

ORDINANCE NO. 02-21

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 4.3.3, "SPECIAL REQUIREMENTS FOR SPECIFIC USES," TO ADD SUBSECTION 4.3.3(RR), "ROOFTOP USE," TO PROVIDE REGULATIONS FOR ROOFTOP USES; AMENDING SECTION 4.3.4, "BASE DISTRICT DEVELOPMENT STANDARDS," SUBSECTION 4.3.4(J), "HEIGHT," TO UPDATE HEIGHT EXCEPTIONS; AMENDING ARTICLE 4.6, "SUPPLEMENTAL DISTRICT REGULATIONS," SECTION 4.6.18, "ARCHITECTURAL ELEVATIONS AND AESTHETICS," SUBSECTION 4.6.18(B), "BUILDING AND STRUCTURE REQUIREMENTS," TO PROVIDE REGULATIONS FOR THE SCREENING OF FLAT ROOFS AND APPURTENANCES; 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; PROVIDING A CONFLICTS CLAUSE AND 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, declaring its intention to consider amendments to the City's Code of Ordinances relating to the regulation of appurtenances providing 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, on June 16, 2020, the City Commission approved Resolution 102-20, extending the period

established by Resolution No. 37-20 until January 10, 2021. On December 8, 2020, the City Commission approved Resolution 207-20, further extending the period established by Resolution No. 37-20 until March 10, 2021. The extensions were approved 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, will be revised to provide clearer requirements for future proposals; and

WHEREAS, the proposed 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; and

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 7 to 0 to recommend the proposed text amendments be approved, finding the request thereof is consistent 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,” of the Land Development Regulations of the City of Delray Beach Code of Ordinances be and the same is hereby amended to add Subsection 4.3.3(RR), “Rooftop uses,” as follows:

Sec. 4.3.3 – Special requirements for specific uses.

By nature of characteristics unique to the following uses, such use may be established only in compliance with these special requirements. These requirements are in addition to those established elsewhere in these Regulations. Description of each use in this Section shall be of its common meaning or as pursuant to the Definitions Section of these Regulations.

(A) – (R) (These subsections shall remain in full force and effect as adopted.)

(RR) Rooftop uses:

- (1) **Purpose and intent:** These regulations are intended to provide guidance for the use of rooftop terraces in residential and non-residential zoning districts while protecting 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 all residential zoning districts.** Rooftop uses are limited to open air terraces and amenities that are ancillary or accessory to the principal use, including but not limited to outdoor kitchen areas, swimming pools, and spas, which shall not be located higher than 26 feet. Rooftops located higher than 26 feet shall 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.** Central Business District (CBD) rooftop terraces shall be regulated by Section 4.4.13. Rooftops in OSSHAD and RO located higher than 26 feet shall not have rooftop uses, may only be accessed for maintenance and repair, and elevator access is not allowed. Rooftop uses and amenities that are ancillary or accessory to the principal use in OSSHAD and RO shall not be located higher than 26 feet. For all other nonresidential 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 and hot tubs 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 uses and terraces:** All rooftop uses and 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(I)(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 or accessory to the principal use (i.e., a swimming pool for a condominium).
- (c) Rooftop use areas containing more than 100 square feet located below the maximum building height shall provide landscaping over a minimum of 10 percent of the rooftop use area. Rooftop uses located above the maximum building height shall be landscaped over a minimum of 20 percent of the rooftop use area. Landscaping shall consist of trees, shrubs, ground cover, and vines.
- (d) Rooftop use areas 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 use area 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-residential rooftops uses adjoining or separated by an alley from OSSHAD, RO, or a residential zoning district, rooftop uses and 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 or screening, greater than 75 percent opaque and

- b. minimum of six feet in height, along the adjoining perimeter; or 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 allowed to be 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 uses and terraces is subject to review and action by the City Commission through the waiver process per, LDR Section 2.4.7(B).

(S) – (ZZZZ) (These subsections shall remain in full force and effect as adopted.)

Section 3. That Section 4.3.4, “Base district development standards,” Subsection 4.3.4(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:

(J) ***Height.***

(1) – (2) (These subsections shall remain in full force and effect as adopted.)

~~(3)~~ ***Exceptions to district height limitations.***

- ~~(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.~~
- ~~(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.~~
- ~~(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.~~

(3) **Exceptions to the zoning district height.** The height limitations for freestanding and architectural features, rooftop appurtenances, parapets, and certain building structures constructed or placed above the roof are established in Table 4.3.4(I)(3), Height Exceptions, or in the specific zoning district regulations. Table 4.3.4(I)(3) identifies the maximum height and roof area allowed for each type. For the purposes of regulating exceptions to the zoning district height, references to residential zoning districts include the R-1, RO and OSSHAD. References to non-residential zoning districts include all other zoning districts, excluding the CBD (see Section 4.4.13).

(a) **Height exceptions allowed.** Exception types that are “Allowed” in Table 4.3.4(I)(3) may be approved administratively if not associated with a request that requires board action. Height exception types that are “Allowed” in Table 4.3.4(I)(3) and are associated with a request that requires board action, do not require additional findings by the approving body.

(b) **Height exceptions subject to action by the approving body.** Exception types that are “Subject to Action by the Approving Body” in Table 4.3.4(I)(3), require board action by the approving body and are subject to the following procedure:

1. Documentation supporting the requested height exception must be provided, such as, but not limited to, massing study, line of sight diagrams, architectural proportion analysis, or roof area calculations, and justification statement addressing the necessity of the request and the criteria for board action in Section 4.6.18(E).

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.

(c) For detached single family and duplex residences (not subject to review by the Historic Preservation Board), height exception requests that require action by an approving body shall be reviewed by the Site Plan Review and Appearance Board.

(d) Requests to exceed the maximum limitations in Table 4.3.4(I)(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		
Exception Type ¹	Maximum Height	Maximum Roof Area
Free-standing features in residential zoning districts	20% taller than the height of the building or 40 feet, whichever is less	=
Free-standing features in non- residential zoning	20% taller than the height of the building or 64 feet, whichever is less	
Rooftop appurtenances	4 feet	10%
Parapet or roof screening		=
Sloped parapet	4 feet in height, 3 feet projection beyond face of building, and 12 feet projection into the roof surface	50%
SUBJECT TO ACTION BY THE APPROVING BODY		
Exception Type ¹	Maximum Height	Maximum Roof Area
Architectural features in non-residential zoning districts	20% taller than the height of the building	=
Rooftop appurtenances in non-residential zoning	more than 4 feet and up to 10 feet	10%
Parapet (flat or sloped) or roof screening in non-residential zoning districts		-
Restroom facilities in nonresidential districts ²	10 feet above the height of the building	10% per type or the minimum required by the Florida Building Code, whichever is greater, and a maximum of 20% in total for two or more types combined.
Stair tower ²	8 feet	
Elevator and vestibule in nonresidential zoning districts ²	Up to 10 feet in height	

¹Refer to Appendix A for definitions

²See Section 4.3.3(RR) for rooftop uses

(4) – (5) (These subsections shall remain in full force and effect as adopted.)

Section 4. That Section 4.6.18, “Architectural elevations and aesthetics,” Subsection 4.6.18(B), “Building and structure requirements,” of the Land Development Regulations of the City of Delray Beach Code of Ordinances be and the same is hereby amended as follows:

(1) – (13) (These subsections shall remain in full force and effect as adopted.)

(14) Architectural features and building structures constructed or placed above the roof, such as but not limited to stair towers, restroom facilities, and elevator overruns, shall be incorporated into the overall building design and shall be consistent with the architectural style.

(15) Flat roofs shall be screened from the lateral view of adjacent properties by a parapet. New or replacement rooftop appurtenance, including mechanical equipment, shall be screened by a parapet, enclosure, or other method equal in height to the appurtenance. The screening must be integrated or compatible with the building architecture.

Section 5. That the following definitions in Appendix A, “Definitions,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same are hereby amended to read as follows:

ARCHITECTURAL FEATURES. ~~These include, but are not limited to the~~ Any prominent element, including but not limited to religious spires, steeples, belfries, cupolas, domes, monuments, and widow's walk 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. 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 and 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, and television antennas, necessary to operate and maintain the building and not intended for human occupancy and required to be placed on or extended above the roof.

ROOFTOP TERRACE. An open-air space on a roof that accommodates access and use by the building occupants.

Section 6. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 7. 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 8. Specific authority is hereby given to codify this Ordinance.

Section 9. This Ordinance shall become effective immediately upon its adoption on second and final reading.

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

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading: _____

Second Reading: _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney