

ORDINANCE NO. 12- 1593

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA AMENDING CHAPTER 90 "ZONING" AND SPECIFICALLY AMENDING SECTION 90-56.1 "CONSTRUCTION FENCING" OF THE TOWN OF SURFSIDE CODE OF ORDINANCES TO RENUMBER AND SUPPLEMENT WITH SECTION 90.56.1.B AND TO INCLUDE A REQUIREMENT THAT ALL CONSTRUCTION SITES SHALL PROVIDE A CONSTRUCTION FENCE TO SECURE THE SITE UNTIL THE COMPLETION OF CONSTRUCTION; PROVIDING FOR INCLUSION IN THE CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission (the "Commission") by Ordinance 1549, § 2, 3-9-10; and Ordinance 1583 § 2, 1-17-12 adopted regulations on construction fencing, including prohibited fencing, permit requirements, fees, and penalties; and

WHEREAS, the Commission clarifies § 90-56.1. – "Construction Fencing" by including it in § 90-56; and

WHEREAS, the Commission recognizes the danger posed within the confines of the construction fence during construction and non-construction hours and requires that such locations be locked; and

WHEREAS, the Planning and Zoning Board, as the local planning agency for the Town, shall conduct a hearing on the proposed amendment on September 27, 2012 with due public notice and input; and

WHEREAS, the Town Commission shall have conducted a first duly noticed public hearing on these regulations as required by law on September 19, 2012; and

WHEREAS, the Town Commission shall have conducted a duly noticed second

public hearing on these regulations as required by law on October 9, 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The code of the Town of Surfside, Florida is hereby amended as follows:

Sec. 90-56. – Fences, Walls, and Hedges.

90-56.1.A. A fence or ornamental wall not more than six (6) feet in height, as measured from grade, may project into or enclose an interior side or rear yard only. Notwithstanding anything to the contrary elsewhere in the code, for purposes of this section, grade is defined as the point of the ground immediately below the location of the fence or wall.

90-56.1.B. Construction Fencing. Temporary construction fences are required by this ordinance unless otherwise determined by the Building Official. A construction fence permit shall be obtained from the Building Department prior to the fence being erected. Each fence constructed or maintained shall be constructed and anchored in accordance with the Florida Building Code.

- a) Permit required. A permit application and a current survey of the site.
- b) Permitted Fence. Subject to the approval of the Building and Zoning Departments, chain-link fence with canvas (or similar material) are the only type of fence that is permitted.
 - i. Chain-link fences with canvas (or similar material backing) are permitted subject to approval of the Building and Zoning Departments. The property owner or agent shall obtain a demolition permit from the building department. The chain-link fence shall be permitted to be utilized as a demolition fence for a period of no longer than two months or until expiration of the demolition permit, whichever occurs first. However, such demolition fence shall not be removed until the installation of a permitted construction fence, as defined in this section.
 - ii. The permitted construction fence shall be installed immediately upon removal of the temporary demolition fence. At no time shall the parcel remain without a protective barrier.

c) Any person or entity found to be in violation of this subsection shall be subject to a fine of \$500.00 per day.

d) A temporary construction fence (as defined herein) shall be installed on the front, side, and rear property lines.

e) Permitted height. All construction fences shall be at least six (6) feet high and no higher than eight (8) feet.

(f) Locked. The fence shall be kept locked when the property is unoccupied.

(g) Prohibited fences.

(i) The following fences are not permitted, except as otherwise provided in the Code herein below:

1. Chain-link fences, unless,

(a) Chain-link fences with canvas (or similar material) backing or meshing may be permitted to be utilized as a temporary construction fence for a period of no longer than 18 months, provided they are neatly designed and maintained as approved by the building and zoning departments.

2. Barbed-wire fences.

3. Fences made of canvas material.

4. Any fences that fail to meet the requirement of the Florida Building Code.

(h) Setbacks from property line on Harding Ave and Collins Ave. A temporary fence installed on the front of the property shall be situated six feet from the property line on Harding Avenue and Collins Avenue, unless specifically waived by the town manager. The setback area between the temporary fence and the property line shall contain a continuous extensively landscaped buffer which must be maintained in good healthy condition by the property owner. No temporary construction permit shall be issued unless a landscape plan is approved by the town for the buffer. Failure to maintain the landscaping will result in the town taking action to replace same and lien the property for the costs of landscaping.

(i) Expiration of permit. A temporary construction fence permit issued under this chapter shall expire at the completion of construction at which time the temporary fence shall be removed in accordance with the terms of the Florida Building Code.

(j) Murals and graphics. Graphics and murals on temporary construction fencing are prohibited unless approved by the town manager for aesthetic enhancement of the fence and advertisement of the project to be constructed.

(k) Fees. The town manager or designee may impose fees as he/she may determine appropriate for the use of construction fences for advertisement purposes in accordance with the schedule promulgated by the building official.

(l) Access gates. All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.

(m) Temporary construction signs. Construction, erection, and maintenance of temporary construction signs shall be governed by Town of Surfside Sign Code.

(n) Appeals. Any decision made by the town manager or designee regarding graphics, advertisement, and murals on a temporary construction fence may be appealed to the town commission.

(o) Enforcement and penalties. The code compliance division and building departments shall be responsible for the enforcement of the provisions of this section. Any person or entity found to be in violation of this section shall be subject to a \$500.00 fine per day.

90-56.2 A fence or ornamental wall may be placed within the front yard or primary corner yard if granted approval by the Design Review Board.

90-56.3 Fences or ornamental walls placed within a front yard or secondary frontage/corner yard are limited to function as spatial locators and shall not be substantial in appearance and shall adhere to height and opacity limitations as set forth in Table 90-56.4.

90-56.4 Front yard and corner yard fences and ornamental walls—Table.

Lot Frontage	Maximum Height (Feet)	Maximum Opacity (Percent)
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Less than or equal to 50 ft in width	4 ft	All wall and fence surfaces above two (2) feet measured from grade shall maintain a maximum opacity of fifty (50) percent
Wider than 50 ft and less than 100 ft	4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 5 ft	
Wider than or equal to 100 ft	4 ft + ½ ft per 10 feet of lot width exceeding 50 feet, maximum 6 ft	
Secondary frontage (Corner only)	Shall adhere to the height and opacity limitations for corresponding lot frontage	

90-56.5 Modification of secondary frontage fence and ornamental wall regulations.

- (1) A fence that has a maximum opacity of 100 percent and a maximum height of five feet, as measured from grade, may project into or enclose up to 50 percent of the rear portion of the primary corner yard provided that the fence shall be placed at least ten feet from the right-of-way line or the fence shall be aligned with the wall plane of the subject home.
- (2) An ornamental wall whose surface above two feet measured from grade maintains a maximum opacity of 50 percent and a maximum height of five feet, may project into or enclose up to 50 percent of the rear portion of the primary corner yard provided that the ornamental wall shall be placed at least ten feet from the right of way line or the ornamental wall shall be aligned with the wall plane of the subject home.

90-56.6 When being installed as a safety feature for a swimming pool in a front or primary corner yard, a fence or ornamental wall shall be permitted at a maximum of four feet in height. The applicant shall demonstrate evidence relative to this hardship.

90-56.7 The height of such fence or ornamental wall shall be measured from grade. A berm or retaining wall shall not be created with the purpose of increasing the grade such that an ornamental wall or fence height exceeds the maximum height permitted by this Code.

90-56.8 In order to prevent water ponding at the base of ornamental walls, the installation of weep holes or other similar drainage features shall be required. The number and spacing shall be determined per lot per review.

90-56.9 Hedges shall be no more than four feet in height in the front yard and side corner yards and ten feet in height in the rear and interior side yards. Hedges may be higher if granted approval by the design review board, on a case-by-case basis.

90-56.10 Under no circumstances is any fence, wall or hedge to be located on a corner lot in such a way as to conflict with the requirements of section 90-52 (Required clearances) or fire codes, including concealment of fire hydrants.

90-56.11 No fence, wall or hedge may be placed within the public right-of-way except that landscaped islands surrounded by circular driveways on lots no more than 115 feet in width shall be permitted, provided that it is understood by the property owner that the town does not waive its right to demand removal without notice as deemed necessary within the town's discretion and the town shall not be liable for any damages arising from such removal. Property owner shall install or plant such materials at own risk. All improvements, other than groundcovers, as defined in the landscape section, shall be placed on private property.

90-56.12 Fences and walls shall be constructed so that the finished side shall face out or away from the property upon which it is constructed, and all support posts and the unfinished side shall be on the inside facing the property upon which said fence or wall is constructed. All masonry fences or walls shall be constructed so as to have a finished surface, including concrete block walls which shall have a plastered finish on all sides above ground level. In the event that a wood fence is constructed against a significant obstacle on the adjoining property, such as a hedge or another fence, that line of fence against the obstacle may be constructed with posts on the outside of the fence provided that the horizontal rails are at least 50 percent covered by boards on the side facing away from the property on which the fence is constructed.

90-56.13 It shall be a violation under this article for any person to erect or maintain a structure to serve as a fence in manner that endangers the health, safety, and welfare of the public as described in this section and as determined by the town manager or designee.

90-56.14 The following fencing material shall be prohibited:

- (1) Chain-link and other wire fencing, except as permitted herein.
- (2) Loosely attached masonry products, such as concrete block, bricks or other similar products not bonded together by mortar or comparable adhesive.

90-56.15 No grandfathering of chain-link fences shall be permitted in the front yard or in the corner side yard. Grandfathering of chain-link fences shall be permitted in interior side yards or rear yards.

90-56.16 In all districts, the owner or his agent, shall be responsible for the maintenance, in perpetuity, of all landscaping material in good condition so as to present a healthy, neat and orderly appearance and clear of weeds, refuse and debris. Landscaping material shall be trimmed and maintained so as to meet all site distance requirements. Hedges planted along property lines shall be maintained and neatly trimmed to prevent growth extended across the property lone or otherwise encroaching on an adjacent property. In the event of any discrepancy as to whether healthy, neat and orderly appearance is being maintained shall be determined by the town manager or designee.

90-56.17 Temporary construction fences shall be permitted pursuant to standards provided in section 90-56.1.B

~~Sec. 90-56.1. — Construction fencing.~~

~~(a)~~

~~Temporary construction fencing. No person or entity shall install or construct a temporary construction fence in this town without first obtaining a permit from the town's building department. Each fence constructed or maintained shall be constructed and anchored in accordance with the Florida Building Code.~~

(b)

~~Permitted fences:~~

~~(1)~~

~~Except on Harding Avenue and Collins Avenue, the following temporary construction fences are permitted in all the zoning districts:~~

~~a.~~

~~Wrought iron or blackened aluminum.~~

~~b.~~

~~Stucco and stone match main structure.~~

~~c.~~

~~Masonry walls pursuant to subsection 90-56.1~~

~~d.~~

~~Wood pickets.~~

~~e.~~

~~Concrete wall pursuant to subsection 90-56.1~~

~~f.~~

~~Frame plywood panel.~~

~~g.~~

~~Chain-link fences with canvas (or similar material) are permitted if the property owner or agent has obtained a demolition permit from the building department. the chain-link fence shall be permitted to be utilized as a demolition fence for a period of no longer than two months or until expiration of the demolition permit, whichever occurs first. However, such demolition~~

fence shall not be removed until the installation of a permitted construction fence, as defined in this section. The permitted construction fence shall be installed immediately upon removal of the temporary demolition fence. At no time shall the parcel remain without a protective barrier. Any person or entity found to be in violation of this subsection shall be subject to a fine of \$500.00 per day.

(2)

A temporary construction fence (as defined herein) shall be installed on the front, side, and rear property lines.

(3)

Chain-link fences with canvas (or similar material) backing or meshing may be permitted, provided they are neatly designed and maintained as approved by the building and zoning departments.

(e)

Prohibited fences.

(1)

The following fences are not permitted, except as otherwise provided in Code herein below:

a.

Chain-link fences.

b.

Barbed-wire fences.

c.

Fences made of canvas material.

d.

Any fences that fail to meet the requirement of the Florida Building Code.

(2)

Chain-link fences with canvas (or similar material) backing or meshing may be permitted to be utilized as a temporary construction fence for a period of no longer than 18 months, provided they are neatly designed and maintained as approved by the building and zoning departments.

(d)

Maximum and minimum height. A fence is permitted a maximum height of 12 feet and a minimum height of six feet.

(e)

Setbacks. A temporary fence installed on the front of the property shall be situated six feet from the property line on Harding Avenue and Collins Avenue, unless specifically waived by the town manager. The setback area between the temporary fence and the property line shall contain a continuous extensively landscaped buffer which must be maintained in good healthy condition by the property owner. No

~~temporary construction permit shall be issued unless a landscape plan is approved by the town for the buffer. failure to maintain the landscaping will result in the town taking action to replace same and lien the property for the costs of landscaping.~~

(f)

~~*Expiration of permit.* A temporary construction fence permit issued under this chapter shall expire upon the issuance of a certificate of occupancy. The temporary fence shall remain on the property until the completion of construction, provided that it shall be removed in accordance with the terms of the Florida Building Code.~~

(g)

~~*Murals and graphics.* Graphics and murals on temporary construction fencing are prohibited unless approved by the town manager for aesthetic enhancement of the fence and advertisement of the project to be constructed.~~

(h)

~~*Fees.* The town manager or designee may impose fees as he/she may determine appropriate for the use of construction fences for advertisement purposes in accordance with the schedule promulgated by the building official.~~

(i)

~~*Access gates.* All temporary construction fences shall contain access gates with a minimum clear opening width of 12 feet. Access gates must be provided at the front and rear of the enclosure. Gates must be kept unlocked during inspection hours.~~

(j)

~~*Temporary construction signs.* Construction, erection, and maintenance of temporary construction signs shall be governed by Town of Surfside Sign Code.~~

(k)

~~*Appeals.* Any decision made by the town manager or designee regarding graphics, advertisement, and murals on a temporary construction fence may be appealed to the town commission.~~

(l)

~~*Enforcement and penalties.* The code enforcement and building department shall be responsible for the enforcement of the provisions of this section. Any person or entity found to be in violation of this section shall be subject to a \$500.00 fine per day.~~

~~(Ord. No. 1549, § 2, 3-9-10; Ord. No. 1583, § 2, 1-17-12)~~

Section 3. Severability. If any section, subsection, clause or provision of this

Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.


Section 4. Conflict. All sections or parts of sections of the Town of Surfside Code of Ordinances in conflict herewith are intended to be repealed to the extent of such conflict.

Section 5. Inclusion in the Code of Ordinances. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Town of Surfside Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" may be changed to "Section" or other appropriate word.

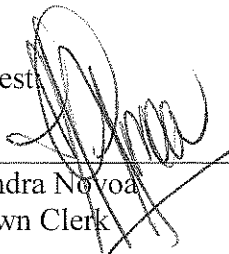
Section 6. Effective Date. This Ordinance shall be effective ten (10) days after adoption on second reading.

PASSED and ADOPTED on first reading this 19 day of September, 2012.

PASSED and ADOPTED on second reading this 9 day of October, 2012.



Daniel Dietch, Mayor

Attest


Sandra Nova
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

On First Reading Moved by: Commissioner Kligman

On Second Reading Seconded by: Vice Mayor Karukin

Vote:

Commissioner Joseph Graubart	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Michelle Kligman	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Commissioner Marta Olchyk	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Vice Mayor Michael Karukin	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>
Mayor Daniel Dietch	yes	<input checked="" type="checkbox"/>	no	<input type="checkbox"/>

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