TO: Honorable Mayor & Members of the Biscayne Park Village Commission

FROM: John R. Herin, Jr., Interim Village Attorney

DATE: September 1, 2020.

TITLE: ORDINANCE NO. 2020-04 An Ordinance of the Village Commission of the Village of Biscayne Park, Florida, Amending Chapter 11 of the Biscayne Land Development Code Entitled “Accessory Structures” Establishing Requirements for Mandatory Fencing of Construction Sites, Mandatory Maintenance Requirements for Pools; and Amending Chapter 16 Entitled “Permits and Certificates” Authorizing the Building Official to Require the Posting of a Maintenance Bond for Construction Sites; Providing for Inclusion in the Code and Scrivener’s Errors; Providing for Conflicts; Providing for Severability and Providing for an Effective Date

Recommendation

Staff recommends approval on first reading of Ordinance 2020-04.

Background

The Commission directed staff to prepare an ordinance requiring fencing at construction sites and requiring pool enclosures and maintenance requirements.

Resource Impact

Cost of enforcement

Attachment(s)

- Proposed Ordinance 2020-04

Prepared by: John R. Herin, Jr, Interim Village Attorney
ORDINANCE NO. 2020-04

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTER 11 OF THE BISCAYNE LAND DEVELOPMENT CODE ENTITLED “ACCESSORY STRUCTURES” ESTABLISHING REQUIREMENTS FOR MANDATORY FENCING OF CONSTRUCTION SITES, MANDATORY MAINTENANCE REQUIREMENTS FOR POOLS; AND AMENDING CHAPTER 16 ENTITLED “PERMITS AND CERTIFICATES” AUTHORIZING THE BUILDING OFFICIAL TO REQUIRE THE POSTING OF A MAINTENANCE BOND FOR CONSTRUCTION SITES; PROVIDING FOR INCLUSION IN THE CODE AND SCRIVENER’S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR 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, Section 4.03 of the Village Charter of the Village of Biscayne Park empowers the Village Commission to adopt, amend, or repeal such ordinances as may be required for the proper governing of the Village; and

WHEREAS, the Village Commission “(Commission”) recognizes the need to regulate fences at construction sites and require the regular maintenance of pools to protect the health, safety and welfare of the residents of Biscayne Park; and

WHEREAS, on September ___, 2020, the Village Planning Board, as the local planning agency for the Village, held its hearing on this proposed Ordinance with due public notice and input; and

WHEREAS, on September 1, 2020 the Commission held a first reading and public hearing of this proposed Ordinance; and

WHEREAS, on October __, 2020 the Commission held a second reading and public reading of this proposed Ordinance with due public notice and input.

NOW, THEREFORE, BE ORDAINED BY THE VILLAGE OF BISCAYNE PARK, FLORIDA AS FOLLOWS:¹

Section 1. Recitals. 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 Village Commission.

¹/ 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.
Section 2. Amendments to the Land Development Code. Chapter 11 of the Land Development Code of Ordinances, Village of Biscayne Park, Florida is hereby amended by adding a section to be numbered _______, which section reads as follows: to read as follows:

CHAPTER 11 – ACCESSORY STRUCTURES

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11.6. - Fences, walls and hedges.

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Sec. 11.6 - Construction site fencing and maintenance.

11.6. All construction sites shall be enclosed with a temporary six-foot fence, which shall be installed prior to commencement of any construction activity or material deliveries. The fence shall be chain link, covered with green or black nylon material screening the construction from view, and installed on the front, side and rear lot lines. The fence shall not be placed in a manner that creates a public safety hazard and the fence gate shall be locked during nonworking hours.

11.6. All Construction sites shall be maintained free of loose debris and scrap materials. No open pits, holes, or trenches shall be permitted on the construction site except during construction activity or when a guard is present. The contractor shall provide before any construction, adequate refuse and garbage containers. All persons employed on the premises shall be instructed to use these containers for the disposal of left-over food, rubbish, garbage, or construction debris, etc., and the premises shall be kept clean and sanitary. Houses under construction shall be provided with sufficient waste receptacles to contain all garbage and waste produced by the house. Garbage and waste placed outside of receptacles shall constitute a violation of this section and is declared to be a public nuisance.

11.6. Whenever an application is made for a building permit in the Village and during the construction under permit, it shall be the duty of the Building Official to determine whether the improvement being permitted or constructed will impact the appearance of the Village by the possibility or occurrence of construction debris left abandoned or damage to the Village median during or upon the completion of the work associated with the permit. If, in the opinion of the Building Official, it appears probable that, in the course of construction, that construction debris may be or has been abandoned or that the work involved will leave or has left debris or damage to the Village median that will not be restricted to the project site, the Building Official shall require a cash bond of $5,000.00 to be posted by the applicant. This bond shall be posted in addition to any amounts otherwise required to be paid to the Village by the Applicant including, but not limited
to any fees required pursuant to other resolutions or ordinances of the Village relating to the improvement of the property.

Sec. 11.6. The Building Official shall give a receipt for the sum of money on a form prepared by the Village. The receipt form shall contain a provision that all or part of the cash bond shall be forfeited upon documentation of damage to the median or debris at the site that is not properly contained in dumpsters. The Village will restore the median or clean the debris left on the site that has been abandoned or is otherwise littering or likely to litter or on the private property of any Village resident or other areas of the Village other than the job site. Any amount of forfeiture will trigger a stop work order while the $5,000.00 bond is replenished and the site cleaned of debris.

Sec. 11.6. Before final approval of any building or structure constructed or any other work for which a permit has been issued, the Building Official shall require the cleanup of the work site and shall refuse final approval of the construction permit unless the cleanup is completed.

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11.9 - Swimming pools.

Sec. 11.9.1 A swimming pool unless entirely screened in, must be surrounded by a protective fence and/or wall of a minimum height of four (4) feet.

Sec. 11.9.2 The fence or wall shall be placed either around the swimming pool or the premises on which the pool is located.

Sec. 11.9.3 The fence or wall shall be constructed of concrete block or two-inch chain link, galvanized wire with top rail. All gates shall be the spring local type (close automatically) and shall be equipped with a lock.

Sec. 11.9.4 Final inspection and/or approval of construction of a swimming pool shall not be granted until such a fence or wall has been erected.

Sec. 11.9.5 No overhead electric power line shall pass over any pool, nor shall any power line be nearer than ten (10) feet horizontally or vertically from the pool's water edge.

Sec. 11.9.6 No final inspection and approval for a swimming pool shall be given by the Village unless there has been erected a safety barrier as hereinafter provided. No pool shall be filled with water unless a final inspection has been made and approved, except for testing purposes as may be approved by the Village.
Sec. 11.9. The safety barrier shall take the form of a screened-in patio, a wooden fence, a wire fence, a rock wall, a concrete block wall or other materials, so as to enable the owner to blend the same with the style of architecture planned or in existence on the property or as otherwise required by this Code.

Sec. 11.9. The minimum height of the safety barrier shall be not less than four (4) feet.

Sec 11.9. The safety barrier shall be erected either around the swimming pool or around the premises or a portion thereof on which the swimming pool is erected. In either event, it shall enclose the area entirely, prohibiting unrestrained admittance to the enclosed area. Pools located in enclosed structures shall not require the installation of barriers as required herein.

Sec. 11.9. Gates shall be of the spring lock type, so that they shall automatically be in a closed and fastened position at all times. Gates shall also be equipped with a safe lock and shall be locked when the swimming pool is not in use.

Sec. 11.9. Before any work is commenced, permits shall be secured for all swimming pools and for the safety barriers. Plans shall contain all details necessary to show compliance with the terms and conditions of this Code. No swimming pool permit shall be issued unless simultaneously therewith a permit is secured for the erection of the required safety barrier. If the premises are already enclosed a permit for the safety barrier shall not be required, if, upon inspection of the premises, the existing barrier and gates are proven to be satisfactory.

Sec. 11.9. In the wooden type fence, the boards, pickets, louvers, or other such members, shall be spaced, constructed, and erected, so as to make the fence non-climbable and impenetrable. Walls, whether of the rock or block type, shall be non-climbable. Wire fences shall be the two (2) inch chain link or diamond weave non-climbable type, or of an approved equal, with top rail, they shall be of a heavy, galvanized material.

Sec. 11.9. It shall be within the discretion of the Building Official to refuse approval of a barrier which, in his/her opinion, does not furnish the safety requirements of this section, i.e., that is high enough and so constructed to keep the children of preschool age from getting over or through it.

Sec. 11.9. It shall be the responsibility of the owner and/or occupant of the premises upon which the swimming pool is built to maintain and keep in proper and safe condition the safety barrier required and erected
in accordance with this Code, to maintain the pool in proper working order and free of algae, debris, mosquitos, and other health and safety hazards.

Sec. 11.9.5 No overhead electric power line shall pass over any pool, nor shall any power line be nearer than ten (10) feet horizontally or vertically from the pool’s water edge.

Section 3. Inclusion in the Code & Scrivener’s Errors. The Village Commission intends that the provisions of this Ordinance be made a part of the Biscayne Park Code, 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 Village Manager without further process.

Section 4. Conflicts. 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. Severability. 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. Effective Date. This Ordinance shall become effective upon adoption by the Town Council.

PASSED AND ADOPTED upon first reading this ___ day of ________, 2020.

PASSED AND ADOPTED upon second reading this ___ day of ________, 2020.

The foregoing Ordinance was offered by __________________________, who moved its adoption. The motion was seconded by __________________________, and upon being put to a vote the vote was as follows:

Virginia O’Halpin, Mayor
MacDonald Kennedy, Vice Mayor
Roxanna Ross, Commissioner
Dan Samaria, Commissioner
William Tudor, Commissioner
VILLAGE OF BISCAYNE PARK

________________________
Virginia O’Halpin, Mayor

ATTEST:

________________________
Roseann Prado, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:

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John R. Herin, Jr., Interim Village Attorney