

§ 14-16-3-12 COMMUNITY RESIDENTIAL PROGRAM REGULATIONS.

- (A) Applicants for permissive Community residential programs shall satisfy the Zoning Enforcement Officer and applicants for conditional Community residential programs shall satisfy the Zoning Hearing Examiner that they will meet the following standards:
- (1) Prior to occupancy of the facility, the program will obtain any applicable license from the State of New Mexico; any city approval is conditional upon the Zoning Enforcement Officer receiving state confirmation that an appropriate license has been issued or certification that a license is not required by the state.
 - (2) The program will provide a planned program of care consisting of full-time programmatic supervision, counseling and/or therapy, and assistance in the development of daily living skills.
 - (3) The program will be operated under the authority of a reputable governing board, proprietor, or government official to whom staff are responsible and who will be available to city officials, if necessary, to resolve complaints pertaining to the facility. To afford accessibility, a governing board shall include one or more residents of the Albuquerque metropolitan area.
 - (4) The design of the facility will be compatible with the neighborhood within which it is located, including its landscaping and architecture. The Zoning Enforcement Officer or the Zoning Hearing Examiner, whichever is applicable, shall consider lawful covenants and/or should consider elements and characteristics of the neighborhood including but not limited to:
 - (a) roof types;
 - (b) setbacks;
 - (c) percentage of impervious surface coverage;
 - (d) garage style and design;
 - (e) major facade elements;
 - (f) landscaping type and design; and
 - (g) architectural stylethat apply to the facility and are in effect at the time of review in the determination of whether the design of the facility will be compatible with the neighborhood.
 - (5) The health and safety of the residents will be protected by the physical structure which will be used. Programs which are not licensed by the state shall satisfy the Zoning Enforcement Officer that they meet all city ordinances and regulations; in doing so, he shall seek the review of the Fire Marshal [i.e., the Chief of the Fire Prevention Bureau] and the Director of the Department of Environmental Health.
 - (6) The operators will have a workable, written plan for facilitating good relationships with neighboring residents and businesses, including a method for recording and resolving complaints by neighbors pertaining to the operations of the program. Complaints, efforts to resolve complaints, and the result of such efforts shall be recorded.

- (7) In order to better allow integration of the clients of Community residential programs into their neighborhoods, Community residential programs shall be located a minimum of 1,500 feet from any other Community residential program or Emergency shelter.
- (8)
 - (a) The total combined number of Emergency shelters and Community residential programs located in any City Council District shall not exceed one for each 1,000 dwelling units within that Council District.
 - (b) If the periodic realignment of the boundaries of a Council District causes the number of Emergency shelters and Community residential programs to exceed one for each 1,000 dwelling units, those shelters and programs legally established prior to the time of the realignment shall be allowed to continue to operate, however, no new shelters or programs shall be approved until the requirements of subsection (8)(a) can be met .
- (9) Notice to neighbors of proposed permissive community residential programs is not required; however, it is highly recommended that applicants notify leaders of affected neighborhood associations, nearby businesses, and neighbors.
- (10) The above regulations shall not apply to Community residential programs legally established prior to the effective date of this section, September 2, 1987, except:
 - (a) Existing community residential programs shall be counted in respect to decisions on the location of new programs; and
 - (b) By September 2, 1988, existing Community residential programs shall comply with the procedures for complaints (division (6) above) and annual review (division (E)(1) below).
- (11) Distance from premises selling or dispensing alcoholic beverages.
 - (a) In order to better integrate into the community the clients of community residential programs and the patients of hospitals for treatment of substance abusers, any licensee that sells or dispenses alcoholic beverages, including but not limited to beer and wine, for on or off-premises consumption, pursuant to Chapter 13, Article 2 ROA 1994, shall not locate within 500 feet of a community residential program, including but not limited to, community residential programs for substance abusers and community residential corrections programs or hospitals for treatment of substance abusers.
 - (b) In each zone in the Zoning Code that allows for a licensee to sell alcoholic beverages within the city, all licensees' establishments must meet this separation requirement from the effective date of Ord. 4-2005, or March 1, 2005, whichever is later.
 - (c) This separation requirement applies prospectively to all licensees, selling alcoholic beverages, locating their establishments within the city. Licensees' establishments currently existing pursuant to paragraph (b) will be considered nonconforming uses pursuant to § 14-16-3-4 ROA 1994.
 - (d) Nothing in this requirement for separation between liquor establishments and community residential programs or hospitals for treatment of substance abusers shall prohibit a community residential program or a hospital for treatment of substance abusers from choosing to locate within 500 feet of an existing licensees' establishment dispensing alcohol.

- (B) (1) The applicant shall take all necessary steps to comply with all city ordinances and state licensing. When appropriate, the applicant shall obtain a letter that no state license is required from the State Health and Environment Department.
- (2) The Zoning Enforcement Officer shall not deny an application for a permissive Residential care facility unless he concludes there is clear and convincing evidence that such use will be injurious to adjacent property, the neighborhood, or the community in ways specified in division (A) of this section. Any such denial may be appealed to the Planning Commission.
- (C) Community residential programs must evaluate and exclude any client who is a threat to others, based on the specific history of the individual, the current behavior of the individual, and/or current illegal use of a controlled substance by the individual, if said threat cannot be eliminated by reasonable accommodation.
- (D) Every provider shall send complaint procedures to each property owner within a 100 feet of the property within 45 days subsequent to city approval, to facilitate good neighbor relations. Neighboring residents and businesses may, if written complaints are not resolved within 30 days after bringing them to the attention of the program operators, file such complaints with the Zoning Enforcement Officer for review, investigation, and possible mediation.
- (E) **Review Process.**
- (1) Operators of community residential programs shall annually submit to the Zoning Enforcement Officer copies of complaints received, efforts to resolve complaints, and the result of such efforts; their current license; up-dated program description; up-dated listing of board members, proprietors, or responsible government officials; and up-dated neighborhood relations plan; when there are no changes since the previously filed documents, a statement to this effect is sufficient. The Zoning Enforcement Officer shall review this documentation, along with records of any complaints filed with the city to assure that the program continues to function in accord with city regulations and the original terms of the city's approval. For programs licensed by the State of New Mexico, this review will occur at the time of application for license renewal. For other programs it will occur at the anniversary of the date upon which approval was originally granted.
- (2) If evidence indicates changes in the program materially in violation of the original terms of approval or major unresolved complaints attendant upon the use of the facility as a community residential program, the Zoning Enforcement Officer may refer the matter to the Zoning Hearing Examiner for a public hearing to determine if the approval should be terminated or its terms amended. This process shall apply whether the use is permissive or conditional. The decision of the Zoning Hearing Examiner is subject to appeal to the Planning Commission within 15 days of decision.
- (F) Notwithstanding division (E) above, if the Zoning Enforcement Officer finds clear and convincing evidence that the program is violating the original terms of its approval, he may take action to enforce the terms of approval at any time; normally after written warning, the Zoning Enforcement Officer will initiate criminal enforcement action or seek an injunction.
- (G) **Fees; Approval of Applications.**
- (1) The Zoning Enforcement Officer shall charge a fee of \$55 for review of standards specified in division (A) of this section as to a community residential program hereafter established which has not been approved for the previous year. The fee and review applies to both permissive and conditional uses.

- (2) The above fee shall reserve the location as to distance and separation criteria for 90 days, to the degree that the site met the location requirements of this section when the fee and application were tendered. After the expiration of 90 days, upon showing of significant improvements since the previous extension or application, up to three 90-day extensions shall be granted, which will maintain the location as to distance and separation. No application can be extended beyond 360 days from the date of original application. This provision does not exclude the applicant from reapplying for the same location, meeting all of the other appropriate requirements; however, other applications which have been filed shall take priority over the reapplication as to distance and separation.
 - (3) The Zoning Enforcement Officer shall charge a fee of \$35 for the annual review specified in division (E) of this section.
- (H)** A dwelling occupied by a group meeting the definition of a family is allowed, as is any family, regardless of whether it also meets the definition of a community residential program. Dwellings occupied in this manner shall not be counted or controlled as community residential programs as provided in this section, but this does not relieve them of applicable state licensing requirements.
- (I)** The Planning Director and the Zoning Enforcement Officer may form advisory citizen committees to advise them in administering the provisions of this division (I); particularly appropriate would be a committee to advise the Zoning Enforcement Officer and Zoning Hearing Examiner concerning community residential program quality and a committee to assist in the formation of training programs for citizens and neighborhood associations regarding community residential programs.

('74 Code, § 7-14-40L) (Am. Ord. 23-2001; Am. Ord. 30-2002; Am. Ord. 4-2005; Am. Ord. 12-2005; Am. Ord. 23-2006)