

ORDINANCE NO. 1386

**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**

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### **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.

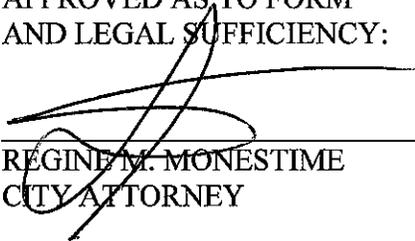
**Section 5. Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

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

**PASSED AND ADOPTED** by 5 - 0 vote of the Mayor and City Council on second reading this 23rd day of June, 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: Galvin  
Seconded by: Smith

**Vote:**

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

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