Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.

Memo

To: Village of Key Biscayne Mayor and Council Members

From: Stephen J. Helfman

Date: June 17, 2009

Re: Non-residential Trash Container Ordinance

Background

Recently, the Village Council discussed non-residential trash containers within the Village. After this discussion, the Village Council directed Village staff to work with the Village Attorney's Office to prepare an ordinance regulating such containers. In preparing the ordinance, Village staff met with the representatives of several shopping centers and the Chamber of Commerce to solicit their input on the proposed regulations relating to the location, appearance, and use of non-residential trash containers.

Non-residential Trash Container Ordinance

The proposed Ordinance requires all trash, garbage, and debris to be placed, disposed, and stored within fully enclosed commercial trash containers with closed lids. In addition, all non-residential property owners with trash containers will be required to submit a "Management Plan" to the Village for review and approval. This Plan requires non-residential property owners to provide: (1) a detailed site plan depicting the location of the container; (2) the screening or other materials (i.e. landscaping, paint color of enclosure, etc.) to be used to minimize the visual impacts of the container; (3) the use of the container (i.e. food or other types of trash that are to be disposed); and (4) the proposed hours and frequency of trash pickup. The requirements of this Ordinance apply to new as well as existing non-residential trash containers. As provided in the Ordinance, all non-residential property owners with trash containers have 90 days to submit a Management Plan to the Village and 180 days to fully comply with the provisions of this Ordinance.

Recommendation

The Village Attorney's Office and Village staff recommends approval of this Ordinance.

ORDINANCE NO. 2009-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 6, "BUILDING AND BUILDING REGULATIONS," OF THE VILLAGE CODE BY CREATING SECTION 6-4, "NON-RESIDENTIAL TRASH CONTAINERS," WHICH ESTABLISHES REQUIREMENTS FOR DISPOSAL OF NONRESIDENTIAL TRASH, USE, AND LOCATION OF SUCH CONTAINERS; PROVIDING FOR NON-CONFORMITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in order to ensure the necessary health and safety of the Village of Key Biscayne (the "Village") residents, it is appropriate to regulate and require trash containers for non-residential developments within the Village; and

WHEREAS, the Village Council desires to amend Chapter 6, Building and Building Regulations by creating Section 6-4, "Non-Residential Trash Containers" so as to prevent spillage and unsanitary conditions and maintain unsightly garbage from public view; and

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

WHEREAS, the Village finds that this Ordinance is in the best interest 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 FOLLOWS[1]:

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

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[1] Additions to existing Village Code text are shown by underline. Shaded text reflects changes made from First Reading.

Section 2. Village Code Amended. That the Village Code of the Village of Key Biscayne, Florida is hereby amended by amending Chapter 6, Building and Building Regulations by creating Section 6-4, "Non-Residential Trash Containers" to read as follows:

Section 6-4. Non-Residential Trash Containers

1. Disposal. All non-residential trash, garbage and debris shall be placed, disposed, and stored within fully enclosed commercial trash containers with closed lids. These containers shall be located within the property at a location approved by the Village pursuant to the process set forth in Section 3 below.

2. Trash Pickup Requirements. Non-residential trash containers, which contain the disposal of foodstuffs from any source, including, but not limited to, restaurants or grocery stores, shall be emptied on a daily basis. For all other types of non-residential trash, the required number of pickups per week shall depend on the intensity of the use and shall be set out in the plan required in Section 3 below.

3. ~~Dumpster~~ Management Plan. All nonresidential property owners ~~with trash containers~~ shall submit a ~~Dumpster~~ Management Plan for review and approval by the Building, Zoning, and Planning Director or designee. All ~~Dumpster~~ Management Plans shall provide for the location, use, and screening of nonresidential trash containers that are located on the property and shall, at a minimum, contain the following information:

   a. A detailed and dimensioned site plan depicting the location of the nonresidential trash container(s), including whether the container(s) are visible from a public right of way and the distance from surrounding properties;

   b. A detailed elevation ~~drawing~~ of the trash container(s) which demonstrates that the:

      (i) container is completely screened from view from outside the property by opaque materials;

      (ii) enclosure is at least as high as the container; and

      (iii) materials and/or landscaping that will be used to screen the container(s). If fencing is used for screening purposes, such fences shall be

covered ~~coated~~ with green or black colored ~~material covering~~, and if block walls are used such walls shall be painted to match the principal building on the site; and

c. Type of trash that is proposed to disposed of within the non-residential trash container;

d. Proposed hours and days of the week for trash pickup; and

~~e. Application fee plus the annual inspection fee for the approved nonresidential trash containers as established by resolution of the Village Council; and~~

e.f. Any additional information as reasonably required by the Building, Zoning, and Planning Director or designee.

4. ~~Change in Use. In the event there is a change of use within a nonresidential property, a revised Management Plan, which meets the requirements of Section 3 above, shall be submitted to the Village Building, Zoning, and Planning Director or designee for review and approval.~~

Section 3. Non-Conformity. All non-residential trash containers located within the Village as of the effective date of this Ordinance, which do not conform to the requirements of this Ordinance shall be deemed nonconforming. The owners of such nonconforming containers shall be notified by the Building, Zoning, and Planning Director or designee that within ninety (90) days from the effective date of this Ordinance a ~~Dumpster~~ Management Plan shall be submitted, in accordance with the provisions of this Ordinance, to the Village. In addition, within 180 days from the effective date of this Ordinance such nonconforming containers shall fully comply with the provisions of this Ordinance.

Section 4. 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 5. 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 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 26th day of May, 2009.

PASSED AND ADOPTED on second reading this 23rd day of June, 2009.

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MAYOR ROBERT L. VERNON

ATTEST:

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CONCHITA H. ALVAREZ, MMC VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY