



# VILLAGE OF KEY BISCAINE



## Office of the Village Manager

*Village Council*  
Mayra P. Lindsay, *Mayor*  
Franklin H. Caplan, *Vice Mayor*  
Luis F. de La Cruz  
Theodore Holloway  
Michael E. Kelly  
Edward London  
James Taintor

*Village Manager*  
John C. Gilbert

**DATE:** January 13, 2015  
**TO:** Honorable Mayor and Members of the Village Council  
**FROM:** John C. Gilbert, Village Manager  
**RE:** Amendment to the Zoning and Land Development Regulations: Swimming Pool Fences

### RECOMMENDATION

It is recommended that the Village Council approve the attached Ordinance amending the Village Code relating to pool fencing.

### BACKGROUND

On December 2, 2014, the Village Council discussed amending the Zoning and Land Development Regulations to require fencing around a swimming pool. Currently, in accordance with the Florida Building Code and Chapter 515 of the Florida Statutes all property owners are required to surround the pool with a fence or cover the pool with a mesh.

When a property owner constructs a pool in the front yard, Village Officials have observed on two (2) instances that the pool is covered with a mesh and a perimeter wall is not constructed. While this meets the Florida Building Code, the Administration is concerned that property owners may remove the required mesh after the final inspection; thereby, creating a potential safety hazard for children.

The attached Ordinance requires swimming pools to have a fence that is consistent with the standards set forth in the Florida Building Code and Chapter 515 of the Florida Statutes and removes the option of using a mesh to prevent access to the pool.

Reviewed by Mr. Chad Friedman from Weiss Serota Helfman Pastoriza Cole & Boniske as to form and legal sufficiency.



# VILLAGE OF KEY BISCAIYNE

## Department of Building, Zoning and Planning

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**DT:** January 13, 2015  
**TO:** John C. Gilbert, Village Manager  
**FR:** Jud Kurlancheek, AICP, Director  
Building, Zoning, and Planning Department  
**RE:** Amendment to the Zoning and Land Development  
Regulations: Swimming Pool Fences

*Director*  
Jud Kurlancheek, AICP  
*Chief Building Official*  
Eugenio M. Santiago, P.E., CFM

### **EXPLANATION AND ANALYSIS**

**Text Amendment Review Criteria:** The Village's Zoning Ordinance requires that text amendments to the Zoning and Land Development Regulations be evaluated based on the following criteria:

**Criteria 1** The proposed amendment is consistent with the Comprehensive Plan.

**Analysis** The Master Plan opinion poll ranked public safety and security as the third "most liked aspect of Key Biscayne." By requiring all swimming pools to have fences, this increases public safety.

**Recommendation** Consistent.

**Criteria 2** The proposed change will result in buildings that are consistent in scale and otherwise compatible with those within 300 ft. of the site

**Analysis** The criteria is not applicable as the amendment has no impact on the scale of development or compatibility with adjacent structures.

**Recommendation** Not applicable.

**Criteria 3** The resulting boundaries of a zoning district are logically drawn.

Analysis This criteria is not applicable as the amendment does not address zoning district boundaries.

Recommendation Not applicable.

**Criteria 4** The proposed change will enhance property values in the Village.

Analysis This criteria is not applicable as the amendment does not have an impact on property values.

Recommendation Not applicable.

**Criteria 5** The proposed change will enhance the quality of life in the Village.

Analysis The proposed amendment will require that all pools be surrounded by a fence. This will provide a security measure against children entering a swimming pool and possibly drowning. As such, the amendment will protect and enhance the quality of life in the Village.

Recommendation Consistent.

**Criteria 6** There are substantial and compelling reasons why the proposed change is in the best interests of the Village.

Analysis The proposed amendment will require that all pools be surrounded by a fence. This will prevent children from entering a swimming pool and prevent drownings. As such, the amendment is in the best interest of the Village.

Recommendation Consistent.

## ***RECOMMENDATION***

Staff recommends approval of the attached ordinance as it is consistent with the review criteria.

**ORDINANCE NO. 2015 -**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE,  
FLORIDA, AMENDING SECTION 30-100  
“SINGLE-FAMILY AND TWO-FAMILY DISTRICTS” OF  
THE VILLAGE CODE OF ORDINANCES RELATING TO  
POOL FENCES; PROVIDING FOR SEVERABILITY;  
PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN  
EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the “Village”) has adopted Zoning and Land Development Regulations in order to promote the health, safety, order, convenience, comfort, and general welfare of the public, and to promote and preserve the character and ecological quality of the Village as articulated in the Village’s Comprehensive Plan; and

**WHEREAS**, the Village Council desires to amend the Land Development Regulations relating to pool fences in the single-family and two-family districts; and

**WHEREAS**, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

**WHEREAS**, the Village Council finds that the adoption of this Ordinance is in the best interest of the residents of the Village.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS<sup>1</sup>:**

**Section 1.** The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Section 30-100 of the Village Code Amended.** That Section 30-100 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

**Sec. 30-100. Single Family and Two-Family districts.**

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<sup>1</sup> Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.

\* \* \*

(f) *Permitted encroachments in Required Yards.*

\* \* \*

(3) Decks, pools, and screen enclosures.

\* \* \*

(e) fences. All new pools constructed within the Village shall be surrounded by a fence acting as a pool barrier installed in accordance with the Florida Building Code and Chapter 515, Florida Statutes.

**Section 3. 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 4. Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 5. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR MAYRA PEÑA LINDSAY

ATTEST:

\_\_\_\_\_  
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CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY