VILLAGE OF KEY BISCAYNE
Office of the Village Manager

Village Council
Robert Oldakowski, *Mayor*
Robert L. Vernon, Vice *Mayor*
Enrique Garcia
Steve Liedman
Jorge E. Mendia
Thomas Thornton
Patricia Weinman

Village Manager
Jacqueline R. Menendez

DT: August 9, 2005

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Hurricane Protection Measures: Maintenance of Trees Near Property Lines

RECOMMENDATION

It is recommended that the attached ordinance be approved. The ordinance provides for the removal of landscaping that is near power lines and exotic trees from lots which are planned for new single or two family construction. A list of exotic landscaping is presented below.

BACKGROUND

At the September 7, 2004 Council Meeting, staff was requested to prepare an ordinance that addresses hurricane protection measures associated with the removal of landscaping debris from the public right of way, landscaping that is in close proximity to overhead power lines, and "exotic" trees from the island. At first reading, the Council approved the ordinance subject to the deletion of the regulation which required the removal of the exotic trees for all properties on the island. Second reading of the ordinance was never scheduled as several Councilmembers did not want to proceed.

EXPLANATION

At the July 5, 2005 workshop, Council discussed the causes of power outages. As part of this discussion, there was a consensus that staff schedule a public hearing to consider an ordinance which requires the removal of landscaping that is within six (6) ft. of power lines and exotic landscaping on lots where new homes are planned for construction. The attached ordinance provides for the following:

1. removal of landscaping that is within six (6) ft. of power lines.
2. a 10 ft. setback from the placement of landscape debris that is on the ground to a utility right of way or public road.
3. removal of exotic landscaping from lots which are planned for new single or two family construction.
4. prohibits the planting of exotic landscaping

The current landscape regulations do not require the removal of exotic landscaping on developed lots or on properties which are planned for new construction. With regard to new construction, staff does not permit the planting of exotic landscaping and there are no provisions which require their removal if they are present on the site. The current regulations only waive the permit and fee requirements to remove an exotic plant or tree. There is no prohibition on planting exotics after the Village makes the final inspection for new homes or on properties which are already developed. The attached ordinance only addresses new construction. As such, exotics which are planted on developed lots are not affected by this ordinance.

Exotic landscape materials should be removed as they have a root structure which is easily uprooted during high winds causing damage to property and a threat to public safety. The tree limbs are brittle and can be broken off causing the same problems. In both instances, power outages are problematic. This type of landscaping is also intrusive to native plants and can bloom sending seeds to other properties on the island.

EXOTIC LANDSCAPING

1.	Schinus terebinthinfolius	(Brazilian Pepper/Florida Holly)
2.	Metopium toxiferum	(Poison Wood)
3.	Casurina equisetifolia	(Austrailian Pine)
4.	Melaleuca Quinquenervia	(Melaleuca)
5.	Araucaria Heterophylla	(Excelsa, Northfork Pine Island)
6.	Brassala Actinophylla	(Schefflera)

ORDINANCE NO. _____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 8 "ENVIRONMENT," BY CREATING ARTICLE V "HURRICANE PROTECTION MEASURES" CONSISTING OF SECTION 8-301 "PREVENTION OF STORM DAMAGE"; PROVIDING REGULATIONS CONCERNING LANDSCAPING AND THE MAINTENANCE AND DISPOSAL OF LANDSCAPING DEBRIS, TREES, YARD WASTE AND VEGETATION, SO AS TO MITIGATE POTENTIAL STORM IMPACTS AND DAMAGES; PROVIDING RESTRICTIONS ON PLACEMENT OF LANDSCAPING DEBRIS; REQUIRING REMOVAL OF CERTAIN EXOTIC PLANTS AND TREES FOR NEW CONSTRUCTION; PROVIDING FOR PROTECTION OF ELECTRIC POWER LINES FROM VEGETATIVE GROWTH; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR PENALTY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as a result of the recent series of hurricanes and severe weather events which have affected the Village and the State of Florida, it is recognized to be necessary to implement additional regulations to assure the protection of the public health, safety and welfare; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is protective of the public health, safety and welfare.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

