibit 1: 2023 Amendments to the Tables in Zoning Ordinance, Title 11, Chapters 5, 6, 7, 8, and 58 pertaining to drive thru facilities and pick up window facilities.” (Citywide)**), and 6-b, (**Ordinance proposing Amendments to Chapters 5, 6, 7, 8, 31, 58, 86, and 87 of Title 11, Zoning Ordinance, of the Mesa City Code, pertaining to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows. The amendments include, but are not limited to, repealing in its entirety Section 11-31-18 (Drive-thru Facilities) and replacing it with a new Section 11-31-18 (Drive-thru and Pick-up Window Facilities); modifying land use tables pertaining to Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows; removing definitions of Drive-thru Facilities and adding new definitions for Drive-thru Facilities, Pick-up Window Facilities, and Drive-up ATM/Teller Windows. (Citywide)**), on the Regular City Council meeting agenda, Planning Director Mary Kopaskie-Brown provided clarification stating that the ordinance that is being introduced today

includes an additional requirement that an onsite Circulation and Stacking Study will be required for all drive-thru facilities moving forward.

2-a. Hear a presentation, discuss, and provide direction on sober living homes in Mesa.

Deputy City Manager Candace Cannistraro displayed a PowerPoint presentation and provided a background on the Sober Living Home program. **(See Attachment 1)**

Ms. Cannistraro explained that this program has led to nationwide healthcare fraud. She said that many communities across Arizona are experiencing similar issues with the program because there are unlicensed facilities located in residential areas. She suggested ways to identify an illegal facility. (See Pages 2 and 3 of Attachment 1)

Ms. Cannistraro gave an overview of the State and City laws which included the definition of a Sober Living Home (SLH), according to A.R.S 36-2061(3). She mentioned numerous licensed SLHs throughout Mesa that are doing great things to improve the lives of the people they serve. She added that the purpose of the unlicensed SLHs is to bill insurance companies fraudulently to make money. (See Pages 4 through 7 of Attachment 1)

Ms. Cannistraro stated that the Arizona Health Care Cost Containment System (AHCCCS) funds medical services, including outpatient treatment for drug and alcohol addictions, and described how fraud can occur. She reviewed the SLH goals for the City. She explained the current Arizona Department of Health Services (ADHS) SLH regulations and its authority to assess fines. She emphasized that the State regulates the SLHs, not the City. She noted some of the ADHS regulation issues and stated that Mesa will continue to work with the Arizona League of Cities and Towns to propose new legislation. (See Pages 8 through 11 of Attachment 1)

Ms. Cannistraro provided an explanation of the current City regulations and the Community Residence (CR) definition, which include SLH and assisted living homes. She mentioned that the illegal operators are creating cluster SLHs by keeping the number of residents under four, which is considered a single-family home, and have different licensing requirements. She discussed recommendations for zoning registration and proof of licensing. (See Pages 12 through 15 of Attachment 1)

Ms. Cannistraro explained the City's current general business license requirements, stating that SLHs are required to obtain a business license before opening. She said that it is recommended that Mesa modify the business license application to obtain more information about the type of business being conducted. (See Pages 16 through 18 of Attachment 1)

Ms. Cannistraro summarized that the next step is to draft language to modify the Mesa zoning code. She emphasized that working with the State legislature and having the DHS work with cities to allow for more information exchange would have the greatest impact.

Mayor Giles thanked staff for the presentation.

3. Current events summary including meetings and conferences attended.

Mayor Giles and Councilmembers highlighted the events, meetings and conferences recently attended.

4. Scheduling of meetings.

City Manager Christopher Brady stated that the schedule of meetings is as follows:

Thursday, October 12, 2023, 7:30 a.m. - Study Session

5. Adjournment.

Without objection, the Study Session adjourned at 5:57 p.m.



John Giles

JOHN GILES, MAYOR

ATTEST:

Holly Moseley

HOLLY MOSELEY, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 2nd day of October 2023. I further certify that the meeting was duly called and held and that a quorum was present.

Holly Moseley

HOLLY MOSELEY, CITY CLERK

sr
(Attachments – 1)



SOBER LIVING HOMES

Candace Cannistraro, Deputy City Manager

October 2, 2023

What Brought Us Here

- ▶ Nationwide healthcare fraud scheme
 - ❖ Florida jurisdictions encountered scheme years ago
- ▶ Medicaid fraud and unlicensed sober living homes became a statewide problem in Arizona
- ▶ Unlicensed sober living homes avoid state regulations designed to protect residents, vulnerable individuals
 - ❖ Vulnerable people in need of services are preyed upon
 - ❖ Provided drugs and alcohol instead of the treatment they need
- ▶ Unlicensed sober living homes locate in all types of residential locations and disrupt the community

Mesa's Experience

- ▶ Communities across the state are experiencing similar issues
- ▶ Typical things to look for in assessing a suspected illegal sober living home associated with AHCCCS (Arizona Health Care Cost Containment System) fraud
 - ❖ People are coming and going, loitering, does not seem to be long-term residents
 - ❖ Alcohol and drugs are openly consumed
 - ❖ Residents say that they are not allowed to talk to neighbors
 - ❖ Residents identify that it is a sober living home, recovery home, or part of a government experiment - but not licensed by the State

Discussion and Recommendations

- ❑ State Authority and Requirements
- ❑ City Zoning Authority and Requirements
- ❑ City Business License Authority and Requirements
- ❑ Recommendations and Next Steps

History of State and City Laws

- ▶ 2016: State law authorized cities to adopt standards and requirements for sober living homes; but additional legislation took the cities' authorization away upon ADHS adopting rules to regulate sober living homes
- ▶ July 2018: Mesa passed an ordinance requiring sober living homes to obtain a license from the City and setting minimum standards for the operation of sober living homes
 - ❖ The Ordinance was a stopgap until the ADHS rules were adopted; Ordinance was automatically repealed upon adoption of the ADHS rules
- ▶ July 2019: ADHS rules for sober living homes became effective (Title 9, Chapter 12 of the Arizona Administrative Code)
 - ❖ ADHS has the broadest authority to license and regulate sober living homes

A Sober Living Home is defined by A.R.S § 36-2061(3)

“ . . . any premises, place or building that provides alcohol-free or drug-free housing and that:

- a) Promotes independent living and life skills development
- b) May promote activities that are directed primarily toward recovery from substance use disorders
- c) Provides a supervised setting to a group of unrelated individuals who are recovering from substance use disorders
- d) Does not provide any medical or clinical services or medication administration on-site, except for verification of abstinence

Legally Run, Licensed Sober Living Homes Play a Vital Role in the Community

There are numerous licensed sober living homes throughout Mesa doing great things to improve the lives of the people they serve

- ❖ Many go unnoticed and blend into their community
- ❖ They provide a stable, safe environment for individuals to practice sobriety

We want to be very clear that the **unlicensed homes in question** are not operating with good intent

- ❖ Their purpose is to warehouse individuals, not help them
- ❖ Their purpose is to bill insurance for as much as they can get without providing any services

How Does AHCCCS Fraud Fund Bad Actors

- ▶ AHCCCS does not fund housing. Like any medical insurance, it funds medical services including outpatient treatment for drug and alcohol addictions
- ▶ Companies set up outpatient medical facilities and register with AHCCCS
- ▶ Different companies find individuals in need and offer them free housing, but require them to sign-up with AHCCCS and particularly with the American Indian Health Program (AIHP)
- ▶ The company housing the individuals gives the insurance information to the company “running” the outpatient facility, and AHCCCS is charged repeatedly for services that are not rendered
- ▶ The scam is so profitable that the bad actors can make millions of dollars making the cost of warehousing people insignificant

What are the City's Goals?

- ▶ Find solutions to benefit vulnerable people in need of quality services
- ▶ Protect residents from unhealthy living situations
- ▶ Ensure sober living homes provide quality care, are safe, clean, and comply with state and local laws
- ▶ Avoid overburdening licensed sober living home businesses or pushing quality sober living homes out of Mesa
- ▶ Remain consistent with the Fair Housing Act and Americans with Disabilities Act and case law

Current State Regulation: ADHS

- ▶ ADHS rules for sober living homes include:
 - ❖ Requirement for a license
 - ❖ Grounds for denial, revocation, and suspension of a license
 - ❖ Operating requirements, including for a manager, record keeping, and detailed safety standards
- ▶ ADHS has authority to:
 - ❖ Enter on and into the premises of sober living homes that are licensed *or required to be licensed* to inspect for compliance with laws and rules
 - ❖ Issue, deny, suspend, and revoke licenses
 - ❖ Impose fines (\$1,000/day for every day operating without a license; \$500/day for other violations)
 - ❖ Issue cease and desist orders pursuant to A.R.S. § 36-601(B), which are subject to judicial review through the office of administrative hearings (A.R.S. § 41-1092, et. seq.)

ADHS Regulation Issues/Gaps

- ▶ Despite broad authority of ADHS to license and regulate sober living homes, the sober living homes statutes have issues
- ▶ Current definition is narrow (and is narrowly applied by ADHS):
 - ❖ Sober living home is: “...any premises, place or building that provides alcohol-free or drug-free housing...”
- ▶ If outside this definition, ADHS does not require the facility to obtain a sober living home license
 - ❖ Operators can avoid state regulation by intentionally falling outside the definition or outside of ADHS’s interpretation and application of the definition
- ▶ ADHS is not permitted to discuss the location of a sober living home
- ▶ **Mesa will continue to work with the Arizona League of Cities and Towns to propose new legislation**

Current City Regulation: Community Residence Definition

A Community Residence is defined in Section 11-86-2 of the Mesa Zoning Ordinance

- ▶ A residential living arrangement for five to ten individuals with disabilities, excluding staff, living as a family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence.
- ▶ Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services related to the residents' disabilities.
 - ❖ A community residence seeks to emulate a biological family to foster normalization of its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment.
- ▶ Medical treatment is incidental as in any home. Supportive interrelationships between residents are an essential component.
- ▶ Community residence includes sober living homes and assisted living homes but does not include any other group living arrangement for unrelated individuals who are not disabled nor any shelter, rooming house, boarding house or transient occupancy.

Current City Regulation: Community Residence (CR) Summary

- ▶ 4 OR FEWER RESIDENTS
 - ❖ No City registration required
 - ❖ No separation requirements
 - ❖ No Use Permit required
- ▶ 5-10 RESIDENTS
 - ❖ City Registration and Annual Renewal required
 - ❖ Property owner must approve use (if different than applicant)
 - ❖ 1,200ft separation from other Community Residences
 - ❖ Use Permit required for Transitional CR

Bad Actors Cluster Homes and Avoid City Registration

- ▶ Operators cluster sober living homes in two or more dwelling units or adjacent homes where the number of residents in each unit or home meets the definition of “family” and therefore zoning registration is not required (creating a “Recovery Community”)
 - ❖ Operators can intentionally avoid zoning registration and separation requirements by having 4 or fewer unrelated individuals (i.e., “family”) in each unit or home
 - ❖ Operators may be intentionally avoiding ADHS regulations
 - ❖ Clustering does not emulate a family-like setting, does not encourage integration into the community, and is counterproductive to residents’ success
- ▶ **Requiring zoning registration of Recovery Communities can help address these issues**
- ▶ Not unique to Mesa
 - ❖ Has occurred in many southeast Florida jurisdictions (Pompano Beach, Delray Beach, and Palm Beach County) which have adopted zoning regulations to address Recovery Communities
 - ❖ One Arizona jurisdiction recently adopted zoning regulations to address Recovery Communities

Zoning Recommendations: Recovery Community

- ▶ Update the Zoning Ordinance to incorporate the concept of Recovery Communities
 - ❖ Add “Recovery Community” as a land use classification
 - ❖ Require Recovery Community to obtain zoning registration and show proof of state license/certification
 - ❖ Require Recovery Community to comply with separation requirements
- ▶ Enhance the revocation provisions for zoning registration
- ▶ These recommended changes are not intended to limit good operators who have a state license/certification

Current City Regulation: General Business License Requirements

- ▶ Mesa City Code Chapter 5-5 outlines business license requirements
 - ❖ Purpose is to promote the public health, safety, and welfare
 - ❖ A person shall not conduct business within the City without a valid license for the business issued pursuant to this Chapter
 - ❖ Applies to businesses located at residential or commercial locations
 - ❖ Any City official may inspect a business during regular business hours to ensure compliance with the provisions of this Chapter
- ▶ Many exclusions apply: such as property rental, and businesses that are required to get a specific business license like a mobile food vendor
- ▶ Sober Living Homes are businesses and are therefore required to obtain a Mesa Business License before beginning operations

Mesa Business License Recommendations

- ▶ Modify the business license application to obtain more information about the type of business conducted
 - ❖ Application can indicate whether the business is a sober living home, other group residential facility, or involves the care of vulnerable individuals
 - ❖ Staff can follow-up with businesses that are required to have state or county licensing to ensure compliance

Mesa Business License On-going Efforts

- Leverage business license as a single point of entry for new businesses
 - ❖ The goal is to simplify the process by using the business license as the first step in opening any type of business in Mesa. Staff can determine additional licenses and/or approvals needed and advise the applicant on their next steps

Summary of Recommendations And Next Steps

- ▶ Pursue State legislative changes regarding Sober Living Home definition and ability of Arizona Department of Health Services to share information with municipal government officers
- ▶ Draft language to modify Mesa zoning code to add Recovery Communities
- ▶ Modify business license application to collect information regarding services involving vulnerable populations

If City Council approves moving forward with the recommendations, staff will proceed with drafting the zoning code language and will return for City Council review and consideration

Thank You



mesa·az

What Brought Us Here

- ▶ Nationwide healthcare fraud scheme
 - ▶ Florida jurisdictions encountered scheme years ago
 - ▶ 2017: [Owner Sentenced to More than 27 Years in Prison for Multi-Million Dollar Health Care Fraud and Money Laundering Scheme Involving Sober Homes and Alcohol and Drug Addiction Treatment Centers](#)
 - ▶ 2017: [Insurance Scams Plague 'Sober Home' Recovery Industry in South Florida](#)
- ▶ Medicaid fraud and unlicensed sober living homes became a statewide problem in Arizona
 - ▶ [Arizona cracks down on Medicaid, sober living home fraud targeting Native Americans: 'This is tragic'](#)
 - ▶ [City of Glendale cracking down on unlicensed sober living homes](#)
 - ▶ [Unlicensed home facilities face pushback in Surprise, Cities crack down on recent illegal sober living homes](#)
 - ▶ [Fake Arizona rehab centers scam Native Americans from across the country, officials warn during investigations](#)
- ▶ Unlicensed sober living homes avoid state regulations designed to protect residents, vulnerable individuals
 - ▶ Vulnerable people in need of services are preyed upon
 - ▶ Provided drugs, alcohol instead of the treatment they need

Adult Protective Services Reporting Criteria:

Investigates allegations of abuse, neglect (self-neglect) and exploitation of vulnerable and incapacitated adults. Where the incident occurred in Arizona.

Definition of a vulnerable and Incapacitated adult is set in statute:

- **Vulnerable Adult (A.R.S. § 46-451(A)(11)):**
 - An individual who is 18 years of age or older
 - Unable to protect themselves from maltreatment as defined as abuse, neglect (self-neglect) or exploitation by others because of a physical or mental impairment.
 - It includes an incapacitated person as defined in A.R.S. § 14-5101.
- **Incapacity:** Impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person (A.R.S. § 14-5101)

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