



V I L L A G E O F K E Y B I S C A Y N E



Office of the Village Manager

Village Council
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DATE: May 8, 2012
TO: Honorable Mayor and Members of the Village Council
FROM: John C. Gilbert, Village Manager
RE: Unsafe Structures Ordinance

Village Manager
John C. Gilbert

RECOMMENDATION

It is recommended that the Village Council approve the attached Ordinance which expands the jurisdiction of the Board of Code Enforcement Special Magistrates to include prosecution of unsafe structure violations.

BACKGROUND

Miami-Dade County used to require all municipalities that sought to demolish a structure to go through the Miami-Dade County Unsafe Structures Board. Last year the County passed an Ordinance that allowed cities to adopt their own unsafe structures ordinances. The proposed Village Ordinance permits the Village to prosecute unsafe structures cases through the Village's Board of Code Enforcement Special Magistrates. This will save the Village a substantial amount of attorney's fees and staff time. The cases could also be heard much more promptly.

Similar to the County regulations, the Village Ordinance allows for the recovery of costs of demolition as an assessment lien on the property that is superior to all other interests except taxes. The administrative costs of prosecuting the case are also recoverable as a lien on the property. Unlike the County ordinance, the Village ordinance also allows the Village to impose code enforcement fines that would run until the violations are corrected.

ORDINANCE NO. _____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 6 "BUILDINGS AND BUILDING REGULATIONS," BY CREATING ARTICLE III "UNSAFE STRUCTURES," INCLUDING ENFORCEMENT PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Miami-Dade County, Florida adopted Miami-Dade County Ordinance No. 11-03 permitting municipalities to adopt their own ordinances establishing an administrative process to address unsafe structures within the municipal boundaries; and

WHEREAS, the Village Council desires to adopt its own ordinance to address unsafe structures within the Village.

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

Section 1. Recital Adopted. That the above-stated recitals are hereby adopted and confirmed.

Section 2. Code Amended. That Article III "Unsafe Structures" of Chapter 6 "Buildings and Building Regulations" of the Village Code is hereby created to read as follows:

ARTICLE II. UNSAFE STRUCTURES

Sec. 6-5. Definitions.

The following definitions shall apply exclusively to this article.

Administrative costs means the costs and expenses incurred by the Village in its prosecution of unsafe structures cases, including, but not limited to, any staff time, court reporter costs, and attorney's fees for the inspection, investigation, prosecution, testing, monitoring or correction of a violation of this article.

Chief Building Official means the Village Building Official as defined in the Florida Building Code.

Fire Official means the Village Fire Chief who is the Authority Having Jurisdiction as defined in the Florida Fire Prevention Code.

Owner means any person, agent, firm or corporation having a legal or equitable interest in the property.

Structure means anything that is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof." For the purposes of this article, each portion of a structure separated from other structures by a four-hour firewall shall be considered a separate structure. If a structure has been designated historic and is under Miami-Dade County's historic preservation jurisdiction, said structure may only be demolished in accordance with the procedures set forth in Chapter 16A of the Miami-Dade County Code.

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the pre-improvement market value of the structure on a per event basis, as determined by the office of the Property Appraiser of Miami-Dade County, or a Florida Licensed Appraiser, either: (1) before the improvement or repair is started, or (2), if the structure has been damaged and is being restored, before the damage occurred. The total cost does not include nonstructural interior finishing, including, but not limited to, finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAX grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters, or roof coverings, except when determining whether the structure has been substantially improved as a result of a single improvement or repair, or substantially damaged as a result of a single event. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the structure commences, whether or not that alteration affects the external dimension of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are necessary solely to assure safe living conditions or (2) any alteration of a structure designated as a historic landmark pursuant to Chapter 16A of the Miami-Dade County Code, provided that the alteration would not preclude the structure's continued designation as a historic landmark.

Sec. 6-6. Physical criteria for unsafe structures.

A structure shall be considered unsafe if one or more of the following criteria applies:

(a) The structure or its electrical, gas, mechanical, or plumbing system is unsafe; dangerous; unsanitary; does not provide adequate egress; constitutes a fire or windstorm hazard; is otherwise dangerous to human life; by reason of illegal or improper use,

occupancy or maintenance, constitutes a hazard to safety or health; or has been substantially damaged by the elements, fire, explosion, or otherwise.

(b) The structure constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

(c) The structure is not completed in substantial conformity with the plans and specifications upon which the building permit for construction was issued and 120 days or more have lapsed since the expiration, revocation, or cancellation of the building permit.

(d) The structure has been determined to be unsafe for entry or a hazard to fire or law enforcement officials by evidence of a report stating so.

(e) The structure has been boarded or secured with a material previously approved by the Chief Building Official and the boarding or other material has been breached without repair.

(f) The structure has been used to conduct criminal activity on more than two occasions within a six-month period, and such criminal activity was facilitated by the existence of one or more of the conditions enumerated in this section.

(g) The structure is occupied and its storm shutters have not been removed from all of the means of escape required by the Florida Fire Prevention Code after a hurricane watch or warning has expired.

(h) The structure is a swimming pool or spa that contains stagnant water or does not conform to Section 424.2.17 of the Florida Building Code.

(i) There is an accumulation of debris or other combustible material in the structure that creates a hazard of combustion or the condition of the structure creates a hazard with respect to the means of egress and fire protection.

(j) A structure shall be presumed to be unsafe if one or more of the following criteria applies:

(1) There is falling-away, hanging, or loose siding, blocks, bricks, or other building material.

(2) The structure or its structural parts are deteriorated.

(3) The structure is partially destroyed.

(4) There is an unusual sagging or leaning out of plumb or square of the structure and such effect is caused by deterioration or over-stressing.

(5) The electrical, gas, mechanical, or plumbing installations or systems create a hazardous condition contrary to the standards of the Florida Building Code and the National Electric Code.

(6) An unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems.

(7) The structure is occupied and there is no potable water service or no electric service.

(8) The construction of the structure, or the construction or installation of systems or components within the structure, has been commenced or completed without a permit or all of the required inspections or the permit has expired prior to the required final inspections and the issuance of a certificate of occupancy or certificate of completion.

(9) The structure is vacant and is in violation of Section 6-11 of this article.

(10) By reason of illegal or improper use, the occupancy or maintenance does not comply with the Florida Building Code or the Florida Fire Prevention Code.

(11) The structure or part thereof meets any of the physical criteria of an unsafe structure set forth above and has not been repaired and brought into compliance with the applicable codes following the expiration of a reasonable notice period.

Sec. 6-7. Grow Houses.

(a) A structure that has been identified by any law enforcement officer as being used to grow or manufacture controlled substances as defined by Chapter 893 of the Florida Statutes or any drugs, as defined in Chapter 499 of the Florida Statutes ("Grow House") shall be presumed to be unsafe if one or more of the following criteria applies:

(1) There is an open and obvious modification or addition to any of the structure's electrical wiring or electrical components, or there exists any exposed wires or exposed electrical components.

(2) There is an open and obvious modification or addition to any of the structure's plumbing, or any discharge of water or other effluent that is not into an ordinarily available drain.

(3) The structure's interior walls have been destroyed, moved, or modified in any way. This may be evidenced by marks on the ceiling or floor that are indicative of a wall having been moved or removed, holes or passages in a wall that are not ordinary, and may be unfinished in appearance. This list shall not be considered exhaustive such that any other evidence of walls being destroyed, moved or modified shall be proper.

(4) Any exterior window has been modified or covered in such a manner as to prevent, inhibit, or reduce egress or normal use for ventilation purposes. This shall not include curtains and other ordinary window coverings.

(b) Upon observation of any one of the above criteria, any law enforcement personnel may post a notice to vacate as provided in section 6-14 below.

(c) Entry to any structure posted with such a notice shall be prohibited except by an order issued by a court of competent jurisdiction, until such time as all necessary inspections listed in subsection (e) below have been completed.

(d) The Village Police Department shall promptly notify the Village Building, Zoning and Planning Department of any such notice and violations. Upon receiving such notification from the Police Department, the Building, Zoning and Planning Department shall immediately serve a notice of inspection of the unsafe structure stating that the Chief Building Official will conduct an inspection of the structure and may issue a notice of unsafe structure. The notice of inspection shall be served pursuant to Section 2-39 of this Code.

(e) All structures that meet any of the criteria from subsection (a) above and have been posted with the notice in subsection (b) above must pass the following inspections to the satisfaction of the Chief Building Official before the structure can be deemed safe for use:

- (1) An electrical inspection;
- (2) A plumbing inspection;
- (3) An inspection by a certified mold inspector; and
- (4) An inspection by a structural engineer.

Upon completion of the inspections described herein, an inspection report shall be filed with the Building, Zoning and Planning Department for approval. The Village shall prescribe the forms to be used for the inspection reports described herein and shall be authorized to charge a fee for reviewing the inspection reports. Each inspection report shall indicate whether there are any unsafe or hazardous conditions in the structure, whether all building code violations have been corrected, and whether the structure is safe for occupancy. No structure deemed unsafe pursuant to this section shall be occupied until the Chief Building Official has reviewed the results of the required inspections and determines that occupancy may be safely resumed and the property has passed final inspection on all permits required to bring the structure back into compliance with the Building Code. Nothing herein shall relieve the owner from the requirement to obtain permits for any repairs required by this section.

Sec. 6-8. Inspections and criteria for demolition; emergency action; infestation.

(a) The Chief Building Official, the Fire Official, or their designees are authorized to conduct such inspections and take such action as may be required to enforce the provisions of this article, including, but not limited to, vacating, boarding, securing, repairing, or demolishing a structure.

(b) If the cost of repairing, restoring, or replacing any structure shall exceed 50 percent of its value, the Chief Building Official shall order the demolition of said structure and shall not issue a building permit for the repair of said structure. For the purposes of this article, the cost of repairing, restoring, or replacing a structure shall be determined according to the method for determining what constitutes a substantial improvement.

(c) If the cost of repairing, restoring or replacing any structure shall be equal to or less than 50 percent of its value, the Chief Building Official shall order the demolition of said structure, unless the owner or other interested party applies for the required building permit for repair, restoration, or replacement of the structure within 30 days and obtains the permit and passes final inspection on the repair, restoration, or replacement work within a reasonable period.

(d) If the structure has been vacated, boarded, or secured for a period of six months or more and the owner or other interested party has not applied for permits to make the structure occupiable and criminal activity has occurred on the property on more than two occasions, the Chief Building Official shall order the demolition of the structure and shall not issue a building permit for the repair of said structure.

(e) If the owner or other interested party fails to comply with a notice to vacate, board, secure, repair, or demolish, the Chief Building Official may cause the unsafe condition to be abated and shall recover all costs of doing so as provided in this article.

(f) Prior to demolition, all structures shall be free of infestation from insects and rodents. If the property is infested, the owner or other interested party shall hire a licensed exterminator to provide the appropriate treatment to eliminate the infestation and shall provide documentation to the Chief Building Official that this requirement has been met prior to demolition. The Village may provide for said treatment and shall recover all costs of doing so as provided in this article.

Sec. 6-9. Requirements not covered by code.

The Chief Building Official or Fire Official, as appropriate, may impose requirements that are not specifically provided for in the applicable code, but that are necessary for the strength or stability of an existing or proposed structure or for the health or safety of the occupants of the structure.

Sec. 6-10. Abatement required.

All unsafe structures or systems are declared illegal and shall be abated by repair and rehabilitation or demolition. The owner shall obtain a permit to demolish the structure or, where specifically allowed by this section, to bring the structure into compliance with the applicable codes.

Sec. 6-11. Vacant structures.

Vacant structures shall be secure at all times. The owner of any vacant structure found unguarded and open shall secure the doors, windows, and any other openings of the vacant structure. Structures may be secured using concrete blocks, storm shutters, or other materials of the same durability, as determined by the Village. Structures must be secured using construction methods that are in keeping with good workmanship and appearance, and are otherwise in compliance with the Florida Building Code. In no event shall a vacant structure remain secured by the use of concrete blocks, storm shutters, or similar materials for a period exceeding 180 days. Prior to the expiration of the 180-day period, the construction or repair of the vacant structure must be completed and the structure must pass final inspection on all required development approvals or the structure shall be demolished. Vacant structures that are ordered secured shall not be used or occupied until the Village authorizes it in writing.

Sec. 6-12. Notices, hearings, and appeals.

(a) Except as provided in section 6-8 relating to emergencies, the Chief Building Official shall prepare and issue a notice of unsafe structure directed to the owner of record and all other interested parties. The notice shall be served pursuant to Section 2-39 of this Code. The notice shall contain, but is not limited to, the following information:

(1) The street address and legal description of the property where the structure is located and a brief description of the structure.

