

ORDINANCE NO. 2005-13

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 8 "ENVIRONMENT," BY CREATING ARTICLE V "HURRICANE PROTECTION MEASURES" CONSISTING OF SECTION 8-301 "PREVENTION OF STORM DAMAGE"; PROVIDING REGULATIONS CONCERNING LANDSCAPING AND THE MAINTENANCE AND DISPOSAL OF LANDSCAPING DEBRIS, TREES, YARD WASTE AND VEGETATION, SO AS TO MITIGATE POTENTIAL STORM IMPACTS AND DAMAGES; PROVIDING RESTRICTIONS ON PLACEMENT OF LANDSCAPING DEBRIS; REQUIRING REMOVAL OF CERTAIN EXOTIC PLANTS AND TREES FOR NEW CONSTRUCTION; PROVIDING FOR PROTECTION OF ELECTRIC POWER LINES FROM VEGETATIVE GROWTH; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR PENALTY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as a result of the recent series of hurricanes and severe weather events which have affected the Village and the State of Florida, it is recognized to be necessary to implement additional regulations to assure the protection of the public health, safety and welfare; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is protective of the public health, safety and welfare.

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

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Village Code Amended. That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 8 "Environment", by creating Article V "Hurricane

Protection Measures" consisting of Section 8-301 "Prevention of Storm Damage", to read as follows:¹

ARTICLE V. HURRICANE PROTECTION MEASURES

Section 8-301. Prevention of Storm Damage

(a) **Hurricane Watch; Restriction On Placement of Landscaping Debris.**

Once an official hurricane watch is issued by the National Weather Service for an area which includes the Village, no person shall place any yard waste including, but not limited to, vegetative clippings, trees, palm fronds, leaves, branches or any other vegetative debris (the "Landscape Debris") on any portion of the public right of way or upon any land within ten (10) feet of the public right of way, unless instructed to do so in writing by the Village Manager. This shall not prohibit the temporary placement of Landscape Debris on the swale area adjacent to the parcel which produced such Landscape Debris for pick up by a licensed private hauler, so long as such pick up and removal is fully accomplished prior to the issuance by the National Weather Service of an official hurricane warning and in any event is completed by the private hauler prior to the occurrence of the anticipated storm event and at the private property owner's sole cost and expense.

(b) **Removal of Certain Exotic Plants and Trees for New Construction.**

From and after the date of adoption of this Ordinance, any person owning or controlling (the "Responsible Person") real property upon which there exists any of the exotic species of vegetation ("Exotics") listed on Exhibit "A", a copy of which is attached hereto and incorporated herein, shall cause the removal and disposal of said Exotics prior to obtaining a building permit for the construction of any new single family or duplex residence upon said property. As to any such property for which there exists at the time of adoption of this section an active building permit for the

^{1/} Proposed deletions from existing Village Code text are indicated by ~~strike through~~; proposed additions to existing Village Code text are indicated by underline.

construction of a new single family or duplex residence upon such property, the Exotics shall be removed by the Responsible Person prior to the issuance of a Certificate of Occupancy. The requirements of this section shall be applicable regardless of whether the Exotics were planted or established before, on or after the date of adoption of this Ordinance. Nothing herein shall be construed to authorize the planting of Exotics.

(c) Protection of Electric Power Lines.

Each person owning or controlling real property within the Village shall cause all landscaping situated upon such real property, including, but not limited to, trees, branches, palm fronds, vines, bushes and any other vegetative matter, to be maintained and trimmed so that no trees, branches, palm fronds, vines, bushes or other vegetative matter shall be situated at any point any closer than six (6') feet to any energized electric transmission or electric service line. In the event that a person owning or controlling such real property does not timely cause the landscaping to be maintained and trimmed as described above within seven (7) days after having received a written demand from the Village to do so, the Village Manager shall be authorized to arrange for Village employees or contractors to perform such work. Village shall have a lien, in the nature of a special assessment, upon the property for the purpose of securing full reimbursement to the Village for all costs incurred for said work, and may record and enforce said lien to the fullest extent authorized by law. The procedures applicable to the enforcement and collection of said lien shall be the same as those which are authorized for solid waste collection service liens pursuant to Section 2-62 of the Village Code.

Section 3. 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 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. **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 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 5. **Penalty.** That any person who violates any provisions of this Ordinance shall, upon conviction, be punished by a fine not to exceed \$500.00 or imprisonment in the County jail not to exceed sixty (60) days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This Ordinance shall be subject to enforcement under the Local Government Code Enforcement Act, Chapter 162, F.S., as amended, and Village Code Section 2-31, et. seq., as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

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

PASSED AND ADOPTED on first reading this 12th day of October, 2004.

PASSED AND ADOPTED on second reading this 6th day of September, 2005.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EXHIBIT "A"

EXOTIC LANDSCAPING TO BE REMOVED FROM PROPERTY

1. Schinus terebinthifolius (Brazilian Pepper/Florida Holly)
2. Metopium toxiferum (Poison Wood)
3. Casurina equisetifolia (Australian Pine)
4. Melaleuca Quinquenervia (Melaleuca)
5. Araucaria Heterophylla (Excelsa, Northfork Pine Island)
6. Brassala Actinophyera (Schefflera)