



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report
REGULAR MEETING

Item # 9.a.

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
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Prepared by: John R. Herin, Jr, Interim Village Attorney

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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~~.

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

4
5 **CHAPTER 11 – ACCESSORY STRUCTURES**

6
7 ***

8
9 **11.6. - Fences, walls and hedges.**

10
11 ***

12
13 **Sec. 11.6 - Construction site fencing and maintenance.**

14
15 11.6. All construction sites shall be enclosed with a temporary six-
16 foot fence, which shall be installed prior to commencement of any
17 construction activity or material deliveries. The fence shall be chain link,
18 covered with green or black nylon material screening the construction from
19 view, and installed on the front, side and rear lot lines. The fence shall not
20 be placed in a manner that creates a public safety hazard and the fence gate
21 shall be locked during nonworking hours.

22
23 11.6. All Construction sites shall be maintained free of loose
24 debris and scrap materials. No open pits, holes, or trenches shall be
25 permitted on the construction site except during construction activity or
26 when a guard is present. The contractor shall provide before any
27 construction, adequate refuse and garbage containers. All persons
28 employed on the premises shall be instructed to use these containers for the
29 disposal of left-over food, rubbish, garbage, or construction debris, etc., and
30 the premises shall be kept clean and sanitary. Houses under construction
31 shall be provided with sufficient waste receptacles to contain all garbage
32 and waste produced by the house. Garbage and waste placed outside of
33 receptacles shall constitute a violation of this section and is declared to be a
34 public nuisance.

35
36 11.6. Whenever an application is made for a building permit in the
37 Village and during the construction under permit, it shall be the duty of the
38 Building Official to determine whether the improvement being permitted or
39 constructed will impact the appearance of the Village by the possibility or
40 occurrence of construction debris left abandoned or damage to the Village
41 median during or upon the completion of the work associated with the
42 permit. If, in the opinion of the Building Official, it appears probable that,
43 in the course of construction, that construction debris may be or has been
44 abandoned or that the work involved will leave or has left debris or damage
45 to the Village median that will not be restricted to the project site, the
46 Building Official shall require a cash bond of \$5,000.00 to be posted by the
47 applicant. This bond shall be posted in addition to any amounts otherwise
48 required to be paid to the Village by the Applicant including, but not limited
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1 to, any fees required pursuant to other resolutions or ordinances of the
2 Village relating to the improvement of the property.

3
4 Sec. 11.6. The Building Official shall give a receipt for the sum of
5 money on a form prepared by the Village. The receipt form shall contain a
6 provision that all or part of the cash bond shall be forfeited upon
7 documentation of damage to the median or debris at the site that is not
8 properly contained in dumpsters. The Village will restore the median or
9 clean the debris left on the site that has been abandoned or is otherwise
10 littering or likely to litter or on the private property of any Village resident
11 or other areas of the Village other than the job site. Any amount of forfeiture
12 will trigger a stop work order while the \$5,000.00 bond is replenished and
13 the site cleaned of debris.

14
15 Sec. 11.6. Before final approval of any building or structure
16 constructed or any other work for which a permit has been issued, the
17 Building Official shall require the cleanup of the work site and shall refuse
18 final approval of the construction permit unless the cleanup is completed.

19 ***

20 **11.9 - Swimming pools.**

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

27
28 ~~Sec. 11.9.2 — The fence or wall shall be placed either around the~~
29 ~~swimming pool or the premises on which the pool is located.~~

30
31 ~~Sec. 11.9.3 — The fence or wall shall be constructed of concrete block or~~
32 ~~two inch chain link, galvanized wire with top rail. All gates shall be the~~
33 ~~spring local type (close automatically) and shall be equipped with a lock.~~

34
35 ~~Sec. 11.9.4 — Final inspection and/or approval of construction of a~~
36 ~~swimming pool shall not be granted until such a fence or wall has been~~
37 ~~erected.~~

38
39 ~~Sec. 11.9.5 — No overhead electric power line shall pass over any pool, nor~~
40 ~~shall any power line be nearer than ten (10) feet horizontally or vertically~~
41 ~~from the pool's water edge.~~

42
43 Sec. 11.9. No final inspection and approval for a swimming pool shall
44 be given by the Village unless there has been erected a safety barrier as
45 hereinafter provided. No pool shall be filled with water unless a final
46 inspection has been made and approved, except for testing purposes as
47 may be approved by the Village.

1 Sec. 11.9 The safety barrier shall take the form of a screened-in patio,
2 a wooden fence, a wire fence, a rock wall, a concrete block wall or other
3 materials, so as to enable the owner to blend the same with the style of
4 architecture planned or in existence on the property or as otherwise
5 required by this Code.

6
7 Sec. 11.9 The minimum height of the safety barrier shall be not less
8 than four (4) feet.

9
10 Sec 11.9. The safety barrier shall be erected either around the
11 swimming pool or around the premises or a portion thereof on which the
12 swimming pool is erected. In either event, it shall enclose the area
13 entirely, prohibiting unrestrained admittance to the enclosed area. Pools
14 located in enclosed structures shall not require the installation of barriers
15 as required herein.

16
17 Sec. 11.9. Gates shall be of the spring lock type, so that they shall
18 automatically be in a closed and fastened position at all times. Gates shall
19 also be equipped with a safe lock and shall be locked when the swimming
20 pool is not in use.

21
22 Sec. 11.9. Before any work is commenced, permits shall be secured
23 for all swimming pools and for the safety barriers. Plans shall contain all
24 details necessary to show compliance with the terms and conditions of this
25 Code. No swimming pool permit shall be issued unless simultaneously
26 therewith a permit is secured for the erection of the required safety barrier.
27 If the premises are already enclosed a permit for the safety barrier shall
28 not be required, if, upon inspection of the premises, the existing barrier
29 and gates are proven to be satisfactory.

30
31 Sec. 11.9. In the wooden type fence, the boards, pickets, louvers, or
32 other such members, shall be spaced, constructed, and erected, so as to
33 make the fence non-climbable and impenetrable. Walls, whether of the
34 rock or block type, shall be non-climbable. Wire fences shall be the two
35 (2) inch chain link or diamond weave non-climbable type, or of an
36 approved equal, with top rail, they shall be of a heavy, galvanized material.

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

43
44 Sec. 11.9. It shall be the responsibility of the owner and/or occupant
45 of the premises upon which the swimming pool is built to maintain and
46 keep in proper and safe condition the safety barrier required and erected
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1 in accordance with this Code, to maintain the pool in proper working order
2 and free of algae, debris, mosquitos, and other health and safety hazards.

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4 Sec. 11.9.5 No overhead electric power line shall pass over any pool,
5 nor shall any power line be nearer than ten (10) feet horizontally or
6 vertically from the pool's water edge.
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8 **Section 3. Inclusion in the Code & Scrivener's Errors.** The Village Commission intends
9 that the provisions of this Ordinance be made a part of the Biscayne Park Code, and that sections herein
10 may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish
11 codification; regardless, typographical errors that do not affect intent may be corrected with notice to and
12 authorization of the Village Manager without further process.

13
14 **Section 4. Conflicts.** Whenever the requirements or provisions of this Ordinance are in
15 conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most
16 restrictive shall apply.

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

22
23 **Section 6. Effective Date.** This Ordinance shall become effective upon adoption by the Town
24 Council.

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26 PASSED AND ADOPTED upon first reading this ____ day of _____, 2020.

27
28 PASSED AND ADOPTED upon second reading this ____ day of _____, 2020.

29
30 The foregoing Ordinance was offered by _____, who moved its
31 adoption. The motion was seconded by _____, and upon being put to a vote
32 the vote was as follows:

33
34 Virginia O'Halpin, Mayor _____
35 MacDonald Kennedy, Vice Mayor _____
36 Roxanna Ross, Commissioner _____
37 Dan Samaria, Commissioner _____
38 William Tudor, Commissioner _____
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1 VILLAGE OF BISCAYNE PARK

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5 Virginia O’Halpin, Mayor
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10 ATTEST:

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13 _____
14 Roseann Prado, Village Clerk
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16 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
17 USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:
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21 _____
22 John R. Herin, Jr., Interim Village Attorney
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