

ORDINANCE NO. 2006-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING ARTICLE II "VILLAGE COUNCIL" OF CHAPTER 2 "ADMINISTRATION" BY CREATING SECTION 2-21 "DEFENSE OF OFFICIALS IN ETHICS MATTERS"; PROVIDING FOR THE DEFENSE OF OFFICIALS; DEFINITIONS; DEFENSE OF OFFICIALS; REQUEST AND APPROVAL; AUTHORIZATION; RESERVATION OF RIGHTS AND IMMUNITIES; APPLICABILITY; MALICIOUS, FRIVOLOUS OR GROUNDLESS ALLEGATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council finds that in order to encourage qualified persons to serve the Village it is necessary to protect such persons from certain legal expenses incurred in protecting themselves from allegations of violating ethics standards and guidelines, while acting in the course and scope of their service to the Village; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village.

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

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

Section 2. Village Code Amended. That Article II "Village Council" of Chapter 2 "Administration" of the Village Code of the Village of Key Biscayne, Florida is hereby amended by creating Section 2-21 "Defense of Officials in Ethics Matters" to read as follows:¹

^{1/} Proposed additions to existing Village Code text are indicated by underline.

Section 2-21. Defense of Officials in Ethics Matters.

(a) Definitions. When used in this section, the following words shall mean as indicated:

1. The term "Official" shall mean solely the following: the Mayor and all members of the Village Council.
2. The term "Village Funds" shall mean only such funds appropriated for expenditure by the Village Council.
3. The term "Counsel" shall mean the attorney independently selected by the Official for the purpose of defending the Official in actions or proceedings in accordance with this section. Counsel shall be licensed to practice law in Florida, experienced in ethics defense, and otherwise adequately qualified for the purpose of such representation.
4. The term "Legal Expenses" shall mean reasonable attorney's fees and necessary defense expenses directly incurred in defending an Official in accordance with this section.
5. The term "Legal Defense" shall mean the services provided by Counsel in defending an Official in accordance with this section.

(b) Defense of Officials. Upon the request of a Village Official (the "Official") the Village may, in its discretion, provide for the Legal Defense of any action or proceeding brought against such Official for acts or omissions arising out of and in the course and scope of the Official's employment or function, when such Official is charged with a violation of any provision of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, Florida Statutes, Section 2-11.1, Miami-Dade County Code, or any applicable Village ethics ordinances. The provision of Legal Defense is limited to the payment of Legal Expenses to Counsel for the purpose of defending actions or proceedings in accordance with the provisions of this section. This section shall not apply to any action brought or initiated by the Village against an Official.

(c) Request and Approval. A written request for the provision of Legal Defense (the "Request") shall be submitted by the Official and reviewed in accordance with the following procedure:

1. A Request shall be submitted to and reviewed by the Village Manager;
2. A Request shall be submitted promptly after the Official is served with a complaint, notice, charge, summons, process or other initiating pleading, such that the Village has ample time to review such Request and respond accordingly;

3. A Request shall include the name, address, resume, and hourly rate of Counsel, and a copy of the complaint, notice, charge, summons, process or other initiating pleading;
4. The Village Manager shall approve or deny the Request in writing within ten (10) days after receipt of such Request. The Village Manager's approval or denial is subject to the Village Attorney's concurrence that said Request is consistent with the requirements of this section.

(d) Authorization. The Village Manager is hereby authorized to expend Village Funds, upon the review and approval of a Request, for the payment of Legal Expenses in accordance with subsection (b). The authorization to expend Village Funds shall not extend to any appeal or other judicial review without additional authorization of Village Council. The expenditure of Village Funds shall be paid from a specific Village account established in the Village budget for the purposes of this section. No funds of the Village, other than Village Funds, as defined in subsection (a), shall be used for the Legal Defense of an Official. The expenditure of Village Funds for the payment of Legal Expenses shall be subject to the following:

1. Counsel of the Official shall on a monthly basis submit all current bills for Legal Expenses to the Village finance department in a format approved by the Village;
2. The Village Manager shall review and approve all submitted bills prior to payment by the Village;
3. Upon approval of submitted bills, the Village Manager shall provide for direct payment to Counsel. Payments shall be made on a monthly basis during the pendency of the action or proceeding pursuant to Section 218.70, Florida Statutes, et. seq.;
4. The Village Manager shall on a monthly basis provide a copy of all approved bills to the Village Clerk for filing and retention as a public record and for public inspection, subject to any applicable exemptions.

(e) Reservations of rights and immunities. The provision of the Legal Defense of an Official as provided in subsection (b), including those acts for which the defense may be provided and the extent of Village Funds which may be expended, shall be solely within the discretion of the Village.

1. The Village reserves unto itself the right to deny or revoke approval of the Request if it is determined by the Village Manager to be beyond the scope of this section or inconsistent with the purposes of this section;

2. The Village reserves unto itself the right to deny the Request where the Official has failed to select qualified Counsel, or where the proposed fee schedule is deemed unreasonable;
3. The Village reserves unto itself the right to revoke approval of the Request where such Official fails to cooperate in the defense of such action or proceeding;
4. The Official shall reimburse the Village for any and all Village funds expended for payment of Legal Expenses where it is determined that the alleged act or omission was taken outside the course or scope of the employment or duties of the Official, or where such Official was adjudicated guilty of the alleged violation. The Village reserves unto itself the right to seek reimbursement and/or recovery from an Official of all Village Funds expended for payment of Legal Expenses in accordance with this section where it is determined that the alleged act or omission was taken outside the course or scope of the employment or duties of the Official, or where such Official was adjudicated guilty of the alleged violation;
5. Nothing in this section shall authorize the Village to provide for the Legal Defense of an Official where the alleged act or omission was taken outside the course or scope of employment or duties of the Official, or where the Official has acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property;
6. Nothing in this section shall authorize the Village to provide for the Legal Defense of an Official where it is alleged that said Official failed to comply with applicable financial and gift disclosure requirements mandated by Chapter 112, Florida Statutes, Section 2-11.1, Miami-Dade County Code, or any applicable Village ethics ordinances concerning financial and gift disclosure.
7. Nothing in this section shall be construed as a waiver by the Village or any Official of any claim of immunity, including sovereign immunity, applicable to any action;
8. Any Official who submits a Request and is subsequently provided a Legal Defense at the expense of the Village in accordance with this section shall be prohibited from seeking further remuneration from the Village for any expenses incurred by said Official during or resulting from the defense of any action or proceeding contemplated by this section;
9. Where an Official fails to avail him/herself of the provisions of this section, and no Legal Defense was provided at the expense of the Village, nothing herein shall prohibit such Official from seeking reimbursement from the Village for legal expenses incurred in the successful defense of a violation or violations of any provision of the Code of Ethics for Public Officers and Employees, Part III,

Chapter 112, Florida Statutes, Section 2-11.1, Miami-Dade County Code, or any applicable Village ethics ordinances, where said Official was acting in the course and scope of the Official's employment or function, and said Official is subsequently acquitted, or the charge or charges against said Official are dismissed upon no violation being found.

(f) *Applicability.* The provisions of this section shall apply to all actions and proceedings pending upon or instituted after the effective date of this section. As used herein, an action shall be construed to be pending where the action has not been tried, or if tried where the judgment has not become final by reason of the completion of any appellate proceedings.

(g) *Malicious, Frivolous or Groundless Allegations.* In accordance with Section 112.317(8), Fla. Stat., or Section 2-1074(t), Miami-Dade County Code, where it is determined that the complaining party filed a frivolous or groundless complaint, or filed a complaint with malicious intent to injure the reputation of the Official by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation, the Village may seek recovery of Legal Expenses incurred by the Village from the complaining party in the name of the Official, or as subrogee of the Official.

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 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. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this ____ day of _____, 2006.

PASSED AND ADOPTED on second reading this ____ day of _____, 2006.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY