



VILLAGE OF KEY BISCAINE

Office of the Village Manager

MEMORANDUM

Village Council
Franklin H. Caplan, *Mayor*
Mayra P. Lindsay, *Vice Mayor*
Michael W. Davey
Theodore J. Holloway
Michael E. Kelly
Ed London
James S. Taintor

Village Manager
John C. Gilbert

DATE: March 5th, 2013

TO: Honorable Mayor and Members of the Village Council

FROM: John C. Gilbert, Village Manager

RE: Key Biscayne Cat Community- Trap-Neuter-Return (TNR) Program

RECOMMENDATION

It is recommended that the Village Council authorize the Village Manager to return to Council with a Resolution to implement a feral (community) cat Trap-Neuter-Return (TNR) Program within the Village and to consider an anti-littering Ordinance similar to the City of Miami Beach anti-littering Ordinance, attached as "Exhibit A", which will aide in the success of the TNR program.

BACKGROUND

At the October 9th, 2012 Council Meeting, the Village Council was presented with an Ordinance, see attached "Exhibit B", regarding the feeding of ownerless or stray (community) cats in the Village. A motion was made to continue the hearing on November 20th, 2012. Although, the Ordinance was not brought back to Council on that date, in the meantime, the Village Manager has met with Dr. Adair Bush a Key Biscayne veterinarian, as a representative of the Village residents concerned about our cat community, and who are interested in resolving issues relating to the community cats. Dr. Bush, after several meetings and extensive research with other Key Biscayne veterinarians and residents, the Key Biscayne Community Foundation, The Cat Network and the City of Miami Beach Community Resource & Outreach Team, the following proposal for a TNR program for the Village is being presented.

A representative, Mr. Larry Wasserscheid, from the interest group, as well as Ms. Lynne Bernstein, from the Miami Beach Community Resource & Outreach Team, will be conducting a short presentation to Council with the details as to the benefits and the estimated cost to the Village for implementation of the TNR program and the purpose for adopting an anti-littering Ordinance.

Exhibit A

Sec. 46-92. - Litter; definitions; prohibitions on litter; penalties for litter and commercial handbill violations; commercial handbill regulations, fines, and rebuttable presumptions; seizure and removal of litter by the city; enforcement; appeals; liens.

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.
 - (2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.
 - (3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.
 - (4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.
 - (5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, styrofoam or plastic products, or other waste, including, but not limited to, tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.
 - (6) *One day* means a 24-hour period from noon to noon.
 - (7) *Person, benefactor, or owner* include, within their respective meanings, either an individual or an entity.
- (b) *Litter prohibited.* It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, sidewalk cafe areas, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, including, but not limited to, sidewalk cafe furniture and fixtures, unless prior consent of the owner has been given and

unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

- (c) *Prohibitions on beaches.* It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container. In addition, it shall be unlawful for any person to carry any styrofoam product onto any beach within the city or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.
- (d) *Prohibitions on causing litter in sewers and on public and private property.* It shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, or discarded into any of the gutters, drains, sewers, or public rights-of-way within the city, or upon any adjacent public or private real or personal property, any garbage, litter, paper, handbill, trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances.
- (e) *Garbage container requirements for restaurants.* All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.
- (f) *Penalties for violations.* The following civil fines shall be imposed for violations of this section except as provided in subsection (h) below:
- (1) First offense: \$50.00 fine.
 - (2) Second offense: \$100.00 fine.
 - (3) Third or subsequent offense: \$500.00 fine.

In lieu of a fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each \$5.00 of an imposed fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.

- (g) *Prohibitions on commercial handbill distribution.*
- (1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- a. *Art deco historic district* means that area within the boundaries of the National Register Historic District (the Miami Beach Architectural District) as set forth in appendix A.
 - b. *High impact periods* mean those periods of time as annually designated by the city manager during which one or more of the following occur:
 - (i) There is a designated major event period;
 - (ii) A maintenance of traffic plan is required (e.g., including, but not limited to, street closures, lane closures, shuttle service);
 - (iii) Hotel occupancy levels are anticipated to be greater than 75 percent;
 - (iv) Mutual aid or other assistance from outside agencies is required to provide for the safety and well-being of residents and visitors to the destination; and
 - (v)

An event on public property is anticipated to result in more than 25,000 visitors to the destination.

- c. *Right-of-way* means and includes, but is not limited to, any state, county, or city owned public street, sidewalk, street corner, curb, bicycle path, or pedestrian walkway.
 - (2) *Art deco historic district during high impact periods*. Commercial handbills shall not be distributed in the art deco historic district during high impact periods on Ocean Drive from 6th through 15th Streets, Washington Avenue from 6th through 17th Streets, Collins Avenue from 6th through 17th Streets, and on any portion of Lincoln Road.
 - (3) *Sidewalk cafes*. Commercial handbills shall not be distributed on the right-of-way:
 - a. Within 20 feet in any direction from the outside perimeter of any approved sidewalk cafe (as indicated in the approved site plan attached to the city-issued permit); and
 - b. On any right-of-way within the approved sidewalk cafe.
 - (4) *Beaches*. Commercial handbills shall not be distributed on any city beach east of the dunes.
- (h) *Penalties for commercial handbill violations*. If a violation resulted from the throwing, discarding, placing, or depositing, or causing to be thrown, discarded, placed, or deposited, of commercial handbills as litter in violation of subsection (b), or resulted from a violation of subsection (g), then the following civil fines shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine of \$50.00 provided in subsection (f)(1).
- (1) If the offense is the first offense, \$100.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
 - (2) If the offense is the second offense within the preceding 12 months, \$500.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
 - (3) If the offense is the third or subsequent offense within the preceding 12 months, \$1,500.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
 - (4) Notwithstanding subsections (h)(1)—(3), no person or benefactor shall receive more than one offense within any one-day period, however, the \$50.00 per handbill fine shall apply to all littered handbills found during that one-day period for a violation of subsection (b).
- (i) *Commercial handbill presumption*. At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special master shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.
- (j) *Securing of commercial handbill litter by the city*. If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special master, all commercial handbills in the possession of the violator.
- (k) *Removal of litter by the city*. The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.
- (l)

Enforcement by code compliance officers; notice of violation. If a code compliance officer finds a violation of this article, such code compliance officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.

- (m) *Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.*
- (1) A violator who has been served with a notice of violation shall elect either to:
 - a. Pay the civil fine in the manner indicated on the notice; or
 - b. Request an administrative hearing before a special master appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation.
 - (2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 102-384 and 102-385 of the City Code.
 - (3) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.
 - (4) Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.
- (n) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*
- (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
 - (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.
- (o) *Planning board authority.* Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.
- (p) *Injunctive relief.* As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

(Code 1964, § 3-7; Ord. No. 94-2913, § 1(3-7), 3-16-94; Ord. No. 2007-3560, § 1, 6-6-07; Ord. No. 2009-3644, § 1, 7-15-09; Ord. No. 2010-3708, § 1, 11-17-10; Ord. No. 2012-3759, § 1, 4-11-12)

Cross reference— *Public property, ch. 82; beaches generally, § 82-436 et seq.*

Exhibit B

ORDINANCE NO. 2012 -

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CREATING SECTION 8-202 "FEEDING OF OWNERLESS OR STRAY CATS" OF THE VILLAGE CODE OF ORDINANCES; PROHIBITING THE OUTDOOR FEEDING OF STRAY OR OWNERLESS CATS SO AS TO CAUSE THEM TO CONGREGATE IN NUMBERS ON OR NEAR A GIVEN PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village") has recently experienced a large number of ownerless or stray cats within the Village; and

WHEREAS, the Village Council finds that the feeding and congregation of ownerless or stray cats within the Village is a public nuisance and public health hazard; and

WHEREAS, as such, the Village Council desires to prohibit the feeding of ownerless or stray cats so as to cause them to congregate in numbers on or near a given property; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the health, safety, and welfare of the residents of the Village.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals. That the preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

¹ Coding: underlined words are additions to existing text, struck through words are deletions from existing text, shaded text reflects changes made from First Reading.

Section 2. Creating Section 8-202 of the Village Code. That the Code of Key Biscayne, Florida, is hereby amended by adding a section to be numbered 8-202, which section reads as follows:

Sec. 8-202. – Feeding of ownerless or stray cats.

The outdoor feeding of stray or ownerless cats, so as to cause them to congregate in numbers on or near a given property, is prohibited as a public nuisance and public health hazard.

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. Conflicts. That all ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

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

PASSED on first reading this ____ day of _____, 2012.

PASSED AND ADOPTED on second reading this ____ day of _____,
2012.

MAYOR FRANKLIN CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY