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 LOCAL PLANNING AGENGY MEETING AGENDA
Monday, March 12, 2012 - 7:00 P.M.
(To immediately precede Regular Council Meeting)
Village Hall
9705 E. Hibiscus Street
(305) 259-1234

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

2. ORDINANCE FOR SECOND READING (PUBLIC HEARING)

A. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING DIVISION 30-160 ENTITLED "ART IN PUBLIC PLACES" TO CLARIFY APPLICATION OF COUNTY CODE SECTION 2-11.15(2), INCREASING FEE FOR GOVERNMENT PROJECTS TO BE CONSISTENT WITH COUNTY CODE FROM 1.25 TO 1.5 PERCENT; AND CLARIFYING PROCEDURAL APPLICATIONS OF THE DIVISION; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

B. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO SECTION 30-30.7(b) MODIFYING DIVISION 30-30, ENTITLED "DEVELOPMENT APPROVAL PROCEDURES"; TO FURTHER DELINEATE SUBSECTION 30-30.2(p) THE PROCESS FOR REVOCATION, SUSPENSION OR ZONING DENIAL AS IT RELATES TO THE DEVELOPMENT ORDER OR ADMINISTRATIVE DETERMINATION BEING APPEALED AND IMPLEMENTED UNTIL FINAL RESOLUTION OF THE APPELLATE LITIGATION, IN PART OR IN WHOLE; PROVIDING AN EXCEPTION

DUE TO LIFE, SAFETY, OR MATERIAL DETERIORATION AS DEFINED UNDER THE FLORIDA BUILDING CODE OR WHERE PROHIBITED BY STATE STATUTE OR COUNTY ORDINANCE; AND ACCORDINGLY UPDATE SECTION 30-30.14; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Mayor Shelley Stanczyk].

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 and Village Council

Date: March 5, 2012

From: Ron E. Williams, Village Manager

RE: AIPP Updates
Second Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING DIVISION 30-160 ENTITLED "ART IN PUBLIC PLACES" TO CLARIFY APPLICATION OF COUNTY CODE SECTION 2-11.15(2), INCREASING FEE FOR GOVERNMENT PROJECTS TO BE CONSISTENT WITH COUNTY CODE FROM 1.25 TO 1.5 PERCENT; AND CLARIFYING PROCEDURAL APPLICATIONS OF THE DIVISION; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

BACKGROUND:

This Ordinance was not modified from first to second/final reading.

The proposed ordinance seeks to update Division 30-160, entitled "Art in Public Places" (AIPP), in order to clarify certain provisions by providing appropriate definitions, formalizing the establishment of the Public Art Advisory Board and its authority, to align the fee schedule of governmental projects consistent with Miami-Dade County's Public Art ordinance, and provide for a waiver provision for governmental projects that are not buildings. The proposed amendment clearly delineates the AIPP board, provides an official name and definition to the advisory board. Additionally, to assist in implementing the program, certain definitions are suggested to be added and/or modified to further clarify the authority of the AIPP program. Finally, Miami-Dade County, through its home rule authority requires all governments which administer their own AIPP program to conform to their Ordinance to the County's fee schedule for governmental projects. As a result, the Village is required to raise its fee for governmental projects to be consistent with the fee charged by the County.

FISCAL/BUDGETARY IMPACT:
The fiscal impact of this action may result in a small increase in revenue generated from governmental development projects into the AIPP program. The modification of the Village's program simply ensures that our code reflects the requirements of the County Code and its authority under the Miami-Dade County Home Rule Charter.

RECOMMENDATION: Approval.

Attachment: Planning and Zoning Analysis

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING DIVISION 30-160 ENTITLED "ART IN PUBLIC PLACES" TO CLARIFY APPLICATION OF COUNTY CODE SECTION 2-11.15(2), INCREASING FEE FOR GOVERNMENT PROJECTS TO BE CONSISTENT WITH COUNTY CODE FROM 1.25 TO 1.5 PERCENT; AND CLARIFYING PROCEDURAL APPLICATIONS OF THE DIVISION; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay pursuant to the Village's adopted Comprehensive Plan have pledged to develop a Land Development Code tailored to the needs of the Village's residents and properties; and,

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay have enacted a successful Art in Public Places Program (AIPP); and,

WHEREAS, public and private development both contribute to a public art program to enhance and maintain the Village's aesthetic character; and

WHEREAS, in *Metromedia, Inc. v San Diego*, 453 U.S. 490 (1980), the U.S. Supreme Court previously held that land development regulations which require development to meet aesthetic conditions have been generally found to be supported by legitimate public purpose; and,

WHEREAS, in *Ehrlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996), the California Supreme Court held that an art fee on private development is a legitimate aesthetic regulation which does not require the same level of legal scrutiny as an impact fee; and

WHEREAS, the Mayor and Village Council created Division 30-160 entitled "Art in Public Places" to enhance the quality of life through artistic opportunities and to create a cultural legacy for future generations through the collection and exhibition of high-quality art pieces that reflect diverse styles, chronicling history through the collection of artifacts, documents and memorabilia that will acknowledge the past and create programs and activities that will further these goals.

WHEREAS, the Public Art requirements found in this Article are design standards based on the aesthetic needs of the community and are not intended to be either an impact fee or a tax; and,

WHEREAS, the Mayor and Village Council previously reviewed this Ordinance at duly noticed hearings on Ordinance 07-12 and determined that it is consistent with the Village's Comprehensive Plan; and,

WHEREAS, the Mayor and Village Council desire to amend the ordinance in order to clarify certain provisions relating to the Miami-Dade County Art in Public Places requirement, which under its Home Rule Powers derived from the Florida Constitution, makes certain provisions mandatory to the municipalities within its jurisdiction, and to reconcile any discrepancies between the County's and the Village's program; and,

WHEREAS, the Village desires to revise the Village's program, consistent with the County ordinance, 2-11.15, to ensure enforceability and consistency; and,

WHEREAS, Miami-Dade County, through its home rule authority requires all public/governmental projects to provide 1.5 percent of the total cost of a project towards AIPP and the Village's Code needs to be modified from 1.25 to 1.5 percent for governmental projects only; and,

WHEREAS, the Mayor and Village Council desires to amend Division 30-160, and declares that the adoption of this Ordinance amending the existing regulations is necessary, appropriate, and advances the public interest.

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

Section 1. The Village of Palmetto Bay hereby amends Division 30-160, entitled "Art in Public Places" which amendment shall read as follows:

* * *

DIVISION 30-160

ART IN PUBLIC PLACES

* * *

Sec. 30-160.2. - Definitions.

(a) "Artwork" means durable creations that may be original or limited editions of art and that may include, but not be limited to, sculptures, murals, monuments, frescoes, fountains, paintings, stained glass, or ceramics and may include architectural designs, components or structures as provided for under section 30-160.14. The "artwork" medium may include, but not be limited to: glass, steel, bronze, wood, stone and concrete. For purposes of the art in public places program, "artwork" does not include the following:

(1) Directional elements, such as signage or graphics;

(2) Objects that are mass produced in a standard design;

(3) Landscape gardening, unless substantially comprising durable elements defined as "artwork" under this section.

(b) "Construction cost" shall mean the architectural and engineering fees, site work, and contingency allowances for a development project. It shall not include the cost of land acquisition or subsequent cost changes to the construction and/or architectural contract(s). In the absence of

such information being provided by the applicant or the dispute of said submission, the cost shall be based upon the most recent publication of RS Means together with estimated design services fees with all value estimations to favor the Village's interests. All costs to derive at said estimated value as described above shall be borne by the applicant and be considered part of the construction cost.

(~~b~~c) "Development project" means any development, including remodeling, which requires a building permit or permits as described on the precise plan submitted for approval to the Village.

(d) "Durable" means lasting, enduring and highly resistant to deterioration due to weather or the passage of time.

(e) "Life cycle" of an art piece shall mean the natural deterioration period for a piece of art work. Artworks created under this Ordinance are meant to be permanent and should last at least 25 years, when properly designed and maintained. Artwork reaches the end of its life cycle when the artist, or the artist's estate, and/or a qualified art conservator verifies that the artwork has aged or deteriorated to a point where it cannot reasonably be conserved or repaired. Artwork life span cannot be less than 25 years.

(~~e~~f) "Project developer" means the owner, including its successor and assigns, of the subject property.

(~~d~~g) "Project valuation" means the total value of the improvements approved for a development project~~, as indicated on the building permit application or applications~~ submitted to the Village in order to obtain a building permit or permits for the development project, which shall constitutes all of the construction costs identified in this Division.

(h) "Public Art Board" means the entity appointed by the Mayor and Village Council to make recommendations to the Village Council regarding dedication, donations, installations, maintenance and acquisitions of public art to fulfill the requirements of this Article.

(i) "Public Art Fund" means a separate, interest bearing set of accounts set up by the Village to receive monies for the Public Art Program.

(~~e~~j) "Public place" means any exterior area on public or private property within the Village which is easily accessible or clearly visible to the general public from adjacent public property such as a street or other public thoroughfare or sidewalk.

~~(f) "Durable" means lasting, enduring and highly resistant to deterioration due to weather or the passage of time.~~

Sec. 30-160.3. - Administration of the program.

The Village's Art in Public Places Program shall be administered by the Planning and Zoning D~~d~~epartment ~~of community development~~ of the Village. ~~To assist in administering the art in public places program, the Village Council may appoint [a] board.~~

Sec. 30-160.4. - ~~Membership in the advisory~~Public Art B~~b~~oard.

There shall be created a Public Art Board whose membership, meetings, duties, and other responsibilities are as described below.

(a) Membership. ~~Each member of the~~ The Village Council shall ~~recommend a~~appoint members to the Public ~~arts~~ Arts ~~advisory board~~Board, which board shall consist of five members. The mayor and Village Council shall vote on the selection of each member. The ~~board~~Board members shall serve for ~~two~~ four (4) years, under staggered terms, serving without compensation. Each ~~board~~Board member must be knowledgeable in one of the identified fields of: fine art, be employed by any art dealer, art gallery, artists' representative, museum or other entity which derives income from the sale or display of artwork, be a professional in the field of art, architecture, art history, architectural history, urban planning, landscape architecture, interior design, graphic or product design, and possess a minimum of a bachelor's degree in said field from an accredited university. To ensure a balanced and diverse ~~board~~Board it is recommended that two of the ~~board~~Board members be architects (landscape architect, architect, architectural historian, or urban planner); two be skilled in fine art (fine art history, art dealer, art gallery, artists' representative, museum curator, etc.); and one be an interior designer or professor of art or art history.

(b) Meetings. If any member fails to attend two of three successive meetings without cause and without prior approval of the chairman, the committee shall declare the member's office vacant, and the Village Council shall promptly fill that vacancy.

(c) Conflict of interest. If any member of the public art committee shall find that his private or personal interests are involved in the matter coming before the committee, he shall disqualify himself from all participation in that matter. No member of the public art committee shall have his or her work of art considered or approved by the public art committee during their term of service on the committee or for one-year thereafter.

(d) Duties. The ~~board~~Board shall review and propose artwork items to be acquired under the Village's Art in Public Places Program. The ~~board~~Board shall issue a recommendation to the Village Council for all artwork program acquisitions in accordance with this Division. The ~~b~~Board shall oversee the public education, and curatorial aspects of the program. The ~~community development~~ Planning and Zoning director, or his/her designee shall be the liaison to the ~~board~~Board, shall prepare a budget for staff and other expenditures necessary to operate the program and shall deliver an annual report to the Village Council. The ~~b~~Board shall screen submissions and will recommend to the Village Council for final authorization for each acquisition not more than three possible selections, which may be existing works of art or new commissions.

(e) Master art plan and implementation guidelines. ~~should~~ Should the program's fund grow~~s~~ to over a $1,000,000.00, the ~~board~~Board may prepare a master art plan to ensure a coherent acquisition program and implementation guideline~~s~~, both of which must be presented to the Village Council for final approval by resolution. Should this occur, the Village Council, ~~with the assistance~~ per the recommendation of the ~~board~~Board ~~shall~~ may adopt and publish a master art plan ~~and~~

~~written~~with uniform guidelines to govern the manner and method of the submission of proposed works of art to the ~~b~~Board, the process by which the ~~board~~Board shall make recommendations to the Village Council and the process by which the Village Council shall approve acquisition.

Sec. 30-160.5. - Selections of works of art.

All acquisitions will be in accordance with the criteria identified in this Division. The Village Council may approve each acquisition from those elections recommended by the ~~b~~Board. The Village Manager and Village Attorney will negotiate and execute appropriate contracts to acquire each approved work of art. Funds may be aggregated to acquire works of art.

(a) Selection process. The Village Council shall establish procedures for selecting artwork to be purchased from the resources of the art in public places fund. Those procedures may include the following means:

(1) Open competition;

(2) Limited competition;

(3) Invitation;

(4) Direct purchase;

(5) Donation; and,

(6) Any combination of the above.

All ~~board~~Board members, Village Council members, artists, applicants, and respective agents shall comply with the Village's Cone of Silence Regulations.

(b) Selection criteria. In the selection process, the following principles shall be observed:

(1) Works of art shall be located in areas where residents and visitors live and congregate and shall be highly accessible and visible (Maximum visual accessibility to pedestrian or vehicular traffic).

(2) Areas used by tourists, including the water front, parks and thoroughfares, at public or governmental facilities, shall each have a separate master plan which shall be incorporated as a portion of the master art plan.

(3) The ~~board~~Board should consider the inherently intrusive nature of public art on the lives of those frequenting public places. Artworks reflecting enduring artistic concepts, not transitory ones, should be sought.

(4) The ~~board~~Board's selections must reflect the cultural and ethnic diversity of the Village and South Florida without deviation from a standard of excellence.

(5) Final selection shall also take into account appropriateness to the site, permanence of the work in light of environmental conditions at the site, maintenance requirements, quality of the work, likelihood that the artist can successfully complete the work within the available funding, diversity of works already acquired by the Village, diversity of the artists whose work has been acquired by the Village.

(6) Quality of the artwork;

(7) Maintenance requirements;

(8) Whether the artwork too closely resembles a business logo or sign and should, therefore, be rejected;~~ and~~

(9) Any other criteria set forth in the public art program guidelines, as amended from time to time~~.~~;

(10) Ability of the artist to complete the project within a specified schedule and budget;

(11) Exhibition and sales history of the artist, as well as works of art in public collections and previous public art purchases or commissions; and

(12) Any other criteria set forth in the public art program guidelines, as amended from time to time.

Sec. 30-160.6. - Application procedures for placement of artwork on private property; donations of artwork.

An application for placement of artwork on private property but within "public space." or for the donation of artwork to the Village (as a gift or in lieu of a fee), shall be submitted to the Village Council, after review and recommendation by the ~~board~~Board, and shall include:

(a) Preliminary sketches, photographs or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork;

(b) An appraisal or other evidence of the value of the proposed artwork including acquisition and installation costs (to establish the value of art submitted to comply with this program's requirements, the Village may employ an independent art appraiser to provide a written appraisal of the art. Such appraisal shall either be funded from the Art in Public Places Fund or by the developer as part of the overall art contribution);

(c) Preliminary plans containing such detailed information as may be required by the Village to adequately evaluate the location of the artwork and its compatibility with the proposed development project and/or with the character of adjacent developed parcels and the existing neighborhood;

(d) A written agreement executed by the artist who created the artwork, in which he or she expressly waives all rights that may be waived under applicable state and federal laws. The artist of approved artwork shall grant to the Village an unlimited, perpetual, nonexclusive, royalty-free, irrevocable license to reproduce and distribute two-dimensional reproductions of the artwork for Village-related purposes, and grant to the Village the exclusive irrevocable ownership rights in any trademark, service mark, or trade dress rights regarding the artwork, pursuant to a license that shall be approved by the Village Attorney. Village approval of the artwork shall be deemed to be a grant of the artist for authorization by third parties to review and reproduce documents provided by the artist to the Village which are deemed to be public records pursuant to the public records laws of the state. The Village shall also have the option of referring to the name and title of the artist and artwork in reproductions;

(e) When artwork is to be placed on private property, a written statement executed by the property owner and approved by the Village Attorney that requires the landowner or his or her successors and assigns to defend, indemnify and hold the Village harmless against any liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from any claim, action or liability related to the artwork;

(f) A narrative statement to be submitted to the Village to demonstrate that the artwork will be displayed in a public place; and

(g) A statement indicating the property owner's willingness to maintain the artwork in compliance with ~~section~~ 30-160.~~14~~15

(h) Ownership and upkeep. Ownership of all works of art acquired by the Village under this program is vested in the Village. The art in public places ~~board~~Board and the Village Council are charged with the custody, supervision, maintenance and preservation of such works of art. In each instance, the Village shall acquire title to each work of art acquired.

Sec. 30-160.7. - Applicability.

(a) Government development projects. All government development projects shall provide for the acquisition of works of art equivalent in value to not less than one and one-half (1½) percent of the construction cost of the project, provided that no funds may be appropriated for this purpose from the ad valorem tax operations fund.

(~~a~~b) Nongovernmental and private sector development projects. ~~All commercial~~ All nongovernmental and private sector development projects (including interior or exterior modifications, additions, or new construction) including: parking structures, residential developments of more than two units, mixed use projects, and/or commercial sites shall provide for the acquisition of works of art in value to not less than one and one quarter (1¼) percent of the construction costs, for artwork provided on site, or one (1) percent of the construction costs for either art work provided off site or a contribution to the art fund or some combination thereof, subject to the project valuation schedule below:

(1) ~~with a p~~Project developments with construction costs ~~valuation(s) as provided for under the development order or building permit(s)~~ exceeding $250,000.00 shall be subject to the provisions of this Division.

(2) A single residential unit (including interior or exterior modifications, additions or new construction) with construction costs exceeding ~~a project valuation of~~ $750,000.00 shall ~~also~~ be subject to the provisions of this Code. ~~If the art (residential or commercial) remains on private property or is an architectural design component of a project, then, an additional quarter percent shall be required. Individual tenant improvements in any commercial or mixed-use development shall comply with this provision. All interior, exterior modifications, additions, or new construction to a single residential unit (versus developments for commercial sale of two or more residential units) with a project value under $750,000.00 shall be exempt from contributing to the art in public places program or fund.~~

(~~b~~c) Exemptions. Nongovernmental and private sector development projects maybe exempt from this Division by ~~As determined by~~ the Village Council, ~~after public hearing, the development, remodeling or reconstruction of structures may be exempt from the fee for the art in public places program if~~provided:

(1) The structure is intended primarily to house one or more social service agency providers, affordable housing projects, or religious facilities; or,

(2) The project consists of the reconstruction of structures which have been damaged by fire, flood, wind, or other calamity.

(3) Governmental development projects or portions thereof that do not include buildings.

Sec. 30-160.8. - Building permits.

(a) Copies of this Division shall be made available upon request to the public and shall be provided to any party applying for approval of a development project within the Village.

(b) Prior to issuance of a final building permit, a temporary certificate of occupancy or certificate of occupancy, the applicant or developer for projects subject to this Division shall be required to either:

(1) Pay the appropriate fee as identified in Section 30-160~~one percent of the value of the proposed project of total project valuation of the development project excluding land acquisition and off-site improvement costs, not to exceed $400,000.00, for an art fee~~;

(2) Donate artwork which have been approved by the ~~board~~ Board and Village Council, ~~and which artwork is documented minimum value is one percent of the value of the proposed project development, not to exceed $400,000.00, in lieu of the fee~~;

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(3) Place artwork, which shall have been approved by the ~~board~~ Board and Village Council, ~~and which shall have a minimum value of 1.25 percent of the value of the proposed project development, on the property on which the development project is located, not to exceed $400,000.00, in lieu of the fee~~; or,

(4) A combination of the above subject to the approval of the Village Council.

(5) Any party may contribute amounts or artworks valued at amounts greater than those required by this section.

* * *

Sec. 30-160.12. - Donation of art.

Any art proposed to be donated to the Village in lieu of payment of a fee to the art in public places fund, or otherwise to fulfill the obligations set forth in section 30-160.7, must qualify as an artwork, and must be approved by the ~~board~~Board and Village Council as provided for under sections 30-160.5 through 30-160.6.

Sec. 30-160.13. - Approval for placement of artwork on private property; donations of artwork in lieu of a fee; donations.

(a) Completed applications shall be submitted to the ~~board~~Board as provided for under section 30-160.6 and ultimately to the Palmetto Bay Village Council for review and approval of the artwork including consideration of the artwork's conformity to the definition of "artwork," its aesthetic quality and harmony with the existing on-site improvements and neighborhood, and its proposed location and public accessibility.

(b) If, after review, the applicant proposes, or the Village Council subsequently recommends, significant revisions to the architecture or physical design and layout of the proposed project, the revised application shall be returned to the Village Council for further review and recommendation concerning the revised proposal.

Sec. 30-160.14. - Ownership and maintenance of artwork placed on the site of a project.

(a) All artwork placed on the site of a development project shall remain the property of the ~~Village~~site's owner. The obligation to provide all maintenance necessary to preserve and maintain the artwork in good condition shall remain with the owner of that site and the owner's successors and assigns, unless ~~an~~ agreed~~ment~~ ~~with the~~to otherwise by resolution of the Village Mayor and Council ~~is reached and recorded~~. Application for such request and all associated fees with processing same shall be borne by the applicant.

(b) The obligation to maintain the artwork shall be enforced as follows:

(1) Prior to the placement of the artwork on a development project, the property owner shall record a document with the county recorder setting forth a description of the artwork

and acknowledging the obligation of the property owner to repair and maintain it. This document and the underlying covenant shall run with the land for a minimum of five (5) years, and shall provide notice to future property owners of the obligation to repair and maintain the artwork and of certain limitations related to any federal, state or local laws governing the rights of the artists including but not limited to rights regarding the alteration, modification or relocation of subject artwork. The Village shall be a signatory party to this document, and its final form and content shall be approved by the Village Attorney.

(2) Maintenance of artwork, as used in this Division, shall include, without limitation, preserving the artwork in good condition to the satisfaction of the Village, protecting the artwork against physical defacement, mutilation or alteration, and securing and maintaining insurance coverage for fire, wind, vandalism and extended liability in an amount to be determined by the Village Attorney. Maintenance requirements shall be enforcable by the Village for the "life cycle" of the specific artwork.

(3) At any time the Village Council determines that artwork has not been maintained in substantial conformity with the manner in which it was originally approved, the code compliance division of the Village, as authorized by the Village Council, shall require the current property owner to either:

a. Repair or maintain the artwork; or

b. After reasonable notice, pay the lesser of either the costs estimated by the Village to be required to repair and maintain the artwork and/or secure and maintain insurance for the artwork, or the percent for the art fee required under this Division, based upon the current fee schedule and the current fair market value of the building, structure or improvement for which the artwork was required, as determined by the county tax assessor.

The Village may additionally issue notices of civil infraction for failure to maintain the art work in accordance with the Village's notice of Civil Infraction Fine Schedule contained in 2-205, of the Village's Code of Ordinances.

(c) Stolen or removed artworks are to be replaced by the owner. Replaced pieces are to be reviewed and approved by the Village Council subject to the criteria set forth in this Division.

(d) All artwork donated to the Village shall become the property of the Village upon acceptance by the Village Council.

PASSED AND ENACTED this ____ day of _____, 2012.

First Reading: _____

Second Reading: _____

Attest: _____ _____

Meighan Rader
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____

Eve A. Boutsis,
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Howard Tendrich _____

Council Member Joan Lindsay _____

Vice-Mayor Brian W. Pariser _____

Mayor Shelley Stanczyk _____

To:	Mayor and Village Council	Date:	March 5, 2012
From:	Eve A. Boutsis, Village Attorney	Re:	Division 30-30 Second Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO SECTION 30-30.7(b) MODIFYING DIVISION 30-30, ENTITLED "DEVELOPMENT APPROVAL PROCEDURES"; TO FURTHER DELINEATE SUBSECTION 30-30.2(p) THE PROCESS FOR REVOCATION, SUSPENSION OR ZONING DENIAL AS IT RELATES TO THE DEVELOPMENT ORDER OR ADMINISTRATIVE DETERMINATION BEING APPEALED AND IMPLEMENTED UNTIL FINAL RESOLUTION OF THE APPELLATE LITIGATION, IN PART OR IN WHOLE; PROVIDING AN EXCEPTION DUE TO LIFE, SAFETY, OR MATERIAL DETERIORATION AS DEFINED UNDER THE FLORIDA BUILDING CODE OR WHERE PROHIBITED BY STATE STATUTE OR COUNTY ORDINANCE; AND ACCORDINGLY UPDATE SECTION 30-30.14; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

BACKGROUND:

In 2010, the Village established Division 30-30 which provided for, among other authorities, the scope and procedures by which the village granted various development orders. Once granted, a development order confers upon a property certain development rights, however should such an order become the subject of an appeal, the full scope of those rights may be subject to change following full disposition and final order by the appellant authority with competent jurisdiction. The proposed ordinance clarifies existing language within Division 30-30 which provides for the status of a development order subject to appeal and any subsequent development orders (permits, certificates, et.al.) related thereto. The intent of the proposed changes is to ensure the integrity of the initial development order until such time that all appeals, whose outcome may alter the development rights of the order, are concluded and finalized.

The proposed revisions to Division 30-30 were reviewed for consistency with the criteria established in Section 30-30.7(b). The following is a review of those criteria:

Criteria (1): Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the Village's concurrency Management Program.

Analysis: The Comprehensive Plan and the Village's concurrency management plan do not address appeals of development orders. The Village must apply its procedures uniformly.

Finding: Not applicable.

Criteria (2): Wither the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: The proposed amendment brings clarity to the Village's procedures for appeal of zoning determinations or revocation of permits.

Findings: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: The proposed change supports the Village's desire to ensure the integrity of development orders authorized by Division 30-30, and as to the conformance of a proposed project to the development standards of the Village's Land Development Regulations.

Findings: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and locations of uses involved, the impact on the adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land sues.

Analysis: The proposed ordinance does not change the list of permitted uses within the Village's zoning districts.

Finding: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and service; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: The intent of the proposed ordinance is to maintain the integrity of a development order until such time that all appeals have concluded. The proposed ordinance

clarifies existing language which seeks to prevent further issuance of any development orders of a development subject to appeal pending final disposition thus mitigating any unknown impact on the capacity of existing facilities or services that may result from any final decision of said appeal.

Finding: Consistent.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer wildlife habitats, and vegetative communities.

Analysis: The intent of the proposed ordinance is to maintain the integrity of a development order until such time that all appeals have concluded. The proposed ordinance clarifies existing language which seeks to prevent further issuance of any development orders of a development subject to appeal pending final disposition thus mitigating any unknown impact on the natural environment that may result from any final decision of said appeal.

Finding: Consistent.

Criteria (7) Whether, and to the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis The proposed amendment brings clarity to the Village's procedures for development orders subject to appeal. The changes would not affect property values or adversely affect the general welfare.

Findings: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern, Any positive and negative effects on land use patter shall be identified.

Analysis The intent of the proposed ordinance is to maintain the integrity of a development order until such time that all appeals have concluded. The proposed ordinance clarifies existing language which seeks to prevent further issuance of any development orders of a development subject to appeal pending final disposition thus mitigating any unknown impact land use patterns that may result from any final decision of said appeal.

Findings: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose of Chapter 30.

Analysis: The proposed amendment brings clarity to the Village's procedures for development orders subject to appeal, thus it is consistent with Chapter 30.

Findings: Consistent.

Criteria (10) Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: As per the direction of the Village Council.

Finding: As determined by the Village Council.

FISCAL/BUDGETARY IMPACT:

None at this time.

RECOMMENDATION:

It is the decision of the Village Council to proceed with the modifications.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO SECTION 30-30.7(b) MODIFYING DIVISION 30-30, ENTITLED "DEVELOPMENT APPROVAL PROCEDURES"; TO FURTHER DELINEATE SUBSECTION 30-30.2(p) THE PROCESS FOR REVOCATION, SUSPENSION OR ZONING DENIAL AS IT RELATES TO THE DEVELOPMENT ORDER OR ADMINISTRATIVE DETERMINATION BEING APPEALED AND IMPLEMENTED UNTIL FINAL RESOLUTION OF THE APPELLATE LITIGATION, IN PART OR IN WHOLE; PROVIDING AN EXCEPTION DUE TO LIFE, SAFETY, OR MATERIAL DETERIORATION AS DEFINED UNDER THE FLORIDA BUILDING CODE OR WHERE PROHIBITED BY STATE STATUTE OR COUNTY ORDINANCE; AND ACCORDINGLY UPDATE SECTION 30-30.14; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Mayor Shelley Stanczyk].

WHEREAS, the Mayor and Village Council as the Land Planning Agency and Council created Division 30 of Chapter 30, entitled "Development Approval Procedures" relating to zoning applications, public hearing procedures, notice requirements relating to public hearing items; procedures for hearing variance requests, land development code amendments, Comprehensive Plan amendments; administrative modifications, and appeal procedures; and,

WHEREAS, the Mayor and Village Council desire to preserve the integrity of the Village's development orders and determinations until such time that any appeal related thereto has completed all appeal proceedings; and,

WHEREAS, it is thus the desire that no permits be issued, and in fact, may be suspended where not prohibited by State Statute or County Ordinance, during the pendency of an appeal of an administrative determination, and/or public hearing zoning resolution or development order issued by the Village Council or the Village administration; and,

WHEREAS, to protect the applicant and the Village and to ensure clear direction, after a decision by the judiciary as to an appealed item, no permits shall issue until the matter is resolved and all appeals are terminated; and,

WHEREAS, should any permits have issued prior to an appeal, those permits, where not prohibited by State Statute or County Ordinance shall be suspended pending final resolution of the appellate matter; and,

WHEREAS, the Village Council have reviewed the criteria of 30-30.7(b) and find the ordinance in compliance with the applicable standards; and,

WHEREAS, if one portion of an administrative determination, Council zoning resolution, or development order is appealed, all permits relating to that determination, resolution or order shall be suspended or not issued at all, pending resolution of the appellate litigation.

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

Section 1. Pursuant to the requirements of 30-30.7(b) of the Village's Code, the following text change is in compliance with the Village's Comprehensive Code and review criteria. The Village of Palmetto Bay hereby amends Division 30 of Chapter 30, entitled "Development Approval Procedures" at Section 30-30.2 and 30-30.14, which sections shall read as follows:

* * *

DIVISION 30-30

DEVELOPMENT APPROVAL PROCEDURES

* * *

30-30.2 GENERAL APPLICATION REQUIREMENTS.

* * *

(p) Denial, revocation and suspension of zoning approvals relating to certificates, development orders, administrative decisions or any other order as authorized by Division 30-20. The Village may deny, revoke or suspend a zoning approval relating to certificates, development orders, administrative decisions or any other order as authorized by Division 30-20, where not prohibited by State Statute or County Ordinance, ~~issued~~ under this Division if the Village determines that the applicant has:

(1) violated any provision of this Chapter 30;

(2) misrepresented or concealed a fact on the application, renewal application or replacement application for a registration certificate;

(3) aided or abetted a person who has failed to obtain a certificate in order to evade or avoid the provisions of this Division;

(4) engaged in any conduct as part of the performance of a contract for service which constitutes fraud;

(5) violated any condition, limitation, or restriction of a certificate imposed by a Village;

(6) failed to comply with the terms of a cease and desist order, notice to correct a violation, written assurance of compliance, or any other lawful order of the Village; ~~and/or,~~

(7) is found in violation of, or convicted of a violation of this Division; or

(8) if permit, certificate, development order, administrative decision or any other order as authorized in Division 30-20, is the subject of an appeal.

~~Notwithstanding the foregoing~~Except as provide for at 30-30.14, no revocation or suspension of a certificate development order, administrative decision or any other order as authorized by Division 30-20, by the Village shall be effective until the rendition of the appeal, if any, of the revocation or suspension, or until the time period for filing an appeal has expired, whichever is later.

(q) Civil fines/citations. In addition to any other judicial or administrative remedies or penalties provided by law, rule, or regulation, any person who violates any of the provisions of the certificate requirements, any cease and desist order of the Village, any notice to correct a violation, or any assurance of compliance, with respect to the matters regulated herein, or any other lawful order of the Village, or any condition, limitation, or restriction of a certificate issued by the Village, shall be subject to the imposition and recovery of a civil fine/infraction in an amount of not more that $500.00 per offense in conjunction with the Village's fee schedule. Each day during any portion of which the violation occurs or continues to occur constitutes a separate offense. The funds recovered by the Village shall be deposited in the Village's Code Compliance fund to be used for code compliance purposes.

Appeals of civil fines/citations shall be to the special master pursuant to Section 2-205 of the Village's Code of Ordinances.

(r) Criminal penalties. In addition to any other judicial or administrative remedies or penalties provided by law, rule, or regulation, if any person violates, fails, or refuses to obey or comply with any provision of this Division, or any lawful order, any cease and desist order any notice to correct a violation, any assurance of compliance, or any condition, limitation, or restriction of a certificate issued by the Village, that person, upon conviction of any offense, shall be punished by a fine not to exceed $500.00 or imprisonment not to exceed 60 days in the county jail, or both, in the discretion of the court. Each day or portion thereof of continuing violation shall be deemed a separate offense.

* * *

30-30.14 APPEALS.

(a) Stay pending appeal.

(1) Rezoning Actions. In the event an application is made for a change of zoning on property which possesses any variance, conditional use, ~~or~~ site plan review, or administrative determination as provided by Division 30-20, no permits or certificates shall be issued for such variance, use, special permit, or administrative determination as provided by Division 30-20, until the order on the application becomes final and any appeal proceeding is concluded. If the application for change of zoning is approved, the variance, conditional use, special permit or plan review shall terminate, unless continued by the rezoning resolution; otherwise such prior approval shall terminate with the approval of the rezoning application. No plans may be submitted to the Building Department until the application for zoning hearing has been approved, or approved with modifications, and has not been appealed.

