

**ORDINANCE NO. 2009-1**

**AN ORDINANCE OF THE VILLAGE COMMISSION  
OF THE VILLAGE OF BISCAYNE PARK, FLORIDA  
AMENDING CHAPTER 16 ENTITLED "PERMITS  
AND CERTIFICATES" BY AMENDING SECTION  
16.15 ENTITLED "LANDLORD PERMITS;"  
CLARIFYING VARIOUS PROVISIONS INCLUDING  
FEES, APPLICATION PROCEDURES AND  
PENALTIES; PROVIDING FOR CONFLICT;  
PROVIDING FOR SEVERABILITY; PROVIDING  
AN EFFECTIVE DATE**

WHEREAS, the Village Commission of the Village of Biscayne Park adopted Ordinance 2006-13 addressing landlord permits in order to preserve and protect the aesthetics and property values within its community; and

WHEREAS, the Village Commission has found it to be in the best interests of its citizens to amend Ordinance 2006-13 in order to clarify certain regulations including fees, application procedures and penalties;

**NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE  
COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:**

**Section 1.** Each and all the foregoing Whereas clauses are true and correct and are incorporated herein.

**Section 2.** Chapter 16 of the Municipal Code of the Village of Biscayne Park, Florida is hereby amended to create Section 16-15, entitled "Landlord Permits," to read as follows:

**Sec. 16.15. Landlord permits.**

**Sec. 16.15.1. Application for permit; issuance of permit.** Every owner of a dwelling is required to get obtain an annual landlord permit for each dwelling unit from the Village Manager or designee prior to leasing, subleasing, renting or allowing the occupancy of such unit to another natural person or other natural persons, unrelated to the

owner, whether or not for consideration, except as provided in subsection 16.15.2.3. In the case of multiple owners of any such dwelling unit, it shall be sufficient for any one of the owners to have obtained a permit on the unit. The application shall be in writing and on a form provided by the Village. Such annual permit shall be valid from January 1 through December 31 of each year and shall be issued and not revoked if:

(1) ~~The An annual regulatory fee in accordance with the schedule set out in Appendix A~~ is paid.

(2) The applicant and the applicant's property are not in violation of this section.

(3) The applicant provided the correct street address for all parcels or property covered by this section.

**Sec. 16.15.2 Landlord permit required.** It is hereby deemed unlawful for any person to lease, sublease, rent or allow the occupancy of any dwelling or dwelling unit for the purpose of tenancy, whether or not for consideration, without first obtaining the required landlord permit.

**Sec. 16.15.2. 3. Exemption.** The provisions of this section do not apply if the dwelling unit is occupied by less than three persons 18 years of age or older, one of whom is the owner, and the children of one or both of these people.

**Sec. 16.15.3.4. Payment; late payment.** The Village shall bill each applicant or holder of a landlord permit for the annual fee, once the Village Manager or designee determines that all requirements for the permit have been met. If payment is not received on the due date, the account shall be considered delinquent and subject to a delinquency penalty of ten percent (10%) for the first thirty (30) days of delinquency and an additional five percent (5%) penalty for each month of delinquency thereafter until paid; provided that the total delinquency penalty shall not exceed twenty five percent (25%) of the fee due. ~~an extra fee shall be due and payable as specified in Appendix A.~~ If payment is not received within one hundred twenty (120) days ~~the time frames specified in Appendix A,~~ the Village Manager or designee may refer the account to a collection agency. If the collection agency does not collect the amount due within 90 days of the referral, or if the Village Manager or designee decides not to refer the account to a collection agency, the applicant or permit holder shall be subject to citation for violation of this section and proceedings before the code enforcement board.

**Sec.16.15.5 Fees.**

(a) Fees to be charged for the purpose of administering this ordinance shall be established by separate resolution.

(b) The Village Manager shall collect all fees due and owing to the Village.

(c) Inspections of the applicant's premise shall be scheduled at the convenience of both the enforcement officer/inspector, landlord, and tenant(s). If the landlord and/or tenant fails to be present at the time of the scheduled inspection or if the enforcement

officer/inspector is denied and/or unable to gain access to the swelling or dwelling unit to conduct the requisite inspection, the landlord may be subject to being charged a re-inspection fee of twenty five dollars (\$25.00), for each re-inspection, at the discretion of the Village. Additionally, after three (3) such attempts and/or denials of access to the premises, the Village may pursue the revocation of any existing permit(s) of use issued to the subject premises.

**Sec. 16.15.4. 6. Waiver of permit fee.** If the property has received no violations for 3 consecutive years, then the landlord permit fee shall be waived.

**Sec. 16.15.7. Application procedures.**

(a) No landlord permit shall be issued or granted to any person unless an application is filed with the Village Manager, or his/her designee on forms provided for that purpose, disclosing the following:

(1) The landlord's name and address and telephone number, and any other emergency contact information. Any changes in such information during the period for which the landlord permit is issued shall be made to the Village Manager or his/her designee, in writing.

(2) If the applicant is a corporation or partnership, the full name and address of the corporation or partnership and the state of incorporation. Applicant must submit a copy of the articles of incorporation.

(b) All applications and permits shall be assigned a number, which may be an individual's social security number, a corporation's federal tax number, or such other uniform method of numbering selected by the Village Manager or his designee.

(c) Statement of accuracy: The application form shall contain the following language:

"The undersigned has carefully reviewed this application and all information contained herein has been freely and voluntarily provided. All facts, figures, statements contained in this application are true, correct, and complete to the best of my knowledge and belief. The applicant also acknowledges and understands that the issuance of a Village landlord permit is contingent upon a compliance inspection and in conjunction with the issuance of a certificate of occupancy. The undersigned understands that failure to comply with the Village's ordinances may result in revocation of said landlord permit."

(d) The applicant shall print and sign his or her name to the application immediately after the statement required in subsection (c) above. In the case of a corporation, an officer shall be required to sign the application in his individual capacity and not solely as a corporate agent.

(e) Dwelling or dwelling units that are required to obtain a certificate of occupancy pursuant to the Florida Building Code, must do so prior to the issuance of a

landlord permit. The Village shall honor any certificate of occupancy issued by Miami Dade County provided that the occupancy for which the certificate was issued remains the same.

(f) State license, certificate, registration required. All premises regulated by the state must submit a copy of their current state license, certificate, and/or registration prior to the issuance of their landlord permit and thereafter each year at the time of renewal. Only the state license itself or receipt therefore shall constitute proof of current state license.

(g) Landlord permits shall not be issued unless:

- (1) There has been a site inspection of the dwelling or dwelling unit(s) by the Village.
- (2) The Village has verified compliance with all applicable laws and regulations and has collected all applicable fees due to the Village.

**Sec. 16.15.5.8 Failure to apply for permit.** If the Village Manager or designee has reasonable cause to believe that a dwelling unit is being leased, subleased, rented or occupied without a permit in violation of this section, the owner of the property shall be given notice that a permit is required and that an application must be filed with the Village within 30 days of the notice. If an application, or evidence that a permit is not required, is not received on the due date, ~~an extra fee shall be charged for the permit as specified in Appendix A. Failure to apply or provide evidence that a permit is not required within the time frames specified in Appendix A shall subject the~~ The owner shall be cited to citation for violation of this section and proceedings before the code enforcement board will begin.

**Sec. 16.15.6.9. Tenant documents.** Prior to executing a lease for the dwelling unit covered by the permit, applicant will provide each tenant with a copy of:

- (a) F.S. Chapter 83, pt. II, entitled "Residential Tenancies;" and
- (b) Chapter 16, Section 16.15 of this Code, entitled "Landlord Permits."

**Sec. 16.15.7.10. Obligation to pursue lawful remedies.** In the event the Village provides notice to the applicant (property owner or designated agent) of repeated violations of certain ordinances by a tenant or guests of a tenant of the dwelling unit, the applicant will pursue all lawful remedies available under F.S. Section 83.56, regarding termination of the rental agreement due to the tenant's failure to comply with F.S. Chapter 83, the provisions of the lease or this Code.

**Sec. 16.15.8.11. Requirements of permittee.**

(a) Any owner who resides outside of Miami-Dade County either at the time of procuring a permit or after having procured a permit shall appoint an agent who resides within the county for the purpose of receiving notices from the Village concerning the

permit. The owner shall notify the Village in writing of the name, address, and telephone number of the agent. If the owner fails to appoint an agent or notify the Village, the permittee shall be presumed to have agreed to constructive notice by publication in a newspaper of countywide circulation within Miami-Dade County.

(b) The permittee and appointed agent, if any, shall maintain a list of the names of tenants in each dwelling unit. Such lists shall be available to the Village upon reasonable notice.

**Sec. 16.15.9-12. Material breaches of lease.** Adjudications of guilt or pleas of no contest of the Village's ordinances, including but not limited to noise, animal control, solid waste, storage, trash and yard maintenance, shall be a material breach of a lease of any unit regulated by this section, and grounds for termination of the lease.

**Sec. 16.15.10-13. Agreement to allow inspection.** By applying for a permit, the owner agrees to allow inspection of the unit for violations of the housing code at any reasonable time; however, this provision shall not be interpreted as authorizing the Village to conduct an inspection of an occupied rental unit without obtaining either the consent of an occupant or a warrant.

**Sec. 16.15.11-14. Contact information.** No permit shall be issued or renewed until the applicant or permit holder has provided the name and phone number of a natural person 18 years of age or older who can be contacted 24 hours a day, seven days a week, regarding the rental unit. This contact person may be the owner, the owner's agent, or any other person other than a resident of the rental unit who has agreed to be the contact person.

**Sec. 16.15.12-15. Denial or revocation of permit.**

(a) The Village Manager or designee may deny issuance of, or revoke, any permits applied for under this section if it is determined either that the applicant or holder has made material misrepresentations about the condition of his/her property, ~~or that the occupancy of the property is, or at any time subsequent to the issuance of the permit becomes, in excess of occupancy by a single family,~~ or that the owner has otherwise violated a provision of this section.

(b) If the Village Manager or designee determines there is reasonable cause to believe that there are grounds to revoke or deny a permit applied for or held, a written notice shall be mailed by registered mail to the owner or agent whose address was provided in the application for such permit. If the dwelling unit in question is occupied, a copy of the notice shall be mailed to at least one tenant. Such written notice shall state the alleged grounds for revocation or denial. For revocation of a permit, such written notice shall also state that the revocation will become effective 30 days from the date of the notice unless, within the 30 days, the alleged grounds for revocation are remedied (or legal action to do so is begun) to the satisfaction of the Village Manager or designee or a hearing is applied for in accordance with this section.

(c) Within 30 days ~~of~~ from the date the notice of revocation or denial is mailed, a holder of or applicant for a permit or the appointed agent may request in writing to the Village Manager a hearing on the revocation or denial. The Village Manager or designee shall schedule the hearing to occur within 15 days after receiving the request for hearing and shall notify the permit holder or applicant at least five days in advance. The hearing may be postponed if mutually agreed upon by all parties.

(d) The hearing shall be conducted informally and adherence to the rules of evidence normally followed by the courts shall not be required. Any person may present testimony, documents or other evidence as deemed relevant by the Village Manager or designee. Any person may be represented by counsel.

(e) The Village Manager or designee shall consider all evidence presented, and if the preponderance of the evidence supports the allegation of violation the permit shall be denied or revoked. If the preponderance of the evidence does not support the allegation of violation, the permit shall be issued or allowed to continue. The decision of the Village Manager or designee may be appealed to the county court of Miami-Dade County.

(f) The Village Manager or designee may waive the revocation requirement as to any permit if it is determined that the owner has attempted in good faith to comply with this section. In determining asserted good faith as required for a waiver, the Village Manager or designee may consider, but not be limited to, the owner's having remedied the violation, and the owner's past history of violations of the conditions of the landlord permit.

(g) If a permit is revoked under this section, the owner whose permit was revoked shall not be issued another permit on the same premises for a period of 6 months after the date of revocation.

**Sec. 16.15.13.16. Inspections and complaints.**

(a) *Inspections.* If there is cause to believe a violation of this section exists, the Village Manager or designee is hereby authorized to make inspections of any premises at reasonable times with 72 hours notice to the owner or agent at the address provided in the application for the permit for the premises or, if no permit has been applied for, to the owner as shown on the latest tax rolls, and one occupant (if any), to determine if a violation exists. Upon refusal to allow entry into the dwelling, the Village may apply for a search warrant from the appropriate court for authorization to enter the dwelling.

(b) *Complaints.* All complainants shall be requested to state their names and addresses and give a statement of the facts giving rise to the complainant's belief that the provisions of this section are being violated. Such information may be obtained orally or in writing.

**Sec. 16.15.17. Penalties for violations.** Any person who violates any section of this ordinance shall be subject to the issuance of a civil citation with a civil penalty in the amount of two hundred fifty dollars (\$250.00) per day. Violations of this ordinance may also be punished by a fine not to exceed five hundred dollars (\$500.00). Each day any violation or any provision of this Code shall continue, shall constitute a separate offense.

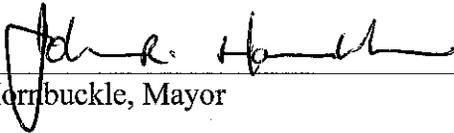
**Section 3. Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**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.

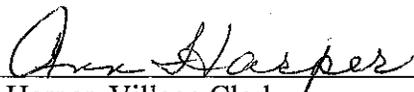
**Section 5. Effective Date.** This Ordinance shall be effective upon adoption on second reading.

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

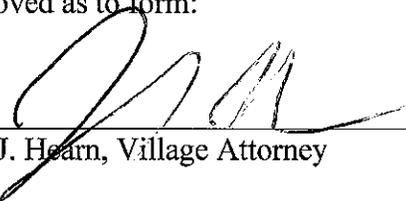
**The foregoing ordinance upon  
being put to a vote, the vote was as  
follows:**

  
\_\_\_\_\_  
John Hornbuckle, Mayor

Attest:

  
\_\_\_\_\_  
Ann Harper, Village Clerk

Approved as to form:

  
\_\_\_\_\_  
John J. Hearn, Village Attorney

Mayor Hornbuckle: yes  
Commissioner Mallette: NO  
Commissioner Bernard: yes  
Commissioner Morris: yes  
Commissioner Anderson: yes

1<sup>st</sup> Reading -- January 6, 2009  
2<sup>nd</sup> Reading -- February 3, 2009