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**ORDINANCE NO. 2012-09**

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**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, RELATING TO CHAPTER 15 OF THE LAND DEVELOPMENT CODE RELATING TO CODE ENFORCEMENT; RENAMING THE DEPARTMENT "CODE COMPLIANCE DEPARTMENT" AND RENAMING THE CODE ENFORCEMENT BOARD TO "CODE COMPLIANCE BOARD"; MODIFYING FINES CONSISTENT WITH CHAPTER 162, FLORIDA STATUTES; INCLUDING CERTAIN DEFINITIONS FROM CHAPTER 2 AND PLACING THEM IN CHAPTER 15; ELIMINATING ARTICLE VII, OF CHAPTER 2, OF THE VILLAGE'S CODE, SECTION 2-101 THROUGH 2-110 RELATING TO USING A HEARING OFFICER SYSTEM RELATING TO THE MIAMI-DADE COUNTY; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Village of Biscayne Park has created a Code Enforcement Board and Department; and,

WHEREAS, the Village desires to change the name of the department and of the Board to reflect that the goal of the Village is to obtain compliance and not to seek solely enforcement; and,

WHEREAS, the Village also desires to make certain scrivener's type edits to Chapter 15 of the Land Development Code for consistency purposes; and,

WHEREAS, the Village does not seek to unnecessarily burden properties with fines and citations, but wants to work with the community to obtain property compliance, and to use citations and fines as a last resort; and,

WHEREAS, the Village modifies certain fines to be in line with the requirements of Chapter 162, Florida Statutes; and,

WHEREAS, the Village has an obsolete provision in the Code at Chapter 2, Section 2-101 through 2-110 relating to the use of a hearing officer system under the County Code, which should be deleted from the code, and,

WHEREAS, the Village desires to make these edits to the code, as well as to include certain definitions in the code relating to enforcement, taken from Chapter 2, and, now, therefore



1 (c) *Expenses.* Members shall serve without compensation, but may be reimbursed for such  
2 travel, mileage and per diem expenses as may be authorized by the Village Commission.

3 **15.1.6 Counsel.** The Village Attorney shall either be counsel to the Code Compliance Board or  
4 shall represent the Village by presenting cases before the Board, but in no case shall the Village  
5 attorney serve in both capacities.

6  
7 **15.1.7 Compliance procedure.**

8 (a) It shall be the duty of the Code Compliance Officer to initiate enforcement proceedings  
9 of the various codes; provided, however, no member of the Code Compliance Board shall have  
10 the power to initiate such enforcement proceedings.

11 (b) Except as provided in subsections (c) and (d), if a violation of the codes is found, the  
12 Code Compliance Officer shall notify the violator and give the violator a reasonable time to  
13 correct the violation and, unless an emergency or life safety situation may issue a courtesy  
14 notice. Should the violation continue beyond the time specified for correction, the Code  
15 Compliance Officer shall notify the Code Compliance Board of the charges and request a hearing  
16 pursuant to procedure in subsection 15.1.8, of the Land Development Code. Notice shall be  
17 provided pursuant to subsection 15.1.13, of the Land Development Code.

18 (c) If the violation is corrected and then recurs or if the violation is not corrected by the time  
19 specified for correction by the Code Compliance Officer, the case may be presented to the Code  
20 Compliance Board even if the violation has been corrected prior to the Board hearing, and the  
21 notice shall so state. If a repeat violation is found, the Code Compliance Officer shall notify the  
22 violator but is not required to give violator a reasonable time to correct the violation. The Code  
23 Compliance Officer, upon notifying the violator of a repeat violation, shall notify the Code  
24 Compliance Board and request a hearing. The Code Compliance Board shall schedule a hearing  
25 and shall provide notice pursuant to subsection 15.1.12, of the Land Development Code. The  
26 case may be presented to the Code Compliance Board even if the repeat violation has been  
27 corrected prior to the Board hearing, and the notice shall so state. "Repeat violation" means a  
28 violation of a provision of a code or ordinance by a person who has been previously found,  
29 through a Code Compliance Board or other quasi-judicial or judicial process, to have violated or  
30 has admitted violating the same provision within five (5) years prior to the violation.

31 (d) If the Code Compliance Officer has reason to believe a violation presents a serious threat  
32 to the public health, safety, and welfare, the Code Compliance Officer may proceed directly to  
33 the procedure in subsection 15.1.7(b), of the Land Development Code without being required to  
34 notifying the violator of a reasonable time to correct.

35 (e) If the owner of the property which is subject to an enforcement proceeding before a Code  
36 Compliance Board, transfers ownership of such property between the time the initial pleading  
37 was served and the time of the hearing, such owner shall:

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

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

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

4 (4) File a notice with the Code Compliance Department of the transfer of the  
5 property, with the identity and address of the new owner and copies of the  
6 disclosures made to the new owner, within five (5) days after the date of the  
7 transfer. A failure to make the disclosures described in this subsection before the  
8 transfer creates a rebuttable presumption of fraud. If the property is transferred  
9 before the hearing, the proceeding shall not be dismissed, but the new owner shall  
10 be provided a reasonable period of time to correct the violation before the hearing  
11 is held.

12 **15.1.8 Conduct of hearing.**

13 (a) The chairman of the Code Compliance Board may call hearings of the Board, and  
14 hearings may also be called by written notice signed by at least three (3) members of the Code  
15 Compliance Board. The Board, at any hearing, may set a future hearing date. The Board shall  
16 attempt to convene no less frequently than once every two (2) months, but it may meet more or  
17 less often as the demand necessitates. Minutes shall be kept of all hearings by the Board, and all  
18 hearings and proceedings shall be open to the public. The Village shall provide clerical and  
19 administrative personnel as may be reasonably required by the Board for the proper performance  
20 of its duties.

21 (b) Each case before the Code Compliance Board shall be presented by a Code Compliance  
22 Officer appointed by the Village for that purpose.

23 (c) The Code Compliance Board shall proceed to hear the cases on the agenda for that day.  
24 All testimony shall be under oath and shall be recorded. The Board shall take testimony from the  
25 Code Compliance Officer, the alleged violator, and any witnesses called. Formal rules of  
26 evidence shall not apply, but fundamental due process shall be observed and govern said  
27 proceedings.

28 (d) At the conclusion of the hearing, the Code Compliance Board shall issue findings of fact,  
29 based on evidence recorded and conclusions of law, and shall issue an order affording the proper  
30 relief consistent with powers granted herein. The finding shall be by motion approved by a  
31 majority of those present and voting, except that at least three (3) members of the Code  
32 Compliance Board must vote for the action to be official. The order may include a notice that it  
33 must be complied with by a specified date and that a fine may be imposed if the order is not  
34 complied with by said date. A certified copy of such order may be recorded in the public records  
35 of Miami-Dade County and shall constitute notice to any subsequent purchasers, successors in  
36 interest, or assigns if the violation concerns real property, and the findings therein shall be  
37 binding upon the violator and, if the violation concerns real property, any subsequent purchasers,  
38 successors in interest, or assigns. If an order is recorded in the public records pursuant to this  
39 subsection and the order is complied with by the date specified in the order, the Code  
40 Compliance Board shall issue an order acknowledging compliance that shall be recorded in the  
41 public records. A hearing is not required to issue such an order acknowledging compliance.

1 **15.1.9 Powers of the Code Compliance Board.** The Code Compliance Board shall have the  
2 power to:

- 3 (1) Adopt rules for the conduct of its hearings.
- 4 (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may  
5 be served by the police department.
- 6 (3) Subpoena evidence to its hearings.
- 7 (4) Take testimony under oath.
- 8 (5) Issue orders having the force of law commanding whatever steps are  
9 necessary to bring a violation into compliance.

10 **15.1.10 Fines; liens.**

11 (a) The Code Compliance Board, upon notification by the Code Compliance Officer that a  
12 previous order of the Board has not been complied with by the set time, or finds a person to be a  
13 repeat violator under subsection (c), may order the violator to pay a fine in an amount specified  
14 in this section for each day the violation continues past the date set by the Board for compliance  
15 or, in the case of a repeat violation, for each day the repeat violation continues past the date of  
16 notice to the violator of the repeat violation. If a finding of a violation or a repeat violation has  
17 been made as provided in this part, a hearing shall not be necessary for issuance of the order  
18 imposing the fine.

19 An "uncorrectable violation" is a violation which cannot be remedied after the violation has been  
20 committed because the violation constitutes a single prohibited act rather than an ongoing  
21 condition or circumstance. Each reoccurrence of an uncorrectable violation shall constitute a  
22 separation violation and shall subject the violator to an additional penalty in the same amount as  
23 that prescribed for the original violation. If, however, a violator has been once found guilty of an  
24 uncorrectable violation, and causes the same uncorrectable violation to occur a second time, each  
25 reoccurrence of the uncorrectable violation by such violator shall constitute a "repeat violation."  
26

27 "Continuing violations" are those violations which remain uncorrected beyond the reasonable  
28 time period for correction contained in either the civil violation notice or the final order of the  
29 Code Compliance Board, whichever is applicable. For each day of continued violation after the  
30 time for correction has run, an additional penalty in the same amount as that prescribed for the  
31 original violation shall be added.  
32

33 A "repeat violation" is a recurring violation of an ordinance by a violator who has previously  
34 been guilty of the same violation within the last five (5) years. In the case of correctable  
35 violations, a repeat violation can occur only after correction of the previous violation has been  
36 made. For the first repeat violation, the amount of the civil penalty shall be double the amount of  
37 penalty prescribed for the original violation by.  
38

39 (b) Amount of fine.

- 40 (1) A fine imposed pursuant to this section shall not exceed the following:
  - 41 a. Two hundred fifty dollars (\$250.00) per day per violation for a first  
42 violation;
  - 43 b. Five hundred dollars (\$500.00) per day per violation for a repeat  
44 violation;

1 c. Up to one thousand dollars (\$1,000.00) per day if the Code  
2 Compliance Board finds the violation to be irreparable or irreversible in  
3 nature; and

4 d. A limit of five thousand dollars (\$5,000.00) per violation if the  
5 Code Compliance Board finds the violation to be irreparable or  
6 irreversible in nature.

7 (2) In determining the amount of the fine, if any, the Code Compliance Board shall  
8 consider the following factors:

9 a. The gravity of the violation;

10 b. Any actions taken by the violator to correct the violation; and

11 c. Any previous violations committed by the violator.

12 (c) Reduction of fine imposed pursuant to this section.

13 (1) The Code Compliance Board is hereby delegated the authority to hear  
14 requests for reduction of fines pursuant to this section and make the final decision  
15 on behalf of the Village.

16 (2) For all requests for reduction of fine, the Code Compliance Officer shall  
17 submit a written recommendation to the Code Compliance Board. In formulating  
18 the recommendation, the Code Compliance Officer shall consider criteria, which  
19 includes, but is not limited to the following:

20 a. The cooperation of the respondent, including whether the  
21 respondent had appeared before the Board at the original hearing;

22 b. The documentation provided by the respondent in support of the  
23 request;

24 c. Whether the respondent has new evidence or information which  
25 could not be provided at the original hearing;

26 d. Whether there was any extraordinary hardship which existed or  
27 currently exists;

28 e. Whether the respondent has come into compliance with the order  
29 of the Board;

30 f. The number of days that the violation existed;

31 g. Whether the respondent has been deemed a repeat violator by the  
32 Board;

33 h. Whether the property is homestead or non-homestead property;  
34 and

35 i. The total administrative cost to the Village for the handling of the  
36 case, which cost will be inclusive of staff time and recording and release  
37 of lien fees.

38 (3) The Code Compliance Board shall consider the same criteria as the Code  
39 Compliance Officer.

40 (4) The Code Compliance Board shall not waive administrative costs incurred  
41 by the local government in enforcing its codes. In addition, the Code Compliance

1 Board and the administrative panel shall not waive costs of repairs incurred by the  
2 local government.

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

16 **15.1.11 Duration of lien.** No lien provided by the Code Compliance Boards Act shall continue  
17 for a longer period than twenty (20) years after the certified copy of an order imposing a fine has  
18 been recorded, unless within that time an action to foreclose on the lien is commenced in a court  
19 of competent jurisdiction. In an action to foreclose on the lien, the prevailing party is entitled to  
20 recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The  
21 continuation of the lien effected by the commencement of the action shall not be good against  
22 creditors or subsequent purchasers for valuable consideration without notice, unless a notice of  
23 lies pendent is recorded.

24 **15.1.12 Appeal.** An aggrieved party, including the Village, may appeal a final order of the Code  
25 Compliance Board to the circuit court. Such an appeal shall not be a hearing do novo but shall be  
26 limited to appellate review of the record created before the Board. An appeal shall be filed within  
27 thirty (30) days of the execution of the order to be appealed.

28 **15.1.13 Notice and Procedures.**

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

30 (1) Certified mail, return receipt requested, provided if such notice is sent under this  
31 subsection to the owner of the property in question at the address listed in the tax  
32 collector's office for tax notices, and at any other address provided to the Village by such  
33 owner and is returned as unclaimed or refused, notice may be provided by posting as  
34 described in subsections (b)(1) and (2) below, and by first class mail directed to the  
35 addresses furnished to the local government with a properly executed proof of mailing or  
36 affidavit confirming the first class mailing; or

37 (2) Hand delivery by the sheriff or other law enforcement officer, Code Compliance  
38 Officer, or other person designated by the local governing body; or

39 (3) Leaving the notice at the violator's usual place of residence with any person  
40 residing therein who is above fifteen (15) years of age and informing such person of the  
41 contents of the notice.

42 (b) (1) In lieu of notice as described in subsection (a), such notice may be posted at least  
43 ten (10) days prior to the hearing, or prior to the expiration of any deadline contained in the

1 notice, in at least two (2) locations, one of which shall be the property upon which the violation  
2 is alleged to exist and the other of which shall be at the Village Hall.

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

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

9 (d) Enforcement procedures by Code Compliance Officer.

10 (1) For the purposes of this Chapter, a "Code Compliance Officer" is defined to be  
11 any agent or employee of the Village or Miami-Dade County whose duty is to assure the  
12 enforcement of and compliance with the Village Code, the Florida Building Code, or  
13 Miami-Dade County, as applicable. Prior to being provided the authority to initiate  
14 enforcement proceedings under this Chapter, a Code Compliance Officer shall be  
15 required to successfully complete a criminal background investigation as prescribed by  
16 administrative order of the county manager. Subject to the requirements of section 8CC-  
17 11, a "Code Compliance Officer" is also defined to be any agent or employee of a  
18 municipality who has been authorized pursuant to that section to assure code compliance.  
19 Municipal employees shall also be required to successfully complete a criminal  
20 background investigation prior to being provided authority to initiate enforcement  
21 proceedings under this Chapter.

22  
23 (2) For the purposes of this Chapter, "violators" shall be deemed to be those persons  
24 or entities legally responsible for the violation of the Village's Code of Ordinances,  
25 applicable provision of the Miami-Dade County Code, or the Florida Building Code.

26  
27 (3) A Code Compliance Officer who finds a violation of an ordinance shall determine  
28 a reasonable time period within which the violator must correct the violation. This  
29 determination shall be based on considerations of fairness; practicality; ease of  
30 correction; ability to correct; severity of violation; nature, extent and probability of  
31 danger or damage to the public; and other relevant factors relating to the reasonableness  
32 of the time period prescribed. A time for correction need not be specified if the violation  
33 is deemed to be an uncorrectable violation.

34  
35 (4) Service shall be effected by delivering the civil violation notice to the violator or  
36 his agent, or by leaving the civil violation notice at the violator's usual place of abode  
37 with any person residing therein who is fifteen (15) years of age or older and informing  
38 that person of its contents. If such service cannot be effected, the notice may be sent by  
39 certified mail, return receipt requested, or by posting of the civil violation notice in a  
40 conspicuous place on the premises or real property upon which the violation has been  
41 observed or by mailing to or posting the civil violation notice at the property owner's  
42 mailing address as listed in the tax records of Miami-Dade County. Such posting of the  
43 notice or violation shall be deemed proper service, and the time for compliance, stated in  
44 the notice, shall commence with the date such notice is posted.  
45

1 (5) A Code Compliance Officer is authorized to record in the public record the civil  
2 violation notice or a notice of violation which is based upon the civil violation notice.  
3 The recording of the civil violation or a notice of violation under this section shall not act  
4 as or be a lien on the property and shall not act as a notice of a lien on the property but  
5 shall merely act as public notice of the existence of the violation.  
6

7 (6) A Code Compliance Officer must have, at a minimum, a Florida Association of  
8 Code Enforcement (F.A.C.E.) Level 1 certification within one (1) year of hire.  
9

10 \* \* \*

11  
12 **-Secs. 2-101—2-130. - Reserved.**

13 \* \* \*

14  
15 **Section 4. Effect and Adoption of Ordinance.** The adoption of this Ordinance shall  
16 be the final adjudication of the issues presented unless proper steps shall be initiated in a court of  
17 competent jurisdiction to secure relief within twenty calendar days from the date of this  
18 assessment.  
19

20 **Section 5. Severability.** The provisions of this Ordinance are declared to be  
21 severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be  
22 held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining  
23 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it  
24 being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any  
25 part.  
26

27 **Section 6. Repeal of Conflicting Provisions.** To the extent any provisions of the  
28 Code conflict with this Chapter, those provisions are repealed in its entirety.  
29

30 **Section 7. Effective Date.** This Ordinance shall be effective upon adoption.  
31

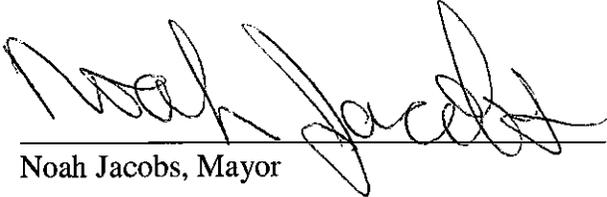
32 The foregoing Ordinance was offered by Commissioner Ross, who moved its adoption. The  
33 motion was seconded by Commissioner Anderson and upon being put to a vote, the vote was as  
34 follows:  
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36 FIRST READING: November 7, 2012

37 SECOND READING: December 20, 2012  
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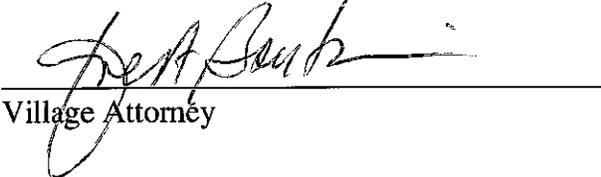
**The foregoing ordinance upon being put to a vote, the vote was as follows:**

  
\_\_\_\_\_  
Noah Jacobs, Mayor

Mayor Jacobs: Yes  
Vice Mayor Cooper: Absent  
Commissioner Anderson: Yes  
Commissioner Ross: Yes  
Commission Watts: Yes

  
\_\_\_\_\_  
Maria C. Camara, Village Clerk

Approved as to form:

  
\_\_\_\_\_  
Village Attorney