

Sellers Fence

- February 2024 - Staff noticed that a new fence was constructed on Ms. Sellers' property without a fence permit. We did a site visit to see if the fence was non-conforming. After measuring the height and footprint, we confirmed that not only was the fence too tall, but it did not meet the required setback either (we did not know exactly where the property lines were at the time). We let Ms. Sellers know that she was going to need to have the fence moved and lowered to meet the 2024 ULDC requirements. Ms. Sellers voiced that the new fence was only replacing a fence that was damaged by Hurricane Ian in the same location. We let her know that the City was planning on going through updating fencing regulations and that we would not open a code enforcement case until after the new regulations were set in place.
- March 2024- Staff began a series of multiple Planning and Zoning meetings working with the Central Florida Regional Planning Council to draft updated fencing regulations. Ms. Sellers did attend the initial P&Z meeting.
- April 2024 – After another site visit to the property, it was discovered that the fence in question was built approximately 8'1" into the City's right of way. Rather than asking Ms. Sellers to move the fence immediately, we asked her to continue to wait until the new fence regulations were set in place. We were trying to avoid her having to move the fence twice depending how the new regulations were drafted.
- May 2025 – New fence regulations are adopted. New regs require 6' privacy fences to be setback a minimum of 5' from the property line on side street "fronts" that are on corner lots. The original regulations would have required a 6' privacy fence to be placed even with the back corner of the house and not to encroach at all into the "front" of the side street yard.
- October 2025 – Staff made Ms. Sellers aware that the new regulations were in place and that she would need to move the fence to meet the current code. We met her on site and she showed us that there is an existing 4' chain link fence just inside the 6' privacy that is also in the right of way. The chain link fence has been there since before the old and new privacy fences were built. She asked to be placed on the Commission agenda to voice her concerns.

Options moving forward:

1. To meet current fencing regulations, the fence would need to be moved to 5' off the property line. This is approximately 13' from its existing location. The fence would also need to be lowered to 6'. The fence can have a decorative column that is an additional one foot in height, but the current decoration that spans each post, would need to be removed.
2. The fence could potentially remain if Ms. Sellers is willing to apply and pay for a revocable license (pending commission approval). I have included the license requirements in this

document. The City Commission has approved a revocable license for building into the right of way on two occasions in the last decade. One for Jim See's balconies, and one for Utilitech's stairs for 2nd floor access. In those instances, the buildings were built right up to the property line and had no alternative location.

Sec. 16-6. - Use of and/or construction in city rights-of-way.

(a) Definitions. In this section:

Construction means any activity or installation performed by any entity other than the City within the boundaries of any city right-of-way, including, but not limited to, curb cuts; driveways; excavation activities; installation of pavers, poles, conduits, wires, cables, electrical conductors, fiber optics, digital technology fixtures, manholes, sewer lines, water lines, fencing, signage and sidewalks; structures or other improvements or fixtures; and landscaping activities.

Rights-of-way means any opened or unopened city street, roadway or alleyway or any easement or any real property owned by the city.

(b) Activities in city rights-of-way without permits.

(1) The following construction and/or use activities are prohibited within the boundaries of all city rights-of-way unless permitted in accord with the provisions of this article:

a. Installation of mailboxes other than units prescribed by U.S. Postal Service Standards and Florida Department of Transportation Parking and Traffic Design Standards.

b. Decorative walls.

c. Retaining walls.

d. Buildings or structures of any kind.

e. Barriers or obstructions of any kind.

f. Basketball goals.

g. Skateboard ramps.

h. Recreational structures of any kind, whether temporary or permanent.

i. Fences.

j. Swimming pools.

k. Parking lots.

l. Landscaping of any kind.

m. Any other facility, object or item requiring a permanent foundation or which cannot be removed readily.

n. Any facility, object or item designed and intended for personal or private use and not for public use.

o. Security lights and street lights.

p. Driveways, new, modified or replaced.

q. Any work, construction activity or item which creates an obstruction, whether permanent or temporary, to the free and complete use of the right-of-way.

r. Trenchless construction activities.

(c) Permits and revocable licenses required.

(1) Any person or entity desiring to install, place, construct or replace any improvement in a city public right-of-way shall obtain prior to commencement of any work a permit for such activity issued by the city manager or his or her designee on terms and conditions as defined below and, in certain instances, the issuance of a revocable license approved by the city commission.

(2) Fees for permits and revocable licenses shall be determined by resolution of the city commission.

(3) No use of or construction in a public right-of-way shall be permitted or licensed if that use or construction creates an obstruction, barrier or safety hazard as defined by generally accepted engineering practices.

(4) All requested uses of or construction in a public right-of-way shall be evaluated for the benefit of said use or construction to the general public or for whether the benefit to and convenience gained by a private property owner conflicts with the benefit to the general public for the use of the right-of-way affected.

(5) Revocable licenses are required for all improvements in the public right-of-way which are not accepted for maintenance by the city. Such improvements are for the benefit and pleasure of the property owner. License fees shall be adopted by resolution of the city commission.

(6) All revocable license agreements shall include terms established by the city attorney and shall be approved by the city commission upon recommendation of the city manager or his or her designee.

(7) The permit applicant shall be the owner or owners of the real property located adjacent to the affected right-of-way or a person designated by affidavit of said owner or owners.

(8) Time limitations.

a. In no case shall construction commence on any improvement within any public right-of-way or easement before a permit is issued. A permit issued by the city shall be valid for a period of 120 days from the date of issuance. If a period in excess of 120 days is required because of the scope of work, approval shall be obtained in advance of the issuance of the permit and the permit validation period shall reflect such extension. A permit shall not be extended more than three times or for more than one year from the date of issuance.

b. After issuance of the permit, the permittee shall notify the city public works department a minimum of two business days prior to commencing construction. This notification will allow for scheduling of inspections. If a road closure is required, the permittee shall submit with the permit application a maintenance of traffic (MOT) plan

to include all proposed road closures and an expected time duration for each closing. Road closures shall require separate approval by the public works department and a minimum of three business days prior notification before the commencement or construction. Road closures of fewer than 15 minutes shall not require notification.

(9) It shall be the duty and responsibility of each applicant for a permit under this article to:

a. Make a written application for permit with the public works department on such forms as the city shall prescribe. No work shall commence until the engineer has approved the application and plan and the applicant has paid and provided all fees, deposits and certificates required by this article. The engineer shall review the application and issue a decision or comments for revision and will issue permit providing all conditions of the permit application have been met and all required fees, deposits and certificates from the applicant have been received.

b. Include in the application information stating the kind, character and purpose of the proposed excavation or opening and such other information which may be reasonably required to fulfill the requirements of this article.

c. Furnish in triplicate a detail plan with dimensions showing the location of the work to be performed under such permit. If approved by the engineer, one copy of such plan shall be returned to the applicant at the time the permit is granted.

d. Obtain a permit for each and every project.

e. Agree to save the city, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under such permit. The acceptance of any permit under this article shall constitute such an agreement by the applicant whether such acceptance is expressed or not.

f. Pay a permit and engineering review fee and security deposit. Developers of major subdivisions may request to pledge assurances to the city in lieu of cash or check, and the city, in the sole exercise of the city's judgment and discretion, may accept or reject such assurances.

g. Furnish a certificate of insurance.

h. Keep the original copy of the permit and an approved copy of the plan in the possession of the party actually doing the work, and when required, exhibit such copy to the engineer, duly authorized inspectors or, in the instances of county and state roads, to the respective inspectors representing these authorities.

i. Agree to perform the work, in accord with the permit conditions, the regulations established under this article and such further conditions as may be imposed by the engineer.

(10) Bond. A performance bond, or other financial security, in form, content and execution approved by the city attorney, may be required to protect the city in the event the specified work is incomplete and certificate of occupancy has been requested or when damages to the right-of-way or any public property have occurred and not repaired in accord with good engineering practices or when the work is nonconforming as determined by the public works department. In

addition to paying the permit and inspection fees established by resolution of the city commission, a performance bond or other security approved by the city attorney shall be due in the amount of \$100.00 for a nonrefundable processing fee plus \$2,000.00 as a retainer refundable within 30 days after completion of specified work. If the work in question exceeds a value of \$2,000.00, the bond amount shall be increased by the difference plus ten percent of that difference. If said work remains incomplete after 30 days, the bond will be forfeited. Such forms shall prescribe the manner in which noncompliance with the provisions of a permit or this subchapter shall be remedied and shall provide the necessary financial assurances to remedy any noncompliance.





