

ORDINANCE NO. 2019-008

AN ORDINANCE OF NORTH BAY VILLAGE FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE; AMENDING SECTION 8.16(F); CLARIFYING THAT FENCES ON CORNER LOTS SHALL NOT EXCEED 5 FEET IN HEIGHT IN BOTH YARDS WITH STREET FRONTAGE, SETTING A MINIMUM WIDTH FOR REQUIRED LANDSCAPING; ALLOWING FOR GOVERNMENT USES TO CONSTRUCT SAFE AND COMPATIBLE FENCES, WALLS AND HEDGES; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Florida Statute 166.01 authorizes cities to establish, coordinate and enforce zoning and development laws that are necessary for the protection of the public; and

**WHEREAS**, North Bay Village desires to update its Unified Land Development Code; and

**WHEREAS**, the North Bay Village Unified Land Development Code is intentionally modified to be relevant and to encourage development and redevelopment; and

**WHEREAS**, the North Bay Village Unified Land Development Code is wholly consistent with the Village's Comprehensive Plan and the Florida Community Planning Act; and

**NOW, THEREFORE, BE IT ENACTED BY THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** Each of the above stated recitals is true and correct and incorporated herein by this reference.

**Section 2. Village Code Amended.** North Bay Village Code of Ordinances is hereby revised as follows:

**§ 8.16 – Supplemental Development Standards**

\* \* \* \*

F. Fences, walls and hedges.

1. When required

- a. An eight-foot high wall, hedge, or fence shall be required along all side and rear commercial property lines which are contiguous to a residential zoned property, subject to vision clearance requirements established elsewhere in this section.

- b. All permitted outdoor storage areas in multifamily residential and commercial zones shall be visually screened from public view by an eight-foot high solid wood or masonry fence or wall.
- c. Fences or walls to be built in connection with other permitted recreational uses such as baseball backstops, tennis courts, handball courts, and the like shall be permitted at the height necessary for the particular use.
- d. All vacant lots adjacent to Kennedy Causeway shall be hedged along that portion of the lot which is adjacent to Kennedy Causeway.
  - (1) The hedge shall not exceed four feet in height and not be lower than two feet in height and shall be of sufficient thickness and density so as to provide a physical barrier similar in effect to a fence.
  - (2) The hedges shall be continuously and regularly trimmed, and any dead plants, or plants which fail to bear leaves, shall be regularly and timely replaced.
  - (3) The remainder of the lots shall be fenced or hedged so as to prevent the unauthorized entry of motor vehicles thereon.
- e. Concrete Block Walls. No fence, solid contiguous wall or ledge consisting of blocks or concrete shall be erected, constructed, installed or maintained in any manner parallel to the 79th Street Causeway.

## 2. Prohibitions

- a. No fence, wall, or hedge may be constructed, installed, or maintained within six feet of any fire hydrant or other emergency apparatus.
- b. No fence, wall, or hedge may be constructed, installed, or maintained which in any manner creates a visual obstruction to vehicular traffic. In no event shall any fence which obstructs or obscures vision, or any wall or hedge exceed four feet in height within 30 feet of the intersection of official right-of-way lines.
- c. No wall or fence shall exceed five feet in height within any required front yard setback, provided such fence or wall does not create a visual obstruction to pedestrian or vehicular traffic. For fences on corner lots, both street frontages shall be considered front yards. Additionally:
  - (1) Landscaping shall be required on the street side of any such wall or fence and the width of the landscape bed shall be at least 18 inches for the entire length of the fence or wall, excluding gated sections.

- (2) Any concrete wall or concrete block wall shall be sustained in a finished condition.
- d. Hedge heights shall not exceed twelve (12) feet in height in the front, rear and side setbacks in the RS-1 and RS-2 Districts, provided that:
  - (1) Such hedges do not interfere with vehicular traffic or visibility on public rights-of-way;
  - (2) Such hedges are neatly trimmed;
  - (3) The property owner responsible for planting the hedge shall maintain the entire hedge, including the sides facing the neighboring properties in order avoid any hindrance to said neighboring property.
  - (4) Hedge planting is strictly prohibited within the Village right-of-way or easement area.
- e. Walls and fences in the rear and side setbacks shall not exceed a height of six feet.
- f. No chain link, wire or cable fencing or fences similar in appearance to any of the foregoing, will be permitted within front setbacks. (This includes all areas past the front edge of the house running towards the street.)
- g. Ornamental entrances, fountains, plant containers, and similar architectural features exceeding the wall height restriction will be permitted, provided that:
  - (1) No such feature shall exceed in height the wall height restriction for that district plus three feet; and
  - (2) There shall be only one such feature in any front, side or rear yard, except that there may be two entrance gates.
- h. Planting of vegetation in easement areas shall conform to the following:
  - (1) No trees may be planted within any easement or public right-of-way area as shown on the recorded plats of the various subdivisions of the Village ("easement areas").
    - (a) Nothing in this section shall be construed to prohibit the planting of low growth landscaping in the easement or right-of-way areas ("easement landscaping").
    - (b) Easement or right-of-way landscaping is subject to removal by the Village without notice in the event that this landscaping impedes access to these areas. The

Village shall not be responsible for damage to the removed landscaping;

- (c) Prior to planting such easement landscaping in easement areas, the property owner shall execute a permission for removal, release and indemnification agreement, in a form acceptable to the Village, pertaining to such easement.
  - i. For single family properties on North Bay Island. The linear footage of any property's street front Village easement or right-of-way area must maintain a greenspace (pervious) area whereby the permissible paved area is to be limited to only 40 percent of that total linear footage.
    - (1) The protected greenspace shall be restricted from any paving materials including but not limited to asphalt, concrete, brick, pavers, gravel or solid cover of mulch.
    - (2) The depth of that protected pervious area must be maintained at full easement depth from the street to the property boundaries.
    - (3) Any paving of the property frontage beyond the easement area (within front yard), and greater than 40 percent of the permitted linear footage must create a green landscape facade to decrease the sight line of that paved surface from the street view.
  - j. For single family properties on all islands.
    - (1) Front yard area may be paved up to 40 percent of the total linear footage.
    - (2) The balance of footage may only be paved if a greenspace is created between the Village's sidewalk and the paved area, for a depth of no less than 48 inches, and heavily landscaped to create green landscape facade to decrease the sight line of that paved surface from the street.
  - k. Nonconforming uses of land. The lawful use of land existing at the time of the passage of this ordinance or an amendment thereto, although such uses do not conform to the provisions of this ordinance, may be continued subject to the following provisions:
    - (1) Front yard areas may not be increased in paved areas.
    - (2) All rights and obligations subject to the nonconforming use of the land run with the land and are not personal to the present owner or tenant of the nonconforming use of land and are not affected by a change in ownership or tenancy.
3. General requirements

- a. Construction and materials.
    - (1) No fence or wall may be constructed of materials which will be hazardous to the health, safety, or welfare of persons or animals.
    - (2) Fences which are erected with sheathing, pickets or slats on one side only shall have such materials placed on the side of the fence facing the adjacent property in such a manner as to conceal the structural elements of the fence from off premises view.
    - (3) Walls or fences constructed of concrete block shall be constructed so that the side facing away from the property on which the wall or fence is located shall be finished with stucco or some other approved material.
  - b. Maintenance. All fences, walls, and hedges shall be maintained in a safe, attractive, and non-hazardous condition.
    - (1) Hedges shall not extend over or into the public right-of-way for the full height of the hedge.
    - (2) Maximum height.
      - (a) No fence or wall shall exceed six feet in height and no hedge shall exceed six feet except as may be permitted or further restricted elsewhere in this section.
      - (b) The height of a wall, fence, or hedge shall be the vertical distance measured from the average elevation of the finished building site to the top of the wall, fence, or hedge.
      - (c) The average elevation shall be measured along the wall, fence, or hedge line that the same is to be placed.
      - (d) The land within the area which the wall, fence, or hedge is to be placed may not be increased or decreased to effect the permitted height unless the entire building site is to be graded to level off this area.
4. Temporary fence around construction site. Nothing in this section shall be deemed to prohibit the erection and maintenance of a temporary fence around construction sites on which actual construction activity is taking place pursuant to a valid active building permit.
- a. The fence may exceed the height limitations in this zoning code if the fence is constructed of solid wood (or plywood) and is decorated in an attractive and artful design as shall be determined by the Village Commission or appropriately designated board.
  - b. In no event shall the fence exceed eight feet in height.

- c. Chain link fences shall not be the permitted around construction sites unless screening is used with the chain link to conceal construction materials from outside view.
- 5. Existing nonconforming fences and/or walls; removal.
  - a. Intent. It is the intent of this division to recognize that the eventual elimination of existing fences, that do not conform with the provisions of this chapter, in as expeditious a manner as is reasonable, is as much a subject of the health, safety, and welfare of the citizens of the Village as is the prohibition of new fences that would violate the provisions of these regulations. It is also the intent of this division that there shall not be any unreasonable burden upon established private property rights.
  - b. Continuance. Subject to the amortization schedule below, a nonconforming fence may be continued and shall be maintained in good condition, but shall not be:
    - (1) Enlarged or changed to another nonconforming fence.
    - (2) Reestablished after its removal.
    - (3) Reestablished after being damaged or deteriorated whereby the estimated expense of reconstruction exceeds 50 percent of the appraised replacement cost.
  - c. It shall be the responsibility of the Code Enforcement Officer to make an inventory and a record of all nonconforming fences and to serve notice on the owners or users of such fences within 30 days after the adoption of these regulations. The period of nonconformity shall nonetheless begin as of the date of the passing of this division. The inventory shall include the following:
    - (1) Owner.
    - (2) Type of fence
    - (3) Location.
    - (4) Reason for classification as nonconforming.
    - (5) Date fence was erected.

**6. Fences, privacy walls, and hedges for government uses and facilities.**

- a. Applicability. This section applies to fences, privacy walls and hedges erected by a governmental entity for a governmental use including, but not limited to, parks, recreation areas, government offices, utility facilities, parking, or storage sites.
- b. Approval. Governmental entities other than North Bay Village may only be approved for fences, privacy walls and hedges according to this Section by the Village Commission at public hearing, following a recommendation by the Village Planning Zoning Board.

- c. Location. Fences, privacy walls, and hedges installed in any location on the subject property as necessary to ensure safety and compatibility.
- d. Height. Fences, privacy walls, and hedges may be installed at heights necessary to ensure safety and compatibility.
- e. Materials. Fences and privacy walls may be constructed with materials which are necessary to ensure safety and compatibility, including but not limited to, chain link, wood, masonry and vinyl.

**Section 3. Repeal.** All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

**Section 4. Severability.** The provisions of this Ordinance are declared to be non-severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall render this Ordinance void in its entirety.

**Section 5. Inclusion in the Code.** It is the intention of the Village Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of North Bay Village; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Wilmoth, who moved its adoption on second reading. This motion was seconded by Commissioner Strout and upon being put to a vote, the vote was as follows:

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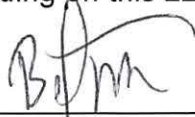
Mayor Brent Latham	<u>YES</u>
Vice Mayor Marvin Wilmoth	YES
Commissioner Jose R. Alvarez	YES
Commissioner Andreana Jackson	YES
Commissioner Julianna Strout	YES

**PASSED** on first reading on this 9th of July, 2019.

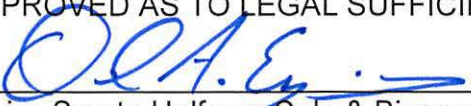
**PASSED AND ENACTED** on second reading on this 22nd day of July, 2019.

ATTEST:

  
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Elora Riera, CMC  
Village Clerk

  
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Brent Latham, Mayor

APPROVED AS TO LEGAL SUFFICIENCY:

  
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Weiss Serota Helfman Cole & Bierman, PL  
Village Attorney