

1           **AMENDMENT OFFERED BY COUNCILMEMBER DAVID SINGER**

2  
3           **[sample = add; ~~sample~~ = strike; sample = strike]**

4  
5           **AN ORDINANCE OF THE MAYOR AND VILLAGE**  
6           **COUNCIL OF THE VILLAGE OF PALMETTO BAY,**  
7           **FLORIDA AND AS THE LOCAL PLANNING AGENCY,**  
8           **AMENDING SECTION 30-50.19, VILLAGE MIXED-USE**  
9           **DISTRICT (VMU); CLARIFYING THAT THE EXISTING**  
10           **MAXIMUM RESIDENTIAL UNITS PERMITTED UNDER**  
11           **THE EXISTING ZONING CODE IS THREE HUNDRED**  
12           **EIGHTY-NINE (389) RESIDENTIAL UNITS (WHICH**  
13           **INCLUDES TRANSFER OF DEVELOPMENT RIGHTS); ,**  
14           **~~WITH THE INTENT TO REVERT TO THE LAND~~**  
15           **~~DEVELOPMENT CODE WHICH REGULATED THE VMU~~**  
16           **~~DISTRICT PRIOR TO THE ADOPTION OF ORDINANCE~~**  
17           **~~2016-14 IN MAY 2016; AMENDING SECTION 30-50.19,~~**  
18           **~~VMU DISTRICT, TO INCLUDE 100 RESIDENTIAL UNITS~~**  
19           **~~AND 300 SENIOR LIVING FACILITY UNITS; TO NO~~**  
20           **~~LONGER COUNT HOTEL UNITS AS RESIDENTIAL~~**  
21           **~~UNITS; TO REDUCE SOME PERMITTED BUILDING~~**  
22           **~~HEIGHTS; TO DELETE REFERENCES TO TRANSFER OF~~**  
23           **~~DEVELOPMENT RIGHTS (TDRs); PROVIDING FOR~~**  
24           **~~ORDINANCES IN CONFLICT, CODIFICATION,~~**  
25           **~~SEVERABILITY AND AN EFFECTIVE DATE. (Sponsored~~**  
26           **~~by Vice Mayor John DuBois)~~**

27  
28           **~~WHEREAS, on May 2, 2016, the Mayor and Village Council~~**  
29           **~~adopted Ordinance 2016-14, which amended the land use code which~~**  
30           **~~regulates the Village Mixed-Use (VMU) District, providing for permitted~~**  
31           **~~uses and development standards therein; and~~**  
32

33           **~~WHEREAS, circumstances in the area surrounding the Village~~**  
34           **~~Mixed-Use (VMU) District have substantially changed since the adoption~~**  
35           **~~of Ordinance 2016-14 in May 2016, including but not limited to: (i)~~**  
36           **~~accelerating development and governmental approvals for development~~**  
37           **~~(especially to the south of the VMU District in the Village of Cutler Bay~~**  
38           **~~and beyond); and (ii) increased traffic congestion (including the prospect~~**

1 of increased future traffic congestion from future development to the  
2 south of the VMU); and

3  
4 ~~**WHEREAS**, the Village Council desires to amend the regulations  
5 and standards contained in Ordinance 2016-14, due to the substantially  
6 changed circumstances, as provided below; and~~

7  
8 ~~**WHEREAS**, the intention of the Village Council is to revert to the  
9 land development code which regulated the VMU District prior to the  
10 adoption of Ordinance 2016-14 in May 2016; and~~

11  
12 ~~**WHEREAS**, the existing land development code (zoning code) for  
13 the Village Mixed Use (VMU) District limits the maximum number of  
14 residential units permitted in the VMU to the number of residential units  
15 which will produce no more vehicular traffic than the maximum amount of  
16 vehicular traffic which would have been produced under the VMU District  
17 code in existence prior to the amendments of May 2016; and~~

18  
19 ~~**WHEREAS**, expert analysis demonstrates that the maximum  
20 number of residential units permitted under these provisions of the  
21 existing VMU code is three hundred eighty-nine (389) residential units  
22 (including transfer of development rights); and~~

23  
24 ~~**WHEREAS**, competent substantial evidence exists demonstrating  
25 that the maximum number of residential units permitted under these  
26 provisions of the existing VMU code is three hundred eighty-nine (389)  
27 residential units (including transfer of development rights); and~~

28  
29 ~~**WHEREAS**, the amendment of the existing VMU code by stating  
30 the maximum of residential units in numeric form as three hundred  
31 eighty-nine (389) (including transfer of development rights) merely  
32 clarifies the existing limitation and does not reduce or limit any existing  
33 rights; and~~

34  
35 ~~**WHEREAS**, pursuant to Section 163.3174, Florida Statutes, the  
36 Village Council has been designated as the Local Planning Agency for the  
37 Village; and~~

38

1           **WHEREAS**, the Local Planning Agency has approved the  
2 proposed amendments, as contained herein, on \_\_\_\_\_, 2018;

3  
4           **NOW, THEREFORE, BE IT ENACTED BY THE MAYOR AND**  
5 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS**  
6 **FOLLOWS:**

7  
8           **Section 1. Recitals.** The above recitals are true and correct and  
9 incorporated herein as findings of the Land Planning Agency and Village  
10 Council by this reference.

11  
12           **Section 2. Findings.** The Village Council finds that competent  
13 substantial evidence exists to support this clarifying amendment of the  
14 VMU zoning code, and incorporates herein in the record all testimony  
15 and reports, including the reports of the Village planning staff and the  
16 Village-retained expert traffic consultant. ~~circumstances in the area~~  
17 ~~surrounding the Village Mixed-Use (VMU) District have substantially~~  
18 ~~changed since the adoption of Ordinance 2016-14 in May 2016,~~  
19 ~~including but not limited to:~~

20           ~~\_\_\_\_\_ (i) accelerating development and governmental approvals for~~  
21 ~~development (especially to the south of the VMU District in the Village of~~  
22 ~~Cutler Bay and beyond); and~~

23           ~~\_\_\_\_\_ (ii) increased traffic congestion (including the prospect of~~  
24 ~~increased future traffic congestion from future development to the south~~  
25 ~~of the VMU).~~

26  
27           **Section 3. Amendment of Section 30-50.19.** Chapter 30, of the  
28 Village's Land Development Code, at Section 30-50.19 is amended to  
29 read as follows:

30  
31                                   **DIVISION 30-50**  
32                                   **ZONING DISTRICTS**

33  
34                                   \*   \*   \*

35  
36           **Sec. 30-50.19. Village Mixed Use District, VMU.**

37  
38                                   \*   \*   \*

1 (b) No provision in this section 30-50.19 shall be applicable to any  
2 property lying outside the boundaries of the Village Mixed-Use  
3 District ("VMU").  
4

5 (c) *Definitions.* Terms used throughout this zoning district,  
6 under section 30-50.19 shall take their commonly accepted  
7 meaning unless otherwise defined in other Village Code  
8 provisions. Terms requiring interpretation specific to this zoning  
9 district are as follows:  
10

11 *Apartment building:* A building which is used or intended to be  
12 used as a multi-family dwelling unit; as a home or residence for  
13 three or more families living in separate apartments, in which the  
14 yard areas, hallways, stairways, balconies and other common  
15 areas and facilities are shared by families living in the apartment  
16 units. ~~*Apartment building:* A building which is used or intended to~~  
17 ~~be used as a multi-family dwelling unit; as a home or residence for~~  
18 ~~three or more families living in separate apartments, in which the~~  
19 ~~yard areas, hallways, stairways, balconies and other common~~  
20 ~~areas and facilities are shared by families living in the apartment~~  
21 ~~units.~~

22 \* \* \*

23  
24  
25 *Residential building type:* One of the following multifamily  
26 multifamily residential building types shall be permitted in the VMU  
27 District: Apartment—Building, Apartment Building,  
28 Rowhouses/Townhouses or Senior Housing (as hereinafter  
29 defined).  
30

31 \* \* \*

32  
33 (d) *Uses.* Uses are allowed in the VMU District as provided for in this  
34 subsection. However, these uses shall not be deemed or construed  
35 to prohibit a continuation of any structure, use or occupancy in the  
36 VMU that were existing as of the date of the effective date of this  
37 division.  
38

39 (1) *Permitted uses:* ~~Village Mixed Use District.~~

- 1 a. ~~Residential uses. Multifamily residential, up to 400 units~~  
2 ~~which may include apartment buildings,~~  
3 ~~rowhouses/townhouses, and Senior Living Facilities as~~  
4 ~~provided by F.S. § 760.29. For the purposes of this~~  
5 ~~subsection and within the VMU zoning district, each~~  
6 ~~individual hotel unit shall be considered and count as~~  
7 ~~an individual residential unit. Multifamily residential, up~~  
8 ~~to three hundred eighty-nine (389) (including transfer of~~  
9 ~~development rights) units which may include apartment~~  
10 ~~buildings, rowhouses/townhouses, and Senior Living~~  
11 ~~Facilities as provided by F.S. § 760.29. For the~~  
12 ~~purposes of this subsection and within the VMU zoning~~  
13 ~~district, each individual hotel unit shall be considered~~  
14 ~~and count as an individual residential unit.~~ Residential  
15 uses are permitted in the VMU as provided below in  
16 accordance with the village's adopted comprehensive  
17 plan and the Declaration of Restrictive Covenants and  
18 the First Amendment to the Declaration of Restrictive  
19 Covenants recorded May 1, 1989 at Official Records  
20 Book 14089 at Pages 2349-52 and Official Records  
21 Book 12428 at Pages 923-1010, of the Public Records  
22 of Miami-Dade County, Florida, ~~and the Amended~~  
23 ~~Declaration of Restrictive Covenants in Lieu of Unity of~~  
24 ~~Title recorded Official Resources Book 27101 at Pages~~  
25 ~~2672-2678 of the public Records of Miami-Dade~~  
26 ~~County, Florida.~~  
27 ~~i. Multi-family residential rowhouses/townhouses up~~  
28 ~~to 100 units.~~  
29 ~~ii. Senior housing, intended to comply with F.S. §~~  
30 ~~760.29, in the form of multi-family condominiums~~  
31 ~~or apartments up to 300 residential units.~~

32  
33 It is the finding of the Village Council that the maximum  
34 number of residential units provided herein (389) is  
35 based upon the following existing code provision:  
36 Automobile traffic volume on Old Cutler Road  
37 generated by residential land uses within the VMU  
38 Zoning District shall not exceed the automobile traffic  
39 volume which would have been generated by the

1 residential development rights of 300 senior housing  
2 units and 100 multi-family residential  
3 rowhouses/townhouses in the VMU Zoning District  
4 pursuant to the VMU provisions of Village Ordinance  
5 08-09 and by residential development rights of 85  
6 single family residential units in the Interim Zoning  
7 District (which is contiguous to the western boundary of  
8 the VMU Zoning District) pursuant to the Interim  
9 provisions of Village Code section 30-50.22, as in effect  
10 on May 1, 2016. Automobile traffic volume on Old  
11 Cutler Road generated by residential land uses within  
12 the VMU Zoning District shall not exceed the  
13 automobile traffic volume which would have been  
14 generated by the residential development rights of 300  
15 senior housing units and 100 multi-family residential  
16 rowhouses/townhouses in the VMU Zoning District  
17 pursuant to the VMU provisions of Village Ordinance  
18 08-09 and by residential development rights of 85  
19 single family residential units in the Interim Zoning  
20 District (which is contiguous to the western boundary of  
21 the VMU Zoning District) pursuant to the Interim  
22 provisions of Village Code section 30-50.22, as in effect  
23 on May 1, 2016. The owners of all property within the  
24 VMU shall execute a restrictive covenant running with  
25 the land containing the automobile traffic volume  
26 restriction of this subsection and development rights of  
27 this subsection shall not be available to such owners  
28 until such a covenant, approved by the Village Attorney,  
29 is publicly recorded.

30 \* \* \*

31  
32  
33 (e) *General requirements.* These requirements shall not be deemed or  
34 construed to prohibit a continuation or restoration after casualty of  
35 any structure, use or occupancy in the VMU District that was  
36 existing as of the date of the effective date of this section.

37  
38 (1) *Buildings.*

1 a. *Heights.* All height restrictions herein are deemed as  
2 consistent with the intent of the previously enacted  
3 Village of Palmetto Bay Comprehensive Plan which  
4 established parameters for this VMU District.  
5 Furthermore, all height restrictions must remain in  
6 conformity with any existing deed restrictions,  
7 declarations, or covenants in effect as to any lands  
8 within the VMU District. Multi-family  
9 rowhouse/townhouse units shall not exceed 70 feet  
10 above grade in height. Multi-family senior housing  
11 facilities shall not exceed 85 feet above grade in height.  
12 ~~Nonresidential~~ All All buildings shall be no higher than  
13 85 feet above grade in height. This shall not preclude,  
14 above such height restrictions, ~~bonuses granted by a~~  
15 ~~Transfer of Development Right,~~ antennae, elevator and  
16 roof equipment, stairway roof access and railings or  
17 similar safety barrier, as long as said structures are not  
18 visible from the property line of the VMU District at Old  
19 Cutler Road.

20 \* \* \*

21  
22 e. *Density.* Overall density for all residential units on the  
23 property, including senior housing facilities, shall be a  
24 minimum of 3.0 and a maximum of 14.0 dwelling  
25 units per gross acre, all as consistent with the  
26 comprehensive plan of the village. ~~Residential~~  
27 ~~density calculations pursuant to the preceding~~  
28 ~~sentence shall be calculated based upon the entire~~  
29 ~~land area zoned VMU, regardless of any non-~~  
30 ~~residential development within the VMU. Additional~~  
31 ~~units may be developed in accordance with an~~  
32 ~~approved Transfer of Development Rights.~~  
33 Residential density calculations pursuant to the  
34 preceding sentence shall be calculated based upon  
35 the entire land area zoned VMU, regardless of any  
36 non-residential development within the VMU.  
37 Additional units may be developed in accordance with  
38 an approved Transfer of Development Rights, but in

1 no event shall the total number of residential building  
2 units exceed three hundred eighty-nine (389).

3  
4  
5 \* \* \*

6  
7 (i) *Nonconforming structures, uses, and occupancies.* Nothing  
8 contained in this section 30-50.19 shall be deemed or construed  
9 to prohibit a continuation or restoration after casualty of a legal  
10 nonconforming structure, use or occupancy in the VMU District  
11 that was existing as of the effective date of this division.

12  
13 (j) *Review procedure/administrative site plan review.* All applications  
14 for development approval within the VMU District that are not  
15 otherwise permitted as nonconforming uses or structures shall  
16 comply with the requirements of section 30-30.5 and this section  
17 and with the site plan review criteria contained therein.  
18 Developments shall be processed and approved administratively  
19 or by village council action, as applicable, as follows:

20 (1) *Administrative site plan review.*

21 a. The department shall review plans, including all  
22 materials required under section 30-30.5 for  
23 completeness and compliance with the provisions of  
24 sections 30-30.5 and 30-50.2019, and for compliance  
25 with the site plan review criteria provided therein,  
26 including but not limited to traffic analysis.

27  
28 **Section 4. Conflicting Provisions.** The provisions of the Code of  
29 Ordinances of the Village of Palmetto Bay, Florida and all ordinances or  
30 parts of ordinances in conflict with the provisions of this ordinance are  
31 hereby repealed.

32  
33 **Section 5. Severability.** The provisions of this Ordinance are  
34 declared to be severable, and if any sentence, section, clause or phrase  
35 of this Ordinance shall, for any reason, be held to be invalid or  
36 unconstitutional, such decision shall not affect the validity of the  
37 remaining sentences, sections, clauses or phrases of the Ordinance, but  
38 they shall remain in effect it being the legislative intent that this  
39 Ordinance shall stand notwithstanding the invalidity of any part.



1 PASSED on **SECOND READING** this \_\_\_ of \_\_\_\_\_, 2018.

2  
3  
4 Attest: \_\_\_\_\_

5 Missy Arocha  
6 Village Clerk

\_\_\_\_\_  
Eugene Flinn  
Mayor

7  
8 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
9 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

10  
11  
12 \_\_\_\_\_  
13 Dexter W. Lehtinen  
14 Village Attorney

15  
16  
17 **VOTE ON SECOND READING:**

18  
19 Council Member Karyn Cunningham \_\_\_\_\_

20  
21 Council Member David Singer \_\_\_\_\_

22  
23 Council Member Larissa Siegel Lara \_\_\_\_\_

24  
25 Vice-Mayor John DuBois \_\_\_\_\_

26  
27 Mayor Eugene Flinn \_\_\_\_\_

28  
29  
30  
31 **PASSED and ENACTED** on **THIRD READING** this \_\_\_ of  
32 \_\_\_\_\_, 2018.

33  
34  
35  
36  
37 Attest: \_\_\_\_\_

38 Missy Arocha  
39 Village Clerk

\_\_\_\_\_  
Eugene Flinn  
Mayor

1 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
2 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

3  
4  
5  
6 \_\_\_\_\_  
7 Dexter W. Lehtinen  
8 Village Attorney

9  
10  
11 **FINAL VOTE AT ADOPTION ON THIRD READING:**

12  
13 Council Member Karyn Cunningham \_\_\_\_\_  
14  
15 Council Member David Singer \_\_\_\_\_  
16  
17 Council Member Larissa Siegel Lara \_\_\_\_\_  
18  
19 Vice-Mayor John DuBois \_\_\_\_\_  
20  
21 Mayor Eugene Flinn \_\_\_\_\_