ORDINANCE NO. 2013-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE OF KEY BISCAYNE CODE OF ORDINANCES BY AMENDING SECTION 2-42 "CIVIL PENALTIES AND RELATED TERMS CONSTRUED" OF ARTICLE III "CODE ENFORCEMENT" OF CHAPTER 2 "ADMINISTRATION", AND BY AMENDING ARTICLE IV "DANGEROUS INTERSECTION SAFETY" OF CHAPTER 26 "TRAFFIC AND VEHICLES" TO ENSURE CONSISTENCY WITH SECTION 316.0083, FLORIDA STATUTES, "THE MARK WANDALL TRAFFIC SAFETY ACT", AS AMENDED BY THE FLORIDA LEGISLATURE THROUGH THE ENACTMENT OF CS/CS/HB HOUSE BILL 7125 DURING THE 2013 LEGISLATIVE SESSION; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR CLERK DESIGNATED; PROVIDING FOR SAVINGS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on October 9, 2007 the Village Council enacted Ordinance No. 2007-7 creating Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" (the "Ordinance"); and

WHEREAS, in accordance with applicable law, the Ordinance designated the running of red traffic lights as a violation of the Village Code and provided for the use of traffic safety cameras as a supplemental means of enforcement; and

WHEREAS, during the 2010 legislative session, the Florida Legislature enacted House Bill 325 establishing uniform procedures for the use of red light traffic safety cameras throughout the State of Florida and, for the first time, preempting the use of traffic safety cameras for enforcement purposes; and

WHEREAS, on August 31, 2010 the Village Council enacted Ordinance No. 2010-3 repealing Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" and effectively replacing it with a revised Article IV "Dangerous Intersection Safety" of the Village Code in order to comply with criteria established in HB 325; and

WHEREAS, during the 2013 legislative session, the Florida Legislature enacted CS/CS/HB7125 ("House Bill 7125"), amending the statutory uniform procedures for the use of red light cameras throughout the State of Florida; and

WHEREAS, the Village Council desires to amend Chapter 26 of the Village Code to comply with the provisions of House Bill 7125 and to further revise and update the Village Code to conform with the 2013 legislation.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AS FOLLOWS: [1]

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

Section 2. **Village Code Amended.** That Article III "Code Enforcement" of Chapter 2 "Administration" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 2-42 "Civil penalties and related terms construed" to delete obsolete reference:

Sec. 2-42. - Civil penalties and related terms construed.

* * *

~~(2) The civil penalty for a violation of the Dangerous Intersection Safety Act shall be $125.00 for a first offense; $250.00 for a second offense and $500.00 for each additional offense.~~

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Section 3. **Village Code Amended.** That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 26-44 "Intent" to read as follows:

Sec. 26-44. – Intent.

The purpose of this article is to authorize the use of traffic infraction detectors to promote compliance with red light signal directives and to adopt a civil enforcement system for red light signal violations, all in accord with general law, including Chapter 2010-80, Laws of Florida (2010) (the "Mark Wandall Traffic Safety Act" or the "Act") as amended by CS/CS/HB 7125 (2013) ("House Bill 7125"). This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

Section 4. **Village Code Amended.** That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 26-45 "Use of image capture technologies" to read as follows:

Section 26-45. Use of image capture technologies.

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[1] Additions to existing text in the Village Code shall be indicated by underline, deletions from existing text in the Village Code shall be indicated by ~~strikethrough~~.

The Village shall utilize traffic infraction detectors pursuant to general law as a means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws. Nothing herein shall conflict with the primary jurisdiction of Miami-Dade County to install and maintain traffic signal devices. This article shall serve to enable the Village to provide enhanced enforcement and respect for authorized traffic signal devices pursuant to F.S., §§ 316.008 and 316.0083 (2010), as amended by House Bill 7125 (2013). The Village may utilize traffic infraction detectors as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations.

Section 5. **Village Code Amended**. That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 26-46 "Definitions" to read as follows:

Section 26-46. Definitions.

The following definitions shall apply to this article:

* * *

Local Hearing Officer. The person(s), appointed by the Village Mayor and approved by the Village Council to serve as code enforcement special magistrates (the "Board of Special Magistrates") pursuant to Village Code Section 2-33. The Board of Special Magistrates are hereby authorized to conduct hearings related to a notice of violation issued pursuant to Section 316.0083, Florida Statutes, and this Article. The Village Manager, if desired, may designate a specific Special Magistrate(s) to serve as a Local Hearing Officer in lieu of the Board of Special Magistrates.

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Petitioner. Any person that has received a Notice of Violation and has requested a hearing before the Local Hearing Officer for the purpose of determining whether the alleged violation has occurred.

Section 6. **Village Code Amended.** That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 26-47 "Adherence to red light traffic control signals" to read as follows:

Section 26-47. Adherence to red light traffic control signals.

(a) Pursuant to general law, motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or if none then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is approaching a clearly marked stop line, but if none, is approaching the crosswalk on the near side of the intersection or, if none, then is approaching the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn in a careful and prudent manner provided the driver comes to a complete stop before turning right (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection. A notice of violation and a traffic citation may not be issued if the driver of a vehicle comes to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required.

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Section 7. Village Code Amended. That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 26-50 "Review of recorded images" to read as follows:

Section 26-50. Review of recorded images.

(a) The owner of the vehicle which is observed by recorded images committing a red zone infraction, shall be issued a notice of violation (hereinafter also known as a "notice") no later than 30 days after the red zone infraction occurs. The recorded image shall be sufficient grounds to issue a notice.

(b) The Village Chief of Police shall designate one or more Traffic Infraction Enforcement Officers, who shall be Police Officers of the Village and who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The Traffic Infraction Enforcement Officer shall review recorded images prior to the issuance of a notice to ensure the accuracy and integrity of the recorded images. Once the Traffic Infraction Enforcement Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a notice shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

(c) If a vehicle owner receiving a notice fails to pay the penalty imposed by F.S. § 316.0083, ~~or~~ to provide an affidavit that complies with the provisions of F.S. § 316.0083, or request a hearing within ~~30~~ 60 days of the date the notice is issued, then a Uniform Traffic Citation shall be issued to the vehicle owner as provided by general law. ~~The Uniform Traffic Citation shall be issued no later than 60 days after the red zone infraction occurs.~~

Section 8. Village Code Amended. That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by amending Section 26-51 "Notice of violation" to read as follows:

Section 26-51. Notice of violation.

The notice shall be served via first class mail and shall include:

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(11) A statement that the owner must pay a penalty of $158.00 to the Village, ~~or~~ provide an affidavit that complies with F.S. § 316.0083, or request a hearing within ~~thirty (30)~~ sixty (60) days of the date the notice is issued in order to avoid ~~court fees, costs, and~~ the issuance of a Uniform Traffic Citation;

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(13) Information on the person's right to request a hearing and on all court costs related thereto and a form to use to request a hearing or shall direct the person to a web address for a website that provides that information.

Section 9. Village Code Amended. That Article IV "Dangerous Intersection Safety" of Chapter 26 "Traffic and vehicles" of the Village of Key Biscayne Code of Ordinances is hereby amended by creating Section 26-52 "Notice of violation hearing procedure" to read as follows:

Section 26-52. Notice of violation hearing procedure.

(a) A Petitioner who elects to request a hearing shall be scheduled for a hearing by the clerk of the Local Hearing Officer to appear before a Local Hearing Officer with notice to be sent by first-class mail. Upon receipt of the notice, the Petitioner may reschedule the hearing once by submitting a written request to reschedule to the clerk of the Local Hearing Officer, at least 5 calendar days before the day of the originally scheduled hearing. The Petitioner may cancel his or her appearance before the Local Hearing Officer by paying the penalty assessed by s. 316.0083(1)(b), Fla. Stat., as amended, plus $50 in administrative costs, before the start of the hearing.

(b) All testimony at the hearing shall be under oath and shall be recorded. The Local Hearing Officer shall take testimony from a traffic infraction enforcement officer and the Petitioner, and may take testimony from others. The Local Hearing Officer shall review the photographic or electronic images or the streaming video made available under s. 316.0083(1)(b)1.b., Fla. Stat., as amended. Formal rules of evidence do not apply, but due process shall be observed and govern the proceedings.

(c) At the conclusion of the hearing, the Local Hearing Officer shall determine whether a violation under s. 316.0083, Fla. Stat., as amended, has occurred, in which case the hearing officer shall uphold or dismiss the violation. The Local Hearing Officer shall issue a final administrative order including the determination and, if the notice of violation is upheld, require the Petitioner to pay the penalty assessed under s. 316.0083(1)(b), Fla. Stat. as amended, and may also require the petitioner to pay municipal costs, not to exceed $250. The final administrative order shall be mailed to the Petitioner by first-class mail.

(d) An aggrieved party may appeal a final administrative order consistent with the process provided under s. 162.11, Fla. Stat.

Section 10. Implementation. That the Village Manager shall take any and all action necessary to implement the amended Red Light Camera Safety Program including, but not limited to, the appointment or designation of a Local Hearing Officer(s), and amendment of the Village's agreement with American Traffic Solutions and other service providers to the extent necessary, if any, to comply with Chapter 316; Fla. Stat., as amended though the enactment of HB 7125 (2013).

Section 11. Clerk Designated. That the Office of the Village Clerk of the Village of Key Biscayne is hereby designated as the clerk to the Local Hearing Officer.

Section 12. 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 13. Inclusion in the 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 14. Savings. That all fines, penalties, fees and costs imposed pursuant to the provisions of Article IV of Chapter 26 of the Village Code, which provisions existed immediately prior to July 1, 2013, are hereby authorized, approved, ratified and confirmed, and shall continue to be due and owing until paid to Village.

Section 15. Effective Date. That following adoption of this Ordinance on second reading, this Ordinance shall be in full force and effect from and after July 1, 2013, except that the provisions of Section 10 of this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 11th day of June, 2013.

PASSED AND ADOPTED on second reading this 25th day of June, 2013.

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MAYOR FRANKLIN H. CAPLAN

ATTEST:

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CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY