ORDINANCE NO. 2013 -

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 30 "ZONING AND LAND DEVELOPMENT REGULATIONS" OF THE VILLAGE CODE OF ORDINANCES BY AMENDING ARTICLE II "DEFINITIONS", AT SECTION 30-11, RELATED TO REGULATIONS OF SIGNS, AND ARTICLE VIII "SIGNS", AT SECTIONS 30-190, 30-191, 30-193, 30-196, 30-197, 30-198, 30-199 AND 30-200, TO AMEND THE REGULATIONS REGARDING PLACEMENT OF SIGNS WITHIN PUBLIC RIGHTS-OF-WAY, AND TO PROVIDE UPDATED PROCEDURES AND STANDARDS FOR SIGNS GENERALLY; 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 Council previously adopted definitions, permit procedures, and regulations, relating to the installation, construction, placement, and erection of signs in the Village; and

WHEREAS, these provisions were codified within Article VIII "Signs" of Chapter 30 "Zoning and Land Development Regulations" of the Village's Code of Ordinances ("Code"); and

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

WHEREAS, the Village Council finds and determines that the Village's sign regulations are intended to maintain and improve the aesthetics, quality of life, and safety of the Village and its residents, while meeting the need for signage that clearly identifies locations, advertises

noncommercial messages and businesses, and otherwise communicates commercial and noncommercial speech; and

WHEREAS, sign regulation to advance the governmental purpose of aesthetics has long been upheld by the state and federal courts; and

WHEREAS, based on a review of recent legal authority and upon the direction of the Village Council, Village staff, in coordination with the Village Attorney's office, has developed proposed revisions to the Village sign regulations within Article VIII "Signs" of Chapter 30 "Zoning and Land Development Regulations" of the Code, in order to update standards and procedures regarding temporary signs, and to clarify regulations concerning the location of temporary signs within public rights-of-way; and

WHEREAS, these amendments are further intended to clarify the intent of the existing sign regulations, aid in interpretation and enforcement of the regulations, and further ensure that the regulations are consistent with all controlling laws and provide for viewpoint neutral regulation of signs; and

WHEREAS, the Village Council finds and determines that the Village has consistently adopted severability provisions in connection with its Code, and the Village Council wishes to assure that its severability provisions will be applied to its sign regulations; and

WHEREAS, in several recent judicial decisions, the courts have failed to give full effect to severability provisions applicable to sign regulations, and expressed uncertainty over whether local government authorities intended that severability would apply to certain factual situations despite the plain and ordinary meaning of the severability clauses; and

WHEREAS, the Village Council is aware that the failure of some courts to apply severability clauses has led to an increase in litigation by applicants seeking to strike down sign regulations in their entirety so that they may argue that their applications to erect signs must be granted; and

WHEREAS, the Village Council desires that there be an ample and unequivocal record of its intention that the severability clauses it has adopted related to its sign regulations shall be applied to the maximum extent possible, even if a limitation on speech would result from a determination that any exceptions, limitations, variances, or other sign provisions are invalid or unconstitutional for any reason whatsoever; and

WHEREAS, the Village Council desires that its sign prohibitions be given full effect, regardless of the invalidity or unconstitutionality of any or all of the Village's sign regulations, land development regulations, or other regulations; and

WHEREAS, the Village Council further finds and determines that the Village has long allowed noncommercial speech to appear wherever commercial speech appears and that it now codifies that practice through the adoption of a substitution clause that expressly allows non-commercial messages to be substituted for commercial messages; and

WHEREAS, the Village Council specifically intends that this substitution clause and past practice be applied so that its sign regulations can never be construed to impermissibly favor commercial messages over noncommercial messages, and desires to codify this substitution clause in this Ordinance to bolster its effectiveness; 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:

* * *

Bunting. A temporary Sign made of gathered cloth, canvas, light fabric or plastic.

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Flag. A piece of fabric with a color or pattern that represents a government, or other organization or idea.

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Sign, Balloon. Any Sign which is made up of or incorporates an inflatable object.

* * *

Sign, Box Wall. An attached Sign where the face is enclosed, bordered, or contained within a box-like structure, frame or other device. Also known as a cabinet sign.

Sign, Bus Bench. A Sign that is painted on or incorporated into the material structure of a bus bench or bus shelter.

* * *

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

Sign, Neon. Any Sign which incorporates electrified, luminous tube lights that contain rarefied neon or other gases.

* * *

V-sign. A free-standing Sign consisting of two (2) sign faces which are connected together at an angle, in the shape of a "V."

Section 3. Section 30-190 of the Village Code Amended. That Section 30-190 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-190. Purpose.

(a) *Purpose.* The purpose of this article is to promote and protect the public health, safety and general welfare of the Village of Key Biscayne by regulating existing and proposed Signs and other Street graphics within the Village. In particular, these Regulations are intended to preserve the unique aesthetic character of the Village and ensure that Signs are compatible with their surroundings. It is further intended to protect property values, create a better business climate, enhance the physical appearance of the community, preserve the natural beauty of the Village and improve vehicular and pedestrian safety and reduce visual pollution.

(b) *Applicability.* All Signs shall be erected, placed, established, painted, created, or maintained in the Village only in conformance with the standards, procedures, exemptions, and other requirements of this article. This article is not intended to regulate any Sign which is not visible from another property or from public access areas. Signs posted by the Village, including but not limited to traffic Signs and legal notices, shall not be subject to this article. No Sign shall be permitted except in accordance with the provisions of this article.

(c) *Substitution clause.* It is not the intent of this article to afford greater protection to commercial speech than to noncommercial speech. Any Sign, display or device allowed under this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that complies with all other requirements of this article. The noncommercial message may occupy the entire Sign area or any portion thereof, and may substitute for or be combined with the commercial message. The Sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the Sign's owner, provided that the Sign is not prohibited and the Sign continues to comply with all requirements of this article, including but not limited to the requirements for permit review for installation or alteration of Signs pursuant to Section 30-198.

(d) *Severability.*

(1) The sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this article shall be declared unconstitutional or void or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity

shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this article.

(2) This subsection shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provision in this Code or any adopting ordinance. The Village Council specifically intends that severability shall be applied to Sign regulations even if the result would be to allow less speech in the Village, whether by subjecting currently exempt Signs to permitting or by some other means.

(3) This subsection shall not be interpreted to limit the effect of subsections (1) or (2) above, or any other applicable severability provision in this Code or any adopting ordinance. The Village Council specifically intends that severability shall be applied to prohibited Signs so that each of the prohibited Sign types listed in Section 30-191 shall continue to be prohibited irrespective of whether another provision or any Sign prohibition is declared unconstitutional or invalid.

* * *

Section 4. Section 30-191 of the Village Code Amended. That Section 30-191 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-191. Prohibited Signs.

The following are prohibited in the Village:

(1) Abandoned Signs, pursuant to Sec. 30-200.

(2) Animated Signs.

(3) Balloon Signs.

(4) Box Wall Signs.

(5) Buntings.

(6) Bus Bench Signs.

(7) Flags other than one United States flag and one other noncommercial flag together on a pole not to exceed 20 feet in height; one pole each permitted per Building.

(8) Neon Signs (other than Reverse Channel and Wall Signs where permitted) and neon Building trim.

(9) Off Premise Signs/Billboards.

(10) Pole Signs.

(11) ~~Portable~~ Movable Signs.

(12) Projecting Signs, except Canopy Signs.

(13) Roof Signs.

(14) Snipe Signs.

(15) Swinging Signs.

(16) All Signs except those placed by governmental agencies located on public property.

(17) Any Sign on a utility pole except for the purpose of utility identification.

(18) Any Sign that could be confused with a traffic Signal or traffic Sign.

(19) Any Sign that in the opinion of the Village Manager constitutes a safety hazard.

(20) Any ~~private~~ Sign extending over or located within a public Right-of-Way, other than those required to be posted to ensure traffic safety or otherwise pursuant to the requirements of law.

(21) Logos as the main permitted ~~s~~Sign. A Logo as secondary signage per establishment shall have a ~~s~~Sign area that does not exceed ~~to~~ 144 square inches.

(22) Monument Signs.

(23) V-signs.

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Section 5. Section 30-193 of the Village Code Amended. That Section 30-193 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-193. Signs not requiring a permit.

The following Signs do not require a permit.

(1) A Government Instructional Sign.

(2) Temporary holiday decorations, provided they carry no advertising matter, and further provided that they are not in place more than seven days prior to a holiday and are removed within seven days after the holiday ends. The time limitations contained in this paragraph shall not apply during the period November 1 through January 15 each year.

(3) Temporary Signs for special events by nonprofit entities, subject to approval by the Village Manager.

(4) No-trespassing and no-dumping Signs not to exceed one and one-half square feet in area per Sign and not to exceed four per lot, except that special permission may be obtained from the Village Manager for additional Signs under proven special circumstances.

(5) ~~Certain Temporary Signs as specified in section 28-8 hereof~~ Political Signs.

(6) Real Estate Signs and Real Estate Open House Signs.

(7) Garage Sale Signs.

Section 6. Section 30-196 of the Village Code Amended. That Section 30-196 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-196. Temporary Signs.

(a) The following requirements shall apply to all Temporary Signs:

(1) No Temporary Sign of any type or size shall be erected, placed or maintained within any public Right-of-Way, or upon any property owned or leased by the Village, except as authorized by this article.

(2) No Temporary Sign may be erected on any property in such a manner to preclude or limit the sight distance visibility of drivers of motor vehicles.

(3) Any person or organization who constructs, erects or causes to be erected a Temporary Sign, or the owner or lessee of the property, where a Temporary Sign is located, shall be responsible for any hazard to the public which is caused by or created by reason of the construction and maintenance of Temporary Signs.

(3) Upon a failure to remove a Temporary Sign which is in violation of this section, the Village Manager may cause the removal of the Temporary Sign and charge the person or organization responsible for the Temporary Sign for the actual cost of removal.

(b) The following Temporary Signs are authorized in the Village:

(1) *Grand Opening or Seasonal Banner Sign (permit from Village Manager required).*

	Residential District	Nonresidential District
Number (maximum)	One per project	One per establishment
Area (maximum)	20 square feet	20 square feet
Sign Ht. (maximum)	Four feet	Four feet
Length of display	14 days	14 days
Frequency	1 per year	1 per year
Location	Not permitted within Public Rights-of-Way	Not permitted within Public Rights-of-Way

(2) *Real Estate Signs.*

	Residential District	Nonresidential District
Number (maximum)	Two per lot	One per lot
Area (maximum)	40 square inches each	Four square feet
Sign Ht. (maximum)	Four feet	Four feet
~~Setback (minimum)~~	~~Five feet~~	~~Five feet~~
Location	Not permitted within Public Rights-of-Way	Not permitted within Public Rights-of-Way

(3) *Construction Sign.*

	Residential District	Nonresidential District
Number	One per lot	One per lot

(maximum)		
Area (maximum)	Four square feet	Four square feet
Sign Ht. (maximum)	Four feet	Four feet
~~Setback (minimum)~~	~~Five feet~~	~~Five feet~~
Length of display	During Remodeling or construction	During Remodeling or construction
Location	Not permitted within Public Rights-of-Way	Not permitted within Public Rights-of-Way

(4) *Model Sign.*

	Residential District	Nonresidential District
Number (maximum)	One per model Unit One per Apartment Building, and One per Office and/or Retail Building	(Not applicable)
Area (maximum)	Four square feet	
Sign Ht. (maximum)	Four feet	
Model arrow	Three per Development	
Location	~~Model Signs or arrows directing traffic to models are p~~Prohibited ~~on the median and~~ within Public Rights-of-Way ~~along Crandon Boulevard~~	
Signs	Not to exceed two square feet each	
Flags	Not permitted	
Time limit	Until certificate of completion/occupancy is issued for last house or Unit in Development	

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(6) *Garage Sale Sign.*

	Residential District	Nonresidential District
Number (maximum)	One per Lot on site	Not permitted
Area (maximum)	Six square feet	
Height (maximum)	Four feet	
Length of display	Maximum of one weekend during six-month period	
Location	Not permitted within Public Rights-of-Way	

(7) *Political Sign* ~~*(see section 30-197(h) for supplemental provisions)*~~.

	Residential District	Nonresidential District
Area (maximum)	Four square feet	Four square feet
Sign Height (maximum)	Four feet	Four feet
~~Setback (minimum)~~	~~Five feet from edge of pavement~~	~~Five feet from edge of pavement~~
Maximum Number	Not applicable	No more than one Sign per candidate or issue per establishment
Removal	If related to an election, within seven days following the election to which the Signs relate	If related to an election, within seven days following the election to which the Signs relate
Location	Not permitted within Public Rights-of-Way	Not permitted within Public Rights-of-Way
Additional Requirements	Although no permit is required for a Political Sign, each candidate successfully filing qualifying campaign papers and each Political Sign sponsor shall be responsible for compliance with all requirements of this article. The	

	Village Clerk shall furnish a copy of this article to all qualifying candidates and Political Sign sponsors, and each shall sign and date an acknowledgment of receiving this article.

~~However, in no instance shall a Political Sign(s) be located on a public right-of-way which is adjacent to government owned property.~~

(8) *Real Estate Open House Sign (in conformance with design specifications as provided by the Village Manager).*

	Residential District	Nonresidential District
Number (maximum)	One per property	Three per property
Area (maximum)	Six square feet	Six square feet
Sign Height (maximum)	1½ × 2 feet	1½ × 2 feet
Time limit	Shall only be permitted Wednesday, Saturdays and Sundays 10:00 a.m. to 4:00 p.m. Must be removed same day.	Shall only be permitted Wednesday, Saturdays and Sundays 10:00 a.m. to 4:00 p.m. Must be removed same day.
~~Supplemental Regulations:~~		
Location	Not permitted within Public Rights-of-Way	Not permitted within Public Rights-of-Way
~~No real estate open house Signs shall be permitted to be placed in the median of or on property abutting and facing Crandon Boulevard nor within five feet of any Right-of-Way line.~~	~~Signs may be located in the public Right-of-Way provided said Sign must be Setback five feet from the edge of pavement.~~	~~Signs may be located in the public Right-of-Way provided said Sign must be Setback five feet from the edge of pavement.~~

Section 7. Section 30-197 of the Village Code Amended. That Section 30-197 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-197. Supplemental Regulations.

* * *

~~(h) *Political Signs.*~~

~~(1) Although no permit is required for a Political Sign, each candidate successfully filing qualifying campaign papers and each Political Sign Sponsor shall be responsible for meeting all requirements of this chapter relative to Political Signs. The Village Clerk shall furnish a copy of this ordinance to all qualifying candidates and Political Sign sponsors and each shall sign and date an acknowledgment of receiving this document.~~

~~(2) The Village Manager may cause the removal of any Political Sign Erected on public property contrary to the provisions of this chapter. The candidate or Political Sign sponsor responsible for erecting such Political Sign shall be liable to the City for the costs incurred in the removal. The Village Manager may cause the removal of any Political Sign illegally Erected on private property in conformance with section 28-13 hereof.~~

~~(3) All Political Signs shall be removed within seven days after the election to which they relate. Upon a failure to remove a Political Sign in a timely fashion, the Village Manager may cause the removal of the Political Sign and charge the candidate or Political Sign Sponsor the actual cost of removal.~~

~~(i)~~ (h) *Signs on Golf Carts.*

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Section 8. Section 30-198 of the Village Code Amended. That Section 30-198 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-198. Sign permits.

(a) *Required.* Except as otherwise set forth herein, it shall be unlawful for any Person to display or install any Sign without first having obtained a permit.

(b) *Applications.*

(1) *Filing.* Applications for permits required by this chapter shall be filed with the Village Manager upon forms to be furnished by the Village Manager. Such applications shall also respond to the structural requirements for Signs as specified in the ~~South~~ Florida Building Code.

(2) *Signs requiring Village Council approval.* All Multitenant Center Sign graphics criteria~~,~~ require prior review and approval by the Village Council based upon the recommendations of the Village Manager.

(c) *Issuance.* The Village Manager shall approve or deny the permit within thirty (30) days after receipt of a complete application, based upon whether the application complies with the terms of this article. If the permit is denied, the Village Manager shall prepare a written notice of the decision, describing the applicant's appeal rights pursuant to subsection (h), and provide it to the applicant within the thirty (30) day time period. ~~Provided the terms of this ordinance have been complied with, the Village Manager shall issue a permit for each Sign and retain a copy thereof and a copy of the plan.~~ Permits shall be numbered in order of their issuance.

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Section 9. Section 30-199 of the Village Code Amended. That Section 30-199 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-199. Legal Nonconforming Signs.

* * *

(d) *Other termination of legal Nonconforming Signs.*

(1) By abandonment: Abandonment of a legal Nonconforming Sign shall terminate its nonconforming status.

(2) By damage or poor condition: The legal nonconforming status of a Sign shall cease whenever the Sign is damaged beyond 50 percent as determined by the Village Manager from any cause whatever, or to the extent the Sign becomes a hazard or danger.

(3) Abandoned and damaged Signs, as described in this section, shall be removed by owners in accordance with the requirements of section ~~28-13~~ 30-201 hereof.

Section 10. Section 30-200 of the Village Code Amended. That Section 30-200 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 30-200. Sign maintenance.

(a) *Maintenance.* All Signs shall be maintained in a safe, presentable and good structural condition, which shall include the replacement of defective parts, repainting, cleaning and other acts required for the maintenance of said Sign. The area around the base of the Sign shall be kept free of weeds and debris. If a Sign does not comply with the above standards, the Village Manager shall require its removal in accordance with subsection ~~28-13~~ (d) hereof.

(b) ~~*Ineffective*~~ *Abandoned Signs.* Except as otherwise provided in this chapter, any Sign which is located on property that becomes vacant and unoccupied for a period of 90 days or more, or any Sign which pertains to a purpose that no longer applies, shall be deemed ~~ineffective~~ abandoned. An ~~ineffective~~ *Abandoned* Sign is prohibited and shall be removed by the owner ~~of the Premises in accordance with section 28-13 hereof~~.

(c) *Dangerous or defective Signs.* No Person shall permit to be maintained on any Premises owned or controlled by him, any Sign that is in a dangerous or defective condition. Any such Sign shall be removed or repaired by the owner of the Sign or the owner of the Premises.

(d) *Unlawful Signs.* No Person shall erect on any Premises owned or controlled by him any Sign that is prohibited under section ~~28-3~~ 30-191 or any Sign that in any way does not comply with the provisions of this chapter or any Sign that has not received a valid permit (unless specifically exempted there from).

Section 11. 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 12. Conflicts. All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 13. **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____ day of _____, 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