

RESOLUTION 37-20

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA, DECLARING THE INTENTION OF THE CITY TO CONSIDER ADOPTION OF AN ORDINANCE AMENDING THE CITY CODE RELATING TO THE REGULATION OF APPURTENANCES; INVOKING THE PENDING ORDINANCE DOCTRINE; PROVIDING THAT FROM JANUARY 16, 2020 AND DURING THE PENDENCY OF CONSIDERATION, THE CITY WILL CONTINUE TO DEFER THE PROCESSING AND APPROVAL OF ALL APPLICATIONS FOR APPURTENANCES INCONSISTENT WITH THE CODE OF ORDINANCES; DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO ADOPT SUCH ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, this Resolution is enacted pursuant to the home rule powers of the City Commission of the City of Delray Beach, Florida (“City”) as set forth in Article VIII, Section 2 of the Constitution of the State of Florida, Chapter 166, *Florida Statutes* and the City Charter; and

WHEREAS, the City is responsible for the protection of the health, safety and welfare of its businesses, residents, and visitors; and

WHEREAS, in light of a recent increase in the number of applications submitted to the City proposing to place appurtenances providing rooftop terrace access above the maximum height limitations of single family, duplex, and multi-family residences within the Single Family Residential and Medium Density Residential zoning districts, City staff desires to evaluate and make recommendations for regulations to the City Commission; and

WHEREAS, the City has been actively engaged in the process of undertaking a revision and update of the existing Code of Ordinances with respect to appurtenances and desires additional time to prepare a revision to its Code; and

WHEREAS, the City Commission finds and declares a need to temporarily suspend the approval or denial of applications related to appurtenances providing rooftop terrace access placed above the maximum height limitations of single family, duplex, and multi-family residences within the Single Family and Medium Density Residential zoning districts in order to allow the development of revisions to the current regulations pertaining to same; and

WHEREAS, the City wishes to definitively place all parties on notice that it is considering amending the City Code regulating the aforementioned appurtenances and all parties are hereby placed on notice that the City is considering the adoption of ordinances with respect to this subject matter and that this subject matter should be considered pursuant to the pending legislation doctrine.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF

DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. The City Commission of the City of Delray Beach hereby declares its intention to consider adoption of an ordinance amending the City Code relating to the regulation of appurtenances providing rooftop terrace access placed above the maximum height limitations of single family, duplex, and multi-family residences within the Single-Family and Medium Density Residential zoning districts.

Section 3. Pursuant to the pending legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA 1980), all persons and entities that plan to submit application to the City for consideration of a site plan containing an appurtenance providing rooftop terrace access placed above the maximum height limitations of a single family, duplex, or multi-family residence within the Single Family and Medium Density Residential zoning districts that:

- (a) The City is considering the adoptions of regulations relating to such use;
- (b) The regulations are considered pending; and
- (c) Any reliance upon current regulations or expenditure of funds or efforts in reliance on current regulations, until the regulations are considered by the City Commission and adopted and effective, or determined that they will not be adopted, is not reasonable and is at the risk of the applicant.

Section 4. City staff, after January 16, 2020, shall defer the processing of applications with respect to appurtenances placed above the roof level of a single family, duplex, or multi-family residence within the Single Family and Medium Density Residential zoning districts pending the passage of revisions to the City Code regarding such use, except as follows:

- (1) Such deferral in processing applications is temporary and shall automatically dissolve upon the passage of one hundred eighty (180) days from the effective date of this Resolution, or until new regulations for appurtenances are adopted by the City Commission, whichever occurs first.

Section 5. The City Clerk is hereby directed to publish a Notice of Intention to consider adoption of an ordinance in a newspaper of general circulation in the City.

Section 6. The provisions of this Resolution are declared to be severable, and if any sentence, section, clause or phrase of this resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Resolution, but they shall remain in effect it being the legislative intent that this resolution shall stand notwithstanding the invalidity of any part.

Section 7. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED in regular session on this _____ day _____, 2020.

ATTEST:

Katerri Johnson, City Clerk

MAYOR

Approved as to Form and Legal Sufficiency:

Lynn Gelin, City Attorney