ORDINANCE NO. 2016-05

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA AMENDING CHAPTER 14 OF THE LAND DEVELOPMENT CODE ENTITLED "CODE COMPLIANCE BOARD"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE

WHEREAS, at its meeting of May 5, 2015, the Village Commission adopted Ordinance 2015-03 which modified language pertaining to Village Boards and required code compliance board members to be property owners as well as residents of the Village; and

WHEREAS, the Village Commission finds that it is necessary to adopt a procedure for allowing non-resident and/or non-property owners in the Village should circumstances warrant such an appointment; and

WHEREAS, the Village Commission finds it in the best interests of the Village to approve this ordinance, authorizing the LDC to be revised to be consistent with the Village Commission's recommendation;

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. Chapter 14, entitled "Code Compliance Board - Generally", is hereby amended to read as follows:

14.1. - Code compliance board—Generally.

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

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

14.1.3 Composition. The five-member board shall be appointed by the village commission. Members of the code compliance board shall be property owners and residents of the Village of Biscayne Park. Residents who are not property owners may be appointed by the village commission by at least a four-fifths super majority vote. Appointments shall be made on the basis of experience or interest and, when possible, include the following individuals: an architect, an attorney a business person, an engineer, a general contractor, a subcontractor and a licensed real estate person.

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14.1.10 Fines; liens.

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

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

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

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

(b) Amount of fine. The fine amount(s) are referenced in a resolution kept on file by the Village Clerk.

~~(1) A fine imposed pursuant to this section shall not exceed the following:~~

~~a. Two hundred fifty dollars ($250.00) per day per violation for a first violation;~~

~~b. Five hundred dollars ($500.00) per day per violation for a repeat violation;~~

~~c. Up to one thousand dollars ($1,000.00) per day if the code compliance board finds the violation to be irreparable or irreversible in nature; and~~

~~d. A limit of fifteen thousand dollars ($15,000.00) per violation if the code compliance board finds the violation to be irreparable or irreversible in nature.~~

(2) In determining the amount of the fine, if any, the code compliance board shall consider the following factors:

a. The gravity of the violation;

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

c. Any previous violations committed by the violator.

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

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

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

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

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

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

PASSED AND ADOPTED upon second reading this 3rd day of May, 2016.

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

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

David Coviello, Mayor

Attest:

Maria C. Camara, Village Clerk

Approved as to form:

John J. Hearn, Village Attorney