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ORDINANCE NO. 2016-10

**AN ORDINANCE OF THE VILLAGE
COMMISSION OF THE VILLAGE OF
BISCAYNE PARK, FLORIDA AMENDING
SECTION 14.1 OF THE LAND DEVELOPMENT
CODE ENTITLED "COMPLIANCE
PROCEDURE" TO ADDRESS OPEN FEEDING
THAT CAUSES A GATHERING OF MORE
THAN FOUR (4) DOGS OR FOUR (4) CATS OR
COMBINATION THEREOF IN VIOLATION OF
SECTION 3.4 OF THE VILLAGE CODE;
PROVIDING FOR CONFLICTS; PROVIDING
FOR SEVERABILITY; PROVIDING FOR
INCLUSION; PROVIDING FOR AN EFFECTIVE
DATE**

WHEREAS, on April 5, 2016, the Village Commission adopted Ordinance 2016-04 which amended the administrative citation process to create a streamlined and efficient way of enforcing violations of the Village Code that are easily correctable, however, the damage is irreversible; and

WHEREAS, while utilizing the new enforcement procedures, Village staff has identified an additional offense where the damage is irreversible, however the offense is easily correctable; and

WHEREAS, the Village Commission finds it to be in the best interests of the residents of the Village of Biscayne Park to include an additional violation of the Code in the 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. Section 14.1.7 of the Village of Biscayne Park Land Development Code, entitled, "Compliance procedure", is hereby amended to read as follows:

14.1.7 Compliance procedure.

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

- 1 (b) Except as provided in subsections (c), (d) and (f), if a violation of the codes is found,
2 the code compliance officer shall notify the violator and give the violator a reasonable
3 time to correct the violation. Should the violation continue beyond the time specified for
4 correction, the code compliance officer shall notify the code compliance board of the
5 charges and request a hearing pursuant to procedure in section 14.1.8. Notice shall be
6 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) open feeding that causes a gathering of more than four (4) dogs or four (4) cats or
12 combination thereof totaling four (4), in violation of Section 3-4 of the Code;

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

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

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

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

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

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

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

24
25 In the issuance of an administrative citation, the following procedures shall be used:

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

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

34
35 (i) The date and time of issuance.

36
37 (ii) The name and address of the person to whom the administrative
38 citation is issued.

39
40 (iii) The facts constituting reasonable cause.

41
42 (iv) The section of the Code that is violated.

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

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

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

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

10
11 (ix) 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 immediately and pay within fourteen (14) days of
23 service of the administrative citation the penalty in the manner indicated
24 on the administrative citation; or

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

27
28 **Section 3.** **Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts
29 thereof in conflict herewith, are and the same are hereby repealed to the extent of such conflict.

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

1 **Section 5. Codification.** It is the intention of the Village Commission of the Village of
2 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of
3 Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be
4 renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other
5 word or phrase in order to accomplish such intention.

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

8 The foregoing Ordinance was offered by Commissioner Jonas, who moved its adoption. The
9 motion was seconded by Vice Mayor Ross and upon being put to a vote, the vote was as follows:

10 PASSED AND ADOPTED upon first reading this 1st day of November, 2016.

11 PASSED AND ADOPTED upon second reading this 15th day of November, 2016.

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

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18 _____
19 David Coviello, Mayor

Mayor Coviello: Yes
Vice Mayor Ross: Yes
Commissioner Anderson: Absent
Commissioner Jonas: Yes
Commissioner Watts: Yes

20
21 Attest:

22
23 
24 _____
25 Maria C. Camara, Village Clerk

26
27 Approved as to form:

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32 _____
John J. Hearn, Village Attorney