VILLAGE OF KEY BISCAYNE

Office of the Village Manager

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

Village Manager
Jacqueline R. Menendez

DT: May 16, 2007

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Special Magistrates

RECOMMENDATION

It is recommended that the attached ordinance be approved.

EXPLANATION

The attached ordinance creates procedures that the Special Magistrates have been following since they were first organized. The Special Magistrates will now operate as a Board composed of five (5) members and two (2) alternates. There are currently four (4) Special Magistrates. Mortimer Fried, Rosemary Sala, Dennis O'Hara, and Jenniffer Leal have been appointed as Special Magistrates.

ORDINANCE NO. 2007-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 2 OF THE VILLAGE CODE, "ADMINISTRATION," ARTICLE III, "CODE ENFORCEMENT," TO PROVIDE FOR A BOARD OF SPECIAL MAGISTRATES IN LIEU OF INDIVIDUAL SPECIAL MAGISTRATES, TO DELETE THE REQUIREMENT THAT THE CODE ENFORCEMENT OFFICER SUBMIT A WRITTEN REQUEST FOR A HEARING, AND TO PROVIDE THAT THE BUILDING, ZONING, AND PLANNING DEPARTMENT SHALL PROVIDE CLERICAL AND ADMINISTRATIVE PERSONNEL TO THE BOARD; REVISING THE VILLAGE'S ALTERNATE CODE ENFORCEMENT SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE VILLAGE CODE; PROVIDING FOR EFFECTIVE DATE.

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

Section 1. That Chapter 2, "Administration," Article III, "Code Enforcement," of the Code of the Village of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 2-31. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means a board of Special Magistrates.

* * *

Sec. 2-33. Composition of the Board, qQualifications of Special Magistrates; appointment and removal; compensation.

(a) The Board shall consist of five Special Magistrates and the Village may appoint two alternative Special Magistrates. The Special Magistrates shall elect a Chair, who shall be a voting member, from the members of the Board. The presence of three or more members

of the Board shall constitute a quorum.

~~(a)~~(b) Appointments of Special Magistrates shall be made by the Mayor as needed on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the Council for ratification.

~~(b)~~(c) Special Magistrates shall be residents of the Village and shall possess outstanding reputations for civic pride, interest, integrity, responsibility and business or professional ability.

~~(c)~~(d) Appointments shall be made for a term of one year. Special Magistrates may be reappointed at the discretion of the Mayor, subject to ratification by the Council. Special Magistrates may be suspended and removed for cause.

~~(d)~~(e) Special Magistrates shall not be Village employees and shall serve without compensation.

Sec. 2-34. Powers of ~~Special Magistrates~~the Board.

~~Special Magistrates~~The Board shall have the power to:

(1) Adopt rules for the conduct of hearings.

(2) Subpoena Violators and witnesses for hearings; subpoenas shall be served by the Village Police Department or by the Village staff.

(3) Subpoena evidence to hearings.

(4) Take testimony under Oath.

(5) Assess and order the payment of civil penalties as provided in this article.

(6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-35. Village Attorney to serve as counsel.

The Village Attorney shall provide legal advice to the ~~Special Magistrates~~Board. If an appeal is taken pursuant to section 2-44, the Village Attorney shall represent the Village at such proceedings.

Sec. 2-36. Authority to initiate enforcement proceedings.

Code Enforcement Officers shall have the authority to initiate code enforcement proceedings as provided in section 2-37. ~~Special Magistrates~~The Board and its members shall not have such authority.

Sec. 2-37. Enforcement Procedures.

(a) A Code Enforcement Officer who finds a violation of the Code shall issue a Notice to the Violator stating that the Violator has committed a violation of the Code and shall specify a reasonable time period within which the Violator must correct the violation. This determination shall be based on consideration of fairness; practicality; ease of correction; ability to correct; severity of violation; nature, extent, and probability of danger or damage to the public; and other relevant factors relating to the reasonableness of the time period prescribed.

(b) If, upon personal investigation, a Code Enforcement Officer finds that the Violator has not corrected the violation within the time period specified in the Notice, the Code Enforcement Officer shall notify the Village Manager or designee ~~in writing~~ and may request a hearing.

(c) If the Code Enforcement Officer has reason to believe a violation presents a serious threat to the public health, safety or welfare, or if the violation is an Uncorrectable Violation, the Code Enforcement Officer shall issue a Notice requiring immediate correction of the violation. The Code Enforcement Officer shall make a reasonable effort to notify the Violator and may immediately notify the Village Manager or designee and request a hearing.

(d) If a Code Enforcement Officer finds a Repeat Violation, the Code Enforcement Officer shall issue a Notice to the Violator but is

not required to give a reasonable time to correct the violation. The Code Enforcement Officer, upon notifying the Violator of a Repeat Violation, shall notify the Village Manager or designee and request a hearing.

(e) The current owner of the property is responsible for the violation in addition to any other party who has possession of the property or who may have actually caused the violation, even if the violation was caused by a prior owner or an unknown third party. The ~~Special Magistrate~~Board may find the landlord as well as the tenant responsible for a violation. A condominium association shall be responsible for any violation affecting the common elements of the condominium in addition to any other party who may have actually caused the violation. If the ~~Special Magistrate~~Board enters an order against a condominium association, there shall be no lien against the common elements and there shall be no lien against a unit of the condominium unless the unit owner is also a respondent in the code enforcement proceeding.

Sec. 2-39. Contents and service of Notice.

(a) A Notice shall include:

(1) Date and time of issuance.

(2) Name of Code Enforcement Officer issuing the Notice.

(3) Name and address of the Violator.

(4) The section of the Code that has been violated.

(5) Brief description of the nature of the violation, including location, date and time of violation.

(6) Amount of the civil penalty for which the Violator may be liable.

(7) Instructions and date for paying the civil penalty or for filing a request for an administrative hearing before ~~a Special Magistrate~~the Board to appeal the civil penalty.

(8) Time within which the violation must be corrected.

(9) A statement that each day of continued violation after the time period for correction has run shall be deemed a Continuing Violation subject to an additional penalty in the same amount without the need for additional Notice.

(10) A statement that the filing of a request for an administrative hearing will toll the accrual of Continuing Violation penalties.

(11) A statement that failure to request an administrative hearing within 20 days after service of the Notice shall constitute a waiver of the Violator's right to an administrative hearing before the ~~Special Magistrate~~Board, and that such waiver shall constitute an admission of the violation, and that in such case, judgment may be entered against the Violator for the amount of the civil penalty.

(12) A statement that the Violator may be liable for the reasonable administrative hearing costs should he, she, or it be found guilty.

(b) Service of the Notice to the Violator shall be effected either by:

(1) hand delivery to the violator; or

(2) leaving the notice at the violator's usual place of residence with any person residing therein who is 15 years of age or older and informing such person of the contents of the notice; or

(3) certified mail, return receipt requested, to the violator's usual place of residence; or

(4) by posting the notice in a conspicuous place on the premises or real property upon which the violation was observed or on the personal property which is the subject of the violation. The posting of the notice shall be deemed proper service, and the time for compliance stated in the notice shall commence with the date of such posting.

(c) In the case of commercial premises, notice may be served by leaving the notice with the manager or other person in charge. A corporation may also be served at the address of the registered agent in addition to the address listed in the tax collector's office for tax notices or the property appraiser's office.

(d) If the owner of property which is subject to an enforcement proceeding before the ~~Special Magistrate~~Board or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Sec. 2-40. Rights of Violators; payment of fine; right to appeal; failure to pay and correct or to appeal.

(a) A Violator who has been served with a Notice shall elect either to:

(1) Pay the civil penalty in the manner and within the time

indicated on the Notice and correct the violation within the time specified on the Notice; or

(2) Request an administrative hearing before ~~a Special Magistrate~~the Board to appeal the decision of the Code Enforcement Officer which resulted in the issuance of the Notice.

(b) An appeal of the Notice shall be accomplished by filing a request in writing to the address indicated on the Notice, not later than 20 calendar days after the service of the Notice.

(c) If the named Violator, after Notice, fails to pay the civil penalty and correct the violation within the time specified, or to timely request an administrative hearing before ~~a Special Magistrate~~the Board, the ~~Special Magistrate~~Board shall be informed of such failure by report from the Code Enforcement Officer. Such report shall be by affidavit of the Code Enforcement Officer. Failure of the named Violator to appeal the decision of the Code Enforcement Officer within the prescribed time period shall constitute a waiver of the Violator's right to administrative hearing before the ~~Special Magistrate~~Board. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties may be assessed accordingly.

Sec. 2-41. Scheduling and conduct of hearing.

(a) Upon receipt of a named Violator's timely request for an administrative hearing or a ~~written~~ hearing request from the Code Enforcement Officer as provided for in section 2-37, the Village Manager or designee shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practicable.

(b) The Village Manager or designee shall send a notice of hearing by first class mail, or any other method reasonably calculated to effect delivery, to the named Violator at his last known address. The notice of hearing shall include but not be limited to the following:

(1) Name of the Code Enforcement Officer who issued the Notice.

(2) Factual description of the alleged violation.

(3) Date of the alleged violation.

(4) Section of the Code allegedly violated.

(5) Place, date and time of the hearing.

(6) Notice of the right of the Violator to be represented by an attorney.

(7) Right of the Violator to present evidence and ~~witnesses~~ and to cross examine witnesses.

(8) Notice that failure of the Violator to attend the hearing may result in civil penalty and administrative hearing costs being assessed.

(9) Notice that requests for continuances will not be considered if not received in writing by the ~~Special Magistrate~~Board at least ten calendar days prior to the date set for the hearing.

(c) The Village Manager or designee shall call hearings on a monthly basis or upon the request of the Code Enforcement Officer.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the ~~Special Magistrate~~Board at least ten calendar days prior to the date set for the hearing.

(e) All hearings of the ~~Special Magistrate~~Board shall be open to the public. All testimony shall be under Oath. Assuming proper notice, a hearing may proceed in the absence of the named Violator.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The ~~Village Clerk~~Building, Zoning, and Planning Department shall provide clerical and administrative personnel as may be reasonably required by ~~each Special Magistrate~~the Board for the proper performance of ~~his or her~~ its duties.

(h) Each case before ~~a Special Magistrate~~the Board shall be presented by the Village Manager or designee.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the ~~Special Magistrate~~Board finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called that witness to testify; and to offer rebuttal of the evidence.

(k) The ~~Special Magistrate~~Board shall make findings of fact and conclusions of law based on evidence of record. In order to make a finding upholding the Code Enforcement Officer's decision, the ~~Special Magistrate~~Board must find that a preponderance of the evidence indicates that the named Violator was responsible for the violation of the relevant section of the Code.

(l) The time for correction given by the Code Enforcement Officer to the named Violator and contained in the Notice is rebuttably presumed to have been a reasonable time for correction. Upon presentation of relevant evidence by the named Violator that the time for correction was not reasonable; however, the ~~Special Magistrate~~Board may make a redetermination as to reasonableness of the time for correction contained in the Notice. The ~~Special Magistrate~~Board may not make a determination that the time given for correction in the Notice was unreasonable unless the time given for correction has not yet run at the time the ~~Special Magistrate~~Board makes ~~his or her~~its decision. If the ~~Special Magistrate~~Board determines that the time given for correction was insufficient, the penalty for a Continuing Violation shall be calculated from the date determined by the ~~Special Magistrate~~Board to be a reasonable date for correction.

(m) If the named Violator is found guilty of the violation, he or she may be held liable for the reasonable cost of the administrative hearing, at the discretion of the ~~Special Magistrate~~Board.

(n) The fact-finding determination of the ~~Special Magistrate~~Board shall be limited to whether the violation alleged did occur, and, if so, whether the person named in the Notice may be held responsible for that violation. Based upon this fact-finding determination, the ~~Special Magistrate~~Board shall either affirm or reverse the decision of the Code Enforcement Officer. ~~Special Magistrate~~Board may also modify the decision of the Code Enforcement Officer as to the time for correction contained in the Notice, subject to the provisions of subsection (l) of this section. If the ~~Special Magistrate~~Board reverses the decision of the Code Enforcement Officer and finds the named Violator not responsible for the Code violation alleged in the Notice, the named Violator shall not be liable for the payment of any civil penalty, absent reversal of the ~~Special Magistrate~~Board's findings pursuant to section 2-44.

(o) A decision of the ~~Special Magistrate~~Board affirming the decision of the Code Enforcement Officer shall include the following elements:

(1) Amount of civil penalty.

(2) Administrative costs of hearing.

(3) Date by which the violation must be corrected to prevent presumption of Continuing Violation penalties, if applicable.

(p) ~~A Special Magistrate~~The Board shall postpone a hearing if the named Violator, prior to the scheduled hearing date, files with the duly authorized Village board of appropriate jurisdiction, if any, an administrative appeal concerning the interpretation or application of the Code provisions upon which the alleged violation was based. However, once an issue has been determined by ~~a Special Magistrate~~the Board in a specific case, that issue may not be further reviewed by another Village board in that specific case.

(q) Upon exhaustion of a timely filed administrative appeal and finalization of the administrative order by the duly authorized Village board of appropriate jurisdiction, the ~~Special Magistrate~~Board may exercise all powers given to him or her by this article. The ~~Special Magistrate~~Board shall not, however, exercise any jurisdiction over such alleged Code violations until the time allowed for court appeal

of the ruling of such board has lapsed or until such further appeal has been exhausted.

(r) The ~~Special Magistrate~~Board shall be bound by the interpretations and decisions of duly authorized Village boards concerning the provisions of the Code within their respective jurisdictions. If such a board decides that an alleged violation of the Code is not in accordance with such board's interpretation of the Code provision on which the violation is based, the ~~Special Magistrate~~Board shall not be empowered to proceed with the enforcement of the violation.

Sec. 2-42. Civil penalties and related terms construed.

(a) Unless otherwise provided in this Code, penalties for violations of the provisions to be enforced through this article shall be $250.00 per day for a first violation. The penalty for a violation relating to the failure to obtain any required development approvals, including building permits, shall be $500 per day. The penalty for an Uncorrectable Violation shall not exceed $5000 per violation.

(b) For each day of a Continuing Violation, an additional penalty in the same amount as that prescribed for in the original violation shall be added.

(c) For a Repeat Violation, the amount of the civil penalty shall be $500 per day.

(d) A Repeat Violation which remains uncorrected beyond the time prescribed for correction in the Notice shall be treated as a Continuing Violation, and the additional penalty for each day of continued violation shall be $500.00.

(e) Continuing Violation penalties shall accrue from the date of correction given in the Notice until the correction is made or until a request for administrative hearing is filed, whichever comes first. If the named Violator requests an administrative hearing and loses his appeal, the ~~Special Magistrate~~Board shall determine a reasonable time period within which correction of the violation must be made, based on the considerations set forth in section 2-37(a). If correction is not made within the period set by the ~~Special Magistrate~~Board, Continuing Violation penalties shall begin to accrue again after the

time for correction has run and the Code Enforcement Officer has filed an Affidavit of Continuing Violation. The Code Enforcement Officer shall serve on the violator a copy of the Affidavit of Non-Compliance and a Notice of Continuing Violation which shall include the following:

(1) Date of issuance.

(2) A reference to the order of the ~~Special Magistrate~~Board that continues to be violated.

(3) Notice of the right to request an administrative hearing before the ~~Special Magistrate~~Board and instructions on how to file the request.

(4) Notice that failure to request an administrative hearing within 20 days after the date of the Notice of Continuing Violation shall constitute a waiver of the right to a hearing.

(5) Notice that the hearing is strictly limited to whether and when the Violator complied with the order of the ~~Special Magistrate~~Board.

(6) Notice that the Violator shall be liable for the reasonable costs of the administrative hearing if the Violator is unsuccessful at the hearing.

At reasonable intervals, a Violator may request an inspection to determine compliance with an order of the ~~Special Magistrate~~Board. After his inspection, the Code Enforcement Officer shall issue an Affidavit of Non-Compliance and Notice of Continuing Violation or an Affidavit of Compliance, in recordable form, as appropriate.

(f) If, pursuant to a finding by the ~~Special Magistrate~~Board, the violation is a violation described in Section 2-37(c), the Village may, at its discretion, make all reasonable repairs that are required to bring the property into compliance and charge against the Violator the cost of the repairs along with the fine imposed pursuant to this Section. The Village shall have a lien upon the property in such amount until paid, which lien shall be prior to all other liens on such property, except taxes. Such lien, when delinquent for more than three months, may be foreclosed in the manner provided for the foreclosure of mortgages on real property. Making such repairs does not create a continuing obligation on the part of the local governing body to make

further repairs or to maintain the property and does not create any liability against the Village for any damages to the property if such repairs were completed in good faith.

(g) Civil penalties assessed pursuant to this article are due and payable to the Village on the last day of the period allowed for the filing of an appeal from the ~~Special Magistrate~~Board's decision, or, if a proper appeal is made, when the appeal has been finally decided adversely to the named Violator.

Sec. 2-43. Recovery of unpaid civil penalties; unpaid penalty to constitute a lien; foreclosure; lien reduction.

(a) The Village may institute proceedings in a court of competent jurisdiction to compel payment of civil penalties.

(b) A certified copy of an order imposing a civil penalty shall be recorded in the public records and thereafter shall constitute a lien against the property on which the violation exists and upon any other real or personal property owned by the Violator; upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A civil penalty imposed pursuant to this article shall continue to accrue until the Violator complies or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first. After three months from the date of filing of any such lien which remains unpaid, the Village may foreclose or otherwise execute on the lien. Alternatively, the Village may sue to recover a money judgment for the amount of the lien plus accrued interest. Upon payment of the civil penalty or notice of assessment by the Violator or the successor(s), assign(s) or heir(s) of the Violator, the Village Clerk is authorized to execute and record in the Public Records of Miami-Dade County the appropriate Release of Lien document.

(c) No lien provided under this article shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action to foreclose on a lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien, the prevailing party may recover interest

and all costs, including a reasonable attorney's fee, incurred in the foreclosure. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(d) The Violator, or the Violator's successors or assigns, (the "Applicant") who has an ownership interest in the property encumbered by a lien for civil penalties, may file a request for a reduction of the civil penalty before the ~~Special Magistrate~~Board only after a compliance inspection is completed during which a Code Enforcement Officer finds that all violations were corrected. Upon receipt of a written request for reduction of civil penalty, and the filing of an affidavit of partial compliance by the Code Enforcement Officer which sets forth that all outstanding violations of the ~~Special Magistrate~~Board's order have been corrected, except for payment of any outstanding civil penalties, the Village Manager, or designee, shall set the matter for penalty reduction hearing by the ~~Special Magistrate~~Board. However, if the Village Attorney has commenced action to obtain compliance with the order of the ~~Special Magistrate~~Board, including but not limited to an action for injunctive relief, foreclosure, or money judgment, no hearing shall be held for a reduction of civil penalty.

(e) At the hearing, the fact-finding determination of the ~~Special Magistrate~~Board shall be limited to evidence establishing:

1) good cause for a reduction of the civil penalty,

2) the amount of the reduction, and

3) any equitable considerations raised by the Applicant or the Village relating to good cause or the amount of the reduction.

Said hearing shall not be an opportunity to appeal any finding of fact or conclusions of law set forth in any prior order of the ~~Special Magistrate~~Board or any administrative determination of the Village.

(f) The ~~Special Magistrate~~Board may reduce a civil penalty once the Applicant has otherwise complied with an order of the ~~Special Magistrate~~Board based on a showing of good cause, but in no event shall the civil penalty be reduced below the costs incurred by the

Village in its prosecution of violations, including but not limited to, any attorney's fees and staff time. In no event, however, shall any administrative fees previously ordered by the ~~Special Magistrate~~Board be waived or reduced.

(g) In determining good cause, and the amount of the reduction, if any, the ~~Special Magistrate~~Board shall consider:

(1) The gravity of the violation.

(2) Any actions taken by the Violator or Applicant to correct the violation.

(3) Any previous, or other outstanding violations whether committed by the Violator, or pertaining to the property to which the lien attaches, unless an order finding a violation is under appeal at the time of the determination.

(4) Whether the violation is irreparable or irreversible in nature.

(5) Whether the Violator's failure to timely comply with an order of the Code Enforcement Officer or the ~~Special Magistrate~~Board is due to an inability to comply based on factors beyond the control of the Violator.

(h) Upon a finding of good cause, the ~~Special Magistrate~~Board has the sole discretion to grant or deny the request for a reduction of civil penalty according to the following guidelines, provided the reduction to an amount that is not less than the costs incurred by the Village:

(1) If compliance occurs within three months of the date for compliance set forth in the order of the ~~Special Magistrate~~Board; a maximum reduction of 95 percent of the total civil penalty (the original civil penalty plus the continuing civil penalty amounts);

(2) If compliance occurs more than three months but less than 12 months from the compliance date, a maximum reduction of 75 percent of the total civil penalty amount;

(3) If compliance occurs from 12 months to 18 months of the compliance date; a maximum of 50 percent of the total civil penalty amount; and

(4) If compliance occurs more than 18 months after the compliance date, a maximum of 25 percent of the total civil penalty amount.

(i) The ~~Special Magistrate~~Board has the authority where there is a demonstrated showing of financial hardship or other good cause to reduce the civil penalty below the civil penalty reduction guidelines. The ~~Special Magistrate~~Board shall exercise this authority with great caution and only in documented and exceptional circumstances. A Violator alleging financial hardship has the burden of presenting evidence of inability to pay the civil penalty.

(j) If a civil penalty is reduced, the order of the ~~Special Magistrate~~Board shall provide that, if the Violator fails to pay the reduced civil penalty by the date ordered by the ~~Special Magistrate~~Board, then the original amount of the civil penalty shall be automatically reinstated. The ~~Special Magistrate~~Board may impose conditions on the granting of a request for reduction of the civil penalty and may allow additional hearings upon request if necessary to establish compliance with said conditions before an order reducing the civil penalty is entered.

(k) A certified copy of the order reducing the civil penalty shall not be recorded in the public records unless the terms of the order reducing the civil penalty are fully complied with and the order shall so provide.

(l) Upon receipt of timely payment in full of the amount of the reduced civil penalty, and the recording costs, the Village Manager, or designee, shall record a copy of the order reducing the civil penalty and a satisfaction of lien.

(m) A reduction of civil penalty may only be granted once as to any violation of an order of the ~~Special Magistrate~~Board.

Sec. 2-44. Appeals of ~~Special Magistrate~~Board's order.

(a) An aggrieved party, including the Village, may appeal a final order imposing fines or assessing continuing fines of ~~Special Magistrate~~the Board to the Circuit Court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the ~~Special Magistrate~~Board. An appeal shall be filed within 30 calendar days of the issuance of the order sought to be overturned. Failure to make such appeal within the prescribed 30-day period shall render the findings of the ~~Special Magistrate~~Board conclusive, binding and final.

(b) Unless the findings of the ~~Special Magistrate~~Board are overturned in a proceeding held pursuant to subsection (a) of this section, findings of the ~~Special Magistrate~~Board shall be admissible in any proceeding to collect unpaid penalties.

(c) No aggrieved party other than the Village may apply to the Court for relief unless such party has first exhausted the remedies provided for in this article and has taken all available steps provided in this article. It is the intention of the Village that all steps provided by this article shall be taken before any application is made to the Court for relief; and no application shall be made by any aggrieved party other than the Village to a court for relief except from an order imposing fines or assessing continuing fines issued by ~~a Special Magistrate~~the Board pursuant to this article. It is the intention of the Village that, notwithstanding anything in this article to the contrary, the Village shall retain all rights and remedies otherwise available to it to secure compliance with or prevent violations of the Code. For purposes of an appeal, the Village Clerk shall make available, for public inspection and copying, the record upon which each final order of a ~~Special Magistrate~~Board is based. The Village Clerk shall make a reasonable charge commensurate with the cost for the preparation of the official record on appeal and transmittal thereof to the Circuit Court and for making certified copies of any record or portion thereof.

Sec. 2-46. Additional Enforcement Powers.

In addition to the powers and authority given to the ~~Special Magistrates~~Board for the Village pursuant to this article, the Village may, in its discretion, exercise any powers given to municipalities or their ~~Special Magistrates~~Boards by F.S. ch. 162, as amended.

Section 2. Alternate Code Enforcement System. Pursuant to Section 162.03(2), Florida Statutes and the Village's home rule powers, the Village hereby revises Chapter 2 "Administration," Article III "Code Enforcement," as its alternate code enforcement system.

Section 3. 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 4. Inclusion in the Code. 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. Effective Date. This Ordinance shall be effective upon adoption on second reading.

PASSED AND ADOPTED on first reading this 22nd day of May, 2007.

PASSED AND ADOPTED on second reading this 5th day of June, 2007.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY