



VILLAGE OF PALMETTO BAY

Mayor Shelley Stanczyk
Vice Mayor Brian W. Pariser
Council Member Patrick Fiore
Council Member Howard Tendrich
Council Member Joan Lindsay

Village Manager Ron E. Williams
Village Attorney Eve A. Boutsis
Village Clerk Meighan J. Alexander

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Village Clerk at (305) 259-1234 for assistance no later than four days prior to the meeting.

VILLAGE SPECIAL COUNCIL MEETING AGENDA

Monday, October 24, 2011 - 7:00 P.M.

Village Hall Chambers
9705 E. Hibiscus Street
(305) 259-1234

1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE

2. RESOLUTION

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; APPROVING THE SELECTION OF A FIRM TO PROVIDE PROFESSIONAL AUDITING SERVICES AND OTHER RELATED DUTIES TO THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT NEGOTIATIONS WITH TOP RANKED FIRM; PROVIDING AN EFFECTIVE DATE.

3. ORDINANCE (PUBLIC HEARING REQUIRED)

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; AMENDING DIVISION 30-50.17(B) ENTITLED THE "B-2, BUSINESS DISTRICT"; RELATING TO THE USES PERMITTED WITHIN THE B-2 DISTRICT; MODIFYING THE LIST OF USES TO INCLUDE GUN SHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

3. NEXT MEETING AND ADJOURNMENT

PURSUANT TO FLORIDA STATUTES 286.0105, THE VILLAGE HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR

SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.



To: Honorable Mayor, Vice Mayor, and
Village Council

Date: October 24, 2011

From: Ron E. Williams, Village Manager

Re: Auditor Selection Process

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF
THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO
CONTRACTS; APPROVING THE SELECTION OF A FIRM TO
PROVIDE PROFESSIONAL AUDITING SERVICES AND OTHER
RELATED DUTIES TO THE VILLAGE; AUTHORIZING THE
VILLAGE MANAGER TO ENTER INTO CONTRACT
NEGOTIATIONS WITH TOP RANKED FIRM; PROVIDING AN
EFFECTIVE DATE.**

As you know, on September 29, 2011, the Village Clerk's office conducted the opening of the Request for Qualifications for Financial Auditing Services for the Village. Six firms provided responses to this RFQ, which were provided to Council for your careful consideration. In accordance with Charter Section 4.10 and following Florida Statute 218.391, we are seeking Council direction to select the firm and authorize negotiations with the selected firm.

The pricing of the top three candidates will be opened at the Village Council meeting and may be considered when making your final decision.

FISCAL IMPACT:

Professional Services have been funded in this current fiscal year budget. The Village Manager will return with a contract for final approval at the November 7th Council Meeting.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CONTRACTS; APPROVING THE SELECTION OF A FIRM TO PROVIDE PROFESSIONAL AUDITING SERVICES AND OTHER RELATED DUTIES TO THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO CONTRACT NEGOTIATIONS WITH TOP RANKED FIRM; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 4.10 of the Village Charter mandates that the Council shall provide for an annual independent audit of all Village accounts. Section 4.10 further provides that the audit shall be made by “a certified public accountant or firm of such accountants who have no personal interest direct or indirect in the fiscal affairs of the Village government, its employees or officers”; and,

WHEREAS, the Village advertised a Request for Proposals, received responses from the following firms, which responses were provided the responses to Council.

Alberini, Caballero & Company, LLP
Cherry, Bekaert & Holland, LLP
GLSC & Company, PLLC
Harvey, Covington & Thomas, Inc.
Keefe, McCullough & Co., LLP
Marcum, LLP

Following review by the Council and based upon qualifications, the top three preliminary responsive bidders are as follows:

1. Cherry, Bekaert & Holland, LLP
2. Marcum, LLP
3. Alberini, Caballero & Company, LLP

WHEREAS, the Mayor and Village Council desire to select a firm from among the top three proposers.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The following firm is selected to provide the Village with Financial Audit Services and other related duties:

Section 2. The Village Manager is authorized to negotiate a Contract for Professional Services with the selected firm and return said contract for approval.

Section 3. This resolution shall take effect immediately upon approval.

PASSED and ADOPTED this ____ day of October, 2011.

Attest: _____
Meighan J. Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

Eve Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____
Council Member Howard J. Tendrich _____
Council Member Joan Lindsay _____
Vice-Mayor Brian Pariser _____
Mayor Shelley Stanczyk _____



To: Mayor and Village Council

Date: October 3, 2011

From: Eve A. Boutsis, Village Attorney

Re: Permitted Uses - B-2

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; AMENDING DIVISION 30-50.17(B) ENTITLED THE "B-2, BUSINESS DISTRICT"; RELATING TO THE USES PERMITTED WITHIN THE B-2 DISTRICT; MODIFYING THE LIST OF USES TO INCLUDE GUN SHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS:

In 2010 the Village of Palmetto Bay enacted the Village's Land Development Code including Division 30-50 relating to the Village's zoning districts. The Village administration recommends updating the B-2, "Business District" use schedule to include the listed use of "gun shops. The Florida Legislature during the 2011 Session enacted a law precluding certain actions by local government as it relates to gun regulations, and gun sales. The state regulation addresses local government efforts to regulate firearms and ammunition and can be found at Section 790.33, Florida Statutes; the state legislation imposes a financial penalty on governments, elected officials or staff that adopt policies or take enforcement action that violates the existing state law preemption of firearm and ammunition regulation.

Under the enacted statutes, local government officials or employees who are found to have willfully and knowingly violated the preemption would be personally liable for a fine of no more than \$5,000 and not more than \$100,000 if a court determines the violation was knowing and willful. A government entity could be liable for actual damages up to \$100,000 and for the plaintiff's attorney's fees. For example, under the law, an elected municipal official passing or a municipal employee enforcing an ordinance prohibiting guns in parks, discharging guns within municipal limits, or otherwise restricting guns could be personally liable as provided in the statute. The law authorizes a person or organization whose membership is adversely affected by an ordinance, regulation, measure, directive, rule, enactment, order or policy promulgated or enforced in violation of the statute to file suit for declaratory and injunctive relief and for all actual and consequential damages attributable to the violation.

The law becomes effective October 1st, 2011. Pursuant to 166.041, Florida Statutes, a change in uses requires a 30 day advertising notice for each reading of the ordinance. The Village has complied with the advertising requirement.

Pursuant to subsection (4) of section 790.33, Florida Statutes, municipalities can continue to enforce its zoning code, provided however, the municipality should not place unduly restrictive

procedures in relation to firearms and ammunition. However, currently the Village has no regulations relating to firearms and ammunition and does not provide, as of right, a zoning district for the "gun shop" use. Although there is no specific regulation that requires the Village to permit "gun shops" arguably section 790.33, Florida Statutes, could be utilized against the Village in a challenge that the Village is "precluding" or restricting firearms and ammunition by not providing a location for their sales.

The B-2 zoning district is the most intensive use zoning district and would be the most appropriate district for having the permitted use of "gun shop." To ensure compliance with 790.33, and to preclude a challenge under that statute, with its waiver of limited sovereign immunity under 768.28, Florida Statutes, with its limits of liability exposure of \$200,000, it is the recommendation of staff to provide for the "gun shop" use in the Village's most intensive business zoning district

FISCAL/BUDGETARY IMPACT:

None at this time. Failure to provide for the use may lead to litigation pursuant to 790.33, Florida Statutes. Such litigation would probably not succeed as the Village has not created obstructions to ammunition or firearms. Nevertheless, in an abundance of caution, the recommendation to place the use, as a permitted use, within the Village's most intense zoning district would preclude any possible litigation relating to the implementation of 790.33.

RECOMMENDATION:

Approval.

1 WHEREAS, pursuant to subsection (4) of section 790.33, Florida Statutes, municipalities
2 can continue to enforce its zoning code, provided however, the municipality should not place
3 unduly restrictive procedures in relation to firearms and ammunition; and,
4

5 WHEREAS, currently the Village has no regulations relating to firearms and ammunition
6 and does not provide, as of right, a zoning district for the "gun shop" use; and,
7

8 WHEREAS, the B-2 zoning district is the most intensive use zoning district and would be
9 the most appropriate district for having the permitted use of "gun shop."
10

11 WHEREAS, although there is no specific regulation that requires the Village to permit "gun
12 shops" arguably section 790.33, Florida Statutes, could be utilized against the Village in a challenge
13 that the Village is "precluding" or restricting firearms and ammunition by not providing a location
14 for their sales; and,
15

16 WHEREAS, to ensure compliance with 790.33, and to preclude a challenge under that
17 statute, with its waiver of limited sovereign immunity under 768.28, Florida Statutes, with its limits
18 of liability exposure of \$200,000, it is the recommendation of staff to provide for the "gun shop" use
19 in the Village's most intensive business zoning district; and,
20

21 WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay desire to update
22 the B-2 zoning district, also known as the "Business District" to include gun shops.
23

24 NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF
25 THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
26

27 Section 1. The above whereas clauses are incorporated by reference herein.
28

29 Section 2. Chapter 30, of the Village's Land Development Code, at Division 30-50, Section 30-
30 50.17, entitled "B-2 Business District" and the schedule of permitted uses is hereby amended to read
31 as follows:
32

33 **50.17. - B-2, Business District.**
34

35 (a) Purpose The purpose of the B-2, is to provide for large scale commercial and/or office
36 facilities that service the needs of the Village's urban areas.
37

38 (b) Uses permitted. No land, body of water and/or structure shall be used or permitted to be
39 used, and no structure shall be hereafter erected, constructed, reconstructed, moved, occupied or
40 maintained for any purpose in any B-2 District except for one or more of the following uses:
41

42 (1) All uses permitted in the B-1 District.
43

1 (2) Any portion of a building which is between 20 and 30 feet in height shall be set back at least
2 ten feet from the lot line adjacent to any street or thoroughfare. Thereafter, one additional foot of
3 setback shall be provided for each five feet of additional height.
4

5 (3) Automobile parking garages, not over six stories in height, shall be permitted provided they
6 are not located closer than 200 feet to a residential district or to a hospital, church or building used
7 for public assemblage. Automobile parking garages shall meet all open space, lot coverage and other
8 applicable requirements of this section.
9

10 (4) Used automobile and truck sales in conjunction with a new automobile and truck car dealer
11 subject to the following conditions:

12 a. Open lot car and truck sales new and or used, including as ancillary uses, automobile
13 repairs, body and top work and painting, provided that no more than 15 percent of the gross
14 building area is devoted to such ancillary uses, and,

15 b. That a continuous, densely planted greenbelt of not less than 15 feet in width,
16 penetrated only at points approved by the department of planning and zoning and public works
17 department for ingress and egress to the property, shall be provided along all property lines abutting
18 public rights-of-way. The greenbelt shall have shade trees planted at a maximum spacing of 30 feet
19 on center and a hedge of a minimum of six feet in height abutting residentially zoned property and a
20 minimum of three feet in height abutting public rights-of-way. The shade trees shall have a
21 minimum caliper of 2½ inches at time of planting.

22 c. A minimum of 20 percent of the net lot area of the site shall be developed as
23 landscaped open space.

24 d. No vehicles shall be displayed or parked within the 15-foot
25 greenbelt.

26 e. That such uses be conducted on sites consisting of at least 1½ net acre.

27 f. That attention attracting devices, such as blinking or flashing lights, streamer lights,
28 pennants, banners, streamers and all fluttering, spinning advertising devices (either mobile or
29 stationary) are prohibited, except as permitted under point of sale sign regulations.

30 g. That outdoor lighting shall be designed to avoid spilling beyond the site boundaries.

31 h. That no vehicular test drives shall be conducted on residential local traffic streets
32 (50-foot right-of-way or less).

33 i. That the applicant obtains a certificate of use, which shall be automatically renewable
34 yearly upon compliance with all terms and conditions.

35 j. All outdoor paging or speaker systems are expressly
36 prohibited.

37 k. A maximum of 25 percent of the vehicle display area may be used for use car display.

38 l. That a decorative masonry wall at least six feet in height shall enclose the vehicle
39 storage area and repair. The placement of the wall and openings through same shall comply with the
40 requirements contained elsewhere in this section.
41

42 (5) Use watercraft sales in conjunction with new watercraft dealer subject to the following
43 conditions:

1 a. Open lot watercraft sales new and or used, including as ancillary uses, watercraft
2 repairs, body and top work and painting, provided that no more than 15 percent of the gross
3 building area is devoted to such ancillary uses, and subject to the following conditions:

4 b. That a continuous, densely planted greenbelt of not less than 15 feet in width,
5 penetrated only at points approved by the department of planning and zoning and public works
6 department for ingress and egress to the property, shall be provided along all property lines abutting
7 public rights-of-way. The greenbelt shall have shade trees planted at a maximum spacing of 30 feet
8 on center and a hedge of a minimum of six feet in height abutting residentially zoned property and a
9 minimum of three feet in height abutting public rights-of-way. The shade trees shall have a
10 minimum caliper of 2½ inches at time of planting.

11 c. A minimum of 20 percent of the net lot area of the site shall be developed as
12 landscaped open space.

13 d. No watercrafts shall be displayed or parked within the 15-foot greenbelt.

14 e. That such uses be conducted on sites consisting of at least 1½ net acre.

15 f. That attention attracting devices, such as blinking or flashing lights, streamer lights,
16 pennants, banners, streamers and all fluttering, spinning advertising devices (either mobile or
17 stationary) are prohibited, except as permitted under point of sale sign regulations.

18 g. That outdoor lighting shall be designed to avoid spilling beyond the site boundaries.

19 h. That the applicant obtains a certificate of use, which shall be automatically renewable
20 yearly upon compliance with all terms and conditions.

21 i. All outdoor paging or speaker systems are expressly prohibited.

22 j. A maximum of 25 percent of the vehicle display are may be used for use car display.

23 k. That a decorative masonry wall at least six feet in height shall enclose the watercraft
24 storage area and repair. The placement of the wall and openings through same shall comply with the
25 requirements contained elsewhere in this section.

26 l. No stacking of watercraft vehicles in display area. Stacking is permitted in the storage
27 area behind six-foot decorative wall, provided stacking does not extend beyond the height of wall.

28
29 (6) Conservatories and music and dance schools, provided no such establishment is located
30 within 500 feet of any residential district except after approval after public hearing.

31
32 (7) Dancing halls or dancing academies in air-conditioned buildings providing no intoxicating
33 beverages of any kind are served, providing that such establishments are not located closer than 500
34 feet to a residential district.

35
36 (8) Hospitals (other than animal hospitals), subject to the following conditions:

37 a. That such uses shall be on sites of at least ten net
38 acres;

39 b. That the facility shall have capacity for a minimum of 100 beds.

40 c. The certificate of use for the hospital shall be annually renewed.

41 d. That the hospital operates a 24-hour emergency room.

42 e. Notwithstanding the provisions of subsection (f), below, the net lot coverage
43 permitted for all buildings on the site shall not exceed 50 percent of the total lot area; the floor area
44 ratio shall be 50 percent at one story and shall be increased by 14 percent for each additional story
45 up to eight stories, and thereafter the floor area ratio shall be increased by six percent for each

1 additional story. Structured parking shall not count as part of the floor area, but shall be counted in
2 computing building height and number of stories. Enclosed or nonenclosed mall areas shall not
3 count as part of the floor area, for floor area ratio computation purposes, nor as part of the lot
4 coverage.

5
6 f. Notwithstanding the provisions of subsection (h) below, the minimum landscaped
7 open space at one story shall be 14 percent. The minimum landscaped open space shall be increased
8 by one percent for each additional story or part thereof, up to eight stories, thereafter the landscaped
9 open space shall increase by two percent for each additional story or part thereof. For the purpose
10 of computing the amount of required landscaped space where the building height varies, the number
11 of stories shall be equal to the sum of the products of the number of stories of each part of the
12 building(s) of a different height times its floor area divided by the sum of the floor area of all parts
13 of the building(s). The open space shall be extensively landscaped with grass, trees and shrubbery.
14 Water areas may be used as part of the required landscaped open space provided such water areas do
15 not exceed 20 percent of the required landscaped open space. The specific areas within enclosed or
16 nonenclosed malls which are landscaped with grass, trees and/or shrubbery, water areas therein, and
17 areas therein with permanent art display may be used as part of the required landscaped open space
18 provided such areas do not exceed ten percent of the required landscaped open space. Landscaping
19 and trees shall be provided in accordance with Division 30-100 of this Code.

20
21 g. That such uses shall be located within sites having frontage on a major access road,
22 including major roadways (three or more lanes), section or half section line roads and/or frontage
23 roadways serving limited access highways and expressways.

24
25 h. The site shall meet and comply with the provisions of subsections (f) and (h) below,
26 except that the wall may be penetrated at points approved by the directors of the planning and
27 zoning department and the public works department for ingress and egress to afford pedestrian or
28 vehicular access between the sites, and if the property where the facility is located is separated from
29 the AG, I, R or E zoned property by a canal or a previously existing, dedicated and improved
30 roadway, then a wall shall not be required on that portion of the property which is separated by the
31 canal or roadway.

- 32
33 (8) Hotels in compliance with R-H district regulations.
34
35 (9) Liquor package stores.
36
37 (10) Major department stores.
38
39 (11) Night clubs located no closer than 500 feet of any residential, if approved at a public hearing.
40
41 (12) Office parks.
42
43 (13) Pubs and bars.
44
45 (14) Regional shopping centers.

1
2 (15) Self-service storage facility. "Self-service storage facility" shall be defined as a fully enclosed
3 space used for warehousing which contains individual storage units with floor area no greater than
4 400 square feet and an interior height not to exceed 12 feet. No wholesale or retail sales are
5 permitted.
6

7 (16) Gun Shops (Firearms and ammunition sales).
8

9 (16) Any use which is found by the director to be a use similar to one of the above numbered
10 uses and, in his/her opinion, conforms to the intent of this section.
11

12
13 Section 3. Severability. The provisions of this Ordinance are declared to be severable
14 and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be
15 invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,
16 sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the
17 legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.
18

19 Section 4. All ordinances or parts of ordinances in conflict with the provisions of this
20 ordinance are repealed.
21

22 Section 5. This ordinance shall not be codified in the Code of Ordinances but shall be
23 included in the history table.
24

25 Section 6. If any section, clause, sentence, or phrase of this ordinance is for any reason
26 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
27 validity of the remaining portions of this ordinance.
28

29 Section 7. This ordinance shall take effect immediately upon enactment.
30

31
32 PASSED AND ENACTED this [] day of _____, 2011.
33

34
35 Attest: _____
36 Meighan Alexander Shelley Stanczyk
37 Village Clerk Mayor
38

39 APPROVED AS TO FORM:
40

41 _____
42 Eve A. Boutsis
43 Village Attorney
44
45

1 FINAL VOTE AT ADOPTION:
2
3 Council Member Patrick Fiore _____
4
5 Council Member Howard Tendrich _____
6
7 Council Member Joan Lindsay _____
8
9 Vice-Mayor Brian W. Pariser _____
10
11 Mayor Shelley Stanczyk _____
12