ORDINANCE NO. _______

AN ORDINANCE OF THE VILLAGE COUNCIL OF MIAMI SHORES VILLAGE, FLORIDA, RELATING TO REGULATION OF SINGLE-USE PLASTIC BOTTLED WATER, PROVIDING DEFINITIONS; PROVIDING FOR THE PROHIBITION OF SINGLE-USE PLASTIC BOTTLED WATER IN ANY VILLAGE FACILITY OR ON VILLAGE PROPERTY AND EXCEPTIONS; ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING FOR ENFORCEMENT; ESTABLISHING RIGHTS OF VIOLATORS, PAYMENT OF FINES, RIGHT TO AN APPEAL, FAILURE TO PAY CIVIL FINE OR APPEAL; PROVIDING FOR RECOVERY OF UNPAID FINES, ESTABLISHING UNPAID FINES TO CONSTITUTE A LIEN, PROVIDING FOR FORECLOSURE, PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING THAT ENFORCEMENT IS CUMULATIVE; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Miami Shores Village is committed to environmental conscientiousness, and declares that it is in the best interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the land and in the waters of Miami Shores Village; and

WHEREAS, discarded Single-Use Plastic Bottled Water (as defined in this Ordinance) contributes to overburdened landfills, threatens wildlife and marine life, and degrades and litter the land and waters off of Florida’s coast, which include areas within Miami Shores Village; and

WHEREAS, Single-Use Plastic Bottled Water is neither readily recyclable nor fully biodegradable, and can take hundreds of years to degrade; and

WHEREAS, Single-Use Plastic Bottled Water constitutes a portion of the litter in Miami Shores Village’s streets, parks, public places, and waterways; and

WHEREAS, the sale and distribution of such Single-Use Plastic Bottled Water has a detrimental effect on Miami Shores Village’s environment, and that of surrounding jurisdictions; and

WHEREAS, as an environmental leader among local governments in the State of Florida, a goal of Miami Shores Village is to replace Single-Use Plastic Bottled Water with reusable alternatives whenever possible; and

WHEREAS, this Ordinance provides for a 120-day implementation period (where only written warnings will be issued for violations of this Ordinance) allowing Miami Shores Village Contractors, Village Permittees, Temporary Vendors, and residents a reasonable opportunity to transition to reusable alternatives; and

WHEREAS, the Miami Shores Village Council finds that there are reasonable, environmentally-friendly alternatives to Single-Use Plastic Bottled Water; and

WHEREAS, the Miami Shores Village Council finds that this Ordinance is necessary for the preservation of our environment and the public health, safety, and welfare of Miami Shores Village residents and visitors and future generations.

NOW, THEREFORE, BE IT ENACTED BY THE VILLAGE COUNCIL OF MIAMI SHORES VILLAGE, FLORIDA, that:
1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

2. **Section 2.** The provision of the Miami Shores Village Code of Ordinances is hereby amended so as to create an Article I as part of Chapter 15. Existing Sections 15-1, 15-2, 15-3, 15-4, 15-5, 15-6, 15-7, 15-8, 15-9, 15-10, and 15-11 shall now fall under Article I of Chapter 15.

3. **Section 3.** The provision of the Miami Shores Village Code of Ordinances is hereby amended so as to create a new Article II as part of Chapter 15, to read as follows:

**Chapter 15, Article II: Regulation of Single-Use Plastic Bottled Water**

4. **Sec. 15-13 – Definitions**

   The following words, phrases or terms as used in this Article, unless context indicates otherwise, shall have the following meanings:

   **Single-Use Plastic Bottled Water:** Drinking Water originally provided in a sealed Rigid Plastic Bottle.

   **Drinking Water:** Includes, natural spring water or well water; water taken from municipal or private utility systems or other sources; distilled, deionized, filtered, or other purified water; or any of the foregoing to which chemicals may be added. “Drinking Water” does not include: carbonated or sparkling water; soda, seltzer, or tonic water; or flavored water, also marketed as fitness water, vitamin water, enhanced water, energy water, or similar products. Products shall not be considered to fall within the definition of “Drinking Water” merely because water is one of several ingredients thereof.

   **Rigid Plastic Bottle:** Any formed or molded container comprised predominantly of plastic resin, having a relatively inflexible fixed shape or form, having a neck that is smaller than the container body, and intended primarily as a single service container. “Rigid Plastic Bottle” includes a compostable plastic bottle meeting these criteria.

   **Village Contractor:** Any person in privity of contract with the Village conducting business on Village-owned property or within the Village right-of-way, including but not limited to: contractors, vendors, lessees, concessionaires, and operators of a Village Facility or Village Property.

   **Village Permittee:** Any person or entity issued a special event permit or temporary use permit by the Village for a special event of temporary use on Village Property.

   **Village Facility:** Any building, structure, park, beach, road, street, right-of-way, or other facility owned, operated, or managed by the Village.

   **Village Property:** Any land or facilities, water, or air rights owned, operated, or managed by the Village.
Village-Located Event: Any gathering held on Village Property, including a Village Facility, and subject to a Village permit. Any event regardless of specific location, but held within the Village, which enjoys substantial Village sponsorship or funding shall be considered a Village-Located Event.

Temporary Vendor: Any person or entity issued a temporary permit by the Village to provide or sell food on Village Property or in a Village Facility, including but not limited to special event permits issued by the Village for a special event on Village Property or in a Village Facility.

Sec. 15-14 – Prohibition of Single-Use Plastic Bottled Water in any Village Facility or on Village Property

(1) **Intent.** Single-Use Plastic Bottled Water containers are neither readily recyclable nor biodegradable, and can take hundreds of years to degrade. The intent of this Section is to reduce litter and pollutants impacting the Village land and the waters by reducing Single-Use Plastic Bottled Water usage and replacing it with reusable alternatives.

(2) **Single-Use Plastic Bottled Water; Prohibitions**

   (a) Single-Use Plastic Bottled Water, as defined in Section 15-13, shall not be used, sold, provided, or distributed on Village Property or as part of a Miami Shore Village-approved activity or Village-Located Event, whether private or public.

   (b) Village Contractors, Village Permittees, and Temporary Vendors shall not sell, use, or offer Single-Use Plastic Bottled Water in Village Facilities or on Village Property. The provisions of this Section shall be deemed incorporated into all contracts, leases, or concession agreements for Village Contractors, Village Permittees, and Temporary Vendors entered into after the effective date of this Ordinance, and may be incorporated by reference via requiring compliance with all laws, rules, and ordinances. A violation of this Section shall be deemed a material default under the terms of the contract, lease, or concession agreement and shall be grounds for revocation of a special events permit.

(3) **Exceptions.** Although the discontinuation of the use of Single-Use Plastic Bottled Water is strongly encouraged by the Village Council, this Article shall not apply to:

   (a) Any Miami Shores Village contract, lease, or concession agreement entered into prior to the effective date of this Section nor any temporary permit issued prior to the effective date of this Section, unless the Village Contractor, Village Permittee, or Temporary Vendor agrees to be subject thereto.

   (b) Where a reasonable accommodation is needed by an individual due to a medical or physical condition, or a religious belief.

   (c) Where the Village Manager finds that relying on Single-Use Plastic Bottled Water is necessary in a given situation to protect the public health, safety,
and welfare, and no reasonable alternative to Single-Use Plastic Bottled Water will serve the same purpose.

(d) Use, sale, or distribution of Single-Use Plastic Bottled Water occurring subsequent to a declaration (by the Mayor or other duly authorized Village, County, State, or Federal official) of an emergency covering the Village, and affecting the availability and/or quality of drinking water to residents of the Village (however, this exemption shall expire seven days after such declaration has expired or ended).

Sec. 15-15 – Enforcement; Penalties

(1) Following adoption of this Ordinance, the Village shall engage in public education efforts to inform the public and users of Village Facilities and Village Properties of the provisions of this Article and to provide assistance with identifying alternatives to Single-Use Plastic Bottled Water.

(2) Beginning upon this Ordinance becoming effective, the Miami Shores Village Code Compliance Department shall begin a 120-day period of providing written warnings for any noted violations of this Article in lieu of any other enforcement penalties hereunder. Thereafter, the Miami Shores Village Code Compliance Department may fully enforce all provisions of this Article.

(3) If a code inspector (as defined in Section 2-76) finds a violation this Article, prior to issuing a violation, such code inspector shall issue a warning to allow for time to correct the violation before issuing a notice of violation hereunder. After the warning period expires, the code inspector may issue notice(s) of violation. The notice may inform the violator of the nature of the violation, amount of fine for which the violator may be liable, provide instructions and due date for paying the fine, provide notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing. A violation of this ordinance is deemed to be irreparable as it may only be complied with in the future and not retroactively.

(4) In the Village’s discretion, a notice of violation of this chapter may be issued through Florida Statutes Section § 162.06, which may require the appearance of the person alleged to be in violation before the code enforcement board.

Sec. 15-16 – Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.

(1) A Village Contractor, Village Permittee, or Temporary Vendor that has been issued a notice of violation shall elect to either:

(a) Pay the following civil fine (per day, irrespective of the number of violations in a given day) within 30 days of the notice of violation:

i. First violation .................................................................$50.00
ii. Second Violation within one (1) year after issuance of first violation.................................$100.00

iii. Third violation and any subsequent violation within one (1) year after issuance of the first violation .............................................................................$500.00

(b) Request an administrative hearing before the code enforcement board to appeal the notice of violation, which hearing must be requested in writing and be received by the Village within ten days of service of the notice of violation.

(2) An individual or entity that has been issued a notice of violation, but which is not a Village Contractor, Village Permittee, or Temporary Vendor, shall elect to either:

(a) Pay a $25.00 civil fine (per day, irrespective of the number of violations in a given day) within 30 days of the notice of violation; or

(b) Request an administrative hearing before the code enforcement board to appeal the notice of violation, which hearing must be requested in writing and be received by the Village within ten days of service of the notice of violation.

(3) The Village may revoke or cancel any permit for non-compliance with this Article, and may use past non-compliance as grounds for not renewing or re-issuing a permit.

(4) Nothing stated herein shall be construed as a limitation to the Village’s remedies available to it through its contract, lease, permit, or other relationships.

(5) Standard of Review. If an administrative hearing is requested, the code enforcement board shall review an appeal of the notice of violation de novo on the merits using a preponderance of the evidence standard.

(6) The code enforcement board shall be prohibited from hearing the merits of and defense to the notice of violation if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.

(7) Any party aggrieved by a decision of the code enforcement board may appeal that decision, as set forth in Village Code Section 2-82.

(8) The failure to timely pay the civil fine, or to timely request an administrative hearing before the code enforcement board, shall constitute a waiver of the violator’s right to administrative hearing before the code enforcement board, and shall be treated as an admission of the violation, for which fines and penalties may be assessed accordingly.
(1) The Village may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon all real or personal property owned by the violator within the county or counties of such recordation, which lien may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against any of the violator’s real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. Three months after the recording of any such lien, which remains unpaid, the Village may foreclose or otherwise execute upon the lien, for the amount of the lien, plus accrued interest, and attorneys’ fees in all courts.

(3) Injunctive relief. As an additional means of enforcement, when there are more than three offenses by the same violator within a calendar year, the Village may seek injunctive relief, may follow procedures to revoke the violator’s business tax receipt and revoke the violator’s certificate of use.

Sec. 15-18 – Enforcement is cumulative.

All methods of enforcement provided for in this Article are cumulative and independent of the other and the Village may use one or all of the same.

Section 4. Conflicting Provisions. Any provisions of the Code of Ordinances of Miami Shores Village, Florida in conflict with the provisions of this Ordinance are hereby repealed, but only to the extent of such conflict.

Section 5. Severability. The provisions of this Ordinance are declared to be severable, and if any sentence, section, 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 sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Codification. It is the intention of the Miami Shores Village Council that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Miami Shores Village, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.
Section 7. Effective Date. This Ordinance shall take effect immediately upon adoption on second reading.

PASSED and ENACTED this _____ day of ___________________, 2020.

First Reading: January 21, 2020.

Second Reading: _______________________, 2020.

ATTEST:

Ysabel Rodriguez, MPA, CMC
Village Clerk

Crystal Wagar, Mayor

APPROVED AS TO FORM:

Richard Sarafan
Village Attorney