



LAKE MARY CITY COMMISSION

**Lake Mary City Hall
100 N. Country Club Road**

**Regular Meeting
AGENDA
THURSDAY, AUGUST 08, 2013 7:00 PM**

- 1. Call to Order**
- 2. Moment of Silence**
- 3. Pledge of Allegiance**
- 4. Roll Call**
- 5. Approval of Minutes: July 18, 2013**
- 6. Special Presentations**
- 7. Unfinished Business**
 - A. Ordinance No. 1489 - Amending Section 157.23, Arbor Pruning - Second Reading (Public Hearing) (Gary Schindler, City Planner)**
 - B. Ordinance No. 1490 - Amending Section 163.03 of the Code of Ordinances, establishing a fee for arbor appeals - First Reading (Public Hearing) (Gary**

Schindler, City Planner) (postponed 7/18/13) (Request by staff to withdraw ordinance)

8. New Business

- A. Ordinance No. 1491 - Amending Police Officers' Retirement System - First Reading (Public Hearing)**
- B. Ordinance No. 1492 - Amending Firefighters' Retirement System - First Reading (Public Hearing)**
- C. Ordinance No. 1493 - Amending Chapter 150, Appendix C, Stormwater Management, providing for clarification of stormwater management fee billing methodology- First Reading (Public Hearing) (Bruce Paster, Public Works Director)**
- D. Resolution No. 922 - Annual Local Improvement and Essential Service Assessment for Lake Mary Woods Wastewater Improvements (Jackie Sova, City Manager)**

9. Other Items for Commission Action

10. Citizen Participation

11. City Manager's Report

A. Items for Approval

- a. 2013 Cold Mix Paving Project**
- b. Public Safety Training Agreement**

B. Items for Information

12. Mayor and Commissioners Report

13. City Attorney's Report

14. Adjournment

THE ORDER OF ITEMS ON THIS AGENDA IS SUBJECT TO CHANGE

Per the direction of the City Commission on December 7, 1989, this meeting will not extend beyond 11:00 P. M. unless there is unanimous consent of the Commission to extend the meeting.

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY ADA COORDINATOR AT LEAST 48 HOURS IN ADVANCE OF THE MEETING AT (407) 585-1424.

If a person decides to appeal any decision made by this Commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Per State Statute 286.0105.

NOTE: If the Commission is holding a meeting/work session prior to the regular meeting, they will adjourn immediately following the meeting/work session to have dinner in the Conference Room. The regular meeting will begin at 7:00 P. M. or as soon thereafter as possible.

UPCOMING MEETINGS: August 22, 2013

1 MINUTES OF THE LAKE MARY CITY COMMISSION MEETING held July 18, 2013,
2 7:00 P.M., Lake Mary City Commission Chambers, 100 North Country Club Road, Lake
3 Mary, Florida.

4
5
6 I. Call to Order

7
8 The meeting was called to order by Mayor David Mealor at 7:05 P.M.

9
10 II. Moment of Silence

11
12 III. Pledge of Allegiance

13
14 IV. Roll Call

15
16 Mayor David Mealor
17 Commissioner Gary Brender
18 Commissioner George Duryea
19 Commissioner Allan Plank
20 Deputy Mayor Jo Ann Lucarelli

Jackie Sova, City Manager
Carol Foster, City Clerk
Dianne Holloway, Finance Director
John Omana, Community Dev. Dir.
Gary Schindler, City Planner
Steve Noto, Planner
Tom Connelly, City Engineer
Bruce Paster, Public Works Director
Bryan Nipe, Parks & Recreation Dir.
Randy Petitt, Human Resources Mgr.
Steve Bracknell, Police Chief
Craig Haun, Fire Chief
Katie Reischmann, City Attorney
Mary Campbell, Deputy City Clerk

21
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30
31 V. Approval of Minutes: June 6, 2013

32
33 **Motion was made by Commissioner Plank to approve the minutes of the June 6,**
34 **2013, meeting, seconded by Deputy Mayor Lucarelli and motion carried**
35 **unanimously.**

36
37 Mayor Mealor thanked the representatives of the Forest community for being present
38 and their diligence is duly noted.

39
40 VI. Special Presentations

41
42 A. Proclamation – Parks and Recreation Month

43
44 Mayor Mealor said we are blessed with an amazing Parks and Recreation Department.
45 He asked the Parks and Recreation Director, Bryan Nipe, to come forward.

1
2 The City Attorney read a proclamation proclaiming July 2013 as “Parks and Recreation
3 Month”.

4
5 Mayor Meador said each member of the Commission receives compliments from our
6 residents about the work that Mr. Nipe and his team does. He presented the
7 proclamation to Bryan Nipe.

8
9 Mr. Nipe thanked the Mayor and Commission for the proclamation. He asked the Parks
10 and Recreation staff to come forward. We appreciate the Mayor and Commission’s
11 support in what we do and recognizing the work Parks and Recreation is doing, both
12 from a value standpoint and social and interaction standpoint. The value adds to the
13 community through beautification, construction, and maintenance of our facilities and
14 also events and programs.

15
16 Mr. Nipe said the leadership staff are key players and don’t accept second best. He
17 said Kathy Gehr, Assistant Parks and Recreation Director, has taken over more of a
18 role in overseeing maintenance of buildings. She has hit the ground running and has
19 done a great job.

20
21 Mr. Nipe said Joe Flannagin has expanded his role as well in taking part of the facilities
22 maintenance. He has done a great job throughout the years and has stepped up to the
23 plate.

24
25 Mr. Nipe said Radley Williams is the Recreation Chief. He has been here a couple of
26 years, originally as a volunteer in a part-time role as a Recreation Assistant. He has
27 shown through his background and education and his knowledge working in the field
28 that he is ready for the next level. He will be leading our recreation team and the
29 community center.

30
31 Mr. Nipe said Deb Barr is one of our newest team members and runs the Senior Center
32 and senior programs and we are happy to have her here. She comes from Elgin, Illinois
33 where she worked for 22 years in parks and recreation in a variety of roles.

34
35 Mr. Nipe said Gunnar Smith, our Recreation Manager and Events Center Manager,
36 does a great job to bring down costs and raise revenue at the Events Center and has
37 brought partnerships and programs throughout the venue.

38
39 Mr. Nipe thanked his staff and thanked the City Commission for the proclamation.

40
41 VII. Unfinished Business

- 42
43 A. Ordinance No. 1488 - Amending Section 154.21 of the Code of Ordinances
44 related to mobile food vendors – Second Reading (Public Hearing) (Gary
45 Schindler, City Planner)

1 The City Attorney read Ordinance No. 1488 by title only on second reading.

2
3 Mr. Schindler stated staff had nothing new to add.

4
5 Commissioner Brender asked if this can be adjusted if necessary.

6
7 Mr. Schindler answered affirmatively. The Commission can give staff direction on what
8 they want changed and we will come in with a code revision and come back with an
9 ordinance.

10
11 Commissioner Brender said in the initial discussion we had on this he felt we were
12 going zero to 60 in no time flat. Now we have slowed it down to 30. He said he wanted
13 to make sure there is a methodology in here and is it legal for us to come back six
14 months from now when we find out we didn't mean for this to happen—the rule of
15 unintended consequences.

16
17 Ms. Reischmann said we are not giving anybody any property rights through this
18 ordinance. This is just a regulation of the vendors. The fact that they have to move off
19 every night is going to make it less likely that they're entitled to grandfathered status.
20 That status generally doesn't inure to an accessory use and only to the primary use of
21 the property.

22
23 Commissioner Plank said he was comfortable with the final ordinance and appreciated
24 the efforts of the Community Development Department in fine tuning it to eliminate
25 some of the problems we had initially.

26
27 Mayor Mealor asked if anyone would like to speak in reference to Ordinance No. 1488.
28 No one came forward and the public hearing was closed.

29
30 **Motion was made by Commissioner Brender to approve Ordinance No. 1488 on**
31 **second reading, seconded by Commissioner Plank and motion carried by roll-call**
32 **vote: Commissioner Brender, Yes; Commissioner Duryea, Yes; Commissioner**
33 **Plank, Yes; Deputy Mayor Lucarelli, Yes; Mayor Mealor, Yes.**

34
35 VIII. New Business

- 36
37 A. Request for Conditional Use Approval regarding a private and retail
38 recreational facility for Cross Fit Lake Mary within the Office and Light
39 Industrial (M-1A) Zoning District, 111 Commerce Street; Greg Sheppard,
40 Cross Fit Lake Mary, applicant (Public Hearing) (Steve Noto, Planner)

41
42 Mr. Noto said this item originally came before the Commission in 2010 requesting a
43 conditional use to operate Cross Fit Lake Mary. Cross Fit is a military style workout
44 facility that has become incredibly popular over the last three to five years. The
45 applicant is looking to expand his business at 111 Commerce Street.

1 Mr. Noto showed a summary of what was requested on the overhead. It is essentially
2 doubling the size, doubling the number of customers, and doubling the average number
3 of parking spaces. We did multiple site visits checking out the parking situation and we
4 saw maybe ten cars throughout the day. We don't anticipate a parking problem. We
5 have received no complaints during the last three years it has been open. On Page 3 of
6 the staff report, Finding of Fact No. 2, we added a condition about adding more parking
7 at the southwest corner of the site if parking becomes an issue. The number of spaces
8 will be relative to the average number of vehicles around the area.
9
10 Commissioner Brender asked if that area was paved.
11
12 Mr. Noto said it was paved but was not striped.
13
14 Mr. Noto said this item was heard by the Planning & Zoning Board at their regular June
15 26, 2013, meeting and they voted unanimously 5-0 to recommend approval.
16
17 Mr. Noto said staff finds that the request to expand an existing personal training facility
18 at 111 Commerce Street in the M-1A zoning district does not adversely affect the public
19 interest and recommends approval with the one condition regarding parking.
20
21 Commissioner Plank said in the 2013 request they are calling for 40 to 50 per class with
22 an average of 30 parking spaces in use. He asked what they were basing the 30
23 spaces on.
24
25 Mr. Noto said carpooling. It will be a similar scenario of what has been happening
26 where the average number of spaces used is half of their full customers.
27
28 Commissioner Plank asked if we had any control if that changes other than the parking
29 expansion.
30
31 Mr. Noto said the request is for 40 to 50 customers per class and they cannot exceed
32 that. If it turns out they are having 70 people per class then that is an expansion of this
33 conditional use and they would need an additional conditional use request.
34
35 Commissioner Plank asked what other businesses were in that same area.
36
37 Mr. Noto said 111 is currently Cross Fit and Micromint. He said he didn't think anyone
38 was in 109 and there are a couple of small offices at 115. Micromint is going to move to
39 one of the other buildings and Cross Fit will be using 111. There was previously a
40 metalworking type of business there and at most were three to five cars.
41
42 Commissioner Plank asked if that building was zoned for retail.
43
44 Mr. Noto answered negatively. It is zoned M-1A, Office and Light Industrial.
45

1 Mayor Mealor asked if anyone wanted to speak in reference to this request for a
2 conditional use for Cross Fit Lake Mary. No one came forward and the public hearing
3 was closed.

4
5 **Motion was made by Commissioner Duryea to approve the conditional use for**
6 **Cross Fit Lake Mary subject to the one condition regarding parking as outlined in**
7 **the staff report, seconded by Commissioner Brender and motion carried by roll-**
8 **call vote: Commissioner Duryea, Yes; Commissioner Plank, Yes; Deputy Mayor**
9 **Lucarelli, Yes; Commissioner Brender, Yes; Mayor Mealor, Yes.**

10
11 Mayor Mealor thanked Mr. Sheppard and his family for their investment in Lake Mary.

12
13 B. Ordinance No. 1489 – Amending Section 157.23 of the Code of Ordinances,
14 Arbor Pruning – First Reading (Public Hearing) (Gary Schindler, City Planner)

15
16 Mr. Schindler requested to present Items B and C together. There were no objections
17 from the Board.

18
19 The City Attorney read Ordinances Nos. 1489 and 1490 by title only on first readings.

20
21 Mr. Schindler said there are three things contained in the ordinances. Ordinance No.
22 1489 has some housekeeping issues like changing some archaic language. It changes
23 the term “shade tree” to “canopy tree”. All trees provide shade, some more than others.

24
25 Mr. Schindler said the primary issue for Ordinance No. 1489 is that it makes it clear that
26 one and two-family property owners and residents have the responsibility to engage in
27 proper pruning. We do not require a pruning permit for one and two-family dwellings—
28 residents or owners. Everyone else--apartment units, office, retail, industrial--are
29 required to get a permit for pruning and that's not changing. However, there is an
30 obligation to engage in “proper” pruning. It was unclear in the code. If someone
31 engaged in such activities they could be issued a Notice of Violation.

32
33 Mr. Schindler said Ordinance No. 1490 is establishing an appeal fee for arbor violations.
34 We contacted various governments and the County and only four of them had fees:
35 Sanford, Longwood, Altamonte Springs and the County. They went from a low of \$100
36 to a high of \$500. The Commission has always directed staff to look at fees in mid-
37 range and is how we came up with the proposed fee of \$300.

38
39 Mr. Schindler said these are two policy issues staff is proposing.

40
41 Mr. Schindler said at their special June 10, 2013, meeting, the Arbor Board voted
42 unanimously to recommend approval of the proposed revisions to Section 157.23 of the
43 City's Code of Ordinances, making one and two-family dwellings responsible for proper
44 pruning of trees. There was a 4 – 2 vote to recommend approval of the proposed
45 revision to Section 163.03(E) establishing an Arbor Appeal Fee in the amount of \$300.

1 Mr. Schindler said at their regular meeting of June 25, 2013, P&Z voted 3 – 2 to
2 recommend denial of the proposed changes.
3
4 Commissioner Duryea asked if this applied to the power companies.
5
6 Mr. Schindler answered negatively.
7
8 Commissioner Brender asked the problem at P&Z.
9
10 Mr. Schindler said he thought it was a matter of philosophy. Some members did not
11 feel an appeal fee was appropriate.
12
13 Commissioner Brender clarified that if we have an appeal fee you get a fine if you lose
14 the appeal.
15
16 Mr. Schindler answered affirmatively. When we receive calls we make an on-site
17 inspection. When it is determined that a violation has occurred, we send a certified
18 letter to the property owner notifying them that a violation has occurred and giving them
19 a time and amount. They then have 30 days to appeal to the Arbor Board.
20
21 Commissioner Brender said the appeal costs more than the fine.
22
23 Mr. Schindler said not necessarily. The initial fine is \$250 and then the secondary fine
24 for a non-historic tree is \$50 per caliper inch.
25
26 Commissioner Brender said that is if the pruning is injurious to the tree, correct?
27
28 Mr. Schindler answered affirmatively. For pruning there would only be the initial fine
29 because the tree has not been removed. The appeal fee is for all arbor violations and
30 not simply pruning.
31
32 Commissioner Brender asked if there were other things in the Lake Mary Code that we
33 have an appeal fee for.
34
35 Mr. Schindler answered negatively.
36
37 Commissioner Brender when somebody appeals something to Planning & Zoning or the
38 City Commission we don't charge them to appeal.
39
40 Mr. Schindler said that is correct.
41
42 Commissioner Brender questioned why we are going to charge people to appeal an
43 arbor violation.
44
45 Mr. Schindler said it is a policy decision. It is a significant amount of work. An Arbor
46 Permit is \$50. For other items, such as a site plan, it is \$1,750.

1
2 Mr. Omana said to address the issue of what other appeals come forward or not come
3 forward, let's say for instance a conditional use or something in the quasi-judicial arena,
4 the City Commission would be the terminal board. If there is an appeal subsequent to a
5 quasi-judicial action then they have the ability to go to the circuit court and that takes it
6 into a whole different arena and is out of our hands. That's why we don't have any fee
7 per se established for zoning related processes.

8
9 Commissioner Brender said what is done is a city service. Part of this is a service that
10 we provide versus when does it become a fee for service that we do. He said he had
11 the same philosophical problem that the Planning & Zoning Board had.

12
13 Commissioner Plank asked how many appeals we have per year.

14
15 Mr. Schindler said between four and eight appeals per year. The initial fine is \$250 and
16 the secondary fine is based on the size of the tree and also whether it is a historic tree
17 or non-historic tree. The secondary fine may be mitigated but the initial fine may not.

18
19 Commissioner Plank said in looking at the minutes from the Arbor Board presentation
20 he thought Mr. Schindler was explaining the base fine was \$100 plus whatever the
21 caliper size of the tree was and was an average of \$250 for most trees.

22
23 Mr. Schindler said the initial fine for a non-historic tree is \$250 and for an historic tree it
24 is \$500. The secondary fine for a non-historic tree is \$50 per caliper inch and for an
25 historic tree \$100 per caliper inch. Depending on size we could be looking at \$1,000 or
26 more.

27
28 Commissioner Plank said \$250 is the least I'm going to get away with paying.

29
30 Mr. Schindler said unless it's appealed to the Arbor Board and City Commission and the
31 Commission makes a decision.

32
33 Commissioner Brender said the cost to appeal it to the Arbor Board is \$300.

34
35 Commissioner Plank said he thought every citizen should have the right of appeal and
36 thought a \$300 fee is an open deterrent to that appeal. He said he wasn't necessarily
37 averse to a filing fee of some kind if we want to go that route but thought \$300 was
38 excessive.

39
40 Mr. Schindler asked the Commission to provide staff with direction.

41
42 Mayor Mealor said that was a very good segue way to his feeling right now: provide
43 direction. At no time did the Commission ever direct that something like this come
44 forward so this is staff initiated and staff generated.

1 Deputy Mayor Lucarelli said she agreed with Commissioner Plank that they should have
2 a right to an appeal but at that price you are not giving it to them because it could cause
3 a financial hardship. She would be more agreeable to the Seminole County fee of \$100
4 or something more reasonable.

5
6 Commissioner Brender said he realized there is a cost to having an appeal. He asked
7 Mr. Schindler if he could lay out a cost so they have a starting point. He asked if it costs
8 the City 50 bucks or 100 bucks.

9
10 Mr. Schindler said it depends. In some instances we ask the Parks & Recreation
11 Director to go out because he is a certified arborist. Many times police officers become
12 involved if something happens on the weekend and then he has to request information
13 from them.

14
15 Commissioner Brender said he agreed with Allan (Plank). He said he didn't want to cut
16 off the appeal process. If somebody comes in and says he didn't know then that's not a
17 decent enough reason. If he hires somebody and that somebody goes out and hires a
18 sub-contractor who goes out and does it without the owner's knowledge. We need to
19 have processes in place where we can judge that an appeal has a basis without being
20 so onerous as 300 bucks to walk in the door. He said he didn't know what the number
21 should be. We want to make it enough that they think about it but don't want to make it
22 more than the fine they are going to endure. He was thinking \$50 or \$100. If they really
23 do have a legitimate problem such as the tree was rubbing against power lines and
24 needed to do something today then that's an appeal he would like to hear and could
25 judge if that was a valid reason.

26
27 Ms. Reischmann pointed out that the fee has to be based on our costs.

28
29 Commissioner Brender said that's why he asked for some kind of basis. He said Mr.
30 Schindler is a salaried employee and gets paid regardless. We have to figure out a
31 legitimate cost basis and come up with a number, but don't make the appeal process
32 worse than the fine.

33
34 Commissioner Plank asked if we differentiate between commercial and residential
35 removal.

36
37 Mr. Schindler said we do not.

38
39 Commissioner Plank asked if any consideration was given to that because his feeling is
40 they (the tree contractor) should know better. He said he would support a higher fine for
41 that.

42
43 Mr. Schindler said we have only the ability through the Arbor Board to go after property
44 owners. The contractors are issued a citation through the court system. He said \$300
45 is the fine for a contractor. We have the ability to go after the contractor and the

1 homeowner at the same time. When we are able to determine who the contractor is, we
2 do that.
3
4 Commissioner Plank asked if the contractor could appeal.
5
6 Mr. Schindler said he appeals to the courts and not through the Arbor Board.
7
8 Commissioner Brender asked how they arrive at a number. He said staff arrived at
9 \$300 based on other cities in the County.
10
11 Mr. Schindler said based upon being in the middle of what other cities charge that do
12 charge.
13
14 Commissioner Brender said discounting employee time and just simply looking at paper
15 and fuel costs, he was trying to come up with a number that he could justify. He thought
16 \$50 or \$100 appeals it. He didn't think having such an onerous appeal cost is right. He
17 said he didn't know how to arrive at a number.
18
19 Mayor Meador asked if anyone wanted to speak in reference to Ordinance No. 1489
20 and/or Ordinance No. 1490.
21
22 Dr. Ellen McLaughlin of the Forest came forward. She said she didn't know what a
23 camphor tree looked like.
24
25 Mayor Meador said the term they were using was tree "canopy" as opposed to camphor.
26
27 Dr. McLaughlin asked if anyone in Lake Mary knew what the Commission was talking
28 about.
29
30 Deputy Mayor Lucarelli said that brings up the idea of community awareness. In her
31 neighborhood she has seen some butchered up trees and it aggravates her. She said
32 she had a professional arborist to trim her trees so it is done properly. She sees people
33 whacking the tops off. She questioned how to get that community awareness so they
34 know what they are doing is wrong and could be punishable by a fine.
35
36 Mr. Schindler said it was our intent to send out notices with the water bills. We give out
37 a newcomer packet that talks about arbor issues and the fact you need a permit and it
38 has phone numbers. We also do education with the contractors. Most contractors are
39 good and know they need permits. It is an ongoing process in education.
40
41 Dr. McLaughlin thanked the Commission for bringing this up and jokingly said she was
42 "barking up the wrong tree".
43
44 Mr. Schindler said all she needs to do is give him a call and he would out to the property
45 and look at the trees and tell her what he knows about what variety they are.
46

1 Mr. Omana interjected that he and Mr. Noto also go out.

2

3 No one else came forward and the public hearing was closed.

4

5 Commissioner Brender said Section 157.23(A) says the owner of the property, tenant or
6 agent shall not trim, prune, remove living branches or cause the diminution of the crown
7 of any canopy tree or understory tree without having first obtained a pruning permit.
8 Owners, tenants or agents of a one or two-family dwelling unit shall be exempt from the
9 requirement of having to obtain a pruning permit. He asked who we are talking to here.
10 He asked if they were talking to apartment complexes.

11

12 Mr. Schindler said right now if you are a one or two-family owner or resident, you do not
13 have to get a pruning permit and we are not proposing to change that.

14

15 Commissioner Plank said they are exempt from permitting but are not exempt for
16 accountability if they violate code.

17

SIDE 1B

18

19 Mr. Schindler answered affirmatively.

20

21 **Motion was made by Deputy Mayor Lucarelli to approve Ordinance No. 1489 on**
22 **first reading, seconded by Commissioner Brender and motion carried by roll-call**
23 **vote: Commissioner Plank, Yes; Deputy Mayor Lucarelli, Yes; Commissioner**
24 **Brender, Yes; Commissioner Duryea, Yes; Mayor Mealor, Yes.**

25

26 C. Ordinance No. 1490 – Amending Section 163.03 of the Code of Ordinances,
27 establishing a fee for arbor appeals – First Reading (Public Hearing) (Gary
28 Schindler, City Planner)

29

30 Ordinance No. 1490 was read by title only on first reading, staff report presented, and
31 public hearing held under Item B.

32

33 Commissioner Brender said in its current form he could not support it and would like to
34 postpone this item to August 8th for reconsideration.

35

36 **Motion was made by Commissioner Brender to postpone Ordinance No. 1490 to**
37 **August 8, 2013.**

38

39 Deputy Mayor Lucarelli asked if that would include staff bringing back more information
40 on what the costs are to process an appeal.

41

42 Commissioner Brender said he wanted to know what it really costs to do this and what
43 do we want to do as part of our job as government as far as the appeal process.

44

45 **Motion seconded by Deputy Mayor Lucarelli.**

46

1 Deputy Mayor Lucarelli said she had no problem with the \$300 fee as it relates to
2 commercial but when it comes down to your next door neighbor it seems steep.

3
4 **Motion carried unanimously.**

5
6 D. Fiscal Year 2014 Budget Message (Jackie Sova, City Manager)

7 Setting of:

- 8 1. Proposed operating millage rate
9 2. Current year rolled-back rate
10 3. Date, time and place of Tentative Budget Hearing

11
12 Ms. Sova said in accordance with state law and pursuant to the City Charter, I am
13 pleased to present for your consideration the proposed annual operating budget for
14 Fiscal Year 2013-2014, including the five-year plan through Fiscal Year 2017-2018.

15
16 Ms. Sova said as the City and the country as a whole continue on the path of economic
17 recovery, this budget proposal represents a commitment towards strategic financial
18 planning to meet the City's goal of providing a high standard of quality of life and
19 development opportunities. During the past few months we have had significant
20 announcements from Verizon and Digital Risk that will bring over 1,300 new jobs to the
21 City. SunRail will begin operating in May 2014 and the City's commitment to transit
22 oriented development will become the cornerstone of growth and economic activity in
23 our Downtown and keeping the future on track.

24
25 Ms. Sova said the budget is designed to provide the reader with a comprehensive and
26 informative document that includes the policy directives of the Commission. The budget
27 is a plan that provides management with the necessary tools to analyze, diagnose, and
28 evaluate how well appropriated funds are converted into the services desired by our
29 citizens. A separate comprehensive Capital Improvement Program Summary is
30 presented for enhanced understanding of significant projects and their financial impacts.
31 The budget is also presented with a five-year plan encompassing all categories of
32 revenue generation and expenditures, including personnel, operating, and capital costs.

33
34 Ms. Sova said the total proposed Fiscal Year 2014 budget is 16% more than the Fiscal
35 Year 2013 budget at a total of \$33,867,296 for all funds combined and \$4,763,010 more
36 than last year. This increase can be attributed to a strategic Capital Improvement Plan
37 totaling \$5,316,237, including \$3,145,462 of projects for the Downtown area and the
38 impending start of SunRail service.

39
40 Ms. Sova said this year we are proposing to the set the ad valorem millage rate at
41 3.5895 mills, or the rolled-back rate, and a reduction of .046 from the prior year. For the
42 previous five years the ad valorem millage rate has been 3.6355. With the combined
43 property values reflecting a total increase of 3.66%, the rolled-back rate will yield
44 \$82,061 less in tax collections than the previous year.

1 Ms. Sová said the stability and economic recovery in Lake Mary can be shown from
2 ongoing construction projects such as the Verizon building consisting of just over
3 220,000 square feet. This facility should add more than \$75,000,000 to the City's tax
4 rolls and much more to the local economy as a whole. The 750 employees will be
5 added over the next three years with the first 300 expected to be employed during the
6 first full year of operation and an anticipated full staff level by 2016. Digital Risk has
7 already completed their \$6,000,000 interior build-out and begun to occupy 50,000
8 square feet of space in Rinehart Ridge at Century Point, and the first 300 jobs are
9 anticipated to be filled by December 2013. An additional 300 jobs may be created by
10 the end of 2017. The Rinehart Place PUD is under active due diligence to be
11 purchased by a potential developer expected to provide the high quality development
12 originally planned under its vested entitlements.

13
14 Ms. Sová said residential construction in the Fountain Parke PUD includes 58 units
15 underway and another 149 to be built. Colonial Properties has 132 units under
16 construction in the third phase of its DRI, emphasizing live, work, and play through
17 internal capture via this mix of uses. The single-family home development in the
18 Enclave at Tuscaný is nearly complete with only a handful of lots left to develop in this
19 high end 33-lot subdivision.

20
21 Ms. Sová said the much anticipated apartment project known as The Station House that
22 is located at East Crystal Lake Avenue and Old Lake Mary Road should be under
23 construction soon. This development of 200 upscale apartments and amenities will
24 include the City's participation in a 3-1/2 story parking garage, landscaping, drainage,
25 roadway, on-street parking, and intersection improvements. Some of the units are
26 scheduled to be ready for occupancy when the first SunRail train leaves the station.
27 While others are planned, this development is expected to be the first of its kind
28 completed along the SunRail route.

29
30 Ms. Sová said still moving through the planning phases is the Station Pointe project
31 including opportunities for offices and retail to be adjacent to the rail platform and
32 provide services for SunRail commuters.

33
34 Ms. Sová said proposed development activities near the SunRail station include
35 planning for a much improved Palmetto Street to include a gateway feature at Lake
36 Mary Boulevard along with traffic calming features such as a roundabout and
37 enhancements to the intersection at Old Lake Mary Road. Our Enhancement
38 Agreement with FDOT will provide a portion of the funding. Staff is considering all
39 available options to have the greatest flexibility for parking, sidewalks, lighting, and
40 traffic calming in the area.

41
42 Ms. Sová said traffic circulation enhancements also include roundabouts to be
43 constructed at the intersections of Country Club Road and Wilbur Avenue as well as
44 Country Club Road and Crystal Lake Avenue.

45

1 Ms. Sova said the recently acquired Community Center building intended to replace
2 and/or enhance the opportunities for gatherings not appropriate for the Events Center is
3 ready for interior renovations and ready to start. These renovations will be partially
4 funded through the fundraising efforts of the Trailblazers and the generosity of the
5 Community Improvement Association.

6
7 Ms. Sova said the City currently has four economic incentive program obligations. After
8 proof of fulfillment of their obligations, Axiom Healthcare is eligible for a payment of up
9 to \$6,000, Paylocity up to \$27,667, and Digital Risk \$150,000. Verizon will not be
10 eligible for economic incentive payments until Fiscal Year 2015. All of these payments
11 are made to the County after verification that the incentive requirements have been met.

12
13 Ms. Sova said after a successful bid process for the traditional hot mix street resurfacing
14 program in 2013, I am recommending that we plan to have sufficient work in 2015 to
15 generate significant economies of scale savings as well as the accompanying better
16 warranty for the finished product. This would mean no hot mix resurfacing for 2014.
17 We do not believe the same will hold true for cold mix paving as the product is specific
18 to very few vendors. We will be able to validate that before the end of the current fiscal
19 year as this project is currently in the bid process.

20
21 Ms. Sova said funding for the cold mix paving program has always been a dedicated
22 source from the Stormwater Utility Fund. The long-term outlook for this fund began to
23 show the financial impact of no change in the rate for 19 years and in Fiscal Year 2013,
24 the Commission authorized a \$1 per month per EDU (Equivalent Drainage Unit) rate
25 increase bringing the total to \$4 per EDU for a period of one year only. I believe it is
26 imperative that the \$4 rate remain in place if it is the intent to continue to maintain the
27 cold mix roads from this funding source. If the Commission desires to do any other
28 projects funded by stormwater fees in the future, including the Stairstep Parks project,
29 the continued financial outlook for the stormwater fund and its primary revenue
30 source—the monthly EDU charge—must be addressed.

31
32 Ms. Sova said after completing the first year of a self-funded health insurance benefit,
33 the City was able to hold the increase in group health insurance costs to a 5.5%
34 renewal. This compares to a market trend of at least 10%. We achieved over \$20,000
35 in savings by changing from a commissioned based payment for the third party
36 administration of our plan to paying a flat fee per employee per month. The savings
37 achieved by changing to a self-funded plan were utilized to open our Lake Mary
38 Employee Wellness Clinic. After six months of operation our employees have saved
39 over \$17,500 in office visit costs and \$3,700 in generic prescription costs. More
40 important than that is the value of the improved health and care employees have
41 realized by participating with the clinic.

42
43 Ms. Sova said during the past year the Community Development Department staff,
44 along with Public Works employees, absorbed the duties of the City's Engineering
45 Inspector due to the unexpected extended vacancy of that position. After eight months

1 we have made the realignment of those duties permanent and have eliminated that
2 position from the budget.

3
4 Ms. Sova said included in the budget is a request for a new full-time position created as
5 an Economic Development and Grants Administrator. If approved, this position would
6 be tasked with optimizing economic development opportunities within the City. This
7 would be accomplished by working with all departments and providing guidance to
8 individuals and companies to recruit, establish, relocate, or expand their businesses or
9 to retain their businesses within the City. Promoting and marketing the City are
10 expected to be key elements for a successful economic development program.
11 Additional assignments would include identifying, researching, and assisting with the
12 City's various opportunities related to obtaining grants and the use of various funding
13 programs to the City's benefit. If we are fortunate enough to find someone with these
14 qualities, I would recommend that funding for this position be evaluated on a year-to-
15 year basis, based on accomplishments achieved and overall benefit to the City.

16
17 Ms. Sova said in the Parks & Recreation Department there is funding for a Lead
18 Recreation Assistant to supervise, train, and coordinate part-time Recreation Assistants
19 as well as provide additional coverage at the new Community Center. With the planned
20 return of the summer camp program, six camp counselors are also included in the
21 budget.

22
23 Ms. Sova said a Pay & Classification Study is not planned as an overall effort for 2014
24 as that task was completed last year including raising the entire pay plan upward 1% for
25 all positions. There are sufficient funds budgeted to address a few isolated cases that
26 may not have been adequately addressed in the study. The individual department
27 budgets allow for up to 2% annual merit pay increase as pay for performance and
28 calculated through the annual evaluation process. The individual merit pay amounts will
29 be based on a point scale utilized consistently citywide.

30
31 Ms. Sova said after years of hard work by many volunteers including the Trailblazers,
32 the Lake Mary Historical Society, and the Lake Mary Historical Commission in their
33 efforts to operate the museum, purchase display cases and needed items, catalog and
34 identify artifacts, and to hold history-related events, it has come time to consider the
35 best approach to continue to keep the museum open and operating in a manner that
36 reflects respect for all of the past efforts. While grateful for all those volunteer efforts,
37 keeping the museum open for regular hours and operating in a manner acceptable to
38 the City takes both time and effort. After some consultation with the Historical Society,
39 they would accept the contractual agreement with the City to provide those services
40 desired. Included in the budget is \$25,000 to fund such an agreement. Contractual
41 considerations would be brought back to the City Commission for approval.

42
43 Ms. Sova said 24 vehicles are scheduled for replacement. These vehicles include two
44 solar sign boards and one speed trailer, eight pick-ups of various sizes and types, three
45 SUVs, one dump truck, two police motorcycles, and seven police cars. We are in the
46 process of a complete analysis to consider replacing the standard police patrol vehicle

1 with Ford Explorer SUV Interceptors. Fairly new to the market these SUVs would
2 provide additional interior space for the ever-increasing amount of equipment officers
3 need to have available as well as provide them with a better comfort level.

4
5 Ms. Sova said as we have always done, this budget is presented in a conservative
6 manner while providing a steadfast commitment to deliver a high level of quality
7 services to our community. Our employees are dedicated and hardworking and I
8 appreciate their effort every single day.

9
10 Ms. Sova said we have scheduled our first work session for August 8th beginning at 5:00
11 P.M. to go over in detail the proposed budget. As always we will review each of the
12 various operating programs during the work session but other than what I have already
13 mentioned, the operating budgets are pretty much flat. We can have additional
14 meetings if we find that necessary.

15
16 Ms. Sova said in accordance with Florida Statutes, the action required by the
17 Commission tonight is to establish a proposed millage rate for Fiscal Year 2014, which I
18 recommend at 3.5895 mills, set the rolled-back rate at 3.5895 mills, and schedule the
19 first public hearing for September 5, 2013, at 7:00 P.M. in the Commission Chambers.

20
21 **Motion was made by Deputy Mayor Lucarelli to set the proposed operating**
22 **millage rate at 3.5895 mills, seconded by Commissioner Brender.**

23
24 Mayor Mealor said the previous millage rate was the lowest in the area. He asked how
25 many years that was in place.

26
27 Ms. Sova said five years and was 3.6355 mills.

28
29 Mayor Mealor said what the City Manager is proposing is a millage reduction.

30
31 Ms. Sova said it is a millage reduction of .046.

32
33 **Motion carried unanimously.**

34
35 **Motion was made by Commissioner Brender to establish the rolled-back rate at**
36 **3.5895 mills, seconded by Commissioner Plank and motion carried unanimously.**

37
38 **It was the consensus of the Commission to schedule the first public hearing for**
39 **September 5, 2013, 7:00 P.M., in the Commission Chambers.**

40
41 Mayor Mealor asked Ms. Sova to thank the department heads. There has been
42 concerted effort this year and we appreciate that very much.

43
44 IX. Citizen Participation

1 Joanne Counelis, 136 East Alma Avenue, came forward. She asked the Commission to
2 get 24-hour bus service on holidays, weekends and nighttime. She asked that a bus be
3 on Longwood-Lake Mary Road by January because that's when she starts track and
4 field.

5
6 Mayor Mealor said the City Manager would be meeting with Lynx and she has that note.

7
8 No one else came forward and citizen participation was closed.

9
10 X. Reports

11
12 A. City Manager

13
14 1. Lake Mary Community Center Design-Build RFQ #13-06

15
16 Ms. Sova said the Lake Mary Community Center Design-Build RFQ #13-06 was issued
17 and has come back. We had a committee go through and rank the qualifications. They
18 ranked one, two, and three. The first was McCree Design Builders; second, Axios
19 Construction Services; and third, Comelco General & Electrical Contracting Services.

20
21 Ms. Sova said McCree scored significantly higher than the others by the members of
22 the Selection Committee, and they are the contractor that did the remodel of City Hall
23 and built Station 33. She recommended the Commission authorize her to enter into
24 contract negotiations with McCree for renovations of the Lake Mary Community Center.

25
26 **Motion was made by Commissioner Plank to authorize the City Manager to enter**
27 **into contract negotiations with McCree Design Build, Inc. for renovation of the**
28 **Lake Mary Community Center, seconded by Commissioner Brender and motion**
29 **carried unanimously.**

30
31 2. Professional Debris Removal Service Contract

32
33 Ms. Sova said this item is a back-up contract for professional debris removal services.
34 As a result of RFP #13-04, she entered into contract negotiations with TAG Grinding
35 Service, Inc. and the contract was executed on June 26, 2013. Since that time,
36 CrowderGulf inquired if we would be using a secondary contract. That is something
37 used frequently by other cities and she didn't think it could hurt in case that came to
38 pass, especially since these contractors are a little bit of distance from us.

39
40 Ms. Sova recommended that the Commission authorize her to enter into negotiations
41 with CrowderGulf for professional debris removal services as a secondary contract.

42
43 **Motion was made by Commissioner Brender to authorize the City Manager to**
44 **enter into contract negotiations with CrowderGulf for Professional Debris**
45 **Removal Services as a secondary contract, seconded by Commissioner Plank**
46 **and motion carried unanimously.**

- 1
2 3. Request for authorization to proceed with utility relocation along the west side of
3 Palmetto Street
4

5 Ms. Sova said this is a request for authorization to proceed with utility relocation along
6 the west side of Palmetto Street. Duke Energy, AT&T, and Bright House Networks
7 currently have aerial utility lines along the west side of Palmetto Street adjacent to the
8 SunRail currently under construction. It used to be wooded there and when all that
9 vegetation came down for the SunRail parking lot those power poles just stand up there
10 and aren't pleasant to look at. This would bury those lines and also increase service
11 reliability. The lines on the east side of Palmetto would remain.
12

13 Ms. Sova said we have met with Duke Energy, AT&T and Bright House several times
14 and have gotten the price down to \$64,493.33. She recommended the Commission
15 approve the proposals not to exceed \$64,493.33.
16

17 **Motion was made by Deputy Mayor Lucarelli to proceed with utility relocation**
18 **along the west side of Palmetto Street in an amount not to exceed \$64,493.33**
19 **(Duke Energy, \$50,100.23; AT&T, \$10,628.10; Bright House Networks, \$3,765.00),**
20 **seconded by Commissioner Plank and motion carried unanimously.**
21

- 22 4. Acceptance of Florida Department of Environmental Protection Grant
23

24 Ms. Sova said this item is for acceptance of the Florida Department of Environmental
25 Protection Grant (FDEP). FDEP has awarded the City of Lake Mary the full request of
26 \$75,000 for maintenance renovations of the Rinehart Trail during Fiscal Year 2013-
27 2014. They have asked us to respond with our intent to use the entire amount. We do
28 intend to use the entire amount. She requested the Commission approve the award of
29 \$75,000 from FDEP and let us respond to the state indicating our plans.
30

31 **Motion was made by Commissioner Plank to approve the award of \$75,000 from**
32 **the Florida Department of Environmental Protection and authorize staff to**
33 **respond to the state indicating the City's plans to use the entire amount,**
34 **seconded by Deputy Mayor Lucarelli and motion carried unanimously.**
35

36 Ms. Sova said this grant is due to the good work of Bryan Nipe.
37

- 38 5. 2013-2014 Edward Byrne Memorial Justice Assistance Grant (JAG) Program
39

40 Ms. Sova said this is the 2013-2014 Edward Byrne Memorial Justice Assistance Grant
41 (JAG). This is an annual amount split between all the governments in the County with
42 each law enforcement agency receiving \$16,731.37. This year we plan to get some
43 new equipment for our training room and update it to include projectors, computers,
44 TVs, furniture, and media equipment for training at the police department.
45

1 **Motion was made by Commissioner Brender to approve the distribution of funds**
2 **from the 2013-2014 Edward Byrne Memorial Justice Grant to be used for new**
3 **equipment for the Police Department training room and authorize the Mayor to**
4 **sign letter, seconded by Commissioner Duryea and motion carried unanimously.**
5

6 6. Historical Society Event
7

8 Ms. Sova said this is a request by the Historical Society to hold a local artist event.
9 They haven't established a specific date but it would be a small event by invitation only
10 with hors d'oeuvres, soft drinks, coffee, and wine. Since it includes wine on City
11 property the Commission would need to approve that request.
12

13 **Motion was made by Commissioner Brender to authorize the Historical Society to**
14 **serve alcoholic beverages at the Lake Mary Museum on whatever date they**
15 **establish, seconded by Commissioner Plank and motion carried unanimously.**
16

17 7. Surplus seven Zoll automatic external defibrillators and four MSA multi-gas
18 detectors
19

20 Ms. Sova said this is a request to surplus seven automatic external defibrillators and
21 four MSA multi-gas detectors. The serial numbers and City ID numbers are listed in the
22 staff report. She requested that the Commission declare these surplus and authorize
23 her to dispose of.
24

25 **Motion was made by Deputy Mayor Lucarelli to declare seven Zoll automatic**
26 **external defibrillators and four MSA multi-gas detectors surplus as outlined in**
27 **staff report and authorize City Manager to dispose of, seconded by**
28 **Commissioner Brender.**
29

30 Commissioner Brender asked if the AEDs go out of date and we have to throw them
31 away.
32

33 Chief Haun said they are out of date and the new models are much simpler for a lay
34 person to use. We were able to use the old ones as trade-ins which allowed us to get
35 an extra one free.
36

37 **Motion carried unanimously.**
38

39 8. Appointment to Board of Adjustment
40

41 Ms. Sova said this is an appointment to the Board of Adjustment. Jim Lormann has
42 submitted his resignation. As previous practice she asked the Commission to appoint
43 the alternate member, Eugene Vaughn, as a regular member to serve the rest of Mr.
44 Lormann's term expiring December 31, 2015.
45

1 **Motion was made by Commissioner Brender to appoint alternate member Eugene**
2 **Vaughn as a regular member of the Board of Adjustment, seconded by Deputy**
3 **Mayor Lucarelli and motion carried unanimously.**
4

5 Ms. Sova reminded everyone that we have rescheduled the August meetings to August
6 8th and August 22nd. The first budget workshop will be on August 8th.
7

8 Ms. Sova said we are sponsoring National Night Out on August 6th from 6:00 P.M. to
9 9:00 P.M. in Central Park. There will be health and wellness booths, K-9 and Taser
10 demonstrations, lots of games and fun.

11
12 Ms. Sova said WineART Wednesday will be held August 7th from 5:00 P.M. to 9:00 P.M.
13 in Central Park.
14

15 Ms. Sova said the Police Department is having their annual school supply drive,
16 "Operation Backpack", from July 22nd to August 7th with drop-off locations at the Police
17 Department, Fire Department, and Senior Center. Needed items are backpacks,
18 Crayola crayons, colored pencils, rulers, highlighters, #2 pencils, one and three-inch
19 three-ring binders, wide ruled notebook paper, one and three-subject spiral notebooks,
20 and solid color pocket folders for the students who can't afford these items on their own.
21

22 B. Mayor

23
24 Mayor Mealor had no report at this time.
25

26 C. Commissioners (4)
27

28 Deputy Mayor Lucarelli said she attended the Metroplan meeting. We have been trying
29 to get some municipal representation on the CRA Board. There has always been
30 resistance to that. It seems with continued pressure and a changing of the guards they
31 are starting to soften to the idea and considering it. We all participate so it seems fair
32 we would have a say on that committee.
33

34 Deputy Mayor Lucarelli said there was a RPA meeting this morning. There wasn't a
35 quorum so it was just discussion. Some of the new staff has developed a new brochure
36 (copy attached) for the corridor to help with marketing efforts and get out more
37 information to existing or new business owners that want to come in, and the types of
38 grants available to beautify or upgrade a facility. There are some great before-and-after
39 pictures and shows the old K-Mart that is now Lowe's in the Casselberry/Fern Park area
40 and the old Gino's Italian Restaurant that is now a Patio Grill. They are going to be
41 working on more before and after to keep this rotating. We are trying to get the word
42 out. We are in the works of setting up mini grants which are \$5,000 and under to
43 expedite the process. We are updating the ordinances and things in the code that
44 would allow staff to make that approval without having to come before us and then the
45 CRA.
46

1 Commissioner Brender said there was a bit of movement about reestablishing the
2 Seminole County Expressway Authority. It still has to be approved by the state but we
3 are trying to get it back in place so by the time the road begins the planning process and
4 the construction process on this end, which appears to be coming 2016-2017, we would
5 like to have a local authority in place and ready for that process. We will probably be
6 hearing more about that in the next six months.

7
8 Deputy Mayor Lucarelli said she went to the groundbreaking kickoff for the Wekiva
9 Parkway and Chairman Dallari acknowledged Commissioner Brender's long-term efforts
10 and hard work and said thank you.

11
12 Commissioner Duryea asked what was up with Epoch property.

13
14 Ms. Sova said they have the St. Johns permit and their site plan and building permits
15 are in. The formal sales transaction has not been completed yet. We are in the
16 permitting stage. We are expecting a late August or mid-September closing.

17
18 Commissioner Plank said the museum is going to be sponsoring a Local Artists exhibit
19 beginning August 3rd and will remain until the latter part of September.

20
21 Commissioner Plank thanked the City for the new tablet. It is very well designed and
22 easy to use.

23
24 Mayor Mealor acknowledged two things that appeared in the most recent *Florida Trend*
25 magazine. He said Mr. Chad Crawford with The Crawford Group located across from
26 City Hall does a beautiful TV series called How to do Florida. Also contained in the
27 most recent *Florida Trend* magazine is a very special section on Florida's Legal Elite.
28 He was pleased to say that recognized under the government and administrative area is
29 our City Attorney Ms. Reischmann and he extended congratulations.

30
31 D. City Attorney

32
33 Ms. Reischmann distributed an article having to do with a P&Z member having to turn
34 over all her e-mails in a lawsuit involving affordable housing (copy attached). She
35 emphasized to the Commission to watch their e-mails. There are some people around
36 the state that are trying to create lawsuits on public records and that is their full-time job.
37 This happened to be a discovery request that was incredibly broad asking for all of this
38 planning board's members' e-mails so she had to go back to her internet provider and
39 retrieve all her deleted e-mails. Those are the kind of things that can happen if we rely
40 too much on our e-mails and get into these kinds of situations. She advised the
41 Commission to forward their e-mails regarding city business to the City Clerk and City e-
42 mail address.

43
44 Ms. Reischmann said she wasn't sure if they had discussion on this public comment law
45 that was signed by the Governor a few weeks ago where you must allow city comment
46 on city propositions undefined near to the time of the decision which is also not defined.

1 It's a short little law and we are doing a memo for all of our governments on what we
2 would suggest. Sometimes you have a work session item that you don't necessarily
3 bring back to the Commission for a time but we may have a consensus to move
4 forward. There may be some need for clarification. You may have a City Manager
5 Report item that is something that might be questioned. We are going to bring back
6 something where we recommend and we will work with the City Clerk and City Manager
7 on that.

8
9 Ms. Reischmann said she was sure everyone read in the paper about Koontz vs. St.
10 Johns River Water Management District, one of that series of U.S. Supreme Court
11 decisions. That one could be very detrimental to governments because in that case the
12 Supreme Court found that where the St. Johns River Water Management District had
13 negotiated with an owner where the St. Johns could have denied the permit but instead
14 offered alternatives, one of which was unconstitutional and one of which was
15 constitutional, but the court said that was a taking because where you have an
16 unconstitutional condition coupled with a denial of a permit that can affect a taking. This
17 could potentially have a negative effect on a city's ability to sit down and creatively work
18 out potential alternatives with landowners. Even though it makes some sense it is just
19 broadening what we understood about the takings law.

20
21 XI. Adjournment

22
23 There being no further business, the meeting adjourned at 8:35 P.M.

24
25
26
27
28 _____
29 David J. Mealor, Mayor Mary Campbell, Deputy City Clerk

30
31
32 ATTEST:
33
34
35
36 _____
37 Carol A. Foster, City Clerk



MEMORANDUM

DATE: August 8, 2013

TO: City Commission

VIA: Jackie Sova, City Manager

FROM: Gary Schindler, City Planner

SUBJECT: Ordinance No. 1489 - Amending Section 157.23, Arbor Pruning - Second Reading (Public Hearing) (Gary Schindler, City Planner)

REFERENCE: City Comprehensive Plan and Code of Ordinances

REQUEST: Section 157.23 addresses the issue of tree trimming and pruning. Paragraph (A) establishes the need for a pruning permit; however, it specifically exempts the owners of 1 & 2 family dwellings from having to obtain a permit to trim trees. Paragraphs (B) – (G) address issues of what constitutes unlawful pruning, establishes a permitting and review process, establishes fines for unlawful pruning and identifies an appeal process.

Additionally, staff proposes to amend Section 163.03 of the City's Code of Ordinances, to establish a fee for arbor appeals. The proposed fee is comparable to the fees charged by other governments in Seminole County.

DISCUSSION:

Section 157.23 - Historically, staff has interpreted the exemption for 1 & 2 family dwelling units in (A) to specifically relate only to the need for acquiring a pruning permit. When pruning occurs that is injurious to the tree, staff has proceeded as though the tree had been illegally removed and sent the owner of the subject property a Notice of Violation. The Notice of Violation informs the property owner of the amount of the initial fine and also that they have the right to appeal staff's determination to the City's Arbor Board.

On two occasions, staff has taken such cases to the Arbor Board. In the first instance, the Arbor Board made a determination that no violation had occurred. Regarding the second

instance, the Arbor Board continued the item for a minimum of 6 months. At the end of six months, staff was directed to conduct an on-site inspection to ascertain the health of the trees. If the tree was dead or dying, staff was to reschedule this item for the Arbor Board's review and action.

In light of this situation, staff proposes to clarify the intent of Section 157.23. Specifically, staff proposes to retain the language that exempts owners of 1 & 2 family dwelling units from having to obtain pruning permits; however, add language that makes such owners responsible for pruning and clarify that persons engaging in irresponsible pruning can be cited with a Notice of Violation and can be fined. In light of this, staff proposes the following revision:

Section 157.23 Pruning ~~Permit~~.

(A)The owner of a property, tenant, or agent shall not trim, prune, remove living branches or cause the diminution of the crown of any canopy tree or understory tree without having first obtained a pruning permit. All Owners, tenants and/or agents of one and two family dwelling units shall be exempt from the requirement of having to obtain a pruning permit this section.; however, such owners, tenants and/or agents shall comply with all other provisions of Section 157.23. ...

(C) Unlawful pruning. Unlawful pruning includes the practices referred to as Sshearing, hat racking, topping or poodle trimming of trees (lollipop), lions-tailing, pollarding of trees. Trees intended for shade ~~Canopy and understory~~ trees shall be allowed to reach their mature canopy spread. It shall be unlawful to engage in excessive pruning techniques on canopy and understory trees intended for shade purposes. Excessive shearing, pruning, or shaping shall only be allowed with a permit in times of emergency, the City may only designate a period during which permitting for pruning shall not be required and excessive shearing, pruning, or shaping shall be allowed. The following are deemed unlawful excessive pruning techniques, which are prohibited on shade canopy or understory trees:

...

(G) Unauthorized Injurious Pruning. Irrespective of whether or not a pruning permit has been issued, if a tree is pruned in a manner that is injurious to the tree, including but not limited to the techniques described in Section 157.23 (C) above If a tree not authorized for pruning is altered, pruned, trimmed, or diminished in canopy such that its susceptibility to disease or other detrimental environmental factors is significantly increased which may result in premature death or so that the purposes of this chapter are not serviced, the general contractor and/or property owner shall pay to the city an initial fine of \$100 per tree pruned plus a fine related to the size of the tree pruned as follows: ...

Section 163.03(E), Other Community Development Land Development Fees: Section 163.03 addresses a number of fees, including arbor fees for both residential and nonresidential properties; however, currently the City does not have an application fee for an arbor appeal. Staff proposes to amend this Section to add an Arbor Appeal Fee.

