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MEMORANDUM

Department of Building and Planning

DATE: June 4, 2024

TO: Yocelyn Galiano, ICMA-CM  
Village Manager

FROM: Stephen R. Olmsted, AICP, LEED-GA  
Planning Director

RE: Ordinance Amending Chapter 30, Land Development Regulations -  
Article 5, Division 5.15, Open Air Café in Conjunction with a Restaurant  
Article 7, Signs

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The Building and Planning Department has prepared an ordinance amending two sections of the Village's Land Development Regulations for review and consideration by the Village Council at first reading on June 11, 2024 as follows:

**Article 5, Division 5.15, Open Air Café in Conjunction with a Restaurant**

The *Pinecrest Parkway (US 1) Vision Plan*, completed in 2012 and updated in 2022, indicates that there is a demand for "more restaurants and outdoor dining opportunities" in Pinecrest. In response to this demand, the Village Council has approved various amendments to the Village's Land Development Regulations including adoption of an ordinance regulating outdoor dining in 2002, and adjustment of the Village's parking regulations to better reflect current parking demand based on restaurant type and hours of operation.

Recently, the Building and Planning Department met with a restaurateur who is interested in establishing a restaurant in the Village of Pinecrest. The applicant, Mr. Carlos Gazitua, CEO of Sergio's Restaurants, would like to have outdoor dining at his proposed restaurant location including seating at an outside counter at the front of the restaurant that would be oriented toward the restaurant interior, outdoor seating at the side of the proposed restaurant, and outdoor music in compliance with the Village's current noise restrictions. In reviewing the existing criteria of Article 5, Division 5.15, *Open Air Café in Conjunction with a Restaurant*, it became apparent that current regulations would not allow outdoor dining at the side of the restaurant, outdoor music, or an outdoor counter and pass through opening.



During the course of our meeting with the applicant, staff became aware that Mr. Gazitua is a current Board Member and Past President of the Florida Restaurant and Lodging Association, and has worked together with the Fontainebleau Hotel, Loews Hotel, Fleming's Restaurants and other major restaurant groups to provide local and state ordinances for the hospitality industry. Given the experience and qualifications of Mr. Gazitua, staff was interested in hearing his opinion regarding the Village's regulations related to restaurants and outdoor dining. Mr. Gazitua indicated that although the Village's regulations are largely supportive of restaurants in general, they do not allow for outdoor music, they restrict the location of outdoor dining to the front of the restaurant, and they do not allow for outdoor counter service with an open view toward the interior of the restaurant; features that are commonly found in other restaurants with outdoor dining.

Given the community's desire for more outdoor dining in Pinecrest, staff offered to draft amendments to the Village's Land Development Regulations for the Village Council's review and consideration that would accommodate the additional features proposed by Mr. Gazitua. In addition to accommodating the restaurant model preferred by Mr. Gazitua, the recommended amendments would allow outdoor dining at other restaurants in accordance with current trends and customer preferences.

Proposed amendments to Division 5.15 would eliminate restrictions prohibiting counter service and a pass-through window, would allow outdoor dining on the side of a restaurant, and would allow outdoor music in compliance with the Village's noise restrictions and additional restrictions recommended for orientation of speakers away from residential areas and buffering of sound.

### **Article 7, Signs**

Miami-Palmetto Elementary School recently inquired about the possibility of installing an electronic changeable message sign on school property. Current regulations do not allow digital or changeable message signs within the Village. Following recent discussion of the request with the Village Council and review of proposed sign design alternatives prepared by Kimley Horn, the Village Council selected two alternative designs as the preferred design for this type of sign, if permitted. Staff has prepared a proposed amendment to the Village's Land Development Regulations to allow digital changeable message signs within the PS, Public and Semi-Public Services Zoning District, in accordance with proposed size and setback criteria and consistent with the preferred design alternatives.

An ordinance amending Article 5, Division 5.15, *Open Air Café in Conjunction with a Restaurant*, and Article 7, *Signs* of the Village's Land Development Regulations is attached for the Village Council's consideration at first reading on June 11, 2024. Proposed amendments are shown in underlined text and highlighted in yellow. If approved by the Village Council at first reading, staff will schedule the ordinance for consideration by the Local Planning Agency and the Village Council at second reading on July 9, 2024.

ORDINANCE 2024 - \_\_\_\_

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PINECREST, FLORIDA AMENDING THE PINECREST CODE OF ORDINANCES, CHAPTER 30, LAND DEVELOPMENT REGULATIONS, ARTICLE 5, ADDITIONAL REGULATIONS, DIVISION 5.15, OPEN AIR CAFÉ IN CONJUNCTION WITH A RESTAURANT, REVISING LOCATION, DESIGN, AND OPERATION REQUIREMENTS FOR ESTABLISHMENT OF OUTDOOR DINING; AND ARTICLE 7, SIGNS, DIVISION 7.13, PROHIBITED SIGNS, AND DIVISION 7.16, SIGN STANDARDS AND REQUIREMENTS TO ALLOW NON-COMMERCIAL FREESTANDING ELECTRONIC AND CHANGEABLE COPY MONUMENT SIGNS IN THE PS, PUBLIC AND SEMI-PUBLIC SERVICES ZONING DISTRICT; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the Village of Pinecrest, Florida (the "Village"), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provides municipalities with the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

WHEREAS, the Village Charter empowers the Village Council to adopt, amend or repeal its ordinances and resolutions as may be required for the benefit of the residents of the Village; and

WHEREAS, the Village Council finds it periodically necessary to amend its Code of Ordinances and Land Development Regulations ("Code") in order to update regulations and procedures necessary to implement municipal goals and objectives; and

WHEREAS, the Village Council has identified amendments to the Village's Code that are necessary to implement the goals, objectives, and policies of the Village's Comprehensive Development Master Plan; and

WHEREAS, in order to protect the public health, safety, and general welfare of the citizens of the Village, and to provide for the dissemination of public notices in the Village Council finds that it is necessary to allow digital, changeable message signs within the PS, Public Service Zoning District; and

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<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words, **highlighted in yellow** are additions to the existing words. Changes between first and second reading are indicated with **green highlight** and ~~double-strikethrough~~ or double underline.

WHEREAS, the Village Council finds it necessary to amend the Village’s Land Development Regulations to accommodate the demand for “more restaurants and outdoor dining opportunities” as indicated in the *Pinecrest Parkway (US 1) Vision Plan* adopted in 2012 and updated in 2022; and

WHEREAS, the Local Planning Agency, held a duly advertised public hearing on \_\_\_\_\_; and \_\_\_\_\_; and

WHEREAS, after reviewing the Local Planning Agency’s recommendations, the recommendations of Village staff, and comments from the public, the Village Council finds that the proposed amendments to its Code are in compliance and consistent with Florida law, and its adopted Comprehensive Development Master Plan; and

WHEREAS, the Village Council further finds it to be in the best interest of the public health, safety and welfare of the citizens to adopt this Ordinance amending the Village’s Code.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PINECREST, FLORIDA:

**Section 1.**     **Recitals.** That the above stated recitals are hereby adopted and confirmed.

**Section 2.**     **Village Code Amended.** The Village Council of the Village of Pinecrest hereby amends Article 5, “Additional Regulations,” and Article 7, “Signs” of Chapter 30 of the Code of Ordinances as follows:

## CHAPTER 30 – LAND DEVELOPMENT REGULATIONS

\* \* \*

### ARTICLE 5, ADDITIONAL REGULATIONS

\* \* \*

#### **Div. 5.15 - Open air café in conjunction with a restaurant**

An open-air cafe is permitted only as an accessory use to a restaurant in a Business District (BU-1, BU-1A, BU-2, BU-3). The open air cafe shall comply with all code requirements and the following additional conditions and restrictions:

