NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

Staff Report

Date: ~~June 9, 2015~~ June 23, 2015 (Second Reading)

To: The Honorable Mayor and City Council Members

From: Tanya Wilson-Séjour, AICP, Community Planning and Development Manager

Re: Amendment to Article 5, Division 9, Section 5-901 – "General Standards for Residential and Non-Residential Districts" and Section 5-902 – "Maximum Height"

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 5, UNDER DIVISION 9 ENTITLED "FENCES, WALLS, AND OTHER SIMILAR STRUCTURES", SPECIFICALLY AT SECTION 5-901 ENTITLED "GENERAL STANDARDS FOR RESIDENTIAL AND NONRESIDENTIAL DISTRICTS", AND SECTION 5-902 ENTITLED "MAXIMUM HEIGHT", TO CLEARLY ESTABLISH APPROPRIATE REGULATIONS FOR THE CONSTRUCTION AND USE OF OPAQUE FENCES AND WALLS IN RESIDENTIAL DISTRICTS, AND TO FURTHER ORGANIZE AND STREAMLINE THE SPECIFIC SECTIONS FOR GREATER CLARITY AND CONSISTENCY WITH THE INTENT OF THE NORTH MIAMI COMPREHENSIVE PLAN; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION

That the Mayor and City Council pass and adopt the proposed ordinance to amend Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations" (LDRs) by amending the texts of Article 5, Division 9 ("Fences, Walls and Other Similar Structures"), specifically at Section 5-901 ("General Standards for Residential and Non-Residential Districts") and Section 5-902 ("Maximum Height") to establish appropriate regulations for the construction and use of opaque fences in residential districts, and to further streamline and organize the specific sections of the entire division to provide for greater clarity and consistency.

PLANNING COMMISSION RECOMMENDATION

At its meeting on May 5, 2015, the Planning Commission (attended by Commissioners James, Ernst, Each, Jeanty, Boule and Prevatel) reviewed and discussed the proposed ordinance to amend Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations" (LDRs) by amending the texts of Article 5, Division 9, Section 5-901 and Section

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5-902 to establish consistent minimum standards for the construction and use of opaque fences in residential districts, and to further streamline and organize the specific sections of the entire division to provide for greater clarity and consistency. Following staff's presentation, the Planning Commission briefly discussed the item and asked staff for further clarification. Motion to recommend approval of the proposed ordinance was made by Commissioner James and seconded by Commissioner Each. The motion passed 6-0.

BACKGROUND

Sponsored by Councilman Scott Galvin, the proposed request seeks to amend the texts of Article 5, Division 9, Sections 5-901 and 5-902 of the LDRs to establish consistent minimum requirements for the construction and use of opaque fences in residential districts. The request also proposes to further streamline and organize the specific sections of the entire division to provide for greater clarity and consistency. Section 5-901(C) currently prohibits completely opaque fences or walls in the required front yard setback of all residential districts. This provision, which is consistent with that of several nearby communities, has the logical effect of improving the aesthetic quality of residential neighborhoods, as well as public safety and the welfare of persons using city sidewalks and streets through the maintenance of adequate visibility into and from private property and within public rights-of-way. However, this no-opacity provision becomes problematic, if not burdensome, when viewed through the lens of Section 5-902(C)(1), which reads, "For the purposes of fences and walls, all corner lots in single-family residential districts shall have two (2) front yards."

Recently, a number of complaints have reached the City Administration relating to the total prohibition of opaque fences or walls in the required front-yard setback of residential properties, especially from owners of corner lot properties, who are taking issue to the total lack of privacy they have in their back yard. As such, the proposed text amendment seeks primarily to eliminate the two-front yard rule for corner lot properties as set forth in Article 5, Division 9, Section 5-902(C)(1), making thereby the minimum requirements set forth in the entire Division more consistent and more responsive to the privacy needs of City residents. The proposed amendment will not cause the remaining phrases, clauses, sentences, paragraphs and sections of Article 5, Division 9 of the LDRs any less stringent. In fact, this Division will continue to further its fundamental objectives in that (1) it still provides for the aesthetic quality of the City's residential neighborhoods by encouraging creative and attractive fence designs; and (2) it still promotes public safety and the welfare of persons using city sidewalks and streets through the maintenance of adequate visibility. Lastly, the proposed amendment affords staff the opportunity to streamline and better organize particular Sections of Division 9, so as to achieve greater clarity, while reducing redundant language.

ANALYSIS

Article 3, Section 3-1004 of the City's Land Development Regulations (LDRs) requires that all text amendments to the LDRs must meet the following minimum criteria.

1. **Promotes the public health, safety and welfare;**

   The proposed text amendment establishes appropriate regulations for the construction and use of opaque fences in residential districts, and to further streamline and organize the specific sections of the entire division to provide for greater clarity and consistency. It will promote the aesthetic beauty of the City's residential neighborhoods, public safety and the welfare of persons, bikers and motorists using the City's sidewalks and streets, as well as the need for privacy for residents occupying corner lot properties. As such, this text amendment is consistent with the purpose and intent of the LDRs and will promote the public health, safety and welfare of the residents.

2. **Does not permit uses the Comprehensive Land Use Plan prohibits in the area affected by the zoning map change or text amendment;**

   The proposed text amendment establishes guidelines for the construction and use of opaque fences in residential districts. It does not allow uses, which are otherwise prohibited in the Comprehensive Land Use Plan.

3. **Does not allow densities or intensities in excess of the densities and intensities which are permitted by the future land use categories of the affected property;**

   The proposed text amendment neither changes the residential land use map designations of the effected properties nor modifies the uses or intensities of the developments authorized in the affected FLUE designations.

4. **Will not cause a decline in the level of service for public infrastructure which is the subject of a concurrency requirement to a level of service which is less than the minimum requirements of the Comprehensive Land Use Plan;**

   The proposed text amendment will not cause a decline in the level of service for public services in the affected districts. It will not have any negative impact on the response time for emergency services. Furthermore, the additional privacy that the opaque fencing offers to these residents may well lead to a reduction in criminal activities, as the defensible space theory by Oscar Newman suggests that the more private a space is, the more control and influence a resident has over it.

5. **Does not directly conflict with any goal, objective or policy of the Comprehensive Land Use Plan; and**

   The proposed text amendment establishes consistent minimum requirements for the construction and use of opaque fences in residential districts, and to further streamline and organize the specific sections of the entire division to provide for greater clarity and consistency. It is consistent with the goals, policies and objectives of the City's Comprehensive Plan, specifically Policy 1.7.7, which calls for the adoption of standards in the LDRs, which enhance neighborhood preservation and promote privacy.

6. **The proposed amendment furthers the orderly development of the City of North Miami.**

   The proposed text amendment establishes more consistent regulations for the construction and use of opaque fences in residential districts. This amendment clearly furthers the orderly development of the City as it promotes the aesthetic beauty of the City's residential neighborhoods, public safety and the welfare of persons, bikers and motorists using the City's sidewalks and streets. Additionally, the amendment carefully addresses the need for privacy expressed by residents occupying corner lot properties, while preventing the creation of nuisances. Finally, the proposed amendment seeks to further streamline and organize the specific sections of Division 9 in order to provide for greater clarity and consistency, in furtherance of the City's Comprehensive Plan.

CONCLUSION

Based on the foregoing, staff believes that the proposed text amendment is consistent with the zoning guidelines in the City's LDRs and conforms to the future land use goals, objectives and policies identified in the City's adopted Comprehensive Plan. Therefore staff **requests that the Mayor and City Council pass and adopt the attached ordinance amending** Chapter 29 of **the North Miami Code of Ordinances entitled "Land Development Regulations" (LDRs) by amending the texts of Article 5, Division 9, Section 5-901 and Section 5-902 to establish consistent minimum standards for the construction and use of opaque fences in residential districts, and to further streamline and organize the specific sections of the entire division to provide for greater clarity and consistency.**

TWS/nl

Attachments: 1. Proposed Ordinance
2. Newspaper Advertisement

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE NORTH MIAMI CODE OF ORDINANCES, ENTITLED "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 5, UNDER DIVISION 9, ENTITLED "FENCES, WALLS, AND OTHER SIMILAR STRUCTURES", SPECIFICALLY AT SECTION 5-901 ENTITLED "GENERAL STANDARDS FOR RESIDENTIAL AND NONRESIDENTIAL DISTRICTS", AND SECTION 5-902 ENTITLED "MAXIMUM HEIGHT", TO CLEARLY ESTABLISH APPROPRIATE REGULATIONS FOR THE CONSTRUCTION AND USE OF OPAQUE FENCES AND WALLS IN RESIDENTIAL DISTRICTS, AND TO FURTHER ORGANIZE AND STREAMLINE THE SPECIFIC SECTIONS FOR GREATER CLARITY AND CONSISTENCY WITH THE INTENT OF THE NORTH MIAMI COMPREHENSIVE PLAN; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, FOR CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, on April 28, 2009, the Mayor and City Council adopted the City of North Miami ("City") Land Development Regulations under Chapter 29 of the City's Code of Ordinances ("LDRs"); and

