

ORDINANCE NO. 2020-_____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTION 2-21 "DEFENSE OF OFFICIALS IN ETHICS MATTERS" TO PROVIDE FOR THE COST OF DEFENSE OF AN ELECTED OFFICIAL AS FURTHER PROVIDED HEREIN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2-21 of the Village of Key Biscayne (the "Village") Code of Ordinances (the "Village Code") currently provides that the Village may, in its discretion, determine when to provide for the legal defense of officials in ethics matter; and

WHEREAS, the Village Council desires to amend the Village Code to provide that the Village may, in its discretion, provide for the defense of officials, including in investigations or as witnesses, that may arise out of the performance of the official's duties while serving a public purpose; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. **Recitals.** That the above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. **Amending Village Code.** That section 2-21, "Defense of officials in ethics matters" of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 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.

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlighted** ~~double-strikethrough~~ and double underline.

- (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 the defense of claims similar to the one that the Official has been charged with, 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. They shall include any expenses incurred by the Official if that Official is merely a witness.
- (5) The term "Legal Defense" shall mean the services provided by Counsel in defending an Official in accordance with this section or representing them as a witness in a proceeding involving their official capacity.
- (6) The term "Reimbursable Costs" shall mean approved necessary incidental expenses, including, but not limited to travel expenses, directly incurred by the Official in association with the defense of actions or proceedings in accordance with this section.
- (7) The term "Charge or Charged" shall mean the formal commencement of civil or criminal proceedings against an Official (including the initiation of an investigation preliminary to any such proceedings) which could result in the Official:

a. being removed from office;

b. being imprisoned or placed on criminal probation; or

c. paying a civil fine and/or judgment.

- (b) *Defense of Officials.* Upon the request of a Village Official (the "Official") the Village may, in its discretion, determine when to 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 duties while serving a public purpose Official's function, when such Official is eCharged or a witness ~~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 and the payment of approved Reimbursable Costs to the Official incurred 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) The Official must provide written proof, where the matter involves a being a witness or preliminary investigation (and none of the documents described in (2) above has been served):
 - (3 4) 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; and
 - (4 5) 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. In the event the Village Manager denies the Request, the Official may appeal the decision, in writing, to the Village Council within thirty (30) days of receiving such denial.
- (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 and Reimbursable Costs 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 or from other funds designated for Mayor or Council use. 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 and Reimbursable Costs 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. The Official shall on a monthly basis submit all current bills for Reimbursable Costs 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 for Legal Expenses and to the Official for Reimbursable Costs. Payments shall be made on a monthly basis during the pendency of the action or proceeding pursuant to F.S. § 218.70 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 or the Village Council 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 and Reimbursable Costs where it is determined that the alleged act or omission was taken outside the course or scope of the duties of the Official, or where such Official was adjudicated guilty of the alleged violation or found liable for a cause sued upon. 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 and Reimbursable Costs in accordance with this section where it is determined that the alleged act or omission was taken outside the course or scope of the duties of the Official, or where such Official was adjudicated guilty of the alleged violation or found liable for a cause sued upon;
- (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 the 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~~ may 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, F.S., § 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; and
- (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, F.S. § 2-11.1, Miami-Dade County Code, or any applicable Village ethics ordinances~~ Charge, where said Official was acting in the course and scope of the Official's function, and said Official is

subsequently acquitted, not liable, or the eCharge or eCharges 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 at the time of 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 F.S. § 112.317(87), or section 2-1074(t), Miami-Dade County Code, where the Florida Commission on Ethics or the Miami-Dade County Commission on Ethics determines 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 and Reimbursable Costs incurred by the Village from the complaining party in the name of the Official, or as subrogee of the Official.
- (h) The Village, as subrogee of the Official, reserves any rights under the law to recovery of Legal Expenses and Reimbursable Costs incurred by the Village from the complaining party in any civil action.

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. Codification. 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 Village's Code of Ordinances, and 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. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the _____ day of _____, 2019.

PASSED AND ADOPTED on second reading on the _____ day of _____, 2020.

ATTEST:

MICHAEL W. DAVEY
MAYOR

JENNIFER MEDINA, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY:

VILLAGE ATTORNEY