ORDINANCE NO. 2007-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA; AMENDING CHAPTER 26 OF THE VILLAGE CODE, "TRAFFIC AND VEHICLES", BY CREATING ARTICLE IV, "DANGEROUS INTERSECTION SAFETY", PROVIDING FOR RECORDED IMAGE MONITORING AND ENFORCEMENT OF RED LIGHT INFRACTIONS AND FOR RELATED PROCEDURES AND PROVISIONS; AMENDING CHAPTER 2 "ADMINISTRATION", ARTICLE III "CODE ENFORCEMENT", SECTION 2-42 "CIVIL PENALTIES AND RELATED TERMS CONSTRUED", TO FACILITATE USE OF CODE ENFORCEMENT MECHANISM FOR DANGEROUS INTERSECTION SAFETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the running of red lights causes a safety hazard affecting every citizen and traveler in the Village of Key Biscayne; and

WHEREAS, the Village of Key Biscayne wishes to reduce the running of red lights by creating an additional enforcement mechanism.

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

Section 1. Recitals Adopted. That the recitals set forth above are hereby adopted and confirmed.

Section 2. Dangerous Intersection Safety. That the Village Code of the Village of Key Biscayne is hereby amended by amending Chapter 26 "Traffic and Vehicles" by creating Article IV "Dangerous Intersection Safety", to read as follows:

Chapter 26 Traffic and Vehicles

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Article IV Dangerous Intersection Safety

Sec. 26-44. Intent.

The purpose of this article is to authorize the use of an unmanned cameras/monitoring system to promote compliance with red light signal directives as proscribed by this article, and to adopt a civil enforcement system for red light signal violations. This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a notice for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

Sec. 26-45. Use of Image Capture Technologies.

The Village shall utilize image capture technologies as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws. Nothing herein shall conflict with the primary jurisdiction of Miami-Dade County to install and maintain traffic signal devices. This article shall serve to enable the Village to provide enhanced enforcement and respect for authorized traffic signal devices. The Village may utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. Notices of infractions issued pursuant to this article shall be addressed using the Village's own Board of Special Magistrates and not through uniform traffic notices or county courts. This shall not bar the use of uniform traffic citations and the county courts when Village police personnel decide not to rely on this article as the enforcement mechanism for a specific violation.

Sec. 26-46. Definitions.

The following definitions shall apply to this article:

INTERSECTION. The area embraced within the prolongation or connection of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways of two roads which join or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

MOTOR VEHICLE. Any self-propelled vehicle not operated upon rails or guide way, but not including any bicycle or electric personal assisted mobility device.

OWNER/VEHICLE OWNER. The person or entity identified by the Florida Department of Motor Vehicles, or other state vehicle registration office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.

RECORDED IMAGES. Images recorded by a traffic control signal monitoring system/device:

(1) On:

(a) Two or more photographs;

(b) Two or more electronic images;

(c) Two or more digital images;

(d) Digital or video movies; or

(e) Any other medium that can display a violation; and

(2) Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

RED ZONE INFRACTION. A traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

BOARD OF SPECIAL MAGISTRATES. The Village's Code Enforcement Board of Special Magistrates as described in Article III of Chapter 2 of this Code.

TRAFFIC CONTROL INFRACTION REVIEW OFFICER. The Village employee designated, pursuant to Sec. 26-50 herein, to review recorded images and issue red zone infractions based upon those images.

TRAFFIC CONTROL SIGNAL. A device exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, using only the colors green, yellow, and red which indicate and apply to drivers of motor vehicles as provided in F.S. § 316.075.

TRAFFIC CONTROL SIGNAL MONITORING SYSTEM/DEVICE. An electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

Sec. 26-47. Adherence to Red Light Traffic Control Signals.

Motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the

intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

Sec. 26-48. Violation.

A violation of this article, known as a red zone infraction, shall occur when a vehicle does not comply with the requirements of Sec. 26-47. Violations shall be enforced pursuant to Sec. 26-50.

Sec. 26-49. Ninety Day notice; introductory period.

The Police Chief shall notify the Village Manager when the red light camera system is operating correctly at the initial location established. For the ninety days following said notification, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with routine traffic enforcement techniques, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation. Commencing ninety one days after the above referenced notification, the vehicle owner is subject to the enforcement provisions as provided herein and no warning shall be given pursuant to this Article.

Sec. 26-50. Review of Recorded Images.

(A) The owner of the vehicle which is observed by recorded images committing a red

zone infraction shall be issued a notice of violation (hereinafter also known as a "notice"). The recorded image shall be sufficient grounds to issue a notice.

(B) The Village's Chief of Police shall designate a Traffic Control Infraction Review Officer, who shall be a police officer of the Village or who shall meet the qualifications set forth in F.S. Section 316.640(5)(A), or any other relevant statute. The Traffic Control Infraction Review Officer shall review recorded images prior to the issuance of a notice to ensure the accuracy and integrity of the recorded images. Once the Traffic Control Infraction Review Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a notice shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

Sec. 26-51. Notice of Violation.

The notice shall be in the form as provided for in Sec. 2-39 of this code but shall also include:

(A) The name and address of the vehicle owner;

(B) The license plate number and registration number of the vehicle;

(C) The make, model, and year of the vehicle;

(D) Notice that the infraction charged is pursuant to this article;

(E) The location of the intersection where the infraction occurred;

(F) Notice that there are recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction;

(G) Images depicting the infraction;

(H) A signed statement by the Traffic Control Infraction Review Officer that, based on inspection of recorded images, the vehicle was involved in and was utilized to commit a red zone infraction.

Sec. 26-52. Vehicle Owner Responsibilities

(A) A vehicle owner receiving a notice may:

(1) Pay the assessed civil penalty pursuant to instructions on the notice; or

(2) Appear before the Board of Special Magistrates to contest the notice.

(B) The failure to pay the assessed civil penalty and failure to appear before the Board of Special Magistrates to contest the notice will be considered an admission of liability and in such case an order may be entered against the violator for an amount up to the maximum civil penalty, plus any administrative costs.

Sec. 26-53. Hearing before the Special Master.

(A) The Village's code enforcement Board of Special Magistrates is authorized to hold hearings related to the enforcement of this article. A hearing shall be scheduled for all notices for which the vehicle owner timely requests an administrative hearing.

(B) Upon receipt of the named violator's timely request for an administrative hearing, the Village shall schedule a hearing before the Board of Special Magistrates pursuant to section 2-41 of this Code. Notice of hearing shall be provided to the vehicle owner pursuant to the notice provisions contained in Article III of Chapter 2 of this Code.

(C) The hearing shall be held pursuant to the procedures set forth in Article III of Chapter 2 of this Code. The Traffic Control Infraction Review Officer may testify at the hearing. The vehicle owner may present testimony and evidence.

(D) Recorded images indicating a red zone infraction, verified by the Traffic Control Infraction Review Officer, are admissible in any proceeding before the Village's Board of Special Magistrates to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.

(E) Unless an affidavit is provided pursuant to 26-54, it is presumed the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone infraction.

Sec. 26-54. Vehicle Owner Affidavit of Non-Responsibility.

(A) In order for the vehicle owner to establish that the motor vehicle was, at the time of the red zone infraction: (1) in the care, custody, or control of another person without the consent of the registered owner or (2) was subject to a short term (less than six months) car rental agreement entered into between a car rental agency, which is licensed as required by applicable law and is authorized to conduct business in the State of Florida, and the operator of the vehicle, the vehicle owner is required, within 20 days from the date listed on the notice, to furnish to the Village, an affidavit setting forth the circumstances demonstrating either: (1) that the motor vehicle was not in the vehicle owner's care, custody, or control, and was not in the care, custody or control of another person with the vehicle owner's consent or (2) that the motor vehicle was subject to a short term

(less than six months) rental agreement between the car rental agency receiving the notice and the vehicle operator and provide a true and correct copy of the short term car rental agreement, as applicable. The affidavit must be executed in the presence of a notary, and include:

(1) If known to the vehicle owner, the name, address, and the driver's license number of the person who had care, custody, or control of the motor vehicle, without the vehicle owner's consent, at the time of the alleged red zone infraction; or

(2) The name, address and drivers license number of the person who rented the motor vehicle from the car rental agency which has received the notice, at the time of the alleged red zone infraction; or

(3) If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction; and

(4) The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

(B) Upon timely receipt of a sufficient affidavit pursuant to this section, any prosecution of the notice issued to the vehicle owner shall be terminated. Proceedings may be commenced by the Village against the responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures which are applicable to vehicle owners.

Sec. 26-55. Administrative Charges.

In addition to the penalty pursuant to Sec. 26-58 herein, administrative charges may be

assessed pursuant to Article III of Chapter 2 of this Code in the event of a hearing and/or the necessity to institute collection procedures arises.

Sec. 26-56. Collection of fines.

Collection of fines shall be accomplished pursuant to Article III of Chapter 2 of this Code.

Sec. 26-57. Exceptions.

This article shall not apply to red zone infractions involving vehicle collisions or to any authorized emergency vehicle responding to a bona fide emergency; nor shall a notice be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indication for the same event or incident.

Sec. 26-58. Penalty.

A violation of this article shall be deemed a non-criminal, non-moving violation for which a civil penalty, as proscribed in Article III of Chapter 2 of this Code, shall be assessed. As the violation relates to this article and not to the Florida statutes, no points as otherwise provided in F.S. § 322.27, shall be recorded on the driving record of the vehicle owner or responsible party.

Sec. 26-59. Enforcement.

This Ordinance may be enforced by any other means available to the Village.

Sec. 26-60. Signage.

The Village shall, to the extent practicable, at the primary motor vehicle entry points to the Village, cause to be erected and maintained signs, which substantially meet the design specifications indicated in Exhibit "A", providing notice of this article. Failure to erect, maintain or create these

signs shall not invalidate any enforcement of this article.

Section 3. Civil Penalties and Related Terms Construed amended. That the Village Code of the Village of Key Biscayne is hereby amended by amending Chapter 2 "Administration", Article III "Code Enforcement", Section 2-42 "Civil penalties and related terms construed", to read as follows: [1]

Sec. 2-42. Civil Penalties and Related Terms Construed.

(1) Unless otherwise provided in this Code, penalties for violations of the provisions to be enforced through this article shall be $250 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 $5,000 per violation.

(2) The civil penalty for a violation of the Dangerous Intersection Safety Act shall be $125 for a first offense; $250 for a second offense and $500 for each additional offense.

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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.

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[1] / Proposed additions to text of Village Code are indicated by underline; proposed deletions from text of Village Code are indicated by strikethrough.

Section 5. 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 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 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 4th day of September, 2007.

PASSED AND ADOPTED on second reading this 9th day of October, 2007.

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MAYOR ROBERT L. VERNON

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"

Signage shall use the following language written so that it may be readily observed from the adjacent roadways:

NOTICE OF TRAFFIC MONITORING

ALL PERSONS ARE HEREBY ADVISED THAT CERTAIN INTERSECTIONS WITHIN THE VILLAGE ARE SUBJECT TO RED LIGHT TRAFFIC SIGNAL ENFORCEMENT BY PHOTOGRAPHIC MEANS AND THAT NOTICES OF VIOLATION MAY BE ISSUED TO VEHICLE OWNERS AND/OR OPERATORS FOR THE VIOLATION OF TRAFFIC SIGNALS, PURSUANT TO THE VILLAGE'S CODE ENFORCEMENT SYSTEM.

KEY BISCAYNE POLICE DEPARTMENT