

## ORDINANCE NO. 3314

### AN ORDINANCE AMENDING CHAPTER 4 OF THE ZONING AND DEVELOPMENT CODE OF THE CITY OF GRAND JUNCTION, COLORADO

RECITALS: On April 22, 2000, the City of Grand Junction Zoning and Development Code became effective. After the effective date, City staff met with representatives who own and manage group living facilities in our community to re-work the provisions specifically related to group living facilities. The goal of this collaboration was to write an ordinance which would be workable for the group living facilities, while still providing information to the City regarding the location and services of the group living facilities, as well as allowing the group living facilities to be integrated into neighborhoods. Group living facilities are an important service in our community. The City's policy is to promote the existence of such facilities. Group living facilities provide needed services and a home environment for those who may not be able to live on their own. Additionally, it is the City's policy to integrate these homes into neighborhoods to protect the health, safety and welfare of the residents of the neighborhood, as well as the residents of the group living facilities.

### NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

Chapter 4 of the Zoning and Development Code of the City of Grand Junction, be amended as follows:

That Section 4.Q be repealed and a new Section 4.Q be added to read:

#### **Q. Group Living Facility.**

1. Group Living Facility ("facility" or "group living facility").
  - a. A Group Living Facility is a residential facility or use as defined by this Code that functions as a housekeeping unit comprised of unrelated persons receiving public or private supervision, care or treatment. Registration and compliance with other terms and conditions, as defined and described by this Code are required. A separate City license is not required.
    - (1) An **unlimited group living facility** is a group living facility shared by or the residence of 12 or more unrelated persons, exclusive of staff.
    - (2) A **large group living facility** is a group living facility shared by or the residence of more than eight (8) but fewer than twelve (12) unrelated persons, exclusive of staff.
    - (3) A **small group living facility** is a group living facility shared by or the residence of more than four (4) but fewer than eight (8) unrelated persons, exclusive of staff.
  - b. For the purpose of this section only, the following definitions shall apply:

- (1) **Facility.** A single facility is a lot, parcel or tract of land, together with the structures located thereon.
    - (2) **Use.** The purpose, mission or activity for which land or buildings are designed, arranged or buildings are occupied or maintained.
    - (3) **Structure/Building** shall be defined in Chapter 9.
    - (4) **Related** means a person's: child, stepchild, foster child that is being adopted by a foster family, or other descendant, spouse, aunt, uncle, niece, nephew, parent, grandparent, great grandparent, or stepparent. (See, Chapter 9, Group Living Facility, Family and Household)
  - c. Group living facilities as defined by this Code may or may not be licensed by the State. A facility, which is licensed by the state, regardless of category or size is a group living facility and is required to register with the City.
  - d. A use which does not fit within the definition of a group living facility, is not allowed within a residential district. It is a violation of this Code for four (4) or more unrelated persons to reside together in a structure if a use or service the same as or similar to those described below occurs therein unless permitted by the City as a group living facility.
2. Accessory uses authorized with a group living facility are indoor and on-site recreational facilities and parking of vehicles for occupants and staff. The Director may approve other accessory uses that will have substantially the same impacts; if disapproved the Director or the applicant may refer such matters to the Planning Commission.
  3. Examples of uses that are appropriate as group living facilities, if properly permitted, are listed below. See Table 3.5 Use/Zone Matrix. If the Director determines that a use is not appropriate or compatible with the neighborhood, even if it is described below, he may refer the question to the Planning Commission. A Community Corrections Facility, as defined by this Code is not a group living facility, and thus, shall not exist in a residential zone.
    - a. "Adult Day Treatment Facility" is a facility for the care of adults who require nursing or physician assistance and/or supervision during the day by licensed caregivers and staff, where the resident resides at the facility.
    - b. "Adult Foster Home" or "Family Foster Home" is a residence for the care of persons who are unable to live alone in safety.
    - c. "Alternate Care Facility" is defined in C.R.S. § 26-4-603 (3).
    - d. "Assisted Living Facility" is a: a) structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or b) a supervised living environment that provides support, training or assistance with individual activities of daily living.
    - e. "Community Residential Home" is defined in C.R.S. § 27-10.5-102 (4).
    - f. "Family Care Home" is defined in C.R.S. § 26-6-102(4).

- g. "Foster Care Home" is defined as a facility that is certified by the county department of human services or a child placement agency for child care in a place of residence of a family or person for the purpose of providing twenty-four hour family care for more than four (4) children under the age of eighteen years who is not related to the head of such home.
- h. "Group Home for Persons with Mental Illness" is defined in C.R.S. § 30-28-115(2)(b.5).
- i. "Group Home for the Developmentally Disabled" is defined in C.R.S. § 30-28-115(2)(a).
- j. "Halfway Home" or "Halfway House" is a facility licensed by the State in which residents are provided supervision, counseling, training, or treatment of residents to facilitate their transition from a correctional institution to independent living.
- k. "Homeless Shelter" is a structure or portion thereof in which sleeping accommodations are provided for the homeless. A homeless shelter that provides accommodations for more than six months in one year for any one person shall comply with the group living facility regulations of this Code and any and all other applicable regulations. A shelter which provides accommodations for less than six months shall be considered "lodging" and shall be zoned as such.
- l. "Institutions providing life care" as "life care" is defined in C.R.S. § 12-13-101(5).
- m. "Non-profit group home for the developmentally disabled" is defined in C.R.S. § 30-28-115(2)(b)(I)(A).
- n. "Nursing Facility" is defined in C.R.S. § 26-4-103(11).
- o. "Nursing Home" is a health care facility, other than a hospital, constructed, licensed and operated to provide patient living accommodations, twenty-four (24) hour staff availability and a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological or other professional therapies to intermittent health-related or paraprofessional personal care services.
- p. "Owner Operated Group Home" is defined in C.R.S. § 30-28-115(2)(b)(I)(B).
- q. "Personal Care Boarding Home" is defined in C.R.S. § 25-27-102(8).
- r. "Resident Health Care Facility" means a facility licensed by the State which provides protected living arrangements for four (4) or more persons who because of minor disabilities cannot, or choose not to, remain alone in their own home. The facility may serve the elderly, persons with minor mental or physical disabilities, or any other persons who are ambulatory or mobile and do not require continuous nursing care or services provided by another category of licensed health facility. The resident health care facility shall be considered the resident's principle place of residence.
- s. "Residential Child Care Facility" is defined in C.R.S. § 26-6-102(8).

- t. "Residential Substance Abuse Treatment Home" means a residential facility which provides twenty-four (24) hour staff supervision and may include a peer support structure to help applicants acquire and strengthen the social and behavioral skills necessary to live independently in the community. A residential substance abuse treatment home provides supervision, counseling and therapy through a temporary living arrangement and provides specialized treatment, habilitation, or rehabilitation services for persons with alcohol, narcotic drug or chemical dependencies.
  - u. "Secure Residential Treatment Center" is defined in C.R.S. § 26-6-102(9).
  - v. "Staff Secure Facility" is defined in C.R.S. § 19-1-103 (101.5).
  - w. "Transitional Treatment Home" means a residential facility which provides twenty-four (24) hour staff supervision and a peer support structure to help residents acquire and strengthen the social and behavioral skills necessary to live independently in the community. Such programs provide specialized treatment, habilitation or rehabilitation services for persons with emotional, psychological, developmental, behavioral dysfunctions or impairments. A transitional treatment home shall not include any persons referred by the State Department of Corrections.
  - x. "Transitional Victim Home" means a residential facility which provides twenty-four (24) hour care and peer support to help victims of abuse or crime. A transitional victim home arranges for or provides the necessities of life and protective services to individuals or families who are experiencing a temporary dislocation or emergency which prevents them from providing these services for themselves or for their families. Treatment is not a necessary component of residential support services; however, care may be provided.
4. A Small Group Living Facility may be established in the RSF-R, RSF-E, RSF-1, RSF-2, RSF-4, RMF-5, RMF-8, RMF-12, RMF-16, RMF-24, RO (residential office) and B-1 districts, if licensed by the State for each program and service offered. A Small Group Living Facility is subject to a Conditional Use Permit in a B-2, C-1, C-2 and CRS districts.
  5. A Large Group Living Facility is subject to a Conditional Use Permit in the RMF-5, RMF-8, RMF-12, RMF-16, RMF-24, RO, B-1, B-2, C-1 and C-2 districts.
  6. Unlimited Group Living Facility may be established, subject to a Conditional Use Permit in RMF-12, RMF-16, RMF-24, RO, B-1, B-2, C-1, C-2.
  7. If a Group Living Facility does not exceed the density of the zone in which it is located, then a Conditional Use Permit is not required. "Density" for the purpose of Group Living Facilities is defined in Section 3.6.B.3.i of this Code.
  8. A Group Living Facility located in a commercial zone district (C-1 or C-2) is not subject to the following requirements: compatibility with architecture, use of the facility by other groups, use of the facility by non-residents, and/or any other requirements which are specific to incompatibility with residential neighborhoods.

9. No person shall own, operate or manage any group living facility unless the facility (ies) is/are registered with the City. Registration shall expire on the anniversary date twelve (12) months after issuance.
  - a. Transitional Victim Homes are subject to registration but the address of such group living facilities shall not be required to be disclosed.
  - b. A group living facility that is not registered may be abated, prosecuted or otherwise subject to enforcement action under this Code.
10.
  - a. All group living facilities which were in existence as such prior to the effective date of this ordinance may continue without regard to the provisions of this section, with the exception of all registration requirements. Such use may continue until the occurrence of any of the following:
    - (1) Any expansion of the facility which results in an increase of the number of residents;
    - (2) Any expansion which results in a change of use, as defined by this section;
    - (3) Any expansion of common areas which does not result in more than 300 square feet per structure;
    - (4) Any expansion which results in further nonconformity under this Code;
    - (5) Any expansion due to damage or destruction of the facility, as provided in Sections 3.8.c and e of this Code; or
    - (6) Abandonment of the group living facility use for a period of more than 12 months.
  - b. Any remodel which is an interior remodel and does not effect the size or the use of the facility is not an expansion which will require the facility to come into conformity under this Code.
  - c. If any expansion occurs as described in section (a) above, the facility shall conform to all requirements of this Code and the expansion shall be subject to approval by the Planning Commission after public hearing.
11. The Director shall approve the annual registration if the applicant, when registering or renewing a registration, provides proof that:
  - a. The group living facility has a valid Colorado license, if any is required;
  - b. The group living facility is at least seven hundred and fifty (750) feet from every other group living facility (See 9c.);
  - c. The group living facility has complied with the applicable City, state and other building, fire, health and safety codes as well as all applicable requirements of the zone district in which the group living facility is to be located;
  - d. The architectural design of the group living facility is residential in character and generally consistent with the RO zone district;
  - e. Only administrative activities of the private or public organization sponsored, conducted or related to group living facilities shall be conducted at the facility;

- f. The group living facility complies with the parking requirements of this Code; and
  - g. The maximum number of residents allowed is not exceeded.
12. A facility shall only be located or operated on a lot or parcel that contains:
- a. At least five hundred (500) square feet for each person residing in the group living facility, and;
  - b. The Director determines that public facilities and the neighborhood will not be adversely affected by the number of residents proposed and/or any uses offered or by the aggregate number of group living facilities in the Neighborhood.
13. A facility is considered to have an adverse affect on a neighborhood if one or more of the following standards are shown:
- a. Public and private services such as streets, sewers, water and or utility systems are burdened by the group living facility, to the extent that usage exceeds that normally associated with such a use or in the particular neighborhood;
  - b. The group living facility interferes with the peace, quiet and dignity of the neighborhood;
  - c. The group living facility creates, imposes, aggravates or leads to inadequate, impractical, unsafe or unhealthy conditions; or
  - d. The group living facility is found to be dangerous or unsafe due to an increased number of police visits, instigated by neighbors or for non-mandated purposes; or the existence of a single criminal act by a resident involving serious bodily injury or extensive property damage; or an increased number of incidences of criminal acts by residents involving bodily injury or property damage.
  - e. When considering whether an adverse impact exists, the Director shall consider the following:
    - (1) Whether the impact is real or perceived, based upon stereotypes of the population served by the group living facility;
    - (2) The existence of alarms and/or fences, in and of itself shall not constitute a safety issue which would be an adverse impact; or
    - (3) Whether complaints and/or police calls regarding the group living facility have been founded or unfounded.
14. Services provided within the group living facility shall be restricted to the residents of the facility. Any use which provides services for those other than current residents, which facility is located in a residential zone may allow additional persons up to the total number of residents permitted in that particular group living facility or the number of persons permitted in an Adult Day Care Center (twelve) to use the services of the use. For example, if there are currently eight (8) residents at the facility, no more than four (4) non-residents may use the services the facility provides;
15. If the group living facility proposes to use or convert existing multi-family residences, adequate lot area shall be provided according to the requirements

- of the district, the requirements of the district shall be met and the intensity of the programs or services offered shall be compatible with the neighborhood.
16. Within thirty (30) days prior to making an application for registration of a new (including conversion of an existing building or buildings) group living facility, each applicant shall give mailed notice to and meet with, at a location convenient to the neighborhood: property owners within five hundred (500) feet from the proposed group living facility and those neighborhood groups which are registered with the City and which represent residents within one thousand (1000) feet of the group living facility.
    - a. At the meeting, the applicant shall describe the facility and its proposed uses.
    - b. If a neighborhood meeting is required because of development application then only one neighborhood meeting, conducted in accordance with the more restrictive standard of this Code, shall be necessary.
    - c. Transitional victim homes, where confidentiality of the location is an integral part of the facility, shall not be required to hold a neighborhood meeting.
    - d. The Director may rely on any comments received by the residents of the neighborhood, or other interested persons when he makes his decision to register, deny, refer or register with conditions. The Director shall not be required to research the comment or otherwise investigate the motive of the commenting party or parties, unless the Director relies on that information when making a decision.
  17. Group living uses occurring in each structure, if more than one structure exists on a single group living facility property, may be limited in size and number if the Director determines that the neighborhood is adversely impacted by multiple uses occurring in one structure.
  18. At least twenty (20) days in advance of any change of use, as defined by this section, the owner and/or operator shall report in writing to the Director such proposed change in the site, use, scope, type, number of persons or intensity of the group living facility. A change of residents or staff of the group living facility shall not, in and of itself, require a report to the Director.
    - a. The Director may disallow any change, refer the change to the Planning Commission or he may approve the change.
    - b. If the Director fails to act within twenty (20) business days, the proposed change is deemed approved; however, the owner or operator shall not implement any such change until the earlier of:
      - (1) The twenty day period has elapsed; or
      - (2) The Director's decision to disallow, allow or refer.
  19. At least once each twelve- (12) months, the owner or operator of each group living facility shall file a renewal application with the Director. Each such application shall describe each service or use of the facility including any changes from the prior application, including type of facility, licensure, structural changes, change of use and improvements.
    - a. A group living facility that is not registered may be abated, prosecuted or otherwise subject to enforcement action under this Code.

- b. Within twenty (20) days after the group living facility has applied for registration or a renewal, the Director may refer the matter to the Planning Commission. The Director may make such a referral based on founded complaints, which show an adverse impact to the neighborhood, as defined by this section; failure to register or renew registration; unsatisfactory completion of the registration requirements; lapse of any State licensing or any change to the site, service or use or any suspected or actual noncompliance with a provision or provisions of this Code.
  - c. Within ten (10) days of the Director's decision, the owner or operator of a group living facility may appeal the Director's denial of an application or a condition imposed by the Director to the Zoning Board of Appeals. Appeals shall be in writing and perfected in accordance with Chapter Two of this Code. A denial or condition imposed by the Board of Appeals shall be final, pursuant to the Code.
- 20. Each group living facility for accused, convicted or adjudicated juveniles or adults is designed and located to assure the security of the facility itself, adjoining properties and the neighborhood. As a basis for his decision for renewal or denial of registration, the Director may rely on the number, type and frequency of police and/or other emergency responses at the Facility in the preceding twelve (12) month period;
- 21. Every group living facility for adult or juvenile offenders, defined as persons that are sent or taken to the facility because they have committed a crime or are accused of having committed a crime and the same is the reason for placement, shall be reviewed annually when the facility applies for annual registration.
  - a. The Mesa County Juvenile Community Corrections Board shall conduct the review, if the facility houses juvenile offenders or the Adult Community Corrections Board if the facility houses adult offenders. If the facility houses a combination of adult and juvenile offenders, the facility shall be reviewed by the juvenile board if there is a greater number of juveniles residing in the facility or by the adult board if there is a greater number of adults residing in the facility.
  - b. The review shall include but not necessarily be limited to criteria established by the Board and adopted by the City. Criteria shall be established and maintained by the Board and shall be based upon researched factors that have been demonstrated to be correlative to risk to the community, community expectations, prudent land use practices and legal standards. Before any criteria being used by the Board, the City shall review and adopt such criteria.
  - c. It is the responsibility of the group living facility that is being reviewed to provide to the Board with complete and accurate information regarding the types of offenders, the number of offenders, the average length of placements and responses to the other Board-established criteria.
  - d. The Board shall make a recommendation to the Director to register the facility, deny registration, or register with conditions. The Board



shall take into consideration the interests of the community in light of the criteria established by the Board.

23. Group living facilities shall comply with all requirements of this Code, as well as the State licensing requirements, unless the City requirements are incompatible with State licensing requirements. In case of a conflict, the more stringent regulation shall apply.
24. The Director shall not approve an application, notwithstanding a recommendation from the Board to register or register with conditions, for a group living facility that houses one or more sex offenders, as defined by state law. The Planning Commission shall determine any such application. In addition to the other criteria, the Planning Commission shall consider whether the proposed owner/operator has established by clear and convincing evidence that any sex offender shall not directly impact the neighborhood and/or its residents. An appeal from a Planning Commission decision made under this paragraph 18 shall be in accordance with Colorado Rule of Civil Procedure 106(a)(4).
25. After one year of the effective date of this ordinance, the City Council shall examine the ordinance's effectiveness. If the Council determines at that time that the provisions have been effective, the review shall occur every three years thereafter.

Introduced this 6th day of December, 2000.

Passed and adopted this 20th day of December, 2000.

/s/ Gene Kinsey  
President of the Council

Attest:

/s/ Stephanie Nye  
City Clerk

# STATE OF COLORADO

## COLORADO DEPARTMENT OF HUMAN SERVICES

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**Robert Rossi**  
Regional Center Director



Bill Owens  
Governor

Marva Livingston Hammons  
Executive Director

December 20, 2000

City Council Members  
Grand Junction, Co.

Re: Proposed Zoning and Development Code, 11/15/00

Dear City Council Members,

Thank you for the opportunity to present these comments to you regarding the proposed Group Living Facility ordinance. The Colorado Department of Human Services provides funding for various constituent groups that are affected by local zoning regulations: children in out of home placement, persons with mental illness, developmental disabilities, and alcohol and substance abuse problems, older adults, and adjudicated youth. I am most concerned with the proposed requirements concerning "small group living facility" as that term is defined in the ordinance.

As I am sure that you are aware, many of our constituent groups of persons are protected under both State and Federal laws to ensure fair housing for all. State laws provide that, although municipalities have the right to impose reasonable conditions by way of traditional local zoning laws on group homes for persons with disabilities (among others), the regulations may not amount to a prohibition of those 8 bed group homes within any residential district. See: e.g. C.R.S. section 30-28-115 (2000). The Fair Housing Act was clearly intended by Congress to prohibit zoning practices that limited housing opportunities for persons with disabilities. See: 42 USC 3601 et seq.; City of Edmonds v. Oxford House, 514 U.S. 725 (1995).

It is against this background that I respectfully raise the issues that are attached. My concerns generally relate to the discretion given to the Director to apply criteria to screen out small group homes for persons with disabilities that are not equally applied to households with persons who do not have disabilities. It is my hope that further work will be done on this proposal to address these concerns and the legitimate concerns of all Colorado citizens.

Thank you again for this opportunity to share my thoughts with you.

A handwritten signature in black ink, appearing to read "R. Rossi".

Robert Rossi  
Office Manager Direct Services, Director Grand Junction Regional Center

CDHS Issues re: Group Living Facility Ordinance

1. The proposed ordinance provides that a “small group living facility” need not apply for a conditional use permit to exist in a residential use zone if the criteria set forth in subparagraph 5 are met: the requirements that follow detailing the “registration” requirements do apply to these smaller facilities. Thus, the intent of subparagraph 3, which allows the Director to determine “that a use is not appropriate or compatible with the neighborhood” and refer the question to the Planning Commission, is unclear. What are the standards that the Director would use to make this determination and under what circumstances?
2. The requirements of subparagraph 11 raise questions. At what point in the process are these requirements imposed?
  - a. Regarding the square footage requirement, is this a requirement for all residences within the relevant area? If not, this requirement implicates the Fair Housing Act provisions.
  - b. This provision allows the Director to determine that a group living facility should be prohibited because of adverse impact caused by the number of residents, the uses, or by the number of group living facilities in the neighborhood. Do these subjective criteria apply to all homes in the neighborhoods that may contain many family members or multi-generational members living under one roof? As applied, this requirement could be used to prohibit a protected 8-bed group home from residential zoning in violation of state law and may violate the Fair Housing Act.
3. Subparagraph 12 attempts to define “adverse impact”, however the criteria are vague and could be applied in a discriminatory manner.
  - a. Are other homes in the neighborhood disallowed due to the family’s over usage of water or electricity compared to the amount “normally associated with such a use or in the particular neighborhood”. What is the rationale for applying this to a home with persons with disabilities?
  - b. Interference with the “peace, quiet and dignity of the neighborhood” is traditional language to exclude group homes for persons with disabilities. It is contrary to the

holding of Adams County Association for Retarded Citizens, Inc. v. City of Westminster, 196 Colo. 79, 580 P.2d 1246 (1978).

- c. Subparagraph "c" criteria are subjective and vague. Wouldn't legitimate concerns in this area be addressed in a "public nuisance" type of ordinance?
  - d. Although it certainly is appropriate for the neighbors to be concerned over dangerous or unsafe conditions, is this criteria applied to other homes in the neighborhood as well? How are neighbors protected from dangerous conditions at other homes where persons with disabilities don't live? How are neighbors protected when a family member from the house next door commits a crime? Additionally, using the criteria of police involvement may lead to misleading results: there are many reasons that police are called to a residence; the language appears to be overly broad.
4. Subparagraph 15 concerns a neighborhood meeting and then (d) allows the Director to rely upon unsubstantiated information. How do these provisions relate? Does this provision place the burden on the applicant to disprove neighborhood rumor as opposed to placing the burden on opponents to comment responsibly?
  5. Are the procedures before the Planning Commission provided elsewhere in the Zoning Code, so that applicants have a clear understanding of how to proceed if the Director decides to refer the application to that committee?
  6. Subparagraph 19 provides that the Director determines registration of a living facility for offenders, however, subparagraph 22 provides that only the Planning Commission shall make the decision on a facility that houses one or more sex offenders. Do these provisions mean that the Director makes the initial decision concerning facilities for offenders other than those involving sex offenders?