



The Village of Biscayne Park

600 NE 114th St., Biscayne Park, FL 33161

Telephone: 305 899 8000 Facsimile: 305 891 7241

AGENDA
SPECIAL COMMISSION MEETING
LOG CABIN - 640 NE 114th Street
Biscayne Park, FL 33161
Tuesday, February 11, 2020 6:00 pm

1 Call to Order



2 Roll Call

Mayor O'Halpin

Vice-Mayor Tudor

Commissioner Kennedy

Commissioner Samaria

3 Pledge of Allegiance

4 Public Comments Related to Agenda Items / Good & Welfare

Comments from the public relating to topics that are on the agenda, or other general topics.

5 New Business

5.a Interim Village Attorney



Engagement letter FoxRotschild - John Herin

5.b Interim Village Manager



Memo of appointment of Interim Village Manager - David Hernandez

5.c Resolution # 2020-06 - Special Election - One (1) seat



A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; CALLING A SPECIAL ELECTION TO FILL VACANCY OF ONE COMMISSION SEAT; PROVIDE FOR POLLING LOCATION: PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

5.d Special Magistrate - discussion on Ordinance 2019-05



- Ordinance 2019-05
- Annette Canon letter

5.e Ordinance # 2020-01 - Changing language Board Members Resignation - First Reading



AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING ARTICLE III OF CHAPTER 2 OF THE CODE OF ORDINANCES, VILLAGE OF BISCAYNE PARK, ENTITLED "COMMISSIONS, BOARDS AND COMMITTEES" BY AMENDING SECTION 2-30(d)(3) REGARDING THE ONE YEAR RESTRICTION ON THE ELIGIBILITY OF APPOINTMENT OF MEMBERS OF BOARDS OR COMMITTEES THAT HAVE RESIGNED; PROVIDING FOR INCLUSION IN THE CODE AND SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Public Hearing on Ordinance # 2020-01

5.f Charter Review Advisory Board's Final Report to the Commission



- Cover Memo from Chair
- Final Report

6 Adjournment

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899 8000 no later than four (4) days prior to the proceeding for assistance.

DECORUM - All comments must be addressed to the Commission as a body and not to individuals. Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.



Fox Rothschild LLP
ATTORNEYS AT LAW

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JOHN R. HERIN, JR.
DIRECT DIAL: 786- 501-7377
EMAIL ADDRESS: JHerin@foxrothschild.com

February 5, 2020

David Hernandez
Interim Village Manager
Village of Biscayne Park
600 NE 114th Street
Biscayne Park, FL 33161

Re: Fox Rothschild LLP Engagement Letter

Dear Mr. Hernandez:

This letter will confirm that the Village of Biscayne Park, acting through its duly elected Village Commission (“Client”) has retained Fox Rothschild LLP (“Firm”) to represent Client in connection with the matter described below. The Engagement Letter (“Letter”), along with the attached Standard Terms of Engagement (“Standard Terms”), comprise the Engagement Agreement (“Agreement”) between Client and the Firm and explain the terms under which the Firm will provide legal services to Client in this matter (The Standard Terms are attached hereto and incorporated by reference as Exhibit 1).

Scope of Work. Client has engaged the Firm to serve as the Interim Village Attorney as provided for in Section 3.02 of the Village Charter (“Engagement”).

Identity of Client. The Firm’s only client in the Engagement is the party identified as Client in the first paragraph of this Letter. Except as provided for in the Village Charter and applicable state law, the Engagement is not an agreement to represent any of Client’s affiliates, subsidiaries, parents or related individuals, officers, directors, partners, members, shareholders, employees, independent contractors or agents (collectively, “Affiliates”) unless the Firm has specifically agreed to do so in writing. Client agrees that the Firm’s representation of Client in the Engagement does not give rise to an attorney-client relationship between the Firm and any of Client’s Affiliates. Further, unless prohibited by applicable Florida Bar rules, the Firm’s representation of Client in the Engagement will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of Client’s Affiliates.

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia Florida Illinois
Minnesota Nevada New Jersey New York Pennsylvania Texas Washington



Fox Rothschild LLP
ATTORNEYS AT LAW

David Hernandez
Interim Village Manager
Village of Biscayne Park
February 7, 2020
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Client has agreed that the Village Manager (Interim or otherwise) will be the contact person (“Contact”) for Client throughout the duration of the Engagement and that all Invoices should be sent to Contact for processing and payment.

Fees and Billing. The Firm’s minimum fee will be determined by the amount of time spent on the Engagement multiplied by the applicable hourly billing rates. Each of the Firm’s billing professionals and other personnel are assigned an hourly rate that reflects that person’s experience, skills, reputation, and ability, as well as prevailing market demand. The Firm’s billing rates currently range from \$235 to \$965 per hour for lawyers and from \$140 to \$425 per hour for paralegals. All dollar amounts reflected in the Agreement are in United States Dollars. The Firm’s time will be recorded in increments of rounded tenths of an hour, with one-tenth (0.1) being the minimum for any activity. The following attorneys and, if applicable, paralegals, will be working on the Engagement at the indicated hourly rates:

John R. Herin, Jr. (\$225)

The Firm reserves the right to revise the staffing of the Engagement as it deems efficient. If, at any time, Client has any questions concerning the staffing of the Engagement, please contact me immediately. The Firm’s billing rates are adjusted from time to time, generally once a year, usually in June, to reflect then current levels of legal experience, changes in overhead costs, market conditions or other appropriate considerations.

The Firm typically incurs costs in connection with the Engagement. These costs include postage, delivery charges, facsimile and photocopy charges, computerized legal research and related expenses, travel expenses including parking, mileage, meals and hotel costs, and use of outside service providers including printers or experts. In litigation matters, such expenses may also include filing fees, deposition costs, process servers, e-discovery costs and technician time, court reporters and witness fees. Client agrees to reimburse the Firm for any costs and expenses incurred in the course of the Engagement. If the Firm anticipates that substantial expenses will be incurred on Client’s behalf, the Firm will advise Client and the Firm may request that Client pay these expenses directly.

The Firm will issue regular Invoices that detail the fees and costs incurred in the Engagement (“Invoices”), usually on a monthly basis. The time charged will include all time the Firm devotes to the Engagement.

Payment is due within thirty (30) days from the date of Invoices. Unpaid Invoices will accrue interest at the maximum rate permitted by applicable laws. If an Invoice is not timely paid, the Firm may withdraw from the Engagement. If necessary, the Firm shall file a motion with the court to withdraw as counsel in the Engagement and Client shall not oppose said motion.



Fox Rothschild LLP
ATTORNEYS AT LAW

David Hernandez
Interim Village Manager
Village of Biscayne Park
February 7, 2020
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Although the Firm attempts to capture all fees charged and disbursements made on Client's behalf through the closing date set forth in each Invoice, there may be fees or charges for a particular time period that will not appear on certain Invoices. Any such fees or charges will appear on subsequent Invoices.

No individual except the Firmwide Managing Partner, or his/her designee, has the authority to modify the Invoices submitted to Client.

Security for Financial Obligations. Florida law provides the Firm with the right to impose a lien upon and retain, as security for payment of the Firm's Invoices, all documents, money and other intangibles and materials coming into the Firm's possession (except to the extent that such a lien on funds, deposited with the Firm in its client trust account, is prohibited). Additionally, the Firm can acquire a lien, to the extent permitted by law, on all judgments, awards, damages or other settlement, compromise, or court award then or thereafter obtained or achieved on Client's behalf in the Engagement, whether by the Client, by the Firm, or by any other attorneys who may succeed the Firm in the Engagement. These retaining and charging liens may be asserted by the Firm in such circumstances as the Firm believes to be necessary or appropriate.

No Retainer. No retainer is requested at this time. However, the Firm reserves the right to request retainers in the future.

Prospective Waiver. The Firm is a large law firm with many offices and represents many companies and individuals in numerous jurisdictions. It is possible that during the course of the Engagement another client will have a transaction with or a matter adverse to the Client unrelated to the Engagement or any subsequent engagement for the Client. Such matters may include, for example, a real estate transaction or land use matter, a bankruptcy matter, a financing matter, business counseling, corporate matter, a patent or intellectual property matter, or a labor and employment matter. This will confirm that the Client agrees that the Firm may continue to represent or may undertake in the future to represent existing or new clients in such matters not substantially related to the Engagement, even if the interests of such clients in those other matters are directly adverse to the Client. We agree, however, that the Client's prospective consent to conflicting representations contained in this paragraph will not apply to any litigation matters. Furthermore, the Firm agrees not to use any proprietary or other confidential information of a non-public nature concerning the Client acquired by the Firm as a result of the Engagement, to the Client's material disadvantage in connection with any matter in which the Firm is adverse to the Client. Client may wish to consult with independent counsel regarding this advance waiver.

Similarly, new lawyers frequently join the Firm. These lawyers may have represented parties adverse to Client while employed by other law firms or organizations. The Firm assumes that,



Fox Rothschild LLP
ATTORNEYS AT LAW

David Hernandez
Interim Village Manager
Village of Biscayne Park
February 7, 2020
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consistent with ethical standards, Client has no objection to the Firm's continuing representation of Client notwithstanding our lawyers' prior professional relationships.

Future Representation. If Client asks the Firm to take on an additional assignment in the future, Client and the Firm will reach a separate understanding covering that additional assignment, which understanding will be reflected in a separate writing, which may include e-mails.

Encryption of Electronic Email. We take data privacy very seriously. The Firm will first attempt to transmit all email to Client by means of the Transport Layer Security (TLS) protocol, which encrypts communications between Client's email server and the Firm's email server. Most major email providers support the TLS protocol, and it is considered a best practice in the security industry. If Client's email provider or server is not configured to receive communications sent with the TLS protocol, the Firm automatically will re-send those communications without using the TLS protocol and without any encryption during transmission. The Firm strongly recommends that Client send and receive email containing attorney-client privileged information, Personally Identifiable Information or Protected Health Information only by means of the TLS protocol. If Client is unable to receive email by means of the TLS protocol, please notify the undersigned and the Firm will use a third party service that will allow Client to retrieve its emails in a secure manner.

Conclusion. If Client has any questions about the Agreement, please contact me as soon as possible. Client may consult with separate counsel regarding this Agreement. This Agreement will take effect on the date when the Firm first performs legal services for Client.

We appreciate the opportunity and privilege to represent Client in the Engagement.

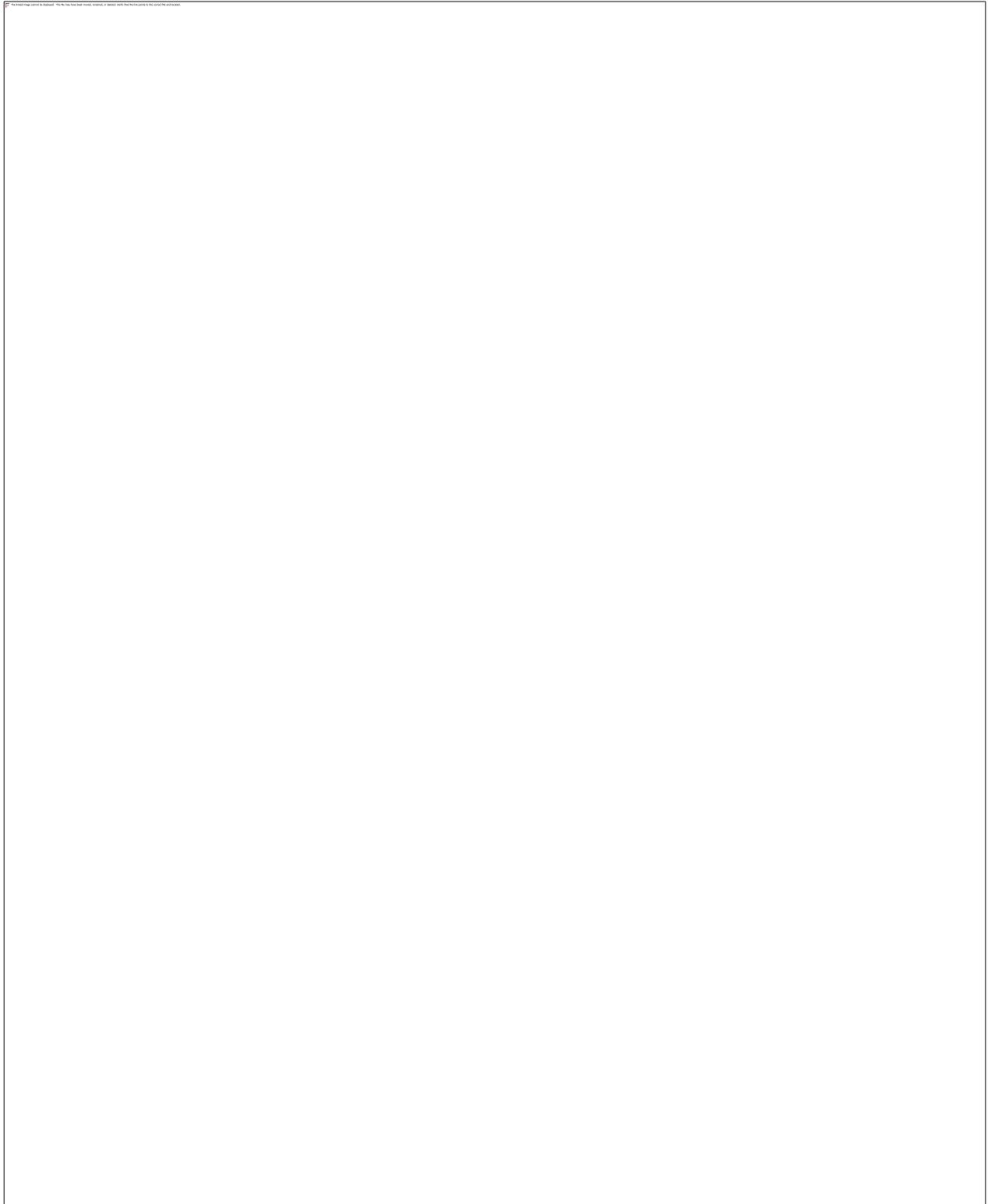
Sincerely,

John R. Herin, Jr.
For Fox Rothschild LLP
Enclosure



Fox Rothschild LLP
ATTORNEYS AT LAW

David Hernandez
Interim Village Manager
Village of Biscayne Park
February 7, 2020
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VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report
REGULAR MEETING

Item # 5.b

TO: Members of the Biscayne Park Village Commission

FROM: Virginia “Ginny” O’Halpin, Mayor

DATE: February 11, 2020

TITLE: Appointment of David Hernandez as Interim Village Manager

Recommendation

For discussion and subsequent action by the Village Commission.

Background

At the regular Village Commission meeting of February 4, 2020, the Commission suspended with pay Village Manager Krishan Manners pending his possible removal as provided for in Section 3.03 of the Village Charter. In light of Mr. Manners’ suspension pending his possible removal as Village Manager, the Commission appointed the Village’s Director of Public Works, David Hernandez, as Interim Village Manager. Mr. Hernandez agreed to accept the position of Interim Village Manager subject to the following conditions:

- Mr. Hernandez will continue to serve and perform the functions of Director of Public Works and revert solely back to that position upon the Commission’s reinstatement of Mr. Manners or the hiring of a permanent Village Manager if the Commission elects to terminate Mr. Manners’ employment, or Mr. Manners resigns as Village Manager.
- Mr. Hernandez’ salary remains the same for the current.

During the Commissioner Comments section of the agenda that same meeting, Commissioner Kennedy discussed the possibility of temporarily increasing Mr. Hernandez’ compensation to reflect the additional duties and responsibilities that he is assuming during his tenure as Interim Village Manager.

Resource Impact

Unknown at this time, but would be whatever amount – if any - the Commission decides to temporarily increase Mr. Hernandez’ compensation to be determined upon discussion with Village Commission.

Attachment(s)

None.

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RESOLUTION NO. 2020-05

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, FOR REMOVAL OF THE VILLAGE MANAGER, KRISHAN MANNERS, AND TERMINATION FOR CAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution 2017-32, on June 6, 2017, the Village Commission approved an Employment Agreement with Village Manager, Krishan Manners (“Manners”), whereby Manners agreed “to perform the functions and duties as specified in Section 3.01 [of] the Village Charter, and to perform such other legally permissible and proper duties as are required by the Village Commission from time to time.” (Employment Agreement, Sec. 1. A)

WHEREAS, the Employment Agreement provides, in part, that “...Village Manager shall serve at the pleasure of the Village Commission and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Commission to terminate the services of the Village Manager at any time, subject only to the provision set forth in Section 7...” (Employment Agreement, Sec. 2.A)

WHEREAS, the relevant subparagraphs of the Employment Agreement, Section 7 address termination for cause, providing that:

A. In the event the Village Commission wishes to terminate the Village Manager, it shall do so in accordance with Section 3.03 of the Village Charter and the provisions of this Agreement.

....

D. In the event the Village Manager is terminated for just cause, such termination will take effect immediately and the Village shall have no obligation to pay the amounts outlined in this Agreement except for any accrued and unpaid salary and benefit earned, consistent with Village policies just cause is defined and limited to mean (1) breach of any material term or condition of this Agreement after ten (10) days written notice and an opportunity to cure (opportunity to cure not required if incurable offense); and (2) misconduct in office such as an act of fraud or dishonesty (3) misconduct as defined in Florida Statute, section 443.036(29) in which case, by statute, such payment would be prohibited; (4) gross insubordination; (5) willful neglect of duty; (6) a knowing or intentional violation of the International City/County Management Association, Florida or Miami-Dade County conflict of interest and code of ethics laws and Village Charter; (7) moral turpitude; or (8) conviction of any criminal act (except for minor traffic infractions).

WHEREAS, turning to the Village of Biscayne Park Charter, relevant portions provide that:

1 3.01- Village Manager.

2 (A) *Village Manager*. There shall be a Village Manager (the
3 “Manager”) who shall be the chief administrative officer of the Village.
4 The Manager shall be responsible to the Commission for the
5 administration of all Village affairs and for carrying out the policies of
6 the Commission.

7 (B) *Appointment; removal; compensation of the Manager*. ...The
8 Commission may remove the Manager at any time, as provided for in
9 Section 3.03. ...

10
11 3.03- Removal procedure.

12 The Manager and the Attorney (each to be referred to as “Charter
13 Officer”) may be suspended with pay, pending removal by a resolution
14 approved by the majority of the total membership of the Commission,
15 which shall set forth the reasons for suspension and proposed removal. A
16 copy of such resolution shall be served immediately upon the affected
17 Charter Officer. The affected Charter Officer shall have fifteen (15) days in
18 which to respond in writing; and upon request, shall be afforded a public
19 hearing, which shall occur not earlier than ten (10) days nor later than
20 fifteen (15) days after such hearing is requested. After the public hearing,
21 if one is requested, and after full consideration, the Commission by a
22 majority vote of its total membership may adopt a final resolution of
23 removal. The affected Charter Officer shall continue to receive full
24 compensation until the effective date of a final resolution of removal.
25

26 **WHEREAS**, the Village Commission has lost confidence in Manners, and wishes to
27 terminate his employment with the Village **for cause**.

28
29 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE**
30 **VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:**

31
32 **Section 1.** The foregoing “WHEREAS” clauses are hereby ratified and
33 confirmed as being true and correct and are incorporated herein by this reference.
34

35 **Section 2.** The Village Commission finds that just cause exists to terminate the
36 Employment Agreement and Manners’ employment with the Village in connection with the
37 following:

38 A. Gross Insubordination

- 39 1. Manners exceeded his authority as Village Manager by instructing
40 the Attorney to institute a Petition for Writ of Quo Warranto and
41 Declaratory Relief (“Residency Challenge”) against a duly
42 residing, elected and sitting Commissioner on January 9, 2020.
43 2. Not only did Manners exceed his authority in commencing the
44 Residency Challenge, but he knew that the case was based on a
45 false premise, as evidenced by Manners delivering an agenda
46 packet to the Commissioner at his home address on January 10,
47 2020. After hearing presentations and taking evidence, the
48 unauthorized Petition was dismissed as being premature because

1 at the time of the filing the Commissioner resided at the home
2 address stated in his candidacy papers.

- 3 3. An Investigative Report by Miami Dade County Commission on
4 Ethics & Public Trust (“Ethics Commission”) concludes “the
5 evidence establishes that after Truppman advised Manners of her
6 unavailability for the [3/5/2019] meeting, he took it upon himself
7 to contact the other elected officials and as a result of these
8 contacts the meeting was cancelled. The other four elected
9 officials told investigator that they were not told that *only the*
10 *Mayor* was unavailable and that *the other four elected officials*
11 *were available to conduct the meeting in her absence.”*
12 4. While the Ethics Commission found insufficient evidence to
13 demonstrate that Manners exploited his position, Manners actions
14 in providing four Commissioners selective information to achieve
15 a rescheduling of the March 5, 2019, meeting was a manipulation
16 and a willingness to subvert the goals of the Commission to
17 proceed with the conduct of Village business as scheduled.
18

19 B. Willful Neglect of Duty

- 20 1. When the January 14, 2020, commission meeting, was not called
21 to order because quorum was not reached due to the unexplained
22 absence of Mayor Tracy Truppman, Manners failed to follow the
23 Village Charter and have two new commissioners sworn in
24 outside the public meeting. Those two new commissioners would
25 have created the required quorum for the monthly commission to
26 take place. Because of Manners’ neglect, the Village had no
27 commission meeting for the month of January 2020, which
28 included an advertised quasi-judicial variance hearing. The
29 cancelled January meeting was not rescheduled.
30 2. By his own admission, Manners intentionally did not provide
31 required written responses to requests for information related to
32 the audit of the Citizens Independent Transportation Trust and
33 related funds appropriate to the Village for transit and
34 transportation.
35 3. Failure of oversight with respect to attorney billings. By his
36 admission, Manners authorized payment of attorney invoices
37 without appropriate examination and without bringing the details
38 to Commission for review and approval.
39 4. Failure of oversight with respect to WastePro, and the irregularity
40 of services provided.
41 5. Failure to initiate competitive bidding at the appropriate time to
42 replace WastePro or leverage a better quality of service.
43

44 **Section 3.** For these reasons, and such others that may be articulated at the
45 reading of this Resolution, the Commission resolves that Manners be suspended with pay
46 and that the Removal procedures be initiated in accordance with the Charter, Section 3.03.
47

1 **Section 4.** Upon approval of this Resolution, Manners shall immediately
2 relinquish to the Sergeant at Arms all devices (phones, tablets, laptops, external drives), and
3 other electronic media, keys, passwords, and other means of access to Village property
4 (including accounts).
5

6 **Section 5.** During his suspension, Manners is prohibited from accessing Village
7 files or accounts, and he is prohibited from contacting Village employees, contract vendors,
8 residents or elected officials in any way, except that Manners is instructed to respond to
9 inquiries from an Interim Manager and/or Village Clerk on vital pending matters that
10 require attention.

11 **Section 6.** The Interim Manager and/or Village Clerk are instructed to immediately
12 communicate this suspension of Manners internally within the Village, to all vendors and to
13 residents, and to instruct the electronic/IT vendor to suspend Manners' access to all Village
14 electronic resources, including email. Village employees and vendors will be instructed to
15 not contact Manners during his suspension except as noted in Section 5.
16

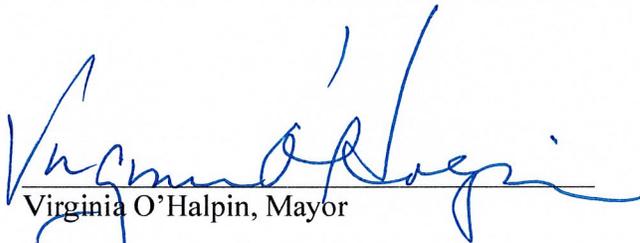
17 **Section 7.** In accordance with the Charter, Manners shall have fifteen (15) days
18 from receipt of this Resolution to respond in writing and to request a public hearing, which
19 shall occur within 10-15 days after such request.
20

21 **Section 8.** In the event that a public hearing is not timely requested by Manners,
22 this Resolution shall be deemed a Final Resolution of Removal, and Manners employment
23 shall be terminated as of February 20, 2020.
24

25 **Section 9.** This Resolution shall become effective immediately upon its adoption.
26

27 **PASSED AND ADOPTED this 4th day of February 2020.**
28

29 The foregoing resolution upon being put to a vote, the vote was as follows:
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35 Virginia O'Halpin, Mayor

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37 Attest:

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40 Roseann Prado, Village Clerk
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**The foregoing resolution upon being
put to a vote, the vote was as follows:**

Mayor O'Halpin: Yes
Vice Mayor Tudor: No
Commissioner Kennedy: Yes
Commissioner Samaria:



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report
REGULAR MEETING

Item # 5.c

TO: Honorable Mayor & Members of the
Biscayne Park Village Commission

FROM: Roseann Prado, Village Clerk

DATE: February 11, 2020

TITLE: Special Election – One (1) vacant seat

Recommendation:

Approval of Resolution 2019-26.

Background

On February 04, 2020, Commissioner and Mayor Tracy Truppman sent a letter of resignation to the Village Manager. Tracy Truppman's term would have expired November 2020, leaving 9 months left in her unexpired term.

Village code states that if six months or more remain in the unexpired term, the vacancy needs to be filled by Special Election which must occur within 90 days from the date of the said vacancy, or as soon as it is allowed by the Miami-Dade County Supervisor of Elections. The Department of Elections has advised that the Village Commission must pass legislation calling for the Special Election. Based on this requirement, and all other related guidelines, the date of the Special Election would follow Section 2.05 of the Village Charter on a date yet to be determined by the Miami-Dade County Supervisor of Elections SOE. Based on this requirement, and all other related guidelines, the proposed date of the Special Election would be April 14, 2020.

Resource Impact

An estimate based on the last Special Election held in January 07, 2020, provided by the Miami-Dade Department of Elections which includes the costs for Personnel, Polling Locations, Supplies and Services, Trucks and Vehicles, Printing and Advertising, Postage, Ballot Creation, and Administrative Overhead total the amount of \$ 14,680.63.

There would be an additional estimated cost of \$1,500 for required newspaper publications.

Attachment

- Resolution 2020-06
- E-mail SOE
- Calendar Special Election

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RESOLUTION NO. 2020-06

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CALLING A SPECIAL ELECTION TO FILL VACANCY OF ONE COMMISSION SEAT; PROVIDE FOR POLLING LOCATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on November 2016, Tracy Truppmann was elected to serve as an at-large member of the Village Commission of the Village of Biscayne Park, Florida (the “Village”) for a four (4) year term commencing on November 2016 and ending in November 2020; and

WHEREAS, on February 04, 2020, the Village Manager received a written notice of resignation for this commission seat, effective immediately; and

WHEREAS, the Village Manager promptly notified the Village Commission of the resignation and vacancy; and

WHEREAS, more than six (6) months are remaining in this unexpired Commission term; and

WHEREAS, Section 2.05 of the Village Charter requires such a vacancy to be filled pursuant to a special election to occur within forty-five (45) days from the date from the date of said vacancy, or as soon as allowed by the Miami-Dade County Supervisor of Elections (“Miami-Dade SOE”), but in no case to exceed ninety (90) days; and

WHEREAS, Section 5.01 of the Village Charter, states that special elections, when required, shall be scheduled by the Commission at such times and in such manner as shall be consistent with the Village Charter; and

WHEREAS, Section 100.151, *Florida Statutes* requires the Village to first provide notice to the Miami-Dade SOE of the need to call a special election to obtain consent as to an election date prior to calling the special election; and

WHEREAS, the Village Clerk has notified the Miami-Dade SOE of the need to hold a special election to fill the current vacancy on the Village Commission; and

WHEREAS, the Miami-Dade SOE has provided the Village with a proposed tentative special election date of April 14, 2020; and

WHEREAS, Section 100.342, *Florida Statutes*, requires the Village to publish notice of the special election in a newspaper of general circulation within the Village at least twice, once in the fifth week and once in the third week prior to the week in which the special election is to be held; and

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:

Section 1. Recitals. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Village Commission.

1 PASSED AND ADOPTED this 11th day of February, 2020.

2
3 The foregoing Resolution was offered by _____, who moved its
4 adoption. The motion was seconded by _____, and upon being put to a vote
5 the vote was as follows:

6
7 Virginia "Ginny" O'Halpin, Mayor _____
8 William Tudor, Vice Mayor _____
9 Macdonald "Mac" Kennedy, Commissioner _____
10 Dan Samaria, Commissioner _____

11
12 VILLAGE OF BISCAYNE PARK

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15 _____
16 Virginia "Ginny" O'Halpin, Mayor

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18 ATTEST:

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21 _____
22 Roseann Prado, Village Clerk

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25 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
26 USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:

27
28
29 _____
30 John R. Herin, Jr., Interim Village Attorney

Roseann Prado

From: Trutie, Suzy (Elections) <suzy.trutie@miamidade.gov>
Sent: Thursday, February 6, 2020 3:40 PM
To: Roseann Prado
Cc: White, Christina (Elections); Prieto, Elizabeth (Elections)
Subject: Ideal date for Special Election

Roseann,

Good afternoon. On behalf of Miami-Dade County Supervisor of Elections Christina White, the earliest we can conduct the Special Election is April 14, 2020 with a potential Run-Off on April 28, 2020.

Please provide Elizabeth Prieto in our office with a finalized resolution from your Village Commission calling for the Special Election as soon as possible. Additionally, we will need the candidate oaths by Friday, March 6, 2020 at close of business day. Feel free to contact us if you have any questions or need more information.

Thank you.

Suzy Trutie

Deputy Supervisor of Elections, Government Affairs and Media Relations
Miami-Dade County Elections Department
2700 NW 87 Avenue
Miami, FL 33172
Direct: 305-499-8409 | Fax: 305-499-8501 | Mobile: 305-495-7557
Email: suzy.trutie@miamidade.gov
www.iamelectionready.org



Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. Email messages are covered under such laws and thus subject to disclosure.

From: Roseann Prado <villageclerk@biscayneparkfl.gov>
Sent: Thursday, February 06, 2020 11:14 AM
To: White, Christina (Elections) <Christina.White@miamidade.gov>; Prieto, Elizabeth (Elections) <Elizabeth.Prieto@miamidade.gov>
Cc: Trutie, Suzy (Elections) <suzy.trutie@miamidade.gov>
Subject: RE: Ideal date for Special Election

EMAIL RECEIVED FROM EXTERNAL SOURCE.

Forgive my hurriedness, my concern is to have a tentative date to present to Commission at next Commission meeting on Tuesday, February 11, 2020 – as a tentative to pass a Resolution and then work with you on the final date.

I appreciate your prompt response.

Warm Regards,



Roseann Prado, CMC
Village Clerk

*Village of Biscayne Park
Village Hall
600 NE 114th Street
Biscayne Park, FL 33161
305 899 8000 – Phone
305 891 7241 – Fax
villageclerk@biscayneparkfl.gov
www.biscayneparkfl.gov*

 Please print only if necessary.

The Village of Biscayne Park is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our servers and kept as a public record.



From: White, Christina (Elections) <Christina.White@miamidade.gov>
Sent: Thursday, February 6, 2020 10:20 AM
To: Roseann Prado <villageclerk@biscayneparkfl.gov>; Prieto, Elizabeth (Elections) <Elizabeth.Prieto@miamidade.gov>
Cc: Trutie, Suzy (Elections) <suzy.trutie@miamidade.gov>
Subject: RE: Ideal date for Special Election

Roseann,

We are in receipt of your email. As you know, we are in a very challenging time for special elections, as we have a major countywide election (Presidential Primary) on March 17th. Our entire equipment inventory is allocated to this election, and therefore currently unavailable, as well as all other resources. We will map out available options and get back to you as soon as possible.

Best Regards,
Christina White
Supervisor of Elections
Miami-Dade Elections Department
305.499.8509

From: Roseann Prado <villageclerk@biscayneparkfl.gov>
Sent: Wednesday, February 05, 2020 2:04 PM
To: White, Christina (Elections) <Christina.White@miamidade.gov>; Prieto, Elizabeth (Elections) <Elizabeth.Prieto@miamidade.gov>
Cc: Herin, John R. <JHerin@foxrothschild.com>; David Hernandez <dhernandez@biscayneparkfl.gov>
Subject: Ideal date for Special Election

EMAIL RECEIVED FROM EXTERNAL SOURCE.

Dear Ms. Christina White,

*Yesterday, Tuesday February 04, 2020 we received a resignation letter from our former Mayor/Commission Tracy Truppmann.
The Village must hold a Special Election within a minimum of forty-five (45) and ninety (90) days to fill the vacant seat.*

Please indicate the best dates for that special election.

I understand that after that we will submit a Resolution approved by the Commission to you, the Supervisor Of Elections to authorize the special election.

Best Regards,



**Roseann Prado, CMC
Village Clerk**

Village of Biscayne Park
Village Hall
600 NE 114th Street
Biscayne Park, FL 33161
305 899 8000 – Phone
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**VILLAGE OF BISCAYNE PARK
SPECIAL ELECTION - 2020
SCHEDULE OF MEETING, EVENTS AND REQUIRED ACTIONS**

Date	Description
Monday, February 11, 2019	Special Commission Meeting: Resolution 2020-06 passed calling for the special election.
Wednesday, February 12, 2020	Submittal of adopted Resolution to the Miami-Dade County Supervisor of Elections.
Friday, February 14, 2020	Publication of required notice no. 1 of Special Election to fill a vacancy (FS 100.141) in newspaper before Qualification Period.
Tuesday, February 18, 2020	Qualification period begins.
Friday, February 28, 2020	Qualification period ends.
Sunday, March 24, 2019	Publication of required notice no. 3 of Special Election fo fill a vacancy (FS 100.141) in newspaper (with Sample ballot)
Tuesday, April 14, 2020	SPECIAL ELECTION
Tuesday, April 21, 2020	Official results received (latest)
Tuesday, April 28, 2020	In case of a deadlock and need a Run-Off election



The Village of Biscayne Park

600 NE 114th St., Biscayne Park, FL 33161
Telephone: 305-899-8000 Facsimile: 305 891 7241

Tracy Truppman
Mayor

December 18, 2019

Commissioners
Dan Samaria
William Tudor

Ms. Annette Cannon, Esq.
103-7th Terrace, Dilido Island
Miami Beach, Florida 33139

Krishan Manners
Village Manager

Dear Ms. Cannon:

Rebecca Rodriguez
Village Attorney

Pursuant to our discussion yesterday, I am delighted to recommend you for Commission Ratification as the Special Magistrate for the Village of Biscayne Park.

Roseann Prado
Village Clerk

Confirming the rates/terms discussed, the Village will pay you \$150.00 per hour, with a minimum of 2 hours, to preside over hearings from our Code Department. No travel time will be billed, and Orders of Enforcement will be signed at each meeting. The term of this agreement will be for two (2) years. This agreement may be terminated by either party if necessary with 60 days' notice.

Please provide a copy of your Professional Liability Insurance Policy to the Village Manager as soon as possible.

This agreement will be presented to the Village Commission on January 14, 2020 for ratification. We would like for you to attend this Commission meeting to answer questions as needed for our Commissioners.

Again, it was a pleasure meeting with you and we look forward to working with you.

Sincerely,

Krishan Manners
Village Manager

1 **WHEREAS**, on October 1, 2019, the Village Commission had a preliminary discussion
2 during its regular commission meeting about potentially adding a special magistrate authority for
3 certain code enforcement proceedings;

4 **WHEREAS**, on October 17, 2019, the Village Commission held a special commission
5 meeting to receive resident comments regarding, and discuss the potential for codifying,
6 amendments to the Village’s Land Development Code to provide for a special magistrate in
7 certain code enforcement proceedings;

8 **WHEREAS**, on October 24, 2019, the Village Commission held a special commission
9 meeting to have a public hearing on, and first reading of, the proposed ordinance;

10 **WHEREAS**, on October 24, 2019, the proposed ordinance passed on its first reading;

11 **WHEREAS**, on October 25, 2019, the Village advertised the second reading and public
12 hearing date for the proposed enactment of the ordinance in the Daily Business Review (ad. no.
13 0000433955-01) in compliance with Section 166.041(3)(a), Florida Statutes;

14 **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF**
15 **THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

16 **Section 1.** **Ratification.** The foregoing “Whereas” clauses are hereby ratified and
17 confirmed as being true and correct and are hereby made a specific part of this Ordinance upon
18 adoption hereof.

19 **Section 2.** **Land Development Code Amended.** Chapters 14 and 15 of the Land
20 Development Code of the Village of Biscayne Park, Florida shall be amended to read as follows:

21 CHAPTER 14. – SPECIAL MAGISTRATE AND CODE COMPLIANCE
22 BOARD

23 14.1. – Special magistrate and code compliance board—Generally.
24
25

1 14.1.1 Purpose. This chapter sets forth the procedures of governing the
2 special magistrate and the code compliance board. When not expressly provided
3 for in this chapter, article III, section 2-30 of the Biscayne Park Code shall apply.
4

5 14.1.2 Intent. It is the intent of the village to provide an equitable,
6 expeditious, effective, and inexpensive method of enforcing the codes and
7 ordinances in force in the village by granting to the special magistrate and the
8 code compliance board the authority to impose administrative fines and other
9 non-criminal penalties for violation(s) of said codes and ordinances. Any alleged
10 violation of the Code may also be enforced by the Village in any court of
11 competent jurisdiction.
12

13 14.1.3 Composition.

14 (a) Special magistrates.

15
16
17 (1) Appointment. Appointments of special magistrates shall be
18 made by the Village Manager or his or her designee on the basis of
19 experience. Such appointments shall be submitted to the Village
20 Clerk for ratification by the Village Commission. The hiring of a
21 special magistrate must be ratified by a simple majority vote of the
22 Village Commission to become final.
23

24 (2) Authority. Special magistrates shall be authorized to hear
25 and decide cases involving code violations in the same manner as
26 the code compliance board.
27

28 (3) Qualifications. The special magistrate must be a licensed
29 attorney who is a member in good standing with the Florida Bar,
30 who possesses an outstanding reputation for civic pride, integrity,
31 fairness, objectivity, responsibility, and the appropriate legal
32 experience or background. A special magistrate must maintain a
33 professional liability insurance policy with a policy limit deemed
34 acceptable to the Village Manager. A copy of the policy must be
35 presented to the Village Commission for review prior to voting on
36 ratifying the hiring of a special magistrate.
37

38 (4) Term of Appointment. Appointments shall be made for a
39 term of two years. Any special magistrate may be reappointed at
40 the discretion of the village manager, subject to ratification by the
city41 commission. There shall be no limit on the number
of42 reappointments of any individual hearing officer/special master.
A43 determination as to removal or reappointment must be made
for44 each hearing officer/special master at the end of each of his or
her45 two-year term. The village manager shall have authority to
remove46 hearing officers/special masters with or without
cause.

1 Appointments to fill any vacancy shall be for the remainder of the
2 unexpired term

3
4 (5) Removal. The Village Manager may remove a special
5 magistrate at any time.

6
7 (b) Code compliance board.

8
9 (1) Composition. The five-member board shall be appointed
10 by the village commission.

11
12 (2) Qualifications; exceptions. Members of the code
13 compliance board shall be property owners and residents of
14 the Village of Biscayne Park. Residents who are not
15 property owners in the Village of Biscayne Park may be
16 appointed by the village commission by at least a four-
17 fifths super majority vote. Appointments shall be made on
18 the basis of experience or interest and, when possible,
19 include the following individuals: an architect, an attorney
20 a business person, an engineer, a general contractor, a
21 subcontractor and a licensed real estate person.

22
23 14.1.4 (3) Terms of office. The initial appointments to the code
24 compliance board and the alternate members shall be as
25 follows:

26
27 (1a) One (1) member appointed for a term of one (1)
28 year.

29
30 (2b) Two (2) members appointed for a term of two (2)
31 years.

32
33 (3c) Two (2) members appointed for a term of three (3)
34 years.

35
36 Thereafter, all appointments shall be made for a term of three (3) years and shall
37 take effect on May 1 of the year the appointment is made. A member may be
38 reappointed upon approval of the village commission. Appointments to fill any
39 vacancy on the code compliance board shall be for the remainder of the unexpired
40 term of office. For an excused absence, a board or committee member must
41 advise the village clerk prior to the meeting of the fact that they will be absent and
42 provide a reason for that absence. The board or committee may vote to excuse the
43 requested absence at the same meeting the board or committee member is absent.
44 The absence, and whether or not the absence is excused or unexcused, is to be
45 reflected in the minutes.
46

1 The members shall serve in accordance with the village Charter and may be
2 suspended and removed for cause as provided in the village code for removal of
3 members of village boards.
4

5 14.1.4 Jurisdiction of special magistrate and code compliance board.
6

7 (a) The special magistrate shall preside over code enforcement
8 proceedings involving:
9

10 (1) Irreparable or irreversible violations. For purposes of this
11 section, "irreparable" or "reversible" violations are those
12 that are incapable of correction, repair or return to an
13 original condition.
14

15 (2) Continuing violations. For purposes of this section,
16 "continuing" violations are those violations which remain
17 uncorrected beyond the prescribed time period for
18 correction contained in the civil violation notice. For each
19 day of continued violation after the time period for
20 correction has run, an additional penalty in the same
21 amount as for the original violation shall be added.
22

23 (3) Repeat violations. For purposes of this section, "repeat"
24 violation means a violation of a provision of a code or
25 ordinance by a person who has been previously found
26 through a code enforcement board or any other quasi-
27 judicial or judicial process, to have violated or who has
28 admitted violating the same provision within 5 years prior
29 to the violation, notwithstanding the violations occur at
30 different locations. For the purposes of this definition, a
31 plea of "No Contest" or "Nolo Contendre" shall be deemed
32 an admission of a violation.
33

34 (4) Uncorrectable violation. For purposes of this section, an
35 "uncorrectable" violation is a violation which cannot be
36 remedied after the violation has been committed because
37 the violation constitutes a single prohibited act rather than
38 an ongoing condition or circumstance. Each reoccurrence
39 of an uncorrectable violation shall constitute a separate
40 violation and shall subject the violator to an additional
41 penalty in the same amount as that prescribed for the
42 original violation. If, however, a violator has been once
43 found guilty of an uncorrectable violation, and causes the
44 same uncorrectable violation to occur a second time, each
45 reoccurrence of the uncorrectable violation by such violator
46 shall constitute a "repeat violation."

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- (5) Assessment of fines including costs relating to the prosecution of cases before the special magistrate and/or code compliance board in those cases where the village prevails;
- (6) Assessment of costs;
- (7) Assessment or mitigation of liens upon real property;
- (8) Fine reduction hearings brought at the request of the violator;
- (9) Amnesty hearings. For purposes of this section, “amnesty hearings” shall mean a presentation by the village manager or finance director requesting special magistrate ratification of proposed settlement terms to resolve an outstanding and unpaid fine or lien on the basis that said potential settlement would be in the best interests of the village and its residents;
- (10) Any proceedings involving real property presently owned by a governmental, quasi-governmental, or corporate entity;
- (11) Any proceeding wherein the respondent will be represented by legal counsel;
- (12) Any proceeding involving a violation which carries the potential to impose an initial fine equal to or greater than five thousand dollars and zero cents (\$5,000.00).

(b) The code compliance board shall preside over the following types of code enforcement hearings:

- (1) Hearings involving a first notice of violation, administrative citation, and any other preliminary or routine code compliance matters not specifically delegated to the special magistrate;
- (2) Requests for extensions of time to correct violation(s);
- (3) Any code proceedings not specifically delegated to the special magistrate’s jurisdiction shall be within the jurisdiction of the code compliance board.

1 (4) In the event the code compliance board does not meet to
2 hold a monthly hearing, the special magistrate shall preside
3 over all code proceedings that month. The village clerk
4 shall promptly notify both the respondent and the code
5 enforcement officer in writing of any reassignments from
6 the code compliance board's hearing docket to the special
7 magistrate's hearing docket.
8

9 14.1.5 Procedures for code compliance board.

- 10
11 (a) ~~Chairman~~ Chairperson. The members of the code compliance
12 board shall elect a ~~chairman~~ chairperson from among its members.
13
14 (b) Quorum. The presence of three (3) members shall constitute a
15 quorum of the code compliance board.
16
17 (c) Expenses. Members shall serve without compensation, but may be
18 reimbursed for such travel, mileage and per diem expenses as may
19 be authorized by the village commission.
20

21 14.1.6 Counsel. The village attorney shall either be counsel to the code
22 compliance board or shall represent the village by presenting cases before the
23 board, but in no case shall the village attorney serve in both capacities.
24

25 14.1.7 Compliance procedure.

- 26
27 (a) It shall be the duty of the code compliance officer to initiate
28 enforcement proceedings of the various codes; provided, however,
29 no member of the code compliance board shall have the power to
30 initiate such enforcement proceedings.
31
32 (b) Except as provided in subsections (c), (d) and (f), if a violation of
33 the codes is found, the code compliance officer shall notify the
34 violator and give the violator a reasonable time to correct the
35 violation. Should the violation continue beyond the time specified
36 for correction, the code compliance officer shall notify the special
37 magistrate or code compliance board of the charges and request a
38 hearing pursuant to procedure in section 14.1.8. Notice shall be
39 provided pursuant to section 14.1.13.
40
41 (c) If the violation is corrected and then recurs or if the violation is not
42 corrected by the time specified for correction by the code
43 compliance officer, the case may be presented to the special
44 magistrate or code compliance board even if the violation has been
45 corrected prior to the ~~board~~ hearing, and the notice shall so state. If
46 a repeat violation is found, the code compliance officer shall notify

1 the violator but is not required to give violator a reasonable time to
2 correct the violation. The code compliance officer, upon notifying
3 the violator of a repeat violation, shall notify the special magistrate
4 or code compliance board and request a hearing. The special
5 magistrate or code compliance board shall schedule a hearing and
6 shall provide notice pursuant to section 14.1.12. The case may be
7 presented to the special magistrate or code compliance board even
8 if the repeat violation has been corrected prior to the ~~board~~ hearing,
9 and the notice shall so state. "Repeat violation" means a violation
10 of a provision of a code or ordinance by a person who has been
11 previously found, through a special magistrate, code compliance
12 board, or other quasi-judicial or judicial process, to have violated
13 or has admitted violating the same provision within five (5) years
14 prior to the violation.

15
16 (d) If the code compliance officer has reason to believe a violation
17 presents a serious threat to the public health, safety and welfare,
18 the code compliance officer may proceed directly to the procedure
19 in subsection 14.1.7(b) without notifying the violator.

20
21 (e) If the owner of the property which is subject to an enforcement
22 proceeding before a special magistrate or code compliance board,
23 or if the court, transfers ownership of such property between the
24 time the initial pleading was served and the time of the hearing,
25 such owner shall:

26
27 (1) Disclose, in writing, the existence and the nature of the
28 proceeding to the prospective transferee.

29
30 (2) Deliver to the prospective transferee a copy of the
31 pleadings, notices, and other materials relating to the code
32 enforcement proceeding received by the transferor.

33
34 (3) Disclose, in writing, to the prospective transferee that the
35 new owner will be responsible for compliance with the
36 applicable code and with orders issued in the code
37 enforcement proceeding.

38
39 (4) File a notice with the code compliance department of the
40 transfer of the property, with the identity and address of the
41 new owner and copies of the disclosures made to the new
42 owner, within five (5) days after the date of the transfer. A
43 failure to make the disclosures described in this subsection
44 before the transfer creates a rebuttable presumption of
45 fraud. If the property is transferred before the hearing, the
46 proceeding shall not be dismissed, but the new owner shall

1 be provided a reasonable period of time to correct the
2 violation before the hearing is held.

3
4 (f) The village commission finds that aesthetics are paramount to
5 maintaining an attractive and marketable community. The
6 violations enumerated below severely damage the aesthetics and
7 livability of the community immediately upon their commission.
8 Such damage cannot be repaired or reversed. Therefore, the village
9 commission hereby deems a violation of this section an irreparable
10 and irreversible violation. As a result, the Village of Biscayne Park
11 adopts supplemental and alternative code enforcement procedures
12 pursuant to F.S. §§ 162.13 and 162.22, as amended, to authorize
13 code compliance officers to issue administrative citations for
14 review before the special magistrate or code compliance board. A
15 code compliance officer shall have the sole discretion in
16 determining whether to issue an administrative citation or a notice
17 of violation for the following offenses:
18

- 19 (1) Open feeding that causes a gathering of more than four (4)
20 dogs or four (4) cats or combination thereof totaling four
21 (4), in violation of section 3-4 of the code;
- 22
23 (2) Excessive barking or howling of dogs, in violation of
24 section 3-21 of the code;
- 25
26 (3) Parking not on an approved surface where there is an
27 approved parking surface as required by section 5.6.1 of the
28 Land Development Code;
- 29
30 (4) Garbage cans and trash receptacles not placed behind face
31 of building and screened from view, in violation of section
32 6.3.2 of the Land Development Code;
- 33
34 (5) Domestic trash and recycling materials placed at the
35 property line and/or not removed under the requirements of
36 section 6.3.3 of the Land Development Code;
- 37
38 (6) Trees and garden refuse placed at the property line and/or
39 not removed under the requirements of section 6.3.4 of the
40 Land Development Code;
- 41
42 (7) Overgrown grass in violation of section 8.4.1 of the Land
43 Development Code;
- 44
45 (8) Offensive noise, in violation of section 10-1 of the code.
46

1 In the issuance of an administrative citation, the following procedures shall be
2 used:

3
4 (1) For the offenses enumerated above, a code compliance officer
5 who, upon personal investigation, has reasonable cause to believe
6 that there is a violation, shall have the authority to issue an
7 administrative citation to the alleged violator and/or record owner
8 of the subject property.

9
10 (2) The administrative citation issued shall be in a form approved by
11 the village manager and shall contain:

- 12 a. The date and time of issuance.
- 13 b. The name and address of the person to whom the
14 administrative citation is issued.
- 15 c. The facts constituting reasonable cause.
- 16 d. The section of the code that is violated.
- 17 e. The name of the code compliance officer.
- 18 f. The procedure for the person to follow in order to pay or
19 contest the administrative citation.
- 20 g. The penalty, including administrative costs, if the person
21 elects to contest the administrative citation and is found in
22 violation.
- 23 h. The penalty if the person elects to pay the administrative
24 citation.
- 25 i. A conspicuous statement that if the person fails to pay the
26 penalty within the time allowed, or fails to appear before
27 the special magistrate or code compliance board, that the
28 person shall be deemed to have waived his or her right to
29 contest the administrative citation and that, in such case, a
30 final order and/or judgment may be entered against the
31 person up to five hundred dollars (\$500.00).

32 (3) After issuing the administrative citation, the code compliance officer
33 shall deposit an original with the village manager or their designee.

34 (4) A person who has been served with an administrative citation shall
35 may elect either to:
36
37
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- 1
2 a. Correct the violation immediately and pay within fourteen (14)
3 days of service of the administrative citation the penalty in the
4 manner indicated on the administrative citation; or
5
6 b. Request a hearing before the special magistrate or code compliance
7 board, depending on the applicable jurisdiction.
8

9 14.1.8 Conduct of hearing.
10

11 ~~(a) — The chairman of the code compliance board may call hearings of the~~
12 ~~board, and hearings may also be called by written notice signed by at least three~~
13 ~~(3) members of the code compliance board. The board, at any hearing, may set a~~
14 ~~future hearing date. The board shall attempt to convene no less frequently than~~
15 ~~once every two (2) months, but it may meet more or less often as the demand~~
16 ~~necessitates. Minutes shall be kept of all hearings by the board, and all hearings~~
17 ~~and proceedings shall be open to the public. The village shall provide clerical and~~
18 ~~administrative personnel as may be reasonably required by the board for the~~
19 ~~proper performance of its duties.~~
20

21 ~~(b) — Each case before the code compliance board shall be presented by a~~
22 ~~code compliance officer appointed by the village for that purpose.~~
23

24 ~~(c) — The special magistrate and code compliance board shall proceed to~~
25 ~~hear the cases on the agenda for that day. All testimony shall be under oath and~~
26 ~~shall be recorded. The board shall take testimony from the code compliance~~
27 ~~officer, the alleged violator, and any witnesses called. Formal rules of evidence~~
28 ~~shall not apply, but fundamental due process shall be observed and govern said~~
29 ~~proceedings.~~
30

31 ~~(d) — At the conclusion of the hearing, the special magistrate and code~~
32 ~~compliance board shall issue findings of fact, based on evidence recorded and~~
33 ~~conclusions of law, and shall issue an order affording the proper relief consistent~~
34 ~~with powers granted herein. The finding shall be by motion approved by a~~
35 ~~majority of those present and voting, except that at least three (3) members of the~~
36 ~~code compliance board must vote for the action to be official. The order may~~
37 ~~include a notice that it must be complied with by a specified date and that a fine~~
38 ~~may be imposed if the order is not complied with by said date. A certified copy of~~
39 ~~such order may be recorded in the public records of the county and shall~~
40 ~~constitute notice to any subsequent purchasers, successors in interest, or assigns if~~
41 ~~the violation concerns real property, and the findings therein shall be binding~~
42 ~~upon the violator and, if the violation concerns real property, any subsequent~~
43 ~~purchasers, successors in interest, or assigns. If an order is recorded in the public~~
44 ~~records pursuant to this subsection and the order is complied with by the date~~
45 ~~specified in the order, the code compliance board shall issue an order~~

1 ~~acknowledging compliance that shall be recorded in the public records. A hearing~~
2 ~~is not required to issue such an order acknowledging compliance.~~

3
4 (a) Upon request of the code inspector, or at such other times as may
5 be necessary, the special magistrate or chair of the code
6 compliance board may call a code enforcement hearing; a hearing
7 also may be called by written notice signed by at least two
8 members of the code compliance board. Minutes shall be kept of
9 all code enforcement hearings, and all hearings and proceedings
10 shall be open to the public. The village commission shall provide
11 clerical and administrative personnel as may be reasonably
12 required by the special magistrate or code compliance board for the
13 proper performance of code enforcement duties.

14
15 (b) Each case before the special magistrate or code compliance board
16 shall be presented either (1) a member of the Village
17 administrative staff, or (2) the Village Attorney. The Village
18 Attorney shall only present cases in the event of unavailability of
19 staff, or if a matter involves legal issues requiring argument of
20 counsel as determined by the Village Manager. If the Village
21 prevails in prosecuting a case before the special magistrate or
22 enforcement board, it shall be entitled to recover all costs incurred
23 in prosecuting the case before the board and such costs may be
24 included in the lien authorized under s. 162.09(3).

25
26 (c) The special magistrate or code compliance board shall proceed to
27 hear the cases on the agenda for that day. All testimony shall be
28 under oath and shall be recorded. The enforcement board shall take
29 testimony from the code inspector and alleged violator. Formal
30 rules of evidence shall not apply, but fundamental due process
31 shall be observed and shall govern the proceedings.

32
33 (d) At the conclusion of the hearing, the special magistrate or code
34 compliance board shall issue written findings of fact, based on
35 evidence of record and conclusions of law, and shall issue an order
36 affording the proper relief consistent with powers granted herein.
37 The finding shall be by motion approved by a majority of those
38 members present and voting, except that at least three members of
39 the code compliance board, must vote in order for the action to be
40 official. The order may include a notice that it must be complied
41 with by a specified date and that a fine may be imposed and, under
42 the conditions specified in s. 162.09(1), the cost of repairs may be
43 included along with the fine if the order is not complied with by
44 said date. A certified copy of such order may be recorded in the
45 public records of Miami-Dade County, Florida and shall constitute
46 notice to any subsequent purchasers, successors in interest, or

1 assigns if the violation concerns real property, and the findings
2 therein shall be binding upon the violator and, if the violation
3 concerns real property, any subsequent purchasers, successors in
4 interest, or assigns. If an order is recorded in the public records
5 pursuant to this subsection and the order is complied with by the
6 date specified in the order, the special magistrate or code
7 compliance board must issue an affidavit acknowledging
8 compliance that shall be recorded in the public records of Miami-
9 Dade County, Florida. A hearing is not required to issue such an
10 affidavit acknowledging compliance.

11
12 14.1.9 Powers of the special magistrate and code compliance board. The
13 special magistrate and code compliance board shall have the power to:

- 14
15 (1) Adopt rules for the conduct of its hearings.
16
17 (2) Subpoena alleged violators and witnesses to its hearings.
18 Subpoenas may be served by the police department.
19
20 (3) Subpoena evidence to its hearings.
21
22 (4) Take testimony under oath.
23
24 (5) Issue orders having the force of law commanding whatever steps
25 are necessary to bring a violation into compliance.
26

27 14.1.10 Fines; liens.

28
29 (a) The special magistrate and code compliance board, pursuant to their
30 respective authority delegated herein, upon notification by the code compliance
31 officer that a previous order ~~of the board~~ has not been complied with by the set
32 time, or finds a person to be a repeat violator under subsection (c), may order the
33 violator to pay a fine in an amount specified in this section for each day the
34 violation continues past the date set by the special magistrate or code compliance
35 board for compliance or, in the case of a repeat violation, for each day the repeat
36 violation continues past the date of notice to the violator of the repeat violation. If
37 a finding of a violation or a repeat violation has been made as provided in this
38 part, a hearing shall not be necessary for issuance of the order imposing the fine.
39

40 ~~An "uncorrectable violation" is a violation which cannot be remedied after~~
41 ~~the violation has been committed because the violation constitutes a single~~
42 ~~prohibited act rather than an ongoing condition or circumstance. Each~~
43 ~~reoccurrence of an uncorrectable violation shall constitute a separation violation~~
44 ~~and shall subject the violator to an additional penalty in the same amount as that~~
45 ~~prescribed for the original violation. If, however, a violator has been once found~~
46 ~~guilty of an uncorrectable violation, and causes the same uncorrectable violation~~

1 to occur a second time, each reoccurrence of the uncorrectable violation by such
2 violator shall constitute a "repeat violation."
3

4 "~~Continuing violations~~" are those violations which remain uncorrected
5 beyond the reasonable time period for correction contained in either the civil
6 violation notice or the final order of the code compliance board, whichever is
7 applicable. For each day of continued violation after the time for correction has
8 run, ~~an additional penalty in the same amount as that prescribed for the original~~
9 ~~violation shall be added.~~

10
11 A "~~repeat violation~~" is a recurring violation of an ordinance by a violator
12 who has previously been guilty of the same violation within the last five (5) years.
13 ~~In the case of correctable violations, a repeat violation can occur only after~~
14 ~~correction of the previous violation has been made. For the first repeat violation,~~
15 ~~the amount of the civil penalty shall be double the amount of penalty prescribed~~
16 ~~for the original violation.~~

17
18 (b) Amount of fine.

19
20 (1) The fine amount(s) are referenced in a resolution kept on file by the
21 village clerk.

22
23 (2) In determining the amount of the fine, if any, the special magistrate
24 or code compliance board shall consider the following factors:

- 25
26 a. The gravity of the violation;
27
28 b. Any actions taken by the violator to correct the violation; and
29
30 c. Any previous violations committed by the violator.
31
32 (c) Reduction of fine imposed pursuant to this section.

33
34 (1) The special magistrate and code compliance board, pursuant to their
35 respective authority delegated herein, is hereby delegated the authority to may
36 hear requests for reduction of fines pursuant to this section and make the final
37 decision on behalf of the village.

38
39 (2) For all requests for reduction of fine, the code compliance officer
40 shall submit a written recommendation to the special magistrate code compliance
41 board. In formulating the recommendation, the code compliance officer shall
42 consider criteria, which includes, but is not limited to, the following:

- 43
44 a. The cooperation of the respondent petitioner seeking reduction,
45 including whether the respondent petitioner had appeared before

1 the special magistrate or code compliance board at the original
2 hearing;

3
4 b. The documentation provided ~~by the respondent~~ in support of the
5 fine reduction request;

6
7 c. Whether the ~~respondent~~ petitioner seeking reduction has new
8 evidence or information which could not be provided at the
9 original hearing;

10
11 d. Whether there was any extraordinary hardship which existed or
12 currently exists;

13
14 e. Whether the ~~respondent~~ petitioner seeking reduction is presently
15 ~~has come~~ into compliance with the prior order of the special
16 magistrate and/or code compliance board;

17
18 f. The number of days that the violation existed;

19
20 g. Whether the ~~respondent~~ petitioner seeking reduction ~~has been~~ was
21 previously deemed a repeat violator by order of the special
22 magistrate and/or code compliance board;

23
24 ~~h. Whether the property is homestead or non-homestead property;~~
25 ~~and~~

26
27 i.h. The total administrative cost to the village for the handling of the
28 case, which cost will be inclusive of staff time and recording and
29 release of lien fees.

30
31 (3) When issuing a determination for a fine reduction request, the ~~The~~
32 special magistrate code compliance board shall consider the same criteria as the
33 code compliance officer.

34
35 (4) The special magistrate code compliance board shall not waive
36 administrative costs incurred by the ~~local government~~ Village in enforcing its
37 codes. In addition, the ~~code compliance board and the administrative panel~~ special
38 magistrate shall not waive costs of any repairs incurred by the Village ~~local~~
39 government.

40
41 (d) A certified copy of an order imposing a fine, or a fine plus repair
42 costs, may be recorded in the public records of Miami-Dade County, Florida and
43 thereafter shall constitute a lien against the land on which the violation exists, or,
44 if the violator does not own the land, upon any other real or personal property
45 owned by the violator. Upon petition to the circuit court, such order shall be
46 enforceable in the same manner as a court judgment by the sheriffs of this state,

1 including execution and levy against the personal property of the violator but such
2 order shall not be deemed otherwise to be a judgment of a court except for
3 enforcement purposes. A fine imposed pursuant to this part shall continue to
4 accrue until the violator comes into compliance or until judgment is rendered in a
5 suit to foreclose on a lien filed pursuant to this section, whichever occurs first.
6 After three (3) months from the filing of any such lien which remains unpaid, the
7 special magistrate or code compliance board may authorize the village attorney to
8 initiate court proceedings to foreclose upon the lien. No lien created pursuant to
9 the provisions of this chapter may be foreclosed on real property, which is a
10 homestead under the Florida Constitution, Art. X, § 4. For purposes of this
11 section, there is a rebuttable presumption that a residential property for which a
12 homestead exemption for taxation was granted according to the certified rolls of
13 the latest assessment by the county property appraiser, before the filing of the
14 foreclosure action, is an owner-occupied residential property.

15
16 14.1.11 Duration of lien.

17
18 No lien provided by the ~~Code Compliance Boards Act~~ for herein shall continue to
19 encumber real property for a longer period than twenty (20) years after the
20 certified copy of an order imposing a fine has been recorded, unless within that
21 time an action to foreclose on the lien is commenced in a court of competent
22 jurisdiction. In an action to foreclose on the lien, the prevailing party is entitled to
23 recover all costs, including a reasonable attorney's fee, that it incurs in the
24 foreclosure. The continuation of the lien effected by the commencement of the
25 action shall not be good against creditors or subsequent purchasers for valuable
26 consideration without notice, unless a notice of lis pendens is recorded.

27
28 14.1.12 Appeal.

29
30 (a) Pursuant to Section 162.11, Florida Statutes, An aggrieved
31 party, including the Village, may appeal a final order of the special
32 magistrate or code compliance board to the ~~circuit court~~ Circuit
33 Court of the Eleventh Judicial Circuit in and for Miami-Dade
34 County, Florida. Such an appeal shall not be a hearing ~~de~~ de novo,
35 but shall be limited to appellate review of the record created before
36 the special magistrate or code compliance board.

37
38 (b) Pursuant to the applicable Florida Rules of Appellate Procedure,
39 the following documents must be filed within thirty (30) calendar
40 days of rendition of the order to be appealed:

- 41
42 (1) Original notice of appeal with the Village Clerk;
43
44 (2) File a copy of the notice of appeal and order being
45 appealed, accompanied with the requisite court filing fees,
46 with the Miami-Dade County Clerk of the Court.

1
2 (c) The Village Clerk shall process any requests for a copy of the
3 record created before the special magistrate or code compliance
4 board. The Village may assess a reasonable charge for the
5 preparation and transmission of the record to be paid by the
6 petitioner in accordance with Section 119.07, Florida Statutes.
7

8 14.1.13 Notice and procedures.
9

10 (a) All notices required by this part shall be provided to the alleged
11 violator by:

12
13 (1) Certified mail, return receipt requested, provided if such
14 notice is sent under this subsection to the owner of the
15 property in question at the address listed in the tax
16 collector's office for tax notices, and at any other address
17 provided to the village by such owner and is returned as
18 unclaimed or refused, notice may be provided by posting as
19 described in subsections (b)(1) and (2) below, and by first
20 class mail directed to the addresses furnished to the ~~local~~
21 ~~government~~ Village with a properly executed proof of
22 mailing or affidavit confirming the first class mailing; or

23
24 (2) Hand delivery by the sheriff or other law enforcement
25 officer, code compliance officer, or other person designated
26 by the ~~local governing body~~ Village; or

27
28 (3) Leaving the notice at the violator's usual place of residence
29 with any person residing therein who is above fifteen (15)
30 years of age and informing such person of the contents of
31 the notice.

32
33 (b) (1) In lieu of notice as described in subsection (a), such notice
34 may be posted at least ten (10) days prior to the hearing, or
35 prior to the expiration of any deadline contained in the
36 notice, in at least two (2) locations, one of which shall be
37 the property upon which the violation is alleged to exist and
38 the other of which shall be at the Village Hall.

39
40 (2) Proof of posting shall be by affidavit of the person posting
41 the notice, which affidavit shall include a copy of the notice
42 posted and the date and places of its posting.

43
44 (c) Evidence that an attempt has been made to hand deliver or mail
45 notice as provided in subsection (a), together with proof of notice
46 or posting as provided in subsection (b), shall be sufficient to show

1 that the notice requirements of this chapter have been met, without
2 regard to whether or not the alleged violator actually received such
3 notice.
4

5 14.1.14 Enforcement procedures by code compliance officer.
6

7 (a) For the purposes of this chapter, a "code compliance officer" is
8 defined to be any agent or employee of the village or Miami-Dade
9 County whose duty is to assure the enforcement of and compliance
10 with the village code, the Florida Building Code, or Miami-Dade
11 County, as applicable. Prior to being provided the authority to
12 initiate enforcement proceedings under this chapter, a code
13 compliance officer shall be required to successfully complete a
14 criminal background investigation as prescribed by administrative
15 order of the county manager. Subject to the requirements of section
16 8CC-11, a "code compliance officer" is also defined to be any
17 agent or employee of a municipality who has been authorized
18 pursuant to that section to assure code compliance. Municipal
19 employees shall also be required to successfully complete a
20 criminal background investigation prior to being provided
21 authority to initiate enforcement proceedings under this chapter.
22

23 (b) For the purposes of this chapter, "violators" shall be deemed to be
24 those persons or entities legally responsible for the violation of the
25 village's Code of Ordinances, applicable provision of the Miami-
26 Dade County Code, or the Florida Building Code.
27

28 (c) A code compliance officer who finds a violation of an ordinance
29 shall determine a reasonable time period within which the violator
30 must correct the violation. This determination shall be based on
31 considerations of fairness; practicality; ease of correction; ability to
32 correct; severity of violation; nature, extent and probability of
33 danger or damage to the public; and other relevant factors relating
34 to the reasonableness of the time period prescribed. A time for
35 correction need not be specified if the violation is deemed to be an
36 uncorrectable violation.
37

38 (d) Service shall be effected by delivering the civil violation notice to
39 the violator or his agent, or by leaving the civil violation notice at
40 the violator's usual place of abode with any person residing therein
41 who is fifteen (15) years of age or older and informing that person
42 of its contents. If such service cannot be effected, the notice may
43 be sent by certified mail, return receipt requested, or by posting of
44 the civil violation notice in a conspicuous place on the premises or
45 real property upon which the violation has been observed or by
46 mailing to or posting the civil violation notice at the property

1 owner's mailing address as listed in the tax records of Miami-Dade
2 County. Such posting of the notice or violation shall be deemed
3 proper service, and the time for compliance, stated in the notice,
4 shall commence with the date such notice is posted.
5

6 (e) A code compliance officer is authorized to record in the public
7 record the civil violation notice or a notice of violation which is
8 based upon the civil violation notice. The recording of the civil
9 violation or a notice of violation under this section shall not act as
10 or be a lien on the property and shall not act as a notice of a lien on
11 the property but shall merely act as public notice of the existence
12 of the violation.
13

14 (f) A code compliance officer must have, at a minimum, a Florida
15 Association of Code Enforcement (F.A.C.E.) Level 1 certification
16 within one (1) year of hire.
17

18 CHAPTER 15. - ENFORCEMENT

19 15.1. - Generally.

20
21
22 15.1.1 Enforcement of Land Development Code. The planning board,
23 special magistrate, and the code compliance board shall enforce the Land
24 Development Code.
25

26 15.2. - Building official.

27
28 15.2.1 Designation. The building official shall be designated by the
29 appointing authority, whatever the official title, to enforce the provisions of the
30 Florida Building Code and other applicable laws; provided, the official may act
31 with the aid and through authorized assistants.
32

33 15.2.2 Authority. The building official is hereby authorized and directed
34 to interpret and enforce all of the provisions of this code subject to the powers
35 vested in the planning board and the code compliance board.
36

37 15.3. - Violations and general penalty.

38
39 15.3.1 General penalty. Whenever in this code or in any ordinance of
40 the village any act is prohibited or is made or declared to be unlawful or an
41 offense, or whenever in such code or ordinance the doing of any act is required or
42 the failure to do any act is declared to be unlawful, where no specific penalty is
43 provided therefor, the violation of any such provision of this code or any
44 ordinance shall be punished by a fine not to exceed five hundred dollars
45 (\$500.00), or imprisonment for a term not exceeding sixty (60) days, or by both a

1 fine and imprisonment. Each day violation of any provision of this code or of any
2 ordinance shall continue shall constitute a separate offense.
3

4 15.3.2 Continuation of violation. In addition to the penalties
5 hereinabove provided, any condition caused or permitted to exist in violation of
6 any of the provisions of this code or any ordinance shall be deemed a public
7 nuisance and may be, by the village, abated as provided by law, and each day that
8 such condition continues shall be regarded as a new and separate offense.
9

10 15.4. - Other penalties and remedies.
11

12 15.4.1 Civil remedies. If any building or structure is erected,
13 constructed, reconstructed, altered, repaired, or maintained or any building,
14 structure, land, or water is used in violation of this code, the village, through the
15 village attorney, may institute any appropriate civil action or proceedings in any
16 court to prevent, correct, or abate the violation.
17

18 **Section 3. Severability.** Should any section, provision, paragraph, sentence, clause of
19 word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction
20 to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall
21 not affect the validity of the remaining portions or applications of this Ordinance.

22 **Section 4. Codification.** It is the intention of the Village Commission of the Village of
23 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Land
24 Development Code of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance
25 may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article"
26 or other word or phrase in order to accomplish such intention.

27 **Section 5. Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts
28 thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

29 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon its
30 passage and adoption, in accordance with the Village Charter.

31 The foregoing Ordinance was offered by Mayor Truppman who moved its adoption.



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report

Item # 5.e

REGULAR MEETING

TO: Honorable Mayor & Members of the
Biscayne Park Village Commission

FROM: MacDonald Kennedy, Commissioner

DATE: February 11, 2020

TITLE: Change to Code of Ordinances, Article III, Chapter 2

Recommendation

I am recommending a change to Article III to allow board members to reapply to a board after resigning from it for any reason at any time. This change does not guarantee a reappointment to the board, which must still be voted on by the Commission.

Background

The current wording of this ordinance requires former board members to wait one year to reapply to a board on which they served. Further, the Code of Ordinances also requires board members to resign if they decide to run for Commissioner. Regardless of the reason for a board resignation, this waiting period limits the village from appointing the most qualified board members.

Resource Impact

Attorney fees to draft the new ordinance.
Advertisement of second reading.
Commission time to consider and vote on the new ordinance.

Attachment(s)

- None
-

Prepared by: MacDonald Kennedy, Commissioner

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ORDINANCE NO 2020-01

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AMENDING ARTICLE III OF CHAPTER 2 OF THE CODE OF ORDINANCES, VILLAGE OF BISCAYNE PARK, ENTITLED "COMMISSIONS, BOARDS AND COMMITTEES" BY AMENDING SECTION 2-30(d)(3) REGARDING THE ONE YEAR RESTRICTION ON THE ELIGIBILITY OF APPOINTMENT OF MEMBERS OF BOARDS OR COMMITTEES THAT HAVE RESIGNED; PROVIDING FOR INCLUSION IN THE CODE AND SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Section 4.03 of the Village Charter of the Village of Biscayne Park empowers the Village Commission to adopt, amend, or repeal such ordinances as may be required for the proper governing of the Village; and

WHEREAS, the Village Commission desires to amend Section 2-30(d)(3) of the Code of Ordinances, Village of Biscayne Park ("Biscayne Park Code) regarding the one year restriction on the eligibility of appointment of members of boards or committees that have resigned; and

WHEREAS, on February 11, 2020, the Village Commission held a first reading of this proposed Ordinance; and

WHEREAS, on March 3, 2020, the Village Commission held a properly noticed second reading of this proposed Ordinance.

NOW, THEREFORE, BE ORDAINED BY THE VILLAGE OF BISCAYNE PARK, FLORIDA AS FOLLOWS:¹

Section 1. Recitals. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Village Commission.

Section 2. Amendments to the Biscayne Park Code. Section 2-30(d)(3) of the Code of Ordinances, Village of Biscayne Park, Florida, is hereby amended to read as follows:

ARTICLE III. - COMMISSIONS, BOARDS AND COMMITTEES

Sec. 2-30. - General rules and policies.

¹/ Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

1
2 ***

3
4 (d) *Attendance by members at meetings; resignation of*
5 *members.*

6
7 ***

8
9 (3) *Resignation of members.* Members of boards and
10 committees may resign at any time. ~~A member who~~
11 ~~resigns will not be eligible for appointment to the~~
12 ~~same board or committee for a one year period.~~

13
14 ***

15
16 **Section 3. Inclusion in the Code & Scrivener’s Errors.** The Village Commission intends
17 that the provisions of this Ordinance be made a part of the Biscayne Park Code, and that sections herein
18 may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish
19 codification; regardless, typographical errors that do not affect intent may be corrected with notice to and
20 authorization of the Village Manager without further process.

21
22 **Section 4. Conflicts.** Whenever the requirements or provisions of this Ordinance are in
23 conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most
24 restrictive shall apply.

25
26 **Section 5. Severability.** If any section, subsection, sentence, clause or phrase of this
27 Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid,
28 such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the
29 part so declared.

30
31 **Section 6. Effective Date.** This Ordinance shall become effective upon adoption by the Town
32 Council.

33
34 PASSED AND ADOPTED upon first reading this 11th day of February, 2020.

35
36 PASSED AND ADOPTED upon second reading this 3rd day of March, 2020.

37
38 The foregoing Ordinance was offered by _____, who moved its
39 adoption. The motion was seconded by _____, and upon being put to a vote
40 the vote was as follows:

41
42 Virginia “Ginny” O’Halpin, Mayor _____
43 William Tudor, Vice Mayor _____
44 MacDonald “Mac” Kennedy, Commissioner _____
45 Dan Samaria, Commissioner _____
46
47
48
49

1 VILLAGE OF BISCAYNE PARK

2
3
4 _____
5 Virginia "Ginny" O'Halpin, Mayor

6
7
8 ATTEST:

9
10
11 _____
12 Roseann Prado, Village Clerk

13
14
15 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
16 USE AND RELIANCE OF THE VILLAGE OF BISCAYNE PARK ONLY:

17
18
19 _____
20 John R. Herin, Jr., Interim Village Attorney



VILLAGE OF BISCAYNE PARK
Village Commission Agenda Report
REGULAR MEETING

Item # 5.f

TO: Honorable Mayor & Members of the
Biscayne Park Village Commission

FROM: Judith Gersten, Board Chairperson

DATE: February 11, 2020

TITLE: Final Written Report of Charter Review Advisory Board

Background

The Charter Review Advisory Board held noticed, public meetings on the following dates to review and debate potential revisions to the existing Village Charter:

- October 3, 2019
- November 7, 2019
- December 5, 2019
- December 9, 2019
- January 13, 2020

The Charter Review Advisory Board has concluded its review of the Village Charter.

Pursuant to Section 2-35 of the Biscayne Park Code of Ordinances (the "Village Code"), the Charter Review Advisory Board submits its final written report and ballot recommendations to the Village Commission for review and consideration. In so doing, the Charter Review Advisory Board sunsets pursuant to Section 2-35(f) of the Village Code.

Attachment(s)

- Final Written Report to Village Commission

PROPOSED BALLOT QUESTIONS:

Proposed Ballot Question No. 1:

Shall the Village of Biscayne Park Charter be amended to require the electorate to vote for the Mayor of Biscayne Park?

Statement:

Presently, the Village Commission consists of five (5) at-large commissioners who elect one of its members to the position of Mayor.

If you vote “YES” on this ballot question, it means you want to change the Charter so that candidates must specifically run for mayor and be elected by the registered voters in Biscayne Park, as opposed to five Commission members voting to determine who amongst them will serve in the capacity as Village Mayor.

Proposed Ballot Question No. 2:

Shall Village Commission seats be subject to term limits of two consecutive terms of four (4) years each?

Statement:

Presently, the Village Charter does not impose term limits on Commission members.

Proposed Ballot Question No. 3:

Shall the removal procedures for a Charter Officer be streamlined to only require a simple majority vote of the Commission at any time?

Statement:

Presently, the Village Charter mandates removal procedures for Charter Officers which include, suspension with pay pending removal, adoption of a resolution for removal, formal written notice and a fifteen (15) day opportunity to respond, and a public hearing, if requested. If amended, these procedures would be removed and the Commission could vote to remove a Charter Officer at any time by a simple majority vote.

BISCAYNE PARK CHARTER

CITIZENS' BILL OF RIGHTS

- (A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administration management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:
- (1) *Convenient Access.* Every person has the right to transact Village business with a minimum of personal inconvenience. It shall be the duty of the Mayor, the Commission and the Manager to provide, within budgetary limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the Village.
 - (2) *Truth in Government.* No Village official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.
 - (3) *Public Records.* Records of the Village, its agencies, boards, committees, authorities and departments shall be open for inspection at reasonable times and places convenient to the public, to the extent required by law.
 - (4) *Minutes and Ordinance Register.* The Clerk shall maintain and make available for public inspection a register separate from the minutes showing the votes of each Commission member on all ordinances and resolutions listed by descriptive title. The register shall be available for public inspection not later than 60 days after the conclusion of the meeting at which action was taken.
 - (5) *Right to be Heard.* So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or agency, board, committee, authority or department for the presentation, adjustment or determination of an issue, request, or controversy within the jurisdiction of the Village. Matters shall be scheduled for the convenience of the public. The Commission shall adopt agenda procedures and schedule hearings in a manner that will enhance the opportunity for public participation. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits and procedures for the presentation of a matter.
 - (6) *Right to Notice.* Persons entitled to notice of a Village hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any

determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

- (7) *No Unreasonable Postponements.* No matter, once having been placed on a formal agenda by the Village, shall be postponed to another date except for good cause shown.
- (8) *Right to Public Hearing.* Upon a timely written request from any interested party and after presentation of the facts to and approval by the Commission, a public hearing shall be held upon any significant policy decision which is not subject to subsequent administrative or legislative review and hearing.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his/her counsel shall be entitled to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The decision of such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

- (9) *Notice of Action and Reasons.* Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any Village administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.
 - (10) *Managers' Report.* The Manager shall periodically make a public status report on all major matters pending or concluded within his/her areas of concern.
 - (11) *Budgeting.* In addition to any budget required by state law, the Manager shall prepare a budget showing the cost of each department for each budget year. Prior to the Commission's first public hearing on the proposed budget required by state law, the Manager shall issue a budget summary setting forth the proposed cost of each individual department and reflecting the personnel for each department, the purposes therefore, and the amount of any contingency and carryover funds.
- (B) The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the Village. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the Village. The orderly, efficient and fair operation of government requires the participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in

the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.

- (C) All provisions of this Bill of Rights shall be construed to be supplementary to and not in conflict with the general laws of Florida and the Home Rule Charter of Miami-Dade County, Florida.

**ARTICLE I. - CORPORATE EXISTENCE, FORM OF GOVERNMENT,
BOUNDARY AND POWERS**

Section 1.01. - Corporate existence.

The municipal corporation now existing and known as the Village of Biscayne Park (the "Village") shall continue to exist and be known as the Village of Biscayne Park pursuant to the Constitution of the State of Florida (the "State") and the Home Rule Charter of Miami-Dade County (the "County"), Florida.

Section 1.02. - Form of government.

The Village shall have a "Commission-Manager" form of government, **with the Commission consisting of five (5) at-large members, one of whom shall be the elected as at-large mayor.**

Section 1.03. - Corporate boundary.

The corporate boundary of the Village shall be as follows:

Beginning at the Northeast corner of Lot 4, Block 9, Bellevue Biscayne Subdivision as recorded in the Public Records of Dade County, Florida, in Plat Book 17, page 29; said beginning point being further described as the intersection of the Southeasterly right-of-way line of the Dixie Highway and the Southwesterly right-of-way line of Biscayne Canal, as now laid out and platted; thence Easterly on a straight line to the intersection of the center line of Griffing Boulevard and Eighth Street (NE 121st Street) as shown on a plat of Biscayne Park Estates, recorded in Plat Book 5, page 107, Public Records of Dade County, Florida, thence east along the center line of Eighth Street (NE 121st Street) as shown on the following recorded plats: Biscayne Park Estates, Plat Book 8, page 18, Biscayne Park Estates, Plat Book 15, page 53, Biscayne Park Estates, Plat Book 8, page 21; Biscayne Park Estates, Plat Book 7, page 129, Biscayne Park Estates, Plat Book 35, page 44, Palomar, Plat Book 7, page 158, and Palomar, Plat Book 35, page 43, thence continuing east along NE 121st Street, produced in a straight line, to its intersection with the Westerly right-of-way line of the Florida East Coast Railroad; thence Southwesterly along the Westerly right-of-way line of the Florida East Coast Railroad to its intersection with the center line, produced east in a straight line, of First Street (NE 107th Street) as shown

on a plat of Biscayne Park Estates, recorded in Plat Book 14, page 1; thence west along aforesaid produced center line of NE 107TH Street, Davis Addition to Biscayne Park Estates, Plat Book 45, Page 59 and as shown on aforesaid plat of Biscayne Park Estates, Plat Book 14, page 1, to its intersection with the Westerly right-of-way line of Biscayne Canal; thence Northwesterly along the Westerly right-of-way line of the Biscayne Canal to its intersection with a line thirty-five (35) feet east of and parallel to the west line of the NE ¼ of Sec. 31-Twp. 52 South-Rgs. 42 East; thence North across Biscayne Canal along aforesaid line thirty-five (35) feet east of and parallel to the west line of the NE ¼ of Sec. 31-52-42 to its intersection with the Easterly right-of-way line of Biscayne Canal; thence Northwesterly along the Easterly right-of-way line of Biscayne Canal 500 feet; thence Southwesterly across Biscayne Canal and at right angles thereto to the Westerly right-of-way line of Biscayne Canal; thence Northwesterly along the Westerly right-of-way line of Biscayne Canal to the Point of Beginning.

Section 1.04. - Powers.

The Village shall have all available governmental, corporate and proprietary powers and may exercise them except when prohibited by law. Through the adoption of this Charter, it is the intent of the electors of the Village that the municipal government established herein shall have the broadest exercise of home rule powers permitted under the Constitution and laws of the State.

ARTICLE II. - VILLAGE COMMISSION; MAYOR

Section 2.01. - Village Commission.

~~There shall be a Village Commission (the "Commission") vested with all legislative powers of the Village, consisting of five members (hereinafter referred to as "Commissioners"). The Commission shall elect one of its members to the position of Mayor at the first meeting of each newly elected Commission.~~

The legislative body of the Village shall be known as the Village Commission (the "Commission") which shall be composed of four (4) members who shall be known as commissioners and who shall each be elected at-large, and one member who shall be known as mayor-commissioner and he/she shall be elected at large from all the village's registered voters. All commission members shall be elected by the qualified electors on a nonpartisan basis.

Section 2.02. - Mayor and Vice-Mayor.

(A) Mayor. The Mayor shall preside at meetings of the Commission and be a voting member of the Commission. The Mayor shall be recognized as the

head of Village government for all ceremonial purposes and for purposes of military law, **declaring a state of local emergency**, for service of process, execution of duly authorized contracts, deeds and other documents, and as the Village official designated to represent the Village in all dealings with other governmental entities.

- (B) Vice-Mayor. During the absence or incapacity of the Mayor, the Vice-Mayor shall have all the powers, authority, duties and responsibilities of the Mayor. Semi-annually at such times as established by ordinance of the Village, each **at-large** member of the Commission shall serve **as Vice-Mayor** for a period of six **(6)** months ~~as Vice-Mayor~~.

Section 2.03. - Election and term of office.

Election and term of office. **The Mayor shall be elected in the manner provided in Article V of this Charter.** Each Commissioner shall be elected at-large in the manner provided in Article V of this Charter.

Section 2.04. - Candidates.

To qualify for elections, candidates for the Commission shall file a written notice of candidacy with the Clerk consistent with Article V of this Charter at such time and in such manner as prescribed by ordinance; and make payment to the Clerk of any required election assessment fee. Only electors of the Village who have resided continuously in the Village for at least one year preceding the date of such filing shall be eligible to hold the office of Commissioner. Qualifying period shall be coordinated with the Miami-Dade County Department of Elections. ~~In order to align Village elections with Countywide general elections, the terms of office of two current Commissioners and three future Commissioners shall be extended approximately 11 months until each successor takes office. The persons elected to serve a four year term on December 6, 2011, and 2013 shall serve until their successors are elected on the first Tuesday of November of 2016. The persons elected to serve a four year term on December 3, 2013, shall serve until their successors are elected on the first Tuesday of November of 2018; the person elected to serve a two year term on December 3, 2013, shall serve until his or her successor is elected on the first Tuesday of November of 2016.~~

*****ADVISORY BOARD NOTE: THE COMMISSION SHOULD EXPLORE NEW TRANSITION LANGUAGE TO ALIGN WITH THE ELECTION CYCLES.**

(Ord. No. 2012-02, § 4, 5-1-12; Ord. No. [2012-05](#), § 4, 7-19-12)

Section 2.05. - Vacancies; forfeiture of office; filling of vacancies.

(A) Vacancies. The office of a Commissioner shall become vacant upon his/her death, resignation, removal from office in any manner authorized by law, or by forfeiture of his/her office.

(B) Forfeiture of office.

(1) Forfeiture by disqualification. A Commissioner shall forfeit his/her office if at any time during his/her term s/he: (a) ceases to maintain his/her permanent residence in the Village; or (b) otherwise ceases to be a qualified elector of the Village.

(2) Forfeiture determinations shall be determined as provided by law. Removal procedures by recall election are governed by the recall procedures in Article V of this Charter.

~~(2) Forfeiture by absence. A Commissioner shall be subject to forfeiture of his/her office, in the discretion of the remaining Commissioners, if s/he is absent without good cause from any three (3) regular meetings of the Commission during any twelve (12) month period.~~

(3) Procedures.

(a) The Commission ~~shall be the sole~~ **may** judge ~~of the qualifications of its members and shall hear all questions relating to forfeiture of a Commissioner's office, including~~ whether ~~or not~~ good cause for any absence has been or may be established. The Commissioner in question shall have the burden of establishing good cause for any such absence. Any Commissioner may at any time during any duly held meeting move to establish good cause for the absence of himself/herself or any other Commissioner from any past, present, or future meeting(s). If the Commission finds that good cause has been established, the matter shall be considered concluded. A Commissioner whose qualifications are in question or who is otherwise subject to forfeiture of his/her office shall not vote on matters of qualification, forfeiture, or good cause.

(b) The Commissioner in question may request a public hearing regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the Village at least two **(2)** weeks in advance of the hearing. Any final determination by the Commission that a Commissioner has forfeited his/her office shall be made by resolution. All votes and other actions taken by the Commissioner in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

(C) Filling of vacancies.

- (1) Vacancy of Commission Office. Commission vacancy shall be filled as follows:
 - (a) If less than ~~six (6)~~ **nine (9)** months remain in the unexpired term, the vacancy shall be filled by appointment of the Commission made within thirty (30) calendar days following the occurrence of the vacancy.
 - (b) If ~~six (6)~~ **nine (9)** months or more remain in the unexpired term, the vacancy shall be filled pursuant to a Special Election which shall occur within forty five (45) days from the date of said vacancy or as soon as allowed by the Supervisor of Elections, in no case to exceed ninety (90) days.
 - (c) Notwithstanding any quorum requirements established herein, if at any time the full membership of the Commission is reduced to less than a quorum, the remaining members may, by majority vote, appoint additional members until a quorum is achieved to the extent otherwise permitted or required under this subsection (C).
 - (d) In the event that all the offices of the Commission are vacated, the Governor shall appoint interim Commissioners who shall meet the qualifications under Article II and Article V of this Charter. The interim Commission shall call a special election within not less than ~~thirty (30)~~ **ninety (90)** days but no more than ~~sixty (60)~~ **one hundred twenty (120)** days after such appointment. However, if there are less than ~~six (6)~~ **nine (9)** months remaining in any unexpired term(s), the interim Commission shall appoint an interim Commissioner(s) to serve out the unexpired term(s). If a special election is held, the candidate(s) who receive(s) the most votes will serve out the longer remaining term(s).
- (2) Vacancy of Mayoral Position. If the position of Mayor becomes vacant, ~~the Commission will elect a sitting Commissioner as Mayor who shall complete the term of the Mayor. The Commission vacancy shall then be filled in the manner described in this subsection (C).~~ **a special election must be called to fill the vacancy consistent with the special election procedures provided in this Charter.**
- (3) Vacancy in Candidacy. In the event of a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate(s) following the end of the qualifying period which leaves fewer candidates for the Commission than Commission vacancies, the remaining candidates shall be elected to office and the remaining vacant position(s) shall be filled by special election within ~~forty five (45)~~ **ninety (90)** days of the vacancy or as soon as allowed by the Supervisor of Elections, but in no case to exceed ~~ninety (90)~~ **one hundred twenty (120)** days.

- (a) Any candidates filling a vacancy shall meet the qualifications specified in this Article II and Article V of this Charter.
- (b) If no candidate for a vacancy meets the qualifications under Article II and Article V of this Charter, the Commission shall appoint a person qualified under Article II and Article V to fill the vacancy.

Section 2.06. - Compensation; reimbursement for expenses.

Members of the Commission shall receive annual compensation as set by ordinance by a four-fifths 4/5 majority vote. Members of the Commission shall receive reimbursement in accordance with applicable law, or as may be otherwise provided by ordinance, for authorized expenses incurred in the performance of their official duties.

ARTICLE III. - ADMINISTRATIVE

Section 3.01. - Village Manager.

- (A) *Village Manager.* There shall be a Village Manager (the "Manager") who shall be the chief administrative officer of the Village. The Manager shall be responsible to the Commission for the administration of all Village affairs and for carrying out the policies of the Commission.
- (B) *Appointment; removal; compensation of the Manager.* The Commission shall appoint the Manager for an ~~indefinite term~~ **two (2) year term**. The appointment shall be **ratified** by a majority vote of the Commission's total membership. The Commission may remove the Manager at any time, as provided for in Section 3.03. The Commission shall fix the compensation and benefits for the Manager.
- (C) *Duties of the Manager.* The Manager shall:
 - (1) Be responsible for the hiring, supervision and removal of all Village employees;
 - (2) Direct and supervise the administration of all departments and offices but not Village boards, agencies, committees or authorities, unless so directed by the Commission from time to time;
 - (3) Attend all Commission meetings and have the right to take part in discussion but not the right to vote;
 - (4) Ensure that all laws, provisions of this Charter and acts of the Commission, subject to enforcement and/or administration by him/her or by officers subject to his/her direction and supervision, are faithfully executed;
 - (5) Prepare and submit to the Commission a proposed annual budget and capital program;

- (6) Submit to the Commission and make available to the public an annual report on the finances and administrative activities of the Village as of the end of each fiscal year;
 - (7) Prepare such other reports as the Commission may require concerning the operations of Village agencies, boards, committees, authorities or departments;
 - (8) Keep the Commission fully advised as to the financial condition and future needs of the Village and make such recommendations to the Commission concerning the affairs of the Village as s/he deems to be in the best interests of the Village;
 - (9) Execute contracts, deeds and other documents on behalf of the Village as authorized by the Commission;
 - (10) Appoint a Clerk. The Manager cannot appoint himself/herself as Clerk. The Clerk shall give notice of Commission meetings to its members and the public, shall keep minutes of its proceedings and shall perform such other duties as the Manager may prescribe from time to time. The Clerk shall report to the Manager.
 - (11) Perform such other duties as are specified in this Charter or as may be required by the Commission.
- (D) Absence or disability of the Manager.

By letter filed with the Clerk, the Manager may designate a qualified Village officer to perform the Manager's duties during a temporary absence or disability. In the event of the Manager fails to make such designation, or the person so designated is unsatisfactory to the Commission, the Commission may by resolution appoint an individual, corporation or other entity to perform the duties of the Manager during the temporary absence or disability.

(E) Bond of the Manager.

The Commission shall provide by ordinance for the Manager to furnish a fidelity bond to be approved by the Commission, and in such amount as the Commission may fix. The Village shall pay the premium of the bond.

Section 3.02. - Village Attorney.

- (A) The Commission shall appoint an attorney who is licensed to practice law in the State of Florida to serve as Village Attorney (the "Attorney") and who shall serve at the pleasure of the Commission. The Attorney shall act as the legal advisor to, and attorney and counselor for, the Village and all of its officers in matters relating to their official duties under such terms, conditions and compensation as are consistent with this Charter and as may be established. The Commission at any time may remove the Attorney as provided in Section 3.03 below.

- (B) When requested by the Commission or Manager, the Attorney shall: (1) prepare all contracts, bonds and other instruments in writing or shall endorse on each his/her approval of the form, language and execution thereof; (2) prosecute and defend, for and on behalf of the Village, all complaints, suits and controversies in which the Village is a party; (3) furnish his/her opinion on any question of law relating to their respective powers and duties; and (4) perform such other professional duties as may be required by ordinance, by resolution of the Commission, by this Charter, or such as are prescribed for village attorneys under the general laws of the State, not inconsistent with this Charter.
- (C) No contract with the Village shall be binding upon the Village until the Attorney has approved such contract for form, language and execution.

Section 3.03. - Removal procedure.

~~The Manager and the Attorney (each to be referred to as "Charter Officer") may be suspended with pay pending removal by a resolution approved by the majority of the total membership of the Commission, which shall set forth the reasons for suspension and proposed removal. A copy of such resolution shall be served immediately upon the affected Charter Officer. The affected Charter Officer shall have fifteen (15) days in which to respond in writing; and upon request, shall be afforded a public hearing, which shall occur not earlier than ten (10) days nor later than fifteen (15) days after such hearing is requested. After the public hearing, if one is requested, and after full consideration, the Commission by a majority vote of its total membership may adopt a final resolution of removal. The affected Charter Officer shall continue to receive full compensation until the effective date of a final resolution of removal.~~

A Charter Officer may be removed by a simple majority vote of the Commission at any time.

Section 3.04. - Expenditure of Village funds.

No funds of the Village shall be expended except pursuant to duly approved appropriations.

Section 3.05. - Competitive bid requirement.

Competitive bid procedures shall be established by Ordinance.

Section 3.06. - Village boards, agencies, committees and authorities.

Except as otherwise provided by law, the Commission shall establish or terminate such boards, agencies, committees and authorities ("Boards") as it may deem advisable from time to time. The Commission shall appoint members of the Boards and shall regulate such Boards **as provided in the Village Code of Ordinances** ~~through the enactment of an Ordinance.~~

ARTICLE IV. - LEGISLATIVE

Section 4.01. - Commission meeting procedure.

(A) **Commission Meetings.**

(1) Regular Monthly Commission Meetings. The Commission shall hold at least eleven (11) regular monthly meetings in each calendar year, at such times and places as the Commission may prescribe by rule.

(2) Special Commission Meetings. Special meetings may be held on the call of the Mayor or upon the call of ~~four~~ **three** **(3)** members of the Commission and upon no less than twenty four (24) hours' notice to each member and the public, or such shorter time as a majority of the Commission shall deem necessary in case of an emergency affecting life, health, property or the public peace.

(3) Emergency Commission Meetings. In the event a state of emergency is declared by the Governor of the State of Florida, the Miami-Dade County Mayor, or the Village Mayor, an emergency meeting can be called with less than twenty-four (24) hours' notice to the public. The Commission, Village Attorney, Village Manager, and Village Clerk are each permitted to attend emergency Commission meetings remotely using electronic means. Any decisions made during an emergency meeting of the Commission must be publicly ratified by resolution during the following regularly scheduled monthly Commission meeting.

(B) Rules and journal. The Commission shall determine its own rules of procedure and order of business and shall keep minutes open for public inspection.

(C) Quorum and voting.

(1) Any three (3) members of the Commission shall constitute a quorum but a smaller number may recess or adjourn a meeting from time to time ~~and may compel the attendance of absent members in a manner and subject to the penalties prescribed by the rules of the Commission prior to voting on matters of great importance.~~

(2) Ordinances shall be voted upon by roll call.

Section 4.02. - Prohibitions.

- (A) Appointments and removals. Neither the Commission nor any of its members shall interfere with the Manager's decision to appoint or remove any Village administrative officer or employee. However, the Commission may express its views and fully and freely discuss the appointment or removal of such officer or employee with the Manager.
- (B) Interference with administration.
- (1) It is the express intent of this Charter that individual Commissioners make any recommendations for improvement in Village operations to the Manager only. Individual Commissioners may discuss any matter of Village business with the Manager but are strictly prohibited from directing or otherwise ordering the Manager to take any particular action.
 - (2) Except for the purpose of inquiries and investigations made in good faith, the Commission and its members shall deal with Village officers and employees who are subordinate to the Manager solely through the Manager. Neither the Commission nor its members shall give orders directly to any such officer or employee, either publicly or privately.
 - (3) Any willful violation of this Section by any member of the Commission shall be grounds for removal from office by an action brought by the State Attorney of Miami-Dade County.
- (C) Holding other office. A Commissioner shall not be an employee or appointed official of the Village while serving his/her term of office. A former Commissioner shall not become an employee or compensated appointed official of the Village until one (1) year after leaving office.

Section 4.03. - Action requiring an ordinance.

- (A) In addition to other acts required by law or this Charter to be taken or effectuated by ordinance, the Commission shall act by ordinance in order to:
- (1) Adopt or amend an administrative regulation or establish, alter or abolish any Village office, department, board, agency, committee or authority;
 - (2) Establish a rule or regulation the violation of which carries a penalty;
 - (3) Levy taxes, **impose special assessments**, or appropriate funds;
 - (4) Grant, renew or extend a franchise;
 - (5) Set service or user charges for municipal services or grant administrative authority to set such charges;
 - (6) Authorize the borrowing of money;

- (7) Convey, lease or authorize by administrative action the conveyance or lease of any lands owned by the Village;
- (8) Regulate land use through zoning and other means;
- (9) Amend or repeal any ordinance previously adopted, except as otherwise provided in this Charter.

Section 4.04. - Emergency ordinances.

(A) Authorization; form.

- (1) To meet a public emergency affecting life, health, property or the public peace, the Commission may adopt, in the manner provided in this Section, one or more emergency ordinances, but such ordinances may not: (a) enact or amend a land use plan or rezone private property; (b) levy taxes; (c) grant, renew or extend any municipal franchise; (d) set service or user charges for any municipal services; or (e) authorize the borrowing of money except as provided under the emergency appropriations provisions of this Charter.
- (2) An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall: (a) be plainly designated as an emergency ordinance in its title; (b) contain a declaration stating that an emergency exists; and (c) describe the emergency in clear and specific terms.

(B) Procedure. Upon the affirmative vote of ~~four (4)~~ **three (3)** Commissioners ~~at during a scheduled Commission meeting~~, an emergency ordinance may be adopted. After its adoption, the ordinance shall be advertised and printed as prescribed for other ordinances, **and publicly ratified thereafter by the Commission via resolution at the next regularly scheduled monthly Commission meeting.**

(C) Effective date. Emergency ordinances shall become effective upon adoption or at such other date as may be specified in the ordinance.

(D) Repeal. Every emergency ordinance except emergency appropriation ordinances shall automatically be repealed as of the sixty first (61st) day following its effective date, but this shall not prevent re-enactment of the ordinance under regular procedures, or if the emergency still exists, in the manner specified in this Section. An emergency ordinance may also be repealed by adoption of an ordinance in the manner specified in this Section for adoption of emergency ordinances.

(E) Emergency appropriations. The Commission may make emergency appropriations in the manner provided in this Section. To the extent that there are no available unappropriated revenues to meet such appropriations, the Commission may, by affirmative vote of four members,

enact an emergency ordinance authorizing the issuance of emergency notes, which may be renewed from time to time, but the emergency notes, including renewals thereof, shall be payable not later than the last day of the fiscal year next succeeding the fiscal year in which the emergency appropriation ordinance was originally adopted.

Section 4.05. - Annual budget adoption.

- (A) Balanced budget. Each annual budget adopted by the Commission shall be a balanced budget.
- (B) Budget adoption. The Commission shall by ordinance adopt the annual budget on or before the last day of September. An ordinance adopting an annual budget shall constitute appropriations of the amounts specified therein.
- (C) Specific appropriation. The budget shall be specific as to the nature of each of the department's appropriations. Reasonable appropriations may be made for contingencies, but only within defined spending categories.

Section 4.06. - Fiscal year.

The fiscal year of the Village government shall begin on the first day of October and shall end on the last day of September of the following calendar year. Such fiscal year shall also constitute the annual budget and accounting year.

Section 4.07. - Appropriation amendments during the fiscal year.

