



To: Honorable Mayor and Village Council

Date: March 31, 2014

From: Ron E. Williams, Village Manager

Re: Noise/Nuisance Animals  
Ordinance for 1<sup>st</sup> Reading

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING CERTAIN SECTIONS OF DIVISION 30-50 AND SECTION 30-60.29 OF THE LAND DEVELOPMENT CODE RELATING TO BARKING DOGS AND PUBLIC NUISANCE ANIMALS; PROVIDING FOR ENFORCEMENT PROCEEDINGS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE [Sponsored by Mayor Stanczyk].**

**BACKGROUND:**

In February at the request of the Mayor, the Interim Village Attorney prepared a rough draft of an ordinance which sought to clarify noise standards for animals within the Village and to amend the enforcement standard thereto. Staff completed that effort and attached a proposed ordinance for Council consideration. The challenge presented by the current ordinance lies principally with verification of an alleged violation. Other changes include clarification of certain definitions pertaining thereto as well as a few administrative corrections which properly align Section 30-60.29 to Article VII "Code Compliance Procedures" of the Village Code of Ordinances.

Under current Code, enforcement action may only proceed upon an officer witnessing 20 minutes of continuous barking or an hour of intermittent barking. Often, the alleged incident either passed or was indictable by the time the officer responds to the complaint. The proposed remedy is to permit the complainant to submit a notarized Verified Animal Noise Complaint Affidavit (VANCA) asserting the violation occurred. Such action will result in the officer issuing a courtesy warning. If a subsequent VANCA is submitted within the thirty days of the courtesy warning, the officer will issue a citation. As provided for all code compliance cases, the person receiving the citation shall have the right to appeal. In the event of such an appeal, the affiant will be requested to testify at the appeal proceeding as the existence of the event(s) identified in the VANCA. It then becomes incumbent upon the Special Master to determine whether in fact the Violation existed.

The principal change occurring to the definitions portion of 30-60.29 lies principally with defining "animal", "public nuisance animal" and "barking intermittently." The other definitions reflect a reorganization of certain existing provision within the Noise Code.

The administrative changes reflect aligning the syntax of “notice of civil infraction” (ie. courtesy warning) and citation, as they are used in Article VII, “Code Compliance Procedures.”

**ANALYSIS:**

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30.7(b). The Background section provided above shall be considered supplemental information to this analysis and thusly shall be incorporated into each criterion delineated below. 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: Goal 1 of the comprehensive plan reads as follows:

To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in Southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provisions of high quality facilities and services, *quality neighborhood protection*, and enhancement of its unique and beautiful coastal environmental resources. [italic added]

Although the Comprehensive Plans does not specifically mention nuisance animals directly, it does reference quality neighborhood protection which is a function of the Villages code compliance efforts. The proposed ordinance is consistent with that Goal. Other minimum level of service standards as prescribed within the comprehensive plan do not apply to the proposed ordinance.

**Finding:** Consistent.

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

Analysis: Please see Background section of this report. The proposed ordinance is internally consistent with the remaining portions of Section 30-60.29 and is not affected nor impacts other portions of Chapter 30 of the Land Development Code. The proposed ordinance properly aligns the compliance provisions with Article VII “Code Compliance Procedures.”

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:** Please see Background section of this report. As reflected in the Background section of this report, confirmation by code compliance officers of animal complaints is hindered due to the nature of the alleged violations. The amendment provides clearer definitions and provides a mechanism for the complainant to serve as the witness of record to any such activity, while maintaining appropriate appeal procedures to the individual subject to the code compliance complaint.

**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 uses.

**Analysis:** Please see Background section of this report. The proposed ordinance does not change permitted uses. It merely provides clearer definitions, with an enforcement and appellate procedure.

**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 proposed ordinance does not impact the above systems.

**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 proposed ordinance does not impact the above systems.

**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** See Analysis under Criteria 2, 3 and 4. The proposed ordinance provides a method of enforcement and appeal for an animal nuisance complaint of a noise nature.

**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 pattern shall be identified.

**Analysis** The proposed ordinance does not changed permitted uses or changed any provisions which affect the development of land.

**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:** See Analysis under Criteria 2, 3 and 4.

**Finding:** 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.

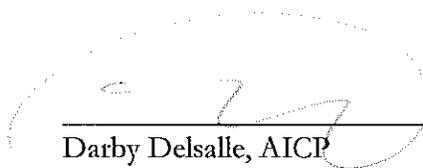
**Finding:** As determined by the Village Council.

**FISCAL/BUDGETARY IMPACT:**

None at this time.

**RECOMMENDATION:**

Decision for the Village Council.

  
\_\_\_\_\_  
Darby Delsalle, AICP  
Planning & Zoning Director

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING CERTAIN SECTIONS OF DIVISION 30-50 AND SECTION 30-60.29 OF THE LAND DEVELOPMENT CODE RELATING TO BARKING DOGS AND PUBLIC NUISANCE ANIMALS; PROVIDING FOR ENFORCEMENT PROCEEDINGS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE [Sponsored by Mayor Stanczyk].

WHEREAS, on October 1, 2007, the Mayor and Village Council adopted Section 30-60.29, which provided for noise standards throughout the Village; and

WHEREAS, that section includes noise standards and enforcement regulations as applied to barking dogs and other nuisance animals; and

WHEREAS, despite those provisions, it is difficult to enforce the requisite noise standard as verification of any alleged violation is difficult to document; and

WHEREAS, to overcome that challenge, this ordinance contemplates providing clearer definitions regarding such offenses, and provides for such complaints to be accompanied by and "Animal Noise Complaint Affidavit"; and

WHEREAS, the proposed ordinance also provides other updates to the enforcement and penalty provisions reflective of the Mayor and Village Council's desired change, and corrects certain scrivener errors contained therein, thus properly synchronizing Section 30-60.29 to ARTICLE VII Code Compliance Procedures.

BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:<sup>1</sup>

**Section 1.** Recitals. The above recitals are true and correct and incorporated herein.

**Section 2.** Noise. Division 30-60.29, of the Village's Code of Ordinances entitled "Noise" shall be amended as follows:

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<sup>1</sup> / Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, deletions are shown as ~~strikethrough~~, and deletions after first reading are shown as ~~double-strikethrough~~.

Sec. 30-60.29. Noises.

\* \* \*

- (c) Definitions. The following words, terms and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning. All terminology used in this chapter not defined below shall be in conformance with applicable publications and standards of the American National Standards Institute (ANSI) or its successor body, the state and other applicable industry standards.

Animal shall mean any non-human living creature, including without limitation dogs, cats, ferrets, rabbits, turtles, gerbils, hamsters, cows, horses, sheep, and other domestic animals or livestock.

Barking dog shall mean a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of twenty minutes or barks intermittently for one hour or more to the disturbance of any person at any time of day or night regardless of whether the dog is physically situated in or upon private property. This definition is not meant to include dogs within a wholly enclosed air conditioned structure or garage.

Barks intermittently shall mean a noise disturbance caused by a barking dog which occurs 5 times within an hour.

\* \* \*

Noise control officer (NCO) shall mean the village manager, or person(s) designated by the village manager such as a code compliance or police officer.

Noise disturbance shall mean any sound which (a) endangers or injures the safety or health of humans or animals, (b) disturbs a reasonable person of normal sensitivities, or (c) endangers or injures personal or real property.

\* \* \*

Public nuisance animal shall mean any animal or combination of animals that makes excessive noises, including, but not limited to, continued or repeated howling, barking, whining or other utterances which substantially interferes with and/or disturbs a Village citizen's enjoyment of life and/or property.

\* \* \*

- (e) Specific prohibitions against different types of noises. In addition to the general prohibitions set out above and the maximum permissible sound levels set out in Table 1, and unless otherwise exempted by this article or by act of the village, the following specific acts, or the causing or permitting thereof, are hereby declared to be in violation of this section:

\* \* \*

- (5) Public Nuisance Animals. ~~The owner of any public nuisance animal, including barking dogs, as defined under this article, shall be deemed to be in violation of this article, regardless of the knowledge, intent or culpability of the owner. Owning, possessing or harboring any animal or bird which, frequently or for continued duration, howls, barks, meows, squawks, or makes other sounds which create excessive and unnecessary noise across a residential or commercial real property line or within a noise sensitive zone, excluding public zoos or private animal attractions operated for profit to which the public has general admission and that are regulated by the village. For the purposes of this regulation, "barking dog" is defined as a dog that barks, bays, cries, howls or makes any other noise continuously and/or incessantly for a period of 20 minutes or barks intermittently for one hour or more to the disturbance of any person at any time of day or night regardless of whether the dog is physically situated in or upon private property; however, a dog shall not be deemed a "barking dog" for the purposes of this regulation if, (i) at the time the dog is barking or making any other noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog, or (ii) if the animal is placed within the single-family home, including the garage.~~

\* \* \*

- (i) Enforcement responsibility. The NCO shall have primary enforcement responsibility for this article. Alleged noise disturbance violations shall be investigated on a "complaint only" basis and only when the person or persons making the complaint contacts the Village of Palmetto Bay's Code Compliance Division.
- (j) Penalties.
- (1) Notice of civil infraction. Except as provided herein for Barking Dogs and other Nuisance Animals, Upon a determination by the NCO that a source of noise is being conducted in violation of this article, the NCO shall issue a notice of civil infraction directing the operator or operators thereof to cease and desist such operations until the violation is corrected. Such notice of civil infraction shall be served by personal delivery to the source of noise or by deposit in the U.S. mail by registered or certified mail addressed to the operator of the noise facility at the location thereof. If such notice of civil infraction is delivered personally, a copy of the notice of civil infraction shall be posted on the property concerned. If any operator shall fail to comply with a valid, duly served notice of civil infraction, he shall be guilty of an offense and punished as heretofore provided. Each day's continuing violation shall constitute a separate and distinct offense.
- (a) Barking Dogs and Nuisance Animals, specifically. Complaints regarding barking dogs and Nuisance Animals must be submitted in writing to the Village of Palmetto Bay's Code Compliance Division in the form of a notarized Verified Animal Noise Complaint Affidavit. The Verified Animal Noise Complaint Affidavit must set forth the nature and the time(s) and

date(s) of the act(s), the owner of the animal(s), the address of the owner and a description of the animal(s) doing such act(s).

(b) Notice of Civil Infraction. Upon receipt of the first Verified Animal Noise Complaint Affidavit, prior to issuing a civil citation the NCO will first issue a notice of civil infraction to the animal owner as provided in Section 2-205(d) of the Village Code of Ordinances. The notice of civil infraction must give the dog owner a reasonable period to correct but in no event can that period exceed thirty days.

(2) Civil Citation Hearing Before Special Master. Any person receiving a ~~notice of civil infraction~~ civil citation may appeal such order to the NCO by serving a written request for hearing upon the NCO within ~~twenty-20~~ calendar days of receipt of such order. Such written notice may be served by deposit in the U.S. mail by registered or certified mail addressed to the NCO. Upon receipt of a written request for hearing, the NCO shall grant a hearing to the appellant at the earliest possible date as provided in Section 2-205(g) of the Village Code of Ordinances. At such hearing, the appellant is entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter as provided for under the Village's Special Master System of Village of Palmetto Bay Code of Ordinances.

(a) Affiants Called to Testify. Any Affiant(s) to a civil citation under appeal may be called to testify in-person to the Special Magistrate.

(3) Civil proceedings. Upon determination by the NCO that a source of noise is being conducted in violation of this article or a ~~notice of civil infraction~~ civil citation issued by the NCO, in addition to other remedies provided in such sections and in the laws of the State of Florida, the NCO may, upon authorization by the special master, institute any appropriate action or proceedings to restrain, correct or abate such violations or otherwise prevent the unlawful use of such noise operation or the unlawful operation of such facility by any person, as provided for in this section.

**Section 3. Conflicting Provisions.** The provisions of the Code of Ordinances of the Village of Palmetto Bay, Florida and all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Codification.** It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be

renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This ordinance shall take effect immediately upon enactment.

First reading: \_\_\_\_\_

Second reading: \_\_\_\_\_

PASSED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Attest: \_\_\_\_\_

Meighan Alexander  
Village Clerk

\_\_\_\_\_  
Shelley Stanczyk  
Mayor

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

\_\_\_\_\_  
Dexter Lehtinen  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore \_\_\_\_\_

Council Member Tim Schaffer \_\_\_\_\_

Council Member Joan Lindsay \_\_\_\_\_

Vice-Mayor John DuBois \_\_\_\_\_

Mayor Shelley Stanczyk \_\_\_\_\_