



Village of Biscayne Park

Commission Agenda Report

Village Commission Meeting Date: April 5, 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

At the March 1, 2016 meeting, Ordinance 2016-04 was presented and approved at first reading with direction to the Village Attorney to review/amend as follows:

- Include in the title of the ordinance both sections 6.3.3 and 6.3.4
- Section 15.4 - Planning Board, to be frocked (as recommended by Attorney Hearn)
- Section 6.3.3 and 6.4.3 to be amended to include the 9:00am to 9:00 am time provision.
- Section 14.1.7 (f) to be amended to change from "parking on grass" to "parking on a non-approved surface".
- Section 14.1.7 (2) (iii) need to clarify/delete the language: "The date and time the violation was committed."
- Section 14.1.7 (2) (viii) need to clarify the language: "The penalty if the person elects to contest the administrative citation."

April 5, 2016

Commission Agenda Report

Ordinance 2016-04

- Section 14.1.7 (5) (ii) need to change “Attend a hearing” to “Request a hearing”.

The ordinance also specifies the requirements of the Administration Citation form and a sample is also provided for review.

Recommendation: Approval at second reading.

Attachments:

- Ordinance 2016-04
- Administrative Citation DRAFT

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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 6.3.4
OF THE LAND DEVELOPMENT CODE
ENTITLED “GARDEN/BULKY WASTE”;
“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**

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

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

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

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

33
34 **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF**
35 **THE VILLAGE OF BISCAYNE PARK, FLORIDA:**

36
37 **Section 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as
38 being true and correct and are hereby made a specific part of this Ordinance upon adoption
39 hereof.

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

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

6 **6.3.3 Owner/occupant responsibility.**

- 7 (a) It shall be the duty of each owner/occupant to prevent the continued, excessive and
8 unsightly accumulation of garbage, trash and other types of waste and rubbish.
- 9 (b) Each owner/occupant shall place domestic trash and recyclable materials at the property
10 line in front of the property ~~no earlier than 9:00 a.m. of the day the evening not more~~
11 ~~than twenty four (24) hours before~~ preceding the scheduled collection time and
12 containers must be removed and placed out of sight by 9:00 a.m. the day following the
13 scheduled day of collection. ~~Each owner/occupant shall remove their trash container~~
14 ~~from the front of the property within twenty four (24) hours after collection.~~
- 15 (c) Failure to comply with the provisions of this section shall constitute a violation of this
16 Code.

17 **Section 4.** Section 6.3.4 of the Village of Biscayne Park Land Development Code,
18 entitled, “Garden/bulky waste”, is hereby amended to read as follows:

19 **6.3.4 Garden/bulky waste.** All tree trimmers and tree surgeons who are employed by a
20 resident or occupant of any residence or who may be employed by the village, or who may
21 otherwise pursue their occupation in the village shall be required to remove immediately to a
22 dump or other place designated for refuse, all refuse, cutting or debris resulting from their
23 operation. In no event shall any refuse, cuttings or debris remain overnight on any premises
24 where tree trimmers or tree surgeons have been engaged in their occupation. Each property
25 owner shall place tree and garden refuse at the property line no earlier than ~~5:00~~ 6:00 a.m. of
26 the day preceding scheduled collection time and containers must be removed and placed out
27 of sight by ~~5:00~~ 6:00 a.m. the day following the scheduled day of collection. Failure to
28 comply with the provisions of this section shall constitute a violation of this Code.

29 **Section 5.** Section 14.1.7 of the Village of Biscayne Park Land Development
30 Code, entitled, “Compliance procedure”, is hereby amended to read as follows:

31 **14.1.7 Compliance procedure.**

- 32 (a) It shall be the duty of the code compliance officer to initiate enforcement proceedings of
33 the various codes; provided, however, no member of the code compliance board shall
34 have the power to initiate such enforcement proceedings.
35

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

7 (c) If the violation is corrected and then recurs or if the violation is not corrected by the
8 time specified for correction by the code compliance officer, the case may be presented
9 to the code compliance board even if the violation has been corrected prior to the board
10 hearing, and the notice shall so state. If a repeat violation is found, the code compliance
11 officer shall notify the violator but is not required to give violator a reasonable time to
12 correct the violation. The code compliance officer, upon notifying the violator of a
13 repeat violation, shall notify the code compliance board and request a hearing. The code
14 compliance board shall schedule a hearing and shall provide notice pursuant to section
15 14.1.12. The case may be presented to the code compliance board even if the repeat
16 violation has been corrected prior to the board hearing, and the notice shall so state.
17 "Repeat violation" means a violation of a provision of a code or ordinance by a person
18 who has been previously found, through a code compliance board or other quasi-
19 judicial or judicial process, to have violated or has admitted violating the same
20 provision within five (5) years prior to the violation.

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

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

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

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

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

34 (4) File a notice with the code compliance department of the transfer of the property,
35 with the identity and address of the new owner and copies of the disclosures
36 made to the new owner, within five (5) days after the date of the transfer. A
37 failure to make the disclosures described in this subsection before the transfer
38 creates a rebuttable presumption of fraud. If the property is transferred before the
39 hearing, the proceeding shall not be dismissed, but the new owner shall be
40 provided a reasonable period of time to correct the violation before the hearing is
41 held.

42
43 (f) The Village Commission finds that aesthetics are paramount to maintaining an attractive
44 and marketable community. The violations enumerated below severely damage the

1 aesthetics and livability of the community immediately upon their commission. Such
2 damage cannot be repaired or reversed. Therefore, the Village Commission hereby
3 deems a violation of this Section an irreparable and irreversible violation. As a result,
4 the Village of Biscayne Park adopts supplemental and alternative code enforcement
5 procedures pursuant to Sections 162.13 and 162.22, Florida Statutes, as amended, to
6 authorize code compliance officers to issue administrative citations for review before the
7 code compliance board. A code compliance officer shall have the sole discretion in
8 determining whether to issue an administrative citation or a notice of violation for the
9 following offenses:

- 10
- 11 (i) excessive barking or howling of dogs, in violation of Section 3-21 of the Code;
- 12 (ii) parking ~~on the grass~~ not on an approved surface where there is an approved
13 parking surface as required by Section 5.6.1 of the Land Development Code;
- 14 (iii) garbage cans and trash receptacles not placed behind face of building and
15 screened from view, in violation of Section 6.3.2 of the Land Development Code;
- 16 (iv) domestic trash and recycling materials placed at the property line and/or not
17 removed under the requirements of Section 6.3.3 of the Land Development Code;
- 18 (v) trees and garden refuse placed at the property line and/or not removed under the
19 requirements of Section 6.3.4 of the Land Development Code;
- 20 (vi) overgrown grass in violation of Section 8.4.1 of the Land Development Code;
- 21 (vii) offensive noise, in violation of Section 10-1 of the Code.

22

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

24

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

29

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

- 32
- 33 (i) The date and time of issuance.
- 34
- 35 (ii) The name and address of the person to whom the administrative
36 citation is issued.
- 37
- 38 ~~(iii) The date and time the violation was committed.~~
- 39
- 40 (iii) ~~(iv)~~ The facts constituting reasonable cause.
- 41
- 42 (iv)~~(v)~~ The section of the Code that is violated.
- 43

1 (v)(vi) The name of the code compliance officer.

2
3 (vi)(vii) The procedure for the person to follow in order to pay or contest
4 the administrative citation.

5
6 (vii)(viii) The penalty, including administrative costs, if the person elects
7 to contest the administrative citation and is found in violation.

8
9 (viii)(ix) The penalty if the person elects to pay the administrative citation.

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

16
17 (3) After issuing the administrative citation, the code compliance officer shall deposit
18 an original with the Village Manager or their designee.

19
20 (4) A person who has been served with an administrative citation shall elect either to:

21
22 (i) Correct the violation and pay within ten (10) days of service of the
23 administrative citation the penalty in the manner indicated on the
24 administrative citation; or

25
26 (ii) Request a hearing before the code compliance board.
27

28 **Section 6.** Section 15.4 of the Village of Biscayne Park Land Development Code,
29 entitled, "Other penalties and remedies", is hereby amended to read as follows:

30 **15.4. - Other penalties and remedies.**

31 ~~15.4.1 *Planning board determination.* If the planning board determines that the code~~
32 ~~enforcement process would otherwise be an inadequate response to a given violation, it may~~
33 ~~pursue the following penalties and remedies, as provided by law.~~

34
35 ~~15.4.2 *Civil remedies.* If any building or structure is erected, constructed, reconstructed,~~
36 ~~altered, repaired, or maintained or any building, structure, land, or water is used in violation of~~
37 ~~this code, the planning board or the code compliance board village, through the village~~
38 ~~attorney, may institute any appropriate civil action or proceedings in any court to prevent,~~
39 ~~correct, or abate the violation.~~

1 ~~15.4.3 *Civil citation.* For any violation against this code and to enforce any provisions of this~~
2 ~~code, civil citation procedures may be used.~~

3
4 **Section 7. Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts
5 thereof in conflict herewith, are and the same are hereby repealed to the extent of such conflict.

6 **Section 8. Severability.** The provisions of this Ordinance are declared to be
7 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be
8 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining
9 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it
10 being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any
11 part.

12 **Section 8. Codification.** It is the intention of the Village Commission of the Village of
13 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of
14 Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be
15 renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other
16 word or phrase in order to accomplish such intention.

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

19
20 The foregoing Ordinance was offered by Commissioner _____, who moved its
21 adoption. The motion was seconded by _____ and upon being put to a vote,
22 the vote was as follows:

23
24 PASSED AND ADOPTED upon first reading this 1st day of March, 2016.

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

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

David Coviello, Mayor

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

Attest:

Maria C. Camara, Village Clerk

Approved as to form:

John J. Hearn, Village Attorney



ADMINISTRATIVE CITATION

DATE ISSUED: March 31, 2016

Owner/Violator Name: John Smith

Owner/Violator Address: 640 NE 114th St.
Biscayne Park, FL 33161

On March 30, 2016 at 10:00 AM PM, I, the undersigned Code Compliance Officer of the Village of Biscayne Park did witness at, 640 NE 114th St., Biscayne Park, Florida:

- Parking on an unapproved surface, in violation of 5.6.1 of the Land Development Code
- Garbage cans/trash receptacles not screened from view, in violation of 6.3.2 of the Land Development Code
- Trash and recycling materials placed at the property line and/or not removed under the requirements of Section 6.3.3 of the Land Development Code
- Trees and garden refuse placed at the property line and/or not removed under the requirements of Section 6.3.4 of the Land Development Code
- Overgrown grass, in violation of 8.4.1 of the Land Development Code
- Offensive noise, in violation of 10-1 of the Code
- Excessive barking or howling of dogs, in violation of 3-21 of the Code

To correct the above violation, you must: Park vehicles only on an approved driveway surface.

FAILURE TO PAY CIVIL PENALTY OR FILE A REQUEST FOR AN ADMINISTRATIVE HEARING BY DATES SHOWN SHALL CONSTITUTE A WAIVER OF YOUR RIGHT TO HEARING AND SUCH WAIVER SHALL CONSTITUTE AN ADMISSION OF VIOLATION. YOU MAY BE ISSUED SUBSEQUENT CITATIONS IF VIOLATION CONTINUES. THE CODE COMPLIANCE BOARD MAY ENTER A FINAL ORDER AND/OR JUDGMENT AGAINST YOU FOR UP TO \$500. A FINE OF \$ AND AN ADMINISTRATIVE COST OF \$ SHALL BE ASSESSED IF YOU DO NOT PREVAIL.

You Shall:

1. Pay the civil penalty of **\$25.00** on or before: April 7, 2016 OR;
2. You may request an administrative hearing before the Code Compliance Board to appeal the decision of the Code Compliance Officer 10 days from receipt of this citation. (By April 7, 2016.)

I request an administrative hearing

Should you request a hearing, the hearing will be held on: **May 9, 2016** at 7:00 P.M., Village Commission Chambers (Log Cabin), 640 NE 114th Street, Biscayne Park, Florida.

I acknowledge receipt of this civil violation notice. I understand that acceptance of this violation notice is not an admission of guilt.

Violator (Signature)

Printed

Date

Signature of Code Compliance Officer

Printed

(305) 899 8000

Phone Number

Date



INSTRUCTIONS

1. PAYMENT OF THE ADMINISTRATIVE CITATION:

Payment should be made in the form of cash, money order, or cashier's check. Payments made in the form of a cashier's check or money order should be made payable to: VILLAGE OF BISCAYNE PARK

Payment may be mailed to our office at 640 NE 114th Street, Biscayne Park, Florida 33161. **DO NOT MAIL CASH.**

PAYMENT OF THE CIVIL PENALTY DOES NOT CONSTITUTE A CORRECTION OF THE VIOLATION

2. REQUEST FOR HEARING MUST BE **SUBMITTED IN WRITING** TO:

VILLAGE OF BISCAYNE PARK
CODE COMPLIANCE
640 NE 114TH STREET
BISCAYNE PARK, FLORIDA 33161

Tel. 305-899-8000

Email: code@biscayneparkfl.gov

IF YOU REQUEST A HEARING, YOU MAY APPEAR WITH OR WITHOUT COUNSEL AND PRODUCE WITNESSES ON YOUR BEHALF.

3. YOU WILL BE LIABLE FOR THE COSTS OF THE AMINISTRATIVE HEARING UPON A FINDING OF GUILT.

4. LIENS IN THE AMOUNT OF UNPAID PENALTIES CAN BE FILED AGAINST YOUR REAL OR PERSONAL PROPERTY.