- (a) *Site plan.* A site plan shall be prepared and submitted to the village for approval pursuant to requirements of the land development code. In addition to requirements of site plan review, such plan shall include the floor plan of the existing restaurant, including tables, chairs and restrooms, and the proposed open-air cafe. The plan shall also show the existing parking; any proposed landscaping; location of refuse containers; proposed lighting; layout of all tables, chairs, benches, and other furniture; and pedestrian ingress and egress. An open-air cafe located on sidewalks must

remain at the elevation of the existing sidewalk. In the case of a lease or sublease, the site plan must be accompanied by a written statement from the landlord and owner consenting to the use of the real property as an open-air cafe.

(b) *Location, design and operation.* The operation of such open-air cafe shall not be conducted in such a way as to become a public nuisance and the operation of such business shall not interfere with the circulation of pedestrian or vehicular traffic on the adjoining streets, alleys or sidewalks. **The applicant shall be required to submit a mitigation plan that adequately addresses noise, glare, trash, odors, and all other adverse impacts to neighboring properties in proximity to the outdoor café or dining area. The Village reserves the right to require additional mitigation when it finds identified impacts are not adequately addressed.** A minimum space of 40 inches shall be allowed for pedestrian circulation. ~~The space for such use shall not extend beyond the interior wall, which is perpendicular to the front or rear wall.~~ In addition, the open-air cafe shall comply with the following:

1. ~~*Type of service.* The service of patrons of the open-air cafe shall be at tables only and no counter service, self-service or pass through window shall be permitted.~~
2. **1.** *Space occupied.* The open-air cafe shall not occupy an area of more than 30 percent of the total area of the primary restaurant operation.
3. **2.** *Enclosure restricted.* An open-air cafe shall be open, except that it may be covered with a canvas or structural canopy of a building's arcade, loggia or overhang as may be permitted by the Code.
4. **3.** *Kitchen equipment.* All kitchen equipment used to service the open-air cafe shall be located within the kitchen of the primary restaurant.
5. **4.** *Appearance.* The open-air cafe shall be kept in a neat and orderly appearance and shall be kept free from refuse and debris. After the close of business, all tables and chairs shall be removed from the premises unless they are properly secured.
6. **5.** *Signage.* No additional signage shall be permitted in the open-air cafe area.
7. **6.** *Noise generation.* ~~No outdoor speaker, stereo system, live bands, or outdoor entertainment shall be allowed.~~ **External speakers shall be oriented away from residential districts of the Village, and landscape buffers or fencing shall be installed as necessary to ensure that noise levels are consistent with those identified in Sec. 15-21.3 of the Village's Code of Ordinances.**

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## ARTICLE 7 – SIGNS

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### Div. 7.13 - Prohibited Signs.

**Except as otherwise specifically provided in this article, the following signs shall be prohibited:**

- (a) No sign shall be so located as to constitute a danger to public safety.
- (b) No sign shall exhibit thereon any lewd or lascivious matter.
- (c) No sign shall be attached to trees, utility poles or any other unapproved supporting structure.
- (d) Roof signs are prohibited.

- (e) No signs shall be erected or painted on fence and wall enclosures in residential districts. Fence and wall signs shall be prohibited in the residential district.
- (f) Blinking or flashing lights, streamer lights, pennants, permanent banners, streamers, and all fluttering, spinning or other type of attention attractors or advertising devices are prohibited. Flags shall not be used in mass primarily as an advertising device in order to circumvent this subsection.
- (g) No revolving or rotating sign shall be permitted or erected.
- (h) Signs that may be confused with a traffic control device. Red, green or amber (or any color combination thereof) revolving or flashing light giving the impression of police or caution light is a prohibited sign, whether on a sign or on an independent structure.
- (i) Portable signs unless otherwise authorized by law.
- (j) Signs painted or affixed in any manner to any vehicle, trailer or pickup truck, van or similar transportable device and which are used to advertise a place of business or activity as viewed from a public road shall be prohibited. This shall not be interpreted to prohibit identification of commercial vehicles provided such vehicles are operational and moved and used daily for delivery of service purposes and are not used, or intended for use, as portable signs. This sign shall also not be interpreted to apply to buses, taxicabs, and similar common carrier vehicles, which are licensed or certified by the county or other governmental agency.
- (k) Billboard signs are prohibited.
- (l) Animated signs that use movement, changeable message, moving message, or change of lighting to depict action or create a special effect or scene, or emit a sound, odor, or visible matter such as smoke or vapor or uses variable graphics or video are prohibited. Manual changeable copy signs are not included in this prohibition.
- (m) Balloons or inflatables used as signs or for advertising purposes are prohibited.
- (n) Electronic signs are prohibited.
- (o) Signs that obstruct any window, door, fire escape, stairway, or opening intended to provide light, air, ingress, or egress for any building that would cause a violation of the Building Code are prohibited.
- (p) Obsolete signs, abandoned signs, or dilapidated signs.

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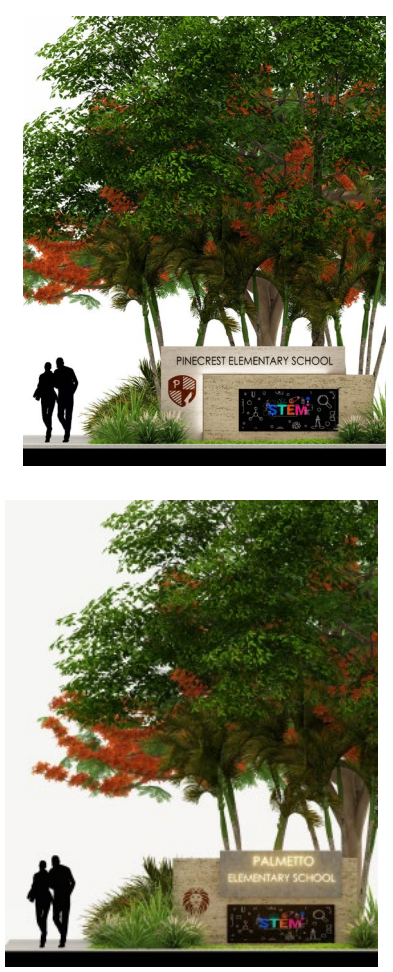
**Div. 7.16 Sign Standards and Requirements**

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- (a) *Permanent Signs*

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2. Detached Sign

Zoning District or Location Permitted	Size	Number	Setback and Spacing	Illumination	Maximum Height	Special Conditions
<p>***</p> <p><b>PS Districts</b></p>	<p>***</p> <p><b>Eighty (80) Square feet total sign area; digital changeable copy area shall be limited to twenty-eight (28) square feet.</b></p>	<p>***</p> <p><b>One (1) Sign</b></p>	<p>***</p> <p><b>Ten (10) feet from the front property line.</b></p>	<p>***</p> <p><b>Illumination permitted; see general provision on illumination. Digital changeable message content permitted.</b></p>	<p>***</p> <p><b>Six (6) feet from grade to top of sign</b></p>	<p>***</p> <p><b>No off-premise advertising shall be permitted.</b></p>  <p><b>Sign Design: The design of a changeable message sign shall be consistent with either of the design alternatives provided above.</b></p>

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**Section 3. Inclusion in the Code of Ordinances.** It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Pinecrest; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 4. Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 5. 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 6. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

PASSED AND ADOPTED on second reading this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2024.

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Joseph M. Corradino, Mayor

ATTEST:

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Priscilla Torres, MMC  
Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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Mitchell Bierman  
Village Attorney

Motion on Second Reading by:  
Second on Second Reading by:

Vote: