

ORDINANCE NO. 18-__

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO COMMUNITY RESIDENCES; AMENDING CHAPTER 13, "LAND DEVELOPMENT CODE", AT ARTICLE VI, "ZONING DISTRICT REGULATIONS", PROVIDING FOR FINDINGS OF FACT, INTENT AND PURPOSE; PROVIDING DEFINITIONS FOR TERMS; PROVIDING MINIMUM HOUSING STANDARDS; ALLOWING COMMUNITY HOMES IN ALL RESIDENTIAL DISTRICTS; PROVIDING FOR REGISTRATION OF COMMUNITY HOMES; PROVIDING FOR RENEWAL AS WELL AS TERMINATION OF REGISTRATIONS; PROVIDING FOR CERTIFICATION OR LICENSING REQUIREMENTS; PROVIDING FOR COMPLIANCE BY EXISTING BUT UNREGISTERED COMMUNITY RESIDENCES; PROVIDING FOR APPLICATION REQUIREMENTS; PROVIDING FOR DISTANCE SEPARATION; PROVIDING FOR REASONABLE ACCOMODATIONS; PROVIDING FOR CONDITIONAL USE PERMITS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Community Housing is a necessary and significant component in the recovery of individuals with disabilities; and

WHEREAS, the Fair Housing Act as amended (42 U.S.C § 3601) provides protections for person with disabilities; and

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

WHEREAS, On June 5, 2018 the Town Council of the Town of Miami Lakes directed the Town Attorney to explore the options to provide for the regulation of community residences, being those residences not licensed by the state of Florida that provide a residential environment conducive to rehabilitation for persons with disabilities.

WHEREAS, on September 18, 2018 at a publicly advertised workshop, staff presented a recommendation to the Town Council regarding the implementation of standards and definitions that may be adopted into the Code to regulate Community Residences with the purpose of ensuring the

protection of the Community Residence residents from the adverse effects of clustering, overcrowding, and other potentially exploitive circumstances; and

WHEREAS, the amendment at Exhibit “A” is reflective of the Town Council’s desire as expressed at the September 18, 2018, workshop; and

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

WHEREAS, reasonable zoning regulations may be enacted to ensure the community residences are sited in residential zoning districts consistent with federal and state law by allowing a community residence for people with disabilities as a permitted or conditional use in residential districts, subject to a rationally based spacing distance requirement and a licensing or certification requirement for the operator of the community residence; and

WHEREAS, by amending its zoning regulations with requirements including rationally based distancing regulations, certification or licensing requirements, rationally based distinctions between transitional and family community residences and the numbers of residents therein, and including a reasonable accommodation process, the Town makes the reasonable accommodations that the Fair Housing Act requires and preserves the ability of community residences for people with disabilities to emulate a family and achieve normalization and community integration of their residents; and

WHEREAS, the Town Council appointed the Planning and Zoning Board as the Local Planning Agency (LPA) for the Town pursuant to Section 163.3174, Florida Statutes; and

WHEREAS, on _____, 2018, after conducting a properly noticed public hearing, the Planning and Zoning Board, acting in its capacity as the Local Planning Agency, acted in accordance with state law, and in specific compliance with Section 163.3174, Florida Statutes and reviewed and recommended approval to the Miami Lakes Town Council; and

Additions to the text are shown in underlined; deletions from the text are shown in ~~striketrough~~.

Omitted portions of this ordinance are shown as “* * *”.

WHEREAS, on _____, 2018, after conducting a properly noticed public hearing and considering the recommendations of the public, the Local Planning Agency, and the Administrative Official; the Town Council moved the proposed amendment on first reading for second reading and consideration of adoption; and

WHEREAS, the Town Council finds that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan and the criteria for evaluation of an amendment to the Land Development Code found in Subsection 13-306(b) of the Town Code; and

WHEREAS, on _____, 2018, after conducting a properly noticed public hearing and considering the recommendations of the public, the Local Planning Agency, and the Administrative Official, the Town Council finds it in the public interest to adopt the proposed ordinance.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, HEREBY ORDAINS AS FOLLOWS.

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Findings. After considering Staff's report, both submitted in writing and presented orally and the public comment, the Town Council finds that the proposed amendment is consistent with the Town of Miami Lakes Comprehensive Plan and the criteria for an amendment to the Land Development Code pursuant to Subsection 13-306(b) of the Town Code, as provided for in the Staff Recommendation and Analysis Report.

Section 3. Approval. The Town Council hereby adopts the amendment as provided at Exhibit "A," and as incorporated herein.

Section 4. Repeal of Conflicting Provisions. All provisions of the Code of the Town of Miami Lakes that are in conflict with this Ordinance are hereby repealed.

Additions to the text are shown in underlined; deletions from the text are shown in ~~strike through~~.

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Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Town Code. It is the intention of the Town Council, and it is hereby ordained, that the provisions of this Ordinance shall be included in the Town Code.

Section 7. Effective date. This Ordinance shall become effective immediately upon adoption.

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Additions to the text are shown in underlined; deletions from the text are shown in ~~striketrough~~.

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FIRST READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on first reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Frank Mingo	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Nelson Rodriguez	_____
Councilmember Marilyn Ruano	_____

Passed on first reading this _____ day of October, 2018.

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Additions to the text are shown in underlined; deletions from the text are shown in ~~strike through~~.

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SECOND READING

The foregoing ordinance was offered by Councilmember _____ who moved its adoption on second reading. The motion was seconded by Councilmember _____ and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	_____
Vice Mayor Frank Mingo	_____
Councilmember Luis Collazo	_____
Councilmember Tim Daubert	_____
Councilmember Ceasar Mestre	_____
Councilmember Nelson Rodriguez	_____
Councilmember Marilyn Ruano	_____

Passed and adopted on second reading this _____ day of _____, 2018.

Manny Cid
MAYOR

Attest:

Gina Inganzo
TOWN CLERK

Approved as to form and legal sufficiency:

Raul Gastesi, Jr.
Gastesi & Associates, P.A.
TOWN ATTORNEY

EXHIBIT A

CHAPTER 13 LAND DEVELOPMENT CODE

* * *

ARTICLE IV. – ZONING DISTRICT REGULATIONS

* * *

DIVISION 2. - SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL DISTRICTS RU-1, RU-1A, RU-1B, RU-1Z AND RU-2

* * *

13-422. - Main permitted uses.

(a) *RU-1, RU-1A, RU-1B, RU-1Z.* Main permitted uses are as follows:

* * *

- ~~(2) A group home, which otherwise meets the definition of a community residential home, shall be permitted in a dwelling unit subject to the requirements of F.S. § 419.001 and provided that the total number of resident clients on the premises shall not exceed six in number.~~

* * *

DIVISION 4. - RM-13 LOW DENSITY RESIDENTIAL DISTRICT (RU-3M)

13-462. - Permitted uses.

No land, body of water or structure shall be used or permitted to be used, and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in an RM-13 District which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

* * *

- ~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

13-463. - Conditional uses.

Conditional uses are as follows:

- ~~(1) Congregate living facilities, foster homes, group homes not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

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* * *

DIVISION 5. - RM-23 LOW MEDIUM DENSITY RESIDENTIAL DISTRICT (RU-4L)

* * *

13-482. - Permitted uses.

No land, body of water or structure shall be used, or permitted to be used, and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in a RM-23 District which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

* * *

~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

13-483. - Conditional uses.

Conditional uses are as follows:

~~(1) Congregate living facilities, foster homes, group homes, not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

* * *

DIVISION 6. - RM-36 MEDIUM DENSITY RESIDENTIAL DISTRICT (RU-4M)

* * *

13-502. - Permitted uses.

No land, body of water or structure shall be used, or permitted to be used and no structures shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in a RM-36 District which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

13-503. - Conditional uses.

Conditional uses are as follows:

~~(1) Congregate living facilities, foster homes, group homes, not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

* * *

DIVISION 7. - RM-50 HIGH DENSITY RESIDENTIAL DISTRICT (RU-4)

* * *

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• **13-522. - Permitted uses.**

No land, body of water or structure shall be used, or permitted to be used, and no structure shall be hereafter erected, constructed, moved or reconstructed, structurally altered or maintained for any purpose in an RM-50 High Density Residential District, which is designed, arranged or intended to be used or occupied for any purpose, except for one of the following uses:

* * *

~~(3) A community residential home subject to the requirements of F.S. § 419.001.~~

13-523. - Conditional uses.

Conditional uses are as follows:

~~(1) Congregate living facilities, foster homes, group homes, not otherwise meeting the definition of community residential home, nursing homes, religious institutions, small scale public facilities and utilities.~~

* * *

DIVISION 10. - AU AGRICULTURAL DISTRICT

* * *

13-584. - Permitted uses.

No land, body of water and/or structure shall be maintained, used or permitted to be used, and no structure shall be hereafter maintained, erected, constructed, moved, reconstructed or structurally altered or be permitted to be erected, constructed, moved, reconstructed or structurally altered for any purpose in an AU District which is designed, arranged, or intended to be used or occupied for any purpose other than the following:

* * *

~~(12) A group home, which otherwise meets the definition of a community residential home, shall be permitted in a dwelling unit subject to the requirements of F.S. § 419.001 and provided that the total number of resident clients on the premises does not exceed six in number.~~

* * *

DIVISION 20. - BUSINESS, COMMERCIAL AND INDUSTRIAL DISTRICT MASTER LIST

* * *

13-748. - Business, Commercial and Industrial Use Master List.

Use	RO-13	RO-50	BU-1	BU-1A	BU-2	BU-3	IU-1	IU-2	IU-3	IU-C	TC	*Add'l Regs
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* * *												
Community residential home (subject to the requirements of F.S. 419.001	P	P									P/C	\$ 13-799.6*
* * *												

DIVISION 21. - ADDITIONAL BUSINESS, COMMERCIAL, INDUSTRIAL AND OTHER USE REGULATIONS

* * *

13-799.6. (Reserved) Community Residential Homes in the TC District.

- (a) ~~A community residential home of six or fewer residents shall be a use permitted by right in the TC District, subject to the requirements of F.S. § 419.001.~~
- (b) ~~A community residential home of between seven and fourteen residents shall be a conditional use in the TC District, subject to the requirements of F.S. § 419.001.~~

* * *

DIVISON 25. – GU INTERIM DISTRICT

* * *

13-764. ~~Group homes.~~ COMMUNITY RESIDENTIAL HOMES (ALFS), RECOVERY RESIDENCES, AND REASONABLE ACCOMMODATIONS.

~~A group home shall be permitted in a dwelling unit provided:~~

- (a) ~~That the total number of resident clients on the premises not exceed six in number.~~
- (b) ~~That the operation of the facility be licensed by the State of Florida Department of Health and Rehabilitative Services and that said Department or sponsoring agency promptly notify the Director of said licensure no later than the time of home occupancy.~~
- (c) ~~That the structure used for a group home shall be located at least 1,000 feet from another existing, unabandoned legally established group home. The 1,000 foot distance requirement shall be measured by following a straight line from the nearest portion of the structure of the proposed use to the nearest portion of the structure of the existing use.~~

13-764.1 - Community Residences

- (a) Applicability. All community residences of three (3) or more unrelated persons with or without disabilities, whether Family Community Residences or Transitional Community Residences, as defined in subsection (d) below, prior to occupancy or construction, must register the with the Town, using a

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form provided by the Town, in order to determine whether the proposed community residence is a permitted use or requires a conditional use permit, to determine the maximum number of occupants allowed under city code provisions that apply to all residential uses, and to identify whether any further reasonable accommodation is needed in accordance with section 13-902, "Reasonable Accommodation Procedures" of the LDC. Legal nonconforming community residences existing at the date of the adoption of this subsection shall be allowed to continue without regard to distance limitations and without the necessity to obtain a conditional use permit but shall have sixty (60) days to register and obtain certification. Legal nonconforming community residence uses and structures shall be subject thereafter to the nonconformity provisions of these LDCs.

(b) *Generally.* Community residences may locate in residential zoning districts as a permitted use, or with a Conditional Use Permit, or with a reasonable accommodation approval, in accordance with the following and in compliance with these LDCs. All community residences of three (3) or more unrelated persons shall be required to be licensed as a community residence by a state of Florida licensing agency or certified by a state of Florida credentialing agency authorized under Section 397.487, Florida Statutes, unless they are recognized or sanctioned by Congress. If the State of Florida does not offer a license or certification for the proposed kind of community residence and the population it would serve, the applicant must obtain a reasonable accommodation approval pursuant to the standards of section 13-902.

(c) *Approvals.*

(1) Community residences of fewer than three (3) residents are considered a family as defined in the subsection (d) below and are allowed as of right wherever a family can be housed.

(2) Community residences with more than ten (10) residents require a reasonable accommodation approval pursuant to the standards of section 13-901.

(3) Family Community Residences and Transitional Community Residences are permitted based on distance separation as follows:

a. Family Community Residence.

1. Family community residences with between three (3) and ten (10) residents and located less than one thousand (1,000) feet from another community residence, or from a community residential home as defined by Section 419.001(1)(a), Florida Statutes, when measured from the closest point of the property line of the proposed community residence to the closest point of the property line of the nearest existing community residence or community residential home, may be permitted within all residential zoning districts subject to conditional use requirements.

2. Family community residences with between three (3) and ten (10) residents and located at least one thousand (1,000) feet from a community residence, or from a community residential home as defined by Section 419.001(1)(a), Florida Statutes, when measured from the closest point of the property line of the proposed community residence to the closest point of the property line of the nearest existing community residence or community residential home, are permitted in any residential zoning district.

b. Transitional Community Residence:

1. Transitional community residences with between three (3) and (10) residents located at least one thousand (1,000) feet from a community residence, or from a community residential home as defined by Section 419.001(1)(a), Florida Statutes, when measured

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from the closest point of the property line of the proposed community residence to the closest point of the property line of the nearest existing community residence or community residential home, may be permitted within single family residential zoning districts subject to conditional use requirements.

2. Transitional community residences with between three (3) and ten (10) residents located less than one thousand (1,000) feet from a community residence, or from a community residential home as defined by Section 419.001(1)(a), Florida Statutes, when measured from the closest point of the property line of the proposed community residence to the closest point of the property line of the nearest existing community residence or community residential home, may be permitted within all residential zoning districts subject to conditional use requirements.
3. Transitional community residences with between three (3) and ten (10) residents and located at least one thousand (1,000) feet from a community residence, or from a community residential home as defined by Section 419.001(1)(a), Florida Statutes, when measured from the closest point of the property line of the proposed community residence to the closest point of the property line of the nearest existing community residence or community residential home, are permitted in all multifamily zoned property.

(d) Definitions. For the purpose of this Division, the following terms and phrases shall be defined as provided below.

Community residence. Except as required by state law, a community residence is a residential living arrangement for unrelated individuals with disabilities living as a single functional family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as the support services, if any, provided by the staff of the community residence. Residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services, related to the residents' disabilities. A community residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment; treatment is incidental as in any home. Supportive inter-relationships between residents are an essential component. A community residence may be either a Family community residence or a Transitional community residence.

A community residence shall be considered a residential use of property for purposes of all zoning, building, and property maintenance codes. The term does not include any other group living arrangement for unrelated individuals who are not disabled nor residential facilities for prison pre-parolees or sex offenders. Community residences do not include community residential homes that are defined in section 419.001(1)(a), Florida Statutes and licensed by the Florida Agency for Persons with Disabilities, the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration, and the Florida Department of Children and Families. They do include functional family sober living arrangements also known as recovery residences certified by the state of Florida's designated credentialing entity established under Section 397.487 of the Florida Statutes.

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Disability. A physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such an impairment, or being regarded as having such an impairment. People with disabilities do not include individuals who are currently using alcohol, illegal drugs, or using legal drugs to which they are addicted, or individuals who constitute a direct threat to the health and safety of others.

Family. One (1) or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, or a group of persons up to two (2) in number who are not so interrelated, occupying the whole or part of a dwelling as a single housekeeping unit, supplied with a kitchen or facilities for doing their own cooking on the premises, and who share common living facilities. Any person under the age of 18 years whose legal custody has been awarded to the State Department of Health and Rehabilitative Services or to a child-placing agency licensed by the Department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to and a member of the family for the purposes of this definition. A family does not include residents of any nursing home; club; boarding or lodging house; dormitory; fraternity; sorority; or group of individuals whose association is seasonal or similar in nature to a resort, motel, hotel, boarding or lodging house.

Family Community Residence. A family community residence is a type of community residence that is a relatively permanent living arrangement for more than three (3) unrelated people with disabilities with no limit on how long a resident may live in the home. The length of tenancy is measured in years. Oxford House is an example of a family community residence. A family community residence may be certified as a recovery residence by the state of Florida's designated credentialing entity established under Section 397.487 of the Florida Statutes, but does not include a community residential home as defined under section 419.001(1)(a), Florida Statutes and licensed by the State of Florida.

Oxford House. A self-governed community residence for people in recovery that is part of Oxford House, Inc. An Oxford House places no time limit on residency, operates as a democratic system and utilizes self-support to pay all the household expenses. Sanctioned by Congress, each Oxford House is operated in accord with the Oxford House Manual© and is subject to annual inspections which serve as the functional equivalent of the certification or licensing of community residences required by these Unified Land Development Regulations.

Reasonable accommodation request. A request pursuant to the LDC for a case specific modification of the LDC so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit.

Transitional community residence. A transitional community residence is a type of community residence that is a temporary living arrangement for more than three unrelated people with disabilities with a limit on length of tenancy that is measured in weeks or months, not years. The residents in a transitional community residence do not typically, but may as conditioned under a reasonable accommodation approval, operate as a single functional family. A transitional community residence may be certified as a recovery residence by the state of Florida's designated credentialing entity established under Section 397.487 of the Florida

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Statutes, but does not include a community residential home as defined under section 419.001(1)(a), Florida Statutes and licensed by the State of Florida.

764.2. Community Residences Conditional Use Permit Requirements.

(a) Conditional Use Permit for Community Residences. In conjunction with section 13-303 of the LDC, the purpose of this section is to provide narrowly-tailored standards for determining whether to grant a conditional use permit as a form of reasonable accommodation to ensure that the community residences required to obtain a conditional use permit will:

- (1) Be located a sufficient distance from any existing community residences so that the proposed community residence does not lessen nor interfere with the normalization and community integration of the residents of existing community residences or combine with any existing community residences to contribute to the creation or intensification of a de facto social service district,
- (2) Operate as a functional family (also known as emulating a biological family) that fosters normalization and community integration of its residents, and
- (3) Operate in a manner consistent with the protections afforded by the State of Florida's licensing or certification standards for community residences serving individuals with disabilities similar to those of the proposed community residence in order to protect the residents of the proposed community residence from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.

(b) Standards for Awarding a Conditional Use Permit for Family Community Residence and Transitional Community Residence of three (3) to ten (10) residents. A conditional use permit may be issued only if the proposed family community residence or proposed transitional community residence meets the following standards, in addition to the conditional use standards of section 13-303:

- (1) When the proposed family community residence or a transitional community residence is required to obtain a conditional use permit because it would be located within one thousand (1,000) linear feet of an existing community residence,
 - a. The applicant demonstrates that the proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence, and
 - b. The applicant demonstrates that the proposed community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying a de facto social service district by concentrating community residences on a block or in a neighborhood.
- (2) When the proposed transitional community residence is a conditional use in a single family zoning district,
 - a. The applicant demonstrates that the proposed transitional community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence, and
 - b. The applicant demonstrates that the proposed transitional community residence in combination

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with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying a de facto social service district by concentrating community residences on a block or in a neighborhood, and

c. The applicant demonstrates that the proposed transitional community residence will be compatible with the residential uses allowed as of right in the zoning district, and

d. The applicant demonstrates that the proposed transitional community residence will not alter the residential stability of the single-family zoning district.

(c) Standards for Awarding a Reasonable Accommodation/conditional use for Community Residence with more than ten (10) residents. To establish a community residence for more than ten (10) individuals with disabilities, the applicant shall submit a Request for Reasonable Accommodation in accordance with the procedures of section 13-902 of these LDCs. In all cases the Special Magistrate shall make findings of fact in support of all determinations and shall render the decision in writing. To grant a Reasonable Accommodation to allow more than ten (10) occupants in a community residence, the Special Magistrate shall affirmatively find compliance with the conditional use standards of section 13-303 of the LDC, the reasonable accommodation standards promulgated in section 13-303 of the LDC, and the following:

(1) The applicant specifies by how many individuals it wishes to exceed the maximum of ten (10) residents and adequately demonstrates the financial or therapeutic need to house the proposed number of residents; and

(2) The applicant demonstrates that the primary function of the proposed community residence is residential where any treatment is merely incidental to the residential use of the property; and

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

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

(d) Community Residence for which the State of Florida does not offer a license or certification. To establish a community residence of more than three (3) persons for which the State of Florida does not offer a license or certification, the applicant must meet the standards for the similar proposed size and type of community residence in 13-901(b) or (c), as applicable, in addition to the reasonable accommodation standards promulgated in section 13-902 of the LDC. The Special Magistrate shall make findings of fact in support of all determinations and shall render the decision in writing.

(e). Fees. The fee for consideration of a conditional use permit under this section shall be pursuant to Article XI of the LDC.

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

764.3. Reasonable Accommodation Procedure

(a) Purpose. The purpose of this subsection is to implement a procedure for processing requests for reasonable accommodation for housing to the Town's LDC, for persons with disabilities as provided

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by the federal Fair Housing Amendments Act (42 U.S.C. 3601, et. seq.) ("FHA") and Title II of the Americans with Disabilities Amendments Act (42 U.S.C. Section 12131, et. seq.) ("ADA"). For purposes of this section, a "disabled" person is an individual that qualifies as disabled or handicapped under the FHA or ADA. Any person who is disabled (or qualifying entities) may request a reasonable accommodation for housing with respect to the Town's LDC, as provided by the FHA and the ADA, pursuant to the procedures set out in this section.

(b) *Notice to the public of availability of accommodation.* The Town shall display a notice on the City's public notice bulletin board (and shall maintain copies available for review in the Department of Sustainable Development and the Town Clerk's Office), advising the public that disabled individuals (and qualifying entities) may request a reasonable accommodation as provided herein.

(c) *Application.* A request for reasonable accommodation shall be submitted on a zoning application form maintained by and submitted to the Town and shall include a supplemental application form particular to such requests.

(1) Confidential information. Should the information provided by the disabled individual to the Town include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled individual, such individual may, at the time of submitting such medical information, request that the Town, to the extent allowed by law, treat such medical information as confidential information of the disabled individual. The Town shall thereafter endeavor to provide written notice to the disabled individual, or their representative, of any request received by the town for disclosure of the medical information or documentation which the disabled individual has previously requested be treated as confidential by the Town. The Town will cooperate with the disabled individual, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the Town shall have no obligation to initiate, prosecute or pursue any such action, or to incur any legal or other expenses (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled individual.

(2) Fee. There shall be no fee imposed by the Town in connection with an administrative conditional use request for reasonable accommodation under this section. Request requiring Public hearing shall pay the required fees and deposits as provided at Chapter 13, Article XI, of the Land Development Code. The Town shall have no obligation to pay a requesting party's attorney's fees or costs in connection with the request.

(3) Town assistance. The Town shall provide such assistance and accommodation as is required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, including, without limitation, assistance with reading application questions, responding to questions, completing the form, and appearing at a hearing, etc., to ensure the process is accessible.

(4) Supplemental application form. The following information shall be included on the the supplemental application form.

a. Name and contact information of the Applicant;

b. Information regarding property at which reasonable accommodation is requested, including the address and legal description of such location as well as ownership of the subject property;

Additions to the text are shown in underlined; deletions from the text are shown in ~~striketrough~~.

Omitted portions of this ordinance are shown as “* * *”.

- c. Describe the accommodation and the specific regulation(s) or procedure(s) from which accommodation is sought;
 - d. Reasons the accommodation may be necessary for the requesting party or the individuals with disabilities seeking the specific accommodation, and if relating to housing, why the requested reasonable accommodation is necessary to use and enjoy the housing;
 - e. Describe qualifying disability or handicap;
 - f. Other relevant information pertaining to the disability or property that may be needed by the City in order for it to be able to evaluate the request for reasonable accommodation;
 - g. All certified recovery residences must provide proof of satisfactory, fire, safety, and health inspections as required by Section 397.487, Fla. Stats., as amended from time to time;
 - h. Signature of requesting party;
 - i. If there will be an on-site supervisor or manager, provide the name and contact information (phone and email) for each;
 - j. Date of request;
 - k. Owner's consent for application.
 - l. A requesting party who seeks a reasonable accommodation to house more than ten unrelated individuals in a community residence as provided in subsection 13-901(c) shall also complete and submit the form the Town requires of all applications to establish a community residence.
- (d) Findings for reasonable accommodation. In lieu of the criteria for conditional uses at Section 13-303(b)(3) a reasonable accommodation request shall be granted or denied upon a determination that the requesting party establishes that he/she or the residents of the housing for which this request is made are protected under the FHA or ADA by demonstrating that he/she or the residents of the proposed housing are people with disabilities, at section 13-900(d).
- (1) The requesting party shall demonstrate that the proposed reasonable accommodations sought are reasonable and necessary to afford the subject individual(s) with disabilities an equal opportunity to use and enjoy the housing that is the subject of the request. The following factors shall be considered, among other relevant factors including judicial interpretation of disability law:
- a. The disabled individuals shall establish that they are handicapped or disabled, as defined in the FHA or ADA, and therefore entitled to protection under the FHA or ADA, such that they have a physical or mental impairment which substantially limits one or more major life activities; or that they have a record of having such impairment, or that they are regarded as having such impairment.
 - b. If a request for reasonable accommodation is submitted by an operator of a residence that provides housing to disabled individuals, the operator shall be required to establish that the operator is qualified to provide such housing to disabled individuals.
 - c. The requesting party shall demonstrate that the requested accommodation is both reasonable and necessary (as interpreted by the courts) to afford the disabled individuals served by the housing an equal opportunity to use and enjoy the housing, including that the proposed accommodation is therapeutically necessary and actually alleviates the effects of a handicap or disability, with a site-specific assessment in regard to the particular property in that regard.
 - d. The requesting party shall demonstrate that the proposed accommodation does not constitute a fundamental alteration of the City's zoning scheme or other Town program or policies, and that it does not impose an undue financial or administrative burden on the Town.

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- (2) A request for reasonable accommodation to permit more than ten (10) unrelated individuals to occupy a community residence shall be granted only when the requesting party also meets the applicable standards for community residences in subsection 13-901(c) of the LDC. In this case, the process will involve the Special Magistrate.
- (3) A request for reasonable accommodation to permit a community residence for more than three disabled individuals for which there is no license or certification available shall also meet the standards for the similar proposed size and type of community resident in subsection 13-901(b) or (c), as applicable. In this case, the process will involve the Special Magistrate. In addition, the applicant must demonstrate that the proposed community residence will be operated in a manner effectively similar to that of a licensed or certified community residence, that the staff will be adequately trained, that the home will emulate a biological family and be operated to achieve normalization and community integration, and that the rules and practices governing how the home is operated will actually protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.
- (4) The foregoing shall be the basis for a written decision with findings of fact upon a reasonable accommodation request made to the Special Magistrate.
- (e) *Special Magistrate review and decision.* When a reasonable accommodation request form has been completed and submitted to the Town, it will be referred to the Special Magistrate for review and consideration. The Special Magistrate shall conduct a noticed public hearing to receive input and information from the public. The Special Magistrate shall thereafter issue a written determination within thirty (30) calendar days of the date of receipt of a completed application and may, in accordance with federal law, (1) grant the accommodation request, (2) grant a portion of the request and deny a portion of the request, or impose conditions upon the grant of the request, or (3) deny the request, in accordance with federal law. Any such denials 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 (i.e. the disabled individual or his/her representative) by certified mail, return receipt requested or hand delivery, receipt signed by the recipient. If reasonably necessary to reach a determination on the request for reasonable accommodation, the Special Magistrate may, prior to the end of said thirty (30) calendar day period, request additional information from the requesting party, specifying in sufficient detail what information is required. The requesting party shall have fifteen (15) calendar 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) calendar day period to issue a written determination shall no longer be applicable, and the Special Magistrate shall issue a written determination within thirty (30) calendar days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) calendar day period, the Special Magistrate shall issue a written notice advising that the requesting party had failed to timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned or withdrawn and no further action by the Town with regard to said reasonable accommodation request shall be required.
- (f) *Appeal.* An appeal from a decision of the Special Magistrate shall be handled exclusively by petition for writ of certiorari within thirty (30) days from the date of filing the written order of the Special Magistrate with the Town Clerk.

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(g) Stay of enforcement. While a request for reasonable accommodation for a community residence, or appeal of a determination of same, is pending before the Town, the Town will not enforce the subject zoning ordinance, rules, policies, and procedures against the requesting or appealing party.

(h) Expiration of approvals. Approvals of requests for reasonable accommodation shall expire within one hundred and eighty (180) days if not implemented.

(i) Recertification. All reasonable accommodation requests approved by the Special Magistrate and implemented by the requesting party pursuant to section 13-902, are valid for no more than one (1) year and shall require annual recertification each year on or before April 1st. Failure to recertify annually shall result in the revocation of the approved reasonable accommodation. Recertification requests shall follow the same requirements and procedures provided in section 13-902, except the recertification notice will be sent annually by regular mail or hand delivered.

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ARTICLE VI. - SUPPLEMENTARY REGULATIONS

DIVISION 1. – GENERALLY

Sec. 13-1600. – Minimum Housing Standards.

No person shall let to another for occupancy, any dwelling or dwelling unit for the purpose of living therein, which does not comply with the following requirements:

(1) Every dwelling unit shall contain a minimum gross floor area of at least 600 square feet for the first occupant, 100 square feet for each of the next two (2) occupants, and at least 75 square feet for each occupant thereafter. Floor space shall be calculated on the basis of total habitable room area excluding bathrooms and closets.

(2) Every dwelling unit shall have at least one room of not less than 120 square feet net floor area, every other habitable room, except the kitchen shall have a minimum net floor area of at least 70 square feet. Every room occupied for sleeping purposes by more than one (1) occupant shall have a minimum gross floor area of 75 square feet per occupant. Every room used for sleeping purposes shall have a minimum width of eight (8) feet. Kitchens shall not be used for sleeping purposes. Porches shall not be used as permanent sleeping quarters.

(3) At least one-half of the floor area of every habitable room having a sloped ceiling shall have a ceiling height of at least seven (7) feet. Any portion of a room having a ceiling height of less than five (5) feet shall not be considered in computing the total floor area of such room.

(4) No dwelling or dwelling unit containing two (2) or more sleeping rooms shall be so arranged that access to a bathroom, shower room, or water closet compartment intended for use by occupants of more than one (1) sleeping room can be had only by going through another sleeping room or outside the structure, nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room, bathroom, shower room, or water closet compartment.

(5) No cellar or basement space shall be used as a habitable room or dwelling unit.

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