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To: Honorable Mayor and Village Council

Date: August 29, 2014

From: Ron E. Williams, Village Manager

Re: Revising Ordinance 2004-10  
as amended by 2011-03  
"Burglar Alarms"

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CHAPTER 14<sup>1</sup>, DIVISION II, RELATING TO BURGLAR ALARMS; UPDATING AND AMENDING THE CODE FOR CLARIFICATION PURPOSES TO REFLECT A CHANGE FROM A CALENDAR YEAR TO AN ANNUAL REGISTRATION PERIOD FROM REGISTRATION DATE, AND REQUIRING ALARM MONITORING COMPANIES TO REGISTER; AND PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**BACKGROUND & ANALYSIS:**

The Mayor and Village Council enacted Ordinance No. 2004-10 on July 6, 2004 entitled "Burglar Alarms" and amended by Ordinance No. 2011-0. Prior to incorporation of the Village of Palmetto Bay all alarm registration, permitting, fines, and appeals of false alarm reports was accomplished under the jurisdiction of Miami-Dade County pursuant to Section 21-276 of the Miami-Dade County Code (burglar alarm code). The Mayor and Village Council enacted a municipal burglar alarm code tailored to the Village' needs by creating Chapter 14, Article II, of the Village's Code Ordinances, which code is to be uniformly enforced through the Village and which code provides for a registration period, registration fee, and false alarm report, fine, and appeal process.

To better serve the alarm applicants during the annual renewal period, the alarm renewal date is being changed from January 1 to an applicant's application date. This will allow the alarm renewals to be spread out throughout the year instead of all on the same date. Additionally the Village is adding the requirement for alarm companies to register with the Village so accurate information is maintained and State license information can be verified.

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<sup>1</sup> In 2007, the Village enacted the Burglar Alarm Code under Chapter 7. Municode eventually codified the Code and renumbered the provision under Chapter 14 relating to Emergency Services and naming the ordinance Article II relating to "Burglar Alarms."

**BUDGET & FISCAL IMPACT:**

There should not be any major budgetary impact as the changes are for efficiency of the department and better service to the customers.

**RECOMMENDATION:**

Approval is recommended.

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ORDINANCE NO. 2014-

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CHAPTER 14<sup>1</sup>, DIVISION II, RELATING TO BURGLAR ALARMS; UPDATING AND AMENDING THE CODE FOR CLARIFICATION PURPOSES TO REFLECT A CHANGE FROM A CALENDAR YEAR TO AN ANNUAL REGISTRATION PERIOD FROM REGISTRATION DATE, AND REQUIRING ALARM MONITORING COMPANIES TO REGISTER; AND PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council enacted Ordinance No. 2004-10 on July 6, 2004 entitled "Burglar Alarms"; and amended by Ordinance No. 2011-03, and,

WHEREAS, prior to incorporation of the Village of Palmetto Bay all alarm registration, permitting, fines, and appeals of false alarm reports was accomplished under the jurisdiction of Miami-Dade County pursuant to Section 21-276 of the Miami-Dade County Code (burglar alarm code) and,

WHEREAS, the Mayor and Village Council enacted a municipal burglar alarm code tailored to the Village' needs; and,

WHEREAS, the Village has tailored the alarm code by creating Chapter 14, Article II, of the Village's Code Ordinances, which code is to be uniformly enforced through the Village and which code provides for a registration period, registration fee, and false alarm report, fine, and appeal process.

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

Section 1. Chapter 14 entitled "Emergency Services" at Sections 14-19 through 14-30 at Article II entitled "Burglar Alarms" of the Code of Ordinances of the Village of Palmetto Bay is amended to read as follows:

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<sup>1</sup> In 2007, the Village enacted the Burglar Alarm Code under Chapter 7. Municode eventually codified the Code and renumbered the provision under Chapter 14 relating to Emergency Services and naming the ordinance Article II relating to "Burglar Alarms."

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CHAPTER 14

\* \* \*

ARTICLE II

BURGLAR ALARMS<sup>2</sup>

\* \* \*

SEC. 14-19. DESIGNATION, PURPOSE AND SCOPE OF REGULATION.

(a) *Designation.* This chapter shall be designated and known as the Village of Palmetto Bay Burglar Alarm Code. This chapter shall be applicable to all burglar alarm systems within village limits.

(b) *Purpose of regulations.* The purpose of this chapter is to place responsibility on the alarm user to prevent, by use of appropriate mechanical, electrical, or other means, false burglar alarms.

(c) *Scope of regulations.* This section will apply to all properties located within village limits.

14-20 DEFINITIONS.

*Alarm company* shall mean any person engaged in selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing or monitoring any alarm system or causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed in, or on, any building, structure or facility. An alarm company and, or, alarm monitoring company shall obtain an occupational license as required by F.S. ch. 489.

*Alarm owner* shall mean the person designated in the application process as responsible for responding to alarms and giving access to the site, and who is responsible for proper maintenance and operation of the alarm and payment of penalties and fees relating to the operation of the alarm system, and specifically includes the term alarm user.

*Alarm notification* shall mean a notification intended to summon the police, which is designed either to be initiated purposefully by a person or by an alarm system that responds to stimulus characteristic of unauthorized intrusion.

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<sup>2</sup> Although the entire chapter is new and therefore should be underlined, I have only underlined changes from the original ordinance found at chapter 14.

1        *Alarm user* shall mean any person or other entity that owns, possesses, controls, occupies, or  
2 manages any premises as defined below; shall specifically include the property owner if the premises  
3 is leased, occupied and/or managed by third persons; and/or the registered owner designated in the  
4 application process.  
5

6        *Burglar alarm system* shall mean any assembly of equipment, mechanical, wireless, or electrical,  
7 arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and  
8 to which the Police Department may reasonably be expected to respond, but does not include fire  
9 alarms or alarms installed in motor vehicles. If a fire alarm system is connected to a burglar alarm  
10 system, this Section shall not apply to false alarms that the alarm user proves were generated by the  
11 fire alarm portion of the system.  
12

13        *False burglar alarm or false alarm notification* shall mean a signal from a burglar alarm system that  
14 elicits a response by the police when no emergency or actual or threatened criminal activity requiring  
15 immediate response exists. This definition includes signals activated by negligence, accident,  
16 mechanical failure, and electrical failure; signals activated intentionally in non-emergency situations;  
17 and signals for which the actual case of activation is unknown. It is a rebuttable presumption that a  
18 burglar alarm is false if personnel responding from the police department do not discover any  
19 evidence of unauthorized entry, criminal activity, or other emergency after following normal police  
20 procedures in investigating the incident. An alarm is not false if the alarm user proves that:  
21

22        (1) An individual activated the alarm based upon a reasonable belief that an emergency or  
23 actual or threatened criminal activity requiring immediate response existed; or  
24

25        (2) The alarm system was activated by lightning or an electrical surge that caused physical  
26 damage to the system, as evidenced by the testimony of a licensed alarm system contractor who  
27 conducted an on-site inspection and personally observed the damage to the system; or  
28

29        (3) If the user experienced a power outage of four or more hours, causing the alarm to  
30 activate upon restoration of power, as evidenced by written documentation provided by Florida  
31 Power and Light Company or other applicable provider.  
32

33        *Person* shall mean an individual, corporation, partnership, association, organization or similar  
34 entity.  
35

36        *Premises* shall mean the building or structure or portion of a building or structure upon which  
37 is installed or maintained a burglar alarm system.  
38

39        *Property owner* shall mean the person or entity listed as owner with the Miami-Dade County  
40 Property Appraiser's office and/or listed on the deed to the property as owner.  
41

1  
2 **14.21 REGISTRATION OF ALARM SYSTEM AND ALARM FEES.**  
3

4 (a) Registration of burglar alarm systems. All burglar alarm systems which operate at  
5 locations within Village limits shall be registered by the alarm user with the Village of Palmetto Bay,  
6 Finance Department. The user shall complete and submit an initial registration or an annual  
7 registration renewal with the appropriate fee. Initial registration shall be necessary to register any  
8 system which is not currently registered or upon a change in the users of an alarm. A separate  
9 registration is required for each alarm system.

10  
11 (b) Annual registration fee. Annual registration shall be ~~for each calendar year from the~~  
12 date of application. New alarm installations or new home owners with an existing alarm system  
13 have 30 calendar days to register the alarm system with the Village. For those registrants with a false  
14 alarm call during the year, the registration fee shall be \$25.00. Registration not renewed by February  
15 1<sup>st</sup> of the applicable year within 30 days from anniversary date shall be considered delinquent and the  
16 owner/user shall be subject to an enforcement action as is necessary to gain compliance with this  
17 Chapter.

18  
19 (c) Change in registration information. In the event of a change in any of the  
20 information required as part of the initial or annual registration, the user shall notify the Village,  
21 Department of Finance, of the change. An updated registration shall be filed within 10 days of any  
22 change.

23  
24 (d) *Application of funds.* Funds collected under this chapter shall be applied to the  
25 operational costs and enforcement of this article, to reduce the number of false alarms received by  
26 the police department, and to reduce the time spent by police officers handling false alarm calls.

27  
28 (e) *Registration form.* The owner/user shall complete and submit to the village finance  
29 department an emergency contact registration form and thereafter an annual renewal registration  
30 form, with the appropriate fee(s), for each alarm in use in the village on the premises. ~~Upon receipt~~  
31 ~~of a completed registration form and collection of the registration fee or renewal fee, the village shall~~  
32 ~~issue a numbered alarm registration permit to the applicant to facilitate retrieval of registration~~  
33 ~~information.~~ The registration form shall include:

34  
35 (1) The name, address and daytime and evening telephone numbers of at least one  
36 alternative person who can be contacted in the case of activation of the alarm system in the event  
37 that the alarm owner/user cannot be contacted;

38  
39 (2) The classification of the alarm site as residential, ~~commercial or apartment~~ business.  
40

1 (3) When required by this chapter, certification by a person licenses by the State of Florida  
2 to install or design alarm systems stating: the date of installation or maintenance of the alarm system,  
3 whichever is applicable; the current Florida State License of the person performing or directly  
4 supervising the installation or maintenance of the alarm system; and any other information that may  
5 be required by the finance director in order to obtain compliance with this chapter.  
6

7 (f) *Transferability.*  
8

9 (1) An alarm registration cannot be transferred to another person. When there is a change  
10 of property ownership or business ownership a new registration form with updated information  
11 must be completed by the new owner/user and a new registration fee shall be applied.  
12

13 (2) An alarm company and/or alarm monitoring company shall be properly licensed in  
14 accordance with F.S. ch. 489. An alarm company shall have an appropriate ~~occupational~~  
15 ~~license/business tax receipt~~ pursuant to F.S. ch. 489, pt. II.  
16

17 (3) It shall be the duty of all alarm companies, property owners, and/or alarm owner/users  
18 to apply for and obtain any required permits for the installation of any alarm system from the Village  
19 of Palmetto Bay.  
20

21 (g) Any false statement of a material matter made by an applicant for the purpose of  
22 registering an alarm shall be a violation of this chapter and subject the violator to the appropriate  
23 enforcement action.  
24

25 **Sec. 14-22. ALARM DISPATCH RECORDS.**  
26

27 (a) The police officer responding to a dispatch resulting from any alarm covered by this  
28 chapter shall record the information as necessary to permit the village police department and finance  
29 director to maintain records, including but not limited to the following:  
30

- 31 (1) The identification of the registered owner or, if no registration exists the owner  
32 or person in charge of the premises, if know;
- 33 (2) The exact address of the alarm site;
- 34 (3) The dispatched received date, time and arrival time;
- 35 (4) The weather conditions;
- 36 (5) The area of the premises involved, if known; and
- 37 (6) The name of the registered owner's representative, if on the premises.  
38

39 (b) The responding police officer shall indicate on the dispatch record whether the  
40 notification was caused by criminal offense, attempted criminal offense or was a false alarm/alarm  
41 notification.

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2 (c) In the case of an assumed false alarm or alarm malfunction, the responding police  
3 officer shall leave notice at the alarm site that the police department has responded to a false alarm  
4 or alarm malfunction notification. The notice shall include the following information:

- 5 (1) Date and time of the police department response to the false alarm notification;  
6 (2) The identification number of the responding police officer; and  
7 (3) A statement that shall, in substance, urge the registered owner to ensure that the  
8 alarm system is properly operated and maintained to avoid service fees.  
9

10 (d) The Miami-Dade Police Department and/or the village police department shall forward  
11 a copy of the police incident report/dispatch report to the village finance department of any  
12 necessary follow-up action required under this chapter.  
13

14 **Sec. 14-23. ALARM SYSTEMS IN MULTIPLE-FAMILY/HIGH-DENSITY**  
15 **RESIDENTIAL PREMISES AND BUSINESSES.**  
16

17 (a) The owner or property manager of any apartments, apartment hotels, hotels,  
18 condominiums and/or other similar multiple-family/high-density residential and business premises  
19 shall obtain a master alarm registration form from the Village if any alarm system is operated on the  
20 multi-family/high-density premises.  
21

22 (b) The individual or entity named in the master alarm registration form is responsible for  
23 false alarm notifications emitted from unoccupied residential units or business units.  
24

25 (c) The owner or property manager of any building identified in subsection (a), above, shall  
26 provide a separate completed registration form for any alarm system operated in a non-residential  
27 area of the apartment complex, including, but not limited to common tenant areas, offices, storage,  
28 and equipment areas.  
29

30 (d) A tenant or unit owner in any building identified in subsection (a), above, shall also  
31 obtain an alarm registration form from the village before obtaining or causing the operation of an  
32 alarm system in the tenant's residential unit.  
33

34 **Sec. 14-24. REQUIRED EQUIPMENT IN A BURGLAR ALARM AND PROPER**  
35 **OPERATION OF ALARM SYSTEM.**  
36

37 (a) A burglar alarm user shall not use a burglar alarm system unless that burglar alarm  
38 system is equipped with:

- 39 (1) A backup power supply that will become effective in the event of power failure  
40 or outage; and  
41

1 (2) A device that automatically silences the alarm within 15 minutes after activation.

2  
3 (b) A registered alarm owner/user shall:

4  
5 (1) Maintain the premises and the alarm system in a manner that will minimize or  
6 eliminate false alarm notifications;

7  
8 (2) Respond or cause the representative to appear at the systems location within a  
9 reasonable period of time when notified by the village police department to deactivate a  
10 malfunctioning alarm system, to provide access to the premises or to provide security for the  
11 premises;

12  
13 (3) Not manually activate an alarm for any reason other than an occurrence of an  
14 event that the alarm system was intended to report;

15  
16 (4) Any and all alarm owners/users shall maintain at each alarm site a complete set  
17 of written operating instructions for each alarm system. Special codes, combinations or  
18 passwords should not be included in these instructions; and

19  
20 (5) It shall be the duty of every person owning, operating using, or purchasing any  
21 business premises within the village limits to comply with the requirements of this chapter  
22 prior to operating an alarm system.

23  
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25 **14-25. ALARM COMPANIES RESPONSIBILITIES.**

26  
27 (a) It shall be the responsibility of any licensed person selling and, or, monitoring an alarm  
28 system to provide the user with the registration form and the "Village of Palmetto Bay Burglar  
29 Alarm Ordinance Information" form. The registration form provided to the user shall include the  
30 person's name, address, and State of Florida burglar alarm contractor's license number, and other  
31 information required on the registration form. An alarm company may not charge a customer a fee,  
32 other than the required registration fee, to register any alarm system with the village.

33  
34 (b) Any person testing and, or, working on an alarm system shall promptly cancel any  
35 activation so that police will not be dispatched.

36  
37 (c) All alarm companies and/or monitoring companies shall be properly licensed as  
38 required by the State of Florida and any jurisdiction in which they have an actual place of business;  
39 and shall communicate alarm notifications to the village in a manner and form determined by the  
40 village. Additionally, no alarm company, monitoring company, and/or person in charge of a local  
41

1 alarm or alarm system shall permit an alarm indication from such alarm to be sent directly to the  
2 village.

3  
4 (d) All companies that monitor alarms installed upon properties within the boundaries of  
5 the city shall be required to register with the city. The initial registration fee shall be one hundred  
6 dollars (\$100.00). The annual registration renewal fee thereafter shall be one hundred dollars  
7 (\$100.00). The registration is good for one (1) year from the registration date, and each one (1) year  
8 period thereafter with renewal. The registration form shall contain the following but is not limited  
9 to:

- 10 (1) The name, address and telephone number of the alarm monitoring company.  
11 (2) The corporate officers or owners of the alarm monitoring company and their title or  
12 relationship to the company.  
13 (3) The type(s) of alarm system(s) it monitors.  
14 (4) State license number.

15  
16  
17 **14-26 ALARM CALL VERIFICATION, CANCELING FALSE ALARMS AND FALSE**  
18 **ALARM PROHIBITION.**

19  
20 (a) Alarm call verification. All residential or commercial intrusion and/or, burglar  
21 alarms, that have central monitoring, must have a central monitoring verification call made to the  
22 premises generating the alarm signal, prior to alarm monitor personnel contacting the Police  
23 Department for dispatch. This does not apply to panic or holdup type alarms. Alarm monitoring  
24 companies will make available to the Police Department upon request, records providing proof that  
25 the monitoring company made the verification calls.

26  
27 (b) Canceling false burglar alarm calls. Alarm monitoring companies that notify the  
28 Village Police Department prior to the arrival of an officer shall be considered a canceled false  
29 alarm. Alarm monitoring companies will make available to the Police Department records  
30 providing proof that the Police Department was contacted prior to the arrival of the officer. An  
31 emergency line has been provided by the Police Department to call in and, or, cancel panic or  
32 holdup type alarms. Use of this line for non-emergency alarm calls is prohibited.

33  
34 (c) False burglar alarms prohibited. No burglar alarm user shall cause, allow, or permit the  
35 burglar alarm system to give four or more false alarms in any registration period.  
36  
37  
38

1 **14-27 PENALTIES.**

2  
3 (a) The owner/user of an alarm or the person in control of an alarm system shall be  
4 subject to fees or penalties concerning their alarm depending upon the number of false alarm  
5 notifications emitted from an alarm system covered by this Chapter within the registration period of  
6 each calendar year. Each violation of this section shall be punished as follows:

7  
8 (1) ~~A fine of \$50.00 for first violation of sections 14-23, 14-24, 14-25 or 14-28.~~

9  
10 (1) ~~A fine of \$100.00 for a second or any additional violation of sections 14-23,~~  
11 ~~14-24, 14-25 or 14-28.~~

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13 (2)(1) ~~A fine of \$100.00 for each false alarm for each violation of section 14-21, 14-~~  
14 ~~23, 14-24, 14-25, 14-28.~~

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16 (4)(2) ~~For the fourth false burglar alarm in the user's registration period, by a fine~~  
17 ~~of \$50.00.~~

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19 (5)(3) ~~For the fifth false burglar alarm in the user's registration period, by a fine of~~  
20 ~~\$100.00.~~

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22 (6)(4) ~~For the sixth and each additional false burglar alarm in the user's registration~~  
23 ~~period, by a fine of \$200.00.~~

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25 **14-28. APPEAL PROCESS.**

26  
27 All citations for violations under this chapter may be appealed within 20 days of the issued  
28 citation, to the special master, as provided in section 2-205 of the Village of Palmetto Bay Code of  
29 Ordinances. Police response will continue while an appeal is pending.

30  
31 **14-29 PROCEDURE FOR FALSE ALARMS.**

32  
33 (a) *Notification of false alarms.* It is the responsibility for each alarm user and owner to  
34 monitor the occurrences of false alarms on its premises. The Village shall notify the alarm user of  
35 each false alarm. Whenever an alarm is activated requiring response to a location by the police or  
36 fire department, a police officer or firefighter on the scene of the activated alarm system will inspect  
37 the area protected by the system and shall determine whether the emergency response was, in fact,  
38 required as indicated by the alarm system or whether the same was a false alarm.

39  
40 (1) If the police officer or firefighter at the scene of the activated alarm system  
41 determines the alarm to be false, such police officer or firefighter shall make a report of the

1 false alarm, a notification of which shall be mailed, delivered, or posted to the alarm user, at  
2 the address of the alarm system installation location. Where the user is not the owner, then  
3 the owner will also be notified at the address furnished by the alarm user certificate  
4 application or recorded in the current property ownership records maintained by the Village.  
5 The alarm user and/or property owner will be advised of the false alarm and any applicable  
6 charges therefore. The notification shall be sent by certified mail or posted at the property.  
7

8 (2) Once there have been six or more false alarm within a calendar year, the  
9 alarm user shall be required to have a licensed alarm contractor complete the Village  
10 prescribed alarm affidavit confirming that appropriate action has been taken to correct any  
11 possible defects. The affidavit shall be filed with the Finance Department within 30 days  
12 from notice, and will state that the alarm system has been inspected and is functioning  
13 properly, and in accordance with this Chapter. Failure to comply with the above may result  
14 in a revocation of the alarm user certificate and a penalty charge as established by a civil  
15 citation.  
16

17 (b) *Limitations to police response.* Police are not required to respond:  
18

19 (1) To burglar alarms at locations where six or more false alarms occurred in the  
20 user's annual registration period. After sustaining the first police response termination in a  
21 registration period for accruing six false alarms, the alarm user may, at the discretion of the  
22 police department, sustain subsequent response terminations for every three additional false  
23 alarms occurring in the same registration period. Should the police continue to respond to  
24 false alarms, the fine established under section 14-27(a)(5) shall apply.  
25

26 (2) To burglar alarms at locations where a burglar alarm fine was not paid within 60  
27 days of a civil violation notice; or  
28

29 (3) To locations where required alarm registration information was not filed within  
30 30 days of a civil violation notice for failure to file alarm information.  
31

32 (c) *Nothing in this chapter shall:*  
33

34 (1) Preclude the police department from responding to panic or ambush alarm  
35 signals, calls describing emergencies or crimes in progress, or routine calls for service;  
36

37 (2) Limit the police department from issuing civil violation notices for alarms in  
38 violation of this chapter; or  
39

40 (3) Be construed to create a duty to respond in any circumstances where such a  
41 duty does not exist pursuant to the statutory or common law of Florida. This chapter

1 imposes or creates no duties on the part of the village or its departments and employees, and  
2 the obligation of complying with the requirements of the chapter, and any liability for failing  
3 to do so is placed upon the parties responsible for owning, operating, monitoring and  
4 maintaining security alarms.

5  
6 (4) Preclude the police department from responding to any alarm signal at the  
7 discretion of the police commander.

8  
9 (d) *Notice of discontinued service:* A notice that police response will be discontinued will  
10 accompany a civil violation notice, be posted at the affected location, or be sent to the user by  
11 certified mail at least 30 days prior to discontinuing service.

12  
13 (e) *Restoring police response to terminated locations.* To restore police response to burglar alarms  
14 at terminated locations, the alarm user must:

15  
16 (1) When police response has been discontinued pursuant to subsection 14-  
17 29(b)(1), submit a written report from a licensed burglar alarm company certifying that the  
18 system has been inspected, repaired if required, and that it is functioning properly. In  
19 addition, the alarm user must pay all outstanding burglar alarm ordinance fines; or

20  
21 (2) When police response has been discontinued pursuant to subsection 14-29(b)(2)  
22 and (3), submit burglar alarm registration information and pay all outstanding burglar alarm  
23 ordinance fines.

24  
25 **14-30. FALSE ALARMS AND REPORTS.**

26  
27 (a) *False alarms.* It shall be unlawful for any person intentionally to make, turn in, or give a  
28 false alarm of fire, or a false alarm of the need for police or ambulance assistance; and it shall be  
29 unlawful for any person to aid or abet in the commission of any such act.

30  
31 (b) *False reports.* It shall be unlawful to make or file with the police department any false,  
32 misleading or unfounded statement or report concerning the commission or alleged commission of  
33 any crime, or offense, occurring within the county or any municipality within the county.

34  
35  
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37 \* \* \*

38  
39 **Section 2.** All ordinances or parts of ordinances in conflict with the provisions of this  
40 ordinance are repealed.





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To: Honorable Mayor and Village Council

Date: August 29, 2014

From: Ron E. Williams, Village Manager

Re: Solid Waste Franchise

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO SOLID WASTE; CREATING A NEW CHAPTER OF THE VILLAGE OF PALMETTO BAY CODE OF ORDINANCES; PROVIDING FOR CREATING A SOLID WASTE FRANCHISE FEE; PROVIDING FOR ORDINANCES IN CONFLICT; CODIFICATION; SEVERABILITY; AND AN EFFECTIVE DATE.**

**BACKGROUND AND ANALYSIS:**

The Mayor and Village Council of the Village of Palmetto Bay desire to create a new Chapter of the Village of Palmetto Bay's Code of Ordinances providing for the collection, conveyance and disposal of all garbage, trash and refuse accumulated within the Village. This Chapter shall provide for commercial trash franchise agreements for all commercial solid waste. The Mayor and Village Council of the Village of Palmetto Bay deem it to be in the continued public interest to provide residential collection of municipal solid waste by the Miami-Dade County Solid Waste Department, as is required by the Village's Charter. The Mayor and Village Council also deem it appropriate to allow commercial solid waste collection and to create a process for issuing of non-exclusive franchises to qualified commercial solid waste haulers. The Village has and reserves the right to exercise municipal police powers of the use of its highways, streets, alleys, right-of-ways and public places and to receive a reasonable and non-discriminatory rent for use of all rights-of-way. The Village right-of-ways are valuable public property acquired and maintained by the Village at great expense to Village tax payers, and the right to use the rights-of-way is a valuable property right without which contractors would be required to invest substantial capital and property acquisition costs. The Village deems it to be in the best interest of the citizens and residents of the Village to provide for classification and fees for licensing and for granting a franchise to those persons operating and providing commercial waste services within the Village and that same is necessary to protect the public general health, safety and welfare.

It is the intent of the Village in adopting a new Chapter to enhance licensing and franchising procedures to regulate solid waste collection by private haulers operating within the Village, and to allow the use of the appropriate right-of-ways by franchisees, and to charge such providers reasonable and non-discriminatory rents for the use of such right-of-ways. The Mayor and Village Council desire to create a new Chapter as it relates to the specific franchise provisions providing for insurance requirements, term of non-exclusive franchises, and providing material terms for allowing franchise agreements.

