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October 21, 2003

The Honorable Mayor and Councilmembers
Village of Key Biscayne
88 West McIntyre St.
Key Biscayne, Florida 33149-0250

Re: Proposed Charter Amendments

Dear Mayor and Councilmembers:

Pursuant to the Village Council's request at the last Council meeting, we have drafted the enclosed proposed Ordinance for the purpose of enabling the Council to present two proposed Charter Amendments to the electors of the Village at the March 9, 2004 Presidential Preference Primary election.

The two proposed Charter Amendments consist of the following:

1. Amending the term of office of Council Members from two year terms to four year terms of office, while retaining the two year term for the Office of Mayor;
2. Eliminating the run-off election for Mayor and Council Member positions and the related majority vote of elector requirement, so as to enable the Mayor and Council Members to be elected at a single regular election at which those candidates receiving the greatest number of votes are elected.

Pursuant to Section 5.03 of the Miami-Dade County Charter, any proposed Charter Amendments which the Council desires to place on the March 9, 2004 ballot, must be passed by the Village Council between November 10, 2003 and January 9, 2004. This time-frame is confirmed

The Honorable Mayor and Councilmembers
October 21, 2003
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by the July 29, 2003 Memorandum of the Miami-Dade Supervisor of Elections. In order to comply with the deadline for the March 9, 2004 ballot, we would suggest that the Council adhere to the following schedule:

- General discussion of proposed Charter Amendment Ordinance: At Council Meeting of October 28, 2003;
- First reading of proposed Charter Amendment Ordinance: At Council meeting of November 11, 2003;
- Second reading of proposed Charter Amendment Ordinance: At Council meeting of December 2, 2003.

Section 2 of the Ordinance sets forth the text of the two Charter Amendments. Section 3 of the Ordinance provides the specific ballot language. The last sentence of Section 5 of the Ordinance specifies that the Charter Amendments shall not operate to extend or otherwise affect the existing term of office of any Council Member.

Please advise if any further information is required at this time.

Sincerely,



David M. Wolpin

DMW/ajj
103.001
Enclosures

cc: Village Manager
Village Clerk
Stephen J. Helfman, Esq.

ORDINANCE NO. _____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, PROVIDING FOR AMENDMENT OF THE VILLAGE CHARTER BY AMENDING SECTION 2.03 "ELECTION AND TERM OF OFFICE" AND SECTION 5.01 "ELECTIONS"; BY PROVIDING FOR COUNCIL MEMBERS, OTHER THAN THE MAYOR, TO BE ELECTED FOR TERMS OF FOUR (4) YEARS INSTEAD OF TWO (2) YEAR TERMS; AND BY PROVIDING FOR ELIMINATION OF RUN-OFF ELECTIONS FOR MAYOR AND COUNCIL MEMBER POSITIONS, AND PROVIDING FOR CANDIDATES TO BE ELECTED TO MAYORAL AND COUNCIL MEMBER POSITIONS BY PLURALITY VOTE RATHER THAN BY A MAJORITY VOTE REQUIREMENT; CALLING AN ELECTION ON THE PROPOSED AMENDMENTS TO THE VILLAGE CHARTER TO BE HELD ON TUESDAY, MARCH 9, 2004; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL THE CHARTER AMENDMENTS SET FORTH HEREIN; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE OF ELECTION; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 6.02(a)(i) of the Charter of the Village of Key Biscayne provides that the Council may, by Ordinance, propose amendments to the Charter, subject to approval by the electorate at the next general election or at a special election called for such purpose; and

WHEREAS, the Council has determined to submit certain proposed Charter Amendments for approval or disapproval by the electors, as provided in this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

¹ / Underlined text is proposed to be added; ~~strikethrough~~ text is proposed to be deleted from the existing Charter text.

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

Section 2. Charter Amended.

A. That Section 2.03 "Election and Term of Office" of the Village Charter, is amended by revising that Section to read as follows:

Section 2.03. Election and term of office.

Each Council Member and the Mayor shall be elected at-large ~~for a two (2) year term~~ by the electors of the Village in the manner provided in Article V of this Charter. The term of office for Council Members shall be four (4) years. The term of office for Mayor shall be two (2) years. No person shall serve as Mayor for more than two (2) consecutive elected terms, and no person may serve on the Council, or as any combination of Mayor and Council Member, for more than eight (8) consecutive years.

B. That Section 5.01 "Elections" of the Village Charter, is amended by revising that Section to read as follows:

Section 5.01. Elections.

- (a) *Electors.* Any person who is a resident of the Village, has qualified as an elector of the State and registers to vote in the manner prescribed by law shall be an elector of the Village.
- (b) *Nonpartisan elections.* All elections for the offices of Councilmember and Mayor shall be conducted on a nonpartisan basis.
- (c) *Election date.* An election shall be held in November of each even-numbered year, on the same day U.S. congressional elections are held, or if none are held in any year, on the first Tuesday following the first Monday of November of that year.
- (d) *Election.* The ballot for the election shall contain the names of all qualified candidates for Mayor and (for those election years at which Council Members' terms of office are expiring) for each of the six (6) Council positions, and shall instruct electors to cast one (1) vote for Mayor and no more than six (6) votes for Council, with a maximum of one (1) vote per candidate. ~~If any candidate for Mayor receives greater than fifty percent (50%) of the ballots cast for Mayor, such candidate shall be duly elected~~

~~Mayor. If any candidate(s) for Council receive(s) a number of votes greater than fifty percent (50%) of the total number of ballots cast, such candidate(s) shall be duly elected to the Council, and the number of positions contested in the runoff election shall be decreased accordingly. If no candidate receives greater than fifty percent (50%) of the ballots cast for Mayor, the two (2) candidates for Mayor who received the greatest number of ballots cast shall be included in a runoff election. The ballot for the runoff election shall also contain the names of up to twelve (12) candidates for Council who received the most votes in the election, provided that if any Council positions were filled in the election, the number of Council candidates on the ballot shall be a number equal to the remaining number of Council positions to be filled, times two (2). The candidate for Mayor who receives the greatest number of votes cast for the office of Mayor shall be duly elected Mayor. The six (6) Council candidates who receive the greatest number of votes for Council Member shall be duly elected to Council positions.~~

- (e) *Special elections.* Special elections, when required, shall be scheduled by the Council at such times and in such manner as shall be consistent with this Charter.
- (f) ~~*Runoff election Tie Votes.* If a runoff election is necessary, it shall be held two (2) weeks after the election held pursuant to subsection e) of this Section. The ballot shall instruct electors to cast one (1) vote for Mayor and to cast a number of votes for the Council not greater than the number of contested Council positions, with a maximum of one (1) vote per candidate. The candidate receiving the greatest number of ballots cast in the runoff election for Mayor shall be duly elected Mayor. The candidates for Council receiving the greatest number of ballots cast for Council Member, respectively, shall be duly elected to the remaining positions to be filled on the Council. If a tie vote occurs in the runoff election between two (2) or more candidates for either the office of Mayor or Council Member, the tie shall be decided by lot under the direction of the Village Clerk.~~
- (g) *Single candidates.* In the event that the number of persons who qualify as candidates for the Council positions to be filled at an election is equal to or less than the number of positions to be filled at such election, those positions shall not be listed on the election ~~or runoff~~ ballot. No election for Mayor shall be required in any election if there is only one duly qualified candidate for Mayor. The duly qualified candidates shall be deemed elected.
- (h) *Absentee votes.* Absentee voting will be permitted as provided by the laws of the State and under such conditions as may be prescribed by ordinance

from time to time; provided, however, that no ordinance shall limit the right to vote by absentee ballot available under State law.

- (i) *Commencement of terms.* The term of office of any elected official will commence seven (7) days following the day of the election, ~~runoff~~, or special election at which s/he is elected.

Section 3. **Form of Ballot.** The form of ballot for the Charter Amendments provided for in Section 2 of this Ordinance shall be as follows:

A. **"Term of Office of Council Members.**

The Village Charter currently provides for Council Members to be elected for two year terms. It is proposed that the Charter be amended to provide for Council Members to be elected to four year terms, with the Mayor continuing to be elected to two year terms.

Shall the above described Amendment be adopted?

YES []

NO []"

B. **"Procedure for Election of Mayor and Village Council Members.**

The Village Charter currently provides for the Mayor and Council Members to be elected by majority vote of the electors voting, and includes regular and run-off elections. It is proposed that the Charter be amended to eliminate the run-off elections and provide for regular elections in which those candidates receiving the greatest number of votes are elected to the Council Member and Mayor positions.

Shall the above described Amendment be adopted?

YES []

NO []"

Section 4. Election Called; Ballot; Notice, etc.

a. In conjunction with the presidential preference primary election, an election is hereby called for Tuesday, the 9th day of March, 2004 to present to the electors of the Village the Charter Amendment ballot questions provided in Section 3 above.

b. The balloting shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. at the regular polling places for Village elections or as otherwise provided by law. All qualified electors residing within the Village who are timely registered shall be entitled to vote.

c. Notice of said election shall be published in accordance with Section 100.342, Florida Statutes, in a newspaper of general circulation within the Village at least thirty (30) days prior to said election, the first publication to be in the fifth week prior to the election, and the second publication to be in the third week prior to the election, and shall be in substantially the following form:

“NOTICE OF ELECTION.

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO AN ENABLING ORDINANCE DULY ADOPTED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, (THE “VILLAGE”), AN ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE VILLAGE ON TUESDAY, THE 9TH DAY OF MARCH, 2004, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSITIONS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE.

A. **Term of Office of Council Members.**

The Village Charter currently provides for Council Members to be elected for two year terms. It is proposed that the Charter be amended to provide for Council Members to be elected to four year terms, with the Mayor continuing to be elected to two year terms.

Shall the above described Amendment be adopted?

YES []

NO []

B. Procedure for Election of Mayor and Village Council Members.

The Village Charter currently provides for the Mayor and Council Members to be elected by majority vote of the electors voting, and includes regular and run-off elections. It is proposed that the Charter be amended to eliminate the run-off elections and provide for regular elections in which those candidates receiving the greatest number of votes are elected to the Council Member and Mayor positions.

Shall the above described Amendment be adopted?

YES []

NO []

Polling place information and the full text of the enabling Ordinance are available at the Office of the Village Clerk.

VILLAGE CLERK”

The Council may by Resolution revise the Ballot questions which are set forth above.

d. The registration books shall remain open at the Office of the Miami-Dade County Supervisor of Elections until February 9, 2004, at which date the registration books shall close in accordance with the provisions of the general election laws.

e. The Village Clerk, with necessary assistance from the Miami-Dade County Supervisor of Elections, is hereby authorized to take all appropriate actions necessary to carry into effect and accomplish the electoral provisions of this Ordinance.

f. This election shall be canvassed by the Village Clerk in accordance with the provisions of Section 2-102 of the Village Code and any applicable provisions of the general election laws or by the County Canvassing Board at the request of the Village Clerk.

g. Copies of this Ordinance are available for public inspection during regular business hours at the Office of the Village Clerk.

Section 5. Effectiveness of Charter Amendment. The Village Charter Amendments described in Section 2 above, shall only be effective if a majority of the qualified electors of the Village voting at the Charter Amendment election held for such purpose, pursuant to Sections 3 and 4 hereof, vote for its adoption, and shall be considered adopted and effective upon certification of the election results. If conflicting Charter Amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. Each of the Charter Amendments which are approved by the electors shall be applied prospectively only and shall not operate to extend or otherwise affect the existing term of office of any Council Member.

Section 6. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall 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 7. Inclusion in the Charter. It is the intention of the Village Council, and it is hereby ordained that the provisions of Section 2 of this Ordinance shall become and be made a part of the Charter of the Village of Key Biscayne, Florida; as to each Charter Amendment measure approved by a majority of voters voting on such measure in such election; that the sections of this

Ordinance may be renumbered or relettered to accomplish such intentions; that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. **Effective date.** This Ordinance shall be effective on adoption on second reading, and each of the Charter Amendment measures provided herein shall be effective only upon approval of a majority of electors voting on the specific measure, effective upon certification of the election results.

PASSED AND ADOPTED on first reading this ____ day of November, 2003.

PASSED AND ADOPTED on second reading this _____ day of December, 2003.

ROBERT OLDAKOWSKI, MAYOR

ATTEST:

CONCHITA H. ALVAREZ, CMC

VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY