



**Memorandum**

**Meeting Details:** Planning Commission, June 03, 2024

**Prepared For:** Planning Commission

**From:** Community Development Department

**Subject:** Ordinance 2024-08 Fences

**Background:** The lack of details in the fence section of the Madeira Beach Land Development Regulations (LDRs) has caused confusion and frustration for various homeowners, contractors, city staff, and applicants attempting to obtain a fence permit. Some of these issues include many common prefabricated open fence types not meeting current open fence sizing and spacing requirements, fencing requirements in other code sections not being referenced in the fence division, and a lack of clear black-and-white guidance when it comes to fences. The current code is also silent on some fence types such as temporary construction fencing and split rail fences. While this section of the code already has a definition for “building line” as being established by the primary structure setback, this definition is not referenced at all in this code. Due to not being referenced, the lack of a clear definition of where the side, rear, and front yards begin, when determining height, city staff is forced to interpret it as the building line of the primary structure that exists at the time of permitting. Because of this, applicants whose structures do not extend as far as the minimum setback requirements are penalized, applicants with nonconforming structures built beyond the setbacks are rewarded and fence lines are inconsistent from property to property within the same zoning district. As a result, some applicants have had their neighbors apply for their fence permits to extend further than they typically would be able to.

**Discussion:** The proposed ordinance (attached to the memo) has been reviewed by community development staff several times over the past couple of months. This proposed ordinance has been brought to the April 24<sup>th</sup> BOC Workshop Meeting and May 6<sup>th</sup> Planning Commission Meeting. The Ordinance has been revised based on feedback from these meetings and recommendations from the city attorney.

The most notable change from the last Planning Commission meeting was a change to the building line definition to be less restrictive for lots with nonconfirming primary structures.

The proposed amendments incorporate all the above-discussed issues and improvements city staff noticed and recommend amending or adding to the current fence code. When coming up with the proposed amendments, city staff analyzed common issues that arose through fence permit applications over the past several months, reviewing common fence types listed by manufacturers such as Home Depot, as well as comparing the Madeira Beach Code of Ordinances to, that of other nearby municipalities.

**Recommendation(s):** Staff recommends approval of Ordinance 2024-08 to be brought to the next BOC meeting.

**Fiscal Impact or Other:**

There is no anticipated fiscal impact.

**Attachments:**

- Business Impact Estimate
- Proposed amendments to the Fence Code

# **Business Impact Estimate**

Proposed ordinance's title/reference:

## **ORDINANCE 2024-08**

**AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, AMENDING DIVISION 3 (LANDSCAPE FENCES, GATES, HEDGES, AND WALLS) OF ARTICLE VI (SUPPLEMENTARY DISTRICT REGULATIONS) OF CHAPTER 110 (ZONING) OF THE CITY'S LAND DEVELOPMENT CODE TO REVISE THE DEFINITION OF BUILDING LINE; TO ADD A PROVISION FOR OPENINGS; TO REVISE THE PROVISION RELATED TO OPEN FENCES; TO PROHIBIT FENCES OVER THREE FEET IN INTERSECTION VISIBILITY TRIANGLES; TO AMEND HEIGHT, FRONT, SIDE AND REAR YARD REQUIREMENTS; TO INCLUDE A PROVISION FOR FENCES AROUND SWIMMING POOLS; AND TO ADD A NONCONFORMING FENCE, GATE, HEDGE OR WALL PROVISION; PROVIDING FOR CONFLICT, CODIFICATION AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City of Madeira Beach is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the City of Madeira Beach is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;

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<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

- b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
- c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
- d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the City of Madeira Beach hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

The lack of details in the fence section of the Madeira Beach Land Development Regulations (LDRs) has caused confusion and frustration for various homeowners, contractors, city staff, and applicants attempting to obtain a fence permit. Some of these issues include many common prefabricated open fence types not meeting current open fence sizing and spacing requirements, fencing requirements in other code sections not being referenced in the fence division, and a lack of clear black-and-white guidance when it comes to fences. The current code is also silent on some fence types such as temporary construction fencing and split rail fences. While this section of the code already has a definition for “building line” as being established by the primary structure setback, this definition is not referenced at all in this code. Due to not being referenced, the lack of a clear definition of where the side, rear, and front yards begin, when determining height, city staff is forced to interpret it as the building line of the primary structure that exists at the time of permitting. Because of this, applicants whose structures do not extend as far as the minimum setback requirements are penalized, applicants with nonconforming structures built beyond the setbacks are rewarded and fence lines are inconsistent from property to property within the same zoning district. As a result, some applicants have had their neighbors apply for their fence permits to extend further than they typically would be able to.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City of Madeira Beach, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the City of Madeira Beach’s regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

No foreseen impact.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

It is not foreseen that any businesses will be negatively impacted by passing this ordinance.

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4. Additional information the governing body deems useful (if any):
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**WHEREAS**, City Staff has reviewed the current provisions of Division 3 of Article VI of Chapter 110 of the Land Development Code of the City of Madeira Beach and recommends amending the building line definition to be less restrictive; and

**WHEREAS**, City Staff has reviewed the current provisions of Division 3 of Article VI of Chapter 110 of the Land Development Code of the City of Madeira Beach and recommends amending the open fence requirements to be less restrictive and more descriptive and allow for the addition of decorative fencing such as split rail fences; and

**WHEREAS**, City Staff has reviewed the current provisions of Division 3 of Article VI of Chapter 110 of the Land Development Code of the City of Madeira Beach and recommends adding information clarifying that construction fencing does not apply to this section; and

**WHEREAS**, City Staff has reviewed the current provisions of Division 3 of Article VI of Chapter 110 of the Land Development Code of the City of Madeira Beach and recommends amending the height requirements to be more clear on where front, rear and side yards are located by utilizing the building line definition; and

**WHEREAS**, City Staff has reviewed the current provisions of Division 3 of Article VI of Chapter 110 of the Land Development Code of the City of Madeira Beach and recommends adding information regarding swimming pool fences, nonconforming fences and the intersection sight visibility triangle to reflect other sections of the Land Development Code; and

**WHEREAS**, the recommendations of staff have been found meritorious by the Board of Commissioners.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, AS FOLLOWS:**

**Section 1.** That Section 110-446 (Applicability of Division) of Division 3 (Landscape Fences, Gates, Hedges and Walls) of Article VI (Supplementary District Regulations) of Chapter 110 (Zoning) of the Land Development Code of the City of Madeira Beach, Florida, is hereby amended to read as follows:

**Sec. 110-446. - Applicability of division.**

This division applies to all fences, hedges, and walls that are not specifically exempted from this division. This division does not apply to seawalls (see [chapter 14](#), article V of this Code for regulations on seawalls).

(1) *Definitions.* The following terms and phrases used in this division have the following meanings.

*Building line* means the line established by the setback required by the zoning district in which the lot is located, beyond which a building must not extend, ~~excepter~~ as specifically provided by this Code or approved variance from this Code. If the furthest vertical structural member of the primary structure on the subject property, or the abutting neighbor's shared property line to the proposed fence extends further than the established setback required by the zoning district, then that furthest vertical structural member shall apply as the building line.

*Chain-link fence* means an open fence consisting of a woven mesh of thick steel wire having a uniform diamond-shaped pattern.

*Grade* means a reference plane representing the average of finished ground level along the exterior edge of the fence, hedge, or wall.

*Hedge* means any installation or placement of plants, structural elements, feature art, ornaments or objects that together form a row, boundary or screen that extends more than three feet before a break (open space) of at least three feet horizontally and six feet vertically. Hedges can be installed in conjunction with or in lieu of fences, except those fences required by the Florida Building Code, and must meet the same height restrictions as fences and walls except in the rear yard where the natural plant material of the hedge may be allowed to grow to natural height.

*Picket fence* means an open fence consisting of pickets or pales attached to horizontal stringers between upright posts.

*Post* means a sturdy vertical component placed into the ground to support a fence. Posts for residential use cannot be greater than five inches wide and posts for non-residential uses cannot be greater than eight inches wide. Posts may extend three inches above the restricted fence height.

*Sand fence* means an artificial barrier of evenly spaced wooden slats or synthetic fabric erected perpendicular to the prevailing wind and supported by posts.

*Wall* means a non-bearing landscape wall.

(2) *Building permits required.* All fences and walls except temporary construction fencing must comply with established building permit procedures.

(3) *Design.* All fences and walls on each property must have reasonably complementary or uniform design and materials.

(4) *Openings.* Openings in any fence must not allow passage of a four-inch diameter (102 mm) sphere unless spacing is greater than 12 inches for decorative fences not required by Florida Building Code.

(45) *Open fences.* When a fence is required to be open, the following criteria must be met. Open fences must have openings between vertical or horizontal members shall not be less than three inches and no greater than four inches between vertical and horizontal members. Horizontal members, other than the top and bottom horizontal members which cannot be greater than six inches wide, cannot be greater than two and one-half inches in width. Vertical members, other than posts which cannot be greater than six inches wide, cannot be greater than three and one-half inches wide. Openings in any fence must not allow passage of a four-inch diameter (102 mm) sphere. Permitted open fences include chain-link and picket fences.



(~~56~~) *Materials*. Fences and walls must be constructed of traditional building materials including brick, stone, stucco over concrete block, finished concrete, metal, vinyl, wood (natural, stained, or painted), and composite products manufactured specifically for fences and walls. Non-traditional materials, such as tires, mufflers, hubcaps, etc. are prohibited. Chain-link and other wire fences are not permitted in front yards.

(~~67~~) *Finished sides*. Fences and walls must be constructed to present a finished side to all adjoining lots and abutting rights-of-way.

(~~78~~) *Maintenance*. After construction, fences and walls must be maintained with original components and remain substantially vertical to serve their function and aesthetic purposes. Structural integrity must be maintained to prevent a danger of destruction or flight during high winds. Hedges must be maintained at or below the maximum height permitted.

(~~89~~) *Dangerous structures*. Barbed wire, spire tips, sharp objects, or electrically charged fences or walls are prohibited.

**Section 2.** That Section 110-447 (Location and Height of Fences, Hedges and Walls) of Division 3 (Landscape Fences, Gates, Hedges and Walls) of Article VI (Supplementary District Regulations) of Chapter 110 (Zoning) of the Land Development Code of the City of Madeira Beach, Florida, is hereby amended to read as follows:

**Sec. 110-447. - Location and height of fences, hedges, and walls.**

(a) *Setbacks*. Except as otherwise permitted or required by this Code, fences and walls are prohibited:

- (1) Within any right-of-way or street easement, or closer than three feet to any sidewalk or bike path,
- (2) Closer to the Gulf of Mexico than the County Coastal Construction Control Line,
- (3) Closer to the Gulf of Mexico than 18 feet landward of an existing seawall,
- (4) Closer than five feet to the mean high-water line along waterbodies, including canals, except a fence or wall may be permitted immediately landward of, or on top of, an existing seawall.

(5) Within the intersection visibility triangle as specified in [Sec. 110-423](#) unless three feet in height or less

(b) *Height.* Height is measured from the average grade elevation ~~along the entire length of the fence, hedge, or wall.~~

- (1) *Front yards.* From the required front building line to the right-of-way, all walls, solid fences, and hedges ~~located in front yards~~ must not exceed three feet. Open fences, must not exceed four feet. Chain-link and other wire fences are not permitted in front yards.
- (2) *Side yards.* From the required front building line to the required rear building line, all fences, hedges, and walls ~~located in side yards~~ must not exceed six feet.
- (3) *Rear yards facing water.* From the required rear building line to the rear property line, ~~a~~All walls and solid fences ~~located in rear yards~~ abutting or facing waterbodies must not exceed three feet, ~~except fences up to six feet are permitted adjacent to sewage lift stations and along property lines adjacent to parking associated with nonresidential uses.~~ Open fences must not exceed four feet. Fences up to six feet are permitted adjacent to sewage lift stations, city pocket parks, and along residential property lines that are adjacent to commercial uses. When deemed necessary by the permitting authority to ensure life-safety and security however, a six-foot high solid or open fencing may be allowed or required in the site plan review process for commercial and institutional uses. In rear yards facing the Gulf of Mexico, open and sand fences must not exceed four feet and fencing that is wrought iron in appearance must not exceed six feet.
- (4) *Sand fences.* Sand fences may be approved by temporary permits and must be removed when the director determines that sea oats have established a permanent vegetative screen. Permitted sand fences must be accompanied by no less than three rows of one-gallon container sea oats planted seaward of and along the entire length of the sand fence. Each sea oat planting must be no more than 12 inches apart, on-center, and rows separated by no more than 12 inches.
- (5) *Rear yards not facing water.* From the required rear building line to the rear property line, ~~a~~All fences and walls ~~located in rear yards~~ not abutting or facing waterbodies must not exceed six feet.

(c) *Swimming pool fence:*

- (1) Every outdoor swimming pool, outdoor spa and outdoor permanent wading pool shall be completely surrounded by an appropriate fence not less than four feet in height for all pools, commercial and residential. A building, existing wall or screen enclosure may be used as a part of such enclosure.

(2) For rear yards facing an open water body with a swimming pool, the required swimming pool fence must be four feet in height and must, at a minimum, have the highest foot of the fence constructed as an open fence in compliance with Sec. 110-446(5) (i.e. three-foot solid fence with one-foot lattice)

(3) All gates or doors opening through such enclosure shall be of self-closing and self-latching construction and shall be designed to permit locking. The releasing device for the latch shall be located no less than 54 inches from the bottom of the gate, the device release mechanism may be located on either side of the gate and so placed that it cannot be reached by a young child over the top or through any opening or gap from the outside.

**Section 3.** That Section 110-449 (Nonconformities) shall be added to Division 3 (Landscape Fences, Gates, Hedges and Walls) of Article VI (Supplementary District Regulations) of Chapter 110 (Zoning) of the Land Development Code of the City of Madeira Beach, Florida, and shall read as follows:

**Sec. 110-449. – Nonconformities.**

Any legally nonconforming fences, gates, hedges, or walls must be brought into conformance once any maintenance requiring a permit on the fence, gate or wall is done.

**Section 4.** For purposes of codification of any existing section of the Madeira Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 5.** Ordinances or parts of ordinances in conflict herewith to the extent that such conflict exists are hereby repealed.

**Section 6.** In the event a court of competent jurisdiction finds any part or provision of the Ordinance unconstitutional or unenforceable as a matter of law, the same shall be stricken and the remainder of the Ordinance shall continue in full force and effect.

**Section 7.** The Codifier shall codify the substantive amendments to the Land Development Code of the City of Madeira Beach contained in Sections 1 through 3 of this Ordinance as provided for therein and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 8.** Pursuant to Florida Statutes §166.041(4), this Ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS \_\_\_\_\_ day of \_\_\_\_\_, 2024.**

\_\_\_\_\_  
James "Jim" Rostek, Mayor

**ATTEST:**

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Clara VanBlargan, MMC, MSM, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas J. Trask, City Attorney

PASSED ON FIRST READING: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

PASSED ON SECOND READING: \_\_\_\_\_