

**ORDINANCE NO. 16-2020**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 134, ZONING, AS FOLLOWS: AT ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 134-1728 AIR CONDITIONING AND SWIMMING POOL HEATING EQUIPMENT, BY CHANGING THE TITLE; REORGANIZING THE REGULATIONS; ALLOWING THE USE OF A NEIGHBOR'S CONCRETE WALL FOR SCREENING SAID EQUIPMENT; PROVIDING FOR A RECORDED AGREEMENT WITH THE TOWN TO BUILD A SCREENING WALL AS PROVIDED FOR IN THE CODE SHOULD THE NEIGHBOR REMOVE THEIR WALL; PROVIDING A MAXIMUM DISTANCE THAT SWIMMING POOL EQUIPMENT CAN BE LOCATED FROM A SWIMMING POOL OR FOUNTAIN; AT ARTICLE VIII, SUPPLEMENTARY DISTRICT REGULATIONS, SECTION 134-1729, GENERATORS AND SWIMMING POOL EQUIPMENT, BY MODIFYING THE TITLE AND GENERATOR REGULATIONS; MOVING SWIMMING POOL EQUIPMENT INTO SECTION 134-1728 OF THE CODE; ALLOWING MORE THAN ONE GENERATOR ON A PROPERTY AND ALLOWING THE USE OF A NEIGHBOR'S CONCRETE WALL FOR SCREENING SAID EQUIPMENT; PROVIDING FOR A RECORDED AGREEMENT WITH THE TOWN TO BUILD A SCREENING WALL AS PROVIDED FOR IN THE CODE SHOULD THE NEIGHBOR REMOVE THEIR WALL; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, after public hearings pursuant to notice required by law, the Planning and Zoning Commission considered all testimony and recommended modification to the Code of Ordinances; and

**WHEREAS**, after public hearing pursuant to notice required by law, the Town Council considered the Planning and Zoning Commission's Record and Report and all evidence and testimony and as the Local Planning Agency recommended that the Town Council adopt the subject Ordinance; and

**WHEREAS**, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach requires that the aforesaid Chapter 134, ZONING, of the Code of Ordinances, be amended as hereinafter set forth.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.** Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec. 134-1728, Air conditioning and swimming pool heating equipment, is hereby amended to read as follows:

Sec. 134-1728. - Air conditioning and swimming pool, ~~heating and fountain~~ equipment.

~~(a) No portion of any air conditioning and/or swimming pool equipment shall be located closer than five feet from a side or rear property line. In addition, such air conditioning or swimming pool equipment within ten feet from the side or rear property line shall be completely screened with a wall as high as said equipment from the neighboring property. Except as provided for in subsection (b) of this section, air conditioning and/or swimming pool equipment, in excess of two units or more than four feet in height, as measured above the natural grade or minimum flood elevation, whichever is greater, or occupying more than 25 square feet in total area, shall be considered an enclosed accessory structure and shall be constructed, erected or placed in compliance with all the provisions of the ordinance applicable thereto.~~

~~(b) In the R-AA, R-A and R-B zoning districts, where setbacks for principal structures are increased based on a larger lot width, the air conditioning and/or swimming pool equipment which are in excess of number, height and area restrictions identified in subsection a of this section shall only be required to meet the minimum yard setback requirements for an enclosed accessory structure on a minimum size lot in that district.~~

~~(c) Cooling towers shall be required to meet the same minimum yard setback requirements as the principal structure, and shall be screened from the neighbors and/or a street by a three-sided, concrete block masonry finished wall at least as high as said cooling tower. If the required wall is higher than the Code allows in a setback in order to screen the cooling tower from the neighbors and/or a street, said wall shall also meet the minimum yard setback requirement as the principal structure.~~

~~(d) No air conditioning or swimming pool equipment shall be allowed in a front yard setback.~~

~~(e) Any house that fronts on two or more streets shall be allowed to place air conditioning (excluding cooling towers) and/or swimming pool equipment in each required street side or street rear yard setback provided that the combination of said equipment does not exceed two in each of said setbacks; are not more than four feet in height above the natural grade or the minimum flood elevation, whichever is greater, occupy no more than 25 square feet in total area; and are setback a minimum of 20 feet from the street side or street rear property line and are screened from view by a wall as high as said equipment and three foot high hedge outside said wall.~~

(a) Air conditioning/chiller equipment (excluding cooling towers):

Air conditioning equipment shall not be allowed in a required front yard setback. Said equipment shall be allowed in a required side, rear, street side and street rear yard setback provided the following requirements are met:

1. The equipment shall have a minimum five-foot side and rear yard setback.
2. The equipment shall have a minimum twenty-foot street side and street rear yard setback.