(2) A statement indicating the structure has been declared unsafe by the Chief Building Official, and a detailed report documenting the conditions determined to have rendered the structure unsafe under the provisions of this article.

(3) A statement advising that, if the required action is not completed by the time specified, the Chief Building Official may order that the structure be vacated, boarded, secured, and posted to prevent further occupancy until the work is completed; and that the Chief Building Official may cause the work to be done and shall recover the costs incurred against the property and the owner of record.

(4) A statement that the owner or interested party may appeal the decision of the Village to the Village's Code Enforcement Board of Special Magistrates within 20 days of the date of the notice. A hearing on said appeal shall be conducted pursuant to section 2-41 of this Code.

(5) A statement that, if the owner or other interested party does not appeal the decision of the Village, the Code Enforcement Board of Special Magistrates may enter an order of demolition and assess all costs of the proceedings and of demolition for which the Village shall have a lien against the owner and the property.

(6) The order of the Code Enforcement Board of Special Magistrates may be appealed pursuant to Section 2-44 of this Code.

Sec. 6-13. Emergency action.

When, in the opinion of the Chief Building Official or Fire Official, there is an actual or immediate danger of the failure or collapse of a structure, or there is a health, windstorm or fire hazard, the Chief Building Official or Fire Official may order the occupants to vacate, temporarily close for use or occupancy the rights-of-way thereto, sidewalks, streets or adjacent structures or nearby area and institute such other temporary safeguards, including securing the structure, as they may deem it necessary under the circumstances, and may employ the necessary labor and materials, including private contractors, to perform the required work as expeditiously as possible. In such event, the operation of the notice and hearing requirements of this article shall be suspended as reasonably necessary in the opinion of the Chief Building Official or Fire Official to redress the emergency situation. The costs incurred in the performance of such emergency work may be paid by the Village and the Village shall have a lien against the property for such costs as provided in Section 6-15 of this Code.

Sec. 6-14. Posting of notice to vacate.

(a) Every notice to vacate shall be posted by the Chief Building Official or Fire Official at each exit and entrance to the structure and shall state:

UNSAFE STRUCTURE: This structure is declared unsafe by the Chief Building Official for the Village of Key Biscayne. THIS STRUCTURE SHALL BE VACATED AND SHALL NOT BE OCCUPIED. The owner must contact the Village of Key Biscayne Building, Zoning and Planning Department immediately. THIS NOTICE SHALL NOT BE REMOVED EXCEPT BY THE CHIEF BUILDING OFFICIAL. DATE POSTED:(insert date posted).

(b) Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm, or corporation or their agents to remove such notice without written permission of the Chief Building Official, or for any person to enter the structure except for the purpose of making the required repairs or demolishing the structure.

Sec. 6-15. Village to recover costs.

All administrative costs and costs of corrective action incurred by the Village in enforcing this article shall be promptly paid by the owner or interested party and the Village shall have a lien for such costs on the property where the unsafe structure is or was located and on any real and personal property of the respondent in an unsafe structures case. The Code Enforcement Board of Special Magistrates may award all administrative costs and costs of repair in its order or the Village may record an affidavit setting forth its costs and may foreclose on any unpaid liens. The Village may sell as salvage or require the demolition contractor to dispose of the contents of the structure demolished. The Village's lien for the costs of repair or demolition shall have equal dignity with a lien for taxes. The lien for administrative costs shall be equal in dignity to a lien for civil penalties and administrative costs under Chapter 2, Article III of this code.

The Village shall record the affidavit of costs or the order of the Code Enforcement Board of Special Magistrates in order to have the lien provided for in this section.

Sec. 6-16. Provisions supplemental and exhaustion of administrative remedies.

The Village may enforce this article by any other lawful means, including, but not limited to, Chapter 2, Article III of this Code. The enforcement procedures of this article are supplemental to all others and shall not be deemed prerequisites to filing a suit for the enforcement of any section of the code. A property owner or other interested party must have exhausted the administrative remedies provided for in this article prior to filing any action in court.

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 the Code. That it is the intention of the Village Council, and it is hereby ordained that 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 intention; 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 ____ day of _____, 2012.

PASSED AND ADOPTED on second reading 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