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To: Mayor and Village Council

Date: July 2, 2012

From: Eve A. Boutsis, Village Attorney

Re: Moratorium  
Second Reading

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**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO THE ENACTED ZONING IN PROGRESS RESOLUTION; CREATING A MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF USE WITHIN THE RESIDENTIAL ZONING DISTRICTS FOR PROPERTIES OVER AN ACRE IN SIZE FOR THE LESSER OF A FOUR (4) MONTH PERIOD OR UNTIL SUCH TIME THAT AN ORDINANCE IS ADOPTED APPROVING NEW REGULATIONS THERETO; SUCH TEMPORARY MORATORIUM TO APPLY TO ALL PROPERTIES WITHIN THE RESIDENTIAL ZONING DISTRICTS THAT ARE OVER AN ACRE IN SIZE; EXEMPTING HEALTH, SAFETY WELFARE OR MAINTENANCE TYPE PERMITS; PROVIDING WAIVER PROVISION THROUGH HEARING BEFORE THE VILLAGE COUNCIL; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Council Person Joan Lindsay]. [Please note: proposed substitution enclosed].**

**BACKGROUND:**

On April 16, 2012, at a Committee of the Whole (COW) meeting, Council Person Joan Lindsay requested the imposition of a "Zoning in Progress" (ZIP) procedure to implement revisions to the zoning code as it relates to neighborhood protection. Council Person Lindsay advised that she desired to provide guidelines for nonresidential uses allowed within residential districts so as to preserve the overall residential quality of Village neighborhoods and to provide a fair and equitable process and guidelines for issuing development orders. Council Person Lindsay intends for the proposed neighborhood protection regulations to simplify the current process of imposing conditions on developments, and provide a fair and equitable system for all by defining specific criteria for: setbacks, buffers, construction staging, athletic fields and amenities, landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological, unity of title, enforcement, and structures, amongst other issues.

Pursuant to Section 30-30.10(a) of the Code of Ordinances, "[t]he Village Council may consider a 'Zoning in Progress Resolution' on its own initiative." In this particular case, the Mayor and Village Council chose to pursue a ZIP upon their own initiative. On May 21, 2012, following public hearing, the Mayor and Village Council adopted the zoning in progress resolution for all residentially zoned properties larger than one (1) acre, including the Live Work subdistrict within the FT&I

District. As a result of approving the ZIP, the Village Council has now directed staff to prepare a moratorium ordinance that is to expire the earlier of adoption of the neighborhood protection regulations or November 9, 2012.

### **PROCEDURES (ZONING IN PROGRESS/MORATORIUM)**

Ordinance 30-30.10 provides the process by which a ZIP and Moratorium are to be adopted, as each mechanism provides for a different effect with regard to permits, certificates of use, and development orders issued by the Village (collectively hereinafter referred to as 'PERMITS'). Generally, a ZIP does not preclude the issuance of PERMITS, rather it simply requires that any permit that is issued not violate either existing or proposed regulations. Thus, a standard ZIP must be accompanied by specific regulations that would apply in lieu of those that already exist. When the scope of the proposed change is broader, less clearly defined, and requires a fuller consideration of current regulations, a moratorium becomes the appropriate tool. By approving Resolution No. 2012-45, on May 21, 2012, the Mayor and Village Council elected to pursue the moratorium option. To date, no legislation relating to "neighborhood protection" has been drafted.

Pursuit of the moratorium option required the passage of a ZIP resolution, which defines the scope of the proposed moratorium and directs staff to proceed with its study and preparation of the moratorium legislation. Pursuant to Section 30-30.10(b)(2), in approving a ZIP resolution, "[t]he Village Council shall make preliminary findings" which identify the need to pursue such action. Resolution No. 2012-45 accomplishes this task. Given the ZIP Resolution was initiated by Village Council, pursuant to Section 30-30.10(a), consideration and analysis of the proposed Moratorium Ordinance by staff shall rely upon the May 21, 2012, findings issued by the Mayor and Village Council and as further detailed below under the "Analysis" section.

The approved ZIP resolution may last no longer than 90 days, operates in a manner similar to a moratorium, and is dissolved once the proposed moratorium is enacted, the 90 days pass, or the Council repeals the ZIP resolution, whichever happens first. A Moratorium seeks to fully preserve the *status quo* of the affected area until such time pending legislation is implemented as set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2<sup>nd</sup> DCA 1980). A moratorium must be enacted under the same procedures which govern zoning and rezoning, as a moratorium temporarily prohibits a person from building upon his/her property, and is considered a substantial restriction upon land use. *City of Sanibel v. Buntrock*, 409 So.2d 1073, 1075 (Fla. 2d DCA 1981). If enacted, pursuant to case law and the Burt J. Harris Act, a Moratorium Ordinance may remain in effect for a period not to exceed twelve (12) months or else the action may be considered a violation of the Act. The proposed moratorium is intended to last up to four months, or until the adoption of any new neighborhood protection regulations to the Land Development Code, whichever event occurs first. To reiterate, the zoning moratorium would not apply to residential properties one acre or smaller or to the commercial or mixed use districts (except for Live Work - Residential sub-district within the FT&I District).

**ANALYSIS:**

The Comprehensive Plan is the base line regulatory document governing all land developmental activities within the Village of Palmetto Bay. The Land Use Element of the Comprehensive Plan provides specific goals which are supplemented and further explained through the Village's delineated objectives and policies. The Village adopted its Comprehensive Plan in 2005 citing its first goal as:

Goal 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in Southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, *quality neighborhood protection*, and enhancement of its unique and beautiful coastal environmental resources. [*Emphasis added*].

The development standards prescribed within the Village's Land Development Code (hereinafter referred to as the "LDC"), otherwise known as the Village's zoning code, takes its purpose and direction from and must be consistent with the goals, objectives, and policies adopted in the Comprehensive Plan.

The LDC provides consolidated zoning development standards for both commercial establishments within the Village's business districts and for residential developments in residential districts. The LDC, however, does not provide the same kind of development standards for all non-residential uses that are permitted within residential districts. Though most of the non-residential uses permitted within residential districts are subject to public hearing, the development criteria vary from use to use, are spread throughout different portions of the LDC, or, in some cases, are silent in addressing the full impact of such developments on the residential neighborhood. The result is an approval process that may be subject to non-standardized development conditions imposed during the hearing/review process.

The proposed moratorium would provide the time needed for the Council and staff to prepare development standards for non-residential developments in residentially zoned districts. These developments would still be subject to the public hearing process and, potentially, conditions of development where appropriate. However, the proposed neighborhood protection regulations are being designed to provide a consistent and predictable framework aimed at protecting residential neighborhoods from disruptive intrusion by uses that may otherwise disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood. The regulations are intended to minimize the impacts to the neighborhood from excessive density, noise, light, glare, odor, vibration, dust or traffic. As such, the proposed regulations are intended to refine or better define the regulations relating to criteria for setbacks, buffers, construction staging, athletic fields and amenities, landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological, unity of title, enforcement, and structures, amongst other issues. In adopting such regulations, the Village intends to provide a stream lined check-list of criteria, applicable to all such zoning requests, which would assist the applicant and residents in obtaining a fair and equitable development order. Adoption of the proposed standards will assist the Village in

minimizing the imposition of different conditions on different properties while still providing for unique site specific requirements that may be applied during the public hearing process.

#### **UPDATE:**

During the Committee of the Whole meeting of June 11, 2012, the Village Council discussed placing procedures and standards of review in the draft ordinance relating to implementing the waiver process. It was proposed that the ordinance be modified to include written notice to the neighbors as provided under 30-30.11(o), and notice of public hearing for any waiver to be placed on the website provided, however both the mailed notice and posting shall occur 15 days prior to the public hearing. To keep costs down, the Council concluded that the applicant would not be required to advertise in a paper in general circulation. However, for proper notice under state law, the advertisement must be run in the newspaper at least 10 days prior to the public hearing. The standard proposed for reviewing the waiver was suggested to be whether such a request is non-deleterious to the scope of the proposed neighborhood protection ordinance. The Council additionally proposed an amendment to the scope of the moratorium so as to only affect nonresidential uses of over one acre in size, in residential districts. As this modification narrows the scope of the moratorium, a third reading will not be required. Enclosed is the proposed substitution ordinance reflective of the above revisions. To consider it, the Council would need to move the substitution forward.

#### **ANALYSIS OF POSSIBLE CLAIMS:**

The Village Attorney is tasked with review of form and legal sufficiency. The Village Attorney's review of the proposed substitution moratorium ordinance is based upon facial legal sufficiency. As to a facial challenge, it appears that facially, all the proposed amendments are facially constitutional. There is no obvious facial issue and none has been raised during the public input process.

The Village Attorney cannot, at this time, address any possible "as applied" challenge, in particular, as it relates to the types of uses identified in the moratorium. As with any legislation and action of the Council, litigation may ensue. As the moratorium is of short duration, four months, the chance of challenge is limited, particularly, as the Council has provided a "waiver process." That waiver process would have to be complied with, prior to filing any challenge, as a challenger will be required to exhaust administrative remedies, before filing suit.

Nevertheless, in an abundance of caution the following provides the Village Council with a delineation of possible claims, as the issue has been raised in the public, and in the "Soap Box" of the Miami Herald.

**Bert J. Harris Act.** A complainant could possibly assert a Bert J. Harris Act challenge. A Court could rule, based upon an "as applied challenge" that the "moratorium, imposes an inordinate burden, or restriction or limit to private property rights, and would inordinately burden an existing use of real property or a vested right to a specific use of real property." Fla. Stat. 70.001. A one year

moratorium is legislated, presumptively, as a BJ Harris Act claim. Further, a challenger, if successful, could obtain a judgment providing a substantial monetary decision, if successful. An appraisal would need to be filed to support the claim.

Enclosed below are the provisions of the Bert J. Harris Act. In short, there is no statutory limit on liability, as with most other claims, as would otherwise be provided under section 768.28, Florida Statutes. This act provides:

**§ 70.001. Private property rights protection:**

(1) This act may be cited as the "Bert J. Harris, Jr., Private Property Rights Protection Act." The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section.

(3) For purposes of this section: (a) The existence of a "vested right" is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

(b) The term "existing use" means:

1. An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or

2. Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

\* \* \*

(e) The terms "inordinate burden" and "inordinately burdened":

1. Mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

2. Do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section. **However, a temporary impact on development, as defined in s. 380.04, that is in effect for longer than one (1) year may, depending upon the circumstances, constitute an "inordinate burden" as provided in this paragraph.** [Emphasis added].

In determining whether reasonable, investment-backed expectations are inordinately burdened, consideration may be given to the factual circumstances leading to the time elapsed between enactment of the law or regulation and its first application to the subject property.

(f) The term "property owner" means the person who holds legal title to the real property at issue. The term does not include a governmental entity.

(g) The term "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the property owner had a relevant interest.

\* \* \*

**RLUIPA.** A religious institution could raise a RLUIPA (Religious Land Use and Institutionalized Persons Act) claim or the Florida version of RLUIPA due to the limited nature of the moratorium - attached to nonresidential uses within residential zoning districts. A claimant would be required to go through the waiver process before filing suit, in order to exhaust administrative remedies. The waiver process provides clear procedures for seeking a waiver and a clear standard of review of the waiver request.

By way of a brief history, the US Supreme Court initially relied upon a "compelling governmental interest" standard when reviewing challenges to governmental action that impinged upon free exercise of religion, as protected by the First Amendment to the US Constitution. It is worth noting that the "compelling governmental interest" is the highest standard of review that can be applied to any court ruling. Starting in approximately 1990, the US Supreme Court retracted from this

"compelling government interest" standard of federal judicial review. As a result, the federal legislature created the Religious Freedom Restoration Act (RFRA), the predecessor to RLUIPA. RFRA was intended to essentially overrule the Supreme Court's decision in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872, 108 L. Ed. 2d 876, 110 S. Ct. 1595 (1990). RFRA restored the compelling state interest test as the standard for free exercise challenges to laws of general applicability. See 42 U.S.C. § 2000bb (2000). Thereafter, the US Supreme Court struck down a portion of RFRA, and as a result, the federal legislature created RLUIPA to overcome that US Supreme Court action. In both cases, the Florida legislature acted in sync with the federal legislature, first by enacting a their own version of RFRA, and then followed by the current Florida RLUIPA law, as further described later in this review..

The general rule on Religious Land Use and Institutionalized Person Act RLUIPA, 42 U.S.C. § 2000cc et seq., provides that: "No government shall impose or implement a land use regulation in a manner than imposes a *substantial burden* on *religious exercise*, unless the government demonstrates a *compelling governmental interest* that is the *least restrictive means* of furthering that interest." (*emphasis added*)

The Religious Land Use and Institutionalized Person Act (RLUIPA) itself does not expressly define what constitutes a "substantial burden," but the Seventh Circuit has stated that, a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise effectively impracticable. More importantly, RLUIPA requires a compelling governmental interest to justify a practice or policy that creates a substantial burden on an individual's religious exercise. Please note, as stated above, that in judicial review, the standard of "compelling governmental interest" requires the most stringent review of a governmental act. An example of such an "interest" would be the life-safety laws found in the Fire Code or the Florida Building Code. This is more than the reasonable relation to a legitimate penological interest required under current First Amendment precedent. In addition, RLUIPA requires government agents to demonstrate that the policy they adopted is the least restrictive means of furthering the compelling governmental interest. *Young v. Ericksen*, 758 F. Supp. 2d 777 (ED WI 2010)

"The term 'religious exercise' includes any exercise of religion, ***whether or not compelled by, or central to, a system of religious belief.***" "The use, building, or conversions of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose." *Id.*

A person filing a RLUIPA claim could seek declaratory relief, remand, injunctive relief damages, and attorney's fees. There has been over a decade of litigation in RLUIPA claims. City of Hollywood was subject to a RLUIPA claim and settled the litigation for over \$4,000,000. As part of the settlement, the City was subject to oversight by the Department of Justice and a consent decree requiring full compliance with RLUIPA. In that matter the principal claim related to a challenge of the City's zoning regulations, and a challenge to the individual decision in applying the zoning regulations to a property. The consent decree also provided for individual liability, if a violation of RLUIPA was found during the enforcement time period required under the agreement.

It is important to note that the term "substantial burden" is not defined. The case law appears to reflect that a financial hardship, alone, is not enough. There must be a showing that the existing facilities of the applicant are adequate. Moreover, the Court looks to determine whether there are other suitable properties, as a "mere inconvenience" is not sufficient for raising a claim. The cases appear to reflect that the action of the governmental body as it relates to a religious institution, is whether the action is fair. It is clear that a party's failure or refusal of religious institutions to file land use applications would make the claim not ripe. – *Congregation Anshei Roosevelt v. Borough of Roosevelt* (3d Cir. 2009).

## FLORIDA RLUIPA

Florida's *Free Exercise Clause* is found in the Florida Constitution's Declaration of Rights and provides:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution. *Art. I, § 3, Fla. Const.*

The Florida Supreme Court interpreted this provision of the Florida Constitution in *Warner v. City of Boca Raton*, 887 So. 2d 1023, (Florida 2004) and stated:

In interpreting the scope of constitutional rights, this Court [Florida Supreme Court] has stated that in any state issue, the federal constitution represents the "floor" for basic freedoms, and the state constitution represents the "ceiling." *See Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992). The [Florida Supreme] Court has not squarely addressed the parameters of Florida's *free exercise clause*, but other Florida courts have "treated the protection afforded under the state constitutional provision as coequal to the federal [provision], and have measured government regulations against it accordingly." *Toca v. State*, 834 So. 2d 204, 208 (Fla. 2d DCA 2002)

To further protect religious exercise, the Florida legislature first enacted RFRA (Florida version of the federal RFRA act). Due to the US Supreme Court decision invalidating a portion of the federal RFRA, the US Congress enacted RLUIPA. Thereafter, Florida enacted its own statutory version of RLUIPA, which is found at § 761.03, Florida Statutes, and is entitled "Free exercise of religion protected," and states:

(1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except that

government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:

- (a) Is in furtherance of a compelling governmental interest; and
  - (b) Is the least restrictive means of furthering that compelling governmental interest.
- (2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

The statute provides for attorney's fees. It is modeled after the federal law, but appears more expansive. Please note that the Third District Court of Appeal in *First Baptist Church of Perrine v. Miami-Dade County*, 68 So.2d 1114 (Fla. 3rd DCA 2000), in analyzing the predecessor statute to Florida's RFRA (the prior statute discussed above which was modeled after the federal RFRA) held that the Miami-Dade County special exception process for reviewing religious institutions, including their ancillary use (school) did not violate Florida law. The Court found that the record did not demonstrate "that the County's zoning ordinances are aimed at impeding religion, that they are based on a disagreement with religious beliefs or practices, or that they negatively influence the pursuit of religious activity or expression of religious belief." The Court went on to state:

Further, the burden on the County of altering the enforcement of its zoning ordinances to accommodate the Church's requests would be much greater than any burden placed on the Church's religious activity by requiring that it comply with the Zoning Board's decision in this matter. In *First Assembly of God v. Collier Co.*, 775 F. Supp. 383, 386 (M.D. Fla. 1991), the court recognized as a significant interest the preservation of a government's ability to regulate zoning. To impose on the County's zoning ordinances an exception based on religion could result in the breakdown of a community's zoning scheme and increase non-conforming uses each time religion is asserted as a basis for zoning requests. Even though the Church argues that religious education is central to its religion, the burden on the Church of conducting this activity elsewhere is less than the burden which would be placed on the County if it is forced to routinely grant exceptions to its zoning schemes for primarily residential neighborhoods when requested to do so for allegedly religious purposes.

Application of the County's zoning ordinances to preclude expansion of First Baptist Church of Perrine's school does not prevent or seriously inhibit the Church's ability to provide a religious education. There are other less-traffic-sensitive locations within Miami-Dade County for the Church to expand in order to teach seventh and eighth grades, if its religion so requires. It is not absolutely precluded from providing seventh and eighth grade classes by the Zoning Board's decision. But, even assuming that the Church has demonstrated a substantial burden on its free exercise of religion, the County clearly has a compelling interest in enacting and enforcing fair

and reasonable zoning regulations. *See Daytona Rescue Mission, Inc. v. City of Daytona Beach*, 885 F. Supp. 1554, 1560 (M.D. Fla. 1995). For these reasons, the circuit court, appellate division also properly rejected the Church's contention that the Zoning Board's denial of its zoning request violated the Act.

The Village Attorney cannot advise whether a Florida or Federal RLUIPA claim would be successful in advance of the Village implementing the moratorium. Any challenge would be based upon application of the moratorium and associated ordinances enacted under the authority of the moratorium, and would be dependent upon the facts presented in that particular challenge. Moreover, there would be a need for the complainant to demonstrate the substantial burden on the exercise of religion. Any impacts to ancillary matters or uses may not raise an effective state or federal RLUIPA claim.

**FISCAL/BUDGETARY IMPACT:**

The fiscal/budgetary impact is undetermined.

**RECOMMENDATION:**

Decision for the Mayor and Village Council.



1  
2       **WHEREAS**, the neighborhood protection regulations should simplify the current process  
3 of imposing conditions on these developments, and provide a fair and equitable system for all by  
4 defining specific criteria for: setbacks, buffers, construction staging, athletic fields and amenities,  
5 landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological,  
6 unity of title, enforcement, and structures, amongst other issues; and,  
7

8       **WHEREAS**, the Mayor and Village Council desire to preserve the *status quo*, except as  
9 provided below, regarding existing zoning designations of property in the Village during a  
10 moratorium to impose the neighborhood protection regulations; and,  
11

12       **WHEREAS**, when an ordinance may affect land use, it must be enacted under the same  
13 procedures which govern zoning and rezoning, as a moratorium temporarily prohibits a person from  
14 building upon his/her property, and is considered a substantial restriction upon land use; *City of*  
15 *Sanibel v. Buntrock*, 409 So.2d 1073, 1075 (Fla. 2d DCA 1981); and,  
16

17       **WHEREAS**, the Village Council seeks to implement this ordinance, creating a four (4)  
18 month moratorium within the residential zoning districts and the Live Work subdistrict within the  
19 FT&I mixed use district for properties over one acre in size, in order to study and complete the  
20 proposed revisions to the code and address the issues identified herein; and,  
21

22       **WHEREAS**, as the next step in the process, the Village Council will initiate drafting its  
23 neighborhood compatibility and preservation ordinance for the various residential zoning districts;  
24 and,  
25

26       **WHEREAS**, to preserve the *status quo*, it is necessary to establish a moratorium on the  
27 issuance of building permits for developments that are within the Village, such temporary  
28 moratorium to apply to all residentially zoned properties over an acre in size within the Village for  
29 four months to complete the study and adoption of the neighborhood protection ordinance,  
30 whichever comes first; and,  
31

32       **WHEREAS**, to fully preserve the *status quo* it is necessary to implement the pending  
33 legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2<sup>nd</sup> DCA 1980).  
34

35       **BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE**  
36 **VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**  
37

38       **Section 1.**   Moratorium Imposed. Upon the date of enactment of this ordinance, no  
39 Land Development Regulation proposals or amendments, development permits, including, but not  
40 limited to, a re-zoning or change in zoning district boundaries, special exception, site plan approval,  
41 building permit, certificate of use, Development of Regional Impact Application for Development  
42 Approval, variance, plat or subdivision approval shall be processed or considered by the Village for  
43 the residential zoning districts for properties over an acre during the time period that the  
44 moratorium is in effect. This moratorium shall remain in effect for four (4) months through  
45 November 9, 2012, or until such time as an ordinance establishing the new rules is adopted,

1 whichever comes first. This moratorium may be extended beyond the period contemplated in order  
2 to complete the process of enacting the neighborhood protection ordinance. The moratorium shall  
3 apply to all residentially zoned properties and all Live Work zoned properties exceeding an acre in  
4 size.

5  
6 **Section 2.** Exemptions. The following proposals to amend the Land Development  
7 Regulations, development permits, and applications for development permits shall be exempted  
8 from the provisions of this Ordinance:

9  
10 (1) Development permits, such as site plan applications or building permit applications  
11 for the purpose of repair, rehabilitation of an existing structure;

12 (2) Development order relating to concurrency;

13 (3) Vested rights special permit;

14 (4) Construction, repair, or rebuilding of structures in existence or with approved  
15 construction permit obtained on or before date of enactment of this ordinance.

16 (5) Building permits or development orders for properties subject to the restrictions  
17 herein may be issued for any and all projects, if the project does not increase the size or footprint of  
18 the existing building or structure, a remodeling or renovation of an existing structure that does not  
19 increase square footage, height or intensity of use; it being the intent of this Ordinance that building  
20 permits for the repair or replacement of existing structures, or parts thereof, shall be allowed during  
21 the moratorium.

22 (6) Emergency repairs, including life safety repairs, shall be entitled to proceed during  
23 the moratorium.

24 (7) The commercial districts, and the mixed-use districts (except for the Live Work  
25 subdistrict within the FT&I mixed use district - Live Work Neighborhood subdistrict.

26 (8) Residentially zoned properties of an acre or less.

27  
28 **Section 3.** Waivers. The Village Council, after public hearing, may grant a waiver of the  
29 moratorium where the applicant can show the following: That the proposed development complies  
30 with the existing land development regulations; and that the proposed development satisfies the  
31 objective of the Village Council in ordering a moratorium. For example, if the Village Council is  
32 considering increasing the minimum setback in a residential zoning district by two (2) feet, and the  
33 applicant demonstrates that it complies with the proposed modification of the setback, the Village  
34 Council, after public hearing may grant a waiver of the moratorium. The waiver will not hinder the  
35 intent of the Village Council in its proposed amendment to these regulations.

36  
37 **Section 4.** This moratorium may be extended beyond the date of approval in order to  
38 complete the neighborhood protection ordinance if the Village Council deems it necessary in order  
39 to enact land development regulations to implement the plan.

40  
41 **Section 5.** Nothing in this ordinance should be construed or applied to abrogate the  
42 vested right of a property owner to develop or utilize his/her property in any other way

1 commensurate with zoning and other regulations, including any required renewal of permits for  
2 existing legally erected premises.

3  
4 **Section 6.** All ordinances or parts of ordinances in conflict with the provisions of this  
5 ordinance are repealed.

6  
7 **Section 7.** If any section, clause, sentence, or phrase of this ordinance is for any reason  
8 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the  
9 validity of the remaining portions of this ordinance.

10  
11 **Section 8.** This ordinance shall take effect immediately upon enactment.

12  
13 PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

14  
15 First Reading: \_\_\_\_\_

16 Second Reading: \_\_\_\_\_

17  
18  
19 Attest: \_\_\_\_\_

20 Meighan Alexander  
21 Village Clerk

\_\_\_\_\_  
Shelley Stanczyk  
Mayor

22  
23 APPROVED AS TO FORM:

24  
25 \_\_\_\_\_  
26 Eve A. Boutsis  
27 Village Attorney

28  
29 FINAL VOTE AT ADOPTION:

30  
31 Council Member Patrick Fiore \_\_\_\_\_

32  
33 Council Member Howard Tendrich \_\_\_\_\_

34  
35 Council Member Joan Lindsay \_\_\_\_\_

36  
37 Vice-Mayor Brian W. Pariser \_\_\_\_\_

38  
39 Mayor Shelley Stanczyk \_\_\_\_\_



1           **WHEREAS**, the commercial districts, and the mixed-use districts (except for the Live Work  
2 sub-district within the FT&I mixed use district), shall be exempt from this moratorium ordinance;  
3 and,  
4

5           **WHEREAS**, the neighborhood protection regulations should simplify the current process  
6 of imposing conditions on these developments, and provide a fair and equitable system for all by  
7 defining specific criteria for: setbacks, buffers, construction staging, athletic fields and amenities,  
8 landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological,  
9 unity of title, enforcement, and structures, amongst other issues; and,  
10

11           **WHEREAS**, the Mayor and Village Council desire to preserve the *status quo*, except as  
12 provided below, regarding existing zoning designations of property in the Village during a  
13 moratorium to impose the neighborhood protection regulations; and,  
14

15           **WHEREAS**, when an ordinance may affect land use, it must be enacted under the same  
16 procedures which govern zoning and rezoning, as a moratorium temporarily prohibits a person from  
17 building upon his/her property, and is considered a substantial restriction upon land use; *City of*  
18 *Sanibel v. Buntrock*, 409 So.2d 1073, 1075 (Fla. 2d DCA 1981); and,  
19

20           **WHEREAS**, the Village Council seeks to implement this ordinance, creating a four (4)  
21 month moratorium within the residential zoning districts and the Live Work subdistrict within the  
22 FT&I mixed use district for properties over one acre in size that are using or intend to use the  
23 property for a non-residential use, in order to study and complete the proposed revisions to the code  
24 and address the issues identified herein; and,  
25

26           **WHEREAS**, as the next step in the process, the Village Council will initiate drafting its  
27 neighborhood compatibility and preservation ordinance for the various residential zoning districts;  
28 and,  
29

30           **WHEREAS**, to preserve the *status quo*, it is necessary to establish a moratorium on the  
31 issuance of building permits for developments that are within the Village, such temporary  
32 moratorium to apply to all nonresidential uses with the residentially zoned properties over an acre in  
33 size within the Village for four months to complete the study and adoption of the neighborhood  
34 protection ordinance, whichever comes first; and,  
35

36           **WHEREAS**, to fully preserve the *status quo* it is necessary to implement the pending  
37 legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2<sup>nd</sup> DCA 1980).  
38

39           **BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE**  
40 **VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**  
41

42           **Section 1.** Moratorium Imposed. Upon the date of enactment of this ordinance, no  
43 Land Development Regulation proposals or amendments, development permits, including, but not  
44 limited to, a re-zoning or change in zoning district boundaries, special exception, site plan approval,  
45 building permit, certificate of use, Development of Regional Impact Application for Development

1 Approval, variance, plat or subdivision approval shall be processed or considered by the Village for  
2 nonresidential uses located within the residential zoning districts for properties over an acre during  
3 the time period that the moratorium is in effect. This moratorium shall remain in effect for four (4)  
4 months through November 9, 2012, or until such time as an ordinance establishing the new rules is  
5 adopted, whichever comes first. This moratorium may be extended beyond the period  
6 contemplated in order to complete the process of enacting the neighborhood protection ordinance.  
7 The moratorium shall apply to all nonresidential uses located within residentially zoned properties  
8 and all Live Work zoned properties exceeding an acre in size.

9  
10 **Section 2.** Exemptions. The following proposals to amend the Land Development  
11 Regulations, development permits, and applications for development permits shall be exempted  
12 from the provisions of this Ordinance:

- 13  
14 (1) Development permits, such as site plan applications or building permit applications  
15 for the purpose of repair, rehabilitation of an existing structure;
- 16 (2) Development order relating to concurrency;
- 17 (3) Vested rights special permit;
- 18 (4) Construction, repair, or rebuilding of structures in existence or with approved  
19 construction permit obtained on or before date of enactment of this ordinance.
- 20 (5) Building permits or development orders for properties subject to the restrictions  
21 herein may be issued for any and all projects, if the project does not increase the size or footprint of  
22 the existing building or structure, a remodeling or renovation of an existing structure that does not  
23 increase square footage, height or intensity of use; it being the intent of this Ordinance that building  
24 permits for the repair or replacement of existing structures, or parts thereof, shall be allowed during  
25 the moratorium.
- 26 (6) Emergency repairs, including life safety repairs, shall be entitled to proceed during  
27 the moratorium.
- 28 (7) The commercial districts, and the mixed-use districts (except for the Live Work  
29 subdistrict within the FT&I mixed use district - Live Work Neighborhood subdistrict.
- 30 (8) Residentially zoned properties of an acre or less.
- 31 (9) Residentially zoned properties not being utilized for a nonresidential purpose.
- 32

33 **Section 3.** Waivers. The Village Council, after public hearing, may grant a waiver of the  
34 moratorium where the applicant can show the following: That the proposed development complies  
35 with the existing land development regulations; and that the proposed development satisfies the  
36 objective of the Village Council in ordering a moratorium. For example, if the Village Council is  
37 considering increasing the minimum setback in a residential zoning district by two (2) feet, and the  
38 applicant demonstrates that it complies with the proposed modification of the setback, the Village  
39 Council, after public hearing may grant a waiver of the moratorium. The waiver will not hinder the  
40 intent of the Village Council in its proposed amendment to these regulations. The standard of  
41 review for such waivers shall be for the applicant to provide proof of an economic or other  
42 hardship, extenuation circumstances, and that the application will not be deleterious to the intent of  
43 the moratorium. Mailed notice shall be as is provided under 30-30.11(o). The advertisement must be

1 run in the newspaper at least 10 days prior to the public hearing. The notice of public hearing shall  
2 be placed on the Village's website. The mailed notice be shall issue at least 15 days prior to the  
3 hearing date, and posted on the Village's website by the 15th day prior.  
4

5 **Section 4.** This moratorium may be extended beyond the date of approval in order to  
6 complete the neighborhood protection ordinance if the Village Council deems it necessary in order  
7 to enact land development regulations to implement the plan.  
8

9 **Section 5.** Nothing in this ordinance should be construed or applied to abrogate the  
10 vested right of a property owner to develop or utilize his/her property in any other way  
11 commensurate with zoning and other regulations, including any required renewal of permits for  
12 existing legally erected premises.  
13

14 **Section 6.** All ordinances or parts of ordinances in conflict with the provisions of this  
15 ordinance are repealed.  
16

17 **Section 7.** If any section, clause, sentence, or phrase of this ordinance is for any reason  
18 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the  
19 validity of the remaining portions of this ordinance.  
20

21 **Section 8.** This ordinance shall take effect immediately upon enactment.  
22

23  
24 PASSED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.  
25

26 First Reading: \_\_\_\_\_  
27

28 Second Reading: \_\_\_\_\_  
29

30  
31 Attest: \_\_\_\_\_

32 Meighan Alexander  
33 Village Clerk

\_\_\_\_\_  
34 Shelley Stanczyk  
35 Mayor

36 APPROVED AS TO FORM:  
37

\_\_\_\_\_  
38 Eve A. Boutsis  
39 Village Attorney  
40

41 FINAL VOTE AT ADOPTION:  
42

43 Council Member Patrick Fiore \_\_\_\_\_  
44

- 1 Council Member Howard Tendrich \_\_\_\_\_
- 2
- 3 Council Member Joan Lindsay \_\_\_\_\_
- 4
- 5 Vice-Mayor Brian W. Pariser \_\_\_\_\_
- 6
- 7 Mayor Shelley Stanczyk \_\_\_\_\_

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**RESOLUTION NO. 2012-45**

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING IN PROGRESS PURSUANT TO SECTION 30-30.10; TO CREATE AN ORDINANCE IMPOSING A MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS BY THE EARLIER OF FOUR MONTHS OR THE FINAL ADOPTION OF THE VILLAGE'S REVISIONS TO THE LAND DEVELOPMENT CODE TO CREATE NEIGHBORHOOD PRESERVATION AND COMPATIBILITY REGULATIONS; THIS ZONING IN PROGRESS RESOLUTION SHALL RESULT IN THE DRAFTING OF A MORATORIUM ORDINANCE IN ORDER TO COMPLETE THE NEW NEIGHBORHOOD PRESERVATION AND COMPATIBILITY REGULATIONS; PROVIDING AN EFFECTIVE DATE. [Council Person Joan Lindsay].**

WHEREAS, the Mayor and Village Council are designated the local planning agency; have previously undertaken the necessary studies; and adopted a Comprehensive Plan to guide and control growth and development in the Village; and,

WHEREAS, in 2009 the Village Council adopted its own land development regulations for the various zoning districts contemplated in the Village's Comprehensive Plan; and,

WHEREAS, a majority of the Village Council, on its own initiative during a Committee of the Whole meeting held on April 16, 2012, indicated a desire to review the Land Development Code to ensure that the guidelines provide development standards for nonresidential development in residential zoning areas to ensure neighborhood preservation and compatibility; and,

WHEREAS, a neighborhood ordinance may be needed to preserve the residential character and quality of life that Village residents expect; and,

WHEREAS, the primary intent of such an ordinance is to provide design guidelines for non-residential development in residential zoning areas in the Village of Palmetto Bay; and,

WHEREAS, the commercial districts, the mixed-use districts (except for the Live Work - Residential Overlay District of Comprehensive Plan), and residential properties of one acre or less shall be exempt from this zoning in progress resolution and proposed moratorium ordinance; and,

WHEREAS, the neighborhood preservation and compatibility regulations should simplify the current process of imposing conditions on these developments, and provide a fair and equitable system for all by defining specific criteria for: setbacks, buffers, construction staging, athletic fields and amenities, landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological, unity of title, enforcement, and structures, amongst other issues; and,

WHEREAS, the Village has several chapters within the Land Development Code that may need to be revised, after study, in order to implement the proposed neighborhood preservation and compatibility regulations; and,

1  
2 WHEREAS, the Mayor and Village Council desire to preserve the *status quo*, except as  
3 provided below, regarding existing zoning designations of property in the Village during a  
4 moratorium to impose the neighborhood preservation and compatibility regulations; and,  
5

6 WHEREAS, the Village Council seeks to implement an ordinance, creating a four (4) month  
7 moratorium within the single family and multifamily residential districts for parcels exceeding one  
8 acre in size, as well as the Live Work Neighborhood, Franjo Triangle Residential Overlay District, in  
9 order to study and complete the proposed revisions to the code and address the issues identified  
10 herein; and,  
11

12 WHEREAS, to preserve the *status quo* it is necessary to establish a moratorium on the  
13 issuance of building permits for developments, and/or certificates of use that are within the Village  
14 Residential Districts, such temporary moratorium to apply to all residential properties within the  
15 Village for a four (4) month period; and,  
16

17 WHEREAS, to fully preserve the *status quo* it is necessary to implement the pending  
18 legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2<sup>nd</sup> DCA 1980).  
19

20 BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE  
21 OF PALMETTO BAY, FLORIDA, AS FOLLOWS:  
22

23 Section 1. Upon the date of approval of this resolution, staff shall comply with 30-  
24 30.10, to create an ordinance for first reading imposing a four (4) month moratorium, and as such,  
25 in the interim, no building permits, certificates of use, development orders, including but not limited  
26 to site plans, shall be submitted or issued for developments in all residential zoning districts within  
27 the Village for applications for development on properties exceeding one acre in size or a grouping  
28 of properties exceeding one acre in size that would be combined for a unified development plan.  
29 This zoning in progress resolution shall remain in effect until the adoption of the Village's  
30 moratorium ordinance, or shall expire within 90 days, which ever comes first.  
31

32 Section 2. Emergency repairs, including life safety repairs, shall be entitled to proceed  
33 during the zoning in progress.  
34

35 Section 3. The Village Council approves/denies this proposed zoning in progress  
36 resolution. The Village Council has determined that a moratorium pending the preparation of a  
37 detailed and comprehensive analysis of the area in question is reasonably necessary and desirable,  
38 and as such, the Village Council approves this zoning in progress resolution; and order a fixed time,  
39 not to exceed 90 calendar days, within which Village Staff shall report to the Village Council with its  
40 report, a proposed ordinance amending these regulations, and recommendations relating to a  
41 potential moratorium.  
42

43 Section 4. Upon adoption of the zoning in progress resolution, the Village Clerk shall  
44 publish the adopted resolution in a newspaper of general circulation published in the Village, or  
45 Miami-Dade County, Florida within ten days following the date of adoption. The commercial  
46 districts, the mixed use districts (other than the Live Work subdistrict within the Franjo Triangle &

1 US I zoning district) and residentially zoned properties of an acre or less are exempt from the  
2 moratorium procedures.  
3

4 Section 5. During the period of time that the Village is considering a moratorium  
5 ordinance, no permit(s), certificate(s) of use, or development order(s) of any kind shall be issued if  
6 issuance would result in the nonconforming or unlawful use of the subject property should the  
7 moratorium, text amendment, or zoning district change be finally enacted by the Village Council.  
8 The period of time of the moratorium on permits shall begin on the earlier of: (A) Village Council  
9 Adoption of Zoning in Progress Resolution or (B) Notice has been given as required by law of the  
10 initial public hearing before the Village Council on the amendment to these regulations.  
11

12 Section 6. Nothing in this resolution should be construed or applied to abrogate the  
13 vested right of a property owner to develop or utilize his/her property in any other way  
14 commensurate with zoning and other regulations, including any required renewal of permits for  
15 existing legally erected premises.  
16

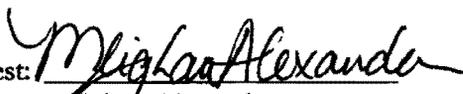
17 Section 7. Notwithstanding the adoption of this zoning in progress or the upcoming  
18 moratorium ordinance, the building official may authorize the issuance of building permits for  
19 nondeleterious items including, but not limited to: fences, interior repairs or remodeling, general  
20 repairs and similar matters, where he determines that such permit(s) will not affect the outcome of  
21 the planning study; provided, however, that with regard to any particular moratorium, the Village  
22 Council may by ordinance increase or decrease allowable exemptions and may by ordinance provide  
23 either a supplemental or exclusive procedure for acting upon requests for exemptions. Such  
24 procedure may vest jurisdiction and responsibility for acting upon requests for exemptions in the  
25 planning and zoning director, with the input of the Village Manager and Building Official.  
26

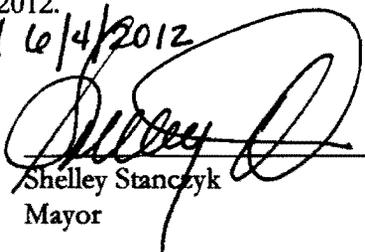
27 Section 8. This ordinance shall take effect immediately upon enactment.  
28

29 PASSED AND RESOLVED this 21st day of May, 2012.

↳ executed 6/4/2012

30  
31  
32  
33 Attest:

  
34 Meighan Alexander  
35 Village Clerk  
36

  
37 Shelley Stanczyk  
38 Mayor  
39

40 APPROVED AS TO FORM:  
41

  
42 Eve A. Boutsis  
43 Village Attorney  
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45  
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1  
2 FINAL VOTE AT ADOPTION:  
3  
4 Council Member Patrick Fiore NO  
5  
6 Council Member Howard Tendrich NO  
7  
8 Council Member Joan Lindsay YES  
9  
10 Vice-Mayor Brian W. Pariser YES  
11  
12 Mayor Shelley Stanczyk YES




---

To: Honorable Mayor and Village Council

Date: July 2, 2012

From: Eve A. Boutsis, Village Manager

RE: HPB Updates -Second Reading

---

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL,  
OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING  
DIVISION 30-150, ENTITLED HISTORIC PRESERVATION, OF  
THE VILLAGE'S LAND DEVELOPMENT CODE, TO BE  
CONSISTENT WITH SECTION 16A, ENTITLED "HISTORIC  
PRESERVATION," OF THE MIAMI-DADE CODE OF  
ORDINANCES, WITH REGARDS TO AUTHORITY,  
RESPONSIBILITIES AND CRITERIA; PROVIDING FOR A  
LEGISLATIVE REVIEW CLAUSE; PROVIDING FOR  
ORDINANCES IN CONFLICT; CODIFICATION;  
SEVERABILITY; AND AN EFFECTIVE DATE**

**BACKGROUND:**

The proposed ordinance seeks to update Division 30-150 entitled: "Historic Preservation," (HP) in order to align the advisory role of the Historic Preservation Board and Village Council consistent with Miami-Dade County Ordinance 16A; to clarify certain provisions including updated definitions; to amend the appointment and term of Board Members; and to provide for a legislative review clause.

On June 18, 2007, the Village of Palmetto Bay adopted a Historic Preservation Code (Ord. No. 07-28) to facilitate the "protection, enhancement and perpetuation of properties of historical, cultural, archeological, paleontological, aesthetic and architectural merit[.]" (§30-150.1). The Ordinance created the Historic Preservation Board to serve as the advisory body to the Village Council, who in turn were assigned authority to bestow historic designation on property(ies) and to authorize development certificates permitting the alteration or demolition of designated properties and structures.

Miami-Dade County, through its Constitutional Home Rule Authority requires all governments which administer a historic preservation program to conform to the County Code. Therefore, pursuant to Section 16A.3.1(2)(c), of the Miami-Dade County Code of Ordinances, for the Village to have properly assigned designation and certification authority to itself (i.e. the Council), the Ordinance would have had to of been adopted by 2003. Due to this Rule, Miami-Dade County is the final decision maker. If it is the desire for the Council to continue to participate in this process, albeit in a limited advisory capacity, the

ordinance, which was adopted in 2007, must be amended to reflect all final designation and certification authority to be with Miami-Dade County. In order to undertake this modification to be consistent with the County's Home Rule Authority, other changes to the ordinance are required including: an update of the definitions and striking of the appeals clause as the Council would no longer act as the final decision making body as to historic designation.

In light of the foregoing, it is now incumbent upon the Village to decide what its continued role is to be in the designation and certification processes. To date, and in fulfillment of Policy 3.1.8 of the Village's Comprehensive Plan, a survey was completed identifying potential structures and buildings within the Village that may be eligible for historic designation. That survey included twenty-five (25) homes and four (4) segments of oolitic rock walls adjacent to Old Cutler Road. Modification of the Ordinance as proposed would permit the continued participation of the Village in an advisory capacity to the County, in the official designation of the above properties. It is important to note, however, all historic designation applications must be accompanied by a designation report, the cost of which is to be borne by the Village or the applicant, given the County's Historic Preservation Office is no longer adequately staffed to perform that aspect of the work. Thus, should the Village decide it is in its interest to pursue those designations and participate in the process, in a duplicate advisory capacity (Historic preservation Board review, then final advisory recommendation by the Village Council), the Village Council would be required to adopt the proposed changes to 30-150. The Village Council would also need to provide appropriate funding to complete the necessary designation reports.

Should the Village Council choose to continue its participation in the designation process, and to include the Historic Preservation Board in that process, it is suggested, as provided in the proposed Ordinance, that the terms of the Board members be extended from one (1) year to two (2) years. The selection of Advisory Board Members was not modified. The Village Council, during first reading elected not to change the selection process from the process already provided in the ordinance, to wit; each council person may select an appointee, with confirmation of the selection by the entire council. The change in tenure of Board Members is recommended due to the technical nature of the Board's review and the time it may likely take to complete consideration of the properties and structures identified in the 2008 survey.

The proposed ordinance provides for a Legislative Review clause, which will permit the Historic Preservation Board to sunset on October 1, 2014, unless the Village Council reauthorizes the Ordinance thus, allowing for the Board to complete their principal task of reviewing the properties identified in the 2008 survey. It is worth noting that, notwithstanding the oolitic wall segments, the twenty-five (25) identified properties are all privately owned, and the individual property owners may not be interested in having their private homes historically designated.

## **ANALYSIS**

The proposed ordinance was reviewed for consistency with the criteria established in Section 30-30(b). The Background section provided above shall be considered supplemental information to this analysis and thusly shall be incorporated into the individual criteria therein. 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 proposed amendment is consistent with Comprehensive Plan as per the following Objectives and Policies:

**Objective 1.5 Historic and Environmental Resources and Natural Systems.** Protect and enhance, to the maximum extent possible, all environmentally important natural systems and historical resources existing within the Village.

**Policy 1.5.2.** Encourage the protection of all identified, and yet unidentified, historical and archeological structures and sites within the Village (see Housing Element 3.1.8) through appropriate land development regulations, comprehensive review of development applications, public acquisition decisions, and historic designations. To this end, the Village shall pursue historic designation and/or rehabilitation opportunities for the property at 17301 Old Cutler Road to preserve public access to the site and the waterfront.

**Policy 1.5.3.** By January 2006, request to the appropriate state and county agencies and evaluation of the unique low rock walls along SW 152 Street for possible designation as a unique and historic transportation feature within the Village, and if found appropriate, work with these agencies to implement recommended protective measures.

**Policy 3.1.8.** By July 2007, survey existing housing stock for historically significant structures and determine whether or not the Village should implement a historic preservation program.

**Objective 6.10 Archeological and Historical Resources.** Ensure further land development activities incorporate appropriate measures to prevent damage to archaeologically and historically significant resources in the Village of Palmetto Bay to the maximum extent possible.

The ordinance as proposed provides a vehicle to protect and preserve properties of interest to the Village while providing for an advisory role in Miami Dade County's historic designation authority.

**Finding:** Consistent

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

**Analysis:** The proposed amendment brings the Historic Preservation code into compliance with Miami-Dade County, as required by the Miami-Dade County Home Rule Power authority. The ordinance provides for the continued advisory role of the Historic Preservation Board to the Village Council, who in turn forwards a recommendation to the County with regard to historic designations and issuance of development certificates.

**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 proposed amendment brings the Village's Historic Preservation Code into compliance with Section 16A of Miami-Dade County's Code of Ordinances, as required by the County's Home Rule Authority.

**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.

**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.

**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:** It is not clear whether the historic designation will necessary affect the value of a property be it positively or negatively as many factors go into determining the value of land and their structures thereupon.

**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 within the Village's zoning districts and it does not affect the natural environment as described above.

**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 the code into compliance with Section 16A of the Miami-Dade County Code of Ordinances.

**Findings:** Consistent

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

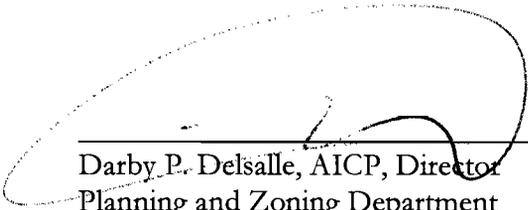
**Finding:** As determined by the Village Council.

**FISCAL/BUDGETARY IMPACT:**

The fiscal impact on the Village should it seek to pursue designation of the 25 homes and the four (4) oolitic rock wall segments will vary based on how many of the surveyed properties/structures are pursued for consideration. Preliminary estimate for the cost to complete a designation report is \$3,500. This cost, plus the cost of any mailer, will be borne by the Village for those properties where it is the applicant.

**RECOMMENDATION:**

Approval.



\_\_\_\_\_  
Darby P. Delsalle, AICP, Director  
Planning and Zoning Department

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

**AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL, OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING DIVISION 30-150, ENTITLED "HISTORIC PRESERVATION," OF THE VILLAGE'S LAND DEVELOPMENT CODE, TO BE CONSISTENT WITH SECTION 16A, ENTITLED "HISTORIC PRESERVATION," OF THE MIAMI-DADE CODE OF ORDINANCES, WITH REGARDS TO AUTHORITY, RESPONSIBILITIES AND CRITERIA; PROVIDING FOR A LEGISLATIVE REVIEW CLAUSE; PROVIDING FOR ORDINANCES IN CONFLICT; CODIFICATION SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, on June 18, 2007, the Village of Palmetto Bay adopted Division 30-150, entitled Historic Preservation (Ord. No. 07-28), with the intent to preserve and record the history of the development of the Village; and,

**WHEREAS**, the Ordinance created the Village's Historic Preservation Board, granting it the authority to approve various development certificates for historically designated properties and to recommend to the Mayor and Village Council, buildings and structures for historic designation; and,

**WHEREAS**, Miami-Dade County, under its Home Rule Authority, has a county-wide Historic Preservation Ordinance at Section 16A of the Miami-Dade County Code of Ordinances, which is applicable to the entire county and all municipalities, thus preempting the authorities granted under the Village's Code; and,

**WHEREAS**, though Village is permitted to create its own historic code, it may only serve in an advisory capacity to the appropriate County board/agency; and,

**WHEREAS**, pursuant to Object 6.10 of the Village's Comprehensive Plan, a survey was completed identifying potential structures and buildings within the Village that may be eligible for historic designation; and,

**WHEREAS**, it is the Village's desire to fulfill that Objective and consider those structures and buildings for historic designation, but to do so the existing Ordinance must be amended to properly assign such final authority to the County; and,

**WHEREAS**, once the work of the Historic Preservation Board and Village Council completes that review, that this Ordinance may be subject to additional legislative review or be allowed to sunset effective October 1, 2014.

**NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**

**Section 1.** The above whereas clauses are incorporated by reference herein.

**Section 2.** Chapter 30, of the Village's Land Development Code, at Division 30-150, Section, entitled "Historic Preservation", is amended to read as follows:

Chapter 30  
ZONING

\* \* \*

Article II. Village of Palmetto Bay, Florida-Land Development Code

\* \* \*

DIVISION 30-150. - HISTORIC PRESERVATION

30-150.1. - Declaration of Legislative Intent.

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of historical, cultural, archeological, paleontological, aesthetic and architectural merit are in the interests of the health, prosperity and welfare of the people of Village of Palmetto Bay. Therefore, this Division is intended to:

(a) Effect and accomplish the protection, enhancement and perpetuation of buildings, structures, improvements, landscape features, paleontological and archeological resources of sites and districts which represent distinctive elements of the county's cultural, social, economic, political, scientific, religious, prehistoric and architectural history;

(b) Safeguard the Village and Miami-Dade County's historical, cultural, archeological, paleontological and architectural heritage, as embodied and reflected in such individual sites, districts and archeological zones;

(c) Foster civic pride in the accomplishments of the past;

(d) Protect and enhance the Village's attraction to visitors and the support and stimulus to the economy thereby provided; and

(e) Promote the use of individual sites and districts for the education, pleasure and welfare of the people of Village of Palmetto Bay.

30-150.2. - Definitions.

For the purpose of this Division, the terms below shall be defined as follows:

Archeological or paleontological zone. An area designated pursuant to Section 16A of Miami-Dade County Code of Ordinances, which is likely to yield information on the paleontology, history and prehistory of Village of Palmetto Bay and Miami-Dade County based on prehistoric settlement patterns in Miami-Dade County as determined by the results of the Miami-Dade County historic survey. These zones will tend to conform to natural physiographic features which were the focal points for prehistoric and historic activities and paleontology.

Certificate of appropriateness. A certificate issued by Miami-Dade County permitting certain alterations or improvements to a designated individual site or property in a designated district.

Regular certificate of appropriateness. A regular certificate of appropriateness shall be issued Miami-Dade County for all designated properties, based on the guidelines for preservation pursuant to Section 16A of the Miami-Dade Code of Ordinances.

Certificate to dig. A certificate that gives permission for certain digging projects that may involve the discovery of as yet unknown or known archeological or paleontological sites in an archeological or paleontological zone. This certificate is issued pursuant to Section 16A of the Miami-Dade Code of Ordinances.

Certificate of recognition. A certificate issued by the board recognizing properties designated pursuant to this Division.

Demolition. The complete constructive removal of a building on any site.

Designated property. A property which has received historic preservation designation by the National Historic Register, State of Florida, or Miami-Dade County.

Districts. A collection of archeological or paleontological sites, buildings, structures, landscape features or other improvements that are concentrated in the same area and have been designated as a district pursuant to Section 16A of the Miami-Dade Code of Ordinances.

Exterior. All outside surfaces of a building or structure.

Guidelines for designation. Criteria pursuant to Section 16A of the Miami-Dade Code of Ordinances to be used by staff in determining the validity of applications for a regular certificate of appropriateness and any certificate to dig and to establish a set of guidelines for the preservation of buildings in South Florida.

Historic preservation board. An advisory board as created by this Division as described in section 30-150.3

Historic survey. A comprehensive survey compiled by the Historic Preservation Division of the Miami-Dade County Office of Community and Economic Development involving the identification, research and documentation of buildings, sites and structures of any historical, cultural, archeological, paleontological or architectural importance in Miami-Dade County, Florida.

Individual site. An archeological site, a paleontological site, building, structure, place or other improvement that has been designated as an individual site pursuant to this Division. Pursuant to Section 16A of the Miami-Dade Code of Ordinances, interior spaces may be regulated only where a building or structure is a designated individual site and where its interiors are specifically designated.

National Register of Historic Places. A federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966, as amended.

Ordinary repairs or maintenance. Work done to prevent deterioration of a building or structure or decay of or damage to a building or structure or any part thereof by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner of a designated property. As reflected on the current Miami-Dade County tax rolls or current title holder.

Undue economic hardship. Failure to issue a certificate would place an onerous and excessive financial burden upon the owner that would amount to the taking of the owner's property without just compensation.

Landscape feature. Any improvement or vegetation including, but not limited to outbuildings, walls, courtyards, fences, shrubbery, trees, sidewalks, planters, plantings, gates, street furniture and exterior lighting.

#### Sec. 30-150.3. - Creation and Membership of Advisory Board.

There is hereby created a Historic Preservation Board, as an advisory board for the Village.

(a) The Historic Preservation Board shall consist of five members, ~~to be confirmed by the Mayor and Village Council~~; each member of the Village Council shall appoint one member; the

Mayor shall appoint the chairperson of the board; and all members confirmed by the Village Council, as a whole.

(b) The board shall be comprised of architects, planners, archeologists, historians, art historians, historic preservationist. One member of the Advisory Board by virtue of the civic involvement or concern for historic preservation may be appointed to the Advisory Board.

(c) It is intended that members of the Historic Preservation Board established by this section shall be persons of knowledge, experience, mature judgment, and background, having ability and desire to act in the public interest and representing, insofar as may be possible, the various special professional training, experience, and interest required to make informed and equitable decisions concerning conservation and protection of the physical environment.

(d) The term of office of membership shall be a term of two-years for each member. Members shall be eligible for reappointment. Terms shall not automatically renew. Each Advisory Board position shall expire at the end of the two-year term and shall remain vacant until reappointment or selection of new Advisory Board member occurs.

(e) Any vacancy occurring on the Advisory Board shall be filled by the Mayor and Village Council for the remainder of the unexpired term.

(f) Special advisors may be appointed by the Mayor and Village Council upon recommendation by the Historic Preservation Board.

#### 30-150.4. - Powers and Duties of Board.

The Village recognizes through the County's Home rule authority that the designation of any property, creation of any district or listing, and the issuance of the any certificate is preempted by Miami-Dade County. The Village's Historic Preservation Board shall serve as a supplementary Advisory Board which has the authority to forward recommendations to the Mayor and Village Council with whom shall have the authority to issue recommendations to the appropriate board/agency of Miami-Dade County. The Historic Preservation Board shall have the following enumerated powers and duties:

(a) Recommend designation of individual sites, districts and archeological and paleontological zones to the Mayor and Village Council.

(b) Recommend to the Mayor and Village Council properties for designation as historic landmarks and historic landmark districts.

(d) Recommend approval or denial of certificates of appropriateness pursuant to this Division and the requirements of Miami-Dade County.

(e) Recommend to the Mayor and Village Council whether a historic landmark destroyed by fire or other natural disaster should be reconstructed. If so, the Advisory Board may recommend to the Village that an exception to the zoning code be granted.

(f) Make recommendations to the Mayor and Village Council concerning the transfer of development rights on sites designated under this Division.

(g) Increase public awareness of the value of historic conservation by developing and participating in public information programs.

(h) Make recommendations to the Mayor and Village Council concerning the utilization of grants from federal and state agencies or private groups and individuals, and utilization of Village funds to promote the preservation of archaeologically, historically and aesthetically significant sites, districts and zones.

(i) Approve historic markers and plaques and issue recognition to designated historic landmarks and historic landmark districts within the Village.

(j) Advise the Village on all matters related to the use, administration and maintenance of Village-owned designated historic landmarks and historic landmark districts.

#### 30-150.5. – Standards for Review.

Review criteria and eligibility for all recommendations issued by the Advisory Board shall be pursuant to Section 16A of the Miami Dade Code of Ordinances.

#### 30-150.6. - Procedures for designation.

Applications for historic preservation, whether reviewed by the Advisory Board or the Council, shall be consistent with Section 16A of the Miami Dade Code of Ordinances. Any recommendation of the Advisory Board shall be forwarded to the Village Council for their consideration. Final recommendation by the Council shall be forwarded to the appropriate board/agency of Miami-Dade County.

#### 30-150.7. Appeals.

(a) As both the Advisory Board and the Village Council act as advisory groups to the Miami-Dade County review for Historic Preservation, appeals of the Miami-Dade County decision shall be pursuant to the County's regulations relating to same.

30-150.8. - Enforcement of Maintenance and Repair Provisions.

Where the Historic Preservation Board or board's staff determines that any improvement within a designated historic landmark or historic district is endangered by lack of maintenance and repair, or that other improvements in visual proximity to an historic landmark or historic landmark lack maintenance and repair to such an extent as to detract from the desirable character of the historic landmark or historic landmark district, it shall request appropriate officials or agencies of the Village to require correction of such deficiencies under authority of applicable laws and regulations.

30-150.9. - Unsafe Structures.

In the event the building official determines that any structure within a designated historic landmark or historic landmark district is unsafe pursuant to the Florida Building Code, he or she shall immediately notify the Historic Preservation Board with copies of such findings. Where reasonably feasible within applicable laws and regulations the building official shall endeavor to have the structure repaired rather than demolished and shall take into consideration any comments and recommendations by the advisory board. The advisory board may take appropriate actions to effect and accomplish preservation of such structure, including, but not limited to, negotiations with the owner and other interested parties, provided that such actions do not interfere with procedures in the Florida Building Code.

30-150.10. - Economic Incentives.

It is the policy of the Village to assist the owners of historic properties to obtain applicable state and federal tax benefits for preserving historical properties. The board's decision on an application for a certificate of appropriateness shall be based upon an evaluation of the compatibility of the physical alteration or improvement with surrounding properties and, where applicable, compliance with the following:

(a) The Secretary of Interior's Standard for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, as revised from time to time; and

(b) Other guidelines/policies/plans adopted or approved by resolution or ordinance by the Village.

Sec. 30-150.11. - Penalties for Offenses.

Any person who carries out or causes to be carried out any work in violation of this Division and Miami-Dade County, Chapter 16A, shall be required to restore the subject improvement, landscape feature, or site, either to its appearance prior to the violation or in accordance with a certificate of

appropriateness approved by Miami-Dade County,. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty otherwise provided under state law.

30-150.12 Legislative Review.

This section shall stand repealed on October 1, 2014, unless reviewed and saved from repeal through reenactment by the Mayor and Village Council.

\* \* \*

**Section 3.** Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 4.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

**Section 5.** This ordinance shall not be codified in the Code of Ordinances but shall be included in the history table.

**Section 6.** 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 7.** 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 \_\_\_\_\_