



# 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

DATE: November 20, 2012  
TO: Honorable Mayor and Members of the Village Council  
FROM: John C. Gilbert, Village Manager  
RE: Property Maintenance Standards

*Village Manager*  
John C. Gilbert

### RECOMMENDATION

It is recommended that the Village Council approve the attached Ordinance on second reading which establishes minimum property maintenance standards in all areas of the Village.

### 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 including buildings in single and two family districts.

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.

The Ordinance was approved at first reading on May 8, 2012 with several changes. The revised Ordinance was reviewed by the Council on August 28, 2012 which resulted in additional comments that have been incorporated into the attached Ordinance. Second reading was set at that meeting for November 20, 2012.

ORDINANCE NO. 2012-\_\_\_\_

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, ~~REPEALING~~AMENDING THE CHAPTER ~~19~~ENTITLED ~~“PROPERTY MAINTENANCE”~~ “RESPONSIBLE PROPERTY OWNER AND MERCHANT ACT” OF THE MIAMI-DADE COUNTY CODE, ADOPTED BY THE VILLAGE UPON INCORPORATION; FROM THE MIAMI-DADE COUNTY CODE; AMENDING CHAPTER 6 “BUILDINGS AND BUILDING REGULATIONS” OF THE VILLAGE CODE OF ORDINANCES, BY CREATING ARTICLE II “ADDITIONAL PROPERTY MAINTENANCE” STANDARDS THROUGHOUT THE VILLAGE; PROVIDING FOR DEFINITIONS; PROVIDING FOR MAINTENANCE REGULATIONS RELATING TO STRUCTURES AND LOTS WITHIN THE VILLAGE; PROVIDING FOR MAINTENANCE REGULATIONS RELATING TO THE APPEARANCE OF PROPERTY UPON WHICH CONSTRUCTION OR DEMOLITION IS BEING PERFORMED; 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 the maintenance of~~ 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/residents~~ 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 BISCAWAYNE, FLORIDA, AS FOLLOWS:

**Section 1. Recitals Adopted.** ~~That e~~Each of the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended.** ~~That t~~The Village Code of the Village of Key Biscayne, Florida, ~~along with is hereby amended by repealing amended~~ the Chapter ~~4~~ ~~entitled~~ "Property Maintenance Responsible Property Owner and Merchant Act" ~~of the Miami-Dade County Code,~~ adopted by the Village upon incorporation ~~from the Miami-Dade County Code is~~ hereby amended; by ~~designating~~ ~~creating~~ the ~~existing~~ ~~additional~~ sections in Chapter 6 of the Village Code, ~~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 regarding "Property Maintenance",~~ Standards, to read as follows:

~~Article II "Property Maintenance"~~

**Sec. 6-45. Applicability**

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

**Sec. 6-56. Definitions.**

In construing the provisions of ~~this Article~~ the succeeding sections, where the context will permit and no definition is provided herein, words and phrases used in this ~~Article~~ Chapter 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~~ Chapter, shall have those meanings when used in this ~~Article~~ Chapter. The following words and phrases when used in this ~~Article~~ Chapter shall have the following meanings:

*Accessory structure* means a nonhabitable garage, or other Building or Structure on a lot or parcel subordinate to and not forming an integral part of the main or principal Building but pertaining to the use of the main Building.

*Excessive Growth* shall mean 1) the growth of vegetation, including, but not limited to, grass, weeds, bushes, hedges, undergrowth, ~~or trees, or roots,~~ that is detrimental to the public health, safety, and welfare ~~by causing an infestation of rodents, the breeding of mosquitoes, or vermin by creating a public nuisance, obstacle or dangerous condition in the public way;~~ 2) the growth of vegetation that generally detracts from the appearance of the neighborhood ~~for lack of landscape maintenance;~~ 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, ~~including, but not limited to packaging materials.~~

*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 a parcel or tract of land designated and identified as a single Unit of area in a Subdivision Plat officially recorded in the public records of Dade County, Florida. This definition includes the terms site, platted Lot, Plot, tract or parcel and land described by metes and bounds.

*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 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 or other real property; (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 any owner of personal property; (5) any holder of a utility easement, or (56) the person or entity that possesses or disposes of any solid waste; the current owner of the property in addition to any other party who has possession of the property or any contractor working for the owner or person in possession of the property or any successor owners, agents, or parties in possession of the property.~~

*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 botanical~~ 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~~ mean anything ~~constructed or erected, which requires location on the ground or attached to something having a location on the ground 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, gazebos, 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. 6-67. 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. Fences shall be maintained in good repair.

(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/mold and stains~~. debris and garbage.

(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~~ defects and shall be properly maintained, or it shall be disconnected, removed or otherwise made safe.

(6) Every plumbing fixture, waterpipe, wastepipe, ~~sewer pipe, septic tank~~, 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~~ All exposed pipes, utility lines and cables located in parking garages and common areas must be screened from view.

(7) ~~Pools~~ Swimming pools and spas shall be maintained so the water remains free and clear of algae, insects, fish, amphibians, 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~~ draining, covering, by fencing, or by using another ~~approved method~~ approved by the Village.

(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 dead trees. The responsible party shall remove any dead trees. Any tree that is removed must be replaced with a tree with the same number of inches of caliper diameter or trees that cumulatively provide the same number of inches of caliper diameter. All replacement trees must be on the same site that the dead tree was removed. Removal and replacement of trees shall be approved by the Building, Zoning, and Planning Director

~~(9)~~ 10) 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. Any waste created by domestic animals or pets shall be removed from the lot and discarded.

(b) Except for the removal of invasive exotic species, the requirements of this ~~Article~~ Chapter shall apply to utility easements and the public rights-of-way abutting such properties including, but not limited to, alleys, sidewalks and swales. The responsible party shall maintain utility easements and the abutting public right-of-way in such a manner to prevent and to correct any violations of this ~~Article~~ Chapter including, but not limited to, keeping the utility easements or 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.

(e) Any condition caused or permitted to exist in violation of any of the Provisions of this Chapter shall be deemed a public nuisance and shall be subject to abatement by the Village.

**Sec. 6-8. Standards for maintenance and appearance of property upon which construction or demolition is being performed.**

(a) Public notice. After construction permits have been issued for any construction or demolition of a structure on a single family lot, the Contractor hired by the Responsible Party shall post a "Public Notice" on the property advising the public of the date upon which construction or demolition will begin.

(b) Property lines. Permits issued for construction of a wall, fence or other structure along a common, shared property line do not in any manner authorize any Responsible Party or person hired by any Responsible Party to encroach upon, trespass or otherwise enter upon the adjacent property to accomplish work.

(c) Perimeter fence. All lots on which a new single family home is to be constructed are required to be secured on all sides with a six foot chain link fence with windscreens. Such fence shall remain in place until the drywall, windows and doors have been constructed. However, in no instance shall the swimming pool be left unsecured. The perimeter fence may be temporarily opened and/or removed as necessary for construction purposes.

(d) Removal of construction materials or debris. Under no circumstances shall any construction materials or debris be allowed to be placed in the public right-of-way. Any construction materials or debris shall be removed, even if it inadvertently lands within the public right-of-way due to weather conditions. The public right-of-way in front of the construction site and the immediately adjacent lots shall be kept clean and free of construction materials or debris.

(e) Maintenance of the roadway and public rights-of-way. The roadway and all public rights-of-way in front of a construction site shall be kept clean from dirt and construction dust. During dry time periods, the roadway and public rights-of-way shall be watered down to remove dust and dirt which are the result of construction. If any swale is damaged during the course of construction, the responsible party shall repair the damaged swale.

(f) Other conditions. Any Contractor hired by a Responsible Party is required to act in conformity with any other reasonable conditions imposed by Village issued building permits, regarding the standards for maintenance and appearance of any lot upon which construction and/or demolition is being performed.

#### **Sec. 6-79. 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)~~ten calendar days to perform maintenance or corrective action or to appeal. ~~To the extent the maintenance or corrective action cannot reasonably be completed within this time frame, the Village may grant additional time to comply.~~

#### **Sec. 6-810. Corrective Action by the Village**

Upon ~~ten (10)~~ten 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. ~~To the extent the maintenance or corrective action cannot reasonably be completed within this time frame, then the Village may grant additional time to comply.~~ 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. 6-911. 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