To: Honorable Mayor and Village Council

Date: January 9, 2012

From: Ron E. Williams, Village Manager

RE: Alcoholic Beverages – First Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE VILLAGE'S CODE OF ORDINANCES, AMENDING DIVISION 30-130, ENTITLED "ALCOHOLIC BEVERAGES" AMENDING DISTANCE SEPARATION EXEMPTIONS FOR SPECIFIED USES; PROVIDING FOR SUNDAY PACKAGE SALES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS:

In July of 2007, the Village enacted its Alcoholic Beverages ordinance under Division 30-130, which provided for distance separations and hours and days of sales for businesses that sell alcoholic beverages. The ordinance identified specific zoning districts within the regulations as it pertained to various types of establishments engaged in such activities. This action was unnecessary as Section 30-50 already provides permitted use lists within in each of the Village's zoning districts. Adversely, by adding the zoning designation information to the Alcohol Beverages Ordinance, the regulations had an unintended effect of excluding those zoning designations within the FT&I District which permit establishments that sell such stock from the "establishment" specific criteria. The proposed ordinance seeks to correct this by developing uniform regulations based upon the "alcoholic beverage establishment" designation, while continuing to rely upon Section 30-50 to identify where in the Village such uses are generally permitted. The proposed ordinance also provides for alcohol sales at package stores (sale for off premise consumption only) on Sundays consistent with the hours of operations permitted during the remainder of the week.

FISCAL/BUDGETARY IMPACT:

There are no fiscal impacts in implementing this Ordinance.

RECOMMENDATION:

Approval

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE VILLAGE'S CODE OF ORDINANCES, AMENDING DIVISION 30-130, ENTITLED "ALCOHOLIC BEVERAGES" AMENDING DISTANCE SEPARATION EXEMPTIONS FOR SPECIFIED USES; PROVIDING FOR SUNDAY PACKAGE SALES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay adopted its Land Development Code tailored to the needs of the Village's residents and properties; and,

WHEREAS, in July of 2007, the Village enacted its Alcoholic Beverages ordinance under Division 30-130,which included distance separations exemptions for specified uses but in doing so, the Village inadvertently excluded the business districts within the Franjo Triangle and US 1 Island District (FT&I) under the ordinance; and,

WHEREAS, as is found in the B-1 and B-2 zoning districts, there are uses permitted within the FT&I district that would normally accommodate the sale of, and in some cases such as a restaurant use, the on premise consumption of alcohol; and,

WHEREAS, Division 130 of Chapter 30, entitled "Alcoholic Beverages" provides for the location, distance requirements between other establishments, religious facilities or public schools, hours and days of sales and other compliance requirements for establishments selling alcoholic beverages; and,

WHEREAS, the Mayor and Council desire to amend Division 30-130 to establish uniform alcohol distance separation requirements for specified uses across its commercial districts; and,

WHEREAS, the Village Code prohibits the sale of alcoholic beverages on Sunday; and,

WHEREAS, the Mayor and Council desire to amend the code to permit Sunday alcohol sales as is similarly now done by all jurisdictions that surround the Village.

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

Section 1. The Village of Palmetto Bay hereby amends Division 130 of Chapter 30, entitled "Alcoholic Beverages" which shall read as follows:

* * *

DIVISION 30-130

ALCOHOLIC BEVERAGES

* * *

30-130.2 EXCEPTIONS TO SPACING AND DISTANCE REQUIREMENTS.

The restrictions and spacing requirements set forth in subsection 30-130.1 above shall not apply to:

* * *

(b) Restaurants~~ in B-1, and B-2districts~~. ~~Dining rooms or restaurants located in B-1 and B-2 districts which comply with the requirements of such districts and~~which serve cooked, full course meals, daily prepared on the premises, or such other dining rooms or restaurants in other more liberal districts complying with the requirements ~~of B-1 and B-2districts~~therein and which serve cooked, full course meals, daily prepared on the premises, providing that only a service bar is used and the sale of alcoholic beverages are sold only to persons seated at tables. Sidewalk cafes in conjunction with a bonafied restaurant are exempt.

(c) Cocktail lounge-bars in restaurants. Cocktail lounge-bars as an accessory use in restaurants~~ located in B-1 and B-2 districts~~, provided the restaurant occupies no less than 4,000 square feet of gross floor space, and has accommodations for service of 200 or more patrons at tables, and provided that the restaurant prepares and serves fully cooked meals daily and contains full kitchen facilities, meaning commercial grade burners, ovens, range hood(s) and refrigeration units of such size and quantity to accommodate the occupancy content of the restaurant, and provided that the restaurant shall be prohibited from advertising itself as a bar, cocktail lounge-bar, saloon, nightclub or similar type of establishment; and further provided that once the restaurant use is terminated, the cocktail lounge use will automatically terminate. The cocktail lounge-bar in the restaurant structure shall not have separate outside patron entrances, provided, however, a fire door exit shall be permitted, when the same is equipped with panic-type hardware and locks and is maintained in a locked position except in emergencies; and provided the cocktail lounge-bar shall be so located that there is no indication from the outside of the structure that the cocktail lounge/bar is within the structure, and provided that the accessory cocktail lounge-bar is no larger that fifteen percent (15%) of the gross square footage of the restaurant, and provided that the alcoholic beverages are served for on-premises consumption only; and further provided that the operating hours for the cocktail lounge-bar shall not extend beyond the permitted hours of operation for the restaurant.

