



# *The Village of Biscayne Park*

600 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

**AGENDA**  
**SPECIAL COMMISSION MEETING**  
**LOG CABIN - 640 NE 114th Street**  
**Biscayne Park, FL 33161**  
**Thursday, October 17, 2019 6:30 pm**

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899 8000 no later than four (4) days prior to the proceeding for assistance.

**DECORUM** - All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.



*Attachment included*

**1 Call to Order**

**2 Roll Call**

Mayor Truppman

Vice-Mayor Samaria

Commissioner Johnson-Sardella

Commissioner Tudor

Commissioner Wise

**3 Pledge of Allegiance**

**4 Public Comments Related to Agenda Items / Good & Welfare**

*Comments from the public relating to topics that are on the agenda, or other general topics.*

**5 Ordinance**

**5.a discussion on Ordinance regarding Special Magistrate**

**6 Adjournment**

Rebecca A. Rodriguez, Esq.  
Of Counsel

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WASHINGTON, DC  
WEST PALM BEACH

## **MEMORANDUM**

**TO:** Village Commission of Village of Biscayne Park, Florida

**FROM:** Rebecca A. Rodriguez, Village Attorney

**DATE:** October 1, 2019

**SUBJECT:** Amending Village Land Development Code to Include a Special Magistrate;  
Draft Ordinance for Commission Consideration and Discussion

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Pursuant to the Village Commission's directive in the September 2019 regular commission meeting, attached please find the draft ordinance for Commission discussion. This draft ordinance would revise the Village's current Land Development Code to authorize a special magistrate presiding over the Village's code enforcement proceedings.

**FOR DISCUSSION**

**ORDINANCE NO. 2019-XX**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING CHAPTERS 14 AND 15 OF THE LAND DEVELOPMENT CODE OF THE VILLAGE OF BISCAYNE PARK; AUTHORIZING SPECIAL MAGISTRATE POSITION FOR CODE ENFORCEMENT PURPOSES; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 162.03(2), Florida Statutes, a charter municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances; and

**WHEREAS**, pursuant to Section 162.03(2), Florida Statutes, a special magistrate shall have the same status as an enforcement board; and

**WHEREAS**, Chapter 14 of the Village's Land Development Code created a code compliance board to preside over the Village's code enforcement proceedings;

**WHEREAS**, Chapter 15 of the Village's Land Development Code provides enforcement guidelines for code compliance issues;

**WHEREAS**, the Village Commission is desirous to also utilize a special magistrate for certain Village code enforcement proceedings;

**BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

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

4           **Section 2. Land Development Code Amended.** Chapters 14 and 15 of the Land  
5 Development Code of the Village of Biscayne Park, Florida shall be amended to read as follows:

6           CHAPTER 14. – SPECIAL MAGISTRATES AND CODE COMPLIANCE  
7           BOARD

8  
9           14.1. – Special magistrates and code compliance board—Generally.

10  
11           14.1.1 Purpose. This chapter sets forth the procedures of the special  
12 magistrate and code compliance board. When not expressly provided for in this  
13 chapter, article III, section 2-30 of the Biscayne Park Code shall apply.

14  
15           14.1.2 Intent. It is the intent of the village to provide an equitable,  
16 expeditious, effective, and inexpensive method of enforcing the codes and  
17 ordinances in force in the village by granting to the special magistrate and code  
18 compliance board the authority to impose administrative fines and other non-  
19 criminal penalties for violation(s) of said codes and ordinances.

20  
21           14.1.3 Composition.

22  
23           (a) Special magistrates. Special magistrates shall be appointed by a  
24 simple majority vote of the village commission taken during any  
25 regular commission meeting. Special magistrates shall be  
26 authorized to hear and decide cases involving code violations in  
27 the same manner as the code compliance board. Special  
28 magistrates shall be members in good standing with the Florida  
29 Bar. The village commission may remove a special magistrate by  
30 a simple majority vote taken during any regular commission  
31 meeting.

32  
33           (b) Code compliance board. The five-member board shall be  
34 appointed by the village commission. Members of the code  
35 compliance board shall be property owners and residents of the  
36 Village of Biscayne Park. Residents who are not property owners  
37 may be appointed by the village commission by at least a four-  
38 fifths super majority vote. Appointments shall be made on the  
39 basis of experience or interest and, when possible, include the  
40 following individuals: an architect, an attorney a business person,

1 an engineer, a general contractor, a subcontractor and a licensed  
2 real estate person.

3  
4 14.1.4 Terms of office for code enforcement board. The initial  
5 appointments to the code compliance board and the alternate members shall be as  
6 follows:

- 7  
8 (1) One (1) member appointed for a term of one (1) year.  
9  
10 (2) Two (2) members appointed for a term of two (2) years.  
11  
12 (3) Two (2) members appointed for a term of three (3) years.  
13

14 Thereafter, all appointments shall be made for a term of three (3) years and shall  
15 take effect on May 1 of the year the appointment is made. A member may be  
16 reappointed upon approval of the village commission. Appointments to fill any  
17 vacancy on the code compliance board shall be for the remainder of the unexpired  
18 term of office. For an excused absence, a board or committee member must  
19 advise the village clerk prior to the meeting of the fact that they will be absent and  
20 provide a reason for that absence. The board or committee may vote to excuse the  
21 requested absence at the same meeting the board or committee member is absent.  
22 The absence, and whether or not the absence is excused or unexcused, is to be  
23 reflected in the minutes.  
24

25 The members shall serve in accordance with the village Charter and may be  
26 suspended and removed for cause as provided in the village code for removal of  
27 members of village boards.  
28

29 14.1.5 Procedures for code compliance board.

- 30  
31 (a) *Chairman.* The members of the code compliance board shall elect  
32 a chairman from among its members.  
33  
34 (b) *Quorum.* The presence of three (3) members shall constitute a  
35 quorum of the code compliance board.  
36  
37 (c) *Expenses.* Members shall serve without compensation, but may be  
38 reimbursed for such travel, mileage and per diem expenses as may  
39 be authorized by the village commission.  
40

41 14.1.6 Counsel. The village attorney shall either be counsel to the code  
42 compliance board or shall represent the village by presenting cases before the  
43 board, but in no case shall the village attorney serve in both capacities.  
44  
45

14.1.7 Compliance procedure.

- 1  
2  
3 (a) It shall be the duty of the code compliance officer to initiate  
4 enforcement proceedings of the various codes; provided, however,  
5 no member of the code compliance board shall have the power to  
6 initiate such enforcement proceedings.  
7
- 8 (b) Except as provided in subsections (c), (d) and (f), if a violation of  
9 the codes is found, the code compliance officer shall notify the  
10 violator and give the violator a reasonable time to correct the  
11 violation. Should the violation continue beyond the time specified  
12 for correction, the code compliance officer shall notify the special  
13 magistrate or code compliance board of the charges and request a  
14 hearing pursuant to procedure in section 14.1.8. Notice shall be  
15 provided pursuant to section 14.1.13.  
16
- 17 (c) If the violation is corrected and then recurs or if the violation is not  
18 corrected by the time specified for correction by the code  
19 compliance officer, the case may be presented to the special  
20 magistrate or code compliance board even if the violation has been  
21 corrected prior to the special magistrate or board hearing, and the  
22 notice shall so state. If a repeat violation is found, the code  
23 compliance officer shall notify the violator but is not required to  
24 give violator a reasonable time to correct the violation. The code  
25 compliance officer, upon notifying the violator of a repeat  
26 violation, shall notify the special magistrate or code compliance  
27 board and request a hearing. The special magistrate or code  
28 compliance board shall schedule a hearing and shall provide notice  
29 pursuant to section 14.1.12. The case may be presented to the  
30 special magistrate or code compliance board even if the repeat  
31 violation has been corrected prior to the ~~board~~ hearing, and the  
32 notice shall so state. "Repeat violation" means a violation of a  
33 provision of a code or ordinance by a person who has been  
34 previously found, through a special magistrate, code compliance  
35 board, or other quasi-judicial or judicial process, to have violated  
36 or has admitted violating the same provision within five (5) years  
37 prior to the violation.  
38
- 39 (d) If the code compliance officer has reason to believe a violation  
40 presents a serious threat to the public health, safety and welfare,  
41 the code compliance officer may proceed directly to the procedure  
42 in subsection 14.1.7(b) without notifying the violator.  
43
- 44 (e) If the owner of the property which is subject to an enforcement  
45 proceeding before a special magistrate or code compliance board,  
46 or if the court, transfers ownership of such property between the

1 time the initial pleading was served and the time of the hearing,  
2 such owner shall:

- 3
- 4 (1) Disclose, in writing, the existence and the nature of the  
5 proceeding to the prospective transferee.  
6
- 7 (2) Deliver to the prospective transferee a copy of the  
8 pleadings, notices, and other materials relating to the code  
9 enforcement proceeding received by the transferor.  
10
- 11 (3) Disclose, in writing, to the prospective transferee that the  
12 new owner will be responsible for compliance with the  
13 applicable code and with orders issued in the code  
14 enforcement proceeding.  
15
- 16 (4) File a notice with the code compliance department of the  
17 transfer of the property, with the identity and address of the  
18 new owner and copies of the disclosures made to the new  
19 owner, within five (5) days after the date of the transfer. A  
20 failure to make the disclosures described in this subsection  
21 before the transfer creates a rebuttable presumption of  
22 fraud. If the property is transferred before the hearing, the  
23 proceeding shall not be dismissed, but the new owner shall  
24 be provided a reasonable period of time to correct the  
25 violation before the hearing is held.  
26

27 (f) The village commission finds that aesthetics are paramount to  
28 maintaining an attractive and marketable community. The  
29 violations enumerated below severely damage the aesthetics and  
30 livability of the community immediately upon their commission.  
31 Such damage cannot be repaired or reversed. Therefore, the village  
32 commission hereby deems a violation of this section an irreparable  
33 and irreversible violation. As a result, the Village of Biscayne Park  
34 adopts supplemental and alternative code enforcement procedures  
35 pursuant to F.S. §§ 162.13 and 162.22, as amended, to authorize  
36 code compliance officers to issue administrative citations for  
37 review before the special magistrate or code compliance board. A  
38 code compliance officer shall have the sole discretion in  
39 determining whether to issue an administrative citation or a notice  
40 of violation for the following offenses:  
41

- 42 (1) Open feeding that causes a gathering of more than four (4)  
43 dogs or four (4) cats or combination thereof totaling four  
44 (4), in violation of section 3-4 of the code;  
45

- 1 (2) Excessive barking or howling of dogs, in violation of  
2 section 3-21 of the code;
- 3
- 4 (3) Parking not on an approved surface where there is an  
5 approved parking surface as required by section 5.6.1 of the  
6 Land Development Code;
- 7
- 8 (4) Garbage cans and trash receptacles not placed behind face  
9 of building and screened from view, in violation of section  
10 6.3.2 of the Land Development Code;
- 11
- 12 (5) Domestic trash and recycling materials placed at the  
13 property line and/or not removed under the requirements of  
14 section 6.3.3 of the Land Development Code;
- 15
- 16 (6) Trees and garden refuse placed at the property line and/or  
17 not removed under the requirements of section 6.3.4 of the  
18 Land Development Code;
- 19
- 20 (7) Overgrown grass in violation of section 8.4.1 of the Land  
21 Development Code;
- 22
- 23 (8) 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  
26 used:

- 27
- 28 (1) For the offenses enumerated above, a code compliance officer  
29 who, upon personal investigation, has reasonable cause to believe  
30 that there is a violation, shall have the authority to issue an  
31 administrative citation to the alleged violator and/or owner of the  
32 property.
- 33
- 34 (2) The administrative citation issued shall be in a form approved by  
35 the village manager and shall contain:
  - 36 a. The date and time of issuance.
  - 37
  - 38 b. The name and address of the person to whom the  
39 administrative citation is issued.
  - 40
  - 41 c. The facts constituting reasonable cause.
  - 42
  - 43 d. The section of the code that is violated.
  - 44
  - 45 e. The name of the code compliance officer.
  - 46

- 1  
2 f. The procedure for the person to follow in order to pay or  
3 contest the administrative citation.  
4  
5 g. The penalty, including administrative costs, if the person  
6 elects to contest the administrative citation and is found in  
7 violation.  
8  
9 h. The penalty if the person elects to pay the administrative  
10 citation.  
11  
12 i. A conspicuous statement that if the person fails to pay the  
13 penalty within the time allowed, or fails to appear before  
14 the special magistrate or code compliance board, that the  
15 person shall be deemed to have waived his or her right to  
16 contest the administrative citation and that, in such case, a  
17 final order and/or judgment may be entered against the  
18 person up to five hundred dollars (\$500.00).  
19

20 (3) After issuing the administrative citation, the code compliance officer  
21 shall deposit an original with the village manager or their designee.  
22

23 (4) A person who has been served with an administrative citation shall  
24 elect either to:  
25

- 26 a. Correct the violation immediately and pay within fourteen (14)  
27 days of service of the administrative citation the penalty in the  
28 manner indicated on the administrative citation; or  
29  
30 b. Request a hearing before the special magistrate or code compliance  
31 board.  
32

33 14.1.8 Conduct of hearing.  
34

35 ~~(a) The chairman of the code compliance board may call hearings of the~~  
36 ~~board, and hearings may also be called by written notice signed by at least three~~  
37 ~~(3) members of the code compliance board. The board, at any hearing, may set a~~  
38 ~~future hearing date. The board shall attempt to convene no less frequently than~~  
39 ~~once every two (2) months, but it may meet more or less often as the demand~~  
40 ~~necessitates. Minutes shall be kept of all hearings by the board, and all hearings~~  
41 ~~and proceedings shall be open to the public. The village shall provide clerical and~~  
42 ~~administrative personnel as may be reasonably required by the board for the~~  
43 ~~proper performance of its duties.~~  
44

45 ~~(b) Each case before the code compliance board shall be presented by a~~  
46 ~~code compliance officer appointed by the village for that purpose.~~

1  
2           ~~(e) The special magistrate and code compliance board shall proceed to~~  
3 ~~hear the cases on the agenda for that day. All testimony shall be under oath and~~  
4 ~~shall be recorded. The board shall take testimony from the code compliance~~  
5 ~~officer, the alleged violator, and any witnesses called. Formal rules of evidence~~  
6 ~~shall not apply, but fundamental due process shall be observed and govern said~~  
7 ~~proceedings.~~

8  
9           ~~(d) At the conclusion of the hearing, the special magistrate and code~~  
10 ~~compliance board shall issue findings of fact, based on evidence recorded and~~  
11 ~~conclusions of law, and shall issue an order affording the proper relief consistent~~  
12 ~~with powers granted herein. The finding shall be by motion approved by a~~  
13 ~~majority of those present and voting, except that at least three (3) members of the~~  
14 ~~code compliance board must vote for the action to be official. The order may~~  
15 ~~include a notice that it must be complied with by a specified date and that a fine~~  
16 ~~may be imposed if the order is not complied with by said date. A certified copy of~~  
17 ~~such order may be recorded in the public records of the county and shall~~  
18 ~~constitute notice to any subsequent purchasers, successors in interest, or assigns if~~  
19 ~~the violation concerns real property, and the findings therein shall be binding~~  
20 ~~upon the violator and, if the violation concerns real property, any subsequent~~  
21 ~~purchasers, successors in interest, or assigns. If an order is recorded in the public~~  
22 ~~records pursuant to this subsection and the order is complied with by the date~~  
23 ~~specified in the order, the code compliance board shall issue an order~~  
24 ~~acknowledging compliance that shall be recorded in the public records. A hearing~~  
25 ~~is not required to issue such an order acknowledging compliance.~~

26  
27           ~~(a) Upon request of the code inspector, or at such other times as may~~  
28 ~~be necessary, the special magistrate or chair of the code~~  
29 ~~compliance board may call a code enforcement hearing; a hearing~~  
30 ~~also may be called by written notice signed by at least two~~  
31 ~~members of the code compliance board. Minutes shall be kept of~~  
32 ~~all code enforcement hearings, and all hearings and proceedings~~  
33 ~~shall be open to the public. The village commission shall provide~~  
34 ~~clerical and administrative personnel as may be reasonably~~  
35 ~~required by the special magistrate or code compliance board for the~~  
36 ~~proper performance of code enforcement duties.~~

37  
38           ~~(b) Each case before an enforcement board shall be presented by the~~  
39 ~~local governing body attorney or by a member of the~~  
40 ~~administrative staff of the local governing body. If the local~~  
41 ~~governing body prevails in prosecuting a case before the~~  
42 ~~enforcement board, it shall be entitled to recover all costs incurred~~  
43 ~~in prosecuting the case before the board and such costs may be~~  
44 ~~included in the lien authorized under s. 162.09(3).~~

1           (c) An enforcement board shall proceed to hear the cases on the  
2           agenda for that day. All testimony shall be under oath and shall be  
3           recorded. The enforcement board shall take testimony from the  
4           code inspector and alleged violator. Formal rules of evidence shall  
5           not apply, but fundamental due process shall be observed and shall  
6           govern the proceedings.

7  
8           (d) At the conclusion of the hearing, the special magistrate or code  
9           compliance board shall issue findings of fact, based on evidence of  
10           record and conclusions of law, and shall issue an order affording  
11           the proper relief consistent with powers granted herein. The  
12           finding shall be by motion approved by a majority of those  
13           members present and voting, except that at least three members of  
14           the code compliance board, must vote in order for the action to be  
15           official. The order may include a notice that it must be complied  
16           with by a specified date and that a fine may be imposed and, under  
17           the conditions specified in s. 162.09(1), the cost of repairs may be  
18           included along with the fine if the order is not complied with by  
19           said date. A certified copy of such order may be recorded in the  
20           public records of the county and shall constitute notice to any  
21           subsequent purchasers, successors in interest, or assigns if the  
22           violation concerns real property, and the findings therein shall be  
23           binding upon the violator and, if the violation concerns real  
24           property, any subsequent purchasers, successors in interest, or  
25           assigns. If an order is recorded in the public records pursuant to  
26           this subsection and the order is complied with by the date specified  
27           in the order, the special magistrate or code compliance board shall  
28           issue an order acknowledging compliance that shall be recorded in  
29           the public records. A hearing is not required to issue such an order  
30           acknowledging compliance.

31  
32           14.1.9 Powers of the special magistrate and code compliance board. The  
33           special magistrate and code compliance board shall have the power to:  
34

- 35           (1) Adopt rules for the conduct of its hearings.  
36  
37           (2) Subpoena alleged violators and witnesses to its hearings.  
38           Subpoenas may be served by the police department.  
39  
40           (3) Subpoena evidence to its hearings.  
41  
42           (4) Take testimony under oath.  
43  
44           (5) Issue orders having the force of law commanding whatever steps  
45           are necessary to bring a violation into compliance.  
46

1 14.1.10 Fines; liens.  
2

3 (a) The special magistrate and code compliance board, upon notification  
4 by the code compliance officer that a previous order of the board has not been  
5 complied with by the set time, or finds a person to be a repeat violator under  
6 subsection (c), may order the violator to pay a fine in an amount specified in this  
7 section for each day the violation continues past the date set by the board for  
8 compliance or, in the case of a repeat violation, for each day the repeat violation  
9 continues past the date of notice to the violator of the repeat violation. If a finding  
10 of a violation or a repeat violation has been made as provided in this part, a  
11 hearing shall not be necessary for issuance of the order imposing the fine.  
12

13 An "uncorrectable violation" is a violation which cannot be remedied after  
14 the violation has been committed because the violation constitutes a single  
15 prohibited act rather than an ongoing condition or circumstance. Each  
16 reoccurrence of an uncorrectable violation shall constitute a separation violation  
17 and shall subject the violator to an additional penalty in the same amount as that  
18 prescribed for the original violation. If, however, a violator has been once found  
19 guilty of an uncorrectable violation, and causes the same uncorrectable violation  
20 to occur a second time, each reoccurrence of the uncorrectable violation by such  
21 violator shall constitute a "repeat violation."  
22

23 "Continuing violations" are those violations which remain uncorrected  
24 beyond the reasonable time period for correction contained in either the civil  
25 violation notice or the final order of the code compliance board, whichever is  
26 applicable. For each day of continued violation after the time for correction has  
27 run, an additional penalty in the same amount as that prescribed for the original  
28 violation shall be added.  
29

30 A "repeat violation" is a recurring violation of an ordinance by a violator  
31 who has previously been guilty of the same violation within the last five (5) years.  
32 In the case of correctable violations, a repeat violation can occur only after  
33 correction of the previous violation has been made. For the first repeat violation,  
34 the amount of the civil penalty shall be double the amount of penalty prescribed  
35 for the original violation.  
36

37 (b) Amount of fine.  
38

39 (1) The fine amount(s) are referenced in a resolution kept on file by the  
40 village clerk.  
41

42 (2) In determining the amount of the fine, if any, the special magistrate  
43 or code compliance board shall consider the following factors:  
44

45 a. The gravity of the violation;  
46

- 1           b. Any actions taken by the violator to correct the violation; and
- 2
- 3           c. Any previous violations committed by the violator.
- 4
- 5           (c) Reduction of fine imposed pursuant to this section.
- 6

7           (1) The code compliance board is hereby delegated the authority to hear  
8 requests for reduction of fines pursuant to this section and make the final decision  
9 on behalf of the village.

10           (2) For all requests for reduction of fine, the code compliance officer  
11 shall submit a written recommendation to the special magistrate or code  
12 compliance board. In formulating the recommendation, the code compliance  
13 officer shall consider criteria, which includes, but is not limited to the following:

- 14           a. The cooperation of the respondent, including whether the  
15 respondent had appeared before the board at the original hearing;
- 16           b. The documentation provided by the respondent in support of the  
17 request;
- 18           c. Whether the respondent has new evidence or information which  
19 could not be provided at the original hearing;
- 20           d. Whether there was any extraordinary hardship which existed or  
21 currently exists;
- 22           e. Whether the respondent has come into compliance with the order  
23 of the board;
- 24           f. The number of days that the violation existed;
- 25           g. Whether the respondent has been deemed a repeat violator by the  
26 board;
- 27           h. Whether the property is homestead or non-homestead property;  
28 and
- 29           i. The total administrative cost to the village for the handling of the  
30 case, which cost will be inclusive of staff time and recording and  
31 release of lien fees.
- 32
- 33
- 34
- 35
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- 39
- 40
- 41
- 42

43           (3) The special magistrate or code compliance board shall consider the  
44 same criteria as the code compliance officer.

1 (4) The special magistrate or code compliance board shall not waive  
2 administrative costs incurred by the local government in enforcing its codes. In  
3 addition, the code compliance board and the administrative panel shall not waive  
4 costs of repairs incurred by the local government.  
5

6 (d) A certified copy of an order imposing a fine, or a fine plus repair  
7 costs, may be recorded in the public records and thereafter shall constitute a lien  
8 against the land on which the violation exists, or, if the violator does not own the  
9 land, upon any other real or personal property owned by the violator. Upon  
10 petition to the circuit court, such order shall be enforceable in the same manner as  
11 a court judgment by the sheriffs of this state, including execution and levy against  
12 the personal property of the violator but such order shall not be deemed otherwise  
13 to be a judgment of a court except for enforcement purposes. A fine imposed  
14 pursuant to this part shall continue to accrue until the violator comes into  
15 compliance or until judgment is rendered in a suit to foreclose on a lien filed  
16 pursuant to this section, whichever occurs first. After three (3) months from the  
17 filing of any such lien which remains unpaid, the special magistrate or code  
18 compliance board may authorize the village attorney to foreclose on the lien. No  
19 lien created pursuant to the provisions of this chapter may be foreclosed on real  
20 property, which is a homestead under the Florida Constitution, Art. X, § 4.  
21

22 14.1.11 Duration of lien.  
23

24 No lien provided by the Code Compliance Boards Act shall continue for a longer  
25 period than twenty (20) years after the certified copy of an order imposing a fine  
26 has been recorded, unless within that time an action to foreclose on the lien is  
27 commenced in a court of competent jurisdiction. In an action to foreclose on the  
28 lien, the prevailing party is entitled to recover all costs, including a reasonable  
29 attorney's fee, that it incurs in the foreclosure. The continuation of the lien  
30 effected by the commencement of the action shall not be good against creditors or  
31 subsequent purchasers for valuable consideration without notice, unless a notice  
32 of lis pendens is recorded.  
33

34 14.1.12 Appeal.  
35

36 An aggrieved party, including the village, may appeal a final order of the special  
37 magistrate or code compliance board to the circuit court. Such an appeal shall not  
38 be a hearing do novo but shall be limited to appellate review of the record created  
39 before the special magistrate or board. An appeal shall be filed within thirty (30)  
40 days of the execution of the order to be appealed.  
41

42 14.1.13 Notice and procedures.  
43

44 (a) All notices required by this part shall be provided to the alleged  
45 violator by:  
46

- 1 (1) Certified mail, return receipt requested, provided if such notice is  
2 sent under this subsection to the owner of the property in question  
3 at the address listed in the tax collector's office for tax notices, and  
4 at any other address provided to the village by such owner and is  
5 returned as unclaimed or refused, notice may be provided by  
6 posting as described in subsections (b)(1) and (2) below, and by  
7 first class mail directed to the addresses furnished to the local  
8 government with a properly executed proof of mailing or affidavit  
9 confirming the first class mailing; or  
10  
11 (2) Hand delivery by the sheriff or other law enforcement officer, code  
12 compliance officer, or other person designated by the local  
13 governing body; or  
14  
15 (3) Leaving the notice at the violator's usual place of residence with  
16 any person residing therein who is above fifteen (15) years of age  
17 and informing such person of the contents of the notice.  
18

19 (b) (1) In lieu of notice as described in subsection (a), such notice  
20 may be posted at least ten (10) days prior to the hearing, or prior to the expiration  
21 of any deadline contained in the notice, in at least two (2) locations, one of which  
22 shall be the property upon which the violation is alleged to exist and the other of  
23 which shall be at the Village Hall.  
24

25 (2) Proof of posting shall be by affidavit of the person posting the  
26 notice, which affidavit shall include a copy of the notice posted and the date and  
27 places of its posting.  
28

29 (c) Evidence that an attempt has been made to hand deliver or mail  
30 notice as provided in subsection (a), together with proof of notice or posting as  
31 provided in subsection (b), shall be sufficient to show that the notice requirements  
32 of this chapter have been met, without regard to whether or not the alleged  
33 violator actually received such notice.  
34

35 14.1.14 Enforcement procedures by code compliance officer.  
36

37 (a) For the purposes of this chapter, a "code compliance officer" is  
38 defined to be any agent or employee of the village or Miami-Dade County whose  
39 duty is to assure the enforcement of and compliance with the village code, the  
40 Florida Building Code, or Miami-Dade County, as applicable. Prior to being  
41 provided the authority to initiate enforcement proceedings under this chapter, a  
42 code compliance officer shall be required to successfully complete a criminal  
43 background investigation as prescribed by administrative order of the county  
44 manager. Subject to the requirements of section 8CC-11, a "code compliance  
45 officer" is also defined to be any agent or employee of a municipality who has  
46 been authorized pursuant to that section to assure code compliance. Municipal

1 employees shall also be required to successfully complete a criminal background  
2 investigation prior to being provided authority to initiate enforcement proceedings  
3 under this chapter.  
4

5 (b) For the purposes of this chapter, "violators" shall be deemed to be  
6 those persons or entities legally responsible for the violation of the village's Code  
7 of Ordinances, applicable provision of the Miami-Dade County Code, or the  
8 Florida Building Code.  
9

10 (c) A code compliance officer who finds a violation of an ordinance  
11 shall determine a reasonable time period within which the violator must correct  
12 the violation. This determination shall be based on considerations of fairness;  
13 practicality; ease of correction; ability to correct; severity of violation; nature,  
14 extent and probability of danger or damage to the public; and other relevant  
15 factors relating to the reasonableness of the time period prescribed. A time for  
16 correction need not be specified if the violation is deemed to be an uncorrectable  
17 violation.  
18

19 (d) Service shall be effected by delivering the civil violation notice to  
20 the violator or his agent, or by leaving the civil violation notice at the violator's  
21 usual place of abode with any person residing therein who is fifteen (15) years of  
22 age or older and informing that person of its contents. If such service cannot be  
23 effected, the notice may be sent by certified mail, return receipt requested, or by  
24 posting of the civil violation notice in a conspicuous place on the premises or real  
25 property upon which the violation has been observed or by mailing to or posting  
26 the civil violation notice at the property owner's mailing address as listed in the  
27 tax records of Miami-Dade County. Such posting of the notice or violation shall  
28 be deemed proper service, and the time for compliance, stated in the notice, shall  
29 commence with the date such notice is posted.  
30

31 (e) A code compliance officer is authorized to record in the public  
32 record the civil violation notice or a notice of violation which is based upon the  
33 civil violation notice. The recording of the civil violation or a notice of violation  
34 under this section shall not act as or be a lien on the property and shall not act as a  
35 notice of a lien on the property but shall merely act as public notice of the  
36 existence of the violation.  
37

38 (f) A code compliance officer must have, at a minimum, a Florida  
39 Association of Code Enforcement (F.A.C.E.) Level 1 certification within one (1)  
40 year of hire.  
41  
42

1 CHAPTER 15. - ENFORCEMENT  
2

3 15.1. - Generally.  
4

5 15.1.1 Enforcement of Land Development Code. The planning board,  
6 special magistrate, and the code compliance board shall enforce the Land  
7 Development Code.  
8

9 15.2. - Building official.  
10

11 15.2.1 Designation. The building official shall be designated by the  
12 appointing authority, whatever the official title, to enforce the provisions of the  
13 Florida Building Code and other applicable laws; provided, the official may act  
14 with the aid and through authorized assistants.  
15

16 15.2.2 Authority. The building official is hereby authorized and directed  
17 to interpret and enforce all of the provisions of this code subject to the powers  
18 vested in the planning board and the code compliance board.  
19

20 15.3. - Violations and general penalty.  
21

22 15.3.1 General penalty. Whenever in this code or in any ordinance of  
23 the village any act is prohibited or is made or declared to be unlawful or an  
24 offense, or whenever in such code or ordinance the doing of any act is required or  
25 the failure to do any act is declared to be unlawful, where no specific penalty is  
26 provided therefor, the violation of any such provision of this code or any  
27 ordinance shall be punished by a fine not to exceed five hundred dollars  
28 (\$500.00), or imprisonment for a term not exceeding sixty (60) days, or by both a  
29 fine and imprisonment. Each day violation of any provision of this code or of any  
30 ordinance shall continue shall constitute a separate offense.  
31

32 15.3.2 Continuation of violation. In addition to the penalties  
33 hereinabove provided, any condition caused or permitted to exist in violation of  
34 any of the provisions of this code or any ordinance shall be deemed a public  
35 nuisance and may be, by the village, abated as provided by law, and each day that  
36 such condition continues shall be regarded as a new and separate offense.  
37

38 15.4. - Other penalties and remedies.  
39

40 15.4.1 Civil remedies. If any building or structure is erected,  
41 constructed, reconstructed, altered, repaired, or maintained or any building,  
42 structure, land, or water is used in violation of this code, the village, through the  
43 village attorney, may institute any appropriate civil action or proceedings in any  
44 court to prevent, correct, or abate the violation.  
45

1           **Section 3.**   **Severability.** Should any section, provision, paragraph, sentence, clause of  
2 word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction  
3 to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall  
4 not affect the validity of the remaining portions or applications of this Ordinance.

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

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

12          **Section 6.**   **Effective Date.** This Ordinance shall become effective immediately upon its  
13 passage and adoption, in accordance with the Village Charter.

14           The foregoing Ordinance was offered by \_\_\_\_\_ who moved its adoption.  
15 The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as  
16 follows:

17 PASSED AND ADOPTED upon first reading this \_\_\_\_\_, 2019.

18 PASSED AND ADOPTED upon second reading this \_\_\_\_\_, 2019.

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

19  
20  
21  
22  
23  
24 \_\_\_\_\_  
25 Tracy Truppman, Mayor

Mayor Truppman: \_\_\_\_\_  
Vice Mayor Johnson-Sardella: \_\_\_\_\_  
Commissioner Samaria: \_\_\_\_\_  
Commissioner Tudor: \_\_\_\_\_  
Commissioner Wise: \_\_\_\_\_

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14  
15

Attest:

\_\_\_\_\_  
Roseann Prado, Village Clerk

Approved as to form:

\_\_\_\_\_  
Rebecca Rodriguez, Village Attorney

