

ORDINANCE NO. 2018-03

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3
4 AN ORDINANCE OF THE MAYOR AND VILLAGE
5 COUNCIL OF THE VILLAGE OF PALMETTO BAY,
6 FLORIDA AND AS THE LOCAL PLANNING AGENCY,
7 AMENDING SECTION 30-50.19, VILLAGE MIXED-USE
8 DISTRICT (VMU); CLARIFYING THAT THE EXISTING
9 MAXIMUM RESIDENTIAL UNITS PERMITTED UNDER
10 THE EXISTING ZONING CODE IS THREE HUNDRED
11 EIGHTY-NINE (389) RESIDENTIAL UNITS (WHICH
12 INCLUDES TRANSFER OF DEVELOPMENT RIGHTS); ,
13 ~~WITH THE INTENT TO REVERT TO THE LAND~~
14 ~~DEVELOPMENT CODE WHICH REGULATED THE VMU~~
15 ~~DISTRICT PRIOR TO THE ADOPTION OF ORDINANCE~~
16 ~~2016-14 IN MAY 2016; AMENDING SECTION 30-50.19,~~
17 ~~VMU DISTRICT, TO INCLUDE 100 RESIDENTIAL UNITS~~
18 ~~AND 300 SENIOR LIVING FACILITY UNITS; TO NO~~
19 ~~LONGER COUNT HOTEL UNITS AS RESIDENTIAL~~
20 ~~UNITS; TO REDUCE SOME PERMITTED BUILDING~~
21 ~~HEIGHTS; TO DELETE REFERENCES TO TRANSFER OF~~
22 ~~DEVELOPMENT RIGHTS (TDRs); PROVIDING FOR~~
23 ~~ORDINANCES IN CONFLICT, CODIFICATION,~~
24 ~~SEVERABILITY AND AN EFFECTIVE DATE. (Sponsored~~
25 ~~by Vice Mayor John DuBois) (Sponsored by Councilmember~~
26 ~~David Singer)~~

27
28 ~~WHEREAS, on May 2, 2016, the Mayor and Village Council~~
29 ~~adopted Ordinance 2016-14, which amended the land use code which~~
30 ~~regulates the Village Mixed-Use (VMU) District, providing for permitted~~
31 ~~uses and development standards therein; and~~
32

33 ~~WHEREAS, circumstances in the area surrounding the Village~~
34 ~~Mixed-Use (VMU) District have substantially changed since the adoption~~
35 ~~of Ordinance 2016-14 in May 2016, including but not limited to: (i)~~
36 ~~accelerating development and governmental approvals for development~~
37 ~~(especially to the south of the VMU District in the Village of Cutler Bay~~
38 ~~and beyond); and (ii) increased traffic congestion (including the prospect~~

1 of increased future traffic congestion from future development to the
2 south of the VMU); and

3
4 ~~WHEREAS, the Village Council desires to amend the regulations~~
5 ~~and standards contained in Ordinance 2016-14, due to the substantially~~
6 ~~changed circumstances, as provided below; and~~

7
8 ~~WHEREAS, the intention of the Village Council is to revert to the~~
9 ~~land development code which regulated the VMU District prior to the~~
10 ~~adoption of Ordinance 2016-14 in May 2016; and~~

11
12 ~~WHEREAS, the existing land development code (zoning code) for~~
13 ~~the Village Mixed Use (VMU) District limits the maximum number of~~
14 ~~residential units permitted in the VMU to the number of residential units~~
15 ~~which will produce no more vehicular traffic than the maximum amount of~~
16 ~~vehicular traffic which would have been produced under the VMU District~~
17 ~~code in existence prior to the amendments of May 2016; and~~

18
19 ~~WHEREAS, expert analysis demonstrates that the maximum~~
20 ~~number of residential units permitted under these provisions of the~~
21 ~~existing VMU code is three hundred eighty-nine (389) residential units~~
22 ~~(including transfer of development rights); and~~

23
24 ~~WHEREAS, competent substantial evidence exists demonstrating~~
25 ~~that the maximum number of residential units permitted under these~~
26 ~~provisions of the existing VMU code is three hundred eighty-nine (389)~~
27 ~~residential units (including transfer of development rights); and~~

28
29 ~~WHEREAS, the amendment of the existing VMU code by stating~~
30 ~~the maximum of residential units in numeric form as three hundred~~
31 ~~eighty-nine (389) (including transfer of development rights) merely~~
32 ~~clarifies the existing limitation and does not reduce or limit any existing~~
33 ~~rights; and~~

34
35 ~~WHEREAS, pursuant to Section 163.3174, Florida Statutes, the~~
36 ~~Village Council has been designated as the Local Planning Agency for the~~
37 ~~Village; and~~

1 **WHEREAS**, the Local Planning Agency has approved the
2 proposed amendments, as contained herein, on _____, 2018;

3
4 **NOW, THEREFORE, BE IT ENACTED BY THE MAYOR AND**
5 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS**
6 **FOLLOWS:**

7
8 **Section 1. Recitals.** The above recitals are true and correct and
9 incorporated herein as findings of the Land Planning Agency and Village
10 Council by this reference.

11
12 **Section 2. Findings.** The Village Council finds that competent
13 substantial evidence exists to support this clarifying amendment of the
14 VMU zoning code, and incorporates herein in the record all testimony
15 and reports, including the reports of the Village planning staff and the
16 Village-retained expert traffic consultant. ~~circumstances in the area~~
17 ~~surrounding the Village Mixed-Use (VMU) District have substantially~~
18 ~~changed since the adoption of Ordinance 2016-14 in May 2016,~~
19 ~~including but not limited to:~~

20 ~~_____ (i) accelerating development and governmental approvals for~~
21 ~~development (especially to the south of the VMU District in the Village of~~
22 ~~Cutler Bay and beyond); and~~

23 ~~_____ (ii) increased traffic congestion (including the prospect of~~
24 ~~increased future traffic congestion from future development to the south~~
25 ~~of the VMU).~~

26
27 **Section 3. Amendment of Section 30-50.19.** Chapter 30, of the
28 Village's Land Development Code, at Section 30-50.19 is amended to
29 read as follows:

30
31 **DIVISION 30-50**
32 **ZONING DISTRICTS**

33
34 * * *

35
36 **Sec. 30-50.19. Village Mixed Use District, VMU.**

37
38 * * *

1 (b) No provision in this section 30-50.19 shall be applicable to any
2 property lying outside the boundaries of the Village Mixed-Use
3 District ("VMU").
4

5 (c) *Definitions.* Terms used throughout this zoning district,
6 under section 30-50.19 shall take their commonly accepted
7 meaning unless otherwise defined in other Village Code
8 provisions. Terms requiring interpretation specific to this zoning
9 district are as follows:
10

11 *Apartment building:* A building which is used or intended to be
12 used as a multi-family dwelling unit; as a home or residence for
13 three or more families living in separate apartments, in which the
14 yard areas, hallways, stairways, balconies and other common
15 areas and facilities are shared by families living in the apartment
16 units. ~~*Apartment building:* A building which is used or intended to~~
17 ~~be used as a multi-family dwelling unit; as a home or residence for~~
18 ~~three or more families living in separate apartments, in which the~~
19 ~~yard areas, hallways, stairways, balconies and other common~~
20 ~~areas and facilities are shared by families living in the apartment~~
21 ~~units.~~
22

23 * * *

24
25 *Residential building type:* One of the following multifamily
26 multifamily residential building types shall be permitted in the VMU
27 District: ~~Apartment—Building,~~ Apartment Building,
28 Rowhouses/Townhouses or Senior Housing (as hereinafter
29 defined).
30

31 * * *

32
33 (d) *Uses.* Uses are allowed in the VMU District as provided for in this
34 subsection. However, these uses shall not be deemed or construed
35 to prohibit a continuation of any structure, use or occupancy in the
36 VMU that were existing as of the date of the effective date of this
37 division.
38

39 (1) *Permitted uses:* ~~Village Mixed Use District.~~

- 1 a. ~~Residential uses. Multifamily residential, up to 400 units~~
 2 ~~which may include apartment buildings,~~
 3 ~~rowhouses/townhouses, and Senior Living Facilities as~~
 4 ~~provided by F.S. § 760.29. For the purposes of this~~
 5 ~~subsection and within the VMU zoning district, each~~
 6 ~~individual hotel unit shall be considered and count as~~
 7 ~~an individual residential unit. Multifamily residential, up~~
 8 ~~to three hundred eighty-nine (389) (including transfer of~~
 9 ~~development rights) units which may include apartment~~
 10 ~~buildings, rowhouses/townhouses, and Senior Living~~
 11 ~~Facilities as provided by F.S. § 760.29. For the~~
 12 ~~purposes of this subsection and within the VMU zoning~~
 13 ~~district, each individual hotel unit shall be considered~~
 14 ~~and count as an individual residential unit.~~ Residential
 15 uses are permitted in the VMU as provided below in
 16 accordance with the village's adopted comprehensive
 17 plan and the Declaration of Restrictive Covenants and
 18 the First Amendment to the Declaration of Restrictive
 19 Covenants recorded May 1, 1989 at Official Records
 20 Book 14089 at Pages 2349-52 and Official Records
 21 Book 12428 at Pages 923-1010, of the Public Records
 22 of Miami-Dade County, Florida, ~~and the Amended~~
 23 ~~Declaration of Restrictive Covenants in Lieu of Unity of~~
 24 ~~Title recorded Official Resources Book 27101 at Pages~~
 25 ~~2672-2678 of the public Records of Miami-Dade~~
 26 ~~County, Florida.~~
 27 ~~i. Multi-family residential rowhouses/townhouses up~~
 28 ~~to 100 units.~~
 29 ~~ii. Senior housing, intended to comply with F.S. §~~
 30 ~~760.29, in the form of multi-family condominiums~~
 31 ~~or apartments up to 300 residential units.~~

32
 33 It is the finding of the Village Council that the maximum
 34 number of residential units provided herein (389) is
 35 based upon the following existing code provision:
 36 Automobile traffic volume on Old Cutler Road
 37 generated by residential land uses within the VMU
 38 Zoning District shall not exceed the automobile traffic
 39 volume which would have been generated by the

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a. *Heights.* All height restrictions herein are deemed as consistent with the intent of the previously enacted Village of Palmetto Bay Comprehensive Plan which established parameters for this VMU District. Furthermore, all height restrictions must remain in conformity with any existing deed restrictions, declarations, or covenants in effect as to any lands within the VMU District. Multi-family rowhouse/townhouse units shall not exceed 70 feet above grade in height. Multi-family senior housing facilities shall not exceed 85 feet above grade in height. ~~Nonresidential~~ All All buildings shall be no higher than 85 feet above grade in height. This shall not preclude, above such height restrictions, ~~bonuses granted by a Transfer of Development Right,~~ antennae, elevator and roof equipment, stairway roof access and railings or similar safety barrier, as long as said structures are not visible from the property line of the VMU District at Old Cutler Road.

* * *

e. *Density.* Overall density for all residential units on the property, including senior housing facilities, shall be a minimum of 3.0 and a maximum of 14.0 dwelling units per gross acre, all as consistent with the comprehensive plan of the village. ~~Residential density calculations pursuant to the preceding sentence shall be calculated based upon the entire land area zoned VMU, regardless of any non-residential development within the VMU. Additional units may be developed in accordance with an approved Transfer of Development Rights.~~ Residential density calculations pursuant to the preceding sentence shall be calculated based upon the entire land area zoned VMU, regardless of any non-residential development within the VMU. Additional units may be developed in accordance with an approved Transfer of Development Rights, but in

1 no event shall the total number of residential building
2 units exceed three hundred eighty-nine (389).

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4
5 * * *

6
7 (i) *Nonconforming structures, uses, and occupancies.* Nothing
8 contained in this section 30-50.19 shall be deemed or construed
9 to prohibit a continuation or restoration after casualty of a legal
10 nonconforming structure, use or occupancy in the VMU District
11 that was existing as of the effective date of this division.

12
13 (j) *Review procedure/administrative site plan review.* All applications
14 for development approval within the VMU District that are not
15 otherwise permitted as nonconforming uses or structures shall
16 comply with the requirements of section 30-30.5 and this section
17 and with the site plan review criteria contained therein.
18 Developments shall be processed and approved administratively
19 or by village council action, as applicable, as follows:

20 (1) *Administrative site plan review.*

21 a. The department shall review plans, including all
22 materials required under section 30-30.5 for
23 completeness and compliance with the provisions of
24 sections 30-30.5 and 30-50.2019, and for compliance
25 with the site plan review criteria provided therein,
26 including but not limited to traffic analysis.

27
28 **Section 4. Conflicting Provisions.** The provisions of the Code of
29 Ordinances of the Village of Palmetto Bay, Florida and all ordinances or
30 parts of ordinances in conflict with the provisions of this ordinance are
31 hereby repealed.

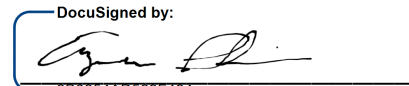
32
33 **Section 5. Severability.** The provisions of this Ordinance are
34 declared to be severable, and if any sentence, section, clause or phrase
35 of this Ordinance shall, for any reason, be held to be invalid or
36 unconstitutional, such decision shall not affect the validity of the
37 remaining sentences, sections, clauses or phrases of the Ordinance, but
38 they shall remain in effect it being the legislative intent that this
39 Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Codification. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the Village of Palmetto Bay, Florida, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. Effective Date. This ordinance shall take effect immediately upon adoption by the Village Council.

PASSED on FIRST READING, as amended, on this 19th day of March 2018, and DETERMINED TO BE A SUBSTANTIAL AMENDMENT WARRANTING FURTHER SUBSEQUENT READINGS.

Attest: 
Missy Arocha
Village Clerk


Eugene Flinn
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:


Dexter W. Lehtinen
Village Attorney

VOTE ON FIRST READING:

- Council Member Karyn Cunningham NO
- Council Member David Singer YES
- Council Member Larissa Siegel Lara YES
- Vice-Mayor John DuBois NO
- Mayor Eugene Flinn YES

PASSED on **SECOND READING** this ____ of _____, 2018.

Attest: _____
Missy Arocha Village Clerk Eugene Flinn Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

Dexter W. Lehtinen Village Attorney

VOTE ON SECOND READING:

Council Member Karyn Cunningham _____
Council Member David Singer _____
Council Member Larissa Siegel Lara _____
Vice-Mayor John DuBois _____
Mayor Eugene Flinn _____

PASSED and ENACTED on **THIRD READING** this ____ of _____, 2018.

Attest: _____
Missy Arocha Village Clerk Eugene Flinn Mayor

1 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
2 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

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7 Dexter W. Lehtinen
8 Village Attorney

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10

11 **FINAL VOTE AT ADOPTION ON THIRD READING:**

12

13 Council Member Karyn Cunningham _____

14

15 Council Member David Singer _____

16

17 Council Member Larissa Siegel Lara _____

18

19 Vice-Mayor John DuBois _____

20

21 Mayor Eugene Flinn _____