



To: Honorable Mayor and Village Council

Date: July 3, 2013

From: Eve A. Boutsis, Village Attorney

Re: Board and Committee Procedures
Ordinance for First Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PUBLIC COMMENTS; AMENDING ARTICLE VIII OF CHAPTER 2, ENTITLED "BOARDS AND COMMITTEES, GENERALLY"; REQUIRING ALL SCHEDULED BOARD AND COMMITTEE MEETINGS TO PROVIDE FOR PUBLIC COMMENTS PERIOD AT THE BEGINNING OF EVERY MEETING CONSISTENT WITH SECTION 286.0114, FLORIDA STATUTES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

During the Florida Legislature's 2013 regular session, the legislature enacted Senate Bill 50, effective October 1, 2013, which bill created Section 286.0114, Florida Statutes. The Legislature found that a proper and legitimate state purpose is served when members of the public have been given a reasonable opportunity to be heard on a proposition before a board or commission of a state agency or authority, or of an agency or authority of a county, municipal corporation, or political subdivision. Therefore, the Legislature determined that the statute fulfilled an important state interest. Although the Village currently provides public comments at all board and committee meetings, the proposed modification to the ordinance on boards and committees is to require public comments at the beginning of each meeting, prior to action by the board or committee.

Compliance with Section 286.0114, Florida Statutes, would ensure that the Council is not subject to injunctive relief lawsuit or attorney's fees for bringing the action forward.

For ease of reference, the new statute is delineated below:

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, "board or commission" means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity

occurs at a meeting that is during the decision making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

- (3) The requirements in subsection (2) do not apply to:
 - (a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
 - (b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
 - (c) A meeting that is exempt from s.286.011; or
 - (d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

- (4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:
 - (a) Provide guidelines regarding the amount of time an individual has to address the board or commission;
 - (b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
 - (c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
 - (d) Designate a specified period of time for public comment.

- (5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

- (6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

- (7) (a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

FISCAL/BUDGETARY IMPACT:

None at this time.

RECOMMENDATION:

Approval.

1 All Board and Committee meetings, whether ah hoc, or standing boards or committees shall provide
2 for public commentary at the beginning of each scheduled meeting prior to taking action on any
3 substantive agenda items. Public Comments shall be maintained at no more than three (3) minutes
4 per person, unless the Board or Committee authorizes a different amount of time.

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

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

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

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16 **Section 5.** This ordinance shall take effect immediately upon enactment.

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18 **PASSED AND ENACTED** this [] day of [], 2013.

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21 Attest: _____
22 Meighan Alexander Shelley Stanczyk
23 Village Clerk Mayor
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25 APPROVED AS TO FORM:

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27 _____
28 Eve A. Boutsis,
29 Village Attorney

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31 FINAL VOTE AT ADOPTION:

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33 Council Member Patrick Fiore _____
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35 Council Member Tim Schaffer _____
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37 Council Member Joan Lindsay _____
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39 Vice-Mayor John DuBois _____
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41 Mayor Shelley Stanczyk _____
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