

ORDINANCE NO. 2016-

AN ORDINANCE OF THE VILLAGE COUNCIL OF KEY BISCAYNE, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE VILLAGE ELECTORS FOR APPROVAL OR DISAPPROVAL, IN ACCORDANCE WITH SECTION 6.02(A)(I) OF THE VILLAGE CHARTER, A PROPOSED AMENDMENT TO SECTION 2.05(C) OF THE VILLAGE CHARTER, ENTITLED “FILLING OF VACANCIES,” TO PROVIDE FOR AN APPOINTMENT PROCESS TO FILL A VACANCY ON THE VILLAGE COUNCIL; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION OF THE CHARTER AMENDMENT TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED CHARTER AMENDMENT TO BE HELD ON TUESDAY, THE 8TH DAY OF NOVEMBER, 2016, IN CONJUNCTION WITH THE GENERAL ELECTION BEING HELD ON SAID DATE; PROVIDING FOR VOTING AT THE POLLS; PROVIDING FOR NOTICE OF ELECTION; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR INCLUSION IN THE CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the “Village”) Council desires to streamline the process by which a vacancy on the Council or in the Office of Mayor may be filled; and

WHEREAS, the Village Council desires to implement a process to allow for the filling of a vacancy on the Council or in the Office of Mayor by appointment; and

WHEREAS, an amendment to the Village Charter is required in order to allow for an appointment process to fill a vacancy on the Council or in the Office of the Mayor; and

WHEREAS, the Village Council finds that an amendment to Article II, Section 2.05(c) of the Village Charter allowing for the filling of vacancies by an appointment process 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 FOLLOWS: ¹

Section 1. **Recitals.** That the above recitals are true and correct and incorporated herein by this reference.

Section 2. **Village Charter Amended.** That, subject to the requirements of Section 8 of this Ordinance, Article II, Section 2.05(c) of the Village Charter is hereby amended to read as follows:

“PART I – CHARTER

ARTICLE II. – VILLAGE COUNCIL; MAYOR

Section 2.05. - Vacancies; forfeiture of office; filling of vacancies.

(a) Vacancies. The office of a Council Member or Mayor shall become vacant upon his/her death, resignation, removal from office in any manner authorized by law or forfeiture of his/her office.

(b) Forfeiture of office.

(i) Forfeiture by disqualification. A Council Member shall forfeit his/her office if at any time during his/her term s/he ceases to maintain his/her permanent residence in the Village or otherwise ceases, without good cause, to be a qualified elector of the Village.

(ii) Forfeiture by absence. A Council Member shall be subject to forfeiture of his/her office, in the discretion of the remaining Council Members, if s/he is absent without good cause from any three (3) regular meetings of the Council during any calendar year, or if s/he is absent without good cause from any three (3), consecutive Regular Meetings of the Council, whether or not during the same calendar year.

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text. Changes between first and second reading are indicated with highlight.

- (iii) Procedures. The Council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a Council Member's office, including whether or not good cause for absence has been or may be established. The burden of establishing good cause shall be on the Council Member in question; provided, however, that any Council Member may at any time during any duly held meeting move to establish good cause for the absence of him/herself or any other Council Member, from any past, present or future meeting(s), which motion, if carried, shall be conclusive. A Council Member whose qualifications are in question or who is otherwise subject to forfeiture of his/her office shall not vote on any such matters. The Council Member in question shall be entitled to a public hearing(s) on request. If a public hearing is requested, notice thereof shall be published in one (1) or more newspapers of general circulation in the Village at least one (1) week in advance of the hearing. Any final determination by the Council that a Council Member has forfeited his/her office shall be made by resolution. All votes and other acts of the Council Member in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.
- (c) Filling of vacancies. A vacancy on the Council or in the office of Mayor shall be filled by Council appointment. The appointee must meet all the requirements for candidates provided for in the last sentence of Section 2.04. The vacancy shall be filled by the appointee until the next regularly scheduled Village Mayoral or Council, countywide, statewide or federal election. filled as follows:
- ~~(i) If the vacancy occurs on the Council and less than six (6) months remain in the unexpired term, the vacancy shall be filled by the Council. If the vacancy occurs in the office of Mayor and less than six (6) months remain in the unexpired term, the vacancy shall be filled by vote of the Council from among its members.~~
- ~~(ii) If one (1) year or more remains in the unexpired term, the vacancy shall be filled by a special election to be held not sooner than thirty (30) days or more than ninety (90) days following the occurrence of the vacancy.~~
- ~~(iii) If six (6) months or more but less than one (1) year remain, the vacancy shall be filled by the Council as provided for in paragraph (i) of this subsection (c) unless there is a Village, County, State or a national election scheduled to take place on any date(s) within such period, in which case the vacancy shall be filled by special election on the first such election date.~~
- ~~(iv) If there is no qualified candidate for any vacancy in any election, the Council shall appoint a person qualified under this Article for the vacancy.~~
- ~~(v) Notwithstanding any quorum requirements established herein, if at any time the full membership of the Council is reduced to less than a quorum, the remaining members~~

may, by majority vote, appoint additional members to the extent otherwise permitted or required under this subsection (c).

- (vi) In the event that all the members of the Council are removed by death, disability, recall, forfeiture of office and/or resignation, the Governor shall appoint interim Council Members who shall call a special election within not less than thirty (30) days or more than sixty (60) days after such appointment and such election shall be held in the same manner as the first elections under this Charter; provided, however, that if there are less than six (6) months remaining in the unexpired terms, the interim Council appointed by the Governor shall serve out the unexpired terms. Appointees must meet all requirements for candidates provided for in the last sentence of Section 2.04.

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Section 3. Election Called. That a special election is hereby called, to be held on Tuesday, the 8th day of November, 2016, in conjunction with the general election being held on the same date, to present to the qualified electors of the Village of Key Biscayne, the ballot question provided in Section 4 of this Ordinance.

Section 4. Form of Ballot. That the form of ballot for the Charter Amendment provided for in Section 2 of this Ordinance shall be substantially as follows:

“1. Filling of Vacancies on the Council or in the Office of Mayor.

The Village Charter currently provides different methods for filling vacancies that occur during Council terms. Such methods include by Council appointment or by special election. It is proposed that the Charter be amended to provide for the filling of such council or mayoral vacancies solely by an appointment made by the Council.

Shall the above-described Charter amendment be adopted?

[] Yes

[] No”

Section 5. Balloting. That balloting shall be conducted between the hours of 7:00 a.m. to 7:00 p.m. on the date of the election. Absentee ballots shall be available. Early voting shall be provided in conjunction with the general election. All qualified Village electors who are timely registered in accordance with law shall be entitled to vote. The Village Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County (the "County") Supervisor of Elections. The County registration books shall remain open at the Office of the County Supervisor of Elections until the date at which the registration books shall close in accordance with the provisions of the general election laws. The Village Clerk and the County Supervisor of Elections are hereby authorized to take all appropriate action necessary to carry into effect and accomplish the provisions of this ordinance. Pursuant to Section 2-102 of the Village Code, this election shall be canvassed by the Village Clerk with assistance from the County Supervisor of Elections, or as required by law.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the Village at least 30 days prior to said election, the first publication to be in the fifth week prior to the election (to-wit: during the week commencing Sunday, October 4, 2016), and the second publication to be in the third week prior to the election (to-wit: during the week commencing Sunday, October 16, 2016), and shall be in substantially the following form:

“NOTICE OF SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO ORDINANCE NO 2016-__ ADOPTED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA (THE "VILLAGE"), A SPECIAL ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE VILLAGE, IN CONJUNCTION WITH THE GENERAL ELECTION, ON TUESDAY, THE 8TH

DAY OF NOVEMBER, 2016, AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSAL SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE.

1. Filling of Vacancies on the Council or in the office of Mayor.

The Village Charter currently provides different methods for filling vacancies that occur during Council terms. Such methods include by Council appointment or by special election. It is proposed that the Charter be amended to provide for the filling of such council or mayoral vacancies solely by an appointment made by the Council.

Polling place information, the enabling Ordinance including the full text of the proposed Village Charter Amendment and the ballot question, are available at the office of the Village Clerk located at 88 West McIntyre Street, Key Biscayne, Florida 33149.

Village Clerk”

Section 7. Copies. That copies of this Ordinance concerning the Charter Amendment are on file at the office of the Village Clerk, located at 88 West McIntyre Street, Key Biscayne, Florida 33149, and is available for public inspection, during regular business hours.

Section 8. Effectiveness. That the Charter Amendment provided for in Section 2 above shall become effective only if the majority of the qualified electors voting on the specific Charter Amendment vote for its adoption, and it shall be considered adopted and effective upon certification of the election results. Following adoption of the Charter Amendment, the Village Clerk shall file the adopted Charter Amendment with the Clerk of the Circuit Court of Miami-Dade County, Florida.

Section 9. Inclusion in the Charter. That subject to the requirements of Section 8 above, it is the intention of the Village Council and it is hereby provided that the Charter Amendment shall become and be made a part of the Charter of the Village of Key Biscayne, Florida;

that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention.

Section 10. 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 11. Effective Date. That this Ordinance shall become effective immediately upon adoption at second reading.

PASSED on first reading this 8th day of March, 2016.

PASSED AND ADOPTED on second reading this 12th day of April, 2016.

MAYOR MAYRA PEÑA LINDSAY

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY