



## Cover Memorandum/Staff Report

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**File #:** 24-847

**Agenda Date:** 7/9/2024

**Item #:** 8.A.

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**TO:** Mayor and Commissioners  
**FROM:** Anthea Gianniotas, AICP, Development Services Director  
**THROUGH:** Terrence R. Moore, ICMA-CM  
**DATE:** July 9, 2024

ORDINANCE NO. 13-24: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, BY AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.3, "DISTRICT REGULATIONS, GENERAL PROVISIONS," SECTION 4.3.4, "BASE DISTRICT DEVELOPMENT STANDARDS," SUBSECTION (H), "SETBACKS," BY AMENDING SUBSECTION (4), "STRUCTURES ALLOWED IN SETBACKS," TO MODIFY THE STRUCTURES AND BUILDING FEATURES PERMITTED WITHIN REQUIRED BUILDING SETBACKS; AMENDING CHAPTER 4, "ZONING REGULATIONS," ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.15, "SWIMMING POOL, WHIRLPOOLS, AND SPAS," FOR CONSISTENCY WITH OTHER EDITS; AND AMENDING APPENDIX A, "DEFINITIONS," TO ADD A DEFINITION FOR "BAY WINDOW;" PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE. (SECOND READING/PUBLIC HEARING)

### **Recommended Action:**

Consider Ordinance No. 13-24, a City-initiated request to amend and update Section 4.3.4(H), "Setbacks," Section 4.6.15(G), "Yard Encroachment," and Appendix A, "Definitions," of the Land Development Regulations (LDR) relative to building design elements and site improvements allowed in building setbacks.

### **Background:**

On January 16, 2024, a zoning in progress was adopted via Resolution No. 38-24 to halt approvals of balconies that encroach into building setbacks. The Resolution recognizes "zoning in progress" with respect to the preparation and review of proposed amendments to the City's Land Development Regulations (LDR) to develop regulations governing the encroachment of balconies into the required building setbacks. The Resolution adopts the pending ordinance doctrine and Florida law as applied to the City's review of zoning regulations related to requests to approve balcony encroachment in building setbacks. During the zoning in progress period, the City is deferring the acceptance and processing of applications for these requests.

The current LDR has a broad list of items that can be placed in setback areas. The regulations are detailed for some items, but do not have any limitation on placement (for example, barbecue pits are limited in size, but apparently could be placed on the property line). The LDR is silent on balcony encroachment into required building setbacks. The review of balconies and similar elements that encroach into setbacks relies on a decades-old administrative interpretation that equates the balconies with "house eaves," which are allowed to encroach up to three feet into the building

setback.

Ordinance No. 13-24 amends regulations governing balconies and updates other related items within the relevant and related subsections. The proposed amendment distinguishes between attached elements (like balconies) and freestanding elements (like sculptures) and recognizes differences in setbacks (front, side, rear, etc.). The full text of the proposed ordinance, as well as a complete discussion of the background and summary of changes is provided in the attached Planning and Zoning Board staff report.

The Planning and Zoning Board heard Ordinance No. 13-24 at its March 18, 2024, meeting as a discussion-only item, and made recommendations on the degree of encroachment to the property line that should be allowed for certain site improvements. At its May 20, 2024 meeting, the Board voted 4-1 to recommend approval of the revised proposed ordinance. Ms. Morrison, the Board Chairperson, dissented over concerns with the over-development of residential lots.

**City Attorney Review:**

Ordinance No. 13-24 is approved as to form and legal sufficiency.

**Funding Source/Financial Impact:**

Not applicable.

**Timing of Request:**

Ordinance No. 13-24 will be effective immediately upon adoption at second reading.