(2) During an appeal of a development order, whether issued administratively or by the Village Council, and whether the appeal is for the entirety of the order or just a portion thereof, any zoning approvals relating to that development order being appealed shall not be issued until the appeal becomes final and all appeal proceedings are concluded. Further, zoning approvals for a development order or permit issue, except those associated with a building permit not related to the development order being appealed and regardless of whether the appeal is for the entirety of the order or just a portion thereof, shall not be issued/granted until the appeal becomes final and all appeal proceedings are concluded. During any appeal, all permits relating to the item(s) appealed shall be, were not prohibited by State Statute or County Ordinance, revoked or suspended, as applicable. If a portion of an administrative determination, Council zoning resolution or development order is appealed, all permits and approvals relating to that determination, resolution or development order shall be stayed pending final resolution by the Courts. No permits may issue by any regulating agencies, including but not limited to Miami-Dade County DERM, Fire, or Public Works, if directly related to the matter being appealed. The application for, and issuance of permits to the appealing party shall result in civil fines as provided under subsections (q) and (r) below, and may result in the Village seeking an injunction in the applicable Court, the cost of which proceeding shall be born by the violating applicant. An exception to the foregoing shall apply to the issuance of permits due to life safety or material deterioration under the Florida Building Code or prior issued permits unrelated to the specific development order being appealed.

(3) A variance, conditional use, new use, special permit, or unusual use shall be deemed to have been utilized if the use pursuant thereto shall have been established, or if a building permit has been issued, and the development to which such variance, conditional use, or special permit is an integral part is progressively and continuously carried to conclusion.

(b) Exhaustion of remedies required; rendition of development orders. No person aggrieved by any resolution/ordinance relating to rezoning, order or determination of the Village or the Village Council pursuant to Chapter 30 may apply to the court for relief unless that person has first exhausted the remedies provided for herein. It is the intention of the Village Council that no application shall be made to the court for relief except from resolution or ordinance on rezoning adopted by the Village Council. Development orders of the Village Council shall be reviewed by the filing an appeal as provided for under the Florida Rules of Appellate Procedure in the appropriate court. A development order is final for purposes of filing an appeal or writ of certiorari to the appropriate court only upon the order's execution by the Village Clerk.

(c) Appeals from actions, decisions or determinations of the Village Administration. Any person regulated by this Division who is aggrieved by any action, decision or determination of the Village Administration due to an administrative review, as provided in this Division, may request an administrative quasi-judicial public hearing before the Village Council to appeal the action, decision or determination of the Village review which resulted in the grievance. Appeal by administrative hearing of the action, decision or determination complained of shall be accompanied by filing a written request with the Village within 15 calendar days of the date of the action, decision or determination complained of. The written notice of appeal shall set forth the nature of the action, decision or determination to be reviewed and the basis for the administrative hearing. Customers or the business or use regulated shall not be deemed to be persons regulated by this Division for the purposes of this section. The appeal shall clearly state that the denial of the application for the variance constitutes an error by the Village, and that the interpretation of any portion of the regulations or criteria set forth in this section. The Village Council shall set the matter for hearing on the earliest practicable regularly scheduled hearing date. The Village Council shall hear and consider all relevant and the Council may affirm, modify or reverse the action, decision or determination appealed from. The decision of the Village Council shall constitute final administrative review and no rehearing shall be permitted. Nothing herein shall be construed to prevent or prohibit the Village from instituting any civil or criminal action or proceeding authorized by this Division at any time. The Village Council shall conduct a *de novo*, quasi-judicial public hearing on the appeal and issue a written determination approving, approving with conditions, or denying the variance.

(d) Judicial Review. The Village, the Village Council, or any person regulated by this Division who is aggrieved by any decision of the Village Council may appeal a final order by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with procedures and within the time provided by the Florida Rules of Appellate Procedure for review of administrative action. <u>The review shall not be a de novo review, but shall be a review based upon the established record.</u> The words "action," "decision" and "determination" as used herein shall not include the filing or institution of any action, conference or proceeding by the Village in any court or otherwise. Customers shall not be deemed to be persons regulated by this Division for the purposes of this section.

(e) Copy of the record. For the purposes of review by the Court, the Village shall make available for public inspection and copying the record upon which each final decision of the Village Council is based. Prior to certifying a copy of any record or portion thereof, the Village shall make all necessary corrections in order that the copy is a true and correct copy of the record. The Village may make a reasonable charge commensurate with the cost of furnishing the record or any portion thereof.

* * *

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 3. This ordinance shall be codified and included in the Code of Ordinances.

Section 4. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 5. This ordinance shall take effect immediately.

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

Attest: _____ _____

Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

_____

Eve A. Boutsis
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Howard Tendrich _____

Council Member Joan Lindsay _____

Vice-Mayor Brian W. Pariser _____

Mayor Shelley Stanczyk _____