

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Monroe D. Kiar, Town Attorney  
(954) 584-9770

**SUBJECT:** Ordinance

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, BY AMENDING THE DEFINITION OF "OPEN SPACE" AS DEFINED UNDER SECTION 12.503 AND ADD TO SECTION 12-33 (N) A SUBSECTION (10) AS CONCERNS FENCES IN "E" DISTRICTS ALREADY BUILT WITH VALIDLY ISSUED PERMITS AND AS CONCERNS FENCES ON LAKEFRONT PROPERTY IN "E" DISTRICTS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The Town Attorney's Office has been requested by the Town Council to prepare a revision to the Code with reference to fences on lakefront property in the "E" District. A precipitating reason for this matter coming to the attention of the Town Council was as a result of the request of Stonebrook Estates to erect fences on its development on its lakefront sites. It is the understanding of the Town Attorney's Office that this matter of fences on open space property in "E" Districts has been a problem in the Town and many fence permits were issued and fences built on property which encompass open space. This Ordinance seeks to address these concerns by amending the definition of "open spaces" and adding a code provision as concerns fences already built on lakefront property in "E" Districts.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:** N/A

**RECOMMENDATIONS:** Motion to approve Ordinance A OR B

**ATTACHMENTS:** Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF DAVIE, BY AMENDING THE DEFINITION OF "OPEN SPACE" AS DEFINED UNDER SECTION 12.503 AND ADD TO SECTION 12-33(N) A SUBSECTION (10) AS CONCERNS FENCES IN "E" DISTRICTS ALREADY BUILT WITH VALIDLY ISSUED PERMITS AND AS CONCERNS FENCES ON LAKEFRONT PROPERTY IN "E" DISTRICTS; PROVIDING FOR INCLUSION IN THE TOWN CODE; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie, Florida, finds and determines it is in the best interests of the Town of Davie to amend the Land Development Code by amending the definition of "Open Space" and the add a Code Provision as concerns fences already built with validly issued permits and as concerns fences on lakefront property in "E" Districts;

WHEREAS, the Town Council of the Town of Davie desires to amend the Land Development Code by amending the definition of "Open Space" as defined under Section 12.503 and to add to Section 12-33(N) a subsection (1) as concerns fences already built with validly issued permits and as concerns fences on lakefront property in "E" Districts; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. Amend the definition of "Open Space" as defined under §12.503 as follows:

Land that is to be used primarily for resource protection, agriculture (where agricultural products are not sold on site), recreational purposes or otherwise left undisturbed and specifically excluding road rights-of-way. Where residential lots are above the minimum sizes required and the excess lot area is deed restricted to open space uses it may be counted as open space in site plans approved before November 1, 2001. In a residential development such deed restricted common areas must have unrestricted access for all residents, except for lakefront lots in the "E" District Zoning category in which the lakefront lot property owner is entitled to construct a fence subject to compliance with §12-33(N). As of November 1, 2001, no developer may obtain approval of any site plan which utilizes excess lot area as open space.

SECTION 2. Add to §12-33(N) the following subsection (10):

(10) As to "E" District Zoning, fences already built consistent with a validly issued permit from the Town are grandfathered. As to any other fences desired by a lakefront lot property owner in the "E" District Zoning, the Town may issue a fencing permit to a lakefront lot property owner which is above the minimum size required and has within the lot excess lot area which is considered open space provided the fence has unlocked latch gated access to the open space on two sides through the lot so that the residents of the "E" District development have access to the open space contained within the lot. However, a lot owner is not entitled to build a fence which in any way fences, encroaches upon or blocks any recreation trail and/or equestrian trail and/or other trail and/or path. Nothing in this section is meant to or shall be construed to take away from other lot owners within the "E" District developments their rights concerning the open space, and the lot property owner obtaining a fencing permit does so with the knowledge and understanding of the interest or potential interest of other lot owners within the residential development concerning open space. Any owner must submit an approval from their respective Homeowner's Association with an application for a fencing permit under this subsection.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court or competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2001.

PASSED ON SECOND READING THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2001

MAYOR/COUNCIL MEMBER

ATTEST:

TOWN CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2001.