

Memo

To: The Honorable Mayor and Members of the Village Council

From: David M. Wolpin

Date: For January 10, 2006

Re: **Calling election on proposed Charter Amendments which eliminate primary elections for Council Members and revise the term of office of Council Members; Providing for Mail Ballot Procedure to be Used.**

Recommendation

As authorized by the enabling Ordinances which set forth the proposed Charter Amendments, we have prepared the enclosed proposed Resolution calling the Charter Amendment election to be held as a special election on the 11th day of April, 2006, pursuant to mail ballot election procedure.

Background

The proposed Charter Amendments were initially to be presented on the November 1, 2005 special countywide election that Miami-Dade County had been expected to call. The Village Council repealed the Resolution which had set the Village Charter Amendment election for November 1, 2005, once the County advised the Village that a special countywide election would not be held on November 1, 2005.

The use of a mail ballot election procedure requires approval from the Miami-Dade County Supervisor of Elections Office and coordination between the Supervisor of Elections Office and the State Division of Elections as to the procedures to be utilized pursuant to Section 101.6101 to 101.6107, Florida Statutes.

The holding of a special election on the Charter Amendments in early 2006 will enable the results of the Village Charter Amendment election to be known well in advance of the scheduled 2006 Village Mayor and Council primary election and in advance of the candidate qualifying process.

It should be noted that as to any Resolution which calls an election for the presentation of a Charter Amendment to the electors of the Village, it is necessary that the Resolution be adopted no later than sixty (60) days and no sooner than one hundred and twenty (120) days before the election date, as required by Miami-Dade County Charter Section 5.03, which governs municipal charter amendments. Accordingly, this Resolution must be adopted before February 10, 2006 in order to utilize the April 11, 2006 election date which the County Supervisor of Elections has approved.

Please advise if there are any questions on the above matter.

Respectfully Submitted,

DMW/ajj
103.001

David M. Wolpin

Enclosures: Ordinance No. 2005-04; Ordinance No. 2005-11

Cc: Village Manager

Village Clerk

Stephen J. Helfman, Esq., Village Attorney

RESOLUTION NO. 2006-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CALLING AN ELECTION TO PRESENT TO THE ELECTORS OF THE VILLAGE, THE PROPOSED CHARTER AMENDMENTS CONCERNING THE TERM OF OFFICE OF COUNCIL MEMBERS AND THE ELIMINATION OF PRIMARY ELECTIONS FOR COUNCIL MEMBERS, AS AUTHORIZED BY CHARTER AMENDMENT ENABLING ORDINANCES NO. 2005-04 AND NO. 2005-11 OF THE VILLAGE; PROVIDING FOR SPECIAL ELECTION ON THE CHARTER AMENDMENTS TO BE HELD ON TUESDAY, THE 11TH DAY OF APRIL, 2006, BY MAIL BALLOT PROCEDURE; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance No. 2005-04 and Ordinance No. 2005-11, the Village Council has authorized two (2) proposed Charter Amendments to be submitted to the electors of the Village; and

WHEREAS, pursuant to Section 4(a) and 8 of each of the above-described Ordinances, the Village Council hereby determines to hold the Village Charter Amendment election as a special election on Tuesday, the 11th day of April, 2006, by mail ballot procedure as provided by law.

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

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

Section 2. Election Called. That a special election is hereby called for Tuesday, the 11th day of April, 2006, to present to the electors of the Village of Key Biscayne (the "Village") each of the Charter Amendment ballot measures provided in Ordinance No. 2005-04 and Ordinance No. 2005-11. The Notices of Election for each Charter Amendment shall be combined into one form of

Notice of Election and shall be conformed to the mail ballot procedure by the Village Clerk and Village Attorney.

Section 3. Voting Procedure. That mail ballots, as prescribed by Sections 101.6101-101.6107, Florida Statutes, shall be used in this special election.

Section 4. Implementation. That the Village Clerk is hereby authorized to take any action which is necessary to implement this Resolution and the Charter Amendment enabling Ordinances referenced above, and to utilize all necessary election administration services which are provided by the Miami-Dade County Supervisor of Elections. Further, the Miami-Dade County Supervisor of Elections is accordingly authorized and requested to take any action which is necessary to implement the purposes of this Resolution and of the Charter Amendment enabling Ordinances referenced above in carrying out the election.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 10th day of January, 2006.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

F:\100\103001\resolutions\Election by Mail Ballot 9.7.05

ORDINANCE NO. 2005-4

AN ORDINANCE OF THE VILLAGE OF KEY BISCAZYNE, FLORIDA, PROVIDING FOR AMENDMENT OF THE VILLAGE CHARTER BY AMENDING SECTION 2.03 "ELECTION AND TERM OF OFFICE" AND SECTION 5.01 "ELECTIONS"; REVISING CHARTER PROVISIONS WHICH CURRENTLY PROVIDE FOR A TWO (2) YEAR TERM OF OFFICE FOR COUNCIL MEMBERS TO PROVIDE FOR A FOUR (4) YEAR TERM OF OFFICE FOR COUNCIL MEMBERS AND TO INCLUDE PROVISIONS PROVIDING FOR TRANSITION FROM THE TWO (2) YEAR TERM TO THE FOUR (4) YEAR TERM AND PROVIDING FOR STAGGERED TERMS OF OFFICE BY REQUIRING THAT THE THREE COUNCIL MEMBERS WHO RECEIVE THE MOST VOTES AT THE 2006 COUNCIL ELECTION SHALL BE ELECTED FOR A FOUR (4) YEAR TERM OF OFFICE AND THE REMAINING THREE (3) COUNCIL MEMBERS WHO ARE ELECTED IN 2006 SHALL RECEIVE A TWO (2) YEAR TERM OF OFFICE; RETAINING TWO (2) YEAR TERM OF OFFICE FOR MAYOR; AND PROVIDING FOR ELECTIONS TO BE HELD IN EACH EVEN-NUMBERED YEAR AFTER 2006 FOR MAYOR AND THREE COUNCIL POSITIONS; CALLING AN ELECTION ON PROPOSED AMENDMENTS TO THE VILLAGE CHARTER TO BE HELD ON A DATE WHICH IS SET BY RESOLUTION OF THE VILLAGE COUNCIL; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE CHARTER AMENDMENT 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 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

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

Section 2. Charter Amended.

That Section 2.03 "Election and Term of Office" and Section 5.01 "Elections" of the Village Charter, are amended by revising those Sections to read, as follows:

Section 2.03. Election and Term of Office.

- (a) 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. However, beginning with the 2006 elections, a transition shall commence in the length of the term of office by providing for Council Members to be elected at-large for a four (4) year term by the electors of the Village in the manner provided in Article V of this Charter. In order to create and maintain staggered terms which provides continuity in the legislative branch of government, there shall be a transition made from two (2) year terms to four (4) year terms. This transition from a two (2) year term to a four (4) year term of office shall be accomplished by providing that the three (3) Council Members receiving the most votes at the 2006 election shall receive four (4) year terms of office and the remaining three (3) Council Members who are elected at the 2006 election shall receive two (2) year terms of office. The Mayor shall continue to be elected for a two (2) year term.
- (b) 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.

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.

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

(b) *Nonpartisan elections.* All elections for the offices of Councilmember and Mayor shall be conducted on a nonpartisan basis.

(c) *Election date.* A primary election shall be held in each even-numbered year on the first Tuesday following the first Monday of October. A regular 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. Notwithstanding any contrary provisions of this section, the Village Council may, by ordinance enacted pursuant to Section 100.3605(2), Florida Statutes, or independent of such statutory basis by virtue of the enabling authority provided in this subsection (c), from time to time, change the dates for conducting primary, regular and special elections for the election of the Mayor and/or Village Council and provide for the orderly transition of office resulting from such date changes.

(d) *Primary elections.*

1. 2006 Primary election. This paragraph 1. shall apply only to the 2006 primary election. There shall be no primary election for Mayor if no more than two candidates qualify to run for the office of Mayor. There shall be no primary election for Council if no more than twelve candidates qualify to run for the six Council positions. In the event that a primary election is not necessary, as described above, the qualified candidates' names shall be placed on the regular election ballot, unless otherwise specified by paragraph (h) below. The ballot for the primary election shall contain the names of all qualified candidates for Mayor and 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.

2. 2008 and subsequent primaries. This paragraph 2. shall apply only to primary elections held in 2008 and thereafter. There shall be no primary election for Mayor if no more than two candidates qualify to run for the office of Mayor. There shall be no primary election for Council if no more than six candidates qualify to run for the three (3) Council positions. In the event that a primary election is not necessary, as described above, the qualified candidates' names shall be placed on the regular election ballot, unless otherwise specified by paragraph (h) below. The ballot for the primary election shall contain the names of all qualified candidates for Mayor and for each of the three (3) Council positions, and shall instruct electors to cast one (1) vote for Mayor and no more than three (3) votes for Council, with a maximum of one (1) vote per candidate.

(e) *Regular Elections.*

1. 2006 regular election. This paragraph 1. shall apply only to the 2006 regular election. The ballot for the regular election shall contain the names of the two candidates for Mayor who received the most votes in the primary election. The ballot for the regular election shall also contain the names of the twelve candidates for Council who received the most votes in the primary election. The ballot shall instruct electors to cast one vote for Mayor and to cast a number of votes for the Council not greater than the number of the six (6) contested Council positions, with a maximum of one vote per candidate. The candidate for Mayor receiving the most votes shall be the duly elected Mayor. The six (6) candidates for Council receiving the most votes shall be duly elected to the six (6) positions on the Council.

2. 2008 and subsequent regular elections. This paragraph 2. shall apply only to regular elections held in 2008 and thereafter. The ballot for the regular election shall contain the names of the two candidates for Mayor who received the most votes in the primary election. The ballot for the regular election shall also contain the names of the six (6) candidates for Council who received the most votes in the primary election. The ballot shall instruct electors to cast one vote for Mayor and to cast a number of votes for the Council not greater than the number of the three (3) contested Council positions, with a maximum of one vote per candidate. The candidate for Mayor receiving the most votes shall be the duly elected Mayor. The three (3) candidates for Council receiving the most votes shall be duly elected to the three (3) positions on the Council.

(f) *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.

(g) *Tie Votes.* If the primary election results in two or more candidates receiving a tie vote such that the number of candidates to be placed on the ballot for the regular election would exceed the limitations in subsection (e), all candidates receiving a tie vote shall be listed on the ballot for the general election and the limitations in subsection (e) shall not apply. If a tie vote occurs in the regular election between two or more candidates for either the office of Mayor or Councilmember, the tie vote shall be decided by lot under the direction of the Village Clerk.

(h) *Single candidates.* In the event that the number of persons who qualify as candidates for the Council Member 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 primary or regular election 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.

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

Section 3. Form of Ballot.

The form of ballot for the Charter amendment provided for in Section 2 of this Ordinance shall be, as follows:

"Term of Office of Council Members.

The Village Charter provides for Council Members to be elected for terms of two years. A Charter amendment is proposed which provides for Council Members to be elected for terms of four years, with the transition of term length being made at the 2006 and 2008 elections, so that the expiration of Council terms is staggered. The Mayor shall continue being elected for terms of two years.

Shall the above-described Charter amendment be adopted?

YES []

NO []".

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

- a. The Village Council shall by Resolution timely call an election to present to the electors of the Village the Charter amendment ballot question 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 AND RESOLUTION DULY ADOPTED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, (THE “VILLAGE”), AN ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE VILLAGE ON _____, THE DAY OF _____, 200__ BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSITION SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE.

"Term of Office of Council Members. _____

The Village Charter provides for Council Members to be elected for terms of two years. A Charter amendment is proposed which provides for Council Members to be elected for terms of four years, with the transition of term length being made at the 2006 and 2008 elections, so that the expiration of Council terms is staggered. The Mayor shall continue being elected for terms of two years.

Shall the above-described Charter 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 question and corresponding Notice of Election which are set forth above. Notices of Election for any other Charter amendments may be combined with this Notice of Election by the Village Clerk.

d. The registration books shall remain open at the Office of the Miami-Dade County Supervisor of Elections until the date at which 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. The Village Clerk is authorized to arrange for early voting as authorized by law.

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 Amendment 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 as provided herein.

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 any 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. Following adoption of this Ordinance on second reading, this Ordinance shall be effective immediately upon the adoption of a Resolution which sets the date of the Charter amendment election. Any Charter amendment measure provided herein shall be effective only upon approval of a majority of electors voting on the measure, effective upon certification of the election results, and shall be applicable to elections conducted commencing in 2006 as provided herein.

PASSED AND ADOPTED on first reading this 12th day of April, 2005.

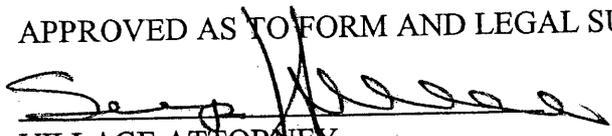
PASSED AND ADOPTED on second reading this 10th day of May, 2005.


MAYOR ROBERT OLDAKOWSKI

ATTEST:


CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


VILLAGE ATTORNEY



MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
Miami, Miami-Dade County, Florida

STATE OF FLORIDA COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared O.V. FERBEYRE, who on oath says that he or she is the SUPERVISOR, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

VILLAGE OF KEY BISCAIYNE - ORDINANCE - MAY 10, 2005
ORDINANCE AMENDING SECTION 2.03, ETC.

in the XXXX Court,
was published in said newspaper in the issues of

04/28/2005

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida, each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.



Sworn to and subscribed before me this

28 day of APRIL, A.D. 2005



(SEAL)



Maria I. Mesa

O.V. FERBEYRE personally known to me
My Commission DD293855
Expires March 04, 2008

VILLAGE OF KEY BISCAIYNE OFFICE OF THE VILLAGE CLERK

PUBLIC NOTICE

Notice is hereby given that the following ordinance will be considered and heard by the Village Council of the Village of Key Biscayne at a public hearing to be held on Tuesday, May 10, 2005 at 7:00 p.m. in the Council Chamber, located at 350 Grandon Boulevard, Key Biscayne, Florida.

AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA PROVIDING FOR AMENDMENT OF THE VILLAGE CHARTER AMENDING SECTION 2.03, ELECTIONS AND TERM OF OFFICE AND STAGGERED ELECTIONS, REVISING CHARTER PROVISIONS WHICH CURRENTLY PROVIDE FOR A TWO (2) YEAR TERM OF OFFICE FOR COUNCIL MEMBERS TO PROVIDE FOR A FOUR (4) YEAR TERM OF OFFICE FOR COUNCIL MEMBERS AND TO INCLUDE PROVISIONS PROVIDING FOR TRANSITION FROM THE TWO (2) YEAR TERM TO THE FOUR (4) YEAR TERM AND PROVIDING FOR STAGGERED TERMS OF OFFICE BY REQUIRING THAT THE THREE COUNCIL MEMBERS WHO RECEIVE THE MOST VOTES AT THE 2006 COUNCIL ELECTIONS SHALL BE ELECTED FOR A FOUR (4) YEAR TERM OF OFFICE AND THE REMAINING THREE (3) COUNCIL MEMBERS WHO ARE ELECTED IN 2006 SHALL RECEIVE A TWO (2) YEAR TERM OF OFFICE REMAINING TWO (2) YEAR TERM OF OFFICE FOR MAYOR AND PROVIDING FOR ELECTIONS TO BE HELD IN EACH EVEN NUMBERED YEAR AND FOR MAYOR AND THREE COUNCIL POSITIONS DURING AN ELECTION ON PROPOSED AMENDMENTS TO THE VILLAGE CHARTER TO BE HELD ON A DATE WHICH IS SET BY RESOLUTION OF THE VILLAGE COUNCIL PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE CHARTER AMENDMENT 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.

The proposed Ordinance may be inspected by the public at the Office of the Village Clerk. Interested parties may appeal at the Public Hearing and be heard with respect to the proposed Ordinance. Any person wishing to address the Village Council on any item at this Public Hearing is asked to register with the Village Clerk prior to that item being heard.

In accordance with the Americans With Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Office of the Village Clerk, 88 West McNelly Street, Suite 220, Key Biscayne, Florida 33149, telephone number (305) 365-5506, not later than two business days prior to such proceeding.

Should any person desire to appeal any decision of the Village Council with respect to any matter to be considered at this meeting, that person shall insure that a verbatim record of the proceedings is made including all testimony and evidence upon which any appeal may be based (F.S. 286.0105).

Comments of any interested party relative to this matter may be submitted in writing and or presented in person at the public hearing.

Conchita H. Alvarez, CMC
Village Clerk

ORDINANCE NO. 2005-11

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, PROVIDING FOR AMENDMENT OF THE VILLAGE CHARTER BY AMENDING SECTION 5.01 "ELECTIONS"; TO PROVIDE FOR ELIMINATION OF PRIMARY ELECTIONS FOR COUNCIL MEMBERS AND TO INSTEAD PROVIDE FOR COUNCIL MEMBERS TO BE ELECTED AT A SINGLE ELECTION; RETAINING PRIMARY ELECTION FOR OFFICE OF MAYOR; CALLING AN ELECTION ON THE PROPOSED AMENDMENT TO THE VILLAGE CHARTER TO BE HELD ON A DATE WHICH IS SET BY RESOLUTION OF THE VILLAGE COUNCIL; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE CHARTER AMENDMENT 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 a proposed Charter amendment 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

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

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

Section 2. Charter Amended.

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.* A primary election for the office of Mayor shall be held in each even-numbered year on the first Tuesday following the first Monday of October. A regular election for Mayor and Council positions 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. Notwithstanding any contrary provisions of this section, the Village Council may, by ordinance enacted pursuant to Section 100.3605(2), Florida Statutes, or independent of such statutory basis by virtue of the enabling authority provided in this subsection (c), from time to time, change the dates for conducting mayoral primary and all regular and special elections for the election of the Mayor and/or Village Council and provide for the orderly transition of office resulting from such date changes.
- (d) *Primary elections.* There shall be no primary election for Mayor if no more than two (2) candidates qualify to run for the office of Mayor. ~~There shall be no primary election for Council if no more than twelve (12) candidates qualify to run for the six (6) Council positions.~~ In the event that a primary election is not necessary, as described above, the qualified candidates' names for the office of Mayor shall be placed on the regular election ballot, unless otherwise specified by paragraph (h) below. The ballot for the primary election shall contain the names of all qualified candidates for Mayor ~~and 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.~~

- (e) *Regular Election.* The ballot for the regular election shall contain the names of the two (2) candidates for Mayor who received the most votes in the primary election. The ballot for the regular election shall also contain the names of the qualified twelve ~~(12)~~ candidates for Council. ~~who received the most votes in the primary election.~~ 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 ~~the six~~ ~~(6)~~ contested Council positions, with a maximum of one vote per candidate. The candidate for Mayor receiving the most votes shall be the duly elected Mayor. The ~~six~~ ~~(6)~~ candidates for Council receiving the most votes shall be duly elected to the ~~six~~ ~~(6)~~ positions on the Council which are up for election.
- (f) *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.
- (g) *Tie Votes.* If the mayoral primary election results in two or more candidates receiving a tie vote such that the number of candidates to be placed on the mayoral ballot for the regular election would exceed the limitations in subsection (e), all candidates receiving a tie vote shall be listed on the mayoral ballot for the general election and the limitations in subsection (e) shall not apply. If a tie vote occurs in the regular election between two (2) or more candidates for either the office of Mayor or Councilmember, the tie vote shall be decided by lot under the direction of the Village Clerk.
- (h) *Single candidates.* In the event that the number of persons who qualify as candidates for the Council Member 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 ~~primary~~ or regular election 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.
- (i) *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.
- (j) *Commencement of terms.* The term of office of any elected official will commence seven (7) days following the day of the regular election or special election at which s/he is elected.

Section 3. Form of Ballot.

The form of ballot for the Charter amendment provided for in Section 2 of this Ordinance shall be, as follows:

"Elimination of Primary Elections for Councilmembers.

The Village Charter provides for the Mayor and Councilmembers to be elected by an election system which includes primary and regular elections. A Charter amendment is proposed which provides for Councilmembers to be elected at a single regular election at which the candidates receiving the most votes for the available Council positions are elected. Primary elections are to be retained for the office of Mayor.

Shall the above-described Charter amendment be adopted?

YES []

NO []"

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

a. The Village Council shall by Resolution timely call an election to present to the electors of the Village the Charter amendment ballot question 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 AND RESOLUTION 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 _____, THE _____ DAY OF _____, 200__ BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSITION SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE.

"Elimination of Primary Elections for Councilmembers.

The Village Charter provides for the Mayor and Councilmembers to be elected by an election system which includes primary and regular elections. A Charter amendment is proposed which provides for Councilmembers to be elected at a single regular election at which the candidates receiving the most votes for the available Council positions are elected. Primary elections are to be retained for the office of Mayor.

Shall the above-described Charter 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 question and corresponding Notice of Election which are set forth above. Notices of Election for any other Charter amendments may be combined with this Notice of Election by the Village Clerk.

d. The registration books shall remain open at the Office of the Miami-Dade County Supervisor of Elections until the date at which 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. The Village Clerk is authorized to arrange for early voting as authorized by law.

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 Amendment 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 as provided herein. 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. Further, in the event of such conflict, the Village Attorney is authorized to revise the Charter to the extent necessary to assure that any amendments adopted conform to one another and are properly included in the publication of the revised Charter.

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 any 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. Following adoption of this Ordinance on second reading, this Ordinance shall be effective immediately upon the adoption of a Resolution which sets the date of the Charter amendment election. Any Charter amendment measure provided herein shall be effective only upon approval of a majority of electors voting on the measure, effective upon certification of the election results, and shall be applicable to elections conducted commencing in 2006.

PASSED AND ADOPTED on first reading this 14th day of June, 2005.

PASSED AND ADOPTED on second reading this 5th day of July, 2005.

Robert Oldakowski
MAYOR ROBERT OLDAKOWSKI

ATTEST:

Conchita H. Alvarez

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

[Signature]
VILLAGE ATTORNEY



F:/103.001/Ordinances/ Second Version of Amending Section 5.01 Elections 5.26.05

MIAMI DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
Miami, Miami-Dade County, Florida

STATE OF FLORIDA
COUNTY OF MIAMI-DADE:

Before the undersigned authority personally appeared O.V. FERBEYRE, who on oath says that he or she is the SUPERVISOR, Legal Notices of the Miami Daily Business Review f/k/a Miami Review, a daily (except Saturday, Sunday and Legal Holidays) newspaper, published at Miami in Miami-Dade County, Florida; that the attached copy of advertisement, being a Legal Advertisement of Notice in the matter of

VILLAGE OF KEY BISCAIYNE - ORDINANCE - JULY 5, 2005
ORDINANCE AMENDING SECTION 5.01 "ELECTIONS", ETC.

in the XXXX Court,
was published in said newspaper in the issues of

06/23/2005

Affiant further says that the said Miami Daily Business Review is a newspaper published at Miami in said Miami-Dade County, Florida and that the said newspaper has heretofore been continuously published in said Miami-Dade County, Florida, each day (except Saturday, Sunday and Legal Holidays) and has been entered as second class mail matter at the post office in Miami in said Miami-Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.



Sworn to and subscribed before me this

23 day of JUNE, A.D. 2005



SEAL)



Maria I. Mesa

My Commission DD293855

Expires March 04, 2008

O.V. FERBEYRE personally known to me

VILLAGE OF KEY BISCAIYNE OFFICE OF THE VILLAGE CLERK

PUBLIC NOTICE

Notice is hereby given that the following Ordinance will be considered at the next meeting of the Village Council of the Village of Key Biscayne, Florida and will be held at the Village Office, 68 West Main Street, Suite 201, in the Council Chamber, located at 68 West Main Street, Key Biscayne, Florida:

AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA PROVIDING FOR AMENDMENT OF THE VILLAGE CHARTER BY AMENDING SECTION "ELECTIONS" TO PROVIDE FOR ELIMINATION OF PRIMARY ELECTIONS FOR COUNCIL MEMBERS AND COUNCIL AT-LARGE PROVIDE FOR COUNCIL MEMBERS TO BE ELECTED BY A SINGLE ELECTION, RETAINING PRIMARY ELECTION FOR OFFICE OF MAYOR; CALLING AN ELECTION ON THE PROPOSED AMENDMENT TO THE VILLAGE CHARTER TO BE HELD ON A DATE WHICH IS SET BY RESOLUTION OF THE VILLAGE COUNCIL; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF THE CHARTER AMENDMENT 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.

The proposed Ordinance may be inspected by the public at the Office of the Village Clerk. Interested parties may request a public hearing and be heard with respect to the proposed Ordinance. Any person wishing to address the Village Council on any item at this Public Hearing is asked to register with the Village Clerk prior to that item being heard.

In accordance with the Americans With Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Office of the Village Clerk, 68 West Main Street, Suite 201, Key Biscayne, Florida 33149, telephone number (305) 365-5566, not later than two business days prior to such proceeding.

Should any person desire to appeal any decision of the Village Council with respect to any matter to be considered at this meeting, that person shall insure that a verbatim record of the proceedings is made including all testimony and evidence upon which any appeal may be based (F.S. 266.010).

Comments of any interested party relative to this matter may be submitted in writing and or presented in person at the public hearing.

Gonzala H. Alvarez-CMC
Village Clerk

6/23

05-4-64/559640M