



To: Honorable Mayor and Village Council

Date: July 3, 2013

From: Eve A. Boutsis, Village Attorney

Re: Peddler Ordinance
Ordinance for First Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO REPEAL THE LANGUAGE OF SECTION 27-89 OF THE VILLAGE'S CODE ENTITLED "PEDDLING PROHIBITED"; AND REPLACING IT WITH "NOTICE ON PREMISES THAT UNINVITED VENDORS, SOLICITORS, PEDDLERS, ETC. ARE NOT WANTED; AND PROVIDING PENALTIES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

In 2010, as part of the Village's revisions to its property maintenance standards, the Mayor and Village Council of the Village of Palmetto Bay adopted section 27-89 entitled "Peddling Prohibited". The provision was modeled after a then enacted Miami-Dade County Code provision, which has subsequently been repealed. As of this date, the Village has yet to issue a violation of this provision through the Code Compliance Division. Recently, on April 29, 2013, a vendor in the community, Vivint, Inc., issued a letter to the Village Attorney indicated concerns with the constitutionality of the provision based upon the First Amendment. The Village Attorney reviewed the provisions cited by Vivint, Inc.'s counsel and confirmed that the ordinance should be modified.

The proposed replacement provision is consistent with the law in the State of Florida and has been reviewed by the Miami-Dade County Policing Unit's legal department for enforcement and legal sufficiency purposes. The County's police legal unit has signed off on the draft ordinance.

In short, should a resident place a "no solicitation" sign on their property, and solicitation does occur, the Village's Code Compliance and Policing units may issue a violation notice to the person soliciting, with a \$250.00 fine for a first offense, \$500.00 for repeat offense.

FISCAL/BUDGETARY IMPACT:

None at this time.

RECOMMENDATION:

Approval.

1 It shall be unlawful for any person to engage in the business of peddling within the village
2 except in those areas designated and approved by the village manager. The term "peddling"
3 or "peddler" shall be defined as any person, whether a resident of the village or not, traveling
4 by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place,
5 from house to house, or from street to street, carrying, conveying or transporting goods,
6 wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions,
7 offering and exposing the same for sale, or making sales and delivering articles to purchasers,
8 or who, without traveling from place to place, shall sell or offer the same for sale from a
9 wagon, automotive vehicle, railroad car, or other vehicle or conveyance, and one who solicits
10 orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or
11 design to evade the provisions of this section. The word "peddler" shall include the words
12 "hawker" and "huckster."

13 (a) It shall be the duty of the person in possession of any premises who desires that the
14 occupants of the premises remain unmolested by the visits of uninvited solicitors, peddlers,
15 vendors, itinerant merchants, door-to-door canvassers or hawkers to post in a conspicuous
16 place near the door or on the premises a sign in letters at least 1½ inches high with the
17 words "no peddlers," "no solicitors," "no trespassing" or otherwise signifying externally the
18 wish for the occupants of the premises to remain unmolested by such visitors.

19
20 (b) It shall be unlawful for any uninvited solicitors, peddlers, vendors, itinerant
21 merchants, door-to-door canvassers or hawkers to visit or go upon any premises which have
22 been posted with a notice as prescribed in this section, to the effect that the person in
23 possession or the occupants of the premises desire to remain unmolested.

24
25 (c) Any person violating subsection (b) shall be fined \$250.00 for a first offense, and
26 \$500.00 for a second, or repeat offense. Each day that such violation shall continue, each
27 performance, shall constitute a separate offense.

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

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

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

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

PASSED AND ENACTED this _____ day of _____, 2013.

Attest: _____
Meighan Alexander
Village Clerk

Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

Eve Boutsis
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 _____