

ORDINANCE NO. 2013 -

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 30 "ZONING AND LAND DEVELOPMENT REGULATIONS" BY AMENDING ARTICLE IX "LANDSCAPE REGULATIONS," SECTION 30-235, RELATING TO TREE REMOVAL PERMIT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, the Village of Key Biscayne (the "Village") is authorized to protect the public health, safety and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the Village currently has regulations relating to tree plantings and the removal, relocation and replacement of trees within the Village; and

WHEREAS, in addition to the Village's tree regulations, property owners are also required to comply within Chapter 24, Article IV, Division II of the Miami-Dade County Code of Ordinances relating to trees and removal; and

WHEREAS, the Village Council finds it necessary to periodically necessary amend its Code of Ordinances ("Code") in order to update regulations and procedures to implement planning goals and objectives; and

WHEREAS, the Village Council recognizes that current regulations do not adequately address various circumstances under which trees might be removed from private properties or provisions for replacement of trees that are removed; and

WHEREAS, for the foregoing reasons, the Village Council desires to amend relevant standards and criteria within the Code relating to the removal of trees on private properties and their replacement; and

WHEREAS, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

WHEREAS, the Village Council finds that the changes within this Ordinance meet the applicable review criteria set forth in Section 30-71(b) of the Code; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest 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. The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. **Section 30-235 of the Village Code Amended.** That Section 30-235 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-235. Tree removal permit.

(a) *Tree removal permit required.* No Person shall cut down, destroy, remove, relocate, destructively damage or cause to be cut down, destroyed, removed, relocated or destructively damaged any tree without first obtaining a permit from the ~~Miami-Dade County Department of Resource Management (DERM) and the Village.~~ The issuance of a tree removal permit from the Village shall require proof that a permit has been obtained from the Miami-Dade County Department of Resource Management, if such permit is required by Division 2 “Tree Preservation and Protection” of Chapter 24 of the Miami-Dade County Code of Ordinances, as may be amended from time to time.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text. **Highlighted** words are changes made between First and Second Reading.

~~(1) Schinus terebinthifolius (Brazilian Pepper/Florida Holly)~~

~~(2) Metopium toxiferum (Poison Wood)~~

~~(3) Casurina equisetifolia (Australian Pine)~~

~~(4) Melaleuca Quinquenervia (Melaleuca)~~

~~(5) Araucaria Heterophylla (Excelsa, Northfolk Island Pine)~~

~~(6) Brassia Actinophylla (Schefflera)~~

(b) *Permit Fee.* The Village Council shall establish a fee for tree removal permits. However, no fee shall be charged for a permit to remove the following: ~~a tree listed in subsection (a) above.~~

(1) Schinus terebinthifolius (Brazilian Pepper/Florida Holly)

(2) Metopium toxiferum (Poison Wood)

(3) Casurina equisetifolia (Australian Pine)

(4) Melaleuca Quinquenervia (Melaleuca)

(5) Araucaria Heterophylla (Excelsa, Norfolk Island Pine)

(6) Brassia Actinophylla (Schefflera)

(7) Bischofia javanica (bishopwood).

(8) Ricinus communis (castorbean).

(9) Psidium guajava (guava).

(10) Albizia lebbek (woman's tongue).

(11) Acacia auriculaeformis (earleaf acacia).

(12) Adenantha pavonina (red sandalwood).

(13) Cupaniopsis anacardioides (carrotwood).

(14) Dalbergia sissoo (Indian dalbergia, sissoo).

(15) Ficus microcarpa (=R. nitida; =F. retusa varnitida) (laurel fig).

(16) Flacourtia indica (governor's plum).

(17) Hibiscus tiliaceus (mahoe).

(18) Leucaena leucocephala (lead tree).

(19) Mimosa pigra (catclaw mimosa).

(20) Thespesia populnea (seaside mahoe).

(21) A dead or fatally diseased tree, which meets the requirements of subsection (d)(7) below.

(22) A tree that has a chronic pest infestation or other persistent harmful condition, which meets the requirements in subsection (d)(8) below.

(23) A tree causing substantial damage to hardscape features or structures, which meets the requirements in subsection (d) (9) below.

(c) *Application.* The Tree Removal Permit Application shall contain the following information:

(1) Location of the tree to be removed.

(2) A survey of the property showing the Buildings, Easements, utility services.

~~(3) The Building, Zoning and Planning Director may waive the above requirements where it can be determined that the information can be obtained in the Village records or through a site visit. If the permit request is supported by the criteria of subsections (d) (7), (d) (8) or (d) (9) of this Section, the required statement of a professional holding an International Society of Arboriculture Arborist Certification.~~

(4) The Building, Zoning and Planning Director may waive the requirements of subsections (c)(1) and (c)(2) above, upon a determination that the required information can be obtained in the Village records or through a site visit.

(d) *Tree removal evaluation criteria.* No tree may be removed unless one of the following conditions exists, as determined by the Building, Zoning, and Planning Director, ~~exists~~:

(1) A Site Plan is submitted by the applicant that demonstrates a proposed Structure can be situated on the property only if specifically identified ~~specific~~ tree(s) are removed or relocated.

(2) The tree(s) is (are) located in such proximity to existing or proposed Structures that the utility or structural integrity of such Structures is or will be materially impaired.

(3) The tree materially interferes with the location, servicing, or functioning of Public Utility lines or service, and such interference cannot be mitigated by trimming or pruning.

(4) The tree obstructs views of oncoming traffic or otherwise creates a substantial traffic hazard, and such obstruction or hazard cannot be mitigated by trimming or pruning.

(5) Any law or Regulation that requires such removal.

(6) The tree is one listed in Section 30-235(b)(1)-(20).

(7) A statement is submitted by a professional holding an International Society of Arboriculture Arborist Certification demonstrating that the tree is: (a) dead; (b) fatally diseased; or (c) suffering from a chronic irreversible disease.

(8) A statement is submitted by a professional holding an International Society of Arboriculture Arborist Certification, demonstrating that the tree is affected by a pest infestation affecting the owner's reasonable use and enjoyment of the property for which there is no scientifically recognized treatment to control the infestation, or alternatively, if there is such a recognized treatment, that such the recognized treatments have been applied as recommended and have been ineffectual in controlling the infestation.

(9) For single or two family residential properties, a statement is submitted by a professional holding an International Society of Arboriculture Arborist Certification, demonstrating that the tree's root system has caused material damage to impervious exterior hardscape elements or structures (excluding elements constructed using movable sand-set pavers) and that the owner has unsuccessfully exhausted all available and approved methods to resolve the condition causing such

damage, including but not limited to, root pruning or installation of root barriers, and that there is no practical alternative to rectify or mitigate the damage except for removal of the subject tree.

(10) A tree removal permit application may pertain only to a tree located on the applicant's own Lot, and not to any tree located on another owner's Lot or in the public right-of-way of other Village owned land.

(e) Replacement trees. ~~Any tree that is removed must be replaced with:~~

~~(1) A tree with the same number of inches of caliper diameter; or~~

~~(2) Trees that cumulatively provide the same number of inches of caliper diameter. All replacement trees must be on the same Site that the tree was removed.~~

(1) Any tree that is removed must be replaced with: (i) a single tree with not less than the same number of inches of caliper diameter and the same canopy diameter as the removed tree; or (ii) trees that cumulatively provide not less than the same number of inches of caliper diameter and the same canopy diameter as the removed tree; or (iii) in the Manager's discretion based on a finding of hardship, trees that cumulatively provide as substantial a canopy replacement as is practicable under the circumstances. All replacement trees must be on the same site from which the tree was removed, except in cases of hardscape disruption and otherwise as approved by the Director.

(2) If as a result of any tree removal, the Lot or property contains less than the minimum number of required trees specified in Section 30-238 (2), a replacement tree or trees must be planted on the subject Lot or property to satisfy the requirements of Section 30-238 (1) and (2); provided that if the removed tree is one of the trees identified in Section 30-235 (b)(1)-(20), and if such removal results in less than the minimum number of required trees specified in Section 30-238 (2), then, in such instance only, the Lot owner will not be required to plant a replacement tree or trees to satisfy the requirements of Section 30-238 (1) and (2). If a tree that is subject to permitted removal is to be destroyed, in the discretion of the Manager, the Village may, but shall not be required to, arrange for the removal and relocation of the tree to Village property at the Village's cost, and such tree shall be the property of the Village if it is relocated by the Village.

(3) Where tree removal on a Lot results in less than the minimum quantity of trees specified in Section 30-238(2), and where the removed trees are

not replaced on the subject Lot due to Manager's finding of hardship. the applicant shall either:

(a) Replace a minimum of 50% of the removed canopy with a single tree or with multiple trees; or

(b) Donate a tree to the Village that has a minimum of 50% of the removed canopy; unless the Manager determines otherwise based on hardship.

(f) *Removal of trees on public lands.* No trees shall be removed from any public land including, but not limited to Rights-of-Way and swale areas, without the approval of the Building, Zoning, and Planning Director and Village Manager.

Section 3. 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.

Section 4. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

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

PASSED on first reading this 8th day of January, 2013.

PASSED AND ADOPTED on second reading this _____ day of _____, 2013.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**BACKUP
COMPARISON TO
FIRST READING**

ORDINANCE NO. 2013 -

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 30 "ZONING AND LAND DEVELOPMENT REGULATIONS" BY AMENDING ARTICLE II "DEFINITIONS," SECTION 30-11, BY CREATING A "PERMANENT HARDSCAPE FEATURE" DEFINITION, AND AMENDING ARTICLE IX "LANDSCAPE REGULATIONS," SECTION 30-235, RELATING TO TREE REMOVAL PERMIT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, the Village of Key Biscayne (the "Village") is authorized to protect the public health, safety and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the Village currently has regulations relating to tree plantings and the removal and relocation and replacement of trees within the Village; and

WHEREAS, in addition to the Village's tree regulations, property owners are also required to comply within Chapter 24, Article IV, Division II of the Miami-Dade County Code of Ordinances relating to tree preservation trees and protection removal; and

WHEREAS, the Village Council finds it necessary to periodically necessary to amend its Code of Ordinances ("Code") in order to update regulations and procedures to implement planning goals and objectives; and

WHEREAS, the Village Council recognizes that damage to private residential properties results from incompatibility between a tree planting site and surrounding hardscape features (such as patios, driveways, sidewalks, curbs and other similar features), and that such damage

~~may necessitate removal of a tree if a property owner has unsuccessfully exhausted all available and approved methods to resolve the condition causing this damage~~current regulations do not adequately address various circumstances under which trees might be removed from private properties or provisions for replacement of trees that are removed; and

~~WHEREAS, the Village Council recognizes that certain trees within the Village suffer from chronic, irreversible diseases and pest infestations, and that damage to and death of trees as a result of such diseases and infestations creates serious adverse impacts on private property owners, and results in damage and harm to surrounding properties; and~~

WHEREAS, for the foregoing reasons, the Village Council desires to amend relevant standards and criteria within the Code, relating to the removal of trees on private properties and their replacement; and

WHEREAS, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

WHEREAS, the Village Council finds that the changes within this Ordinance meet the applicable review criteria set forth in Section 30-71(b) of the Code; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the residents of the Village.

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

Section 1. 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. Highlighted words are changes made between First and Second Reading.

Section 2. Section 30-11 of the Village Code Amended. That Section 30-11 of the

Code of Key Biscayne, Florida, is hereby amended to read as follows:

* * *

~~*Permanent Hardscape Feature.* An impervious exterior landscape element, including a driveway, sidewalk, patio, pool deck, landing or similar surface, but specifically excluding such surface if constructed using movable, sand-set pavers.~~

* * *

Section 3. Section 30-235 of the Village Code Amended. That Section 30-235 of the Code

of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-235. Tree removal permit.

(a) *Tree removal permit required.* No Person shall cut down, destroy, remove, relocate, destructively damage or cause to be cut down, destroyed, removed, relocated or destructively damaged any tree without first obtaining a permit from the Miami-Dade County Department of Resource Management (DERM) and the Village. ~~Additionally, the~~The issuance of a tree removal permit from the Village shall require proof that a permit has been obtained from the Miami-Dade County Department of Resource Management, if such permit is required by Division 2 "Tree Preservation and Protection" of Chapter 24 of the Miami-Dade County Code of Ordinances, as may be amended from time to time. ~~However nothing in this article shall prevent a Person from destroying the following trees without receiving a permit.~~

~~(1) *Schinus terebinthifolius* (Brazilian Pepper/Florida Holly)~~

~~(2) *Metopium toxiferum* (Poison Wood)~~

~~(3) *Casurina equisetifolia* (Australian Pine)~~

~~(4) *Melaleuca Quinquenervia* (Melaleuca)~~

~~(5) *Araucaria Heterophylla* (Excelsa, Norfolk Island Pine)~~

~~(6) *Brassaia Actinophylla* (Schefflera)~~

(b) *Permit Fee.* The Village Council shall establish a fee for tree removal permits. However, no fee shall be charged for a permit to remove the following: a tree listed in subsection (a) above.

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(1) Schinus terebinthifolius (Brazilian Pepper/Florida Holly)

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(2) Metopium toxiferum (Poison Wood)

(3) Casurina equisetifolia (Australian Pine)

(4) Melaleuca Quinquenervia (Melaleuca)

(5) Araucaria Heterophyllal (Excelsa, Norfolk/Norfolk Island Pine)

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(6) Brassia Actinophylla (Schefflera)

~~(7) A dead tree, following an inspection and authorization by a Building, Zoning, and Planning Department inspector whose decision shall be based upon a written recommendation from a professional holding an International Society of Arboriculture Arborist Certification.~~

~~(b) *Permit Fee.* The Village Council shall establish a fee for tree removal permits. However, no fee shall be charged for a permit to remove a~~ (7) Bischofia javanica (bishopwood).

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(8) Ricinus communis (castorbean).

(9) Psidium guajava (guava).

(10) Albizia lebbek (woman's tongue).

(11) Acacia auriculaeformis (earleaf acacia).

(12) Adenanthera pavonina (red sandalwood).

(13) Cupaniopsis anacardioides (carrotwood).

(14) Dalbergia sissoo (Indian dalbergia, sissoo).

(15) Ficus microcarpa (=R. nitida; =F. retusa varnitida) (laurel fig).

(16) Flacourtia indica (governor's plum).

(17) Hibiscus tiliaceus (mahoe).

(18) Leucaena leucocephala (lead tree-listed).

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(19) Mimosa pigra (catclaw mimosa).

(20) Thespesia populnea (seaside mahoe).

(21) A dead or fatally diseased tree, which meets the requirements of subsection (d)(7) below.

(22) A tree that has a chronic pest infestation or other persistent harmful condition, which meets the requirements in subsection (a)-above)(8) below.

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(23) A tree causing substantial damage to hardscape features or structures, which meets the requirements in subsection (d) (9) below.

(c) Application. The Tree Removal Permit Application shall contain the following information:

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(1) Location of the tree to be removed.

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(2) A survey of the property showing the Buildings, Easements, utility services.

~~(3)(3) The Building, Zoning and Planning Director may waive the above requirements where it can be determined that the information can be obtained in the Village records or through a site visit. If the permit request is supported by the criteria of subsections (d)(6) or (7), (d)(7) (8) or (d) (9) of this sectionSection, the required statement of a professional holding an International Society of Arboriculture Arborist Certification.~~

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~~(4) The Building, Zoning and Planning Director may waive the above requirements of subsections (c)(1) and (c)(2) above, where it can be determined upon a determination that the required information can be obtained in the Village records or through a site visit.~~

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(d) Tree removal evaluation criteria. No tree may be removed unless one of the following conditions *exists*, as determined by the Building, Zoning, and Planning Director, *exists*:

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(1) A Site Plan is submitted by the applicant that demonstrates a proposed Structure can be situated on the property only if specifically identified ~~specific tree(s)~~ are removed or relocated.

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(2) The tree(s) is (are) located in such proximity to existing or proposed Structures that the utility or structural integrity of such Structures is or will be materially impaired.

(3) The tree materially interferes with the location, servicing, or functioning of Public Utility lines or service, and such interference cannot be mitigated by trimming or pruning.

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(4) The tree obstructs views of oncoming traffic or otherwise creates a substantial traffic hazard, and such obstruction or hazard cannot be mitigated by trimming or pruning.

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(5) Any law or Regulation that requires such removal.

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(6) The tree is one listed in Section 30-235(b)(1)-(20).

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(7) A statement is submitted ~~from by~~ a professional holding an International Society of Arboriculture Arborist Certification, which demonstrates demonstrating that the ~~subject tree suffer~~ tree is: (a) dead; (b) fatally diseased; or (c) suffering from a chronic, irreversible disease or

(8) A statement is submitted by a professional holding an International Society of Arboriculture Arborist Certification, demonstrating that the tree is affected by a pest infestation affecting the owner's reasonable use and enjoyment of the property for which there is no scientifically recognized treatment available to preserve the life of the tree, to control the infestation, or alternatively, if there is such a recognized treatment, that such the recognized treatments have been applied as recommended and have been ineffectual in controlling the infestation.

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(7)9) ~~For properties devoted to single- or two family residential use properties,~~ a statement is submitted by a professional holding an International Society of Arboriculture Arborist Certification, which demonstrates:

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a. The tree is causing damage (including cracking, shifting or movement) of one or more Permanent Hardscape Features; and

b. The property demonstrating that the tree's root system has caused material damage to impervious exterior hardscape elements or structures

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(excluding elements constructed using movable sand-set pavers) and that the owner has unsuccessfully exhausted all available and approved methods to resolve the condition causing such damage, including but not limited to, root pruning or installation of the treeroot barriers, and that there is no practical alternative to rectify or mitigate the damage to the Permanent Hardscape Feature(s), except for the removal of the subject tree.

(10) A tree removal permit application may pertain only to a tree located on the applicant's own Lot, and not to any tree located on another owner's Lot or in the public right-of-way of other Village owned land.

(e) Replacement ~~tree~~trees. Any tree that is removed must be replaced with:

~~(1) A tree with the same number of inches of caliper diameter, or~~

~~(2) Trees that cumulatively provide the same number of inches of caliper diameter. All replacement trees must be on the same Site that the tree was removed.~~

(1) Any tree that is removed must be replaced with: (i) a single tree with not less than the same number of inches of caliper diameter and the same canopy diameter as the removed tree; or (ii) trees that cumulatively provide not less than the same number of inches of caliper diameter and the same canopy diameter as the removed tree; or (iii) in the Manager's discretion based on a finding of hardship, trees that cumulatively provide as substantial a canopy replacement as is practicable under the circumstances. All replacement trees must be on the same site from which the tree was removed, except in cases of hardscape disruption and otherwise as approved by the Director.

(2) If as a result of any tree removal, the Lot or property contains less than the minimum number of required trees specified in Section 30-238 (2), a replacement tree or trees must be planted on the subject Lot or property to satisfy the requirements of Section 30-238 (1) and (2); provided that if the removed tree is one of the trees identified in Section 30-235 (b)(1)-(20), and if such removal results in less than the minimum number of required trees specified in Section 30-238 (2), then, in such instance only, the Lot owner will not be required to plant a replacement tree or trees to satisfy the requirements of Section 30-238 (1) and (2). If a tree that is subject to permitted removal is to be destroyed, in the discretion of the Manager, the Village may, but shall not be required to, arrange for the removal and relocation of the tree to Village property at the Village's cost, and such tree shall be the property of the Village if it is relocated by the Village.

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(3) Where tree removal on a Lot results in less than the minimum quantity of trees specified in Section 30-238(2), and where the removed trees are not replaced on the subject Lot due to Manager's finding of hardship, the applicant shall either:

(a) Replace a minimum of 50% of the removed canopy with a single tree or with multiple trees; or

(b) Donate a tree to the Village that has a minimum of 50% of the removed canopy; unless the Manager determines otherwise based on hardship.

(f) Removal of trees on public lands. No trees shall be removed from any public land including, but not limited to Rights-of-Way and swale areas, without the approval of the Building, Zoning, and Planning Director and Village Manager.

Section 43. 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.

Section 54. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 65. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 8th day of January, 2013.

PASSED AND ADOPTED on second reading this _____ day of _____, 2013.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

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