

**ORDINANCE NO. 09-2017**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA; AMENDING SECTION 110-470 OF THE CAPE CANAVERAL LAND DEVELOPMENT CODE TO ALLOW FENCES AND WALLS SIX (6) FEET IN HEIGHT OR LESS TO BE LOCATED WITHIN FIFTEEN (15) FEET OF THE PUBLIC RIGHT-OF-WAY ON A NONCONFORMING CORNER LOT OF RECORD; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Sections 110-297, 110-317 and 110-373 of the City of Cape Canaveral Land Development Code, respectively applicable to the R-2, R-3 and Townhouse zoning districts, establish the minimum side yard setback for corner lots of 25 feet, but reduce such side yard setbacks for nonconforming corner lots of record to 15 feet; and

**WHEREAS**, Section 110-470(a)(1) of the City of Cape Canaveral Land Development Code restricts the placement of fences and walls, providing that in any residential district, no fence or wall in any side yard shall be over four feet in height if within 25 feet of any public right-of-way; and

**WHEREAS**, the City Council desires to provide an exception to the restriction on the placement of fences and walls above four feet tall on nonconforming corner lots of record to reflect and be consistent with the applicable 15-foot setback; and

**WHEREAS**, the City Council of the City of Cape Canaveral, Florida, hereby finds this ordinance to be in the best interests of the public health, safety and welfare of the citizens of Cape Canaveral.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA, AS FOLLOWS:**

**Section 1.**     **Recitals.**   The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cape Canaveral.

**Section 2.**     **Code Amendment.**   Chapter 110 of the Code of Ordinances, City of Cape Canaveral, Florida, is hereby amended as follows (underlined type indicates additions and strikeout type indicates deletions, while asterisks (\* \* \*) indicate a deletion from this Ordinance of text existing in Chapter 110. It is intended that the text in Chapter 110 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance):

## Chapter 110 Zoning

\* \* \*

### ARTICLE IX. – SUPPLEMENTARY DISTRICT REGULATIONS

#### DIVISION 1. – GENERALLY

\* \* \*

##### Sec. 110-470. – Fences, walls and hedges.

- (a) Fences and walls may be permitted in any yard, except as specified in section 110-469, provided the following restrictions shall apply:
- (1) In any residential district, no fence or wall in any side or rear yard shall be over six feet in height or over four feet in height if within 25 feet of any public right-of-way, unless otherwise specified in this section;
  - (2) In any residential district where property abuts a public beach access parking area, the fence or wall in a side, rear or front yard which abuts the public parking area shall not exceed six feet in height;
  - (3) In any commercial or industrial district, no fence or wall in any side or rear yard shall be over eight feet in height or over four feet in height if within 25 feet of any public right-of-way. When the boundary of a commercial or industrial zoning district abuts any residential zoning district, and a fence or wall is used to meet the requirements of section 110-566, the fence or wall shall have a minimum height of six feet and a maximum height of eight feet;
  - (4) No wall shall be built along unimproved property boundaries until and unless the owner has obtained and paid for a building permit for the principal structure;
  - (5) All concrete boundary walls are to be finished by stuccoing or painting in neutral colors at the time they are constructed. All fences shall be constructed or installed such that the finished side faces abutting properties or public rights-of-way. If chain-link is used for fencing, the same must have a top rail and the rail and chain-link must be coated in a rubber or vinyl material; and
  - (6) No words or symbols, other than street addresses and names of occupants in residential districts, shall be permitted on exterior boundary fences or walls, except a small sign, not to exceed 32 square inches, may be attached identifying the fence manufacturer or installer. If there are such nonallowed words or symbols, they shall be covered or removed within seven days of notification to the owner by the city.
  - (7) Notwithstanding Section 110-470(a)(1) above, in the R-2, R-3 and Townhouse districts on nonconforming corner lots of record, fences and walls may be up to six feet in height if constructed or installed in the side yard and are 15 feet or more from the public right-of-way.
- (b) Hedges may be permitted in any yard, except as specified in section 110-469 of this code, provided the following restrictions shall apply:

- (1) Any hedge planted to satisfy the visual screening requirements provided within section 110-566 of this Code shall have a minimum height at time of planting of three feet and will be required to reach a minimum height of six feet, unless otherwise provided by this chapter, and a density of at least 80 percent opacity within two years of planting;
- (2) No hedge planted to satisfy the visual screening requirements of section 110-566 of this Code and located adjacent to a property boundary shall exceed four feet in height if within 25 feet of any public right-of-way;
- (3) Any hedge located adjacent to any public right-of-way, sidewalk or easement utilized for public purposes shall be set back a minimum of three feet from the property line or easement boundary to ensure such hedge will not encroach into or impede the use of such public right-of-way, sidewalk or easement;
- (4) Any hedge planted or otherwise established in accordance with this chapter shall be comprised of a desirable species of vegetation as defined in chapter 102 of this Code, as may be amended from time to time; and
- (5) All hedges shall be maintained in accordance with Chapter 34 of this code and all other applicable statutes, ordinances, and regulations affecting landscaping and vegetation.

\* \* \*

**Section 3.**     **Repeal of Prior Inconsistent Ordinances and Resolutions.**     All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

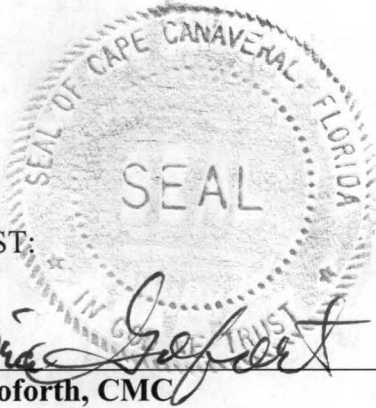
**Section 4.**     **Incorporation Into Code.** This Ordinance shall be incorporated into the Cape Canaveral City Code and any section or paragraph, number or letter and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and like errors may be corrected and additions, alterations and omissions, not affecting the construction or meaning of this Ordinance and the City Code, may be freely made.

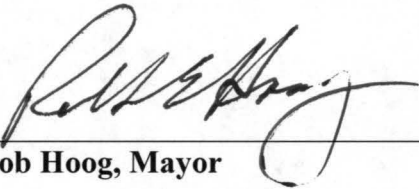
**Section 5.**     **Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 6.**     **Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cape Canaveral, Florida.

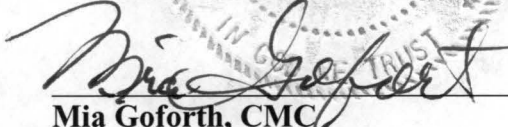
**ADOPTED** by the City Council of the City of Cape Canaveral, Florida, this 18<sup>th</sup> day of July, 2017.

**[Signature page follows]**



  
Bob Hoog, Mayor

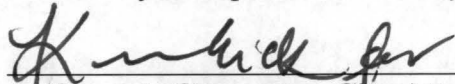
ATTEST:

  
Mia Goforth, CMC  
City Clerk

For Against

Mike Brown	<u>X</u>	_____
Robert Hoog	<u>X</u>	_____
Brendan McMillin	<u>Motion</u>	_____
Rocky Randels	<u>X</u>	_____
Betty Walsh	<u>Second</u>	_____

Approved as to legal form and sufficiency  
for the City of Cape Canaveral only by:

  
Anthony A. Garganese, City Attorney

1 <sup>st</sup> Reading:	June 20, 2017
Advertisement:	July 6, 2017
2 <sup>nd</sup> Reading:	July 18, 2017