- (A) Supplemental appropriations. If, during any fiscal year, revenues in excess of those estimated in the annual budget are available for appropriation, the Commission may by ordinance make supplemental appropriations for the fiscal year up to the amount of such excess.
- (B) Reduction of appropriations. If, at any time during the fiscal year, it appears probable to the Manager that the revenues available will be insufficient to meet the amounts appropriated, s/he shall report to the Commission in writing without delay, indicating the estimated amount of the deficit, and his/her recommendations as to the remedial action to be taken. The Commission shall then take such action, as it deems appropriate, to prevent any deficit spending not covered by adequate unappropriated financial resources including reserves.

Section 4.08. - Authentication, recording and disposition of ordinances, resolutions and Charter amendments.

- (A) Authentication. The Mayor and the Clerk shall authenticate by their signature all ordinances and resolutions adopted by the Commission. In addition, when the electors have approved Charter amendments, the Mayor

and the Clerk shall authenticate by their signatures the Charter amendment, such authentication to reflect the approval of the Charter amendment by the electorate.

- (B) Recording. The Clerk shall record all ordinances and resolutions enacted or passed by the Commission in a properly indexed book. Ordinances shall, at the direction of the Commission, be periodically codified. The Clerk shall also maintain the Charter in current form as to all amendments.
- (C) Printing. The Commission shall, by ordinance, establish procedures for making all resolutions, ordinances, technical codes adopted by reference, and this Charter available for public inspection and available for purchase at a reasonable price.

Section 4.09. - Tax levy and assessments.

The Village shall have the right to levy, assess and collect all such taxes and assessments as are permitted by law, including but not limited to ad valorem, excise, franchise or privilege taxes and taxes on services and utilities.

Section 4.10. - Borrowing.

The Commission shall not borrow funds unless:

- (A) approved by four Commissioners; and
- (B) provided the Commission has first received and approved a feasibility study from the Manager concluding that sufficient revenues are available to repay the indebtedness; and
- (C) the funds are borrowed for a valid public purpose.

Section 4.11. - Independent audit.

The Commission shall provide for an independent annual audit of all Village accounts and may provide for more frequent audits, as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal or financial interest or conflict, direct or indirect, in the fiscal affairs of the Village or any of its officers. Residency, per se, shall not constitute a direct or indirect interest. A summary of the results, including any deficiencies found, shall be made public. A written response to any noted deficiencies shall be the responsibility of the Manager.

ARTICLE V. - ELECTIONS

Section 5.01. - Term of Office.

(A) Mayor. At each regularly scheduled election of the Village, the mayoral candidate receiving the highest number of votes shall receive a four (4) year term as Mayor.

(B) At-Large Commissioners. At each regularly scheduled election of the Village, the two candidates receiving the highest number of votes shall each receive a four year term and the candidate receiving the third highest number of votes shall receive a two year term.

(C) Term Limits. No person shall serve as a member of the Commission for more than two (2) consecutive terms of four years each. No person shall serve as Mayor for more than two (2) consecutive terms of four (4) years each. These limitations shall apply to Commissioner and Mayoral terms separately, and shall not be combined. These limitations shall not be applied retroactively to terms served before January 1, 2021.

Section 5.02. - 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 Commissioner shall be conducted on a nonpartisan basis.
- (C) Election dates. A general election shall be held in each even-numbered year, on the first Tuesday in November, commencing with the general election of 2016 and every two years subsequent thereto. In the event of a deadlocked vote for the third position, there shall be candidate qualifications and run-off election(s) as soon as possible thereafter, upon coordination with the Miami-Dade County Elections Department. In the event that there is a deadlock for the second position and the affected individuals are unable to amicably resolve such deadlock at the first (1st) Commission meeting following the general election, the Clerk shall flip a coin to determine who is to receive the two (2) year term and who is to receive the four (4) year term. The coin toss shall occur after the affected individuals have been duly sworn to the Commission.
- (D) General election. The ballot for the general election shall contain the names of all qualified candidates for Commission vacancy and shall instruct electors that they may cast one vote for each vacancy being filled in said election with a maximum of one vote per candidate. The candidate for

each Commission vacancy receiving the most votes shall be duly elected to that Commission vacancy.

- (E) Run-off election. The ballot for the run-off election shall contain the names of the candidates eligible for the run-off election. The ballot shall instruct electors that they may cast one vote for each Commission vacancy. The candidate receiving the most votes shall be duly elected to that Commission vacancy.
- (F) Special elections. Special elections, when required, shall be scheduled by the Commission at such times and in such manner as shall be consistent with this Charter.
- (G) Single candidates. No election for any Commission vacancy shall be required in any election if there is only one duly qualified candidate for any Commission vacancy.
- (H) Absence of Candidates. In the absence of candidate(s) for the Commission, the Commission shall appoint a person qualified under Section 2.05 of this Charter.
- (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.
- (J) Commencement of terms. The term of office of any elected official will commence within ten (10) days from **the date of the Miami-Dade County Supervisor of Elections certifies the election results**. The date and time shall be selected by the **City Village** Manager based on availability of the new Commission.

(Ord. No. 2012-02, § 4, 5-1-12; Ord. No. [2012-05](#), § 4, 7-19-12)

Section 5.03. - Initiative, referendum and recall.

- (A) Power to initiate and reconsider ordinances.
 - (1) Initiative. The electors of the Village shall have power to propose ordinances to the Commission. If the Commission fails to adopt a proposed ordinance the electors shall have the right to consider adoption of such ordinance at a Village election.
 - (2) Referendum. The electors of the Village shall have power to require the Commission to reconsider any adopted ordinance. If the Commission fails to repeal the ordinance after reconsideration the electors shall have the right to consider the repeal of such ordinance at a Village election.
- (B) Commencement of proceedings.

- (1) A minimum of ten (10) electors may commence initiative or referendum proceedings by filing an affidavit with the Clerk which states the following: (a) name and address of each elector; (b) the willingness of the ten (10) electors to constitute the petitioners' committee, circulate the petition and file it in the proper form; (c) the address to which all notices to the committee shall be sent; and (d) the identification of the ordinance to be proposed or reconsidered.
 - (2) Promptly upon the filing of the petitioners' committee affidavit the Clerk shall validate the electors listed in the affidavit and the Attorney shall review the Petitioners' proposed ordinance for legal sufficiency. Once the electors are validated and the proposed ordinance is found to be legally sufficient, the Clerk shall prepare and issue the appropriate petition blanks to the petitioners' committee at the committees' expense.
- (C) Petitions.
- (1) Number of signatures. Initiative and referendum petitions must be signed by electors of the Village equal in number to at least ten percent (10%) of the total number of electors registered to vote at the last regular Village election.
 - (2) Form and content. All papers of a petition shall be assembled as one instrument of filing. Each signature shall be executed in ink and shall be followed by the printed name and address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.
 - (3) Affidavit of circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that s/he personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his/her presence, that s/he believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity, before signing, to read the full text of the ordinance proposed or sought to be reconsidered.
 - (4) Filing deadline. All initiative and referendum petitions must be filed within sixty (60) days of the date the proceedings for such initiative or referendum are commenced.
- (D) Procedure for filing.
- (1) Certificate of Clerk; amendment.
 - (a) Within twenty (20) calendar days after an initiative petition is filed or within five (5) business days after a referendum petition is filed, the Clerk shall complete a certificate as to its sufficiency (the

"Certificate"). A copy of the Certificate shall be sent promptly to the petitioners' committee by registered mail.

- (b) If the petition is insufficient, the Clerk shall list the deficiencies in the Certificate. A petition shall be considered insufficient if it fails to meet the requirements established in section 5.03(C) of this Charter.
- (c) A petition that is certified as insufficient for lack of the required number of valid signatures may be amended one time if: (i) the petitioners' committee files a notice of intent to amend with the Clerk within two (2) business days of receiving a copy of the Certificate; and (ii) the petitioners' committee files the necessary required additional valid signatures ("Supplementary Petition") within ten (10) days of receipt of a copy of the Certificate. The Supplementary Petition must meet the requirements established in section 5.03(C) of this Charter.
- (d) Within five (5) business days after a Supplementary Petition is filed, the Clerk shall complete a Certificate as to the sufficiency of the petition as amended. A copy of the Certificate shall be sent promptly to the petitioners' committee by registered mail.
- (e) If a petition or amended petition is certified sufficient, or if a petition or amended petition is certified insufficient and the petitioners' committee does not elect to amend or request Commission review under subsection (2) of this section (D) within the time specified, the Clerk or other official designated by the Commission shall promptly present the Certificate to the Commission and such Certificate shall be the final determination as to the sufficiency of the petition.

- (2) Commission review. If a petition has been certified insufficient and the petitioners' committee does not file notice of intention to amend it or if an amended petition has been certified insufficient, the committee may, within two (2) business days after receiving the copy of such Certificate, file a request that it be reviewed by the Commission. The Commission shall review the Certificate at its next meeting following the filing of such request and approve or disapprove it. The Commission's determination shall then be a final determination as to the sufficiency of the petition.

(E) Action on petitions.

- (1) Action by Commission. When an initiative or referendum petition has been determined sufficient, the Commission shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance. If the Commission fails to adopt a proposed initiative ordinance without any change in substance within forty five (45) days or fails to repeal the referred ordinance within thirty (30) days, it shall submit the proposed or referred ordinance to the electors of the Village.

- (2) Submission to electors. The vote of the electors on a proposed or referred ordinance shall be held not less than thirty (30) or more than sixty (60) days from the date the Commission acted or was deemed to have acted pursuant to this Section. If no regular election is to be held within the period described in this paragraph, the Commission shall provide for a special election. Copies of the proposed or referred ordinance shall be made available at the polls.
 - (3) Withdrawal of petitions. An initiative or referendum petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the electorate by filing with the Clerk or other official designated by the Commission a request for withdrawal signed by at least four-fifths (4/5ths) of the members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.
- (F) Recall. The electors shall have the power to recall and to remove from office any elected official of the Village to the extent permitted by the Constitution and laws of the State of Florida.
- (G) Results of election.
- (1) Initiative. If a majority of the electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.
 - (2) Referendum. If a majority of the electors voting on a referred ordinance vote for repeal, it shall be considered repealed upon certification of the election results.
 - (3) Recall. If a majority of the electors voting on a recall vote for recall, the subject elected official shall be removed from office.

ARTICLE VI. - CHARTER AMENDMENTS

Section 6.01. - Charter amendments.

This Charter may be amended in accordance with the provisions of this Article and all applicable laws.

Section 6.02. - Procedure to amend.

- (A) ~~This Charter may be amended by~~ **Proposed ballot amendments to this Charter may be initiated by:**
- (1) Ordinance. The Commission may propose amendments to this Charter by ordinance and shall submit the proposed amendment to a vote of the electors at the next general election held within the Village or at a special election called for such purpose.

- (2) Petition. The electors of the Village may propose amendments to this Charter by petition. The electors proposing such amendment to the Charter shall follow the same procedures for proposing an ordinance by initiative as described in this Charter. Upon certification of the sufficiency of a petition, the Commission shall submit the proposed amendment to a vote of the electors at a general election or special election to be held not less than ~~sixty (60)~~ **ninety (90)** days or more than one hundred and twenty (120) days from the date on which the petition was certified.
- (B) Results of election. If a majority of the qualified electors voting on a proposed amendment vote for its adoption, it shall be considered adopted upon certification of the election results. If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

ARTICLE VII. - GENERAL PROVISIONS

Section 7.01. - Severability.

If any article, section or part of section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter or the context in which such article, section or part of section so held invalid may appear, except to the extent that an entire article, section or part of section may be inseparably connected in meaning and effect with the article, section or part of section to which such holding shall directly apply.

Section 7.02. - Conflicts of interest; ethical standards.

All Commissioners, officials and employees of the Village shall be subject to the standards of conduct for public officers, employees, and appointees set by Federal, State, County or other applicable law. The Commission may adopt additional standards of conduct and code of ethics requirements that are not inconsistent with Federal, State, County or other applicable law.

Section 7.03. - Village personnel system.

All new employments, appointments and promotions of Village officers and employees shall be made pursuant to written personnel procedures to be established by the Manager from time to time.

Section 7.04. - Charitable contributions.

The Village shall not make any charitable contribution to any person or entity, except such contributions as have been approved by four Commissioners.

Section 7.05. - Variation of pronouns.

All pronouns and any variation thereof used in this Charter shall be deemed to refer to masculine, feminine, neutral, singular or plural as the identity of the person or persons shall require and are not intended to describe, interpret, define or limit the scope, extent or intent of this Charter.

Section 7.06. - Style and capitalization.

When a defined word is enclosed in quotes and in parentheses after the definition, that word shall be treated as a defined term in the remainder of this Charter, when capitalized.

Section 7.07. - No discrimination.

The Village shall not adopt any measure or policy or otherwise discriminate against any person due to race, religion, color, national origin, physical or mental disability, creed, sexual orientation, gender, marital or familial status.

Section 7.08. - Calendar day.

For the purposes of this Charter, unless otherwise specified, a day shall mean a calendar day.

Section 7.09. - Effective date.

The effective date of this Charter shall be ninety (90) days after certification of the election results.

2020 BALLOT ISSUES DEADLINES

Should a municipality have a scheduled election or wish to conduct a special election along with the countywide 2020 Primary and General Elections, the **deadlines listed below must be followed**, in order to allow sufficient time for ballot preparation and to meet State-mandated deadlines to mail vote-by-mail ballots to overseas voters.

If you are considering conducting a special election, which includes adding a question(s) and/or filling a vacancy(ies), to a regularly scheduled election, please note that per F.S. 100.151, “...*the governing authority of a municipality shall not call any special election until notice is given to the supervisor of elections and his (her) consent obtained as to a date...*” Once approval is obtained from the supervisor of elections, the resolution and/or ordinance to call a special election must be passed to meet the deadlines listed below.

2020 SCHEDULED COUNTYWIDE ELECTIONS	DEADLINE FOR CANDIDATE QUALIFYING TO END	DEADLINE TO SUBMIT RESOLUTION AND/OR ORDINANCE TO THE SUPERVISOR OF ELECTIONS FOR CHARTER AMENDMENTS OR ANY OTHER QUESTIONS
PRESIDENTIAL PREFERENCE PRIMARY ELECTION March 17, 2020	No later than Friday, November 29, 2019	No later than Friday, November 29, 2019
PRIMARY ELECTION August 18, 2020	No later than Friday, June 12, 2020 <i>(Same as Federal, State, and County offices)</i>	No later than Friday, May 29, 2020
GENERAL ELECTION November 3, 2020	No later than Friday, August 21, 2020	No later than Friday, July 31, 2020

Should you have any questions or need additional information, please contact Elizabeth Prieto, Elections Coordination Manager, at 305-499-8405 or e-mail at eprieto@miamidade.gov.