



# AGENDA REPORT

To: Planning Commission

From: Ben Song, Community Development Director

Agenda: April 13, 2021 Planning Commission Meeting

Item: Zoning Ordinance Text Amendment (A-21-002) to make the treatment of Personal Care Home/Assisted Living use consistent with other comparable residential uses

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## Item Summary

Staff has initiated this text amendment to the City of Johns Creek Zoning Ordinance (Appendix A – Zoning) to make the treatment of Personal Care Home/Assisted Living use consistent with other comparable residential uses. The proposed text amendment would continue to provide ongoing protection of the health, safety and welfare of Johns Creek communities while better addressing regulations for care facilities based on size while complying with the Fair Housing Act.

## Background

Projected demographic changes in Georgia and Johns Creek show a steadily rising aging population over time, which has generated increasing demand for personal care home/assisted living in neighborhood settings. Personal Care Home/Assisted Living is currently defined as “[a] state licensed use in which domiciliary care is provided to adults who are provided with food, shelter and personal services,” which excludes “hospitals, convalescent centers, nursing homes, hospices, clinics, or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured.”

The Zoning Ordinance currently allows for Personal Care Home/Assisted Living as a use by right in six zoning districts: C-1 and C-2 (Community Business), O-I (Office Institutional), MIX (Mixed Use), A (Medium Density Apartment) and A-L (Apartment Limited Dwelling). The use is currently allowed in the R-6 (Two-Family Dwelling) and TR (Townhouse Residential) Districts if approved for a Special Use Permit by City Council. Of note, additional development requirements apply with the Special Use Permit, including a 50-foot setback from single-family districts and/or AG-1 districts when used for single-family, landscape strips and buffers, parking location, noise study reporting. These regulations were put in place to protect properties from large-scale care facilities in a multi-family or institutional-style environment, but do not account for “family-style”, small scale, neighborhood-oriented personal care homes.

Since the City's Zoning Ordinance does not differentiate small scale, family-style personal care facilities from institutional care facilities, care options for adults are limited to mostly nonresidential zoning districts and potentially economically infeasible in the single-family zoning district due to the City's definition of "family," Which limits the occupancy of a dwelling unit of no more than 4 unrelated persons. While legal, this definition does not exempt the City from the requirements of the federal Fair Housing Act which prohibits a city from discriminating against elderly adults by precluding them from living in a single-family residential community. In such a situation, a city may be required by the Fair Housing Act to make "reasonable accommodations" to allow elderly adults to live together in a single-family residential community including allowing more adults to live together than are allowed by the City's unrelated person occupancy limit.

To comply with the Fair Housing Act and make the treatment of "family-style," small scale, neighborhood-oriented personal care home uses consistent with other comparable residential uses, staff has completed analysis of options for how the Zoning Ordinance could be adjusted.

## Analysis

Staff reviewed ordinances from adjacent and nearby jurisdictions related to personal care homes. To balance the need for regulation of large-scale, institutional-style facilities with the differing needs of small-scale, "family-style" facilities, all examples reviewed divide personal care facilities for adults into two categories based on scale of use.

- **Personal Care Home, Family**, where care is provided to up to eight adults in a group home setting in a single-family home. This type of care facility is typically permitted through a Special Use Permit in residential zoning districts.
- **Personal Care Home, Congregate**, where care is provided to more than eight adults in an institutional-style environment. This type of care facility is typically permitted as a use by-right in commercial and institutional zoning districts.

## Recommendation

Staff recommends amending the Zoning Ordinance to create a distinction between small scale, "family-style" personal care homes and large-scale, institutionalized personal care homes by modifying Article III "Definitions", Article VII "Two-Family; Townhouse; Apartment Dwelling Districts", Article VIII "Office Institutional; Mixed Use Districts", Article IX "Community Business Districts", Article XVIII "Off Street Parking and Loading", and Article XIX "Administrative Permits and Use Permits" of the City of Johns Creek Zoning Ordinance, as follows:

1. **Revise definition** for "Personal Care Home/Assisted Living" by differentiating "Personal Care Home/Assisted Living, Family" and "Personal Care Home/Assisted Living, Congregate."

