

ARTICLE 4.3 DISTRICT REGULATIONS, GENERAL PROVISIONS

Section 4.3.1 Application of District Regulations: The regulations established by this Article shall be minimum regulations and shall apply uniformly to each class or type of structure or land, except as herein provided:

(A) No building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof, shall hereafter be constructed, erected, moved, reconstructed, or structurally altered except in conformity with all of the regulations herein specified for the zoning district in which it is located.

(B) No building or structure shall hereafter be erected or altered; to exceed the height or mass; to accommodate or house a greater percentage of lot area; or to have narrower or smaller front yards, side yards, rear yards, or other open spaces, than herein required; or in any other manner contrary to the provisions of this chapter.

(C) No part of a yard, off-street parking space, loading space, or other open space, required about or in connection with any building for the purpose of complying with this chapter, shall be included as part of a yard, off-street parking space, loading space, or open space similarly required for any other building.

(D) No yard or lot existing at the time of the passage of this chapter shall be reduced in area or dimensions below the minimum requirements set forth herein. Lots or yards created after October 1, 1990 shall meet the minimum requirements established by this chapter unless the City Commission declares at the time of approval of an associated development application that it is necessary and appropriate to create such a nonconformity. **[Amd. Ord. 11-00 5/16/00]**

Notwithstanding the above, the City shall provide notice by mail of any such action before the City Commission. Notice shall be provided pursuant to Section 2.4.2(B)(1)(n) to the owners of all property located within five hundred feet (500') of the perimeter of the property on which the action is being sought. The notice shall be mailed no later than ten (10) calendar days prior to the meeting before the City Commission. **[Amd. Ord. 11-00 5/16/00]**

(E) In no Single Family Residential District (R1), or Rural Residential District (RR) shall a lot contain more than one principal residential structure.

Section 4.3.2 Determining Use:

(A) **General:** Uses are allowed as provided for in individual zoning districts pursuant to the purpose statement, categories of use, and types of use allowed therein.

SECTION 4.3.2 (A)

Categories of use are principal uses, accessory uses, and conditional uses as described below. Types of uses are identified within each zoning district. Interpretation of a specific use which is not listed is governed by Subsection (C) herein.

(B) **Categories of Use**: All uses shall be categorized pursuant to the following:

(1) **Principal Use**: A principal use is allowed, by right, within a zoning district provided that all development regulations are met. A principal use must be conducted on a site in order to have accessory or ancillary uses on that site.

(2) **Accessory Use**: An accessory, or ancillary use, falls into one of three categories as follows:

- (a) A use which is otherwise allowed as a principal use but is subordinate in intensity to other principal uses (retail sales and business offices)
- (b) A use which is associated with a principal use and which is specifically identified within the zoning district as an accessory use (a garage used in conjunction with a single family house)
- (c) A use which is associated with the a principal or accessory use by virtue of supplemental district requirements (a parking lot required for a multiple family use)

No building which contains an accessory use pursuant to (b) may be rented or used as a separate dwelling unit, except as a guest cottage. No accessory structure shall be constructed before the principal structure is under construction.

(3) **Conditional Use**: A use which may not be appropriate generally, or without restriction, within a zoning district. The purpose of identifying such conditional uses and regulating them in a special manner is that they possess certain characteristics which may make them incompatible with existing uses, contiguous zoning, permitted uses, or future uses. Through special conditions imposed through procedures set forth in Section 2.4.5(E), the adverse impacts of such a use may be mitigated. The allowing of a conditional use is discretionary.

(C) **Uses Not Listed**: In most instances it is clear that a specific use is allowable under a use category (i.e. the specific use of "sale of clothing directly to a consumer" is allowed under the category of "general retail sales"). Some specific uses (e.g. sale of automobiles) involve a special product which is identified as such within these regulations and hence are allowed only as listed. However, in some cases, it may be necessary to have an interpretation made to determine whether or not a use is allowable. In such cases, the following applies:

SECTION 4.3.2 (C) (1)

(1) **Interpretation By Director**: In situations where a specific use is not listed in examples provided under a type, the Director may determine that a specific use is allowable on the basis that it is identical to uses listed in the examples. The Director shall maintain a list of such determinations.

(2) **Determination of Similarity of Use**: In situations where the Director finds that the requested use is not identical but has similar characteristics to allowable uses or when the use is of a specific nature (e.g. automobile sales) and is listed as a specific use in another zone district, the use may be established within a specific zone district by action of the Planning and Zoning Board in authorizing it through a determination of similarity of use.

(3) **Prohibited Uses**: When a use is not allowed by application of Subsection 4.3.2(C)(1) or (2), it shall be considered as a prohibited use and not allowed within the Zoning District.

Section 4.3.3 Special Requirements for Specific Uses: By nature of characteristics unique to the following uses, such use may be established only in compliance with these special requirements. These requirements are in addition to those established elsewhere in these Regulations. Description of each use in this Section shall be of its common meaning or as pursuant to the Definitions Section of these Regulations.

(A) **Self-Service Storage Facilities (SSSF)**: [Amd. Ord. 52-97 1/6/98]

(1) **Lot Area**: The minimum lot area is two (2) acres, and the maximum lot area is five (5) acres. [Amd. Ord. 52-97 1/6/98]

(2) **Facilities and Requirements**: [Amd. Ord. 52-97 1/6/98]

- (a) Any SSSF which has outdoor bay type access to storage units must be designed in such a way to create a compound like structure with a defined masonry perimeter. In addition, the facility should be designed in such a way to minimize or eliminate sight lines of any bay doors, or outdoor storage of boats and vehicles, from the adjacent rights-of-way. [Amd. Ord. 52-97 1/6/98]
- (b) No building shall exceed fifteen feet (15') in height. This does not apply to an on-site manager's apartment which may be located on a second floor, not to exceed thirty-five feet (35') in height. [Amd. Ord. 52-97 1/6/98]
- (c) Parking shall be provided at the rate of one (1) space per 5,000 square feet of gross floor area. This requirement may be modified

SECTION 4.3.3 (A) (2) (c)

during the site plan approval process if a sufficient number of storage units have direct vehicle access, and internal driveways are designed to allow customers to safely park in front of their storage unit without impeding internal circulation. **[Amd. Ord. 01-09 1/20/09]; [Amd. Ord. 52-97 1/6/98]**

(3) **Limitation of Uses:** **[Amd. Ord. 52-97 1/6/98]**

- (a) Activities other than the rental or lease of storage units are not allowed to be conducted on the premises, unless specifically permitted through the conditional use process. **[Amd. Ord. 52-97 1/6/98]**
- (b) No business or activity other than dead storage shall be conducted from any storage unit in the facility. Examples of prohibited uses include, but are not limited to the following: the servicing, repair and/or restoration of automobiles, boats, recreational vehicles, lawnmowers and the like; garage sales; moving and storage companies; cabinet making and wood working (whether personal or professional); personal hobbies and arts and crafts; and any other activity unless specifically permitted through the conditional use process. **[Amd. Ord. 52-97 1/6/98]**
- (c) There shall be no electrical power provided to, or accessible from, any individual storage units. This includes the provision of lighting fixtures to the interior of a storage unit, unless specifically addressed in the conditional use approval. The use of portable generators is also prohibited. **[Amd. Ord. 52-97 1/6/98]**
- (d) The use or storage of any hazardous materials is expressly prohibited. **[Amd. Ord. 52-97 1/6/98]**
- (e) The terms and conditions of this section shall be clearly expressed in all storage rental or leasing contracts, as well as conspicuously displayed on a sign no smaller than one foot (1') by two feet (2') in the leasing office. **[Amd. Ord. 52-97 1/6/98]**
- (f) Failure to maintain the terms and conditions of this section shall be grounds for revocation of the conditional use approval. **[Amd. Ord. 52-97 1/6/98]**

(4) **On-Site Manager Required:** All SSSF are required to have, and continuously maintain, an on-site manager, and provide on-site living quarters for such. **[Amd. Ord. 52-97 1/6/98]**

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(5) **Hours of Operation:** SSSF customers may not access individual storage units before 5:00 a.m. or any later than 9:00 p.m. Hours of operation may be further restricted when it is deemed that morning and evening traffic into and out of the facility may negatively impact the character of an adjacent residential area. In no circumstance shall customers of any SSSF have 24 hour access to their storage unit(s). **[Amd. Ord. 52-97 1/6/98]**

(6) **Landscape Requirements:** In addition to all applicable landscape requirements and other special provisions pursuant to the individual zone district, a minimum ten foot (10') landscape buffer shall be required for the entirety of the property. **[Amd. Ord. 52-97 1/6/98]**

(7) **Outdoor Storage of Vehicles and Boats:** The outdoor storage of boats and vehicles is permitted only if specifically addressed during the conditional use approval process. In all cases, this use is permitted only as accessory to the main use, must be located in the interior of the masonry perimeter, and may not be visible from any rights-of-way. **[Amd. Ord. 52-97 1/6/98]**

(8) **Truck Rental:** Truck rental may be conducted as an ancillary use, if specifically permitted in the conditional use approval, and an appropriate amount of additional parking spaces are provided. Storage of rental trucks must be located in the interior of the masonry perimeter, and may not be visible from any rights-of-way. **[Amd. Ord. 52-97 1/6/98]**

(AA) **Adult Entertainment Establishments:** In addition to the requirements of the underlying zoning district, other applicable general regulations, County licensing requirements, parking regulations and Section 113.20 of the Code of Ordinances of the City of Delray Beach, the following requirements shall apply to adult entertainment establishments: **[Amd. Ord. 30-98 9/08/98]**

(1) No adult entertainment establishment shall be located on properties with frontage on an arterial road or located east of the CSX railroad track. **[Amd. Ord. 30-98 9/08/98]**

(2) No adult entertainment establishment shall be located closer than one thousand (1,000) feet from any house of worship, school, residential zoning district, community facilities zoning district (CF, OS, OSR, CD) where the use is or is to be regularly frequented by the general public (i.e. community center, parks, courthouse, child care facilities, offices, etc.) measured from lot line to lot line boundary along a straight airline route, except when the property containing the adult entertainment establishment is separated from the above by the I-95 right-of-way. **[Amd. Ord. 30-98 9/08/98]**

SECTION 4.3.3 (AA) (3)

(3) No adult entertainment establishment shall be located within two hundred (200) feet of an alcoholic beverage establishment, measured from lot line to lot line boundary along a straight airline route except if the establishment permitting nudity or partial nudity is separated from an alcoholic beverage establishment by a Railroad Corridor or an Arterial Roadway as the width of the Railroad Corridor and/or Arterial Roadway shall be deemed a sufficient separation. **[Amd. Ord 43-03 12/2/03]; [Amd. Ord. 30-98 9/08/98]; [Amd. Ord. 55-90 11/13/90]**

(4) **Signage.** Only one sign per adult entertainment establishment is permitted, and such sign shall not extend above twelve (12) feet above ground level or have an area of greater than thirty-six (36) square feet. No neon material shall be permitted on the sign. All other restrictions of the sign code shall apply herewith. **[Amd. Ord. 55-90 11/13/90]**

(5) No adult entertainment establishment shall be located within an historic district, on an historic site, or on properties listed on the Local or National Register of Historic Places, unless the historic district, site or property was previously used for an adult entertainment type use. **[Amd. Ord. 30-98 9/08/98]**

(6) The minimum floor area per room or partitioned area within an adult entertainment establishment must be 2,000 sq. ft. exclusive of kitchen, restrooms, storage areas, and other non-public/customer area of the establishment. **[Amd. Ord. 30-98 9/08/98]**

(7) Performers/entertainers or employees in the state of nudity or partial nudity shall not approach within four feet of patrons, customers, or other employees or other performers/entertainers, and must perform/entertain from a stage encompassing an area of at least one hundred (100) square feet. **[Amd. Ord. 30-98 9/08/98]**

(AAA) **Adult Gaming Centers: Purpose:** It is the intent of this section to regulate adult gaming centers that mimic the look and feel of gambling venues but are operated in accordance with Florida State Statute Chapter 849 (Gambling). Regulation of these venues ensures that they are permitted as conditional uses in the appropriate compatible designation within the City and that appropriate police powers are established to ensure reduction of any secondary effects. This section does not purport to regulate adult arcades which are addressed in Section 4.3.3(AA) of the City's Land Development Regulations entitled "Adult Entertainment Establishments" and Section 113.20 of the City's Code of Ordinances, nor Amusement Game Facilities as defined herein. **[Amd. Ord. 58-04 10/19/04]**

(1) **Development Standards for Adult Gaming Centers:** **[Amd. Ord. 58-04 10/19/04]**

SECTION 4.3.3 (AAA) (1) (a)

- (a) No Adult Gaming Center shall be located within one thousand (1,000) feet of or in the same block as, whichever distance is greater, an existing adult gaming center, measured from lot line to lot line in a straight line. **[Amd. Ord. 58-04 10/19/04]**
- (b) **Location**: No adult gaming center shall be located within an historic district, on an historic site, on properties listed on the Local or National Register of Historic Places or in any Redevelopment Area. **[Amd. Ord. 58-04 10/19/04]**
- (c) **Adult Gaming Center Requirements**: **[Amd. Ord. 58-04 10/19/04]**
1. An attendant must be provided on the premises during all hours of operation. **[Amd. Ord. 58-04 10/19/04]**
 2. The hours of operation shall be limited to 9:00 a.m. to 11:00 p.m., 7 days a week. **[Amd. Ord. 58-04 10/19/04]**
 3. No one under 18 years of age shall be allowed in the Adult Gaming Center. **[Amd. Ord. 58-04 10/19/04]**
 4. The consumption and/or possession of alcohol shall be prohibited on the premises. **[Amd. Ord. 58-04 10/19/04]**
 5. The license for each machine shall be attached thereto. **[Amd. Ord. 58-04 10/19/04]**
 6. The use of gift certificates, gift cards, credit cards or other cash substitutes shall be prohibited. **[Amd. Ord. 58-04 10/19/04]**
 7. Prizes shall be limited to \$.75 retail value per game played. **[Amd. Ord. 58-04 10/19/04]**
 8. Any machine on the premises of the enterprise or business shall not violate the State's laws against slot machines and shall be in full compliance with Section 849.16, *Florida Statutes*. **[Amd. Ord. 58-04 10/19/04]**
 9. The enterprise or business shall permit unlimited access to law/code enforcement officials to enter the premises and inspect any machine at any time to ensure that the provisions of this Ordinance are in compliance. **[Amd. Ord. 58-04 10/19/04]**

- (2) **Conditional Use Criteria**: **[Amd. Ord. 58-04 10/19/04]**

SECTION 4.3.3 (AAA) (2) (a)

- (a) **Application**: No person shall operate or conduct an adult gaming center for use by the general public in the City for the reward of prizes without first applying for a conditional use and stating in the application, at a minimum, the following: **[Amd. Ord. 58-04 10/19/04]**
1. The name under which the enterprise or business is to be conducted; **[Amd. Ord. 58-04 10/19/04]**
 2. The location at which the enterprise or business is to be carried on; **[Amd. Ord. 58-04 10/19/04]**
 3. The name, address and principal occupation of every person with an interest in the enterprise or business. **[Amd. Ord. 58-04 10/19/04]**
 4. The number of machines to be exhibited; **[Amd. Ord. 58-04 10/19/04]**
 5. The manufacturer, serial numbers, name of each machine, name of actual owner of each machine with address and phone numbers; and, **[Amd. Ord. 58-04 10/19/04]**
 6. Whether the applicant has ever been engaged in operating a gaming center, of whatsoever type or nature, and when, where and how long in each place within five (5) years preceding the date of application. **[Amd. Ord. 58-04 10/19/04]**
 7. A conditional use shall not be approved if a person with an interest in the adult gaming center, or an employee of the adult gaming center, has been convicted of a violation of a Federal or State statute or any local ordinance pertaining to gambling or any other crime involving moral turpitude. **[Amd. Ord. 58-04 10/19/04]**
 8. The applicant shall be eighteen (18) years of age or more and provide proof thereof. **[Amd. Ord. 58-04 10/19/04]**
- (b) **Inspection**: As a prerequisite to the continuation of the granting of a conditional use within 6 months and periodically thereafter during the operation of the adult gaming center, the Chief Building Official, or designee, the City Fire Inspector or designee and the Delray Beach Police Department shall have the right to inspect the premises certifying that the adult gaming establishment is operating in accordance with the requirements of law and this ordinance. **[Amd. Ord. 58-04 10/19/04]**

SECTION 4.3.3 (AAA) (2) (c)

- (c) **Registration:** Upon approval of a conditional use, registration for each coin operated amusement gaming device, however operated, shall be required. For each machine registered, a numbered metal tag or plastic decal shall be issued to the applicant for each machine so covered. Application for machine registration stickers must disclose the location where the machine is to be operated, the manufacturer of the machine, the manufacturer's serial number, and the software version, if any. Registration stickers are not transferable from person to person, place to place, or machine to machine. No machine will be eligible for a registration sticker if its operation involves any material elements of chance, unless: **[Amd. Ord. 58-04 10/19/04]**
1. The applicant submits with the application, satisfactory proof that the applicant has registered with the United States Department of Justice pursuant to 15 *United States Code* 1171, and **[Amd. Ord. 58-04 10/19/04]**
 2. The applicant submits with the application, the records required under Federal law to be maintained by those who register under 15 *United States Code* 1171, and certifies the machine bears the permanent marking required by Federal law. **[Amd. Ord. 58-04 10/19/04]**
 3. The applicant shall keep the registered machines, the records of acquisition, location and disposition required by Federal law, and records of prize awards open to law/code enforcement inspection at any time. **[Amd. Ord. 58-04 10/19/04]**
- (3) **Peace Disturbances; Gambling; Intoxicated Persons; Minors.** No licensee or owner of any adult gaming center, or any servant, agent or employee of such a licensee or owner, shall permit upon the premises housing a mechanical amusement device any of the following: **[Amd. Ord. 58-04 10/19/04]**
- (a) Disorderly persons; **[Amd. Ord. 58-04 10/19/04]**
 - (b) Gambling, or the use, possession or presence of gambling paraphernalia; **[Amd. Ord. 58-04 10/19/04]**
 - (c) Intoxicated persons to loiter on the premises; **[Amd. Ord. 58-04 10/19/04]**
 - (d) Loud noise or music to emerge from the licensed premises, which noise or music is disturbing to the surrounding area; and **[Amd. Ord. 58-04 10/19/04]**

SECTION 4.3.3 (AAA) (3) (e)

(e) Any licensee or owner, or any servant, agent or employee thereof, shall be presumptively deemed to have permitted the conduct enumerated in this Section if it occurs on the premises housing an adult gaming center. **[Amd. Ord. 58-04 10/19/04]**

(4) **Penalty:** Section 10.99, "General Penalty" of the Code of Ordinances of the City of Delray Beach shall apply, but shall not be the exclusive penalty for violations of this section, which may include but not be limited to a finding that the conditional use is null and void if any adult gaming center is found to be in violation of Chapter 849, Fla. Stat. or this ordinance or conditions of approval. **[Amd. Ord. 58-04 10/19/04]**

(AAAA) Simulated Gambling Devices: [New Section Added by Ord. 48-11 1/3/12]

(1) **Purpose:** It is the intent of this section to prohibit the use of simulated gambling devices, including any related activity or behavior which can be reasonably construed to be the use of simulated gambling devices.

(2) **Prohibition of Simulated Gambling Devices:** It shall be unlawful for any person to manage, supervise, maintain, provide, produce or use one or multiple simulated gambling devices. Each individual act to manage, supervise, maintain, provide, produce, or use a simulated gambling device constitutes a separate violation of this section.

(3) Exemptions:

(a) This section does not prohibit the personal, recreational, non-commercial ownership, play, operation or use of a device which could be construed to be a simulated gambling device, provided such ownership, play, operation or use is not otherwise prohibited by Florida law and provided such ownership, play, operation or use does not constitute a lottery under Article X, Section 7 of the Florida Constitution.

(b) This section does not prohibit the ownership, play, operation, or use of any device expressly permitted by the Florida Statutes and not otherwise prohibited by the Florida Constitution, except that devices permitted by Article X, Section 23 of the Florida Constitution and Chapter 551, Florida Statutes, in Broward and Miami-Dade County only are not permitted by this section.

c. This section does not prohibit Adult Gaming Centers, which are regulated by LDR Section 4.3.3(AAA).

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(4) **Conflict with State Law:** Nothing in this section is intended to conflict with the provisions of the Florida Constitution or Chapter 849, Florida Statutes, concerning gambling. In the event of a conflict between this section and either the Florida Constitution or Chapter 849, Florida Statutes, then the provisions of the Florida Constitution or Chapter 849, Florida Statutes, as applicable, control.

(5) **Penalty:** Any person who violates this section is subject to the provisions of Section 10.99, "General Penalty", of the Code of Ordinances of the City of Delray Beach. Each simulated gambling device, possession or use thereof constitutes an individual offense for purposes of Section 10.99.

(B) **Abused Spouse Residence:**

(1) **Occupancy:** Occupancy of sleeping rooms shall be as follows:

- (a) One abused spouse and all minor or dependent children of that spouse may occupy a sleeping room;
- (b) A maximum of four abused spouses with no minor or dependent children may occupy a sleeping room;
- (c) Should conditions warrant unrelated individuals to share quarters, a maximum of four individuals (abused spouses and minor or dependent children) may occupy a sleeping room.

(2) **Appearance:** Abused spouse residences in residential zoning districts shall have exterior architectural elevations which are residential in character, shall maintain appropriate landscaping, and shall have no signs or external devices to detract from the residential character of the structure.

(3) **Inspections and Licenses:**

- (a) **Fire Inspections:** Issuance of an occupational license shall be preceded by an annual fire safety inspection; issuance of an occupational license shall be contingent upon compliance with the recommendations of the City Fire Marshall and Chief Building Official.
- (b) **State License:** Should a State license become mandatory for abused spouse residences, a valid State license shall be required for renewal of the City occupational license.

(C) **[Deleted by Ord. 20-08 4/15/08]**

SECTION 4.3.3 (D)

(D) **Community Gardens** [New Section Added by Ord. 12-11 6/7/11]; [“Residential and Non-Residential Licensed Services Provider Facilities” was repealed by Ord. No.10-11, 4/5/11]

(1) **Purpose:** It is the intent of this section to regulate Community Gardens which are green spaces that are communally cultivated and cared for. The intent of permitting community gardens is to allow a group of residents to grow produce and horticultural plants for their consumption and enjoyment without creating adverse environmental impact or land use incompatibilities. These spaces may consist of individually-worked plots, communally-tended areas and sitting areas.

(2) **Appearance:**

(a) All community gardens on single-family lots within Single-Family Residential, Low Density Residential, and Medium Density Residential zoning districts, shall require administrative plan approval through the Community Improvement Department. Community Gardens proposed on parcels other than single-family lots within Multiple Family Residential Zoning districts shall require site plan modification approval through the Planning and Zoning Department. The application shall require the property owners consent and the following items must be attached: layout of plots and other components proposed on the site of the community garden, setbacks from adjacent properties, identification of water supplies, established operating rules identifying the governance structure of the garden and maintenance and security responsibilities; contact information for the person responsible for the oversight of the garden.

(b) The owner of the property on which the garden is located shall be responsible for maintaining the property so that it does not become overgrown with weeds, infested by invasive exotic plants or vermin, or a source of erosion or storm water runoff. If the property is not used as a community garden for 120 or more consecutive days, the site shall be restored back to its pre-Community garden condition.

(3) **General Rules & Regulations:**

(a) A Community Garden is not intended to be a commercial enterprise. Sale of produce and plants at the site are prohibited.

(b) The raising of poultry or other livestock, fish and the keeping of bees is prohibited.

(c) The use of pesticides, herbicides and weed killers, or insecticides made from synthetic chemical materials and chemicals is prohibited. The use of materials and practices used for organic production (guidelines) is strongly encouraged.

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- (d) The site shall be designed and maintained to prevent drainage or runoff onto adjacent property.
- (e) The community garden shall grow at least four (4) different food crops and/or non-food crops. No gardening activities shall take place before sunrise or after sunset. 50% or more of the planting area shall be in production at all times.
- (f) The property owner shall be prohibited from seeking an agricultural tax exemption afforded by the local, state or federal tax regulations.

(4) **Site Standards:**

- (a) Community gardens are primarily intended to occupy infill lots in single family subdivisions, thus a garden shall not be greater in size than the standard lot within the neighborhood it is located. Multiple infill lots are not to be combined, nor developed with individual gardens adjacent one another. For Multiple Family Residential zoning designations the proposed garden shall be appropriate with respect to size and scale to the development in which they are located and this will be determined during the site plan modification process.
- (b) All planting shall be planted no closer than 15 feet from the front property line and 10 feet from the interior side or rear property lines. Corner lots shall maintain a 15-foot side street setback. All plantings shall comply with the visibility at intersection requirements pursuant to applicable Land Development Regulations.
- (c) The Community garden shall be served by a water supply sufficient to support the cultivation practices used on the site.
- (d) A perimeter fence or hedge is required for all gardens. The fence or hedge shall comply with LDR Section 4.6.5 and must have a drive-through gate to accommodate trucks and other equipment that may be used from time-to-time as a part of the gardening maintenance. Hedges are encouraged and may consist of drought-tolerant shrubs.
- (e) Compost and organic matter to be used for the community garden shall not be stored in open air. They shall be contained in appropriate containers, which shall not be located with a 25-foot front setback nor 15-foot side street setback from all rights-of-way and shall be a minimum of 10-foot setback from all interior property lines. Such containers shall be maintained to prevent odors and prevent the harborage of rodents and pests.
- (f) Storage of toxic and flammable materials is not allowed. No tires are allowed to be stored on-site.
- (g) One sign is permitted, which shall not exceed 16 square feet and with a maximum height of 5 feet.

SECTION 4.3.3 (D) (4) (h)

(h) No parking is allowed on-site.

(DD) **Drug Paraphernalia (as defined by Section 893.145 Fla. Stat.):** [Amd. Ord. 45-02 10/1/02]

(1) **General:** It shall be unlawful for any person to sell or offer for sale drug paraphernalia or to operate a business which primarily sells drug paraphernalia. [Amd. Ord. 45-02 10/1/02]

(a) **Exemptions:** This section shall not apply to: [Amd. Ord. 45-02 10/1/02]

(i) Any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items, or [Amd. Ord. 45-02 10/1/02]

(ii) Any item that, in the normal lawful course of business is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory. [Amd. Ord. 45-02 10/1/02]

(E) **Child Care Facilities:** (See Subsection (T) Re: Family Day Care)

(1) **Lot Area:** The minimum lot area shall be 7,500 square feet.

(2) **Floor Area:** Facilities shall contain a minimum floor area of 35 square feet per child, exclusive of space devoted to bathrooms, halls, kitchen, offices, and storage.

(3) **Outdoor Area:** There shall be a minimum area of 75 square feet of outdoor play area per child. The play area shall be located on the same lot as the principal use and shall not be located in the front yard setback or adjacent to any outdoor storage area. The play area shall be surrounded by a six-foot high fence or wall.

(4) **Loading Area:** A pickup and drop-off area for children shall be provided in a convenient area adjacent to the building and shall provide clear ingress and egress to the building.

(5) **Other Regulations:** All child care facilities shall comply with State and County regulations.

(F) **Adult Day Care Facilities:** All provisions of 4.3.3(E) shall apply except as follows:

(1) No outdoor play area needs to be provided.

(2) The minimum floor area requirements shall be based upon adults instead of children.

(G) [Deleted by Ord. 20-08 4/15/08]

SECTION 4.3.3 (H)

(H) Nursing Homes: [Amd. Ord. 20-08 4/15/08]

- (1) **Lot Area**: The minimum lot area for such uses shall be one acre.
- (2) **Frontage**: The minimum frontage of the parcel upon which such a use is to be located is 100 feet.
- (3) **Locational Factors**:
 - (a) Such uses shall not be located on any arterial street.
 - (b) Should the facility require ambulance service, such access shall be from a collector street and shall be provided in such a manner to minimize adverse effects on adjacent property.
 - (c) The environment created should be of a pronounced residential nature and shall be designed to minimize any adverse condition which might detract from the primary convalescent purpose of the facility.

(HH) **Public Educational Facilities of The School District of Palm Beach County**: The following regulations apply. Relief from these requirements shall only be granted by the City Commission through the waiver process [Section 2.4.7(B)]. [Amd. Ord. 24-02 7/16/02]; [Amd. Ord. 79-94 10/18/94]

(1) **Lot Area**: The minimum lot area is one (1) acre. [Amd. Ord. 24-02 7/16/02]; [Amd. Ord. 79-94 10/18/94]

DELETED (2) AND RENUMBERED. [Amd. Ord. 24-02 7/16/02]

(2) **Loading Area**: A pickup and drop-off area for children shall be provided in a convenient area adjacent to the building and shall provide clear ingress and egress to the building. A minimum of a 100' dedicated vehicular drop-off / pick-up lane shall be provided. The stacking area is measured from the loading area and shall not block drive-aisles or parking areas. A greater distance may be required by the approving body based on the capacity of the facility. A reduced stacking distance may be approved by the Board based on a traffic impact statement. Pathways that cross vehicular use areas shall be defined by special paving, brick, striping or other method acceptable to the Board. [Amd. Ord. 24-02 7/16/02]; [Amd. Ord. 79-94 10/18/94]

(3) **Landscape Requirement**: When abutting residentially zoned properties, excluding separators such as streets, canals, and railroads, a perimeter setback area of 15' must be provided. The perimeter landscape area shall be a landscaped area. No paving is allowed except for driveways and walkways leading to structures on the premises provided they are perpendicular to the property line. This perimeter setback area may be decreased to 10' when an outdoor recreation area is provided and abuts residentially zoned property. [Amd. Ord. 24-02 7/16/02]

SECTION 4.3.3 (HH) (4)

(4) **Parking Requirement:** Parking for public educational facilities of The School District of Palm Beach county must be provided pursuant to Section 4.6.9(C)(6)(e). **[Amd. Ord. 24-02 7/16/02]**

(5) **Other Regulations:** All Public Education Facilities of The School Board of Palm Beach County must comply with Chapter 235 of the Florida Statutes and the State Requirements for Educational Facilities as amended. **[Amd. Ord. 24-02 7/16/02]; [Amd. Ord. 79-94 10/18/94]**

(HHH) **Private Schools and Other Similar Education Facilities:** **[Amd. Ord. 18-02 6/18/02]**

(1) **Floor Area:** Facilities shall contain a minimum floor area of 35 square feet per child, exclusive of space devoted to bathrooms, halls, kitchen, offices, and storage. **[Amd. Ord. 18-02 6/18/02]**

(2) **Loading Area:** A pickup and drop-off area for children shall be provided in a convenient area adjacent to the building and shall provide clear ingress and egress to the building. A minimum of a 100' dedicated vehicular drop-off/pick-up lane shall be provided. The stacking area is measured from the loading area and shall not block drive-aisles or parking areas. A greater distance may be required by the approving body based on the intensity of the Private School. A lesser stacking distance may be approved by the Board based on a traffic impact statement. Pathways that cross vehicular use areas shall be defined by special pavings, brick, striping or other method acceptable to the Board. **[Amd. Ord. 18-02 6/18/02]**

(3) **Outdoor Area:** There shall be a minimum area of 75 square feet of outdoor play area per student. The play area shall be located on the same lot as the principal use and shall not be located in the front yard setback. The play area shall be surrounded by a 6'-high opaque fence or chain link fence with a 6'-high hedge. Outdoor play areas shall meet the minimum setbacks in the PC zoning district per LDR Section 4.3.4(K). Relief from this requirement shall only be granted by the City Commission through the waiver process [Section 2.4.7(B)]. **[Amd. Ord. 18-02 6/18/02]**

(4) **Transport Vehicles:** For private schools that utilize transport vehicles, an area must be designated for the parking/storage of these vehicles and that these areas be screened when visible from a public right-of-way or residentially zoned property in accordance with LDR Section 4.6.4(A) and 4.6.16(H)(3)(e). **[Amd. Ord. 18-02 6/18/02]**

(5) **Other Regulations:** All Private Schools and Similar Facilities shall comply with the American Disability Act (ADA), Standard Building Code, Fire Codes, and any other regulations including State and County regulations as may be required. **[Amd. Ord. 18-02 6/18/02]**

(6) Private school facilities shall be limited to a maximum of 100 students when located in the PC district. **[Amd. Ord. 18-02 6/18/02]**

SECTION 4.3.3 (I)

(I) Community Residential Homes and Group Homes: [Amd. Ord. 23-01 5/1/01]

(1) **Purpose**: The purpose of this section is to provide for the health, safety, welfare, and shelter in sound housing of residents of Community Residential Homes and Group Homes and residents of the City who are in need of such facilities while assuring compatibility of these facilities with surrounding areas. [Amd. Ord. 23-01 5/1/01]

(2) **Applicability**: This section shall be applicable but not limited to Community Residential Homes and Group Homes which constitute a new facility or a modification of an existing lawful facility which increases the floor area or the permitted number of residents. This section does not include foster homes; assisted living facilities; continuing care facilities; abused spouse residences; child care facilities; adult day care facilities; nursing homes; nor licensed service provider facilities. [Amd. Ord. 16-11 5/17/11]; [Amd. Ord. 28-09 7/7/09]; [Amd. Ord. 23-01 5/1/01]

(3) **Definitions**: [Amd. Ord. 23-01 5/1/01]

(a) **Resident**: The term "resident" for a community residential home or group home means any of the following pursuant to the Florida Statutes: [Amd. Ord. 23-01 5/1/01]

1. A frail elder as defined in Section 429.65, Fla. Stat.; [Amd. Ord. 28-09 7/7/09], [Amd. Ord. 23-01 5/1/01]
2. A physically disabled or handicapped person as defined in Section 760.22(7)(a), Fla. Stat.; [Amd. Ord. 28-09 7/7/09], [Amd. Ord. 15-04 4/13/04]; [Amd. Ord. 23-01 5/1/01]
3. A developmentally disabled person as defined in Section 393.063(12), Fla. Stat.; [Amd. Ord. 28-09 7/7/09], [Amd. Ord. 23-01 5/1/01]
4. A nondangerous mentally ill person as defined in Section 394.455 (18), Fla. Stat.; or, [Amd. Ord. 28-09 7/7/09], [Amd. Ord. 23-01 5/1/01]
5. A child as defined in Section 39.01(14), Section 984.03(9) or (12), or Section 985.03(8), Fla. Stat.. [Amd. Ord. 28-09 7/7/09], [Amd. Ord. 23-01 5/1/01]

(b) **Community Residential Home**: The term "Community Residential Home" means a dwelling unit licensed to serve clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice; or Department of Children and Family Services, or a dwelling unit licensed by the Agency for Health

SECTION 4.3.3 (I) (3) (b)

Care Administration, which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet physical, emotional, or social needs of the residents. **[Amd. Ord. 28-09 7/7/09], [Amd. Ord. 23-01 5/1/01]**

- (c) **Group Home**: The term "Group Home" means a home, and/or a building or part thereof, or group of buildings, which has either less than seven (7) residents or more than fourteen (14) residents and which is licensed to serve clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice Department of Children and Families, or the Agency for Health Care Administration. **[Amd. Ord. 28-09 7/7/09], [Amd. Ord. 23-01 5/1/01]**

(4) **Classifications**: **[Amd. Ord. 23-01 5/1/01]**

- (a) **Group Home, Type 1**: A group home of not more than six (6) unrelated residents. Such homes which satisfy the provisions of this section shall be allowed as a permitted use in the zoning districts as outlined in Section 4.3.3(I)(4)(d), provided, however, that no such home shall be located within a radius of 1,000 feet of another Type 1 group home or a community residential home. **[Amd. Ord. 82-06 1/2/07]; [Amd. Ord. 23-01 5/1/01]**
- (b) **Community Residential Home**: Such homes which satisfy the provisions of this section shall be allowed as a permitted or conditional use in the zoning districts as outlined in Section 4.3.3(I)(4)(d), provided that such homes shall not be located within a radius of 1,000 feet of a community residential home or within a radius of 500 feet of a single family residential zoning district. **[Amd. Ord. 23-01 5/1/01]**
- (c) **Group Home, Type 2**: A group home which provides lodging or related services for fifteen (15) or more unrelated residents. Such homes which satisfy the provisions of this section shall be allowed as a permitted or conditional use in the zoning districts as outlined in Section 4.3.3(I)(4)(d), provided however that such homes shall not be located within a radius of 1,000 feet of a community residential home or group home, within a radius of 500 feet of a single family residential zoning district, or within a radius of 1,000 feet of a public or private elementary, middle or secondary school. **[Amd. Ord. 23-01 5/1/01]**
- (d) Community Residential Homes and Group Homes shall be allowed as a permitted or conditional use in the following zoning districts: **[Amd. Ord. 02/10 1/19/10]; [Amd. Ord. 23-01 5/1/01]**

SECTION 4.3.3 (I) (4) (d)

TYPE OF RESIDENCE	ZONING DISTRICTS								
	A, RR, R-1	RL	RM	PRD	RO, OSSHAD	CBD, CF	GC	PC	CBD-RC
Group Home, Type 1	Permitted	Permitted	Permitted	Permitted	Permitted	Not Permitted	Permitted	Permitted	Not Permitted
Community Residential Home	Not Permitted	Conditional Use	Permitted	Not Permitted	Conditional Use	Conditional Use	Conditional Use	Conditional Use	Conditional Use
Group Home, Type 2	Not Permitted	Conditional Use	Permitted	Not Permitted	Conditional Use	Conditional Use	Conditional Use	Conditional Use	Conditional Use

(5) Noticing and Licensing Requirements: [Amd. Ord. 23-01 5/1/01]

- (a) An applicant for a community residential home must notify the City in writing the specific address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. The City may review the notice submitted for compliance with the underlying zoning district and respond pursuant to Chapter 419.001(3)(a) of the Florida Statutes. **[Amd. Ord. 23-01 5/1/01]**
- (b) Group Homes shall at the time of application for City business tax receipt provide evidence that appropriate approvals or licenses from county, state, or federal regulatory agencies have been applied for or obtained, if any is required and they must show that no other community residential home or group home is within a radius of 1,000 feet of the proposed site. The business tax receipt must be renewed annually and may only be received upon provision of proof that the facility continues to be licensed by the State, if required, and upon passing of City inspections. **[Amd. Ord. 82-06 1/2/07]; [Amd. Ord. 23-01 5/1/01]**

(6) Development Standards: [Amd. Ord. 23-01 5/1/01]

(a) Minimum Floor Areas: [Amd. Ord. 23-01 5/1/01]

1. Community Residential Homes and Group Homes of 4 to 14 residents require no minimum floor area except as required by the underlying zoning district requirements and as required by State agencies. **[Amd. Ord. 23-01 5/1/01]**
2. Type 2 Group Homes require a minimum floor area for bedrooms of 80 square feet for the first permitted resident in a bedroom with an additional 60 square feet for each additional permitted resident in a bedroom. There shall be a minimum of one bathroom equipped with sink, commode, and shower or tub per each four permitted residents. **[Amd. Ord. 23-01 5/1/01]**

SECTION 4.3.3 (I) (6) (b)

(b) **Outdoor Recreational Space**: Type 2 Group Homes located in nonresidential zone districts shall provide usable outdoor passive recreation area of 35 square feet per resident in addition to any required open space, landscaping, and setback areas. **[Amd. Ord. 23-01 5/1/01]**

(c) **Special Regulations**: **[Amd. Ord. 23-01 5/1/01]**

1. Signage shall be pursuant to LDR Section 4.6.7. **[Amd. Ord. 23-01 5/1/01]**

2. Parking requirements shall be pursuant to LDR Section 4.6.9(C). **[Amd. Ord. 23-01 5/1/01]**

(7) **Findings of Reviewing Authority**: The Planning and Zoning Board shall not recommend approval of a Conditional Use for a Community Residential Home or Group Home unless it is demonstrated that the home has met all of the requirements of Section 4.3.3(I), including those requirements in the specific zoning district in which the proposed home is to be located, and has received applicable preliminary State agency approval or current State agency license when a license is required. A recommendation of approval shall be based upon consideration of the following factors: **[Amd. Ord. 23-01 5/1/01]**

(a) Homes located within residential districts shall have building elevations, which are residential in character and similar in appearance to the surrounding neighborhood. They shall not be institutional in appearance as determined by the Site Plan Review and Appearance Board or the Historic Preservation Board. **[Amd. Ord. 23-01 5/1/01]**

(b) Homes located in a nonresidential area shall be maintained in the general character of the surrounding area. This standard applies to design, lot size, landscaping, and other factors affecting the character of the area. **[Amd. Ord. 23-01 5/1/01]**

(c) The proposed facility shall be in conformance with the Future Land Use Map, and Objectives and Policies of the City's Comprehensive Plan. **[Amd. Ord. 23-01 5/1/01]**

(8) **Distance Requirements**: All distance requirements in this section shall be measured from the nearest point of the existing home, school or area of single-family zoning to the nearest point of the proposed Community Residential or Group Home. **[Amd. Ord. 23-01 5/1/01]**

SECTION 4.3.3 (II)

(II) **Senior Housing:** See the definition of Senior Housing for clarification of terms and qualifying standards. [New Section Enacted by Ord. 39-05 6/21/05]

(1) **Floor Area:**

- (a) **Rooms:** The total floor area for each unit shall be a minimum of 400 square feet in area.
- (b) **Common Area:** At least 10% of the total floor area shall be devoted to a common area, exclusive of halls, corridors, stairs, and elevator shafts, wherein a variety of recreational or therapeutic activities may occur.

(2) **Facilities and Requirements:**

- (a) A sleeping room and separate bathroom facilities shall be provided for an on-site property manager who is required to remain on the premises overnight.
- (b) Adult residents may utilize private medical care or personal services while in residence and may not have a nurse in residence.
- (c) No more than two (2) residents shall be housed per unit.
- (d) Senior Housing located in any zoning district shall provide outdoor amenities, landscaping, design features, and yard space to serve the residents. Such features shall be reviewed and approved concurrent with Conditional Use Approval.
- (e) The facility shall not provide non-recreational services such as beautician, barber, tailor, seamstress, sale of convenience goods, and entertainment.
- (f) Commercial rated cooking equipment may be permitted provided such features shall be reviewed and approved concurrent with the Conditional Use approval. Meals prepared from this equipment shall only serve the residents.
- (g) The facility shall accommodate low to very-low income residents 60 years of age or older.

(3) **Intensity:** A minimum of 900 sq. ft. of lot area is required per bedroom.

(4) **Appearance:** Senior Housing Facilities shall have building elevations which are residential in character and similar in appearance to the surrounding neighborhood and shall not be institutional in appearance as determined by the Site Plan Review and Appearance Board or the Historic Preservation Board.

(5) **Locational Factors:**

- (a) Such use shall also be within a 600 foot radius of a mass transit stop.

SECTION 4.3.3 (II) (5) (b)

(b) Such use shall not be located within a radius of 1,000 feet, measured from parcel to parcel, of another senior housing facility.

(6) **Parking Requirement**: One (1) parking space shall be provided for each sleeping room plus one (1) parking space shall be provided for an on-site property manager.

(7) **Signage**: Signage is limited to one (1) freestanding sign with a maximum of eight (8) square feet in area and a maximum height of three (3) feet, measured from finished grade to highest point.

(J) **Gasoline Station**: A gasoline station is any establishment at which the sale and delivery of fuel to a motor vehicle occurs. Gasoline stations are classified as to other activities which occur on the site of the establishment and are thus regulated as provided for herein.

(1) **Service Station**: A gasoline station which also sells and delivers lubricants and other products necessary to the operation of vehicles. It may include the sale and installation of accessories, tires, batteries, seat covers; and the provision of services such as tire repair, tune-ups, minor engine repair, wheel balancing and alignment, brake servicing, and washing either by hand or by an automated car wash facility. Food and drinks may be accommodated only through the use of vending machines.

(2) **Convenience Mart (Gasoline Station with Food Sales)**: A gasoline station which also sells foods and convenience items and does not accommodate repair or installation services provided that the sale of food and convenience items is secondary to use as a gasoline station.

(3) **Full Service Station**: A gasoline station at which activity of a service station and the sale of food and convenience items occurs.

(4) **Incidental Gasoline Sales**: A gasoline station at which the sale of fuel is incidental or secondary to the primary function of the site as a retail business. There may be no outside display of vehicle products (oil, tires, etc.) at such a facility.

(5) **General Development Standards**: Development standards as set forth in the following shall apply to sites upon which a service station or convenience mart is to be located. An establishment with incidental gasoline sales shall be governed by the site development requirements for the site and the main business except that the requirement of Subsection (6) shall apply. A full service station shall adhere to a combination of the requirements for a service station and a convenience mart.

SECTION 4.3.3 (J) (5)

ITEM	SERVICE STATION	CONVENIENCE MART
Minimum Lot Area	15,000 Square Feet	15,000 Square Feet
Minimum Frontage	150 Feet	150 Feet
Parking Requirements	4.5 / 1,000 sq. ft. of non-repair gross floor area and 4 spaces per Service Bay or Lift [Amd. Ord. 01-09 1/20/09]	4.5 / 1,000 Square Feet of Gross Floor Area [Amd. Ord. 01-09 1/20/09]
Driveways	There shall be no more than two (2) curb-cuts to any abutting street with a minimum distance of twenty-five feet (25') between curb-cuts. Curb-cuts shall not have a width exceeding thirty-five feet (35'), exclusive of transitions. Curb-cuts shall not be located closer than twenty-five feet (25') to the intersection of the ultimate right-of-way lines at a corner nor closer than fifteen feet (15') from any abutting property line or alley.	

(6) **Gasoline Facility Development Standards:** The following standards apply to whatever classification, a gasoline station has.

- (a) **Location of Dispensers:** Gasoline dispensers, tanks, dispenser island, and canopies shall not be located closer than fifteen feet (15') from any property line. When property directly abuts residentially zoned property, gasoline dispensers, tanks, dispenser islands and canopies, signs, or vents shall not be located closer than forty feet (40') from the property line abutting the residentially zoned property.
- (b) **Storage Tanks:** All storage tanks shall be underground.
- (c) **Lift and Repair Facilities:** All such facilities shall be located within a structure.
- (d) **Display of Products:** Vending machines are to be located under roof and screened on three sides. Racks containing cans of lubricating oil may be displayed on service islands. Racks or pedestals used for the display of tires shall be located along any side (as opposed to front) of a structure.

(K) **Home Occupations:** A home occupation is one conducted in a dwelling unit under the following restrictions:

- (a) No person other than members of the family residing on the premises shall be engaged in such occupation.
- (b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character thereof.
- (c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation.

SECTION 4.3.3 (K) (d)

- (d) In the single-family zoning districts, no sign or display shall be visible other than an unlighted nameplate not exceeding one square foot in area, which would indicate from the exterior that the building is being partially used for any purpose other than a dwelling. In the multiple family zoning districts, no sign of any type shall be allowed.
- (e) No home occupation shall be conducted in any accessory building.
- (f) No home occupation shall occupy more than 20% of the first floor area of the residence, exclusive of the area of any open porch or attached garage or similar space not suited or intended for occupancy as living quarters.
- (g) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in the required front setback.
- (h) No equipment or process shall be used in such home occupation which creates fumes, glare, noise, odors, vibration, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
- (i) The following shall not be considered home occupations: antique or gift shops, musical instruments or dance instructor, barbershops, beauty shops, food processing, fortune-telling or similar activity, massage parlors, medical or dental laboratories, outdoor repair, photographic studio, retail sales, studio for group instruction, swimming instructor, and tearooms. The giving of group instruction of any type shall not be deemed a home occupation.
- (j) The giving of individual instruction to one person at a time such as an art or piano teacher, shall be deemed a home occupation, provided however, that the provisions of division (i) above shall apply, as to prohibiting individual uses.
- (k) Fabrication of articles such as those commonly classified under the terms of arts and handicrafts may be deemed a home occupation, subject to the other terms of this division, and providing no retail sales are made at the home.
- (l) A home occupation shall be subject to all applicable city occupational licenses and other business taxes.

(KK) Home Tutorial Services: [Amd. Ord. 79-94 10/18/94]

(1) Shall only be as an accessory use in a private residence. **[Amd. Ord. 79-94 10/18/94]**

(2) Is limited to no more than five students at any one time. **[Amd. Ord. 79-94 10/18/94]**

SECTION 4.3.3 (KK) (3)

(3) Traffic generated by such Home Tutorial Services shall not exceed traffic volumes than would normally be expected in a residential neighborhood. Any need for parking generated by the operation of such Home Tutorial Services shall be met off the street and other than in the required front setback. **[Amd. Ord. 79-94 10/18/94]**

(4) Home Tutorial Services shall not occupy more than 20% of the first floor area of the residence, excluding the area of any open porch, attached garage, or similar space which is not suited or intended for occupancy as living quarters. **[Amd. Ord. 79-94 10/18/94]**

(KKK) **Live/Work Units** [New Section Ord. 23-10 10/5/10]

(1) **General**

- (a) The occupant of the residential unit must be the proprietor or owner of the business that occupies the nonresidential portion of the building.
- (b) Only one (1) additional employee may work at the business.
- (c) Residential appearance must be maintained.
- (d) Unlighted signage with a maximum of 2 SF is permitted.
- (e) The Live/Work Unit must face either a public or private street that has available on-street parking.
- (f) May only be permitted with new development approvals, or modifications to approved site plans for buildings that have not begun construction.
- (g) The non-residential use must be internally connected to the residential unit and must also provide direct access from the public sidewalk adjacent to the street.
- (h) The Live-Work Unit shall meet the Florida Building Code requirements at the time of construction for mixed occupancy buildings.
- (i) Access to all Live-Work Units shall be clearly identified in order to provide for emergency services.

(2) **Allowed Non-residential uses.** Live-Work Units may include the following non-residential uses:

- (a) Business services, including but not limited to: commercial artist, photography, computer programming, detective agency, editing/proofreading, mail service, paralegal, photocopying service, secretarial service, telemarketing service.

SECTION 4.3.3 (KKK) (2) (b)

- (b) Personal Services, including but not limited to: alterations/dressmaking, barber/beauty shop, income tax service, locksmith, shoe shine and repair, tailor shop, massage, pedicure, photographic studio [subject to 4.3.3.KKK(4)(d)], facials, and fortune teller or similar if geographically allowed by the LDRs.
- (c) Professional Services, including but not limited to: title company, accountant, insurance adjusters, advertising office, appraiser, architect, attorney, auditor, broker, contractors office (no construction materials permitted), stenographers, engineers office, interior decorating, loan company, model agencies, notary public office, real estate sales/management, stock exchanges, travel agency.
- (d) Fabrication of arts and handicrafts, with retail sales limited to materials fabricated by the owner/proprietor.

(3) **Interim Residential Use.**

- (a) Residential use is permitted in the approved non-residential portion of a Live-Work Unit.
- (b) Prior to the issuance of a Business Tax Receipt for an approved non-residential use within the Live-Work unit, the applicant shall apply to the City for a change in use, and indicate that the unit was previously designated as a Live-Work Unit as part of a development approval.

(4) **Operation.**

- (a) The net area devoted to an approved non-residential use shall be a maximum of 200 sq. ft. The “net area” means all areas not utilized for stairways, vestibules, hallways, closets, bathrooms, and garages.
- (b) One hundred percent of the building's net area above the ground floor shall be designated as residential.
- (c) The non-residential use of a Live-Work Unit may operate only from 8:00 AM to 6:00 PM; deliveries are limited to between 9:00 AM to 6:00 PM.
- (d) Non-residential uses creating industrial-type impacts, such as those that involve processes that generate significant amounts of heat, require the use of heavy machinery, loud speakers, bells, or emit gases, fumes, and/or smoke or that create a nuisance (i.e., noise, odors and/or vibration) are prohibited.

(L) **Hospitals:**

- (1) **Lot Area:** The minimum lot area shall be five acres
- (2) **Frontage:** The minimum frontage shall be 300'

SECTION 4.3.3 (L) (3)

(3) **Setbacks**: No structure shall be located within fifty feet (50') of a property line. Parking areas shall not be located within twenty-five feet (25') of a property line.

(4) **Intensity**: The maximum intensity, in terms of patient rooms is 30.37 patient rooms per acre computed on the basis of one patient room allowable for each 1,500 square feet of lot area.

(5) **Use Restriction**: No rooms or suites shall be designed, altered, or maintained for housekeeping or family living purposes.

(LL) **Kidney Dialysis Centers**: [Amd. Ord. 35-06 6/20/06]

(1) **Generators**: [Amd. Ord. 35-06 6/20/06]

- (a) All new kidney dialysis centers that apply for a building permit on or after July 1, 2006 shall provide auxiliary power generators; and [Amd. Ord. 35-06 6/20/06]
- (b) All kidney dialysis centers in existence prior to July 1, 2006 shall have two (2) years from the effective date of this ordinance to provide auxiliary power generators; and [Amd. Ord. 35-06 6/20/06]
- (c) Generators shall not be dependent on a municipal water supply for cooling purposes; and [Amd. Ord. 35-06 6/20/06]
- (d) Generators shall be designed and equipped to operate the full capacity of all of the kidney dialysis machines in the facility for a period not less than one hundred twenty (120) hours; and [Amd. Ord. 35-06 6/20/06]
- (e) Generators shall be tested at least once a month and a test log shall be maintained for inspection by the City of Delray Beach, upon request. [Amd. Ord. 35-06 6/20/06]

(LLL) **Pharmacies**: [Amd. Ord. 35-06 6/20/06]

(1) **Generators**: [Amd. Ord. 35-06 6/20/06]

- (a) All new pharmacies that apply for a building permit on or after July 1, 2006 shall provide auxiliary power generators; and [Amd. Ord. 35-06 6/20/06]
- (b) All pharmacies in existence prior to July 1, 2006 shall provide auxiliary power generators within two (2) years of the effective date of this ordinance; and [Amd. Ord. 35-06 6/20/06]
- (c) Generators shall not be dependent on a municipal water supply for cooling purposes; and [Amd. Ord. 35-06 6/20/06]

SECTION 4.3.3 (LLL) (1) (d)

- (d) Generators shall be designed and equipped to operate the full capacity of the facility for a period of not less than one hundred twenty (120) hours; and **[Amd. Ord. 35-06 6/20/06]**
- (e) Generators shall be tested at least once a month and a test log shall be maintained for inspection by the City of Delray Beach, upon request. **[Amd. Ord. 35-06 6/20/06]**

(LLLL) **Medical, Professional and Business Offices, and Medical Clinics:** **[Amd. Ord. 36-10 10/19/10]** **[New Section Ord. 50-09 10/20/09]**

(1) **Applicability.** Medical, Professional and Business Offices, and Medical Clinics shall be subject to the following: **[Amd. Ord. 36-10 10/19/10]; [Amd. Ord. 13-10 6/15/10]**

- (a) On-site dispensing of controlled substances that are identified in Schedule II, III, or IV in Sections 893.03, and as further amended by Sections 893.035 or 893.0355, Florida Statutes, is prohibited, unless otherwise expressly permitted by statutory or general law. The following are exempt from this prohibition: **[Amd. Ord. 13-10 6/15/10]**
 - (i) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
 - (ii) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
 - (iii) A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital.
 - (iv) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
 - (v) A health care practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.

(2) **Appeal.** An appeal from an administrative determination or board action, excluding the granting or denial of a variance, regarding Medical Offices shall be appealed to the City Commission. The applicant shall follow the procedures and requirements set forth in Section 2.4.7(E). In addition to the requirements listed in Section 2.4.7(E) the applicant shall also list the following:

- (a) If the applicant is a potential claimant under a federal or state law; and

SECTION 4.3.3 (LLLL) (2) (b)

- (b) That the applicant believes in good faith that the City through implementation of this section has intentionally or unintentionally violated federal or state law. The law(s) the City has allegedly violated shall be identified.

(M) Hotels and Motels:

(1) **Minimum Floor Area:** Each sleeping room shall contain a minimum floor area of 325 square feet including closets and baths.

(2) **Orientation:** If lounges, limo service, or rental car counters are provided as accessory uses, such uses shall be oriented primarily to guests of the establishment and shall be located within the building so as to not be visible to the general public, unless so approved through the conditional use process.

(3) **Accessory Signs:** Signage designating those accessory uses allowed in conjunction with a hotel shall be prohibited from being attached to the outside of the hotel unless such signage is approved as part of a conditional use approval.

(MM) Grocery Stores: [Amd. Ord. 35-06 6/20/06]

(1) Generators: [Amd. Ord. 35-06 6/20/06]

- (a) All new grocery stores that apply for a building permit on or after July 1, 2006 that are ten thousand (10,000) square feet or larger in size must provide auxiliary power generators; and [Amd. Ord. 35-06 6/20/06]
- (b) All grocery stores that are in existence prior to July 1, 2006 and are ten thousand (10,000) square feet or larger in size must provide auxiliary power generators within six (6) years of the effective date of this ordinance or at the time of renovations exceeding twenty-five percent (25%) of the facility value, whichever comes first; and [Amd. Ord. 35-06 6/20/06]
- (c) Generators shall not be dependent on a municipal water supply for cooling purposes; and [Amd. Ord. 35-06 6/20/06]
- (d) Generators shall be designed and equipped to operate the facility's refrigeration and freezer equipment in addition to basic lighting for customers and employees for a period of not less than one hundred twenty (120) hours; and [Amd. Ord. 35-06 6/20/06]
- (e) Generators shall be tested at least once a month and test logs shall be maintained for inspection by the City of Delray Beach, upon request. [Amd. Ord. 35-06 6/20/06]

(N) Towing and Attendant Storage Facilities:

(1) **Screening:** Outdoor motor vehicle storage must be entirely surrounded by a fence or wall which is a minimum of six feet (6') in height. The enclosure shall be provided with vision obscuring gates.

(2) **Landscaping:**

(a) **Frontage:** Along the frontage, the fence or wall shall be located along the interior of a required perimeter landscape strip of a minimum of ten feet. Shade trees shall be provided every twenty-five (25') linear feet in addition to hedging.

(b) **Other Sides:** Along other perimeters, the fence or wall shall be set on the property line with a ten foot (10') curbed planting island every forty (40') linear feet and shall abut the interior of the wall. One shade tree, with a minimum height of twelve feet (12') and a minimum spread of six feet (6') shall be planted therein.

(O) Townhouses and Townhouse Type of Development:

(1) **Application:** These special requirements apply to townhome or townhouse development and to apartment complexes which are designed in the style of a townhome, except projects located within the Central Business District and Central Business District – Railroad Corridor, which shall comply with the applicable district regulations. **[Amd. Ord. 64-04 11/16/04]; [Amd. Ord. 21-04 5/4/04]**

(2) **Plat Required:** Each townhouse, or townhouse type, development shall be platted with a minimum designation of the interior street system as a tract. When the dwelling units are to be sold, each such unit must be shown on the plat.

(3) **Setbacks:** Setbacks shall be measured as follows:

(a) Setbacks from the perimeter of the overall project shall be as established by the base zone district requirements.

(b) Setbacks interior to the project shall be measured from the platted street system.

(c) Setbacks interior to the project with respect to side and rear lot lines shall not be observed; but in-lieu thereof structures (dwelling unit groups) shall not be located closer than twenty-five feet (25') for a two-story structure, nor thirty feet (30') or a three story, or greater, structure.

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(4) **Design Standards:**

- (a) No more than two townhomes may be constructed without providing a front setback of not less than four feet (4') offset front to rear.
- (b) No townhouse row shall consist of more than eight (8) dwelling units or a length of two hundred feet (200'), whichever is less.
- (c) Service features, garages, parking areas, and entrances to dwelling units shall, where possible, be located on a side of the individual lot having access to the interior street. Walkways should be designed to connect dwelling units with each other and connect each dwelling unit with common open space.
- (d) Not less than twenty-five percent (25%) of the total area, less water bodies, shall be usable open space, either for recreational or some other suitable purpose, public or private. For the purpose of this section; streets, driveways, garages, parking areas, and water bodies shall not be construed as usable open space.

(OO) **Multifamily Residential Buildings Equipped with Elevators:** [Enacted new Subsection (OO) [Amd. 46-06 9/5/06]

(1) **Generators:**

- (a) All new multifamily residential buildings (including hotels and motels) equipped with public elevators that apply for a building permit after the effective date of this ordinance shall provide auxiliary power generators for all interior corridor lighting and exit signs and at least one (1) public elevator; and
- (b) All existing (as of the date of this ordinance) multifamily residential buildings, including but not limited to apartments, hotels and motels, but excluding condominiums, that are three stories or more in height, and that are equipped with public elevators, shall provide auxiliary power generators for all interior corridor lighting and exit signs and at least one (1) public elevator within six (6) years of the effective date of this ordinance; and
- (c) All existing (as of the date of this ordinance) condominium residential buildings that are equipped with public elevators and that are three stories or more in height, shall provide auxiliary power generators for all interior corridor lighting and exit signs and at least one (1) public elevator within six (6) years of the effective date of this ordinance, unless by a two-thirds vote of the unit owners it is agreed to not provide the auxiliary power generators; and

SECTION 4.3.3 (OO) (1) (d)

- (d) In the event that a condominium residential building is converted to an apartment residential building, or vice versa, the building shall be required to comply with the applicable City ordinances.
- (e) Generators shall not be dependent on a municipal water supply or cooling purposes; and
- (f) Generators shall be designed and equipped to operate the full capacity of the equipment being served for a period not less than one hundred twenty (120) hours; and
- (g) Generators shall be tested at least once a month and a test log shall be maintained for inspection by the City of Delray Beach, upon request.
- (h) All building permit fees for the installation of the generators installed pursuant to this ordinance shall be waived.

(OOO) **Clubhouses and Country Clubs:** [Amd. Ord. 35-06 6/20/06]

(1) **Generators:** [Amd. Ord. 35-06 6/20/06]

- (a) All new clubhouses and/or country clubs in residential communities that apply for a building permit on or after July 1, 2006 shall provide auxiliary power generators; and [Amd. Ord. 35-06 6/20/06]
- (b) Generators shall not be dependent on a municipal water supply for cooling purposes; and [Amd. Ord. 35-06 6/20/06]
- (c) Generators shall be designed and equipped to operate the full capacity of the facility for a period not less than one hundred twenty (120) hours; and [Amd. Ord. 35-06 6/20/06]
- (d) Generators shall be tested at least once a month and a test log shall be maintained for inspection by the City of Delray Beach, upon request. [Amd. Ord. 35-06 6/20/06]

(P) **Satellite Dish - Satellite Television Antenna:**

(1) A satellite dish or satellite television antenna that is greater than one meter (39.37") in diameter or any size satellite dish that is mounted on a mast higher than 12 feet above the roof line shall be considered a structure and shall require a building permit. Antennas or dishes shall be of non-combustible and corrosive resistant material, shall be erected in a secure wind resistant manner, and shall be adequately grounded for protection against direct strike of lightning. Portable satellite dishes are not permitted. Only satellite dishes which are actually required for obtaining a signal

SECTION 4.3.3 (P) (1)

may be erected and maintained on any property. Satellite dishes may not be used for display or advertising purposes on the exterior of any structure. Where a commercial enterprise is engaged in the sale of satellite dishes, the erection of more than two dishes (each of which shall be of different sizes) which perform essentially the same function, on the exterior of the structure shall be presumed to be for display or advertising purposes. Satellite dishes may not have any writing on them which is visible from the right-of-way. These structures shall be subject to the provisions of Chapter Seven, Building Regulations, which do not conflict with this section as well as the following conditions: **[Amd. Ord. 34-04 8/3/04]**

- (a) **Application Process**: The application for a permit shall be reviewed by the Building Department for a determination that the structure is designed and will be erected in a manner which meets the technical requirements of the code including those set forth in this section. The City Horticulturist shall review the plans for screening the structure.
1. All satellite dishes and/or satellite television antennas that are smaller than one meter (39.37") in diameter and that receive video programming signals such as Direct Broadcast Satellites ("DBS"), Multichannel Multipoint Distribution (wireless cable) providers ("MMDS"), and Television Broadcast Stations (TVBS") shall not require a permit and shall be exempted from these regulations but shall be subject to removal if they are located as to create a hazard or safety issue. **[Amd. Ord. 34-04 8/3/04]**
- (b) **Screening**: The satellite dish shall be effectively screened from off-premises view and from visibility from public rights-of-way to the greatest extent practicable, except that such screening shall not be required in locations surrounding the satellite dish where and only to the extent it is proved that such screening interferes with reception. The visibility of the satellite dish shall be mitigated as much as possible by screening. The structure shall be screened by the use of landscaping or by a nonliving barrier such as a wall or fence, or by some combination of the above. Walls or fences used for screening may not exceed six feet in height unless they are erected in compliance with the building setbacks. Trees and shrubs used in screening shall be of a species capable of obtaining such height, spread, and density of canopy at maturity so as to effectively screen the satellite dish from off-premises view. Landscaping to be used as screening shall be planted at the time of construction or placement of the satellite dish and the landscaping shall be at least equal to four feet at the time of planting. Landscaping shall be maintained by the property owner or the persons or groups in control of the property in a manner which will encourage maximum screening without interference with the maintenance or operation of the satellite dish.

SECTION 4.3.3 (P) (2)

- (2) The following requirements apply in single-family districts.
- (a) One noncommercial satellite dish per residential dwelling unit shall be permitted.
 - (b) The satellite dish shall be located on the lot in the rear of the house or in a side yard (which does not front on a public right-of-way) behind the front roof line of the house provided that the satellite dish shall be substantially screened from the right-of-way and from the adjacent property. A satellite dish must be located so as to provide the screening required by division (P)(1)(b) above.
 - (c) Notwithstanding the provisions of the above, and subject to sufficient proof being submitted to the city, to prove that it is not possible to locate a proposed satellite dish in the rear yard or side yard as described above, then and only then satellite dishes which are 12 feet in diameter or less may be permitted on the roof of property in a single-family residential zoning district and such a dish may not be more than eight feet above the roof line as measured from the highest point of the dish.
- (3) The following requirements apply in multi-family districts:
- (a) Satellite dishes may be erected on individual multi-family lots if the ownership of an individual unit includes ownership of sufficient property to locate the dish in compliance with the requirements in single-family districts. (Property owned jointly or in common with other unit owners may not be used for purposes of calculating the unit owner's individual property.) Nothing in this provision shall be construed to alter or impair any rights, authority, or restrictions imposed by deed or under the rightful authority of any homeowners' association.
 - (b) A satellite dish in a multi-family district may be erected to meet the following requirements:
 - 1. Only one satellite dish (other than those complying with (a) above) may be located in a multi-family complex and must be placed so as to be effectively screened from all public rights-of-way and adjacent residential complexes. In no event shall the dish be placed between a structure and any public right-of-way (other than an alleyway) unless the dish can be erected in compliance with this section and other code requirements so as to be entirely invisible from the public right-of-way and adjacent residential developments.
 - 2. Satellite dishes must be located to provide the screening required in division (1)(b).

SECTION 4.3.3 (P) (3) (b) 3.

3. A satellite dish may not be located on a roof unless it complies with division (2)(c).

(4) The following requirements apply in commercial and industrial zoning districts.

(a) The satellite dish shall be located on the property so as to be effectively screened from all public rights-of-way and adjacent residential properties

(b) A satellite dish may not be located on a roof so that the dish would thereby be visible from a public right-of-way or residential district; provided, however, if it is proved that there is no such location on a roof where the satellite dish may be located to gain proper reception, then and only then such a satellite dish may be located where it might be so visible, but only to the extent required to gain such proper reception.

(c) Satellite dishes which are mounted on a tower and used for communication in connection with the operation of a business shall be required to provide reasonable screening and shall be subject to conditional use approval.

(5) Nothing herein shall be construed to allow the use of any public rights-of-way for the carriage of a signal from a satellite dish erected in compliance with this section.

(6) The City Manager shall have authority to grant administrative relief from LDR Section 4.3.3(P) to allow temporary portable satellite dishes provided that: **[Amd. Ord. 76-94 10/18/94]**

(a) The satellite facilities are part of an approved special event. **[Amd. Ord. 76-94 10/18/94]**

(b) The administrative relief shall not exceed ten (10) calendar days in duration. **[Amd. Ord. 76-94 10/18/94]**

(Q) **Guest Cottage:**

(1) Can only be used by members of the family occupying the principal dwelling, their nonpaying guests, (except in Bed and Breakfast Inns), or persons employed for service on the premises. **[Amd. Ord. 11-10 7/20/10]; [Amd. Ord. 56-01 10/16/01]**

(2) The guest cottage shall not occupy more than 1/20th of the lot area and in no case shall exceed a floor area of 700 square feet. **[Amd. Ord. 38-07 2/5/08]**

(3) The structure shall be located to observe the setback requirements as imposed for the principal structure.

SECTION 4.3.3 (Q) (4)

(4) When located on individually designated historic properties or within designated historic districts, the structure shall not exceed the height of the principal structure. **[Amd. Ord. 38-07 2/5/08]**

(5) Only one (1) guest cottage shall be allowed on a property. **[Amd. Ord. 11-10 7/20/10]**

(R) **Keeping of Livestock**: The keeping, maintaining, or pasturing of horses, cattle, mules, goats, sheep, swine, poultry, or other livestock in the City of Delray Beach is prohibited except on property within the Agricultural (A) and Rural Residential (RR) Zone Districts and then only in compliance with provisions of those regulations.

Notes:

- *Subsection (S) Junkyards deleted in its entirety. [Amd. Ord. 59-93 10/12/93]*
- *Enacted the following new Subsection (S) Telecommunication Towers and Antennas. [Amd. Ord. 21-97 6/3/97]*

(S) **Telecommunication Towers and Antennas**: **[Amd. Ord. 21-97 6/3/97]**

(1) **Purpose and Intent**: The regulations and requirements of this section are intended to:

- (a) Promote the health, safety and general welfare of the citizenry;
- (b) Provide for the appropriate location and development of telecommunication towers and antennas within the City;
- (c) Minimize adverse visual impacts of telecommunication towers and antennas through careful design, siting, and screening criteria;
- (d) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures; and
- (e) Protect residential areas and land uses from potential adverse impacts of telecommunication towers and antennas by maximizing use of any new or existing telecommunication towers through shared use, i.e., co-location, to reduce the number of towers.

(2) **Freestanding Telecommunication Towers**:

Freestanding telecommunication towers are permitted as follows:

- (a) Monopole towers having a maximum height of 64 feet are a permitted use in the following zoning districts:
 1. Planned Commercial (PC)
 2. Planned Commerce Center (PCC)
 3. Mixed Industrial and Commercial District (MIC)
 4. Light Industrial (LI)

SECTION 4.3.3 (S) (2) (a) 5.

5. Industrial (I)
 6. Open Space and Recreation (OSR)
 7. Community Facilities (CF)
- (b) Monopole towers having a maximum height greater than 64 feet may be permitted as a conditional use in the following zoning districts:
1. Planned Commerce Center (PCC)
 2. Mixed Industrial and Commercial District (MIC)
 3. Light Industrial (LI)
 4. Industrial (I)
 5. Open Space and Recreation (OSR) (on sites greater than 10 acres in size)
 6. Community Facilities (CF) (on sites greater than 10 acres in size)
- (c) Notwithstanding the above listed requirements, monopole towers greater than 64 feet in height are a permitted use when located on the public properties listed below. Towers that are to be located on these properties are not subject to the minimum separation requirement between towers. Towers shall be located so as to create the least potential visual impact on adjacent rights-of-way and residential areas.
1. Miller Park, 1905 S.W. 4th Avenue
 2. Delray Beach Municipal Golf Course, 2200 Highland Avenue
 3. Public Works Complex, 434 South Swinton Avenue
 4. South Central Regional Wastewater Treatment Facility, 1801 North Congress Avenue
 5. Lakeview Golf Course [**Amd. Ord. 26-08 6/17/08**]
 6. Barwick Park [**Amd. Ord. 26-08 6/17/08**]
- (d) Lattice and guyed towers may be permitted as a conditional use in the following zoning districts:
1. Community Facilities (CF) (on sites greater than 10 acres in size)
 2. Industrial (I)
- (e) **Development Standards and Criteria:**
1. **Height:**
 - a. Tower height shall not exceed 125 feet unless a waiver is granted pursuant to Subsection 4.3.3(S)(7)

SECTION 4.3.3 (S) (2) (e) 1. b.

- b. Tower height is to be measured from the crown of the road of the nearest public right of way. The measurement of the tower height shall include any apparatus that extends above the tower structure, with the following exceptions:
 - (1) Lightning rods, safety lighting, and any other apparatus required by the Federal Aviation Administration (FAA) or the Federal Communications Commission (FCC) to ensure the safe operation of the facility.
 - (2) Whip antennas not exceeding 6 inches in diameter may extend 10 feet above the height of the tower structure.

2. **Setbacks:**

- a. Towers shall be located a minimum of fifty (50) feet from any existing or proposed public street right-of-way line.
- b. The minimum distance between a monopole tower and the nearest property line of a residential zoning district shall be equal to 200% of the height of the tower.
- c. The minimum distance between a lattice or guyed tower and the nearest property line of a residential zoning district shall be equal to 400% of the height of the tower.
- d. Monopole, lattice, or guyed telecommunication towers shall not be located within one thousand (1,000) feet of any existing monopole, lattice, or guyed telecommunication tower.
- e. Equipment buildings and other structures associated with a telecommunication tower shall conform to the setbacks established for the underlying zoning district.

3. **Buffering Requirements:**

- a. An eight foot high fence or wall shall be constructed around the base of a telecommunication tower. The fence or wall shall be screened in accordance with LDR Section 4.6.5.
- b. Accessory equipment and structures shall be screened in accordance with Section 4.6.16.
- c. Landscaping may be required around anchors or supports, as well as around the perimeter of the site on which the tower is located, in order to enhance compatibility with adjacent properties.

SECTION 4.3.3 (S) (2) (e) 4.

4. **High Voltage and “No Trespassing” Warning Signs:**
 - a. If high voltage is necessary for the operation of the telecommunication tower or any accessory structures, “**HIGH VOLTAGE - DANGER**” warning signs shall be permanently attached to the fence or wall and shall be spaced no more than forty (40) feet apart.
 - b. “**NO TRESPASSING**” warning signs shall be permanently attached to the fence or wall and shall be spaced no more than forty (40) feet apart.
 - c. The letters for the above described signs shall be at least six (6) inches in height. The two warning signs may be combined into one sign. Warning signs shall be installed at least five (5) feet above the finished grade of the fence.
 - d. Where the warning signs could be obscured by landscaping, they may be installed on free standing poles, at least (5) feet above the finished grade.
5. **Signs and Advertising:** The use of any portion of a tower for signs or advertising purposes, including company name, banners, streamers, etc. is strictly prohibited.
6. **Color:** Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over telecommunication towers, telecommunication towers shall be constructed in neutral colors, designed to blend into the surrounding environment, such as non-contrasting gray.
7. **Lighting:** Artificial tower lighting shall be limited to mandatory safety lighting required by county, state, or federal regulatory agencies possessing jurisdiction over telecommunication towers. Security lighting around the base of a tower may be provided if such lighting conforms with the requirements of Section 4.6.8.
8. **Hazardous Materials:** Review and approval by the Fire Marshal is required where telecommunication towers are proposed within two hundred feet of a proposed or existing principal use which includes the storage, distribution, or sale of volatile, flammable, explosive, or hazardous wastes such as LP gas, propane, gasoline, natural gas, and corrosive or dangerous chemicals, unless such materials are used for backup power purposes.

SECTION 4.3.3 (S) (2) (e) 9.

9. **Equipment Storage**: Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the telecommunication tower, unless repairs to the tower are being made.

(f) **Required Information**:

All applications for telecommunication towers shall contain the following information:

1. Standard application items pursuant to 2.4.3(A).
2. Site plan showing the location, dimensions, and elevations of the tower and accessory structures.
3. An aerial photograph produced at a scale of not less than one inch equals 300 feet (1"=300') indicating all residential land uses and all existing telecommunication towers located within 1,500 feet of the proposed tower.
4. Landscape plan pursuant to 4.6.16.
5. A statement prepared by a professional registered engineer licensed to practice in the State of Florida, which through rational engineering analysis certifies the tower's compliance with applicable standards as set forth in the Standard Building Code, and any associated regulations; and describes the tower's capacity, including an example of the number and type of antennas it can accommodate. For all towers attached to existing structures, the statement shall include certification that the structure can support the load superimposed from the tower.

Deleted number 6. and renumbered. [Amd. Ord. 37-03 10/7/03]

6. Written approval or a statement of no objection from other federal or state agencies that may regulate telecommunication tower siting, design, and construction. **[Amd. Ord. 37-03 10/7/03]**
7. Verification that the facility has been licensed by the Federal Communications Commission (FCC). **[Amd. Ord. 37-03 10/7/03]**
8. A certified statement that the construction and placement of the tower will not unnecessarily interfere with public safety communications and the usual and customary transmission or reception of radio and television service enjoyed by adjacent residential and nonresidential properties. A statement shall be prepared by a radio frequency engineer identifying any interference that may result from the proposed construction and placement. **[Amd. Ord. 37-03 10/7/03]**

SECTION 4.3.3 (S) (2) (f) 9.

9. A line of sight analysis shall be required to assess the tower's visual impact on residential areas. Such analysis shall include a visual representation of the tower on the site, and an illustration of its impact when viewed from at least three (3) specific points within a 1,000 foot radius of the proposed tower location. The exact location of the points to be included in the analysis shall be coordinated with Planning and Zoning Department staff. **[Amd. Ord. 37-03 10/7/03]**

(g) **Inspections:**

1. The owner of a telecommunication tower shall have the tower periodically inspected for structural and electrical integrity by an engineer licensed to practice in the State of Florida, in accordance with the following schedule:
 - (a) Monopole: at least once every five (5) years
 - (b) Self-support lattice: at least once every two (2) years
 - (c) Guyed: at least once every two (2) years
2. Inspections may be required on a more frequent basis if there is reason to believe that the structural or electrical integrity of the tower is jeopardized.
3. Reports detailing the results of the inspections shall be submitted to the Chief Building Official. Based upon the results of an inspection, the Chief Building Official may require repair or removal of a telecommunication tower.
4. The City Commission may approve an alternative inspection program when the Chief Building Official has determined that the alternative program is sufficient to ensure the safety of the facility.
5. The City may conduct its own periodic inspections of a telecommunication tower to ensure its structural or electrical integrity.

(h) **Existing Towers:**

1. Notwithstanding the above provisions of this section, whip and panel type telecommunication antennas may be placed on existing towers with sufficient loading capacity after approval by the Chief Building Official. Any other type of antenna requires a modification of the conditional use approval. The loading capacity of a tower shall be certified by an engineer licensed to practice in the State of Florida.

SECTION 4.3.3 (S) (2) (h) 2.

2. Notwithstanding the provisions of this section, towers in existence as of May 6, 1997, may be replaced with a tower of equal or less visual impact upon approval by the Planning and Zoning Director, provided that the following criteria are met:
 - a. The tower meets the minimum requirements of this section; or
 - b. The tower received conditional use approval prior to May 6, 1997.

Replacement of existing towers which do not meet the above specified criteria may be approved by the City Commission as a new conditional use.

(i) **Abandoned Towers:**

1. A tower shall be considered abandoned if its use for telecommunication service has been discontinued for one hundred eighty (180) consecutive days. All abandoned or unused telecommunication tower facilities shall be removed by the tower owner/operator within ninety days (90) days of abandonment.
2. Where a tower is abandoned but not removed within the specified time frame, the City may remove or demolish the tower and place a lien on the property following the procedures (but not the criteria) for demolition of unsafe buildings/structures contained in Article 7.8 of the LDRs, Unsafe Buildings or Structures. Telecommunication towers being utilized for other purposes, including but not limited to light standards and power poles, may be exempt from this provision.

(3) **Antennas Not Located on Telecommunication Towers:**

- (a) Non stealth and stealth antennas mounted on rooftops, buildings, or other structures which constitute a principal use, are a permitted use in the following zoning districts, subject to the limitations and requirements contained herein:
 1. Medium Density Residential (RM)
 2. General Commercial (GC)
 3. Central Business District (CBD)
 4. Central Business District--Railroad Corridor (CBD-RC)
 5. Automotive Commercial (AC)
 6. Planned Commercial (PC)
 7. Resort /Tourism (RT)
 8. Planned Office Center (POC)
 9. Professional and Office District (POD)

SECTION 4.3.3 (S) (3) (a) 10.

10. Planned Commerce Center (PCC)
11. Mixed Industrial and Commercial (MIC)
12. Industrial (I)
13. Light Industrial (LI)
14. Community Facilities (CF)
15. Open Space and Recreation (OSR)

(b) **Non-Stealth Antennas:**

1. Shall only be permitted on buildings or structures which are at least fifty (50) feet tall. Antennas may be placed on buildings or structures less than fifty (50) feet tall in the CF or OSR zoning districts if public safety needs warrant the antenna.
2. Shall be placed in a manner so as to minimize the visual impact of the antenna on adjacent properties, and shall be of a color which matches the exterior of the building or structure upon which it is situated.
3. May not extend more than ten (10) feet above the highest point of the roof or structure. Antennas may exceed this maximum height in the CF or OSR zoning districts if public safety needs warrant the antenna.
4. Shall be accompanied by a statement which demonstrates in a technical manner why a stealth antenna cannot be used for the particular application.
5. Require approval by the Site Plan Review and Appearance Board.

(c) **Stealth Antennas:**

1. May extend up to twenty (20) feet above the highest point of the roof or structure. If a greater height is necessary, the antenna must be approved by the Site Plan Appearance and Review Board.
2. Requires approval by the Director of Planning and Zoning to ensure that the antenna is consistent with the definition of a stealth facility.

(d) **Requirements and Standards:**

1. Each application shall contain a rendering or photograph of the antenna including, but not limited to, colors and screening devices.
2. No commercial advertising shall be allowed on an antenna or on the screening devices or elements.

SECTION 4.3.3 (S) (3) (d) 3.

3. The antenna must be in compliance with FAA requirements. No signals, lights, or illumination shall be permitted on an antenna, unless required by the FCC or FAA.
4. Any related unmanned equipment building shall not contain more than 750 square feet of gross floor area or be more than twelve (12) feet in height; and
5. If the equipment building is located on the roof of the building, the area of the equipment building shall not occupy more than twenty five percent (25%) of the roof area.
6. An antenna proposed for location on a structure or site that is listed on the local or national register of historic places, or is located within a designated historic district, may be denied if the antenna creates an adverse impact on the historic character of the structure, site, or district.

(4) Co-Location:

- (a) In order to minimize adverse visual impacts associated with a proliferation of towers, co-location of communication antennas by more than one provider on existing or new telecommunication towers shall take precedence over the construction of new single use telecommunication towers. An application for a new tower that is greater than 64 feet in height shall not be approved unless it can be demonstrated by the applicant that there is a need for the new tower which cannot be met by placing the antenna on an existing tower. Accordingly, the following requirements apply to each application for a new telecommunication tower that is greater than 64 feet in height.
 1. All new telecommunication towers shall be constructed so as to have the capacity to permit multiple uses. Monopole towers shall be able to accommodate a minimum of two (2) users, and lattice or guyed towers shall be able to accommodate a minimum of three (3) users.
 2. All applications for new telecommunication towers shall include a written analysis of the feasibility of sharing any existing telecommunication tower located within a half-mile radius of the proposed tower site. The analysis shall consider the following factors:
 - a. Availability of existing towers for co-location.
 - b. Structural capacity of existing tower or towers.
 - c. Geographic service area requirements.
 - d. Radio frequency interference.

SECTION 4.3.3 (S) (4) (a) 2. e.

- e. Mechanical or electrical incompatibility.
 - f. Restrictions or limitations of the Federal Communications Commission that would preclude the shared use of the tower.
 - g. Any other information that would demonstrate the need for the new tower.
3. An existing telecommunication tower that is determined to be inappropriate for sharing shall be assumed to be inappropriate for sharing the same types of facilities in the future. Such towers will not need to be evaluated in the future regarding sharing with the same type of facility for which it has been determined to be inappropriate. The Planning and Zoning Department shall retain a list of such towers, and will provide a copy of the list to all potential applicants. The City may require additional sharing feasibility evaluations if warranted by changes in technology.
 4. A requirement to allow co-location will be a condition of approval for all new towers. This requirement will be deemed to have been met if the facility owner shows that it has executed a joint use agreement with at least one other unaffiliated entity for shared use, and agrees to offer the same contract to others. In other cases, the facility owner must provide a statement of intent to offer space on the tower on fair, reasonable, nondiscriminatory terms, at fair market value, and to negotiate leases promptly and without undue delay. A condition of any permit for a new telecommunication tower shall be that the permit shall be terminated, and the facility removed, if the City finds that the facility owner is not complying with its obligations under this section.
 5. For any telecommunication tower approved for shared use, the owner of the tower shall send a written notice to all potential users of the new tower, informing them of the opportunity for co-location, and including information on the tower's location and load capacity. Copies of the notice letters shall be provided to the City at the time that the application is filed. The list of potential users shall be provided by the Planning and Zoning Department.
 6. The City may deny an application if an available co-location is feasible and the application is not for such co-location.
 7. The requirement for a new tower to provide for co-location, and the applicable provisions of this subsection, may be waived pursuant to the requirements and findings stipulated in subsection 4.3.3(S)(7).

SECTION 4.3.3 (S) (5)

(5) Use of City-Owned Property for Telecommunication Facilities:

- (a) No municipally-owned property may be used without a lease agreement with the City. The City shall authorize the application and use of City property after the applicant executes a lease agreement that is acceptable to the City. The City shall have no obligation whatsoever to execute such lease even if the applicant can meet the criteria set forth in this section.
- (b) The City may, as appropriate, to protect its property and the public interest, establish additional requirements beyond the minimum requirements of this section for facilities located on municipally-owned property.
- (c) The City may issue letters of interest for the purposes of leasing sites on designated City property for the construction and installation of personal wireless service facilities. The City will encourage the installation of facilities which have a minimal impact on the surrounding areas and are consistent with the development of the public property on which the facility is located.

(6) Review and Approval Process:

- (a) The City shall process all applications for telecommunication towers and antennas in a timely manner and in accordance with established procedures. **[Amd. Ord. 37-03 10/7/03]**
 - 1. Application for new tower permits will be processed within ninety (90) business days of receipt of a properly completed application. **[Amd. Ord. 37-03 10/7/03]**
 - 2. Applications for co-location permits will be processed within forty-five (45) business days of receipt of a properly completed application. **[Amd. Ord. 37-03 10/7/03]**
 - 3. The city will notify permit applicants within twenty (20) business days after the date of submission of an application whether the application is for administrative purposes only, properly completed and properly submitted. **[Amd. Ord. 37-03 10/7/03]**
- (b) A waiver of the time frames set forth above must be voluntarily agreed to by the applicant and the City except in the case of a declared local, state or federal emergency that directly affects the administration of all permitting activities of the City. **[Amd. Ord. 37-03 10/7/03]**

SECTION 4.3.3 (S) (6) (c)

- (c) The reason for the rejection or denial of any application filed in accordance with the provisions of this section shall be set forth in writing within the above specified time frames. **[Amd. Ord. 37-03 10/7/03]**
- (d) All conditional uses must be approved pursuant to the provisions of Section 2.4.5(E). In addition to the requirements of that section, the following finding must be made in connection with a conditional use approval for a new communication tower: **[Amd. Ord. 37-03 10/7/03]**
 - 1. That the visual impact of the tower has been minimized to the greatest extent possible through careful design, siting, and screening. **[Amd. Ord. 37-03 10/7/03]**

(7) **Waivers:**

- (a) The City Commission may waive the requirements of this section pursuant to the authority granted in Section 2.4.7 (B). In addition to the requirements and standards specified in that section, the following findings which are applicable to the nature of the waiver must be made:

1. **Waiver of Locational Restrictions:**

Finding: That approval of the waiver will allow for the construction of a facility at a location that is more appropriate than sites which comply with the zoning and separation requirements, based upon

factors such as its distance from residential uses, existence of permanent screening or buffers, and location within a large-scale non-residential area.

2. **Waiver of Height Restrictions:**

At least one of the following findings must be made:

- a. That a height greater than 125 feet is necessary to accommodate co-location by another provider, and it has been illustrated through a line of sight analysis that the additional height will not significantly impact residential neighborhoods. Waivers granted pursuant to this provision shall not allow heights in excess of 150 feet.
- b. That a height greater than 125 feet is required to meet public safety needs.

SECTION 4.3.3 (S) (7) (a) 3.

3. Waiver of Co-Location Requirements:

Finding: That it has been specifically demonstrated through data and analysis that co-location is not feasible because of factors such as site constraints, radio frequency (RF) interference, geographic service area incompatibilities, mechanical or electric incompatibilities, or similar circumstances.

(T) Family Day Care Home: [Amd. Ord. 25-10 10/19/10]

(1) Shall only be as an accessory use in a private residence and may function as either for or not for profit

(2) Is limited to no more than six children at any one time but may be conducted twenty-four hours a day. [Amd. Ord. 25-10 10/19/10]

(3) The person furnishing such service shall have a current, valid permit from Palm Beach County for operation of a family day care home, as required by Article II of Chapter 39, Palm Beach County Code; and a City of Delray Beach occupational license as a "Family Day Care Home". [Amd. Ord. 25-10 10/19/10]

(4) A Family Day Care Home which is registered with the State Department of Health and Rehabilitative Services (HRS) are specifically exempt from having to obtain any special exemption or use permit or pay any special fee in excess of \$50 to operate within the City (F.S. 166.0445). [Amd. Ord. 25-10 10/19/10]

(5) Baby-sitting services provided by an individual at the home of the parents or legal guardians are deemed to be exempt from these provisions.

(TT) Large Family Child Care Home [New Section Ord. 25-10 10/19/10]

(1) **Requirements:** Two full-time child care personnel must be on the premises during the hours of operation.

(a) One of the full-time child care personnel must be the owner or occupant of the residence.

(b) Such use must first have operated as a licensed family day care home for two years, with an operator who has had a child development associate credential or its equivalent for one (1) year.

(c) A large family child care home shall be allowed to provide care for one of the following groups of children which shall include those children under 13 years of age who are related to the caregiver:

(i) A maximum of eight (8) children from birth to 24 months of age, or;

SECTION 4.3.3 (TT) (1) (c) (ii)

- (ii) A maximum of twelve (12) children with no more than four (4) children under 24 months of age.

(2) **Floor Area:** Facilities shall contain a minimum floor area of 35 square feet per child, exclusive of space devoted to bathrooms, halls, kitchen, offices, and storage.

(3) **Outdoor Area:** There shall be a minimum area of 75 square feet of outdoor play area per child. The play area shall be located on the same lot as the principal use and shall not be located in the front yard setback or adjacent to any outdoor storage area. The play area shall be surrounded by a six-foot high fence or wall.

(4) **Loading Area:** A pick-up and drop-off area for children shall be provided in a convenient area adjacent to the building and shall provide clear ingress and egress to the building.

(5) **Other Regulations:** All child care facilities shall comply with state and county regulations.

(U) **Live Aboard Vessels:** Live aboard vessels may be located only at full service marinas which used their facilities for such use as of September 1, 1985. In no event shall dockage at real property improved with a residential dwelling unit or residential dwelling units qualify as a full-service marina. [173.182(K)]

(V) **Uses Involving Alcoholic Beverages:** [Amd. Ord. 42-03 11/18/03]

(1) **Defined:** For this subsection, alcoholic beverage is defined as:

- * Distilled spirits and all beverages containing one-half of 1 percent (0.5%) or more alcohol by volume. [Amd. Ord. 42-03 11/18/03]

(2) **Prohibitions by Frequency:** The sale of alcoholic beverages for on-site consumption shall be allowed as a principal use within stand alone bars and as an accessory use in chartered private clubs and golf courses with the restriction that: [Amd. Ord. 42-03 11/18/03]

(a) Not more than one stand alone bar shall be located within any one block, nor within seven hundred and fifty (750) feet of another stand alone bar measured from lot line to lot line in a straight line. [Amd. Ord. 42-03 11/18/03]

(b) The above restriction does not apply to a duly licensed grocery store which sells beer and wine in packages for off-site consumption nor does it apply to a restaurant which holds a special restaurant license issued by the Department of Business Regulations of the State Division of Alcoholic Beverages and Tobacco. [Amd. Ord. 42-03 11/18/03]

SECTION 4.3.3 (V) (2) (c)

(c) To be allowed to begin operating a business as a stand alone bar, the following rules shall apply: **[Amd. Ord. 22-05 4/19/05]**

1. A written request to establish a stand alone bar shall be submitted to the Planning and Zoning Department. Attached to the written request shall be a copy of a valid 4COP License, evidence of an executed lease to operate the business at the proposed location and a copy of an approved site plan for a restaurant or bar use (hereinafter referred to as the submission). The submission shall be date and time stamped by the Planning and Zoning Department. The submission shall be valid for a period of six (6) months. **[Amd. Ord. 22-05 4/19/05]**
2. If locational requirements allow for a stand alone bar to be established, a person or entity that has filed a submission as set forth above at the earliest time and date will be notified that the use may be established. If the stand alone bar use is not legally established pursuant to LDR Section 2.4.4(D) within sixty (60) days after notification, the person or entity who filed a submission next in time and date shall have an opportunity to establish a stand alone bar use. That person or entity and subsequent persons or entities that have a submission on file must also comply with the sixty (60) day establishment requirement. Persons or entities that fail to establish the stand alone bar use in accordance with LDR Section 2.4.4(D) within the sixty (60) day period shall not have any further priority to establish the stand alone bar use and the submission shall be deemed void unless no other persons or entities have filed a submission wherein a longer time to establish the use may be permitted upon request. **[Amd. Ord. 22-05 4/19/05]**
3. If for any reason the City is unable to determine who was first in time or unable to determine if the use was legally established and operational within the time permitted, the Planning and Zoning Board shall review all valid submissions on file regardless of time or date of the submission or establishment of the use, based on the required findings of LDR Section 2.4.5(E) and make a recommendation to the City Commission. The City Commission will then determine which stand alone bar use is the most compatible with surrounding uses, based on the following: **[Amd. Ord. 22-05 4/19/05]**
 - a. Compliance with code requirements, **[Amd. Ord. 22-05 4/19/05]**
 - b. site's physical appearance, **[Amd. Ord. 22-05 4/19/05]**
 - c. location, **[Amd. Ord. 22-05 4/19/05]**

SECTION 4.3.3 (V) (2) (c) 3. d.

- d. consistency with the Comprehensive Plan, and **[Amd. Ord. 22-05 4/19/05]**
- e. capacity of infrastructure to accommodate the proposed use, **[Amd. Ord. 22-05 4/19/05]**
- f. whether the stand alone bar will have a deleterious effect on adjacent businesses. **[Amd. Ord. 22-05 4/19/05]**

The stand alone bar use deemed most compatible will then have the right to establish a stand alone bar use as a permitted use within sixty (60) days of the decision of the City Commission. **[Amd. Ord. 22-05 4/19/05]**

- 4. No assignment of any submission or rights obtained as a result of a submission to establish a stand alone bar use under this section shall be permitted, provided, however, an established stand alone bar use may continue to exist at the same location without participating in the process outlined in Subsection (c) for as long as the use is operational. If the stand alone bar use is not operational for a period of one hundred eighty (180) days or the business location has been occupied by an intervening use, then the process described in subsection (c) herein shall apply. **[Amd. Ord. 22-05 4/19/05]**
- 5. New letters with attachments set forth above may be submitted once every six (6) months. **[Amd. Ord. 22-05 4/19/05]**

(3) **Prohibition by Proximity (Schools and Churches)**: Alcoholic beverages shall not be sold at any establishment which is located within 300 feet of an established school or church.

- (a) With respect to schools, the 300' distance shall be measured from the nearest point of the building of the place of business, location, or establishment to the nearest point of the school grounds in use as a part of the school facilities.
- (b) With respect to churches, the 300' distance shall be measured from the nearest point of the building of place of business, location, or establishment to the nearest point of the church building or buildings.
- (c) The 300' distance shall be measured in a straight line.
- (d) The above restriction does not apply to a duly licensed grocery store which sells beer and wine in packages for off-site consumption nor does it apply to a restaurant which holds a special restaurant license issued by the Department of Business Regulations of the State Division of Alcoholic Beverages and Tobacco.

SECTION 4.3.3 (V) (4)

(4) **Bottle Clubs Prohibited**: Bottle Clubs as defined in Appendix A are prohibited in all zone districts. [Amd. Ord. 42-03 11/18/03]

(VV) **24-Hour or Late Night Businesses**: [Amd. Ord. 41-01 8/7/01]

(1) **Purpose and Intent**: The purpose and intent of the regulations of this section are: [Amd. Ord. 41-01 8/7/01]

(a) To promote the health, safety and general welfare of the citizenry; [Amd. Ord. 41-01 8/7/01]

(b) To provide conditions upon the use of 24-Hour or late night businesses in order to minimize impacts upon residentially-zoned properties from such uses. [Amd. Ord. 41-01 8/7/01]

(2) **Requirements**: Unless otherwise specified, the following regulations shall apply to 24-Hour or late night businesses: [Amd. Ord. 41-01 8/7/01]

(a) **Conditional Use**: Any 24-Hour or late night business located or proposed to be located within a three hundred foot (300') straight line route from any residentially-zoned property shall obtain a conditional use permit from the City for the operation of such use. The distance shall be measured from the nearest point of the property on which the 24-Hour or late night business is or will be located to the nearest point of a residentially-zoned property. [Amd. Ord. 41-01 8/7/01]

(b) **Conditions**: In addition to complying with Section 2.4.5(E) of the Land Development Regulations, all other applicable regulations, and with any conditions imposed through the conditional use process, the following conditions shall apply to all 24-Hour or late night businesses which meet the requirements of subsection (2)(a): [Amd. Ord. 41-01 8/7/01]

1. **Security Plan**: A 24-Hour or late night business shall submit a security plan detailing the manner in which the business intends to address the security of the establishment, its patrons, employees and nearby residents. A convenience business as defined in Section 812.171, Florida Statutes (2000), as may be amended from time to time, is exempted from filing a security plan with the City pursuant to this subsection. However, convenience businesses shall comply with all applicable provisions of Sections 812.101-812.175, Florida Statutes (2000), as may be amended from time to time. A security plan shall include, at a minimum, a detailed description of the following: [Amd. Ord. 41-01 8/7/01]

a. external lighting; and, [Amd. Ord. 41-01 8/7/01]

SECTION 4.3.3 (VV) (2) (b) 1. b.

- b. other external security measures, such as security cameras or other similar measures; and, **[Amd. Ord. 41-01 8/7/01]**
 - c. internal security measures, such as drop safes, silent alarms, security personnel or other similar measures. **[Amd. Ord. 41-01 8/7/01]**
2. **Buffering**: A 24-Hour or late night business shall provide adequate buffering to minimize the effects of noise and to act as a visual buffer to the property from nearby residential districts. **[Amd. Ord. 41-01 8/7/01]**
- (c) **Findings**: In addition to any findings required by Section 2.4.5(E) of the Land Development Regulations, and any other required findings, the following specific findings shall be made in order for any 24-Hour or late night business to be approved for a conditional use: **[Amd. Ord. 41-01 8/7/01]**
1. That the use will be consistent with Housing Element A-12.3 of the Comprehensive Plan of the City of Delray Beach. **[Amd. Ord. 41-01 8/7/01]**
 2. That the submitted security plan contains measures adequate to reasonably protect the safety of patrons, employees and nearby residents. **[Amd. Ord. 41-01 8/7/01]**
 3. That the amount and type of proposed buffering is adequate to minimize the effects of noise impacts upon surrounding uses and nearby residential properties and to act as a visual buffer to the property from surrounding uses and nearby residential properties. **[Amd. Ord. 41-01 8/7/01]**
- (3) **Applicability**: **[Amd. Ord. 41-01 8/7/01]**
- (a) The provisions of this section shall not apply to 24-Hour or late night businesses which: 1. are more than a three hundred foot (300') straight line route from any residentially zoned property as determined by the provisions of subsection (2)(a); or, 2. are in operation at the time of the adoption of this ordinance; or, 3. are under construction pursuant to a validly issued building permit at the time of the adoption of this ordinance. **[Amd. Ord. 41-01 8/7/01]**
 - (b) Any 24-Hour or late night business which is in existence at the time of the adoption of this ordinance, which meets the requirements of subsection (2)(a), and which changes its use from one type of 24-Hour or late night business to another type of 24-Hour or late night business (e.g., restaurant to nightclub), shall be required to obtain a conditional use approval pursuant to the provisions of this section. **[Amd. Ord. 41-01 8/7/01]**

SECTION 4.3.3 (W)

(W) **Veterinary Clinics**: A veterinary clinic shall not accommodate on-site disposal of carcasses nor shall it provide overnight accommodations of patients except for those under medical supervision. Boarding of animals is expressly prohibited.

(X) **Residential-Type Inns**: Residential-type inns shall be subject to the following provisions, limitations, and restrictions: **[Amd. Ord. 9-98 2/17/98]**

(1) The use must be located with frontage on, or access from, at least one arterial or collector street as delineated on the City's Transportation Element;

(2) The use must be located in proximity to office, industrial, or commercial uses; **[Amd. Ord. 9-98 2/17/98]**

(3) The minimum floor area per suite shall be 450 square feet;

(4) Accessory uses may include recreational facilities (i.e. swimming pool, whirlpool, jacuzzi, steam room, tennis courts), meeting rooms, complimentary room service, and other non-residential uses as permitted within the respective zoning district. **[Amd. Ord. 9-98 2/17/98]**

(5) Parking shall be provided pursuant to Section 4.6.9 (C) (7) (e). **[Amd. Ord. 9-98 2/17/98]**

(Y) **Bed and Breakfast Inns**: In addition to the requirements of the underlying zone district, Section 4.5.1, Historic Preservation Districts and Sites, other applicable general regulations, parking regulations, and special conditions imposed through the conditional use process, the following requirements shall apply to Bed and Breakfast Inns: **[Entire Section Revised Ord. 11-10 7/20/10]**

(1) **Location**: Bed and Breakfast Inns shall only be established as follows:

(a) Within designated historic buildings, which are located on Individually Designated sites as listed in Section 4.5.1(K) or on those properties classified as "Contributing" within a designated historic district, as listed in Section 4.5.1(L); and which are a permitted or conditional use within the zoning district.

(b) Not within 300' of another Bed and Breakfast Inn, measured lot line to lot line in a straight line, when located within the Medium-Density, Multi-Family (RM) district.

(2) **Parking**: Parking for Bed and Breakfast Inns shall be provided as follows:

(a) Parking shall comply with the requirements in Section 4.6.9.

(b) One (1) parking space shall be provided for the manager/owner and one (1) parking space shall be provided for each guest room.

SECTION 4.3.3 (Y) (2) (c)

- (c) All required parking shall be provided in a manner which will not detract from the character of either the neighborhood or the historic property. No designated parking spaces may be located within the front or side-street setback areas
 - (d) Circular driveways, and/or tandem parking spaces with a maximum two (2) car depth are permitted
 - (e) No parking may be provided via mechanical lift.
- (3) **Common Area**: Within each Bed and Breakfast Inn, a common area must be provided for a central dining area and for, at least, one (1) reading/discussion/living room.
- (4) **Guest Rooms**:
- (a) There shall be no cooking facilities or food storage facilities in any guest room. Guest rooms do not have to contain bathroom facilities.
 - (b) The number of bedrooms provided for guest use shall be as existed when the structure was originally constructed with subsequent additions, unless modifications are necessary to comply with Building, Fire, and/or Health codes. An existing guest cottage, subject to the requirements of Section 4.3.3(Q) may be used as the primary residence of the Property Owner. Historically designated guest cottages may also be used for paying guests.
- (5) **Meals**: Breakfast shall be the only meal provided for paying guests who are using the facility overnight. The breakfast meal shall not be served after 11:00 a.m.
- (6) **Maximum Stay**: The maximum stay for each guest shall be not more than fourteen (14) days during any thirty (30) day period. A guest book which accurately identifies all customers for each night's lodging shall be maintained by the owner and/or manager.
- (7) **Employees and Personnel**: No more than one (1) nonresident may be employed in the management and administration of the facilities on-site. This restriction excludes maintenance and cleaning personnel.
- (8) **Property Owner**: The owner of the Bed and Breakfast Inn property must reside on the property.
- (9) **Events**: Events and/or private parties shall be limited to the property owner and guests staying at the Bed and Breakfast Inn.

(Z) Resource Recovery or Waste Management Facilities:

(1) **Rule:** Pursuant to the Palm Beach County Solid Waste Act (Chapter 75-473, Laws of Florida, as amended) requires that "No person shall operate, maintain, construct, expand, or modify any resource recovery and/or waste management facility without first having applied for and received a valid operating permit from the Solid Waste Authority". Examples of facilities which require such permitting include: landfills, transfer stations, mulching/composting sites, recycling facilities, biohazardous waste treatment facilities, and any facility that stores, processes, treats, incinerates or disposes of solid waste.

(2) **Notification Required:** Accordingly, as a part of any application, at any step of the land use and/or development approval process, which involves the aforementioned facilities, it shall be required that a letter from the Solid Waste Authority which states its knowledge of the proposed facility shall accompany said application.

(3) **Locations:** Such facilities shall be allowed only upon land which is zoned Community Facilities (CF) with an underlying Future Land Use Map designation of Community Facilities. Such facilities shall not be located within Wellfield Protection Zones 1, 2, or 3. **[Amd. Ord. 31-97 9/9/97]**

(ZZ) Permanently Installed Generators: The following standards shall apply to all permanently installed generators: **[Section Added by Ord. 28-06 5/16/06]**

(1) Generators are prohibited in the front yard and side street setbacks.

(2) Generators and accessory above ground facilities, such as fuel tanks, are to be screened from view from adjacent properties or rights-of-way by a wall or hedge equal to the height of the generator at the time of installation.

(3) Generators may be operated for exercising purposes one time per week, excluding Sundays, for a period not exceeding 30 minutes between the hours of 10:00 a.m. to 6:00 p.m.

(4) A maximum of one generator is allowed per single family, duplex, or townhouse residential dwelling unit except for multiple family, which is allowed one generator per multiple family structure. Non-residential uses are allowed one generator per tenant.

(5) Generators are setback a minimum of three feet from the side interior property line in the R-1-A, R-1-AB and R-1-AAB Single Family Residential zoning districts, conventionally sited homes in the Planned Residential District, Mobile Home District, and Old School Square Historic Arts District and five feet from the side interior property line (development perimeter for townhouses) in all other zoning districts.

(6) Generators are setback a minimum of five feet from the rear property line in all zoning districts.

SECTION 4.3.3 (ZZZ)

(ZZZ) **Transient Residential Use:** 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 shall be presumed to be a Transient Residential Use and therefore prohibited. An 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 of the entire dwelling unit turns over occupancy more often than six (6) times in any one (1) year shall be presumed to be a Transient Residential Use and therefore prohibited. **[Amd. Ord. 40-12 11/6/12]; [Amd. Ord. 03-12 2/21/12]; [Section Added by Ord. 29-09 7/7/09]**

[Deleted (1) and renumbered Ord. 03-12 2/21/12]

(1) **Exceptions/Exemptions:**

- (a) Existing transient residential uses with a turnover more often than three (3) times per year but not exceeding six (6) times per year in single-family, rural residential, and planned residential development zoning districts may continue until twelve (12) months after the effective date of ordinance 03-12. **[Amd. Ord. 40-12 11/6/12]; [Amd. Ord. 03-12 2/21/12]**
- 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 are exempt.
- (c) The real property owners of the dwelling unit and their family are exempt regardless of how much time the owners and family spend at the dwelling unit on a yearly basis. **[Amd. Ord. 03-12 2/21/12]**

(2) **Waiver for Undue Economic Hardship:** In all instances where there is a claim of undue economic hardship, the property owner may be granted a waiver from Section 4.3.3(ZZZ) after submission of waiver request to the City's Community Improvement Director or his/her designee. **[Amd. Ord. 40-12 11/6/12]**

- (a) All waivers requests shall include the following documentation: **[Amd. Ord. 40-12 11/6/12]**
 - 1. The amount paid for the property, the date of purchase, and the party from whom purchased;
 - 2. The assessed value of the land and improvements thereon, according to the two most recent assessments;
 - 3. Real estate taxes for the previous two years;
 - 4. Annual debt service or mortgage payments, if any, for the previous two years;

SECTION 4.3.3 (ZZZ) (2) (a) 5.

5. All appraisals, if any, obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
6. Any listing of the property for sale or rent, price asked, and offers received, if any;
7. The annual gross income from the property for the previous two years, if any;
8. The annual cash flow, if any, for the previous two years;
9. An applicant may submit and the Community Improvement Director or his/her designee may require that an applicant furnish additional information relevant to the determination of any alleged undue economic hardship; and **[Amd. Ord. 03-12 2/21/12]**
10. In the event that any of the required information is not reasonably available to the property owner and cannot be obtained by the property owner, the property owner shall file statement of the information which cannot be obtained and the reasons why such information cannot be reasonably obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which will be as accurate as are feasible.

- (b) **Notice of Proposed Decision.** The City's Community Improvement Director, or his/her designee, shall have the authority to consider and act on waivers for undue economic hardship under this section. When a waiver has been requested, the City's Community Improvement Director, or his/her designee, shall issue a written determination within forty-five (45) days of the date of receipt of all required documentation and may, (1) grant the waiver request, (2) grant a portion of the request and deny a portion of the request, and/or impose conditions upon the grant of the request, or (3) deny the request. Any such denial shall be in writing and shall state the grounds therefore. All written determinations shall give notice of the right to appeal. The notice of determination shall be sent to the requesting party by certified mail, return receipt requested. If reasonably necessary to reach a determination on the request for reasonable accommodation, the City's Community Improvement Director, or his/her designee, may, prior to the end of said forty-five (45) day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the forty-five (45) day period to issue a written determination shall no longer be applicable, and the City's Community Improvement Director, or his/her designee, shall issue a written determination within thirty (30) days after receipt of the additional information. If the requesting party fails to provide the requested

SECTION 4.3.3 (ZZZ) (2) (b)

additional information within said fifteen (15) day period, the City's Community Improvement Director, or his/her designee, shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for waiver shall be deemed abandoned and/or withdrawn and no further action by the City with regard to said wavier request shall be required. **[Amd. Ord. 40-12 11/6/12]**

- (c) **Appeal.** Within thirty (30) days after the Community Improvement Director's, or his/her designee's, determination on a waiver request is mailed to the requesting party, such applicant may appeal the decision. All appeals shall contain a statement containing sufficient detail of the grounds for the appeal. Appeals shall be to the City Commission who shall, after public notice and a public hearing, render a determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed. **[Amd. Ord. 40-12 11/6/12]**

(3) **Reasonable Accommodation:** Reasonable Accommodations from this section may be obtained pursuant to LDR Section 2.4.7(G).

(4) **Penalties for Violations:** The City adopts all enforcement methods, which include, but are not limited to, the issuance of a citation, summons, notice to appear in county court, arrest for violation of municipal ordinances, civil citations, injunction or any other enforcement method authorized by law including penalties as set forth in Section 10.99 of the City's Code of Ordinances. Any property owner that leases, rents, licenses, subleases, or otherwise allows in any manner or form the use of an entire dwelling unit within a single-family, rural residential, or planned residential development zoning district for a period of less than twelve (12) months with a turnover in occupancy of any part of the dwelling unit more often than three (3) times in any one (1) year as well as those entire dwelling units that are located within Low Density Residential (RL) or Medium Density Residential (RM) Zoning Districts with a turnover in occupancy of any part of the dwelling unit more often than six (6) times in any one (1) year shall be in violation of this section. **[Amd. Ord. 40-12 11/6/12]; [Amd. Ord. 03-12 2/21/12]**

(5) **Severability:**

- (a) **Generally.** If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the remainder of Section 4.3.3(ZZZ), "Transient Residential Uses".

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- (b) If the entire Section 4.3.3(ZZZ) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the earlier version of this section adopted by the City Commission on July 7, 2009 as Ordinance 29-09 shall be substituted herein and shall be deemed to be in full force and effect. **[Amd. Ord. 03-12 2/21/12]**

(ZZZZ) **Segway Tours and Segway Sales** shall mean a business that is approved as a conditional use under Section 4.4.13 (D) which conducts tours on Segways and/or sells Segways. **[Section Added by Ord. 04-11 4/5/11]**

(1) "Segway" is used as a generic term and does not refer to a particular manufacturer's product. Segway is defined for these purposes as an electric personal assistive mobility device (EPAMD) as set forth in Appendix "A".

(2) **Special Conditions and Limitations** - The following Special Conditions and Limitations are imposed on Segway tours and sales:

- (a) The applicant for Conditional Use will designate routes for the tours and shall be limited to only routes that are approved.
- (b) No more than nine (9) tours shall be conducted each day.
- (c) All servicing of Segways shall be indoors and not utilize more than twenty (20%) of the floor area of the premises.
- (d) No Segway sales or tour businesses shall be located within three hundred (300) feet of any other Segway sales or tour business, as measured from property line to property line in a straight line.
- (e) Tour guides shall not amplify voice or music while operating tours.
- (f) Pre tour instructions shall not be conducted on public streets, sidewalks, or between the building and the adjacent street.
- (g) Segway tours shall operate in compliance with the requirements of Chapter 132 of the City of Delray Beach Code of Ordinances.

Section 4.3.4 Base District Development Standards:

(A) **General:** The following standards are provided in order to fulfill those purpose statements found in Section 4.1.1 which pertain to determination and regulation of area, size, bulk, height, and other physical aspects of development. Standards for the following items are applicable to all zoning districts in the manner set forth in Subsection (K). The basis for measurement or calculation of those standards are set forth below as are provisions for exceptions.

(B) **Lot Area:** The area contained within the perimeter of the lot upon which the use is to be located.

(1) Said area shall be calculated prior to dedication of additional land for right-of-way purposes or for dedication as a lake management tract. The lot area described in the matrix is the minimum lot area which is required for the establishment of use.

(2) Notwithstanding the above, the lot area for a duplex which is to be held in separate ownership may be reduced to a minimum of 4,000 square feet per lot when a two hour or more fire rated tenant separation wall becomes the basis for the separation of lots. **[Amd. Ord. 23-97 5/20/97]**

(3) Minimum lot areas do not need to be provided for individual ownerships within condominium and townhome developments; or for lots which are platted as tracts for specific purposes other than residential or commercial development.

(C) **Width:** The mean horizontal distance between the side lines of a lot measured at right angles to the depth. Other than at this point, the width of a lot may be less than the minimum set forth in the matrix.

(D) **Depth:** The distance measured from the midpoint of the front lot line to the midpoint of the opposite rear line of the lot. Other than at this point, the depth of a lot may be less than the minimum set forth in the matrix.

(E) **Front and Frontage:** **[Amd. Ord. 43-98 11/3/98]**

(1) Each lot is required to have frontage.

(2) On curving streets and cul-de-sacs the frontage may be reduced by 40% provided the centerline radius of the street is 100 feet or less. **[Amd. Ord. 43-98 11/3/98]**

(3) The front of a lot is the side with frontage on a street. For corner lots, the side having the least street frontage shall be the front for setback purposes. Where a corner lot or through lot has frontage on an arterial or collector street, the front shall be the side with frontage on the arterial or collector. For lots with frontage on both an arterial and a collector, the front shall be the arterial frontage. **[Amd. Ord. 43-98 11/3/98]**

SECTION 4.3.4 (E) (4)

(4) Notwithstanding the previous description, if a limited access easement or limited access right-of-way runs the length of the frontage on a street, then the front of the lot shall be on a frontage without such access restrictions. **[Amd. Ord. 43-98 11/3/98]**

(F) **Floor Area:**

(1) In single family detached units and duplex structures, the floor area shall be all enclosed space in the principle structure exclusive of terraces and unroofed areas and 50% of the area for attached garages, carports, and screened porches.

(2) In multiple family structures, the floor area shall be the net living area for each unit within the structure exclusive of balconies, decks, porches, and common areas such as corridors, lobbies, etc

(G) **Lot Coverage:** Formerly "ground floor building area", lot coverage is the maximum amount of the lot which may be devoted to coverage by a structure or structures.

(H) **Setbacks:**

(1) **General:** Setbacks are measured at right angles to the lot line and represent the minimal distance within which a structure may come to said lot line. Setbacks are established for front, interior side, street side, and rear lot lines. Lot lines along rights-of-way are established, for setback purposes, as being for the ultimate right-of-way as required for the minimum section for the class of street or as otherwise required by the Traffic Network as contained in the Transportation Element of the Comprehensive Plan.

(2) **Large Lot Development:** Where structures are established within a development which does not have interior lot lines (apartment complex), building setbacks shall be measured from the right-of-way or easement or other description provided for the interior street system and distance between building requirements as set forth in Section 4.6.2. However, in any event the setback requirements for the district shall be observed around the perimeter of the overall development.

(3) **Zero Lot Line Development:**

(a) A zero lot line development allows the placement of a structure coterminous to a side property line provided the distance between the structure and the structure on the adjacent lot is a minimum of 15'. A zero lot line can not occur adjacent to property which is not a part of a zero lot line development.

SECTION 4.3.4 (H) (3) (b)

- (b) All accessory buildings, structures, or uses attached or unattached to the principal structure shall comply with the applicable setbacks for the zoning district in which the development is located except that attached garages may be placed contiguous to the side property line on which the principal structure is located.
- (c) Roof eaves may project over the zero lot line up to a maximum of eighteen inches (18") if adequate gutters are provided to prevent runoff onto the contiguous property and if an appropriate easement is recorded for roof encroachment. Eaves or other overhangs may not project over utility easements.

(4) **Structures Allowed in Setbacks:** The following structures are allowed in required setbacks pursuant to stipulations contained herein.

- (a) Barbecue pits, not to exceed six feet by six feet.
- (b) Fences and walls pursuant to Section 4.6.5.
- (c) Fish or lily ponds, not to exceed a depth of 24 inches.
- (d) House eaves, not to exceed a three-foot overhang.
- (e) Lot line walls not to exceed six feet in height.
- (f) Planter walls, not to exceed three feet in height.
- (g) Pump houses, not to exceed three feet in height.
- (h) Rock gardens.
- (i) Swimming pools in conformance with provisions of Section 4.6.15.
- (j) Air conditioner units, transformers.
- (k) Permanently installed generators, not to exceed a height of 4.5 feet, subject to the provisions of LDR Section 4.3.3(ZZ). **[Added by Ord. 28-06 5/16/06 and remaining items renumbered]**
- (l) Steps and platforms for the principal building but not to exceed three (3) feet in height. **[Amd. Ord. 12-91 3/13/91]**
- (m) Trellises which may extend to no more than five (5) feet from the side of the principal building or extend more than two (2) feet from the front or rear of the principal building. **[Amd. Ord. 12-91 3/13/91]**
- (n) Boat slips, whether attached or detached, which shall not be built closer than ten (10) feet from any abutting property line, and which shall not occupy more than twenty percent (20%) of the total lot area. **[Amd. Ord. 12-91 3/13/91]**

SECTION 4.3.4 (H) (4) (o)

- (o) Canopies, marquees, and covered walkways may extend within front and side setback areas in commercial zone districts. **[Amd. Ord. 12-91 3/13/91]**

(5) Setbacks for screen porches, screen enclosures, and accessory structures in rear yards shall comply with the following requirement: **[Amd. Ord. 12-91 3/13/91]**

- (a) In all residential zoning districts, the minimum rear setback for screen porches attached to residential type buildings shall be ten feet whenever at least 50 feet of open space, as defined in division (c) below, separates that rear property line from the next rear property line directly across and abutting the open space.
- (b) The accessory structure of a screen enclosure around swimming pools and other accessory structures may have a zero rear yard setback whenever at least fifty feet (50') of open space as defined in subsection (c) below separates the rear property line from the property line directly across and abutting the open space. However, this subsection does not constitute a change to provisions of Section 4.3.4(H)(4) (Structures Allowed in Setbacks) or Section 4.6.5 (Walls, Fences, Hedges and the Like) in the interpretation of height restrictions. Any accessory structure which has a solid roof shall not be allowed a height greater than that allowed by the above sections.
- (c) For the purpose of this subsection (5), open space shall mean any exterior open area clear from the ground upward, except as noted below, such as canals, lakes, golf courses, parks, sidewalks, streets, parking areas, bicycle paths, and the like. If an area of open space such as a golf course includes buildings or structures utilized in connection therewith, the reduced setback provision contained above shall still apply if there is a minimum of 50 feet between such buildings and structures, and the property line on which the subject screen porch is to be located.
- (d) In order to qualify for the reduced setback provision, the open space must either consist of common open space that is owned or leased by the owners of residential units within the subdivision of which that open space is a part, or be dedicated to the public, or restricted to such open space use by covenants, declarations, easements, or deed restrictions in order to provide a reasonable degree of assurance of the continuity of the open space status of the property.
- (e) In zero lot line developments only, screened enclosures may extend into the interior side setback areas, but shall not be placed less than five (5) feet from the property line. **[Amd. Ord. 48-93 8/10/93]; [Amd. Ord. 12-91 3/13/91]**

SECTION 4.3.4 (H) (5) (f)

- (f) Any conflicts between this subsection (5), and the regulations as set forth in individual residential zoning districts shall be governed by the provisions of this subsection.

(6) **Special Setbacks**: Three types of special setbacks are established in order to provide for preservation of area for expansion of roadways and/or streetscape beautification. These are: special building setbacks, special landscape setbacks, and a combination thereof.

- (a) **Special Building Setbacks**: Within the following special building setbacks, no structures shall be altered, erected, or reconstructed:

- * Along **Ocean Boulevard** (State Road A1A), a twenty foot (20) setback shall be provided from the "Brockway Line," as shown in Plat Book 20, Page 4, Public Records of Palm Beach County, Florida. The "Brockway Line" shall be the "building line" for Lots 1 thru 7 inclusive, Block 1, Ocean Park, as shown in Plat Book 5, Page 15, Public Records of Palm Beach County, Florida.
- * **[DELETED BY AMD. ORD. 70-95 12/5/95]**
- * Within the residential district along the west side of **S.W. 8th Avenue, between West Atlantic Avenue and S.W. 1st Street**, a fifty foot (50') setback shall be provided from the east property line.
- * Along **Lake Ida Road** extending from **Swinton Avenue** westward to Military Trail, a sixty four foot (64') setback shall be provided on both sides of the centerline. **[Amd. Ord. 64-06 11/21/06]**
- * Along **George Bush Boulevard, between Swinton Avenue and A-1-A**, a fifty foot (50') setback shall be provided on both sides of the centerline.

- (b) **Special Landscape Setbacks**: Within the following special landscape setbacks, no structures shall be altered, erected, or reconstructed; nor shall any paving be allowed except for driveways and sidewalks which lead to structures on, or provide access to, the site and then only when generally perpendicular to the frontage. However, waivers may be granted to these restrictions at the time of site plan review in order to accommodate landscape features, decorative walls, meandering sidewalks, and other decorative pedestrian ways.

SECTION 4.3.4 (H) (6) (b) 1.

1. Along **Federal Highway** (U.S. Highway 1), including the one way pairs (5th and 6th Avenues), extending from the south City limits to S.E. 10th Street, special landscape areas shall be provided as shown below on both sides of the ultimate right-of-way: **[Amd. Ord. 17-99 6/15/99]**

LOT DEPTH	SINGLE FRONTAGE	DOUBLE FRONTAGE *
Up to 200'	10'	10'
201 to 250'	15'	10'
251 to 300'	20'	15'
Over 300'	25'	20'

* Includes frontage on both Federal Highway and Dixie Highway **[Amd. Ord. 17-99 6/15/99]**

2. Along **Federal Highway** (U.S. Highway 1), including the one-way pairs (5th and 6th Avenues), extending from S.E. 10th Street to the north City limits, but excluding the blocks between S.E. 1st Street and N.E. 1st Street, a 10 foot (10') special landscape area shall be provided on both side of the ultimate right-of-way. **[Amd. Ord. 17-99 6/15/99]**

The special landscape area shall not be required between the front building edge and the ultimate right-of-way where storefronts face the roadway and no parking or vehicular circulation areas are provided between the building and the right-of-way. However, the body acting upon the development application may require that foundation plantings, street trees or other landscape features be installed in front of the building to add interest and provide relief from the building mass. **[Amd. Ord. 17-99 6/15/99]**

3. Along **West Atlantic Avenue, From I-95 to the Western City Limits**, a special landscape area shall be provided on both sides of the ultimate right-of-way. **[Amd. Ord. 17-99 6/15/99]**

This landscape area shall be the smaller distance of either thirty feet (30') or 10% of the average depth of the property; however, in no case shall the landscape area be less than ten feet (10').

4. Along **Linton Boulevard**, from A-1-A to the western City limits, a special landscape area shall be provided. This landscape area shall be the smaller distance of either 30' or 10% of the average depth of the property; however, in no case shall the landscape area be less than ten feet (10'): **[Amd. Ord. 17-99 6/15/99]**

SECTION 4.3.4 (H) (6) (b) 5.

5. Along **Congress Avenue**, from the L-38 Canal northward to the L-30 Canal, a special landscape area shall be provided. This landscape area shall be the smaller distance of either 30' or 10% of the average depth of the property; however, in no case shall the landscape area be less than ten feet (10'). **[Amd. Ord. 17-99 6/15/99]**
6. Along **Military Trail**, from the L-38 Canal northward to the L-30 Canal, a special landscape area shall be provided. This landscape area shall be the smaller distance of either 30' or 10% of the average depth of the property; however, in no case shall the landscape area be less than ten feet (10'). **[Amd. Ord. 17-99 6/15/99]**

(c) **Combination Building and Landscape Setbacks**: Within the following special setbacks, no structures shall be altered, erected, or reconstructed. Further, within the first ten feet (10') thereof there shall be no paving except for driveways and sidewalks which lead to structures on, or provide access to, the site and then only when generally perpendicular to the frontage.

