To: The Honorable Mayor and Village Council

Date: September 2011 Update

From: Eve A. Boutsis, Village Attorney

Re: Village Attorney Update

A. Ordinances –

1. An ordinance relating to co-designation, re-naming of public streets, ways and roads; deleting section 21-52 through 54; and modifying section 21-55 to continue to allow the Village to name, re-name or co-designate Village structures, trees, sidewalks, etc., but to eliminate the use of co-designation of street signs. Discussed during July COW meeting. First reading scheduled for the September 12, 2011 Council Meeting. [Sponsored by Council Person Howard Tendrich].

2. 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. First reading scheduled for the September 12, 2011 Council Meeting. [Sponsored by Mayor Shelley Stanczyk].

3. An ordinance creating public comment during Charter Revision Commission meetings, creating Section 2-51, entitled "Charter Revision Commission" and providing for public comment at the end of each meeting. First reading scheduled for the September 12, 2011 Council Meeting. [Sponsored by Council Person Tendrich]

4. As part of the review listed above at paragraph 14, staff has discovered certain revisions that it would like to make to the Sign Code. 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 and shall be brought forward for first reading during the September 12, 2011 Council Meeting. Item sponsored by several council persons, as to different items.

5. Revised and updated Parks Fee Schedule and policies to reflect request relating to use of Community Room by Library Sponsored Groups providing for administrative waiver of

fee. First reading scheduled for September council meeting. [Sponsored by Vice Mayor Brian Pariser].

6. 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.

7. 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. Additionally, during the January 24, 2011 COW meeting, the Village Council directed clarification of the language relating to the AIPP Advisory Board bringing three recommendations to the Village Council. Staff shall begin drafting the revisions and shall bring the item to an upcoming council COW agenda. Sponsored by Council Person Howard Tendrich.

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 garage sales ordinance. This item was enacted during the June 2011 Council meeting. [Sponsored by Mayor Shelley Stanczyk].

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

14. 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.

15. A similar revision is proposed for the Alcoholic Beverages chapter, found at 30-130. This item will be brought to a COW for discussion with the Village Council. The Ordinance for first reading and cover memorandum has been prepared.

16. 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.

17. Staff is to start drafting an ordinance prohibiting current vendors from providing council candidates campaign contributions. Sponsored by Vice Mayor Brian W. Pariser. Discussed during the January 24, 2011 COW. This item was enacted during the June council meeting.

18. Mayor Shelley Stanczyk, during the January 24, 2011 COW meeting requested to modify the Village's elections ordinance and to limit the qualification period, limit the length of campaigning etc. Staff will coordinate with Mayor Stanczyk and proceed with drafting the proposed revisions to the Elections Ordinance. Sponsored by Mayor Shelley Stanczyk. Certain portion relating to signs was heard on first reading at the May council meeting, and again at the June council meeting. The Council voted to table the item and bring it back for discussion at a COW meeting.

19. Modifications to Village's Alcohol Sales Ordinance as to zoning districts – corrections to reflect current LDC and other scrivener's type changes.

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

21. Modification of Park fee ordinance to provide waiver of fee for "qualified organizations" - organizations sponsored by the Library - that desire to use the Edward and Arlene Feller Community Room. Sponsored by Vice Mayor Brian Pariser. Matter was deferred to the July COW meeting. Proposed for First Reading at the September Council meeting.

22. 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.

23. Modification of Division 30-30 relating to notice of public hearing, zoning items. Requested by Council Person Lindsay during June COW meeting. Also requested by Mayor Stanczyk. Will be working with CP Lindsay on same.

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.
3. Attention to proposed alternate routes for FPL Transmission lines – Pinecrest, Miami, and Doral routes.
4. Attention to Filming Interlocal.
5. Attention to surety relating to ISD
6. Attention to Growth Management statutory amendments enacted by the Governor.
7. Attention to FPL franchise agreement.
8. Attention to termination of contractor.
9. Attention to Green Corridor

C. Special report.

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

2. FPL application is proceeding. Corridors for the FPL transmission lines have remained the same as proposed and do not intrude into Palmetto Bay (other than the one guide wire proposed for along US 1 and SW 136th Street). The second round of completeness review of the FPL application has been conducted. The Village shall continue to monitor the application. The Village Council issues a resolution relating to the FPL line location request and is investigating funding a study relating to alternate site route. FPL is proceeding with the process for certification of the route and plan. Village to issue report and recommendation prior to June 1, 2011 to the Florida Department of Environmental Protection. Special Council meeting scheduled for May 25th to discuss the proposed agency report. Deadline for a party to propose an alternate corridor for a transmission line was May 2, 2011. Village filed completion report as to alternate corridor on June 15, 2011. Village filed its agency report in June, 2011.

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. 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. 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.

4. Researched Charter Schools – requirements and application. School Board hearing on Summerset Charter Contract proposed for Old Cutler Presbyterian Church (OCPC) was tabled/taken-off the agenda. No updates on the possible OCPC charter school item. Coral Gables was successful in the initial litigation/preliminary injunction hearing against Summerset. No appeal taken. The school has opted to proceed under the City of Coral Gables public hearing zoning process. The City of Coral Gables has held two public hearings on this matter and deliberated during the month of June. Thereafter, the applicant decided to file an amended application, which is anticipated to be filed sometime in August. The City expects the P&Z hearing to be in September and City Commission hearings in October and November.

I was advised by the Pastor of OCPC that the Charter School with Academica will not be proceeding.

National Public Radio, NPR, during the Florida News Round Up provided the following information: 10% of all public school kids in Florida attend charter schools. However, 50% of all F schools in Florida are charter schools.

5. The owner of the 5 acre parcel near Palmetto Bay Park has contacted staff regarding possibly locating a new Summerset/Academica charter school and an ALF/130 units on the site. No application has been filed. A letter of intent has issued and has been received by the Planning and Zoning Staff. As such please advise the community to refrain from contacting you on this matter as it appears that the item may be proceeding to a public hearing quasi-judicial item. A Community meeting was held on December 7th at 7:00 p.m. at Ludovici Park and Amphitheater/Dr. Feller Community Room. On January 18, 2011, the applicant submitted a formal application and review has begun by P &Z staff. Staff has commented on the proposed application and has directed revisions to the proposed application to be consistent with Code requirements. An updated plan has been submitted to staff for review. The Applicant has submitted revised plans that are being reviewed.

6. Attended monthly meetings of the Charter Revision Committee and shall work with the Clerk and committee on drafts and revisions to be placed on next Village regularly scheduled election. Pubic input workshop is intended for either the month of October or November, 2011.

7. A probationary employee was terminated. He filed a charge of discrimination with the Miami-Dade County Commission on Human Rights. Village filed position statement. Charge is unfounded. Waiting for determination of dismissal.

D. Litigation report.

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

<u>Palmer Trinity v. Village of Palmetto Bay</u>: (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 is being coordinated.

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 11th 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. Court in 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.

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 and PT's motion for sanctions are scheduled for November 9, 2011. Discovery is on-going.

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.

4. 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.

5. Tramutola v. Village of Palmetto Bay, et al., Case no.: 09-74608 CA (08) (Fla. Cir. Ct. 2009). The Plaintiff allegedly tripped on some paint on a sidewalk. Plaintiff failed to sue owner of sidewalk. Alleged that Village's contractor left the yellow paint spill. Mediation

was held on May 9th, and the League settled the case for $9,000.00. Matter closed. There is no deductible for the Village to come out of pocket.

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.

7. Kayworth v. Village of Palmetto Bay, Claim made by parent of minor child injured in 2010 during summer camp. Florida League settled matter for $8000, with full and final general releases.

8. Jane Forman Tennis Academy v. Palmetto Bay, Lawsuit served. Answer was filed.