

# Memo

DT: June 13, 2006

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

**RE: Amendment to Village Code Provisions concerning Landscaping in Public Rights-Of-Way, as Related to the Sanitary Sewer and Water Line Improvement Project.**

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## **RECOMMENDATION**

It is recommended that the Village Council adopt the accompanying ordinance which creates Section 21-15 "Exemption" of the Village Code, in order to exempt the Sanitary Sewer and Water Line Improvement Project (the "Project") from the provisions of Section 21-12 "Village Projects Within the Public Rights-Of-Way".

## **BACKGROUND**

Section 21-12 of the Village Code imposes certain procedures to be followed in circumstances where Village projects or improvements in the Public Rights-Of-Way require removal of Landscape Materials. Since the presently pending Project is already subject to specific public hearing requirements pursuant to Village Charter Section 4.03(9), staff is of the opinion that it is not necessary or desirable to provide for the Project to be subject to the additional public hearing and notice procedures set forth in Section 21-12 of the Village Code, and that the application of such procedures to the Project may serve to delay or impede this important public project. Accordingly, the Village Attorney has drafted the enclosed proposed Ordinance in order to create the necessary exemption for the Project.

Please contact me or the Village Attorney if there are any questions.

cc: Village Attorney, Stephen J. Helfman  
Village Attorney, David M. Wolpin

**ORDINANCE NO. 2006-**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 21 "PUBLIC RIGHTS-OF-WAY", AT ARTICLE II "LANDSCAPING IN PUBLIC RIGHTS-OF-WAY", BY CREATING SECTION 21-15 "EXEMPTION" TO EXEMPT THE VILLAGE SANITARY SEWER AND WATER LINE IMPROVEMENT PROJECT FROM THE PROVISIONS OF SECTION 21-12 "VILLAGE PROJECTS WITHIN THE PUBLIC RIGHTS-OF-WAY"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 21-12 "Village Projects within the Public Rights-of-Way" imposes certain procedures to be followed in circumstances where Village projects or improvements in the public right of way require removal of landscape materials; and

**WHEREAS**, the presently pending Village sanitary sewer and water line improvement project (the "Project"), is already subject to specific public hearing requirements pursuant to Village Charter Section 4.03(9); and

**WHEREAS**, the Village Council finds that it is not necessary or desirable to provide for the Project to be subject to the additional public hearing and notice procedures set forth in Section 21-12 of the Village Code, and that the application of such procedures to the Project may serve to delay or impede the Project; and

**WHEREAS**, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village.

**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 are 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 Article II "Landscaping in Public Rights-Of-Way", of Chapter 21 "Public Rights-of- Way", which Article prior to the adoption of this Ordinance consisted of the provisions which are set forth on Exhibit "A" attached hereto, by creating Section 21-15 "Exemption", to read as follows:

**Sec. 21-15. Exemption.**

The provisions of Section 21-12 "Village Projects within the Public Rights-of-Way" shall not be applicable to that certain sanitary sewer and water line improvement project (the "Project") which is authorized by Capital Project Authorizing Ordinance No. 2006- , as adopted on June 27, 2006. The Village Manager may authorize the Project contractor to remove any Landscape Materials which are in conflict with the work of the Project. The Village Manager may replace Landscape Materials which are removed as a result of the Project, in accordance with the Project work items, but the Village shall not be responsible for the maintenance or survival of any Landscape Materials which are so replaced.

**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 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 4. Inclusion in Code.**

That it is the intention of the Village Council, and it is hereby ordained that the provisions

of this Ordinance shall become and be 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. Effective Date.**

That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 13th day of June, 2006.

PASSED AND ADOPTED on second reading this 27th day of June, 2006.

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MAYOR ROBERT OLDAKOWSKI

ATTEST:

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CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY

## EXHIBIT "A"

### ARTICLE II. LANDSCAPING IN PUBLIC RIGHTS-OF-WAY

#### Sec. 21-10. Purpose.

Surveys conducted in the Village have shown that many property owners have installed landscaping materials within the Swale portion of the Village's Public Rights-of-Way. While, in most cases, these installations have beautified the Village, in some instances the landscaping materials could create a safety threat (such as when they prevent pedestrians from being able to step off of the paved roadway or block motorists' line of sight). Additionally, use of the Public Rights-of-Way in this manner is inconsistent with its use by the public for travel purposes and, restricts the ability to alter the developed portion of the Public Rights-of-Way in the future if the need for such alteration should arise.

#### Sec. 21-11. Restrictions on the placement of Landscape Materials in the Public Rights-of-Way.

Landscape Materials may be installed or maintained in the Public Rights-of-Way subject to the following restrictions:

- (a) For properties where the driveway(s) can accommodate three or more parked vehicles, an area three feet wide, parallel with and immediately adjacent to the edge of the paved roadway, shall be maintained as a step off clear zone. No Landscape Materials other than sod are permitted in the step off clear zone. For properties where the driveway(s) can accommodate less than three vehicles, an area six feet wide, parallel with and immediately adjacent to the edge of the paved roadway, shall be maintained as a clear zone. With the exception of Street Trees, no Landscape Materials other than sod are permitted in the clear zone. However, plantings with a height not to exceed two and one half feet may be maintained within a radius of 24 inches from the base of any Street Tree. Trees installed prior to the adoption of this chapter ("Existing Trees") may be retained in the clear zone so long as the tree is not less than three feet from the paved roadway, the lowest limb is a minimum of six feet above the ground and they are not so closely situated so as to prevent pedestrians from stepping off of the paved roadway as vehicles pass by. Plantings with a height not to exceed 2 1/2 feet may also be maintained within a radius of 24 inches from the base of any Existing Tree that is allowed to remain pursuant to this provision.
- (b) Except within a line-of-sight triangle, Landscape Materials with no height restriction may be maintained within the remainder of the Public Right-of-Way area.

- (c) **Line-of-Sight Triangles.** There shall be maintained a Line-of-Sight Triangle which shall be an isosceles triangle with sides ten feet along the edge of the driveway and the edge of the street. In cases where a sidewalk exists, an additional Line-of-Sight Triangle with sides five feet along the edge of the driveway and the edge of the sidewalk shall be maintained. Within the Line-of-Sight Triangle Landscape Materials shall be maintained at a height not to exceed 2 1/2 feet or with the lowest tree limb at least six feet above the ground.
- (d) In cases where the Public Right-of-Way width is greater than 50 feet, the distances from the paved roadway shall be expanded proportionately.
- (e) When a sidewalk exists or is installed, no Landscape Materials, with the exception of Street Trees, may be maintained between the edge of the paved roadway and the sidewalk. Where Street Trees are have been installed, plantings with a height not to exceed 2 1/2 feet may be maintained within a radius of 24 inches from the base of the Street Tree.
- (f) Landscape Materials shall be maintained in compliance with the requirements of the "Metropolitan Dade County Public Works Manual, Part 1 Standard Details" at all street intersections.
- (g) The sloping of all Public Rights-of-Way shall be maintained in accordance with the "Dade County Department of Planning, Development and Regulation Landscape Manual".

**Sec. 21-12. Village projects within the Public Rights-of-Way.**

The following procedures shall be followed in circumstances where Village projects or improvements in the Public Right-of-Way require removal of Landscape Materials ("Village Projects"):

- (a) Village Projects must be approved by the Village Council after a public hearing (the "Approval Hearing");
- (b) At least 60 days Written notice of the Approval Hearing shall be sent by certified mail, return receipt requested, to each owner of property where Landscape Materials are to be removed ("Affected Owner");
- (c) At least 60 days prior to an Approval Hearing the Village shall also place an ad in a newspaper of wide readership in the Village containing information regarding the Village Project and the time and date of the Approval Hearing;

- (d) If the Village Project is approved, the Village shall send Written notice, certified mail, return receipt requested, to each Affected Owner requiring that Landscape Materials be removed within 90 days. This 90-day period may be shortened by the Village Council in case of emergency;
- (e) The Village may remove any Landscape Materials that are not removed by the Affected Owner within the 90-day period;
- (f) The Village may replace Landscape Materials removed as a result of a Village Project ("Replaced Material"); and
- (g) The Village shall not be responsible for the maintenance or survival of Replaced Material.

**Sec. 21-13. Enforcement.**

Enforcement of the provisions of this article shall be by action before the special master or such other method of code enforcement as the Village may use pursuant to the provisions of F.S. Chapter 162.

**Sec. 21-14. Variances.**

Owners of developed property may apply for a Supervisory Variance for existing Landscape Material within the Public Rights-of-Way which does not comply with these provisions.