- * Along **South 10th Street and Lowson Boulevard**, extending from S.E. 5th Avenue to Military Trail, a thirty foot (30') special combination setback shall be provided. **[Amd. Ord. 39-09 9/22/09]**

(7) **Reduction Along Cul-De-Sacs**: When at least fifty percent (50%) of the frontage of a lot is located on a cul-de-sac, the front building setback may be reduced by five (5) feet. **[Amd. Ord. 12-91 3/13/91]**

(I) **Density**:

(1) **Defined**: Density is the calculation of the number of residential dwelling units allowed per gross acre of the land to be developed. The approved density for any project may be less than that defined as the maximum in that a project is reviewed in its totality and, in addition to meeting density requirements, it must comply with all other provisions of these regulations.

(2) **Calculation of Unit Count**: The allowable unit count is determined by the maximum number shown for the base zoning district as reflected in the Matrix [Section 4.3.4(K)]. This number is multiplied times the lot area expressed in acres and rounded to one-hundredth of an acre. When a fraction exists, it shall be rounded down.

SECTION 4.3.4 (I) (3)

(3) **Duplexes:**

- (a) A duplex on a single lot is allowed, regardless of the provisions of Subsection (2), provided that the minimum lot size for the zone district is met and provided that the use, a duplex, is allowed.
- (b) On a platted lot, where duplexes are permitted, and where the lot has at least 8,000 sq.ft., and where there is a two hour or more fire rated tenant separation wall separating the duplex units, each unit together with approximately one-half the lot may be conveyed, providing that each portion of the lot contains not less than 4,000 sq.ft. and the dividing line runs through the separation wall. **[Amd. Ord. 23-97 5/20/97]**

(J) **Height:**

(1) **Defined:** The vertical distance from grade to the highest finished roof surface of a flat roof or to the mean level between tie beams and ridge for gable, hip, or gambrel roofs. The height set forth in the matrix is the maximum height for all structures within the respective zone district except as provided for in Subsection 4.3.4(J)(3)&(4). **[Amd. Ord. 2-06 1/17/06]**

(2) **Basis for Measurement:**

- (a) For buildings adjoining one street, the grade is established from the mean elevation of the crown of the street along the lot frontage.
- (b) For buildings adjoining more than one street, the grade is established as the average of the mean elevation of the crown of the adjoining streets.
- (c) When applied to single family detached dwelling units, less than three stories, within residentially zoned districts, the grade is established as the mean elevation of the finished surface of the ground adjacent to the exterior walls of the building. Under no circumstance shall the grade be higher in elevation than the highest point of the unaltered dune or the crown of the street. **[Amd. Ord. 43-91 6/11/91]**

SECTION 4.3.4 (J) (3)

(3) Exceptions to District Height Limitations:

- (a) **Free-Standing Features:** The height limitations contained in Subsection (K), **Development Standards Matrix**, shall not apply to free-standing antennas, chimneys, conveyors, cooling towers, flag poles, radio towers, silos, or television towers. However, any part of any such structure, or feature, shall not extend above the height of sixty-four feet (64') unless specifically approved by action of the City Commission.
- (b) **Appurtenances on Buildings:** Appurtenances usually required to be placed above the roof level of a building and not intended for human occupancy may be allowed to extend above the height limitations contained in Subsection (K) but only when specifically approved by action of the Site Plan Review and Appearance Board.
- (c) **Parapets:** Flat roofs shall be screened from adjacent properties and streets with decorative parapets. The maximum height of the parapet wall shall be six feet (6') in height or sufficient height to screen all roof mounted equipment, whichever is greater, measured from the top of the roof deck to the top of the parapet wall. In the cases of sloped parapet features, they shall be no more than seventy-two inches (72") in height, project no more than twenty-four inches (24") beyond the face of the building, project no more than twelve feet (12') into the flat roof area of the building nor cover more than fifty percent (50%) of the flat roof area of the building. **[Amd. Ord. 2-06 1/17/06]**

(4) Increases to Height Regulations:

- (a) **Prohibitions:** There are no provisions which allow, nor is the Board of Adjustment empowered to grant, an increase of height for any purpose in the following zone districts:

Single Family (R-1) Districts

Rural Residential (RR)

Agriculture (Ag)

Mobile Home (MH)

Low Density Residential (RL)

Medium Density Residential (RM)

Planned Residential Development (PRD)

Residential Office (R0)

Neighborhood Commercial (NC)

Professional and Office District (POD)

Conservation District (CD)

Open Space (OS)

SECTION 4.3.4 (J) (4) (b)

- (b) **Allowances:** An increase, to a maximum height of sixty feet (60'), may be approved by the City Commission in any zone district not listed above when approved pursuant to the processing of a conditional use request and based upon a finding of compliance with each of enumerated criteria listed below, as applicable. **[Amd. Ord. 05-13 3/5/13]**
- (i) That the structure is to be located in one of the following geographic areas:
- (1) Area "A" - all property located east of Congress Avenue and west of I-95.
 - (2) Area "B" - the property encompassed by the Delint DRI, with the exception of that portion platted as "Waterford Village"; along with property located west of S.W. 10th Avenue, south of Linton Boulevard, and east of I-95.
 - (3) Area "C" - the property encompassed by the boundary of Linton Boulevard, Wallace Drive, S.W. 10th Street, and I-95.
 - (4) Area "D" - the properties located south of Atlantic Avenue, north of S.W. 1st Street, west of S.W. 2nd Avenue, and east of S.W. 4th Avenue; and the properties located north of Atlantic Avenue, south of N.W. 1st Street, west of N.W. 1st Avenue, and east of N.W. 3rd Avenue. **[Amd. Ord. 21-04 5/4/04]; [Amd. Ord. 71-95 12/5/95]**
 - (5) Area "E" - the property encompassed on the west by the F.E.C. Railroad, on the east by the Intracoastal Waterway, on the south by Allen Avenue extended to said easterly and westerly boundaries, and on the north to the northernmost boundary of the City.
 - (6) Area "F" - the property located between the one-way pair system of Federal Highway (5th and 6th Avenues).
 - (7) Area "G" - the property on either side of Linton Boulevard, extending 200 feet north and south of its ultimate right-of-way, extending from I-95 to Dixie Highway.
 - (8) Area "H" - the area bounded by Linton Boulevard on the south, the F.E.C. Railroad on the east, the combination of Southridge Road and Swinton Avenue on the north, and S.W. 4th Avenue on the west.

SECTION 4.3.4 (J) (4) (b) (i) (9)

- (9) Area "I" - all property within the Central Core portion of the CBD (Central Business District), except for that portion within 150' of any zoning district which has a maximum height limit of 35', measured from the property line of the CBD zoned property. **[Amd. Ord. 67-04 1/04/05]; [Amd. Ord. 64-04 11/16/04]**
- (10) Area "J" - the property encompassed by Lindell Boulevard on the north, Federal Highway on the east, Dixie Highway on the west, and the City limits on the south.
- (11) Area "K" – the property within the project known as Delray Medical Center (Delray Hospital), located on the south side of Linton Boulevard approximately 1,240 feet west of Military Trail, and as annexed into the City of Delray Beach via Ordinance 33-05. **[Amd. Ord. 05-13 3/5/13]**
- (ii) That the increase in height will not provide for, nor accommodate, an increase in the floor area (within the structure) beyond that which could be accommodated by development which adheres to a height limitation of 48 feet, except for the following situations:
- (1) An increase in height is allowed when the increase from 48 feet to 60 feet is for the purpose of accommodating residential use on the top floor of the structure; however, the increase in height is only for the added residential use area. **[Amd. Ord. 51-08 11/18/08]; [Amd. Ord. 16-06 4/4/06]**
- DELETED (2) in its entirety [Amd. Ord. 16-06 4/4/06]*
- (iii) Workforce housing units, equal to at least twenty percent (20%) of the residential units on the top floor, shall be provided within the development onsite, offsite, or through monetary contributions as referenced in Article 4.7 (fractions shall be rounded up). The workforce housing units shall be at the low or moderate income levels and shall comply with other applicable provisions of Article 4.7. **[Amd. Ord. 51-08 11/18/08]**
- (iv) That the increase in height shall be allowed if two or more of subsections 4.3.4(J) iv (1), (2) or (3) are met: **[Amd. Ord. 51-08 11/18/08]; [Amd. Ord. 16-06 4/4/06]; [Amd. Ord. 67-04 1/4/05]**

DELETED (1) and (2) and renumbered [Amd. Ord. 16-06 4/4/06]

SECTION 4.3.4 (J) (4) (b) (iv) (1)

- (1) That for each foot in height above 48 feet, an additional building setback of two feet is provided from the building setback lines which would be established for a 48-foot tall structure. The additional setback is required from all setback lines (i.e., front, side, and rear) for the portion of the building that extends above 48 feet. In lieu of this setback requirement, buildings in the CBD zone shall adhere to the setback requirements of that district; **[Amd. Ord. 21-04 5/4/04]**
- (2) That a minimum of 50% of the ground floor building frontage consist of nonresidential uses (excluding parking); **[Amd. Ord. 67-04 1/04/05]**
- (3) That open areas, such as courtyards, plazas, and landscaped setbacks, be provided in order to add interest and provide relief from the building mass. **[Amd. Ord. 16-06 4/4/06]**

(5) **Special Activity Districts**: Increases permitted above 60 feet for the Special Activities District. For special uses (not including residential, commercial, or industrial uses) which can only be accommodated through the use of the SAD (Special Activities) District, the height limitations for such a use within any SAD shall be specifically set forth in the enacting ordinance of that specific SAD, provided that the SAD falls within one of the geographical areas described in Subsection (J)(4)(i). The foregoing provision shall not apply to residential uses or normal uses within any SAD, as such use shall be governed by the height limitations contained in the SAD regulations

(K) **Development Standards Matrix**: The following matrices set forth the minimum and maximum development standards for each zoning district subject to descriptions, interpretations, and exceptions as provided for elsewhere in Section 4.3.4.

DEVELOPMENT STANDARDS MATRIX - RESIDENTIAL ZONING DISTRICTS

(This matrix is to be interpreted and applied pursuant to Section 4.3.4.)

	MINIMUM LOT SIZE (sq. ft.)	LOT WIDTH I/C (ft.)	LOT DEPTH (ft.)	LOT FRONTAGE I/C (ft.)	MINIMUM FLOOR AREA (sq. ft.)	MAXIMUM LOT COVERAGE	MINIMUM OPEN SPACE REQUIREMENT	SETBACKS				DENSITY	HEIGHT (ft.)	MINIMUM DEVELOPMENT AREA
								FRONT 1&2/3 (7) (ft.)	SIDE STREET 1&2/3 (7) (ft.)	SIDE INTERIOR 1&2/3 (7) (ft.)	REAR (ft.)			
Agriculture	10 AC. (2)	100	110	100	1,500			35	25	15	25	35		
Rural Residential	3 ACRES				2,200			17	12	12	12	35		
Single Family	R-1-AAA	12,500	100	110	2,200			35	17	12	12	35		
	R-1-AAAB	12,500	100	110	1,500			35	17	12	12	35		
	R-1-AA	9,500	75/95	100	1,500	N/A		30	15	10	10	35		N/A
	R-1-AAB	9,000	90	100	1,500			25	20	8 1/2	25	35		
	R-1-A	7,500	60/80	100	1,000			25	15	7 1/2	10	35		
	R-1-AB	7,500	60/80	100	1,500			25	15	7 1/2	10	35		
Low -														
Medium Density	RL (5)						(3)	25	25	15	25	35		
	Multi-family	8,000	60	100	(1)	40%		25	25	15	15	35		
	Duplex			80				25	25	15	25			
Medium -	RM (5)	8,000	60	100	(1)	40%		25/30 (6)	25/30 (6)	15/30 (6)	25 (6)	35		
	Multi-family										15			
	Duplex			80							25			
Planned Residential	PRD													
	Multi-family Component	N/A	N/A	N/A	(1)	40%		25/30	25/30	15/25	25	35		5 ACRES
	Single Family Component	7,500	60/80	100	60/80	1,200		25	15	7 1/2	10	35		
	Zero Lot Line	4,500	40/60	80	40/60	1,000	N/A	20		0/15				
Mobile Home Park	Park	2 ACRES	120	N/A	N/A	N/A		25	15	7 1/2	10	35		2 ACRES
	Sites	3,200	N/A					5	5	5	5			

I/C = Interior Lot/Corner Lot

SUBNOTES:

- (1) = Minimum Floor Area for Duplexes and Multifamily Dwelling Units:
 - Duplexes 1000 sq. ft.*
 - Efficiency 400 sq. ft.
 - One Bedroom 600 sq. ft.
 - Two Bedroom 900 sq. ft.
 - Three Bedroom 1250 sq. ft.
 - Four Bedroom 1500 sq. ft.
- (2) = See Section 4.4.1(F) for exceptions.
- (3) = A minimum of 25% non-vehicular open space shall be provided. Interior and perimeter landscaping may be applied toward meeting this requirement.
- (4) = See Paragraph 4.3.4(J)(2) for single family detached structures in residentially zoned districts.
- (5) = The provisions for the R-1-A District shall apply for single family dwellings.
- (6) = Refer to individual district regulations "Development Standards" section for special setbacks in the Southwest Neighborhood Overlay District, Carver Estates Overlay District and Infill Workforce Housing Area. [Amd. Ord. 24-07 8/21/07]; [Amd. Ord. 7-05 2/15/05]
- (7) = 1&2/3 = 1st & 2nd Story / 3rd Story. The setback for the 3rd story shall only be applied to those portions of the building which are 3 stories in height, not the entire building. [Amd. Ord. 29-06 5/16/06]

[Amd. Ord. 42-97 10/7/97]; [Amd. Ord. 16-93 2/9/97]

* Represents absolute minimum size. Must also comply with minimums for corresponding number of bedrooms.

DEVELOPMENT STANDARDS MATRIX - NONRESIDENTIAL ZONING DISTRICTS

(This matrix is to be interpreted and applied pursuant to Section 4.3.4.)

	MINIMUM			MAXIMUM			MINIMUM			SETBACKS						MINIMUM DEVELOPMENT AREA	OTHER
	LOT SIZE (sq. ft.)	LOT WIDTH (ft.)	LOT DEPTH (ft.)	LOT FRONTAGE (ft.)	LOT COVERAGE	FLOOR AREA (sq. ft.)	PERIMETER (ft.)	FRONT (ft.)	SIDE STREET (ft.)	SIDE INTERIOR (ft.)	REAR (ft.)	HEIGHT (ft.)	MINIMUM DEVELOPMENT AREA	OTHER			
General Commercial	0	0	0	0	(3)	N/A	N/A	10 (5)	10 (5)	(2) (5)	10 (5)	48	N/A	Refer to special requirements for auto sales			
Automobile Commercial	10,000(1)	50(1)	100(1)	50(1)	(3)	N/A	N/A	15 (5)	15	(2)	10	48	(1)				
Neighborhood Commercial	1 ACRE	100	200	100	40% (3)	4,000	N/A	40	30	30	10 (4)	48	1 ACRE	Maximum site area of two (2) acres			
Planned Commercial	10,000	50	100	50	(3)	6,000	N/A	10	10	0	10	48	N/A	Refer to Section 4.4.12(F)(2) restrictions on floor area			
Central Business District	0	0	0	0	(1)	N/A	N/A	(1)	(1)	(1)	(1)	48	N/A				
Central Business District- Rail Corridor	0	0	0	0	(1)	N/A	N/A	(1)	(1)	(1)	(1)	48	N/A				
Resort-Tourism	1 ACRE	100	100	100	60% (3)	N/A	N/A	N/A	N/A	N/A	N/A	48	N/A				
Planned Office Center	1 ACRE	N/A	N/A	N/A	60% (3)	4,000	(1)	30	30	10	10	48	3 ACRES				
Professional/Office	0	0	0	0	40% (3)	N/A	N/A	25	25	0(2)	10	48	N/A				
Residential Office	8,000	80	100	80	40% (3)	N/A	N/A	25	15	7 1/2	10	35	N/A				
Planned Commerce Center												48	10 ACRES				
Mixed Industrial/Commercial	0	0	0	0	50% (3)	N/A	N/A	25	25	10	10	48	N/A				
Industrial	20,000	100	200	100	50% (3)	N/A	(1)	30	30	10	10	48	(1)				
Light Industrial	20,000	0	0	100	50% (3)	N/A	N/A	10	10	5	10	48	1 ACRE				
O.S. Historic Arts	8,000	80	100	80	40% (3)	(1)	N/A	25 (1)	15 (1)	7 1/2 (1)	10 (1)	35	N/A	Refer to Section 4.4.24 for special areas and additional regulations			
Community Facilities	0	0	0	0	(3)	N/A	10	N/A	N/A	N/A	N/A	48	N/A	Refer to Section 4.4.21(H) for additional setback & open space requirements			
Open Space																	
Open Space and Recreation																	
Conservation																	
Special Activities District	0	0	0	0	(1) (3)	N/A	15	(1)	(1)	(1)	(1)	48	(1)				
Mixed Residential/Office/Commercial	0	N/A	N/A	N/A	75% (3)	4,000	(1)	(1)	(1)	(1)	(1)	85	3 ACRES (6)	Refer to Section 4.4.29 for additional regulations			

NOTES:

- (1) = Refer to individual district regulations.
- (2) = When there is no dedicated access to the rear of any structure a 10' side yard setback shall be provided.
- (3) = In addition to lot coverage restrictions, a minimum of 25% non-vehicular open space shall be provided. Interior and perimeter landscaping may be applied toward meeting this requirement.
- (4) = Minimum rear yard setback is ten feet (10') and then one additional foot for each foot in building height above ten feet (10').
- (5) = Refer to individual district regulations "Development Standards" section for special setbacks in the North Federal Corridor.
- (6) = Waivers to this minimum size may be granted during the Master Plan approval process