



Village of Biscayne Park Commission Agenda Report

Village Commission Meeting Date: March 1, 2016

Subject: Ordinance 2016-04 - Civil Citations

Prepared By: Maria C. Camara

Sponsored By: Staff

Background

At the February 2, 2016 commission meeting, the Commission discussed the utilization of civil citations which would allow for penalties for repeatable violations which can be corrected with minimal effort, as brought forward by Village Attorney John Hearn.

After discussion, there was consensus to move forward and to have the Attorney draft an ordinance for first reading, as well as provide a list of the violations, which include, but are not limited to:

- Parking on the grass
- Overgrown grass
- Waste receptacles left out after collection
- Waste receptacles not properly stored behind face of building
- Excessive/offensive noise

Recommendation:

Approval at first reading.

Attachments:

- Ordinance 2016-04

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ORDINANCE NO. 2016-04

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA AMENDING 6.3.3 OF THE LAND DEVELOPMENT CODE ENTITLED "OWNER/OCCUPANT RESPONSIBILITY"; AMENDING SECTION 14.1 OF THE LAND DEVELOPMENT CODE ENTITLED "COMPLIANCE PROCEDURE"; AMENDING SECTION 15.4 OF THE LAND DEVELOPMENT CODE ENTITLED "OTHER PENALTIES AND REMEDIES"; PROVIDING FOR INTENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the current notice of violation procedure is effective and efficient for most violations of the Village Code; and

WHEREAS, the current notice of violation procedure is ineffective and inefficient for violations of the Village Code that are easily correctable as it allows repeat violations of certain Code provisions to occur and to negatively and irreparably impact the Village without any consequence to the violator; and

WHEREAS, an administrative citation process would create a streamlined and efficient way of enforcing easy to correct violations of the Village Code that are easily correctable, however, the damage is irreversible; and

WHEREAS, the Village Commission finds it to be in the best interests of the residents of the Village of Biscayne Park to create and enact an administrative citation process;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. It is the intent of the Village Commission that administrative citations be issued for violations that can be corrected with minimal effort, and are either health and safety violations, or irreparable or irreversible.

1 **Section 3.** Section 6.3.3 of the Village of Biscayne Park Land Development Code,
2 entitled, “Owner/occupant responsibility”, is hereby amended to read as follows:

3 **6.3.3 Owner/occupant responsibility.**
4

5 (a) The Village Commission finds that aesthetics are paramount to maintaining an attractive
6 and marketable community. The violations enumerated below severely damage the
7 aesthetics and livability of the community immediately upon their commission. Such
8 damage cannot be repaired or reversed. Therefore, the Village Commission hereby
9 deems a violation of this Section an irreparable and irreversible violation.
10

11 (āb) It shall be the duty of each owner/occupant to prevent the continued, excessive and
12 unsightly accumulation of garbage, trash and other types of waste and rubbish.

13 (āc) Each owner/occupant shall place domestic trash and recyclable materials at the property
14 line in front of the property no earlier than 5:00 p.m. of the day the evening not more
15 than twenty four (24) hours before preceding the scheduled collection time and
16 containers must be removed and placed out of sight by 5:00 a.m. the day following the
17 scheduled day of collection. Each owner/occupant shall remove their trash container
18 from the front of the property within twenty four (24) hours after collection.

19 (ād) Failure to comply with the provisions of this section shall constitute a violation of this
20 Code.

21 **Section 4.** Section 14.1.7 of the Village of Biscayne Park Land Development
22
23 Code, entitled, “Compliance procedure”, is hereby amended to read as follows:

24 **14.1.7 Compliance procedure.**

25 (a) It shall be the duty of the code compliance officer to initiate enforcement proceedings of
26 the various codes; provided, however, no member of the code compliance board shall
27 have the power to initiate such enforcement proceedings.

28 (b) Except as provided in subsections (c), ~~and~~ (d) and (f), if a violation of the codes is
29 found, the code compliance officer shall notify the violator and give the violator a
30 reasonable time to correct the violation. Should the violation continue beyond the time
31 specified for correction, the code compliance officer shall notify the code compliance
32 board of the charges and request a hearing pursuant to procedure in section 14.1.8.
33 Notice shall be provided pursuant to section 14.1.13.

34 (c) If the violation is corrected and then recurs or if the violation is not corrected by the
35 time specified for correction by the code compliance officer, the case may be presented
36 to the code compliance board even if the violation has been corrected prior to the board
37 hearing, and the notice shall so state. If a repeat violation is found, the code compliance
38 officer shall notify the violator but is not required to give violator a reasonable time to
39 correct the violation. The code compliance officer, upon notifying the violator of a
40 repeat violation, shall notify the code compliance board and request a hearing. The code

1 compliance board shall schedule a hearing and shall provide notice pursuant to section
2 14.1.12. The case may be presented to the code compliance board even if the repeat
3 violation has been corrected prior to the board hearing, and the notice shall so state.
4 "Repeat violation" means a violation of a provision of a code or ordinance by a person
5 who has been previously found, through a code compliance board or other quasi-
6 judicial or judicial process, to have violated or has admitted violating the same
7 provision within five (5) years prior to the violation.

8 (d) If the code compliance officer has reason to believe a violation presents a serious threat
9 to the public health, safety and welfare, the code compliance officer may proceed
10 directly to the procedure in subsection 14.1.7(b) without notifying the violator.

11 (e) If the owner of the property which is subject to an enforcement proceeding before a
12 code compliance board, or if the court, transfers ownership of such property between
13 the time the initial pleading was served and the time of the hearing, such owner shall:

14 (1) Disclose, in writing, the existence and the nature of the proceeding to the
15 prospective transferee.

16 (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other
17 materials relating to the code enforcement proceeding received by the transferor.

18 (3) Disclose, in writing, to the prospective transferee that the new owner will be
19 responsible for compliance with the applicable code and with orders issued in the
20 code enforcement proceeding.

21 (4) File a notice with the code compliance department of the transfer of the property,
22 with the identity and address of the new owner and copies of the disclosures
23 made to the new owner, within five (5) days after the date of the transfer. A
24 failure to make the disclosures described in this subsection before the transfer
25 creates a rebuttable presumption of fraud. If the property is transferred before the
26 hearing, the proceeding shall not be dismissed, but the new owner shall be
27 provided a reasonable period of time to correct the violation before the hearing is
28 held.

29 (f) The Village of Biscayne Park adopts supplemental and alternative code enforcement
30 procedures pursuant to Sections 162.13 and 162.22, Florida Statutes, as amended, to
31 authorize code compliance officers to issue administrative citations for review before
32 the code compliance board. A code compliance officer shall have the sole discretion in
33 determining whether to issue an administrative citation or a notice of violation. In the
34 issuance of an administrative citation for the following offenses:

35
36 (i) overgrown grass in violation of Section 8.4.1 of the Land Development Code;

37 (ii) domestic trash and recycling materials not removed under the requirements of
38 Section 6.3.3 of the Land Development Code;

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

41 (iv) parking on the grass where there is an approved parking surface as required by
42 Section 5.6.1 of the Land Development Code;

1 (v) violations of Section 3-21 or Section 10.1 of the Code, as they relate to
2 excessive/offensive noise.

3
4 In the issuance of an administrative citation, the following procedures shall be used:

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

10
11 (2) The administrative citation issued shall be in a form approved by the Village
12 Manager and shall contain:

13
14 (i) The date and time of issuance.

15
16 (ii) The name and address of the person to whom the administrative
17 citation is issued.

18
19 (iii) The date and time the violation was committed.

20
21 (iv) The facts constituting reasonable cause.

22
23 (v) The section of the Code that is violated.

24
25 (vi) The name of the code compliance officer.

26
27 (vii) The procedure for the person to follow in order to pay or contest the
28 administrative citation.

29
30 (viii) The penalty if the person elects to contest the administrative citation.

31
32 (ix) The penalty if the person elects to pay the administrative citation.

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34 (x) A conspicuous statement that if the person fails to pay the penalty
35 within the time allowed, or fails to appear before the code
36 compliance board, that the person shall be deemed to have waived his or
37 her right to contest the administrative citation and that, in such case, a
38 final order and/or judgment may be entered against the person up \$500.

39
40 (4) After issuing the administrative citation, the code compliance officer shall deposit
41 an original with the Village Manager or their designee.

1 (5) A person who has been served with an administrative citation shall elect either to:

2
3 (i) Correct the violation and pay within ten (10) days of service of the
4 administrative citation the penalty in the manner indicated on the
5 administrative citation; or

6
7 (ii) Attend a hearing before the code compliance board.
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9 **Section 5.** Section 15.4 of the Village of Biscayne Park Land Development Code,
10 entitled, “Other penalties and remedies”, is hereby amended to read as follows:

11 **15.4. - Other penalties and remedies.**

12 15.4.1 *Planning board determination.* If the planning board determines that the code
13 enforcement process would otherwise be an inadequate response to a given violation, it may
14 pursue the following penalties and remedies, as provided by law.

15
16 15.4.2 *Civil remedies.* If any building or structure is erected, constructed, reconstructed,
17 altered, repaired, or maintained or any building, structure, land, or water is used in violation of
18 this code, the planning board or the code compliance board, through the village attorney, may
19 institute any appropriate civil action or proceedings in any court to prevent, correct, or abate
20 the violation.

21
22 15.4.3 ~~Civil~~ *Administrative citation.* For any violation against this code and to enforce any
23 provisions of this code, ~~civil~~ administrative citation procedures may be used.

24
25 **Section 6.** Conflicts. That all Ordinances or parts of Ordinances, Resolutions or parts
26 thereof in conflict herewith, are and the same are hereby repealed to the extent of such conflict.

27 **Section 7.** Severability. The provisions of this Ordinance are declared to be
28 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be
29 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining
30 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it
31 being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any
32 part.

33 **Section 8.** Codification. It is the intention of the Village Commission of the Village of
34 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of

1 Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be
2 renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other
3 word or phrase in order to accomplish such intention.

4 **Section 9.** Effective Date. This Ordinance shall be effective upon adoption on
5 second reading.

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

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

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

12

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

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

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17 _____
18 David Coviello, Mayor

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23 Attest:

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27 _____
28 Maria C. Camara, Village Clerk

29 Approved as to form:

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34 _____
35 John J. Hearn, Village Attorney