

ORDINANCE NO. 25-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING ARTICLE 2.4, "GENERAL PROCEDURES", SECTION 2.4.7(G), "REQUESTS FOR ACCOMMODATION" IN ORDER TO UPDATE SAME; AMENDING ARTICLE 4.3, "DISTRICT REGULATIONS; GENERAL PROVISIONS", BY REPEALING SECTION 4.3.3(I), "COMMUNITY RESIDENTIAL HOMES AND GROUP HOMES" IN ITS ENTIRETY AND ENACTING A NEW SECTION 4.3.3(I), "COMMUNITY RESIDENCES APPLICATION FORM AND CONDITIONAL USE PERMIT REQUIREMENTS" IN ORDER TO PROVIDE CRITERIA FOR ISSUING A CONDITIONAL USE PERMIT FOR COMMUNITY RESIDENCES AND AMENDING SECTION 4.3.3 (ZZZ), "TRANSIENT RESIDENTIAL USE", IN ORDER TO PROVIDE AN EXEMPTION FOR COMMUNITY RESIDENCES; AMENDING ARTICLE 4.4, "BASE ZONING DISTRICT", SECTIONS 4.4.1, "AGRICULTURAL ZONE DISTRICT (A)"; 4.4.2, "RURAL RESIDENTIAL (RR) ZONE DISTRICT"; 4.4.3, "SINGLE-FAMILY RESIDENTIAL (R-1) DISTRICT", 4.4.5, "LOW DENSITY RESIDENTIAL (RL) DISTRICT"; 4.4.6, "MEDIUM DENSITY RESIDENTIAL (RM) DISTRICT"; 4.4.7, "PLANNED RESIDENTIAL (PRD) DISTRICT"; 4.4.9 "GENERAL COMMERCIAL (GC) DISTRICT"; 4.4.13, "CENTRAL BUSINESS (CBD) DISTRICT"; 4.4.17, "RESIDENTIAL OFFICE(RO) DISTRICT"; 4.4.21, "COMMUNITY FACILITIES (CF) DISTRICT"; 4.4.24, "OLD SCHOOL SQUARE HISTORIC ARTS DISTRICT (OSSHAD)"; 4.4.25, "SPECIAL ACTIVITIES DISTRICT (SAD)" AND 4.4.29, "MIXED RESIDENTIAL, OFFICE AND COMMERCIAL (MROC) DISTRICT", IN ORDER TO PROVIDE FOR COMMUNITY RESIDENCES AMONG THE LIST OF PERMITTED AND CONDITIONAL USES ALLOWED IN EACH ZONING DISTRICT; AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS", SECTION 4.6.9, OFF-STREET PARKING REGULATIONS" IN ORDER TO PROVIDE PARKING FOR COMMUNITY RESIDENCES; AMENDING APPENDIX "A", "DEFINITIONS", IN ORDER TO PROVIDE FOR UPDATED DEFINITIONS OF "ASSISTED LIVING FACILITY", "BOARDING OR ROOMING HOUSE", "FAMILY", AND "TRANSIENT RESIDENTIAL USE", REPEALING THE DEFINITION OF "RESIDENTIAL LICENSED SERVICE PROVIDER" IN ITS ENTIRETY, AND ENACTING NEW DEFINITIONS OF "DISABILITY", "COMMUNITY RESIDENCE", "FAMILY COMMUNITY RESIDENCE", "OXFORD HOUSE", AND "TRANSITIONAL COMMUNITY RESIDENCE"; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on _____ and voted ____ to ____ to recommend that the changes be approved; and

WHEREAS, pursuant to Section 163.3174(4)(c), Florida Statutes, the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the changes are consistent with and further the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings and conclusions of the study it commissioned, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* dated May 2017; and

WHEREAS, the City Commission of the City of Delray Beach finds this ordinance is consistent with the Comprehensive Plan; and

WHEREAS, Section 419.001 (11), Florida Statutes, establishes that “siting of community residential homes in areas zoned for single family shall be governed by local zoning ordinances. Nothing in this section prohibits a local government from authorizing the development of community residential homes in areas zoned for single family;” and

WHEREAS, pursuant to Section 419.001 (12), Florida Statutes, the State of Florida allows local jurisdictions to adopt zoning provisions for community residences for people with disabilities that are more liberal than the requirements of the state statutes; and

WHEREAS, certain provisions of this ordinance do not apply if state law requires a more permissive zoning treatment; and

WHEREAS, the City of Delray Beach recognizes that the Fair Housing Act as amended (42 U.S.C. §3601) provides protections for persons with disabilities; and

WHEREAS, the Fair Housing Act does not preempt local zoning laws or preclude the adoption, amendment or enforcement of zoning regulations by the City of Delray Beach pursuant to its local police powers as long as the zoning regulations are consistent with state and federal laws, including the Fair Housing Act as amended; and

WHEREAS, the legislative history of the Fair Housing Amendments Act of 1988 cautions that local zoning regulations are prohibited that result “*from false or over-protective assumptions* about the needs of handicapped people, as well as *unfounded fears of difficulties* about the problems that their tenancies may pose.” H.R. Rep. No. 711, 100th Cong. 2D Session, Reprinted in 1988 U.S.C.A.N. 2173, 2192 (1988); and

WHEREAS, zoning regulation of community residences for people with disabilities should seek to achieve legitimate government interests, actually achieve those legitimate government interests, and be the least drastic means of actually achieving those legitimate government interests; and

WHEREAS, the Fair Housing Act does not provide for local land use policies or actions that treat groups of persons with certain disabilities differently than groups of people with other disabilities; and

WHEREAS, the City of Delray Beach commissioned a detailed study, *Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People With Disabilities* dated May 2017,

(hereinafter, “the Study”) by a planning and law expert on zoning for community residences whom the Department of Housing and Urban Development (“HUD”) has recommended to communities whose zoning has been challenged; and

WHEREAS, the Study reports upon and examines:

The reasonable accommodation requirements the Fair Housing Amendments Act of 1988 established; and

The core nature of community residences for people with disabilities and why they have long been regarded to be residential uses: performing as a functional family by emulating a biological family as a key component to achieving normalization and community integration of their residents; and

How different types of community residences function; and

The functional differences between community residences for people with disabilities, boarding or lodging houses, and institutional uses such as nursing homes; and

The rational foundations for regulating community residences based on actual research; and

A review of the research on the impacts (or the lack thereof) on property values, property turnover rates, and neighborhood safety of licensed or certified community residences for people with disabilities not clustered on a block or in a neighborhood; and

A review of the locations of community residences in the City of Delray Beach that found clustering of community residences on blocks and in neighborhoods that have created and are creating *de facto* social service districts in the City of Delray Beach that interfere with the ability of community residences for people with disabilities to achieve their core goals of normalization and community integration of their residents; and

A review of the need to protect the vulnerable populations of people with disabilities from unscrupulous operators of community residences through licensing, certification, or recognition by Congress; and

A review of the abuses – including death, prostitution, and continued use of drugs and alcohol - people with disabilities have suffered at the hands of unscrupulous operators of community residences in Delray Beach and southeastern Florida largely for people in recovery from drug and/or alcohol addiction; and

An evaluation of the current zoning treatment of community residences in Delray Beach; and

Enunciation of the general principles for zoning for community residences derived from the case law under the Fair Housing Act, sound zoning and planning principles, and factual information about the purpose and operations of such residences; and

Guiding principles for zoning for community residences for people with disabilities; and

The least drastic zoning approach to actually achieve legitimate government interests; and

A sample zoning application form to enable the city to implement the recommended regulatory approach in a timely, but least intrusive manner; and

The limited scope of §419.001, Florida Statutes, that applies to only those community residences for people with disabilities licensed by five state agencies; and

How §419.001(3)(c)(3), Florida Statutes, fails to comply with the nation's Fair Housing Act and lacks a factual basis; and

How community residences for people with disabilities constitute a different type of land use than vacation rentals that warrants different zoning treatments within the context of the Florida Statutes; and

An annotated bibliography of representative studies of the impacts of community residences for people with disabilities on property values, property turnover, and neighborhood safety; and

WHEREAS, clustering of community residences on a block or in a neighborhood undermines the ability of community residences to achieve normalization and community integration for their residents which is one of the essential purposes of a community residence for people with disabilities; and

WHEREAS, to implement the guidelines of the Study, the City of Delray Beach is hereby amending its land use regulations to make the reasonable accommodations the Fair Housing Act requires by removing any terms and conditions that have the effect of limiting or making housing unavailable to people with disabilities while preserving the ability of community residences for people with disabilities to emulate a family and achieve normalization and community integration of their residents; and

WHEREAS, the City of Delray Beach is hereby amending its land use regulations to give prospective operators of community residences for people with disabilities clarity and certainty on where such homes may locate as of right and via conditional use permit; and

WHEREAS, in accord with case law, community residences for people with disabilities that fit within the cap of three unrelated occupants that can constitute a family under Delray Beach's *Land Development Regulations* must be treated the same as any other family; and

WHEREAS, these new zoning provisions make the reasonable accommodation the Fair Housing Act requires by allowing the relatively permanent living arrangement of a "family community residence" for four to ten people with disabilities as a permitted use in all residential districts and all other zoning districts where residential uses are allowed, subject to a rationally-based spacing distance of a typical block of 660 linear feet from an existing community residence and a licensing or certification requirement for the operator or the home itself; and

WHEREAS, transitional community residences for four to ten people with disabilities tend to perform more like multi-family housing, therefore a reasonable accommodation is made that allows them as a permitted use in all multi-family residential districts and all other zoning districts where multi-family residential uses are allowed, subject to a rationally-based spacing distance of a typical block of 660 linear feet from an existing community residence and a licensing or certification requirement for the operator or the home itself; and

WHEREAS, because transitional community residences for people with disabilities are more akin in terms of function and performance to multi-family uses than single-family residences, the heightened scrutiny of a conditional use permit is warranted for transitional community residences in single-family zoning districts; and

WHEREAS, this ordinance specifies standards narrowly tailored to assure that the proposed community residence will not interfere with normalization or community integration of the occupants of any nearby existing community residences nor contribute to creating a *de facto* social service district that thwarts the purpose and successful functioning of community residences and results in segregation of people with disabilities; and

WHEREAS, the heightened scrutiny of a conditional use permit is warranted when a proposed community residence for people with disabilities fails to meet both criteria to be allowed as a permitted use; and

WHEREAS, a community residence for people with disabilities that has been denied required state licensing or certification would not be allowed due to the state's own licensing or certification laws; and

WHEREAS, some community residences for people with disabilities need to house more than ten people for therapeutic and/or financial reasons, therefore a procedure is established to grant a further reasonable accommodation to allow more than ten residents as long as it can be demonstrated this group can and will perform as a functional family which is a core principle and purpose of community residences for people with disabilities; and

WHEREAS, like all residential uses, the overcrowding provisions in the City's adopted housing code determines the maximum number of occupants of a community residence for people with disabilities no matter how many the zoning code would allow, with or without a reasonable accommodation request to house more than 10 people; and

WHEREAS, this ordinance establishes off-street parking requirements for community residences for people with disabilities narrowly tailored to the actual need of the different types of community residences based on the population served; and

WHEREAS, the Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others, provided however, that determining whether someone poses such a direct threat must be made on an individualized basis, and cannot be based on general assumptions or speculation about the nature of a disability.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth hereinabove are restated and fully incorporated herein.

Section 2. That Article 2.4, "General Procedures", Section 2.4.7(G), ""Requests for Accommodation", Subsection (4), "Findings for Reasonable Accommodation," of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(4) **Findings for Reasonable Accommodation.** In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they or the occupants of the housing for which this request is made are protected under the ~~FHA~~Fair Housing Act and/or ~~the Americans With Disabilities Act~~ADA by demonstrating that they or the residents of the proposed housing are ~~handicapped or disabled people with disabilities~~, as defined ~~the FHA and/or ADA~~in these LDRs. ~~Although the definition of disability is subject to judicial interpretation, for purposes of this ordinance the disabled individual must show: (i) a physical or mental impairment which substantially limits one or more major life activities; (ii) a record of having such impairment; or (iii) that they are regarded as having such impairment. Next, the requesting party will have to demonstrate that the proposed accommodations being sought are reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing. The foregoing (as interpreted by the Courts) shall be the basis for a decision upon a reasonable accommodation request made by the City Manager, or his/her designee, or by the City Commission in the event of an appeal.~~

(a) The requesting party ~~will have~~shall to demonstrate that the proposed reasonable accommodations being sought are reasonable and necessary to afford ~~handicapped/disabled persons~~ the subject individual(s) with disabilities an equal opportunity to use and enjoy the housing that is the subject of this request.

(b) A request for reasonable accommodation to permit more than ten unrelated individuals to occupy a community residence shall be granted only when the requesting party also meets the standards for community residences promulgated in Section 4.3.3 (l)(4) of these LDRs.

(c) The foregoing shall be the basis for a written decision with findings of fact upon a reasonable accommodation request made by the City Manager or designee, or by a Special Magistrate in the event of an appeal.

Section 3. That Article 2.4, "General Procedures", Section 2.4.7(G), "Requests for Accommodation", Subsection (6), "Appeal," of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(6) **Appeal.** Within thirty (30) calendar days after the City Manager's, or his/her designee's, determination on a reasonable accommodation request has been rendered and transmitted to the requesting party, which may be accomplished via hand delivery with signed

confirmation of delivery, email with confirmation of delivery, certified mail, or overnight courier service with signature confirmation, ~~the~~^{such} applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds providing the basis for the appeal. Appeals shall be filed with the City Manager and shall be to the ~~City Commission~~ Special Magistrate who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable within ~~, but in no event later than~~ sixty (60) calendar days after the date on which the ~~an~~ appeal ~~has~~^{was} been filed. An appeal from a decision of the Special Magistrate shall be handled exclusively in the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, and such appeal shall be taken by filing a petition for writ of certiorari within thirty (30) days from the date of filing of the written order with the City Clerk or designee.

Section 4. That Article 2.4, “General Procedures”, Section 2.4.7(G) “Requests for Accommodation,” Subsection (8)(b), “Request Form for Reasonable Accommodation,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(b) An applicant who seeks a reasonable accommodation to house more than ten unrelated individuals in a community residence shall also complete and submit the form the City requires of all applicants to establish a community residence.

Section 5. That Article 2.4, “General Procedures”, Section 2.4.7(G), “Requests for Accommodation,” Subsection (10), “Recertification,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(a) To be recertified, a community residence for which a reasonable accommodation was granted to locate in Delray Beach must provide verifiable evidence that it is currently licensed or certified by the State of Florida to operate at its present location.

(b) A community residence for which a reasonable accommodation was granted to locate in Delray Beach that is not currently licensed or certified by the State of Florida to operate at its present location shall obtain licensure, certification or recertification from the designated state entity before the April 1 reasonable accommodation recertification deadline. Failure to obtain state certification or a required state license, or failure to maintain state certification or a required state license, shall result in revocation of the reasonable accommodation and cessation of operations within 60 days of termination of the license or certification.

Section 6. That Article 4.3, “District Regulations, General Provisions”, Section 4.3.3(I), “Community Residential Homes and Group Homes,” of the Land Development Regulations of the City of Delray Beach, Florida, shall be repealed in its entirety and a new Section 4.3.3(I), “Community residences application form and conditional use permit requirements” shall be enacted to read as follows:

(I) Community residences application form and conditional use permit requirements:

(1) Application Form: An application form shall be required for all community residences with any number of occupants. The application form shall be obtained from and shall be returned to the Director of the Planning, Zoning, & Building Department or his/her designee prior to occupancy or construction of the proposed community residence to determine whether the proposed community residence is a permitted use or requires a conditional use permit, to determine the maximum number of occupants allowed under city code provisions that apply to all residential uses, and to identify whether any further accommodation is needed in accord with Section 2.4.7(G), “Requests for Accommodation” of these LDRs.

(2) Applicability: Subsection 4.3.3 (I)(1) shall be applicable to all community residences with any number of residents while subsections 4.3.3(I)(3) through 4.3.3(I)(6) are applicable only to those community residences that require a conditional use permit and house more than three unrelated individuals.

(3) Purpose of Conditional Use Permit: In conjunction with Section 2.4.5(E) of these LDRs, the purpose of this section is to provide narrowly-tailored standards for determining whether to make the reasonable accommodation of granting a conditional use permit to ensure that the community residences these LDRs require to obtain a conditional use permit will:

(a) Be located a sufficient distance from any existing community residences so that the proposed community residence does not lessen nor interfere with the normalization and community integration of the residents of existing community residences or combine with any existing community residences to contribute to the creation or intensification of a *de facto* social service district,

(b) Operate as a functional family (also known as emulating a biological family) that fosters normalization and community integration of its residents, and

(c) Operate in a manner consistent with the protections afforded by the State of Florida’s licensing or certification standards for community residences serving individuals with disabilities similar to those of the proposed community residence in order to protect the residents of the proposed community residence from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

(4) Standards for Awarding a Conditional Use Permit: A required conditional use permit may be issued only if the proposed community residence meets the following standards:

(a) When the proposed community residence is required to obtain a conditional use permit because it would be located within 660 linear feet of an existing community residence,

1. The applicant demonstrates that the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence, and

2. The applicant demonstrates that the proposed community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying a *de facto* social service district by concentrating community residences on a block or in a neighborhood.

(b) When the proposed community residence is required to obtain a conditional use permit because the State of Florida does not offer a license or certification for this type of community residence and the population it would serve, the application must demonstrate that the proposed community residence will be operated in a manner effectively similar to that of a licensed or certified community residence, that staff will be adequately trained, that the home will emulate a biological family and be operated to achieve normalization and community integration, and that the rules and practices governing how the home is run will actually protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

(5) To establish a community residence for more than ten individuals with disabilities, the applicant shall submit a Request for Reasonable Accommodation in accord with the procedures of Section 2.4.7 (G) of these LDRs. In all cases the City Manager or designee shall make findings of fact in support of all determinations and shall render the decision in writing. The City Manager or designee may meet with and interview the applicant to ascertain or clarify information sufficiently to make the required findings. To grant a Reasonable Accommodation to allow more than ten occupants in a community residence, the City Manager or designee shall affirmatively find compliance with all of the following standards in addition to the general standards promulgated in Section 2.4.7 (G)(4) of these LDRs:

(a) The applicant specifies by how many individuals it wishes to exceed the as of right maximum of ten residents and adequately demonstrates the financial and/or therapeutic need to house the proposed number of residents, and

(b) The primary function of the proposed community residence is residential where any treatment is merely incidental to the residential use of the property, and

(c) The applicant demonstrates that it will ensure that the proposed community residence emulates a biological family and operates as a functional family rather than as an institution, boarding house, nursing home, short term vacation rental, continuing care facility, motel, hotel, treatment center, rehabilitation center, or a nonresidential use, and

(d) The applicant demonstrates that the requested number of residents in the proposed community residence will not interfere with the normalization and community integration of the occupants of any existing community residence.

(6) A conditional use permit under this Section will be reviewed in accord with Section 2.2.2(E)(6)(d), however the fee for consideration of a conditional use permit under this Section is \$300 as this type of conditional use is a form of reasonable accommodation and therefore the fees set for conditional uses in Section 2.4.3(k)(1)(r) are not applicable.

Section 7. That Article 4.3, “District Regulations, General Provisions”, Section 4.3.3, “Special Requirements for Specific Uses,” Subsection (ZZZ), “Transient Residential Use,” Subsection (1) “Exceptions/Exemptions,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(b) The leasing, renting, licensing, subleasing or otherwise allowing in any manner or form the use of a single-family dwelling unit for ~~Community Residential Homes, Group Homes, and/or Assisted Living Facilities, which are licensed by the state a~~ Community Residence ~~are~~ is exempt.

Section 8. That Article 4.4, “Base Zoning District”, Section 4.4.1, “Agricultural Zone District (A),” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(4) ~~Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(l).~~ Family Community Residence, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

~~(6) Assisted Living Facilities~~

Section 9. That Article 4.4, “Base Zoning District”, Section 4.4.1, “Agricultural Zone District (A),” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(D) Conditional Uses and Structures Allowed: Except for family and transitional community residences as specified herein, there are no unrelated conditional uses listed based upon the premise that once an agricultural operation ceases, it is more appropriate to have the land rezoned to a district more in keeping with the designation on the Future Land Use Map. However, nurseries, either retail or wholesale, may be accommodated as a conditional use.

(1) Family Community Residence, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

(2) Transitional Community Residence, except as required by state law.

Section 10. That Article 4.4, “Base Zoning District”, Section 4.4.2, “Rural Residential (RR) Zone District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(2) ~~Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(I).~~ Family Community Residence, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

~~(4) Assisted Living Facilities~~

~~(5) Residential Licensed Service Provider Facilities~~

Section 11. That Article 4.4, “Base Zoning District”, Section 4.4.2, “Rural Residential (RR) Zone District,” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(D) Conditional Uses and Structures Allowed Except for family and transitional community residences as specified here, ~~There are no conditional uses listed based upon the premise that the RR District is to preserve a rural lifestyle and the introduction of other uses within the District is inappropriate to that end.~~

(1) Family Community Residence, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

(2) Transitional Community Residence, except as required by state law.

Section 12. That Article 4.4, “Base Zoning District”, Section 4.4.3, “Single Family Residential (R-1) Districts,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(2) Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(I).~~
Family Community Residence, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

~~(6) Assisted Living Facilities~~

~~(7) Residential Licensed Service Provider Facilities~~

Section 13. That Article 4.4, “Base Zoning District”, Section 4.4.3, “Single Family Residential (R-1) Districts,” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(7) Family Community Residence, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

(8) Transitional Community Residence, except as required by state law.

Section 14. That Article 4.4, “Base Zoning District”, Section 4.4.5 Low Density Residential (RL) District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(4) ~~Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(I).~~ Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

~~(8) Assisted Living Facilities~~

Section 15. That Article 4.4, “Base Zoning District”, Section 4.4.5, “Low Density Residential (RL),” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(6) Group Home, Type 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(I). Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.~~

Section 16. That Article 4.4, “Base Zoning District”, Section 4.4.6, “Medium Density Residential (RM) District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(5) Group Homes, Types 1 and 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(I). Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.~~

(9) Assisted Living Facilities that do not comport with the definition of “community residence” and Continuing Care Facilities

~~(10) Residential Licensed Service Provider Facilities~~

(10~~1~~) Nursing Homes within multi-family structures only

(11~~2~~) Community Gardens pursuant to regulations set forth in Section 4.3.3(D).

Section 17. That Article 4.4, “Base Zoning District”, Section 4.4.6, “Medium Density Residential (RM),” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land

Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(9) Multiple family residential development, ~~including residential licensed service provider facilities and assisted living facilities~~ may exceed twelve (12) units per acre, up to a maximum of twenty-four (24) units per acre within the Southwest Neighborhood Overlay District defined in Section 4.5.9, subject to the provisions of Section 4.4.6(I), Article 4.7, and based upon the development's conformance with the applicable standards and criteria described within the adopted Southwest Area Neighborhood Redevelopment Plan.

(10) Multiple family residential development, ~~including residential licensed service provider facilities and assisted living facilities~~ may exceed twelve (12) units per acre, up to a maximum of twenty-four (24) units per acre within the Carver Estates Overlay District as defined in Section 4.5.11 and up to a maximum of eighteen (18) units per acre within the Infill Workforce Housing Area, subject to the provisions of Section 4.4.6(I), and Article 4.7.

(13) Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

Section 18. That Article 4.4, "Base Zoning District", Section 4.4.7, "Planned Residential (PRD) District," Subsection (B), "Principal Uses and Structures Permitted," of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(5) Assisted Living Facilities~~

~~(5)(6) Group Home, Type 1 pursuant to restrictions set forth in Section 4.3.3(I).~~
Family Community Residence, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an

appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

~~(7) Residential Licensed Service Provider Facilities~~

~~(8) Nursing Homes within multi-family structures only~~

Section 19. That Article 4.4, “Base Zoning District”, Section 4.4.7, “Planned Residential (PRD) District,” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(5) Family Community Residence, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the closest existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

(6) Transitional Community Residence, except as required by state law.

Section 20. That Article 4.4, “Base Zoning District”, Section 4.4.9, “General Commercial (GC) District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(5) Dwelling units, and residential licensed service provider facilities and assisted living facilities~~ in the same structure as commercial uses provided that: commercial uses must be provided on the ground floor; commercial uses on the ground floor must occupy no less than 25% of the total structure excluding square footage devoted to vehicular use; residential uses are not located on the ground level; residential uses and non-residential uses are physically separated and have separate accessways; and the residential density does not exceed 12 units per acre, except the Four Corners District which may have a free standing residential building as part of a multi-building unified master plan or the residential component may be a part of a single mixed use building. The density of the Four Corners Master Plan shall not exceed 30 dwelling units per acre and is subject to the provisions under Section 4.4.9(G)(3)(d)(4).

~~(7) Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(l). Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.~~

Section 21. That Article 4.4, “Base Zoning District”, Section 4.4.9, “General Commercial (GC) District,” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(10) Free-standing multiple-family housing, including residential licensed service provider facilities,~~ subject to the requirements of the RM District except for setback and height requirements which shall be pursuant to this Section.

~~(18) Multiple family residential development, including residential licensed service provider facilities and~~ assisted living facilities that do not comport with the definition of “community residence,” may exceed twelve (12) units per acre, up to a maximum of twenty-two (22) units per acre within the Infill Workforce Housing Area, subject to the provisions of Section 4.4.6(l), and Article 4.7, and subject to the requirements of the RM District except for setback and height requirements, which shall be pursuant to this Section.

(19) Assisted Living Facilities that do not comport with the definition of “community residence”, Nursing Homes, and Continuing Care Facilities subject to the requirements of the RM District except for setback and height requirements which shall be pursuant to this Section.

(21) Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the

existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

Section 22. That Article 4.4, “Base Zoning District”, Section 4.4.13, “Central Business District,” Table 4.4.13(A), “Allowable Uses in the CBD Sub-Districts,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

Table 4.4.13 (A) - Allowable Uses in the CBD Sub-Districts				
	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh.⁵
General retail uses and/or facilities , as in GC district (4.4.9) ^{1,2}	P	P	P	P
Business, professional, and medical uses , as in GC district (4.4.9)	P	P	P	P
Services and facilities , as in GC district (4.4.9), excluding drive-through facilities	P	P	P	P
Multiple-family dwellings³ , including residential licensed service provider facilities	P	P	P	P
Community Residences⁷	See footnote 7			
Assisted living facilities that do not comport with the definition of “community residence”, nursing homes, and continuing care facilities	P	P	P	P
Live/work units (see 4.3.3(KKK))	P	P	P	P
Hotels, motels, and residential-type inns³ (see 4.3.3(M) and 4.3.3 (X))	P	P	P	C
Bed and breakfast inns (see 4.3.3 (Y))	P	P	P	C
Public Parking Garages , as mapped on a Regulating plan	P,S	P,S	P,S	P,S
Fabrication and/or Assembly	-	P	-	-
Wholesaling, Storage, and Distribution⁴	-	P	-	-
Contractor and trade services	-	P	-	-
Automobile brokerage , including vehicle display within an enclosed structure	-	P	-	-
Family day care homes (see 4.3.3(T))	A	A	A	A
Home occupations (see 4.3.3(K))	A	A	A	A
Mechanical parking lifts (see 4.6.9(D)(11) and 4.6.9(F)(4))	A,S	A	A,S	A,S
Parking areas and refuse and service areas	A,S	A	A,S	A,S
Recreational facilities (for a multiple-family complex)	A	A	A	A
Services and repair (incidental to the principal use)	A,S	A	A,S	A,S
Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)	A	A	A	A
Storage of inventory (not shared or leased independent of the principal use)	A,S	A	A,S	A,S
Automobile repair	-	C	-	-
Child care and adult day care facilities (see 4.3.3(E))	C	C	C	C
Commercial recreation , such as bowling alleys and skating rinks	C	C	C	C
Community residential homes (see 4.3.3(I))	C	C	C	C
Drive-through facilities (serving banks, retail uses, etc.)	C	C	C	C
Food Preparation and/or Processing	-	C	-	-
Flea markets, bazaars, and similar retail uses	C	C	C	C
Funeral homes , including accessory uses such as a chapel or crematory	C	C	C	C
Gasoline stations and/or car washes	C	C	-	-
Group homes, Type 2 only	C	C	C	C
Large family child care homes (see 4.3.3(TT))	C	C	C	C
Dry-cleaning Processing Plants	-	C	-	-
Segway tours and Segway sales (see 4.3.3(ZZZZ))	C	C	C	C
Theaters , excluding drive-ins	C	C	C	C
Veterinary Clinics	C	C	C	C
24-hour or late-night businesses , within 300' of residential property (see 4.3.3(VV))	C	C	C	C

LEGEND: **P** = Principal Use **A** = Accessory Use **C** = Conditional Use **-** = Prohibited Use **S** = Secondary Street Use

- ¹ Sales of automotive parts, lawn care equipment, firearms, or second hand material (other than verifiable antiques) are not allowed on properties facing a street designated as a Required Retail Street on the Regulating Plan or in the West Atlantic Neighborhood.
- ² See Section 4.4.13 (C)(4)(c) for limitations on the rental of sporting goods and equipment.
- ³ For density limits, see Section 4.4.13(D).
- ⁴ Not self-storage facilities; products and materials shall not exceed 55 gallons of any substance, which is listed on the Generic Substances List of the Palm Beach County Wellfield Protection Ordinance (Ref.: Palm Beach County ULDC, Article 9, Section 9.3).
- ⁵ See Section 4.4.13(C)(4)(a) for limits on Commercial use locations in the West Atlantic Neighborhood Sub-district.
- ⁶ Drive-through restaurants are not permitted within the CBD.
- ⁷ Except as required by state law, a Community Residence housing four to ten individuals shall be allowed as a permitted use in all four CBD Sub-Districts if it (1) would be located at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence. Except as required by state law, a conditional use permit must be obtained for any community residence that does not meet both criteria (1) and (2).

Section 23. That Article 4.4, “Base Zoning District”, Section 4.4.13, “Central Business (CBD) District,” Subsection (E), “Frontage Standards,” Subsection (1) “Frontage Standards and Allowable Uses,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(1) **Frontage Standards and Allowable Uses.** The use of the ground story is an important factor in streetscape design and appropriate frontage types. For the purposes of Frontage Standards, unless otherwise specified, residential uses are single-family homes, townhomes, multiple family dwellings, assisted living facilities that do not comport with the definition of “community residence”, nursing homes, continuing care facilities, community residences, ~~community residential homes, group homes,~~ and large family childcare homes and live/work uses. All other uses are considered to be “commercial uses” for the purposes of this section.

Section 24. That Article 4.4, “Base Zoning District”, Section 4.4.13, “Central Business (CBD) District,” Subsection (I), “CBD Parking Standards, Table 4.4.13(L), “Minimum Number of Off-Street Parking Spaces Required in the CBD,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

Table 4.4.13(L) Minimum Number of Off-street Parking Spaces Required in the CBD	
Commercial Uses	
Hotels/Motels ¹	.7 space per guest room plus 1 space per 800 sf. of meeting rooms and shops
Business and Professional Office <10,000sf	1 space per 500 sf. of net floor area
Business and Professional Office >10,000sf located more than 750 feet from a public parking garage or Planned Tri-Rail Coastal Link station	1 space per 300 sf. of net floor area
Business and Professional Office >10,000sf located within 750 feet of a public parking garage or Planned Tri-Rail Coastal Link station	1 space per 500 sf. of net floor area
Retail and Commercial Uses	1 space per 500 sf. of gross floor area
Restaurants and lounges (including those located within hotels/motels) NOT in the Atlantic Avenue Parking District	6 spaces per 1,000 sf. of gross floor area
Restaurants and lounges (including those located within hotels/motels) in the Atlantic Avenue Parking District	12 spaces per 1,000 sf. for the first 6,000 sf. Plus 15 spaces per each additional 1,000 sf.
Residential	
<u>Community Residence</u>	<u>The number of off-street spaces required by Section 4.6.9(C)(7)(I) of these Land Development Regulations</u>
Efficiency Dwelling Unit	1 space per unit
One Bedroom Dwelling Unit	1.25 spaces per unit
Two or More Bedroom Dwelling Unit	1.75 spaces per unit
Guest Parking shall be provided cumulatively as follows	
- For the first 20 units	.50 spaces per unit
- For units 21-50	.30 spaces per unit
- For units 51 and above	.20 spaces per
Live/Work Units	2 spaces per unit
Alternative Fuel Parking Spaces	
Residential	3% of Required Parking Spaces
Commercial	3% of Required Parking Spaces

Section 25. That Article 4.4, “Base Zoning District”, Section 4.4.17, “Residential Office (RO) District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(7) Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(I).~~ Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

~~(8) Assisted Living Facilities that do not comport with the definition of “community residence” and Nursing Homes.~~

~~(9) Residential Licensed Service Provider Facilities~~

Section 26. That Article 4.4, “Base Zoning District”, Section 4.4.17, “Residential Office (RO) District,” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(3) Group Home, Type 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(I).~~ Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

Section 27. That Article 4.4, “Base Zoning District”, Section 4.4.21, “Community Facilities (CF) District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(9) Assisted Living Facilities that do not comport with the definition of “community residence” and Continuing Care Facilities subject to the requirements of the RM District except for setback and height requirements which shall be pursuant to this Section

(10) Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

Section 28. That Article 4.4, “Base Zoning District”, Section 4.4. 21, “Community Facilities (CF) District,” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(2) Services, such as: ~~Community Residential Homes and Group Homes, Type 2, pursuant to restrictions set forth in Section 4.3.3(I),~~ Senior Housing as set forth in Section 4.3.3 (II).

(5) Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

Section 29. That Article 4.4, “Base Zoning District”, Section 4.4.24, “Old School Square Historic Arts District (OSSHAD),” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(11) Group Home, Type 1, pursuant to restrictions set forth in Section 4.3.3(I).~~
Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence as measured from the nearest property line of the proposed community residence housing four or more individuals to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

(13) Assisted Living Facilities that do not comport with the definition of “community residence.”

~~(14) Residential Licensed Service Providers Facilities~~

~~(15)~~ Nursing Homes

Section 30. That Article 4.4, “Base Zoning District”, Section 4.4.24, “Old School Square Historic Arts District (OSSHAD),” Subsection (D), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

~~(5) Group Home, Type 2, and Community Residential Homes, pursuant to restrictions set forth in Section 4.3.3(I).~~
Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

Section 30. That Article 4.4, “Base Zoning District”, Section 4.4.25, “Special Activities District (SAD),” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(3) A Community Residence housing four to ten individuals, except as required by state law, is allowed as of right when (1) it is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

Section 31. That Article 4.4, “Base Zoning District”, Section 4.4.25, “Special Activities District (SAD),” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended at Subsection (C), “Review and Approval Process” to provide regulations for conditional uses and structures and a new title “Conditional Uses and Structures Allowed” and providing that existing Subsection (D), “Development Standards,” Subsection (E), “Supplemental District Regulations,” Subsection (F), “Special Regulations,” and Subsection (G), “S.A.D.s” shall be re-lettered as follows:

(C) Conditional Uses and Structures Allowed: The following uses are allowed as conditional uses within the Special Activities District.

(1) A Community Residence housing four to ten individuals, except as required by state law, may be allowed by conditional use permit when (1) it is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

(C) **Review and Approval Process:**

(D) **Development Standards:**

(E) **Supplemental District Regulations:**

(F) **Special Regulations:**

(G) **S.A.D.s:**

Section 32. That Article 4.4, “Base Zoning District”, Section 4.4.29, “Mixed Residential, Office And Commercial (MROC) District,” Subsection (B), “Principal Uses and Structures Permitted,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(4) **Multi-family Dwelling Units:** Multi-family uses, ~~including residential licensed service provider facilities, but~~ excluding duplexes, subject to (c)(1)(2)(3) and (4) below, with a maximum density of either 40 or 50 units per acre, subject to the following;

(6) Assisted Living Facilities that do not comport with the definition of “community residence,” Nursing Homes, and Continuing Care Facilities subject to the requirements set forth in Section 4.4.29(B)(4) a, b, and c above.

(7) Community Residence housing four to ten individuals, except as required by state law, that (1) is at least 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, and (2) the operator or applicant is licensed or certified by the State of Florida to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

Section 33. That Article 4.4, “Base Zoning District”, Section 4.4.29, “Mixed Residential, Office And Commercial (MROC) District,” Subsection (E), “Conditional Uses and Structures Allowed,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(9) Community Residence housing four to ten individuals, except as required by state law, that (1) is less than 660 linear feet from the closest existing community residence housing four or more individuals as measured from the nearest property line of the proposed community residence to the nearest property line of the existing community residence, or (2) the State of Florida does not require the operator or applicant to be licensed or certified to operate the proposed community residence, has no certification from an appropriate national accrediting agency, or has not been recognized or sanctioned by Congress to operate the proposed community residence.

Section 34. That Article 4.6, “Supplemental District Regulations”, Section 4.6.9, “Off-Street Parking Regulations,” Subsection (C), “Number of Parking Spaces Required,” Subsection (2) “Requirements for Residential Uses,” of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(a) ~~Single Family Detached Residences, including Assisted Living Facilities~~ -- two spaces per dwelling unit. Tandem parking may be used provided that in the Single Family (R-1 District) or RL District, no required parking space may be located in a required front or street side setback.

(b) ~~Duplexes, including Assisted Living Facilities~~: -- two spaces per dwelling unit. Tandem parking may be used provided that such parking does not result in the space for one unit impeding access to a space of the other unit. Further, curb cuts or direct access from parking areas onto a street shall not exceed 24' in width

(c) ~~Multiple Family Structures, including Assisted Living Facilities~~

- * Efficiency dwelling unit 1.0 space/unit
- * One bedroom dwelling unit 1.5 spaces/unit
- * Two or more bedroom d.u. 2.0 spaces/unit
- * Guest parking shall be provided cumulatively as follows:
 - for the first 20 units 0.5 spaces per unit
 - for units 21-50 0.3 spaces per unit
 - for units 51 and above 0.2 spaces per unit

Within townhouse and townhouse type developments, parking may be provided in front of garage units provided that such parking does not result in the space for one unit impeding access to a space of the other unit.

Section 35. That Article 4.6, "Supplemental District Regulations", Section 4.6.9, "Off-Street Parking Regulations," Subsection (C), "Number of Parking Spaces Required," Subsection (7) "Other Uses," of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(b) ~~Residential Licensed Service Provider Facilities, and Nursing Homes:~~
Shall provide one space for each four beds.

(c) ~~Assisted Living Facilities~~ that do not comport with the definition of "community residence" and ~~Continuing Care Facilities~~: Facilities shall provide 1.5 spaces per unit.

(l) ~~Community Residential Homes and Group Homes: Group Homes, Type 1 shall provide two spaces per dwelling unit. Community Residential Homes and Group Homes, Type 2 shall provide one space for each four beds~~ Community Residences: Shall provide off-street parking for the greater of (a) the number of off-street spaces required under this code for

the type of dwelling unit (single family, duplex, multi-family, etc.) in which the community residence is located, or (b) 0.5 off-street spaces for each staff member on a shift and/or live-in basis plus, when residents are allowed to maintain a car on premises, the maximum number of occupants that is permissible under this land development regulation and the city's building and property maintenance codes. Off-street spaces may be provided on the premises or at an off-site location other than a street or alley.

Section 36. That Appendix "A", "Definitions", which consists of definitions of terms, of the Land Development Regulations of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

ASSISTED LIVING FACILITY Any building or buildings, section of building, or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administration. "Personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services, which the Department of Elderly Affairs may define by rule. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services. An Assisted Living Facility that does not function in accord with the definition of "Community Residence" in these LDRs is not a community residence. Assisted Living Facilities shall be accommodated in the same manner with respect to the number of residents and the number of units as required for the respective structures of either a single family unit, duplex unit or multi-family unit in the zoning districts where allowed. Requests for exemptions to the number of residents can be requested through a reasonable accommodation request pursuant to LDR Section 2.4.7(G).

