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To: Mayor and Village Council

Date: March 5, 2012

From: Eve A. Boutsis, Village Attorney

Re: Public Notification  
Ordinance

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO 30-30.7(b), OF THE VILLAGE'S CODE, RELATING TO REVISING 30-30.3(C) AND 30-30.11 RELATING TO NOTICE PROVISIONS; TO PROVIDE ADDITIONAL CLARIFICATION AS TO MAILED NOTICE TO NEIGHBORS; REPEAL OF CONFLICTING PROVISIONS FOUND AT SECTION 30-1, 30-2, 30-3, AND 30.1 AND 30.2; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Joan Lindsay].**

**BACKGROUND:**

Since the Mayor and Village Council of the Village of Palmetto Bay enacted Chapter 30-30, Development Approval Procedures, in December 2010, there has been an expressed desire by the Council to amend the notification standards for various developments and application requests as provided for in Section 30-30.11.

The proposed amendment modifies the mailed notification radius requirement for development specific zoning applications (ie. Variances, special exceptions, site plans) reflective of the size of the development parcel with radii that start at 500 feet for lots a half acre or less, 1,500 feet for properties greater than half an acre but less than five (5) acres, and 2,500 feet for developments five (5) acres or larger. The proposed amendment also introduces a mailed notification procedure for the administrative substantial compliance reviews consistent with the radii parameters identified above and includes a mailed notification during the time period during which such determinations may be appealed. Unlike the other zoning petitions identified above, and unlike the Miami-Dade County version of substantial compliance, substantial compliance review is considered a minor review that does not affect required setbacks, height, increases in building foot print, landscaping and/or parking as provided by the Code or the adopted Site Plan. Certain other edits are recommended as there is a conflict between the written word and the chart designated at subsection 30-30.11(o).

Additionally, Municipal Code Corporation is being instructed to repeal and remove from the Village's Code prior enacted and superseded notice provisions that were in place in the interim period - while using the County Code. Upon enactment of the Village's Land Development Code,

the referenced sections should have been removed from Municode. The Village is specifically directing Municode to remove those sections.

**ANALYSIS:**

The proposed revisions to 30-30.3(c) and 30-30.11(o) and were reviewed for consistency with the criteria established in Section 30-30.7(b). 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:** The Comprehensive Plan and the Village's concurrency management plan do not address notice requirements to residents. The proposed revisions are intended to provide greater notice to the community at large.

**Finding:** Not applicable.

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

**Analysis:** The proposed revisions are intended to provide greater notice to the community at large and are consistent with the requirements of Chapter 30 and provide consistency across development types.

**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:** Not applicable.

**Findings:** Not Applicable

**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:** The proposed ordinance does not change the list of permitted uses within the Village's zoning districts. The proposed revisions are intended to provide greater notice to the community at large.

**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 change the list of permitted uses within the Village's zoning districts thus it does not affect the capacity of existing facilities or services as described above. The proposed revisions are intended to provide greater notice to the community at large.

**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 change the list of permitted uses within the Village's zoning districts and it does not affect the natural environment as described above. The proposed revisions are intended to provide greater notice to the community at large.

**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:** The proposed revisions are intended to provide greater notice to the community at large.

**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 patten shall be identified.

Analysis The proposed revisions are intended to provide greater notice to the community at large.

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: The proposed revisions are intended to provide greater notice to the community at large.

Findings: Consistent.

**Criteria (10)** Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: Discretion of Village Council.

Finding: As determined by the Village Council.

**FISCAL/BUDGETARY IMPACT:**

Though the proposed ordinance does not present a fiscal/budgetary impact to the Village, there will be an increased cost assessable to the applicant as a result of the larger required mailing notice radii. All applicants are required to pay the full cost of their zoning applications including that associated with the mailing notice. Please note, the mailing fee is based on 57 cents, per notice, including administrative costs, paper and mailing costs. The cost of a US postal stamp has risen twice since the Village adopted its fee schedule and is currently 49 cents. The cost associated with anyone particular mailing will vary from property to property and the following table is merely an approximation of the cost increase to the customer.

Property Size	½ Acre or Less	½ Acre < Property < 5 Acres	Property ≥ 5 Acres
Existing	\$40	\$ 50	\$ 60
Proposed	\$40	\$400	\$485

In addition to the above, developments seeking administrative substantial compliance review will also require an ad to be placed in a paper of general circulation. The approximate cost of advertising is delineated below:

Miami Herald:  
 For a small advertisement: \$5088  
 For a large advertisement: \$8,904

Revisions to 30-30 Zoning Notice Provisions  
March 12, 2012  
Page 5 of 5

The Village also issues courtesy notices, at the applicant's expense, in the Neighbors section which cost would be approximately \$800.

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

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

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO 30-30.7(b), OF THE VILLAGE'S CODE, RELATING TO REVISING 30-30.3(C) AND 30-30.11 RELATING TO NOTICE PROVISIONS; TO PROVIDE ADDITIONAL CLARIFICATION AS TO MAILED NOTICE TO NEIGHBORS; REPEAL OF CONFLICTING PROVISIONS FOUND AT SECTION 30-1, 30-2, 30-3, AND 30.1 AND 30.2; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Joan Lindsay].

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay in December 2010 completed enactment of Chapter 30 as the Village's Land Development Code; and,

WHEREAS, Division 30 of Chapter 30 regulates the zoning procedures for applicants; and,

WHEREAS, Section 30-30.11 addresses the advertising and notice provisions of the code; and,

WHEREAS, certain edits are recommended as there is a conflict between the written word and the chart designated at subsection 30-30.11(o); and,

WHEREAS, the Village desires to provide additional notice to community as it relates to substantial compliance, and certain zoning public hearing items - to wit: providing notice to greater area of community; and,

WHEREAS, the Village Council have reviewed the criteria of 30-30.7(b) and find the ordinance in compliance with the applicable standards; and,

WHEREAS, as a housing keeping matter, Municipal Code Corporation must be updated in codification to remove prior, interim zoning code provisions when the Village was under the Miami-Dade County Code, and all such provisions, found at sections 30-1 through 30-3, and Sections 30.1 and 30.2 are to be stricken and repealed; and,

WHEREAS, the Mayor and Village Council desire to amend Division 30-30 accordingly.

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

Section 1. Pursuant to the requirements of 30-30.7(b) of the Village's Code, the following text change is in compliance with the Village's Comprehensive Code and review criteria.

1 The Village of Palmetto Bay hereby amends Section 30-30.3 and 30-30.11, which sections shall read  
2 as follows:

3  
4  
5 \* \* \*

6  
7 30-30.3 ADMINISTRATIVE DEVELOPMENT APPROVALS.

8 \* \* \*

9 (c) Substantial compliance. Any changes or amendments to an approved site plan shall  
10 require a re-submission in accordance with the provisions of this Division. However, if the  
11 Department determines that the requested site plan change is minor, as delineated below, the  
12 Department shall have the authority to review and approve the minor change with or without  
13 conditions. The Department shall give written notice of his/her preliminary determination regarding  
14 the substantial compliance determination and shall hear any objections regarding the preliminary  
15 determination during a subsequent 30 day period. The Planning determination shall be advertised in  
16 a newspaper of general circulation, advising the community of the 30 day deadline for an appeal.  
17 The Village shall also provide notice as provided under subsections 30-30.11(l) and (o). At the  
18 conclusion of the 30 day period the Department shall approve, approve with conditions, or deny the  
19 substantial compliance determination by written order.

**Deleted:** The Planning & Zoning Department shall approve the site plan if the Department finds that the change:

20  
21 \* \* \*

22  
23 30-30.11 PUBLIC HEARING AND NOTICE REQUIREMENTS.

24  
25 \* \* \*

26  
27 (i) Comprehensive Plan. Notice for public hearings on applications for amendments to  
28 the comprehensive development plan shall be noticed as follows:

29  
30 (1) Text or map amendments initiated by the Village shall be noticed by  
31 publication in accordance with the provisions of section 163.3184, Florida Statutes. In  
32 addition, property owners of record within a 2,500-foot radius of the property subject to  
33 map amendments shall be provided mailed notice.

34  
35 (2) Text or map amendments initiated by a property owner or governmental  
36 agency other than the Village shall be noticed by publication in accordance with the  
37 provisions of section 163.3184, Florida Statutes, and by posting of the property subject to  
38 the application. In addition, property owners of record within a 2,500-foot radius of the  
39 property subject to map amendments shall be provided mailed notice.

40  
41 (j) Land Development Code, Chapter 30. Notice for public hearings on applications  
42 for amendments to Chapter 30 and the official zoning district map shall be noticed as follows:

1  
2 (1) Text or map amendments initiated by the Village shall be noticed by  
3 publication in accordance with the provisions of section 166.041, Florida Statutes. In  
4 addition, property owners of record within a 2,500-foot radius of the property subject to  
5 map amendments shall be provided mailed notice.  
6

7 (2) Text or map amendments initiated by a property owner or governmental  
8 agency other than the Village shall be noticed by publication in accordance with the  
9 provisions of section 166.041, Florida Statutes, and by posting of the property subject to the  
10 application. In addition, property owners of record within a 2,500-foot radius of the  
11 property subject to map amendments shall be provided mailed notice.  
12

13 (k) Other Development. Public hearings on applications for development permit  
14 approvals other than rezoning, including, but not limited to variances, conditional uses, site plans for  
15 conditional uses, elimination or modification of restrictive covenants, and plats shall be noticed as  
16 follows:  
17

18 (1) Posting of the property subject to the application.  
19

20 (2) Mailed notice to the neighboring property owners of record based upon the  
21 following radii:  
22

23 i. If the subject property is less than or equal to one half acre, then 500  
24 foot notice is required.

25 ii. If the subject property is greater than one half acre and less than five  
26 acres, then 1500 foot notice is required.

27 iii. If the subject property is greater than or equal to five acres, then  
28 2500 foot notice is required  
29

30  
31 (3) Courtesy publication in the non-legal section of the local newspaper of  
32 general circulation that has been selected by the Village.  
33

34 (l) Notice of Administrative Determination under 30-30.3(c):  
35

36 (1) Posting of the property subject to the application in accordance with the  
37 provision of this code, and the chart found at subsection (o). Mailed notice shall issue within  
38 five (5) days of the administrative decision to the neighboring property owners of record  
39 based upon the following radii:  
40

41 i. If the subject property is less than or equal to one half acre, then 500  
42 foot notice is required.

43 ii. If the subject property is greater than one half acre and less than five  
44 acres, then 1500 foot notice is required.

**Deleted:** within a 500-foot radius of the property which is the subject of the application.

1                   iii. If the subject property is greater than or equal to five acres, then  
2 2500 foot notice is required

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5 The property shall also be posted and advertised in accordance with the provisions of 30-  
6 30.11(o).

7                   (2) Appeals of Administrative Action, An applicant seeking an appeal of the  
8 action provided for under 30-30.3(c), shall be responsible for notice of the appeal by mailed  
9 notice to the neighboring property owners of record based upon the following radii:

10                   i. If the subject property is less than or equal to one half acre, then 500  
11 foot notice is required.

12                   ii. If the subject property is greater than one half acre and less than five  
13 acres, then 1500 foot notice is required.

14                   iii. If the subject property is greater than or equal to five acres, then  
15 2500 foot notice is required

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18 The property shall also be posted and advertised in accordance with the provisions of 30-30.11(o).

19                   (m) Applicant bears burden of cost. All costs of publication, mailing and posting shall be  
20 borne by the applicant. Applicant shall also bear the cost of providing the Village Clerk with a CD  
21 ROM containing a copy of all the images scanned on to the CD of the entire application, mailing  
22 radius labels, affidavit of compliance, maps, site plans, etc., as provided under subsection 30-30.9.

23                   (n) Provisions of Florida Statutes. Where provisions of the Florida Statutes conflict  
24 with provisions of Chapter 30, the Florida Statutes shall prevail.

25                   (o) Table of notice requirements with citation to authority.  
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subject to the application and posting of the property  
subject to the application. ¶

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NOTICE REQUIREMENTS

Permit	Notice Section	Posted	Published	Mailed
<u>Administrative Determination</u> ie: <u>substantial compliance</u>	<u>30-30.3(c); 30-30.11(l)</u>	<u>Date of decision</u>	<u>To provide 30day notice of appeal</u>	Property <del> &lt; 1/2 acre requires 500' radius</del> <u>1/2 acre &lt; property &lt; 5 acres requires 1500' radius</u> Property > 5 acres requires 2500' radius
Appeal of Administrative Official ie.: substantial compliance	30-30.3(c); 30-30.11(l)	20 days prior to hearing	30 days prior to hearing	Property < 1/2 acre requires 500' radius <del>1/2 acre &lt; property &lt; 5 acres requires 1500' radius</del> Property > 5 acres requires 2500' radius
Variance	30-30.11(k)	20 days prior to hearing	30 days prior to hearing	Property < 1/2 acre requires 500' radius <del>1/2 acre &lt; property &lt; 5 acres requires 1500' radius</del> Property > 5 acres requires 2500' radius
Other Development Permits (i.e., site plan)	30-30.11(k)	20 days prior to hearing	30 days prior to hearing	Property < 1/2 acre requires 500' radius <del>1/2 acre &lt; property &lt; 5 acres requires 1500' radius</del> Property > 5 acres requires 2500' radius
Comprehensive	30-30.11(i)(1)	No	163.3184, F.S.	2500' radius for map

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Plan – Village				amendment.
Comprehensive Plan – Owner	30-30.11(i)(2)	20 days prior to hearing for map amendment	163.3184, F.S.	2500' radius for map amendment.
Land Development Code- Village	30-30.11(j)(1)	N/A	166.041, F.S.	2500' radius for map amendment.
Moratorium – Village	30-30.11(j)(1)	N/A.	166.041, F.S.	166.041, F.S.
Land Development Code – Owner	30-30.11(j)(2)	20 days prior to hearing for map amendment	166.041, F.S.	2500' radius for map amendment.
Extension of variance, special use, unusual use, new use, special permit beyond six (6) months	<del>30-30.11</del>	20 days prior to hearing	30 days prior to hearing	Property < 1/2 acre requires 500' radius 1/2 acre < property < 5 acres requires 1500' radius Property ≥ 5 acres requires 2500' radius
Zoning In Progress	30-30.9	N/A	166.041, F.S.	166.041, F.S.

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(p) Notice and Appeals. If the notices provided under subsection 30-30.9, are made and published, and the affidavits of compliance are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal from a resolution of an administrative or quasi-judicial hearing, as provided in the Florida Rules of Appellate Procedures.

**Section 2.** Municipal Code Corporation had previously codified the Village's interim zoning code, and when the Village enacted its current zoning code, Municode neglected to repeal the prior code provisions. As a housekeeping matter the following, interim code, enacted prior to the current land development code are hereby repealed and should be removed from

1 Municode.com. These provisions conflict with the remainder of Chapter 20, division 10 through  
2 Division 160.

3  
4 \* \* \*

5 **Sec. 30 1. Adoption of county zoning ordinance.**

6 (a)

7 ~~*Designation.* This section shall be designated and known as the "Village of  
8 Palmetto Bay planning and zoning powers ordinance." This section shall be  
9 applicable to all village planning and zoning applications.~~

10 (b)

11 ~~*Application and enforcement of Miami Dade County Zoning Code.* Chapter 33 of the  
12 Miami Dade County Code, entitled "Zoning", and its parts (i.e., part 33A,  
13 Developments in Incorporated Areas Creating County Impact, etc.) as the same  
14 existed on December 2, 2002, shall be applied within the municipal boundaries  
15 of the Village of Palmetto Bay, as provided by article VIII, section 8.8 of the  
16 village charter.~~

17 (c)

18 ~~*Substitution of village council for community zoning appeals board and county commission.*  
19 The village council of the Village of Palmetto Bay assumes jurisdiction, and  
20 shall exercise the power, over planning and zoning decisions arising under  
21 chapter 33 of the Miami Dade County Zoning Code. To effect this power,  
22 chapter 33 is amended to substitute the village council in the place and stead of  
23 the community zoning appeals board and the board of county commissioners  
24 so that all requests for district boundary change, change in the zoning  
25 regulations applicable within the village, appeals of administrative decisions,  
26 special exceptions or unusual uses, new uses, and variances shall be decided by  
27 the council. The county staff shall perform application processing, review,  
28 hearing and administration functions for the village as may be provided by  
29 agreement between the village and the county.~~

30 (d)

31 ~~*Zoning compliance review and approval standards; authority to grant variances, etc.* The  
32 village council may delegate authority and responsibility to employees,  
33 contractors or boards to review and process all permit applications for zoning  
34 compliance and to show zoning approval by a stamp or mark with a signature  
35 on all copies of applications and plans pursuant to agreement between Miami-  
36 Dade County and the Village of Palmetto Bay, or as otherwise may be  
37 subsequently provided. The standards and criteria set forth in chapter 33 of the~~

1 Miami Dade County Zoning Code shall govern the performance of the duties  
2 delegated pursuant to this subsection:

3 (e)

4 Appeals; judicial review. Section 33-313 and section 33-314, providing for appeals  
5 to the county commission, shall be inapplicable with respect to an action taken  
6 before the village council on an application for a development order. An  
7 applicant or any aggrieved party may seek judicial review of a final order of the  
8 village council as provided by the Florida Statutes or the Florida rules of  
9 appellate procedure.

10 (f)

11 Sections repealed; severable use rights not transferable. Sections 33B-41 through 33B-47  
12 of the Code of Metropolitan Dade County board are repealed, and severable  
13 use rights shall not be transferable, used, or applied in any manner to secure  
14 development bonuses within the corporate limits of the village. All other  
15 sections of the Miami Dade County Code that refer to or relate to these cited  
16 sections shall also not be applicable within the village. The repeal of sections  
17 33B-41 through 33B-47 shall not apply to property located in the village that  
18 receive tentative plat approval by Miami Dade County and the village by the  
19 effective date of the ordinance from which this subsection is derived.

20 (Ord. No. 03-06, §§ 1, 5, 5-5-2003; Ord. No. 01-01, §§ 2, 3, 2-23-2004; Ord. No. 08-08,  
21 §§ 1, 2, 5-5-2008)

22 **Sec. 30-2. County amendments adopted.**

23 The following listed Miami Dade County ordinances are hereby enacted by the  
24 Village of Palmetto Bay. The full text of the ordinances is contained in App. 1 and App.  
25 2 to this ordinance.

26 **APPENDIX 1**

<u>Ord. 03-78</u>	<u>Ord. 03-117</u>	<u>Ord. 03-134</u>
<u>Ord. 03-79</u>	<u>Ord. 03-118</u>	<u>Ord. 03-135</u>
<u>Ord. 03-91</u>	<u>Ord. 03-119</u>	<u>Ord. 03-136</u>
<u>Ord. 03-92</u>	<u>Ord. 03-120</u>	<u>Ord. 03-162</u>
<u>Ord. 03-93</u>	<u>Ord. 03-129</u>	<u>Ord. 03-163</u>
<u>Ord. 03-113</u>	<u>Ord. 03-130</u>	<u>Ord. 03-185</u>
<u>Ord. 03-114</u>	<u>Ord. 03-131</u>	
<u>Ord. 03-116</u>	<u>Ord. 03-132</u>	

APPENDIX 2

<del>Ord. 03-41</del>	<del>Ord. 03-77</del>
<del>Ord. 03-47</del>	<del>Ord. 03-80</del>
<del>Ord. 03-76</del>	<del>Ord. 03-159</del>

~~(Ord. No. 03-15, § 1, 12-1-2003)~~

**Sec. 30-3. Village amendments adopted.**

The Village of Palmetto Bay has modified Miami-Dade County ordinances listed in section 30-2 with the following ordinances:

**(A)**

**Right-of-Way Plan and Minimum Width, VIII, ARTICLE**

**Right-of-way plan and minimum width of 33-133, Sec. streets and ways:**

**B.**

East and west streets:

<u>East West South Streets</u>	<u>Feet</u>
<u>Coral Reef Drive (a) (28) (SW 152 Street) from Ludlam Road to west Old Cutler Road,</u>	<u>100</u>
<u>With the exception of Coral Reef Drive (SW 152 Street), south side as measured from the center line of the road, from SW 68 Ave. east to Old County Hwy. (also known as County Road and the easterly portion of SW 67 Court)</u>	<u>25</u>

**(B)**

**Service Concurrence Management Program 33G, Chapter**

**Definitions, 33G-3, Sec.**

Except as otherwise provided in this chapter, the following definitions shall apply to this chapter:

**(11)**

Financial feasibility: Sufficient revenues are currently available or will be available from committed funding sources for the first three (3) years, or will be available from committed or planned funding sources for years four (4) and five (5), of a five (5) year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and

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~~federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan the are necessary to ensure that adopted level of service standards are achieved and maintained within the period covered by the five (5) year schedule of capital improvements.~~

(20)

~~Proportionate fair share mitigation for transportation. A developer may chose to satisfy all concurrency requirements by contributing to paying their calculated fair share if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the five (5) year schedule of capital improvements in the Capital Improvements Element of comprehensive plan or payments to such facilities or segments are reflected in the five (5) year schedule of capital improvements in the next regularly scheduled update of the Capital Improvements Element; or programmed for construction in the five (5) year capital facility plan or work program of the agency having responsibility for the transportation improvement.~~

(24)

~~Strategic Intermodal System (SIS): A statewide network of high-priority transportation facilities, including the state's largest and most significant commercial service airports, spaceport, deepwater seaports, freight rail terminals, passenger rail and intercity bus terminals, rail corridors, waterways and highways.~~

Procedures, 33G-5, See:

(1)

~~As provided herein, no development order shall be issued where levels of service (LOS) for all public services and facilities will not meet or exceed LOS standards or where the issuance of the development order would result in a reduction of the level of service for any service or facility below LOS standards, except under the following conditions:~~

(6)

~~No development order shall be issued by the Village Council or a Village department unless the following conditions are met:~~

(b)

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Intermediate development orders:

1:

Unless otherwise provided by this chapter, intermediate development orders may be approved only if all services and facilities (roads, transit, water, sewer, parks, solid waste, and flood protection) meet or exceed LOS standards and the development authorized by issuance of the intermediate development order must not result in a reduction of any LOS below LOS standards; or the facilities necessary to accommodate the impacts of the proposed development at or above the applicable standards as established in the CDMP are:

a:

Programmed in the five-year schedule of improvements in the Capital Improvement Element or Transportation Improvement Program; or

b:

Consistent with the CDMP and contained in the adopted five-year capital improvements program of the applicable other service provider; or

c:

Consistent with the CDMP and the applicant agrees in a recordable written instrument that no final development order will be requested unless the necessary facilities are programmed or contracted within the time frames specified in Section 33G-5(6)(c); or

d:

Satisfied through proportionate fair share mitigation for transportation as set forth in Section 33G-5.1.

~~(3)~~

Final development orders:

1:

Unless otherwise provided by this chapter, final development orders may be approved only if all services and facilities (roads, transit, water, sewer, parks, solid

1 waste, and flood protection) meet or exceed LOS  
2 standards and the development authorized by issuance  
3 of the final development order must not result in a  
4 reduction of any LOS below standards; or if the subject  
5 development is located inside the Urban Development  
6 Boundary and:

7 b:

8 For roads and transit, the facilities to  
9 accommodate the impacts of the proposed  
10 development at or above the applicable  
11 standards as established in the CDMP are:

12 (8)

13 Must be contracted for construction no later than 36  
14 months after issuance of a certificate of use and  
15 occupancy if the development is located within the  
16 Urban Development Boundary, and no later than the  
17 date of issuance of a certificate of use and occupancy if  
18 the development is located outside the Urban  
19 Development Boundary; or

20 (9)

21 Satisfied through proportionate fair share mitigation for  
22 transportation is provided as outlined in Section 33G-  
23 5.1.

24 Proportionate fair share mitigation for 33G-5.1, Sec. transportation:

25 (1)

26 Applicability. The Proportionate Fair Share Program shall apply  
27 to all developments in the Village that have been notified of a  
28 lack of capacity to satisfy transportation concurrency on one or  
29 more transportation facilities in accordance with the Village  
30 Concurrency Management Program, including transportation  
31 facilities maintained by the Florida Department of  
32 Transportation (FDOT) or another jurisdiction that are relied  
33 upon for concurrency determinations, pursuant to the  
34 requirements of Section 33G-5.1(2) below. The Proportionate  
35 Fair Share Program does not apply to Developments of  
36 Regional Impact (DRIs) using proportionate fair share under  
37 Section 163.3180(12), Florida Statutes, or to developments  
38 exempted from concurrency as provided for in this Chapter.

39 (2)

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1 General Requirements:

2 (a)

3 An applicant whose project meets the criteria of  
4 subsection 33G-5.1(1) may choose to satisfy  
5 transportation concurrency requirements by making a  
6 proportionate fair share contribution, pursuant to the  
7 following requirements:

8 (1)

9 The proposed development is consistent with  
10 the Comprehensive Development Master Plan  
11 (CDMP) and applicable land development  
12 regulations; and

13 (2)

14 The five year schedule of capital improvements  
15 in the Village's Capital Improvements Element  
16 (CIE) includes one or more transportation  
17 improvements that, upon completion, will satisfy  
18 the requirements of the Village's Concurrency  
19 Management Program. The provisions of  
20 Section (b) below may apply if a project or  
21 projects needed to satisfy concurrency are not  
22 presently contained within the Village's CIE.

23 (b)

24 The Village may choose to allow an applicant to satisfy transportation  
25 concurrency for a deficient segment(s), through the Proportionate Fair-  
26 Share Program, by the developer contributing to an improvement that,  
27 upon completion, will create additional capacity on the deficient  
28 segment(s) sufficient to accommodate the additional traffic generated by  
29 the applicant's proposed development even if the improvement project  
30 for the deficient segment(s) is not contained in the five year schedule of  
31 capital improvements in the CIE, where:

32 (1)

33 The Village Council holds an advertised public hearing to  
34 consider the proportionate share agreement and corresponding  
35 future changes to the five year CIE; and

36 (2)

37 The Village Council adopts by Resolution the Proportionate  
38 Fair Share Agreement directing Village Staff to file an

1 amendment adding the improvement(s) to the five-year  
2 schedule of capital improvements in the CIE, no later than the  
3 next regularly scheduled update. To qualify for consideration  
4 under this section, the proposed improvement must be reviewed  
5 by the Village Council, and determined to be financially feasible,  
6 consistent with the CDMP, and in compliance with the  
7 provisions in this section.

8 (e)

9 Any improvement project(s) proposed to meet a developer's fair share  
10 obligation must meet design standards of the Village for locally  
11 maintained roadways, and the design standards of FDOT for the state  
12 highway system.

13 (3)

14 Application Process:

15 (a)

16 Upon notification of a lack of capacity to satisfy  
17 transportation concurrency, an applicant may choose to  
18 satisfy transportation concurrency through the  
19 proportionate fair share program pursuant to the  
20 requirements of subsection 33G-5.1(2).

21 (b)

22 Prior to submitting an application for a proportionate  
23 fair share agreement, the applicant shall attend a pre-  
24 application meeting with the Public Works Department  
25 to discuss eligibility, application submittal requirements,  
26 potential mitigation options, and related issues. If the  
27 impacted facility is on the Strategic Intermodal System  
28 (SIS), then FDOT will be notified and invited to  
29 participate in the pre-application meeting.

30 (e)

31 Eligible applicants shall submit an application to the  
32 Public Works Department that includes an application  
33 fee, as established by resolution, and the following:

34 (1)

35 Name, address, and phone number of owner(s),  
36 developer and agent;

37 (2)

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~~Property location, including parcel identification numbers;~~

~~(3)~~

~~Legal description and survey of property;~~

~~(4)~~

~~Project description, including type, intensity, and amount of development;~~

~~(5)~~

~~Phasing scheduling, if applicable;~~

~~(6)~~

~~Description of requested proportionate fair share mitigation methods(s);~~

~~(7)~~

~~Copy of concurrency application; and~~

~~(8)~~

~~Location map depicting the site and affected road network.~~

~~(d)~~

~~Within ten business days, the Public Works Department shall review the application and certify that the application is sufficient and complete. If an application is determined insufficient, incomplete, or inconsistent with the general requirements of the Proportionate Fair Share Program as indicated in subsection 33G-5.1(2), then the applicant shall be notified in writing of the reasons for such deficiencies within ten business days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application shall be deemed abandoned.~~

~~(e)~~

~~Pursuant to [F.S. §] 163.3180(16)(c), proposed proportionate fair share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. If a SIS facility is proposed for proportionate share mitigation, the applicant shall submit evidence of an agreement between the applicant~~

1 and the FDOT for inclusion in the proportionate fair-  
2 share agreement.

3 ~~(f)~~

4 Once an application is deemed sufficient, complete, and  
5 eligible, a proposed proportionate fair share obligation  
6 and binding agreement will be prepared by the applicant  
7 with direction from the Village and delivered to the  
8 Public Works Department for review, including a copy  
9 of the FDOT for any proposed proportionate fair share  
10 mitigation on SIS facilities, no later than 60 days from  
11 the date at which the application was determined to be  
12 sufficient and no fewer than 14 days prior to the Village  
13 Council meeting when the agreement will be considered.

14 ~~(g)~~

15 The Public Works Department shall notify the applicant  
16 of the date, time, and location of the Village Council  
17 meeting at which the agreement will be considered for  
18 final action. No proportionate fair share agreement(s)  
19 will be effective until approved by the Village Council.

20 ~~(4)~~

21 Determination of Proportionate Fair Share Obligation:

22 ~~(a)~~

23 Proportionate fair share mitigation for concurrency  
24 impacts may include, separately or collectively, private  
25 funds, contributions of land, and construction and  
26 contribution of facilities as provided for in [F.S. §]  
27 163.3180(16)(c).

28 ~~(b)~~

29 A development shall not be required to pay more than  
30 its proportionate fair share. The fair market value of the  
31 proportionate fair share mitigation for the impacted  
32 facilities shall not differ based on the form of mitigation  
33 as provided for in [F.S. §] 163.3180(16)(c).

34 ~~(c)~~

35 The methodology used to calculate an applicant's  
36 proportionate fair share obligation shall be as provided  
37 for in [F.S. §] 163.3180(12), as follows:

1 The amount of the proportionate share contribution  
2 shall be calculated based upon the cumulative number of  
3 trips from the proposed development expected to reach  
4 roadways during the peak hour from the complete  
5 buildout of a stage of phase being approved, divided by  
6 the change in the peak hour maximum service volume  
7 of roadways resulting from construction of an  
8 improvement necessary to maintain the adopted level of  
9 service, multiplied by the construction cost, at the time  
10 of developer payment, of the improvement necessary to  
11 maintain the adopted level of service. This methodology  
12 is expressed by the following formula:

13 
$$\text{Proportionate Fair Share} = \frac{\sum \{(\text{Development Trips})^2\}}{(\text{SV Increase}) \times \text{Cost}}$$

14  
15 (Note: In the context of the formula, the term  
16 "cumulative" does not include a previously approved  
17 stage or phase of a development.)

18 Where:

19  $\Sigma$  = Sum of all deficient links proposed for  
20 proportionate fair share mitigation for a project.

21 Development Trips = Those trips from the stage or  
22 phase of development under review that are assigned to  
23 roadway segment "i" and have triggered a deficiency per  
24 the concurrency management system;

25 SV Increase = Service volume increase provided by the  
26 eligible improvement to roadway segment "I";

27 Cost = Adjusted cost of the improvement to segment  
28 "i". Cost shall consist of all improvements and  
29 associated costs, including design, right of way  
30 acquisition, planning, engineering, inspection, and  
31 physical development costs, directly associated with  
32 construction at the anticipated cost in the year that  
33 construction will occur.

34 (d)

35 For purposes of determining proportionate fair share  
36 obligations, the Village shall determine the improvement  
37 costs based upon the actual and/or anticipated costs of  
38 the improvement in the year that construction will  
39 occur.

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(e)

If the Village has accepted an improvement project proposed by the applicant, then the value of the improvement shall be based on the Public Works Department cost estimate and approved by the Village's Public Works Director or other method approved by the Village's Public Works Director.

(f)

If the Village has accepted right-of-way dedication for the proportionate fair share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 120% of the most recent assessed value by the County property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the Village Council and at no expense to the Village. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the Village Council at no expense to the Village. If the estimated value of the right-of-way dedication proposed by the applicant, based on a Village approved appraisal, is less than the Village estimated total proportionate fair share obligation for that development, then the applicant must also pay the difference. Prior to the purchase acquisitions of any real estate intended to be used for proportionate fair share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

(5)

Impact Fee Credit for Proportionate Fair Share Mitigation:

(a)

Where mitigation is occurring on County roads, proportionate fair share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair share mitigation is used to address the same capital infrastructure improvements contemplated by the County's impact fee ordinance.

(b)

1 Impact fee credits for the proportionate fair share  
2 contribution will be determined when the transportation  
3 impact fee obligation is calculated for the proposed  
4 development. Impact fees owed by the applicant will be  
5 reduced per the Proportionate Fair Share Agreement as  
6 they become due per the County's impact fee ordinance.  
7 If the applicant's proportionate fair share obligation is  
8 less than the development's anticipated road impact fee  
9 for specific stage or phase of development under review,  
10 then the applicant or its successor must pay the  
11 remaining impact fee amount to the County pursuant to  
12 the requirements of the County impact fee ordinance.

13 (e)

14 Major projects not included within the County's impact  
15 fee ordinance or created under Section 5.1(2) which can  
16 demonstrate a significant benefit to the impacted  
17 transportation system may be eligible at the County's  
18 discretion for impact fee credits.

19 (d)

20 The proportionate fair share obligation is intended to  
21 mitigate the transportation impacts of a proposed  
22 development at a specific location. As a result, any road  
23 impact fee credit based upon proportionate fair share  
24 contributions for a proposed development cannot be  
25 transferred to any other location unless provided for  
26 within the County's impact fee ordinance.

27 (b)

28 Proportionate Fair Share Agreements:

29 (a)

30 The Village Council has the authority by resolution to  
31 enter into a Proportionate Fair Share Agreement.

32 (b)

33 Upon executing a proportionate fair share agreement  
34 (Agreement), in a form acceptable by the Village, and  
35 satisfying other concurrency requirements, an applicant  
36 shall receive concurrency approval. Should the applicant  
37 fail to apply for a development order within (90 days) of  
38 receiving concurrency approval by the Village Council,

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~~the project's concurrency vesting shall expire, and the applicant shall be required to re-apply:~~

(e)

~~Payment of the proportionate fair share contribution is due in full prior to issuance of the final plat or building permit whichever occurs first. If the payment is submitted more than six months from the date of execution of the Agreement, then the best estimate of the construction cost of the required improvement at the time of payment. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given unless otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure completion of all required improvements:~~

(d)

~~All developer improvements authorized under Section 5.1 must be completed as established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure that completion of all required improvements:~~

(e)

~~Dedication of necessary right of way for facility improvements pursuant to a proportionate fair share agreement must be completed prior to issuance of the final development order or recording of the final plat.~~

(f)

~~Any requested change to a development project subsequent to the issuance of a development order shall be subject to additional proportionate fair share contributions to the extent the change would increase the project costs or generate additional traffic that would require mitigation:~~

(g)

~~Applicants should submit a letter to withdraw from a proportionate fair share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the Village are nonrefundable:~~

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(h) The Village may enter into proportionate fair share agreements for selected corridor improvements to facilitate collaboration among multiple applications on improvements to a shared transportation facility.

(f) Appropriation of Fair Share Revenues:

(a) Proportionate fair share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the Village's CIE, or as otherwise established in the terms of the proportionate fair share agreement. At the discretion of the Village, proportionate fair share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair share revenues were derived. Proportionate fair share revenues may also be used as the 50 percent local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

(b) In the event a scheduled facility improvement is removed from the CIE, then the proportionate fair share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvements will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair share contribution was made.

(G) NOTICE PROVISIONS FOR ZONING AND QUASI-JUDICIAL, 30. Chapter PROCEEDINGS  
Application filing and acceptance, 30.1.  
All zoning hearing applications delineated at 33-304 and 33-309, Miami Dade County Code may only be filed and accepted for filing by the Village on the first and third Wednesday of each month, unless such date is a legal holiday. An administrative adjustment may be filed at any time.

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Public hearing and notice requirements, 30.2

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(a)

Generally, When an application for development approval is subject to a public hearing, the administrative official shall ensure that the necessary public hearing is scheduled for the decision making body reviewing the application and that proper notice of the public hearing is provided, as set forth herein. No action shall be taken by the Village Council on application for development approval that is subject to the public hearing requirement, until a public hearing has been held upon notice of the time, place and purpose of such hearing, the cost of said notice to be borne by the applicant.

All notices for public hearings shall include the following information:

(1)

Identify the applicant, if other than the village.

(2)

Indicate the date, time, and place of the public hearing.

(3)

Describe the property involved by street address or by legal description, and area of the subject property. A map may be substituted for the legal description or as required by state law.

(4)

Describe the nature, scope and purpose of the proposal being noticed.

(5)

Identify the village department(s) where the public may inspect the application, staff report and related materials during normal business hours.

(6)

Include a statement that affected parties may appear at the public hearing, be heard and submit evidence with respect to the application.

(7)

Include other information as may be required by law.

(b)

Mail notice.

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~~When the provisions of this Code require that mailed notice be provided, the applicant shall be responsible for acquiring and providing the list of all property owners within the required radius from the subject property that shall be notified (including the subject property):~~

~~(2)~~

~~The applicant shall be responsible for mailing the notice at no cost the Village.~~

~~(3)~~

~~Notice shall be deemed mailed by its deposit in the United States mail~~

~~(4)~~

~~A certified/return notice mailed by applicant to the Village Clerk.~~

~~(5)~~

~~The applicant shall provide an affidavit to the Village stating the date notices were mailed.~~

~~(6)~~

~~Notice by mailing is a courtesy only and no action taken by the village shall be voided by the failure of any individual property owner to receive such notice. However, failure to mail the written notice shall render voidable any hearing held on the application.~~

~~(7)~~

~~The property owners required to be provided notice by this section shall be determined from a certified copy of the most recent county tax roll.~~

~~(8)~~

~~Distances for purposes of mailed notice requirements shall be measured from the perimeter of the property subject to development approval, except that where the owner of the subject property owns contiguous property, the distance shall be measured from the perimeter of the boundary of the contiguous property.~~

~~(9)~~

~~Mailed notice shall be mailed at least 10 calendar days prior to a public hearing.~~

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~~(10)~~

~~If, after the initial notice is mailed, the application is changed in a manner such that additional land area is encompassed within the application, then the initial notice shall be repeated by the applicant, at the applicant's expense.~~

(e)

~~The following noticing information must be provided by the applicant to the Village:~~

~~(1)~~

~~Two (2) copies of a list, with the names and addresses of all property owners of land located within the required radius from the exterior boundary of the subject property. If the subject property constitutes only a portion of a contiguous ownership parcel, the exterior boundary from which the required radius is to be projected will be the exterior boundary of the entire contiguous ownership parcel. Labels can be no older than six (6) months by the time the public hearing is heard.~~

~~(2)~~

~~Two copies of a list with the legal description of land owned by each property owner (lot number, block number and subdivision).~~

~~(3)~~

~~Two copies of a map of the subject area showing the required radius with the subject property highlighted.~~

~~(4)~~

~~Original certified letter plus one copy stating that the ownership list and map is a complete and accurate representation of the real estate property and property owners within the required radius from the subject property and that all persons listed were mailed proper notice, and identify the date of mailing. This letter must be dated and give the address of the subject property and its legal description, subdivision and plat book number and page. Also state the source for this information. (If prepared by a professional data research company, the preceding information should automatically be included. If prepared by the applicant, this letter must be signed by the applicant and notarized). The village maintains, in the application package for public hearings, a list of names and telephone numbers of local companies which the village believes are capable of producing~~

1 the required mailing labels and accompanying maps, legal  
2 descriptions and certified letter for this application requirement.

3 (5)

4 Two copies of the site plan for the public hearing zoning item  
5 to be heard.

6 (6)

7 A CD-ROM containing a copy of all the images scanned on to  
8 the CD of the entire application, mailing radius labels, affidavit  
9 of compliance, maps, site plans, etc., as provided under section  
10 30.2(b)(9)(i) through (v).

11 (d)

12 Staff recommendations. Applications requiring public hearing shall be  
13 promptly transmitted to the Village Council together with a written  
14 recommendation of the Director. All recommendations shall state all  
15 facts relevant to the application, including an accurate depiction of  
16 know living, working, traffic and transportation conditions in the  
17 vicinity of the property that is the subject of the application, and also a  
18 description of all projected effects of the proposed zoning action on  
19 those conditions. Before reaching a conclusion, each recommendation  
20 shall list all known factors both in favor or and against each application.  
21 All such recommendations shall be signed and considered final no  
22 earlier than five (5) days prior to the public hearing to give the public an  
23 opportunity to provide information to the staff prior to the  
24 recommendations becoming final. This shall not preclude earlier,  
25 preliminary recommendations. All documents of the departments  
26 evaluating the application, which documents pertain to the application,  
27 are open for public inspection to applicants or other interested persons.

28 (e)

29 Published notice. When the provisions of this Land Development Code  
30 require that notice be published, the applicant shall be responsible for  
31 the cost of village staff in preparing the content of the notice and for  
32 the cost of publishing the notice in the non-legal section of the local  
33 newspaper of general circulation that has been selected by the village.

34 (f)

35 This notice shall be published at least 15 days prior to the and  
36 no earlier than 30 days prior to the required public hearing,  
37 except where provided otherwise in this Land Development  
38 Code. The notice shall contain the date, time, and place of the  
39 hearing, the property's location and street address (if available).

1 legal description, nature of the applications, including all specific  
2 variances and other requests. The notice shall additionally state  
3 and make clear that any interested person is entitled to discuss  
4 the application with the village staff processing and reviewing  
5 the application to the same extent as the applicant, and that the  
6 application may change during the hearing process.

7 (2)

8 A second, Layman's notice may, at the discretion of the Village  
9 be published in a newspaper of general circulation no earlier  
10 than ten days prior to the hearing and no later than one day  
11 prior to the hearing. The Layman's notice shall contain the same  
12 information as the full legal notice, except that the property's  
13 legal description may be omitted and the nature of the  
14 application and requests contained therein may be summarized  
15 in a more concise, abbreviated fashion. The Layman's notice  
16 may be published in a section or supplement of the newspaper  
17 distributed only in the locality whether the property subject to  
18 the application lies.

19 (f)

20 Website notice. The applicant is to provide the Village Clerk with a CD  
21 ROM containing a copy of all the images scanned on to the CD of the  
22 entire application, mailing radius labels, affidavit of compliance, maps,  
23 site plans, etc., as provided under section 30.2(b)(9)(i) through (v). The  
24 clerk shall use the information from the CD ROM and place the notice  
25 and attachments on the Village's official website in a downloadable  
26 format accessible to the general public at least five days prior to the  
27 public hearing.

28 (g)

29 Posted notice. When the provisions of this Land Development Code  
30 require that notice be posted on the property subject to the application,  
31 the administrative official shall be responsible for posting the property,  
32 and shall:

33 (1)

34 Place the signs on the property that is the subject of the  
35 application at least ten days prior and not more than 30 days  
36 prior to the public hearing.

37 (2)

38 Place the signs along each street that is adjacent to or runs  
39 through the subject property at intervals of not more than 200

1 feet in a manner that makes them clearly visible to adjacent  
2 residents and passers by.

3 ~~(3)~~

4 Place the signs no more than 25 feet from the street so that the  
5 lettering is visible from the street. Where the land does not have  
6 frontage on a street, signs shall be erected on the nearest street,  
7 with an attached notation indicating generally the direction and  
8 distance to the property subject to the application.

9 ~~(h)~~

10 ~~Affidavit of notice; re-noticing. An affidavit and photographic evidence shall~~  
11 ~~be provided by the applicant before the public hearing demonstrating~~  
12 ~~that the applicant has complied with the applicable notice requirements~~  
13 ~~set forth in this Division. Failure to comply with the applicable notice~~  
14 ~~requirements shall result in the postponement and re-noticing of the~~  
15 ~~public hearing. All costs of re-noticing a public hearing shall be borne~~  
16 ~~by the party failing to comply with the applicable notice requirements.~~

17 ~~(i)~~

18 ~~Comprehensive plan amendments. Notice for public hearings on applications~~  
19 ~~for amendments shall be noticed as follows:~~

20 ~~(1)~~

21 ~~Text or map amendments initiated by the Village shall be~~  
22 ~~noticed by publication in accordance with the provisions of [F.S.~~  
23 ~~§] 163.3184. In addition, property owners of record within a~~  
24 ~~2,500-foot radius of the property subject to map amendments~~  
25 ~~shall be provided mailed notice.~~

26 ~~(2)~~

27 ~~Text or map amendments initiated by a property owner or~~  
28 ~~governmental agency other than the Village, shall be noticed by~~  
29 ~~publication in accordance with the provisions of [F.S. §]~~  
30 ~~163.3184 and by posting of the property subject to the~~  
31 ~~application. In addition, property owners of record within a~~  
32 ~~2,500-foot radius of the property subject to map amendments~~  
33 ~~shall be provided mailed notice.~~

34 ~~(j)~~

35 ~~Land Development Code. Notice for public hearings on applications for~~  
36 ~~amendments to the Land development code and the official zoning~~  
37 ~~district map shall be noticed as follows:~~

38 ~~(1)~~

1 Text or map amendments initiated by the village shall be noticed  
2 by publication in accordance with the provisions of F.S. §  
3 166.041. In addition, property owners of record within a 500-  
4 foot radius of the property subject to map amendments shall be  
5 provided mailed notice.

6 (2)

7 Text or map amendments initiated by a property owner or  
8 governmental agency other than the village shall be noticed by  
9 publication in accordance with the provisions of [F.S. §]  
10 166.041, and by posting of the property subject to the  
11 application. In addition, property owners of record within a  
12 500-foot radius of the property subject to map amendments  
13 shall be provided mailed notice.

14 (4)

15 Other development. Public hearings on applications for development  
16 permit approvals other than rezoning, including, but not limited to  
17 variances, conditional uses, site plans for conditional uses, and plats  
18 shall be noticed as follows:

19 (1)

20 Posting of the property subject to the application:

21 (2)

22 Mailed notice to the property owners or record within a 500-  
23 foot radius of the property which is the subject of the  
24 application:

25 (3)

26 Courtesy publication in the non-legal section of the local  
27 newspaper of general circulation that has been selected by the  
28 Village:

29 (f)

30 Appeals of action by the administrative official. An applicant seeking an appeal  
31 of the action by the administrative official to the planning board shall be  
32 responsible for notice of the appeal by mailed notice to property owners  
33 of record within a 500-foot radius of the property subject to the  
34 application and posting of the property subject to the application:

35 (m)

36 Applicant bears burden of cost. All costs of publication, mailing and posting  
37 shall be borne by the applicant. Applicant shall also bear the cost of  
38 providing the Village Clerk a CD-ROM containing a copy of all the

images scanned on to the CD of the entire application, mailing radius labels, affidavit of compliance, maps, site plans, etc., as provided under section 30.2(b)(9)(i) through (v).

(n)

Provisions of Florida Statutes. In the event of a direct conflict between the Land development code conflicts with the Florida Statutes, the Florida Statutes shall prevail.

(o)

Table of notice requirements with citation to authority.

NOTICE REQUIREMENTS

<u>Application Type</u>	<u>Notice Section</u>	<u>Posted</u>	<u>Published</u>	<u>Mailed</u>
<u>Comprehensive Plan by Village</u>	<u>30.2(i)1</u>	No	<u>163.3184, F.S.</u>	<u>2,500 feet radius for map amendment.</u>
<u>Comprehensive Plan by Owner</u>	<u>30.2(i)2</u>	<u>10 days prior to hearing for map amendment</u>	<u>163.3184, F.S.</u>	<u>2,500 feet radius for map amendment</u>
<u>Land Development Code by Village</u>	<u>30.2(j)1</u>	No	<u>166.041, F.S.</u>	<u>500 feet radius for map amendment.</u>
<u>Land Development Code by Owner</u>	<u>30.2(j)2</u>	<u>10 days prior to hearing for map amendment</u>	<u>166.041, F.S.</u>	<u>500 feet radius for map amendment.</u>
<u>Variances, conditional uses, site plans for conditional uses, plats (development permit approvals other than rezonings)</u>	<u>30.2(k)</u>	<u>10 days prior to hearing</u>	<u>15 days prior to hearing</u>	<u>500 feet radius</u>
<u>Appeal of Action by Administrative Official</u>	<u>30.2(l)</u>	<u>10 days prior to hearing</u>	<u>15 days prior to hearing</u>	<u>500 feet radius</u>

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(p)

Notice and appeals. If the notices under subsections 30.2(b) and (e) are made and published, and the affidavits of compliance are of record, no judicial proceeding to void a hearing shall be commenced after the time for appeal from a resolution of an administrative or quasi-judicial hearing as provided in the Florida Rules of Appellate Procedures:

(Ord. No. 06-11, § 1, 6-5-2006; 07-01, §§ 1, 2, 1-8-2007; 07-03, § 1, 3-5-2007)

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Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 4. This ordinance shall be codified and included in the Code of Ordinances.

Section 5. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

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

PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

Attest: \_\_\_\_\_  
Meighan Alexander                                  Shelley Stanczyk  
Village Clerk    Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Eve A. Boutsis  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore                          \_\_\_\_\_  
Council Member Howard Tendrich                      \_\_\_\_\_  
Council Member Joan Lindsay                            \_\_\_\_\_  
Vice-Mayor Brian W. Pariser                             \_\_\_\_\_  
Mayor Shelley Stanczyk                                    \_\_\_\_\_




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To: Mayor and Village Council

Date: March 5, 2012

From: Eve Boutsis, Village Attorney

Re: Variance Criteria -  
Ordinance 1<sup>st</sup> Reading

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO SECTION 30-30.7(b) MODIFYING DIVISION 30-30, ENTITLED "DEVELOPMENT APPROVAL PROCEDURES"; TO AMEND SECTION 30-60.6 ENTITLED "VARIANCES" TO MODIFY THE STRICT HARDSHIP STANDARD TO THE GENERAL STANDARD PROVIDED BY MIAMI-DADE COUNTY; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Patrick Fiore].**

**BACKGROUND:**

The Mayor and Village Council as the Land Planning Agency and Council created Division 30 of Chapter 30, entitled "Development Approval Procedures" which included Section 30-30.6 relating to the hearing process and standards for variances. The amendment is to remove the "strict hardship standard" established for variances in order to facilitate use of the variance process. The revised language as to the variance criteria reflects the general standard provided by Miami-Dade County section 33-311(4)(a).

**ANALYSIS:**

The proposed revision to 30-30.6 was reviewed for consistency with the criteria established in Section 30-30.7(b). 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:** The Comprehensive Plan and the Village's concurrency management plan do not address the variance process for zoning applications.

**Finding:** Not applicable.

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

Memorandum on Variance Criteria

March 5, 2012

Page 2 of 4

Analysis: The proposed revisions are intended to facilitate the variance process. The Council may implement a less stringent variance procedure consistent with the community's desire.

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: The Village originally used the County's variance procedures and had implemented a more stringent process and as such the Council may implement a less stringent variance procedure consistent with the community's desire.

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: The proposed ordinance does not change the list of permitted uses within the Village's zoning districts. The modification would however provide a relaxed standard for residents requesting variation from the Code. The Council may implement a less stringent variance procedure consistent with the community's desire.

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 change the list of permitted uses within the Village's zoning districts thus it does not affect the capacity of existing facilities or services as described above.

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 change the list of permitted uses within the Village's zoning districts and it does not affect the natural environment as described above. Should more variances be allowed, due to the foregoing, it may result in an increase in a nonconforming development pattern. The Council may implement a less stringent variance procedure consistent with the community's desire.

**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** Should more variances be granted, due to the foregoing, there may likely be an increase in a non-conforming development pattern within the Village. Depending on ones point of view, property values could increase or decrease due to the expansion of these nonconformities through the variance process. The extent to such an impact can not be determined however as it would require predicting the nature of future variance approvals that have yet to be considered by the Council.

**Findings:** Consistent in so far as actual impact whether positive or negative cannot be quantified at this time.

**Criteria (8)** Whether the proposal would result in an orderly and compatible land use pattern, Any positive and negative effects on land use patter shall be identified.

**Analysis** The Council has within its authority to implement a less stringent variance procedure consistent with the community's desire. Though such action does not guarantee an increase in requests for variances, a lessening of the review criteria would likely result in more variance approvals. An increase in the number of granted variances may lead to an increase in a nonconforming development pattern within the Village, however the extent of such impact cannot be determined as it would require predicting the nature of future variance approvals that have yet to be considered by the Council.

**Findings:** Consistent in so far as actual impact whether positive or negative cannot be quantified at this time.

**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.

Memorandum on Variance Criteria  
March 5, 2012  
Page 4 of 4

Analysis: The Council has within its authority to implement a less stringent variance procedure consistent with the community's desire.

Findings: Consistent.

**Criteria (10)** Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

Analysis: Discretion of Village Council.

Finding: As determined by the Village Council.

**FISCAL/BUDGETARY IMPACT:**

A relaxation of the variance review criteria may result in an increase in such requests, thus providing for the receipt of additional application fees and corresponding staff time to review and analyze. Application fees are intended to be cost recovery.

**RECOMMENDATION:** Discretion of the Village Council.

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

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO SECTION 30-30.7(b) MODIFYING DIVISION 30-30, ENTITLED "DEVELOPMENT APPROVAL PROCEDURES"; TO AMEND SECTION 30-60.6 ENTITLED "VARIANCES' TO MODIFY THE STRICT HARDSHIP STANDARD TO THE GENERAL STANDARD PROVIDED BY MIAMI-DADE COUNTY; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Patrick Fiore].

WHEREAS, the Mayor and Village Council as the Land Planning Agency and Council created Division 30 of Chapter 30, entitled "Development Approval Procedures" which included Section 30-30.6 relating to the hearing process and standards for variances; and,

WHEREAS, the Mayor and Village Council desire to amend the "strict hardship standard" established for variances in order to facilitate use of the variance process; and,

WHEREAS, the Village Council have reviewed the criteria of 30-30.7(b) and find the ordinance in compliance with the applicable standards; and,

WHEREAS, the Mayor and Village Council desire to amend Section 30-30.6 to have the variance standard reflect the general standard provided by Miami-Dade County Section 33-311(4)(a).

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

**Section 1.** Pursuant to the requirements of 30-30.7(b) of the Village's Code, the following text change is in compliance with the Village's Comprehensive Code and review criteria. The Village of Palmetto Bay hereby amends Section 30-30.6, which section shall read as follows:

\* \* \*

**30-30.6 VARIANCES.**

(a) Non-use variances. The Village Council shall hear applications for non-use variances with the exception of those that qualify for administrative (de minimus) review. The Village Council, following a public hearing, shall grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the land development code, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. In addition, the Village Council must make a determination whether the granting

1 of the variance will be in harmony with the general intent and purpose of the Comprehensive Plan  
2 and Chapter 30, and that the variance will not be injurious to the area involved or otherwise  
3 detrimental to the public welfare. No showing of unnecessary hardship to the land is required. For  
4 the purpose of this subsection, the term "non-use variances" involves matters such as setback lines,  
5 frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard  
6 requirements and other variances which have no relation to change of use of the property in  
7 question.

8  
9 ~~(a) Generally. A variance is a relaxation of the terms of Chapter 30, due to an~~  
10 ~~unnecessary and undue hardship when relaxation of terms is not contrary to the public interest and~~  
11 ~~results from conditions peculiar to the property and not the result of the actions of the applicant~~  
12 ~~that may result from a literal enforcement of Chapter 30.~~

13  
14 ~~(b) Permitted Variances. A variance is authorized to be granted by the Village Council,~~  
15 ~~after quasi-judicial public hearing, only for setback lines; lot width; street frontage; lot depth; lot~~  
16 ~~coverage; landscape or open space requirements; height limitations; yard regulations; fences and wall~~  
17 ~~regulation; signs; parking; flood regulations approved under Section 30-100.6, of the Code of~~  
18 ~~Ordinances, and other matters specifically permitted as variances pursuant to this Division.~~  
19 ~~Administrative setback variances shall be permitted pursuant to section 30-30.3(d). Cross reference~~  
20 ~~with the FT&I Zoning District requirements found at Division 30-50.~~

21  
22 ~~(eb) Prohibited Variances. The Village Council may not grant a variance to allow a~~  
23 ~~prohibited use, or one that is contrary to the Comprehensive Plan or this Chapter. Establishment or~~  
24 ~~expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be~~  
25 ~~granted because of the presence of non-conformities in the zoning district or uses in an adjoining~~  
26 ~~zoning district or because of prior variances granted. Similarly, a variance shall not be granted which~~  
27 ~~increases or has the effect of increasing density or intensity of a use beyond that permitted by the~~  
28 ~~Comprehensive Plan or Chapter 30.~~

29  
30 ~~(dc) Application. The applicant shall submit an application for a variance pursuant to the~~  
31 ~~general procedures outlined in subsection 30-30.2. A "complete application" shall include the~~  
32 ~~application form, the fee, a current survey, building elevations, a site plan, and a landscape plan as~~  
33 ~~well as all supplemental information required by the Village and necessary to render determinations~~  
34 ~~related to the variance request. New or amended site plans shall not be accepted on a pending~~  
35 ~~application after notification has been issued for the public hearing on the variance.~~

36  
37 ~~(de) Village Council action ~~action and criteria for approval.~~ After the public hearing, the~~  
38 ~~Village Council shall adopt a written resolution granting, granting with conditions, or denying the~~  
39 ~~variance. In order to authorize any variance from the terms of this Division, the Village Council~~  
40 ~~must determine whether the applicable requirements of subsection (a) or (b) have been complied~~  
41 ~~with by the applicant. the following criteria have been met:~~

42  
43 ~~(1) That the variance is in fact a variance allowed in this Division and is~~  
44 ~~within the province of Village Council.~~

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2           ~~(2) Existence of special conditions or circumstances. That special~~  
3 ~~conditions and circumstances exist which are peculiar to the land, structure, or~~  
4 ~~building involved and which are not applicable to other lands, structures, or~~  
5 ~~buildings in the same zoning district.~~

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7           ~~(3) That the special conditions and circumstances do not result from the~~  
8 ~~actions of the applicant.~~

9  
10           ~~(4) That granting the variance requested will not confer on the applicant~~  
11 ~~any special privilege that is denied by Chapter 30 to other lands, buildings, or~~  
12 ~~structures in the same zoning district.~~

13  
14           ~~(5) Financial difficulties or economic hardship shall not be a factor for~~  
15 ~~determining whether a variance should be granted.~~

16  
17           ~~(6) That literal interpretation of the provisions of Chapter 30 would~~  
18 ~~deprive the applicant of rights commonly enjoyed by other properties in the same~~  
19 ~~zoning district under the terms of Chapter 30 and would work unnecessary and~~  
20 ~~undue hardship on the applicant. The purchase of property which is an illegal~~  
21 ~~nonconformity with Chapter 30 shall not be considered a hardship for the granting~~  
22 ~~of a variance, nor shall conditions peculiar to the property owner be considered.~~

23  
24           ~~(7) That the variance granted is the minimum variance that will make~~  
25 ~~possible the reasonable use of the land, building, or structure.~~

26  
27           ~~(8) That the grant of the variance will be in harmony with the general~~  
28 ~~intent and purpose of the Comprehensive Plan and Chapter 30, and that the variance~~  
29 ~~will not be injurious to the area involved or otherwise detrimental to the public~~  
30 ~~welfare.~~

31  
32           (e) In granting any variance, Village Council may prescribe appropriate conditions to  
33 mitigate the proposed variance and to ensure safeguards in conformity with the Comprehensive Plan  
34 and Chapter 30 or any other duly enacted ordinance. Violation of conditions and safeguards, when  
35 made a part of the terms under which the variance is granted, shall be deemed a violation of this  
36 Chapter and shall nullify the variance.

37  
38           (f) Resolution. Action by the Village Council upon the variance shall be announced by  
39 the mayor immediately following the vote determining the action and shall be embodied in a written  
40 resolution. The resolution shall be recorded in the public records of Miami-Dade County.

41  
42           (g) Effect and limitation of variance. A resolution granting a variance shall be deemed  
43 applicable to the development for which it is granted and not to the individual applicant, provided  
44 that no resolution granting a variance shall be deemed valid with respect to any use of the premises  
45 other than the use specified in the application for a variance.





To: Mayor and Village Council

Date: March 5, 2012

From: Ron E. Williams, Village Manager

Re: Floodplain Management  
Ordinance – 1<sup>st</sup> Reading

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO CHAPTER 30, DIVISION 100, ENVIRONMENTAL REGULATIONS, REPEALING THE EXISTING PROVISIONS OF 30-100.6 TO REPLACE SAME WITH THE MODEL FLOODPLAIN ORDINANCE REQUIRED BY THE STATE LEGISLATURE; PROVIDING FOR RESPONSIBILITIES OF THE BUILDING OFFICIAL AS FLOODPLAIN COORDINATOR' WHICH MODIFICATIONS ARE MANDATED BY THE STATE TO BE INCLUDED IN THE VILLAGE'S ORDINANCE 30-100.6, RELATING TO SAME; ADOPTING A NEW SECTION 30-100.6; ADOPTING FLOOD HAZARD MAPS, DESIGNATING A FLOODPLAIN ADMINISTRATOR, ADOPTING PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; ADOPTING LOCAL ADMINISTRATIVE AMENDMENTS AND LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE PERTAINING TO THE DESIGN AND CONSTRUCTION OF BUILDINGS AND STRUCTURES IN FLOOD HAZARD AREAS; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**BACKGROUND:**

The Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Village of Palmetto Bay that may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. The Village was accepted for participation in the National Flood Insurance Program on 2008 (as the Village), and the Village Commission desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation.

On October 6, 2008, the Village Commission adopted Ordinance No.08-21, in compliance with federally imposed requirements to protect the public health, safety and general welfare by minimizing flood losses in the flood hazard areas of Palmetto Bay. Since the adoption of Ordinance

Cover Memorandum - Floodplain Management Ordinance

March 12, 2012

Page 2 of 5

No. 08-21, the State of Florida has updated its Flood Damage Prevention Ordinance. As a result, in 2009, the Village, in order to be consistent and in compliance with the State of Florida's Ordinance, the Village Commission of the Village of Palmetto Bay believed it to be in the best interests of its citizenry to repeal the then existing sections of the Code addressing flood damage prevention and replace it with a compliant ordinance. Thereafter, on October 5, 2009, the Village once again updated its Floodplain Ordinance (Ordinance 2009-21) by modifying the existing ordinance as it relates to specific FEMA requirements and deadlines. These modifications were important changes for FEMA purposes and unrelated to the proposed revisions, repeal and replacement ordinance being proposed. In short, the proposed replacement ordinance takes into consideration the new FEMA requirements (which the Village enacted), but also takes into consideration the changes to the Florida Building Code, as amended, and taking effect on March 15, 2010.

Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the Florida Building Code. Chapter 553, Florida Statutes, allows for local technical amendments to the *Florida Building Code* which provide for more stringent requirements than those specified in the Code. Section 553.73(5), Florida Statutes, allows adoption of local administrative and local technical amendments to the *Florida Building Code* to implement the National Flood Insurance Program and incentives.

The Florida Division of Emergency Management has prepared a model code together with the revisions to the 2010 Florida Building Code and has recommended that all local Floodplain ordinances be modified accordingly to ensure uniformity of application and compliance with the changes to the Florida Building Code. The Florida Building Code now contains all laws and rules that pertain to and govern the design and construction of buildings (section 553.73(1)(a), Florida Statutes). This means the flood provisions of the 2010 FBC that govern the flood-resistant design of buildings in mapped flood hazard areas supersede local regulations that are not consistent with the Florida Building Code. The 2010 Florida Building Code goes into effect March 15, 2012, which makes it important that coordination is done as quickly as possible. The model ordinance, which also includes language for local administrative and local technical code amendments, is *specifically designed to repeal and replace existing regulations*, to satisfy the National Flood Insurance Program (NFIP), to coordinate with the Florida Building Code, and to meet the requirements of section 553.75(5), Florida Statutes (allowing technical amendments to Florida Building Code as it relates to flood resistance in order to implement the NFIP).

It is in the public interest to adopt the proposed local technical amendments and proposed local administrative amendments to the 2010 *Florida Building Code* and that the proposed amendments are not more stringent than necessary to address the need identified, do not discriminate against materials, products or construction techniques of demonstrated capabilities, are in compliance with section 553.73(4)(a), Florida Statutes, where applicable, and the proposed amendments are in compliance with section 553.73(5), Florida Statutes, where applicable.

**ANALYSIS:**

**The proposed revisions to Division 30-100.6 was reviewed for consistency with the criteria established in Section 30-30.7(b). 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:** The Comprehensive Plan and the Village's concurrency management plan seeks to ensure future development does not have a dilatory impact on the community and conforms with FEMA guidelines as provided at Objective 4C.1, 4C.2 4C.4, 5.1, 5.3, 5.4, and 5.5 and their corresponding policies applicable thereto. The revisions are consistent with FEMA requirements and the new 2010 Florida Building Code, which is to take effect on March 15, 2012.

**Finding:** Consistent.

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

**Analysis:** The proposed amendment brings the Village's Floodplain management ordinance into compliance with state law and federal FEMA requirements.

**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:** The revisions are consistent with FEMA requirements and the new 2010 Florida Building Code, which is to take effect on March 15, 2012.

**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:** The proposed ordinance does not change the list of permitted uses within the Village's zoning districts.

**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 change the list of permitted uses within the Village's zoning districts thus it does not affect the capacity of existing facilities or services as described above. It does affect construction and ensures compliance with federal law (FEMA) and the 2010 Florida Building Code.

**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 change the list of permitted uses within the Village's zoning districts and it does not affect the natural environment as described above. It does ensure that FEMA requirements are complied with for areas within a floodplain.

**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:** The proposed amendment brings clarity to the Village's procedures as to floodplain management. The changes ensure that insurance can be maintained and is consistent with FEMA and FBC requirements. The revisions would ensure that property values are not affected or adversely affect the general welfare.

**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 patter shall be identified.

**Analysis:** The revisions ensures compliance with federal and state laws and only effects the land development pattern in so far as it seeks to prevent flooding conditions.

**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:** The proposed amendment brings clarity to the Village's floodplain management ordinance and brings the Village's Code into consistency with FEMA requirements and the new 2010 Florida Building Code, which is to take effect on March 15, 2012..

**Findings:** Consistent.

**Criteria (10)** Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

**Analysis:** Discretion of Village Council.

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

**FISCAL/BUDGETARY IMPACT:**

None at this time.

**RECOMMENDATION:** Approval.

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ORDINANCE NO.

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO SECTION 30-30.7(b) RELATING TO CHAPTER 30, DIVISION 100, ENVIRONMENTAL REGULATIONS, REPEALING THE EXISTING PROVISIONS OF 30-100.6 TO REPLACE SAME WITH THE MODEL FLOODPLAIN ORDINANCE REQUIRED BY THE STATE LEGISLATURE; PROVIDING FOR RESPONSIBILITIES OF THE BUILDING OFFICIAL AS FLOODPLAIN COORDINATOR' WHICH MODIFICATIONS ARE MANDATED BY THE STATE TO BE INCLUDED IN THE VILLAGE'S ORDINANCE 30-100.6, RELATING TO SAME; ADOPTING A NEW SECTOIN 30-100.6; ALSO REPEALING CHAPTER 18 RELATING TO SAME; ADOPTING FLOOD HAZARD MAPS, DESIGNATING A FLOODPLAIN ADMINISTRATOR, ADOPTING PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; ADOPTING LOCAL ADMINISTRATIVE AMENDMENTS AND LOCAL TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE PERTAINING TO THE DESIGN AND CONSTRUCTION OF BUILDINGS AND STRUCTURES IN FLOOD HAZARD AREAS; PROVIDING FOR ORDINANCES IN CONFLICT, REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay are concerned with the health, safety, and welfare of its residents; and,

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Village of Palmetto Bay and such areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the Village was accepted for participation in the National Flood Insurance Program on October 6, 2008 and the Village Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

1  
2       **WHEREAS**, Chapter 553, Florida Statutes, allows for local technical amendments  
3 to the *Florida Building Code* which provide for more stringent requirements than those  
4 specified in the Code; and  
5

6       **WHEREAS**, Section 553.73(5), Florida Statutes, allows adoption of local  
7 administrative and local technical amendments to the *Florida Building Code* to implement the  
8 National Flood Insurance Program and incentives; and  
9

10       **WHEREAS**, the Village Council has determined that it is in the public interest to  
11 adopt the proposed floodplain management regulations that are coordinated with the *Florida*  
12 *Building Code*; and  
13

14       **WHEREAS**, the Village Council has determined that it is in the public interest to  
15 adopt the proposed local technical amendments and proposed local administrative  
16 amendments to the 2010 *Florida Building Code* and that the proposed amendments are not  
17 more stringent than necessary to address the need identified, do not discriminate against  
18 materials, products or construction techniques of demonstrated capabilities, are in  
19 compliance with Section 553.73(4)(a), Florida Statutes, where applicable, and the proposed  
20 amendments are in compliance with Section 553.73(5), Florida Statutes, where applicable.  
21

22       **WHEREAS**, the Village, previously adopted its Flood Plain Management Ordinance  
23 in 2004, which was incorporated into the Land Development Code in early 2008, at 30-  
24 100.6, and previously codified by Municode Corporation at Chapter 18; and,  
25

26       **WHEREAS**, based upon Federal Emergency Management Agency (FEMA) rules  
27 was again modified in 2009 under ordinance 09-21; and,  
28

29       **WHEREAS**, the state legislature has again modified the requirements for running  
30 the Floodplain Management program; and,  
31

32       **WHEREAS**, the Village Council have reviewed the criteria of 30-30.7(b) and find the  
33 ordinance in compliance with the applicable standards; and,  
34

35       **WHEREAS**, the Mayor and Village Council desire to repeal the existing code and  
36 replace same with the Model Code proposed by the legislature as it relates to flood plain  
37 management.  
38

39       **BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE**  
40 **VILLAGE OF PALMETTO BAY, FLORIDA, THAT THE FOLLOWING**  
41 **FLOODPLAIN MANAGEMENT REGULATIONS, AND THE FOLLOWING**  
42 **LOCAL ADMINISTRATIVE AMENDMENTS AND LOCAL TECHNICAL**  
43 **AMENDMENTS TO THE 2010 FLORIDA BUILDING CODE, ARE HEREBY**  
44 **ADOPTED.AS FOLLOWS:**  
45

46       **Section 1.**     The foregoing whereas clauses are incorporated herein by reference  
47 and made a part hereof.  
48



1 control projects and response to and recovery from flood events; and

2 viii. Meet the requirements of the National Flood Insurance Program for  
3 community participation as set forth in the Title 44 Code of Federal Regulations, Section  
4 59.22.

5  
6 (4) **Coordination with the Florida Building Code.** Pursuant to the  
7 requirement established in state statute that local communities administer and enforce the  
8 Florida Building Code, the Village Council of the Village of Palmetto Bay does hereby  
9 acknowledge that the Florida Building Code contains certain provisions that apply to the design  
10 and construction of buildings and structures in flood hazard areas. Therefore, this ordinance  
11 is intended to be administered and enforced in conjunction with the Florida Building Code.  
12 Where Section numbers of the Florida Building Code are cited, the Section numbers refer to  
13 the 2010 Florida Building Code. If cited Section numbers are changed in subsequent editions  
14 of the code, then the Section numbers shall refer to comparable sections. Where cited,  
15 ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

16  
17 (5) **Warning.** The degree of flood protection required by this ordinance and the  
18 Florida Building Code, as amended by this community, is considered reasonable for regulatory  
19 purposes and is based on scientific and engineering considerations. Larger floods can and will  
20 occur. Flood heights may be increased by man-made or natural causes. This ordinance does not  
21 imply that land outside of mapped special flood hazard areas, or that uses permitted within such  
22 flood hazard areas, will be free from flooding or flood damage.

23  
24 (6) **Disclaimer of Liability.** This ordinance shall not create liability on the part  
25 of the Village Council of the Village of Palmetto Bay or by any officer or employee thereof  
26 for any flood damage that results from reliance on this ordinance or any administrative  
27 decision lawfully made thereunder.

28  
29 (b) **Applicability**

30  
31 (1) **General.** Where there is a conflict between a general requirement and a  
32 specific requirement, the specific requirement shall be applicable. Where, in any specific  
33 case, requirements of this ordinance conflict with the requirements of the Florida Building  
34 Code, the most restrictive shall govern.

35  
36 (2) **Areas to which this ordinance applies.** This ordinance shall apply to all  
37 flood hazard areas within the Village of Palmetto Bay, as established in Section 30-  
38 100.6(b)(3) of this ordinance.

39  
40 (3) **Basis for establishing flood hazard areas.** The Flood Insurance Study for  
41 Miami-Dade County, Florida and Incorporated Areas dated September 11, 2009 and all  
42 subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps  
43 (FIRM), and all subsequent amendments and revisions to such maps, are adopted by  
44 reference as a part of this ordinance and shall serve as the minimum basis for establishing  
45 flood hazard areas. Studies and maps that establish flood hazard areas are on file at Village  
46 Hall, 9705 East Hibiscus Street; Building Department, Palmetto Bay, Florida 33157.

1           (4) **Submission of additional data to establish flood hazard areas.** To  
2 establish flood hazard areas and base flood elevations, pursuant to Sections 30-100.6(q) - (t)  
3 of this ordinance the Floodplain Administrator may require submission of additional data.  
4 Where field surveyed topography prepared by a Florida licensed professional surveyor or  
5 digital topography accepted by the community indicates that ground elevations:

6  
7           i. Are below the closest applicable base flood elevation, even in areas  
8 not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood  
9 hazard area and subject to the requirements of this ordinance and, as applicable, the  
10 requirements of the *Florida Building Code*.

11           ii. Are above the closest applicable base flood elevation, the area shall  
12 be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change  
13 that removes the area from the special flood hazard area.

14  
15           (5) **Other laws.** The provisions of this ordinance shall not be deemed to nullify  
16 any provisions of local, state or federal law.

17  
18           (6) **Abrogation and greater restrictions.** This ordinance supersedes any  
19 ordinance in effect for management of development in flood hazard areas. However, it is  
20 not intended to repeal or abrogate any existing ordinances including land development  
21 regulations, zoning ordinances, stormwater management regulations, and the *Florida Building*  
22 *Code*. In the event of a conflict between this ordinance and any other ordinance, the more  
23 restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or  
24 easement, but any land that is subject to such interests shall also be governed by this  
25 ordinance.

26  
27           (7) **Interpretation.** In the interpretation and application of this ordinance, all  
28 provisions shall be:

29           i. Considered as minimum requirements;

30           ii. Liberal construed in favor of the governing body; and

31           iii. Deemed neither to limit nor repeal any other powers granted under  
32 state statutes.

33  
34 **(c) Duties And Powers Of The Floodplain Administrator**

35  
36           (1) **Designation.** The Building Official is designated as the Floodplain  
37 Administrator. The Floodplain Administrator may delegate performance of certain duties to  
38 other employees.

39  
40           (2) The Building Official is authorized and directed to administer and enforce  
41 the provisions of this ordinance. The Floodplain Administrator shall have the authority to  
42 render interpretations of this ordinance consistent with the intent and purpose of this  
43 ordinance and may establish policies and procedures in order to clarify the application of its  
44 provisions. Such interpretations, policies, and procedures shall not have the effect of waiving

1 requirements specifically provided in this ordinance without the granting of a variance  
2 pursuant to Section 30-100.6(v) of this ordinance.  
3

4 (3) **Applications and permits.** The Floodplain Administrator, in coordination  
5 with other pertinent offices of the community, shall:

6 i. Review applications and plans to determine whether proposed new  
7 development will be located in flood hazard areas;

8 ii. Review applications for modification of any existing development in  
9 flood hazard areas for compliance with the requirements of this ordinance;

10 iii. Interpret flood hazard area boundaries where such interpretation is  
11 necessary to determine the exact location of boundaries; a person contesting the  
12 determination shall have the opportunity to appeal the interpretation;

13 iv. Provide available flood elevation and flood hazard information;

14 v. Determine whether additional flood hazard data shall be obtained  
15 from other sources or shall be developed by an applicant;

16 vi. Review applications to determine whether proposed development  
17 will be reasonably safe from flooding;

18 vii. Review applications to determine whether all necessary permits and  
19 approvals have been obtained from any federal, state, or local agencies from which prior or  
20 concurrent approval is required, including but {not limited to the following}:

21 (A) The South Florida Water Management District; Section  
22 373.036, F.S.

23 (B) Florida Department of Health for onsite sewage treatment  
24 and disposal systems; Section 381.0065, F.S. and Chapter 64E-6, F.A.C.

25 (C) Florida Department of Environmental Protection for  
26 construction, reconstruction, changes, or physical activities for shore protection or other  
27 activities seaward of the coastal construction control line; Section 161.141, F.S.

28 (D) Florida Department of Environmental Protection for  
29 activities subject to the Joint Coastal Permit; Section 161.055, F.S.

30 (E) Florida Department of Environmental Protection for  
31 activities that affect wetlands and alter surface water flows, in conjunction with the U.S.  
32 Army Corps of Engineers; Section 404 of the Clean Water Act.

33  
34 viii. Issue floodplain development permits or approvals for development  
35 other than buildings and structures that are subject to the *Florida Building Code*, when  
36 compliance with this ordinance is demonstrated, or disapprove the same in the event of  
37 noncompliance; and

38 ix. Coordinate with and provide comments to the Building Official to  
39 assure that applications for building permits for buildings and structures in flood hazard  
40 areas comply with the requirements of this ordinance.

1  
2 (d) **Determinations for existing buildings and structures.** For applications for  
3 building permits to improve buildings and structures, including alterations, movement,  
4 enlargement, replacement, repair, change of occupancy, additions, rehabilitations,  
5 renovations, and any other improvement of or work on such buildings and structures, the  
6 Building Official, shall:  
7

8 (1) Estimate the market value, or require the applicant to obtain an appraisal of  
9 the market value prepared by a qualified independent appraiser, of the building or structure  
10 before the start of construction of the proposed work; in the case of repair, the market value  
11 of the building or structure shall be the market value before the damage occurred and before  
12 any repairs are made;

13 (2) Compare the cost to perform the improvement, the cost to repair a damaged  
14 building to its pre-damaged condition, or the combined costs of improvements and repairs,  
15 if applicable, to the market value of the building or structure;

16 (3) Determine and document whether the proposed work constitutes substantial  
17 improvement or repair of substantial damage; and

18 (4) Notify the applicant if it is determined that the work constitutes substantial  
19 improvement or repair of substantial damage and that compliance with the flood resistant  
20 provisions of the *Florida Building Code* and this ordinance is required.  
21

22 (e) **Modifications of the strict application of the requirements of the *Florida***  
23 ***Building Code.*** The Floodplain Administrator shall review requests submitted to the  
24 Building Official that seek approval to modify the strict application of the flood load and  
25 flood resistant construction requirements of the *Florida Building Code* to determine whether  
26 such requests require the granting of a variance pursuant to Section 30-100.6(v) of this  
27 ordinance.  
28

29 (f) **Coordination of Notices and orders.** The Floodplain Administrator who is the  
30 Building Official shall coordinate the issuance of all necessary notices or orders to ensure  
31 compliance with this ordinance and the flood resistant construction requirements of the  
32 *Florida Building Code.*  
33

34 (g) **Inspections.** The Floodplain Administrator shall make the required inspections as  
35 specified in Section 30-100.6(u) of this ordinance for development that is not subject to the  
36 *Florida Building Code.* For buildings and structures subject to the *Florida Building Code*, the  
37 Building Official shall make the required inspections of structures specified in Section 30-  
38 100.6(u) of this ordinance and *Florida Building Code, Building Section 110.* The Floodplain  
39 Administrator shall inspect flood hazard areas to determine if development is undertaken  
40 without issuance of a permit.  
41

42 (h) **Other duties of the Floodplain Administrator.** The Floodplain Administrator  
43 shall have other duties, including but not limited to:

1           (1) Establish, procedures for administering and documenting determinations of  
2 substantial improvement and substantial damage made pursuant to Section 30-100.6(d) of  
3 this ordinance;

4  
5           (2) Require that applicants proposing alteration of a watercourse notify adjacent  
6 communities and the Florida Division of Emergency Management, State Floodplain  
7 Management Office, and submit copies of such notifications to the Federal Emergency  
8 Management Agency (FEMA);

9           (3) Require applicants who submit hydrologic and hydraulic engineering analyses  
10 to support permit applications to submit to FEMA the data and information necessary to  
11 maintain the Flood Insurance Rate Maps if the analyses propose to change base flood  
12 elevations, flood hazard area boundaries, or floodway designations; such submissions shall  
13 be made within 6 months of such data becoming available;

14           (4) Review required design certifications and documentation of elevations  
15 specified by this ordinance and the *Florida Building Code* and this ordinance to determine that  
16 such certifications and documentations are complete;

17           (5) Notify the Federal Emergency Management Agency when the corporate  
18 boundaries of the Village of Palmetto Bay are modified; and

19           (6) Advise applicants for new buildings and structures, including substantial  
20 improvements, that are located in any unit of the Coastal Barrier Resources System  
21 established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier  
22 Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on  
23 such construction; areas subject to this limitation are identified on Flood Insurance Rate  
24 Maps as “Coastal Barrier Resource System Areas” and “Otherwise Protected Areas.”  
25

26 (i) **Floodplain management records.** Regardless of any limitation on the period  
27 required for retention of public records, the Floodplain Administrator shall maintain and  
28 permanently keep and make available for public inspection all records that are necessary for  
29 the administration of this ordinance and the flood resistant construction requirements of the  
30 *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Change; records of  
31 issuance of permits and denial of permits; determinations of whether proposed work  
32 constitutes substantial improvement or repair of substantial damage; required design  
33 certifications and documentation of elevations specified by the *Florida Building Code* and this  
34 ordinance; notifications to adjacent communities, FEMA, and the state related to alterations  
35 of watercourses; assurances that the flood carrying capacity of altered watercourses will be  
36 maintained; documentation related to appeals and variances, including justification for  
37 issuance or denial; and records of enforcement actions taken pursuant to this ordinance and  
38 the flood resistant construction requirements of the *Florida Building Code*. These records shall  
39 be available for public inspection at Village Hall, 9705 East Hibiscus Street, Building  
40 Department, Palmetto Bay, Florida 33157.

41  
42 (j) **Permits required.** Any owner or owner’s authorized agent (hereinafter “applicant”)  
43 who intends to undertake any development activity within the scope of this ordinance which  
44 is wholly within or partially within any flood hazard area shall first make application to the

1 Building Official, and shall obtain the required permit(s) and approval(s). No such permit or  
2 approval shall be issued until compliance with the requirements of this ordinance and all other  
3 applicable codes and regulations has been satisfied.

4  
5 (k) **Floodplain development permits or approvals.** Floodplain development permits or  
6 approvals shall be issued pursuant to this ordinance for any development activities not subject to  
7 the requirements of the *Florida Building Code*. Depending on the nature and extent of proposed  
8 development that includes a building or structure, the Floodplain Administrator may determine  
9 that a floodplain development permit or approval is required in addition to a building permit.

10  
11 (l) **Buildings, structures and facilities exempt from the *Florida Building Code*.**  
12 Pursuant to the requirements of federal regulation for the National Flood Insurance  
13 Program (44 C.F.R. Section 60.3), floodplain development permits or approvals shall be  
14 required for the following buildings, structures and facilities that are exempt from the *Florida*  
15 *Building Code*, *Building* Section 102.2 and any further exemptions provided by law, are subject  
16 to the requirements of this ordinance:

17 (1) Railroads and ancillary facilities associated with the railroad.

18 (2) Nonresidential farm buildings on farms, as provided in Section 604.50, F.S.

19 (3) Temporary buildings or sheds used exclusively for construction purposes.

20 (4) Mobile or modular structures used as temporary offices.

21 (5) Those structures or facilities of electric utilities, as defined in Section 366.02,  
22 F.S., which are directly involved in the generation, transmission, or distribution of electricity.

23 (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the  
24 Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-  
25 sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials,  
26 and that does not incorporate any electrical, plumbing, or other non-wood features.

27 (7) Family mausoleums not exceeding 250 square feet in area which are  
28 prefabricated and assembled on site or preassembled and delivered on site and have walls,  
29 roofs, and a floor constructed of granite, marble, or reinforced concrete.

30 (8) Temporary housing provided by the Department of Corrections to any  
31 prisoner in the state correctional system.

32  
33 (m) **Application for a permit or approval.** To obtain a floodplain development permit  
34 or approval the applicant shall first file an application in writing on a form furnished by the  
35 community. The information provided shall:

36  
37 (1) Identify and describe the development to be covered by the permit or  
38 approval.

39 (2) Describe the land on which the proposed development is to be conducted by  
40 legal description, street address or similar description that will readily identify and definitively  
41 locate the site.

42 (3) Indicate the use and occupancy for which the proposed development is  
43 intended.

1           (4) Be accompanied by a site plan or construction documents as specified in  
2 Section 30-100.6(q) of this ordinance.

3           (5) State the valuation of the proposed work.

4           (6) Be signed by the applicant or the applicant's authorized agent.

5           (7) Give such other data and information as required by the Floodplain  
6 Administrator.

7  
8 **(n) Validity of permit or approval.** The issuance of a floodplain development permit  
9 or approval pursuant to this ordinance shall not be construed to be a permit for, or approval  
10 of, any violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this  
11 community. The issuance of permits based on submitted applications, construction  
12 documents, and information shall not prevent the Floodplain Administrator from requiring  
13 the correction of errors and omissions.

14  
15 **(o) Expiration.** A floodplain development permit or approval shall become invalid  
16 unless the work authorized by such permit is commenced within 180 days after its issuance,  
17 or if the work authorized is suspended or abandoned for a period of 180 days after the work  
18 commences. Extensions for periods of not more than 180 days each shall be requested in  
19 writing and justifiable cause shall be demonstrated.

20  
21 **(p) Suspension or revocation.** The Floodplain Administrator is authorized to suspend  
22 or revoke a floodplain development permit or approval if the permit was issued in error, on  
23 the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance  
24 or any other ordinance, regulation or requirement of this community.

25  
26 **(p) Site Plans and Construction Documents - Information for development in**  
27 **flood hazard areas.** The site plan or construction documents for any development subject  
28 to the requirements of this ordinance shall be drawn to scale and shall include, as applicable  
29 to the proposed development:

30  
31           (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s),  
32 and base flood elevation(s).

33           (2) Where flood hazard areas, base flood elevations, or floodway data are not  
34 included on the FIRM or in the Flood Insurance Study, they shall be established in  
35 accordance with Section 30-100.6(r) of this ordinance.

36           (3) Where the parcel on which the proposed development will take place will  
37 have more than 50 lots or is larger than 5 acres and the base flood elevations are not  
38 included on the FIRM or in the Flood Insurance Study, such elevations shall be established  
39 in accordance with Section 30-100.6(r) of this ordinance.

40           (4) Location of the proposed activity and proposed structures, and locations of  
41 existing buildings and structures; in coastal high hazard areas, new buildings shall be located  
42 landward of the reach of mean high tide.

43           (5) Location, extent, amount, and proposed final grades of any filling, grading, or

1 excavation.

2 (6) Where the placement of fill is proposed, the amount, type, and source of fill  
3 material; compaction specifications; a description of the intended purpose of the fill areas;  
4 and evidence that the proposed fill areas are the minimum necessary to achieve the intended  
5 purpose.

6 (7) Delineation of the Coastal Construction Control Line or notation that the  
7 site is seaward of the coastal construction control line, if applicable.

8 (8) Extent of any proposed alteration of sand dunes or mangrove stands,  
9 provided such alteration is approved by the Florida Department of Environmental  
10 Protection.

11 (9) Existing and proposed alignment of any proposed alteration of a  
12 watercourse.

13  
14 The Floodplain Administrator is authorized to waive the submission of site plans,  
15 construction documents, and other data not required to be prepared by a registered design  
16 professional if it is found that the nature of the proposed development is such that the  
17 review of such submissions is not necessary to ascertain compliance with this ordinance.

18  
19 (r) **Information in flood hazard areas without base flood elevations (approximate**  
20 **Zone A).** Where flood hazard areas are delineated on the FIRM and base flood elevation  
21 data have not been provided, the Floodplain Administrator shall:  
22

23 (1) Obtain, review, and provide to applicants base flood elevation data available  
24 from a federal or state agency or other source or require the applicant to obtain and use base  
25 flood elevation data available from a federal or state agency or other source; or

26 (2) Require the applicant to develop base flood elevation data prepared in  
27 accordance with currently accepted engineering practices; or

28 (3) Where base flood elevation data are not available from another source,  
29 assume the base flood elevation is not less than two (2) feet above the highest adjacent grade  
30 at the location of the development, provided there is no evidence indicating flood depths  
31 have been or may be greater than two (2) feet.

32 (4) Where the base flood elevation data are to be used to support a Letter of  
33 Map Change from FEMA, advise the applicant that the analyses shall be prepared by a  
34 Florida licensed engineer in a format required by FEMA, and that it shall be the  
35 responsibility of the applicant to satisfy the submittal requirements and pay the processing  
36 fees.

37  
38 (s) **Additional analyses and certifications.** As applicable to the location and nature  
39 of the proposed development activity, and in addition to the requirements of this Section,  
40 the applicant shall have the following analyses prepared and sealed by a Florida licensed  
41 engineer for submission with the site plan and construction documents:

42 (1) For development activities proposed to be located in a regulatory floodway, a  
43 floodway encroachment analysis that demonstrates that the encroachment of the proposed

1 development will not cause any increase in base flood elevations; where the applicant  
2 proposes to undertake development activities that do increase base flood elevations, the  
3 applicant shall submit such analysis to FEMA as specified in Section 30-100.6(t) of this  
4 ordinance and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with  
5 the site plan and construction documents.

6 (2) For development activities proposed to be located in a riverine flood hazard  
7 area for which base flood elevations are included in the Flood Insurance Study or on the  
8 FIRM and floodways have not been designated, a floodway encroachment analysis which  
9 demonstrates that the cumulative effect of the proposed development, when combined with  
10 all other existing and anticipated flood hazard area encroachments, will not increase the base  
11 flood elevation more than one (1) foot at any point within the community. This requirement  
12 does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or  
13 in flood hazard areas identified as Zone AO or Zone AH.

14 (3) For alteration of a watercourse, an engineering analysis prepared in  
15 accordance with standard engineering practices which demonstrates that the flood-carrying  
16 capacity of the altered or relocated portion of the watercourse will not be decreased, and  
17 certification that the altered watercourse shall be maintained in a manner which preserves  
18 the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as  
19 specified in Section 30-100.6(t) of this ordinance.

20 (4) For activities that propose to alter sand dunes or mangrove stands in coastal  
21 high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed  
22 alteration will not increase the potential for flood damage.  
23

24 (t) **Submission of additional data.** When additional hydrologic, hydraulic or other  
25 engineering data, studies, and additional analyses are submitted to support an application, the  
26 applicant has the right to seek a Letter of Map Change from FEMA to change the base flood  
27 elevations, change floodway boundaries, or change boundaries of flood hazard areas shown  
28 on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be  
29 prepared by a Florida licensed engineer in a format required by FEMA. Submittal  
30 requirements and processing fees shall be the responsibility of the applicant.  
31

32 (u) **Inspections - General.** Development for which a permit or approval is required  
33 shall be subject to inspection.  
34

35 (1) **Development other than buildings and structures.** The Floodplain  
36 Administrator shall inspect all development to determine compliance with the requirements  
37 of this ordinance and the conditions of issued floodplain development permits or approvals.  
38

39 (2) **Buildings and structures.** The Building Official shall inspect buildings and  
40 structures subject to the *Florida Building Code* to determine compliance with the flood load  
41 and flood resistant construction requirements of issued building permits and the *Florida*  
42 *Building Code*. The Building Official shall inspect buildings and structures exempt from the  
43 *Florida Building Code* to determine compliance with the requirements of this ordinance and  
44 the conditions of issued floodplain development permits or approvals.  
45

1           (3) **Buildings and structures exempt from the Florida Building Code,**  
2 **lowest floor inspection.** Upon placement of the lowest floor, including basement, and prior  
3 **to further vertical construction,** the owner of a building or structure exempt from the *Florida*  
4 **Building Code,** or the owner's authorized agent, shall submit to the Building Official:  
5

6           i. If a design flood elevation was used to determine the required  
7 elevation of the lowest floor, the certification of elevation of the lowest floor prepared and  
8 sealed by a Florida licensed professional surveyor; or

9           ii. If the elevation used to determine the required elevation of the  
10 lowest floor was determined in accordance with Section 30-100.6(r) of this ordinance, the  
11 documentation of height of the lowest floor above highest adjacent grade, prepared by the  
12 owner or the owner's authorized agent.  
13

14           (4) **Buildings and structures exempt from the Florida Building Code, final**  
15 **inspection.** As part of the final inspection, the owner or owner's authorized agent shall  
16 **submit to the Building Official a final certification of elevation of the lowest floor or final**  
17 **documentation of the height of the lowest floor above the highest adjacent grade; such**  
18 **certifications and documentations shall be prepared as specified in Section 30-100.6(u)(3) of**  
19 **this ordinance.**  
20

21 **(v) Variances And Appeals**  
22

23           (1) **General.** Pursuant to Section 553.73(5), F.S., the Village Council shall hear  
24 **and decide on requests for appeals and requests for variances from the strict application of**  
25 **the requirements of this ordinance and the flood resistant construction requirements of the**  
26 **Florida Building Code. The Village Council shall not have the power to issue variances to any**  
27 **requirement of the Florida Building Code, Building, Section 3109 applicable seaward of the**  
28 **coastal construction control line.**  
29

30           (2) **Appeals.** The Village Council shall hear and decide appeals when it is  
31 **alleged there is an error in any requirement, decision, or determination made by the Building**  
32 **Official in the administration and enforcement of this ordinance or the flood load and flood**  
33 **resistant construction requirements of the Florida Building Code. Any person aggrieved by the**  
34 **decision of the Village Council may appeal such decision to the Circuit Court, as provided**  
35 **by Florida Statutes.**  
36

37           (3) **Limitations on authority to grant variances.** The Village Council shall  
38 **base its decisions on variances on technical justifications submitted by applicants, the**  
39 **considerations for issuance in Section 30-100.6(v)(7) of this ordinance, the conditions of**  
40 **issuance set forth in Section 30-100.6(v)(8) of this ordinance, and the comments and**  
41 **recommendation of the Building Official. The Village Council has the right to attach such**  
42 **conditions as it deems necessary to further the purposes and objectives of this ordinance.**  
43 **Pursuant to Section 553.73(5), F.S., variances shall not be granted to the requirements of**  
44 **Section 3109 of the Florida Building Code applicable to structures seaward of the coastal**  
45 **construction control line.**  
46

1           (4) **Restrictions in floodways.** A variance shall not be issued for any proposed  
2 development in a floodway if any increase in base flood elevations would result, as evidenced  
3 by the applicable analyses and certifications required in Section 30-100.6(s) of this ordinance.  
4

5           (5) **Historic buildings.** A variance is authorized to be issued for the repair,  
6 improvement, or rehabilitation of a historic building that is determined eligible for the  
7 exception to the flood resistant construction requirements of the *Florida Building Code,*  
8 *Existing Building*, Chapter 11 Historic Buildings, upon a determination that the proposed  
9 repair, improvement, or rehabilitation will not preclude the building's continued designation  
10 as a historic building and the variance is the minimum necessary to preserve the historic  
11 character and design of the building. If the proposed work precludes the building's  
12 continued designation as a historic building, a variance shall not be granted and the building  
13 and any repair, improvement, and rehabilitation shall be subject to the requirements of the  
14 *Florida Building Code.*  
15

16           (6) **Functionally dependent uses.** A variance is authorized to be issued for the  
17 construction or substantial improvement necessary for the conduct of a functionally  
18 dependent use, as defined in this ordinance, provided the variance meets the requirements of  
19 Section 30-100.6(v)(4), is the minimum necessary considering the flood hazard, and all due  
20 consideration has been given to use of methods and materials that minimize flood damage  
21 during occurrence of the base flood.  
22

23           (7) **Considerations for issuance of variances.** In reviewing requests for  
24 variances, the Village Council shall consider all technical evaluations, all relevant factors, all  
25 other applicable provisions of the *Florida Building Code*, this ordinance, and the following:  
26

27           i. The danger that materials and debris may be swept onto other lands  
28 resulting in further injury or damage;

29           ii. The danger to life and property due to flooding or erosion damage;

30           iii. The susceptibility of the proposed development, including contents,  
31 to flood damage and the effect of such damage on current and future owners;

32           iv. The importance of the services provided by the proposed  
33 development to the community;

34           v. The availability of alternate locations for the proposed development  
35 that are subject to lower risk of flooding or erosion;

36           vi. The compatibility of the proposed development with existing and  
37 anticipated development;

38           vii. The relationship of the proposed development to the comprehensive  
39 plan and floodplain management program for the area;

40           viii. The safety of access to the property in times of flooding for ordinary  
41 and emergency vehicles;

42           ix. The expected heights, velocity, duration, rate of rise and debris and  
43 sediment transport of the floodwaters and the effects of wave action, if applicable, expected  
44 at the site; and

1           x. The costs of providing governmental services during and after flood  
2 conditions including maintenance and repair of public utilities and facilities such as sewer,  
3 gas, electrical and water systems, streets and bridges.

4  
5  
6           (8) **Conditions for issuance of variances.** Variances shall be issued only upon:

7           i. Submission by the applicant, of a showing of good and sufficient  
8 cause that the unique characteristics of the size, configuration, or topography of the site  
9 render any provision of this ordinance or the elevation standards of the *Florida Building Code*  
10 inappropriate;

11           ii. Determination by the Village Council that:

12                   (A) Failure to grant the variance would result in exceptional  
13 hardship due to the physical characteristics of the land that render the lot undevelopable;  
14 increased costs to satisfy the requirements or inconvenience do not constitute hardship;

15                   (B) The granting of a variance will not result in increased flood  
16 heights, additional threats to public safety, extraordinary public expense, nor create  
17 nuisances, cause fraud on or victimization of the public or conflict with existing local laws  
18 and ordinances; and

19                   (C) The variance is the minimum necessary, considering the flood  
20 hazard, to afford relief;

21           iii. Receipt of a signed statement by the applicant that the variance, if  
22 granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it  
23 appears in the chain of title of the affected parcel of land; and

24           iv. If the request is for a variance to allow construction of the lowest  
25 floor of a building, or substantial improvement of a building, below the elevation required by  
26 the *Florida Building Code* or required by this ordinance, a copy in the record of a written notice  
27 from the Floodplain Administrator to the applicant for the variance, specifying the  
28 difference between the base flood elevation and the proposed elevation of the lowest floor,  
29 stating that the cost of federal flood insurance will be commensurate with the increased risk  
30 resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of  
31 insurance coverage), and stating that construction below the base flood elevation increases  
32 risks to life and property.

33  
34           (w) **Violations**

35  
36           (1) **Violations.** Any construction or development in a flood hazard area that is  
37 performed without an issued permit, that is in conflict with an issued permit, or that does  
38 not fully comply with this ordinance or the *Florida Building Code*, as applicable, shall be  
39 deemed a violation of this ordinance. A building or structure without the documentation of  
40 elevation of the lowest floor, other required design certifications, or other evidence of  
41 compliance required by this ordinance or the *Florida Building Code* is presumed to be a  
42 violation until such time as that documentation is provided.

1           (2) **Authority.** For development that is not within the scope of the *Florida*  
2 *Building Code* but that is regulated by this ordinance and that is determined to be a violation,  
3 the Floodplain Administrator is authorized to serve notices of violation or stop work orders  
4 to owners of the property involved, to the owner's agent, or to the person or persons  
5 performing the work.

6  
7           (3) **Unlawful continuance.** Any person who shall continue any work after  
8 having been served with a notice of violation or a stop work order, except such work as that  
9 person is directed to perform to remove or remedy a violation or unsafe condition, shall be  
10 subject to penalties as prescribed by law.

11  
12 (x) **Definitions - Generally**

13  
14           (1) **Scope.** Unless otherwise expressly stated, the following words and terms  
15 shall, for the purposes of this ordinance, have the meanings shown in this Section.

16  
17           (2) **Terms defined in the *Florida Building Code*.** Where terms are not  
18 defined in this ordinance and are defined in the *Florida Building Code*, such terms shall have  
19 the meanings ascribed to them in that code.

20  
21           (3) **Terms not defined.** Where terms are not defined in this ordinance or the  
22 *Florida Building Code*, such terms shall have ordinarily accepted meanings such as the context  
23 implies.

24  
25           (4) **Definitions**

26  
27 **Alteration of a watercourse.** A dam, impoundment, channel relocation, change in channel  
28 alignment, channelization, or change in cross-sectional area of the channel or the channel  
29 capacity, or any other form of modification which may alter, impede, retard or change the  
30 direction and/or velocity of the riverine flow of water during conditions of the base flood.

31  
32 **Appeal.** A request for a review of the Building Official's interpretation of any provision of  
33 this ordinance or a request for a variance.

34  
35 **ASCE 24.** A standard titled *Flood Resistant Design and Construction* that is referenced by the  
36 *Florida Building Code*. ASCE 24 is developed and published by the American Society of Civil  
37 Engineers, Reston, VA.

38  
39 **Base flood.** A flood having a 1-percent chance of being equaled or exceeded in any given  
40 year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as  
41 the "100-year flood" or the "1-percent-annual chance flood."

42  
43 **Base flood elevation.** The elevation of the base flood, including wave height, relative to the  
44 National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or  
45 other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B,  
46 Section 1612.2.]

1 **Basement.** The portion of a building having its floor subgrade (below ground level) on all  
2 sides. [Also defined in FBC, B, Section 1612.2.]  
3

4 **Building Official.** The officer or other designated authority charged with the  
5 administration and enforcement of the *Florida Building Code*, or a duly authorized  
6 representative. [Also defined in FBC, B, Section 1612.2.]  
7

8 **Building permit.** An official document or certificate issued by the community which  
9 authorizes performance of specific activities that are determined to be compliant with the  
10 *Florida Building Code*.  
11

12 **Coastal construction control line.** The line established by the State of Florida pursuant to  
13 Section 161.053, F.S., and recorded in the official records of the community, which defines  
14 that portion of the beach-dune system subject to severe fluctuations based on a 100-year  
15 storm surge, storm waves or other predictable weather conditions.  
16

17 **Coastal high hazard area.** A special flood hazard area extending from offshore to the  
18 inland limit of a primary frontal dune along an open coast and any other area subject to high  
19 velocity wave action from storms or seismic sources. Coastal high hazard areas are also  
20 referred to as “high hazard areas subject to high velocity wave action” or “V Zones” and are  
21 designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V. [Note: The  
22 FBC,B defines and uses the term “flood hazard areas subject to high velocity wave action”  
23 and the FBC, R uses the term “coastal high hazard areas.”]  
24

25 **Design flood.** The flood associated with the greater of the following two areas: [Also  
26 defined in FBC, B, Section 1612.2.]

- 27 1. Area with a floodplain subject to a 1-percent or greater chance of flooding in any  
28 year; or
- 29 2. Area designated as a flood hazard area on the community’s flood hazard map, or  
30 otherwise legally designated.  
31

32 **Design flood elevation.** The elevation of the “design flood,” including wave height,  
33 relative to the datum specified on the community’s legally designated flood hazard map. In  
34 areas designated as Zone AO, the design flood elevation shall be the elevation of the highest  
35 existing grade of the building’s perimeter plus the depth number (in feet) specified on the  
36 flood hazard map. In areas designated as Zone AO where the depth number is not specified  
37 on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in FBC,  
38 B, Section 1612.2.]  
39

40 **Development.** Any man-made change to improved or unimproved real estate, including  
41 but not limited to, buildings or other structures, tanks, temporary structures, temporary or  
42 permanent storage of equipment or materials, mining, dredging, filling, grading, paving,  
43 excavations, drilling operations or any other land disturbing activities.  
44

45 **Encroachment.** The advancement or infringement of fill, excavation, buildings, permanent  
46 structures or other development into a flood hazard area which may impede or alter the flow  
47 capacity of riverine flood hazard areas.

1  
2 **Existing building and existing structure.** Any buildings and structures for which the  
3 “start of construction” commenced before October 6, 2008. [Also defined in FBC, B,  
4 Section 1612.2.]

5  
6 **Existing manufactured home park or subdivision.** A manufactured home park or  
7 subdivision for which the construction of facilities for servicing the lots on which the  
8 manufactured homes are to be affixed (including, at a minimum, the installation of utilities,  
9 the construction of streets, and either final site grading or the pouring of concrete pads) is  
10 completed before August 2, 2004.

11  
12 **Expansion to an existing manufactured home park or subdivision.** The preparation of  
13 additional sites by the construction of facilities for servicing the lots on which the  
14 manufactured homes are to be affixed (including the installation of utilities, the construction  
15 of streets, and either final site grading or the pouring of concrete pads).

16  
17 **Federal Emergency Management Agency (FEMA).** The federal agency that, in addition  
18 to carrying out other functions, administers the National Flood Insurance Program.

19  
20 **Flood or flooding.** A general and temporary condition of partial or complete inundation of  
21 normally dry land from: [Also defined in FBC, B, Section 1612.2.]

- 22 1. The overflow of inland or tidal waters.  
23 2. The unusual and rapid accumulation or runoff of surface waters from any source.

24  
25 **Flood damage-resistant materials.** Any construction material capable of withstanding  
26 direct and prolonged contact with floodwaters without sustaining any damage that  
27 requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]

28  
29 **Flood hazard area.** The greater of the following two areas: [Also defined in FBC, B,  
30 Section 1612.2.]

- 31 1. The area within a floodplain subject to a 1-percent or greater chance of flooding in  
32 any year.  
33 2. The area designated as a flood hazard area on the community’s flood hazard map, or  
34 otherwise legally designated.

35  
36 **Flood Insurance Rate Map (FIRM).** The official map of the community on which the  
37 Federal Emergency Management Agency has delineated both special flood hazard areas and  
38 the risk premium zones applicable to the community. [Also defined in FBC, B, Section  
39 1612.2.]

40  
41 **Flood Insurance Study (FIS).** The official report provided by the Federal Emergency  
42 Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and  
43 Floodway Map (if applicable), the water surface elevations of the base flood, and supporting  
44 technical data. [Also defined in FBC, B, Section 1612.2.]

1  
2 **Floodplain Administrator.** The office or position designated and charged with the  
3 administration and enforcement of this ordinance (may be referred to as the Floodplain  
4 Manager).

5  
6 **Floodplain development permit or approval.** An official document or certificate issued  
7 by the community, or other evidence of approval or concurrence, which authorizes  
8 performance of specific development activities that are located in flood hazard areas and that  
9 are determined to be compliant with this ordinance.

10  
11 **Floodway.** The channel of a river or other riverine watercourse and the adjacent land areas  
12 that must be reserved in order to discharge the base flood without cumulatively increasing  
13 the water surface elevation more than a designated height. [Also defined in FBC, B, Section  
14 1612.2.]

15  
16 **Floodway encroachment analysis.** An engineering analysis of the impact that a proposed  
17 encroachment into a floodway is expected to have on the floodway boundaries and base  
18 flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer  
19 using standard engineering methods and models.

20  
21 **Florida Building Code.** The family of codes adopted by the Florida Building Commission,  
22 including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code,*  
23 *Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building*  
24 *Code, Fuel Gas.*

25  
26 **Functionally dependent use.** A use which cannot perform its intended purpose unless it is  
27 located or carried out in close proximity to water, including only docking facilities, port  
28 facilities that are necessary for the loading and unloading of cargo or passengers, and ship  
29 building and ship repair facilities; the term does not include long-term storage or related  
30 manufacturing facilities.

31  
32 **Highest adjacent grade.** The highest natural elevation of the ground surface prior to  
33 construction next to the proposed walls or foundation of a structure.

34  
35 **Historic structure.** Any structure that is determined eligible for the exception to the flood  
36 hazard area requirements of the *Florida Building Code, Existing Building, Chapter 11 Historic*  
37 *Buildings.*

38  
39 **Letter of Map Change (LOMC).** An official determination issued by FEMA that amends  
40 or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map  
41 Change include:

42 **Letter of Map Amendment (LOMA):** An amendment based on technical data  
43 showing that a property was incorrectly included in a designated special flood hazard  
44 area. A LOMA amends the current effective Flood Insurance Rate Map and  
45 establishes that a specific property, portion of a property, or structure is not located  
46 in a special flood hazard area.

1 Letter of Map Revision (LOMR): A revision based on technical data that may  
2 show changes to flood zones, flood elevations, special flood hazard area boundaries  
3 and floodway delineations, and other planimetric features.

4 Letter of Map Revision Based on Fill (LOMR-F): A determination that a  
5 structure or parcel of land has been elevated by fill above the base flood elevation  
6 and is, therefore, no longer located within the special flood hazard area. In order to  
7 qualify for this determination, the fill must have been permitted and placed in  
8 accordance with the community's floodplain management regulations.

9 Conditional Letter of Map Revision (CLOMR): A formal review and comment  
10 as to whether a proposed flood protection project or other project complies with the  
11 minimum NFIP requirements for such projects with respect to delineation of special  
12 flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate  
13 Map or Flood Insurance Study; upon submission and approval of certified as-built  
14 documentation, a Letter of Map Revision may be issued by FEMA to revise the  
15 effective FIRM.

16  
17 Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500  
18 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000  
19 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- 20 1. Designed primarily for purposes of transportation of property or is a derivation of  
21 such a vehicle, or
- 22 2. Designed primarily for transportation of persons and has a capacity of more than 12  
23 persons; or
- 24 3. Available with special features enabling off-street or off-highway operation and use.

25  
26 Lowest floor. The floor of the lowest enclosed area of a building or structure, including  
27 basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle  
28 parking, building access or limited storage provided that such enclosure is not built so as to  
29 render the structure in violation of the Florida Building Code or ASCE 24. [Also defined in  
30 FBC, B, Section 1612.2.]

31  
32 Manufactured home. A structure, transportable in one or more sections, which is eight (8)  
33 feet or more in width and greater than four hundred (400) square feet, and which is built on  
34 a permanent, integral chassis and is designed for use with or without a permanent  
35 foundation when attached to the required utilities. The term "manufactured home" does not  
36 include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

37  
38 Manufactured home park or subdivision. A parcel (or contiguous parcels) of land  
39 divided into two or more manufactured home lots for rent or sale.

40  
41 Market value. The price at which a property will change hands between a willing buyer and  
42 a willing seller, neither party being under compulsion to buy or sell and both having  
43 reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the  
44 market value of buildings and structures, excluding the land and other improvements on the  
45 parcel. Market value may be established by a qualified independent appraiser, Actual Cash

1 Value (replacement cost depreciated for age and quality of construction), or tax assessment  
2 value adjusted to approximate market value by a factor provided by the Property Appraiser.

3  
4 **New construction.** For the purposes of administration of this ordinance and the building  
5 code, structures for which the “start of construction” commenced on or after October 6,  
6 2008 and includes any subsequent improvements to such structures.

7  
8 **New manufactured home park or subdivision.** A manufactured home park or  
9 subdivision for which the construction of facilities for servicing the lots on which the  
10 manufactured homes are to be affixed (including at a minimum, the installation of utilities,  
11 the construction of streets, and either final site grading or the pouring of concrete pads) is  
12 completed on or after October 6, 2008.

13  
14 **Nonresidential.** Any building or structure or portion thereof that is not classified residential  
15 in accordance with the *Florida Building Code, Building (Residential Group R or Institutional*  
16 *Group I) and ASCE 24. [Also see definition in ASCE 24.]*

17  
18 **Park trailer.** A transportable unit which has a body width not exceeding fourteen (14) feet  
19 and which is built on a single chassis and is designed to provide seasonal or temporary living  
20 quarters when connected to utilities necessary for operation of installed fixtures and  
21 appliances. [Defined in 15C-1.0101, F.A.C.]

22  
23 **Recreational vehicle.** A vehicle, including a park trailer, which is: [Defined in Section  
24 320.01(b), F.S.)

- 25 1. Built on a single chassis;  
26 2. Four hundred (400) square feet or less when measured at the largest horizontal  
27 projection;  
28 3. Designed to be self-propelled or permanently towable by a light-duty truck; and  
29 4. Designed primarily not for use as a permanent dwelling but as temporary living  
30 quarters for recreational, camping, travel, or seasonal use.

31  
32 **Sand dunes.** Naturally occurring accumulations of sand in ridges or mounds landward of  
33 the beach.

34  
35 **Special flood hazard area.** An area in the floodplain subject to a 1 percent or greater  
36 chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as  
37 Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. The term also includes areas shown  
38 on other flood hazard maps, if such maps are adopted by the Village of Palmetto Bay or  
39 otherwise legally designated. [Also defined in FBC, B Section 1612.2.]

40  
41 **Start of construction.** The date of issuance for new construction and substantial  
42 improvements to existing structures, provided the actual start of construction, repair,  
43 reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days  
44 of the date of the issuance. The actual start of construction means either the first placement  
45 of permanent construction of a building (including a manufactured home) on a site, such as  
46 the pouring of slab or footings, the installation of piles, the construction of columns.

1 Permanent construction does not include land preparation (such as clearing, grading,  
2 or filling), the installation of streets or walkways, excavation for a basement, footings, piers,  
3 or foundations, the erection of temporary forms or the installation of accessory buildings  
4 such as garages or sheds not occupied as dwelling units or not part of the main buildings.  
5 For a substantial improvement, the actual "start of construction" means the first alteration  
6 of any wall, ceiling, floor or other structural part of a building, whether or not that alteration  
7 affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

8  
9 **Substantial damage.** Damage of any origin sustained by a building or structure whereby the  
10 cost of restoring the building or structure to its before-damaged condition would equal or  
11 exceed 50 percent of the market value of the building or structure before the damage  
12 occurred. [Also defined in FBC, B Section 1612.2.]

13  
14 **Substantial improvement.** Any repair, reconstruction, rehabilitation, addition, or other  
15 improvement of a building or structure, the cost of which equals or exceeds 50 percent of  
16 the market value of the building or structure before the improvement or repair is started. If  
17 the structure has incurred "substantial damage," any repairs are considered substantial  
18 improvement regardless of the actual repair work performed. The term does not, however,  
19 include either: [Also defined in FBC, B, Section 1612.2.]

- 20 1. Any project for improvement of a building required to correct existing health,  
21 sanitary, or safety code violations identified by the building official and that are the  
22 minimum necessary to assure safe living conditions.
- 23 2. Any alteration of a historic structure provided the alteration will not preclude the  
24 structure's continued designation as a historic structure and the alteration is  
25 approved by variance issued pursuant to Section 30-100.6(v) of this ordinance.

26  
27 **Variance.** A grant of relief from the requirements of this ordinance, or the flood load and  
28 flood resistant construction requirements of the *Florida Building Code*, which permits  
29 construction in a manner that would not otherwise be permitted by this ordinance or the  
30 *Florida Building Code*.

31  
32 **Watercourse.** A river, creek, stream, channel or other topographic feature in, on, through,  
33 or over which water flows at least periodically.

34  
35 (y) **Flood Resistant Development**

36  
37 (1) **Buildings And Structures**

38  
39 i. **Design and construction of buildings and structures exempt**  
40 **from the *Florida Building Code*.** Pursuant to Section 30-100.6(l) of this ordinance,  
41 buildings, structures, and facilities that are exempt from the *Florida Building Code*, including  
42 substantial improvement or repair of substantial damage of such buildings, structures and  
43 facilities, shall be designed and constructed in accordance with the flood load and flood resistant  
44 construction requirements of ASCE 24. Structures exempt from the *Florida Building Code* that are  
45 not walled and roofed buildings shall comply with the requirements of Section 30-100.6(cc) of  
46 this ordinance.

1            ii. Buildings and structures seaward of the coastal construction  
2 control line. If extending, in whole or in part, seaward of the coastal construction control  
3 line and also located, in whole or in part, in a flood hazard area:

4            (A) Buildings and structures shall be designed and constructed to  
5 comply with the more restrictive applicable requirements of the Florida Building Code, Building  
6 Section 3109 and Section 1612 or Florida Building Code, Residential Section R322.

7            (B) Minor structures and non-habitable major structures as  
8 defined in Section 161.54, F.S., shall be designed and constructed to comply with the intent  
9 and applicable provisions of this ordinance and ASCE 24.

10  
11            (2) Subdivisions

12  
13            i. Minimum requirements. Subdivision proposals, including  
14 proposals for manufactured home parks and subdivisions, shall be reviewed to determine  
15 that:

16  
17            (A) Such proposals are consistent with the need to minimize  
18 flood damage and will be reasonably safe from flooding;

19            (B) All public utilities and facilities such as sewer, gas, electric,  
20 communications, and water systems are located and constructed to minimize or eliminate  
21 flood damage; and

22            (C) Adequate drainage is provided to reduce exposure to flood  
23 hazards.

24  
25            (3) Subdivision plats. Where any portion of proposed subdivisions, including  
26 manufactured home parks and subdivisions, lies within a flood hazard area, the following  
27 shall be required:

28            i. Delineation of flood hazard areas, floodway boundaries and flood  
29 zones, and design flood elevations, as appropriate, shall be shown on preliminary plats and  
30 final plats;

31            ii. Where the subdivision has more than 50 lots or is larger than 5 acres  
32 and base flood elevations are not included on the FIRM, the information required in Section  
33 30-100.6(r) of this ordinance; and

34            iii. Compliance with the site improvement and utilities requirements of  
35 Subsection (z) of this ordinance.

36  
37            (z) Site Improvements, Utilities And Limitations

38  
39            (1) Minimum requirements. All proposed new development shall be reviewed  
40 to determine that:

41            i. Such proposals are consistent with the need to minimize flood  
42 damage and will be reasonably safe from flooding;

43            ii. All public utilities and facilities such as sewer, gas, electric,  
44 communications, and water systems are located and constructed to minimize or eliminate

1 flood damage; and

2 iii. Adequate drainage is provided to reduce exposure to flood hazards.

3  
4 (2) **Sanitary sewage facilities.** All new and replacement sanitary sewage  
5 facilities, private sewage treatment plants (including all pumping stations and collector  
6 systems), and on-site waste disposal systems shall be designed in accordance with the  
7 standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and  
8 ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and  
9 discharge from the facilities into flood waters, and impairment of the facilities and systems.

10  
11 (3) **Water supply facilities.** All new and replacement water supply facilities shall  
12 be designed in accordance with the water well construction standards in Chapter 62-532.500,  
13 F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the  
14 systems.

15  
16 (4) **Limitations on sites in regulatory floodways.** Development, site  
17 improvements, and land disturbing activity involving fill or regrading shall not be authorized  
18 in the regulatory floodway unless the floodway encroachment analysis required in Section  
19 30-100.6(s)(1) of this ordinance demonstrates that the proposed development or land  
20 disturbing activity will not result in any increase in the base flood elevation.

21  
22 (5) **Limitations on placement of fill.** Subject to the limitations of this  
23 ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise  
24 and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-  
25 related erosion and scour. In addition to these requirements, if intended to support buildings  
26 and structures (Zone A only), fill shall comply with the requirements of the *Florida Building*  
27 *Code.*

28  
29 (6) **Limitations on sites in coastal high hazard areas (Zone V).** In coastal  
30 high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if  
31 such alteration is approved by the Florida Department of Environmental Protection and  
32 only if the engineering analysis required by Section 30-100.6(s)(4) of this ordinance  
33 demonstrates that the proposed alteration will not increase the potential for flood damage.  
34 Construction or restoration of dunes under or around elevated buildings and structures shall  
35 comply with Section 30-100.6(cc)(8) of this ordinance.

36  
37 (aa) **Recreational Vehicles And Park Trailers**

38  
39 (1) **Temporary placement, only.** Recreational vehicles and park trailers placed  
40 temporarily in flood hazard areas shall:

41 i. Be on the site for fewer than 180 consecutive days; or

42 ii. Be fully licensed and ready for highway use, which means the  
43 recreational vehicle or park model is on wheels or jacking system, is attached to the site only  
44 by quick-disconnect type utilities and security devices, and has no permanent attachments  
45 such as additions, rooms, stairs, decks and porches.

1 (bb) **Tanks**

2  
3 (1) **Underground tanks.** Underground tanks in flood hazard areas shall be  
4 anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic  
5 and hydrostatic loads during conditions of the design flood, including the effects of  
6 buoyancy assuming the tank is empty.

7 (2) **Above-ground tanks, not elevated.** Above-ground tanks that do not meet  
8 the elevation requirements of Section 30-100.6(bb)(3) of this ordinance shall:

9 i. Be permitted in flood hazard areas (Zone A) other than coastal high  
10 hazard areas, provided the tanks are anchored or otherwise designed and constructed to  
11 prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic  
12 loads during conditions of the design flood, including the effects of buoyancy assuming the  
13 tank is empty and the effects of flood-borne debris.

14 ii. Not be permitted in coastal high hazard areas (Zone V).

15  
16 (3) **Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas  
17 shall be attached to and elevated to or above the design flood elevation on a supporting  
18 structure that is designed to prevent flotation, collapse or lateral movement during  
19 conditions of the design flood. Tank-supporting structures shall meet the foundation  
20 requirements of the applicable flood hazard area.

21  
22 (4) **Tank inlets and vents.** Tank inlets, fill openings, outlets and vents shall be:

23 i. At or above the design flood elevation or fitted with covers designed  
24 to prevent the inflow of floodwater or outflow of the contents of the tanks during  
25 conditions of the design flood; and

26 ii. Anchored to prevent lateral movement resulting from hydrodynamic  
27 and hydrostatic loads, including the effects of buoyancy, during conditions of the design  
28 flood.

29  
30 (cc) **Other Development**

31  
32 (1) **General requirements for other development.** All development, including  
33 man-made changes to improved or unimproved real estate for which specific provisions are  
34 not specified in this ordinance or the *Florida Building Code*, shall:

35 i. Be located and constructed to minimize flood damage;

36 ii. Meet the limitations of Section 30-100.6(z)(4) of this ordinance if  
37 located in a regulated floodway;

38 iii. Be anchored to prevent flotation, collapse or lateral movement  
39 resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the  
40 design flood;

41 iv. Be constructed of flood damage-resistant materials; and

42 v. Have mechanical, plumbing, and electrical systems above the design  
43 flood elevation, except that minimum electric service required to address life safety and

1 electric code requirements is permitted below the design flood elevation provided it  
2 conforms to the provisions of the electrical part of building code for wet locations.

3  
4 (2) **Fences in regulated floodways.** Fences in regulated floodways that have  
5 the potential to block the passage of floodwaters, such as stockade fences and wire mesh  
6 fences, shall meet the limitations of Section 30-100.6(z)(4) of this ordinance.

7  
8 (3) **Retaining walls, sidewalks and driveways in regulated floodways.**  
9 Retaining walls and sidewalks and driveways that involve the placement of fill in regulated  
10 floodways shall meet the limitations of Section 30-100.6(z)(4) of this ordinance.

11  
12 (4) **Roads and watercourse crossings in regulated floodways.** Roads and  
13 watercourse crossings, including roads, bridges, culverts, low-water crossings and similar  
14 means for vehicles or pedestrians to travel from one side of a watercourse to the other side,  
15 that encroach into regulated floodways shall meet the limitations of Section 30-100.6(z)(4) of  
16 this ordinance. Alteration of a watercourse that is part of a road or watercourse crossing  
17 shall meet the requirements of Section 30-100.6(s)(3) of this ordinance.

18  
19 (5) **Concrete slabs used as parking pads, enclosure floors, landings, decks,**  
20 walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone  
21 V). In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors,  
22 landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or  
23 adjacent to buildings and structures provided the concrete slabs are designed and  
24 constructed to be:

25 i. Structurally independent of the foundation system of the building or  
26 structure;

27 ii. Frangible and not reinforced, so as to minimize debris during  
28 flooding that is capable of causing significant damage to any structure; and

29 iii. Have a maximum slab thickness of not more than four (4) inches.

30  
31 (6) **Decks and patios in coastal high hazard areas (Zone V).** In addition to  
32 the requirements of the *Florida Building Code*, in coastal high hazard areas decks and patios  
33 shall be located, designed, and constructed in compliance with the following:

34 i. A deck that is structurally attached to a building or structure shall  
35 have the bottom of the lowest horizontal structural member at or above the design flood  
36 elevation and any supporting members that extend below the design flood elevation shall  
37 comply with the foundation requirements that apply to the building or structure, which shall  
38 be designed to accommodate any increased loads resulting from the attached deck.

39 ii. A deck or patio that is located below the design flood elevation shall  
40 be structurally independent from buildings and structures and their foundation systems, and  
41 shall be designed and constructed either to remain intact and in place during design flood  
42 conditions or to break apart into small pieces to minimize debris during flooding that is  
43 capable of causing structural damage to adjacent elevated buildings and structures.

44 iii. A deck or patio that has a vertical thickness of more than twelve (12)  
45 inches or that is constructed with more than the minimum amount of fill necessary for site

1 drainage shall not be approved unless an analysis prepared by a qualified registered design  
2 professional demonstrates no harmful diversion of floodwaters or wave runup and wave  
3 reflection that would increase damage to adjacent elevated buildings and structures.

4 iv. A deck or patio that has a vertical thickness of twelve (12) inches or  
5 less and that is at natural grade or on nonstructural fill material that is similar to and  
6 compatible with local soils and is the minimum amount necessary for site drainage may be  
7 approved without requiring analysis of the impact on diversion of floodwaters or wave  
8 runup and wave reflection.

9  
10 (7) **Other development in coastal high hazard areas (Zone V).** In coastal  
11 high hazard areas, development activities other than buildings and structures shall be  
12 permitted only if authorized by the appropriate state or local authority; if located outside the  
13 footprint of, and not structurally attached to, buildings and structures; and if analyses  
14 prepared by qualified registered design professionals demonstrate no harmful diversion of  
15 floodwaters or wave runup and wave reflection that would increase damage to adjacent  
16 elevated buildings and structures. Such other development activities include but are not  
17 limited to:

18 i. Bulkheads, seawalls, retaining walls, revetments, and similar erosion  
19 control structures;

20 ii. Solid fences and privacy walls, and fences prone to trapping debris,  
21 unless designed and constructed to fail under flood conditions less than the design flood or  
22 otherwise function to avoid obstruction of floodwaters; and

23 iii. On-site sewage treatment and disposal systems defined in 64E-6.002,  
24 F.A.C., as filled systems or mound systems.

25  
26 (8) **Nonstructural fill in coastal high hazard areas (Zone V).** In coastal high  
27 hazard areas:

28 i. Minor grading and the placement of minor quantities of  
29 nonstructural fill shall be permitted for landscaping and for drainage purposes under and  
30 around buildings.

31 ii. Nonstructural fill with finished slopes that are steeper than one unit  
32 vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified  
33 registered design professional demonstrates no harmful diversion of floodwaters or wave  
34 runup and wave reflection that would increase damage to adjacent elevated buildings and  
35 structures.

36 iii. Where authorized by the Florida Department of Environmental  
37 Protection or applicable local approval, sand dune construction and restoration of sand  
38 dunes under or around elevated buildings are permitted without additional engineering  
39 analysis or certification of the diversion of floodwater or wave runup and wave reflection if  
40 the scale and location of the dune work is consistent with local beach-dune morphology and  
41 the vertical clearance is maintained between the top of the sand dune and the lowest  
42 horizontal structural member of the building.

43

\* \* \*

**Section 3.** The following are administrative amendments to the *Florida Building Code, Building*.

Sec. 101.5, Florida Building Code, Building

\* \* \*

**101.5 Warning, flood hazards.** The degree of flood protection required by the *Florida Building Code*, as amended by the Village of Palmetto Bay, is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This code does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage.

\* \* \*

**Sec. 102.1.2, Florida Building Code, Building**

\* \* \*

**102.1.2 Flood hazard areas.** Pursuant to the requirements of federal regulation for the National Flood Insurance Program (44 C.F.R. Section 60.3), buildings, structures and facilities identified in Section 102.2 as exempt from the *Florida Building Code* are subject to the requirements of the **Village of Palmetto Bay** local floodplain management ordinance and a floodplain development permit or approval shall be required pursuant to that regulation.

\* \* \*

**Sec 102.2.2, Florida Building Code, Building**

\* \* \*

7. The building or structure is installed on a foundation that complies with the flood resistant requirements for the new location if in a flood hazard area

\* \* \*

**Sec 102.7, Florida Building Code, Building**

\* \* \*

3. If relocated into a flood hazard area, the foundation for a manufactured building shall comply with the flood resistant requirements of the new location.

1 **Sec. 104.1.2, Florida Building Code, Building**

2  
3 \* \* \*

4 **104.1.2 Assignment of duties related to flood hazard areas.** Pursuant to Section  
5 553.73(5), F.S., the building official is authorized to assign duties to enforce all or part  
6 of the flood-related code provisions to the office or Floodplain Administrator}.  
7 The specific assigned duties shall be identified and coordinated with said agency or  
8 office.

9  
10 \* \* \*

11  
12 **Sec. 104.7.1, Florida Building Code, Building**

13  
14 \* \* \*

15 **104.7.1 Department records for permits in flood hazard areas.** The Building  
16 Official shall the following records for building permits issued in flood hazard areas: records  
17 of issuance of permits and denial of permits; determinations of whether proposed work  
18 constitutes substantial improvement or repair of substantial damage; required design  
19 certifications and documentation of elevations specified by the Florida Building Code; and  
20 records of enforcement actions taken pursuant to the flood resistant construction  
21 requirements of the Florida Building Code.

22  
23 \* \* \*

24  
25 **Sec. 104.10.1, Florida Building Code, Building**

26  
27 \* \* \*

28 **104.10.1 Modifications of the strict application of the requirements of the**  
29 **Florida Building Code.** The Building Official shall review requests submitted that seek  
30 approval to modify the strict application of the flood load and flood resistant construction  
31 requirements of the Florida Building Code to determine whether such requests require the  
32 granting of a variance pursuant to Section 117 and the local floodplain management  
33 ordinance.

34  
35 \* \* \*

36 **Sec. 104.12, Florida Building Code, Building**

37  
38 \* \* \*

39 **104.12 Coordination with the Floodplain Administrator.** The Building Official  
40 shall identify flood hazard areas; flood elevation and flood hazard information; interpret the  
41 flood hazard area boundaries; determine for existing building and structures; consider  
42 variance requests; and other duties set forth in the local floodplain management ordinance.

43  
44 **104.12.1 Determinations for existing buildings and structures in flood hazard**  
45 **areas.** For applications for building permits for work on existing buildings and structures in

1 flood hazard areas, including alterations, movement, enlargement, replacement, repair,  
2 change of occupancy, additions, rehabilitations, renovations, reconstructions, and any other  
3 improvement of or work on such buildings and structures, the Building Official shall:  
4

5 1. Estimate the market value, or require the applicant to obtain an  
6 appraisal of the market value prepared by a qualified independent appraiser, of the building  
7 or structure before the start of construction of the proposed work; in the case of repair, the  
8 market value of the building or structure shall be the market value before the damage  
9 occurred and before any repairs are made;

10 2. Compare the cost to perform the proposed improvement, or the cost  
11 to repair a damaged building to its pre-damaged condition, or the combined costs of  
12 improvements and repairs, if applicable, to the market value of the building or structure;

13 3. Determine and document whether the proposed work constitutes  
14 substantial improvement or repair of substantial damage; and

15 4. Notify the applicant if it is determined that the work constitutes  
16 substantial improvement or repair of substantial damage and that compliance with the flood  
17 resistant provisions of the *Florida Building Code* is required.  
18

19 \* \* \*

20  
21 **Sec. 107.2.5, Florida Building Code, Building**

22  
23 **107.2.5.1 Information for buildings and structures in flood hazard areas.** The  
24 site plans for buildings and structures in flood hazard areas shall be drawn to scale and shall  
25 include, as applicable to the proposed development:

26 1. Delineation of flood hazard areas, floodway boundaries and flood  
27 zones, and the design flood elevation.

28 2. Where base flood elevations or floodway data are not included on the  
29 FIRM or in the Flood Insurance Study (FIS), they shall be established in accordance with  
30 Section 1612.3 or such information that may be available from federal, state, or other  
31 sources may be used provided the Floodplain Administrator determines it is applicable  
32 pursuant to the local floodplain management ordinance.

33 3. Where multiple flood zones are designated or where multiple base  
34 flood elevations affect the specific location of a building or structure, the more restrictive  
35 flood zone and the highest flood elevation at that location shall be identified and shall  
36 govern the design of the building or structure.

37 4. Surveyed elevation of the ground at the specific location of a building  
38 or structure, in relation to the datum specified on the community's legally designated flood  
39 hazard map, prepared and sealed by a Florida licensed professional surveyor.

40 5. Where the placement of fill is proposed: the amount, type, and  
41 source of fill material and compaction specifications; a description of the intended purpose  
42 of the fill areas; evidence that the proposed fill areas are the minimum necessary to achieve  
43 the intended purpose.

44 6. In coastal high hazard areas (Zone V), the location of any proposed  
45 building, which shall be landward of the reach of mean high tide.

46 7. Delineation of the Coastal Construction Control Line or notation  
47 that the site is seaward of the coastal construction control line, if applicable.

1  
2 **107.2.5.2 Additional information for existing buildings and structures in flood**  
3 **hazard areas.** In addition to the information necessary to demonstrate compliance with the  
4 flood resistant construction requirements of the *Florida Building Code*, the site plan or  
5 construction documents for proposed work on existing buildings and structures located in  
6 whole or in part in flood hazard areas shall include:

7 1. If the building or structure was constructed after {date the  
8 **community's first floodplain management ordinance was adopted}**, evidence that the  
9 proposed work will not alter any aspect of the building or structure that was required for  
10 compliance with the floodplain management requirements in effect at the time the building  
11 or structure was permitted.

12 2. If the proposed work is a horizontal addition, a description of the  
13 addition and whether it will be structurally connected or not structurally connected to the  
14 existing building or structure, and the nature and extent of all other work proposed for the  
15 building, if any.

16 3. If requested by the Building Official, documentation of the market  
17 value of the building or structure before the start of construction of the proposed  
18 improvement, or if the proposed work is repair of damage, before the damage occurred.

19 4. Documentation of the actual cost of all proposed work, including the  
20 cost of all work necessary to repair and restore damage to the before-damage condition,  
21 regardless of the amount of work that will be performed. The value of labor performed by  
22 the owner or volunteers shall be valued at market labor rates and the value of donated or  
23 discounted materials shall be valued at market rates.

24  
25 \* \* \*

26  
27 **Sec. 107.6.1, Florida Building Code, Building**  
28

29 **107.6.1 Building permits issued on the basis of an affidavit.** Pursuant to the  
30 requirements of federal regulation (44 C.F.R. Section 60.3) for the National Flood Insurance  
31 Program, the authority granted to the Building Official to issue permits, to rely on  
32 inspections, and to accept plans and construction documents on the basis of affidavits and  
33 plans submitted pursuant to 105.14 and Section 107.6, shall not extend to the flood load and  
34 flood resistance construction requirements of the *Florida Building Code*.

35  
36  
37 **Sec. 108.2.1, Florida Building Code, Building**

38 **108.2.1 Flood hazard areas.** Temporary structures, temporary storage, and  
39 temporarily placed tanks shall conform to the requirements of Section 1612.4.1 of the *Florida*  
40 *Building Code, Building*.

41  
42 \* \* \*

43  
44  
45 **Sec. 117, Florida Building Code, Building**  
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\* \* \*

**Section 4.** The following technical amendments to the *Florida Building Code, Building* are being made as follows:

**Sec. 1612.3, Florida Building Code, Building**

**1612.3 Establishment of flood hazard areas.** To establish flood hazard areas, the applicable governing authority shall, by local floodplain management ordinance, adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled “The Flood Insurance Study for the Village of Palmetto Bay,” dated September 11, 2009, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this Section.

\* \* \*

**Sec. 1612.4.1, Florida Building Code, Building**

\* \* \*

**1612.4.1 Temporary structures and temporary uses.** Temporary structures and temporary uses, including temporary tanks, shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood. Temporary structures and temporary uses shall not be located in floodways unless the applicant provides a floodway encroachment analysis pursuant to the local floodplain management ordinance.

\* \* \*

**Sec. 1612.4.2, Florida Building Code, Building**

\* \* \*

**1612.4.2 Utility and Miscellaneous Group U.** Utility and Miscellaneous Group U structures, including substantial improvement of such structures, shall comply with the requirements of this Section.

**Exception:** If not walled and roofed, shall

1. Be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
2. Have flood-damage resistant materials used below the design flood elevation; and
3. Have mechanical, plumbing, and electrical systems that meet the requirements of ASCE 24.

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**Sec. 1612.4.3, Florida Building Code, Building**

\* \* \*

**1612.4.3 Public and private swimming pools.** Swimming pools shall be designed and constructed in accordance with ASCE 24. Above-ground pools, on-ground pools, and in-ground pools that involve placement of fill and that are located in designated floodways or in riverine flood hazard areas with base flood elevations but without floodways, shall not be permitted unless the applicant provides a floodway encroachment analysis pursuant to the local floodplain management ordinance.

**1612.4.3.1 Structures associated with swimming pools.** Swimming pools shall be permitted to be surrounded with open latticework and screened enclosures. Swimming pools for which the surrounding decks are below the design flood elevation shall be permitted to be surrounded with walled and roofed structures provided such structures are dry floodproofed in accordance with ASCE 24. Structures associated with pools, including structures to house equipment associated with the pools, shall comply with the requirements of Section 1612.4.

**1612.4.3.2 Swimming pools under elevated buildings.** Swimming pools shall be permitted under elevated buildings provided the pool deck is level with the existing grade and the area in which the pool is located is not fully enclosed by walls, including walls consisting of transparent materials such as glass. The area in which a pool is located under an elevated building shall be permitted to be surrounded by open latticework and screening.

\* \* \*

**Section 5.** The following technical amendments to the *Florida Building Code, Existing Building* are hereby adopted:

**Sec. 202, Florida Building Code, Existing Building**

\* \* \*

**Local floodplain management ordinance.** The An ordinance or regulation ~~30-100.6~~ adopted by the Village Council pursuant to the authority granted to local governments by Title 44 Code of Federal Regulations, Sections 59 and 60 for participation in the National Flood Insurance Program.

**Section 6.** The following is a technical amendments to the *Florida Building Code, Residential* and are hereby adopted:

**Table R301.2(1) Climatic and Geographic Design Criteria, Florida Building Code, Residential**

1 In Sec. Table R301.2(1), pursuant to footnote (g), insert required information in the “Flood  
2 Hazards” cell as follows:

- 3  
4 (a) March 2, 1994,  
5 (b) September 11, 2009, and  
6 (c) Revised FIRM Panel 0468L, 0601L, 0602L, and 0606L effective as of  
7 September 11, 2009.

8  
9 **Sec. R322.1.12, Florida Building Code, Residential**

10  
11 \* \* \*

12  
13 **R322.1.12 Accessory structures, requirements.** Accessory structures, including  
14 substantial improvement of such accessory structures, shall comply with the requirements of  
15 Section R322.2 (A Zone) or R322.3 (V Zone), as applicable to the flood hazard area.

16 **Exception:** Accessory structures that are detached garages that comply with Section  
17 R309.3 and provided:

18 1. If built in flood hazard areas (A Zone) other than coastal high hazard  
19 areas, have flood openings in compliance with Section R322.2.2.

20 2. If built in coastal high hazard areas (V Zone) are no more than 100  
21 square feet or less in area.

22  
23 \* \* \*

24  
25 **Section 7. The following is the previous version of Section 30-100.6 and the entirety**  
26 **of Chapter 18, as codified by Municipal Code Corporation, which ordinances are to**  
27 **be deleted in their entirety.**

28  
29  
30 (a) ~~Statutory Authorization. The Legislature of the state of Florida, through the~~  
31 ~~identification by the Federal Emergency Management Agency (FEMA) in its flood insurance~~  
32 ~~study and flood insurance rate maps for Miami-Dade County, Florida and incorporated areas~~  
33 ~~prepared by the Department of Homeland Security’s Federal Emergency Management~~  
34 ~~Agency (FEMA) dated September 11, 2009 with accompanying maps (12086CIND1A,~~  
35 ~~12086CIND2A, 12086C0464L, 12086C0468L, 12086C0601L, 12086C0602L and~~  
36 ~~12086C0606L) and other supporting data and any subsequent revisions thereto, delegated~~  
37 ~~the responsibility to local government units to adopt regulations designed to promote the~~  
38 ~~public health, safety, and general welfare of its citizenry. Therefore, the Village Council of~~  
39 ~~the Village Palmetto Bay does hereby adopt the following floodplain management~~  
40 ~~regulations.~~

41  
42 (b) ~~Findings of Fact.~~

43  
44 (1) ~~The Village Council acknowledges that there exists flood hazard areas~~  
45 ~~within the Village which are subject to periodic inundation, which can result in loss of life~~  
46 ~~and property, health and safety hazards, disruption of commerce and governmental services;~~

1 extraordinary public expenditures for flood protection and relief, and impairment of the tax  
2 base, all of which adversely affect the public health, safety and general welfare of the Village.  
3

4 ~~(2) — Losses due to floods may be caused by the cumulative effect of~~  
5 ~~obstructions in floodplains causing increases in flood heights and velocities, and by the~~  
6 ~~occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands~~  
7 ~~which are inadequately elevated, flood proofed, or otherwise unprotected from flood~~  
8 ~~damages.~~  
9

10 (c) — ~~Statement of Purpose. The purpose of this Division, the “floodplain~~  
11 ~~management regulations,” is to promote the public health, safety, general welfare, and to~~  
12 ~~minimize public and private losses due to flood conditions in specific areas by provisions~~  
13 ~~designed to:~~  
14

15 ~~(1) — Require that uses vulnerable to floods, including facilities which serve~~  
16 ~~such uses, be protected against flood damage at the time of initial construction, and~~  
17 ~~throughout their intended lifespan.~~  
18

19 ~~(2) — Restrict or prohibit uses which are dangerous to health, safety and~~  
20 ~~property due to water or erosion hazards, or which result in damaging increases in flood~~  
21 ~~heights, velocities or erosion,~~  
22

23 ~~(3) — Control the alteration of natural flood plains, stream channels and~~  
24 ~~natural protective barriers which are involved in the accommodation of flood waters,~~  
25

26 ~~(4) — Control filling, grading, dredging, and other development which may~~  
27 ~~increase flood damage or erosion, and~~  
28

29 ~~(5) — Prevent or regulate the construction of flood barriers which will~~  
30 ~~unnaturally divert flood waters or which may increase flood hazards to other lands.~~  
31

32 (d) — ~~Objectives. The objectives of these flood regulations are:~~  
33

34 ~~(1) — To protect human life and health and to eliminate or minimize~~  
35 ~~property damage;~~  
36

37 ~~(2) — To minimize expenditure of public money for costly flood control~~  
38 ~~projects;~~  
39

40 ~~(3) — To minimize the need for rescue and relief efforts associated with~~  
41 ~~flooding and generally undertaken at the expense of the general public;~~  
42

43 ~~(4) — To minimize prolonged business interruptions;~~  
44

45 ~~(5) — To minimize damage to public facilities and utilities such as water and~~  
46 ~~gas mains, electric, telephone and sewer lines, and streets and bridges and culverts located in~~  
47 ~~flood plains;~~  
48

1                   (6) — To help maintain a stable tax base by providing for the sound use and  
2 development of flood prone areas in such a manner as to minimize flood blight areas; and  
3

4                   (7) — To ensure that potential home buyers are notified that property is in  
5 a flood hazard area.  
6

7                   (e) — Methods of Reducing Flood Losses. In order to accomplish its purpose, this  
8 Section includes methods and provisions for:  
9

10                   (1) — Restricting or prohibiting uses which are dangerous to health, safety,  
11 and property due to water or erosion hazards, or which result in damaging increases in  
12 erosion or in flood heights or velocities,  
13

14                   (2) — Requiring that uses vulnerable to floods including facilities which  
15 serve such uses be protected against flood damage throughout their intended life span;  
16

17                   (3) — Controlling the alteration of natural floodplains, stream channels, and  
18 natural protective barriers, which help accommodate or channel flood waters,  
19

20                   (4) — Controlling filling, grading, dredging, and other development which  
21 may increase flood damage, and  
22

23                   — (5) — Preventing or regulating the construction of flood barriers  
24 that will unnaturally divert flood waters or may increase flood hazards in other areas.  
25

26                   (f) — Definitions:  
27

28                   Accessory structure (Appurtenant structure) — For FEMA purposes, shall mean a  
29 structure that is located on the same parcel of property as the principal structure and the use  
30 of which is incidental to the use of the principal structure. Accessory structures should  
31 constitute a minimal investment, may not be used for human habitation, and be designed to  
32 have minimal flood damage potential. Examples of accessory structures are detached  
33 garages, carports, storage sheds, pole barns, and hay sheds.  
34

35                   Appeal — shall mean a request for a review of the Floodplain Administrator's  
36 interpretation of any provision of this ordinance or a request for a variance.  
37

38                   Area of shallow flooding — shall mean a designated AO or AH Zone on the  
39 community's Flood Insurance Rate Map (FIRM) with base flood average depths of one (1)  
40 to three (3) feet where a clearly defined channel does not exist, where the path of flooding is  
41 unpredictable, and where velocity flow may be evident. Such flooding is characterized by  
42 sheet flow or ponding.  
43

44                   Area of special flood hazard — shall mean the land in the floodplain within a  
45 community subject to a one (1) percent or greater chance of flooding in any given year. The  
46 term "special flood hazard area", for purposes of these regulations, is synonymous with the  
47 phrase "area of special flood hazard."  
48

1           Base flood ~~shall mean the flood having a one (1) percent chance of being equaled~~  
2 ~~or exceeded in any given year (also called the "100-year flood" and "regulatory flood"). Base~~  
3 ~~flood is the term used throughout this ordinance.~~

4  
5           Base Flood Elevation ~~shall mean the water surface elevation associated with the~~  
6 ~~base flood.~~

7  
8           Basement ~~shall mean any portion of a building having its floor sub-grade (below~~  
9 ~~ground level) on all sides.~~

10  
11           Breakaway wall ~~shall mean a wall that is not part of the structural support of the~~  
12 ~~building and is intended through its design and construction to collapse under specific lateral~~  
13 ~~loading forces, without causing damage to the elevated portion of the building or the~~  
14 ~~supporting foundation system.~~

15  
16           Building. ~~See Structure.~~

17  
18           Certification ~~shall mean a certification by a registered professional engineer or other~~  
19 ~~party does not constitute a warranty or guarantee of performance, expressed or implied.~~  
20 ~~Certification of data is a statement that the data is accurate to the best of the certifier's~~  
21 ~~knowledge. Certification of analyses is a statement that the analyses have been performed~~  
22 ~~correctly and in accordance with sound engineering practices. Certification of structural~~  
23 ~~works is a statement that the works are designed in accordance with sound engineering~~  
24 ~~practices to provide protection from the base flood. Certification of "as built" conditions is~~  
25 ~~a statement that the structure(s) has been built according to the plans being certified, is in~~  
26 ~~place, and is fully functioning.~~

27  
28           Coastal high hazard area ~~shall mean an area of special flood hazard extending from~~  
29 ~~offshore to the inland limit of a primary frontal dune along an open coast and any other area~~  
30 ~~subject to high velocity wave action from storms or seismic sources. The area is designated~~  
31 ~~on the FIRM as Zone V1 - V30, VE, or V.~~

32  
33           Critical facility ~~shall mean a facility that is required to maintain function during a~~  
34 ~~significant flood event in order to protect life, health, and safety. Critical facilities include,~~  
35 ~~but are not limited to hospitals, police, fire and emergency response installations.~~

36  
37           Datum ~~shall mean a reference surface used to ensure that all elevation records are~~  
38 ~~properly related. The current national datum is the National Geodetic Vertical Datum~~  
39 ~~(NGVD) of 1929, which is expressed in relation to mean sea level, or the North American~~  
40 ~~Vertical Datum (NAVD) of 1988.~~

41  
42  
43           Development ~~shall mean any man-made change to improved or unimproved real~~  
44 ~~estate, including, but not limited to buildings or other structures, mining, dredging, filling,~~  
45 ~~grading, paving, excavating, drilling operations, or storage of materials or equipment.~~

1           Elevated building ~~shall mean a non-basement building built to have the lowest floor~~  
2 ~~elevated above the ground level by foundation walls, shear walls, posts, piers, pilings, or~~  
3 ~~columns.~~

4  
5           Encroachment ~~shall mean the advance or infringement of uses, plant growth, fill,~~  
6 ~~excavation, buildings, permanent structures or development into a floodplain, which may~~  
7 ~~impede or alter the flow capacity of a floodplain.~~

8  
9           Existing construction ~~shall mean for the purposes of floodplain management,~~  
10 ~~structures for which "the start of construction" commenced before the date of the initial~~  
11 ~~adoption of the floodplain management regulations by the Village of Palmetto Bay. Existing~~  
12 ~~construction, means for the purposes of determining insurance rates, structures for which~~  
13 ~~the "start of construction" commenced before June 18, 1974, the effective date of the~~  
14 ~~FIRM. This term may also be referred to as "existing structures".~~

15  
16           Existing manufactured home park or subdivision ~~shall mean a manufactured home~~  
17 ~~park or subdivision for which the construction of facilities for servicing the lots on which~~  
18 ~~the manufactured homes are to be affixed (including at a minimum the installation of~~  
19 ~~utilities, the construction of streets, and either final site grading or the pouring of concrete~~  
20 ~~pads) is completed before the effective date of the floodplain management regulations as~~  
21 ~~identified by the Federal Emergency Management Agency (FEMA) in its flood insurance~~  
22 ~~study and FIRM adopted by Miami-Dade County, Florida on June 18, 1974, and any~~  
23 ~~revisions thereto.~~

24  
25           Expansion to an existing manufactured home park or subdivision ~~shall mean the~~  
26 ~~preparation of additional sites by the construction of facilities for servicing the lots on which~~  
27 ~~the manufactured homes are to be affixed (including the installation of utilities, the~~  
28 ~~construction of streets, and either final site grading or the pouring of concrete pads).~~

29  
30           Flood or flooding means:

31  
32           ~~(a) A general and temporary condition of partial or complete inundation of~~  
33 ~~normally dry land areas from:~~

34  
35                   ~~(1) — The overflow of inland or tidal waters;~~

36  
37                   ~~(2) — The unusual and rapid accumulation or runoff of surface~~  
38 ~~waters from any source.~~

39  
40                   ~~(3) — Mudslides (i.e., mudflows) which are proximately caused by~~  
41 ~~flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and~~  
42 ~~flowing mud on the surface of normally dry land areas, as when earth is carried by a current~~  
43 ~~of water and deposited along the path of the current.~~

44  
45           ~~(b) The collapse or subsidence of land along a shore of a lake or other body~~  
46 ~~of water as the result of erosion or undermining caused by waves or currents of water~~  
47 ~~exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a~~  
48 ~~natural body of water, accompanied by a severe storm or by an unanticipated force of~~

1 nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and  
2 unforeseeable event which results in flooding as defined in paragraph (a) (1) of this  
3 definition.  
4

5 ~~Flood Boundary and Floodway Map (FBFM) shall mean the official map of a~~  
6 ~~community, on which the FEMA has delineated the areas of special flood hazard and~~  
7 ~~regulatory floodways.~~  
8

9 ~~Flood Hazard Boundary Map (FHBM) shall mean an official map of the~~  
10 ~~community, issued by FEMA, where the boundaries of the special flood hazard areas have~~  
11 ~~been identified as Zone A.~~  
12

13 ~~Flood Insurance Rate Map (FIRM) shall mean an official map of a the community,~~  
14 ~~on which FEMA has delineated both the areas of special flood hazard and the risk premium~~  
15 ~~zones applicable to the community.~~  
16

17 ~~Flood Insurance Study (FIS) shall mean the official hydrology and hydraulics~~  
18 ~~report provided by FEMA. The study contains an examination, evaluation, and~~  
19 ~~determination of flood hazards, and, if appropriate, corresponding water surface elevations,~~  
20 ~~or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other~~  
21 ~~flood-related erosion hazards. The study may also contain flood profiles, as well as the~~  
22 ~~FIRM, FHBM (where applicable), and other related data and information.~~  
23

24 ~~Floodplain shall mean any land area susceptible to being inundated by water from~~  
25 ~~any source (see definition of "flooding").~~  
26

27 ~~Floodplain management shall mean the operation of an overall program of~~  
28 ~~corrective and preventive measures for reducing flood damage and preserving and~~  
29 ~~enhancing, where possible, natural resources in the floodplain, including but not limited to~~  
30 ~~emergency preparedness plans, flood control works, floodplain management regulations, and~~  
31 ~~open space plans.~~  
32

33 ~~Floodplain Administrator is the individual appointed to administer and enforce the~~  
34 ~~floodplain management regulations of the community.~~  
35

36 ~~Floodplain management regulations shall mean this Section and any other zoning~~  
37 ~~ordinances, subdivision regulations, building codes health regulations, special purpose~~  
38 ~~ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance),~~  
39 ~~and other applications of police power which control development in flood-prone areas.~~  
40 ~~This term describes Federal, State of Florida, or local regulations, in any combination~~  
41 ~~thereof, which provide standards for preventing and reducing flood loss and damage.~~  
42

43 ~~Floodproofing shall mean any combination of structural and nonstructural~~  
44 ~~additions, changes, or adjustments to structures which reduce or eliminate flood damage to~~  
45 ~~real estate or improved real property, water and sanitary facilities, structures and their~~  
46 ~~contents.~~  
47

1 Floodway shall mean the channel of a river or other watercourse and the adjacent  
2 land areas that must be reserved in order to discharge the base flood without cumulatively  
3 increasing the water surface elevation more than a designated height of one (1) foot. The  
4 term is also referred to as "regulatory floodway."  
5

6 Floodway fringe shall mean that area of the one percent (base or 100-year)  
7 floodplain on either side of the regulatory floodway.  
8

9 Freeboard shall mean the additional height, usually expressed as a factor of safety in  
10 feet, above a flood level for purposes of floodplain management. "Freeboard" tends to  
11 compensate for the many unknown factors, such as wave action, blockage of bridge or  
12 culvert openings, and hydrological effect of urbanization of the watershed, which could  
13 contribute to flood heights greater than the heights calculated for a selected frequency flood  
14 and floodway conditions.  
15

16 Free of obstruction shall mean any type of lower area enclosure or other  
17 construction element will not obstruct the flow of velocity water and wave action beneath  
18 the lowest horizontal structural member of the lowest floor of an elevated building during a  
19 base flood event. This requirement applies to the structures in velocity zones (V-Zones).  
20

21 Functionally dependent use shall mean a use which cannot be used for its intended  
22 purpose unless it is located or carried out in close proximity to water, such as docking  
23 facilities, or port facility necessary for the loading and unloading of cargo or passengers,  
24 shipbuilding or ship repair. The term does not include long-term storage, manufacture,  
25 sales, or service facilities.  
26

27 Hardship as related to variances from this ordinance means the exceptional  
28 difficulty associated with the land that would result from a failure to grant the requested  
29 variance. The community requires that the variance is exceptional, unusual, and peculiar to  
30 the property involved. Mere economic or financial hardship alone is not exceptional.  
31 Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the  
32 disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship.  
33 All of these problems can be resolved through other means without granting a variance,  
34 even if the alternative is more expensive, or requires the property owner to build elsewhere  
35 or put the parcel to a different use than originally intended.  
36

37 Highest adjacent grade shall mean the highest natural elevation of the ground  
38 surface, prior to construction, next to the proposed walls of a structure.  
39

40 Historic Structure shall mean any structure that is:

41  
42 (1) Listed individually in the National Register of Historic Places (a  
43 listing maintained by the Department of Interior) or preliminarily determined by the  
44 Secretary of the Interior as meeting the requirements for individual listing on the National  
45 Register;  
46

1                   ~~(2) — Certified or preliminarily determined by the Secretary of the Interior~~  
2 ~~as contributing to the historical significance of a registered historic or a district preliminarily~~  
3 ~~determined by the Secretary to qualify as a registered historic district.~~

4  
5                   ~~(3) — Individually listed on the Florida inventory of historic places, which~~  
6 ~~have been approved by the Secretary of the Interior; or~~

7  
8                   ~~(4) — Individually listed on a local inventory for historic places with historic~~  
9 ~~preservation programs that have been certified by either:~~

10  
11                   ~~a. — By the approved Florida program as determined by the Secretary of~~  
12 ~~the Interior; or~~

13  
14                   ~~b. — Directly by the Secretary of the Interior.~~

15  
16                   ~~Increased Cost of Compliance (ICC) — shall mean the coverage by a standard flood~~  
17 ~~insurance policy under the NFIP that provides for the payment of a claim for the cost to~~  
18 ~~comply with the state of Florida and the Village's floodplain management laws or ordinances~~  
19 ~~after a direct physical loss by flood, when the Village declares the structure to be~~  
20 ~~“substantially” or “repetitively” flood damaged. ICC coverage is provided for in every~~  
21 ~~standard NFIP flood insurance policy, and will help pay for the cost to floodproof, relocate,~~  
22 ~~elevate, or demolish the structure.~~

23  
24                   ~~Lowest adjacent grade — shall mean the lowest elevation, after the completion of~~  
25 ~~construction, of the ground, sidewalk, patio, deck support, or basement entryway~~  
26 ~~immediately next to the structure.~~

27  
28                   ~~Lowest floor — shall mean the lowest floor of the lowest enclosed area (including~~  
29 ~~basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles,~~  
30 ~~building access, or storage, in an area other than a basement, is not considered a building's~~  
31 ~~lowest floor, provided that such enclosure is not built so as to render the structure in~~  
32 ~~violation of the non-elevation design requirements of this ordinance.~~

33  
34                   ~~Mangrove stand — shall mean an assemblage of mangrove trees which are mostly low~~  
35 ~~trees noted for a copious development of interlacing adventitious roots above the ground~~  
36 ~~and which contain one (1) or more of the following species: Black mangrove (Avicennia~~  
37 ~~Nitida); red mangrove (Rhizophora Mangle); white mangrove (Laguncularia Racemosa);~~  
38 ~~and buttonwood (Conocarpus Erecta).~~

39  
40                   ~~Manufactured home — shall mean a building, transportable in one (1) or more~~  
41 ~~sections, which is built on a permanent chassis and is designed for use with or without a~~  
42 ~~permanent foundation when connected to the required utilities. The term also includes park~~  
43 ~~trailers, travel trailers, and similar transportable structures placed on a site for 180~~  
44 ~~consecutive days or longer and intended to be improved property.~~

45  
46                   ~~Manufactured home park or subdivision — shall mean a parcel (or contiguous parcels)~~  
47 ~~of land divided into two (2) or more manufactured home lots for rent or sale.~~

1           ~~Map shall mean the Flood Boundary and Floodways Map (FBFM), Flood Hazard~~  
2 ~~Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued~~  
3 ~~by FEMA.~~

4  
5           ~~Market value shall mean the building value, which is the property value excluding~~  
6 ~~the land value and that of the detached accessory structures and other improvements on site~~  
7 ~~(as agreed to between a willing buyer and seller) as established by what the local real estate~~  
8 ~~market will bear. Market value can be established by an independent certified appraisal~~  
9 ~~(other than a limited or curbside appraisal, or one based on income approach), Actual Cash~~  
10 ~~Value (replacement cost depreciated for age and quality of construction of building), or~~  
11 ~~adjusted tax-assessed values.~~

12  
13           ~~Mean sea level shall mean the average height of the sea for all stages of the tide. It~~  
14 ~~is used as a reference for establishing various elevations within the floodplain. For purposes~~  
15 ~~of this regulation, the term is synonymous with the National Geodetic Vertical Datum~~  
16 ~~(NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988.~~

17  
18           ~~National Geodetic Vertical Datum (NGVD) of 1929 shall mean a vertical control~~  
19 ~~used as a reference for establishing varying elevations within the floodplain.~~

20  
21           ~~New Construction shall mean, for floodplain management purposes, any structure~~  
22 ~~for which the "start of construction" commenced on or after the adoption of this Section.~~  
23 ~~The term also includes any subsequent improvements to such structures. For flood~~  
24 ~~insurance rates, structures for which the start of construction commenced on or after June~~  
25 ~~18, 1974, the effective date of the FIRM, and includes any subsequent improvements to such~~  
26 ~~structures.~~

27  
28           ~~New manufactured home park or subdivision shall mean a manufactured home~~  
29 ~~park or subdivision for which the construction of facilities for servicing the lots on which~~  
30 ~~the manufactured homes are to be affixed (including at a minimum, the installation of~~  
31 ~~utilities, the construction of streets, and either final site grading or the pouring of concrete~~  
32 ~~pads) is completed on or after the effective date of floodplain management regulations~~  
33 ~~adopted by the Village.~~

34  
35           ~~Non-Coastal High Hazard Area shall mean an area of special flood hazard not~~  
36 ~~subject to high velocity wave action from storms or seismic sources. The area is designated~~  
37 ~~on the FIRM as Zone A, AE, AH, AO, or A99.~~

38  
39           ~~North American Vertical Datum (NAVD) of 1988 shall mean a vertical control~~  
40 ~~used as a reference for establishing varying elevations within the floodplain.~~

41  
42           ~~Participating community, also known as an eligible community shall mean a~~  
43 ~~community in which FEMA has authorized the sale of flood insurance.~~

44  
45           ~~Primary frontal dune shall mean a continuous or nearly continuous mound or ridge~~  
46 ~~of sand with relatively steep seaward and landward slopes immediately landward and~~  
47 ~~adjacent to the beach and subject to erosion and overtopping from high tides and waves~~

1 during major coastal storms. The inland limit of the primary frontal dune occurs at the point  
2 where there is a distinct change from a relatively steep slope to a relatively mild slope.

3  
4 Principally above ground — shall mean that at least 51 percent of the actual cash value  
5 of the structure is above ground.

6  
7 Program deficiency — shall mean a defect in the community's floodplain management  
8 regulations or administrative procedures that impairs effective implementation of those  
9 floodplain management regulations or of the standards required by the National Flood  
10 Insurance Program.

11  
12 Public safety and nuisance — shall mean anything which is injurious to safety or  
13 health of the entire community or a neighborhood, or any considerable number of persons;  
14 or unlawfully obstructs the free passage or use, in the customary manner, of any navigable  
15 lake, or river, bay, stream, canal, or basin.

16  
17 Reasonably safe from flooding — shall mean base flood waters will not inundate the  
18 land or damage structures to be removed from the SFHA and that any subsurface waters  
19 related to the base flood will not damage existing or proposed buildings.

20  
21 Recreational vehicle — shall mean a vehicle which is:

22  
23 (1) — Built on a single chassis;

24  
25 (2) — 400 square feet or less when measured at the largest horizontal  
26 projection;

27  
28 (3) — Designed to be self-propelled or permanently towable by a light duty  
29 truck; and

30  
31 (4) — Designed primarily not for use as a permanent dwelling but as  
32 temporary living quarters for recreational, camping, travel, or seasonal use.

33  
34 Regulatory floodway — shall mean the channel of a river or other watercourse and the  
35 adjacent land areas that must be reserved in order to discharge the base flood without  
36 cumulatively increasing the water surface elevation more than a designated height.

37  
38 Remedy a deficiency or violation — shall mean to bring the regulation, procedure,  
39 structure or other development into compliance with State of Florida, Federal, or local  
40 floodplain management regulations; or if this is not possible, to reduce the impacts of its  
41 noncompliance. Ways the impacts may be reduced include protecting the structure or other  
42 affected development from flood damages, implementing the enforcement provisions of this  
43 ordinance or otherwise deterring future similar violations, or reducing Federal financial  
44 exposure with regard to the structure or other development.

45  
46 Repetitive Loss — shall mean flood-related damages sustained by a structure on two  
47 (2) separate occasions during a 10-year period for which the cost of repairs at the time of

1 each such flood event, on the average, equaled or exceeded 25 percent of the market value  
2 of the structure before the damages occurred.

3  
4 ~~Riverine~~ shall mean relating to, formed by, or resembling a river (including  
5 tributaries), stream, brook, etc.

6  
7 ~~Sand dune~~ shall mean naturally occurring accumulations of sand in ridges or  
8 mounds landward of the beach.

9  
10 ~~Shallow flooding~~ see area of shallow flooding.

11  
12 ~~Special flood hazard area (SFHA)~~ shall mean an area having special flood hazard  
13 and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V1-30, VE, or V.  
14 (see area of special flood hazard)

15  
16 ~~Start of Construction (for other than new construction or substantial improvements~~  
17 ~~under the Coastal Barrier Resources Act (Pub. L. 97-348))~~ shall include substantial  
18 improvement, and shall mean the date the building permit was issued, provided the actual  
19 start of construction, repair, reconstruction, rehabilitation, addition placement, or other  
20 improvement was within 180 days of the permit date. The actual start means either the first  
21 placement of permanent construction of a structure on a site, such as the pouring of slab or  
22 footings, the installation of piles, the construction of columns, or any work beyond the stage  
23 of excavation; or the placement of a manufactured home on a foundation. Permanent  
24 construction does not include land preparation, such as clearing, grading and filling; nor does  
25 it include the installation of streets and/or walkways; nor does it include excavation for a  
26 basement, footings, piers, or foundations or the erection of temporary forms; nor does it  
27 include the installation on the property of accessory buildings, such as garages or sheds not  
28 occupied as dwelling units or not part of the main structure. For a substantial improvement,  
29 the actual start of construction means the first alteration of any wall, ceiling, floor, or other  
30 structural part of a building, whether or not that alteration affects the external dimensions of  
31 the building.

32  
33 ~~Storm cellar~~ shall mean a place below grade used to accommodate occupants of  
34 the structure and emergency supplies as a means of temporary shelter against severe  
35 tornadoes or similar windstorm activity.

36  
37 ~~Structure~~ shall mean, for floodplain management purposes, a walled and roofed  
38 building, including a gas or liquid storage tank that is principally above ground, as well as a  
39 manufactured home.

40  
41 ~~Substantial damage~~ shall mean damage of any origin sustained by a structure  
42 whereby the cost of restoring the structure to its before damaged condition would equal or  
43 exceed 50 percent of the market value of the structure before the damage occurred. This  
44 term also includes "repetitive loss" structures as defined herein.

45  
46 ~~Substantial improvement~~ shall mean any reconstruction, rehabilitation, addition, or  
47 other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent  
48 of the market value of the structure before the "start of construction" of the improvement.

1 The term includes structures that have incurred “substantial damage”, regardless of the  
2 actual work performed, or “repetitive loss”. The term does not, however, include any repair  
3 or improvement of a structure to correct existing violations of State of Florida or local  
4 health, sanitary, or safety code specifications which have been identified by the local code  
5 compliance officer prior to the application for permit for improvement, and which are the  
6 minimum necessary to assure safe living conditions. This term does not include any  
7 alteration of a historic structure, provided that the alteration will not preclude the structure's  
8 continued designation as a historic structure.

9  
10 Substantially improved existing manufactured home parks or subdivisions is where  
11 the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads  
12 equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair,  
13 reconstruction or improvement commenced.

14  
15 Variance shall mean a grant of relief by the Village from the requirements of this  
16 Section.

17  
18 Violation shall mean the failure of a structure or other development to be fully  
19 compliant with the requirement of this Section. A structure or other development without  
20 the elevation certificate, other certifications, or other evidence of compliance required in this  
21 Section is presumed to be in violation until such time as that documentation is provided.

22  
23 Waterecourse shall mean a lake, river, creek, stream, wash, channel or other  
24 topographic feature on or over which waters flow at least periodically. Waterecourse includes  
25 specifically designated areas in which substantial flood damage may occur.

26  
27 Water surface elevation shall mean the height, in relation to the National Geodetic  
28 Vertical Datum (NGVD) of 1929, or the North American Vertical Datum (NAVD) of 1988,  
29 of floods of various magnitudes and frequencies in the floodplains of coastal or riverine  
30 areas.

31  
32 (g) General Provisions

33  
34 (1) Lands to which this Section applies. This Section shall apply to all  
35 areas of special flood hazard within the jurisdiction of the Village Council of the Village of  
36 Palmetto Bay.

37  
38 (2) Basis for establishing the areas of special flood hazard. The areas of  
39 special flood hazard identified by the Federal Emergency Management Agency in the Flood  
40 Insurance Study (FIS) and flood insurance rate map for Miami-Dade County, Florida and  
41 incorporated areas prepared by the Department of Homeland Security's Federal Emergency  
42 Management Agency (FEMA) dated September 11, 2009, with the accompanying maps and  
43 other supporting data, and any subsequent revisions thereto, are adopted by reference and  
44 declared to be a part of this Section. The Flood Insurance Study and Flood Insurance Rate  
45 Map are on file at the Department of Public Works.

46  
47 (3) Designation of floodplain administrator. The Village Council of the  
48 Village of Palmetto Bay hereby appoints the public works director to administer and

1 ~~implement the provisions of this Section, and shall be referred to as the Floodplain~~  
2 ~~Management Administrator, or the Administrator.~~

3  
4 ~~(4) — Establishment of development permit. A development permit shall~~  
5 ~~be required for all proposed construction or other development, including, but not limited~~  
6 ~~to, the placement of manufactured homes, in conformance with the provisions of this~~  
7 ~~Section prior to the commencement of any development activity.~~

8  
9 ~~(5) — Compliance. No structure or land shall hereafter be located,~~  
10 ~~extended, converted or structurally altered without full compliance with the requirements of~~  
11 ~~this Section and other applicable laws and regulations.~~

12  
13 ~~(6) — Abrogation and greater restrictions. This Section is not intended to~~  
14 ~~repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However,~~  
15 ~~where this Section and another conflict or overlap, whichever imposes the more stringent~~  
16 ~~restrictions shall prevail.~~

17  
18 ~~(7) — Interpretation. In the interpretation and application of this Section~~  
19 ~~all provisions shall be:~~

20  
21 ~~a. — considered as minimum requirements;~~

22  
23 ~~b. — liberally construed in favor of the governing body; and~~

24  
25 ~~c. — deemed neither to limit nor repeal any other powers granted~~  
26 ~~under State of Florida statutes.~~

27  
28 ~~(8) — Warning and disclaimer of liability. The degree of flood protection~~  
29 ~~required by this Section is considered reasonable for regulatory purposes and is based on~~  
30 ~~scientific and engineering considerations. Larger floods can and will occur on rare~~  
31 ~~occasions. Flood heights may be increased by man-made or natural causes. This Section~~  
32 ~~does not imply that land outside the areas of special flood hazard or uses permitted within~~  
33 ~~such areas will be free from flooding or flood damages. This Section shall not create liability~~  
34 ~~on the part of the Village Council of the Village of Palmetto Bay or by any officer or~~  
35 ~~employee of the Village for any flood damages that result from reliance on or any~~  
36 ~~administrative decision lawfully made under this Section.~~

37  
38 ~~(9) — Penalties for violation. Violation of the provisions of this Section or~~  
39 ~~failure to comply with any of its requirements, including violation of conditions and~~  
40 ~~safeguards established in connection with granting of variances or special exceptions, shall~~  
41 ~~constitute a misdemeanor. Any person who violates this Section or fails to comply with any~~  
42 ~~of its requirements shall, upon conviction thereof, be fined not more than \$500 or~~  
43 ~~imprisoned for not more than 60 days, or both, and in addition, shall pay all costs and~~  
44 ~~expenses involved in the case. Each day such violation continues shall be considered a~~  
45 ~~separate offense. Nothing in this Section shall prevent the Floodplain Management~~  
46 ~~Administrator from taking such other lawful actions as is necessary to prevent or remedy any~~  
47 ~~violation.~~

1           (h) — Administration.

2  
3           (1) — Permit procedures. ~~An application for development permit shall be~~  
4 ~~submitted to the Floodplain Management Administrator, on forms furnished by the Village~~  
5 ~~prior to any development activities, and may include, but not be limited to, the following~~  
6 ~~plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of~~  
7 ~~the area under consideration for development; existing and proposed structures, earthen fill,~~  
8 ~~storage of materials or equipment, drainage facilities, perimeter setbacks, environmental~~  
9 ~~features such as base floodplain areas, wetlands, and other protected areas; and the location~~  
10 ~~of the foregoing. Specifically, the following information, certified by a licensed professional~~  
11 ~~engineer or architect who is authorized to certify such information in this state, is required:~~

12  
13           a. — Application Stage:

14  
15           (i) — ~~Elevations of the area (including basement) of~~  
16 ~~development in relation to mean sea level (such as a contour map) for both existing and~~  
17 ~~proposed development;~~

18  
19           (ii) — ~~Elevation in relation to mean sea level of the lowest~~  
20 ~~(including basement) floors of all proposed structures;~~

21  
22           (iii) — ~~Elevation in relation to mean sea level to which any~~  
23 ~~nonresidential structure will be floodproofed;~~

24  
25           (iv) — ~~Certificate from a registered professional engineer or~~  
26 ~~architect that the non-residential flood-proofed building will meet the flood-proofing criteria~~  
27 ~~of this Section;~~

28  
29           (v) — ~~Description of the extent to which any watercourse~~  
30 ~~will be altered or relocated as result of proposed development, and~~

31  
32  
33           (vi) — ~~Elevation in relation to mean sea level of the bottom~~  
34 ~~of the lowest horizontal structural member of the lowest floor and provide a certification~~  
35 ~~from a registered engineer or architect indicating that they have developed and/or reviewed~~  
36 ~~the structural designs, specifications and plans of the construction and certified that are in~~  
37 ~~accordance with accepted standards of practice in Coastal High Hazard Areas.~~

38  
39           a. — Construction Stage: ~~Provide a regulatory floor elevation or~~  
40 ~~floodproofing certification after the lowest floor is completed and prior to the issuance of a~~  
41 ~~Certificate of Occupancy. Upon placement of the lowest floor, or instances where the~~  
42 ~~structure is subject to the regulations applicable to coastal high hazard areas, after placement~~  
43 ~~of the horizontal structural members of the lowest floor, or for nonresidential structures,~~  
44 ~~floodproofing, whichever is applicable, it shall be the duty of the permit holder to submit to~~  
45 ~~the Floodplain Management Administrator a certification of the elevation of the lowest~~  
46 ~~floor, or flood-proofed elevation, or the elevation of the lowest portion of the horizontal~~  
47 ~~structural members of lowest floor, whichever is applicable, as built in relation to mean sea~~  
48 ~~level. Said certification shall be prepared by or under the direct supervision of a registered~~

1 ~~land surveyor or a state licensed professional engineer and certified by same. When~~  
2 ~~floodproofing is utilized for a particular building, said certification shall be prepared by or~~  
3 ~~under the direct supervision of a state licensed professional engineer or architect and~~  
4 ~~certified by same. Any work undertaken prior to submission of the certification shall be at~~  
5 ~~the permit holder's risk.~~

6  
7 The Administrator shall review the floor elevation survey data  
8 ~~submitted and floodproofing certificate. Should these documents be found not in~~  
9 ~~conformance with the requirements of this ordinance, the permit holder shall immediately~~  
10 ~~cease further work, and shall correct any deficiencies. Failure of the permit holder to submit~~  
11 ~~the surveyed lowest floor elevation and floodproofing certificate, and failure to correct the~~  
12 ~~identified deficiencies required by the Administrator, shall be the cause to issue a stop-work~~  
13 ~~order for the project.~~

14  
15 ~~(i) — Duties and responsibilities of the Floodplain Management Administrator.~~  
16 ~~Duties of the Administrator shall include, but are not be limited to the following:~~

17  
18 (1) ~~— Review permits to assure sites are reasonably safe from flooding.~~

19  
20 (2) ~~— Review all development permits to assure that the requirements of~~  
21 ~~this Section have been fully met.~~

22  
23 (3) ~~— Require copies of additional Federal, State of Florida, or local~~  
24 ~~permits, especially as they relate to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05;~~  
25 ~~381.0065; and 553, Part IV, Florida Statutes, be submitted along with the development~~  
26 ~~permit application and maintain such permits on file with the development permit;~~

27  
28 (4) ~~— Review and verify the V-Zone Certifications for new and~~  
29 ~~substantially improved structures in coastal high hazard areas.~~

30  
31 (5) ~~— Review certified plans and specifications for compliance with the~~  
32 ~~requirements of this Section. When flood proofing is utilized for a particular building,~~  
33 ~~certification shall be obtained from a registered engineer or architect certifying that all areas~~  
34 ~~of the building, together with attendant utilities and sanitary facilities, below the required~~  
35 ~~elevation are water tight with walls substantially impermeable to the passage of water, and~~  
36 ~~use structural components having the capability of resisting hydrostatic and hydrodynamic~~  
37 ~~loads and the effects of buoyancy in compliance with these regulations. In Coastal High~~  
38 ~~Hazard Areas, certification shall be obtained from a registered professional engineer or~~  
39 ~~architect that the building is designed and securely anchored to pilings or columns in order~~  
40 ~~to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard~~  
41 ~~Areas, if the area below the lowest horizontal structural member of the lowest floor is~~  
42 ~~enclosed, it may be done so with open wood lattice and insect screening or with non-~~  
43 ~~supporting breakaway walls that meets the standards of these regulations.~~

44  
45 (6) ~~— Verify and record the actual elevation (in relation to mean sea level)~~  
46 ~~of the lowest floor (including basement) or bottom of the lowest horizontal structural~~  
47 ~~member of the lowest floor of all new or substantially improved structures, in accordance~~  
48 ~~with these regulations.~~

1  
2           ~~(7) — Verify and record the actual elevation (in relation to mean sea level)~~  
3 ~~to which the new or substantially improved structures have been floodproofed, in~~  
4 ~~accordance with these regulations.~~  
5

6           ~~(8) — Interpret the exact location of boundaries of the areas of special~~  
7 ~~flood hazard and regulatory floodway. When there appears to be a conflict between a~~  
8 ~~mapped boundary and actual field conditions, the administrator shall make the necessary~~  
9 ~~interpretation. The person contesting the location of the boundary shall be given a~~  
10 ~~reasonable opportunity to appeal the interpretation as provided for in this Section.~~  
11

12           ~~(9) — When base flood elevation data or floodway data have not been~~  
13 ~~provided in accordance with these regulations, the administrator shall obtain, review and~~  
14 ~~reasonably utilize any base flood elevation and floodway data available from a federal, state,~~  
15 ~~or any other source, in order to administer the provisions of these regulations.~~  
16

17           ~~(10) — Notify, in riverine situations, adjacent communities and the~~  
18 ~~appropriate state and regional agencies (Florida Department of Community Affairs Division~~  
19 ~~of Emergency Management — NFIP Coordinating Office, South Florida Water Management~~  
20 ~~District, FEMA, and other Federal and/or State of Florida agencies with statutory or~~  
21 ~~regulatory authority prior to any alteration or relocation of a watercourse. Submit copies of~~  
22 ~~the notifications to FEMA, and assure that the flood carrying capacity within the altered or~~  
23 ~~relocated portion of any watercourse is maintained so that the flood carrying capacity is not~~  
24 ~~diminished.~~  
25

26           ~~(11) — Coordinate with planning, zoning, and public works and other~~  
27 ~~departments in the Village to assure that the requirements of these regulations are fully met.~~  
28

29           ~~(12) — Participate actively in evaluating the variance requests and provide~~  
30 ~~input and recommendations in variance hearings, and~~  
31

32           ~~(13) — Coordinate all change requests to the FIS and FIRM or FBFM, or all,~~  
33 ~~with the requester, state, and FEMA.~~  
34

35           ~~(14) — Requirement to submit new technical data.~~  
36

37           ~~(15) — The Village's base flood elevations may increase or decrease resulting~~  
38 ~~from physical changes affecting flooding conditions. As soon as practicable, but not later~~  
39 ~~than six (6) months after the date such information becomes available, the Village shall~~  
40 ~~notify FEMA of the changes by submitting technical or scientific data. The submission shall~~  
41 ~~be necessary so that upon confirmation of those physical changes affecting flooding~~  
42 ~~conditions, risk premium rates and flood plain management requirements will be based upon~~  
43 ~~current data. The Village may require the applicant or owner to submit the data and review~~  
44 ~~fees for FEMA.~~  
45

46           ~~(16) — In coastal high hazard areas, the Village review plans for adequacy of~~  
47 ~~breakaway walls in accordance with these regulations.~~  
48

1           ~~(17) — All records pertaining to the provisions of these flood regulations~~  
2 ~~shall be maintained by the Village and shall be open for public inspection.~~

3  
4           ~~(j) — Standards for Flood Hazard Reduction. In all areas of special flood hazard,~~  
5 ~~all development sites including new construction and substantial improvements shall be~~  
6 ~~reasonably safe from flooding, and meet the following requirements:~~

7  
8           ~~(1) — Review permits for proposed construction or other development,~~  
9 ~~including the placement of manufactured homes, so that a determination may be made~~  
10 ~~whether or not such construction or other development is proposed within flood-prone~~  
11 ~~areas.~~

12  
13           ~~(2) — New construction, substantial improvements, and other development~~  
14 ~~proposals shall assure that all necessary permits have been obtained from those~~  
15 ~~governmental agencies from which approval is required by federal or state law, including~~  
16 ~~Section 404 of the Federal Water Pollution Control Act, as amended, or by area-wide~~  
17 ~~agencies.~~

18  
19           ~~(3) — New construction and substantial improvements shall be constructed~~  
20 ~~with materials and utility elements resistant to flood damage for any areas up to one (1) foot~~  
21 ~~above base flood elevation.~~

22  
23           ~~(4) — New construction or substantial improvements shall be constructed~~  
24 ~~by methods and practices that minimize flood damage.~~

25  
26           ~~(5) — Electrical, heating, ventilation, plumbing, air conditioning equipment~~  
27 ~~and other service facilities, including duct work, shall be designed and/or located so as to~~  
28 ~~prevent water from entering or accumulating within the components during conditions of~~  
29 ~~flooding.~~

30  
31           ~~(6) — Subdivision proposals and other proposed new development,~~  
32 ~~including manufactured home parks or subdivisions, shall be assured that they will be~~  
33 ~~reasonably safe from flooding. If a subdivision proposal or other proposed new~~  
34 ~~development is in a flood-prone area, any such proposals shall be reviewed to assure that:~~

35  
36           ~~a. — All such proposals are consistent with the need to minimize~~  
37 ~~flood damage within the flood-prone area;~~

38  
39           ~~b. — all public utilities and facilities, such as sewer, gas, electrical,~~  
40 ~~and water systems are located and constructed to minimize or eliminate flood damage, and~~

41  
42           ~~c. — adequate drainage is provided to reduce exposure to flood~~  
43 ~~hazards.~~

44  
45           ~~(7) — New and replacement water supply systems shall be designed to~~  
46 ~~minimize or eliminate infiltration of flood waters into the systems;~~

1                   ~~(8) — New and replacement sanitary sewage systems shall be designed to~~  
2 ~~minimize or eliminate infiltration of flood waters into the systems and discharges from the~~  
3 ~~systems into flood waters, and on-site waste disposal systems shall be located and~~  
4 ~~constructed to avoid impairment to them or contamination from them during flooding;~~  
5

6                   ~~(9) — New construction and substantial improvements, when located in~~  
7 ~~multiple flood zones with varying base flood elevations or in same flood zone with multiple~~  
8 ~~base flood elevations shall meet the requirements for the flood zone with the most stringent~~  
9 ~~requirements and the highest base flood elevation.~~

10  
11                   ~~(10) — New construction and substantial improvements of existing~~  
12 ~~structures shall be anchored to prevent flotation, collapse or lateral movement of the~~  
13 ~~structure.~~

14  
15                   ~~(11) — Manufactured homes shall be anchored to prevent flotation, collapse,~~  
16 ~~or lateral movement. Methods of anchoring may include, but are not limited to, use of over-~~  
17 ~~the-top or frame ties to ground anchors. This standard shall be in addition to and consistent~~  
18 ~~with applicable state requirements for resisting wind forces.~~

19  
20                   ~~(12) — Any alteration, repair, reconstruction or improvements to a structure~~  
21 ~~that is in compliance with the provisions of this code shall meet the requirements as~~  
22 ~~contained in this division.~~

23  
24                   ~~(13) — Any alteration, repair, reconstruction or improvements to a building~~  
25 ~~that is not in compliance with the provisions of this ordinance, shall be undertaken only if~~  
26 ~~said non-conformity is not furthered, extended, or replaced.~~

27  
28                   ~~(14) — All applicable additional Federal, State of Florida, and local permits~~  
29 ~~shall be obtained and submitted to the Floodplain Management Administrator along with~~  
30 ~~the application for development permit. Copies of such permits shall be maintained on file~~  
31 ~~with the development permit. State of Florida permits may include, but not be limited to,~~  
32 ~~the following:~~

33  
34                   ~~a. — South Florida Water Management District: in accordance~~  
35 ~~with Chapter 373.036 Florida Statutes (F.S.), Section (2) (a) — Flood Protection and~~  
36 ~~Floodplain Management;~~

37  
38                   ~~b. — Department of Community Affairs: in accordance with~~  
39 ~~Chapter 380.05 F.S. Areas of Critical State Concern, and Chapter 553, Part IV F.S., Florida~~  
40 ~~Building Code;~~

41  
42                   ~~c. — Department of Health: in accordance with Chapter 381.0065~~  
43 ~~F.S. Onsite Sewage Treatment and Disposal Systems; and~~

44  
45                   ~~d. — Department of Environmental Protection, Coastal~~  
46 ~~Construction Control Line: in accordance with Chapter 161.053 F.S. Coastal Construction~~  
47 ~~and Excavation.~~

1  
2           (15) ~~When proposed new construction and substantial improvements are~~  
3 ~~partially located in an area of special flood hazard, the entire structure shall meet the~~  
4 ~~standards for new construction.~~

5  
6           (k) ~~Specific Standards for Non-Coastal High Hazard Areas. In all non-coastal~~  
7 ~~areas of special flood hazard where base flood elevation data have been provided, as set~~  
8 ~~forth in this Section, but no regulatory floodways have been delineated, the following~~  
9 ~~provisions shall apply:~~

10  
11           ~~(1) Standards of subsection (k), above.~~

12  
13           ~~(2) Residential Structures:~~

14  
15           a. ~~All new construction or substantial improvements of~~  
16 ~~residential structures (including manufactured home) shall have the lowest floor (including~~  
17 ~~basement) elevated to no lower than (one foot above) the base flood elevation. Should solid~~  
18 ~~foundation perimeter walls be used to elevate a structure, there must be a minimum of two~~  
19 ~~openings on different sides of each enclosed area sufficient to facilitate automatic~~  
20 ~~equalization of flood hydrostatic forces in accordance with these regulations.~~

21  
22           b. ~~Should solid foundation perimeter walls be used to elevate a~~  
23 ~~structure, there must be a minimum of two (2) openings on different sides of each enclosed~~  
24 ~~area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance~~  
25 ~~with these regulations.~~

26  
27           ~~(3) Nonresidential Structures:~~

28  
29           a. ~~All new construction or substantial improvements of non-~~  
30 ~~residential structures shall have the lowest floor (including basement) elevated to be at or~~  
31 ~~above the base flood elevation. Nonresidential structures within Zones A1-30, AE, and AH~~  
32 ~~may be flood proofed in lieu of being elevated provided that together with all attendant~~  
33 ~~utility and sanitary facilities, be designed so that below the base flood elevation plus one (1)~~  
34 ~~foot the structure is water-tight with walls substantially impermeable to the passage of water,~~  
35 ~~and with structural components having the capability of resisting hydrostatic and~~  
36 ~~hydrodynamic loads and the effect of buoyancy. A registered professional engineer or~~  
37 ~~architect, who is authorized to certify such information in the state, shall certify that the~~  
38 ~~provisions of this subsection are satisfied. The FEMA Floodproofing Certificate shall be~~  
39 ~~prepared, and submitted to the Floodplain Management Administrator along with the~~  
40 ~~corresponding operational and maintenance plans.~~

41  
42           ~~(4) Elevated Structures. For all new construction and substantial~~  
43 ~~improvements, that include fully enclosed areas below the lowest floor elevation shall be~~  
44 ~~usable solely for parking of vehicles, building access, or storage. These enclosed areas shall~~  
45 ~~be designed and constructed to allow for the entry and exit of floodwaters to automatically~~  
46 ~~equalize hydrostatic flood forces on exterior walls.~~

1 a. ~~Designs for meeting with this requirement must either be~~  
2 certified by a professional engineer or architect, who is authorized to such information in the  
3 state, or meet or exceed the following minimum criteria:

4  
5 (i) ~~A minimum of two (2) openings having a total net area of~~  
6 ~~not less than one (1) square inch for every square foot of enclosed area subject to flooding~~  
7 ~~shall be provided;~~

8  
9 (ii) ~~The bottom of all openings shall be no higher than one~~  
10 ~~(1) foot above adjacent interior grade (which must be equal to or higher in elevation than the~~  
11 ~~adjacent exterior grade); and~~

12  
13 (iii) ~~Openings may be equipped with screens, louvers, valves,~~  
14 ~~or other coverings or devices provided they provide the required net area of the openings~~  
15 ~~and permit the automatic entry and exit of floodwaters.~~

16  
17 b. ~~Fully enclosed areas below the lowest floor shall solely be~~  
18 ~~used for parking of vehicles, storage, and building access. Access to the enclosed area shall~~  
19 ~~be minimum necessary to allow for parking of vehicles (garage door) or limited storage of~~  
20 ~~maintenance equipment used in connection with the premises (standard exterior door) or~~  
21 ~~entry to the living area (stairway or elevator);~~

22  
23 c. ~~The interior portion of such enclosed areas shall not be~~  
24 ~~partitioned, temperature controlled, or finished into separate rooms; and~~

25  
26 d. ~~Where elevation requirements exceed six (6) feet above the~~  
27 ~~highest adjacent grade, a copy of the legally recorded deed restriction prohibiting the~~  
28 ~~conversion of the area below the lowest floor to a use or dimension contrary to the~~  
29 ~~building's originally approved design, shall be presented as a condition of issuance of the~~  
30 ~~final Certificate of Occupancy.~~

31  
32 (5) Provisions for Manufactured Homes and Recreational Vehicles.

33 a. ~~All manufactured homes that are placed, or substantially~~  
34 ~~improved within Zones A1-30, AH, and AE, on sites:~~

35  
36 (i) ~~outside of an existing manufactured home park or~~  
37 ~~subdivision;~~

38  
39 (ii) ~~in a new manufactured home park or subdivision;~~

40  
41 (iii) ~~in an expansion to an existing manufactured home~~  
42 ~~park or subdivision; or~~

43  
44 (iv) ~~in an existing manufactured home park or subdivision~~  
45 ~~on which a manufactured home has incurred "substantial damage" as the result of a flood,~~  
46 ~~be elevated on a permanent foundation and be securely anchored to an adequately anchored~~  
47 ~~foundation system to resist foundation collapse and lateral movement.~~

1                   b. ~~All manufactured homes to be placed or substantially~~  
2 ~~improved in an existing manufactured home park or subdivision within Zones A1-30, AH,~~  
3 ~~and AE, that are not subject to the provisions of subsection (5)(a) must be elevated so that~~  
4 ~~either:~~

5  
6                   (i) ~~The lowest floor of the manufactured home is elevated~~  
7 ~~to be at or above the base flood elevation, or~~

8  
9                   (ii) ~~The manufactured home chassis is supported by~~  
10 ~~reinforced piers or other foundation elements of at least an equivalent strength that are no~~  
11 ~~less than 36 inches in height above the grade and be securely anchored to an adequate~~  
12 ~~foundation system to resist flotation, collapse, and lateral movement.~~

13  
14                   c. ~~All recreational vehicles placed on sites within Zones A1-30,~~  
15 ~~AH, and AE must either:~~

16  
17                   (i) ~~Be on the site for fewer than 180 consecutive days;~~

18  
19                   (ii) ~~Be fully licensed and ready for highway use (A~~  
20 ~~recreational vehicle is ready for highway use if it is on its wheels or jacking system, is~~  
21 ~~attached to the site only by quick disconnect type utilities and security devices, and has no~~  
22 ~~permanently attached additions; or~~

23  
24                   (iii) ~~Meet the requirements for new construction,~~  
25 ~~including anchoring and elevation requirements for manufactured homes in paragraphs (4)(a)~~  
26 ~~or (b) of this Section.~~

27  
28                   d. ~~Standards for waterways with established Base Flood~~  
29 ~~Elevations, but without Regulatory Floodways.~~

30  
31                   e. ~~Located within the areas of special flood hazard established in~~  
32 ~~these regulations, where streams exist for which base flood elevation data has been provided~~  
33 ~~by the Federal Emergency Management Agency without the delineation of the regulatory~~  
34 ~~floodway (Zones AE and A1-30), the following provisions, in addition to those set forth in~~  
35 ~~these regulations, shall apply:~~

36  
37                   (i) ~~Until a regulatory floodway is designated, that no new~~  
38 ~~construction, substantial improvements, or other development (including fill) shall be~~  
39 ~~permitted within Zones A1-30 and AE on the FIRM, unless it is demonstrated that the~~  
40 ~~cumulative effect of the proposed development, when combined with all other existing and~~  
41 ~~anticipated development, will not increase the water surface elevation of the base flood more~~  
42 ~~than one (1) foot at any point within the community.~~

43                   (ii) ~~Development activities which increase the water~~  
44 ~~surface elevation of the base flood by more than one foot may be allowed, provided that the~~  
45 ~~developer or applicant first applies with the community's endorsement for a conditional~~  
46 ~~FIRM revision, and receives the approval of the Federal Emergency Management Agency~~  
47 ~~(FEMA).~~

1  
2 f. ~~Within Zones AH and AO on the FIRM, adequate drainage~~  
3 ~~paths around structures shall be provided on slope to guide floodwaters around and away~~  
4 ~~from proposed structures.~~

5  
6 ~~(l) Standards for Floodways with established Base Flood Elevations and~~  
7 ~~Floodways.~~

8  
9 ~~Located within areas of special flood hazard as established herein as areas designated~~  
10 ~~as floodways. Since the floodway is an extremely hazardous area due to the velocity of~~  
11 ~~floodwaters that carry debris, potential projectiles and have significant erosion potential, the~~  
12 ~~following provisions shall apply:~~

13  
14 ~~(1) Standards of subsection (l).~~

15  
16 ~~(2) Prohibit encroachments, including fill, new construction, substantial~~  
17 ~~improvements and other developments within the regulatory floodway unless certification~~  
18 ~~(with supporting technical data) by a registered professional engineer is provided through~~  
19 ~~hydrologic and hydraulic analyses performed in accordance with standard engineering~~  
20 ~~practice that the proposed encroachment would not result in any increase in flood levels~~  
21 ~~within the community during the occurrence of the base flood discharge,~~

22  
23 ~~(3) Development activities including new construction and substantial~~  
24 ~~improvements within the regulatory floodway that increase the base flood elevation may be~~  
25 ~~allowed, provided that the developer or applicant first applies with the community's~~  
26 ~~endorsement for a conditional FIRM revision, and receives the approval of FEMA.~~

27  
28 ~~(4) When fill is proposed, in accordance with the permit issued by the~~  
29 ~~Florida Department of Health, within the regulatory floodway, the development permit shall~~  
30 ~~be issued only upon demonstration by appropriate engineering analyses that the proposed fill~~  
31 ~~will not increase the water surface elevation of the base flood in accordance with this~~  
32 ~~Section.~~

33  
34 ~~For all structures located seaward of the Coastal Construction Control Line (CCCL),~~  
35 ~~the lowest floor of all new construction and substantial improvements shall be elevated to~~  
36 ~~no lower than the 100-year flood elevation established by the Florida Department of~~  
37 ~~Environmental Protection or by FEMA in accordance with these regulations, whichever is~~  
38 ~~higher. All non-elevation design requirements of this Section shall apply.~~

39  
40 ~~(m) Specific standard for A-Zones without base flood elevations and regulatory~~  
41 ~~floodways.~~

42  
43 ~~Located within the areas of special flood hazard established in these regulations,~~  
44 ~~where there exist A-Zones for which no base flood elevation data and regulatory floodway~~  
45 ~~have been provided or designated by the Federal Emergency Management Agency, the~~  
46 ~~following provisions shall apply:~~

47  
48 ~~(1) Require standards of this Section.~~

1  
2           ~~(2) — Require that all new subdivision proposals and other proposed~~  
3 ~~developments (including proposals for manufactured home parks and subdivisions) greater~~  
4 ~~than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood~~  
5 ~~elevation data. Standards set forth in this Section shall apply.~~  
6

7           ~~(3) — The Floodplain Administrator shall obtain, review, and reasonably~~  
8 ~~utilize any base flood elevation and floodway data available from a Federal, State of Florida,~~  
9 ~~or any other source, in order to administer the provisions of this ordinance. When such data~~  
10 ~~is utilized, provisions of this Section shall apply. The Floodplain Management Administrator~~  
11 ~~shall:~~  
12

13                   ~~a. — Obtain the elevation (in relation to the mean sea level) of the~~  
14 ~~lowest floor (including the basement) of all new and substantially improved structures;~~  
15

16                   ~~b. — Obtain, if the structure has been floodproofed in accordance~~  
17 ~~with the requirements of this Section, the elevation in relation to the mean sea level to which~~  
18 ~~the structure has been floodproofed, and~~  
19

20                   ~~c. — Maintain a record of all such information.~~  
21

22           ~~(4) — Notify, in riverine situations, adjacent communities, the Florida~~  
23 ~~Department of Community Affairs — NFIP Coordinating Office, and the South Florida~~  
24 ~~Water Management District prior to any alteration or relocation of a watercourse, and~~  
25 ~~submit copies of such notifications to FEMA.~~  
26

27           ~~(5) — Assure that the flood carrying capacity within the altered or relocated~~  
28 ~~portion of any watercourse is maintained.~~  
29

30           ~~(6) — Manufactured homes shall be installed using methods and practices~~  
31 ~~that minimize flood damage. They must be elevated and anchored to prevent flotation,~~  
32 ~~collapse, and lateral movement. Methods of anchoring may include, but are not limited to,~~  
33 ~~use of over the top or frame ties to ground anchors. This requirement is in addition to~~  
34 ~~applicable State of Florida and local anchoring requirements for resisting wind forces.~~  
35

36           ~~(7) — When the data is not available from any source, in accordance with~~  
37 ~~standard set forth in this Section, the lowest floor of the structure shall be elevated to no~~  
38 ~~lower than three (3) feet above the highest adjacent grade. Standards set forth in this Section~~  
39 ~~shall apply.~~  
40

41           ~~(n) — Standards for AO Zones.~~  
42

43           ~~Located within the areas of special flood hazard established in these regulations, are~~  
44 ~~areas designated as shallow flooding areas. These areas have flood hazards associated with~~  
45 ~~base flood depths of one to three feet, where a clearly defined channel does not exist and the~~  
46 ~~path of flooding is unpredictable and indeterminate; therefore, the following provisions, in~~  
47 ~~addition to this Section, apply:~~  
48

1           (1) ~~All new construction and substantial improvements of residential~~  
2 ~~structures in all AO Zones shall have the lowest floor, including basement, elevated above~~  
3 ~~the highest adjacent grade at least as high as the depth number specified in feet on the Flood~~  
4 ~~Insurance Rate Map plus one foot. If no flood depth number is specified, the lowest floor,~~  
5 ~~including basement, shall be elevated to no less than two feet above the highest adjacent~~  
6 ~~grade.~~

7  
8           (2) ~~All new construction and substantial improvements of non-~~  
9 ~~residential structures shall:~~

10  
11           a. ~~Have the lowest floor, including basement, elevated above~~  
12 ~~the highest adjacent grade at least as high as the depth number specified in feet on the Flood~~  
13 ~~Insurance Rate Map. If no flood depth number is specified, the lowest floor, including~~  
14 ~~basement, shall be elevated to at least three feet above the highest adjacent grade, or~~  
15

16           b. ~~Together with attendant utility and sanitary facilities be~~  
17 ~~completely floodproofed to (no less than one foot above) that level to meet the~~  
18 ~~floodproofing standard specified in Article 5, Section D (2) (a).~~

19  
20           (3) ~~Adequate drainage paths around structures shall be provided on~~  
21 ~~slopes to guide water away from structures.~~

22  
23           (4) ~~Fully enclosed areas below the lowest floor that are subject to~~  
24 ~~flooding shall meet the non-elevation design requirements of this Section.~~

25  
26           (e) ~~Coastal High Hazard Areas:~~

27  
28           (1) ~~Located within areas of special flood hazard areas established in this~~  
29 ~~Section, are Coastal High Hazard Areas, designated as Zones V1-30, VE, or V. These areas~~  
30 ~~have special flood hazards associated with high velocity waters from hurricane and storm~~  
31 ~~surges and, therefore, in addition to meeting all provisions in this ordinance, the following~~  
32 ~~provisions shall also apply:~~

33           a. ~~Standards of subsection (m):~~

34  
35           b. ~~All new construction and substantial improvements in Zones~~  
36 ~~V1-30 and VE (Zone V if base flood elevation is available) shall be elevated on pilings or~~  
37 ~~columns so that:~~

38  
39           (i) ~~The bottom of the lowest horizontal structural~~  
40 ~~member of the lowest floor (excluding the pilings or columns) is elevated to be at or above~~  
41 ~~the base flood elevation, and~~

42  
43           (ii) ~~The pile or column foundation and structure attached~~  
44 ~~thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of~~  
45 ~~wind and water loads acting simultaneously on all building components. Water loading~~  
46 ~~values used shall be those associated with the base flood. Wind loading values used shall be~~  
47 ~~those required by applicable state or local building standards.~~  
48

1 (iii) — For all buildings located seaward of the Coastal  
2 Construction Control Line (CCCL), the bottom of the lowest horizontal structural member  
3 of the lowest floor of all new construction and substantial improvements shall be elevated to  
4 the 100-year flood elevation established by the Florida Department of Environmental  
5 Protection or the base flood elevation, whichever is the higher.  
6

7 e. — A registered professional engineer or architect shall develop  
8 or review the structural design, specifications and plans for the construction, and shall certify  
9 that the design and methods of construction to be used are in accordance with accepted  
10 standards of practice for meeting the provisions of paragraph b. of this subsection.  
11

12 d. — Obtain the elevation (in relation to mean sea level) of the  
13 bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and  
14 columns) of all new and substantially improved structures in Zones V1-30 and VE. The  
15 administrator shall maintain a record of all such information.  
16

17 e. — All new construction shall be located landward of the reach  
18 of mean high tide.  
19

20 f. — Provide that all new construction and substantial  
21 improvements have the space below the lowest floor either free of obstruction or  
22 constructed with non-supporting breakaway walls, open wood lattice work, or insect  
23 screening intended to collapse under wind and water loads without causing collapse,  
24 displacement, or other structural damage to the elevated portion of the building or  
25 supporting foundation system. For the purpose of this subsection, a breakaway wall shall  
26 have a design safe loading resistance of not less than ten (10) and no more than 20 pounds  
27 per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20  
28 pounds per square foot (either by design or when so required by local or state codes) may be  
29 permitted only if a registered professional engineer or architect certifies that the designs  
30 proposed meet the following conditions:  
31

32 (i) — Breakaway wall collapse shall result from water load  
33 less than that which would occur during the base flood, and  
34

35 (ii) — The elevated portion of the building and supporting  
36 foundation system shall not be subject to collapse, displacement, or other structural damage  
37 due to the effects of wind and water loads acting simultaneously on all building components  
38 (structural and nonstructural). Water loading values used shall be those associated with the  
39 base flood. Wind loading values used shall be those required by applicable state or local, if  
40 more stringent than those of the State of Florida, building standards.  
41

42 (iii) — Such enclosed space shall be useable solely for  
43 parking of vehicles, building access, or storage.  
44

45 g. — The enclosed space below the lowest floor shall be useable  
46 solely for parking of vehicles, building access, or storage. Such space shall not be partitioned  
47 into multiple rooms, temperature-controlled, or used for human habitation.  
48

1 ~~h. Prohibit the use of fill for structural support of structures.~~  
2 ~~No development permit shall be issued for development involving fill in coastal high hazard~~  
3 ~~area unless it has been demonstrated through appropriate engineering analyses that the~~  
4 ~~subject fill does not cause any adverse impacts to the structure on site or adjacent structures.~~  
5 ~~Placement of fill that would result in an increase in the base flood elevation may be~~  
6 ~~permitted, provided that the permit applicant first applies for and receives a conditional~~  
7 ~~FIRM revision, fulfilling the requirements for such revisions as established by FEMA.~~

8  
9 ~~i. Prohibit man-made alteration of sand dunes and mangrove~~  
10 ~~stands that would increase potential flood damage.~~

11  
12 ~~j. All manufactured homes to be placed or substantially~~  
13 ~~improved within Zones V1-30, VE, and V on the FIRM shall:~~

14  
15 ~~(i) Meet the requirements of subsection (o)a. h., if they~~  
16 ~~are located on sites:~~

17  
18 ~~A. Outside of an existing manufactured home~~  
19 ~~park or subdivision;~~

20  
21 ~~B. In a new manufactured home park or~~  
22 ~~subdivision;~~

23  
24 ~~C. In an expansion to an existing manufactured~~  
25 ~~home park or subdivision; or~~

26  
27 ~~D. In an existing manufactured home park or~~  
28 ~~subdivision in which a manufactured home has incurred "substantial damage" as the result~~  
29 ~~of a flood; and~~

30  
31 ~~(ii) All manufactured homes placed or substantially~~  
32 ~~improved on other sites in an existing manufactured home park or subdivision shall meet the~~  
33 ~~requirements of this Section.~~

34  
35 ~~k. Recreational vehicles placed on sites within Zones V1-V30,~~  
36 ~~V, and VE on the FIRM shall be in conformance with the requirements of subsection~~  
37 ~~(k)(5)e.~~

38  
39 ~~(i) Be on the site for fewer than 180 consecutive days;~~

40  
41 ~~(ii) Be fully licensed and ready for highway use (on its~~  
42 ~~wheels or jacking system, is attached to the site only by quick disconnect type utilities and~~  
43 ~~security devices, and has no permanently attached additions); or~~

44  
45 ~~(iii) Meet the requirements of this Section.~~

46  
47 ~~l. For all structures located seaward of the Coastal Construction~~  
48 ~~Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest~~

1 ~~floor of all new construction and substantial improvements shall be elevated to the flood~~  
2 ~~elevation established by the Florida Department of Environmental Protection or the base~~  
3 ~~flood elevation (plus one foot), whichever is higher.~~

4  
5 m. ~~When fill is proposed, in accordance with the permit issued~~  
6 ~~by the Florida Department of Health, in coastal high hazard area, the development permit~~  
7 ~~shall be issued only upon demonstration by appropriate engineering analyses that the~~  
8 ~~proposed fill will not increase the water surface elevation of the base flood nor cause any~~  
9 ~~adverse impacts to the structure on site or other properties by wave ramping or deflection.~~

10  
11 (p) ~~Critical Facilities~~

12  
13 (1) ~~Construction of new critical facilities shall be, to the~~  
14 ~~extent possible, located outside the limits of the SFHA, preferably outside the point two~~  
15 ~~(0.2) percent annual chance floodplain. Construction of new critical facilities may be~~  
16 ~~permissible within the SFHA if feasible alternative sites are unavailable. Critical facilities~~  
17 ~~constructed within the SFHA shall have the lowest floor elevated or floodproofed to three~~  
18 ~~(3) or more feet above the base flood elevation at the site. Floodproofing and sealing~~  
19 ~~measures must be taken to ensure that toxic substances will not be displaced by or released~~  
20 ~~into floodwaters. Access routes elevated to or above the level of the base flood elevation~~  
21 ~~shall be provided to all critical facilities to the maximum extent possible.~~

22  
23 (q) ~~Variances.~~

24 \_\_\_\_\_  
25 (1) ~~Designation of variance and appeals board. The~~  
26 ~~Village Council shall hear and decide appeals and requests for variances from the~~  
27 ~~requirements of this Section.~~

28  
29 (2) ~~Duties of the Village Council. The Village Council as~~  
30 ~~the appeals board shall hear and decide appeals when it is alleged an error in any~~  
31 ~~requirement, decision, or determination is made by the administrator in the enforcement or~~  
32 ~~administration of this Section. Any person aggrieved by the decision of the board may~~  
33 ~~appeal such decision to the circuit court for the 11<sup>th</sup> judicial circuit as provided for under~~  
34 ~~Florida law.~~

35  
36 (3) ~~Considerations in granting variance requests. In~~  
37 ~~acting upon such applications, the Village Council shall consider all technical evaluations, all~~  
38 ~~relevant factors, provisions specified in other sections of these regulations, and:~~

39  
40 a. ~~The danger that materials may be swept onto~~  
41 ~~other lands to the injury of others;~~

42  
43 b. ~~The danger of life and property due to~~  
44 ~~flooding or erosion damage;~~

45  
46 e. ~~The susceptibility of the proposed facility and~~  
47 ~~its contents to flood damage and the effect of such damage on the individual owner;~~  
48

1 d. ~~The importance of the services provided by~~  
2 ~~the proposed facility to the community;~~

3  
4 e. ~~The necessity to the facility of a waterfront~~  
5 ~~location, where applicable;~~

6  
7 f. ~~The availability of alternative locations for the~~  
8 ~~proposed use which are not subject to flooding or erosion damage for the proposed use;~~

9  
10 g. ~~The compatibility of the proposed use with~~  
11 ~~existing and anticipated development;~~

12  
13 h. ~~The relationship of the proposed use to the~~  
14 ~~Comprehensive Plan and floodplain management program for that area;~~

15  
16 i. ~~The safety of access to the property in times~~  
17 ~~of flood for ordinary and emergency vehicles;~~

18  
19 j. ~~The expected heights, velocity, duration, rate~~  
20 ~~of rise, and sediment of transport of the flood waters and the effects of wave action, if~~  
21 ~~applicable, expected at the site;~~

22  
23 k. ~~The costs of providing governmental services~~  
24 ~~during and after flood conditions, including maintenance and repair of public utilities and~~  
25 ~~facilities such as sewer, gas, electrical, and water systems, and streets and bridges; and~~

26  
27 l. ~~The request for variance is not an after-the-~~  
28 ~~fact request.~~

29  
30 (4) ~~Conditions for variances.~~

31  
32 a. ~~Variances may only be issued when there is:~~

33  
34 (i) ~~A showing of good and sufficient~~  
35 ~~cause;~~

36  
37 (ii) ~~A determination that failure to grant~~  
38 ~~the variance would result in exceptional hardship; and~~

39  
40 (iii) ~~A determination that the granting of a~~  
41 ~~variance will not result in increased flood heights, additional threats to public expense, create~~  
42 ~~nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or~~  
43 ~~ordinances.~~

44  
45 b. ~~Variances may only be issued upon a~~  
46 ~~determination that the variance is the minimum necessary deviation from the requirements~~  
47 ~~of this Section, considering the flood hazard, to afford relief, and in the instance of an~~

1 historic structure, a determination that the variance is the minimum necessary so as not to  
2 destroy the historic character and design.

3  
4 ~~e. — Variances shall not be issued within any~~  
5 ~~designated regulatory floodway if any increase in flood levels during the base flood discharge~~  
6 ~~would result.~~

7  
8 ~~d. — Variances may be issued for the repair or~~  
9 ~~rehabilitation of historic structures upon a determination that the proposed repair or~~  
10 ~~rehabilitation will not preclude the structure's continued designation as a historic structure,~~  
11 ~~and the variance is the minimum necessary to preserve the historic character and design of~~  
12 ~~the structure.~~

13  
14 ~~e. — Variances may be issued for new construction~~  
15 ~~and substantial improvements and for other development necessary for the conduct of a~~  
16 ~~functionally dependent use provided that:~~

17  
18 ~~f. — The criteria of paragraphs a. through c. of this~~  
19 ~~subsection are met; and~~

20  
21 ~~g. — The structure or other development is~~  
22 ~~protected by methods that minimize flood damages during the base flood and create no~~  
23 ~~additional threats to public safety.~~

24  
25 ~~(5) — Variance notification.~~

26  
27 ~~a. — Any applicant to whom a variance is granted~~  
28 ~~shall be notified in writing over the signature of the Village's administrative official that:~~

29  
30 ~~(i) — The issuance of a variance to~~  
31 ~~construct a structure below the base flood elevation will result in increased premium rates~~  
32 ~~for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and~~

33  
34 ~~(ii) — Such construction below the base~~  
35 ~~flood level increases risks to life and property.~~

36  
37 ~~b. — A copy of the notice shall be recorded by the~~  
38 ~~floodplain management administrator in the Village Clerk's Office and shall be recorded in a~~  
39 ~~manner so that it appears in the chain of title of the affected parcel of land.~~

40  
41 ~~(i) — The administrator shall maintain a~~  
42 ~~record of all variance actions, including justification for their issuance or denial, and report~~  
43 ~~such variances issued in its biennial report submitted to FEMA.~~

44  
45  
46 ~~(6) — Historic buildings. Variances may be issued for the~~  
47 ~~repair or rehabilitation of "historic" building meeting the definition in this ordinance upon~~

1 ~~determination that the proposed repair or rehabilitation will not preclude the structure's~~  
2 ~~continued designation as a "historic" building.~~

3  
4 ~~(7) Buildings in regulatory floodway. Variances shall not~~  
5 ~~be issued within any designated floodway if any impact in flood conditions or increase in~~  
6 ~~flood levels during the base flood discharge would result.~~

7  
8 ~~(8) Special conditions. Upon consideration of the factors~~  
9 ~~listed in (7) and the purposes of this Section, the Village Council may attach such conditions~~  
10 ~~to the granting of variances, as it deems necessary to further the purposes of this Section.~~

11  
12 \* \* \*

13  
14 CHAPTER 18 Floods

15 Section 18-1 through 18-34 are repealed in their entirety.

16  
17 \* \* \*

18  
19 **Section 8. Fiscal Impact Statement.** In terms of design, plan application review,  
20 construction and inspection of buildings and structures, the cost impact as an overall average  
21 is negligible in regard to the local technical amendments because all development has been  
22 subject to the requirements of the local floodplain management ordinance adopted for  
23 participation in the National Flood Insurance Program. In terms of lower potential for  
24 flood damage, there will be continued savings and benefits to consumers.

25  
26 **Section 9. Applicability.** For the purposes of jurisdictional applicability, this ordinance  
27 shall apply in the Village of Palmetto Bay. This ordinance shall apply to all applications for  
28 development, including building permit applications and subdivision proposals, submitted  
29 on or after adoption of this ordinance.

30  
31 **Section 10. Repealer.** Any and all ordinances and regulations in conflict herewith are  
32 hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces  
33 the following ordinance(s) and regulation(s): Chapter 18, Section 18-1 through 18-34, and  
34 30-100.6, as enacted on October 5, 2009.

35  
36 **Section 11. Inclusion Into The Code Of Ordinances.** It is the intent of the Village  
37 Council that the provisions of this ordinance shall become and be made a part of the Village  
38 of Palmetto Bay Code of Ordinances, and that the sections of this ordinance may be  
39 renumbered or relettered and the word "ordinance" may be changed to "Section," "article,"  
40 "regulation," or such other appropriate word or phrase in order to accomplish such  
41 intentions.

42  
43 **Section 12. Severability.** If any Section, subsection, sentence, clause or phrase of this  
44 ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such  
45 decision shall not affect the validity of the ordinance as a whole, or any part thereof, other  
46 than the part so declared.

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PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

Meighan Alexander  
Village Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Eve A. Boutsis  
Village Attorney

FINAL VOTE AT ADOPTION:

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

Council Member Howard Tendrich \_\_\_\_\_

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

Vice-Mayor Brian W. Pariser \_\_\_\_\_

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



To: Mayor and Village Council

Date: March 5, 2012

From: Ron E. Williams, Village Manager

Re: Landscaping Mitigation Program

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; AMENDING DIVISION 30-100.2 ENTITLED "RESERVED" TO BE RETITLED "LANDSCAPING MITIGATION PROGRAM"; CREATING A PROCESS FOR AN APPLICANT TO COMPLY WITH THE VILLAGE'S ENHANCED TREE AND SHRUB REQUIREMENTS, BY PROVIDING FUNDING TO THE LANDSCAPE MITIGATION FUND FOR TREES AND SHRUBS TO BE PLANTED IN THE PUBLIC AREAS, INCLUDING PARKS AND RIGHTS-OF-WAY; PROVIDING AN ALTERNATIVE TO SEEKING A VARIANCE FROM THE REQUIREMENTS; PROVIDING FOR A SEGREGATED FUND; INTENT; AUTHORITY; REQUIREMENTS; PROCEDURES; ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

**BACKGROUND:**

On October 6, 2008, the Village adopted Ordinance No. 08-21, establishing Division 30-100, Environmental Regulations, which, among other things, provided for minimum landscaping standards. Much of the language establishing those standards were borrowed from the County's landscaping requirements found at chapter 18A, however the Village sought a more robust tree canopy standard to "enhance, improve and maintain the quality of the landscaped and natural environment." (Sec 30-100.1(b) Purpose and Intent) The newly adopted standard increased the tree requirement for all new developments and for any redevelopments (reuse projects) which exceeded a 50% project to existing development value ratio. Many existing projects undergoing redevelopment have been challenged to meet the enhanced standards as certain aspects of their site plan either require compliance with other zoning considerations such as parking and circulation, and/or may also have other vested development rights which permit maintenance of existing lot coverage area and layout.

The existing remedy for projects seeking landscaping compliance is a variance to waive a portion of the tree requirement, which thus results in a permanent loss of the tree canopy the Council sought to achieve when it originally adopted Division 30-100. The proposed ordinance seeks to provide an alternative remedy consistent with the Purpose and Intent of the Division by creating a landscaping mitigation program that can transfer the tree canopy requirement to other portions of the Village

that is deficient and in need of enhancement. Due to Miami-Dade County home rule authority, only landscaping above and beyond that required by the County is eligible for mitigation. Projects seeking to mitigate any landscaping that cannot be provided on-site may choose instead to contribute to a fund that can then be used to purchase and install landscaping elsewhere in the Village. The fee schedule shall be established by ordinance and shall be reflective and in line with the Village's existing Landscaping Services agreement to ensure competitive pricing is provided to the mitigation participants.

**ANALYSIS:**

The proposed revision of section 30-100.2 was reviewed for consistency with the criteria established in Section 30-30.7(b). 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:** Policy 1.5.5 seeks to "[p]rotect and enhance flora and fauna of the Village through strong community landscaping guidelines, land development regulations, and code enforcement." The proposed amendment achieves that goal creating a landscape mitigation program upholds the original Purpose and Intent of Division 30-100 which sought to "enhance, improve and maintain the quality of the landscaped and natural environment."

**Finding:** Consistent.

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

**Analysis:** The proposed revision is consistent with Section 30-100.1(b) which seeks to "enhance, improve and maintain the quality of the landscaped and natural environment", by transferring required tree canopy other portions of the Village that are deficient and in need of enhancement.

**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:** Since adoptions of Division 30-100, some properties seeking redevelopment (reuse) have encounter challenges coming into compliance with the Villages enhanced

landscape standards. The proposed change provides a remedy to those properties while maintaining the original Purpose and Intent of Section 30-100.1(b).

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: The proposed ordinance does not change the list of permitted uses within the Village's zoning districts. The proposed revisions are intended to ensure the purpose and intent of Division 30-100.

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 change the list of permitted uses within the Village's zoning districts thus it does not affect the capacity of existing facilities or services as described above.

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 revision is consistent with Section 30-100.1(b) which seeks to "enhance, improve and maintain the quality of the landscaped and natural environment", by transferring required tree canopy other portions of the Village that are deficient and in need of enhancement.

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** The proposed revision is consistent with Section 30-100.1(b) which seeks to “enhance, improve and maintain the quality of the landscaped and natural environment”, by transferring required tree canopy other portions of the Village that are deficient and in need of enhancement. This action in turn may have a positive effect on surrounding properties.

**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 patter shall be identified.

**Analysis** The proposed ordinance does not change the list of permitted uses.

**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:** The proposed revision is consistent with Section 30-100.1(b) which seeks to “enhance, improve and maintain the quality of the landscaped and natural environment”, by transferring required tree canopy other portions of the Village that are deficient and in need of enhancement.

**Findings:** Consistent.

**Criteria (10)** Other matters which the local planning agency or Village Council in its legislative discretion may deem appropriate.

**Analysis:** Discretion of Village Council.

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

**FISCAL/BUDGETARY IMPACT:**

The proposed ordinance will create a landscape mitigation fund which shall be used to transfer required tree canopy to other areas of the Village where landscaping is deficient.

**RECOMMENDATION:**

As determined by the Village Council.

1  
2   **ORDINANCE NO.** \_\_\_\_\_

3           **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF**  
4 **PALMETTO BAY, FLORIDA; AMENDING DIVISION 30-100.2**  
5 **ENTITLED "RESERVED" TO BE RE-TITLED "LANDSCAPING**  
6 **MITIGATION PROGRAM"; CREATING A PROCESS FOR AN**  
7 **APPLICANT TO COMPLY WITH THE VILLAGE'S ENHANCED TREE**  
8 **AND SHRUB REQUIREMENTS, BY PROVIDING FUNDING TO THE**  
9 **LANDSCAPE MITIGATION FUND FOR TREES AND SHRUBS TO BE**  
10 **PLANTED IN THE PUBLIC AREAS, INCLUDING PARKS AND**  
11 **RIGHTS-OF-WAY; PROVIDING AN ALTERNATIVE TO SEEKING A**  
12 **VARIANCE FROM THE REQUIREMENTS; PROVIDING FOR A**  
13 **SEGREGATED FUND; INTENT; AUTHORITY; REQUIREMENTS;**  
14 **PROCEDURES; ORDINANCES IN CONFLICT, CODIFICATION,**  
15 **SEVERABILITY AND AN EFFECTIVE DATE.**

16  
17           **WHEREAS,** in 2010 the Village of Palmetto Bay enacted the Village's Land Development  
18 Code including Division 30-100 relating to the Village's landscaping code; and,

19           **WHEREAS,** Miami-Dade County, under its Home Rule Authority, created a county-wide  
20 minimum landscaping and tree requirement that is applicable to the entire county and all  
21 municipalities; and,

22  
23           **WHEREAS,** the Village was entitled to create its own landscaping code, provided however,  
24 the code could be more stringent than Miami-Dade County's requirements, not less stringent; and,

25  
26           **WHEREAS,** in most respects, the Village's landscaping code mirrors the Miami-Dade  
27 County Code, however, the Village provided a more stringent tree requirement than that provided  
28 under Article 18A of the County Code; and,

29  
30           **WHEREAS,** the more extensive tree requirements provided under the Village's Code, at  
31 times may be difficult for commercial properties, in particular, to comply with; and,

32  
33           **WHEREAS,** the Village has a true strict hardship requirement as to variances; and,

34  
35           **WHEREAS,** the proposed revision of section 30-100.2 was reviewed for consistency  
36 with the criteria established in Section 30-30.7(b) and found to be consistent; and,

37  
38           **WHEREAS,** the Village, a Tree-City USA municipality, desiring to maintain and extend its  
39 overall tree canopy have developed the proposed Landscaping Mitigation Program, which would  
40 allow an applicant to apply to the program, and to pay into the program for those landscaping  
41 requirements, above and beyond, the minimum required by Chapter 18A of Miami-Dade County, be  
42 mitigated by providing the Village the funds for the landscaping that is "problematic" for the  
43 applicant's site to be planted in the Village's parks, rights-of-way, and other public areas; and,



1 are authorized to establish the Landscape Mitigation Fund and to receive and disburse monies in  
2 accordance with the provisions of this section. All interest earned by the investment of all monies in  
3 the Landscape Mitigation Funds shall accrue to the benefit of the fund and be eligible for  
4 disbursement for any project authorized and consistent with the provisions of this section.

5 (c) Definitions: For the purpose of this section, the following definitions shall apply.

6 1. Large tree shall mean any tree as classified in Division 30-100 with a height, at maturity,  
7 exceeding 20 feet.

8 2. Project Site shall mean the property subject to a site plan or other applicable development  
9 permit thereto, inclusive with that portion of the plantable right-of-way up to the centerline  
10 thereof, exclusive of any central median that may exist thereto.

11 3. Small tree shall mean any tree as classified in Division 30-100 with a height at maturity  
12 that does not exceed 20 feet.

13 (d) Applicability. Requests eligible for consideration under the Landscape Mitigation Program  
14 must comply with the criteria below.

15 (1) Submittal of a Landscape Mitigation application by the property owner or his/her  
16 authorized agent together with an application fee as established by ordinance by the  
17 Village Council.. All costs associated with the request for mitigation shall be borne  
18 by the applicant.

19 (2) The applicant shall be required to demonstrate that the request for mitigation is due  
20 to other zoning requirements and/or vested development rights which obstruct or  
21 preclude compliance with Division 30-100.

22 (3) That the request is limited to Village required landscaping above and beyond the  
23 minimum requirement established by Miami-Dade County Code, Article 18A.

24 (4) That the trees being provided on the project site shall be maximized per the  
25 following standards:

26 (i) Street Trees and other narrow landscape strips:

27 Large tree: one (1) tree planted every 25 feet on center;

28 Small tree: one (1) tree be planted every 20 feet on center;

29 Palm tree: one (1) tree every 15 feet on center.

30 (ii) All other available landscape areas:

31 Large tree: one (1) tree be planted to every 65 square feet of landscape area;

32 Small tree: one (1) tree be planted every 50 square feet of landscape area; and,

33 Palm tree: one (1) tree be planted every 40 square feet of landscape area.

34 (iii) Shrub and ground cover: as required by subsection 30-100.1(e)(4).

1  
2 (e) Mitigation. If the application conforms to the criteria above, any remaining landscaping as  
3 required by this Division, excluding that which is required by Article 18A of the Miami-Dade  
4 County Code of Ordinances, shall be eligible for mitigation. Mitigation eligible landscaping shall be  
5 paid per the fee schedule as established by ordinance. Any payment into the Mitigation fund shall  
6 not be refundable. The application shall be administratively reviewed by the applicable departments  
7 and the site plan documented to reflect participation in the Village's Landscaping Mitigation  
8 Program. All payments into the Landscaping Mitigation Fund shall be made within 30 days of  
9 approval of the application, and prior to Planning & Zoning sign-off on the site plan. Failure to pay  
10 into the fund shall render the mitigation request denied and may result in an enforcement action by  
11 the Code Compliance Department for compliance to Section 30-100. Any further request shall be  
12 by new application and subject to all applicable fees.

13 (f) Landscaping Master Plan. To assist in the strategic, systematic and predicable application of  
14 the Landscape Mitigation Program, the Village Council, may adopt, by resolution, a Landscaping  
15 Master Plan. If adopted, the Plan at a minimum should provide an inventory of existing tree canopy  
16 along the Village's commercial corridors, identify and develop an overall landscaping plan/identity,  
17 and establish priorities for where such plantings are to be installed. Any subsequent modifications  
18 to the Landscaping Master Plan shall be by resolution of the Village Council.

19 \* \* \*

20 **Section 3.** Severability. The provisions of this Ordinance are declared to be severable  
21 and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be  
22 invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,  
23 sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the  
24 legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

25 **Section 4.** All ordinances or parts of ordinances in conflict with the provisions of this  
26 ordinance are repealed.

27 **Section 5.** This ordinance shall be codified in the Code of Ordinances.

28 **Section 6.** If any section, clause, sentence, or phrase of this ordinance is for any reason  
29 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the  
30 validity of the remaining portions of this ordinance.

31 **Section 7.** This ordinance shall take effect immediately upon enactment.

32

33 |

1 PASSED AND ENACTED this [ ] day of \_\_\_\_\_, 2012.

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4 Attest: \_\_\_\_\_  
5 Meighan Alexander Shelley Stanczyk  
6 Village Clerk Mayor

7  
8 APPROVED AS TO FORM:

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10 \_\_\_\_\_  
11 Eve A. Boutsis  
12 Village Attorney

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14  
15 FINAL VOTE AT ADOPTION:

16  
17 Council Member Patrick Fiore \_\_\_\_\_

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19 Council Member Howard Tendrich \_\_\_\_\_

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

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23 Vice-Mayor Brian W. Pariser \_\_\_\_\_

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

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To: Mayor and Village Council

Date: March 5, 2012

From: Ron E. Williams, Village Manager

Re: Landscape Mitigation Fee Schedule Ordinance

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY AMENDING ORDINANCE 07-04, RELATING TO FEE SCHEDULES FOR PLANNING AND ZONING APPLICATIONS; CREATING A FEE SCHEDULE FOR THE LANDSCAPE MITIGATION PROGRAM; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**BACKGROUND:**

The proposed Ordinance is a companion item to another proposed Ordinance currently under consideration by the Mayor and Village Council which if approved, would establish the Village's landscape mitigation program. This Ordinance establishes a fee schedule should the Mayor and Village Council approve the creation of that program. To ensure a fair and competitive pricing to the plan's participants, the proposed fee schedule is based on a previously approved contract for landscape services provided by a vendor to the City. Under that schedule, trees mitigated shall be at a rate of \$200 a piece with each shrub priced at \$9. A 10% administrative fee is included to provide necessary funding to manage the program and provide for other incidentals associated with its implementation.

**FISCAL/BUDGETARY IMPACT:**

The proposed ordinance creates a fee schedule to the proposed landscape mitigation program. All fees received through the program shall be used to transfer required tree canopy to other areas of the Village where landscaping is deficient. The amount to be collected cannot be determined at this time. However, it is not expected to impact other aspects of the Village's budget.

**RECOMMENDATION:**

As determined by the Village Council.

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

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY AMENDING ORDINANCE 07-04, RELATING TO FEE SCHEDULES FOR PLANNING AND ZONING APPLICATIONS; CREATING A FEE SCHEDULE FOR THE LANDSCAPE MITIGATION PROGRAM; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, on December 2<sup>nd</sup>, 2002, the Village of Palmetto Bay adopted Ordinances 02-02 and 03-06 which substituted the Village Council for local Community Council, thus transferring jurisdiction for all decision making with respect to Zoning matters to the Village; and,

**WHEREAS**, on January 9<sup>th</sup>, 2007 the Village assumed from the County all functions of the Planning and Zoning Department of Miami Dade County, and as such all planning and zoning applications within the Village were accepted, reviewed and decided upon by the Village; and,

**WHEREAS**, on March 5<sup>th</sup>, 2009 the Village adopted Ordinance 07-04, establishing a fee schedule in conjunction with the assumption of the planning and zoning functions; and,

**WHEREAS**, the Mayor and Village Council desire to establish a landscape mitigation program to accept payment in lieu of installing landscaping on site for those projects unable to come into full compliance with Division 30-100 of Village's landscaping requirements of the Land Development Code; and,

**WHEREAS**, participation in the landscaping mitigation program can only be accomplished as to any deficiencies with the Village's Code, which requirements are above the minimum landscaping requirements found in the Miami-Dade County Code; and,

**WHEREAS**, the Village thus desires to amend Ordinance 07-04, to include pricing information for landscaping for those projects that participate in the landscaping mitigation program.

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

**Section 1.** The above recitals are incorporated into this ordinance.

**Section 2.** Ordinance 07-04, Exhibit 1, Village of Planning and Zoning Fee Schedule is hereby amended as follows.

**VILLAGE OF PALMETTO BAY**  
**PLANNING AND ZONING FEE SCHEDULE**

\* \* \*

**VI. Landscape Mitigation Fee**

<u>Type of Landscaping</u>	<u>Fee</u>
Tree (per tree)	\$200 (per tree)
Bush/Shrub (per plant)	\$9 (per shrub/bush)
Administrative/processing	10% of total plant/tree fee imposed

**Section 3.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

**Section 4.** This ordinance shall be codified and included in the Code of Ordinances.

**Section 5.** If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

**Section 6.** This ordinance shall take effect immediately upon enactment.

PASSED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Attest:

\_\_\_\_\_  
Meighan Alexander  
Village Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Eve A. Boutsis  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore \_\_\_\_\_  
Council Member Howard Tendrich \_\_\_\_\_  
Council Member Joan Lindsay \_\_\_\_\_  
Vice-Mayor Brian W. Pariser \_\_\_\_\_  
Mayor Shelley Stanczyk \_\_\_\_\_




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To: Mayor & Village Council

Date: March 5, 2012

From: Eve A. Boutsis, Village Attorney

Re: Lobbying Code

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO LOBBYING AND CODE OF SILENCE; DIRECTING MUNICIPAL CODE CORPORATION TO REPEAL SECTIONS 6-19 THROUGH 6-21 AS A PRIOR ENACTED VERSION OF THE LOBBYING CODE ALSO ENACTED AT CHAPTER 2; AND UPDATING THE CODE OF ORDINANCES; 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 enacted its lobbyist provisions in 2004 and made subsequent modifications in 2005, 2006, 2007 and 2008. The Village utilizes Municipal Corporation for codification purposes, and originally codified the lobbyist code at Chapter 6, thereafter further revisions to the code were codified at Chapter 2, thus creating the appearance that the Village had two lobbyist codes. The Mayor and Village Council desire to correct the discrepancy by deleting the lobbying code, that is obsolete from Chapter 6, ensure that the lobbying code is up to date in Chapter 2, and also to ensure that there is no direct conflict with the County lobbyist code, which is the minimum standard for all of Miami-Dade County.

On February 21, 2012, Miriam Ramos, of the Miami-Dade County Commission on Ethics and Public Trust provided a seminar to the Village as to lobbying and issued certain recommendations and interpretations of the lobbying code, and as such the Village Council desire to include those recommendations and clarifications within section 2-137, et. seq.

The revisions are as follows:

1. Delete chapter 6 - old lobbying code incorrectly remaining codified.
2. Deletion of duplicate review process by Village - ensuring Commission on Ethics review and evaluation of allegations. Ensures impartiality.
3. Adopt penalties provisions of Commission on Ethics.
4. Provide clarification as to who is a lobbyist - that lobbying includes the principle of a corporation.

**FISCAL/BUDGETARY IMPACT:** None.

**RECOMMENDATION:** Approval.

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

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO LOBBYING AND CONE OF SILENCE; DIRECTING MUNICIPAL CODE CORPORATION TO REPEAL SECTIONS 6-19 THROUGH 6-21 AS A PRIOR ENACTED VERSION OF THE LOBBYING CODE ALSO ENACTED AT CHAPTER 2; AND UPDATING THE CODE OF ORDINANCES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay enacted its lobbyist provisions in 2004 and made subsequent modifications in 2005, 6, 7 and 8; and,

WHEREAS, the Village utilizes Municipal Corporation for codification purposes, and originally codified the lobbyist code at Chapter 6, thereafter further revisions to the code were codified at Chapter 2, thus creating the appearance that the Village had two lobbyist codes; and,

WHEREAS, the Mayor and Village Council desire to correct the discrepancy by deleting the lobbying code, that is obsolete from Chapter 6, ensure that the lobbying code is up to date in Chapter 2, and also to ensure that there is no direct conflict with the County lobbyist code, which is the minimum standard for all of Miami-Dade County; and,

WHEREAS, the Miami-Dade County Commission on Ethics and Public Trust provided a seminar to the Village as to lobbying and issued certain recommendations and interpretations of the lobbying code, and as such the Village Council desire to include those recommendations and clarifications within section 2-137, et. seq.

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

Section 1. The provisions of Sections 6-19 through 6-21, entitled Lobbyist Registration is here by repealed and the Sections shall be designated as "Reserved," and Section 2-137 of the Village's Code of Ordinances relating to Lobbying shall be revised to read as follows:

\* \* \*

Sec. 2-137. - Lobbying.

- (a) As used in this section "lobbyist" means all employees, persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of:
- (1) Any ordinance, resolution, action or decision of the Village Council;

1 (2) Any action, decision, recommendation of any Village Manager, Village board or committee;  
2 or

3 (3) Any action, decision or recommendation of Village personnel during the time period of the  
4 entire decision-making process on the action, decision or recommendation which foreseeably will be  
5 heard or reviewed by the Village Council, or a Village board or committee.

6 (b) Defining Lobbying and Exemptions.

7 (1) The term "Lobbyist" shall be defined to specifically includes the principal as well as  
8 any employee whose normal scope of employment includes lobbying activities. To be clear, a  
9 corporation speaking through its principle shareholder or officer is considered a lobbyist. Lobbying  
10 is prohibited if a person is not properly registered whether it be a face-to-face meeting, a telephone  
11 conversation or an email exchange. Simply gathering information is not lobbying. Individuals  
12 performing routine administrative functions for a client are not lobbyists.

13

14 (2) The term "lobbyist" specifically excludes the following persons:

15 (i) lobbyists hired by the Village who are to communicate with Village personnel  
16 in the course of performing under their contracts;

17 (ii) attorneys or other representatives retained or employed solely for the  
18 purpose of represent individuals, corporations or other entities during publicly  
19 noticed quasi-judicial proceedings where the law prohibits ex-parte communications;

20 (iii) expert witnesses who only provide scientific, technical or other specialized  
21 information or testimony at public meetings; any person who only appears as a  
22 representative of a neighborhood association without compensation or  
23 reimbursement for the appearance, whether direct, indirect, or contingent, to express  
24 support of or opposition to any item; and

25 (iv) employees of a principal whose normal scope of employment does not  
26 include lobbying activities.

27 (v) Any public officer, employee or appointee who only appears in his or her  
28 official capacity shall not be required to register as a lobbyist.

29 (b) All lobbyists shall register with the Village Clerk within five business days of being retained  
30 as a lobbyist, or before engaging in any lobbying activities, whichever shall come first. Every person  
31 required to register shall:

32 (1) Register on forms prepared by the Village Clerk;

33 (2) State under oath his or her name, business address and the name and business  
34 address of each person or entity which has employed the registrant to lobby. If the lobbyist  
35 represents a corporation, it shall also be identified. Without limiting the foregoing, the lobbyist shall

1 also identify all persons holding, directly or indirectly, a five percent or more ownership interest in  
2 the corporation, partnership, or trust. After initial registration, the lobbyist shall ~~Annually re-~~  
3 ~~registration of all lobbyists shall be required~~ prior to January 15th of the applicable year and each  
4 person who withdraws as a lobbyist for a particular client shall file an appropriate notice of  
5 withdrawal. The fee for annual registration shall be \$490.00.

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6 (3) In addition, every registrant shall be required to state the extent of any business or  
7 professional relationship with any current person described in subsection 2-122(1). The registration  
8 fees required by this section shall be deposited by the Village Clerk into a separate account and shall  
9 be expended for the purpose of recording, transcribing, administration and other costs incurred in  
10 maintaining these records for availability to the public. Unexpended funds may be transferred to  
11 general revenue at the end of the fiscal year. There shall be no fee required for filing a notice of  
12 withdrawal and the Village Council may, in its discretion, waive the registration fee upon a finding of  
13 financial hardship.

14 (4) Prior to conducting any lobbying, all principals must file a form with the Village  
15 Clerk, signed by the principal or the principal's representative, stating that the lobbyist is authorized  
16 to represent the principal. Failure of a principal to file the form required by the preceding sentence  
17 may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not  
18 a responsible contractor. Each principal shall file a form with the Village Clerk at the point in time at  
19 which a lobbyist is no longer authorized to represent the principal.

20 (5) Every lobbyist ~~and principal of a local business~~ shall sign-in with the Village Clerk  
21 each time he or she meets with Village personnel at a Village facility, or shall deliver a memorandum  
22 of meeting to the Village Clerk within 24 hours of meeting with Village personnel at another  
23 location, and shall inform the Village Clerk, in writing, of the: (i) Name of the lobbyist ~~or the~~  
24 ~~principal of the local business~~; (ii) the Village personnel; (iii) the time and place of the meeting;  
25 and (iv) the issue to be discussed. The issue shall be described with as much detail as is practical,  
26 including but not limited to a specific description where applicable to a pending request for a  
27 proposal, invitation to bid, or public hearing item.

28 ~~(e) (1) Any public officer, employee or appointee who only appears in his or her official~~  
29 ~~capacity shall not be required to register as a lobbyist.~~

30 ~~(2) Any person who only appears in his or her individual capacity for the purpose of~~  
31 ~~self representation and any principal of a local business who appears without compensation or~~  
32 ~~reimbursement, whether direct, indirect or contingent, to express support of or opposition to any~~  
33 ~~item, shall not be required to register as a lobbyist.~~

34 (c) Any person who appears as a representative for an individual or firm for an oral presentation  
35 before a Village certification, evaluation, selection, technical review or similar committee, shall list on  
36 an affidavit provided by the Village all individuals who may make a presentation. The affidavit shall  
37 be filed by staff with the Village Clerk's office at the time the proposal is submitted. For the purpose  
38 of this section only, the listed members of the presentation team shall not be required to pay any  
39 registration fees. No person shall appear before any committee on behalf of an individual or firm

1 unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or  
2 unless he or she is registered with the Village Clerk's office and has paid all applicable fees.

3 (de) Financial Disclosure Filing as to Expenditures

4 \_\_\_\_\_(1) ~~By July 1st Between January 2nd and 15th~~ of each year, the lobbyist shall submit to  
5 the Village Clerk a signed statement under oath listing all lobbying expenditures ~~in excess of \$25.00~~  
6 for the preceding calendar year. A statement shall not be required to be filed even if there have been  
7 no expenditures during the reporting period. The statement shall list in detail each expenditure by  
8 category, including food and beverage, entertainment, research, communication, media advertising,  
9 publications, travel, lodging and special events.

10 \_\_\_\_\_(2) The Village Clerk shall notify any lobbyist who fails to timely file an expenditure  
11 report. In addition to any other penalties which may be imposed, a fine of ~~\$50~~15.00 per day shall be  
12 assessed for reports filed after the due date. Where a fine of ~~\$50.00~~ per day is assessed, the Miami-  
13 Dade County ethics eCommission on Ethics and Public Trust shall not impose an additional fine as  
14 provided in Section 2-11.1(u) of the [Miami-Dade] County Code. Any lobbyist who fails to file the  
15 required expenditure report by September 1st shall be automatically suspended from lobbying until  
16 all fines are paid unless the fine has been appealed to the Miami-Dade County Commission on  
17 Ethics.

18 \_\_\_\_\_(3) The ~~village~~Village ~~clerk~~Clerk shall notify the Miami-Dade County Commission on  
19 Ethics and Public Trust of the failure of a lobbyist or principal to file a report and, or, pay the  
20 assessed fines after notification.

21 \_\_\_\_\_(4) A lobbyist or principal may appeal a fine and may request a hearing before the  
22 Miami-Dade County Commission on Ethics and Public Trust. A request for a hearing on the fine  
23 must be filed with the Miami-Dade County Commission on Ethics within 15 calendar days of  
24 receipt of the notification of the failure to file the required disclosure form. The Miami-Dade  
25 County Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole  
26 or part, based on good cause shown. ~~The Commission on Ethics and Public Trust shall have the~~  
27 ~~authority to adopt rules of procedure regarding appeals.~~

28 (ef) The Village ~~Clerk~~ shall publish logs on a quarterly and an annual basis reflecting the lobbyist  
29 registrations which have been filed in accordance with this section. All logs required by this  
30 ~~Section article~~ shall be prepared in a manner substantially similar to the logs prepared for the Florida  
31 Legislature pursuant to F.S. § 11.045, Florida Statutes.

32 (fg) Investigation and violations of Lobbying Code.

33 \_\_\_\_\_(1) A lobbyist that is found to have violated this code shall be prohibited from lobbying  
34 the Council, Committee, or Board on that subject and shall be subject to a \$500.00 fine.

35 \_\_\_\_\_(2) The Miami-Dade County Florida-Commission on Ethics and Public Trust shall  
36 investigate any person engaged in lobbying activities who may be in violation of this Section~~chapter~~.  
37 In the event that a violation is found to have been committed, the person shall be prohibited from  
38 lobbying before the ~~village~~Village ~~council~~Council or any committee, board or personnel of the

1 ~~village~~Village on the subject that resulted in a finding of a violation, and be subject to the penalties  
2 set forth in this chapter.

3 (3) Additionally, every lobbyist who is found to be in violation of this section shall be  
4 prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

5 \_\_\_\_\_ •First violation for a period of 90 days from the date of determination of violation;

6 \_\_\_\_\_ •Second violation for a period of one year from the date of determination of  
7 violation;

8 \_\_\_\_\_ •Third violation for a period of five years from the date of determination of  
9 violation.

10 (g) A bidder or proposer shall be subject to the debarment provisions of Section 10-38 of the  
11 Code of Miami-Dade County as if the bidder or proposer were a contractor where the bidder or  
12 proposer has violated this section, either directly or indirectly or any combination thereof, on three  
13 or more occasions. As used herein, a "direct violation" shall mean a violation committed by the  
14 bidder or proposer and an "indirect violation" shall mean a violation committed by a lobbyist  
15 representing the bidder or proposer. A contract entered into in violation of this section shall also  
16 render the contract voidable. The Village Manager shall include the provisions of this section in all  
17 Village bid documents, RFP, RFQ, CBO and CDBG applications; provided, however, the failure to  
18 do so shall not render any contract entered into as the result of the failure illegal per se.

19 (h) All members of the Village Council, and all Village personnel, shall be diligent to ascertain  
20 whether persons required to register pursuant to this section have complied. Village Council  
21 members or Village personnel may not knowingly permit a person who is not registered pursuant to  
22 this section to lobby the Village Council members, or committee, board or Village personnel.

23 (i) Except as otherwise provided in subsection (gf), above, the validity of any action or  
24 determination of the Village Council members or ~~Village~~ personnel, board or committee shall not be  
25 affected by the failure of any person to comply with the provisions of this subsection.

26 (j) Commencing on the effective date of this ~~division~~Section, and ~~by July 1, between January~~  
27 ~~2nd and 15th~~ of every year thereafter, each lobbyist shall disclose the terms and amount of  
28 compensation paid by each principal to the lobbyist. The principal shall also disclose the terms and  
29 amount of compensation paid to every lobbyist retained or employed by the principal. No person  
30 may, in whole or in part, pay, give or agree to pay or give a contingency fee to a lobbyist. No  
31 lobbyist may, in whole or in part, receive or agree to receive a contingency fee. As used herein,  
32 "contingency fee" means a fee, bonus, commission, or non-monetary benefit paid or promised as  
33 compensation which is dependent on or in any way contingent on the passage, defeat, or  
34 modification of:

35 \_\_\_\_\_(1) Any ordinance, resolution, action or decision of the Village Council;

36 \_\_\_\_\_(2) Any action, decision or recommendation of any Village Manager, Village board or  
37 committee; or

1 \_\_\_\_\_(3) Any action, decision or recommendation of Village personnel during the time period  
2 of the entire decision-making process regarding the action, decision or recommendation which  
3 foreseeably will be heard or reviewed by the Village Council, or a Village board or committee.

4 \* \* \*

5 ~~Sec. 6-19 through 6-21~~ Reserved.

6 ~~Sec. 6-19. Designation.~~

Field Code Changed

7 This section shall be designated and known as the "Lobbyist Registration" ordinance. This section  
8 shall be applicable to all lobbyists as defined below, and shall also constitute a standard of conduct  
9 and behavior for all lobbyists. The provisions of the Village of Palmetto Bay lobbyist ordinance shall  
10 be applied in a cumulative manner.

11 ~~Sec. 6-20. Lobbying.~~

Field Code Changed

12 (a) As used in this section "lobbyist" means all employees, persons, firms, consultants, entities,  
13 or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or  
14 modifications of:

15 \_\_\_\_\_ (1) Any ordinance, resolution, action or decision of the Village Council;

16 \_\_\_\_\_ (2) Any action, decision, recommendation of the Village Manager or any Village board  
17 or committee; or

18 \_\_\_\_\_ (3) Any action, decision or recommendation of Village personnel during the time period  
19 of the entire decision-making process on the action, decision or recommendation which foreseeably  
20 will be heard or reviewed by the Village Council, or a Village board or committee. "Lobbyist"  
21 specifically includes the principal as well as any employee whose normal scope of employment  
22 includes lobbying activities. The term lobbyist shall include all consultants, as defined under this  
23 subsection (b), below. The term "lobbyist" specifically excludes the following persons:

24 \_\_\_\_\_ a. Attorneys or other representatives retained or employed solely for the purpose of  
25 representing individuals, corporations or other entities during publicly noticed quasi-judicial  
26 proceedings where the law prohibits ex parte communications;

27 \_\_\_\_\_ b. Expert witnesses who provide only scientific, technical or other specialized  
28 information or testimony in public meetings;

29 \_\_\_\_\_ c. Any person who only appears as a representative of a neighborhood association  
30 without compensation or reimbursement for the appearance, whether direct, indirect, or contingent,  
31 to express support of or opposition to any item;

32 \_\_\_\_\_ d. Employees of a principal whose normal scope of employment does not include  
33 lobbying activities;

1 ~~\_\_\_\_\_ e. \_\_\_\_\_ Any public officer, employee or appointee who only appears in his or her official~~  
2 ~~capacity;~~

3 ~~\_\_\_\_\_ f. \_\_\_\_\_ Any person who only appears in his or her individual capacity for the purpose of~~  
4 ~~self-representation;~~

5 ~~\_\_\_\_\_ g. \_\_\_\_\_ Any principal of a local business who appears without compensation or~~  
6 ~~reimbursement, whether direct, indirect or contingent, to express support of or opposition to any~~  
7 ~~item; provided, however, the principal shall sign in with the Village Clerk each time he or she meets~~  
8 ~~with Village personnel, as provided below.~~

9 ~~(b) \_\_\_\_\_ *Definitions.*~~

10 ~~*Consultant* shall mean an individual, corporation, partnership or business entity that has been~~  
11 ~~retained, for financial compensation, which includes nonmonetary compensation of similar value, to~~  
12 ~~assist or provide any professional services to an entity in seeking approval of an item from the~~  
13 ~~Village Council or staff, or to obtain a contract with the Village.~~

14 ~~\_\_\_\_\_ a. \_\_\_\_\_ The term "consultant" specifically excludes the following persons: any person who~~  
15 ~~has been retained solely to provide mailing, delivery, a copy and other reproduction services of bid~~  
16 ~~items and related bid materials; any person retained solely to provide engineering services, as~~  
17 ~~certified under F.S. ch. 471; any person retained solely to provide land surveying and mapping~~  
18 ~~services, as certified under F.S. ch. 472; and any person retained solely to provide architectural~~  
19 ~~services, as certified under F.S. ch. 481.~~

20 ~~*Entity* shall mean an individual, corporation, partnership or business entity that engages the services~~  
21 ~~of a consultant, for financial compensation, which includes non-monetary compensation of similar~~  
22 ~~value, to assist or to provide any services to the entity in seeking approval of an item from the~~  
23 ~~Village Council or staff, or to obtain a contract with the Village.~~

24 ~~(c) \_\_\_\_\_ No person or firm who directly or through a member of the person's immediate family, or~~  
25 ~~through a political action committee, or through any other person makes a contribution to a~~  
26 ~~candidate who is elected mayor, vice mayor or Council member, shall be permitted to lobby on~~  
27 ~~behalf of another, any elected official, employee or appointed board or committee member for a~~  
28 ~~period of four years following the swearing in of the elected official.~~

29 ~~(d) \_\_\_\_\_ All lobbyists, including entities and consultants, shall register with the Village Clerk within~~  
30 ~~five business days of being retained as a lobbyist, or before engaging in any lobbying activities,~~  
31 ~~whichever shall come first. Every person required to register shall:~~

32 ~~\_\_\_\_\_ (1) \_\_\_\_\_ Register on forms prepared by the Village Clerk;~~

33 ~~\_\_\_\_\_ (2) \_\_\_\_\_ State under oath his or her name, business address and the name and business~~  
34 ~~address of each person or entity which has employed the registrant to lobby. If the lobbyist~~  
35 ~~represents a corporation or other entity, it shall also be identified. Without limiting the foregoing,~~  
36 ~~the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more~~

1 ownership interest in the corporation, partnership, or trust. Any consultant shall identify itself and  
2 the capacity in which s/he has been retained by an entity.

3 ~~— (3) — Annual registration of all lobbyists, including all consultants, shall be required by~~  
4 ~~October 1st of each year and each person who withdraws as a lobbyist for a particular client shall file~~  
5 ~~an appropriate notice of withdrawal. The fee for the initial and annual registration shall be \$250.00.~~  
6 ~~The registration fees required by this section shall be deposited by the Village Clerk into a separate~~  
7 ~~account and shall be expended for the purpose of recording, transcribing, administration and other~~  
8 ~~costs incurred in maintaining these records for availability to the public. Unexpended funds may be~~  
9 ~~transferred to general revenue at the end of the fiscal year. There shall be no fee required for filing a~~  
10 ~~notice of withdrawal and the Village Council may, in its discretion, waive the registration fee upon a~~  
11 ~~finding of financial hardship.~~

12 ~~— (4) — At the times of initial registration and annually thereafter on the first business day~~  
13 ~~following January 1st, each lobbyist and principal, including all consultants, shall file with the Village~~  
14 ~~Clerk a statement under oath listing all fundraising or campaign contributions made directly or~~  
15 ~~indirectly by the lobbyist, or principal, or through a member of their immediate family, or through a~~  
16 ~~political action committee, or through any other person for the benefit of a person who is elected to~~  
17 ~~the office of mayor, vice mayor or Council member.~~

18 ~~— (e) — Prior to conducting any lobbying, all principals and all consultants, must file a form~~  
19 ~~with the Village Clerk, signed by the principal or the principal's representative, stating that the~~  
20 ~~lobbyist is authorized to represent the principal. Failure of a principal to file the authorization~~  
21 ~~required by the preceding sentence may be considered in the evaluation of a bid or proposal as~~  
22 ~~evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form~~  
23 ~~with the Village Clerk at the point in time at which a lobbyist is no longer authorized to represent~~  
24 ~~the principal.~~

25 ~~(f) — Every lobbyist and principal of a local business shall sign in with the Village Clerk each time~~  
26 ~~he or she meets with Village personnel at a Village facility, or shall deliver a memorandum of~~  
27 ~~meeting to the Village Clerk within 24 hours of meeting with Village personnel at any other location,~~  
28 ~~and shall inform the Village Clerk, in writing, of the:~~

29 ~~— (1) — Name of the lobbyist, consultant, or the principal of the local business;~~

30 ~~— (2) — The Village personnel in attendance;~~

31 ~~— (3) — The time and place of the meeting; and~~

32 ~~— (4) — The issue to be discussed. The issue shall be described with as much detail as is~~  
33 ~~practical, including but not limited to a specific description where applicable to a pending request for~~  
34 ~~a proposal, invitation to bid, or public hearing item.~~

35 ~~(g) — The Village Clerk shall publish to the Village Council, Village board or committee, Village~~  
36 ~~Manager and other Village personnel a list of registered consultants, lobbyists and their principals,~~  
37 ~~and the issues they are authorized to lobby, and any other disclosure made to the Village Clerk that~~

1 is required pursuant to state and county law. The information shall be disseminated by the Clerk  
2 prior to Village Council, board and committee meetings and public hearings.

3 (h) — On the first business day following January 1st of each year, all lobbyists shall disclose the  
4 terms and amount of compensation paid by each principal to the lobbyist for services rendered  
5 regarding Village business. The principal shall also disclose the terms and amount of compensation  
6 paid to every lobbyist retained or employed by the principal. The disclosure shall be made on a form  
7 provided by the Village Clerk. No person may, in whole or in part, pay, give or agree to pay or give a  
8 contingency fee to a lobbyist. No lobbyist may, in whole or in part, receive or agree to receive a  
9 contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or  
10 nonmonetary benefit as compensation which is dependent on or in any way contingent on the  
11 passage, defeat, or modification of:

12 — (1) — An ordinance, resolution, action or decision of the Village Council;

13 — (2) — Any action, decision or recommendation of the Village Manager or any Village board  
14 or committee; or

15 — (3) — Any action, decision or recommendation of Village personnel during the time period  
16 of the entire decision-making process regarding such action, decision or recommendation which  
17 foreseeably will be heard or reviewed by the Village Council, or a Village board or committee.

18 (i) — Any person who appears as a representative for an individual or firm for an oral presentation  
19 before a Village certification, evaluation, selection, technical review or similar committee, shall list on  
20 an affidavit provided by the Village all individuals who may make a presentation. The affidavit shall  
21 be filed by staff with the Village Clerk's office at the time the proposal is submitted. For the purpose  
22 of this subsection only, the listed members of the presentation team shall not be required to pay any  
23 registration fees. No person shall appear before any committee on behalf of an individual or firm  
24 unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or  
25 unless he or she is registered with the Village Clerk's office and has paid all applicable fees.

26 (j) — (1) — On the first business day following January 1st of each year, all lobbyists shall submit  
27 to the Village Clerk a signed statement under oath listing all lobbying expenditures for the preceding  
28 calendar year, including all consultant expenditures as identified in this chapter. The statement shall  
29 list in detail each expenditure by category, including food and beverage, entertainment, research,  
30 communication, media advertising, publications, travel, lodging and special events, and Village  
31 personnel on whose behalf or benefit the expenditure was made. A statement shall be filed even if  
32 there have been no expenditures during the reporting period. Annual statements shall be required  
33 until such time as the lobbyist files a notice of withdrawal of lobbying activities with the Village  
34 Clerk.

35 — (2) — The Village Clerk shall notify any lobbyist, and all consultants, who fails to timely file  
36 an expenditure report. In addition to any other penalties which may be imposed, a fine of \$50.00 per  
37 day shall be assessed for reports filed after the due date. Any lobbyist who fails to file the required  
38 expenditure report by the first business day following January 1st shall be automatically suspended

1 from lobbying until all fines are paid unless the fine has been appealed to the special master for the  
2 Village of Palmetto Bay.

3 ~~———— (3) ——— A lobbyist or principal may appeal a fine and may request a hearing before the~~  
4 ~~special master for the Village of Palmetto Bay. A request for a hearing on the fine must be filed with~~  
5 ~~the special master within 15 calendar days of receipt of the notification of the failure to file the~~  
6 ~~required disclosure form. The special master shall have the authority to waive the fine, in whole or~~  
7 ~~part, based on good cause shown. The special master shall have the authority to adopt rules of~~  
8 ~~procedure regarding appeals.~~

9 ~~(4c) ——— The Village Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist~~  
10 ~~registrations, which have been filed in accordance with this chapter. All logs required by this article~~  
11 ~~shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature~~  
12 ~~pursuant to F.S. § 11.045.~~

13 ~~(4) ——— In the event that a violation is found to have been committed, the person including all~~  
14 ~~lobbyists, principals, entities and consultants shall be prohibited from lobbying before the Village~~  
15 ~~Council or any committee, board or personnel of the Village on the subject that resulted in a finding~~  
16 ~~of a violation, and be subject to a \$500.00 civil penalty. Additionally, every lobbyist who is found to~~  
17 ~~be in violation of this chapter shall be prohibited from registering as a lobbyist or lobbying in~~  
18 ~~accordance with the following schedule:~~

19 ~~———— • ——— First violation for a period of one year from the date of determination of violation;~~

20 ~~———— • ——— Second violation for a period of two years from the date of determination of~~  
21 ~~violation;~~

22 ~~———— • ——— Third violation for a period of three years from the date of determination of~~  
23 ~~violation.~~

24 ~~A bidder or proposer shall be subject to debarment as if the bidder or proposer were a contractor~~  
25 ~~where the bidder or proposer has violated this section, either directly or indirectly or any~~  
26 ~~combination thereof, on three or more occasions. As used herein, a "direct violation" shall mean a~~  
27 ~~violation committed by the bidder or proposer and an "indirect violation" shall mean a violation~~  
28 ~~committed by a lobbyist representing the bidder or proposer.~~

29 ~~(m) ——— A contract entered into in violation of this section shall also render the contract voidable.~~  
30 ~~The Village Manager shall include the provisions of this section in all Village bid documents, RFP,~~  
31 ~~RFQ, and CDBG applications; provided, however, the failure to do so shall not render any contract~~  
32 ~~entered into as the result of the failure illegal per se.~~

33 ~~(n) ——— All members of the Village Council, and all Village personnel, shall be diligent to ascertain~~  
34 ~~whether persons required to register pursuant to this section have complied. Village Council~~  
35 ~~members or Village personnel may not knowingly permit a person who is not registered pursuant to~~  
36 ~~this section to lobby the Village Council members, or committee, board or Village personnel.~~

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~~(e) The definitions provided by Miami Dade County Code Section 2-11.1(b) shall apply to this section:~~

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

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

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

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

PASSED AND ENACTED this [ ] day of [ ], 2012.

PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

Attest: \_\_\_\_\_  
Meighan Alexander  
Village Clerk  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Eve A. Boutsis  
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore \_\_\_\_\_  
Council Member Howard Tendrich \_\_\_\_\_  
Council Member Joan Lindsay \_\_\_\_\_  
Vice-Mayor Brian W. Pariser \_\_\_\_\_

1 | Mayor Shelley Stanczyk

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To: Mayor & Village Council

Date: March 5, 2012

From: Eve A. Boutsis, Village Attorney

Re: Cone of Silence Revisions

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PROCUREMENT; AMENDING THE VILLAGE'S PROCUREMENT CODE TO CLARIFY THE CONE OF SILENCE REQUIREMENTS AND BID PROTEST PROCEDURES; A VIOLATION OF THE CONE OF SILENCE AND BID PROTEST PROCESS WOULD AUTOMATICALLY RESULT IN A TWO (2) YEAR BAR OF THE PROTESTOR FROM BEING AWARDED A CONTRACT WITH THE VILLAGE; REVISING THE REQUIREMENTS OF SECTION 2-175(o); DELETING OF THE PROCESS FOR VILLAGE REVIEW AND ENSURING REVIEW OF VIOLATIONS OF CONE OF SILENCE BY THE MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST AND THEIR ENFORCEMENT PROVISIONS; 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, Florida are vested with a public trust to maximize the purchasing value of public funds in the procurement of goods and services, and to provide safeguards for maintaining a procurement system of quality and integrity. The Village enacted Chapter 2, Division 2, of the Village of Palmetto Bay Code of Ordinances as the procurement policy of the Village. The Village Administration desires to amend its bid protest procedures to ensure that every protestor to the procurement selection process properly adhere to the bid protest procedures. The modification is to ensure transparency and to preclude improper unregistered lobbying of the Village Council. The modification to the protest procedures and cone of silence requirements is to ensure that no protestor circumvent the Village's procurement procedures and cone of silence procedures. The Village desires to clarify the procedures relating to an appeal of the decision of the Village Manager as to a properly filed bid protest with the Village Council and the process for hearing such an appeal. The Mayor and Village Council desire to amend the procurement code to further enhance the maintenance of competitive conditions in the procurement of goods and services to the maximum extent feasible, and does so by amending and clarifying the bid protest requirements and cone of silence requirements. A violation of these procedures would result in barring that protestor from contracting with the Village for a two year period.

Recently, the Village issued an RFQ and a recommendation issued by the Village Manager to the Village Council. Two of proposers ignored the Village's bid protest procedures and instead contacted the Village Council directly in an attempt to circumvent the award of the contract. Although the actions of the two proposers may not have violated the then existing Cone of Silence, it is clear that they did explicitly, with deliberate forethought and intent circumvent the bid protest process. These actions made it apparent to the administration, including the Village Attorney, that the Village could be faced with other such efforts to circumvent the procurement code, which could ultimately lead to litigation by the proposer that adhered to the process, or by other proposers who adhered to the Village's procurement processes. With the tightening of the cone of silence and bid protest procedures - both the Village and its proposers are ensured that proper procedures are adhered to - rather than allowing someone to lobby the commission, without registering as a lobbyist, and without allowing circumvention of the Village's enacted procedures.

The proposed revisions to the Cone of Silence and bid protest procedures are as delineated below:

1. The Commission on Ethics, which has jurisdiction pursuant to Miami-Dade County Home Rule Power, already has power to review cone of silence violations. Village Code currently provides a parallel process for Village review. This is a duplication of effort and further, could cause conflict between the Commission on Ethics and Village. The impartiality of the Commission on Ethics and their Home Rule authority would ensure a consistent review, investigation and determination of any alleged violations. Therefore, the language relating to a parallel process in the Village is recommended for repeal.

2. The organization of the ordinance has been modified to maintain all lobbyists in one section, and to have all "exemptions" in one section. The exemption for small businesses was removed, as anyone can speak at a public hearing on an ordinance, and as the exemption could theoretically overcome the cone of silence restriction. This was a provision implemented by the Council in 2006 and is not consistent with the Miami-Dade County Cone of Silence, which is the minimum standard. In order to prevent a direct conflict with the County Code, this provision is recommended for repeal.

3. In competitive procurement, the bid/RFQ/RFP, can provide for questions and input, which would not be a cone of silence violation. However, all other communications, whether with staff, the Clerk or Village Council, outside of the bid process would be considered a violation. The revision can be found at 2-138(a)(1)(G)(iii), and (a)(2)(B). (a)(2)(B) revision reflects the following modification:

At no point is any bidder, vendor or contractor to lobby the Council as to the specific procurement, even after the issuance of the Village Manager's recommendation. The entity recommended by the Village Manager for the award may appear at the publicly noticed meeting of the Village Council and may respond to inquiries of the Village Council. However, no vendor, bidder, contractor,

including the successfully recommended vendor, contractor or bidder may lobby the Village Council prior to award.

4. The next revision is found at (a)(3), and reflects the following modification:

(3) *Exceptions.* The provisions of this article shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees or the Village Council acting as a selection committee (as applicable under the procurement process), or contract negotiations, which conferences, presentations, or negotiations shall be duly noticed. No bidder, vendor or protester may address, in writing or orally, the procurement item during any other type of duly noticed public meeting (ie: regular council meeting, Committee of the Whole meeting, etc.). Nor shall any communications in writing, at any time, with any Village employee, official or member of the Village Council be allowed, unless specifically provided for under the applicable RFP, RFQ or bid documents (as provided under subsection (g), above). The Cone of Silence is intended to preclude any lobbying during the procurement process. After the Manager issues his recommendation to the Village Council, the only recourse of the bidder, vendor, or contractor to "lobby" the Village Council and Village Administration or to challenge the results of the Village Manager's recommendation shall be to timely file a bid protest.

5. 2-138(b) is revised, to be consistent with the debarment and penalties provided by the Miami-Dade County Commission on Ethics and Public Trust, and also provide a two year debarment from future contracting the village if a vendor is found in violation. The penalties of the County address both staff and vendor violations.

The draft ordinance has been reviewed and commented upon by Deputy General Counsel, Miriam Ramos of the Miami-Dade County Commission on Ethics and Public Trust. Her comments have been included herein.

6. Section 2-138(a)(1)(G)(ii) as it relates to "site visits" was clarified per request of Council Person Howard Tendrich to ensure all site visits, whether by vendors or Council would be noticed, as it relates to a bid or qualification of vendor/contractor review.

7. Section 2-138(a)(1)(F) as it relates to the selection committee was clarified per the request of Mayor Shelley Stanczyk to ensure that all contacts with experts - whether staff or third persons outside of staff- be noticed and comply with the Cone of Silence requirements.

**FISCAL/BUDGETARY IMPACT:** None.

**RECOMMENDATION:** Approval.

1  
2 **ORDINANCE NO.** \_\_\_\_\_  
3

4 AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE  
5 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO  
6 PROCUREMENT; AMENDING THE VILLAGE'S PROCUREMENT CODE  
7 TO CLARIFY THE CONE OF SILENCE REQUIREMENTS AND BID  
8 PROTEST PROCEDURES; A VIOLATION OF THE CONE OF SILENCE  
9 AND BID PROTEST PROCESS WOULD AUTOMATICALLY RESULT IN A  
10 TWO (2) YEAR BAR OF THE PROTESTOR FROM BEING AWARDED A  
11 CONTRACT WITH THE VILLAGE; REVISING THE REQUIREMENTS OF  
12 SECTION 2-175(o); DELETING OF THE PROCESS FOR VILLAGE REVIEW  
13 AND ENSURING REVIEW OF VIOLATIONS OF CONE OF SILENCE BY  
14 THE MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC  
15 TRUST AND THEIR ENFORCEMENT PROVISIONS; PROVIDING FOR  
16 ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN  
17 EFFECTIVE DATE.  
18

19 WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay, Florida are  
20 vested with a public trust to maximize the purchasing value of public funds in the procurement of  
21 goods and services, and to provide safeguards for maintaining a procurement system of quality and  
22 integrity; and,  
23

24 WHEREAS, the Mayor and Village Council, in compliance with Article IV, Section 3 of the  
25 Village Charter, enacted Chapter 2, Division 2, of the Village of Palmetto Bay Code of Ordinances  
26 as the procurement policy of the Village; and,  
27

28 WHEREAS, the Village desires to amend its bid protest procedures to ensure that every  
29 protestor to the procurement selection process properly adheres to the bid protest procedures; and,  
30

31 WHEREAS, to ensure transparency and to preclude improper unregistered lobbying of the  
32 Council, the Village desires to mandate that the Village's procurement procedures and cone of  
33 silence procedures are not circumvented; and,  
34

35 WHEREAS, a violation of these procedures would result in barring that protestor from  
36 contracting with the Village for a two year period; and,  
37

38 WHEREAS, the Village desires to clarify the procedures relating to an appeal of the decision  
39 of the Village Manager as to a properly filed bid protest with the Village Council and the process for  
40 hearing such an appeal; and,  
41

42 WHEREAS, the Village desires that review and ensuring review of violations of cone of  
43 silence be conducted by the Miami-Dade County Commission on Ethics and Public Trust rather  
44 than the Village;  
45

1 WHEREAS, the Mayor and Village Council desire to amend the procurement code to  
2 further enhance the maintenance of competitive conditions in the procurement of goods and  
3 services to the maximum extent feasible, and does so by amending and clarifying the bid protest  
4 requirements and cone of silence requirements.  
5

6 BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE  
7 OF PALMETTO BAY, FLORIDA, AS FOLLOWS:  
8  
9

10 Section 1. Chapter 2, entitled "Administration" at sections 2-138 entitled "Cone of  
11 Silence" and Section 2-175(o), entitled "Procurement Process" are amended to read as follows:

12 \* \* \*

13 **CHAPTER 2 ADMINISTRATION**

14 \* \* \*

15 Sec. 2-138. - Cone of silence.

16 (a) Contracts for the provision of goods and services.

17 \_\_\_\_\_(1) *Cone of silence* is hereby defined to mean a prohibition on:

18 aA. Any communication regarding a particular RFP, RFQ, or bid between a  
19 potential vendor, service provider, bidder, lobbyist, or consultant and the Village's  
20 professional staff including, but not limited to, the Village Manager and his or her  
21 staff;

22 Bb. Any communication regarding a particular RFP, RFQ, or bid between the  
23 Mayor or Village Council members and any member of the Village's professional  
24 staff including, but not limited to, the Village Manager and his or her staff;

25 Ce. Any communication regarding a particular RFP, RFQ or bid between a  
26 potential vendor, service provider, bidder, lobbyist, or consultant and any member of  
27 the selection committee therefor;

28 De. Any communication regarding a particular RFP, RFQ or bid between the  
29 Mayor, Village Council members and any member of the selection committee;

30 Ee. Any communication regarding a particular RFP, RFQ or bid between a  
31 potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor or  
32 Village Council members; and

33 Ef. Any communication regarding a particular RFP, RFQ or bid between any  
34 member of the Village's professional staff and any member of the selection  
35 committee. The Village Manager and the chairperson of the selection committee may  
36 communicate about a particular selection committee recommendation, but only after

1 the committee has submitted an award recommendation to the Village Manager and  
2 provided that should any change occur in the committee recommendation, the  
3 content of the communication and of the corresponding change shall be described in  
4 writing and filed by the Village Manager with the Village Clerk and be included in  
5 any recommendation memorandum submitted by the Village Manager to the Village  
6 Council. The selection committee shall notice any meetings with any experts -  
7 whether of staff or third-party experts.

8  
9 G. Notwithstanding the foregoing, the cone of silence shall not apply to:

10 a.(i). Communications with the Village ~~a~~Attorney and his or her  
11 staff;

12 ~~(ii)~~ b. Duly noticed site visits ~~to determine the competency of~~  
13 ~~bidders~~ regarding a particular bid during the time period between the  
14 opening of bids and the time the Village Manager makes his or her written  
15 recommendation;

16 (iii) A requirement within a bid, RFQ, or RFP providing for a written  
17 question or inquiry by bidders or vendors and any mandatory or  
18 discretionary pre-bid meeting and responses provided in conjunction to any  
19 such process.

20 c.(iv) Any emergency procurement of goods or services;

21 d. (v) Communication regarding a particular RFP, RFQ or  
22 bid between any person and the contracting officer responsible for  
23 administering the procurement process for the RFP, RFQ or bid, provided  
24 the communication is limited strictly to matters of process or procedure  
25 already contained in the corresponding solicitation document.

26  
27 (2) *Procedure.*

28 A. a. A cone of silence shall be imposed upon each RFP, RFQ and  
29 bid after the advertisement of the RFP, RFQ or bid. At the time of imposition of the cone  
30 of silence, the Village Manager or his or her designee shall provide for public notice of the  
31 cone of silence. The Village Manager shall issue a written notice to the affected departments,  
32 file a copy of the notice with the Village Clerk. The Village Clerk shall notify the Village  
33 Council of the cone of silence upon placing of an advertisement in a newspaper of general  
34 circulation. The notice, with a copy to the Mayor and each Village Council member, and  
35 provided to staff or Council -shall be advised of include in any public solicitation for goods  
36 and services a statement disclosing the requirements of this ~~article~~section. Notwithstanding  
37 any other provision of this section, the imposition of a cone of silence on a particular RFP,

1 RFQ or bid shall not preclude staff from obtaining industry comment or performing market  
2 research, provided all communications related thereto between a potential vendor, service  
3 provider, bidder, lobbyist, or consultant and any member of the Village's professional staff  
4 including, but not limited to, the Village Manager and his or her staff, are in writing or are  
5 made at a duly noticed public meeting.

6 ~~\_\_\_\_\_~~ bB. The cone of silence as to the Village Administration and staff shall  
7 terminate at the time the Village Manager makes his or her written recommendation to the  
8 Village Council; provided, however, that if the Village Council refers the Village Manager's  
9 recommendation back to the Village Manager or staff for further review, the cone of silence  
10 shall be re-imposed until the time as the Village Manager makes a subsequent written  
11 recommendation. At no point is any bidder, vendor or contractor to lobby the Council as to  
12 the specific procurement, even after the issuance of the Village Manager's recommendation.  
13 The entity recommended by the Village Manager for the award may appear at the publicly  
14 noticed meeting of the Village Council and may respond to inquiries of the Village Council.  
15 However, no vendor, bidder, contractor, including the successfully recommended vendor,  
16 contractor or bidder may lobby the Village Council prior to award.

17 \_\_\_\_\_ (3) Exceptions. The provisions of this article shall not apply to oral communications at  
18 pre-bid conferences, oral presentations before selection committees or the Village Council acting as  
19 a selection committee (as applicable under the procurement process), or contract negotiations,  
20 which conferences, presentations, or negotiations shall be duly noticed. No bidder, vendor or  
21 protester may address, in writing or orally, the procurement item during any other ~~during any type~~  
22 of duly noticed public meeting (ie: ~~regular council meeting, Committee of the Whole meeting, etc.~~);  
23 public presentations made to the Village Council during any duly noticed public meeting. Nor shall  
24 any communications in writing, at any time, with any Village employee, official or member of the  
25 Village Council be allowed, unless specifically provided for under ~~hibited~~ by the applicable RFP,  
26 RFQ or bid documents (as provided under subsection (g), above). ~~The bidder or proposer shall file a~~  
27 copy of any written communication with the Village Clerk. The Village Clerk shall make copies  
28 available to any person upon request. ~~The Cone of Silence is intended to preclude any lobbying~~  
29 during the procurement process. After the Manager issues his recommendation to the Village  
30 Council, the only recourse of the bidder, vendor, or contractor to "lobby" the Village Council and  
31 Village Administration or to challenge the results of the Village Manager's recommendation shall be  
32 to timely file a bid protest.

33 (b) Penalties. In addition to the penalties provided in this ~~chapter~~ section and Miami-Dade  
34 County Code sections 2-11.1 (s) and (v), violation of this section by a particular bidder or proposer  
35 ~~shall~~ may render any RFP award, RFQ award or bid award to the bidder or proposer voidable. A  
36 violation ~~of section 2-155~~ may render the public hearing item voidable and a \$500.00 penalty to the  
37 applicant consistent with the penalties provided by the Miami-Dade County Commission on Ethics  
38 and Public Trust. ~~The Village Council shall hold an evidentiary hearing to determine whether a~~  
39 violation of section 2-155 has taken place, whether a penalty shall issue, and/or whether the public  
40 hearing item should be voided. Any person who violates a provision of this article shall be  
41 prohibited from serving on a Village competitive selection committee and shall be precluded from  
42 bidding for a two year period. In addition to any other penalty provided by law, violation of any

1 provision of this article by a Village employee shall subject the employee to disciplinary action up to  
2 | and including dismissal. ~~Additionally,~~ any person who has personal knowledge of a violation of this  
3 article shall report the violation to the State Attorney and, or, may file a complaint with the Miami-  
4 Dade County Commission on Ethics.

5 |

1 Sec. 2-139. - Village aAttorney to render opinions on request.

2 Whenever any person included in the terms defined in section 2-122(1) through (6) and (9) is in  
3 doubt as to the proper interpretation or application of this conflict of interest and code of ethics  
4 ordinance, or whenever any person who renders services to the Village is in doubt as to the  
5 applicability of the ordinance, that person may submit to the Village attorney a full written statement  
6 of the facts and questions to be determined. The Village attorney shall then render an opinion to the  
7 person and shall publish these opinions without use of the name of the person advised unless the  
8 person permits the use of a name. The Village Attorney may also refer the inquiry to the Miami-  
9 Dade County Commission on Ethics and Public Trust.

10  
11 Sec. 2-140. - Determination of legal sufficiency of a complaint.

12 ~~An investigation of an alleged violation by any person included in the terms defined in section 2-~~  
13 ~~122(2) through (6) and (9), except the Village Manager and the Village attorney and their immediate~~  
14 ~~family, shall be initiated upon receipt by the Village Manager of a written complaint which alleges~~  
15 ~~the elements of a violation, is based substantially upon the personal knowledge of the complainant~~  
16 ~~and signed under oath or affirmation by the complaining person, and is legally sufficient to state a~~  
17 ~~possible violation of this chapter. Within five days after receipt, the Village Manager shall send a~~  
18 ~~copy of a complaint to the alleged violator. The Village attorney shall make the determination of~~  
19 ~~legal sufficiency within 20 days. If the complaint is determined to be legally insufficient, the Village~~  
20 ~~attorney shall state the reasons for the finding in writing and report the determination to the~~  
21 ~~complainant, the alleged violator, or respondent, and the Village Council.~~

22  
23 Sec. 2-141. - Complaints against Mayor, commission member or appointed Village official.

24 ~~A complaint against the Mayor, a Council member, Village Manager, or Village attorney and their~~  
25 ~~immediate family may be referred to the Miami-Dade County Commission on Ethics, or may be~~  
26 ~~addressed as provided in this section with appropriate provision made by the Village Council for the~~  
27 ~~fair and effective investigation and determination of issues.~~

28  
29 Sec. 2-142. - Probable cause determination.

30 ~~A preliminary investigation of a legally sufficient complaint shall be undertaken by the Village~~  
31 ~~attorney to determine whether there is probable cause to believe that a violation has occurred. If,~~  
32 ~~upon completion of the preliminary investigation, the Village attorney finds no probable cause to~~  
33 ~~believe that a violation has been committed, the Village attorney shall dismiss the complaint with the~~  
34 ~~issuance of a report to the complainant, the respondent and the Village Council. If the Village~~  
35 ~~attorney finds from the preliminary investigation probable cause to believe that a violation has been~~  
36 ~~committed, he or she shall notify, via certified mail, the complainant and the respondent in writing.~~

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Sec. 2-143. Investigations:

~~Investigations shall be conducted by the Village attorney, with assistance from a department head or other department personnel if requested of the Village Manager by the Village attorney. Investigations shall be limited to the allegations of the complaint, but shall include an investigation of all facts and persons materially related to the complaint at issue.~~

Sec. 2-144. Public records:

~~The complaint, all proceedings and other records relating to the preliminary investigation shall be public records under the provisions of F.S. ch. 119, unless otherwise specifically exempt [from] chapter 119.~~

~~The Village attorney shall be empowered to make application to any circuit court of this state which shall have jurisdiction to order witnesses to appear and to produce evidence, or to give testimony touching on any issue in question at any stage of the proceeding on a complaint. Any person who fails to obey the order may be punished in a court of law.~~

Sec. 2-146. Final hearing on complaint:

~~The Village attorney may schedule a final public hearing on a complaint before the Village Manager. Adequate notice shall be given to the complainant and the respondent. Adequate notice shall be presumed to be at least ten days advanced notice of hearing. The complainant shall present the case first. Respondent may then present its defense.~~

~~(1) — The complainant and respondent shall have the rights to present evidence relevant to the complaint, to cross-examine and impeach witnesses and to present rebuttal evidence. The Village, through the Village attorney, or his or her designee, may present additional evidence, cross-examine and impeach witnesses and present rebuttal evidence.~~

~~(2) — Final hearings shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted. Hearsay evidence may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding. The rules of privilege shall be effective to the same extent that they are now or may be recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.~~

~~(3) — The provisions of this section relating to final hearing shall be supplemental to the provisions of the Code of Miami-Dade County Section 2-1074, as amended, relating to motions, motions in opposition to proceeding, pre-hearing conferences, exchange of witness lists, procedures for public hearings, evidence, and transcript of proceedings.~~

1 ~~Upon completion of any investigation and final hearing, the Village attorney shall make proposed~~  
2 ~~recommended findings of facts and conclusions of law, and Village Manager shall enter an order~~  
3 ~~determining whether any provision of this chapter has been violated and, in the case a violation is~~  
4 ~~found, impose a penalty, as provided in the ordinance or statute being enforced, costs and take~~  
5 ~~appropriate personnel action. The burden of proof shall be on the complainant, or the Village, to~~  
6 ~~prove a violation by clear and convincing evidence in the record. The Village Manager shall, within~~  
7 ~~60 days of the filing of a complaint, render a final order disposing of the complaint. If a person fails~~  
8 ~~to comply with an order issued by the Village Manager, the Village Manager may make application to~~  
9 ~~the Miami Dade County Commission on Ethics which shall have jurisdiction over the complaint, or~~  
10 ~~to another agency which may have jurisdiction over the complaint.~~

11  
12 Sec. 2-148. - Attorney's fees:

13 ~~In any case in which the Village attorney finds no probable cause to believe that a violation has been~~  
14 ~~committed or determines that the complaining party filed a frivolous or groundless complaint, the~~  
15 ~~Village attorney may recommend to the Village Manager, and the Village Manager may order the~~  
16 ~~complaining party to pay any costs and attorney's fees incurred by the Village.~~

17  
18 Sec. 2-149. - Prospective jurisdiction:

19 ~~Any alleged violation committed before the effective date of this article shall be governed by the~~  
20 ~~applicable Village of Palmetto Bay, Miami Dade County and State of Florida Code of Ethics~~  
21 ~~Ordinances, Conflict of Interest Ordinances or Lobbyist Registration and Reporting Ordinances in~~  
22 ~~effect at the time of the alleged violations.~~

23 Sec. 2-150. - Personnel proceeding:

24 ~~Where an employee of the Village of Palmetto Bay is alleged to have violated a law within the~~  
25 ~~purview of this article, and based upon the same set of facts, is subject to an ongoing disciplinary~~  
26 ~~action initiated by the Village, the Village attorney and Village Manager shall stay consideration of a~~  
27 ~~complaint until the conclusion of the personnel proceeding.~~

28  
29 Sec. 2-151. - Statute of limitations.

30 ~~No action may be taken on a complaint filed more than one year after the violation is alleged to have~~  
31 ~~accrued.~~

32 Sec. 2-152. - Termination of proceeding:

33 ~~A proceeding on a complaint shall terminate in the event the respondent dies in office, leaves office~~  
34 ~~for any reason or is permanently separated from employment with the Village, or enters into a~~  
35 ~~settlement agreement with the Village Manager.~~

1 ~~(Ord. No. 06-01, § 1(.32), 1-9-2006)~~

2 ~~Sec. 2-153. Appeal and judicial review.~~

3 ~~An aggrieved respondent may appeal an adverse finding of a violation to the Village Council. Review~~  
4 ~~by the Village Council shall be on the record and limited to determining whether the:~~

- 5 ~~(1) Respondent was afforded procedural due process;~~
- 6 ~~(2) Findings of fact are supported by substantial competent evidence; and~~
- 7 ~~(3) Conclusions are correct as a matter of law.~~

8 ~~An aggrieved respondent must first exhaust its right to an appeal to the Village Council before~~  
9 ~~seeking review by the Circuit Court for Miami-Dade County. Review by the circuit court shall be~~  
10 ~~pursuant to the Florida Rules of Appellate Procedure.~~

11 ~~(Ord. No. 06-01, § 1(.33), 1-9-2006)~~

12 ~~Sec. 2-154. Proceedings by the Miami-Dade Commission on Ethics and the Florida Commission~~  
13 ~~on Ethics.~~

14 ~~To the maximum extent allowed by law, the Miami-Dade County Commission on Ethics shall abate~~  
15 ~~proceedings on any complaint, which is filed by the same complainant against the same respondent,~~  
16 ~~and involving substantially identical facts, until the Village completes its proceedings on the~~  
17 ~~complaint. The Village shall promptly notify the Miami-Dade Commission on Ethics and Public~~  
18 ~~Trust and the Florida Commission on Ethics when it learns that a substantially identical complaint~~  
19 ~~has been filed with either of those agencies and request that their proceedings be abated until the~~  
20 ~~conclusion of the Village's proceedings. The Village's findings of facts, conclusions of law, final~~  
21 ~~determination and imposition of a penalty shall be accorded a presumption of correctness by those~~  
22 ~~agencies.~~

23 \* \* \*

24  
25 Section 2. All ordinances or parts of ordinances in conflict with the provisions of this  
26 ordinance are repealed.

27  
28 Section 3. This ordinance shall be codified and included in the Code of Ordinances.

29  
30 Section 4. If any section, clause, sentence, or phrase of this ordinance is for any reason  
31 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the  
32 validity of the remaining portions of this ordinance.

33  
34 Section 5. This ordinance shall take effect immediately upon enactment.

35  
36 PASSED AND ENACTED this [ ] day of \_\_\_\_\_, 2012.

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Attest: \_\_\_\_\_  
Meighan Alexander  
Village Clerk  
Shelley Stanczyk  
Mayor

APPROVED AS TO FORM:  
\_\_\_\_\_  
Eve A. Boutsis  
Village Attorney

FINAL VOTE AT ADOPTION:  
Council Member Patrick Fiore \_\_\_\_\_  
Council Member Howard Tendrich \_\_\_\_\_  
Council Member Joan Lindsay \_\_\_\_\_  
Vice-Mayor Brian W. Pariser \_\_\_\_\_  
Mayor Shelley Stanczyk \_\_\_\_\_

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