**Section 3.3.16.P.**

*Personal Care Home/Assisted Living.* ~~A state-licensed use which domiciliary care is provided to adults who are provided with food, shelter and personal services. A profit or nonprofit facility, home, or structure, licensed by the state, for the protective care of two or more adults who need a watchful environment, but do not have an illness, injury, or disability, which requires chronic or convalescent care, including medical and nursing services. Protective care and watchful oversight includes, but is not limited to, a daily awareness by management of the residents' whereabouts, the asking and reminding of residents of their appointments for medical checkups, the ability and readiness of management to intervene if a crisis arises for a resident, and supervision by management in areas of nutrition, medication, and actual provision of transient medical care, with a 24-hour responsibility for the well-being of residents of the facility.~~ This use shall not include hospitals, convalescent centers, nursing homes, hospices, clinics, ~~halfway house, a treatment center for alcoholism or drug abuse,~~ or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured. Personal care homes shall be classified in the following way:

(1). Personal Care Home/Assisted Living, Family. A personal care home for no more than 8 adults in a family-style residence, non-institutional in character.

(2). Personal Care Home/Assisted Living, Congregate. A personal care home for more than 8 adults.

2. **Update “Personal Care Home/Assisted Living” to “Personal Care Home, Congregate”** in A, O-I, MIX and C-1 Zoning Districts to reflect the new classification.

Section 7.3. A Medium Density Apartment District.

Section 7.3.2. Use Regulations

Section 7.3.2.A. Permitted Uses

9. Personal Care Home, Congregate

Section 8.1. O-I Office Institutional District.

Section 8.1.2. Use Regulations

Section 8.1.2.A. Permitted Uses

23. Personal Care Home, Congregate

Section 8.2. MIX Mixed Use District.

Section 8.2.2. Use Regulations

Section 8.2.2.A. Permitted Uses

31. Personal Care Home, Congregate

Section 9.1. C-1 Community Business District.

Section 9.1.2. Use Regulations

Section 9.1.2.A. Permitted Uses

31. Personal Care Home, Congregate

3. Update “Off Street Parking and Loading” section as necessary.

**Section 18.2.1.**

Use Group	Examples of Types of Use	Minimum Requirement
Health Care Facilities	Hospitals out-patient clinics convalescent home nursing home <del>assisted living/personal care home</del> <del>personal care home/assisted living, congregate</del>	one per four beds + one per 3 employees
<del>Personal Care Home/Assisted Living, Family</del>		<del>one per 2 beds + one per 3 employees</del>

4. Add Special Use Permit requirement for “Personal Care Home/Assisted Living, Family” in the following zoning districts with residential uses.

**Section 19.4.33. Personal Care Home/Assisted Living, Family.** ~~(Allowed as a permitted use in O-I, A, A-L, MIX, C-1 and C-2)~~

A. ~~Required Districts:~~ AG-1, R-1, R-2, R-2A, R-3, R-3A, R-4, R-4A, R-5, R-5A, R-6 and TR

B. ~~Standards:~~

- ~~1. Facilities~~ The personal care home shall be for 5 persons or more located on a lot of at least one (1) acre in size, and shall be limited to no more than 8 adults.
- ~~2. Permitted curb cut access shall be from an arterial or a major collector. Permitted curb cut access may be allowed from a minor collector if within 1,000 feet of the property line of an institutional use.~~
- ~~3. Provide a 50 foot building setback from single family districts and/or AG-1 districts when used for single family.~~
- ~~4.2.~~ No parking allowed in the minimum front yard setback.
- ~~5. The minimum parking spaces provided shall be in conformance with health care facilities per Article 18.2.1.~~
- ~~6. Provide landscape strips and buffers as required in the O-I district as specified in Article 4.23.~~
- ~~7. Rooms or suites of rooms may be designed with separate kitchen facilities.~~
- ~~8.3. Facility~~ The personal care home shall comply with all applicable local, state, and federal regulations, and shall provide all applicable State permits to the Department of Community Development prior to the issuance of a eCertificate of eOccupancy.
- ~~9. In accordance with Article 28.4.6., submit a Noise Study Report as required.~~
4. The personal care home shall adhere to all building, fire, and accessibility codes.

5. The personal care home shall prove:
  - a. the household possess a family-like structure/housing and evidence family-like domestic bond between residents;
  - b. that the living arrangements embody a permanent commitment on the part of the individual residents; and
  - c. that the personal care home is at least 1,000 feet, in all directions, from any other personal care home. No variance shall be granted to the distance requirement herein.
6. At least one (1) employee staffing the personal care home shall be on-site at all times when residents are present.
7. The personal care home shall obtain a business occupation tax certificate from the City of Johns Creek prior to operation.

#### **Attachment**

1. Draft Amendment to Section 3.3.16.P.; Section 7.3.2.A.9.; Section 8.1.2.A.23.; Section 8.2.2.A.31.; Section 9.1.2.A.31.; Section 18.2.1.; and Section 19.4.33. of the Zoning Ordinance

**AN ORDINANCE TO AMEND THE CITY OF JOHNS CREEK CODE OF  
ORDINANCES, APPENDIX A – ZONING, TO MAKE THE TREATMENT OF  
PERSONAL CARE HOME/ASSISTED LIVING USE CONSISTENT WITH OTHER  
COMPARABLE RESIDENTIAL USES**

**WHEREAS**, projected demographic changes in Georgia and Johns Creek show a steadily rising aging population, which has generated increasing demand for Personal Care Home/Assisted Living in neighborhood settings;

**WHEREAS**, the City of Johns Creek Zoning Ordinance allows Personal Care Home/Assisted Living as a Use by Right in the Community Business Districts, Office Institutional District, Mixed Use District and Apartment Dwelling Districts;

**WHEREAS**, the City of Johns Creek Zoning Ordinance allows Personal Care Home/Assisted Living in the Two-Family Dwelling District and Townhouse Residential Districts, through a Special Use Permit approved by the Mayor and City Council;

**WHEREAS**, the City of Johns Creek Zoning Ordinance does not differentiate family-style personal care facilities from institutional care facilities, and care options for adults are limited to mostly nonresidential zoning districts;

**WHEREAS**, the City seeks to amend the Johns Creek Zoning Ordinance to make the treatment of Personal Care Home/Assisted Living use consistent with other comparable residential uses.

**NOW THEREFORE**, the Mayor and Council of the City of Johns Creek hereby ordain that Appendix A – Zoning, Article III “Definitions”; Article VII “Two-Family, Townhouse, Apartment Dwelling Districts”; Article VIII “Office Institutional, Mixed Use Districts”; Article IX “Community Business Districts”; Article XVIII “Off Street Parking and Loading”; and Article XIX “Administrative Permits and Use Permits” are amended as follows:

**Section 3.3.16.P.**

*Personal Care Home/Assisted Living.* A profit or nonprofit facility, home, or structure, licensed by the state, for the protective care of two or more adults who need a watchful environment, but do not have an illness, injury, or disability, which requires chronic or convalescent care, including medical and nursing services. Protective care and watchful oversight includes, but is not limited to, a daily awareness by management of the residents' whereabouts, the asking and reminding of residents of their appointments for medical checkups, the ability and readiness of management to intervene if a crisis arises for a resident, and supervision by management in areas of nutrition, medication, and actual provision of transient medical care, with a 24-hour responsibility for the well-being of residents of the facility. This use shall not include hospitals, convalescent centers, nursing homes, hospices, clinics, halfway house, a treatment center for alcoholism or drug abuse, or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured. Personal care homes shall be classified in the following way:

- (1) *Personal Care Home/Assisted Living, Family.* A personal care home for no more than 8 adults in a family-style residence, non-institutional in character.
- (2) *Personal Care Home/Assisted Living, Congregate.* A personal care home for more than 8 adults.

**Section 7.3.2.A.9.** Personal Care Home, Congregate

**Section 8.1.2.A.23.** Personal Care Home, Congregate

**Section 8.2.2.A.31.** Personal Care Home, Congregate

**Section 9.1.2.A.31.** Personal Care Home, Congregate

**Section 18.2.1.**

Use Group	Examples of Types of Use	Minimum Requirement
Health Care Facilities	hospitals out-patient clinics convalescent home nursing home personal care home/assisted living, congregate	one per four beds + one per 3 employees
Personal Care Home/Assisted Living, Family		one per 2 beds + one per 3 employees

**Section 19.4.33.** *Personal Care Home/Assisted Living, Family.*

A. *Required Districts:* AG-1, R-1, R-2, R-2A, R-3, R-3A, R-4, R-4A, R-5, R-5A, R-6 and TR

B. *Standards:*

1. The personal care home shall be on a lot of at least one (1) acre in size, and shall be limited to no more than 8 adults.
2. No parking allowed in the minimum front yard setback.
3. The personal care home shall comply with all applicable local, state, and federal regulations, and shall provide all applicable State permits to the Department of Community Development prior to the issuance of a Certificate of Occupancy.
4. The personal care home shall adhere to all building, fire, and accessibility codes.
5. The personal care home shall prove:
  - a. the household possess a family-like structure/housing and evidence family-like domestic bond between residents;
  - b. that the living arrangements embody a permanent commitment on the part of the individual residents; and
  - c. that the personal care home is at least 1,000 feet, in all directions, from any other personal care home. No variance shall be granted to the distance requirement herein.
6. At least one (1) employee staffing the personal care home shall be on-site at all times when residents are present.
7. The personal care home shall obtain a business occupation tax certificate from the City of Johns Creek prior to operation.

**SO ORDAINED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Approved:

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Michael E. Bodker, Mayor

ATTEST:

Approved as to Form and Content:

\_\_\_\_\_  
Terri L. Hughes, Interim City Clerk

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City Attorney

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