BOARDING OR ROOMING HOUSE A building other than a hotel, motel, residential inn, or bed and breakfast used to provide lodging for compensation, and where more than one of the partitioned sections are occupied by separate families or rent is charged separately for the individual rooms or partitioned areas occupied by the renter or occupant. Individual living units may or may not be equipped with kitchen facilities; congregate dining facilities may be provided for the guest. A boarding or rooming house is not a community residence.

COMMUNITY RESIDENCE Except as required by state law, a community residence is a residential living arrangement for up to ten unrelated individuals with disabilities

living as a single functional 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 normalize its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment; treatment is incidental as in any home. Supportive inter-relationships between residents are an essential component.

A community residence shall be considered a residential use of property for purposes of all zoning, building, and property maintenance codes. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders. Community residences include, but are not limited to, those residences that comport with this definition that are licensed by the Florida Agency for Persons with Disabilities, the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration, and the Florida Department of Children and Families, and functional family sober living arrangements also known as recovery residences certified by the state's designated credentialing entity established under Section 397.487 of the Florida Statutes.

Per state law, community residences for people with developmental disabilities located in a "planned residential community" as defined by Section 419.001(1)(d) of the Florida Statutes, are exempt from the spacing requirements between community residences established in these LDRs.

To implement these LDRs, an application that the City of Delray Beach designates must be completed in full and submitted to the Director of the Planning, Zoning, & Building Department prior to occupancy or construction of the proposed community residence to determine whether the proposed community residence is a permitted use or requires a conditional use permit, to determine the maximum number of occupants allowed under city code provisions that apply to all residential uses, and to identify whether any further accommodation is needed in accord with Section 2.4.7(G), "Requests for Accommodation" of these LDRs.

A community residence or its operator that loses its license or certification must cease operations and vacate the property within 60 days of the date on which its licensing or certification was discontinued or the date required by state law, whichever is less .

A "community residence" occupied by four to ten unrelated individuals with disabilities can be a "family community residence" or a "transitional community residence." The owner or operator of a community residence may apply for an administrative reasonable accommodation to house more than 10 residents in

accord with the standards and procedures established in Section 2.4.7(G) of these LDRs.

DISABILITY A disability is a physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include individuals who are currently using alcohol, illegal drugs, or using legal drugs to which they are addicted nor individuals who constitute a direct threat to the health and safety of others.

FAMILY "Family" shall mean two (2) or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, and/or a group of persons not more than three (3) in number who are not so interrelated, occupying the whole or part of a dwelling as a ~~separate housekeeping unit with a single set of culinary facilities~~ single housekeeping unit that shares common living, sleeping, cooking, and eating facilities. Any person under the age of 18 years whose legal custody has been awarded to the State Department of Health and Rehabilitative Services or to a child-placing agency licensed by the Department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to and a member of the family for the purposes of this definition. Occupancies in excess of the number allowed herein shall have twelve (12) months from the date of the enactment of this definition or the termination of the current lease agreement to come into compliance, whichever occurs first. Anyone who has applied for or received a reasonable accommodation from this definition prior to June 16, 2009 shall be allowed to proceed under the definition in existence on June 16, 2009 with the total number granted under the reasonable accommodation without having to re-file an application for a reasonable accommodation. A family does not include any society; nursing home; club; boarding or lodging house; dormitory; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house.

FAMILY COMMUNITY RESIDENCE A family community residence is a relatively permanent living arrangement for four to ten unrelated people with disabilities with no limit on how long a resident may live in the home. The length of tenancy is measured in years. Oxford House is a family community residence.

OXFORD HOUSE A self-governed community residence for people in recovery that is part of Oxford House, Inc. An Oxford House places no time limit on residency, operates

as a democratic system and utilizes self-support to pay all the household expenses. Sanctioned by Congress, each Oxford House is operated in accord with the Oxford House Manual® and is subject to annual inspections which serve as the functional equivalent of the certification or licensing of community residences required by these Land Development Regulations.

~~RESIDENTIAL LICENSED SERVICE PROVIDER Shall mean a service provider or facility licensed under Fla. Stat. Sections 397.311(18)(a)2, "Day or Night Treatment", 397.311(18)(a)3, "Day or Night Treatment with Community Housing", and 397.311(18)(a)9, "Residential Treatment" for the purposes of providing a structured live-in environment within a non hospital setting on a 24 hours a day, 7 days a week basis, and which includes: Facilities that provide room and board and treatment and rehabilitation within the primary residential facility. Residential Licensed Service Provider Facilities shall be accommodated in the same manner with respect to the number of residents and the number of units as required for the respective structures of either a single family unit, duplex unit, or multi-family unit in the zoning districts where allowed.~~

TRANSIENT RESIDENTIAL USE Shall mean the entire dwelling unit or any part thereof, which is located in Single Family, Rural Residential, or Planned Residential Development Zoning Districts and is operated or used in such a way that any part of the dwelling unit turns over occupancy more often than three (3) times in any one (1) year and the entire dwelling unit or any part thereof, which is located in Low Density Residential (RL) or Medium Density Residential (RM) Zoning Districts and is operated or used in such a way that any part thereof turns over occupancy more often than six (6) times in any one (1) year. A community residence is not a Transient Residential Use.

TRANSITIONAL COMMUNITY RESIDENCE A transitional community residence is a temporary living arrangement for four to ten unrelated people with disabilities with a limit on length of tenancy that is measured in weeks or months, not years.

Section 37. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 38. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 39. Specific authority is hereby given to codify this Ordinance.

Section 40. That this ordinance shall become effective immediately upon its passage on second and final reading.

(The remainder of this page intentionally left blank.)

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

ATTEST

Cary Glickstein, M A Y O R

Katerri Johnson, CMC, City Clerk

First Reading_____

Second Reading_____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

R. Max Lohman, City Attorney