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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) Unless side yard service is requested Each owner/occupant shall place domestic
10 (kitchen) trash and recyclable materials at the edge of the pavement property-line in
11 front of the property no earlier than 5:00 p.m. of the day the evening not more than
12 twenty-four (24) hours before preceding the scheduled collection time and containers
13 must be removed and placed out of sight by 9:00 a.m. the day following the scheduled
14 day of collection. ~~Each owner/occupant shall remove their trash container from the front~~
15 ~~of the property within twenty-four (24) hours after collection.~~
- 16 (c) Failure to comply with the provisions of this section shall constitute a violation of this
17 Code.

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

20 **6.3.4 Garden/bulky waste.** All tree trimmers and tree surgeons who are employed by a
21 resident or occupant of any residence or who may be employed by the village, or who may
22 otherwise pursue their occupation in the village shall be required to remove immediately to a
23 dump or other place designated for refuse, all refuse, cutting or debris resulting from their
24 operation. In no event shall any refuse, cuttings or debris remain overnight on any premises
25 where tree trimmers or tree surgeons have been engaged in their occupation. Each property
26 owner shall place tree and garden refuse at the edge of the pavement property-line in front of the
27 property no earlier than 9:00 a.m. 6:00 a.m. of the day preceding the scheduled collection time
28 and containers must be removed and placed out of sight by 6:00 a.m. 9:00 a.m. the day following
29 the scheduled day of collection. Failure to comply with the provisions of this section shall
30 constitute a violation of this Code.

31
32 **Section 5.** Section 14.1.7 of the Village of Biscayne Park Land Development
33 Code, entitled, “Compliance procedure”, is hereby amended to read as follows:

34 **14.1.7 Compliance procedure.**

- 1 (a) It shall be the duty of the code compliance officer to initiate enforcement proceedings of
2 the various codes; provided, however, no member of the code compliance board shall
3 have the power to initiate such enforcement proceedings.
- 4 (b) Except as provided in subsections (c), ~~and (d)~~ and (f), if a violation of the codes is
5 found, the code compliance officer shall notify the violator and give the violator a
6 reasonable time to correct the violation. Should the violation continue beyond the time
7 specified for correction, the code compliance officer shall notify the code compliance
8 board of the charges and request a hearing pursuant to procedure in section 14.1.8.
9 Notice shall be provided pursuant to section 14.1.13.
- 10 (c) If the violation is corrected and then recurs or if the violation is not corrected by the
11 time specified for correction by the code compliance officer, the case may be presented
12 to the code compliance board even if the violation has been corrected prior to the board
13 hearing, and the notice shall so state. If a repeat violation is found, the code compliance
14 officer shall notify the violator but is not required to give violator a reasonable time to
15 correct the violation. The code compliance officer, upon notifying the violator of a
16 repeat violation, shall notify the code compliance board and request a hearing. The code
17 compliance board shall schedule a hearing and shall provide notice pursuant to section
18 14.1.12. The case may be presented to the code compliance board even if the repeat
19 violation has been corrected prior to the board hearing, and the notice shall so state.
20 "Repeat violation" means a violation of a provision of a code or ordinance by a person
21 who has been previously found, through a code compliance board or other quasi-
22 judicial or judicial process, to have violated or has admitted violating the same
23 provision within five (5) years prior to the violation.
- 24 (d) If the code compliance officer has reason to believe a violation presents a serious threat
25 to the public health, safety and welfare, the code compliance officer may proceed
26 directly to the procedure in subsection 14.1.7(b) without notifying the violator.
- 27 (e) If the owner of the property which is subject to an enforcement proceeding before a
28 code compliance board, or if the court, transfers ownership of such property between
29 the time the initial pleading was served and the time of the hearing, such owner shall:
- 30 (1) Disclose, in writing, the existence and the nature of the proceeding to the
31 prospective transferee.
- 32 (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other
33 materials relating to the code enforcement proceeding received by the transferor.
- 34 (3) Disclose, in writing, to the prospective transferee that the new owner will be
35 responsible for compliance with the applicable code and with orders issued in the
36 code enforcement proceeding.
- 37 (4) File a notice with the code compliance department of the transfer of the property,
38 with the identity and address of the new owner and copies of the disclosures
39 made to the new owner, within five (5) days after the date of the transfer. A
40 failure to make the disclosures described in this subsection before the transfer
41 creates a rebuttable presumption of fraud. If the property is transferred before the
42 hearing, the proceeding shall not be dismissed, but the new owner shall be
43 provided a reasonable period of time to correct the violation before the hearing is
44 held.

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

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

25
26 In the issuance of an administrative citation, the following procedures shall be used:

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

32
33 (2) The administrative citation issued shall be in a form approved by the Village
34 Manager and shall contain:

35
36 (i) The date and time of issuance.

37
38 (ii) The name and address of the person to whom the administrative
39 citation is issued.

40
41 ~~(iii) The date and time the violation was committed.~~

42
43 ~~(iii) (iv) The facts constituting reasonable cause.~~

1
2 (iv)(v) The section of the Code that is violated.

3
4 (v)(vi) The name of the code compliance officer.

5
6 (vi)(vii) The procedure for the person to follow in order to pay or contest
7 the administrative citation.

8
9 (vii)(viii) The penalty, including administrative costs, if the person elects
10 to contest the administrative citation and is found in violation.

11
12 (viii)(ix) The penalty if the person elects to pay the administrative citation.

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

19
20 (3) After issuing the administrative citation, the code compliance officer shall deposit
21 an original with the Village Manager or their designee.

22
23 (4) A person who has been served with an administrative citation shall elect either to:

24
25 (i) Correct the violation immediately and pay within fourteen (14) days of
26 service of the administrative citation the penalty in the manner indicated
27 on the administrative citation; or

28
29 (ii) Request a hearing before the code compliance board.
30

31 **Section 6.** Section 15.4 of the Village of Biscayne Park Land Development Code,

32 entitled, "Other penalties and remedies", is hereby amended to read as follows:

33 **15.4. - Other penalties and remedies.**

34 ~~15.4.1 *Planning board determination.* If the planning board determines that the code~~
35 ~~enforcement process would otherwise be an inadequate response to a given violation, it may~~
36 ~~pursue the following penalties and remedies, as provided by law.~~

37
38 ~~15.4.2 *Civil remedies.* If any building or structure is erected, constructed, reconstructed,~~
39 ~~altered, repaired, or maintained or any building, structure, land, or water is used in violation of~~
40 ~~this code, the planning board or the code compliance board village, through the village~~

1 attorney, may institute any appropriate civil action or proceedings in any court to prevent,
2 correct, or abate the violation.

3
4 ~~15.4.3 *Civil citation.* For any violation against this code and to enforce any provisions of this~~
5 ~~code, civil citation procedures may be used.~~

6
7 **Section 7.** **Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts
8 thereof in conflict herewith, are and the same are hereby repealed to the extent of such conflict.

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

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

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

22
23 The foregoing Ordinance was offered by Commissioner Jonas, who moved its adoption. The
24 motion was seconded by Commissioner Anderson and upon being put to a vote, the vote was as
25 follows:

26
27 PASSED AND ADOPTED upon first reading this 1st day of March, 2016.

1 PASSED AND ADOPTED upon second reading this 5th day of April, 2016.

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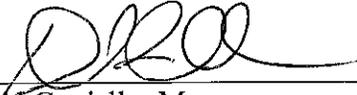
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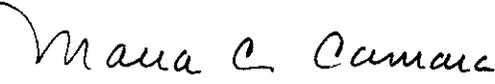
The foregoing ordinance upon being put to a vote, the vote was as follows:



David Coviello, Mayor

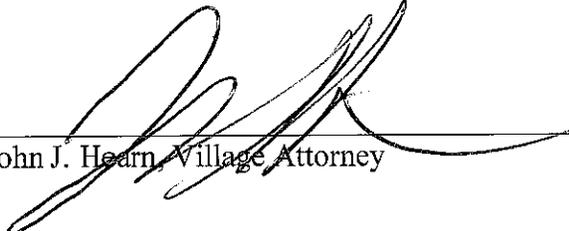
Mayor Coviello: Yes
Vice Mayor Watts: No
Commissioner Anderson: Yes
Commissioner Jonas: Yes
Commissioner Ross: Yes

Attest:



Maria C. Camara, Village Clerk

Approved as to form:



John J. Hearn, Village Attorney