

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: July 23, 2019

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 19-305. Fence standards for vacant lots and construction sites.**

#### **REQUEST**

**AN ORDINANCE** OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 2, ENTITLED "RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," SECTION 142-108, ENTITLED "PROVISIONS FOR THE DEMOLITION OF SINGLE-FAMILY HOMES LOCATED OUTSIDE OF HISTORIC DISTRICTS," TO CREATE FENCING REQUIREMENTS FOR VACANT LOTS IN SINGLE FAMILY DISTRICTS; BY AMENDING ARTICLE IV, ENTITLED "SUPPLEMENTARY YARD REGULATIONS," DIVISION 1, ENTITLED "GENERALLY," BY CREATING SECTION 142-876, ENTITLED "VACANT AND ABANDONED PROPERTIES AND CONSTRUCTION SITES," TO ESTABLISH MINIMUM REQUIREMENTS FOR VACANT AND ABANDONED PROPERTIES, INCLUDING STANDARDS AND REQUIREMENTS, FOR CONSTRUCTION FENCES IN ALL DISTRICTS, AND BY AMENDING DIVISION 4, ENTITLED "SUPPLEMENTARY YARD REGULATIONS," SECTION 142-1132, ENTITLED "ALLOWABLE ENCROACHMENTS WITHIN REQUIRED YARDS," TO AMEND THE FENCING REQUIREMENTS FOR VACANT LOTS AND ABANDONED PROPERTIES IN ALL DISTRICTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

#### **RECOMMENDATION**

Transmit the proposed Ordinance to the City Commission with a favorable recommendation.

#### **HISTORY**

On April 10, 2019, at the request of Vice-Mayor Joy Malakoff, the City Commission referred the subject discussion item to the Land Use and Development Committee (Item C4 X).

On May 22, 2019 the LUDC discussed the item and recommended that the City Commission refer the draft Ordinance to the Planning Board, as amended to include provisions for vacant single family home lots.

On June 5, 2019, at the request of Vice-Mayor Joy Malakoff, the City Commission referred the ordinance to the Planning Board (Item C4 T).

## **BACKGROUND**

Fences, walls and gates are regulated in Section 142-1132 of the Land Development Regulations, as allowable encroachments within required yards. The following are the relevant Code sections pertaining to chain-link fences.

(1) All districts except I-1 and WD-2:

\* \* \*

- d. Chain link fences are prohibited in the required front yard, and any required yard facing a public right-of-way or waterway (except side yards facing on the terminus of a dead end street in single-family districts) except as provided in this section and in section 142-1134.
- e. Chain link fences may be erected to surround vacant lots or vacant buildings to minimize the possibility of the property becoming a dumping area. Such fence shall be permitted on a temporary basis for a period not to exceed one year and subject to its removal prior to the issuance of a certificate of use or a certificate of occupancy for a main permitted use on the property. In the architectural district, such a fence shall be vinyl coated.
- f. Barbed wire or materials of similar character shall be prohibited.
- g. Vacant lots in the CD-1, CD-2, CD-3, C-PS1, C-PS2, C-PS3, C-PS4, RM-1, RM-2, RM-3, R-PS1, R-PS2, R-PS3, R-PS4, RM-PS1, and MXE districts must be secured against motor vehicle entry at all entry points by a chain, hedge, fence, or other such material approved by the planning and zoning director.

The photos below depict typical chain-link fences around vacant lots in Miami Beach that were poorly constructed and/or are not properly maintained.







Construction fences are also often poorly constructed, and not maintained. The dust screen wrapping is often punctured with openings to address wind resistance, and such sites may remain an eyesore for years, as seen in the image below.



#### **REVIEW CRITERIA**

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

- 1. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

**Consistent** – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

**Not applicable** – The proposed amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

The proposed Ordinance is not out of scale with the surrounding neighborhood.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

**Consistent** – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

**Not applicable.** – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

**Consistent** – The proposed ordinance is necessary to improve the appearance of the City and mitigate the negative impacts of vacant sites and construction sites on neighboring properties.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

**Consistent** – The proposed Ordinance will improve living conditions in the neighborhood.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

**Consistent** – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

**Partially Consistent** – The proposed change will not reduce light and air to adjacent areas.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

**Consistent** – The proposed change should improve or at a minimum maintain property values in the adjacent areas compared to the current regulations.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

**Consistent** – The proposed change will not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not Applicable** –

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

**Not applicable** –

#### **COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

The proposal does affect areas that are vulnerable to the impacts of sea level rise.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

The proposal will not affect the resiliency of the City with respect to sea level rise.

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

#### **ANALYSIS**

Currently, chain-link fences are generally prohibited, but are allowed in side yards and within rear yards for non-waterfront lots in single family districts. Although they are also allowed to be installed to surround vacant lots for up to one year, there is no requirement that a vacant lot be fenced. In commercial and multifamily districts the only requirement is that they be secured against motor vehicle entry.

In single family districts, when a non-architecturally significant home is demolished, and a permit has not yet been issued for new construction, the site must be raised to sidewalk elevation, and sodded with drought tolerant sod. There is no requirement that the lot be fenced, but any proposed fencing must consist of aluminum picket type fencing along the entire perimeter.

Vacant lots often become a dumping ground, and requiring that such lots be secured to

minimize dumping benefits the surrounding residents and maintains property values. The same can be said for abandoned sites, which includes properties with structures that are unfit for human habitation, as well as for building sites with abandoned or expired permits. Often such lots remain vacant for many years. In order to improve the appearance of vacant lots and abandoned properties, and prevent them from becoming a dumping ground, staff has drafted an Ordinance to address the securing and fencing of vacant lots and construction sites. The following is a summary of the proposed amendments that would require all vacant lots and construction sites be fenced and secured:

Minimum fencing requirements in all districts (except single family districts):

The following minimum fence requirements shall apply to all vacant lots, lots containing any structures with abandoned or expired permits (more than 30 days) that are unfit for human habitation, and lots containing buildings unfit for human habitation.

- Generally, a seven foot (7') high fence will be required along all property lines, except those facing a waterway, in which case the height shall be five feet (5'). In the event an abutting property has an existing fence along an interior side and/or rear property line, and such fence provides adequate securing of the property, the Planning Director or designee may waive the requirement for a fence along such property lines. Within single family, townhome and all residential districts, the fence shall be setback four feet (4') from front and side street property lines.
- Along the front, street side and any waterway portions of the property line, including all required front yards, side street yards and rear yards facing a street or waterway, an aluminum picket fence (or equivalent standard) with permanent quality construction shall be required. Along interior property lines, as well as rear property lines not facing a waterway or street, black or green vinyl coated chain-link fencing, of permanent quality construction, may be permitted, provided such fencing is not located within a required front yard, street side yard or rear yard facing a waterfront.
- All fences required herein shall be of permanent construction, including concrete foundations.
- Wherever there is a driveway approach entering the lot, vehicular access onto the site shall be required for maintenance, with a locked gate.

Construction fences in all districts:

Construction fences shall be required along all property lines to surround properties with active building permits and which are unfit for human habitation in accordance with the following requirements:

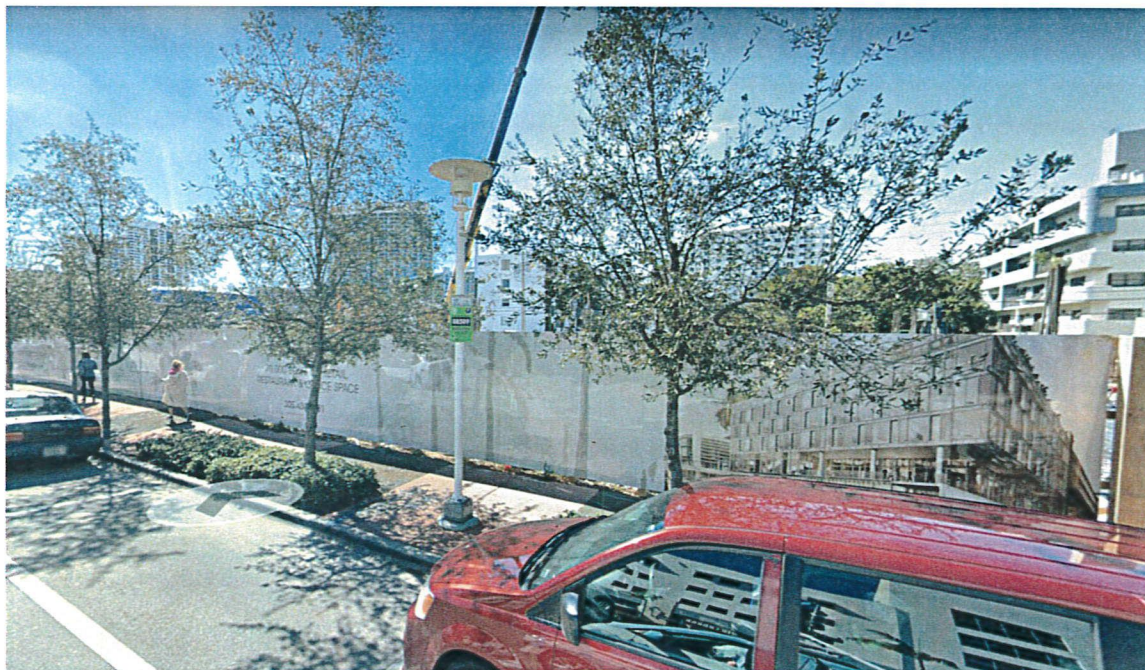
- In single family districts construction fences shall be a minimum height of six feet (6') and maximum height of ten feet (10') measured from the adjacent grade. In all other districts construction fences shall be a minimum height of six feet (6') and maximum height of twelve feet (12'), as measured from adjacent grade.
- In all districts, construction fences located along a front, side facing the street or waterfront property lines, shall consist of an opaque screening, which may include plywood, or aluminum panels, or the equivalent solid construction on a wood or metal frame. The exterior face of such fencing shall at a minimum consist of a continuous



color finish in single family districts. In all other districts, an artistic mural, which is integral to the fence construction, shall be required, subject to design review approval or a certificate of appropriateness, as applicable.

- All fences required herein shall be of permanent construction, including concrete foundations.
- A rolling or rigid folding gate shall be placed as an opening in the fence wherever there is a vehicular access for construction vehicles entering the site. The width of the gate shall not be larger in width than required for access of construction vehicles; however the height may be increased as necessary to provide a rigid frame completely surrounding the vehicular access. The gate shall not be of the swinging type.

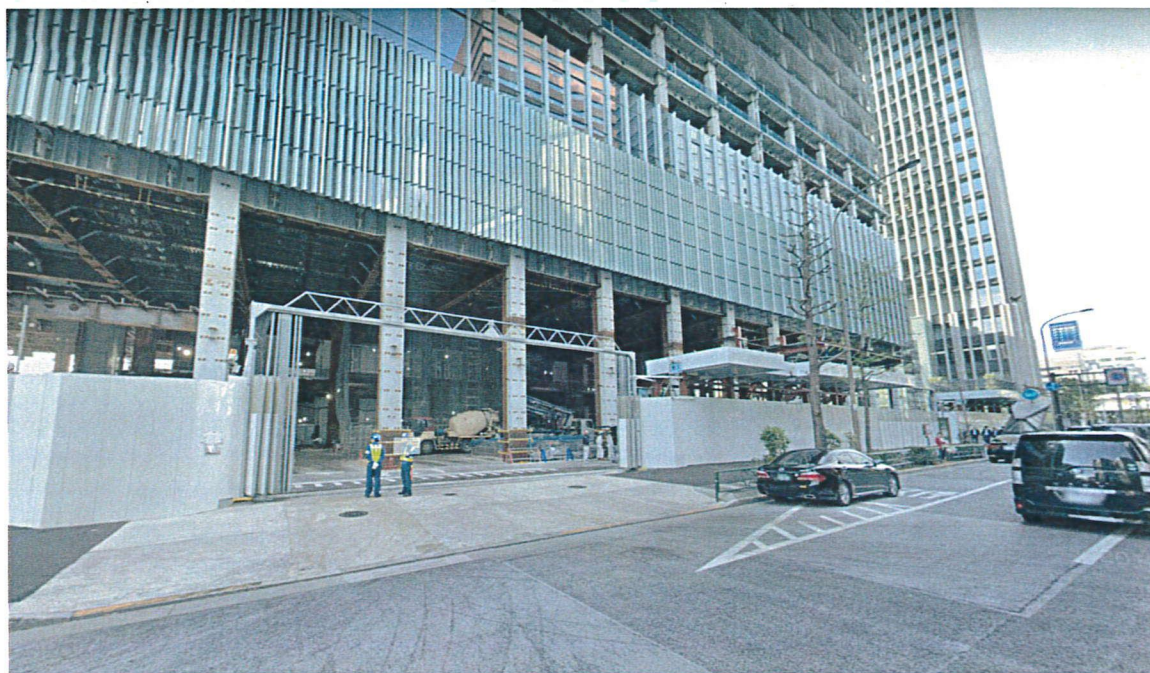
Below are some examples of attractive construction fences in Miami Beach:







The City Code authorizes the use of non-commercial, artistic graphics in conjunction with fencing, and some property owners effectively utilize this to market their property during construction. The images below depict the very strict construction fencing requirements in Japan, with a 10 foot tall, standard white uniform appearance with rigid, controlled folding panel gates for construction vehicle access.







The attached draft Ordinance includes the amendments noted above, as well as corresponding revisions to the single family regulations and existing, allowable encroachments.

The attached Ordinance has been amended to include the recommendation of the Land Use and Development Committee regarding vacant lots in single family districts. In this regard, the fencing of vacant single family lots can be optional, if the lot is maintained.

#### **RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed Ordinance to the City Commission with a favorable recommendation.

**SECTION 1.** Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," Article II, "District Regulations," Division 2, "RS-1, RS-2, RS-3, RS-4 Single Family Residential Districts," is hereby amended as follows:

**CHAPTER 142 – ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

**DIVISION 2. - RS-1, RS-2, RS-3, RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS**

\* \* \*

**Sec. 142-108. - Provisions for the demolition of single-family homes located outside of historic districts.**

\* \* \*

(j) *Issuance of demolition permits for single-family homes that are not architecturally significant.*

(1) Emergency demolition orders. This section shall not supersede the requirements of the applicable building code with regard to unsafe structures and the issuance of emergency demolition orders, as determined by the building official.

(2) A demolition permit for the total demolition of any single-family home that is not architecturally significant, regardless of year of construction, shall not be issued unless all of the following criteria are satisfied:

a. Obtain a building permit process number, which shall require:

(i) A building permit process number for new construction;

(ii) The building permit application and all required plans for the new construction, or proposed improvements to a lot that is abutting an aggregated lot with an existing single-family home, shall be reviewed and approved by the planning department;

(iii) All applicable fees for the new construction, or proposed improvements to a lot that is abutting an aggregated lot with an existing single-family home, shall be paid, including, but not limited to, building permit and impact fees, as well as applicable concurrency and parking impact fees;

(iv) A tree survey, if required, shall be submitted and a replacement plan, if required, shall be reviewed and approved by the urban forestry in the environment and sustainability department.

b. Or, alternatively, be required to comply with the following:

(i) A tree survey, if required, shall be submitted and a replacement plan, if required, shall be reviewed and approved by the urban forestry in the environment and sustainability department.

(ii) The demolition permit shall indicate that the entire property, with the exception of areas surrounding trees to be retained and preserved, shall be raised to sidewalk grade, or the crown of the road, upon the completion of demolition, with approved base material.

(iii) The demolition permit shall indicate that drought and salt tolerant sod, such as bahia sod or seashore paspalum sod shall be installed on the entire site and hedge material shall be installed along the entire perimeter of the property.



- (iv) Fencing for the property shall be required, and, if any, shall only consist of aluminum picket along the entire perimeter of the property.
- (v) The raising of the site to sidewalk grade and the installation of all required landscaping ~~must~~ shall be completed within ten days of the completion of demolition.
- (vi) All landscaping required herein shall be installed and maintained as required by the demolition permit and the city's landscaping code, until such time as new construction is authorized and commences.

\* \* \*

**SECTION 2.** Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," Article IV, "Supplementary District Regulations," Division 1, "Generally," is hereby amended as follows:

## CHAPTER 142 – ZONING DISTRICTS AND REGULATIONS

\* \* \*

### ARTICLE IV. – SUPPLEMENTARY YARD REGULATIONS

\* \* \*

#### DIVISION 1. - GENERALLY

\* \* \*

#### **Section 142-876. - Vacant and abandoned properties and construction sites.**

(a) Vacant and abandoned properties in all districts. The following minimum fence requirements shall apply to all vacant lots, lots containing a structure that is subject to a permit that has been abandoned or that has expired (for more than 30 days) and which structure is unfit for human habitation, and lots containing buildings unfit for human habitation.

(1) Applicability. With the exception of single family districts, fencing shall be required for all vacant and abandoned lots, as identified more specifically in subsection (a).

(2) Height. There shall be no minimum height requirement for fences in single family districts; however, the maximum height in single family districts shall not exceed seven feet (7'). In all other zoning districts, a seven foot (7') high fence shall be constructed along all property lines, except those facing a waterway, in which case the height shall be five feet (5'). If a property contains a building that is set back less than five feet (5') from a property line, or there is an existing CBS wall that is at least five feet (5') in height, the planning director, or designee, may waive the minimum fence requirements along those property lines, provided that the property is secure from trespassing. In the event that an abutting property has an existing fence along an interior side and/or rear property line, and such fence provides adequate securing of the property, the planning director, or designee, may waive the requirement for a fence along such property lines. Within single-family, townhome, and all other residential districts, the fence shall be set back four feet (4') from front and side street property lines.

(3) Materials. Along the front, street side and any waterway portions of the property line, including all required front yards, side street yards, and rear yards facing a street or waterway, an aluminum picket fence (or equivalent standard) with permanent-quality construction shall be required. Along interior property lines, as well as rear property lines not facing a waterway or street, black or green vinyl coated chain-link fencing, of

permanent-quality construction, may be permitted, provided such fencing is not located within a required front yard, street side yard, or rear yard facing a waterfront.

(4) Construction requirements. All fences required herein shall be of permanent-quality construction, including concrete foundations.

(5) Access. Wherever there is a driveway approach entering the lot, vehicular access onto the site shall be required for maintenance, with a locked gate.

(b) Construction fences in all districts. As applicable to all properties with active building permits, which are also unfit for human habitation, construction fences shall be required to be installed along all property lines:

(1) Height. In single-family districts, construction fences shall be installed at a minimum height of six feet (6') and maximum height of ten feet (10'), as measured from the adjacent grade. In all other districts, construction fences shall be a minimum height of six feet (6') and maximum height of twelve feet (12'), as measured from adjacent grade.

(2) Materials. In all districts, construction fences located along a front, side facing a street, or waterfront property lines, shall consist of an opaque screening, which may include plywood or aluminum panels, or the equivalent solid construction on a wood or metal frame. The exterior face of such fencing shall at a minimum consist of a continuous color finish in single family districts. In all other districts, an artistic mural, which is integral to the fence construction, shall be required, subject to design review approval or a certificate of appropriateness, as applicable.

(3) Construction requirements. All fences required pursuant to this section shall be of permanent-quality construction, including concrete foundations.

(4) Access. A rolling or rigid folding gate shall be placed as an opening in the fence wherever there is a vehicular access for construction vehicles entering the site. The width of the gate shall not be larger in width than what is required for access for construction vehicles; however, the height may be increased as necessary to provide a rigid frame completely surrounding the vehicular access point. The gate shall not be of the swinging type.

\* \* \*

#### **DIVISION 4. - SUPPLEMENTARY YARD REGULATIONS**

\* \* \*

#### **Sec. 142-1132. - Allowable encroachments within required yards.**

\* \* \*

(h) Fences, walls, and gates. Regulations and requirements pertaining to materials and heights for fences, walls and gates, excluding for vacant parcels and construction sites, are as follows:

(1) All districts except I-1 and WD-2:

a. Front yard and side yard facing a street. Within the required front yard or required side yard facing a street, fences, walls and gates shall not exceed five feet, as measured from grade. The height may be increased up to a maximum total height



of seven feet (7') if the fence, wall or gate is set back from the front and/or side street property line. Height may be increased by one foot (1') for every two feet (2') of setback. For properties zoned multifamily and located within a locally designated historic district or site, fences shall be subject to the certificate of appropriateness review procedure, and may be approved at the administrative level.

- b. Rear and side yard. Within the required rear or side yard, fences, walls and gates shall not exceed seven feet (7'), as measured from grade, except when such yard abuts a public right-of-way, waterway or golf course, in which case the maximum height shall not exceed five feet (5'). Within RS-1 or RS-2 single-family districts, in the event that a property has approval for adjusted grade, the overall height of fences, walls and gates may be measured from adjusted grade, provided that the portion of such fences, walls or gates above four feet in height consists of open pickets with a minimum spacing of three inches (3"), unless otherwise approved by the design review board or historic preservation board, as applicable.
  - c. Finish. All surfaces of masonry walls and wood fences shall be finished in the same manner with the same materials on both sides to have an equal or better quality appearance when seen from adjoining properties. The structural supports for wood fences, walls or gates shall face inward toward the property. In the event that a masonry wall or wood fence cannot be equally finished on both sides, an affidavit shall be submitted at the time of building permit, signed by the abutting property owner, waving this requirement. This shall not apply to portions of masonry walls or fences which face the right-of-way or water.
  - d. Chain link fences are prohibited in the required front yard, and any required yard facing a public right-of-way or waterway (except side yards facing on the terminus of a dead end street in single-family districts) except as provided in this section and in section 142-1134.
  - e. ~~Chain link fences may be erected to surround vacant lots or vacant buildings to minimize the possibility of the property becoming a dumping area. Such fence shall be permitted on a temporary basis for a period not to exceed one year and subject to its removal prior to the issuance of a certificate of use or a certificate of occupancy for a main permitted use on the property. In the architectural district, such a fence shall be vinyl coated.~~
  - f. Barbed wire or materials of similar character shall be prohibited.
  - g. ~~Vacant lots in the CD-1, CD-2, CD-3, C-PS1, C-PS2, C-PS3, C-PS4, RM-1, RM-2, RM-3, R-PS1, R-PS2, R-PS3, R-PS4, RM-PS1, and MXE districts must be secured against motor vehicle entry at all entry points by a chain, hedge, fence, or other such material approved by the planning and zoning director.~~
- (2) In I-1 light industrial districts, within the front, rear or side yard a fence shall not exceed seven feet (7'), as measured from grade, excluding barbed wire or materials of similar character. Barbed wire or materials of similar character shall be elevated seven feet (7') above grade and be angled towards the interior of the lot. The combined height of a wall or fence plus barbed wire or materials of similar character shall not exceed nine feet (9'). ~~Vacant lots in the I-1 district must be secured against motor vehicle entry at all entry points by a chain, hedge, fence or other such material approved by the planning and zoning director.~~

- (3) For government facilities in GU and CCC districts, a fence surrounding the property may be located on the property line, not to exceed six feet (6') in height, as measured from grade. The height may be increased up to a maximum total height of eight feet (8') if the fence is set back one foot (1') from the property line, subject to design review approval; fence(s) shall be constructed in a manner such that there is substantial visibility through the fence.
- (4) In the WD-2 districts, the following shall apply:
- a. Fences and gates shall be subject to the certificate of appropriateness review criteria, and may be reviewed for approval at the administrative level.
  - b. Fences and gates shall not exceed six feet (6') in height, as measured from the elevation of Miami Beach Drive at the center of the property.
  - c. Fences and gates shall consist only of open aluminum picket, unless otherwise approved by the historic preservation board.
  - d. Wood, chain link, masonry, concrete, barbed wire or materials of similar character shall be prohibited.
- (5) For oceanfront properties, the following shall apply with regard to measurement of maximum height.
- a. The height of allowable fences, walls and gates located in the front, interior side yard or side yards facing a street (and not also within a rear yard) shall be measured from grade, as defined in section 114-1).
  - b. The height of allowable fences, walls and gates located within the required rear yard (including overlapping portions of interior and street side yards) shall be measured from the elevation of the beach walk (not an elevated boardwalk) at the center of the property. Where no beach walk is present, the height of allowable fences, walls, and gates shall be measured from the elevation of the erosion control line at the center of the property.

### **SECTION 3. Repealer.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

### **SECTION 4. Codification.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

### **SECTION 5. Severability.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.



**SECTION 6. Effective Date.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Dan Gelber, Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

First Reading: July 17, 2019  
Second Reading: September 11, 2019

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director