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ORDINANCE NO. 2013-02

AN ORDINANCE OF THE VILLAGE OF BISCAYNE PARK, FLORIDA PROVIDING FOR A UNIFORM METHOD OF IMPOUNDING VEHICLES USED IN THE COMMISSION OF A CRIME; PROVIDING FOR IMPOUNDMENT AND TRANSPORTATION FEES; PROVIDING FOR WRECKER FEES; PROVIDING METHOD FOR ASCERTAINING PERSONS OF INTEREST; PROVIDING FOR PRELIMINARY HEARING COSTS; PROVIDING FOR FINAL HEARING COSTS; PROVIDING FOR BOND; PROVIDING FOR NOTICE TO PERSONS OF INTEREST; PROVIDING FOR HEARING BY HEARING OFFICER; PROVIDING FOR PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR EFFECTIVE DATE

18 WHEREAS, the Village Commission finds it to be in the best interests of the citizens of
19
20 Biscayne Park to provide a uniform method of impounding vehicles which are used in the
21
22 commission of crimes;
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24 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE VILLAGE
25 COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:**

26 **Section 1.** The foregoing “Whereas” clauses are hereby ratified and confirmed as
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28 being true and correct and are hereby made a specific part of this Ordinance upon adoption
29
30 hereof.

31 **Section 2.** Section 17-1 of the Village of Biscayne Park Code of Ordinances, entitled
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33 “Impoundment of motor vehicles used during the commission of a crime”, is hereby created to
34
35 read as follows:
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37 **Sec. 17-1. Impoundment of motor vehicles used during the commission of a crime.**

38 *(A) Impoundment of certain motor vehicles. A motor vehicle shall be subject to impoundment whenever a police officer has probable cause to believe that said vehicle was used to facilitate the commission of a crime, or was used as an instrument to commit a crime, or was driven by an operator who was driving while license was suspended and is a habitual traffic offender, or was driven by an operator who was illegally under the influence of alcohol or a controlled substance in violation of Florida or federal law. All vehicles towed will be subject to review by the Chief of Police or his designee before*

1 charging the five hundred dollar (\$500.00) fee to ensure that said vehicle meets the
2 criteria for this Ordinance.

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4 (B) *Exception.* A vehicle shall not be subject to an impoundment fee if:

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6 (1) The vehicle was stolen at the time that it was subject to
7 impoundment;

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9 (2) The vehicle was operating as a common carrier at the time it was
10 subject to impoundment; or

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12 (3) A law enforcement agency has expressed its intent, in writing, to
13 institute state forfeiture proceedings on the vehicle under the Florida Contraband
14 Forfeiture Act (F.S. § 932.701 et seq.).

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16 (C) *Impoundment fees.* Any person, whether an individual or a legal entity,
17 who owns or operates any motor vehicle located in the Village, which motor vehicle is
18 impounded by the Village under this ordinance, shall be liable for the following
19 impoundment fees prior to the release of such vehicle to such person:

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21 (1) impoundment fee\$500.00

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23 (2) Reasonable towing and storage charges pursuant to chapter 713,
24 Florida statutes.

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26 (D) *Towing.* Upon impounding the motor vehicle, the police department shall
27 provide for the towing of the vehicle pursuant to the Village towing services agreement
28 and all applicable towing procedures.

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30 (E) *Notice of Preliminary Hearing.* Immediately upon impoundment of the
31 vehicle, or as soon thereafter as practicable, the police department shall notify in writing
32 by hand-delivery the person determined to be the owner of the vehicle, if present, any
33 person who claims to be the owner of the vehicle and any person who is found to be in
34 control of the vehicle at the time of the impoundment of the grounds for impoundment,
35 the nature and amount of the impoundment fees, the right to request a preliminary
36 hearing, that a final hearing will be set, and the right to pay the impoundment fee, plus
37 towing and storage costs, in lieu of requesting a preliminary hearing and of a final
38 hearing.

39
40 (F) *Inquiry as to Interested Parties.* Within two business days of
41 impoundment, the police department shall ascertain each owner's name, the insurance
42 company insuring the vehicle, name of any person or entity that has filed a lien upon the
43 vehicle, and the name of any person who may have a legal interest in the vehicle by
44 contacting or interfacing with the Florida Department of Highway Safety and Motor
45 Vehicles, or the corresponding agency of the state of registration, if applicable.

1 (G) Notice of final hearing. Immediately thereafter if practicable, but in no
2 event more than seven business days after the date of impoundment, and regardless of
3 whether a preliminary hearing has been requested, the police department shall notify each
4 interested party, individually, by certified mail, return receipt requested, of the date, time
5 and location of a final hearing and of the right to pay the impoundment fee, plus towing
6 and storage fees, in lieu of a final hearing.

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8 (H) Hearings.

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10 (1) Preliminary hearing. If any interested party or an authorized
11 representative of an interested party has made a written request for a preliminary
12 hearing then:

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14 a. The Village shall hold such hearing within seven days of
15 receipt of the written request, excluding Saturdays, Sundays, and legal
16 holidays, before a hearing officer or other designee of the Village. At the
17 hearing, the Village shall have the burden to show that there is probable
18 cause to believe that the motor vehicle is subject to impoundment and
19 continued impoundment under ordinance. The formal rules of evidence
20 shall not apply at the hearing and hearsay and circumstantial evidence is
21 admissible.

22
23 b. If, after the hearing, the hearing officer determines that
24 there is probable cause to believe that the motor vehicle is subject to
25 impoundment and continued impoundment, he shall order the continued
26 impoundment of vehicle unless the owner or his agent or authorized
27 representative pays the Village the impoundment fee, plus towing and
28 storage costs, or posts with the Village a cash bond in the amount of the
29 impoundment fee, plus the accumulated costs of towing and storing the
30 vehicle. If, after the hearing, the hearing officer finds no probable cause,
31 the vehicle shall be released forthwith to the owner or his agent or
32 authorized representative without the imposition of penalties or fees.

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34 (2) Final hearing.

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36 a. Schedule. Regardless of whether a preliminary hearing has
37 been requested, a final hearing shall be scheduled and held unless
38 continued by order of the hearing officer, no later than thirty days after the
39 date that the vehicle was impounded.

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41 b. Default. All interested parties who received notice under
42 this ordinance but who fail to appear at the final hearing, either in person
43 or by attorney, shall be subject to default. For purposes of this hearing,
44 notice shall be established by a duly executed receipt of certified mail or a
45 written statement by a police officer of the Village that notice was hand
46 delivered.
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1 c. Burden of Proof. The Village shall have the burden to show
2 by clear and convincing evidence the grounds for impoundment.

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4 d. Defense. Lack of knowledge on the part of any owner not in
5 default that the vehicle was being used or was likely to be used in violation
6 of this ordinance shall constitute an absolute defense to impoundment fees
7 and towing fees, but not wrecker fees.

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9 e. Rebuttal. In the event an owner raises lack of knowledge as
10 a defense, the Village may rebut this defense by establishing by a
11 preponderance of the evidence that the owner either knew or should have
12 known after reasonable inquiry that the vehicle was being used or was
13 likely to be used in violation of this ordinance.

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15 f. Evidence. The formal rules of evidence shall not apply at
16 the hearing and hearsay and circumstantial evidence is admissible.

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18 (I) Findings. If, after the hearing, a finding is made that the vehicle is subject
19 to impoundment, then the hearing officer shall enter an order finding the owners of record
20 of the vehicle civilly liable to the Village in the amount of the impoundment fee, plus
21 towing and storage costs. If, after the hearing, a finding is made that the Village did not
22 meet its burden of proof or that one of the exceptions to this section applies, or that an
23 affirmative defense has been proved, the vehicle shall be returned to the owner along with
24 any cash bond posted.

25
26 (J) Nature of final order. If an impoundment fee is ordered by the hearing
27 officer, such fee shall constitute a debt due and owing to the Village and shall be
28 independent of the Village's return or release of the vehicle. If a cash bond has been
29 posted, the bond shall be applied towards payment of the impoundment fee. A certified
30 copy of the final order may be recorded in the public records of each county in the State
31 of Florida and shall, upon recordation, constitute a lien pursuant to Florida law.

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33 (K) Administrative Appeal. Any Interested Party as previously defined may
34 appeal the final ruling and decisions of the hearing officer of the Village, to the Village
35 Commission within thirty days of the date of the final order being appealed. The standard
36 of appeal shall be de novo. The Village may charge the appellant a reasonable fee for
37 preparation of the record on appeal.

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39 (L) Judicial Appeal. Any Interested Party as previously defined may appeal the
40 final decision of the Village Commission to the Circuit Court of the 11th Judicial Circuit
41 of Miami-Dade County, Florida, within thirty days of the date of the final order being
42 appealed. The Village may charge the appellant a reasonable fee for preparation of the
43 record on appeal.

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45 Section 3. Severability. Should any section, provision, paragraph, sentence, clause of
46 word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction

1 to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall
2 not affect the validity of the remaining portions or applications of this Ordinance.

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

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

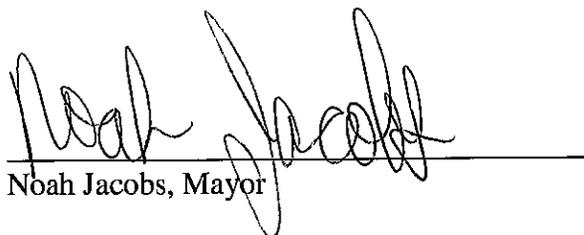
10 Section 6. Effective Date. This Ordinance shall become effective immediately upon its
11 passage and adoption.

12 The foregoing Ordinance was offered by Commissioner Ross who moved its adoption.
13 The motion was seconded by Vice Mayor Anderson and upon being put to a vote, the vote was
14 as follows:
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17 PASSED AND ADOPTED upon first reading this 6th day of August, 2013

18 PASSED AND ADOPTED upon second reading this 24th day of September 2013.

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Noah Jacobs, Mayor

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

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

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Attest:

Maria C. Camara

Maria C. Camara, Village Clerk

Approved as to form:

JM

Village Attorney