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 the removal and relocation of trees within the Village; and

WHEREAS, in addition to the Village's 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 and protection; and

WHEREAS, the Village Council finds it 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; 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

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 FOLLOWS[1]:

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

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.

[1] **Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.**

Additionally, 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 Heterophylal (Excelsa, Northfolk Island Pine)

(6) Brassaia 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 tree listed in subsection (a) above.

(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) If the permit request is supported by the criteria of subsections (d)(6) or (d)(7) of this section, the required statement of a professional holding an International Society of Arboriculture Arborist Certification.

~~(3)~~ (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.

(d) *Tree removal evaluation criteria*. No tree may be removed unless one of the following conditions, 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 specific trees 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 materially impaired.

(3) The tree materially interferes with the location, servicing, or functioning of Public Utility lines or service.

(4) The tree obstructs views of oncoming traffic or otherwise creates a substantial traffic hazard.

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

(6) A statement is submitted from a professional holding an International Society of Arboriculture Arborist Certification, which demonstrates that the subject tree suffers from a chronic, irreversible disease or pest infestation for which there is no scientifically recognized treatment ~~available to preserve the life of the tree~~ to eliminate the infestation.

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

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

b. The property owner has unsuccessfully exhausted all available and approved methods to resolve the condition causing such damage, including but not limited to root pruning of the tree, and that there is no alternative to rectify the damage to the Permanent Hardscape Feature(s), except for the removal of the subject tree.

(e) *Replacement tree*. 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.

(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.

Section 4. **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 5. **Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. **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