

CERTIFIED COPY

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12-8-05 8:57 AM
MICHAEL K. JEANES, Clerk
By B. Navarro
Deputy

6 Attorneys for Town of Payson

7 **SUPERIOR COURT OF ARIZONA**
8 **MARICOPA COUNTY**

9
10 THE STATE OF ARIZONA *ex rel.* JAMES
11 WALSH, Acting Attorney General,* the
12 Attorney General, and THE CIVIL RIGHTS
13 DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

No. CV 2004-013335

14 Plaintiff,

JUDGMENT

15 vs.

16 TOWN OF PAYSON, a municipal
17 corporation of the State of Arizona,

18 Defendant.
19

20 The parties having reached a settlement and have stipulated to the entry of this
21 Judgment, as follows:
22

23 _____
24 * Attorney General Goddard has recused himself from this matter. Accordingly, James Walsh, the Chief Deputy
25 Attorney General, serves as the Acting Attorney General. See Rule 2.15 (a), Superior Court Local Rules -
26 Maricopa County.
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1 A. Plaintiff brought this action pursuant to the Arizona's Fair Housing Act,
2 A.R.S. §§ 41-1491 to 41-1491.37.

3 B. The Complaint alleges that the Defendant Town of Payson violated the
4 Arizona Fair Housing Act by: (1) making housing unavailable to people with
5 disabilities; (2) making discriminatory statements; (3) refusing to grant a reasonable
6 accommodation in its existing zoning code to allow Steps House, a group home for
7 disabled recovering alcoholics and recovering drug addicts without a Title 36 of the
8 Arizona Revised Statutes license, to operate in an R-1 single family residential zone;
9 and (4) engaging in a pattern or practice of discrimination through resistance to the full
10 enjoyment of rights granted under the Arizona Fair Housing Act, and denial of rights
11 which raises an issue of general public importance.

12 C. The Defendant denies these contentions and believes its zoning
13 ordinance is legal pursuant to the Arizona Fair Housing Act. Pending resolution of this
14 matter, Defendant suspended any enforcement action against the group home, and
15 Steps House continued to operate its group home.

16 D. The Plaintiff and Defendant desire to avoid costly and protracted
17 litigation, have voluntarily agreed to resolve this matter without the necessity of trial,
18 and waive their right to appeal from this Judgment.

19 E. After reviewing the terms of this Judgment, the Court concludes and finds
20 that the Town's Zoning Code and Ordinance 678, Exhibit A hereto, comply and are
21 consistent with the Arizona and United States Fair Housing Acts with respect to the
22 matters at issue in this case, and that adherence to the terms in this Judgment will
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1 render the Town in compliance with the Arizona Fair Housing Act, and protect the
2 rights of the Town of Payson and its citizens, under the facts of this case, and is
3 appropriate under the circumstances.
4

5 Therefore, it is ORDERED, ADJUDGED, and DECREED as follows:

6 1. This Court has jurisdiction of this matter.

7 2. This Judgment shall remain in effect for a period of five (5) years from the
8 date when it was entered. The Court shall retain jurisdiction over this action for the
9 duration of the Judgment for the purpose of enforcing any of its terms.
10

11 3. The parties to this Judgment shall endeavor in good faith to resolve
12 informally any differences regarding interpretation of and compliance with this
13 Judgment prior to bringing such matters to the Court for resolution. However, in the
14 event that either party believes that the provisions of this Judgment are not being
15 carried out by the other party in a timely manner, then that party may move the Court
16 to impose any remedy authorized by law or equity, including, but not limited to, an
17 order requiring performance or non-performance of certain acts and an award of any
18 damages, costs and attorneys' fees that may have been occasioned by the other
19 party's non-actions or actions.
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22 4. The Defendant and its employees and agents shall continue to comply
23 with and follow the requirements of the Arizona Fair Housing Act in all respects.

24 5. The Defendant and its employees and agents, in accordance with
25 applicable Town ordinances, shall continue to make reasonable accommodations in
26 rules, policies, practices and services, when such accommodations may be necessary
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1 to afford persons with disabilities an equal opportunity to use and enjoy a dwelling, as
2 required by the Arizona Fair Housing Act.

3 6. The Defendant has adopted Ordinance No. 678, attached hereto as
4 Exhibit A.
5

6 7. Certification by a person who is licensed under Title 32 of the Arizona
7 Revised Statutes, including but not limited to a licensed substance abuse counselor,
8 that the non-staff persons residing in residential facilities are recovering alcoholics
9 and/or recovering drug addicts shall be sufficient at the administrative level to satisfy
10 the provision of Payson's Ordinance No. 678 for certification that the non-staff persons
11 residing in the residential facilities are protected persons under the fair housing laws.
12

13 8. Steps House shall have six (6) months from the entry of this Judgment to
14 comply with Ordinance No. 678, during which period the Defendant shall take no
15 action against Steps House without cause to discourage or hinder its dwelling's
16 operation as a group home for persons with disabilities. Upon Steps House complying
17 with Ordinance No. 678, the pending zoning enforcement action concerning the
18 premises referenced in the Complaint will be dismissed.
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20 9. The Defendant shall, within thirty (30) days of entry of this Judgment
21 inform all of its zoning personnel of the provisions of Ordinance No. 678 and this
22 Judgment.
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24 10. No policy of Defendant predating Ordinance 678 concerning group
25 homes shall have any force or effect.
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1 11. Beginning on the date of entry of this Judgment and throughout its term,
2 if the Town declines, rejects, or denies any application pursuant to Section 15-11,
3 Group Home definition, of its Unified Development Code relating to a dwelling which is
4 occupied by, or designated or intended for occupancy by, persons who are alleged to
5 have disabilities, the Town will forward the application and denial to Plaintiff within
6 thirty days of the denial, together with a written report and/or the minutes or videotape
7 of the meeting explaining the reasons for declining the request. If Plaintiff has any
8 questions or concerns about any application and its denial, Plaintiff shall, within 30
9 days after receipt of the application and denial, provide its written comments, if any, to
10 the Defendant.
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12
13 12. During the pendency of this Judgment, the Defendant shall provide
14 Plaintiff with a copy of any proposed text changes to the Payson Unified Development
15 Code relating to group homes or halfway houses the first time that it is posted on an
16 agenda. Within fifteen (15) days after receipt of the proposal, Plaintiff shall provide
17 written comments and suggestions, if any, to Counsel for Defendant.
18

19 13. Throughout the term of this Judgment and for one (1) year thereafter,
20 Defendant shall retain all records relating to implementation of this Judgment. Plaintiff
21 shall have the opportunity to inspect and copy any such records after giving
22 reasonable notice to Counsel for Defendant.
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24 14. Should Steps House, after complying with the certification provision of
25 Ordinance No. 678, request an increase in the number of residents allowed at its
26 group home at 307 S. Bassett Lane to allow 9 non-staff residents and 2 staff residents
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1 by filing a proper application for a conditional use permit in accordance with Exhibit B
2 attached hereto, the Defendant shall waive the fee for such filing if such filing occurs
3 within one year from the date of this Judgment. Defendant's staff has reviewed Exhibit
4 B and will support and recommend approval of the application to the
5 legislative/administrative bodies charged by Arizona law with considering and
6 approving such a conditional use permit. The Defendant provides technical assistance
7 to applicants for conditional use permits and shall provide such assistance to Steps
8 House in preparing a proper application for a conditional use permit.
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11 15. Defendant and its agents will not engage in any discrimination or
12 retaliation of any kind against Steps House or any of its officers, employees or agents
13 due to its filing of an administrative fair housing complaint with the Plaintiff, or giving
14 testimony or assistance or participating in any manner in any investigation or
15 proceeding in connection with its fair housing complaint.
16

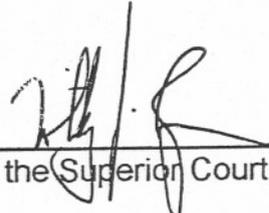
17 16. Defendant shall pay Plaintiff five thousand dollars (\$5,000.00) for
18 monitoring and enforcement of civil rights laws by means of a check made payable to
19 the Arizona Attorney General and delivered to Plaintiff within thirty (30) days of the
20 date of this Judgment.
21

22 17. All communications required under this Judgment shall be sent to:
23 Litigation Section Chief Counsel, Civil Rights Division, Arizona Attorney General's
24 Office, 1275 W. Washington Street, Phoenix, Arizona 85007 and to Town Attorney,
25 Town of Payson, 303 N. Beeline Highway, Payson, Arizona 85541.
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18. If any part of this Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Judgment, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

DATED this 8th day of DECEMBER, 2005.



Judge of the Superior Court

Timothy J. Ryan

ORDINANCE NO. 678

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADOPTING AN AMENDMENT TO THE SECTION 15-11 (DEFINITIONS) OF THE PAYSON UNIFIED DEVELOPMENT CODE.

WHEREAS, the Town of Payson has adopted a Unified Development Code ("UDC") to regulate development within the Town; and

WHEREAS, the Town of Payson has found that the adoption of this Ordinance Number 678 is necessary and appropriate to protect the health, safety, and welfare of the citizens of the Town of Payson as a lawful exercise of police power vested in the Town by the State of Arizona; and

WHEREAS, it is the desire of the Mayor and Common Council to amend the Unified Development Code of the Town of Payson by amending Section 15-11 of the UDC,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. That the definition of 'Group Home' under Section 15-11 of the UDC is amended and as amended shall read as follows:

GROUP HOME: A residential facility for unrelated persons providing living facilities, sleeping rooms and meals, established as a group home pursuant to laws of the State of Arizona under authority of Title 36, Arizona Revised Statutes, or if at the time of application and thereafter annually or sooner in the event of a zoning complaint a person holding a valid and relevant medical, behavioral health, counseling or treatment license pursuant to Title 32, Arizona Revised Statutes, certifies that the non-staff persons residing in the residential facilities are protected persons under federal fair housing laws. The number of persons residing in a group home shall not exceed eight (six protected persons and two staff) without a conditional use permit.

Section 2. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance Number 678 are hereby repealed to the extent of such conflict.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance Number 678 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 of this Ordinance Number 678. The Mayor and Common Council of the Town of Payson declares that it would have adopted this Ordinance Number 678 and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases or portions would be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this 13 day of October, 2005, by the following vote:

AYES 6 NOES 0 ABSTENTIONS 0 ABSENT 1

Barbara G. Brewer
Barbara G. Brewer, Mayor

ATTEST:

Silvia Smith
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

Samuel I. Streichman
Samuel I. Streichman, Town Attorney

STATE OF ARIZONA	}	ss
COUNTY OF GILA		
TOWN OF PAYSON		
I, Silvia Smith, Town Clerk of the Town of Payson, Arizona, do hereby certify that the above foregoing is a true and correct copy of <u>Ordinance 628</u> passed and adopted by the Common Council of the Town of Payson, Arizona.		
WITNESS MY HAND AND THE SEAL OF THE TOWN OF PAYSON, ARIZONA.		
This the <u>20th</u> day of <u>October</u> , <u>2005</u>		
<u>Silvia Smith</u> Town Clerk - Town of Payson, Arizona		