

**ORDINANCE NO. 2012-**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTIONS 30-33(3) AND 30-73(G) OF THE VILLAGE CODE OF ORDINANCES, AMENDING THE SITE PLAN REVIEW PROCEDURES TO PROHIBIT THE APPROVAL OF ADDITIONAL DENSITY IN EXCESS OF DENSITY PREVIOUSLY APPROVED PURSUANT TO A VALID DEVELOPMENT ORDER; PROVIDING FOR SUBMITTAL OF PROPOSED AMENDMENTS TO THE VILLAGE CODE OF ORDINANCES TO THE QUALIFIED ELECTORS OF THE VILLAGE; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR FORM OF BALLOT AND PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE OF ELECTION; PROVIDING FOR EFFECTIVENESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the “Village”) has adopted Zoning and Land Development Regulations in order to promote the health, safety, order, convenience, comfort, and general welfare of the public, and to promote and preserve the character and ecological quality of the Village as articulated in the Village’s Comprehensive Plan; and

**WHEREAS**, during the preparation of the Village’s Comprehensive Plan in 1995, Village residents were surveyed concerning their opinions on major planning issues affecting the Village, and 84% of residents responding to this survey answered yes when asked the question of whether “development on Key Biscayne should be completed at the lowest density that would be legally consistent with protection of reasonable private property rights;” and

**WHEREAS**, Goal 1 of the Future Land Use Element (“FLUE”) of the Comprehensive Plan provides, in part, that “future residential development should be at the lowest densities consistent with protection of reasonable property rights,” and Objective 1.1 of the FLUE includes an objective to “maintain existing development and achieve new development and redevelopment which is

consistent with the community character statement articulated as Goal 1;” and

**WHEREAS**, the Community-Wide Assessment of the 2007 Evaluation and Appraisal Report of the Village’s Comprehensive Plan found that the Village’s population is expected to increase as “many existing, modestly-sized residential structures are being redeveloped into substantially larger homes containing additional bedrooms,” with “potentially dire consequences on the demand for infrastructure and services;” and

**WHEREAS**, Policy 1.2.1 of the Recreation and Open Space Element of the Village’s Comprehensive Plan provides that “the Village shall maintain a Level of Service (LOS) standard of at least 2.5 acres of local public parkland per 1,000 persons (permanent population) based on U.S. Census population estimates;” and

**WHEREAS**, based on the current inventory of Village public parkland (25.1 acres) and the Village’s 2010 United States Census population estimate (12,344 residents), the Village has a Level of Service deficit of 5.76 acres of public parkland; and

**WHEREAS**, Policy 3.5.5 of the Conservation and Coastal Management Element provides that “permitted population density maximums shall be reduced in accordance with the Future Land Use Map of this plan to better coordinate with the 1991 Metropolitan Dade County Emergency Operations Plan, which is the local hurricane evacuation plan for Key Biscayne, and the 1991 lower Southeast Florida Hurricane Evacuation Plan, the regional hurricane evacuation plan;” and

**WHEREAS**, the Community-Wide Assessment of the 2007 Evaluation and Appraisal Report of the Comprehensive Plan found that children under the age of 18 years now represent 24.2% of the total population of the Village, an increase which has resulted in deficiencies in classroom capacity in school facilities serving Village students; and

**WHEREAS**, in recognition of the constraints on the availability of infrastructure and services to serve new Development, as supported by the Comprehensive Plan and 2007 Evaluation and Appraisal Report, the Village Council recommends amendment of the site plan review procedures of the Village Code of Ordinances, to provide that no Site Plan shall be approved which would permit any Development which would result in an increase in Density in excess of the Density previously approved for a property by a valid Development Order; and

**WHEREAS**, the Village Council intends that the proposed limitation on increases in Density of Development will directly further the Goals, Objectives and Policies of the FLUE of the Comprehensive Plan; and

**WHEREAS**, the Village Council further finds that the limitation on increases in Density of Development proposed in this Ordinance will, in accordance with Goal 1 of the FLUE, be consistent with the protection of reasonable property rights; and

**WHEREAS**, the Village Council, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance and recommends approval; and

**WHEREAS**, the Village Council desires to amend the Village Code of Ordinances as provided for within this Ordinance, subject to the approval of the qualified electors of the Village (“Village Electors”) pursuant to a special election called for this purpose; and

**WHEREAS**, the Village Council hereby finds and declares that the adoption of the proposed amendments to the Village Code of Ordinances, upon the approval of the Village electors, is necessary, appropriate, and advances the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS<sup>1</sup>:**

**Section 1.** The preceding “Whereas” clauses are ratified and incorporated as the legislative intent of this Ordinance.

**Section 2. Section 30-33(3) of the Village Code Amended.** The Village Council hereby amends the Village Code as follows:

**Sec. 30-33. - Maximum allowed Density.**

Density is used to determine the maximum number of Units allowed on a site based upon the maximum allowed Density as set forth in the zoning district and as determined below:

- (1) Easement areas located within the site are calculated in the area used for determining Density;
- (2) Density from one site shall not be transferred to another site; and
- (3) The maximum allowed Density on a site shall not exceed the limit as established in the zoning district Regulations except as provided for in the Comprehensive Plan, and in accordance with section 30-73(g)(7). In such cases, where the maximum Density may be exceeded, the repair or reconstruction of a Building shall only occur within the same building envelope as was originally permitted and approved at the time the certificate of occupancy was issued. This exception only applies to multiple Family Buildings that are consistent with the land use element of the Comprehensive Plan.

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**Section 3. Section 30-73(g) of the Village Code Amended.** The Village Council hereby amends the Village Code as follows:

**Sec. 30-73. - Site Plan review procedures.**

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<sup>1</sup> Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, shaded text reflects changes made from First Reading.

(g) *Review criteria.* In order to approve a project, the Village Council must find that it is consistent with each of the below review criteria. The Council may require conditions that are necessary to minimize any adverse impacts on Adjacent Properties.

\* \* \*

(7) Density standards. No Site Plan shall be approved which would permit any Development which would result in an increase in residential Density in excess of the Density previously approved for the subject property by a valid Development Order,

~~(7)~~ (8) Other requirements. Requirements and recommendations as provided in the Village tree and landscape Regulations shall be observed as will the requirements of all applicable standards and Regulations.

(h) *Resolution.* The resolution that memorializes the approval of a Site Plan shall be recorded in the public records of Miami-Dade County at the applicant's expense. A copy of the proof of recordation shall be submitted to the Building, Zoning, and Planning Department prior to the issuance of any building permits.

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**Section 4. Election Called.** That a special election is hereby called for \_\_\_\_\_, the \_\_\_\_ day of \_\_\_\_\_, 2012, to present to the electors of the Village of Key Biscayne the ballot question provided in Section 5 of this Ordinance.

**Section 5. Form of Ballot.** That the form of ballot for the proposed amendments to the Code of Ordinances provided for in Section 2 and 3 of this Ordinance shall be as follows:

Restriction on Increase of Density.

“Should the Village Code of Ordinances be changed to prohibit the Village Council from approving site plans with increased new residential Density?

YES [    ]

NO [    ]”

**Section 6. Balloting; Election Administration.**

- A. That balloting shall be conducted between the hours of 7:00 a.m. until 7:00 p.m. at the regular polling places for Village elections or as otherwise provided by law. Early voting shall be authorized in conjunction with the state election. All qualified electors residing within the Village who are timely registered shall be entitled to vote.
- B. 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.
- C. 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.
- D. 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.

**Section 7. Notice of Election.** That 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 SPECIAL ELECTION**

**PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO ORDINANCE NO. \_\_\_\_\_ 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 \_\_\_\_\_, \_\_\_\_\_, 2012, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CODE OF ORDINANCES AMENDMENT PROPOSITION SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE.**

Restriction on Increase of Density.

“Should the Village Code of Ordinances be amended to provide that no Site Plan shall be approved by the Village Council which would permit an increase in multifamily residential Density in excess of the existing or previously approved Density for the property?

YES [    ]

NO [    ]”

Polling place information and the full text of the proposed Village Code of Ordinances amendments is available at the office of the Village Clerk located at 88 W. McIntyre Street, Key Biscayne, FL 33149.

**Section 8. Copies.** That copies of this Ordinance are on file in the office of the Village Clerk located at 88 W. McIntyre Street, Key Biscayne, FL 33149, and are available for public inspection during regular business hours.

**Section 9. Effectiveness.** The amendments to the Village Code of Ordinances provided in Section 2 and 3 above shall only be effective if a majority of the qualified electors of the Village voting at the election held for such purpose vote for their adoption, and shall be considered adopted and effective upon certification of the election results.

**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. Conflicts.** All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 12. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading, subject to the requirements of Section 9, above.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2012.

PASSED AND ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY