



---

To: The Honorable Mayor and Village Council

Date: February 6, 2012

From: Eve A. Boutsis, Village Attorney

Re: Village Attorney Update

---

**A. Ordinances –**

1. Emergency ordinance and permanent repeal of Park Rule 20-63 relating to the use of weapons in parks. Emergency ordinance enacted December 19, 2011, which is effective for sixty (60) days. First reading also held on permanent repeal of ordinance on December 19, 2011. Second reading scheduled for January, 2012. Items being repealed due to preemption in State law. Emergency Ordinance enacted December 2012. Permanent repeal enacted January 2012.

2. A similar revision is proposed for the Alcoholic Beverages chapter, found at 30-130. This item was discussed at a COW relating to business request to allow package sales on Sundays, hours of operation the same as weekdays. First reading held on January 2012. Scheduled for LPA and second reading on February 6, 2012.

3. An ordinance to modify certain temporary signs. During the January 24, 2011 COW meeting Council Person Howard Tendrich requested certain revisions to the signage code - to limit the number of banners allowed during a year, and to limit political signage (limitation on length of time to install signs). Staff shall begin drafting the ordinance revisions. [Sponsored by Council Person Tendrich, VM Brian Pariser and Mayor Stanczyk]. The Ordinance for first reading and cover memorandum has been prepared. The item was heard during the May and June council meetings. The item was tabled for further discussion. The Village Council, during the July 2011 COW provided direction to staff. Item sponsored by several council persons, as to different items. This became a discussion item during the November 28, 2011 COW. Mayor Stanczyk sponsored the January 2012 first reading of a more limited sign ordinance revision, relating solely to certain temporary signs - as to size and duration, including but not limited to political signs. Second Reading scheduled for February 6, 2012.

4. Modification of Division 30-30 relating to zoning items. [Sponsored by Mayor Stanczyk]. Discussed at the October Committee of the Whole. First Reading to be held on February 6, 2012.

5. An ordinance relating to amending the Art in Public Places Ordinance to conform to the Home Rule Powers of Miami-Dade County, relating to increasing the government project funding from 1.25 to 1.5 percent and clarifying certain details in the ordinance. Discussed during the January COW meeting. First Reading scheduled for February 6, 2012.

6. An ordinance creating the "Friends of Thalatta Advisory Board" with procedures, donation policies, and tenure. Discussed during October COW meeting. Update provided during the January COW meeting. Proposed for first reading on February 6, 2012. [Sponsored by Mayor Shelley Stanczyk].

7. Staff has received Council authorization to draft an ordinance to create the process for implementing the citizen initiative relating to increase of student population at private schools. A draft has been reviewed by Planning and Zoning and the Clerk's office. The draft is being distributed to the Miami-Dade County Elections Department, as the Elections Department shall have to coordinate with the Village on scheduling an election/ballot and the procedures for calculating the 2,000 foot radius from a private school, along with registered voters. A meeting was held with the MDC Elections Department. This item was discussed during the January COW meeting and staff will begin drafting and review to bring this item to the Council. Sponsored by Council Person Joan Lindsay. Staff will bring this forward to a future COW upon review by Planning & Zoning.

8. An ordinance relating to a Code of Conduct for all public meetings. This is an ordinance for future good governance and is modeled after South Miami and Doral's ordinance. Seeking direction from the Village Council whether to bring this item to a COW meeting.

9. Upon receipt of go-ahead, drafting regulations, within one-year moratorium period, relating to pre-annexation procedures.

10. The Village Charter does not specifically designate a mechanism for an initiative or referendum by the community to amend the Charter. The Charter, at Article VI (A) states that the Village is to enact an ordinance to implement such a provision, in compliance with Section 6.03 of the Miami-Dade County Charter. Counsel seeks authorization to proceed on this item at an upcoming Council meeting. During the January 24, 2011 COW meeting, the Village Council directed that staff begin working on drafting this ordinance. Sponsored by Council Person Joan Lindsay. Staff has begun drafting this Ordinance.

11. An ordinance relating to special event process ordinance. Heard on first reading November 1, 2008. Item tabled at first reading. Further discussion had at November 19, 2008 COW meeting and direction provided to staff regarding same. Council held discussion regarding special events during their June council meeting.

12. An ordinance relating to Institutional Uses. Staff is awaiting instruction on this matter.

13. In reviewing the enacted Land Development Code and Village's general code of Ordinances it has come to staff's attention that certain edits are required, including certain "scrivener's errors" type items, and certain edits staff recommends. For example, between 2002-2007 P&Z was known as "Community Development." All the code provisions dating prior to 2008 need to be modified to reflect Planning & Zoning Department and not Community

Development. Additionally, any code provisions, outside of the LDC that reference a County zoning map designation needs to be modified to reflect the current Village zoning map designation. Staff is not planning to bring this item to a COW as it truly is a scrivener's error type ordinance, due to the 2.5 year review and adoption of the LDC. Staff anticipates bringing the item to the Village Council shortly. The Ordinance for first reading and cover memorandum has been prepared.

14. A resident requested a modification to the Village's Land Development Code. The Miami-Dade Board of County Commissioners has amended the Ordinance Relating to Zoning Regulations of Awnings, Canopies and Tents by amending Sections 33-64, 33-65, 33-69, 33-71 and 33-77; and deleting Sections 33-72 and 33-81 of the Code of Miami-Dade County. This amendment, among other things, changed the backyard setback requirement for awnings from twenty-five feet to ten feet. No action has been taken on the request to mirror the Village's Code to the modification requested to mirror the County Code. This item will be brought to a COW for direction.

15. Creation of ordinances relating to filming on private property. Sponsored by Mayor Shelley Stanczyk.

16. Modification of the Village's Noise Ordinance. Requested by Council Person Lindsay. Discussed during June COW meeting. Will be working with CP Lindsay on this item.

17. An ordinance amending section 2-49 of the Village's Code of Ordinances, relating to Village Council meeting procedures - requiring the silencing of all electronic devices during council meetings by audience, staff, and council; and providing for the Police Commander to act as "Sergeant at Arms". Discussed during the July 2011 COW. This item has not proceeded to a First Reading. Awaiting further direction from the Council. [Sponsored by Mayor Shelley Stanczyk].

18. An ordinance amending 30-30.6 relating to variances; to modify the strict hardship standard. [Sponsored by Council Person Patrick Fiore]. Discussed during January COW meeting. Staff is currently drafting the document and proposing first reading for March 2012.

19. An ordinance proposing to close a Cone of Silence loop hole. Discussed for past few months. First reading was held in December and tabled for a COW. Discussed again during the January COW meeting. During February the Council will hold a COW with a concentrated meeting as to the procurement code.

## **B. Contracts**

1. Attention to pending county ordinances that may affect the village with a county wide application.

2. Attention to charter school statutory amendments enacted by Legislature. Attended meetings with the City of Coral Gables, Pinecrest, Miami, Miami-Dade County, and School Board relating to the legislation and application of same.
3. Attention to termination of PW contractor.
4. Attention to Portland contract conclusion.
5. Attention to Village Hall contract.
6. Attention to Thalatta Contracts.
7. Attention to Villagio indemnification.
8. Drafted short term contracts.
9. Reviewed and finalized Palmetto High - Use agreement for baseball field.

**C. Resolutions.**

1. A Resolution creating and establishing an Educational Compact Committee.

**D. Special report.**

1. Continued to work with Fire Rescue on finalizing site plan and County approval process for the PBVC location.

2. Attention to FPL litigation.

3. Please continue to refrain from community contact on the Palmer Trinity matter as the Village is in litigation – three law suits – the 2008 original action, the 2010 declaratory action and the 2010 petition for certiorari. The Village held the remand hearing on the special exception and site plan modification on June 19, 2011, at Christ Fellowship Church. The Village took action and the resolution has issued. Palmer Trinity has indicated that it will probably appeal and may seek sanctions against the Village. Please do not discuss with third parties as litigation remains pending. The hearing on the Motion to Dismiss was held, waiting on Order.

4. Certain residents have inquired whether the wall permit application for the "Hester" property, 8001 SW 184th Street, Palmer Trinity property complies with the enacted zoning resolution. Careful review was undertaken and confirmed that the wall meets the purpose, intent and determination of the underlying zoning resolution 2010-048.

5. Attended Workshop for the Charter Revision Commission. After input and conclusion of Charter Revision Commission meetings our office shall work with the Clerk and committee on drafts and revisions to be placed on next Village regularly scheduled election.

6. This summer, the State Sunshine law created a new exemption to some procurement meetings: (1) any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of competitive solicitation, or which a vendor answers questions as part of a competitive exemption; (2) Any portion of a team meeting at which negotiation strategies. Under the

modification to 286.0113(2)(b), these discussions are exempt from Article I, Section 24(b) of the State Constitution and 286.011, Florida Statutes. Currently, there remains a prohibition under the County Procurement Code and the Village's Procurement Code. In reviewing the Village's Procurement Code at an upcoming COW meeting, the Village may want to make its code consistent with the modification to state law.

7. The Ethics Commission of Miami-Dade County will be holding a public comment period on a policy intended to be implemented by the Commission relating to complimentary tickets to City officials. A copy of the memorandum was previously circulated to Council. In short, the municipality should develop a "public benefit" cause in its contracts; any tickets should be distributed in a non-political, neutral manner with no interference from local officials; if the local official receives a ticket, and its value is over \$100, it is to be reported as a gift; if the gift is from a lobbyist, the gift must be declined pursuant to section 112.3184(4), Florida Statutes; and no reporting of gift, if there is a public purpose. To be "seen" by an elected official's constituency would not be considered a public purpose.

8. Commissioner Linda Bell is seeking to modify the County's Lobbying Code. The Village may want to look at the code provisions to see if comparable revisions should be made to the Village Code. In short, within 60 days of registering, the lobbyist must go through training with the Commission on Ethics, and would be charged a \$100.00 training fee. A second proposed modification would require all County staff to go through training, or refresher course with the Commission on Ethics relating to conflicts of interest, code of ethics, sunshine law, and public records. The Village already has an informal process for requiring periodic training of staff as to these issues. This code provision, if adopted, by county would codify such a procedure. If the Village were to follow the County, it would be codifying its practice into the code. Additionally, the County proposes an anti-lobbying provision by ex commission staffers for a four year period. Currently the County Code provided a two year period. Finally, a provision is being proposed as it relates to a commissioner being retained or employed by an entity that receives county funds, and requiring that commissioner to seek an Ethics Opinion. A copy of the draft ordinances were previously circulated to Council.

**E. Litigation report.** Each council person should avoid discussions with the Community about this possible project to ensure compliance with the Jennings Rule and due to attorney-client privilege. Please maintain all records relating to any communications from third persons on this property – record the time, date, location, subject matter. Please advise the community to refrain from contacting you.

1. As this information is privileged, an update will be provided individually and/or at an appropriately designated attorney-client meeting.

Palmer Trinity v. Village of Palmetto Bay: (a) Oral argument was held on the Palmer Trinity v. Palmetto Bay, certiorari action (appellate matter) on Monday, February 22, 2010 before the Third District Court of Appeals. The Appellate Court reversed and remanded the litigation.

First hearing on the rezoning ordinance was held on April 29, 2010. Second reading of the ordinance was held on May 4, 2010, along with the remainder of the original application. (b) The Applicant has filed two new suits against the Village: a new petition for certiorari (an appeal) and an original action. Village's response to the School's petition for certiorari has been filed. Palmer Trinity's response is due in mid-September. The Interveners have adopted our brief as their own. (c) The Village has filed an opposition to Plaintiff's motion to amend its pending 2008 original action. The Court granted Plaintiff's motion to amend. The Village has filed a motion to dismiss that is scheduled for hearing in 2011 (due to Judge's calendar). Discovery is ongoing. There may be a substitution of counsel in the two litigation matters (2008 and 2010) of Mr. Sean Cleary in place of the Bilzin firm. Jeff Hochman of the Johnson Anselmo firm, hired by the Village's self-insurance fund, shall now be representing the Village in the 2008 litigation. In the 2008 litigation with Palmer Trinity the Village has filed its motion for attorney's fees pursuant to 57.105, Florida Statutes and has prepared its motion to dismiss. Palmer Trinity has filed a third amended complaint with federal claims. The matter was removed to federal court by the Village. All discovery was stayed pending a discovery order from the federal court. On July 29, 2011, Senior Judge Lawrence King remanded the litigation back to state court. Discovery is now ongoing and depositions are being scheduled. A new hearing on Palmer Trinity's motion for sanctions was heard on December 20, 2011. The Judge has reserved ruling.

2. Palmer Trinity v. Village of Palmetto Bay - Appeal/Certiorari Petition from the May 4, 2010 hearings – Oral argument was held on December 1, 2010. On February 10, 2011, the 11<sup>th</sup> Judicial Circuit Appellate Panel ruled in Palmer Trinity's favor on the appeal of the May 4, 2010 decision as to the site plan application. The Court in a *Per Curiam* decision, ruled and remanded by to the Village for action. See above, update as to July 19, 2011 remand hearing at Christ Fellowship Church. Resolution issued. See Section 3 for additional information.

In the 2008 litigation, the Village removed the action to federal court. Senior Judge Lawrence King remanded the matter back to state court to Judge Lester Langer. Hearings on Village's motion to dismiss was heard November 9, 2011. Judge reserved ruling and we are waiting for his final order. Discovery is on-going. Status Conference scheduled for February 2, 2012.

3. Palmer Trinity v. Village of Palmetto Bay - Appeal/Certiorari Petition/Motion to Enforce Mandate. Palmer Trinity, on August 26, 2011 filed its motion to enforce mandate or in alternative motion for certiorari (appeal) based upon the July 19th hearing after remand. Litigation is on-going. The Firm of White & Case, Justice Raoul Cantero has been retained to assist in the appeal. Answer brief filed on October 14, 2011, by both the Village and CCOCI. Decision on motion to enforce mandate issued on December 22, 2011. Any appeal would be due January 21, 2012.

4. Palmer Trinity v. Village of Palmetto Bay. - Certiorari Petition to Third District Court of Appeal. Village petition for certiorari review filed on 1/21/2011.

5. Victor Garcia v. Village of Palmetto Bay, Case no.: 10-61452 CA 11 (Fla. Cir. Ct). The Village has received a notice of claim as required under state law of a possible lawsuit relating to the Village's Dog Park. The matter has been referred to the Florida League of Cities, the Village's Self-Insurance Agent, and Mr. Chris Stearns of the Johnson Anselmo firm is handling the claim. The Claimant's personal property, a young canine, allegedly died at Perrine Wayside Dog Park. An investigation is under way. On December 6, 2010, the Village was served with the complaint alleging damages for conversion, battery, assault, negligent infliction of emotional distress, false imprisonment, negligence per se, and negligence. Mr. Stearns is preparing an answer on the Village's behalf. This claim shall be covered by the Village's self-insurance provider and insurance counsel. Our office is monitoring the litigation. All counts, other than the simple negligence count have been dismissed.

6. Anctil v. Village of Palmetto Bay, Case no.: 11-14303 CA (02) (Fla. Cir. Ct). Plaintiff, parents of minor child, sued village on May 11, 2011. Matter transferred to League for representation. Child allegedly hurt his arm during summer day camp. Any additional information beyond representation in complaint will be provided during any necessary shade sessions. Discovery ongoing.

7. Shores at Palmetto Bay LLC v. Village of Palmetto Bay. Appellate action (certiorari petition filed) after denial of application by the Village Council on December 12, 2012. The Court is to issue a scheduling order to hear the item. Staff is preparing an answer brief. The applicant's request was denied due to an incomplete application amongst other things. Please refrain from speaking to anyone about this matter until after the appeal period expires.