

ORDINANCE NO. 54-20

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 FOUR, "ZONING REGULATIONS," ARTICLE 4.3, "DISTRICT REGULATIONS, GENERAL PROVISIONS," SECTION 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES," TO ADD SUBSECTION 4.3.3(RR), "ROOFTOP USE," TO PROVIDE REGULATIONS FOR ROOFTOP USES; AMENDING ARTICLE 4.3.4, "BASE DISTRICT DEVELOPMENT STANDARDS," SUBSECTION 4.3.4(J), "HEIGHT" TO UPDATE HEIGHT EXCEPTIONS, AND AMENDING APPENDIX A, "DEFINITIONS," TO AMEND THE DEFINITION OF ARCHITECTURAL FEATURES, AND PARAPET AND TO ADD A DEFINITION FOR FREE-STANDING FEATURES, HABITABLE STRUCTURE, ROOFTOP APPURTENANCES AND ROOFTOP TERRACE; AND PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 16, 2020, the Delray Beach City Commission ("City Commission") approved by majority vote Resolution No. 37-20, to consider amendments to the City's Code of Ordinances relating to appurtenances that provide rooftop terrace access above the maximum height limitations for single family, duplex, and multi-family residences within the Single Family Residential and Medium Density residential zoning districts; and

WHEREAS, Resolution No. 37-20 invoked the pending ordinance doctrine with respect to amendments to the Code of Ordinances for the City of Delray Beach and provided that, from the date of adoption of the Resolution and during the pendency of the City's consideration of amendments to the Code, the City would defer the acceptance and processing of applications, permits, or any other approvals that are related to appurtenances, which provide 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 until July 14, 2020; and

WHEREAS, the City Commission extended the period established by Resolution No. 37-20 by further Resolution No. 102-20 until January 10, 2021, to provide additional time for Staff to prepare amendments to the Land Development Regulations; and

WHEREAS, the provisions governing the placement or construction of structures and features on a building or site, including rooftop appurtenances, have been revised to provide clear requirements for future proposals; and,

WHEREAS, the adopted provisions governing rooftop uses are introduced to guide the use of such areas within residential and nonresidential zoning districts. These provisions aim to maintain building scale, privacy, and character of residential and lower intensity mixed-use zoning districts. Correspondingly, the provisions governing rooftop uses in commercial and mixed-use zoning districts are intended to improve the utilization of rooftop areas for uses other than utilitarian uses and to address the current need for additional outdoor amenity space options.

WHEREAS, the Historic Preservation Board reviewed the proposed amendments on November 4, 2020 and voted 7 to 0 to recommend approval of the proposed amendments to the Planning and Zoning Board; and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, reviewed the proposed text amendment to the Land Development Regulations at a public hearing on November 16, 2020 and voted _ to _ to recommend that the proposed text amendments be _____, finding that the request thereof is _____ with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations; and

WHEREAS, the City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth the Land Development Regulations, and is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 4.3.3, “Special requirements for specific uses,” Subsection (RR) of the Land Development Regulations of the City of Delray Beach Code of Ordinances be and the same is hereby amended as follows:

(RR) Rooftop uses:

- (1) **Purpose and intent:** These regulations are intended to guide the use of rooftop terraces and amenities in residential and non-residential zoning districts to add aesthetic value to buildings while providing privacy and maintaining the scale and character of the surrounding area. The use of rooftops in mixed-use and commercial zoning districts is encouraged to create unique gathering spaces and to aid in the reduction of the urban heat index.
- (2) **Allowable rooftop uses.**
 - (a) **Rooftop uses in OSSHAD, RO, and all residential zoning districts.** Rooftop uses are limited to open air terraces and recreational amenities, including outdoor kitchen areas, swimming pools, hot tubs, and spas, and shall not be located higher than 26 feet. Rooftops located higher than 26 feet may not have rooftop uses and may only be accessed for maintenance and repair; elevator access is not allowed.
 - (b) **Rooftop uses in non-residential and mixed-use zoning districts.** Rooftop uses in OSSHAD and RO shall be regulated by Section 4.3.3(RR)(2)(a). Central Business District (CBD) rooftop uses shall be regulated by Section 4.4.13(C). For all other nonresidential and mixed-use zoning districts, rooftops may be used for the following uses, when allowed in the zoning district, subject to the height limitations in Section 4.3.4(J):
 1. Open air terraces.

2. Exercise and fitness activities (both as principal and accessory uses).
3. Swimming pools, hot tubs, and spas are only permitted as amenities to hotel, motel, residential-type inn, or residential buildings.
4. Restroom facilities located above the maximum building height require approval pursuant to Section 4.3.4(J)(3).
5. Outdoor dining associated with a restaurant
6. Retail display
7. Rooftop gardens
8. Urban agriculture

(3) **General Design Standards for rooftop terraces:** All rooftop terraces shall meet the following:

- (a) No features or structures shall extend beyond the maximum building height, except those allowed per Section 4.3.4(J)(3) “Exceptions to zoning district height limitations”, or as specifically increased by the zoning district regulations.
- (b) Parking must be provided for principal uses located on a rooftop terrace (i.e, restaurant seating). Parking is not required for amenities that are ancillary to the principal use (i.e, a swimming pool for a condominium).
- (c) Rooftop terraces containing more than 100 square feet located below the maximum building height shall provide landscaping over a minimum of 10 percent of the rooftop terrace area. Rooftop terraces located above the maximum building height shall be landscaped over a minimum of 20 percent of the rooftop terrace area. Landscaping shall consist of trees, shrubs, ground cover, and vines.
- (d) Rooftop terraces shall be hardscaped with materials that reduce the urban heat island effect such as, but not limited to, cool/reflective roofs, patterned concrete, pavers, or wood decking. Open-air shade elements, such as awnings, trellises, shade sails, etc. are allowed up to 10 feet in height subject to the setback requirements of the zoning district.
- (e) Railings and parapets shall be provided as follows:
 1. The full perimeter of rooftop terrace shall be surrounded by a parapet or railing at a minimum height of four feet that is consistent with the architectural style.
 2. For non-residentially zoned properties adjoining or separated by an alley from OSSHAD, RO, or a residential zoning district, rooftop terraces larger than 100 square feet located at any story or height shall ensure privacy and mitigate

potential impacts to the adjoining property through at least one of the following:

- a. a solid parapet wall or screening, greater than 75 percent opaque and minimum of six feet in height, along the adjoining perimeter; or
 - b. a setback of at least 20 feet from the property line(s) with a railing/parapet of at least four feet in height, along the adjoining perimeter.
- (f) Restroom facilities located above the maximum building height shall be setback an additional 10 feet on all sides.
- (g) Lighting standards of Section 4.6.8 apply. All rooftop lighting shall be full cutoff luminaries to minimize spillover on adjacent properties. Light poles shall not extend beyond the maximum building height limit.
- (h) Relief to the General design standards for rooftop terraces is subject to review and action by the City Commission through the waiver process per, LDR Section 2.4.7(B).

Section 3. That Section 4.3.4, “Base district development standards,” Subsection (J) “Height”, of the Land Development Regulations of the City of Delray Beach Code of Ordinances be and the same is hereby amended as follows:

- (1) – (2) herein remain in full force and effect.
- (3) **Exceptions to zoning district height limitations.** The placement or construction of building features and accessory structures shall not extend above the zoning district height limitations, except as listed in Table 4.3.4(J)(3), Height Exceptions, unless otherwise increased by the specific zoning district regulations. Table 4.3.4(J)(3) identifies the type of feature or structure, the maximum height exception allowed, and the maximum roof area.
- (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 64 feet unless specifically approved by action of the City Commission. Height exceptions for structures and features that are “Allowed” in Table 4.3.4(J)(3) may be approved administratively if not associated with a request that requires board action.

- (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. Height exceptions for structures and features that are “Allowed” in Table 4.3.4(J)(3) that are associated with a request that requires board action, do not require additional findings by the approving body.
- (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 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 72 inches in height, project no more than 24 inches beyond the face of the building, project no more than 12 feet into the flat roof area of the building nor cover more than 50 percent of the flat roof area of the building. Height exceptions for structures and features that are “Subject to Action by the Approving Body” in Table 4.3.4(J)(3), require board action by the approving body and are subject to the following procedure:
1. In addition to the Submission Requirements in Section 2.4.3, documentation must be provided demonstrating the requested height exception is the minimum necessary to meet the purpose of the structure or feature.
 2. The approving body shall make findings that the granting of the height exception meets the standards in Section 4.6.18(E), and Section 4.5.1(E), as applicable.
- (d) For detached single family and duplex residences (not subject to review by the Historic Preservation Board), height exceptions for structures and features that require action by an approving body shall be reviewed by the Site Plan Review and Appearance Board following the procedure in Section 4.3.4(3)(c).
- (e) Requests to exceed the maximum limitations in Table 4.3.4(J)(3) require approval by the City Commission through the waiver process in LDR Section 2.4.7(B) with the additional findings of 4.6.18(E) and 4.5.1 (E), as applicable.

TABLE 4.3.4(J)(3) HEIGHT EXCEPTIONS		
ALLOWED		
Structure or Feature¹	Maximum Height	Maximum Roof Area
<u>Architectural features</u>	<u>20% above the building height or 64 feet, whichever is less</u>	<u>N/A</u>
<u>Free-standing features in residential zoning districts</u>	<u>20% above the building height or 40 feet, whichever is less</u>	<u>N/A</u>
<u>Free-standing features in non-residential zoning districts</u>	<u>20% above the building height or 64 feet, whichever is less</u>	<u>N/A</u>
<u>Rooftop appurtenances</u>	<u>5 feet</u>	<u>10%</u>
<u>Stair tower²</u>	<u>8 feet</u>	<u>10% or minimum dimensions required by the Florida Building Code, whichever is greater</u>
<u>Parapet wall or roof screening</u>	<u>6 feet</u>	<u>N/A</u>
<u>Sloped parapet wall</u>	<u>6 feet in height, 3 feet projection beyond face of building, and 12 feet projection into the roof surface</u>	<u>50%</u>
SUBJECT TO ACTION BY THE APPROVING BODY		
Structure or Feature¹	Maximum Dimensions	Maximum roof area
<u>Parapet wall (flat or sloped) or roof screening</u>	<u>more than 6 feet and up to 10 feet in height</u>	<u>N/A</u>
<u>Restroom facilities in a mixed use or nonresidential district</u>	<u>Up to 10 feet in height</u>	<u>10% or minimum dimensions required by the Florida Building Code</u>
<u>Stair tower, elevator, and vestibule in nonresidential zoning districts²</u>	<u>Up to 10 feet in height</u>	<u>10% or minimum dimensions required by the Florida Building Code, whichever is greater</u>
¹ Refer to Appendix A for definitions		
² See Section 4.3.3(RR) for rooftop uses		

(4) – (5) herein remain in full force and effect

Section 4. That Appendix A, “Definitions,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

ARCHITECTURAL FEATURES: ~~These include:~~ Any prominent element, including religious spires, steeples, belfries, cupolas, domes, monuments, and widow's walk but are not limited to the or distinctive characteristic related to architectural style, mass, general design, and general arrangement of the exterior of a building or structure, including the type, style, or color of roofs, windows, and doors, and appurtenances. Architectural features ~~will~~ include interior architectural features where the interior has been given historic designation.

FREE-STANDING FEATURES: Structures or equipment, such as antennas, satellite dish, industrial conveyors, flag poles, radio and television towers, silos, excluding signs, that are not intended for human occupancy and are placed or constructed on a property, parcel, or site without being attached to a building.

HABITABLE STRUCTURE: A room, space or structure occupied or designed to be occupied by one or more persons for residential purposes or for conducting a commercial or industrial business.

PARAPET: ~~A false front or~~ wall extension above the roof line designed to screen flat roofs and rooftop appurtenances.

ROOFTOP APPURTENANCES: Structures, equipment, or other features, such as chimneys, elevator equipment, air-conditioning units, spiral stairs, tanks, ventilating fans, skylights, flagpoles, photovoltaic cells (solar panels), wireless masts, television antennas required to operate and maintain the building and not intended for human occupancy.

ROOFTOP TERRACE: An open space constructed on a roof that provides recreational amenities for building occupants and accommodates rooftop uses.

Section 5. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 6. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 7. Specific authority is hereby given to codify this Ordinance.

Section 8. That this Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the ____ day of _____, 2021.

ATTEST:

Shelly Petrolia, Mayor

Katerri Johnson, City Clerk

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney