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# VILLAGE OF KEY BISCAYNE

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## Office of the Village Manager

*Village Council*  
Franklin H. Caplan, *Mayor*  
Michael E. Kelly, *Vice Mayor*  
Michael W. Davey  
Enrique Garcia  
Robert Gusman  
Mayra P. Lindsay  
James S. Taintor

*Village Manager*  
John C. Gilbert

DATE: February 28, 2012  
TO: Honorable Mayor and Members of the Village Council  
FROM: John C. Gilbert, Village Manager  
RE: Amendment to the Village Code: Stormwater Control

### RECOMMENDATION

It is recommended that Village Council approve the attached Ordinance which establishes regulations dealing with discharges into the Village's Stormwater System. The Ordinance was approved at first reading on February 28, 2012.

### BACKGROUND

The National Pollutant Discharge Elimination System (NPDES) regulates the discharges of water from a point source (pipes, ditches, or channels) into a waterbody. The Village has 17 stormwater outfalls to the bay. In order to comply with our MS4 Phase 1 NPDES permit, we are required to adopt additional standards and regulations regarding water quality, including standards concerning discharges to the Village's Stormwater System. The attached Ordinance establishes regulations that address illicit discharges and a list of authorized exceptions, inspections and monitoring, and enforcement procedures.

At first reading, the Council reviewed the Ordinance with changes that address situations that are relevant to the Key. The changes are highlighted in yellow on the attached Ordinance. The Ordinance is recommended by our consultant Tetra Tech and has been reviewed by the Village Attorney and the Building, Zoning and Planning Director.

**ORDINANCE NO. 2012 -**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 8 “ENVIRONMENT” TO CREATE ARTICLE VII “STORMWATER CONTROL” IN ORDER TO PROVIDE FOR STORMWATER MANAGEMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, under the National Pollutant Discharge Elimination System (NPDES) program, all nonresidential properties that discharge wastewater directly from a point source (a discrete conveyance such as a pipe, ditch or channel) into a receiving waterbody are issued an NPDES permit; and

**WHEREAS**, in compliance with the renewed MS4 Phase I NPDES permit issued to the Village of Key Biscayne (the “Village”), the Village is required to adopt additional standards and regulations regarding water quality, including standards concerning discharges to the Village’s stormwater system; and

**WHEREAS**, the Village Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

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

**Section 1. Recitals.** The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Village Code Amended.** The Village Council hereby creates Article VII “Stormwater Control,” of Chapter 8 “Environment” as follows<sup>1</sup>:

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<sup>1</sup> Revisions following first reading of the Ordinance are shown as follows: additions are indicated by highlighted underlined text, and deletions are indicated by highlighted underlined and ~~strike through~~ text.

**Article VII. Stormwater Control.**

**Sec. 8-415. Purpose and intent.**

The purpose of this article is to promote the health, safety and general welfare of the inhabitants of the vVillage. This article is intended to comply with federal and state law and regulations regarding water quality.

**Sec. 8-416. 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:

*Authorized official* means any employee or agent of the vVillage authorized in writing by the dDirector to administer or enforce the provisions of this article.

*Director* means the ~~director of public works~~ Village Manager or designee.

*Discharge* means any direct or indirect entry of any solid, liquid or gaseous matter.

*Stormwater* means any stormwater runoff, and surface runoff and drainage.

*Stormwater system* means the system of conveyances used for collecting, storing and transporting sStormwater owned by the vVillage, but not including any facilities intended to be used in accordance with applicable law for collecting and transporting sanitary or other wastewater.

**Sec. 8-417. Illicit discharges.**

(a) Prohibitions. Except as set forth under subsection (b) of this section or as in accordance with a valid National Pollutant Discharge Elimination System (NPDES) permit, any discharge to the stormwater system that is not composed entirely of stormwater is prohibited. Further, any discharge to the stormwater system containing any sewage, industrial waste or other waste materials, or containing any materials in violation of federal, state, county, ~~municipal~~ Village or other laws, rules, regulations, orders or permits is prohibited.

(b) Authorized exceptions. Unless the Director determines that it is not properly managed or otherwise is not acceptable, the following discharges are exempt from the general prohibitions set forth under subsection (a) of this section:

- (1) Flows from firefighting, water line flushing and other contributions from potable water sources;
- (2) Landscape irrigation and lawn watering;
- (3) Irrigation water;
- ~~(4) Diverted stream flows;~~
- ~~(5) (4) Rising groundwaters;~~
- ~~(6) (5) Direct infiltration to the stormwater system;~~
- ~~(7) (6) Uncontaminated pumped groundwater;~~
- ~~(8) (7) Foundation and footing drains;~~
- ~~(9) (8) Water from crawl space pumps;~~
- ~~(10) (9) Air conditioning condensation;~~
- ~~(11) Springs;~~
- ~~(12) (10) Individual residential car washings;~~

~~(13)~~ (11) Flows from riparian habitats and wetlands; and

~~(14)~~ (12) Dechlorinated swimming pool contributions. Chlorinated swimming pools shall not be drained into the sStormwater sSystem with the following exceptions: dDischarges associated with backwashing filters when the backwash cycle generates less than 1,000 gallons and chlorinated water overflowing from a pool associated with a storm event.

~~(c)~~ *Illicit connections.* No person may shall maintain, use or establish any direct or indirect connection to the sStormwater sSystem that results in any dDischarge in violation of this article. This prohibition is retroactive and applies to connections made prior to the date of this article, regardless of whether made under a permit, or other authorization, or whether permissible under the laws or practices applicable or prevailing at the time the connection was made.

~~(d)~~ *Administrative order.* The director may issue an order to any person to immediately cease any discharge, or any connection to the stormwater system, determined by the director to be in violation of any provision of this article, or in violation of any regulation or permit issued hereunder.

~~(e)~~ (d) *NPDES permits.* Any person who holds an NPDES permit shall provide a copy of such permit to the dDirector no later than the later of 60 calendar days after the effective date of the ordinance from which this article is derived, or 60 calendar days after issuance.

~~(f)~~ (e) *Notification of dDischarges.* As soon as any person has knowledge of any dDischarge to the sStormwater sSystem in violation of this article, such person shall immediately notify the director by telephoning (305-365-8945) Miami-Dade County

Permitting, Environment and Regulatory Affairs (PERA); and if such person is directly or indirectly responsible for such dDischarge, he or she shall also take immediate action to ensure the containment and clean up of such dDischarge, and shall confirm such telephone notification in writing to the dDirector at Village of Key Biscayne, 88 W. McIntyre Street Key Biscayne, Florida 33149, within three calendar days.

**Sec. 8-418. Inspections and monitoring.**

(a) Authority for inspections. Whenever necessary to make an inspection to enforce any of the provisions of this article, or regulation or permit issued hereunder, or whenever an aAuthorized eOfficial has reasonable cause to believe there exists any condition constituting a violation of any of the provisions of this article, or regulation or permit issued hereunder, any aAuthorized eOfficial may enter any property, building or facility at any reasonable time to inspect the same or to perform any duty related to the enforcement of the provisions of this article or any regulations or permits issued hereunder; provided that if such property, building or facility is occupied, such aAuthorized eOfficial shall first present proper credentials and request permission to enter, and if such property, building or facility is unoccupied, such aAuthorized eOfficial shall make a reasonable effort to locate the owner or other person having charge or control of the property, building or facility, and shall request permission to enter. Any request for permission to enter made hereunder shall state that the owner or person in control has the right to refuse entry, and that if entry is refused, the aAuthorized eOfficial may enter to make inspection only upon issuance of a search warrant by a duly authorized magistrate official. If the owner or person in control refuses permission to

enter after such request has been made, the aAuthorized eOfficial is hereby authorized to seek assistance from any court of competent jurisdiction in obtaining entry. Routine or areawide inspections shall be based upon such reasonable selection processes as may be necessary to carry out the purposes of this article, including but not limited to random sampling and sampling in areas with evidence of sStormwater contamination, non-sStormwater-dDischarges or similar factors.

(b) Authority for monitoring and sampling. Any aAuthorized eOfficial may establish on any property such devices as are necessary to conduct sampling or metering of dDischarges to the sStormwater sSystem. During any inspections made to enforce the provisions of this article, or regulations or permits issued hereunder, any aAuthorized eOfficial may take any samples deemed necessary.

(c) Requirements for monitoring. The dDirector may require any person engaging in any activity or owning any property, building or facility (including but not limited to a site of industrial activity) to undertake such reasonable monitoring of any dDischarge to the sStormwater sSystem and maintenance of all private Stormwater structures, and to furnish ~~periodic~~ annual maintenance and monitoring reports to the Director.

**Sec. 8-419. Enforcement.**

(a) Injunctive relief. Any violation of any provision of this article, or of any regulation or order issued hereunder, shall be subject to injunctive relief if necessary to protect the public health, safety or general welfare.

~~(b) *Continuing violation.* A person shall be deemed guilty of a separate violation for each day during any continuing violation of any provision of this article, or of any regulation or permit issued hereunder.~~

~~(e) (a) *Enforcement actions.* The Director may take all actions necessary, including the issuance of notices and violations, the filing of court actions, and/or referral of the matter to the board of special magistrates in accordance with Article III of Chapter 2 of this code, to require fines and enforce compliance with the provisions of this article and with any regulation or permit issued hereunder.~~

~~(b) *Stop work orders.* In addition to other remedies for violation as provided in this section, violation of this article shall constitute grounds for the issuance of a stop work order by the building official in accordance with the provisions of the building code.~~

**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, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading

PASSED AND ADOPTED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2012.

PASSED AND ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_, 2012.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY