VILLAGE OF KEY BISCAYNE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Michael E. Kelly, *Vice Mayor*
Michael W. Davey
Enrique Garcia
Robert Gusman
Mayra P. Lindsay
James S. Taintor

Village Manager
John C. Gilbert

DATE: May 22, 2012

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Property Maintenance Standards

RECOMMENDATION

It is recommended that the Village Council approve the attached Ordinance which establishes minimum property maintenance standards in all areas of the Village with the exception of single family and two family districts; however standards for fences, pools, and spas in these areas are established due to public safety concerns.

BACKGROUND

When the Village Council discussed The L'Esplanade Shopping Center, staff was directed to prepare minimum maintenance standards for the Village with the exception of the single and two family districts. The approval of this Ordinance will provide staff with the ability to enforce minimum property standards relating to all aspects of a property from the grounds to the building.

The Ordinance also provides staff with the ability to enforce minimum property standards for fences, swimming pools, and spas for all districts. During the past several months, there have been several instances where we did not have an efficient way to deal with public safety issues with regard to those improvements.

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MISSION STATEMENT: "TO PROVIDE A SAFE, QUALITY COMMUNITY ENVIRONMENT FOR ALL ISLANDERS THROUGH RESPONSIBLE GOVERNMENT."
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ORDINANCE NO. 2012-____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, REPEALING CHAPTER 19 "PROPERTY MAINTENANCE" OF THE MIAMI-DADE COUNTY CODE, ADOPTED BY THE VILLAGE UPON INCORPORATION; AMENDING CHAPTER 6 "BUILDINGS AND BUILDING REGULATIONS" OF THE VILLAGE CODE OF ORDINANCES, BY CREATING ARTICLE II "PROPERTY MAINTENANCE"; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGULATIONS RELATING TO STRUCTURES AND LOTS WITHIN THE VILLAGE; AMENDING THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THIS ARTICLE; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council finds that there is a need to establish more stringent regulations regarding all structures and lots, including vacant structures and lots, within the Village of Key Biscayne ("Village") in order to supplement existing regulations; and

WHEREAS, these structures and properties, if left unsecured, unattended to, or otherwise allowed to fall into disrepair can constitute a significant danger to residents of, and visitors to, the Village; and

WHEREAS, the Village Council finds that such regulations, procedures, and penalties governing all structures and lots, will serve to protect the health, safety, and welfare of the citizens of the Village, as well as the aesthetics 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 repealing Chapter 19 "Property Maintenance" of the Miami-Dade County Code, adopted by the Village upon incorporation; by designating the existing sections in Chapter 6, Section 6-1 Building Moratorium, Section 6-2 Construction Debris, and Section 6-3 Building Permit Fees, as Article I; and by creating Chapter 6, Article II "Property Maintenance", to read as follows:

Article II "Property Maintenance"

Sec. 6-4. Applicability

This Article shall apply throughout the Village, except that the provisions of this Article relating to the maintenance of structures, other than fences, walls, pools, and spas, shall not apply in the IR Island Residential, PS Parkside Residential, VE Village Estate, and VR Village Residential districts.

Sec. 6-5. Definitions.

In construing the provisions of this Article, where the context will permit and no definition is provided herein, words and phrases used in this Article that are defined in other parts of the Code, including but not limited to the Florida Building Code, but are not defined in this Article, shall have those meanings when used in this Article. The following words and phrases when used in this Article shall have the following meanings:

Excessive Growth shall mean 1) the growth of vegetation, including, but not limited to, grass, weeds, bushes, hedges, undergrowth, or trees, that is detrimental to the public health, safety, and welfare 2) the growth of vegetation that generally detracts from the appearance of the neighborhood or 3) the growth of grass, weeds, or undergrowth that exceeds the height of 6 inches from the ground for more than 50% of the area to be maintained.

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Infestation shall mean the presence of any insects, rodents, vermin, or other pests.

Lot means any tract or parcel of land shown on a recorded plat or on the official zoning maps or described by a recorded deed or as defined in Section 30-11 of this Code.

Maintenance or corrective action shall mean the action required to comply with the provisions of this Article including, but not limited to maintaining, cleaning, clearing, mowing, cutting, trimming, watering, irrigating, painting, or repairing, a lot or structure, as applicable, and removing and legally disposing of all associated solid waste.

Public Right-of-way shall mean any public street, alley, swale, sidewalk, walkway, lane, path, public utility easement, or any other property for which the Village is the authority that has jurisdiction and control and to which the Village may grant access pursuant to applicable law. The term that shall include, but not be limited to, all proposed dedications of public rights-of-way set forth on official grading and drainage plans required to accompany approved and valid tentative plats, as well as all existing or dedicated rights-of-way. The term shall also have the meaning set forth in Section 30-11 of this Code.

Responsible Party means (1) any and all persons or entities with legal or equitable title to a lot or other real property; (2) any tenant or lessee of a lot; (3) the holder or owner of any mortgage upon real property who has recorded a lis pendens or filed an action to foreclose upon the mortgage or similar instrument that secures debt upon property, acquired real property through such an action or is an entity owned or controlled by such a holder or owner, until such time as the property is sold or transferred to a new owner, or the action described herein is dismissed; (4) the owner of personal property; or (5) the person or entity that possesses or disposes of any solid waste.

Sidewalk shall mean the paved portion of a street or public right-of-way between the curb line and the adjacent property line intended for the use of pedestrians.

Solid waste shall mean the accumulation of garbage, litter, junk, rubbish, trash, hazardous waste, construction and demolition debris, industrial waste, or other discarded materials, including material or containers from domestic, commercial or agricultural operations. The term shall include all combustible and noncombustible waste materials, except for compost piles. The term shall include residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings or other yard waste, tin cans, metal, mineral matter, glass and crockery. The term shall also include inoperable or discarded personal property, including, but not limited to, furniture, clothing, large and small appliances, printed material, vehicles, vessels, or any other items that give the appearance that the property is abandoned or is not being maintained.

Structure shall have the meaning set forth in the Florida Building Code and shall include, but not be limited to, every residential or commercial building, whether occupied or vacant, and every accessory structure, including, but not limited to, garages, carports, cabanas, swimming pools, hot tubs, decks, screen enclosures, storage buildings, fences, walls, signs, and any fixtures, including, but not limited to, awnings, railings, mailboxes, doors, and lamps.

Swale shall mean the non-paved area between the abutting property line or sidewalk abutting the property line and the street curb or edge of the paved road; any area within a

public right-of-way that does not meet the definition of a bike path, sidewalk, or roadway; or the area defined in Section 21-1 of the this Code. The term shall also include any area within a roadway that is not open to vehicular traffic.

Whenever the words "lot" and "structure" are used in this Article, they shall be construed as though they were followed by the words "or any part thereof." Any reference in this Article to the word "approved," shall have reference to those standards set out in the Florida Building Code, the rules of the State Board of Health, and any other law applicable to the lot or structure or the particular portion or system of the structure under inspection by the enforcing agency.

Sec. 6-6. Standards for maintenance and appearance of property generally.

(a) Every responsible party shall comply with the following:

(1) Every structure, foundation and exterior wall, fence, window, and roof, shall be structurally sound, maintained in good repair, kept clean, sanitary, weathertight, watertight, and free from infestation and solid waste. Roofs shall also be well drained of rainwater.

(2) All exterior areas of any structure, that show evidence of graffiti or similar markings, damage, rot, rust, or other deterioration shall be cleaned, repaired, removed or replaced and painted over with an exterior grade paint or other approved protective coating that matches the color of the exterior area, as applicable.

(3) Every exterior stairway, porch and appurtenance shall be structurally sound, maintained in good repair and kept clean. All floors, paving and sidewalks, shall be kept reasonably clean and free of stains, including, but not limited to, gum and mold.

(4) All exterior surfaces subject to deterioration shall be properly maintained and protected from the elements by paint or another approved protective coating applied in a workmanlike fashion.

(5) Every utility connection shall be free from defects or it shall be disconnected, removed or otherwise made safe.

(6) Every plumbing fixture, waterpipe, wastepipe, pipe, cable, wire and drain shall be free from defects, leaks, and obstructions, as applicable, and shall be attached to a structure in a neat and workmanlike fashion. All clamps, straps, fasteners and similar devices shall be free of rust and shall be securely fastened to both the structure and the object to be fastened. Any missing fasteners shall be replaced. For properties located in the L-1 Low Intensity Commercial and L-1 Low Intensity Office Zoning Districts, all exposed pipes, utility lines and cables located in parking garages must be screened from view.

(7) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas that do not comply with the requirements of the Village Code and other applicable law, or designee, may be secured by filling in with sand, by fencing or by using another approved method.

(8) Lots shall be kept free of excessive growth, solid waste, stagnant water, and the accumulation of newspapers, circulars, flyers, notices, and building materials, unless there is an active building permit for work that requires the use of the materials.

(9) Lots shall be kept free of the invasive exotic species listed in Section 30-235 of the Village Code and the responsible party shall remove any invasive exotic species.

(10) Domestic animals and pets shall not be kept on a lot in such a manner as to create odors, unsanitary conditions, or otherwise constitute a nuisance.

(b) Except for the removal of invasive exotic species, the requirements of this Article shall apply to the public rights-of-way abutting such properties including, but not limited to, alleys, sidewalks and swales. The responsible party shall maintain the abutting public right-of-way in such a manner to prevent and to correct any violations of this Article including, but not limited to, keeping the swale free of excessive growth, solid waste, stagnant water, and shall also keep the abutting public right-of-way free of any holes, obvious or hidden dangers, obstructions, depressions or other excavations. Moreover, the responsible party shall remove from the public right-of-way any mud, dirt, soil, clippings, or other debris resulting from any construction or landscaping work that is performed on a Lot or its abutting public right-of-way.

(c) The responsible party shall also maintain and repair any paved area or structures or improvements in the public right-of-way that were not placed there by the Village, such as, but not limited to, driveways and pavers. This section shall not be interpreted to legalize any structures or improvements placed in the public right-of-way without the express approval of the Village.

(d) Unless otherwise provide in this Code, responsible parties shall legally dispose of all solid waste in a container and shall not deposit, store, maintain or relocate such solid waste to the public right-of-way other than twenty-four (24) hours prior to an authorized scheduled pick up. Solid waste shall not be relocated to any lot other than a legal disposal site. All solid waste containers, including, but not limited to garbage cans and dumpsters, shall have a neat and orderly appearance.

Sec. 6-7. Failure to Comply

In addition to any other remedies available by law, the Village may issue a civil violation notice pursuant to Article III of Chapter 2 of this Code, which allows the responsible

party only seven (7) calendar days to perform maintenance or corrective action or to appeal.

Sec. 6-8. Corrective Action by the Village

Upon ten (10) days written notice served pursuant to Article III of Chapter 2 of this Code, the Village may, but it not required to, correct any violation of this Article at the expense of the owner of the real property or of the abutting real property in the case of a violation involving the public right-of-way. After causing the violation to be corrected, the Village shall certify the expense incurred, including but not limited to advertising, clearing, mowing, trimming, repairing, hauling, or disposing, together with an administrative fee of one hundred (100) dollars or ten (10%) percent of the total expenses, whichever is greater. The Village shall have a special assessment lien that it may record in the public records of Miami-Dade County. The lien shall accrue interest at the maximum legal rate form the date of the certification until paid. The Village may foreclose on such lien pursuant to Article III of Chapter 2 of this Code. Such lien shall have equal dignity with a tax lien.

Sec. 6-9. Inspection of structures and premises.

In order to protect the public health, safety, and welfare and to the extent permitted by law, the Village is authorized to conduct inspections and enter lots and structures to enforce this Article.

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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, except that responsible parties shall have 180 days from the effective date of this ordinance to remove any existing invasive exotic species referred to in Section 6-6(a)(9) adopted by this ordinance.

PASSED AND ADOPTED on first reading this ____this day of _____, 2012.
PASSED AND ADOPTED on second reading this ___this day of _____, 2012.

_____
Franklin H. Caplan, Mayor

Attest:

_____
Conchita H. Alvarez, CMC
Village Clerk

Approved As To Form And Legal Sufficiency:

By: _____
Village Attorney