

ORDINANCE NO. 23-21

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 7, "BUILDING REGULATIONS," ARTICLE 7.1, "BUILDING REGULATIONS," SECTION 7.1.7, "SEAWALLS" AND AMENDING ARTICLE 7.9, "DOCKS, DOLPHINS, FINGER PIERS, AND BOAT LIFTS," SECTION 7.9.5, "STANDARDS FOR APPROVAL," TO ESTABLISH REGULATIONS FOR THE CONSTRUCTION AND MAINTENANCE OF PUBLIC AND PRIVATE SEAWALLS; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations ("LDRs") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDRs from time to time; and

WHEREAS, Southeast Florida continues to experience extreme high tides ("King Tides"), substantially exceeding predicted high tides; and

WHEREAS, the City completed an "Intracoastal Waterway Water Level and Infrastructure Vulnerability Study" ("Study") in October 2018 which was presented to City Commission on April 9, 2019; and

WHEREAS, the Study determined properties with absent or low lying seawalls or seawalls in disrepair contribute to tidal waters flooding adjacent properties or public Rights-of-Way; and

WHEREAS, substantially impermeable seawalls and similar structures that meet a minimum height standard provide coastal resilience against existing tidal flooding and future sea level rise; and

WHEREAS, seawalls with defects or in disrepair contribute to tidal flooding on adjacent properties and public Rights-of-Way, but in the absence of seawall standards, effectuated repairs without an increase in elevation to the minimum recommended height will not provide adequate coastal resilience; and

WHEREAS, the City Commission directed staff to hold public meetings to obtain input prior to the adoption of seawall regulations; and

WHEREAS, the City held six public outreach meetings between November 2019 and March 2020 to present the findings of the Study and garner public input; and

WHEREAS, although Section 100.04 of the City's Code of Ordinances requires seawall maintenance, the LDRs do not specify minimum or maximum elevation limitations or design requirements for seawalls or similar structures; and

WHEREAS, the Study recommends the adoption of minimum and maximum elevations for seawalls to protect the health, safety, and welfare of life and property; and

WHEREAS, Coastal Management Element Policy CME 3.3.2 in the of the Comprehensive Plan specifically supports the adoption of new design criteria for both public and private seawalls throughout the City; and

WHEREAS, a maximum elevation standard for seawall construction reduces the potential for a substantial visual discontinuity with adjacent properties; and

WHEREAS, seawalls should be designed and constructed in a manner that does not create drainage issues for adjacent properties; and

WHEREAS, City staff recommended the minimum allowable seawall elevation of 4.2 feet NAVD88, providing significant protection from the predicted height of seasonal high tides and projected sea level rise to occur within the 30-year lifespan of a seawall constructed after adoption of this Ordinance; 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, considered this item at a public hearing on August 16, 2021; and voted 6 to 0 to recommend these proposed text amendments be approved, finding the request and approval 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 that Ordinance No. 23-21 is consistent with the Comprehensive Plan and meets the criteria set forth the Land Development Regulations.

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

Section 1. The recitations set forth above are incorporated herein.

Section 2. That Section 7.1.7, "Seawalls," of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

Sec. 7.1.7. – Seawalls.

(A) ~~**Permit required; approval.** In addition to the application procedures of Section 2.4.6, prior to the erection, construction, or alteration of any seawall or bulkhead, there shall first be submitted to the~~

~~Chief Building Official an application in the form prescribed by the City, containing detailed plans and specifications for the structure at the proposed site, together with a plot plan showing the location of the proposed structure or alteration in conjunction with adjoining lands, waters and channels. The above shall be prepared and sealed by a registered professional engineer registered in the State of Florida. In addition, approval from the applicable reviewing agencies is required, prior to issuance of a building permit. Application to these agencies is the responsibility of the applicant.~~

(A) **Purpose and intent.** The purpose of this section is to establish a consistent minimum elevation for tidal flood barriers that will:

- (1) Provide a standard for flood mitigation infrastructure that serves as a barrier to tidal flooding by accounting for water levels predicted under combined conditions of sea level rise, high tides, and high frequency storm surge through the year 2050; and
- (2) Ensure new shoreline structures and major shoreline improvements are designed for use as tidal flood barriers through application of consistent standards that account for future predicted tidal flood conditions and coastal water levels associated with sea level rise in accordance with current regional sea level rise projections.

(B) **Applicability.** This section applies to all new tidal flood barriers, to substantial repair or substantial rehabilitation of shorelines and shoreline structures, and the installation of any fixed infrastructure attached to tidal flood barriers (such as mooring or dock structures) on the Intracoastal Waterway.

(C) **Definitions.** For the purposes of this section, the following definitions apply:

- (1) **Mooring device.** A subset of mooring structures as defined herein including, but not limited to, boat davits, hoists, boat lifts and similar devices that are erected on or adjacent to a seawall or dock and upon which a vessel can be moored. A mooring device does not include docks, slips, seawall, or mooring pile.
- (2) **Mooring structure.** A dock, slip, seawall, boat davit, hoist, boat lift, mooring pile or similar structure attached to land more or less permanently to which a vessel can be moored.
- (3) **NGVD 29 of the National Geodetic Vertical Datum of 1929.** The vertical control datum established for vertical control surveying in the United States of America by the General Adjustment of 1929. The datum is used to measure elevation or altitude above, and depression or depth below, mean sea level (MSL).
- (4) **NAVD88 or the North American Vertical Datum.** The vertical control datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.

- (5) **Seawall.** Vertical or near vertical structures placed between an upland area and a waterway. For the purposes of this Section, rip rap is not considered a seawall.
- (6) **Rip rap.** A foundation of unconsolidated boulders, stone, concrete or similar materials placed on or near a shoreline to mitigate wave impacts and prevent erosion.
- (7) **Tidal flood barriers.** Any structure or shoreline feature including, but not limited to, banks, berms, seawalls, seawall caps, upland stem walls, or other infrastructure that impedes tidal waters from flowing onto adjacent property or public right-of-way, and located within or along a tidally influenced area. This definition is not meant to include rip-rap, derelict erosion control structures, or permeable earthen mounds that do not provide a substantially impermeable water barrier to tidal flooding.
- (8) **Tidally influenced areas.** The real property adjacent to, or affected by, a waterway with water level changes in response to the daily tide.

(D) **Requirements.**

- (1) **Elevations.** The maximum elevation of a seawall or dock is determined by the base flood elevation (BFE) for the property, as identified in the corresponding FEMA Flood Insurance Rate Map (FIRM). Property owners choosing to construct seawalls at less than 5.0 feet NAVD88 must design and construct seawalls to accommodate a future seawall height extension up to a minimum elevation of 5.0 feet NAVD88. The minimum and maximum seawall height requirements are identified in Table 7.1.7(D), Seawall Height Requirements:

<u>Table 7.1.7(D)</u> <u>Seawall Height Requirements</u>		
<u>Property's FEMA Flood Insurance Rate Map Location</u>	<u>Minimum (NAVD88)</u>	<u>Maximum Allowable Seawall or Dock Elevation</u>
<u>In a floodplain with a BFE greater than or equal to 5.0 feet NAVD88</u>	<u>4.2 feet NAVD88</u>	<u>Base flood elevation of the property</u>
<u>In a floodplain with a BFE equal to 4.0 feet NAVD88</u>		<u>5 feet NAVD88</u>
<u>In an X zone, not in a floodplain</u>		<u>Meet the definition of grade as determined by Section 4.3.4(J)(2)</u>

- (2) **Design.** Seawalls must be designed and built in a substantially impermeable manner to prevent tidal waters from flowing through the seawall while still allowing for the release of hydrostatic pressure from the upland direction.
- (3) **Attached structures.** The height of structures attached to a seawall shall not exceed the elevation permitted by Section 7.9.5.
- (4) **Seawall maintenance.** All property owners must maintain their seawalls in good repair. A seawall is presumed to be in disrepair if it allows for upland erosion, transfer of material through the seawall, or allows tidal waters to flow unimpeded through the seawall to adjacent properties or public right-of-way.
- (5) **Substandard seawalls.** Property owners with seawalls below the minimum elevation, or permeable erosion barriers such as rip rap, or a land/water interface of another nature shall not allow tidal waters entering their property to impact adjacent properties, public infrastructure, or public rights-of-way. Seawalls are subject to the provisions of Chapter 100, Nuisances, Section 100.04, Seawalls, of the Code of Ordinances.
- (6) **Seawall improvements.** Seawall improvements constituting substantial repair at the time of permit application shall meet the minimum elevation and consider the design recommendations in Section 7.1.7(D) for the continuous seawall along the property's entire shoreline. For the purposes of this section, the substantial repair threshold shall mean the following:
 - (1) Any improvement to the seawall of more than 50 percent of the length of the structure, including both the seawall and cap; or
 - (2) Any improvement to the seawall that results in an elevation change along more than 50 percent of the length of the structure, including both the seawall and cap.
- (7) **Required disclosure in contracts for sale of real estate.** In any contract for the sale of real estate located in tidally influenced areas of the City of Delray Beach executed after February 1, 2022, the seller shall include in the contract, or a rider to the contract, the following disclosure in not less than 14-point, capitalized, bold-faced type:

THIS REAL ESTATE IS LOCATED IN A TIDALLY INFLUENCED AREA. THE OWNER MAY BE REQUIRED BY COUNTY OR MUNICIPAL ORDINANCE TO MEET MINIMUM TIDAL FLOOD BARRIER ELEVATION STANDARDS DURING CONSTRUCTION OR SUBSTANTIAL REPAIR OR SUBSTANTIAL REHABILITATION TO THE PROPERTY OR THE SEAWALLS, BANKS, BERMS,

**AND SIMILAR INFRASTRUCTURE OR WHEN REQUIRED TO ABATE
NUISANCE FLOODING.**

(E) **Approval procedures.** The construction of a new seawall, or alteration of an existing seawall requires the issuance of a building permit. In addition to the requirements of Section 2.4.6, the permit application is subject to the following:

- (1) A survey showing the location and elevation of the seawall in conjunction with adjoining lands, waters and channels;
- (2) Plans and specifications prepared and sealed by a professional engineer registered in the State of Florida; and
- (3) Approval from the applicable reviewing agencies prior to issuance of a building permit. Application to these agencies is the responsibility of the applicant.

Section 3. That Section 7.9.5, “Standards for Approval,” of the Land Development Regulations of the City of Delray Beach, Florida, be and the same is hereby amended to read as follows:

Sec. 7.9.5. – Standards for Approval.

A dock may be permitted subject to the following conditions:

- (A) A dock projection into a waterway, exclusive of dock pilings, shall be designed by one of the following methods:
 - (1)~~i.~~ If no existing seawall: Five feet as measured from the water's edge at mean low tide.
 - (2)~~ii.~~ If existing or proposed seawall without batter piles: Five feet as measured from the face of the seawall.
 - (3)~~iii.~~ If existing or proposed seawall with or without a seawall cap with batter piles: Seven feet as measured from the face of the seawall.
- (B) ~~When plot frontage exists along a body of water, only one~~ Only one fixed dock is permitted per lot. The dock shall not extend any closer than ten feet to the property line of adjacent property or the distance established for the side yard setback, whichever is greater.
- (C) At least one ladder extending from the dock surface to two feet below the mean low waterline shall be provided for each dock.

(D) Floating docks shall be allowed and must be permitted and permanently attached to a fixed dock, finger pier, mooring pilings, or seawall.

(E) Docks attached to a seawall may be constructed at an elevation less than the elevation of the seawall, but shall not exceed the maximum seawall elevation in Section 7.1.7.

Section 4. That all ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 5. Specific authority is hereby given to codify this Ordinance.

Section 6. 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 hereof as a whole or part thereof other than the part declared to be invalid.

Section 7. 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 14th day of January, 2022.

ATTEST:

Katerri Johnson
Katerri Johnson, City Clerk

Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin
Lynn Gelin, City Attorney

First Reading 9/23/2021

Second Reading 1/11/2022