

## ORDINANCE 15-19

AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA CLARIFYING AND AMENDING ITS REGULATIONS FOR RECREATIONAL WATER FEATURES ON PLATTED LOTS OF RECORD OR PARCELS IN THE R-2, R-3 AND R-4 ZONING DISTRICTS BY AMENDING ARTICLE I, SECTION 1.4, DEFINITIONS BY ADDING NEW DEFINITIONS FOR THE TERMS, CABANA, DIVING BOARD/SPRING BOARD, DIVING PLATFORM/DECK, GROTTTO/GROTTO POOL, SPLIT LINE, AND WATERFALL; AMENDING ARTICLE IV, SECTION 4.2 DEFINITION OF NONCONFORMITIES BY ADDING A NEW SECTION 4.2.G APPLICABLE TO EXISTING RECREATIONAL WATER FEATURES IN THE R-2, R-3 AND R-4 ZONING DISTRICTS; AMENDING ARTICLE VI, SUBSECTIONS 6.6.C.2.a (2)(a), 6.6.D.2.a(2)(a) AND 6.6.E.2.a(2)(a) BY ADDING CROSS REFERENCES TO SECTION 6.8.U; AMENDING ARTICLE VI, SECTION 6.8.L BY REQUIRING A FRONT YARD ALONG EACH STREET UPON WHICH A LOT OR PARCEL FRONTS; AMENDING ARTICLE VI, SECTION 6.8.U BY ADDING NEW SUBSECTIONS U.1.a.(1) AND (2) PROHIBITING THE LOCATION OF RECREATIONAL WATER FEATURES IN ANY REQUIRED YARD, AND REQUIRING THAT RECREATIONAL WATER FEATURES LOCATED ON A DUPLEX LOT OF RECORD OR PARCEL MUST BE SET BACK NOT LESS THAN TEN FEET FROM THE SPLIT LINE OR LINE ESTABLISHED IN A CONDOMINIUM PLAT SEPARATING CONDOMINIUM UNITS AS RECORDED IN THE PUBLIC RECORDS OF MANATEE COUNTY; AMENDING ARTICLE VI, SECTION 6.8.U BY ADDING A NEW SUBSECTION 9 LIMITING THE NUMBER, TYPE AND SIZE OF RECREATIONAL WATER FEATURES ALLOWABLE ON A PLATTED LOT OF RECORD OR PARCEL AS DEFINED IN THE LDC; AMENDING ARTICLE VI, SECTION 6.8.U BY ADDING A NEW SUBSECTION 10 PROHIBITING DIVING BOARD/SPRING BOARDS, DIVING PLATFORM/DECKS, GROTTTO/GROTTO POOLS, WATERFALLS AND FOUNTAINS ANCILLARY TO ANY RECREATIONAL WATER FEATURE IN THE R-2, R-3 AND R-4 ZONING DISTRICTS; AMENDING ARTICLE VI, SECTION 6.8.U BY ADDING NEW SUBSECTION 11 REQUIRING THAT THE OWNER OF A DUPLEX UNIT LOCATED IN THE R-2, R-3 OR R-4 ZONING DISTRICTS AND SUBJECT TO A PARTY WALL AGREEMENT PROVIDE PROOF OF ITS LEGAL NONCONFORMING STATUS PRIOR TO RECEIVING APPROVAL FOR ANY RECREATIONAL WATER FEATURE; AMENDING ARTICLE VI, SECTION 6.8.U BY ADDING A NEW SUBSECTION 12 REQUIRING THAT THE OWNER OF A DUPLEX UNIT LOCATED IN THE R-2, R-3 OR R-4 ZONING DISTRICTS AND UNDER THE CONDOMINIUM FORM OF OWNERSHIP PROVIDE PROOF THAT THE CONDOMINIUM ASSOCIATION IS IN GOOD STANDING WITH ALL STATE OF FLORIDA REQUIREMENTS PRIOR TO RECEIVING APPROVAL FOR ANY RECREATIONAL WATER FEATURE; PROVIDING FOR TERMINATION OF THE MORATORIUM IMPOSED BY ORDINANCE 15-09; PROVIDING FOR TERMINATION OF THE MORATORIUM IMPOSED BY ORDINANCE 15-01; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, based on evidence and testimony presented at public hearings before the City Commission, and research conducted by LaRue Planning and Management, Inc., Consulting Planner for the City, the City Commission finds that the pattern of residential construction in the R-2 Zoning District, has dramatically changed since 2008. Specifically:

(1) Of the 346 duplex lots developed through 2008 fully 77.7% had only one pool or no pool; and just 22.3% had two pools.

(2) Of the 34 duplex lots developed since the beginning of 2009, two pools have been built on 32 (94.1%) of the lots, indicating a dramatic change in the nature of development which, if continued without provision to reduce either the number or size of pools, could significantly affect the character of the residential areas zoned R-2 in the City.

**WHEREAS**, the City Commission has determined that a greater number of swimming pools, and/or greater square footage of land area devoted to swimming pools, than has been customary in the past can result in greater noise and activity than has historically been associated with residential lots in the R-2 District and

**WHEREAS**, after considerable discussion, the City Commission has determined that limiting the number of pools on a duplex platted lot of record to just one would unduly affect the expectations of the City's residents who may have anticipated building one pool for each duplex unit on a duplex platted lot of record or parcel and

**WHEREAS**, the City Commission has decided to limit the size rather than the number of swimming pools associated with an individual dwelling unit on a platted duplex lot of record or parcel in order to reduce the impacts associated with the recent increase in the number of pools on duplex lots or parcels in the City and

**WHEREAS**, based on evidence and testimony presented at public hearings before the City Commission, and research conducted by LaRue Planning and Management, Inc., Consulting Planner for the City, the City Commission finds;

(1) The typical pool size on a minimum 7,510 square foot single-family lot in the R-2 District is about 300 square feet. The land area associated with an individual duplex dwelling unit on a minimum 8,712 square foot duplex lot of record is 4,356 square feet representing 58% the size of a minimum single-family lot.

(2) In order to maintain an equivalent relationship between land area devoted to a swimming pool associated with a dwelling unit on a duplex lot of record, compared to that typical on a single-family lot in the R-2 District, no pool located on a platted duplex lot of record should exceed about 58% of the pool area typically associated with a single-family lot, or about 180 square feet of pool surface area.

**WHEREAS**, the Land Development Code currently provides for only one required front yard on corner lots or other lots fronting on two or more streets and

**WHEREAS**, said requirement for only one front yard has allowed instances where driveways have been constructed with insufficient depth resulting in parked vehicles extending into the right-of-way and has allowed for more intense development

with no compensating beneficial effects upon residential neighborhoods, and

**NOW THEREFORE**, be it ordained by the City Commission of the City of Holmes Beach, the following:

**Section 1. Findings of Fact.** The above referenced "whereas" clauses are adopted herein as findings of fact.

**Section 2. Article 1, Section 1.4, Definitions** shall be amended by adding a new definitions for the terms cabana, diving board/spring board, diving platform/deck, grotto/grotto pool, split line and waterfall, to read as follows:

*Cabana:* An accessory shade structure not exceeding 150 square feet in area, which is open on at least one side, permanent in nature with construction compliant with the Florida Building Code, and containing no electrical, plumbing or gas utilities.

*Diving board/spring board:* A flexible board secured at one end elevated above the water's surface, which is used for diving or jumping into a pool or other waterbody.

*Diving platform/deck:* An inflexible, stationary board or other natural or man-made surface elevated above the water's surface, which is used for diving or jumping into a pool or other waterbody.

*Grotto/grotto pool:* A combination of natural or man-made rock or other material forming a structure (with or without a waterfall) which is located in, at the edge of, or adjacent to a swimming pool and/or a hot tub/spa, the surface(s) of which structure is/are elevated above the surface of the water and/or which structure may take a cave-like form over part or all of a swimming pool and/or hot tub/spa.

*Split line:* A line drawn midway between the party wall of a duplex structure or, where there is no party wall, a line drawn midway between the nearest walls of two dwelling units located on platted duplex lot of record or parcel with said line extending from the front property line to the rear property line of the lot or parcel.

*Waterfall:* A structure of natural or man-made materials which is located in, at the edge of, or adjacent to a swimming pool and/or a hot tub/spa, and which structure is elevated above the water's surface allowing the descent of water from the structure to the swimming pool or hot tub/spa.

**Section 3. Article IV, Nonconformities, Section 4.2 Definition of nonconformities** shall be amended by adding a new subsection "G" to read as follows:

- G. As applicable to existing recreational water features in the R-2, R-3 and R-4 zoning districts.
1. A recreational water feature in existence and legally permitted by the city and subsequently made nonconforming to minimum yard or setback requirements by the passage of a subsequent ordinance shall be considered a legal nonconforming structure as to the setback/minimum yard requirements and such recreational water feature is hereby granted the same status as legal nonconforming structures under this article.

2. Waterfalls, grottos, slides or other such ancillary structures associated with a recreational water feature and in existence and legally permitted by the city and subsequently made nonconforming to minimum yard or setback requirements by the passage of a subsequent ordinance shall be considered a legal nonconforming structure as to the setback/minimum yard requirements and such ancillary structure is hereby granted the same status as legal nonconforming structures under this article.
3. Recreational water features located on a platted duplex lot of record or parcel, and which recreational water features were constructed pursuant to building permits issued by the city prior to the effective date of this ordinance, and which recreational water features exceed the number, size and/or type allowable under section 6.8.U as adopted under this ordinance shall be considered non-conforming structures and shall continue to be allowed as non-conforming structures.
4. Waterfalls, grottos, slides or other such ancillary structures associated with a recreational water feature and located on a platted duplex lot of record or parcel, and which ancillary structures were constructed pursuant to building permits issued by the city prior to the effective date of this ordinance, and which ancillary structures exceed the number, size and/or type allowable under section 6.8.U as adopted under this ordinance shall be considered non-conforming structures and shall continue to be allowed as non-conforming structures.

**Section 4. Article VI, Zoning, Section 6.6.C.2.a(2)(a), Permitted Accessory Uses in the R-2 District, shall be amended to read as follows:**

- (a) Private swimming pool and/or cabanas (See § 6.8.U for additional regulations)

**Section 5. Article VI, Zoning, Section 6.6.D.2.a(2)(a), Permitted Accessory Uses in the R-3 District, shall be amended to read as follows:**

- (a) Private swimming pool and/or cabanas (See § 6.8.U for additional regulations)

**Section 6. Article VI, Zoning, Section 6.6.E.2.a(2)(a), Permitted Accessory Uses in the R-4 District, shall be amended to read as follows:**

- (a) Private swimming pool and/or cabanas (See § 6.8.U for additional regulations)

**Section 7. Article VI, Zoning, Section 6.8.L, Lots fronting on more than one street, shall be amended to read as follows:**

Lots fronting on more than one street. Where a residential parcel or lot abuts more than one street, a front yard shall be required on each street, and each front yard shall conform to the front yard requirements of the zoning district in which the lot or parcel is located except as otherwise provided in the specific district regulations.

**Section 8. Article VI, Zoning, Section 6.8.U, Recreational water features,** shall be amended by modifying subsections 6.8.U.1.a through f, to read as follows:

U. Recreational water features.

1. Recreational water features.

- a. An in-ground pool and/or in-ground hot tub/spa located in a waterfront yard with seawalls is subject to the following conditions and limitations:
  - (1) An in-ground pool may be constructed within the required yard provided the pool is set back at least six feet from the center of the seawall and the applicant obtains an engineer's signed and sealed certificate stating said pool will not jeopardize the structural integrity of the seawalls.
  - (2) The setback of the pool shall be measured from the coping and concrete edges of the in-ground pool to the seawall.
  - (3) A deck or patio associated with an in-ground pool is not required to be setback from the seawall.
- b. Except for in-ground pools located in waterfront yards with seawalls, recreational water features and associated decks and ancillary structures, are subject to the following limitations and requirements:
  - (1) No recreational water feature, deck or other structure ancillary to a recreational water feature may be located in any required yard.
  - (2) When located on a duplex lot of record or parcel, every recreational water feature, deck or other ancillary structure must be set back not less than ten feet from a split line, or the line established in a condominium plat separating condominium units as recorded in the public records of Manatee County.
- c. The setback of a pool with no associated deck or patio, shall be measured from the coping and concrete edges of an in-ground pool or the outside edge of an above-ground pool to the property line, split line or line established in a condominium plat separating condominium units as recorded in the public records of Manatee County.
- d. The setback of a pool with an associated deck or patio shall be measured from the edge of the patio or deck nearest to the property line, split line or line established in a condominium plat separating condominium units as recorded in the public records of Manatee County.
- e. The setback of a hot tub/spa with no associated deck or patio, shall be measured from the closest point of the hot tub/spa to the property line, split line or line established in a condominium plat separating condominium units as recorded in the public records of Manatee County.

- f. The setback of a hot tub/spa with an associated deck or patio shall be measured from the edge of the patio or deck nearest to the property line, split line or line established in a condominium plat separating condominium units as recorded in the public records of Manatee County.

**Section 9 Article VI, Zoning, Section 6.8.U, Recreational water features,** shall be amended by adding items 9, 10, 11 and 12, to read as follows:

U. Recreational water features.

- 9. Number and size of swimming pools and hot tubs/spas per platted lot of record or parcel.
  - a. The number of swimming pools and hot tubs/spas on a platted lot of record or parcel shall be limited in the following manner:
    - (1) Not more than one in-ground swimming pool, with or without an integrated hot tub/spa, may be constructed per dwelling unit as an accessory to said dwelling unit, on a platted lot of record or parcel as described in section 11 or 12, below.
    - (2) Not more than one hot tub/spa may be constructed per dwelling unit as an accessory to said dwelling unit, on a platted lot of record or parcel as described in section 11 or 12, below.
    - (3) Not more than one nonportable above-ground swimming pool, with or without an integrated hot tub/spa, may be constructed per dwelling unit as an accessory to said dwelling unit, on a platted lot of record or parcel as described in section 11 or 12, below.
    - (4) An in-ground or nonportable above-ground swimming pool, which is accessory to a duplex dwelling unit, which dwelling unit is subject to a party wall agreement or is held in the condominium form of ownership, may not exceed 180 square feet in total net surface area as measured from the inside edge of the pool.

In no instance may the combination of any swimming pool and hot tub/ spa, whether integrated or as separate units, exceed 180 square feet in total net surface area as measured from the inside edge of the recreational water features at the water's edge.
    - (5) A recreational water feature, or combination of recreational water features located on one platted duplex lot or parcel, which recreational water feature(s) is/are accessory to duplex dwelling units located in one structure under fee simple ownership, may not exceed 360 square feet in total net surface area as measured from the inside edge of the recreational water feature(s) at the water's edge.
- 10. Diving board/spring boards, diving platform/decks, grotto/grotto pools and waterfalls and fountains ancillary to any recreational water feature are prohibited in the R-2, R-3 and R-4 Zoning Districts.
- 11. Duplex dwelling units subject to a party wall agreement.

Before any recreational water feature is approved on any duplex lot of record or parcel in the R-2, R-3, or R-4 Zoning District, if units in the duplex structure are subject to a party wall agreement, the applicant must submit to the City a copy of the party wall agreement as proof that the units qualify as legally nonconforming uses under the provisions of Section 4.2.B of this Land Development Code.

12. Duplex dwelling units under the condominium form of ownership.

Before any recreational water feature is approved on any duplex lot of record or parcel in the R-2, R-3, or R-4 Zoning District, if units in the duplex structure are under the condominium form of ownership, the applicant must submit to the City a certificate from the State of Florida confirming that the condominium association is in good standing with all State requirements.

**Section 10. Termination of Moratorium.** Ordinance 15-09, as amended by Ordinance 15-11 and Ordinance 15-18, shall terminate 30 days after the adoption of this Ordinance.

**Section 11. Termination of Moratorium.** Ordinance 15-01 shall terminate 30 days after the adoption of Ordinance 15-12.

**Section 12. Severability.** In the event that any word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this Ordinance, or application thereof, is contrary to law, or against public policy, or shall for any reason whatsoever held to be invalid, illegal or unconstitutional, by any court of competent jurisdiction, such word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or section(s) of this Ordinance shall be null and void, and shall be deemed severed, and a separate, distinct, and independent provision from the remaining provisions of this ordinance, and such holding shall in no manner affect the validity of the remaining words, phrases, portions, sub-sub-sections, sub-sections, or sections of this Ordinance, which shall remain in full force and effect. This ordinance shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes of this ordinance as expressed herein.

**Section 13. Effective Date.** This Ordinance shall be effective upon adoption by the City Commission and approval by the Mayor in accordance with the Charter of the City of Holmes Beach.

**PASSED AND ADOPTED**, by the City Commission of the City of Holmes Beach, Florida, in regular session assembled, this 10 day of November, 2015.


**First Reading:** 10-27-15

**Publication Date** 10-31-15

**Second Reading and Public Hearing Date** 11-10-15

  
Patrick Morton


  
Carol Soustek

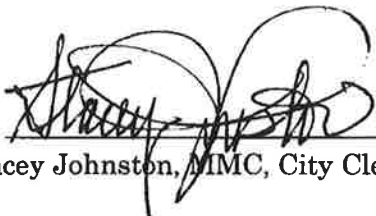
  
Marvin Grossman

  
Judy Titsworth

  
Jean Peelen

APPROVED BY ME THIS 10<sup>th</sup> DAY OF November 2015

  
Bob Johnson, Mayor

ATTEST:   
Stacey Johnston, MMC, City Clerk