

**CITY OF HOLMES BEACH
ORDINANCE 15-10**

AN ORDINANCE OF THE CITY OF HOLMES BEACH AMENDING THE CODE OF ORDINANCES, SPECIFICALLY AMENDING PART III, LAND DEVELOPMENT CODE, ARTICLE I, DEFINITIONS, BY ADDING DEFINITIONS FOR RECREATIONAL WATER FEATURE, IN-GROUND SWIMMING POOL, NONPORTABLE ABOVE-GROUND SWIMMING POOL, AND HOT TUB/SPA; MODIFYING THE DEFINITION OF IMPERVIOUS SURFACE TO INCLUDE ALL RECREATIONAL WATER FEATURES; AMENDING ARTICLE VI, ZONING, SECTION 6.7.V TO REQUIRE ENHANCED BUFFERING, SCREENING, AND LANDSCAPING FOR RESORT HOUSING, WITH ADDITIONAL PROVISIONS SPECIFICALLY APPLICABLE TO RESORT HOUSING WITH RECREATIONAL WATER FEATURES LOCATED ON SITE; AMENDING ARTICLE VI, ZONING, SECTION 6.8.F BY DELETING THE TITLE, "SWIMMING POOLS", OF SUBSECTION 2.K; BY RELOCATING SUBSECTION 2.K(1) TO SECTION 6.8.U.3.B; BY RELOCATING THE FIRST SENTENCE OF SUBSECTION 2.K(2) TO SECTION. 6.8.U.3.D; BY DELETING THE SECOND SENTENCE OF SUBSECTION 2.K(2) AND BY RELOCATING SUBSECTION 2.K(3) TO SECTION. 6.8.U.3.E; AMENDING ARTICLE VI, SECTION 6.8.U, PROVIDING THAT RECREATIONAL WATER FEATURES AND ANCILLARY STRUCTURES THERETO MAY NOT BE LOCATED WITHIN ANY REQUIRED YARD EXCEPT AS SPECIFICALLY PROVIDED OTHERWISE FOR IN-GROUND POOLS IN WATERFRONT YARDS WITH SEAWALLS; REMOVING THE VARIANCE PROVISION FOR IN-GROUND POOLS CLOSER THAN SIX FEET TO A SEAWALL AND REQUIRING AN ENGINEERING CERTIFICATE FOR IN-GROUND POOLS LOCATED WITHIN SUCH WATERFRONT YARDS, BUT NOT CLOSER THAN SIX FEET TO SAID SEAWALL; PROVIDING FOR METHODS OF MEASURING THE SETBACKS OF RECREATIONAL WATER FEATURES, ASSOCIATED DECKS AND PATIOS AND ANCILLARY STRUCTURES; PROHIBITING ANY RECREATIONAL WATER FEATURE FROM BEING LOCATED ANYWHERE EXCEPT AT THE GROUND LEVEL; INCLUDING ALL RECREATIONAL WATER FEATURES IN THE CALCULATION OF IMPERVIOUS SURFACES; PROVIDING FOR A SPECIAL EXCEPTION, WITH CONDITIONS, TO ALLOW FOR A LIMITED INCREASE IN IMPERVIOUS SURFACE, AND/OR REDUCTION OF THE MINIMUM SETBACK TO ALLOW THE CONSTRUCTION OF A RECREATIONAL WATER FEATURE IN ASSOCIATION WITH AN EXISTING SINGLE-FAMILY HOME ON A LEGALLY NONCONFORMING LOT IN THE R-2 OR R-4 ZONING DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is important that the definitions and regulations in the Land Development Code pertaining to accessory structures and their location be clear and understandable to the city staff, residents, and property owners; and

WHEREAS, the City of Holmes Beach recognizes that the location of certain accessory structures can have adverse impacts upon neighboring properties; and

WHEREAS, the City Commission has determined that revisions to the Land Development Code are necessary to fulfill that stated purpose of the Comprehensive Plan and to ensure that the types and locations of accessory structures do not unduly affect adjacent properties.

WHEREAS, the City Commission recognizes that swimming pools do not allow for percolation of stormwater and that the Southwest Florida Water Management District's definition of impervious surface is such that swimming pools are considered impervious; and that the City needs to reduce impervious surfaces to allow standing water greater area for percolation into the water table.

NOW THEREFORE, be it ordained by the City Commission of the City of Holmes Beach, the following:

Section 1. Findings of Fact. The above referenced "whereas" clauses are adopted herein as findings of fact.

Section 2. Article 1, Section 1.4, Definitions, shall be amended modifying the definition of impervious surface to read as follows:

Impervious surface. A surface that has been compacted or covered with a layer of material so that it is highly resistant or prevents infiltration by ~~stormwater~~ water. It includes roofed areas and surfaces such as compacted sand, limerock, or clay, as well as all recreational water features, and conventionally surfaced streets, sidewalks, driveways, parking lots, or other similar surfaces.

Recreational water feature. In-ground swimming pools, nonportable above-ground swimming pools, and hot tubs/spas are all recreational water features.

Swimming pool, in-ground. A water-filled enclosure, permanently constructed, having a depth of more than eighteen inches below the level of the surrounding land and designed, used and maintained for swimming and bathing.

Swimming pool, nonportable, above-ground. A water-filled enclosure situated on the ground and having a depth of more than twenty-four inches and which is designed, used, and maintained for swimming and bathing.

Hot tub/spa. A tub, filled with hot aerated water, often equipped with a thermostat and whirlpool, used for recreation and/or therapy.

Section 3: Article VI, Zoning, Section 6.7.V, subsection 2, Requirements for resort housing shall be amended to read as follows:

c. *Buffering/screening:* For the purposes of buffering and screening, resort housing dwelling units shall be considered a commercial use. Buffering and screening as set forth below shall be installed, ~~to properly separate,~~ between resort housing and other uses for the purpose of protecting residential uses from resort housing uses. ~~Article VIII of this code shall govern with regard to all screening and buffering required under this section.~~ Provided, however, that these requirements shall not apply to nonconformities pursuant to Sections 4.2, C and 4.2, D, of this code.

(1) When a property used for resort housing abuts a land use other than single-family, two-family or multiple-family residential, or another resort housing use, the provisions of Article VIII of this code shall govern with regard to screening and buffering required under this section.

(2) When a property used for resort housing abuts a single-family, two-family, or multiple-family residential land use, or another resort housing use, an opaque wall or fence intended to exclude all visual contact between uses shall be provided along all side and rear property lines as set forth below.

(a) The wall or fence shall be opaque from the ground to a height of six feet along the entire rear property line.

(b) The wall or fence shall be opaque from the ground to a height of six feet along all side property lines from the front building line to the rear property line.

(c) The wall or fence shall be opaque from the ground to a height of four feet along the side property lines from the front property line to the front building line.

(3) When a recreational water feature is provided on property used for resort housing, in addition to the opaque wall or fence, the following landscaping and buffer strip shall be provided in order to provide sound reduction and to create a strong impression of spatial separation:

(a) A buffer strip and landscaping shall be provided along the inside of the fence or wall on all side property lines from a point five feet forward of the rear building line of the principal structure to the rear property line.

i. The wall or fence and landscaping and buffer strip shall, in combination, comprise a depth of at least three feet and shall be in addition to, and not be located in or on, areas used for the purposes of stormwater retention or treatment.

ii. The buffer strip shall be planted with vegetation such as Ligustrum, Podocarpus, Viburnum or similar plants capable of forming a continuous, sound absorbing, hedge reaching the height of the required fence or wall within a period of two years.

- (b) A buffer strip and landscaping shall be provided along the inside of the fence or wall along the entire rear property line.
 - i. The wall or fence and landscaping and buffer strip shall, in combination, comprise a depth of at least five feet, and shall be in addition to, and not be located in or on, areas used for the purposes of stormwater retention or treatment.
 - ii. The buffer strip shall be planted with vegetation such as Ligustrum, Podocarpus, Viburnum or similar plants capable of forming a continuous, sound absorbing, hedge reaching the height of the required fence or wall within a period of two years.
- (c) Minimum standards for landscaping vegetation. All landscaping required under the provisions of this Section shall meet the following minimum requirements:
 - i. All plants shall be Florida Grade No. 1 or better in accordance with Grades and Standards for Nursery Plants (G SNP), published by the state department of agriculture and consumer services. Nursery stock shall be in accordance with minimum requirements of the American Standards for Nursery Stock (ASNS), published by the American Association of Nurserymen.
 - ii. Plants shall be sound, healthy, vigorous, free from mutilation, plant diseases, insect pests or their eggs, and fungus, and shall have healthy, normal root systems. Plants shall be nursery grown stock in containers or freshly dug, balled and burlapped.
 - iii. Caliper measurement, height measurement, height relation to caliper, spread, bare root and ball dimensions, number of canes, types of vines and ground covers, etc., shall conform to the applicable standards given in the American Standards for Nursery Stock published by the American Association of Nurserymen, Inc.
 - iv. Shrubs, when installed, shall be a minimum of 36 inches high for buffers where a continuous hedge is required.

SECTION 4. Article VI, Zoning, Section 6.8.F, subsection 2, General regulations, shall be amended as follows:

F, Fences, subsection 2, General regulations, shall be amended by deleting the title, "Swimming pools", of subsection k; by relocating subsection k(1) to Sec. 6.8.U.3.b; by relocating the first sentence of subsection k(2) to Sec. 6.8.U.3.d; by deleting the second sentence of subsection k(2) as shown in the following text; and by relocating subsection k(3) to Sec. 6.8.U.3.e.

~~New swimming pools, adjacent decks, and any ancillary structures such as fountains, grottos and slides for which a building permit is issued after November 1, 2012 must be set back a minimum of five feet from the property boundary and shall be enclosed as required by the 2010 Florida Building [Code] as same may be amended from time to time.~~

Section 5: Article VI, Zoning, Section 6.8.U, Swimming pools, shall be amended to read as follows;

U. ~~Swimming pools~~ Recreational water features.

1. ~~Construction within yard areas~~ Location.

- a. ~~Swimming pools, other than above ground pools, that are not to be enclosed by a structure, other than fences required or permitted by the city, may be constructed within yard areas, except the required yard adjacent to or facing a street or road, as such areas are prescribed by this ordinance.~~
- b. ~~All swimming pools, decks and any ancillary structures such as fountains, grottos or slides, shall not be located closer than five feet to the property boundary. The five-foot minimum setback applies to the pool, adjacent decks, and any ancillary structures such as fountains, grottos and slides.~~
- a. Except for in-ground pools located in waterfront yards with seawalls, recreational water features and associated decks and ancillary structures, such as fountains and grottos, may not be located within any required yard.
- b. An In-ground pool located in a waterfront yard with seawalls may be constructed within the required yard provided the applicant provides an engineer's certificate that said pool can be safely located within the required yard and the pool is set back at least six feet from the seawall. A variance from the setback requirement may be granted upon application if the applicant provides an engineer's certificate that the pool can be safely located less than six feet from the seawall.
- c. The setback of a pool with no associated deck or patio, shall be measured from the coping and concrete edges of an in-ground pool or the outside edge of an above-ground pool to the property line or seawall, as applicable.
- d. The setback of a pool with an associated deck or patio shall be measured from the edge of the patio or deck nearest to the property line or seawall, as applicable.

- e. The setback of a hot tub/spa with no associated deck or patio, shall be measured from the closest point of the hot tub/spa to the property line.
 - f. The setback of a hot tub/spa with an associated deck or patio shall be measured from the edge of the patio or deck nearest to the property line or seawall, as applicable.
 - g. No recreational water feature shall be located anywhere on the property except at the ground level.
2. *[Temporary fences required during construction.]* Substantial temporary fences shall be required during the construction of all swimming pools.
- a. *[Removal, replacement.]* Temporary fences may be removed to necessitate [facilitate] the actual construction but must be replaced when construction is not in progress.
 - b. *[Installation of permanent fence, cage.]* Temporary fences shall remain in place until a permanent fence or cage is installed.
3. *[Fence requirements.]*
- a. Above-ground pools up to 48 inches high will be permitted within the building area and if not enclosed ~~must meet the fence requirements of this ordinance if~~ and higher than 12 inches and/or of a diameter that exceeds eight feet, shall be enclosed on all open sides by a fence of a minimum of four feet above existing ground grade and a maximum of six feet above existing ground grade. Above-ground pools shall meet any additional specifications required in this ordinance.
 - b. In-ground swimming pools, if located within the building area and if not within a screened cage, shall be enclosed on all open sides by a fence of a minimum of four feet above existing ground grade and a maximum of six feet above existing ground grade. [NOTE: This text has been relocated from Sec.6.8.F.2.k(1)]
 - c. In addition to the buffering/screening necessary to meet the requirements of Sec. 6.7.V.2.c, when a swimming pool is located on a lot used for resort housing, any additional fencing required to ensure that a swimming pool is enclosed on all open sides shall be a minimum of four feet above existing ground grade and a maximum of six feet above existing ground grade.
 - d. Pools for which a building permit was issued prior to November 1, 2012 and which are located within the required yard area shall be enclosed as required by the 2010 Florida Building Code as same may be amended from time to time. [NOTE: This text has been relocated from Sec.6.8.F.2.k(2)]

e. All pool fences must have gates with safety locks. [NOTE: This text has been relocated from Sec.6.8.F.2.k(3)]

4. [Miscellaneous Calculation of impervious surface.] All recreational water features shall be considered in the computation of impervious surface but A swimming pool shall not be considered in the computation of the applicable percentage of the parcel that may be occupied by buildings, except to the extent such pool is either located under a conventional roof, or is wholly within the perimeter of the building.

5. ~~All caged pools must meet setback requirements~~

Special exception to maximum impervious surface limitation and/or minimum setbacks in order to allow the construction of a recreational water feature.

a. The owner of a legally nonconforming single-family lot, located in the R-2 or R-4 District, may apply for a special exception to:

(1) increase the maximum permissible impervious surface by up to 5%, and/or

(2) reduce the required setback of a recreational water feature to as little as five feet, measured in accordance with the provisions of Sec. 6.8.U; provided the following conditions are met:

i. A licensed engineer documents that the stormwater retention and treatment system is capable of meeting all city requirements without the need for regular maintenance (e.g., cleaning of swales, etc.), and

b. If the dwelling unit is used for resort housing, the buffering/screening requirements of Sec. 6.7.V.2 must be met.

c. This special exception provision is applicable only for the construction of one recreational water feature associated with a single-family home that existed on the legally nonconforming lot as of May 1, 2015.

d. An owner may not apply for a special exception in the instance where the principal structure is to be demolished and replaced with a new principal structure.

~~6. In-ground pools in waterfront yards with seawalls.~~

~~a. Must be set back at least six feet.~~

~~b. A variance from the setback requirement may be granted upon application if the applicant provides an engineer's certification that the pool can be safely located less than six feet from the seawall.~~

Subsection 7 to be renumbered as subsection 6

Subsection 8 to be renumbered as subsection 7.

9-8. Any slides constructed at pools in residential zoning districts shall not exceed six feet in height.

Section 6: Severability. If any word, portion, clause or other part of this ordinance is deemed unconstitutional or unenforceable for any reason, such portion shall be severed from this ordinance and the remaining portions thereof shall be unaffected thereby.

Section 7: Effective Date. This ordinance shall be effective upon adoption by the City Commission and approval by the Mayor in accordance with the Charter of the City of Holmes Beach.

First Reading: 6-9-15

Publication Date: 6-13-15

Second Reading and Public Hearing Date: 6-23-15

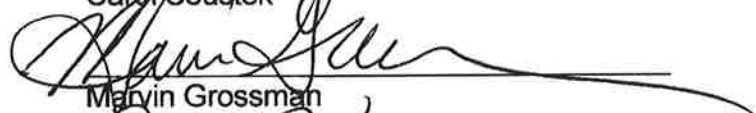
PASSED AND ADOPTED this 23 day of June, 2015, by the City Commission of the City of Holmes Beach, Florida, with a quorum present and voting.



Patrick Morton



Carol Soustek



Marvin Grossman



Judy Titsworth



Jean Peelen

APPROVED BY ME THIS 23 DAY OF June, 2015.


Bob Johnson, Mayor

ATTEST: 

Stacey Johnston, MMC, City Clerk