3. A maximum of two pieces of air conditioning equipment not exceeding six feet in height above grade or the minimum flood elevation, whichever is higher, shall be allowed.
4. The equipment shall be completely screened from the neighboring property and the street by a concrete wall as high as said equipment. Said wall cannot exceed the maximum height allowed by Code. A neighbor's existing concrete wall can satisfy said requirement provided that wall meets the height requirement to completely screen said equipment from the adjacent neighbor and the applicant enter into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.
5. If the equipment and required new screening wall can be seen from the street, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable. Intervening landscape material shall not be considered when determining air conditioning/ chiller equipment visibility.
6. Where required setbacks for principal structures are increased based on a larger lot width or depth, the air conditioning equipment (not including cooling towers) shall meet the same requirements as the standard size lots in the district it is located.

(b) Cooling tower/chiller equipment:

Cooling tower/chiller equipment shall meet the following requirements:

1. The equipment and screening wall required below shall meet the same minimum required yard setbacks as the principal structure.
2. The equipment shall be screened from the neighbors and/or a street by a three-sided, concrete wall at least as high as said cooling tower.
3. If the equipment and required screening wall can be seen from the street without intervening landscape material, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable.

(c) Swimming pool and fountain equipment:

Swimming pool and fountain equipment shall be allowed in a required side, rear, street side and street rear yard setback provided the following requirements are met:

1. Swimming pool and fountain pump and filter equipment shall have a minimum five foot side and rear yard setback and shall in all situations be located no further than twenty-five feet from the pool or fountain water's edge.
2. Swimming pool heater equipment shall have a minimum ten-foot side and rear yard setback and shall in all situations be located no further than twenty-five feet of the swimming pool water's edge.
3. Swimming pool heater and pump equipment and fountain equipment (excluding filters) shall not exceed four pieces of equipment.

4. Swimming pool heater, pump and filter equipment and fountain equipment shall not exceed a maximum height of four feet above grade or the minimum flood elevation, whichever is higher.
5. All swimming pool and fountain equipment, including a heater and filter equipment, shall have a minimum twenty-foot street side yard setback and a fifteen-foot street rear yard setback and in all situations shall be located no further than twenty-five feet from the water's edge of the swimming pool and/or fountain.
6. Swimming pool and fountain pump and filter equipment, excluding swimming pool heater equipment, shall be enclosed in a pump house and shall be located no further twenty-five from the swimming pool or fountain water's edge.
7. Swimming pool heater equipment shall be completely screened from a neighboring property and a street by a building or concrete wall as high as said equipment. Said wall cannot exceed the maximum height allowed by Code. A neighbor's existing concrete wall can satisfy said requirement provided the wall meets the height requirement to completely screen said equipment from the adjacent neighbor and the applicant enters into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.
8. If the equipment and required new screening wall or pump house can be seen from the street, said equipment and wall shall be approved by either the Architectural Commission or Landmark Preservation Commission, whichever is applicable. Intervening landscape material shall not be considered when determining swimming pool and fountain pump, heating and filter equipment visibility.
9. Where required setbacks for principal structures are increased based on a larger lot width or depth, the swimming pool and fountain pump, filter and heating pool equipment shall meet the same requirements as the standard size lots in the district it is located.

**Section 2.** Article VIII, SUPPLEMENTARY DISTRICT REGULATIONS, Sec. 134-1729, Generators and swimming pool equipment, is hereby amended to read as follows:

**Sec. 134-1729. - Generators and swimming pool equipment.**

Except for generators serving a public purpose and owned and operated by the town or temporary generators used during or after a natural disaster such as a tropical storm or hurricane event, and which are therefore exempt from these regulations, portable or permanent generators temporarily or permanently placed on the ground, on a stand or on a trailer, shall not be placed in the required front, street side or street rear yard setbacks; provided, however, not more than one such generator shall be placed in any given within the same required side or rear yard setback ~~or yard area~~.

(1) One or a combination of more than one portable or permanent generators with an combined output of not more than 60 KW shall be allowed provided only one generator is within the same required yard area and no closer than ten-foot side or rear yard property line. Said

generator(s) shall be allowed five feet from a side or rear property line be allowed in a required side or rear yard setback provided said generator meets the following conditions requirements:

a. ~~The generator is set back a minimum of five feet from the property line. There is only one generator within that required yard area.~~

b. The generator(s) shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.

c. The highest point on the generator(s) shall not exceed a maximum of seven feet above the neighboring property owner's grade or zero datum as defined in the appropriate definition of building height in section 134-2.

d. ~~The generator(s) is shall be completely screened from a street and the neighboring property owners by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler); whichever is greater. An adjacent property owner's existing side or rear concrete wall that completely screens the generator from the neighbor adjacent to that generator can count towards screening neighbor's existing concrete wall can satisfy said requirement provided the wall meets the height requirement to screen the generator and the applicant enters into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.~~

e. If the generator(s) is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, whichever is applicable. Intervening landscape material shall not be considered when determining a generator's visibility.

ef. The generator's exhaust shall, as much as practically feasible, vented upwards or directed away from neighboring properties.

fg. The generator(s) shall be used only during periods of power outages or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company or for use by power customers during periods of peak demand.

gh. The generator(s) shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.

hi. ~~Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.~~

ij. Generators shall not be permitted on the roof of a building.

(2) Temporary or permanent generators with a combined output of greater than 60 KW or more may be temporarily placed on the ground, on a stand or on a trailer. A portable or permanent generator may be permanently or temporarily placed on the ground, on a stand, or on a trailer outside of required yard setback areas; provided, however, said generator(s) meets the following conditions requirements:

a. ~~If the A generator(s)'s output capability is greater than 60KW, it shall be placed on the property only in conformance with~~ meet the minimum setback requirements applicable to a principal structure and not more than one generator shall be within the same required setback or yard area.

b. The generator shall not, at any time or for any purpose, exceed the maximum decibels allowed at the property line as set forth in section 42-228.

c. If the generator exceeds an output capacity of 100 KW or the combined output capacity of multiple generators output capacity is greater than 100 exceeds 120 KW, it said generator(s) shall be subject to site plan review as defined in sections 134-326-134-330, and If any individual generator output capacity exceeds 100 KW it shall be housed in an enclosed building with landscaping as approved by the architectural commission or landmarks preservation commission, whichever is appropriate applicable.

d. ~~If the generator is greater than exceeds 60KW and is 100KW or less, and is visible from a street or public way, it shall be screened from view at the street and from the neighboring properties by a concrete block masonry finished wing wall (three-sided wall), at least four feet high or the same height as the generator (including the height of the exhaust muffler); whichever is greater. An adjacent property owner's side or rear concrete wall that completely screens the generator from the neighbor adjacent to said generator can count towards screening provided that the wall meets the height requirement to screen the generator and the applicant enters into a recorded agreement with the town to construct said wall as provided for in the Code to meet the screening requirement should the neighbor remove their wall.~~

e. ~~If the generator is 60KW or less and is visible from a street or public way, its location shall be subject to approval by the architectural commission or landmarks preservation commission, as applicable. Intervening landscape material shall not be considered when determining a generator's visibility.~~

f. The generator'(s) exhaust is shall, as much as practically feasible, be vented upwards or directed away from neighboring properties.

g. The generator(s) shall be used only during periods of power outages, periods of power reductions resulting from the exercise of utility load control programs or for periodic testing and necessary maintenance operation and shall not be used to sell power back to a power company.

h. The generator(s) shall be operated for routine testing and maintenance purposes not more than one time in any seven-day period and no test shall exceed 30 minutes. Testing of

emergency generators is permitted Monday through Thursday only (excluding holidays), between the hours of 11:00 a.m. and 12:00 p.m. or 2:00 pm. and 3:00 p.m.

i. Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted only between the hours of 10:00 a.m. and 5:00 p.m. Monday through Saturday, excluding holidays.

j. Generators ~~are~~ shall not be permitted on the roof of a building.

(3) Notwithstanding subsection (a), the director or designee may grant a waiver allowing a one generator with an output capability in excess of 60KW to be located within a required side or rear yard setback, provided the applicant submits to the town a site plan and evidence or testimony substantiating each of the following conditions:

a. The output of a 60 KW or less generator is incapable of providing enough electricity for the basic necessity of occupying a building and/or protecting interiors or possessions in a building from the damaging effects of prolonged loss of power.

b. The proposed location is not merely for the convenience or preference of the applicant, but that there is no other location outside of the required setbacks that will provide for safe placement of the generator.

c. The proposed location represents the minimum intrusion into the required setback(s) necessary to safely accommodate the generator.

(4) If an administrative waiver is not granted pursuant to subsection (c) the applicant may appeal the administrative decision to the town council pursuant to sections 134-131—134-145.

~~In addition, swimming pool pumps and filters shall be allowed in a required side or rear yard provided said equipment is placed no closer than five feet from the side or rear property line and is enclosed in a pump house not exceeding a height of four feet. However, any lot that fronts on two or more streets shall be allowed to place one swimming pool filter and pump in a required street side and/or street rear yard setback provided that said swimming pool filter and pump, in combination with a pool heater and/or air conditioning unit does not exceed three pieces of said equipment; is set back a minimum of 25 from the street side or street rear property line; and, is screened from view from the neighboring property owner by a five-foot high wall and from the street by a minimum five foot high wall and three-foot high hedge.~~

### **Section 3. Severability.**

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

### **Section 4. Repeal of Ordinances in Conflict.**

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

**Section 5. Codification.**

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

**Section 6. Effective Date.**

This Ordinance shall take effect thirty-one days after its adoption, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 13<sup>th</sup> day of November, 2020, second reading and final adoption on this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Gail L. Coniglio, Mayor

\_\_\_\_\_  
Margret A. Zeidman, Town Council President

\_\_\_\_\_  
Bobbie Lindsay, Council President Pro Tem

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Julie Araskog, Town Council Member

ATTEST:

\_\_\_\_\_  
Danielle H. Moore, Town Council Member

\_\_\_\_\_  
Queenester Nieves, Town Clerk

\_\_\_\_\_  
Lewis S.W. Crampton, Town Council Member