WHEREAS, applicable provisions of the LDRs are calculated to protect and regulate residential and nonresidential uses, as reflected in the various residential zoning districts within the City, consistent with the intent of the City Comprehensive Plan ("Comprehensive Plan"); and

WHEREAS, a number of complaints have reached the City administration relating to the total prohibition of opaque fences or walls from the required front-yard setback of residential properties; and

WHEREAS, a review of Division 9, LDRs, revealed the additional necessity of organizing and streamlining particular Sections regulating the construction and use of fences and walls within residential and nonresidential zoning districts so as to achieve greater clarity, while reducing redundant language; and

WHEREAS, City administration is desirous of amending Sections 5-901 and 5-902, LDRs, to best regulate the construction, maintenance and use of fences and walls, particularly as it relates to opaque fences and walls on residential properties; and

WHEREAS, the Planning Commission, after a duly noticed public hearing held on May 5, 2015, found the proposed amendment to be consistent with the Comprehensive Plan, and in furtherance of the orderly development of the City; and

WHEREAS, the Planning Commission unanimously recommended approval of the proposed amendment to the Mayor and City Council; and

WHEREAS, the Mayor and City Council find the proposed amendment consistent with the intent of the Comprehensive Plan; that it strengthens the protection of the public health, safety and welfare; and therefore, accept the Planning Commission's recommendation of approval.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. **Amendments to Chapter 29 Code of Ordinances.** The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 29 of the North Miami Code of Ordinances entitled "Land Development Regulations", by amending Article 5, under Division 9 entitled "Fences, Walls, and Other Similar Structures", specifically at Section 5-901 entitled "General Standards for Residential and Nonresidential Districts", and Section 5-902 entitled "Maximum Height", to clearly establish appropriate regulations for the construction and use of opaque fences and walls in residential districts, and to further organize and streamline the specific Sections for greater clarity and consistency with the intent of the North Miami Comprehensive Plan, as follows:

CHAPTER 29. LAND DEVELOPMENT REGULATIONS

* * * * * *

ARTICLE 5. DEVELOPMENT STANDARDS

* * * * *

DIVISION 9. FENCES, WALLS, AND OTHER SIMILAR STRUCTURES

~~**Sec. 5-901. - General standards for residential and nonresidential districts.**~~
~~A. Requirements for nonresidential districts.~~

~~*1. Screening adjacent to residential property.* A six-foot high masonry wall shall be required on all nonresidential property that has a side or rear lot line abutting or separated~~

~~by a public right-of-way from residentially zoned property. The wall shall be subject to the vision clearance requirements set forth in section 5-904.~~

~~2. *Outdoor storage.* All permitted outdoor commercial or industrial storage shall be visually screened from public view by a six-foot high opaque fence or wall. In no case shall the items stored project above the fence or wall.~~

~~B. No fence or wall may be erected, constructed, installed or maintained with barbed wire, spikes and/or spears, broken glass, electrical elements, exposed sharp projections, or other hazardous materials, except as provided in section 5-903.~~

~~C. In residential districts, completely opaque fences or walls shall be prohibited in the required front yard setback.~~

~~D. All fences and walls shall comply with the Florida Building Code.~~

~~E. No fence or wall may be constructed of materials which will be hazardous to the health, safety or welfare of persons or animals.~~

~~F. All masonry walls shall be constructed and maintained with a finish of stucco and paint on all external portions and all such inside portions as are observable from rights-of-way or from abutting property.~~

~~G. All fences and walls in nonresidential districts shall be harmonious in color, type and material with adjacent architecture and lots. The director of building and zoning may approve the installation of a fence with the "wrong side" (post side) facing the adjacent or affected properties if the applicant obtains notarized approval letters from all adjacent or affected property owners.~~

~~H. Wood and chain link fences in commercial districts: All fence posts shall face the property upon which the fence is erected. All chain link fences shall be installed with the knuckled side up and shall be plastic coated. All straps, for chain link fences, shall be consistent in color with the color of the principal structure and be maintained in good condition and not weathered, cracked or faded.~~

~~I. All temporary construction fences used at construction or development sites, may, at the discretion of the director of building and zoning department, be exempt from the height, opacity and landscaping provisions of this section of LDRs, provided that they do not obstruct the vision of motor vehicle operations, in accordance with the sight triangle in section 5-904 or create other hazards to public safety.~~

~~J. Maintenance: All fences, walls and hedges shall be maintained in a safe, nonhazardous condition and in good appearance. Walls and fences, unless of natural materials or galvanized, shall be properly painted.~~

~~K. No fence or wall may be constructed within an identified and duly recorded easement unless the property owner has:~~

~~1. Obtained a written, notarized release from all public agencies or utility entities having rights to the easement; or~~

~~2. Obtained a written, notarized release from all private interests/parties having rights to the easement; and~~

~~3. Submitted a notarized letter to the city's attention and acknowledging that should access or improvements to infrastructure be necessary on the property, the property owner will assume all responsibilities for costs incurred to obtain access to the easement area (which may include removal of the fence or wall) and the property owner shall be responsible for the full restoration of the area — all at property owner's sole cost. Such letter shall hold harmless the city, its officials and agents, as well as all other officials or agents of governmental agencies and public utilities, or any private party interest having a right of access to such easement.~~

~~L. No fence or wall in any zoning district may be used to store or hang items such as but not limited to: laundry, towels, sheets, rags, clothing or similar items. Fences and walls shall be solely for the demarcation and separation of properties for privacy and use purposes.~~

Sec. 5-901. Construction, maintenance and use.

A. No fence or wall may be erected, constructed, installed or maintained with barbed wire, spikes and/or spears, broken glass, electrical elements, exposed sharp projections, or other hazardous materials, except as provided in section 5-903.

B. All fences and walls shall be constructed in compliance with the Florida Building Code.

C. No fence or wall may be constructed of materials which will be hazardous to the health, safety or welfare of persons or animals.

D. All masonry walls shall be constructed and maintained with a finish of stucco and paint on all external portions and all such inside portions as are observable from rights-of-way or from abutting property.

E. No fence, wall or other similar structure may be constructed within an identified and duly recorded easement unless the property owner has:

1. Obtained a written, notarized release from all public agencies or utility entities having rights to the easement; or

2. Obtained a written, notarized release from all private interests and parties having rights to the easement; and

3. Submitted a notarized letter to the city's attention and acknowledging that should access or improvements to infrastructure be necessary on the property, the property owner will assume all responsibilities for costs incurred to obtain access to the easement area (which may include removal of the fence, wall or other similar structures) and the property owner shall be responsible for the full restoration of the area — all at property owner's sole cost. Such letter shall hold harmless the city, its officials and agents, as well as all other officials or agents of

governmental agencies and public utilities, or any private party interest having a right of access to such easement.

F. All temporary construction fences used at construction or development sites, may, at the discretion of the community planning and development manager, be exempt from the height, opacity and landscaping provisions of this section of LDRs, provided that they do not obstruct the vision of motor vehicle operations, in accordance with the sight triangle in section 5-904 or create other hazards to public safety.

G. Maintenance: All fences, walls and hedges shall be maintained in a safe, nonhazardous condition and in good appearance. Walls and fences, unless of natural materials or galvanized, shall be properly painted.

H. No fence or wall in any zoning district may be used to store or hang items such as, but not limited to: laundry, towels, sheets, rags, clothing or similar items. Fences and walls shall be solely for the demarcation and separation of properties for privacy and use purposes.

~~**Sec. 5-902. Maximum height.**~~

~~A. *Measurement.* All height measurements for determination of compliance with this section shall be made from the finished grade of the lot. No fence or wall may be placed on any portion of an earthen mound or berm unless the height of the fence or wall is cumulatively not higher than the allowable height in the zoning district from the finished grade of the lot.~~

~~B. *Residential districts, side and rear yard.* In all residential districts, no fence or wall shall exceed six (6) feet in height within the required side and rear yards.~~

~~C. *Residential districts, front yard.*~~

~~1. In all single-family residential districts, no fence or wall shall exceed five (5) feet in height within the required front yard; provided however, that decorative arches for gates and driveway gates may extend twelve (12) inches above the approved fence and post exteriors are permitted six (6) inches above the approved fence. For the purposes of fences and walls, all corner lots in single-family residential districts shall have two (2) front yards.~~

~~2. No chain link except in back yard.~~

~~3. Any fence must be of a decorative design.~~

~~4. In all multifamily residential districts (excluding townhouse developments) no fence or wall shall exceed six (6) feet in height within the required front yard.~~

~~D. *Nonresidential districts.*~~

~~1. In all commercial districts, no fence or wall shall exceed six (6) feet in height.~~

~~2. In industrial districts:~~

~~a. No fence, wall or hedge shall exceed eight (8) feet in height.~~

~~b. All salvage, junk and storage (vehicle, RV, boat trailers and items of this nature) operations shall be visually screened from the public view by an eight-foot high fence or wall which shall be of masonry construction and shall be without openings, except entrance and exit. Such gates shall be of an opaque material providing screening of interior properties' content from public view.~~

Sec. 5-902. General standards for nonresidential and residential districts.

A. Fences or walls in nonresidential districts shall be subject to the following minimum requirements:

1. *Screening adjacent to residential property.* A six (6) feet high masonry wall shall be required on all nonresidential property that has a side or rear lot line abutting or separated by a public right-of-way from residentially zoned property. The wall shall be subject to the vision clearance requirements set forth in section 5-904.

2. *Outdoor storage.* All permitted outdoor commercial or industrial storage shall be visually screened from public view by an opaque fence or wall six (6) feet in height. In no case shall the items stored project above the fence or wall.

3. All fences and walls in nonresidential districts shall be harmonious in color, type and material with adjacent architecture and lots. The community planning and development manager may approve the installation of a fence with the "wrong side" (post side) facing the adjacent or affected properties if the applicant obtains notarized approval letters from all adjacent or affected property owners.

4. *Wood and chain link fences in commercial districts*. All fence posts shall face the property upon which the fence is erected. All chain link fences shall be installed with the knuckled side up and shall be plastic coated. All straps, for chain link fences, shall be consistent in color with the color of the principal structure and be maintained in good condition and not weathered, cracked or faded.

B. Nonresidential districts maximum height:

1. In all commercial districts (except for industrial), no fence or wall shall exceed six (6) feet in height.

2. In all industrial districts:

a. No fence, wall or hedge shall exceed eight (8) feet in height.

b. All salvage, junk and storage (vehicle, RV, boat trailers and items of this nature) operations shall be visually screened from the public view by an eight-foot high fence or wall which shall be of masonry construction and shall be without openings, except entrance and exit. Such gates shall be of an opaque material providing screening of interior properties' content from public view.

C. Fences or walls in residential districts shall be subject to the following minimum requirements:

1. *Opaque fences or walls*. Completely opaque fences or walls exceeding three (3) feet in height shall be prohibited in the required front yard setback. Opaque fences or walls shall be allowed in the required back yard, side yard, or side street setback not exceeding six (6) feet in height and subject to the vision clearance requirements set forth in section 5-904.

2. *Side yard and rear yard setbacks.* No fence or wall shall exceed six (6) feet in height within the required side and rear yards setbacks.

3. *Front yard setbacks.* In all single-family residential districts, no fence or wall shall exceed five (5) feet in height within the required front yard; provided however, that decorative arches for gates and driveway gates may extend twelve (12) inches above the approved fence and post exteriors are permitted six (6) inches above the approved fence.

4. No chain link except in back yard.

5. Any fence must be of a decorative design.

6. In all multifamily residential districts (excluding townhouse developments) no fence or wall shall exceed six (6) feet in height within the required front yard.

D. *Measurement.* All height measurements for determination of compliance with this section shall be made from the finished grade of the lot. No fence or wall may be placed on any portion of an earthen mound or berm unless the height of the fence or wall is cumulatively not higher than the allowable height in the zoning district from the finished grade of the lot.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

Section 3. **Conflicts.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. **Severability.** The provisions of this Ordinance are declared to be 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 not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance

may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 5. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by 5-0 vote of the Mayor and City Council on first reading this 9 day of June, 2015.

PASSED AND ADOPTED by _____ vote of the Mayor and City Council on second reading this _____ day of _____, 2015.

_____
DR. SMITH JOSEPH
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: COUNCILMAN SCOTT GALVIN

Moved by: _____

Seconded by: _____

Vote:

Mayor Dr. Smith Joseph, D.O., Pharm. D.	_____ (Yes)	_____ (No)
Vice Mayor Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilman Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilman Alix Desulme	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.