

**ORDINANCE NO. 19-16**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, DIVISION 17 FENCES, WALLS AND ENTRANCE GATES LIMITING THE HEIGHT OF FENCES WITHIN RIGHT-OF-WAY SETBACKS AND ENHANCING SITE VISIBILITY TRIANGLES, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town of Fort Myers Beach, Florida recognizes that the provisions for fences, walls and entrance gates in the Town's Land Development Code shall be subject to reasonable regulations as proposed herein, in addition to those regulation in Land Development Code Article IV, Division 2; to maintain the health, safety and welfare of citizens of the Town; and

**WHEREAS**, Town Council desires to update Chapter 34 of the Land Development Code language to clarify, improve, and create consistency among sections; and

**WHEREAS**, the Town of Fort Myers Beach recognizes that limiting fences within right-of-way setbacks to a maximum of 42 inches in height, causes a conflict with the Florida Residential Pool Safety Act; and

**WHEREAS**, it is necessary and in the interest of the public health, safety and welfare to monitor and ensure that the Town mitigates visibility impacts created by fences and hedges, within the Town, the following amendment to Chapter 34 of the Land Development Code are hereby adopted; and

**WHEREAS**, on November 12, 2019 the Town of Fort Myers Beach Local Planning Agency (LPA) reviewed and provided a recommendation of approval to the proposed language by a vote of 6-0; and

**WHEREAS**, on December 9<sup>th</sup>, 2019 the Town Council held a first reading of the proposed Ordinance; and

WHEREAS, on February 18<sup>th</sup>, 2020 the Town Council held a second reading of the proposed Ordinance; and

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:<sup>1</sup>**

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Division 17 of Article IV of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

DIVISION 17. - FENCES, WALLS AND ENTRANCE GATES

Sec. 34-1741. - Applicability of division.

This division shall apply to all fences, walls, and entrance gates which are not specifically exempted in this division. This division shall not apply to seawalls (see ch. 26 of this LDC for regulations on seawalls). Hedges, herein defined as an opaque line of like vegetation that function as a boundary, shall also comply as specified within these regulations.

Sec. 34-1742. - Design and construction of fences and walls.

(a) *Building permits required.* All fences and walls that are over 25 inches in height shall comply with established building permit procedures.

(b) *Design.* All fences and walls on each property must have reasonably uniform or complementary materials and design. Figure 34-28 shows several recommended designs for fences and walls.

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<sup>1</sup> Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

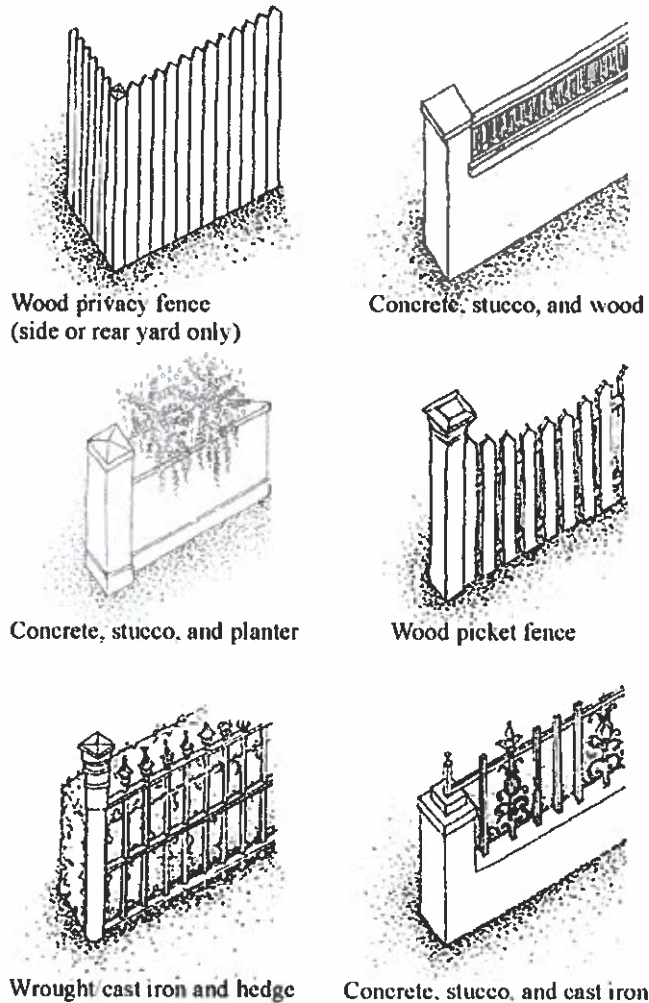


Figure 34-29-28

(c) *Materials.* Fences and walls must be constructed of traditional building materials including brick, stone, stucco over concrete block, finished concrete, metal, vinyl, wood (natural, stained, or painted), and composite products manufactured specifically for fences and walls. Non-traditional fence materials such as tires, mufflers, hubcaps are prohibited. Chain link and other wire fences are not permitted in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line). Chain link and wire fences with slats or fabric installed may not be used as permanent screening materials but may be appropriate for temporary construction fencing.

(d) *Finished sides.* Fences and walls must be constructed to present a finished side to adjoining lots and any abutting rights-of-way. Where there is an existing fence, wall, or continuous

landscape hedge on the adjoining parcel, the director may waive this provision administratively.

(e) *Maintenance.* After construction, fences and walls must be maintained with all original components and they must remain substantially vertical to serve their functions and aesthetic purposes. Structural integrity must not be compromised to the point that the fence would present a danger of flight or destruction during high winds.

(f) *Dangerous fences.* No barbed wire, spire tips, sharp objects, or electrically charged fences shall be erected except that a fence 72 inches high with three strands of barbed wire on top of the fence with six-inch spacing between the strands of barbed wire may be required or approved by the director around structures or equipment of potential hazard to residents or passersby not otherwise protected. ~~However, chain-link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to-line).~~

Sec. 34-1743. - Reserved.

Sec. 34-1744. - Location and height of fences, hedges and walls.

(a) *Setbacks.* Except as may be specifically permitted or required by other sections of this chapter or chapter 10 of this LDC, no fence or wall, excluding seawalls, shall be erected, placed, or maintained:

(1) Within any street right-of-way or street easement, or within six<sup>2</sup> feet of the edge of pavement and travel lane of a road or closer than three feet to any sidewalk, ~~or~~ bike path or to the right-of-way of Estero Boulevard.

(2) Closer to the Gulf of Mexico than permitted by ch. 6, article III of this LDC.

(3) Closer than five feet to the mean high-water line along natural waterbodies, including canals created from sovereign lands, except where the canal that, is seawalled. ~~the~~ Where the canal is contained by a seawall, the fence may be built immediately landward or on top of the seawall. Where the seawall is part of a pool barrier, the fence may extend beyond the seawall (perpendicular to the seawall) by a maximum of 3 feet.

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<sup>2</sup>

Changed eight feet to six feet, scrivener's error corrected on 6/2/2020.

(b) *Height.* The maximum height for fences and walls, measured from the existing elevation of the abutting property, is illustrated in Figure 34-29 and described as follows:

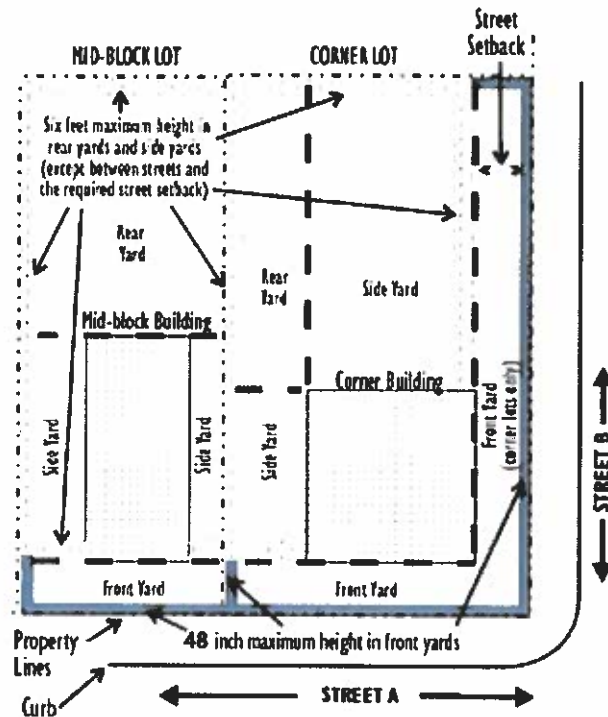


Figure 34-30

(1) *Front yards.* Any fence or wall located in a front yard (between a street right-of-way or easement and the minimum required street setback or build-to line) shall not exceed ~~42~~ 48 inches in height, except as provided in subsection (b)(4) below. This division does not excuse any fence wall from compliance with any lesser height required to meet vehicle visibility requirements (see § 34-3131 of this chapter) at traffic access points.

(2) *Side and rear yards.* Any fence or wall located in a side or rear yard shall not exceed six feet in height.

a. For purposes of this requirement, the side yard does not include any portion of the lot between a street and the minimum required street setback or build-to line.

b. Where a side or rear yard slopes downward from the street, a fence may be up to seven feet above the elevation of the abutting property to avoid unnecessary variations in the height of a fence.

(3) *Near waterbodies.* Within 25 feet of a body of water, those portions of a fence, wall, or hedge that exceed ~~42~~ 48 inches in height cannot be more than 25 percent opaque (as viewed from perpendicular to the fence).

(4) *Exceptions:*

a. *Architectural features.* Fences and walls may include occasional architectural features such as columns, posts, gates, and arbors at a height not exceeding 84 inches. All such features must be visually compatible with the fence or wall design.

b. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.

c. *Enclosure of high-voltage transformers.* See § 34-1748 of this chapter.

d. *Screening of refuse containers.* On sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed ~~42~~ 48 inches in height, but must not exceed six feet in height.

(c) Hedges shall be regulated in the following ways:

(1) Hedges in front and side yards shall not be limited in height, however the following setbacks shall apply:

a. A continuous hedge located along Estero Boulevard shall be maintained a minimum of three feet from any sidewalk or bike path and shall not overhang the right-of-way.

b. A continuous hedge located along any street other than Estero Boulevard shall be maintained a minimum of six feet from the paved edge of the right-of-way and shall not overhang the right-of-way.

(2) Hedges in the 25-foot waterbody setback shall be subject to the height and opacity requirements found in Sec. 34-1744(3).

Sec. 34-1745. - Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416 of this LDC. Where buffers are required by other provisions of this code, this division will not interpreted to restrict the height, location, or other features of required buffers.

Sec. 34-1746. - Reserved.

Sec. 34-1747. - Construction in easements.

Nothing in this division shall be construed so as to permit the construction or placing of any construction within a public or private easement which prohibits such construction or placement.

Sec. 34-1748. - Enclosure of high-voltage transformers and other utility equipment.

All substation high-voltage transformers and any other utility structures or equipment of potential hazard to residents or passersby not otherwise protected shall be completely enclosed by a fence not less than eight feet in height. On top of the fence shall be three strands of barbed wire with a six-inch spacing in between each strand. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

Sec. 34-1749. - Entrance gates.

(a) Entrance gates are not permitted on public or private streets. Decorative entrance features that do not restrict access may be placed along public or private streets provided permission is granted by the town and others entity with authority over the right-of-way or easement.

(b) Entrance gates may be placed on private property that is not subject to any access easements in order to control access. ~~to a private parking lot or to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets.~~

(1) Multi-unit properties with entrance gates must provide a minimum stacking distance of 40 feet from the right-of-way.

(2) Single and two unit properties with entrance gates on Estero Blvd and within 100 feet of Estero Blvd must provide a minimum stacking distance of 20 feet from the right-of-way

(c) Access for emergency vehicles must be provided to any existing entrance gates on private streets.

(1) Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.

(2) If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

Secs. 34-1750—34-1770. - Reserved.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

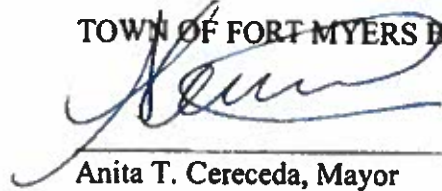
The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Hosafros and seconded by Council Member Shamp and upon being put to a roll call vote, the result was as follows:

Anita Cereceda, Mayor	Aye
Ray Murphy, Vice Mayor	Aye
Joanne Shamp, Councilmember	Aye
Rexann Hosafros, Councilmember	Aye
Bruce Butcher, Councilmember	Aye




ADOPTED this 18<sup>th</sup> day of February, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

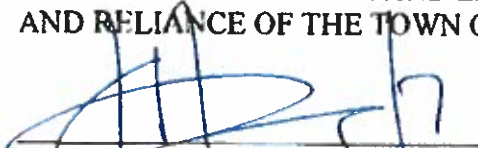
TOWN OF FORT MYERS BEACH

  
Anita T. Cereceda, Mayor

ATTEST:

  
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

  
John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3<sup>rd</sup> day of March 2020.