

**ORDINANCE NO. 2012-10**

**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 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 finds that the adoption of this Ordinance is in the best interest of the residents of the Village.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, 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.** That Section 30-33 of the Code of Key Biscayne, Florida, is hereby amended to read 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

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<sup>1</sup> Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.

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.

\* \* \*

**Section 3. Section 30-73(g) of the Village Code Amended.** That Section 30-73 of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

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

\* \* \*

(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.

\* \* \*

**Section 4. Vested Rights Procedure.** That the following procedure for determination of vested rights from the application of this Ordinance shall apply:

(1) Nothing shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel in accordance with the Village Code in effect prior to the adoption of this Ordinance, where the property owner demonstrates vested development rights under Florida law.

(2) Any property owner claiming to have vested rights must file an application with the Village for a vested rights determination within one hundred twenty (120) days after the effective date of this Ordinance.

(3) The application for a determination of vested rights shall contain a completed application form, as prescribed by the Village Manager, including a sworn statement as to the basis upon which vested rights are asserted, a description of the nature and scope of the vested rights claimed, and any supporting documentation. The application shall be accompanied by a processing fee of \$500.00.

(4) The Village Council shall hold a quasi-judicial hearing within one hundred twenty (120) calendar days of the Village's receipt of a complete application for a vested rights determination, and based upon the evidence submitted, shall make a determination as to whether and to what extent the property owner has established vested development rights under Florida law, and the nature of such vested rights. Upon completion of the hearing, the Village Council shall enter a written decision specifying the reasons for its decision to either grant or deny a finding of vested rights, and the scope and extent of the vested rights determined, if any.

(5) Any property owner which has been granted a vested rights determination under this section shall not be subject to the specific regulations of this Ordinance, to the extent provided in the vested rights determination of the Village Council. Once the application is granted, the applicant shall be authorized to apply for development orders and permits in accordance with the vested rights determination. If the Village Council denies the applicant's request for a finding of vested rights, the applicant shall be subject to all requirements of this Ordinance.

(6) Appeals from decisions by the Village Council under this section shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipal commissions or boards.

**Section 5. Effectiveness.** The amendments to the Village Code of Ordinances shall become effective in accordance with Section 8 below.

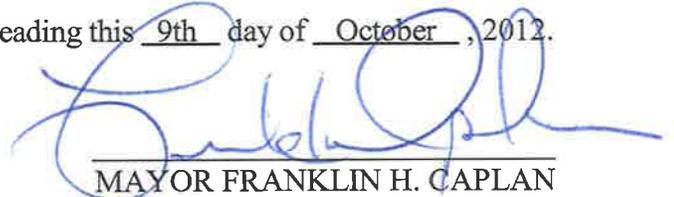
**Section 6. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, 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 7. Conflicts.** All ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

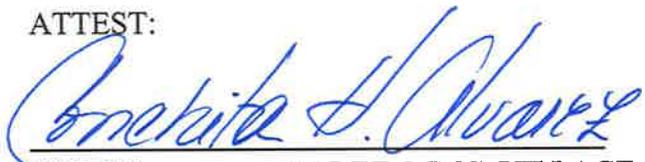
**Section 8. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 26th day of June, 2012.

PASSED AND ADOPTED on second reading this 9th day of October, 2012.

  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

  
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
VILLAGE ATTORNEY



**PUBLISHED DAILY  
MIAMI-DADE-FLORIDA**

**STATE OF FLORIDA  
COUNTY OF MIAMI-DADE**

Before the undersigned authority personally  
appeared:

**TEDDY GONZALEZ II**

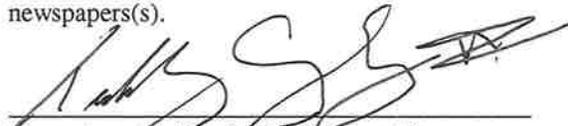
Who on oath says that he/she is

**CUSTODIAN OF RECORDS**

of The Miami Herald, a daily newspaper published at  
Miami in Miami-Dade County, Florida; that the  
attached copy of advertisement was published in said  
newspaper in the issues of:

**September 28, 2012**

Affiant further says that the said The Miami Herald  
is a newspaper published at Miami, in the said  
Miami-Dade County, Florida and that the said  
newspaper has heretofore been continuously published  
in said Miami-Dade County, Florida each day 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 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  
newspapers(s).

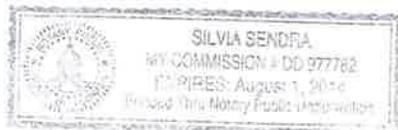
  
Sworn to and subscribed before me this  
28<sup>th</sup> day of September, 2012

My Commission

Expires: August 1, 2014

Silvia Sendra

  
Notary



CAMPAIGN 2012 | LIBERTARIAN PRESIDENTIAL CANDIDATE

# Johnson backs medical-marijuana drive

**The marijuana legalization proposal faces tough challenges in Florida. So does Libertarian presidential candidate Gary Johnson.**

BY MARC CAPUTO  
mrcaputo@miamiherald.com

Gary Johnson, whose Libertarian presidential bid has already spooked Republicans, might get a few Democratic voters as well thanks to his support for a sleeper issue in Florida: medical marijuana.

"Johnson is expected to endorse the current effort to put a Constitutional Amendment to legalize medicinal marijuana on the Florida ballot in 2014," said Johnson's Florida political advisor, Roger Stone, a one-time GOP operative who lives in Miami Beach.

The marijuana proposal faces a series of tough challenges in Florida. And so does Johnson.

As a third-party candi-

date, the little-known former Republican governor of New Mexico doesn't have the name recognition or major financial support that Republican Mitt Romney and President Barack Obama enjoy.

Johnson's campaign says the system is rigged against other parties. He filed a federal lawsuit this week that claimed the Federal Election Commission owes the campaign \$747,115.34 in public campaign-financing money.

The FEC declined to comment.

In August, the FEC reported that it had awarded Johnson's campaign a total of \$303,751.20. The Democratic and Republican parties each received \$18,248,300 for their conventions. The two major party candidates are entitled to as much as \$92,241,400, Johnson's suit says.

Johnson has fought or is fighting Republicans with



JIM MONE/AP

**LIBERTARIAN PARTY CANDIDATE:** Gary Johnson speaks at Macalester College in St. Paul, Minn., last week.

legal challenges to get on the ballot in Virginia, Pennsylvania, Iowa, Michigan and Oklahoma. He also is suing to get into the presidential debates. The first is scheduled for next Wednesday, Oct. 3.

Mirroring Johnson's uphill struggle: The People United for Medical Mariju-

na committee, called PUFMM, a largely liberal group. It has raised \$40,628 and spent \$33,470 since 2009 to get medical marijuana on the Florida ballot. It needs 676,811 valid voter signatures but has collected just 100,000 so far, said PUFMM's Florida Chairwoman Kim Russell.

If the measure makes the ballot, it would then face the daunting requirement that it pass with 60 percent of the vote.

Russell said she hoped Johnson would help spread the word of the medical-marijuana campaign.

"Hopefully it'll make a big difference," she said. "He's awesome."

Johnson doesn't have much support in Florida. He pulled just 1 percent in The Miami Herald/Tampa Bay News' latest poll.

But, as Ralph Nader proved in 2000, a percent means a lot in a tight Florida election. Nader received 1.6 percent of the vote, and many liberals blamed George Bush's 537-vote victory in Florida on Nader.

The Libertarian candidate in 2008, Bob Barr, won 0.21 percent of the Florida vote.

Stone, Johnson's advisor, believes he'll do better than Barr.

He points out that John-

son is appealing to the right for his stances on taxes and regulation. And liberals like his position on medical marijuana, which is decriminalized in 17 states and the District of Columbia. Seven more states could decide this year whether to follow suit.

Meantime, the Obama administration has begun to more aggressively use federal authority to keep pot illegal.

To get the Johnson message out, allies have passed out packs of Johnson-embellished "Live Free" rolling papers that are printed by a group calling itself the Thomas Jefferson Coalition, which features an apparently apocryphal quote from the founding father. Folks pass them out at Johnson rallies like a gay-rights discussion in Orlando.

"Pardons to all first time non-violent drug offenders," the packs say on one side. "Haven't American families suffered enough?"

FLORIDA LEGISLATURE

## Future speaker excels at getting lobby funds

**State Rep. Chris Dorworth's personal finances are a shambles, but he has no trouble raising and spending political money.**

BY STEVE BOUSQUET  
Herald/Times Tallahassee Bureau

**TALLAHASSEE** — State Rep. Chris Dorworth is a study in political contradictions.

His personal finances are a shambles, but his ability to raise and spend political money in the capital is nearly unmatched.

He has an MBA from Duke University, yet is racked by business failure: He lists a net worth of negative \$56,290 on his current financial disclosure form, making him, on paper, among the poorest members of the Florida Legislature.

His own house is in foreclosure, but he's poised to become speaker of the Florida House in two years.

Dorworth uses his power base in the Capitol and his skill at raising special interest money to sustain a nearly \$1 million personal political fund called Citizens for an Enterprising Democracy.

Super-sized campaign contributions allow Dorworth to employ a travel aide, campaign strategist, fund-raising consultant and media advisor.

He pays for airplane trips and catered meals, using unrestricted political donations from an array of interests that covet his support, from citrus growers to healthcare insurers to law firms to Internet cafes. The lawmaker from Lake Mary in Central Florida says it's central to his mission to support fellow Republicans, and that he tries to avoid the appearance of subsidizing his lifestyle

### Dorworth's biggest donors

The largest individual donors to Rep. Chris Dorworth's political fund:

Name	Amount	Purpose
Disney Worldwide Services	\$155,000	Entertainment
Automated Healthcare Solutions	\$55,000	Medical billing
FOCCE	\$50,000	Optometrists
Southern Gardens Citrus	\$32,500	Citrus grower
Taxpayers Against Insurance bad faith	\$32,500	Lawyers

Source: Citizens for and Enterprising Democracy (www.cedcce.com)



FLORIDA HOUSE OF REPRESENTATIVES

**SET TO BECOME HOUSE SPEAKER IN 2014:** Chris Dorworth, R-Lake Mary.

legislative sessions.

Dorworth also reimbursed himself nearly \$32,000 in out-of-pocket expenses from the fund at a time when his personal net worth was plummeting. Most expenses were in 2009 and 2010 when he was running for speaker, and he said he has never personally benefited from the fund.

"It is a dutiful and diligent exercise," Dorworth says. "I am ever mindful of the watchful eye of the people and the press."

Critics say Dorworth is a prime example of why the Legislature is unpopular and viewed as a tool of moneyed interests.

"Rep. Dorworth is feeding at the trough of a legislatively created monster that allows corporations and special interests to give unlimited contributions,"

he will become more powerful in the state House. He'll be next in line when Rep. Will Weatherford of Wesley Chapel becomes speaker in November, and will control candidate recruiting and fund-raising for House races for 2014.

Like dozens of legislators, he is taking advantage of a loophole in campaign finance law by controlling a political fund, known as a committee of continuous existence or CCE, that's exempt from the \$500 contribution limit that applies to candidates.

Dorworth's political fund has few restrictions on how money can be spent as long as it advances the committee's broadly worded objective: "to promote effective leadership to maintain a strong and enterprising democracy."

"How and where I choose to spend my money is not something I necessarily want aired," he says.

By contrast, Sen. Jack Latvala, R-Clearwater, who controls a fund like Dorworth's, allowed his accountant, Nancy Watkins, to show a reporter receipts for his expenses. Watkins said she insists that everything be documented, down to a \$1.50 receipt for a Miami parking lot.

"Every dollar that goes in and out of this committee

CAMPAIGN 2012

## Irregularities spur GOP to fire voter sign-up firm

•REGISTRATION, FROM 1B

ty of elections," RNC Communications Director Sean Spicer said. "When we were informed of an alleged incident, we immediately cut all ties to the company."

The state party reacted similarly.

"We immediately informed the Republican National Committee that we were terminating the contract with the voter-registration vendor we hired at their request because there is no place for voter-registration fraud in Florida," state Republican Party Executive Director Mike Grissom said in a statement.

Strategic Allied Consulting said the suspect forms came from one person and that the company was cooperating with elections officials.

"Strategic has a zero-tolerance policy for breaking the law," said Fred Petti, a company attorney.

"Accordingly, once we learned of the irregularities in Palm Beach County, we were able to trace all questionable cards to one individual and immediately terminated our working relationship with the individual in question."

The company did not identify the individual.

Polls show Obama leading Romney in Florida, a closely divided state that hosted the GOP's convention last month.

If Romney were to lose Florida and its 29 electoral votes, he would have to sweep other battleground states of Ohio, Virginia, Wisconsin, Colorado, Iowa, Nevada and New Hampshire to win.

HALLANDALE BEACH

### Water is safe to use again

Palm Beach County Elections Supervisor Susan Bucher's staff noticed signatures that looked alike and incomplete forms submitted on Sept. 5 by Strategic Allied Consulting.

Bucher met with prosecutors on Monday to request an investigation.

Palm Beach County was at the center of the ballot recount in 2000, with George W. Bush and Al Gore both contesting the results that seemed to give Reform Party nominee Pat Buchanan an unusually strong showing. Critics — and legions of attorneys — said the "butterfly ballot" design led many people to vote for Buchanan

when they meant to vote for Gore.

The subsequent questions that arose about how ballots should be tabulated made their way to the U.S. Supreme Court, which settled the bitter contest in a 5-4 ruling barring continuation of the ballot recount.

Strategic Allied Consulting previously worked for Romney's campaign, but its spokeswoman, Sarah Pompei, said it had not used the company since 2011, when it collected signatures to get Romney onto primary ballots.

The deadline to register in Florida for the Nov. 6 election is Oct. 9.

### VILLAGE OF KEY BISCAYNE NOTICE OF A PUBLIC HEARING OF AN ORDINANCE AMENDING SECTION 30-33(3) AND 30-73(G) OF THE CODE OF ORDINANCES AND AN ORDINANCE AMENDING THE HOTEL RESORT (HR) DISTRICT

NOTICE IS HEREBY GIVEN THAT THE Village Council sitting as the Local Planning Agency (LPA), will hold a public meeting on October 9, 2012 at 7:00 p.m. in the Village Council Chamber, 560 Crandon Boulevard, Key Biscayne, Florida, to consider making a recommendation to the Village Council on the proposed Ordinances. The Village Council shall then consider adoption of the proposed Ordinances on second reading, at a public hearing, immediately following the completion of the LPA Hearing.

**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 EFFECTIVENESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTION 30-103 "HOTEL RESORT DISTRICT"**