

ORDINANCE NO. 2009-12

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AMENDING SECTION 2-62 (“LATE PAYMENT CHARGE, SPECIAL ASSESSMENT LIEN FOR DELINQUENT SOLID WASTE AND RECYCLING SERVICE FEES”) OF ARTICLE IV (“FINANCE”) OF CHAPTER 2 (“ADMINISTRATION”) OF THE CODE OF KEY BISCAYNE, FLORIDA REGARDING A ONE-TIME WAIVER OF SOLID WASTE AND RECYCLING LATE FEES AND INTEREST; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, Section 2-62 of the Code of Key Biscayne, Florida (the “Code”) requires the Village Council to impose late fees and interest for solid waste and recycling charges not timely paid; and

WHEREAS, the Village Council desires to implement a one-time waiver of outstanding late fees and interest for customers who pay their delinquent solid waste and recycling bills prior to December 31, 2009; and

WHEREAS, the Village Council wishes to implement such waiver by amending Section 2-62 of the Code; and

WHEREAS, the Village Council finds that amending the Village Code in accordance with this ordinance is in the best interest of the Village and its residents.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS¹:

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

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown as ~~strikethrough~~.

Section 2. Village Code Amended. That section 2-62 of the Code is hereby amended to

read as follows:

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Sec. 2-62. Late payment charge, special assessment lien for delinquent solid waste and recycling service fees.

(a) Fees imposed by the Village Council for the collection of solid waste and for the providing of recycling services shall be due and payable not later than the due date indicated upon such bill of the Village. Such due date shall be not later than the 15th day of February for service provided by the Village in the immediately preceding annual period of October 1st of the prior year to September 30th of the current year.

(b) If such charges are not fully paid by the customer on or before the past due date, a late charge of five (5) percent shall be added to the bill and imposed by the Village. Unpaid balances of customers for such charges and late charges shall be subject to an interest charge at the rate of 1/2 of 1 percent per month in accordance with the provisions of paragraphs (d) and (g) below. Imposition of said interest charge shall commence for any delinquency existing 30 days after the past due date and continue to accrue until all charges are paid. All accrued late charges and interest charges outstanding for each unpaid account as of the date of the passage and adoption of this amendment to Section 2-62(b) shall be deemed waived, null, and void if and only if the entire unpaid account balance (excluding the late and interest charges) is paid in full no later than December 31, 2009.

(c) Solid waste and recycling charges and late charges, together with any interest charges, shall be debts due and owing to the Village and such debts shall be recoverable by the Village or its assignee, in any court of competent jurisdiction.

(d) All charges, late charges and interest accruing thereupon for service rendered by the Village to any property which remain unpaid 30 days after the past due date of the charges shall become subject to imposition of a lien against and upon the real property to which such service has been furnished to the same extent and character as a lien for a special assessment. An administrative fee of ten percent of the unpaid service charges shall be imposed upon any delinquent account for which a lien is filed. Once such lien is filed by the Village in the Official Records, and until fully paid and discharged, said charges, late charges, administrative fee and interest accrued thereupon shall be, remain and constitute a special assessment lien equal in rank and dignity with the liens of all Village ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property served, from and after the date said charges become a lien as set forth in this paragraph. Said liens may be enforced and satisfied by the Village, pursuant to Chapter 173, Florida Statutes, as amended from time to time or by any other method permitted

by law. The lien provided for herein shall not be deemed to be in lieu of any other legal remedies for payment available to the Village.

(e) Within ten days after a lien is filed against a property, the Village Clerk shall send by U.S. Mail to the property owner of record a notice of lien, informing the property owner of the existence of the lien, the amount of the lien and the service provided by Village for which such lien was imposed. Within 30 days after notice of lien is sent by the Village Clerk to the property owner, the property owner may file an appeal to the Village Manager to contest the existence of the lien or the amount of such lien. The Village Attorney shall prepare a form to be utilized for such appeal, which shall be retained on file in the Office of the Village Clerk. In order to be entitled to be heard by the Village Manager, the notice of appeal of lien assessment must be filed with the Village Manager within 30 days of the date of the Village's mailing of the notice of lien. Failure to appeal within such 30-day period will be considered an abandonment of any right to appeal or contest the lien.

(f) Upon timely receipt of a notice of lien appeal, the Village Manager shall be empowered to adjust, settle or compromise any appeal on behalf of the Village if he shall find any error in the bill rendered for services or the lien imposed.

(g) All liens shall be effective upon filing in the Official Records of Dade County and shall become due, payable and subject to suit for enforcement 30 days after the mailing of the notice of lien by the Village Clerk, except in such cases where an appeal is filed pursuant to paragraph

(f) in which case the lien is due, payable and subject to enforcement 30 days from the decision of the Village Manager.

(h) Liens may be discharged and satisfied by payment to the Village of the aggregate amounts specified in the notice of lien, together with interest accrued thereon, and all filing and recording fees arising from the notice of lien and the satisfaction of lien. When any such lien has been fully paid and/or discharged, the Village Clerk shall cause evidence of the satisfaction and discharge of such lien to be filed with the Office of the Clerk of the Circuit Court of Dade County, Florida, in the Official Records of Dade County, Florida.

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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 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. **Effective Date.** That this Ordinance shall be effective immediately upon adoption at second reading.

PASSED on first reading this 25th day of August , 2009.

PASSED AND ADOPTED on second reading this 27th day of October , 2009.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, MMC VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY