

ORDINANCE NO. 2004-10

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, PROVIDING FOR AMENDMENT OF THE VILLAGE CHARTER BY AMENDING SECTION 5.01 "ELECTIONS"; BY PROVIDING FOR THE ESTABLISHMENT OF PRIMARY ELECTION SYSTEM AND PROCEDURES PERTINENT THERETO; PROVIDING FOR REVISION OF MAYORAL AND COUNCIL ELECTION DATE, COMMENCING WITH 2006 ELECTION, TO PROVIDE FOR PRIMARY ELECTIONS FOR MAYOR AND COUNCIL TO BE IN OCTOBER OF EACH EVEN NUMBERED YEAR AND FOR REGULAR ELECTIONS FOR MAYOR AND COUNCIL TO BE IN NOVEMBER OF EACH EVEN NUMBERED YEAR, AND ELIMINATING RUNOFF ELECTION SYSTEM WHICH CURRENTLY PROVIDES FOR RUNOFF ELECTIONS TO BE HELD TWO WEEKS FOLLOWING REGULAR ELECTION; AND ALLOWING ELECTION DATES TO BE FURTHER ADJUSTED BY ORDINANCE OF THE VILLAGE COUNCIL; CALLING AN ELECTION ON THE PROPOSED AMENDMENTS TO THE VILLAGE CHARTER TO BE HELD ON TUESDAY, NOVEMBER 2, 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 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 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~~ 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 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

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

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. ~~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).~~

- (e) 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.
- (e)(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.
- (f) Runoff election. ~~If a runoff election is necessary, it shall be held two (2) weeks after the election held pursuant to subsection (c) 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) 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.
- (g)(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.
- (h)(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.
- (i)(j) Commencement of terms. The term of office of any elected official will commence seven (7) days following the day of the regular election, ~~runoff~~, 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:

"Procedure for Election of Mayor and Village Council Members.

The Village Charter currently provides for the election of Mayor and Council Members in November of each even numbered year, and includes runoff elections. A Charter Amendment is proposed to eliminate runoffs, establish a primary election system, and provide for a primary election in October with a regular election in November for Mayor and Council positions, and to allow election dates to be further adjusted by Ordinance.

Shall the above-described Charter Amendment be adopted?

YES []

NO []"

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

a. In conjunction with the Presidential Election, an election is hereby called for Tuesday, the 2nd day of November, 2004 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 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 2ND DAY OF NOVEMBER, 2004, 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.

Procedure for Election of Mayor and Village Council Members.

The Village Charter currently provides for the election of Mayor and Council Members in November of each even numbered year, and includes runoff elections. A Charter Amendment is proposed to eliminate runoffs, establish a primary election system, and provide for a primary election in October with a regular election in November for Mayor and Council positions, and to allow election dates to be further adjusted by Ordinance.

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 Monday, October 4, 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. 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.** This Ordinance shall be effective upon adoption on second reading. 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 3rd day of August, 2004.

PASSED AND ADOPTED on second reading this 31st day of August, 2004.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

WEISS SEROTA HELFMAN PASTORIZA
GUEDES COLE & BONISKE, P.A.
VILLAGE ATTORNEYS

F:/103.001/Ordinances/ Additional Alternate Version Re Presidential Election 6.24.04