Section 2. **Village Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 8 "Environment", by creating

Article V "Hurricane Protection Measures" consisting of Section 8-301 "Prevention of Storm Damage", to read as follows:[1]

ARTICLE V. HURRICANE PROTECTION MEASURES

Section 8-301. Prevention of Storm Damage

(a) **Hurricane Watch; Restriction On Placement of Landscaping Debris.**

Once an official hurricane watch is issued by the National Weather Service for an area which includes the Village, no person shall place any yard waste including, but not limited to, vegetative clippings, trees, palm fronds, leaves, branches or any other vegetative debris (the "Landscape Debris") on any portion of the public right of way or upon any land within ten (10) feet of the public right of way, unless instructed to do so in writing by the Village Manager. This shall not prohibit the temporary placement of Landscape Debris on the swale area adjacent to the parcel which produced such Landscape Debris for pick up by a licensed private hauler, so long as such pick up and removal is fully accomplished prior to the issuance by the National Weather Service of an official hurricane warning and in any event is completed by the private hauler prior to the occurrence of the anticipated storm event and at the private property owner's sole cost and expense.

(b) **Removal of Certain Exotic Plants and Trees for New Construction.**

From and after the date of adoption of this Ordinance, any person owning or controlling (the "Responsible Person") real property upon which there exists any of the exotic species of vegetation ("Exotics") listed on Exhibit "A", a copy of which is attached hereto and

1/ Proposed deletions from existing Village Code text are indicated by ~~strike through~~; proposed additions to existing Village Code text are indicated by underline.

incorporated herein, shall cause the removal and disposal of said Exotics prior to obtaining a building permit for the construction of any new single family or duplex residence upon said property. As to any such property for which there exists at the time of adoption of this section an active building permit for the construction of a new single family or duplex residence upon such property, the Exotics shall be removed by the Responsible Person prior to the issuance of a Certificate of Occupancy. The requirements of this section shall be applicable regardless of whether the Exotics were planted or established before, on or after the date of adoption of this Ordinance. Nothing herein shall be construed to authorize the planting of Exotics.

(c) **Protection of Electric Power Lines.**

Each year, at all times during the time period of June 1st to and including December 1st, each person owning or controlling real property within the Village shall cause all landscaping situated upon such real property, including, but not limited to, trees, branches, palm fronds, vines, bushes and any other vegetative matter, to be maintained and trimmed so that no trees, branches, palm fronds, vines, bushes or other vegetative matter shall be situated at any point any closer than six (6') feet to any energized electric transmission or electric service line.

Section 3. **Severability.** That 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 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 4. **Inclusion in the Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the

Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Penalty.** That any person who violates any provisions of this Ordinance shall, upon conviction, be punished by a fine not to exceed $500.00 or imprisonment in the County jail not to exceed sixty (60) days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This Ordinance shall be subject to enforcement under the Local Government Code Enforcement Act, Chapter 162, F.S., as amended, and Village Code Section 2-31, et. seq., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

Section 6. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 31st day of August, 2005.

PASSED AND ADOPTED on second reading this ____ day of September, 2005.

_____
Robert Oldakowski, Mayor

Attest:

_____
Conchita H. Alvarez, CMC
Village Clerk

Approved As to Form And
Legal Sufficiency:

_____
Village Attorney

EXHIBIT "A"

EXOTIC LANDSCAPING TO BE REMOVED FROM PROPERTY

1.	Schinus terebinthinfololius	(Brazilian Pepper/Florida Holly)
2.	Metopium toxiferum	(Poison Wood)
3.	Casurina equisetifolia	(Australian Pine)
4.	Meleleuca Quinquenervia	(Melaleuca)
5.	Araucaria Heterohylla	(Excelsa, Northfork Pine Island)
6.	Brassala Actinophyera	(Schefflera)