Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.A.

Memo

To: The Honorable Mayor and Members of the Village Council

From: David M. Wolpin

Date: March 14, 2006

Re: **Amendment Of Village Code Concerning Early Voting**

Recommendation

It is recommended that the Village Council consider the adoption of the enclosed proposed Ordinance which concerns early voting at future Village elections which are not held in conjunction with county or state elections.

Background

Pursuant to letter of December 19, 2005, the Miami-Dade County Supervisor of Elections has recommended that municipalities in the County consider the adoption of a specific Ordinance concerning early voting. Additionally, the County Supervisor of Elections has recommended that municipalities opt out of the provision of Section 101.657(2), Florida Statutes, which provision would otherwise require the Supervisor of Elections to prepare complex and costly voter information in the midst of an election process.

The proposed Ordinance provides for a shortened duration of early voting for Village elections so that early voting may occur in Village elections during a three (3) day period, rather than the lengthy and costly fourteen (14) day period which is otherwise provided by state law. Additionally, the proposed Ordinance enables the Village Council to subsequently adjust the duration and hours of early voting by Resolution of the Village Council for a specific election.

Please be advised that the City of Aventura and City of Homestead have adopted and successfully implemented early voting measures which are similar to those which are set forth in the proposed Ordinance.

It should be noted that early voting is not applicable to mail ballot elections. Accordingly, the adoption of this Ordinance will not have any impact upon the upcoming charter amendment mail ballot election.

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

Respectfully Submitted,

DWM/ajj

David M. Wolpin

Enclosures:
Proposed Ordinance;
December 19, 2005 letter of County Supervisor of Elections
103.001/Memos
Cc: Village Manager
Village Clerk
Stephen J. Helfman, Esq., Village Attorney

MIAMI-DADE COUNTY

Miami-Dade County Elections Department
2700 NW 87th Avenue
Miami, Florida 33172
T 305-499-VOTE F 305-499-8547
TTY: 305-499-8480

miamidade.gov

December 19, 2005

Conchita H. Alvarez, CMC
City Clerk
Village of Key Biscayne
88 West McIntire Street, Ste 220
Key Biscayne, FL 33149

Dear Ms. Alvarez:

As you are aware, a number of legislative changes take place effective January 1, 2006. Certain changes impact municipal elections. I want to call to your attention one such change **to which you may opt out via municipal ordinance,** remind you of another provision to which you may opt out and inform you of other changes which, per the changes in statute, are not optional.

Florida Statute 101.657(2) now states:

> During any early voting period, each supervisor of elections shall make available the total number of voters casting a ballot at each early voting location during the previous day. Each supervisor shall prepare an electronic data file listing the individual voters who cast a ballot during the early voting period. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than noon of each day and shall be contemporaneously provided to the division.

This requirement would increase the complexity and, thus, the cost of your municipal elections. The Elections Department focuses foremost on facilitating voting and accurately tabulating ballots, and the requirement to make information about voters who voted in a municipal election available before votes are tabulated would necessitate significant new processes. As such, the Florida Division of Elections has recently recommended that municipalities opt out of this requirement via ordinance, and I join the Division in making that recommendation to the municipalities of Miami-Dade County.

State statute also prescribes timeframes during which early voting must take place for federal and state primary and general elections. For these elections, early voting must begin on the fifteenth day before an election, and it must end on the second day before an election; it must take place for exactly eight hours on each weekday and a total of eight hours on each weekend; and it must take place between 7 a.m. and 7 p.m.

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However, statute now gives you the option of designating different early voting hours for municipal elections that are not on a Countywide election date; you no longer need to opt out of these provisions via ordinance. Additionally, Florida Statutes 101.657(1)(e) explicitly specifies that municipalities may, but are not required to, hold early voting, and that they may designate as many sites as necessary.

At the same time, that provision does say that municipalities choosing to hold early voting must do so in accordance with paragraphs (a) through (c) of 101.657, which incorporate a few important changes. Among them are:

- Early voting sites must be designated by no later than the 30th day prior to an election

- All early voting sites must be open on the same days for the same amount of time.

I also want to remind you that for the purpose of scheduling your elections, please remember that the Elections Department requires a minimum of two weeks between primary and general, or general and run-off elections in order to prepare the ballot, program our equipment and print and mail absentee ballots to voters with enough time for them to return those ballots. If your charter specifies a turnaround time of less than two weeks, please remember to change this in the interim via ordinance. Prospectively, during your next charter review, you might want to consider including this as an amendment in your charter if this issue applies to your municipality.

I want to thank you again for your continued cooperation. I genuinely appreciate the relationship our Department has with our municipal partners and your important role in administering successful elections for our residents. If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Lester Sola
Supervisor of Elections

ORDINANCE NO. 2006-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 2 "ADMINISTRATION", BY CREATING SECTION 2-103 "EARLY VOTING", CONCERNING VILLAGE ELECTIONS; PROVIDING FOR A SPECIFIC DURATION FOR EARLY VOTING, AND AUTHORIZING REVISING OR ELIMINATING EARLY VOTING FOR VILLAGE ELECTIONS BY COUNCIL RESOLUTION FOR A SPECIFIC ELECTION; OPTING OUT OF THE REQUIREMENTS OF PARAGRAPH (2) OF SECTION 101.657, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 101.657, Florida Statutes, as amended effective on January 1, 2006, the Florida Legislature has expressly provided that municipalities may determine whether or not to provide early voting in municipal elections that are not held in conjunction with county or state elections and to opt out of certain requirements; and

WHEREAS, the Council finds that lengthy periods of early voting in municipal elections are contrary to the historical tradition of a designated "Election Day" and are costly and unnecessary in light of the availability of absentee ballots; and

WHEREAS, the Village Council desires to provide for limited early voting in municipal elections (including charter amendment elections, initiative elections, referendum elections, bond issuance elections, and all Mayoral and Council elections) which are not held in conjunction with county or state elections, with the duration, hours of operation, and other restrictions for early voting to be as specified herein rather than as otherwise provided by Section 101.657, Florida Statutes; and

WHEREAS, this Ordinance enables the Village to provide for a sufficient schedule of early voting in advance of such municipal elections, if necessary, or to revise or eliminate early voting for specific elections as provided herein; and

WHEREAS, the Miami-Dade County Supervisor of Elections has recommended that the Village opt out of the requirements of Section 101.657(2), Florida Statutes, which would otherwise require the Supervisor of Elections to prepare costly and complex voter activity information in the midst of an electoral process.

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; Early Voting.

That Chapter 2 "Administration", of the Village Code of the Village of Key Biscayne, Florida, is hereby amended by creating Section 2-103 "Early Voting," to read as follows:

Sec. 2-103 Early Voting.

(a) For any Village election, including initiative, referendum, bond issuance, charter amendment or any Mayoral and Council elections (the "Village Elections"), which are not held in conjunction with a county or state election, this Section 2-103 shall govern the matter of early voting. Further, early voting pursuant to this Section 2-103 shall comply with the mandatory requirements of Section 101.657(1)(e), Florida Statutes (2005), as applicable.

(b) The provisions of Section 101.657(2), Florida Statutes, shall not apply to Village Elections, unless specifically made applicable by Council Resolution.

(c) At any Village Election, it is hereby provided that early voting shall be provided only on the Thursday, Friday and Saturday immediately before a Village Election.

(d) Early voting shall be provided for eight (8) hours for each weekday and for an aggregate of eight (8) hours for each weekend on any weekday or weekend in which early voting is allowed.

(e) The Village Council may, by Resolution, adopted in advance of a specific Village Election, alter the schedule of days and hours for early voting from

that which is provided in paragraphs (c) and (d) above. This shall include the authority to extend early voting or to eliminate early voting for a specific election at which absentee balloting is available.

(f) The Village Clerk is hereby authorized to take any action which is necessary or expedient to implement this section or to comply with any applicable law including any mandatory provisions of Section 101.657, Florida Statutes.

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 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 4. Inclusion in Code.

That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be 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 14th day of March, 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

F:/103.001/Ordinances/Early Voting Ordinance 2.13.06