



The Village of Biscayne Park

640 NE 114th St., Biscayne Park, FL 33161
Telephone: 305-899-8000 Facsimile: 305 891 7241

10.b

Commission Agenda Report

Commission Meeting Date: November 1, 2016
Prepared By: Maria C. Camara, Village Clerk
Title / Subject: Ordinance 2016-10

Background:

At the October 13th Commission meeting, there was a discussion on a feral cat issue in the Village. The discussion included that our current code prohibits outdoor open feeding and the ability to add such violation to be eligible for a civil citation under the Village's recently adopted ordinance.

At the conclusion of the discussion, there consensus to direct the Village Attorney to draft an ordinance for first reading to include this violation as a civil citation for the November 1st meeting.

Attachments:

- Ordinance 2016-10

- 1 (c) If the violation is corrected and then recurs or if the violation is not corrected by the
2 time specified for correction by the code compliance officer, the case may be presented
3 to the code compliance board even if the violation has been corrected prior to the board
4 hearing, and the notice shall so state. If a repeat violation is found, the code compliance
5 officer shall notify the violator but is not required to give violator a reasonable time to
6 correct the violation. The code compliance officer, upon notifying the violator of a
7 repeat violation, shall notify the code compliance board and request a hearing. The code
8 compliance board shall schedule a hearing and shall provide notice pursuant to section
9 14.1.12. The case may be presented to the code compliance board even if the repeat
10 violation has been corrected prior to the board hearing, and the notice shall so state.
11 "Repeat violation" means a violation of a provision of a code or ordinance by a person
12 who has been previously found, through a code compliance board or other quasi-
13 judicial or judicial process, to have violated or has admitted violating the same
14 provision within five (5) years prior to the violation.
- 15 (d) If the code compliance officer has reason to believe a violation presents a serious threat
16 to the public health, safety and welfare, the code compliance officer may proceed
17 directly to the procedure in subsection 14.1.7(b) without notifying the violator.
- 18 (e) If the owner of the property which is subject to an enforcement proceeding before a
19 code compliance board, or if the court, transfers ownership of such property between
20 the time the initial pleading was served and the time of the hearing, such owner shall:
- 21 (1) Disclose, in writing, the existence and the nature of the proceeding to the
22 prospective transferee.
- 23 (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other
24 materials relating to the code enforcement proceeding received by the transferor.
- 25 (3) Disclose, in writing, to the prospective transferee that the new owner will be
26 responsible for compliance with the applicable code and with orders issued in the
27 code enforcement proceeding.
- 28 (4) File a notice with the code compliance department of the transfer of the property,
29 with the identity and address of the new owner and copies of the disclosures
30 made to the new owner, within five (5) days after the date of the transfer. A
31 failure to make the disclosures described in this subsection before the transfer
32 creates a rebuttable presumption of fraud. If the property is transferred before the
33 hearing, the proceeding shall not be dismissed, but the new owner shall be
34 provided a reasonable period of time to correct the violation before the hearing is
35 held.
- 36
- 37 (f) The Village Commission finds that aesthetics are paramount to maintaining an attractive
38 and marketable community. The violations enumerated below severely damage the
39 aesthetics and livability of the community immediately upon their commission. Such
40 damage cannot be repaired or reversed. Therefore, the Village Commission hereby
41 deems a violation of this Section an irreparable and irreversible violation. As a result,
42 the Village of Biscayne Park adopts supplemental and alternative code enforcement
43 procedures pursuant to Sections 162.13 and 162.22, Florida Statutes, as amended, to
44 authorize code compliance officers to issue administrative citations for review before the

1 code compliance board. A code compliance officer shall have the sole discretion in
2 determining whether to issue an administrative citation or a notice of violation for the
3 following offenses:
4

5 (i) open feeding that causes a gathering of more than four (4) dogs or four (4) cats or
6 combination thereof totaling four (4), in violation of Section 3-4 of the Code;

7 (ii)(i)excessive barking or howling of dogs, in violation of Section 3-21 of the Code;

8 (iii)(ii)parking not on an approved surface where there is an approved parking surface
9 as required by Section 5.6.1 of the Land Development Code;

10 (iv)(iii)garbage cans and trash receptacles not placed behind face of building and
11 screened from view, in violation of Section 6.3.2 of the Land Development Code;

12 (v)(iv)domestic trash and recycling materials placed at the property line and/or not
13 removed under the requirements of Section 6.3.3 of the Land Development Code;

14 (vi)(v)trees and garden refuse placed at the property line and/or not removed under the
15 requirements of Section 6.3.4 of the Land Development Code;

16 (vii)(vi)overgrown grass in violation of Section 8.4.1 of the Land Development Code;

17 (viii)(vii)offensive noise, in violation of Section 10-1 of the Code.
18

19 In the issuance of an administrative citation, the following procedures shall be used:
20

21 (1) For the offenses enumerated above, a code compliance officer who, upon personal
22 investigation, has reasonable cause to believe that there is a violation, shall have the
23 authority to issue an administrative citation to the alleged violator and/or owner of the
24 property.
25

26 (2) The administrative citation issued shall be in a form approved by the Village
27 Manager and shall contain:
28

29 (i) The date and time of issuance.
30

31 (ii) The name and address of the person to whom the administrative
32 citation is issued.
33

34 (iii) The facts constituting reasonable cause.
35

36 (iv) The section of the Code that is violated.
37

38 (v) The name of the code compliance officer.
39

40 (vi) The procedure for the person to follow in order to pay or contest the
41 administrative citation.
42

1 (vii) The penalty, including administrative costs, if the person elects
2 to contest the administrative citation and is found in violation.

3
4 (viii) The penalty if the person elects to pay the administrative citation.

5
6 (ix) A conspicuous statement that if the person fails to pay the penalty
7 within the time allowed, or fails to appear before the code compliance
8 board, that the person shall be deemed to have waived his or her right to
9 contest the administrative citation and that, in such case, a final order
10 and/or judgment may be entered against the person up to \$500.

11
12 (3) After issuing the administrative citation, the code compliance officer shall deposit
13 an original with the Village Manager or their designee.

14
15 (4) A person who has been served with an administrative citation shall elect either to:

16
17 (i) Correct the violation immediately and pay within fourteen (14) days of
18 service of the administrative citation the penalty in the manner indicated
19 on the administrative citation; or

20
21 (ii) Request a hearing before the code compliance board.
22

23 **Section 3.** **Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts
24 thereof in conflict herewith, are and the same are hereby repealed to the extent of such conflict.

25 **Section 4.** **Severability.** The provisions of this Ordinance are declared to be
26 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be
27 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining
28 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it
29 being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any
30 part.

31 **Section 5.** **Codification.** It is the intention of the Village Commission of the Village of
32 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of
33 Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be

1 renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other
2 word or phrase in order to accomplish such intention.

3 **Section 6.** **Effective Date.** This Ordinance shall be effective upon adoption on
4 second reading.

5 The foregoing Ordinance was offered by Commissioner Jonas, who moved its adoption. The
6 motion was seconded by Commissioner Anderson and upon being put to a vote, the vote was as
7 follows:

8 PASSED AND ADOPTED upon first reading this ____ day of _____, 2016.

9 PASSED AND ADOPTED upon second reading this ____ day of _____, 2016.

**The foregoing ordinance upon being put
to a vote, the vote was as follows:**

Mayor Coviello: _____
Vice Mayor Ross: _____
Commissioner Anderson: _____
Commissioner Jonas: _____
Commissioner Watts: _____

10 _____
11 David Coviello, Mayor

12
13
14
15
16
17
18
19 Attest:

20 _____
21
22
23 Maria C. Camara, Village Clerk

24
25 Approved as to form:

26
27
28
29 _____
30 John J. Hearn, Village Attorney