(d) Beer and wine for off-premises consumption. The sale of beer and wine as a grocery item for consumption off the premises, from grocery stores, convenience stores within the hours adopted and prescribed by the Village Council.

(e) Night clubs~~ in B-2 districts~~. Night clubs where the same are located in a hotel or apartment hotel and under the same roof, which contains at least 200 guest rooms or apartment units under the same roof, provided the exterior of any such building shall not have store fronts or give the appearance of commercial or mercantile activity as viewed from the highways.

(f) Package stores in shopping centers~~ in B-1 and B-2 districts~~. Package stores in shopping centers ~~in B-1 and B-2 districts~~ under one (1) ownership with an improved building area of not less than 40,000 square feet of floor area thereon, and with an improved and developed parking

area of not less than 200 vehicles. Only one (1) such package store will be permitted in the shopping center. ~~Said~~ The package store shall be at least 1,500 feet from any other licensed alcoholic beverage establishment and 2,500 feet from a religious facility or public school measured as otherwise provided in this ~~d~~Division.

~~(f)~~(g) Compliance with section 30-60.17, the Village's Sidewalk Cafe Ordinance.

* * *

Sec. 30-130.6. - Hours and days of sale.

No alcoholic beverages shall be sold or served within Village limits except at such hours and on such days and by such vendors as set forth below:

(a) *Establishments for package sales only.* Vendors holding a state beverage license for the sale of alcoholic beverages for consumption off the premises only, ~~shall make no sale of alcoholic beverages on Sundays, and~~ shall make no sale of alcoholic beverages during any day ~~weekdays~~ except between the hours of 8:00 a.m. and 10:00 p.m. No variance of this provision shall be allowed.

(b) *Establishments for the sale of products other than alcoholic beverages.* Vendors holding a state beverage license for the sale of alcoholic beverages may make sales of beer and wine in sealed containers for consumption off the premises during such hours as their stores legally remain open for the sale of other goods or during weekdays and Sunday except between the hours of 8:00 a.m. and 10:00 p.m. which ever is less; provided further, however, that nothing in the foregoing proviso shall be deemed to modify any of the provisions of the zoning regulations as heretofore or hereafter adopted.

(c) *Private clubs.* Vendors holding a state beverage license for the sale of alcoholic beverages for consumption on the premises in private clubs shall make no sale of such alcoholic beverages except between the hours of 8:00 a.m. and 1:00 a.m. of the following day, and shall make no sale of beer on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday; and shall make no sale of any other alcoholic beverages on Sundays, except between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday.

(d) *Hotels and apartment hotels.* Vendors holding a state beverage license from the for the sale of alcoholic beverages for consumption on the premises in hotels and motels which are restricted by the zoning regulations to making such sales to guests only, shall make no sales of such alcoholic beverages except between the hours of 8:00 a.m. and 1:00 a.m. on the following day on weekdays, and shall make no sale of beer on Sundays, except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday; and shall make no sale of any other alcoholic beverages on Sundays except between the hours of 5:00 p.m. and 1:00 a.m. on the following Monday. In hotels and motels where package sales are restricted to guests only under the zoning regulations, no such sales shall be made except between the hours of 8:00 a.m. and 10:00 p.m. on weekdays, in hotels and motels located in a proper business zone and conforming to the zoning regulations permitting unrestricted sales of alcoholic beverages. "Premises", as used in this section, shall be confined to the bar and/or cocktail lounge located in the particular hotel or motel.

(e) *Restaurants.* Vendors holding a state beverage license for the sale of alcoholic beverages for consumption on the premises in restaurants, which are restricted by the zoning regulations to making such sales with the service of food only, shall make no sales of such alcoholic beverages on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. on the following day, and shall make no sales of beer and wine on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. on the following Monday; and shall make no sales of other alcoholic beverages on Sundays except between the hours of 1:00 p.m. and 1:00 a.m. on the following Monday. Sales of alcoholic beverages for consumption off the premises shall not be permitted.

(f) *Bars and cocktail lounges.* Vendors holding a state beverage license for the sale of alcoholic beverages for consumption on the premises in those bars and cocktail lounges that are not restricted by the zoning regulations to guests only, or to service with food, or the like, shall make no sales of such alcoholic beverages on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. of the following day; and shall make no sales of beer and wine on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. of the following Monday; and shall make no sales of any other alcoholic beverages on Sunday except between the hours of 5:00 p.m. and 1:00 a.m. of the following Monday; sales of beer and wine for consumption off the premises shall not be made on weekdays except between the hours of 8:00 a.m. and 1:00 a.m. of the following day; and shall not be made on Sundays except between the hours of 10:00 a.m. and 1:00 a.m. of the following Monday. Sale of other alcoholic beverages for consumption off the premises shall not be made on weekdays except between the hours of 8:00 a.m. and 10:00 p.m.; and shall not be made on Sundays.

(g) *Night clubs.* For the purpose of this Division, the term "night club" is defined as any place of business located within any building or establishment under one roof and on one floor, wherein entertainment or music or both are regularly supplied, and providing meals and refreshments prepared on the premises, and having a seating capacity of not less than 40 people at tables; having an aggregate floor space of not less 2,200 square feet; and providing a dance floor containing not less than 308 square feet, such floor space provided for dancing to be free from chairs, tables or other obstructions at all times. Any night club which holds a night club license from the Village and which holds a State beverage license for the sale of alcoholic beverages on the premises, shall be permitted to remain open, and sell alcoholic beverages for consumption on the premises from 8:00 a.m. to 4:50 a.m. of the following day during week days, and on Sundays to remain open and sell beer for consumption on the premises from 10:00 a.m. to 4:50 a.m. of the following Monday; and to remain open and sell other alcoholic beverages on Sunday for the consumption on the premises from 5:00 p.m. to 4:50 a.m. of the following Monday; and except that where the alcoholic beverages are served with meals at tables, the same may be served from 1:00 p.m. on Sunday to 4:50 a.m. on the following Monday. It is specifically provided, however, that each and every night club that may operate in the Village in accordance with this section shall close its doors and have all its patrons off its premises by not later than 5:00 a.m. of each day.

(h) *Package sales on Christmas Eve and New Year's Eve and on Sundays during the month of December.* All vendors in the Village holding valid, current State beverage licenses for the sale of alcoholic beverages for consumption off the premises (establishments for package sales only) may make sales and keep their places of business open until 12:00 midnight on Christmas Eve (December 24th) and New Year's Eve (December 31st)~~, and between the hours of 8:00 a.m. and 10:00 p.m. on Sundays during the month of December.~~

(i) *Adult entertainment club.* Adult entertainment club which has a certificate of use and which holds a State beverage license for the sale of alcoholic beverages on the premises, shall be permitted to remain open, and sell alcoholic beverages for consumption on the premises from 8:00 a.m. to 4:50 a.m. of the following day during week days, and on Sundays to remain open and sell beer for consumption on the premises from 10:00 a.m. to 4:50 a.m. of the following Monday; and to remain open and sell other alcoholic beverages on Sunday for the consumption on the premises from 5:00 p.m. to 4:50 a.m. of the following Monday. It is specifically provided, however, that each and every adult entertainment club that may operate in the Village in accordance with this section shall close its doors and have all its patrons off its premises by not later than 5:00 a.m. of each day.

(j) *Additional interpretations.* Wherever in this section it is provided that weekday sales of alcoholic beverages are permitted between any certain hour and a stated time on the following day, the term "following day" shall be deemed to include Sunday.

* * *

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.

PASSED AND ENACTED this [ ] day of _____, 2011.

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 _____

Item 11B

To: Mayor and Village Council

Date: January 12, 2012

From: Eve A. Boutsis, Village Attorney

Re: Sign ordinance revisions

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE VILLAGE'S CODE OF ORDINANCES, AMENDING DIVISION 30-90, ENTITLED "SIGN REGULATIONS"; REGULATING TEMPORARY SIGNS UNIFORMLY AS TO SIZE, AND DURATION, INCLUDING BUT NOT LIMITED TO POLITICAL SIGNS AND PERSONAL EXPRESSION SIGNS; AND PROVIDING FOR A MINIMUM 90 DAY PERIOD FOR DISPLAY OF SAID SIGNS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Mayor Shelley Stanczyk].

BACKGROUND AND ANALYSIS:

In recent months many residents and Council members have requested an amendment to Division 30-90 of the Village's Land Development Code which would limit the period of time political campaign signs can be installed on residential property and their corresponding sizes. Political speech is amongst the most protected form of speech recognized by the First Amendment of the United States Constitution. In regulating such speech, a municipality must be "content neutral" in its regulation of signage – in other words, similar types of noncommercial temporary signs must be treated uniformly, the content cannot be the basis of enforcement.

Many local communities have enacted regulations as to the size, type, length of duration for such signs, without adequately addressing the constitutional issue of "content neutrality" described above. For example, the City of Tampa provides a specific size limitation, and a 60 day posting window, with a seven (7) day removal period after the election. Fort Pierce provides a size limitation, 30 day window, and a removal period of seven days after the election. The Miami-Dade County Code categorizes political signs as a special event, uniformly regulating the size (22 by 28 inches), and requiring removal within 30 days of the special event (election), but does not provide a time regulation prior to the event. The City of Miami Beach (Section 138-134) defines "Election Signs" as signs announcing political candidates seeking public office or advocating positions relating to ballot issues. That code limits such signs to one (1) per residential building or lot, with a sign area similar to that as provided for construction signs, and no limitation on the posting period prior to election , with removal required seven days after the election to which they applied. City of Miami, 10.3.2.5, limits residential political signs to four (4) square feet in aggregate sign area their removal within thirty (30) days of the election, and provide no length of time the sign may be installed prior to an election. No political sign ordinance for Coral Gables was available at the time of this report ,

as their zoning code is at present being substantially modified. One of the deficiency with the above examples is they all failed to apply a consistent standard for all non-commercial signage. Instead, they were either individually regulated or merely tied to a more narrowly defined sign type. Such action thus results in a content based regulation.

Federal Courts have ruled that 60 day time periods for a temporary sign are content based regulations and thus have overturned such code provisions. Time to remove is much less sensitive, as long as it is uniformly handled. It is safest not to have a time period, however, if one is desired, it should be at least 90 days and as indicated above, should apply to other temporary noncommercial signs.

In consideration of the above explanation and consistent with the direction provided at prior Committee of the Whole hearings, the attached proposed ordinance also seeks to modify the current code for temporary noncommercial signs by (1) increase the sign size from 22"x38" to 620 square inches, (2) provide for a 90 day posting prior to the election, and (3) provide a seven (7) day removal period at the conclusion of the election. Staff recommends modifying the code to delineate these specific types of signs and provide the same content neutral regulation to those signs, as other temporary noncommercial signs, such as political signs. [*Café Erotica of Florida, Inc. v. St. Johns County*, 360 F.3d 1274 (Fla. 11th Cir. 2004)(11th Circuit found a size limitation on political signs unconstitutional when same did not apply to other signs). Section 30-90.4 has been modified to include language relating to reasonable, time, place and manner restrictions as to these types of signs. This change addresses the Village's intent to comply with First Amendment application by the Courts.

The following consists of research and analysis of the law as it pertains to political signs and free speech:

The Court in *Curry v. Prince George's County*, 33 F. Supp.2d 447, 452 (D. Md. 1999), undertook a detailed explanation of the First Amendment and case law applying to political speech and government regulation. Provided below is an excerpt from that opinion for your reference, with some edits to assist in the analysis and/or emphasis of certain provisions:

> The First Amendment provides, in pertinent part, that "Congress shall make no law ... abridging the freedom of speech." U.S. Const., amend. I. The Fourteenth Amendment applies this limitation to the states. *City of Ladue v. Gilleo*, 512 US 43 (1994). The Supreme Court has held that "the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *EU v. San Francisco County Dem. Cent. Comm.*, 489 US 214, 223 (1989). Moreover, "communication by signs and posters is virtually pure speech." *Arlington County Rep. Comm.*, 983 F.2d at 593 (citing *Baldwin v. Redwood*, 540 F.2d 1360, 1366 (9th Cir. 1976),cert. denied, sub nom., *Leipzig v. Baldwin*, 431 US 913 (1977)). This does not mean that all limitations on political speech are impermissible, including burdens

with respect to political signs. Signs are subject to municipal regulation because, "unlike oral speech, signs take up space and may obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation." *City of Ladue,* 512 US at 48.

The Supreme Court has recognized limitations on political signs in a variety of circumstances. In *Members of City Council v. Taxpayers for Vincent*, 466 US 789 (1984), for example, the Court upheld a ban on political signs on public property, specifically utility poles. In *Burson v. Freeman*, 504 US 191 (1992), the Court upheld a ban on temporary political signs within 100 feet of polling places. Courts have also routinely upheld regulation of signs by size and shape. Cf., e.g., *Outdoor Sys., Inc. v. City of Mesa,* 997 F.2d 604, 615 (9th Cir. 1993). Indeed, in the present case [In *Curry*] Plaintiffs raise no challenge to any portion of the County zoning ordinance that would affect the size, shape or location of campaign signs.

In analyzing whether a governmental burden upon political speech will be permitted, the conventional approach has been to begin by determining first whether the burden on the speech is content-based or content-neutral. If content-based, the Government is required to show a compelling interest before the burden will be sustained. A rule of strict scrutiny applies. See *Burson*, 504 US at 197-198. "With rare exceptions, content discrimination in regulations of the speech of private citizens on private property or in a traditional public forum is presumptively impermissible, and this presumption is a very strong one." *City of Ladue,* 521 US 43, at 59 (O'Connor, J. concurring). Even where the government has declared a policy of promoting aesthetics and traffic safety, both recognized as "substantial governmental goals," see *Arlington County Rep. Comm.* 983 F.2d at 594, restrictions intended to accomplish those interests have failed to pass strict scrutiny and have been struck down. See, e.g., *City of Ladue*, 512 US 43; *Rappa v. New Castle County,* 18 F.3d 1043 (3rd Cir. 1994); *Arlington County Rep. Comm.* 983 F.2d at 593.

If, on the other hand, the burden on the speech is deemed content-neutral, a less strict standard of scrutiny applies. The government need only show that it has a significant interest at stake, that its regulation is narrowly tailored to promote that interest, and that ample alternative means are available that would permit the desired communication. *Burson*, 504 US at 197; *Arlington County Rep. Comm.* 983 F.2d at 593.

Until *City of Ladue*, virtually all courts that considered the constitutionally of pre-election durational limitation on political campaign signs engaged in the conventional analysis and found the limitations to be content-based. [Emphasis Added]. *See, e.g., Whitton*, 54 F.3d at 1404 (8th Cir. 1995) (city ordinance found to be content-based where "the words on a sign define whether it is subject to durational limitations"); *Dimas v. City of Warren*, 939 F. Supp. 554, 556-57 (ED Mo. 1996) (ordinance

permitting temporary election signs for only 45 days prior to election "is not content-neutral"); *Orazio v. Town of North Hempstead*, 426 F.Supp. 1144, 1149 (E.D. NY 1977) (ordinance containing "pre-election time limit ... discriminates against political wall signs solely on the basis of their content"); see also *City of Antioch v. Candidates' Outdoor Graphic Serv.*, 557 F.Supp. 52, 58 (ordinance limiting posting of outdoor political signs to 60 days prior to election was viewpoint neutral, but "by singling out political signs for restrictive treatment . . . (the) ordinance clearly conflicts with ... *Metromedia, [Inc. v. San Diego*, 453 US 490 (1981)]"; *Collier v. City of Tacoma*, 854 P.2d 1046, 1053 (Wash. 1993) (en banc) (ordinances limiting posting of political signs to 60 days prior to election "fall within the realm of content-based restrictions"). Again, while recognizing aesthetics and traffic safety to be "significant government interests," none of these courts found those interests sufficiently compelling to pass the applicable strict scrutiny test. See, e.g., *McCormack v. Township of Clinton*, 872 F.Supp. 1320, 1325, n. 2 ("No court has ever held that [interests in aesthetics and traffic safety] form a compelling justification for a content-based restriction of political speech"); *Whitton v. City of Gladstone*, 832 F. Supp. 1329, 1335 (W.D. Mo. 1993) ("traffic safety and aesthetics are significant interests ... but they are not compelling interests, especially given the nature of the First Amendment rights at stake"). Accordingly, these courts held durational restrictions on political signs to be unconstitutional.

In *City of Ladue*, the Supreme Court took a different tack. 512 US 43. The Court was faced with a city ordinance that effectively banned any "cause" signs displayed from a private residence. *Id.* at 45. Among several exemptions from the prohibition were "for sale" signs. *Id.* Gilleo had been deemed in violation of the ordinance because she posted a sign in her window saying "For Peace in the Gulf." Id. But instead of pursuing the "normal inquiry . . . first, to determine whether a regulation is content-based or content-neutral, and then, based on the answer to that question, to apply the proper level of scrutiny," *Id.* at 59. (O'Connor, J., concurring), the Court assumed arguendo that the ordinance was "free of impermissible content or viewpoint discrimination," *Id.* at 53, and promptly proceeded to acknowledge the city's "interest in minimizing the visual clutter associated with signs," *Id.* at 54. The Court then launched into a broadscale encomium with respect to signs displayed on private residences, which it termed "a venerable means of communication that is both unique and important." *Id.*

The Court's comments bear quoting in □xtensor because of their relevance to the disposition of the present case: Signs that react to a local happening or express a view on a controversial issue both reflect and animate change in the life of a community. Often placed on lawns or in windows, residential signs play an important part in political campaigns, during which they are displayed to signal the resident's support for particular candidates, parties or causes. . . . They may not

afford the same opportunities for conveying complex ideas as do other media, but residential signs have long been an important and distinct medium of expression.

* * *

Displaying a sign from one's own residence often carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means. Precisely because of their location, such signs provide information about the identity of the "speaker." As an early and eminent student of rhetoric observed, the identity of the speaker is an important component of many attempts to persuade. . . . A sign advocating "Peace in the Gulf" in the front lawn of a retired general or decorated war veteran may provoke a different reaction than the same sign in a 10-year-old child's bedroom window or the same message on a bumper sticker of a passing automobile. An espousal of socialism may carry different implications when displayed on the grounds of a stately mansion than when pasted on a factory wall or an ambulatory sandwich board.

Residential signs are an unusually cheap and convenient form of communication. Especially for persons of modest means or limited mobility, a yard or window sign may have no practical substitute ... Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a handheld sign may make the difference between participating and not participating in some public debate ....

Furthermore, a person who puts up a sign at her residence often intends to reach neighbors, an audience that could not be reached nearly as well by other means (Emphasis in original).

* * *

A special respect for individual liberty in the home has long been a part of our culture and our law ...; that principle has special resonance when the government seeks to constrain a person's ability to speak there ... (Emphasis in original). Most Americans would be understandably dismayed, given that tradition, to learn that it was illegal to display from their window an 8- by 11-inch sign expressing their political views. Whereas the government's need to mediate among various competing uses, including expressive ones, for public streets and facilities is constant and unavoidable .... Its need to regulate temperate speech from the home is surely much less pressing ... " (citations and footnotes omitted), 512 U.S. at 54-58.

The Court thus assumed the content-neutrality of the ban, acknowledged the City's interest in clutter – which is to say aesthetics and traffic safety – but, given the special nature of "cause" speech emanating from private residential property, found

that ample alternative means for communicating the message did not exist and struck the ordinance down. *City of Ladue*, 512 US at 58.

The City of Ladue's ordinance, to be sure, established a nearly total ban on residential signs. But the language of the Court's opinion leaves little room to argue that an extended durational ban on such signs, whether the message supports a cause or a political candidate, is any more acceptable. In the first place, there is no natural terminal date for a "cause" sign; a cause and a private resident's passion for it exists as long as the cause exists. Yet the Court in Ladue speaks interchangeably of "cause" and "political" signs. *See* 512 U.S. at 55. Moreover, a number of problems arise in attempting to make any distinction between the two. To recur to Plaintiffs' arguments on the void-for-vagueness issue:

When does a "cause" sign cease being a "cause" sign and become a political one? If a "cause" sign is linked to a political candidate or a ballot question and the candidate or ballot fails, what happens if the private resident wishes to continue promoting the cause after the election? Ultimately, why is the expression of personal support for a viable reform candidate capable of bringing immediate changes to government any less deserving of support than the expression of an opinion in support of a cause that is fringe in nature and which has little or no hope of ever becoming a reality?

In this Court's view, such questions effectively answer themselves. There is no distinction to be made between the political campaign signs in the present case and the "cause" sign in *City of Ladue*. When political campaign signs are posted on private residences, they merit the same special solicitude and protection established for cause signs in *City of Ladue*.

City of Ladue does state that the Court's decision that the city's "ban on almost all residential signs violates the First Amendment by no means leaves the City powerless to address the ills that may be associated with residential signs." 512 U.S. at 58. In a footnote the Court suggests that signs, "whether political or otherwise," displayed by residents for a fee or offsite commercial advertisements on residential property might be regulated. *Id.* at n. 17. The Court also observes that it was "not confronted [in the case] with mere regulations short of a ban," *Id.*, and that it was "confident that more temperate measures could in large part satisfy Ladue's stated regulatory needs without harm to the First Amendment rights of its citizens." 512 U.S. at 58-59.

But the Court's principal argument with regard to limitations upon excessive sign use is that private residents will tend to impose their own limitations: It bears mentioning that individual residents themselves have strong incentives to keep their own property values up and to prevent "visual clutter" in their own yards and neighborhoods – incentives markedly different from those of persons who erect

> signs on others' land, in others' neighborhoods, or on public property. Residents' self-interest diminishes the danger of the "unlimited" proliferation of residential signs that concerns the *City of Ladue*. 512 U.S. at 58.
>
> Given this rationale as well as the overall thrust of *City of Ladue*, this Court concludes that the most reasonable construction to put upon the Supreme Court's reference to "mere regulations short of a ban" is that while they may include size, shape and location restrictions upon campaign signs, they may ***not*** include durational ones. [Emphasis Added]. Extended durational bans on political speech for all but 45 days before and 10 days after a political election, are bans nonetheless – inconsistent with the "venerable" status that the Supreme Court has accorded to individual speech emanating from an individual's private residence.
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To survive constitutional scrutiny, the duration a sign that can be posted should be tied to the durability of the material the sign is made from, not the content of the sign. A municipality should not regulate political signs separately from other temporary or non-commercial signage. Rather, such signs should be lumped together. Temporary and non-commercial signage can be provided a deadline on removal of the sign after the end of the "event" that triggers it. Regulation of political advertising, like all temporary advertising, must be "non-discriminatory." It is "noncommercial speech" that is highly scrutinized by the Courts. Campaign signs are a type of temporary sign, and their size, number, location, requirements for removal, and other aspects must be regulated uniformly with other speech. Though the safest course is to avoid duration limits for political signs, the issue is often a concern for local government, as it is the case for the Village of Palmetto Bay. The US Supreme Court, in 1994, in *City of Ladue v. Gilleo*, 512 US 43, ruled that a local ordinance precluding certain signs, and regulating the time for installing the "Peace in Gulf" sign was discriminatory. The concept was that some prohibitions foreclosing entire media of expression may suppress too much speech, in violation of the free speech clause of the Federal Constitution's First Amendment, even if such prohibitions are completely free of content discrimination or viewpoint discrimination. The Courts have indicated that municipal ordinances regulating the display of signs are properly subject to attack as violating the free speech clause on the ground that such ordinances prohibit too much protected speech. A city ordinance prohibiting homeowners from displaying any signs on their property except residence identification signs, and signs warning of safety hazards, violates the rights of city residents under the free speech clause of the Federal Constitution's First Amendment, because (1) although the ordinance is supported by the city's valid interest in minimizing visual clutter, this interest is not compelling; (2) the city has almost completely foreclosed a venerable means of communication that is both unique and important, even if it is possible that flags, which are not restricted by the ordinance, could be used in an unconventional manner to carry the same messages; (3) adequate substitutes do not exist for the medium of speech that the city has closed off, and thus the ordinance is not a valid regulation of the time, place, or manner of speech even if city residents remain free to convey their desired messages by other means--as (a) displaying a sign from one's own residence often carries a message quite

distinct from placing the same sign someplace else, or conveying the same text or picture by other means, (b) residential signs are an unusually cheap and convenient form of communication, and (c) the audience of neighbors intended to be reached by a residential sign cannot be reached nearly as well by other means; and (4) the government's need to regulate temperate speech from the home is much less pressing than the government's need to mediate among various competing expressive uses for public streets and facilities. See *City of Ladue v. Gilleo* (US Supreme Court 1994, Unanimous decision). A Federal Court in Maryland, in 1999 invalidated a sign ordinance that limited the posting of political campaign signs in private residences to 45 days before and up to 10 days after an election. (This is the *Curry* case quoted at length above). The Court indicated "there is no distinction to be made between the political campaign signs in the present case and the "cause" sign in *City of Ladue*.... When political campaign signs are posted on private residences, they merit the same special solicitude and protection established for cause signs in *City of Ladue*." *Curry v. Prince George's County*, 33 F. Supp.2d 447, 452 (D. Md. 1999).

In *Arlington County Republican Committee v. Arlington County*, 983 F.2d 587 (4th Cir. 1993) the Court invalidated a county law that imposed a two-sign limit on temporary signs for each residence. The court noted that "the two-sign limit infringes on this speech by preventing homeowners from expressing support for more than two candidates when there are numerous contested elections." The Supreme Court of Ohio, in *City of Painesville Building Department v. Dworken & Bernstein Co*, 733 NE 2d 1152(Oh. 2000) ruled that a city law requiring the removal of political signs within 48 hours after an election is unconstitutional as applied to the posting of such signs on private property. "Although the Supreme Court has not considered the issue, the overwhelming majority of courts that have reviewed sign ordinances imposing durational limits for temporary political signs tied to a specific election date have found them to be unconstitutional."

In short, political signs cannot be prohibited (except on governmental property - case law supports this proposition - *Members of City Council v. Taxpayer Vincent*, 466 US 789, 801 (1984). This does not mean that local government may never legislate in the area of political signs. A local government may regulate the size, shape and location of these signs. Such regulations are ordinarily considered content-neutral and reasonable "time, place and manner" restrictions on speech (federal review standard of First Amendment regulation of speech). There may also be allowed a cap on the number of signs – perhaps a 10-sign limit, per residence on yard signs. At some point, the sheer number of signs might realistically impair the aesthetics of a neighborhood. As to residential signs - the type, size, number, location must be uniform as to all types of temporary noncommercial signs. Currently there is no maximum number provided. A time period on signs prior to election is challenged as a prior constraint on speech. [Please note that homeowner's associations, as private parties, do not qualify as "state actors" and have more ability to regulate political signage under the association's declaration of rules, and by prohibiting the posting of signs at individual units. *Midlake on Big Boulder Lake, Condominium Assoc. v. Cappuccio*, 673 A.2d 340, 342 (Pa. Super.Ct. 1996) [Caveat: Florida Legislature in 1989, passed legislation that prevents associations from barring the display of American Flags. 718.113, Fla. Stat. It also allows the display of military flags and limits the size to 4.5 by 6 feet].

Municipal lawyers have prepared a checklist that they use when considering modifying or drafting an ordinance regulating signs:

1) Is the regulation content based?
2) If yes, strict scrutiny or exacting scrutiny is required to ascertain whether a limitation is justified by a compelling or overriding interest; whether the restriction is narrowly drawn to achieve that interest, and whether the Regulation does not limit more speech than is necessary to vindicate the public interest asserted by the government.
3) Is the regulation content neutral?
4) If yes, intermediate scrutiny is sufficient. The regulation must further an important or substantial government interest; the interest must be unrelated to the suppression of free expression; and the incidental restriction on alleged 1st Amendment freedoms is no greater than is essential to the furtherance of that interest. The regulation must still be narrowly tailored to serve a significant governmental interest; and leave open ample alternative channels for communication of the information. It must focus on the source of the evils the government seeks to eliminate; and the elimination of the signage without banning or significantly restricting a substantial quantity of speech that does not create the same evils.

Please note that federal, state, and/or local campaign signs must be treated equally – there should be no distinguishing regulations between the type of election sign as that would be a content based regulation. Regulation of political signs would require strict scrutiny review by the Court system due to the First Amendment "free speech" protections of the US Bill of Rights. Any time period regulation, prior to an election, would require uniform application to all, or a majority of temporary signs within the community to qualify for "content neutral action." "With rare exceptions," regulations which discriminate based upon the content of speech of private citizens -- whether on private property or in a traditional public forum -- are "presumptively impermissible, and this presumption is a very strong one." *Curry v. Prince George County*, 33 F. Supp.2d 447, 552 (D.Md. 1999). In *Cleveland Board of Realtors v. City of Euclid*, 88 F.3d 382 (6th Cir. 1996), the Court found that a complete ban on yard signs unconstitutional because the court agreed that city ordinances regulating the size, number, and placement of signs in residential neighborhoods were unconstitutional restrictions on speech.

FISCAL/BUDGETARY IMPACT: There could be challenges to the temporary signage code based upon first amendment considerations. The Village has attempted to uniformly regulate temporary noncommercial signs in residential districts as to time, place and manner regardless of content. The Village's temporary signage code would be challenged upon a strict judicial scrutiny standard.

RECOMMENDATION: Decision of the Village Council.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE VILLAGE'S CODE OF ORDINANCES, AMENDING DIVISION 30-90, ENTITLED "SIGN REGULATIONS"; REGULATING TEMPORARY SIGNS UNIFORMLY AS TO SIZE, AND DURATION, INCLUDING BUT NOT LIMITED TO POLITICAL SIGNS AND PERSONAL EXPRESSION SIGNS; AND PROVIDING FOR A MINIMUM 90 DAY PERIOD FOR DISPLAY OF SAID SIGNS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Mayor Shelley Stanczyk].

WHEREAS, the Mayor and Village Council of the Village of Palmetto Bay adopted its own Code of Ordinances in December 2009; and,

WHEREAS, except as it relates to governmental property, temporary political signs cannot be prohibited, and may be regulated by a local government, provided the regulation is content neutral and regulates as to time, place and manner of the expression; and,

WHEREAS, A local government may regulate the size, shape and location of temporary signs; and,

WHEREAS, such regulations are ordinarily considered content-neutral and reasonable "time, place and manner" restrictions on speech (federal review standard of First Amendment regulation of speech); and,

WHEREAS, provided temporary residential signs are regulated uniformly as to the type, size, number, and location, the local regulation should comply with strict scrutiny review of the Courts; and,

WHEREAS, Temporary and non-commercial signage can be provided a deadline on removal of the sign after the end of the "event" that triggers it; and,

WHEREAS, the Village recognizes that regulation of political speech, must be treated in a "non-discriminatory," manner as other "noncommercial speech" that is highly scrutinized by the Courts; and,

WHEREAS, the Village recognizes that campaign signs are a type of temporary sign, and their size, number, location, requirements for removal, and other aspects must be regulated uniformly with other similar forms of temporary noncommercial speech; and,

WHEREAS, the Village's intent is to comply with Federal and State precedent, and comply with the unanimous decision of the US Supreme Court in 1994, in the matter *City of Ladue v. Gilleo*,

512 US 43 (1994) as it relates to political signs and uniform time, manner, place restrictions and content neutrality; and,

WHEREAS, the Village Council desires to limit personal expression and political signs, uniformly as to size and duration of 90 days (or qualifying for office, which ever date is longer); and,

WHEREAS, the Mayor and Village Council desire to amend specific items in Division 30-90, entitled "Sign Regulations".

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

Section 1. The Village of Palmetto Bay hereby amends Division 90 of Chapter 30, entitled "Sign Regulations" which shall read as follows:

* * *

DIVISION 30-90

SIGN REGULATIONS

SEC. 30-90.4. PURPOSE AND INTENT.

(a) The Village Council recognizes that there are various persons and entities that have an interest in communicating with the public through the use of signs that serve to identify businesses and services, residences and neighborhoods, and also to provide for expression of opinions. The council is also responsible for furthering the Village's obligation to its residents and visitors to maintain a safe and aesthetically pleasing environment where signs do not create excessive visual clutter and distraction or hazards for pedestrians and vehicles; where signs do not adversely impact the predominantly residential character of the Village and where signs do not conflict with the natural and scenic qualities of the Village. These regulations are intended to ensure that permitted signs will not, because of size, location, method of construction, installation or manner of display endanger the public safety, create distractions that may jeopardize pedestrian or vehicular traffic safety; mislead, confuse or obstruct the vision of people seeking to locate or identify uses or premises; or destroy or impair visual qualities of the Village which is essential to general welfare and economic viability.

It is the intent of the council that the regulations contained in this Division shall provide uniform sign criteria, which regulate the size, height, graphic character, lighting, number and placement of signs in a manner that is compatible to the scale and character of the Village, and which shall place the fewest possible restrictions on personal liberties, property rights, free commerce, and the free exercise of Constitutional rights, while achieving the Village's goal of creating a safe, healthy, attractive and aesthetically pleasing environment that does not contain excessive clutter or visual distraction from right-of-ways and adjacent properties; the surrounding natural coastal environment and residential neighborhoods, and to ensure consistency with the Village's comprehensive plan.

(b) *Scope.* The provisions of this Division shall govern the number, size, location, and character of all signs which may be permitted. No sign shall be permitted on a plot or parcel except in accordance with the provisions of this Division.

(c) *Substitution of noncommercial speech for commercial speech.* Notwithstanding any provisions of this Division to the contrary, to the extent that this article permits a sign containing commercial copy, it shall permit a noncommercial sign to the same extent. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial messages, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited, and the sign continues to comply with all requirements of this Division.

(d) The Village may regulate the size, shape and location of temporary signs as content-neutral and reasonable "time, place and manner" restrictions on speech (federal review standard of First Amendment regulation of speech). At some point, the sheer number of signs do realistically impair the aesthetics of a neighborhood and provided the temporary residential signs are regulated uniformly as to the type, size, number, and location, the local regulation would comply with strict scrutiny review of the Courts. Temporary and non-commercial signage can be provided a deadline on removal of the sign after the end of the "event" that triggers it; and, the Village recognizes that regulation of speech, must be treated in a "non-discriminatory," manner as other "noncommercial speech" that is highly scrutinized by the Courts. Moreover, the Village recognizes that campaign signs are a type of temporary sign, and their size, number, location, requirements for removal, and other aspects must be regulated uniformly with other speech, and it is the Village's intent is to comply with Federal and State precedent, and comply with the unanimous decision of the US Supreme Court in 1994, in the matter *City of Ladue v. Gilleo*, 512 US 43 (1994) as it relates to political signs and uniform time, manner, place restrictions and content neutrality.

(e~~d~~) *Severability.*

(1) *Generally.* If any part section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this Division is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this Division.

(2) *Severability where less speech results.* This subsection shall not be interpreted to limit the effect of subsection (1), above, or any other applicable severability provision in the code of ordinances or any adopting ordinance. The Village Council specifically intends that severability shall be applied to these regulations even if the result would be to allow less speech in the Village, whether by subjecting currently exempt signs to permitting or by some other means.

(3) *Severability of provisions pertaining to prohibited signs.* This subsection shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provision in the code of ordinances or any adopting ordinance. The Village Council specifically intends that severability shall

be applied to the section entitled "Prohibited signs" so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.

(4) *Severability of prohibition on off-premises signs.* This subsection shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provision in the code of ordinances or any adopting ordinance. If any or all of this Division or any other provision of the Village's Code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the Village Council specifically intends that the declaration shall not affect the prohibition of off-premises signs, as provided under this Division.

* * *

30-90.10 SIGNS PERMITTED WITHOUT A SIGN PERMIT

(a) Within all zoning districts, the following signs, whether temporary or permanent, when not electrically illuminated shall be permitted and exempt from the requirement to obtain a sign permit.

* * *

(8) Personal expression signs limited to two per lot or parcel, or in the case of multi-family uses, one per dwelling unit, expressing personal views or opinions not exceeding 620 square inches ~~four square feet~~ in area, providing such signs are otherwise in compliance with applicable local, state and federal laws and displayed for a period of not more than 90 days in any year.

* * *

(15) Temporary political campaign signs announcing the candidacy of a candidate for public office not exceeding 620 square inches ~~22 inches by 28 inches~~ in size in residential zoning districts and six square feet in area in all other zoning districts. Setback and location shall be at least five feet from the official right-of-way and five feet from property under different ownership. Only one political campaign sign, per candidate, per street face is permitted. Political signs may be installed upon qualifying for office, or 90 days prior to the election, which ever date is longer.

Temporary political campaign signs shall be removed within seven days after the last election or within seven (7) days of withdrawal of a candidate from running for elected office. If such signs are not removed within this period of time, the Village may remove such signs and may charge the candidate the actual cost for such removal. Failure to remove signs is a violation of this Code and is enforceable pursuant to the Village's code enforcement ordinance.

* * *

(17) Holiday and seasonal decorations shall not be construed as signs, providing that these contain no commercial advertising message, and further provided that such decoration

is not up more than 90 ~~60~~ days for a single holiday and is removed within seven (7) days after the holiday ends.

* * *

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.

PASSED AND ENACTED this ____ day of _____, 2011.

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 _____