**FISCAL/BUDGETARY IMPACT:** The implementation of this ordinance would provide revenue to the Village and provide procedures to regulate solid waste collection by private haulers operating within the Village

**RECOMMENDATION:** Approval.

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

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO SOLID WASTE; CREATING A NEW CHAPTER OF THE VILLAGE OF PALMETTO BAY CODE OF ORDINANCES; PROVIDING FOR CREATING A SOLID WASTE FRANCHISE FEE; PROVIDING FOR ORDINANCES IN CONFLICT; CODIFICATION; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Mayor and Village Council of the Village of Palmetto Bay Desire to create a new Chapter of the Village of Palmetto Bay's Code of Ordinances providing for the collection, conveyance and disposal of all garbage, trash and refuse accumulated within the Village; and,

**WHEREAS**, this Chapter shall provide for commercial trash franchise agreements for all commercial solid waste; and,

**WHEREAS**, the Mayor and Village Council of the Village of Palmetto Bay deem it to be in the continued public interest to provide residential collection of municipal solid waste by the Miami-Dade County Solid Waste Department, as is required by the Village's Charter; and,

**WHEREAS**, the Mayor and Village Council deem it appropriate to allow commercial solid waste collection and to create a process for issuing of non-exclusive franchises to qualified commercial solid waste haulers; and,

**WHEREAS**, the Village has and reserves the right to exercise municipal police powers of the use of its highways, streets, alleys, right-of-ways and public places and to receive a reasonable and non-discriminatory rent for use of all right-of-ways; and,

**WHEREAS**, the Village right-of-ways are valuable public property acquired and maintained by the Village at great expense to Village tax payers, and the right to use the rights-of-way is a valuable property right without which contractors would be required to invest substantial capital and property acquisition costs; and,

**WHEREAS**, the Village deems it to be in the best interest of the citizens and residents of the Village to provide for classification and fees for licensing and for granting a franchise to those persons operating and providing commercial solid waste services within the Village and that same is necessary to protect the public general health, safety and welfare; and,

**WHEREAS**, it is the intent of the Village in adopting a new Chapter to enhance licensing and franchising procedures to regulate solid waste collection by private haulers operating within the Village, and to allow the use of the appropriate right-of-ways by franchisees, and to charge such providers reasonable and non-discriminatory rents for the use of such right-of-ways; and,

**WHEREAS**, the Mayor and Village Council desire to create a new Chapter as it relates to the specific franchise provisions providing for insurance requirements, term of non-exclusive franchises, and providing material terms for allowing franchise agreements.

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

**Section 1.** A new Chapter relating to Solid Waste Franchise Agreements, of the Village of Palmetto Bay code is hereby created to read:

**ARTICLE II. FRANCHISES**

Definitions.

Franchise—Required for solid waste collection.

Application.

Insurance

Denial.

Term.

Renewal.

Transfer prohibited.

Information required of franchisee.

Disposal required at County-approved facilities.

Revocation of franchise.

Franchise fee.

Recordkeeping; audit; and inspection.

Restoration.

Hours of collection.

Equipment.

Littering prohibited.

Cleanup after storm or emergency.

Franchise non exclusive.

Article not exclusive.

**Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commercial establishment* means any structure used or constructed for use for business operations. For purposes of this article, hotels and motels are commercial establishments. The term shall not include any residential unit or multifamily residential establishment.

Customer means a person who uses the solid waste or recycling services of a private hauler.

Franchisee means the named person who obtains a franchise from the Village pursuant to this article.

Gross receipts means all monies invoiced resulting from the collection of all solid waste from multifamily residential and commercial customers located within the Village.

Multifamily residential establishment means any structure other than a residential unit which is used, or constructed for use, as a multiple dwelling facility. Multifamily residential establishments shall include, without limitation, rooming house, tourist court, apartment building with rental or cooperative apartments, or multiple story condominiums with common means of ingress and egress.

Private solid waste hauler or collector, private hauler, and hauler mean any person, entity, corporation or partnership that removes, collects and transports for disposal for hire any solid waste over the streets or public rights-of-way within the incorporated area of the Village.

Residential unit means any structure that is used, or constructed for use, as a single-family dwelling, duplex, cluster house or townhouse, and which is located on a single lot, parcel or tract of land. For the purposes of this article, any condominium structure composed of privately-owned, single-family housing units with separate means of ingress or egress and containing no more than two stories shall be considered a residential unit. The term shall not include any multifamily residential establishment.

Solid waste means garbage, trash, litter, yard trash, hazardous waste, construction and demolition debris, industrial waste or other discarded material, including solid or contained gaseous material resulting from domestic, industrial, commercial, agricultural or governmental operations.

Solid waste disposal means disposition of solid waste by means of combustion, landfilling or other final method of discard.

Village manager means the Village Manager of the Village of Palmetto Bay, Florida or his designee.

### **Franchise—Required for solid waste collection.**

- (a) No private hauler shall remove, collect or transport for disposal from any commercial establishment or multifamily residential establishment in the Village solid waste over the streets or public right-of-way located within the Village without first applying for and receiving the appropriate solid waste franchise from the Village to carry on such business.
- (b) The franchise required by this section shall be in addition to any other permits, registration or business tax which may be required by Federal, State or local law.
- (c) Granting of a franchise shall be limited to private haulers holding a valid County permit on the effective date of the ordinance.
- (d) If a private hauler operates within the Village without a franchise the Franchisee will pay double the franchise fee for the period of operation prior to the franchise application.

**Application.**

- (a) Applications for a franchise shall be made to the Village upon a form prescribed by the Village Manager and shall be accompanied by supporting documents and such other information as may be required by the Village Manager.
- (b) The application shall include submission of an application fee of \$1,000 which may be adjusted by the Village Council by resolution.
- (c) After receipt of the application and all required fees and documents, the Village Manager shall review the application and shall either approve the application, deny the application or request additional information from the applicant.
- (d) The applicant for a new franchise or the applicant for renewal of a franchise shall provide a list of existing customers in the Village.

**Insurance.**

- (a) Each franchisee shall maintain not less than the following types and amounts of insurance:

<u>Comprehensive general liability</u>	<u>\$1,000,000.00</u>
<u>Property damage</u>	<u>\$1,000,000.00</u>
<u>Automotive liability</u>	<u>\$1,000,000.00</u>
<u>Worker's compensation</u>	<u>*</u>
<u>Completed operations</u>	<u>\$1,000,000.00</u>
<u>*Statutory requirement</u>	

- (b) Each policy shall name the Village as an additional insured and each franchisee shall deliver to the Village a copy of the certificates of insurance evidencing the existence of the policies. Each certificate shall provide that the Village will be afforded 30-day prior written notice of cancellation of any of the policies for any reason. The insurance shall only be written by companies rated B-plus or higher, according to the most recent issue of Best Insurance Rating Guide. The certificate shall be submitted with a cover letter addressed to the city from the franchisee's insurance agent or agents stating that they have read the provisions of this section and that the insurance provided meets the minimum requirements of this section.
- (c) The insurance shall contain the following endorsement:

In addition to the coverage stated in the body of the policy, the policy shall indemnify and hold harmless the Village, its officers, agents and employees from all claims for bodily injuries to the public in and up to the amount of \$1,000,000.00 for each occurrence and for all damages to the property of others in and up to the amount of \$1,000,000.00 for each, including costs of investigation, all expenses of litigation, including reasonable attorney's fees and the cost of appeals arising out of any claims or suits because of any and all acts or omission or commission by the franchisee, his/her agents, servants, or employees, or through the mere existence of the project under contract.

- (d) All policies shall be on an occurrence basis rather than a claims-made basis.
- (e) The franchisee shall secure and maintain policies of its subcontractors. All policies shall be made available to the Village upon demand. The franchisee shall be responsible to the Village for the acts and omissions of any subcontractors or persons employed by them.

### **Denial.**

Should the Village Manager deny an application for a franchise, the applicant shall be notified by certified mail no later than 14 days from the date of the denial of the application. The applicant's denial of a franchise by the Village Manager may be appealed per the appeals section. The notice of appeal shall be filed in writing with the Village Manager no later than 14 days after the receipt of the certified letter advising applicant of the denial. Reasons for denial include, but is not limited to:

- (1) Incomplete or missing information on application.
- (2) Violation of any of the provisions of the Village Code, the County Code, or any other applicable law where the violation endangers the public health, safety or welfare.

### **Term.**

A franchise approved pursuant to the provisions of this article shall be valid for a period of one year from the date of issuance.

### **Renewal.**

A franchise may be renewed from year to year by the Village Manager with a renewal application form prescribed by the Village Manager. Any such renewal shall be subject to the same terms and conditions applicable to the issuance of the original franchise. The Village Manager shall charge and collect renewal permit fees of \$1,000 which may be adjusted by the Village Council by resolution.

### **Transfer prohibited.**

No franchise for the collection of solid waste issued under the provisions of this article may be assigned or transferred. In the event of any change in ownership, or a change of the name of the corporation or partnership, formal notification shall be given the Village Manager and a new franchise must be applied for and obtained from the Village within 30 days thereof.

### **Information required of franchisee.**

At least quarterly, or more frequently if determined by the Village Manager, each franchisee shall supply the following information to the Village on a form and in the manner prescribed by the Village Manager:

- (a) A listing, as of the reporting date, of the names and addresses of customers, and the addresses of each location served. For each customer on the list, the private hauler shall provide the following:
  - 1. Whether the customer served is a multifamily residential or commercial establishment;
  - 2. Whether the service provided is solid waste collection, recycling or a combination of both;
  - 3. A listing of those materials being recycled at each customer location; and
  - 4. The name of a customer contact person who can provide additional information regarding the recycling program;
- (b) A summary of the number of tons and cubic yards of solid waste collected quarterly from the customer based on scheduled service, as of the reporting date; and
- (c) A summary of the number of tons and cubic yards of recyclable material collected and marketed quarterly.

### **Disposal required at County-approved facilities.**

Any and all solid waste collected by a franchisee within the Village shall be disposed of only at the solid waste disposal facilities approved by the County Department of Solid Waste Management, the Florida Department of Environmental Regulation or other governmental regulatory authority.

### **Revocation of franchise.**

- (a) The following shall constitute cause for revocation of a solid waste franchise by the Village Manager:
  - (1) Violation of any of the provisions of this article, the Village Code, the County Code, or any other applicable law where the violation endangers the public health, safety or welfare;
  - (2) Violation of any of terms or conditions of the franchise; or
  - (3) The failure to pay the franchise fee when due.
- (b) Upon a determination by the Village Manager that a franchise shall be revoked, the affected franchisee shall be provided with written notice via certified mail of such revocation and the reasons therefor. Upon receipt of such notice, the affected franchisee may appeal said revocation to the Village Manager and the appeal and hearing thereon shall be conducted in accordance with the procedures set forth per the appeals section.

**Franchise fee.**

- (a) All private haulers operating in the Village shall pay to the Village a franchise fee equal to 15 percent (phased in equally over the next three (3) fiscal years) of its monthly total gross receipts for all of its accounts that are located within the Village for the privilege of collecting, removing or disposing of solid waste from commercial or multifamily residential establishments over the streets or public rights-of-way located within the Village. The franchise fee shall be in addition to any fees or taxes levied by the Village upon the franchisee's business activities and may be adjusted by the Village Council by resolution.
- (b) The franchise fee shall be paid to the Village by the private hauler on a monthly basis and shall be due on the 15th day of the month succeeding the month for which the franchise fee is being paid.
- (c) The franchise fee shall be accompanied by a report to the Village Manager designating the names and addresses of each account of the private hauler located in the Village that was provided solid waste collection and disposal service for the preceding month. The report shall include the monthly total gross receipts of all such accounts. The report shall be submitted on a form prescribed by the Village Manager.
- (d) If the franchise fee is not paid by the 15th of the month by the private hauler, an additional surcharge equal to 10 percent of monthly total gross receipts for the preceding month shall accrue monthly and be payable to the Village for each month the payment of the franchise fee is delinquent. Additionally, the franchisee shall pay all the city's collection expenses, including court costs and reasonable attorney's fees.

**Recordkeeping; audit; and inspection.**

- (a) On or before September 1, the franchisee shall deliver to the Village Manager a statement of the franchisee's annual gross receipts generated from accounts within the Village prepared by an independent certified public accountant reflecting the franchisee's gross receipts within the Village for the franchisee's preceding fiscal year. The statement should indicate the beginning and end date for the franchisee's fiscal year.
- (b) Each private hauler is required to establish and maintain appropriate records, showing in such detail as the Village Manager may prescribe the amount of monthly solid waste collection and disposal service fee receipts for each of its accounts located in the Village. All records shall be open to inspection or audit by the Village Manager or his/her designee, during regular business hours, after reasonable notice, to audit, inspect and examine the franchisee's fiscal books and records and tax returns, insofar as they relate to Village accounts, to confirm the franchisee's compliance with this chapter. The Village Manager is authorized to promulgate additional rules and regulations with respect to the establishment and maintenance of records as the Village Manager deems necessary. If an audit uncovers any discrepancies, the Franchisee shall pay a penalty equal to the amount of any amounts due plus a surcharge equal to 10 percent for each month the amount was outstanding, plus the cost to conduct the audit.

**Restoration.**

The franchisee agrees to repair all property to as good or better condition as it was before being damaged or altered, for all public or private property, altered or damaged by it, its agents or employees during the performance of its services.

**Compliance with laws.**

The franchisee shall conduct operations under this article in compliance with all applicable laws.

**Equipment.**

Solid waste collection equipment shall be kept clean, sanitary, neat in appearance and in good repair at all times. The franchisee shall have on hand at all times sufficient equipment in good working order to permit the franchisee to perform its solid waste collection duties fully, adequately and efficiently.

**Littering prohibited.**

The franchisee shall not litter in the process of making collections. During hauling, all solid waste shall be contained, tied or enclosed so that leaking, spilling or blowing is prevented. In the event of spillage by the franchisee, the franchisee shall promptly clean up the litter.

**Cleanup after storm or emergency.**

In the event of a storm or emergency requiring mass cleanup operations, franchisee shall, upon direction of Village, participate in said cleanup to the extent directed by the Village.

**Franchise nonexclusive.**

- (a) Any franchise granted by this article is nonexclusive, and the Village reserves the right to award additional franchises or utilize other collection programs for commercial and multifamily residential solid waste.
- (b) Nothing herein shall authorize collection of solid waste from residential units in the Village.

**Article not exclusive.**

Nothing in this article shall be construed as a surrender by the Village of its right or power to pass Ordinances regulating the use of its streets in accordance with the Village's police powers or property rights.

**Appeal from denial; appeal from revocation.**

- (a) The denial or revocation of a franchise by the Village Manager may be appealed to the Special Master. The notice of appeal shall be filed in writing with the Village Manager no later than 14 days after the receipt of the certified letter advising the applicant of the denial or revocation.

(b) The Village Manager shall fix the date and time for hearing the appeal. Said hearing shall be held not less than 14 nor more than 60 days after receipt of the notice of appeal. The Special Master shall either affirm the decision of the Village Manager or direct the Village Manager to issue or reinstate the franchise.

**Municipal collection service.**

Each franchised collection firm shall provide containers and waste collection service to the Village at the locations and in conformance with the criteria established in this section. The waste collection services for the Village locations shall be performed at no cost to the Village and shall be borne equally by the franchised collection firms.

**Section 2. 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 W. Lehtinen  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore	_____
Council Member Joan Lindsay	_____
Council Member Tim Schaffer	_____
Vice-Mayor John DuBois	_____
Mayor Shelley Stanczyk	_____