Staff contacted Seminole County and the other cities in the County to determine if they had an arbor appeal fee and, if so, the amount of the fee. The following is a summary of the results of this research:

Government	Arbor Appeal Fee	Amount
Seminole County -	Yes	\$100
Sanford -	Yes	\$500
Longwood -	Yes	\$400
Altamonte Springs -	Yes	\$250
Casselberry -	No	
Winter Springs -	No	

In light of the arbor appeal fees charged by the other governments in the County, staff proposes an Arbor Appeal Fee of \$300.

Currently, the City's minimum fines equal \$250 for non-historic trees & \$500 for historic trees. Per Commissioner Plank's request, staff has contacted the other governments in Seminole County regarding the minimum fine for removing a tree without a permit. The results of the inquiry are contained in Table #1. The arbor fines charged by other governments vary greatly. At least one government only charges a double permit fee. The cost of an arbor permit is \$30; therefore, the fine is \$60. Others governments charge a minimum of \$50 per caliper inch of each tree, up to a maximum of \$5,000.

In the City of Lake Mary, the following are exempt from permitting: 1 & 2 family dwellings = trees less than 12" caliper & commercial = trees less than 6" caliper. In light of the results of Table #1, the City's initial arbor fines are less than some jurisdictions within the County and more than others. Please refer to Table #1, Comparison of Arbor Fines in the attachments.

ARBOR BOARD ACTION: At their special June 10, 2013 meeting, the Arbor Board took the following action:

- Voted unanimously to recommend approval of the proposed revisions to Section 157.23 of the City's Code of Ordinances, making 1 & 2 family dwellings responsible for proper pruning of trees.
- Voted 4 to 2 to recommend approval of the proposed revision of Section 163.03(E), establishing an Arbor Appeal Fee in the amount of \$300.

PLANNING AND ZONING BOARD ACTION: At their regular June 25, 2013 meeting the Planning and Zoning Board voted 3 to 2 to recommend denial of the proposed changes to the City's Code of Ordinances.

FINDINGS OF FACT: Staff finds the following:

The proposed revisions to Section 157.23, Pruning Permit to be consistent with the Comprehensive Plan and the City Code of Ordinances.

The proposed revision to Section 163.03(E) to be consistent with the Comprehensive Plan and the City Code of Ordinances.

ATTACHMENTS:

- Ordinance No. 1489
- Ordinance No. 1490
- Table #1, Comparison of Arbor Fines
- Arbor Board Minutes
- Planning and Zoning Board Minutes

ORDINANCE NO. 1489

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA AMENDING EXISTING SECTION 157.23(A), (C) & (G), PRUNING PERMIT; PROVIDING CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, on September 22, 1982, the City Commission adopted Ordinance No. 153 which established the City's arbor regulations; and

WHEREAS, the arbor regulations were amended in 1994 and in 1995; and

WHEREAS, the City's Tree Board and City staff spent approximately 18 months reviewing arbor regulations from other jurisdictions and developing and refining proposed regulations, which were adopted in 2005 as Ordinance No. 1165; and

WHEREAS, on March 3, 2011, the City adopted Ordinance No. 1417, which established Chapter 163, relating to Building Department, Community Development, Fire Prevention and Miscellaneous fees; and

WHEREAS, the City Commission desires to amend Chapter 157, Landscaping and Arbor Regulations, to make them more understandable and easier to use; and

WHEREAS, the Arbor Board reviewed the proposed regulations and recommends that the City Commission approve the proposed revisions to Section 157.23 and finds all proposed regulations consistent with the comprehensive plan.

WHEREAS, words with underlined type shall constitute additions to the original text, strike through shall constitute deletions to the original text, and asterisks (***) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:

SECTION 1. Section 157.23 is revised per the language contained in Exhibit "A" attached hereto.

SECTION 2. Codification. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Lake Mary, Florida and the word "ordinance" may be changed to "section", "article", or other appropriate word or phrase and the sections of the Ordinance may be renumbered or re-lettered to accomplish such intention.

Section 3. Conflicts. All ordinances or resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of any conflict.

Section 4. Severability: If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

Section 5. Effective date. This Ordinance shall take effect immediately upon passage and adoption.

PASSED AND ADOPTED this 8th day of August, 2013.

FIRST READING: July 18, 2013

SECOND READING: August 8, 2013

CITY OF LAKE MARY, FLORIDA

MAYOR, DAVID J. MEALOR

ATTEST:

CITY CLERK, CAROL A. FOSTER

For the use and reliance of the City of Lake Mary only. Approved as to form and legal sufficiency.

CATHERINE REISCHMANN, CITY ATTORNEY

EXHIBIT "A"

Section 157.23 Pruning Permit.

(A) The owner of a property, the tenant, or their agent shall not trim, prune, remove living branches or cause the diminution of the crown of any canopy tree or understory tree without having first obtained a pruning permit. All Owners, tenants and/or agents of one and two family dwelling units shall be exempt from the requirement of having to obtain a pruning permit this section; however, such owners, tenants and/or agents shall comply with all other provisions of Section 157.23. ...

(C) Unlawful pruning. Unlawful pruning includes the practices referred to as shearing, hat racking, topping or poodle trimming of trees (lollipop), lions-tailing, pollarding of trees. Trees intended for shade Canopy and understory trees shall be allowed to reach their mature canopy spread. It shall be unlawful to engage in excessive pruning techniques on canopy and understory trees intended for shade purposes. Excessive shearing, pruning, or shaping shall only be allowed with a permit in times of emergency, the City may only designate a period during which permitting for pruning shall not be required and extensive shearing, pruning, or shaping shall be allowed. The following are deemed unlawful excessive pruning techniques, which are prohibited on shade canopy or understory trees:
...

(G) Unauthorized Injurious Pruning. Irrespective of whether or not a pruning permit has been issued, if a tree is pruned in a manner that is injurious to the tree, including but not limited to the techniques described in Section 157.23 (C) above If a tree not authorized for pruning is altered, pruned, trimmed, or diminished in canopy such that its susceptibility to disease or other detrimental environmental factors is significantly increased which may result in premature death or so that the purposes of this chapter are not serviced, the general contractor and/or property owner shall pay to the city an initial fine of \$100 per tree pruned plus a fine related to the size of the tree pruned as follows: ...

**TABLE #1
COMPARISON OF ARBOR FINE**

<u>Government</u>	<u>Amount of Initial Fine</u>	<u>Amount of Initial Fine- Historic Tree</u>
Lake Mary	\$250	\$500
Seminole County -	\$100, \$300 or \$500 (1) (4)	
Sanford -	\$60 (2)	
Longwood -	\$50 per caliper inch (3) (4)	
Altamonte Springs -	Residential = \$300 (4) Commercial = \$450 (4)	
Oviedo – Inch tree	\$50 per caliper inch up to \$5,000 per tree	\$100 per caliper up to \$5,000 per
Casselberry -	\$88 per caliper inch up to \$5,000 (4)	
Winter Springs -	\$250	\$500

1 = Based upon size of tree removed, but not to exceed \$5,000.

2 = Fines equal double permit fee. Fines do not differ between historic and other trees.

3 = Applicable to commercial. Fines vary by size of tree removed; however, \$50 per caliper inch is the minimum.

4 = Fines do not differ for historic and other trees.

1 **MINUTES OF THE CITY OF LAKE MARY, FLORIDA, SPECIAL CITY TREE BOARD**
2 **MEETING HELD JUNE 10, 2013, 6:00 P.M., CITY HALL, 100 N. COUNTRY CLUB**
3 **ROAD**

4
5 **TAPE 1, SIDE A**

DRAFT

6 I. Call to Order

7 The meeting was called to order at 6:00 p.m.

8 II. Roll Call/Determination of a Quorum

9 The following members were present:

10 Chairman Danny Williamson
11 Vice Chairman Lynette Swinski
12 Member James Buck
13 Member Robert Sebald
14 Member Jeanne Miller
15 Member John Lackey

16
17 Member Robert Boardman was absent.

18
19 City staff present were Juan (John) A. Omana, Jr., Community Development
20 Director; Gary Schindler, City Planner; and Diana T. Adams, Administrative
21 Secretary.

22
23 III. Approval of Minutes - May 6, 2013

24
25 **MOTION:**

26
27 **Member Buck moved to approve the Minutes of the May 6, 2013, City Tree**
28 **Board meeting, as presented. Member Sebald seconded the motion, which**
29 **carried unanimously 6-0.**

30
31 IV. 2013-ZTA-03: Recommendation to the City Commission regarding proposed
32 revisions to Section 157.23, Arbor Pruning, and revisions to Section 163.03,
33 establishing an Arbor Appeal Fee; Applicant: City of Lake Mary/Community
34 Development Department/Planning and Zoning Division.

35
36 Gary Schindler, City Planner, presented staff's request and the related Staff
37 Report. He said, what is before you tonight are two proposed revisions to
38 Chapter 157, City Code of Ordinances. He then explained the process to the

JUNE 10, 2013-1
CITY TREE BOARD

1 Board. He stated, you are going to be reviewing them tonight from the
2 perspective of how they relate to the City's policies and regulations regarding
3 trees. After tonight, the same Staff Report will go to the Planning and Zoning
4 (P&Z) Board on June 25th. The P&Z Board looks at it not from the perspective of
5 arbor -- they do not supersede your authority -- they look at it from the
6 perspective of the overall Code of Ordinances because all proposed revisions to
7 the Code of Ordinances go through the P&Z Board. Then, on July 18th, the Staff
8 Report will go to the City Commission with the recommendations/actions of both
9 boards listed and the Minutes from both boards. So, I just want you to
10 understand how the process works.

11
12 Mr. Schindler said, the first revision has to do with one and two-family
13 homes/residences and trimming. Right now, a permit is not required for one or
14 two-family residences to trim. Staff has had an interpretation of the regulations
15 as saying, okay, you don't have to have a permit to trim; however, if you trim and
16 it's injurious to the tree, you can be cited. Well, the Arbor Board, in a couple of
17 instances, has differed from staff and said, we respect your opinion; that it was
18 based on staff's interpretation of the Code. In light of this, we want to
19 change/revise the Code to be very specific to say that you may not need a
20 permit, but you still have responsibility in trimming; that you can't go out and
21 butcher a tree. You can't do that anymore than an office building, manufacturing
22 plant, or retail establishment. If you go out and you trim a tree to the point where
23 it is injurious to it, you may be cited.

24
25 Mr. Schindler stated, the language that is proposed is in Chapter 157.23. Where
26 it says owners, tenants and/or agents of one and two-family dwelling units shall
27 be exempt from the requirement of having to obtain a pruning permit hasn't
28 changed. However, we want to make the language specific to read owners,
29 tenants and/or agents shall comply with all other provisions of Section 157.23,
30 which then says you've got the privilege of not having to get a permit, staff can't
31 review what you are proposing to do, but there is a responsibility that goes with
32 that. And the responsibility is rational, proper pruning that is not injurious. That's
33 it. It clarifies it. And I can't be any more specific than that. You still don't have to
34 get a permit, but you've got to be responsible. And there are a couple of other
35 minor changes that clarifies that. Instead of shade tree, it's canopy and
36 understory tree. It's just some language that we have cleaned up. But, the
37 responsibility of not doing injurious trimming and pruning is clearly the more
38 central factor.

39
40 Mr. Schindler said, then we have Chapter 163.03. What we are wanting to do is
41 establish an application fee for appealing an arbor decision. We want to
42 establish \$300 as the fee. You can see on the bottom of page 2 and the top of
43 page 3 that there are other cities that have established application fees. Now, it

1 is not always apples to apples, oranges to oranges, but in my discussions with
2 other jurisdictions, these are what they charge for an arbor appeal of one sort or
3 another. It goes from \$100 for Seminole County; Sanford, \$500; Longwood,
4 \$400; Altamonte Springs, \$250. So, we are proposing \$300. We feel that is kind
5 of right in the middle, which is where we like to be with our fee structure.
6

7 Mr. Schindler concluded his presentation by saying, that's it. I'm more than
8 happy to answer any questions you may have.
9

10 Chairman Williamson asked if the City has any fee at all currently in place for an
11 arbor appeal, or is it free.
12

13 Mr. Schindler answered, no, none whatsoever.
14

15 Chairman Williamson questioned if the Appellant(s) will get the \$300 back if the
16 appeal is won.
17

18 Mr. Schindler responded, no. Because when we go to that kind of formality –
19 there is a lot of time and effort that goes into it and it would simply reimburse staff
20 for the time that is spent, just like the \$30 that we have for an arbor permit makes
21 a very small contribution to the City's General Fund. It mean, we may make a
22 couple of hundred dollars a year. It is not intended to be a real revenue stream.
23

24 Vice Chairman Swinski asked, are these fees new in other cities, or have they
25 been there for awhile?
26

27 Mr. Schindler replied, my understanding is they have been in place for awhile.
28

29 Vice Chairman Swinski questioned, so, did we just learn about them?
30

31 Mr. Schindler answered, no. We had just made a conscious decision previously
32 that we would not have an application fee for an appeal.
33

34 Chairman Williamson, stated, in reference to trimming, that he recalled at a
35 previous meeting the Board did have staff go back and look at some trees within
36 six months or a year and the Board never heard back. He wondered if those
37 trees were still alive.
38

39 Mr. Schindler said that the trees were still alive.
40

41 Member Miller asked the relevance of that.
42

43 Chairman Williamson responded, he hat-racked the trees.

DRAFT

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Mr. Schindler stated, oh, awful. They ended up with trunks and sticks that look like my hand.

Chairman Williamson said, that's under the pruning section.

Vice Chairman Swinski suggested to discuss Section 157.23, Pruning, first since there are two different issues.

Chairman Williamson stated, we could do that. We could go in order.

Member Sebald questioned what would be the judgment of over pruning.

Mr. Schindler replied, noncompliance with the American Arbor Association, and also in Chapter 157.23, there is a list of prohibited pruning techniques; hat-racking, poodle-ing, lolli-popping, and it gives a description of what those practices entail. We have to treat people the same all the way across the board whether it's injurious or it's not. And it is no more injurious for nonresidential as it is for residential.

Member Sebald asked Mr. Schindler if he was going to be the Board's only guidance.

Mr. Schindler answered, we also have Bryan Nipe, who is a Certified Arborist. We call on him whenever we need expertise. The other thing is if someone were to present a note to me from a Certified Arborist stating that the pruning that had been done was in compliance with the American Arborist Association, unless it was really obvious that it was not, we would defer to that person. When a person applies for a permit to remove a tree, there are some instances where it's enough of a shade of gray that I can't make a determination and say, listen, get a statement from an arborist, and if the Arborist says that this tree needs to come out, we accept it without question. We believe in the professionalism of Arborists.

Chairman Williamson questioned, what kind of trimming is that that the power companies do when they just take the whole middle out and make like a V?

Mr. Schindler responded, unfortunately, they are exempt from local regulations.

Chairman Williamson said, right I know they are, but I would say that's the ugliest trimming I have ever seen in my life.

Mr. Schindler stated, yeah, it is. And we wish we had control over it, but we don't. They have a franchise agreement and they are entitled to do that.

1 Chairman Williamson said, right. Well, I guess that's their right of way too if their
2 power lines are on it.

3
4 Member Sebald asked, so, the homeowner has the primary responsibility for this
5 trimming and we are not going to approach anybody who did the trimming?
6

7 Mr. Schindler replied, oh, we'll go after that person too, but oftentimes they don't
8 tell us who did the trimming. If a determination is made that the trimming was
9 injurious to a tree, we have the ability to issue a citation to the company that did
10 the work and they will be fined \$300, which is not in Chapter 157. It is through
11 the Code Enforcement Board. It is separate from 157.
12

13 Member Sebald stated, so, you are fining the person who trimmed the tree. He
14 questioned, do you also fine the homeowner? Is that in the Code?
15

16 Mr. Schindler answered, yes. Just like with someone who takes out a tree
17 illegally. We can do that now.
18

19 Member Sebald asked, so, that's in some other section? Not in this?
20

21 Mr. Schindler responded, uh-huh.
22

23 Chairman Williamson questioned, so, the type of destructive pruning that you are
24 referring to probably can't be done by Mr. Joe Homeowner with a pole saw? You
25 are talking about someone getting up in a tree with a chainsaw and just hat-
26 racking it?
27

28 Mr. Schindler replied, yes; uh-huh.
29

30 Chairman Williamson said, I would agree with that.
31

32 Vice Chairman Swinski asked, and anyone who would get a Notice of Violation,
33 initial fine would be \$100 and they could also apply for the appeal process but
34 would pay the appeal as anybody else with a tree issue?
35

36 Mr. Schindler answered, that's correct. Yes. There is always an avenue of
37 appeal.
38

39 Vice Chairman Swinski questioned, but if I pay my \$100 -- if I trim my tree
40 because the City says I hat-racked a tree, I get \$100 fine or I pay \$300 to go to
41 the appeal board? It's cheaper for me to just pay my \$100 fine than appeal it?
42

43 Mr. Schindler responded, it is; yes.

1 Vice Chairman Swinski asked, the initial fine is \$100 right now, or that is what we
2 are proposing in the new one?

3
4 Mr. Schindler replied, it's \$100.

5
6 Vice Chairman Swinski stated, because you just don't see that very often.

7
8 Mr. Schindler said, no, you don't because we have stopped bringing any
9 violations for pruning because of the actions you have taken. We felt that it was
10 not a good use of the Board's time or staff's time to bring violations for one and
11 two-family residences because you have made it clear, when Mr. Jarvis was
12 here, that the Code does not specifically support that it is a violation. This is why
13 we are now coming back to you to say, yes, we heard you and we want to clarify
14 that.

15
16 Member Sebald questioned, just to clarify that further, the fine for a homeowner
17 would be \$100 and then \$300 for the contractor?

18
19 Mr. Schindler answered, yes. Now, there is also based on the size of the tree.
20 It's \$100 initially and then it would be based on the size of the tree.

21
22 Vice Chairman Swinski asked, is that also comparable to other cities?

23
24 Mr. Schindler responded, we have not looked at the fines.

25
26 Chairman Williamson questioned, the \$100 fine actually goes up if the tree dies
27 and has to be removed; correct?

28
29 Mr. Schindler replied, it would depend upon whether or not they applied for a
30 permit. I mean, we are not going to be doing double jeopardy. If we fine
31 someone for pruning that is injurious and the tree dies, then I think we might be
32 hard pressed to then turn around and fine them for killing the tree because all
33 they would have to do then is apply for a permit to take out the tree.

34
35 Chairman Williamson asked, don't you think that would be a loophole that people
36 would use?

37
38 Mr. Schindler answered, but you are already saying that it is – you know, you
39 pruned it and it is injurious. So, there is only a 50-percent chance that the tree is
40 going to live. Either the tree is going to live or it's not. Now, if someone comes
41 and applies to take out a tree, then we look at what is the minimum number of
42 trees they are required to have on their property, and if they do not meet that,
43 they will have to then do replacement.

1 Chairman Williamson questioned, the young man that we – a year ago,
2 whenever it was, that we granted him a year to look at his trees, that wasn't a
3 pruning fine, that was a tree destruction fine; correct?
4

5 Mr. Schindler responded, I believe it was a pruning issue because...
6

7 Chairman Williamson interposed saying, oh, I thought we were fining him for
8 taking the whole tree down. It was a historic tree that he trimmed, and it was
9 deemed by Bryan – Bryan was in that meeting that night -- that it killed the tree.
10 And we said, well, it is really not dead yet. Let's wait and see what really
11 happens.
12

13 Mr. Schindler stated, in six months we were to go back and take a look at it and it
14 had come out.
15

16 Vice Chairman Swinski asked, it had come out and survived?
17

18 Mr. Schindler replied, it had survived, but it is going to be years before it ever
19 gets back to what it was.
20

21 Vice Chairman Swinski questioned, and the one where there was no violation
22 had occurred, do you remember any of the details around that one?
23

24 Mr. Schindler answered, no, I don't specifically remember that one, but I believe
25 that it was subsequent to the first one where there was six months. You said,
26 well, per our understanding of the Code, it is not applicable to one and two-family
27 residences and, therefore, no violation has occurred. And staff said, okay, we
28 get the message. We are not bringing anymore violations to you until such time
29 as we revise the Code.
30

31 Member Lackey asked if what was being discussed is about residents getting a
32 permit before they do any pruning on any of their trees.
33

34 Mr. Schindler responded, no, they don't have to get a permit. That hasn't
35 changed. Not having to get a permit is a privilege that nonresidential properties
36 do not have. We know with privilege comes responsibility, and the responsibility
37 is that you do appropriate pruning and trimming. I don't want to be out having to
38 look at that if you are going to take off one limb. We trust you to do what is right,
39 but if you don't, there is a responsibility that you then must pay the price, and that
40 price is being cited. All they have to do is call. I'm more than happy to send
41 them a copy of the relevant section of the Code that says this is what is required
42 for trimming. Also, if you hire a tree contractor, simply tell them that they are to

1 trim in accordance with the American Arborists Association. We recognize that
2 as legitimate, appropriate pruning.

3
4 Member Miller requested to switch gears for a minute to the part about the
5 emergency portion; that the City may designate a period during which permitting
6 or pruning shall not be required.

7
8 Mr. Schindler said, sure.

9
10 Member Miller questioned, do we have anything like that now?

11
12 Mr. Schindler replied, no, not now. But, in 2004, when we had the hurricanes, we
13 suspended permitting for tree removal or trimming for several months. I think for
14 two months. Decree went out that said you don't need to get a permit to remove
15 a tree. You don't need to get a permit to trim. We trust that you are going to act
16 responsibly. And I believe that most people did because I don't remember any
17 problems coming out of that period. So, that's an example of when we had a
18 designated period.

19
20 Member Miller asked how that was communicated.

21
22 Mr. Schindler answered, I believe that it went out in the utility bills.

23
24 Member Sebald questioned, assuming this passes, will you do the same thing to
25 notify the homeowners; put a note in the utility bill?

26
27 Mr. Schindler responded, yes. And it will take a full month to – because the utility
28 bills are staggered, but we can request that this information go out as part of a
29 mailer in the utility bill, and if people read their utility bills and the junk mail that
30 comes in them, they will know.

31
32 Vice Chairman Swinski asked, how many pruning violations do you have in a
33 month?

34
35 Mr. Schindler replied, none, because we aren't – most people know that a permit
36 is not required, and I will get calls two or three times a year that someone is
37 pruning or cutting – what I usually get is they are taking out a tree. And I will
38 drive out to the property and they'll say, no, no, we're just trimming. And I'll say,
39 okay, that's fine. Thank you.

40
41 Vice Chairman Swinski questioned, like the couple of examples that we had of
42 hat-racking that came to the Board, those ones that appealed, how many do you
43 catch that didn't appeal? Rare?

1 Mr. Schindler answered, very seldom. Rare. I think in the last year or so, there
2 have been a couple of instances where trees have been severely trimmed, but
3 we did not proceed to issue them a citation or a Notice of Violation because of
4 the action that the Arbor Board had taken. But, it's not significant.

5
6 Vice Chairman Swinski asked, so, going forward, anyone who gets a violation as
7 determined by you and your department would get the fine notice for \$100 and
8 they could opt to pay or come to the Arbor Board with an appeal fee?
9

10 Mr. Schindler responded, that's right.

11
12 Member Miller stated, I'm viewing these two things separately.

13
14 Mr. Schindler said, they are separate but related. But, yes, they have the option
15 to come to the Arbor Board.

16
17 Member Miller questioned Chairman Williamson if the Board wanted to talk about
18 the second part.

19
20 Chairman Williamson replied, let's make a decision on the first part, then we'll go
21 onto the second part.

22
23 Member Lackey asked, how is this going to be monitored? When we come into
24 hurricane season, a lot of people are going to be trimming their oaks back,
25 thinning them out, because of the winds.

26
27 Mr. Schindler answered, I think the American Arborists Association says that
28 improper trimming is taking out more than 25 percent of a tree. That's a lot. So,
29 if someone calls us and says somebody is taking out a tree, and I go out and
30 they say I'm only trimming. Then I will ask them how much they are going to
31 trim. If necessary, I'll call Bryan Nipe and ask him to come out and take a look.
32 We are not out to bust people's chops. We simply want to make sure that proper
33 practices are being followed.

34
35 Vice Chairman Swinski stated, it sounds like you field a lot of calls from people
36 that would have a question.

37
38 Mr. Schindler said, oh, believe me. All it takes is someone to be working in a
39 tree, they hear the chainsaws, they hear the chippers, and we get calls.

40
41 Chairman Williamson stated, that's probably why you hear so many of them on
42 Saturday and Sunday.
43

1 Mr. Schindler said, yes. Unless I know that a permit has been issued for that
2 address, I have to go out and take a look just to make sure that work is not being
3 done that is illegal.
4

5 Vice Chairman Swinski questioned, how many residents call you in an average
6 week and say, hey, I want...
7

8 Mr. Schindler responded, very few, very few.
9

10 Vice Chairman Swinski asked, but they could and you could accept their call for
11 guidance?
12

13 Mr. Schindler replied, they could. Where we get the most calls in a year is from
14 The Forest than any other neighborhood.
15

16 Member Miller questioned, is understory tree defined somewhere in here?
17

18 Mr. Schindler answered, yes. An understory tree is a tree that, at maturity, has
19 an average height of between 15 and 25'. We have a list of understory trees, not
20 complete, but we say these are recognized understory trees. There could be
21 other understory trees because all the time they are coming up with new species,
22 but we can't begin to change the Code all the time. But, what we say is, rule of
23 thumb, at full height, average 15-25'. A canopy tree is a tree that, at full growth,
24 is in excess of 25'.
25

26 Member Miller asked, what is the value of dropping the language, trees intended
27 for shade?
28

29 Mr. Schindler responded, because it makes it more clear whether it's understory
30 or canopy. What about a Ligustrum; is that a tree. Well, some varieties of
31 Ligustrum are understory trees. Whereas, I wouldn't say that a Ligustrum is a
32 shade tree. It's just better descriptive and more compatible with the rest of the
33 Code.
34

35 Chairman Williamson opened the hearing to public comment. Hearing none, he
36 closed that portion and entertained board discussion and/or a motion.
37

38 **MOTION:**
39

40 **Member Miller moved to recommend approval to the City Commission**
41 **regarding proposed revisions to Section 157.23, Arbor Pruning, consistent**
42 **with staff's Findings of Fact listed in the Staff Report. Member Sebald**
43 **seconded the motion.**

1 **Chairman Williamson requested a roll-call vote on the motion, which was**
2 **taken as follows:**

- 3
4 **Member Lackey - Yes**
5 **Vice Chairman Swinski - Yes**
6 **Member Buck - Yes**
7 **Member Sebald - Yes**
8 **Member Miller - Yes**
9 **Chairman Williamson - Yes**

10
11 **The motion carried unanimously 6-0.**

12
13 Chairman Williamson said, now we'll go to part two, the proposed revisions to
14 Section 163.03, establishing a \$300 Arbor Appeal application fee.

15
16 Mr. Schindler stated, we try to be in the middle. That is one of the reasons we
17 look at what other jurisdictions in the County have as comparable fees and then
18 we try to choose something that is not the highest nor the lowest but in the
19 middle, and we feel that \$300 is in the middle.

20
21 Member Miller questioned, what is the purpose of the fee? So far, I've heard you
22 say that it would potentially cover, partially, staff's time.

23
24 Mr. Schindler replied, it does that. It would tend to reimburse the City for the
25 portion of the time that staff spends on arbor appeals.

26
27 Member Miller asked, but wouldn't you have essentially all the documentation to
28 support a decision when you make the initial decision as opposed to the appeal?
29

30 Mr. Schindler answered, yes, but I still have to write up a Staff Report. I have to
31 make sure that all my facts are coherent, I have to come here to present it to you
32 and there is time involved.

33
34 Member Miller said, I guess I would have the expectation that all of the facts and
35 clarity of the decision was had when the original assessment was done or
36 reviewed, but -- so, the only additional work I would see would be coming here
37 and just double-checking your decision.

38
39 Mr. Schindler stated, well, if we were to go with that thinking, then there would be
40 no fees at all for any of our items; no fees for a zoning request or a land use
41 request, subdivision request, because staff would have done all the work
42 previously. It is up to you to make a recommendation. This is simply in line with
43 what we see other jurisdictions doing.

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Vice Chairman Swinski questioned, what is the fine currently? Like, we talked about on pruning, a resident would have \$100 fine minimum. What is the minimum fine on a tree take down?

While Mr. Schindler deferred to his code book to answer that question, Juan (John) A. Omana, Jr., Community Development Director, said, while he's getting that, obviously, it varies with the size of the tree and things of that nature. And, understand, that is not before you this evening.

Vice Chairman Swinski stated, I'm just curious, just for a matter of perspective.

Chairman Williamson said, actually, this proposal would be good for us because if someone takes a tree down without a permit and gets fined a \$250 fine, that is usually when everyone comes in here to appeal. If they see they have to pay \$300 more to appeal it, they probably are just not going to appeal it at all.

Mr. Omana stated, that's their decision.

Member Sebald asked, so, does that \$300 cover trees taken down without a permit?

Mr. Omana responded, it goes back to the issue of does it cover everything. The answer is no. I mean, \$300 is not going to cover Mr. Schindler, or me, or.....

Member Sebald questioned, do they also have to pay \$300 to appeal a tree?

Mr. Omana replied, to appeal a tree; yes.

Member Sebald asked, that's currently in position?

Mr. Schindler answered, they will have to pay \$300 to appeal any kind of arbor violation if this is in place.

Member Sebald said, okay, so, this does cover everything.

Mr. Schindler further responded, right now, failure to obtain a permit for a non-historic tree, the initial fine is \$250. For a historic tree, it's \$500. Then, for a non-historic tree, it is also \$50 per caliper inch. For a historic tree, it's \$100 per caliper inch on top of that.

Chairman Williamson questioned, does this fee also apply to people who are denied a permit to take a tree down?

1 Mr. Schindler replied, yes, yes.

2
3 Chairman Williamson stated, because that's usually what we see here mostly.

4
5 Mr. Schindler said, yes, yes.

6
7 Chairman Williamson stated, so, it kind of makes it a gamble for them then. If
8 they are going to pay \$300 or wait and see – either they'll grant me to take the
9 trees down or not.

10
11 Mr. Schindler said, if that is your intent that it should, please make that in your
12 motion that the application fee of \$300 would be for any arbor appeal.

13
14 Member Sebald stated, that makes it pretty clear.

15
16 Member Miller said, so, back to what you were saying. If you potentially just pay
17 the penalty because it's cheaper than trying to address the – my concern with
18 that approach is that if we get into a situation where there is interpretation of the
19 law that is not clear, this appeal process is the way for those unclear situations to
20 come up and we would really be deterring people from bringing forward anything
21 where it was unclear, or perhaps you guys retire and we have an overzealous
22 staff and they start making assessments that are unreasonable, we wouldn't
23 really have visibility to that if we deterred people from coming forward with
24 concerns in the community.

25
26 Chairman Williamson stated, well, they are written rules and regulations they go
27 by, and the \$250 fine, keep in mind, is the initial fine. If it is a historic tree of any
28 size, the fine is going to be a lot steeper than that.

29
30 Mr. Schindler said, you also have the ability to make a distinction between
31 appeals for trees being removed and appeals for trimming or pruning. You could
32 make a lesser fine for pruning or trimming. You could say, well, maybe it's \$200
33 rather than the \$300 for illegal pruning or trimming. But, by the same token,
34 understand, we are not going to cite somebody for illegal trimming or pruning
35 unless we believe that that tree is injured and that there is only a 50/50 chance
36 that it is going to live.

37
38 Member Miller stated, but that's not what it says in 157.23. I appreciate you
39 saying that, but that's not how it reads.

40
41 Mr. Schindler said, those are the regulations regarding the types of illegal pruning
42 and trimming and have been on the books for a long time. If someone follows
43 the American Arborists Association rules and regulations regarding trimming,

1 they won't end up with poodle-ing. They won't end up with lolli-popping. There is
2 a good reason to say that those are illegal because they are injurious to trees,
3 and those types of activities are well accepted as being injurious and are not
4 allowed – or they are identified by the American Arborists Association as being
5 not the best management practices.

6
7 Member Miller asked, if we accept the proposal for the first half and it turns out
8 that there was something ambiguous or unclear in the first half, how would we
9 ever get feedback that the lot had to be corrected again without having people
10 come before us?

11
12 Mr. Omana answered, it would go to the City Commission, it would go to the City
13 Manager, they would go to us.

14
15 Mr. Schindler concurred.

16
17 Chairman Williamson stated, regardless of what we say, they can go to the City
18 Commission with our decision.

19
20 Mr. Schindler said, right because anyone can appeal your decision to the City
21 Commission. Whenever we send out the after-action letter or after-board letter,
22 we inform them of that right and then say you have 30 days in which to appeal,
23 30 days from the date of the letter in which to appeal to the City Commission.
24 And we have had a few that have gone to the City Commission.

25
26 Member Sebald asked Mr. Schindler if there was a fee to appeal to the City
27 Commission.

28
29 Mr. Schindler responded, there hasn't been.

30
31 Member Miller questioned, do any of these cities have it where if when they are
32 appealed, the fee is waived?

33
34 Mr. Schindler replied, I don't know. That was not our intent because it is an
35 administrative – I won't say nightmare, but it is a significant issue to refund
36 application fees. It is done when necessary, but, to the best of my knowledge, no
37 other action item in the City do you get your application fee refunded if you lose.

38
39 Member Miller stated, I mean, I keep trying to think about if I get a speeding
40 ticket, I have to pay a court fee. She asked, is this similar to a court fee if I get a
41 speeding ticket?

42
43 Unidentified voice answered, it could; yes.

1 Member Miller said, on the other hand, although you view it as very objectively
2 written, as a homeowner, I might be more subjective in reading it and interpreting
3 it. And that is my concern, is that everybody has their story, whether they are
4 new in town or it was after a storm and they needed to clean it up. I'm just
5 concerned that we wouldn't potentially be allowing people to come to this place.
6

7 Mr. Schindler stated, understand, if we have a storm – in fact, after the storm
8 event we had last week, a fellow came in to me and said I have a tree that's
9 dangerous. I said, take it down. You don't have to apply for a permit because
10 there is language in 157 that says if a tree is threatening life or property, you are
11 to take it down, and then within 24 hours of the act, notify the City. And we allow
12 that. We said yes. That is what the Code says. And in such instances, we take
13 people's word for it. We try to be as objective as possible, but there are times
14 when people blatantly, either through ignorance or willful action, do things that
15 are injurious to trees, whether they take them out or whether they simply hack
16 them to the point where it is questionable if they will live.
17

18 Member Miller said, and that is why I'm in support of the fine. But having to pay
19 money to come before the Board...
20

21 Mr. Schindler interjected, well, then, you may recommend against it.
22

23 Mr. Omana stated, but again, as Mr. Schindler pointed out, beside what we do
24 with you as a board, we have rezonings, we have DRIs, we have conditional
25 uses, we have site plans. We have to charge for those items to help offset the
26 cost of processing. So, we would be applying the same principle here. If these
27 people wish to appeal a decision or a permit that has been processed, then they
28 have that ability. It is just going to cost you, just like it would cost you to file for a
29 rezoning, DRI, site plan, conditional use.
30

31 Member Sebald questioned, how does this fee compare to those fees?
32

33 Mr. Omana responded, rezonings are \$250. Conditional use can vary up to
34 \$600. DRIs go up to \$2,500 depending on the nature. If it's a major DRI...
35

36 Mr. Schindler interposed saying, variances are \$350. An initial subdivision – a
37 preliminary subdivision is \$1,000.
38

39 Member Miller said, but when you calculate the cost of the fee relative to the
40 benefit of a rezoning compared to pruning of a tree, I think it is a pretty significant
41 variance between the two.
42

1 Mr. Schindler stated, well, then, you, as a board, need to decide if you do not like
2 the amount, you may take action to recommend an amount you do believe is
3 justifiable.
4

5 Vice Chairman Swinski said, it sounds like certainly there is – I'm sure there is a
6 ton of administration work that goes into it. You have described some of it. And
7 other cities in the County are charging the fees, so there appears to be a
8 standard operating procedure. We just maybe haven't been charging it in Lake
9 Mary because it's happening in Altamonte, Longwood, Sanford.
10

11 Mr. Omana stated, we haven't been charging it.
12

13 Member Lackey asked, but the \$300 is not based on anything actual? It's just
14 we want to be in the middle?
15

16 Mr. Schindler replied, yes, that's right.
17

18 Chairman Williamson said, Sanford charges \$500
19

20 Mr. Schindler stated, and that's the direction the City Commission has told staff.
21 When it comes to fees, we do not want to be the highest nor the lowest. We
22 want to be somewhere in the middle, and this is what we base this on.
23

24 Member Buck suggested on the date of application submittal that all applicants
25 turn in a photo of what tree(s) they are contemplating pruning or taking out.
26

27 Mr. Schindler said, but we are not asking for a permit for one and two-family.
28

29 Member Buck stated, I mean, other people.
30

31 Mr. Schindler said, yes, we do. Say, for a shopping center, we have had
32 instances where we have actually gone out and met with them and they have
33 shown us – they have walked around and said we are going to take off this limb,
34 we're going to take off this limb. We go out in the field and – because,
35 generally...
36

37 Member Buck interjected, take a picture is what I am saying in case it came up
38 again.
39

40 Mr. Schindler stated, we can; yes.
41

1 Member Buck said, I just thought it might not be a bad thing to be on the
2 application; something like that. It just makes it clear when two people have a
3 different opinion when you come back to City Commission.
4

5 Mr. Schindler concurred.
6

7 Chairman Williamson stated, well, look at the incident you had with the School
8 Board this week over there at Lake Mary where they were trimming trees for
9 portables.
10

11 Mr. Schindler said, yes. That's right. Uh-huh.
12

13 Member Buck stated, I just meant it as a suggestion. Probably a back-up photo
14 is pretty good when you're talking about taking over 25 percent of the tree down.
15 If you have a picture, it should solve the problem.
16

17 Mr. Schindler said, sure. That's a good suggestion because the more objective
18 information – they say a picture is worth a thousand words.
19

20 Chairman Williamson opened the hearing to public comment. Hearing none, he
21 closed that portion and entertained board discussion and/or a motion.
22

23 **MOTION:**
24

25 **Vice Chairman Swinski moved to recommend approval to the City**
26 **Commission regarding revisions to Section 163.03, establishing an Arbor**
27 **Appeal Fee “for any arbor appeal”, consistent with staff’s Findings of Fact**
28 **listed in the Staff Report. Member Buck seconded the motion.**
29

30 **Chairman Williamson requested a roll-call vote on the motion, which was**
31 **taken as follows:**
32

- 33 **Member Miller - No**
- 34 **Member Sebald - Yes**
- 35 **Member Buck - Yes**
- 36 **Vice Chairman Swinski - Yes**
- 37 **Member Lackey - No**
- 38 **Chairman Williamson - Yes**
39

40 **The motion carried 4-2.**
41

42 V. Adjournment
43

DRAFT

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The meeting was adjourned at 6:45 p.m.

Danny Williamson, Chairman

Diana T. Adams, Administrative
Secretary

**JUNE 10, 2013-18
CITY TREE BOARD**

~~QUASI-JUDICIAL~~ SIGN-IN SHEET

6/10, 2013
City Tree Bd. MEETING
(please print)

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

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Item of Interest _____

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Item of Interest _____

1 B. 2013-ZTA-03: Recommendation to the City Commission regarding proposed
2 revisions to Section 157.23, Arbor Pruning, and to Section 163.03 establishing
3 an application fee for arbor appeals; Applicant: City of Lake Mary/Community
4 Development Department/Planning and Zoning Division
5

6 Gary Schindler, City Planner, presented Item B. and the related Staff Report. He
7 said, the proposed revisions do three things. First of all, just some housekeeping
8 issues. For instance, there was language that was somewhat archaic referring to
9 shade trees. I have stricken that and put in both canopy trees and understory
10 trees. The two more significant issues are, one, currently, one and two-family
11 dwellings are not required to get a permit to trim. That is not going to change.
12 What is changing is we want to make it very clear that if improper trimming
13 practices happen, one and two-family homeowners are as responsible as
14 nonresidential property owners.
15

16 Staff had always treated such actions as violations; however, the arbor board
17 (City Tree Board) had a different idea. They did not read the Code of Ordinances
18 as holding the owners of one and two-family properties responsible for improper
19 trimming. We took a couple of them to the arbor board. In one case, they found
20 that there was no violation. In the second case, said continued the item for 6
21 months. During that time, if the tree died, staff was to bring the item back to the
22 arbor board. In light of this, staff ceased to take such trimming violations to the
23 arbor board.
24

25 The waiver of the requirement of obtaining a permit to trim trees is a privilege, not
26 afforded to non-residential properties; however, that does not exempt such
27 properties from the responsibility of engaging in proper trimming practices, in
28 compliance with the American Arborists Association.
29

30 Mr. Schindler stated that the second proposed Code change is to establish a fee
31 to appeal a fine and/or decision to the arbor board and/or City Commission. To
32 the best of staff's knowledge, this is the only item for which there is not an
33 application fee. As such, staff proposes a \$300 application fee for an arbor
34 appeal. This fee would be for all appeals to the arbor board.
35

36 Those are the three issues that are before you tonight.
37

38 Mr. Schindler said, at their special June 10, 2013, meeting, the arbor board took
39 the following actions:
40

- 41 1. Voted 6-0 to recommend approval of applying illegal practices making improper
42 pruning for one and two-family residences a situation in which a fine could be
43 levied.

DRAFT

1
2 2. Voted 4-2 to recommend approval of an arbor appeal fee.

3 Mr. Schindler concluded his presentation by saying, that's it. I will take any
4 questions you may have.

5
6 Member Miller questioned, what constitutes improper pruning?
7

8 Mr. Schindler replied, there are a whole list of improper pruning that is contained in
9 157. A couple of examples are lollipop trees. That is where you have a straight
10 trunk and all the lower limbs are out, and then you reach the top and you've got a
11 nice little – one small ball. There is something called poodle trimming. As you can
12 imagine, a French Poodle; you've got a puff here, a puff here, a puff here, a puff
13 here, and the rest of it is bare. Those are certain examples. There is also lions-
14 tailing. The American Arborists Association says that proper pruning should not
15 engage in trimming more than about 25 percent of the tree at any one time. That is
16 a rule of thumb.
17

18 Juan (John) A. Omana, Jr., Community Development Director, added, hat-racking
19 is another one where they basically turn the tree into, literally, a hat rack. You could
20 hang your hat on it.
21

22 Mr. Schindler stated, yes. That's right. You take all the branches off that have
23 leaves and you are left with these bare limbs that look like a hat rack.
24

25 Member Miller said, I have a neighbor that has a tree similar to what you are talking
26 about. He wins yard- of-the-month almost all the time. It's one of those trees that's
27 kind of a round tree that he trims regularly. I think it's an oak tree. It's beautiful.
28 Sounds like he would get fined for what he is doing with that tree.
29

30 Mr. Schindler stated, not if it is already done. Remember, if it is there and he just
31 continues to keep it in that shape, he is really not taking off more than 25 percent.
32 This is not going to be looking at retroactive. It's going to be looking at taking a
33 tree's natural growth and then applying it to that.
34

35 Chairman Hawkins said, but most of these things are more commercial uses where
36 people do these things to trees so that they get more visibility to their sign or their
37 business.
38

39 Mr. Schindler stated, yes, that's right. But, believe me, we do receive a number of
40 calls each year in which there are people that are engaged in – generally, it's hat-
41 racking. We want to be able to give a very firm message to people that they can't
42 do that.
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Member Cartmill asked, when it comes to, like, say, a Crepe Myrtle, is that a shrub or is that a tree?

Mr. Schindler answered, Crepe Myrtle is an understory tree.

Member Cartmill stated, because I do it and that maintains the...

Mr. Schindler interposed saying, but, understand, we are not going to be unrealistic about this. I do the same thing to my Crepe Myrtle – or at least the person who takes care of my yard does it.

Member Cartmill said, yeah. For a few months it looks ridiculous, but in the Spring, it's beautiful.

Mr. Schindler stated, right. But, we're not talking about...

Chairman Hawkins interjected saying, but that's one of the accepted pruning practices for a Crepe Myrtle.

Mr. Schindler said, that's right.

Member Cartmill stated, because I know the City and the County will do it in the boulevards and all that. I have seen that especially on, say, Primera.

Chairman Hawkins said, but you don't do it to a Live Oak tree.

Mr. Schindler stated, no. I can also tell you that there are landscape architects who cringe when they see Crepe Myrtles that are – it's called knuckling because it looks like knuckles. But, you know, all right, so be it. We are not going to go out on a crusade, but if and when we get a call, we do want to be able to respond appropriately. It's no more acceptable for a homeowner to do this than for a shopping center.

Vice Chairman Taylor questioned, when you have had problems in the past, what percentage has been people intentionally doing a, quote, illegal pruning practice, unquote, versus hiring someone? She said, as a homeowner, you hire a lot of people for a lot of things you don't have any knowledge about and sometimes they do a good job, but I have had people come in to trim trees, as well as do tile, who do a horrible job and it's not best practices. I don't like the thought of punishing because most homeowners aren't trimming their own trees, they are hiring it out to people, and sometimes a bad job is done.

1 Mr. Schindler asked, but what is the alternative? I mean, if the homeowner will tell
2 us the name of the company, we will go after them as well. But, ultimately, it's the
3 responsibility of the homeowners.
4

5 Vice Chairman Taylor said, I just can't say that I'm for it. I just don't think tree
6 trimming is something that most people set out to intentionally do a bad job. I think
7 there is a lot of ignorance. I don't even know what most of these terms mean, so I
8 don't think your general homeowner would. And if they have paid somebody to do
9 it and they do it improperly, I hate to see them then fined on top of that when it may
10 not – because I have had people come in and I have specifically told them to trim a
11 tree a particular way, but some guy comes in with a chainsaw and I'm literally out
12 there screaming at the top of my lungs while he's destroying a tree. I don't want to
13 get fined \$100 for that.
14

15 Mr. Schindler stated, then you will need to vote your conscience. That is all I can
16 say because, right now, there is no penalty. There are no consequences for a
17 homeowner.
18

19 Vice Chairman Taylor said, and just strictly on an administrative note, under
20 Paragraph C, it seems like you define unlawful pruning practices. She questioned if
21 the very last sentence where it says the following are deemed unlawful pruning
22 practices dot, dot, dot needs to be there.
23

24 Mr. Schindler responded, yes, it does because they need to know what constitutes
25 unlawful...
26

27 Vice Chairman Taylor interposed saying, I just wanted to make sure because you
28 defined it earlier in the paragraph. It seems like it might be a redundancy, but I
29 wasn't sure.
30

31 Mr. Schindler stated, well, sometimes it is, but it is better to be redundant than
32 someone say, well, I didn't know. You didn't have this. So, we feel very strongly
33 that we want people to know.
34

35 Vice Chairman Taylor suggested to Mr. Schindler on page 2 of the Staff Report
36 under (G), second sentence, to add the word, not, after the word, but.
37

38 Mr. Omana said, yes, I think the intent may have been there to include but not
39 limited to.
40

41 Chairman Hawkins asked if the \$300 appeal fee was justified based on the
42 amount of time that staff would need in order to prepare for an appeal. He stated
43 that he didn't want a fee for somebody to appeal to be a fine. He wanted the fee

1 to be justified based on the amount of time that somebody has to take to do a
2 certain amount of work. He questioned, you see what I'm asking?
3

4 Mr. Schindler replied, I understand what you are saying, and all I can say is that
5 you have to look at more than the time. There are the facilities – you know, it's
6 like charging \$100 for a nurse to give an aspirin. There are lots of other issues in
7 addition to the amount of time that staff actually spends on the Staff Report.
8

9 Member Cartmill asked, how many arbor decisions are actually appealed?
10

11 Mr. Schindler answered, it varies. There are very few for – as I said, we stopped
12 taking trimming and pruning. But, in a year, there could be six to ten appeals.
13

14 Member Schofield questioned, versus how many violations?
15

16 Mr. Schindler responded, generally, because there was no fee to apply for an
17 appeal, if there is a violation, people appeal.
18

19 Member Schofield asked, so, there are only six to ten violations a year then?
20

21 Mr. Schindler replied, generally, yes.
22

23 Member Schofield questioned, so we're talking about a very limited amount of
24 people?
25

26 Mr. Schindler answered, yes.
27

28 Member Schofield said that he shares some of the same concerns that Vice
29 Chairman Taylor has in that he wasn't sure that residents should be charged with
30 a penalty if a licensed professional does something wrong with the trimming.
31

32 Chairman Hawkins stated, but it's your responsibility to say you need to trim my
33 trees based on the Lake Mary Code of Ordinances, and if you don't know what
34 that is, then I will supply you a copy. He asked, so, what is so difficult about
35 that?
36

37 Mr. Schindler said, the other issue is that it is well established under Florida law
38 that the property owner is ultimately responsible. It's no different than if you hire
39 a fence contractor to come in and build a fence and for whatever reason they –
40 let's say they put the finished side of the fence on the inside. Whether you tell
41 them to or not, you are responsible as the homeowner. The finished side of the
42 fence goes outside. And under Florida law, one of the main tools for local
43 governments is a Code Enforcement Board or similar boards, which levy fines on

1 the property owner. Additionally, we go after the contractor, but that is a citation,
2 which may be appealed to the courts.

3
4 Vice Chairman Taylor stated, but fences, sheds, ancillary buildings, other things
5 that the Code would have to deal with, can be remediated by the homeowner,
6 and a tree, once it's trimmed, can't, despite the homeowners' best effort.

7
8 Mr. Schindler said, but, you can appeal to the City Commission, and the City
9 Commission can determine if this is a special circumstance; we're going to
10 recognize and waive the fine. There is always the ability to appeal to the City
11 Commission.

12
13 Member Cartmill stated, yeah, but you're already out \$300, so it is a fine.

14
15 Vice Chairman Taylor said, it will cost \$300 to appeal.

16
17 Mr. Schindler stated, yes, they are, but what's – I mean, if you want to make a
18 recommendation for no fine, do it. If you want to make a recommendation for a
19 lesser application fee, do it, but there has to be – it is the only appeal review
20 process for which there is no application fee.

21
22 Mr. Omana said, Mr. Chairman, also, if I could have Mr. Schindler state into the
23 record the other cities' structures. We looked at what other cities do and if you
24 could brief the Board.

25
26 Mr. Schindler stated, the City Commission has basically said we don't want to be
27 the highest, we don't want to be the lowest, we want to be in the middle, and that
28 is part of the basis upon which we chose our fees. Seminole County is \$500,
29 Sanford is \$400, Altamonte Springs is \$250, and we chose \$300.

30
31 Member Miller questioned, what were the two cases that came before the arbor
32 board that you couldn't enforce because you didn't have residences included in
33 the practice? He said, you said there were two cases.

34
35 Mr. Schindler responded, yes. I do not remember the first one, but the second
36 one I remember very clearly. They had hat-racked two trees.

37
38 Member Miller asked, cut the top off two trees?

39
40 Mr. Schindler replied, no, not the top. They cut everything off of two trees. I
41 mean, there was not more than ten percent of the leaves left on the trees. This
42 happened in The Reserve at Lake Mary.

1 Member Miller questioned why they did that.

2
3 Mr. Schindler answered, because they couldn't get grass to grow. That was their
4 answer.

5
6 Member Cartmill asked, and then what was the fine?

7
8 Mr. Schindler responded, there was no fine.

9
10 Member Miller stated, the practice doesn't include residences.

11
12 Mr. Schindler added, they continued the item for six months and said, staff, if the
13 trees die, come back and we'll treat it as killing the trees. He said, because we
14 did not have a specific reference, we treated the incident as if the trees had been
15 killed. He stated, I do remember the first instance. It was in Dr. Hawkins'
16 neighborhood. There was a house down the street from you that had been
17 foreclosed upon, there was a short sale, and the backyard was heavily
18 overgrown with trees, and someone went in and there was a Live Oak that they
19 had just butchered. It was hat-racked. And the member of the arbor board said
20 there is no specific reference in this to one and two-family. In fact, a permit is not
21 required. Therefore, no violation had occurred.

22
23 Member Miller questioned, who brings these things up? Is this the infamous
24 Code Enforcement Board?

25
26 Mr. Schindler replied, no, no.

27
28 Member Miller asked, how do you get a case?

29
30 Mr. Schindler answered, residents call.

31
32 Member Miller questioned, complaints by other people?

33
34 Mr. Schindler responded, yes, by other people. When I receive such a cal, I
35 make an onsite inspection. Sometimes, I may get a call from the Code
36 Enforcement officer. Whatever the source of the call, I follow up with an onsite
37 inspection.

38
39 Member Schofield asked, so, it's almost like community self-policing?

40
41 Mr. Schindler replied, oh, believe me. In some neighborhoods, if someone hears
42 a chainsaw, I'll get a call. This is especially true in The Forest Club.

1 Member Schofield questioned, just out of morbid curiosity --you have this pruning
2 thing -- what if I just decide, you know what, I'm not going to bother pruning it, I'm
3 just going to take the whole thing down, and I just take the tree out?
4

5 Mr. Schindler answered, you may if it's within the limits that staff can approve,
6 and if not, then you may appeal to the arbor board to remove a tree.
7

8 Member Schofield requested Mr. Schindler to address the penalty for removing a
9 tree without a permit.
10

11 Mr. Schindler responded, there is an initial flat fee of \$250 for a non-historic tree,
12 \$500 for a historic tree. There is also a secondary fines; for a non-historic tree,
13 it's \$50 per caliper inch, and for a historic tree, it's \$100 per caliper inch. It is not
14 unusual to get fines between \$1250 and \$1500.
15

16 Member Schofield said, the reason for my question is I was curious to know what
17 the penalty was for that versus improper pruning to see if they were equitable. If
18 pruning cost more than just taking a tree out, I might as well just take a tree out.
19

20 Mr. Schindler stated, no. Right. But, no, it doesn't. Because there is a chance
21 that an improperly pruned tree will come back, but there is also a chance it will
22 die because once you do radical pruning on a tree, it opens the tree up to
23 disease and insects, which could mean that it would take three to five years for
24 the tree to ultimately die, and there is no way, at that point, that staff could say,
25 well, this tree died as a result of this action.
26

27 Member Schofield asked, so if I wanted to remove a tree, my best thing to do is
28 improperly trim it, and then it gets to a point where it has to be removed because
29 I have trimmed it so horribly that it dies and then I get no penalty?
30

31 Mr. Schindler replied, that's possible. Yes. But, understand that when we
32 approve tree removal, we also look at the minimum number of trees that you are
33 required to have per lot size, and we will conditionally approve the removal of
34 trees if you meet or exceed that number, and if you don't, then there are
35 replacement trees that you plant.
36

37 Member Schofield said, well, I'm not looking to remove any of mine. I'm just
38 trying to think, you know, what would a homeowner do to try to circumvent the
39 policy. I'm concerned that if we're seeing six to ten cases a year, it just seems
40 like a.....
41

1 Mr. Schindler stated, well, understand, those were generally denial of permits.
2 We stopped taking improper trimming because the Board had said it's not a
3 requirement.
4

5 Chairman Hawkins opened the hearing to public comment. Hearing none, he
6 closed that portion and entertained board discussion and/or a motion.
7

8 Member Cartmill questioned, well, do we think that the caseload will be doubled,
9 tripled now that it includes excessive pruning?
10

11 Chairman Hawkins answered, no, I don't think so. I don't think there will be very
12 many appeals unless they are really serious about appealing.
13

14 Member Cartmill stated, well, that's what I'm saying. The cases could increase
15 though, not necessarily the appeals.
16

17 Chairman Hawkins said, well, the cases are going to increase because we have
18 changed the language to make it clear on what's – that's all. They are going to
19 start taking cases again.
20

21 Member Miller stated, well, the cases will increase because you now include
22 residential properties.
23

24 Mr. Schindler said, now, understand, whatever action the City Commission takes,
25 we will also notify people in the flyers in their water bills. Now, if people don't
26 read the flyers when they come, then they are not going to know, but if they
27 bother to read the flyers, they will know. A full cycle takes a month.
28

29 Member Miller stated, they may know it now. They won't know it when they get
30 ready to do something.
31

32 Member Schofield said, on a side note, speaking of the flyers that go in the water
33 bills, I get mine on-line, and I usually get my water bill on the 20th of the month or
34 so, 24th, and it gives me the month that's already happened, the calendar. It
35 would be nice to get July's calendar at the end of June instead of at the end of
36 July. Just something to think about.
37

38 **MOTION:**
39

40 **Member Cartmill moved to recommend approval to the City Commission**
41 **the request by City of Lake Mary/Community Development**
42 **Department/Planning and Zoning Division regarding proposed revisions to**
43 **Section 157.23, Arbor Pruning, and to Section 163.03 establishing an**

1 application fee for arbor appeals, consistent with staff's Findings of Fact
2 listed in the Staff Report subject to the following condition.
3
4

5 **CONDITION:**
6

7 **1. Planning and Zoning Board recommends on page 2 of the Staff Report**
8 **under (G), second sentence, to add the word, not, after the word, but.**
9

10 **The motion failed for lack of a second.**

11
12 Chairman Hawkins asked the Board, you-all don't want to second it just so you can
13 get it for the record and discuss it, and if you are not in favor of it, vote against it?
14

15 There was no verbal response from the Board.
16

17 Chairman Hawkins said, okay. Motion fails for lack of a second. Okay. I don't
18 think that's the way to carry on business, but that is my personal note.
19

20 It is noted that Chairman Hawkins took up the Community Development Director's
21 Report at this time (see below).
22

23 Member Miller questioned, can we back up and talk about that motion that just
24 failed? Is it forever gone? Because I guess I don't mind seconding it to talk about
25 it.
26

27 Chairman Hawkins answered, yeah – no, no. I just think if you are not in favor of it,
28 you should second the motion and then discuss the motion, and if you want to vote
29 against the motion, that's fine. I think that is the way you show your disapproval to
30 the City Commission, not...
31

32 Member Miller interjected questioning, as the Chair, would you let us back up and
33 can I second it now?
34

35 Chairman Hawkins responded, yeah.
36

37 Member Miller stated, I'll second it. I just didn't feel compelled to second something
38 I ain't in love with. But, I will second it so we can talk about it.
39

40 Chairman Hawkins asked, is that okay with everybody?
41

42 There was no opposition expressed from staff.
43

1 Vice Chairman Taylor said, for the purpose of opening it for discussion.
2 Chairman Hawkins stated, let the record reflect that the Board changed its mind
3 and they want to open this back up for discussion.
4

5 **Member Miller seconded Member Cartmill's motion so the Board could**
6 **discuss it.**
7

8 Member Miller commented, it just seems like we're adding more government
9 interference in what people can do. Since it's mostly coming up from neighbor's
10 complaining about what you do, I'm not sure I want to drag the residences into
11 what's set up now for commercial regulation.
12

13 Chairman Hawkins said, I understand what you are saying.
14

15 Member Miller stated, but, on the other hand, I'm looking at the Arbor Board's 6-0 in
16 favor of it and sent it to us to take some action, which kind of bothered me too.
17

18 Chairman Hawkins said, they are the ones that have to deal with it every day.
19

20 Vice Chairman Taylor stated, well, I don't think they have dealt with it every day. I
21 think they have had two cases where they didn't feel that they could adequately
22 address it. But, I think it's unnecessarily punitive. I think the appeal fee is
23 unnecessarily punitive for the purpose of restricting appeals, and I don't think there
24 is enough education out there. I think this really is targeted towards the commercial
25 use, and maybe if there was a different structure between commercial and
26 residential such as – well, any other scheme. But, I don't think it's fair to have the
27 commercial and the residential be on equal footing for this. I really don't think
28 education-wise and intent-wise they are. So, that is why I won't vote for it.
29

30 Member Schofield commented, I think you summed it up quite nicely and is my
31 feeling as well.
32

33 Member Miller commented, it is my belief that most people who violate ordinances
34 like this do it because they don't know it exists in the first place. If you walked
35 around and asked your neighbors what the ordinances say and do they have to get
36 a permit to do certain things, they don't know, and they are not going to know this
37 until they get the opportunity to pay \$300 to appeal something that they thought
38 was okay to do in the first place. It just feels like we are helping government to
39 extraordinarily interfere in the activities of people.
40

41 Vice Chairman Taylor added, or worse that they paid somebody to give them good
42 guidance.
43

DRAFT

1 Member Miller questioned if the Planning and Zoning Board would be the terminal
2 board on this item, or would it go forward to the City Commission.

3
4 Chairman Hawkins replied, we're just recommending or not recommending.
5

6 Member Schofield commented, if they lowered the fee just for the sake of bringing
7 up awareness, I think I would be a lot more in favor of it, but I think \$300 is
8 excessive for this. If it was \$25, 50 bucks just to get somebody's attention, I'm a lot
9 more in favor of it then than I am at \$300.

10
11 Vice Chairman Taylor commented, and the fee might actually be low for
12 commercial. And don't even get me started on the utility companies, who are the
13 biggest offenders in all of this.
14

15 Member Schofield commented, yeah. For commercial, especially if they are
16 licensed and bonded, they should know better than this. And I would think that
17 maybe the fee structure is different for that, but for residential, especially if I am
18 trimming it on my own and I am not an arborist or something like that, I just share a
19 lot of Colleen's sentiments on this.
20

21 Member Miller commented, thank you for letting us return to it. And I guess staff is
22 sitting there listening to us now. He asked, I wonder if staff would like to rebut
23 anything we're saying?
24

25 Mr. Omana answered, just we'll take forward whatever your motion is.
26

27 Mr. Noto added, and FYI, talking about commercial versus residential, there is no
28 appeal fee period for any arbor misdoings, if you will. So, even if a commercial
29 business does something wrong and they want to appeal our decision, they pay no
30 fee. So, it's an across-the-board zero dollar.
31

32 Member Miller questioned, whereas residential would be \$300?
33

34 Mr. Noto responded, well, no. It's zero now and it would be \$300 for everybody.
35 Everybody would have to pay. But, right now, no one pays.
36

37 Member Miller commented, okay. Now, you're getting somewhere to where we
38 could amend that motion and make it commercial pays \$300 and residential...
39

40 Member Cartmill interposed saying, well, that one wasn't unanimous. That part of it
41 wasn't unanimous from the Arbor Board.
42

43 Chairman Hawkins commented, yeah. Okay. He asked, any other discussion?

**JUNE 25, 2013-16
PLANNING AND ZONING BOARD**

1 Member Miller questioned, do we want to amend the motion at all for anything?

2
3 There was no verbal response.

4
5 Chairman Hawkins commented, I'm in favor of all this, with what staff has done and
6 the way they have done it. I'm in favor of not everybody should have to appeal, and
7 I just wanted to make sure that the appeal fee is not a fine, it's a fee.

8
9 Member Schofield questioned, if someone is successful in their appeal, do they get
10 their appeal fee back?

11
12 Mr. Omana, Mr. Schindler, and Chairman Hawkins all simultaneously replied
13 negatively.

14
15 Member Schofield asked, so you lose \$300 whether you win or lose?

16
17 Mr. Schindler answered, that's right.

18
19 Member Miller questioned, so, why appeal? You just spend \$300 and you walk
20 away feeling better about it?

21
22 Member Schofield asked, maybe a winner take all?

23
24 Chairman Hawkins commented, if you are in court and your attorney says, do you
25 want to appeal, you are still going to have to pay your attorney to fight for your
26 appeal. He's not going to do it for nothing whether you win or lose.

27
28 Mr. Schindler added, it's like with a rezoning. If someone comes in and applies for
29 a rezoning and they are turned down, they don't get their application fee back. I
30 mean, it is a fee. It is not let's flip a coin and winner takes all.

31
32 Member Schofield questioned, but what's the purpose of even – like – okay. So, I
33 get fined by the City because I poodled my tree. Why would I even want to appeal
34 that?

35
36 Mr. Noto responded, if your fine from staff was, like, \$1,200 and you decided not to
37 appeal to avoid paying \$300, you are paying us \$1,200. If your fine is \$1,200 and
38 you want to appeal, you pay \$300. You could potentially have that full \$1,200
39 waived by the Arbor Board. So, now, instead of being out \$1,200, you are out
40 \$300.

41
42 Member Schofield asked if there was a fee schedule for the different types of
43 pruning infractions.

DRAFT

1
2 Mr. Noto replied, there is a fee schedule for tree removal infractions. What Mr.
3 Schindler put together was here's how you break the law. If you break the law,
4 here's the fines and the fees you pay. We usually tell people to call Gary anyway
5 no matter what they're doing. So, his day-to-day operations aren't going to change
6 at all really because we tell them to go to Gary anyway. But, the pruning, whether
7 it's in the Code now or not, is bad, the way people end up doing it. This is codifying
8 it so that way we can have a place to hang our hat -- and not on a hat-racked tree --
9 but a place to hang it when we go out and say you have done this wrong.

10
11 Member Schofield questioned, just so I'm clear then. Let's say I hat-rack my tree,
12 what is the fine? Is it variable depending upon the severity of it?

13
14 Mr. Schindler answered, no, it's \$100.

15
16 Member Schofield said, so, I illegally prune my tree. It's \$100, but you appeal it,
17 you pay \$300. He asked, so, what's the point of the appeal to begin with then?
18 Because no one is going to appeal, they will just pay the fine.

19
20 Chairman Hawkins stated, not for \$100. Probably not. But, everybody wants to
21 appeal, so it takes double the time for staff to take care of this.

22
23 Member Schofield commented, I just think that the appeal should be less than what
24 the fine is, otherwise, then, you're basically saying you can't appeal it.

25
26 Member Miller commented, but, what staff wants to do is discourage appeals.
27 They don't want you to appeal. They want you to accept the fine and pay it.

28
29 Chairman Hawkins commented, but, that's just for pruning. Most of the fines are for
30 cutting down trees illegally.

31
32 Mr. Noto agreed saying, that's correct.

33
34 Mr. Schindler added, at this point, the only option we have without a fine specifically
35 for pruning is to treat you as though you are killing the tree. That's a minimum of
36 \$250, plus a minimum of \$50 per caliper inch. And because trees have to be 12"
37 wide or wider in order to require a permit for one and two-family, we are looking at
38 \$850.

39
40 Member Schofield questioned, if I get a fine of \$100 for improper pruning, then why
41 would I want to appeal? It makes no sense. I would just throw away \$200 more.
42

1 Vice Chairman Taylor responded, but you might have pruned six trees. Usually
2 when you have an arborist come in, they do all your trees and you come to some...
3 Chairman Hawkins interjected commenting, people don't appeal parking tickets
4 because it costs more to appeal them than it does to pay the ticket.
5

6 Member Schofield said, that is what my point is about this, and I just want to make
7 sure I'm clear about it.
8

9 Mr. Schindler stated, if you wish to recommend other fees, do it, but this is what
10 staff is proposing.
11

12 Member Schofield asked, is the \$300 fee per tree, or just in total? So, if I have ten
13 trees on my lot, I'm paying \$300 for that appeal?
14

15 Mr. Schindler replied, no, it's an appeal. It's a fee to appeal the fine for one or more
16 trees.
17

18 Chairman Hawkins added, it's an appeal fee.
19

20 Member Schofield questioned, if I have ten trees and I improperly prune them all, I
21 have \$1,000 fine, but I can still appeal for \$300?
22

23 Mr. Schindler answered, right; yes.
24

25 Vice Chairman Taylor commented, I'm not for this. I'm not going to vote for it, but
26 just for the comments for the City Commission when they consider it, I do think
27 there should be a separate fee structure for commercial than residential because I
28 think to hat-rack or do something...
29

30 **TAPE 1, SIDE B**

31 ...doesn't always work out.
32
33

34 Mr. Schindler said, and we will take that under consideration.
35

36 **Chairman Hawkins requested a roll-call vote on the motion, which was taken**
37 **as follows:**
38

39 **Member Schofield - No**

40 **Member Miller - No**

41 **Vice Chairman Taylor - No**

42 **Member Cartmill - Yes**

43 **Chairman Hawkins - Yes**

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The motion failed 3-2.

It is noted that this item will move forward to the City Commission's July cycle.

VIII. Community Development Director's Report

Juan (John) A. Omana, Jr., Community Development Director, reported that there was no City Commission meeting held on June 20, 2013, therefore, he had nothing to report at this meeting.

Mr. Omana did however let the Board know that staff is working very closely with the FDOT folks on the SunRail Station; some of the lights have gone up, grading continuation, and platform preparation.

IX. Other Business

None

X. Reports of Other Members

None

XI. Adjournment

The meeting was adjourned at 6:48 p.m.

Dr. Robert Hawkins, Chairman	Diana T. Adams, Administrative Secretary
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MEMORANDUM

Community Development Department

TO: Jackie Sova, City Manager

FROM: Gary Schindler, City Planner

VIA: John Omana, Community Development Director

DATE: July 29, 2013

SUBJECT: Request to withdraw proposed Ordinance No. 1490



After due consideration, staff proposes to withdraw Ordinance # 1490 from the August 8, 2013 City Commission Meeting agenda. Ordinance # 1490 would establish an application fee for arbor appeals.



MEMORANDUM

DATE: August 8, 2013

TO: City Commission

VIA: Jackie Sova, City Manager

FROM: Gary Schindler, City Planner

SUBJECT: Ordinance No. 1490 - Amending Section 163.03 of the Code of Ordinances, establishing a fee for arbor appeals - First Reading (Public Hearing) (Gary Schindler, City Planner) (postponed 7/18/13) (Request by staff to withdraw ordinance)

REFERENCE: City Comprehensive Plan and Code of Ordinances

REQUEST: Section 157.23 addresses the issue of tree trimming and pruning. Paragraph (A) establishes the need for a pruning permit; however, it specifically exempts the owners of 1 & 2 family dwellings from having to obtain a permit to trim trees. Paragraphs (B) – (G) address issues of what constitutes unlawful pruning, establishes a permitting and review process, establishes fines for unlawful pruning and identifies an appeal process.

Additionally, staff proposes to amend Section 163.03 of the City's Code of Ordinances, to establish a fee for arbor appeals. The proposed fee is comparable to the fees charged by other governments in Seminole County.

DISCUSSION:

Section 157.23 - Historically, staff has interpreted the exemption for 1 & 2 family dwelling units in (A) to specifically relate only to the need for acquiring a pruning permit. When pruning occurs that is injurious to the tree, staff has proceeded as though the tree had been illegally removed and sent the owner of the subject property a Notice of Violation.

The Notice of Violation informs the property owner of the amount of the initial fine and also that they have the right to appeal staff's determination to the City's Arbor Board.

On two occasions, staff has taken such cases to the Arbor Board. In the first instance, the Arbor Board made a determination that no violation had occurred. Regarding the second instance, the Arbor Board continued the item for a minimum of 6 months. At the end of six months, staff was directed to conduct an on-site inspection to ascertain the health of the trees. If the tree was dead or dying, staff was to reschedule this item for the Arbor Board's review and action.

In light of this situation, staff proposes to clarify the intent of Section 157.23. Specifically, staff proposes to retain the language that exempts owners of 1 & 2 family dwelling units from having to obtain pruning permits; however, add language that makes such owners responsible for pruning and clarify that persons engaging in irresponsible pruning can be cited with a Notice of Violation and can be fined. In light of this, staff proposes the following revision:

Section 157.23 Pruning Permit.

(A) The owner of a property, tenant, or agent shall not trim, prune, remove living branches or cause the diminution of the crown of any canopy tree or understory tree without having first obtained a pruning permit. All Owners, tenants and/or agents of one and two family dwelling units shall be exempt from the requirement of having to obtain a pruning permit this section.; however, such owners, tenants and/or agents shall comply with all other provisions of Section 157.23. ...

(C) Unlawful pruning. Unlawful pruning includes the practices referred to as shearing, hat racking, topping or poodle trimming of trees (lollipop), lions-tailing, pollarding of trees. Trees intended for shade Canopy and understory trees shall be allowed to reach their mature canopy spread. It shall be unlawful to engage in excessive pruning techniques on canopy and understory trees intended for shade purposes. Excessive shearing, pruning, or shaping shall only be allowed with a permit in times of emergency, the City may only designate a period during which permitting for pruning shall not be required and excessive shearing, pruning, or shaping shall be allowed. The following are deemed unlawful excessive pruning techniques, which are prohibited on ~~shade~~ canopy or understory trees:
...

(G) ~~Unauthorized Injurious~~ Pruning. Irrespective of whether or not a pruning permit has been issued, if a tree is pruned in a manner that is injurious to the tree, including but not limited to the techniques described in Section 157.23 (C) above If a tree not authorized for pruning is altered, pruned, trimmed, or diminished in canopy such that its susceptibility to disease or other detrimental environmental factors is significantly increased which may result in premature death or so that the purposes of this chapter are not serviced, the general contractor and/or property owner shall pay to the city an initial fine of \$100 per tree pruned plus a fine related to the size of the tree pruned as follows: ...

Section 163.03(E), Other Community Development Land Development Fees: Section 163.03 addresses a number of fees, including arbor fees for both residential and nonresidential properties; however, currently the City does not have an application fee for an arbor appeal. Staff proposes to amend this Section to add an Arbor Appeal Fee.

Staff contacted Seminole County and the other cities in the County to determine if they had an arbor appeal fee and, if so, the amount of the fee. The following is a summary of the results of this research:

Government	Arbor Appeal Fee	Amount
Seminole County -	Yes	\$100
Sanford -	Yes	\$500
Longwood -	Yes	\$400
Altamonte Springs -	Yes	\$250
Casselberry -	No	
Winter Springs -	No	

In light of the arbor appeal fees charged by the other governments in the County, staff proposes an Arbor Appeal Fee of \$300.

Currently, the City’s minimum fines equal \$250 for non-historic trees & \$500 for historic trees. Per Commissioner Plank’s request, staff has contacted the other governments in Seminole County regarding the minimum fine for removing a tree without a permit. The results of the inquiry are contained in Table #1. The arbor fines charged by other governments vary greatly. At least one government only charges a double permit fee. The cost of an arbor permit is \$30; therefore, the fine is \$60. Others governments charge a minimum of \$50 per caliper inch of each tree, up to a maximum of \$5,000.

In the City of Lake Mary, the following are exempt from permitting: 1 & 2 family dwellings = trees less than 12” caliper & commercial = trees less than 6” caliper. In light of the results of Table #1, the City’s initial arbor fines are less than some jurisdictions within the County and more than others. Please refer to Table #1, Comparison of Arbor Fines in the attachments.

ARBOR BOARD ACTION: At their special June 10, 2013 meeting, the Arbor Board took the following action:

- Voted unanimously to recommend approval of the proposed revisions to Section 157.23 of the City’s Code of Ordinances, making 1 & 2 family dwellings responsible for proper pruning of trees.
- Voted 4 to 2 to recommend approval of the proposed revision of Section 163.03(E), establishing an Arbor Appeal Fee in the amount of \$300.

PLANNING AND ZONING BOARD ACTION: At their regular June 25, 2013 meeting the Planning and Zoning Board voted 3 to 2 to recommend denial of the proposed changes to the City’s Code of Ordinances.

FINDINGS OF FACT: Staff finds the following:

The proposed revisions to Section 157.23, Pruning Permit to be consistent with the Comprehensive Plan and the City Code of Ordinances.

The proposed revision to Section 163.03(E) to be consistent with the Comprehensive Plan and the City Code of Ordinances.

ATTACHMENTS:

- Ordinance No. 1489
- Ordinance No. 1490
- Table #1, Comparison of Arbor Fines
- Arbor Board Minutes
- Planning and Zoning Board Minutes

Z:Staff Reports/Rezoning/2013ZTA03 Arbor Pruning CC

ORDINANCE NO. 1490

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA AMENDING EXISTING SECTION 163.03 (E), OTHER COMMUNITY DEVELOPMENT LAND DEVELOPMENT FEES; PROVIDING CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, on March 3, 2011, the City adopted Ordinance No. 1417, which established Chapter 163, relating to Building Department, Community Development, Fire Prevention and Miscellaneous fees; and

WHEREAS, the City Commission desires to amend Chapter 163, Building, Community Development, Fire Prevention and Miscellaneous Fees to make them more understandable and easier to use; and

WHEREAS, the Arbor Board reviewed the proposed regulations and recommends that the City Commission approve the proposed revisions to Section 163.03(E) and finds all proposed regulations consistent with the comprehensive plan.

WHEREAS, words with underlined type shall constitute additions to the original text, strike through shall constitute deletions to the original text, and asterisks (***) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:

SECTION 1. Section 163.03(E) is revised per the language contained in Exhibit "A" attached hereto.

SECTION 2. Codification. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Lake Mary, Florida and the word "ordinance" may be changed to "section",

“article”, or other appropriate word or phrase and the sections of the Ordinance may be renumbered or re-lettered to accomplish such intention.

Section 3. Conflicts. All ordinances or resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of any conflict.

Section 4. Severability: If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

Section 5. Effective date. This Ordinance shall take effect immediately upon passage and adoption.

PASSED AND ADOPTED this 8th day of August, 2013.

FIRST READING: July 18, 2013

SECOND READING: August 8, 2013

CITY OF LAKE MARY, FLORIDA

MAYOR, DAVID J. MEALOR

ATTEST:

CITY CLERK, CAROL A. FOSTER

For the use and reliance of the City of Lake Mary only. Approved as to form and legal sufficiency.

CATHERINE REISCHMANN, CITY ATTORNEY

EXHIBIT "A"

Chapter 163.03(E) Other Community Development Department Land Development Fees

TYPE	FEE
Arbor Appeal Fee	\$300

**TABLE #1
COMPARISON OF ARBOR FINE**

Government	Amount of Initial Fine	Amount of Initial Fine- Historic Tree
Lake Mary	\$250	\$500
Seminole County -	\$100, \$300 or \$500 (1) (4)	
Sanford -	\$60 (2)	
Longwood -	\$50 per caliper inch (3) (4)	
Altamonte Springs -	Residential = \$300 (4) Commercial = \$450 (4)	
Oviedo – Inch tree	\$50 per caliper inch up to \$5,000 per tree	\$100 per caliper up to \$5,000 per
Casselberry -	\$88 per caliper inch up to \$5,000 (4)	
Winter Springs -	\$250	\$500

1 = Based upon size of tree removed, but not to exceed \$5,000.

2 = Fines equal double permit fee. Fines do not differ between historic and other trees.

3 = Applicable to commercial. Fines vary by size of tree removed; however, \$50 per caliper inch is the minimum.

4 = Fines do not differ for historic and other trees.

1 **MINUTES OF THE CITY OF LAKE MARY, FLORIDA, SPECIAL CITY TREE BOARD**
2 **MEETING HELD JUNE 10, 2013, 6:00 P.M., CITY HALL, 100 N. COUNTRY CLUB**
3 **ROAD**

4
5 **TAPE 1, SIDE A**

DRAFT

6 I. Call to Order

7 The meeting was called to order at 6:00 p.m.

8 II. Roll Call/Determination of a Quorum

9 The following members were present:

10 Chairman Danny Williamson
11 Vice Chairman Lynette Swinski
12 Member James Buck
13 Member Robert Sebald
14 Member Jeanne Miller
15 Member John Lackey

16
17 Member Robert Boardman was absent.

18
19 City staff present were Juan (John) A. Omana, Jr., Community Development
20 Director; Gary Schindler, City Planner; and Diana T. Adams, Administrative
21 Secretary.

22
23 III. Approval of Minutes - May 6, 2013

24
25 **MOTION:**

26
27 **Member Buck moved to approve the Minutes of the May 6, 2013, City Tree**
28 **Board meeting, as presented. Member Sebald seconded the motion, which**
29 **carried unanimously 6-0.**

30
31 IV. 2013-ZTA-03: Recommendation to the City Commission regarding proposed
32 revisions to Section 157.23, Arbor Pruning, and revisions to Section 163.03,
33 establishing an Arbor Appeal Fee; Applicant: City of Lake Mary/Community
34 Development Department/Planning and Zoning Division.

35
36 Gary Schindler, City Planner, presented staff's request and the related Staff
37 Report. He said, what is before you tonight are two proposed revisions to
38 Chapter 157, City Code of Ordinances. He then explained the process to the

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1 Board. He stated, you are going to be reviewing them tonight from the
2 perspective of how they relate to the City's policies and regulations regarding
3 trees. After tonight, the same Staff Report will go to the Planning and Zoning
4 (P&Z) Board on June 25th. The P&Z Board looks at it not from the perspective of
5 arbor -- they do not supersede your authority -- they look at it from the
6 perspective of the overall Code of Ordinances because all proposed revisions to
7 the Code of Ordinances go through the P&Z Board. Then, on July 18th, the Staff
8 Report will go to the City Commission with the recommendations/actions of both
9 boards listed and the Minutes from both boards. So, I just want you to
10 understand how the process works.

11
12 Mr. Schindler said, the first revision has to do with one and two-family
13 homes/residences and trimming. Right now, a permit is not required for one or
14 two-family residences to trim. Staff has had an interpretation of the regulations
15 as saying, okay, you don't have to have a permit to trim; however, if you trim and
16 it's injurious to the tree, you can be cited. Well, the Arbor Board, in a couple of
17 instances, has differed from staff and said, we respect your opinion; that it was
18 based on staff's interpretation of the Code. In light of this, we want to
19 change/revise the Code to be very specific to say that you may not need a
20 permit, but you still have responsibility in trimming; that you can't go out and
21 butcher a tree. You can't do that anymore than an office building, manufacturing
22 plant, or retail establishment. If you go out and you trim a tree to the point where
23 it is injurious to it, you may be cited.

24
25 Mr. Schindler stated, the language that is proposed is in Chapter 157.23. Where
26 it says owners, tenants and/or agents of one and two-family dwelling units shall
27 be exempt from the requirement of having to obtain a pruning permit hasn't
28 changed. However, we want to make the language specific to read owners,
29 tenants and/or agents shall comply with all other provisions of Section 157.23,
30 which then says you've got the privilege of not having to get a permit, staff can't
31 review what you are proposing to do, but there is a responsibility that goes with
32 that. And the responsibility is rational, proper pruning that is not injurious. That's
33 it. It clarifies it. And I can't be any more specific than that. You still don't have to
34 get a permit, but you've got to be responsible. And there are a couple of other
35 minor changes that clarifies that. Instead of shade tree, it's canopy and
36 understory tree. It's just some language that we have cleaned up. But, the
37 responsibility of not doing injurious trimming and pruning is clearly the more
38 central factor.

39
40 Mr. Schindler said, then we have Chapter 163.03. What we are wanting to do is
41 establish an application fee for appealing an arbor decision. We want to
42 establish \$300 as the fee. You can see on the bottom of page 2 and the top of
43 page 3 that there are other cities that have established application fees. Now, it

1 is not always apples to apples, oranges to oranges, but in my discussions with
2 other jurisdictions, these are what they charge for an arbor appeal of one sort or
3 another. It goes from \$100 for Seminole County; Sanford, \$500; Longwood,
4 \$400; Altamonte Springs, \$250. So, we are proposing \$300. We feel that is kind
5 of right in the middle, which is where we like to be with our fee structure.
6

7 Mr. Schindler concluded his presentation by saying, that's it. I'm more than
8 happy to answer any questions you may have.
9

10 Chairman Williamson asked if the City has any fee at all currently in place for an
11 arbor appeal, or is it free.
12

13 Mr. Schindler answered, no, none whatsoever.
14

15 Chairman Williamson questioned if the Appellant(s) will get the \$300 back if the
16 appeal is won.
17

18 Mr. Schindler responded, no. Because when we go to that kind of formality –
19 there is a lot of time and effort that goes into it and it would simply reimburse staff
20 for the time that is spent, just like the \$30 that we have for an arbor permit makes
21 a very small contribution to the City's General Fund. It mean, we may make a
22 couple of hundred dollars a year. It is not intended to be a real revenue stream.
23

24 Vice Chairman Swinski asked, are these fees new in other cities, or have they
25 been there for awhile?
26

27 Mr. Schindler replied, my understanding is they have been in place for awhile.
28

29 Vice Chairman Swinski questioned, so, did we just learn about them?
30

31 Mr. Schindler answered, no. We had just made a conscious decision previously
32 that we would not have an application fee for an appeal.
33

34 Chairman Williamson, stated, in reference to trimming, that he recalled at a
35 previous meeting the Board did have staff go back and look at some trees within
36 six months or a year and the Board never heard back. He wondered if those
37 trees were still alive.
38

39 Mr. Schindler said that the trees were still alive.
40

41 Member Miller asked the relevance of that.
42

43 Chairman Williamson responded, he hat-racked the trees.

DRAFT

1 Mr. Schindler stated, oh, awful. They ended up with trunks and sticks that look
2 like my hand.

3
4 Chairman Williamson said, that's under the pruning section.

5
6 Vice Chairman Swinski suggested to discuss Section 157.23, Pruning, first since
7 there are two different issues.

8
9 Chairman Williamson stated, we could do that. We could go in order.

10
11 Member Sebald questioned what would be the judgment of over pruning.

12
13 Mr. Schindler replied, noncompliance with the American Arbor Association, and
14 also in Chapter 157.23, there is a list of prohibited pruning techniques; hat-
15 racking, poodle-ing, lolli-popping, and it gives a description of what those
16 practices entail. We have to treat people the same all the way across the board
17 whether it's injurious or it's not. And it is no more injurious for nonresidential as it
18 is for residential.

19
20 Member Sebald asked Mr. Schindler if he was going to be the Board's only
21 guidance.

22
23 Mr. Schindler answered, we also have Bryan Nipe, who is a Certified Arborist.
24 We call on him whenever we need expertise. The other thing is if someone were
25 to present a note to me from a Certified Arborist stating that the pruning that had
26 been done was in compliance with the American Arborist Association, unless it
27 was really obvious that it was not, we would defer to that person. When a person
28 applies for a permit to remove a tree, there are some instances where it's enough
29 of a shade of gray that I can't make a determination and say, listen, get a
30 statement from an arborist, and if the Arborist says that this tree needs to come
31 out, we accept it without question. We believe in the professionalism of
32 Arborists.

33
34 Chairman Williamson questioned, what kind of trimming is that that the power
35 companies do when they just take the whole middle out and make like a V?

36
37 Mr. Schindler responded, unfortunately, they are exempt from local regulations.

38
39 Chairman Williamson said, right I know they are, but I would say that's the ugliest
40 trimming I have ever seen in my life.

41
42 Mr. Schindler stated, yeah, it is. And we wish we had control over it, but we
43 don't. They have a franchise agreement and they are entitled to do that.

1 Chairman Williamson said, right. Well, I guess that's their right of way too if their
2 power lines are on it.

3
4 Member Sebald asked, so, the homeowner has the primary responsibility for this
5 trimming and we are not going to approach anybody who did the trimming?
6

7 Mr. Schindler replied, oh, we'll go after that person too, but oftentimes they don't
8 tell us who did the trimming. If a determination is made that the trimming was
9 injurious to a tree, we have the ability to issue a citation to the company that did
10 the work and they will be fined \$300, which is not in Chapter 157. It is through
11 the Code Enforcement Board. It is separate from 157.
12

13 Member Sebald stated, so, you are fining the person who trimmed the tree. He
14 questioned, do you also fine the homeowner? Is that in the Code?
15

16 Mr. Schindler answered, yes. Just like with someone who takes out a tree
17 illegally. We can do that now.
18

19 Member Sebald asked, so, that's in some other section? Not in this?
20

21 Mr. Schindler responded, uh-huh.
22

23 Chairman Williamson questioned, so, the type of destructive pruning that you are
24 referring to probably can't be done by Mr. Joe Homeowner with a pole saw? You
25 are talking about someone getting up in a tree with a chainsaw and just hat-
26 racking it?
27

28 Mr. Schindler replied, yes; uh-huh.
29

30 Chairman Williamson said, I would agree with that.
31

32 Vice Chairman Swinski asked, and anyone who would get a Notice of Violation,
33 initial fine would be \$100 and they could also apply for the appeal process but
34 would pay the appeal as anybody else with a tree issue?
35

36 Mr. Schindler answered, that's correct. Yes. There is always an avenue of
37 appeal.
38

39 Vice Chairman Swinski questioned, but if I pay my \$100 -- if I trim my tree
40 because the City says I hat-racked a tree, I get \$100 fine or I pay \$300 to go to
41 the appeal board? It's cheaper for me to just pay my \$100 fine than appeal it?
42

43 Mr. Schindler responded, it is; yes.

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Vice Chairman Swinski asked, the initial fine is \$100 right now, or that is what we are proposing in the new one?

Mr. Schindler replied, it's \$100.

Vice Chairman Swinski stated, because you just don't see that very often.

Mr. Schindler said, no, you don't because we have stopped bringing any violations for pruning because of the actions you have taken. We felt that it was not a good use of the Board's time or staff's time to bring violations for one and two-family residences because you have made it clear, when Mr. Jarvis was here, that the Code does not specifically support that it is a violation. This is why we are now coming back to you to say, yes, we heard you and we want to clarify that.

Member Sebald questioned, just to clarify that further, the fine for a homeowner would be \$100 and then \$300 for the contractor?

Mr. Schindler answered, yes. Now, there is also based on the size of the tree. It's \$100 initially and then it would be based on the size of the tree.

Vice Chairman Swinski asked, is that also comparable to other cities?

Mr. Schindler responded, we have not looked at the fines.

Chairman Williamson questioned, the \$100 fine actually goes up if the tree dies and has to be removed; correct?

Mr. Schindler replied, it would depend upon whether or not they applied for a permit. I mean, we are not going to be doing double jeopardy. If we fine someone for pruning that is injurious and the tree dies, then I think we might be hard pressed to then turn around and fine them for killing the tree because all they would have to do then is apply for a permit to take out the tree.

Chairman Williamson asked, don't you think that would be a loophole that people would use?

Mr. Schindler answered, but you are already saying that it is – you know, you pruned it and it is injurious. So, there is only a 50-percent chance that the tree is going to live. Either the tree is going to live or it's not. Now, if someone comes and applies to take out a tree, then we look at what is the minimum number of trees they are required to have on their property, and if they do not meet that, they will have to then do replacement.

1 Chairman Williamson questioned, the young man that we – a year ago,
2 whenever it was, that we granted him a year to look at his trees, that wasn't a
3 pruning fine, that was a tree destruction fine; correct?
4

5 Mr. Schindler responded, I believe it was a pruning issue because...
6

7 Chairman Williamson interposed saying, oh, I thought we were fining him for
8 taking the whole tree down. It was a historic tree that he trimmed, and it was
9 deemed by Bryan – Bryan was in that meeting that night -- that it killed the tree.
10 And we said, well, it is really not dead yet. Let's wait and see what really
11 happens.
12

13 Mr. Schindler stated, in six months we were to go back and take a look at it and it
14 had come out.
15

16 Vice Chairman Swinski asked, it had come out and survived?
17

18 Mr. Schindler replied, it had survived, but it is going to be years before it ever
19 gets back to what it was.
20

21 Vice Chairman Swinski questioned, and the one where there was no violation
22 had occurred, do you remember any of the details around that one?
23

24 Mr. Schindler answered, no, I don't specifically remember that one, but I believe
25 that it was subsequent to the first one where there was six months. You said,
26 well, per our understanding of the Code, it is not applicable to one and two-family
27 residences and, therefore, no violation has occurred. And staff said, okay, we
28 get the message. We are not bringing anymore violations to you until such time
29 as we revise the Code.
30

31 Member Lackey asked if what was being discussed is about residents getting a
32 permit before they do any pruning on any of their trees.
33

34 Mr. Schindler responded, no, they don't have to get a permit. That hasn't
35 changed. Not having to get a permit is a privilege that nonresidential properties
36 do not have. We know with privilege comes responsibility, and the responsibility
37 is that you do appropriate pruning and trimming. I don't want to be out having to
38 look at that if you are going to take off one limb. We trust you to do what is right,
39 but if you don't, there is a responsibility that you then must pay the price, and that
40 price is being cited. All they have to do is call. I'm more than happy to send
41 them a copy of the relevant section of the Code that says this is what is required
42 for trimming. Also, if you hire a tree contractor, simply tell them that they are to

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trim in accordance with the American Arborists Association. We recognize that as legitimate, appropriate pruning.

Member Miller requested to switch gears for a minute to the part about the emergency portion; that the City may designate a period during which permitting or pruning shall not be required.

Mr. Schindler said, sure.

Member Miller questioned, do we have anything like that now?

Mr. Schindler replied, no, not now. But, in 2004, when we had the hurricanes, we suspended permitting for tree removal or trimming for several months. I think for two months. Decree went out that said you don't need to get a permit to remove a tree. You don't need to get a permit to trim. We trust that you are going to act responsibly. And I believe that most people did because I don't remember any problems coming out of that period. So, that's an example of when we had a designated period.

Member Miller asked how that was communicated.

Mr. Schindler answered, I believe that it went out in the utility bills.

Member Sebald questioned, assuming this passes, will you do the same thing to notify the homeowners; put a note in the utility bill?

Mr. Schindler responded, yes. And it will take a full month to – because the utility bills are staggered, but we can request that this information go out as part of a mailer in the utility bill, and if people read their utility bills and the junk mail that comes in them, they will know.

Vice Chairman Swinski asked, how many pruning violations do you have in a month?

Mr. Schindler replied, none, because we aren't – most people know that a permit is not required, and I will get calls two or three times a year that someone is pruning or cutting – what I usually get is they are taking out a tree. And I will drive out to the property and they'll say, no, no, we're just trimming. And I'll say, okay, that's fine. Thank you.

Vice Chairman Swinski questioned, like the couple of examples that we had of hat-racking that came to the Board, those ones that appealed, how many do you catch that didn't appeal? Rare?

1 Mr. Schindler answered, very seldom. Rare. I think in the last year or so, there
2 have been a couple of instances where trees have been severely trimmed, but
3 we did not proceed to issue them a citation or a Notice of Violation because of
4 the action that the Arbor Board had taken. But, it's not significant.
5

6 Vice Chairman Swinski asked, so, going forward, anyone who gets a violation as
7 determined by you and your department would get the fine notice for \$100 and
8 they could opt to pay or come to the Arbor Board with an appeal fee?
9

10 Mr. Schindler responded, that's right.
11

12 Member Miller stated, I'm viewing these two things separately.
13

14 Mr. Schindler said, they are separate but related. But, yes, they have the option
15 to come to the Arbor Board.
16

17 Member Miller questioned Chairman Williamson if the Board wanted to talk about
18 the second part.
19

20 Chairman Williamson replied, let's make a decision on the first part, then we'll go
21 onto the second part.
22

23 Member Lackey asked, how is this going to be monitored? When we come into
24 hurricane season, a lot of people are going to be trimming their oaks back,
25 thinning them out, because of the winds.
26

27 Mr. Schindler answered, I think the American Arborists Association says that
28 improper trimming is taking out more than 25 percent of a tree. That's a lot. So,
29 if someone calls us and says somebody is taking out a tree, and I go out and
30 they say I'm only trimming. Then I will ask them how much they are going to
31 trim. If necessary, I'll call Bryan Nipe and ask him to come out and take a look.
32 We are not out to bust people's chops. We simply want to make sure that proper
33 practices are being followed.
34

35 Vice Chairman Swinski stated, it sounds like you field a lot of calls from people
36 that would have a question.
37

38 Mr. Schindler said, oh, believe me. All it takes is someone to be working in a
39 tree, they hear the chainsaws, they hear the chippers, and we get calls.
40

41 Chairman Williamson stated, that's probably why you hear so many of them on
42 Saturday and Sunday.
43

1 Mr. Schindler said, yes. Unless I know that a permit has been issued for that
2 address, I have to go out and take a look just to make sure that work is not being
3 done that is illegal.

4
5 Vice Chairman Swinski questioned, how many residents call you in an average
6 week and say, hey, I want...

7
8 Mr. Schindler responded, very few, very few.

9
10 Vice Chairman Swinski asked, but they could and you could accept their call for
11 guidance?

12
13 Mr. Schindler replied, they could. Where we get the most calls in a year is from
14 The Forest than any other neighborhood.

15
16 Member Miller questioned, is understory tree defined somewhere in here?

17
18 Mr. Schindler answered, yes. An understory tree is a tree that, at maturity, has
19 an average height of between 15 and 25'. We have a list of understory trees, not
20 complete, but we say these are recognized understory trees. There could be
21 other understory trees because all the time they are coming up with new species,
22 but we can't begin to change the Code all the time. But, what we say is, rule of
23 thumb, at full height, average 15-25'. A canopy tree is a tree that, at full growth,
24 is in excess of 25'.

25
26 Member Miller asked, what is the value of dropping the language, trees intended
27 for shade?

28
29 Mr. Schindler responded, because it makes it more clear whether it's understory
30 or canopy. What about a Ligustrum; is that a tree. Well, some varieties of
31 Ligustrum are understory trees. Whereas, I wouldn't say that a Ligustrum is a
32 shade tree. It's just better descriptive and more compatible with the rest of the
33 Code.

34
35 Chairman Williamson opened the hearing to public comment. Hearing none, he
36 closed that portion and entertained board discussion and/or a motion.

37
38 **MOTION:**

39
40 **Member Miller moved to recommend approval to the City Commission**
41 **regarding proposed revisions to Section 157.23, Arbor Pruning, consistent**
42 **with staff's Findings of Fact listed in the Staff Report. Member Sebald**
43 **seconded the motion.**

1 Chairman Williamson requested a roll-call vote on the motion, which was
2 taken as follows:

3
4 Member Lackey - Yes
5 Vice Chairman Swinski - Yes
6 Member Buck - Yes
7 Member Sebald - Yes
8 Member Miller - Yes
9 Chairman Williamson - Yes

10
11 The motion carried unanimously 6-0.

12
13 Chairman Williamson said, now we'll go to part two, the proposed revisions to
14 Section 163.03, establishing a \$300 Arbor Appeal application fee.

15
16 Mr. Schindler stated, we try to be in the middle. That is one of the reasons we
17 look at what other jurisdictions in the County have as comparable fees and then
18 we try to choose something that is not the highest nor the lowest but in the
19 middle, and we feel that \$300 is in the middle.

20
21 Member Miller questioned, what is the purpose of the fee? So far, I've heard you
22 say that it would potentially cover, partially, staff's time.

23
24 Mr. Schindler replied, it does that. It would tend to reimburse the City for the
25 portion of the time that staff spends on arbor appeals.

26
27 Member Miller asked, but wouldn't you have essentially all the documentation to
28 support a decision when you make the initial decision as opposed to the appeal?
29

30 Mr. Schindler answered, yes, but I still have to write up a Staff Report. I have to
31 make sure that all my facts are coherent, I have to come here to present it to you
32 and there is time involved.

33
34 Member Miller said, I guess I would have the expectation that all of the facts and
35 clarity of the decision was had when the original assessment was done or
36 reviewed, but -- so, the only additional work I would see would be coming here
37 and just double-checking your decision.

38
39 Mr. Schindler stated, well, if we were to go with that thinking, then there would be
40 no fees at all for any of our items; no fees for a zoning request or a land use
41 request, subdivision request, because staff would have done all the work
42 previously. It is up to you to make a recommendation. This is simply in line with
43 what we see other jurisdictions doing.

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Vice Chairman Swinski questioned, what is the fine currently? Like, we talked about on pruning, a resident would have \$100 fine minimum. What is the minimum fine on a tree take down?

While Mr. Schindler deferred to his code book to answer that question, Juan (John) A. Omana, Jr., Community Development Director, said, while he's getting that, obviously, it varies with the size of the tree and things of that nature. And, understand, that is not before you this evening.

Vice Chairman Swinski stated, I'm just curious, just for a matter of perspective.

Chairman Williamson said, actually, this proposal would be good for us because if someone takes a tree down without a permit and gets fined a \$250 fine, that is usually when everyone comes in here to appeal. If they see they have to pay \$300 more to appeal it, they probably are just not going to appeal it at all.

Mr. Omana stated, that's their decision.

Member Sebald asked, so, does that \$300 cover trees taken down without a permit?

Mr. Omana responded, it goes back to the issue of does it cover everything. The answer is no. I mean, \$300 is not going to cover Mr. Schindler, or me, or.....

Member Sebald questioned, do they also have to pay \$300 to appeal a tree?

Mr. Omana replied, to appeal a tree; yes.

Member Sebald asked, that's currently in position?

Mr. Schindler answered, they will have to pay \$300 to appeal any kind of arbor violation if this is in place.

Member Sebald said, okay, so, this does cover everything.

Mr. Schindler further responded, right now, failure to obtain a permit for a non-historic tree, the initial fine is \$250. For a historic tree, it's \$500. Then, for a non-historic tree, it is also \$50 per caliper inch. For a historic tree, it's \$100 per caliper inch on top of that.

Chairman Williamson questioned, does this fee also apply to people who are denied a permit to take a tree down?

DRAFT

1 Mr. Schindler replied, yes, yes.

2
3 Chairman Williamson stated, because that's usually what we see here mostly.

4
5 Mr. Schindler said, yes, yes.

6
7 Chairman Williamson stated, so, it kind of makes it a gamble for them then. If
8 they are going to pay \$300 or wait and see – either they'll grant me to take the
9 trees down or not.

10
11 Mr. Schindler said, if that is your intent that it should, please make that in your
12 motion that the application fee of \$300 would be for any arbor appeal.

13
14 Member Sebald stated, that makes it pretty clear.

15
16 Member Miller said, so, back to what you were saying. If you potentially just pay
17 the penalty because it's cheaper than trying to address the – my concern with
18 that approach is that if we get into a situation where there is interpretation of the
19 law that is not clear, this appeal process is the way for those unclear situations to
20 come up and we would really be deterring people from bringing forward anything
21 where it was unclear, or perhaps you guys retire and we have an overzealous
22 staff and they start making assessments that are unreasonable, we wouldn't
23 really have visibility to that if we deterred people from coming forward with
24 concerns in the community.

25
26 Chairman Williamson stated, well, they are written rules and regulations they go
27 by, and the \$250 fine, keep in mind, is the initial fine. If it is a historic tree of any
28 size, the fine is going to be a lot steeper than that.

29
30 Mr. Schindler said, you also have the ability to make a distinction between
31 appeals for trees being removed and appeals for trimming or pruning. You could
32 make a lesser fine for pruning or trimming. You could say, well, maybe it's \$200
33 rather than the \$300 for illegal pruning or trimming. But, by the same token,
34 understand, we are not going to cite somebody for illegal trimming or pruning
35 unless we believe that that tree is injured and that there is only a 50/50 chance
36 that it is going to live.

37
38 Member Miller stated, but that's not what it says in 157.23. I appreciate you
39 saying that, but that's not how it reads.

40
41 Mr. Schindler said, those are the regulations regarding the types of illegal pruning
42 and trimming and have been on the books for a long time. If someone follows
43 the American Arborists Association rules and regulations regarding trimming,

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1 they won't end up with poodle-ing. They won't end up with lolli-popping. There is
2 a good reason to say that those are illegal because they are injurious to trees,
3 and those types of activities are well accepted as being injurious and are not
4 allowed – or they are identified by the American Arborists Association as being
5 not the best management practices.
6

7 Member Miller asked, if we accept the proposal for the first half and it turns out
8 that there was something ambiguous or unclear in the first half, how would we
9 ever get feedback that the lot had to be corrected again without having people
10 come before us?
11

12 Mr. Omana answered, it would go to the City Commission, it would go to the City
13 Manager, they would go to us.
14

15 Mr. Schindler concurred.
16

17 Chairman Williamson stated, regardless of what we say, they can go to the City
18 Commission with our decision.
19

20 Mr. Schindler said, right because anyone can appeal your decision to the City
21 Commission. Whenever we send out the after-action letter or after-board letter,
22 we inform them of that right and then say you have 30 days in which to appeal,
23 30 days from the date of the letter in which to appeal to the City Commission.
24 And we have had a few that have gone to the City Commission.
25

26 Member Sebald asked Mr. Schindler if there was a fee to appeal to the City
27 Commission.
28

29 Mr. Schindler responded, there hasn't been.
30

31 Member Miller questioned, do any of these cities have it where if when they are
32 appealed, the fee is waived?
33

34 Mr. Schindler replied, I don't know. That was not our intent because it is an
35 administrative – I won't say nightmare, but it is a significant issue to refund
36 application fees. It is done when necessary, but, to the best of my knowledge, no
37 other action item in the City do you get your application fee refunded if you lose.
38

39 Member Miller stated, I mean, I keep trying to think about if I get a speeding
40 ticket, I have to pay a court fee. She asked, is this similar to a court fee if I get a
41 speeding ticket?
42

43 Unidentified voice answered, it could; yes.

1 Member Miller said, on the other hand, although you view it as very objectively
2 written, as a homeowner, I might be more subjective in reading it and interpreting
3 it. And that is my concern, is that everybody has their story, whether they are
4 new in town or it was after a storm and they needed to clean it up. I'm just
5 concerned that we wouldn't potentially be allowing people to come to this place.
6

7 Mr. Schindler stated, understand, if we have a storm – in fact, after the storm
8 event we had last week, a fellow came in to me and said I have a tree that's
9 dangerous. I said, take it down. You don't have to apply for a permit because
10 there is language in 157 that says if a tree is threatening life or property, you are
11 to take it down, and then within 24 hours of the act, notify the City. And we allow
12 that. We said yes. That is what the Code says. And in such instances, we take
13 people's word for it. We try to be as objective as possible, but there are times
14 when people blatantly, either through ignorance or willful action, do things that
15 are injurious to trees, whether they take them out or whether they simply hack
16 them to the point where it is questionable if they will live.
17

18 Member Miller said, and that is why I'm in support of the fine. But having to pay
19 money to come before the Board...
20

21 Mr. Schindler interjected, well, then, you may recommend against it.
22

23 Mr. Omana stated, but again, as Mr. Schindler pointed out, beside what we do
24 with you as a board, we have rezonings, we have DRIs, we have conditional
25 uses, we have site plans. We have to charge for those items to help offset the
26 cost of processing. So, we would be applying the same principle here. If these
27 people wish to appeal a decision or a permit that has been processed, then they
28 have that ability. It is just going to cost you, just like it would cost you to file for a
29 rezoning, DRI, site plan, conditional use.
30

31 Member Sebald questioned, how does this fee compare to those fees?
32

33 Mr. Omana responded, rezonings are \$250. Conditional use can vary up to
34 \$600. DRIs go up to \$2,500 depending on the nature. If it's a major DRI...
35

36 Mr. Schindler interposed saying, variances are \$350. An initial subdivision – a
37 preliminary subdivision is \$1,000.
38

39 Member Miller said, but when you calculate the cost of the fee relative to the
40 benefit of a rezoning compared to pruning of a tree, I think it is a pretty significant
41 variance between the two.
42

1 Mr. Schindler stated, well, then, you, as a board, need to decide if you do not like
2 the amount, you may take action to recommend an amount you do believe is
3 justifiable.
4

5 Vice Chairman Swinski said, it sounds like certainly there is – I'm sure there is a
6 ton of administration work that goes into it. You have described some of it. And
7 other cities in the County are charging the fees, so there appears to be a
8 standard operating procedure. We just maybe haven't been charging it in Lake
9 Mary because it's happening in Altamonte, Longwood, Sanford.
10

11 Mr. Omana stated, we haven't been charging it.
12

13 Member Lackey asked, but the \$300 is not based on anything actual? It's just
14 we want to be in the middle?
15

16 Mr. Schindler replied, yes, that's right.
17

18 Chairman Williamson said, Sanford charges \$500
19

20 Mr. Schindler stated, and that's the direction the City Commission has told staff.
21 When it comes to fees, we do not want to be the highest nor the lowest. We
22 want to be somewhere in the middle, and this is what we base this on.
23

24 Member Buck suggested on the date of application submittal that all applicants
25 turn in a photo of what tree(s) they are contemplating pruning or taking out.
26

27 Mr. Schindler said, but we are not asking for a permit for one and two-family.
28

29 Member Buck stated, I mean, other people.
30

31 Mr. Schindler said, yes, we do. Say, for a shopping center, we have had
32 instances where we have actually gone out and met with them and they have
33 shown us – they have walked around and said we are going to take off this limb,
34 we're going to take off this limb. We go out in the field and – because,
35 generally...
36

37 Member Buck interjected, take a picture is what I am saying in case it came up
38 again.
39

40 Mr. Schindler stated, we can; yes.
41

1 Member Buck said, I just thought it might not be a bad thing to be on the
2 application; something like that. It just makes it clear when two people have a
3 different opinion when you come back to City Commission.
4

5 Mr. Schindler concurred.
6

7 Chairman Williamson stated, well, look at the incident you had with the School
8 Board this week over there at Lake Mary where they were trimming trees for
9 portables.
10

11 Mr. Schindler said, yes. That's right. Uh-huh.
12

13 Member Buck stated, I just meant it as a suggestion. Probably a back-up photo
14 is pretty good when you're talking about taking over 25 percent of the tree down.
15 If you have a picture, it should solve the problem.
16

17 Mr. Schindler said, sure. That's a good suggestion because the more objective
18 information – they say a picture is worth a thousand words.
19

20 Chairman Williamson opened the hearing to public comment. Hearing none, he
21 closed that portion and entertained board discussion and/or a motion.
22

23 **MOTION:**
24

25 **Vice Chairman Swinski moved to recommend approval to the City**
26 **Commission regarding revisions to Section 163.03, establishing an Arbor**
27 **Appeal Fee “for any arbor appeal”, consistent with staff’s Findings of Fact**
28 **listed in the Staff Report. Member Buck seconded the motion.**
29

30 **Chairman Williamson requested a roll-call vote on the motion, which was**
31 **taken as follows:**
32

- 33 **Member Miller - No**
- 34 **Member Sebald - Yes**
- 35 **Member Buck - Yes**
- 36 **Vice Chairman Swinski - Yes**
- 37 **Member Lackey - No**
- 38 **Chairman Williamson - Yes**

39
40 **The motion carried 4-2.**
41

42 V. Adjournment
43

DRAFT

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The meeting was adjourned at 6:45 p.m.

Danny Williamson, Chairman

Diana T. Adams, Administrative
Secretary

**JUNE 10, 2013-18
CITY TREE BOARD**

~~QUASI-JUDICIAL~~ SIGN-IN SHEET

6/10, 2013
City Tree Bd. MEETING
(please print)

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

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Item of Interest _____

Name _____ Phone No. _____

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Item of Interest _____

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Item of Interest _____

Name _____ Phone No. _____

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Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

1 B. 2013-ZTA-03: Recommendation to the City Commission regarding proposed
2 revisions to Section 157.23, Arbor Pruning, and to Section 163.03 establishing
3 an application fee for arbor appeals; Applicant: City of Lake Mary/Community
4 Development Department/Planning and Zoning Division
5

6 Gary Schindler, City Planner, presented Item B. and the related Staff Report. He
7 said, the proposed revisions do three things. First of all, just some housekeeping
8 issues. For instance, there was language that was somewhat archaic referring to
9 shade trees. I have stricken that and put in both canopy trees and understory
10 trees. The two more significant issues are, one, currently, one and two-family
11 dwellings are not required to get a permit to trim. That is not going to change.
12 What is changing is we want to make it very clear that if improper trimming
13 practices happen, one and two-family homeowners are as responsible as
14 nonresidential property owners.
15

16 Staff had always treated such actions as violations; however, the arbor board
17 (City Tree Board) had a different idea. They did not read the Code of Ordinances
18 as holding the owners of one and two-family properties responsible for improper
19 trimming. We took a couple of them to the arbor board. In one case, they found
20 that there was no violation. In the second case, said continued the item for 6
21 months. During that time, if the tree died, staff was to bring the item back to the
22 arbor board. In light of this, staff ceased to take such trimming violations to the
23 arbor board.
24

25 The waiver of the requirement of obtaining a permit to trim trees is a privilege, not
26 afforded to non-residential properties; however, that does not exempt such
27 properties from the responsibility of engaging in proper trimming practices, in
28 compliance with the American Arborists Association.
29

30 Mr. Schindler stated that the second proposed Code change is to establish a fee
31 to appeal a fine and/or decision to the arbor board and/or City Commission. To
32 the best of staff's knowledge, this is the only item for which there is not an
33 application fee. As such, staff proposes a \$300 application fee for an arbor
34 appeal. This fee would be for all appeals to the arbor board.
35

36 Those are the three issues that are before you tonight.
37

38 Mr. Schindler said, at their special June 10, 2013, meeting, the arbor board took
39 the following actions:
40

- 41 1. Voted 6-0 to recommend approval of applying illegal practices making improper
42 pruning for one and two-family residences a situation in which a fine could be
43 levied.

DRAFT

1
2 2. Voted 4-2 to recommend approval of an arbor appeal fee.

3 Mr. Schindler concluded his presentation by saying, that's it. I will take any
4 questions you may have.

5
6 Member Miller questioned, what constitutes improper pruning?
7

8 Mr. Schindler replied, there are a whole list of improper pruning that is contained in
9 157. A couple of examples are lollipop trees. That is where you have a straight
10 trunk and all the lower limbs are out, and then you reach the top and you've got a
11 nice little – one small ball. There is something called poodle trimming. As you can
12 imagine, a French Poodle; you've got a puff here, a puff here, a puff here, a puff
13 here, and the rest of it is bare. Those are certain examples. There is also lions-
14 tailing. The American Arborists Association says that proper pruning should not
15 engage in trimming more than about 25 percent of the tree at any one time. That is
16 a rule of thumb.

17
18 Juan (John) A. Omana, Jr., Community Development Director, added, hat-racking
19 is another one where they basically turn the tree into, literally, a hat rack. You could
20 hang your hat on it.

21
22 Mr. Schindler stated, yes. That's right. You take all the branches off that have
23 leaves and you are left with these bare limbs that look like a hat rack.

24
25 Member Miller said, I have a neighbor that has a tree similar to what you are talking
26 about. He wins yard-of-the-month almost all the time. It's one of those trees that's
27 kind of a round tree that he trims regularly. I think it's an oak tree. It's beautiful.
28 Sounds like he would get fined for what he is doing with that tree.
29

30 Mr. Schindler stated, not if it is already done. Remember, if it is there and he just
31 continues to keep it in that shape, he is really not taking off more than 25 percent.
32 This is not going to be looking at retroactive. It's going to be looking at taking a
33 tree's natural growth and then applying it to that.
34

35 Chairman Hawkins said, but most of these things are more commercial uses where
36 people do these things to trees so that they get more visibility to their sign or their
37 business.
38

39 Mr. Schindler stated, yes, that's right. But, believe me, we do receive a number of
40 calls each year in which there are people that are engaged in – generally, it's hat-
41 racking. We want to be able to give a very firm message to people that they can't
42 do that.
43

1 Member Cartmill asked, when it comes to, like, say, a Crepe Myrtle, is that a shrub
2 or is that a tree?
3

4 Mr. Schindler answered, Crepe Myrtle is an understory tree.
5

6 Member Cartmill stated, because I do it and that maintains the...
7

8 Mr. Schindler interposed saying, but, understand, we are not going to be unrealistic
9 about this. I do the same thing to my Crepe Myrtle – or at least the person who
10 takes care of my yard does it.
11

12 Member Cartmill said, yeah. For a few months it looks ridiculous, but in the Spring,
13 it's beautiful.
14

15 Mr. Schindler stated, right. But, we're not talking about...
16

17 Chairman Hawkins interjected saying, but that's one of the accepted pruning
18 practices for a Crepe Myrtle.
19

20 Mr. Schindler said, that's right.
21

22 Member Cartmill stated, because I know the City and the County will do it in the
23 boulevards and all that. I have seen that especially on, say, Primera.
24

25 Chairman Hawkins said, but you don't do it to a Live Oak tree.
26

27 Mr. Schindler stated, no. I can also tell you that there are landscape architects who
28 cringe when they see Crepe Myrtles that are – it's called knuckling because it looks
29 like knuckles. But, you know, all right, so be it. We are not going to go out on a
30 crusade, but if and when we get a call, we do want to be able to respond
31 appropriately. It's no more acceptable for a homeowner to do this than for a
32 shopping center.
33

34 Vice Chairman Taylor questioned, when you have had problems in the past, what
35 percentage has been people intentionally doing a, quote, illegal pruning practice,
36 unquote, versus hiring someone? She said, as a homeowner, you hire a lot of
37 people for a lot of things you don't have any knowledge about and sometimes they
38 do a good job, but I have had people come in to trim trees, as well as do tile, who
39 do a horrible job and it's not best practices. I don't like the thought of punishing
40 because most homeowners aren't trimming their own trees, they are hiring it out to
41 people, and sometimes a bad job is done.
42

1 Mr. Schindler asked, but what is the alternative? I mean, if the homeowner will tell
2 us the name of the company, we will go after them as well. But, ultimately, it's the
3 responsibility of the homeowners.
4

5 Vice Chairman Taylor said, I just can't say that I'm for it. I just don't think tree
6 trimming is something that most people set out to intentionally do a bad job. I think
7 there is a lot of ignorance. I don't even know what most of these terms mean, so I
8 don't think your general homeowner would. And if they have paid somebody to do
9 it and they do it improperly, I hate to see them then fined on top of that when it may
10 not – because I have had people come in and I have specifically told them to trim a
11 tree a particular way, but some guy comes in with a chainsaw and I'm literally out
12 there screaming at the top of my lungs while he's destroying a tree. I don't want to
13 get fined \$100 for that.
14

15 Mr. Schindler stated, then you will need to vote your conscience. That is all I can
16 say because, right now, there is no penalty. There are no consequences for a
17 homeowner.
18

19 Vice Chairman Taylor said, and just strictly on an administrative note, under
20 Paragraph C, it seems like you define unlawful pruning practices. She questioned if
21 the very last sentence where it says the following are deemed unlawful pruning
22 practices dot, dot, dot needs to be there.
23

24 Mr. Schindler responded, yes, it does because they need to know what constitutes
25 unlawful...
26

27 Vice Chairman Taylor interposed saying, I just wanted to make sure because you
28 defined it earlier in the paragraph. It seems like it might be a redundancy, but I
29 wasn't sure.
30

31 Mr. Schindler stated, well, sometimes it is, but it is better to be redundant than
32 someone say, well, I didn't know. You didn't have this. So, we feel very strongly
33 that we want people to know.
34

35 Vice Chairman Taylor suggested to Mr. Schindler on page 2 of the Staff Report
36 under (G), second sentence, to add the word, not, after the word, but.
37

38 Mr. Omana said, yes, I think the intent may have been there to include but not
39 limited to.
40

41 Chairman Hawkins asked if the \$300 appeal fee was justified based on the
42 amount of time that staff would need in order to prepare for an appeal. He stated
43 that he didn't want a fee for somebody to appeal to be a fine. He wanted the fee

1 to be justified based on the amount of time that somebody has to take to do a
2 certain amount of work. He questioned, you see what I'm asking?
3

4 Mr. Schindler replied, I understand what you are saying, and all I can say is that
5 you have to look at more than the time. There are the facilities – you know, it's
6 like charging \$100 for a nurse to give an aspirin. There are lots of other issues in
7 addition to the amount of time that staff actually spends on the Staff Report.
8

9 Member Cartmill asked, how many arbor decisions are actually appealed?
10

11 Mr. Schindler answered, it varies. There are very few for – as I said, we stopped
12 taking trimming and pruning. But, in a year, there could be six to ten appeals.
13

14 Member Schofield questioned, versus how many violations?
15

16 Mr. Schindler responded, generally, because there was no fee to apply for an
17 appeal, if there is a violation, people appeal.
18

19 Member Schofield asked, so, there are only six to ten violations a year then?
20

21 Mr. Schindler replied, generally, yes.
22

23 Member Schofield questioned, so we're talking about a very limited amount of
24 people?
25

26 Mr. Schindler answered, yes.
27

28 Member Schofield said that he shares some of the same concerns that Vice
29 Chairman Taylor has in that he wasn't sure that residents should be charged with
30 a penalty if a licensed professional does something wrong with the trimming.
31

32 Chairman Hawkins stated, but it's your responsibility to say you need to trim my
33 trees based on the Lake Mary Code of Ordinances, and if you don't know what
34 that is, then I will supply you a copy. He asked, so, what is so difficult about
35 that?
36

37 Mr. Schindler said, the other issue is that it is well established under Florida law
38 that the property owner is ultimately responsible. It's no different than if you hire
39 a fence contractor to come in and build a fence and for whatever reason they –
40 let's say they put the finished side of the fence on the inside. Whether you tell
41 them to or not, you are responsible as the homeowner. The finished side of the
42 fence goes outside. And under Florida law, one of the main tools for local
43 governments is a Code Enforcement Board or similar boards, which levy fines on

1 the property owner. Additionally, we go after the contractor, but that is a citation,
2 which may be appealed to the courts.

3
4 Vice Chairman Taylor stated, but fences, sheds, ancillary buildings, other things
5 that the Code would have to deal with, can be remediated by the homeowner,
6 and a tree, once it's trimmed, can't, despite the homeowners' best effort.

7
8 Mr. Schindler said, but, you can appeal to the City Commission, and the City
9 Commission can determine if this is a special circumstance; we're going to
10 recognize and waive the fine. There is always the ability to appeal to the City
11 Commission.

12
13 Member Cartmill stated, yeah, but you're already out \$300, so it is a fine.

14
15 Vice Chairman Taylor said, it will cost \$300 to appeal.

16
17 Mr. Schindler stated, yes, they are, but what's – I mean, if you want to make a
18 recommendation for no fine, do it. If you want to make a recommendation for a
19 lesser application fee, do it, but there has to be – it is the only appeal review
20 process for which there is no application fee.

21
22 Mr. Omana said, Mr. Chairman, also, if I could have Mr. Schindler state into the
23 record the other cities' structures. We looked at what other cities do and if you
24 could brief the Board.

25
26 Mr. Schindler stated, the City Commission has basically said we don't want to be
27 the highest, we don't want to be the lowest, we want to be in the middle, and that
28 is part of the basis upon which we chose our fees. Seminole County is \$500,
29 Sanford is \$400, Altamonte Springs is \$250, and we chose \$300.

30
31 Member Miller questioned, what were the two cases that came before the arbor
32 board that you couldn't enforce because you didn't have residences included in
33 the practice? He said, you said there were two cases.

34
35 Mr. Schindler responded, yes. I do not remember the first one, but the second
36 one I remember very clearly. They had hat-racked two trees.

37
38 Member Miller asked, cut the top off two trees?

39
40 Mr. Schindler replied, no, not the top. They cut everything off of two trees. I
41 mean, there was not more than ten percent of the leaves left on the trees. This
42 happened in The Reserve at Lake Mary.

43

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Member Miller questioned why they did that.

Mr. Schindler answered, because they couldn't get grass to grow. That was their answer.

Member Cartmill asked, and then what was the fine?

Mr. Schindler responded, there was no fine.

Member Miller stated, the practice doesn't include residences.

Mr. Schindler added, they continued the item for six months and said, staff, if the trees die, come back and we'll treat it as killing the trees. He said, because we did not have a specific reference, we treated the incident as if the trees had been killed. He stated, I do remember the first instance. It was in Dr. Hawkins' neighborhood. There was a house down the street from you that had been foreclosed upon, there was a short sale, and the backyard was heavily overgrown with trees, and someone went in and there was a Live Oak that they had just butchered. It was hat-racked. And the member of the arbor board said there is no specific reference in this to one and two-family. In fact, a permit is not required. Therefore, no violation had occurred.

Member Miller questioned, who brings these things up? Is this the infamous Code Enforcement Board?

Mr. Schindler replied, no, no.

Member Miller asked, how do you get a case?

Mr. Schindler answered, residents call.

Member Miller questioned, complaints by other people?

Mr. Schindler responded, yes, by other people. When I receive such a call, I make an onsite inspection. Sometimes, I may get a call from the Code Enforcement officer. Whatever the source of the call, I follow up with an onsite inspection.

Member Schofield asked, so, it's almost like community self-policing?

Mr. Schindler replied, oh, believe me. In some neighborhoods, if someone hears a chainsaw, I'll get a call. This is especially true in The Forest Club.

1 Member Schofield questioned, just out of morbid curiosity --you have this pruning
2 thing -- what if I just decide, you know what, I'm not going to bother pruning it, I'm
3 just going to take the whole thing down, and I just take the tree out?
4

5 Mr. Schindler answered, you may if it's within the limits that staff can approve,
6 and if not, then you may appeal to the arbor board to remove a tree.
7

8 Member Schofield requested Mr. Schindler to address the penalty for removing a
9 tree without a permit.
10

11 Mr. Schindler responded, there is an initial flat fee of \$250 for a non-historic tree,
12 \$500 for a historic tree. There is also a secondary fines; for a non-historic tree,
13 it's \$50 per caliper inch, and for a historic tree, it's \$100 per caliper inch. It is not
14 unusual to get fines between \$1250 and \$1500.
15

16 Member Schofield said, the reason for my question is I was curious to know what
17 the penalty was for that versus improper pruning to see if they were equitable. If
18 pruning cost more than just taking a tree out, I might as well just take a tree out.
19

20 Mr. Schindler stated, no. Right. But, no, it doesn't. Because there is a chance
21 that an improperly pruned tree will come back, but there is also a chance it will
22 die because once you do radical pruning on a tree, it opens the tree up to
23 disease and insects, which could mean that it would take three to five years for
24 the tree to ultimately die, and there is no way, at that point, that staff could say,
25 well, this tree died as a result of this action.
26

27 Member Schofield asked, so if I wanted to remove a tree, my best thing to do is
28 improperly trim it, and then it gets to a point where it has to be removed because
29 I have trimmed it so horribly that it dies and then I get no penalty?
30

31 Mr. Schindler replied, that's possible. Yes. But, understand that when we
32 approve tree removal, we also look at the minimum number of trees that you are
33 required to have per lot size, and we will conditionally approve the removal of
34 trees if you meet or exceed that number, and if you don't, then there are
35 replacement trees that you plant.
36

37 Member Schofield said, well, I'm not looking to remove any of mine. I'm just
38 trying to think, you know, what would a homeowner do to try to circumvent the
39 policy. I'm concerned that if we're seeing six to ten cases a year, it just seems
40 like a.....
41

1 Mr. Schindler stated, well, understand, those were generally denial of permits.
2 We stopped taking improper trimming because the Board had said it's not a
3 requirement.

4
5 Chairman Hawkins opened the hearing to public comment. Hearing none, he
6 closed that portion and entertained board discussion and/or a motion.

7
8 Member Cartmill questioned, well, do we think that the caseload will be doubled,
9 tripled now that it includes excessive pruning?

10
11 Chairman Hawkins answered, no, I don't think so. I don't think there will be very
12 many appeals unless they are really serious about appealing.

13
14 Member Cartmill stated, well, that's what I'm saying. The cases could increase
15 though, not necessarily the appeals.

16
17 Chairman Hawkins said, well, the cases are going to increase because we have
18 changed the language to make it clear on what's – that's all. They are going to
19 start taking cases again.

20
21 Member Miller stated, well, the cases will increase because you now include
22 residential properties.

23
24 Mr. Schindler said, now, understand, whatever action the City Commission takes,
25 we will also notify people in the flyers in their water bills. Now, if people don't
26 read the flyers when they come, then they are not going to know, but if they
27 bother to read the flyers, they will know. A full cycle takes a month.

28
29 Member Miller stated, they may know it now. They won't know it when they get
30 ready to do something.

31
32 Member Schofield said, on a side note, speaking of the flyers that go in the water
33 bills, I get mine on-line, and I usually get my water bill on the 20th of the month or
34 so, 24th, and it gives me the month that's already happened, the calendar. It
35 would be nice to get July's calendar at the end of June instead of at the end of
36 July. Just something to think about.

37
38 **MOTION:**

39
40 **Member Cartmill moved to recommend approval to the City Commission**
41 **the request by City of Lake Mary/Community Development**
42 **Department/Planning and Zoning Division regarding proposed revisions to**
43 **Section 157.23, Arbor Pruning, and to Section 163.03 establishing an**

1 application fee for arbor appeals, consistent with staff's Findings of Fact
2 listed in the Staff Report subject to the following condition.
3
4

5 **CONDITION:**
6

7 **1. Planning and Zoning Board recommends on page 2 of the Staff Report**
8 **under (G), second sentence, to add the word, not, after the word, but.**
9

10 **The motion failed for lack of a second.**

11
12 Chairman Hawkins asked the Board, you-all don't want to second it just so you can
13 get it for the record and discuss it, and if you are not in favor of it, vote against it?
14

15 There was no verbal response from the Board.
16

17 Chairman Hawkins said, okay. Motion fails for lack of a second. Okay. I don't
18 think that's the way to carry on business, but that is my personal note.
19

20 It is noted that Chairman Hawkins took up the Community Development Director's
21 Report at this time (see below).
22

23 Member Miller questioned, can we back up and talk about that motion that just
24 failed? Is it forever gone? Because I guess I don't mind seconding it to talk about
25 it.
26

27 Chairman Hawkins answered, yeah – no, no. I just think if you are not in favor of it,
28 you should second the motion and then discuss the motion, and if you want to vote
29 against the motion, that's fine. I think that is the way you show your disapproval to
30 the City Commission, not...
31

32 Member Miller interjected questioning, as the Chair, would you let us back up and
33 can I second it now?
34

35 Chairman Hawkins responded, yeah.
36

37 Member Miller stated, I'll second it. I just didn't feel compelled to second something
38 I ain't in love with. But, I will second it so we can talk about it.
39

40 Chairman Hawkins asked, is that okay with everybody?
41

42 There was no opposition expressed from staff.
43

1 Vice Chairman Taylor said, for the purpose of opening it for discussion.
2 Chairman Hawkins stated, let the record reflect that the Board changed its mind
3 and they want to open this back up for discussion.
4

5 **Member Miller seconded Member Cartmill's motion so the Board could**
6 **discuss it.**
7

8 Member Miller commented, it just seems like we're adding more government
9 interference in what people can do. Since it's mostly coming up from neighbor's
10 complaining about what you do, I'm not sure I want to drag the residences into
11 what's set up now for commercial regulation.
12

13 Chairman Hawkins said, I understand what you are saying.
14

15 Member Miller stated, but, on the other hand, I'm looking at the Arbor Board's 6-0 in
16 favor of it and sent it to us to take some action, which kind of bothered me too.
17

18 Chairman Hawkins said, they are the ones that have to deal with it every day.
19

20 Vice Chairman Taylor stated, well, I don't think they have dealt with it every day. I
21 think they have had two cases where they didn't feel that they could adequately
22 address it. But, I think it's unnecessarily punitive. I think the appeal fee is
23 unnecessarily punitive for the purpose of restricting appeals, and I don't think there
24 is enough education out there. I think this really is targeted towards the commercial
25 use, and maybe if there was a different structure between commercial and
26 residential such as – well, any other scheme. But, I don't think it's fair to have the
27 commercial and the residential be on equal footing for this. I really don't think
28 education-wise and intent-wise they are. So, that is why I won't vote for it.
29

30 Member Schofield commented, I think you summed it up quite nicely and is my
31 feeling as well.
32

33 Member Miller commented, it is my belief that most people who violate ordinances
34 like this do it because they don't know it exists in the first place. If you walked
35 around and asked your neighbors what the ordinances say and do they have to get
36 a permit to do certain things, they don't know, and they are not going to know this
37 until they get the opportunity to pay \$300 to appeal something that they thought
38 was okay to do in the first place. It just feels like we are helping government to
39 extraordinarily interfere in the activities of people.
40

41 Vice Chairman Taylor added, or worse that they paid somebody to give them good
42 guidance.
43

DRAFT

1 Member Miller questioned if the Planning and Zoning Board would be the terminal
2 board on this item, or would it go forward to the City Commission.

3
4 Chairman Hawkins replied, we're just recommending or not recommending.
5

6 Member Schofield commented, if they lowered the fee just for the sake of bringing
7 up awareness, I think I would be a lot more in favor of it, but I think \$300 is
8 excessive for this. If it was \$25, 50 bucks just to get somebody's attention, I'm a lot
9 more in favor of it then than I am at \$300.

10
11 Vice Chairman Taylor commented, and the fee might actually be low for
12 commercial. And don't even get me started on the utility companies, who are the
13 biggest offenders in all of this.
14

15 Member Schofield commented, yeah. For commercial, especially if they are
16 licensed and bonded, they should know better than this. And I would think that
17 maybe the fee structure is different for that, but for residential, especially if I am
18 trimming it on my own and I am not an arborist or something like that, I just share a
19 lot of Colleen's sentiments on this.
20

21 Member Miller commented, thank you for letting us return to it. And I guess staff is
22 sitting there listening to us now. He asked, I wonder if staff would like to rebut
23 anything we're saying?
24

25 Mr. Omana answered, just we'll take forward whatever your motion is.
26

27 Mr. Noto added, and FYI, talking about commercial versus residential, there is no
28 appeal fee period for any arbor misdoings, if you will. So, even if a commercial
29 business does something wrong and they want to appeal our decision, they pay no
30 fee. So, it's an across-the-board zero dollar.
31

32 Member Miller questioned, whereas residential would be \$300?
33

34 Mr. Noto responded, well, no. It's zero now and it would be \$300 for everybody.
35 Everybody would have to pay. But, right now, no one pays.
36

37 Member Miller commented, okay. Now, you're getting somewhere to where we
38 could amend that motion and make it commercial pays \$300 and residential...

39
40 Member Cartmill interposed saying, well, that one wasn't unanimous. That part of it
41 wasn't unanimous from the Arbor Board.
42

43 Chairman Hawkins commented, yeah. Okay. He asked, any other discussion?

**JUNE 25, 2013-16
PLANNING AND ZONING BOARD**

1 Member Miller questioned, do we want to amend the motion at all for anything?
2

3 There was no verbal response.
4

5 Chairman Hawkins commented, I'm in favor of all this, with what staff has done and
6 the way they have done it. I'm in favor of not everybody should have to appeal, and
7 I just wanted to make sure that the appeal fee is not a fine, it's a fee.
8

9 Member Schofield questioned, if someone is successful in their appeal, do they get
10 their appeal fee back?
11

12 Mr. Omana, Mr. Schindler, and Chairman Hawkins all simultaneously replied
13 negatively.
14

15 Member Schofield asked, so you lose \$300 whether you win or lose?
16

17 Mr. Schindler answered, that's right.
18

19 Member Miller questioned, so, why appeal? You just spend \$300 and you walk
20 away feeling better about it?
21

22 Member Schofield asked, maybe a winner take all?
23

24 Chairman Hawkins commented, if you are in court and your attorney says, do you
25 want to appeal, you are still going to have to pay your attorney to fight for your
26 appeal. He's not going to do it for nothing whether you win or lose.
27

28 Mr. Schindler added, it's like with a rezoning. If someone comes in and applies for
29 a rezoning and they are turned down, they don't get their application fee back. I
30 mean, it is a fee. It is not let's flip a coin and winner takes all.
31

32 Member Schofield questioned, but what's the purpose of even – like – okay. So, I
33 get fined by the City because I poodled my tree. Why would I even want to appeal
34 that?
35

36 Mr. Noto responded, if your fine from staff was, like, \$1,200 and you decided not to
37 appeal to avoid paying \$300, you are paying us \$1,200. If your fine is \$1,200 and
38 you want to appeal, you pay \$300. You could potentially have that full \$1,200
39 waived by the Arbor Board. So, now, instead of being out \$1,200, you are out
40 \$300.
41

42 Member Schofield asked if there was a fee schedule for the different types of
43 pruning infractions.

DRAFT

1
2 Mr. Noto replied, there is a fee schedule for tree removal infractions. What Mr.
3 Schindler put together was here's how you break the law. If you break the law,
4 here's the fines and the fees you pay. We usually tell people to call Gary anyway
5 no matter what they're doing. So, his day-to-day operations aren't going to change
6 at all really because we tell them to go to Gary anyway. But, the pruning, whether
7 it's in the Code now or not, is bad, the way people end up doing it. This is codifying
8 it so that way we can have a place to hang our hat -- and not on a hat-racked tree --
9 but a place to hang it when we go out and say you have done this wrong.

10
11 Member Schofield questioned, just so I'm clear then. Let's say I hat-rack my tree,
12 what is the fine? Is it variable depending upon the severity of it?

13
14 Mr. Schindler answered, no, it's \$100.

15
16 Member Schofield said, so, I illegally prune my tree. It's \$100, but you appeal it,
17 you pay \$300. He asked, so, what's the point of the appeal to begin with then?
18 Because no one is going to appeal, they will just pay the fine.

19
20 Chairman Hawkins stated, not for \$100. Probably not. But, everybody wants to
21 appeal, so it takes double the time for staff to take care of this.

22
23 Member Schofield commented, I just think that the appeal should be less than what
24 the fine is, otherwise, then, you're basically saying you can't appeal it.

25
26 Member Miller commented, but, what staff wants to do is discourage appeals.
27 They don't want you to appeal. They want you to accept the fine and pay it.

28
29 Chairman Hawkins commented, but, that's just for pruning. Most of the fines are for
30 cutting down trees illegally.

31
32 Mr. Noto agreed saying, that's correct.

33
34 Mr. Schindler added, at this point, the only option we have without a fine specifically
35 for pruning is to treat you as though you are killing the tree. That's a minimum of
36 \$250, plus a minimum of \$50 per caliper inch. And because trees have to be 12"
37 wide or wider in order to require a permit for one and two-family, we are looking at
38 \$850.

39
40 Member Schofield questioned, if I get a fine of \$100 for improper pruning, then why
41 would I want to appeal? It makes no sense. I would just throw away \$200 more.
42

1 Vice Chairman Taylor responded, but you might have pruned six trees. Usually
2 when you have an arborist come in, they do all your trees and you come to some...
3 Chairman Hawkins interjected commenting, people don't appeal parking tickets
4 because it costs more to appeal them than it does to pay the ticket.
5

6 Member Schofield said, that is what my point is about this, and I just want to make
7 sure I'm clear about it.
8

9 Mr. Schindler stated, if you wish to recommend other fees, do it, but this is what
10 staff is proposing.
11

12 Member Schofield asked, is the \$300 fee per tree, or just in total? So, if I have ten
13 trees on my lot, I'm paying \$300 for that appeal?
14

15 Mr. Schindler replied, no, it's an appeal. It's a fee to appeal the fine for one or more
16 trees.
17

18 Chairman Hawkins added, it's an appeal fee.
19

20 Member Schofield questioned, if I have ten trees and I improperly prune them all, I
21 have \$1,000 fine, but I can still appeal for \$300?
22

23 Mr. Schindler answered, right; yes.
24

25 Vice Chairman Taylor commented, I'm not for this. I'm not going to vote for it, but
26 just for the comments for the City Commission when they consider it, I do think
27 there should be a separate fee structure for commercial than residential because I
28 think to hat-rack or do something...
29

30 **TAPE 1, SIDE B**

31 ...doesn't always work out.
32

33 Mr. Schindler said, and we will take that under consideration.
34

35 **Chairman Hawkins requested a roll-call vote on the motion, which was taken**
36 **as follows:**
37

38 **Member Schofield - No**

39 **Member Miller - No**

40 **Vice Chairman Taylor - No**

41 **Member Cartmill - Yes**

42 **Chairman Hawkins - Yes**
43

DRAFT

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The motion failed 3-2.

It is noted that this item will move forward to the City Commission's July cycle.

VIII. Community Development Director's Report

Juan (John) A. Omana, Jr., Community Development Director, reported that there was no City Commission meeting held on June 20, 2013, therefore, he had nothing to report at this meeting.

Mr. Omana did however let the Board know that staff is working very closely with the FDOT folks on the SunRail Station; some of the lights have gone up, grading continuation, and platform preparation.

IX. Other Business

None

X. Reports of Other Members

None

XI. Adjournment

The meeting was adjourned at 6:48 p.m.

Dr. Robert Hawkins, Chairman

Diana T. Adams, Administrative Secretary



MEMORANDUM

DATE: August 8, 2013

TO: City Commission

VIA: Jackie Sova, City Manager

FROM: Dianne Holloway, Finance Director

SUBJECT: Ordinance No. 1491 - Amending Police Officers' Retirement System - First Reading (Public Hearing)

DISCUSSION:

Proposed amendments to the City of Lake Mary Police Officers' Retirement System require change by ordinance. This ordinance amends Section 1, Definitions, to amend the definition of Credited Service, and Section 15, Maximum Pension, to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans such as this plan. These amendments clarify language required by the IRC and are mandatory amendments that must be made by September 30, 2013, to ensure the continuation of the plan's tax qualified status.

Additionally, a change is being made to Section 4, Finance and Fund Management, to delete the words "administered by national or state banks", which is recommended by the Pension Board's investment advisor in order to facilitate a proposed investment. Therefore, a formal Actuarial Impact Statement is not required.

The board's actuary, Foster and Foster, have determined that the adoption of these changes will have no impact on the assumptions used in determining the funding requirements of the program.

RECOMMENDATION:

The City Commission adopt Ordinance No. 1491 amending the City of Lake Mary Police Officers' Retirement System.



June 26, 2013

Via Mail & Email

Ms. Audrey Ross
City of Lake Mary Police Officers' Pension Board
4360 Northlake Boulevard, Suite 206
Palm Beach Gardens, FL 33410

Re: City of Lake Mary
Police Officers' Retirement System

Dear Audrey:

In response to Scott Christiansen's letter dated June 13, 2013, we have reviewed the proposed Ordinance (identified on page 15 as dm/lm/pol/06-12-13.ord) and have determined that its adoption will have no impact on the assumptions used in determining the funding requirements of the program.

Because the changes do not result in a change in the valuation results, it is our opinion that a formal Actuarial Impact Statement is not required in support of its adoption. However, since the Division of Retirement must be aware of the current provisions of all public pension programs, it is recommended that you send a copy of this letter and a copy of the fully executed Ordinance to each of the following offices:

Mr. Keith Brinkman
Bureau of Local Retirement Systems
Division of Retirement
P. O. Box 9000
Tallahassee, FL 32315-9000

Patricia Shoemaker
Municipal Police and Fire
Pension Trust Funds
Division of Retirement
P.O. Box 3010
Tallahassee, FL 32315-3010

If you have any questions, please let me know.

Sincerely,

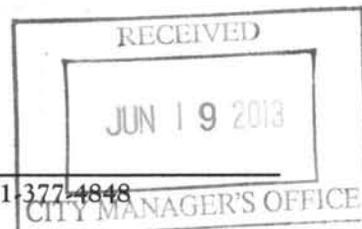
Patrick T. Donlan, ASA, EA, MAAA

PTD/tew

cc: Scott R. Christiansen, Board Attorney

Law Offices
Christiansen & Dehner, P.A.

63 Sarasota Center Blvd. Suite 107 Sarasota, Florida 34240 • 941-377-2200 • Fax 941-377-4848



June 13, 2013

Ms. Jacqueline Sova, City Manager
City of Lake Mary
P.O. Box 958445
Lake Mary, FL 32795-8445

Re: City of Lake Mary Police Officers' Retirement System

Dear Ms. Sova:

As you know, I represent the Board of Trustees of the City of Lake Mary Police Officers' Retirement System. Enclosed please find a proposed ordinance amending the City of Lake Mary Police Officers' Retirement System, which is recommended by the Board for adoption by the City Commission. This ordinance amends Section 1, Definitions to amend the definition of Credited Service, and Section 15, Maximum Pension, to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans such as this plan. These amendments clarify language required by the IRC and are mandatory amendments that must be made by September 30, 2013 to ensure the continuation of the plan's tax qualified status. With these additional changes, the pension plan will comply with all required applicable IRC changes and updates.

In addition to the above mandatory changes, a change is being made to Section 4, Finances and Fund Management, and has been made at the recommendation of the Board's investment advisor in order to facilitate a proposed investment.

By copy of this letter to the plan's actuary, Foster & Foster, Inc., I am requesting that they provide you with a letter indicating that there is no cost associated with the adoption of this ordinance.

If you or any member of your staff have any questions with regard to this ordinance, please feel free to give me a call. In addition, if you feel it would be appropriate for me to be present at the meeting at which this ordinance is considered by the City Commission, please contact my office to advise me of the date that the ordinance would be considered.

Yours very truly,

A handwritten signature in black ink, appearing to read "Scott R. Christiansen".

Scott R. Christiansen

SRC/dm
enclosure

cc: Patrick Donlan, with enclosure
Audrey Ross, with enclosure
Larry Cole, with enclosure

ORDINANCE NO. 1491

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA FURTHER AMENDING THE CITY OF LAKE MARY POLICE OFFICERS' RETIREMENT SYSTEM, ADOPTED PURSUANT TO ORDINANCE NO. 1002, AS SUBSEQUENTLY AMENDED, BY AMENDING SECTION 1, DEFINITIONS, TO AMEND THE DEFINITION OF CREDITED SERVICE; AMENDING SECTION 4, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 15, MAXIMUM PENSION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE MARY, FLORIDA;

SECTION 1: That the City of Lake Mary Police Officers' Retirement System, adopted pursuant to Ordinance No. 1002, as subsequently amended, is hereby further amended by amending Section 1, Definitions, to amend the definition of "Credited Service", to read as follows:

* * * * *

Credited Service means the total number of years and fractional parts of years of service as a Police Officer with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Police Officer. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Police Department pending the possibility of being reemployed as a Police Officer, without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Police Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Police Officer with the Police Department within five (5) years, his Accumulated Contributions, if one-thousand dollars (\$1,000.00) or less, shall be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board. Upon return of a Member's Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated. Upon any reemployment, a Police Officer shall not receive

credit for the years and fractional parts of years of service for which he has withdrawn his Accumulated Contributions from the Fund, unless the Police Officer repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a Member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a Police Officer with the City to perform training or service, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The member is entitled to reemployment under the provisions of USERRA.
- B. The Member returns to his employment as a Police Officer within one (1) year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.
- C. The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the Member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

SECTION 2: That the City of Lake Mary Police Officers' Retirement System, adopted pursuant to Ordinance No. 1002, as subsequently amended, is hereby further amended by amending Section 4, Finances and Fund Management, subsection 6.B., to read as follows:

* * * * *

B. All monies paid into or held in the Fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be limited to:

- (1) Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the Members in the Fund shall be entitled under the provisions of this System and pay the initial and subsequent premium thereon.
- (2) Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
- (3) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.
- (4) Bonds issued by the State of Israel.
- (5) Stocks, commingled funds ~~administered by national or state banks,~~ and bonds or other evidences of indebtedness, provided that:
 - (a) Except as provided in subparagraph (b), all individually held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.

- (b) Up to twenty-five percent (25%) of the assets of the Fund at market value may be invested in foreign securities.
- (c) The Board shall not invest more than five percent (5%) of its assets in the common stock, capital stock, or convertible securities (including synthetics) of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent (5%) of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities (including synthetics) at market exceed seventy percent (70%) of the assets of the Fund.
- (6) Real estate, provided the Board shall not invest more than fifteen percent (15%) at cost in real property or real estate.
- (7) Mutual funds and exchange traded funds (ETFs).

* * * * *

SECTION 3: That the City of Lake Mary Police Officers' Retirement System, adopted pursuant to Ordinance No. 1002, as subsequently amended, is hereby further amended by amending Section 15, Maximum Pension, to read as follows:

SECTION 15. MAXIMUM PENSION.

1. **Basic Limitation.**

Notwithstanding any other provisions of this System to the contrary, the Member contributions paid to, and retirement benefits paid from, the System shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) (\$160,000), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this System. For purposes of this Section, "limitation year" shall be the calendar year.

For purposes of Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code Section 415(n) and to rollover contributions (as defined in Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

2. Adjustments to Basic Limitation for Form of Benefit.

~~————— If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit. If the benefit under the plan is other than the annual benefit described in subsection 1., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:~~

A. For a benefit paid in a form to which Section 417(e)(3) of the Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

- (1) The annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same annuity starting date as the form of benefit to the Member, or
- (2) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable

mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code); or

B. For a benefit paid in a form to which Section 417(e)(3) of the Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

(1) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial experience;

(2) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one half percent (5.5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Code); or

(3) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the Plan Year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code), divided by 1.05.

C. The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections A. and B above.

3. Benefits Not Taken into Account.

For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

- A. Any ancillary benefit which is not directly related to retirement income benefits;
- B. Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1); and

C. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

4. COLA Effect.

Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:

- A. A Member's applicable limit will be applied to the Member's annual benefit in the Member's first calendar limitation year of benefit payments without regard to any automatic cost of living adjustments;
- B. thereafter, in any subsequent calendar limitation year, a Member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
- C. in no event shall a Member's benefit payable under the System in any calendar limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the System, for purposes of applying the limits under Code Section 415(b), a Member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

5. Other Adjustments in Limitations.

- A. In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).

- B. In the event the Member's benefit is based on at least fifteen (15) years of Credited Service as a full-time employee of the police or fire department of the City, the adjustments provided for in A. above shall not apply.
- C. The reductions provided for in A. above shall not be applicable to disability benefits pursuant to Section 8, or pre-retirement death benefits paid pursuant to Section 7.
- D. In the event the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

6. Less than Ten (10) Years of Participation or Service.

The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of Credited Service with the City shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10) of the limit determined without regard to this subsection. The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Section 8, or pre-retirement death benefits paid pursuant to Section 7.

7. Participation in Other Defined Benefit Plans.

The limit of this Section with respect to any Member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the City shall apply as if the total benefits payable under all City defined benefit plans in which the Member has been a member were payable from one plan.

8. Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.

Notwithstanding ~~the foregoing~~ anything in this Section 15, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limit set forth in this subsection

8. of Section 15 if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable Plan-Year limitation year and for any prior Plan-Year limitation year and the City has not any time maintained a qualified defined contribution plan in which the Member participated; provided, however, that if the Member has completed less than ten (10) years of Credited Service with the City, the limit under this subsection 8. of Section 15 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10).

9. Reduction of Benefits.

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Member.

10. Service Credit Purchase Limits.

A. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, as allowed in Section 26 and 27, then the requirements of this Section will be treated as met only if:

- (1) the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or

- (2) the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
- (3) For purposes of applying subparagraph (1), the System will not fail to meet the reduced limit under Code Section 415(b)(2)(c) solely by reason of this subparagraph (3), and for purposes of applying subparagraph (2) the System will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph (3).
- B. For purposes of this subsection the term "permissive service credit" means service credit—
 - (1) recognized by the System for purposes of calculating a Member's benefit under the plan,
 - (2) which such Member has not received under the plan, and
 - (3) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the System, include service credit for periods for which there is no performance of service, and, notwithstanding clause B.(2), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the System.

11. Contribution Limits.

- € A. For purposes of applying the Code Section 415(c) limits in this subsection ~~to~~ which are incorporated by reference and for purposes of this subsection 11., only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a ~~calendar~~ limitation year, except as noted below and as permitted by Treasury

Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the System, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

- (1) However, for ~~calendar~~ limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For ~~calendar~~ limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
- (2) For limitation years beginning on and after January 1, 2007, compensation for the ~~calendar~~ limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the ~~calendar~~ limitation year that includes the date of the employee's severance from employment if:
 - (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from

employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

(3) Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under the definition of "Salary" in Section 1, Definitions.

Ð B. Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment deduction plan for the Member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.

C. If the annual additions for any Member for a limitation year exceed the limitation under Section 415(c) of the Code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

D. For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of this subsection 11. shall not exceed the annual limit under Section 401(a)(17) of the Code.

†† 12. Additional Limitation on Pension Benefits.

Notwithstanding anything herein to the contrary:

- A. The normal retirement benefit or pension payable to a Retiree who becomes a Member of the System and who has not previously participated in such System, on or after January 1, 1980, shall not exceed one hundred percent (100%) of his Average Final Compensation. However, nothing contained in this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.
- B. No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

SECTION 4: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Lake Mary.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 7: That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this _____ day of _____, 2013.

PASSED AND ADOPTED ON SECOND READING, this _____ day of _____, 2013.

CITY OF LAKE MARY, FLORIDA

DAVID MEALOR, MAYOR

ATTEST:

CAROL A. FOSTER, CITY CLERK

Approved as to form:

CATHERINE D. REISCHMANN,
CITY ATTORNEY



MEMORANDUM

DATE: August 8, 2013

TO: City Commission

VIA: Jackie Sova, City Manager

FROM: Dianne Holloway, Finance Director

SUBJECT: Ordinance No. 1492 - Amending Firefighters' Retirement System - First Reading (Public Hearing)

DISCUSSION:

Proposed amendments to the City of Lake Mary Firefighters' Retirement System require change by ordinance. This ordinance amends Section 1, Definitions, to amend the definition of Credited Service, and Section 15, Maximum Pension, to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans such as this plan. These amendments clarify language required by the IRC and are mandatory amendments that must be made by September 30, 2013, to ensure the continuation of the plan's tax qualified status.

Additionally, a change is being made to Section 4, Finance and Fund Management, to delete the words "administered by national or state banks", which is recommended by the Pension Board's investment advisor in order to facilitate a proposed investment.

The board's actuary, Gabriel Roeder Smith & Company, have determined that the adoption of these changes will have no impact on the assumptions used in determining the funding requirements of the program. Therefore, a formal Actuarial Impact Statement is not required.

RECOMMENDATION:

The City Commission adopt Ordinance No. 1492 amending the City of Lake Mary Firefighters' Retirement System.



June 25, 2013

Ms. Audrey Ross
The Resource Centers, LLC
4360 Northlake Blvd., Suite 206
Palm Beach Gardens, FL 33410

RECEIVED
JUN 27 2013

Re: City of Lake Mary Firefighters' Retirement System

Dear Audrey:

We have reviewed the proposed ordinance amending the City of Lake Mary Firefighters' Retirement System drafted by Scott R. Christiansen and dated June 13, 2013. This proposed ordinance would amend the Plan as follows:

- Amending Section 1, adding the following to the definition of *Credited Service*: Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.
- Amending Section 4, *Finances and Fund Management*, subsection 6.B.(5) by removing the restriction that investments in commingled funds must be administered by national or state banks.
- Amending Section 15, *Maximum Pension* to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans.

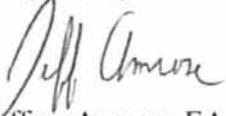
In our opinion, these changes will not have an actuarial impact on the cost of the Pension Fund. Therefore, it is our opinion that a formal Actuarial Impact Statement is not required. However, we recommend that you send a copy of this letter and the ordinance to the Municipal Police Officers and Firefighters' Retirement Trust Funds Office and to the Bureau of Local Retirement Systems.

The undersigned actuary is a member of the American Academy of Actuaries and meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein. The undersigned actuary is independent of the plan sponsor.

Ms. Audrey Ross
June 25, 2013
Page 2

We welcome your questions and comments.

Respectfully submitted,



Jeffrey Amrose, EA, MAAA
Senior Consultant & Actuary

JA/ta

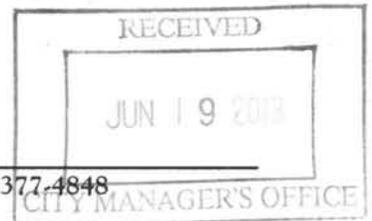
Circular 230 Notice: Pursuant to regulations issued by the IRS, to the extent this communication (or any attachment) concerns tax matters, it is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) marketing or recommending to another party any tax-related matter addressed within. Each taxpayer should seek advice based on the individual's circumstances from an independent tax advisor.

The above communication shall not be construed to provide tax advice, legal advice or investment advice.

Law Offices

Christiansen & Dehner, P.A.

63 Sarasota Center Blvd. Suite 107 Sarasota, Florida 34240 • 941-377-2200 • Fax 941-377-4848



June 13, 2013

Ms. Jacqueline Sova, City Manager
City of Lake Mary
P.O. Box 958445
Lake Mary, FL 32795-8445

Re: City of Lake Mary Firefighters' Retirement System

Dear Ms. Sova:

As you know, I represent the Board of Trustees of the City of Lake Mary Firefighters' Retirement System. Enclosed please find a proposed ordinance amending the City of Lake Mary Firefighters' Retirement System, which is recommended by the Board for adoption by the City Commission. This ordinance amends Section 1, Definitions to amend the definition of Credited Service, and Section 15, Maximum Pension, to comply with recent changes to the Internal Revenue Code (IRC) relating to tax qualified pension plans such as this plan. These amendments clarify language required by the IRC and are mandatory amendments that must be made by September 30, 2013 to ensure the continuation of the plan's tax qualified status. With these additional changes, the pension plan will comply with all required applicable IRC changes and updates.

In addition to the above mandatory changes, a change is being made to Section 4, Finances and Fund Management, and has been made at the recommendation of the Board's investment advisor in order to facilitate a proposed investment.

By copy of this letter to the plan's actuary, Gabriel Roeder Smith & Company, I am requesting that they provide you with a letter indicating that there is no cost associated with the adoption of this ordinance.

If you or any member of your staff have any questions with regard to this ordinance, please feel free to give me a call. In addition, if you feel it would be appropriate for me to be present at the meeting at which this ordinance is considered by the City Commission, please contact my office to advise me of the date that the ordinance would be considered.

Yours very truly,

A handwritten signature in black ink, appearing to read "Scott R. Christiansen".

Scott R. Christiansen

SRC/dm
enclosure

cc: Jeffrey Amrose, with enclosure
Audrey Ross, with enclosure
Larry Cole, with enclosure

ORDINANCE NO. 1492

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA, FURTHER AMENDING THE CITY OF LAKE MARY FIREFIGHTERS' RETIREMENT SYSTEM, ADOPTED PURSUANT TO ORDINANCE 1209, AS SUBSEQUENTLY AMENDED; BY AMENDING SECTION 1, DEFINITIONS TO AMEND THE DEFINITION OF CREDITED SERVICE; AMENDING SECTION 4, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 15, MAXIMUM PENSION; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE MARY, FLORIDA;

SECTION 1: That the City of Lake Mary Firefighters' Retirement System, adopted pursuant to Ordinance No. 1209, as subsequently amended, is hereby further amended by amending Section 1., Definitions, to amend the definition of "Credited Service", to read as follows:

* * * * *

Credited Service means the total number of years and fractional parts of years of service as a Firefighter or Volunteer Firefighter with Member contributions, when required, omitting intervening years or fractional parts of years when such Member was not employed by the City as a Firefighter or Volunteer Firefighter. A Member may voluntarily leave his Accumulated Contributions in the Fund for a period of five (5) years after leaving the employ of the Fire Department pending the possibility of being reemployed as a Firefighter or Volunteer Firefighter, without losing credit for the time that he was a Member of the System. If a vested Member leaves the employ of the Fire Department, his Accumulated Contributions will be returned only upon his written request. If a Member who is not vested is not reemployed as a Firefighter or Volunteer Firefighter with the Fire Department within five (5) years, his Accumulated Contributions, if one-thousand dollars (\$1,000.00) or less, shall be returned. If a Member who is not vested is not reemployed within five (5) years, his Accumulated Contributions, if more than one-thousand dollars (\$1,000.00), will be returned only upon the written request of the Member and upon completion of a written election to receive a cash lump sum or to rollover the lump sum amount on forms designated by the Board.

Upon return of a Member's Accumulated Contributions, all of his rights and benefits under the System are forfeited and terminated. Upon any reemployment, a Firefighter or Volunteer Firefighter shall not receive credit for the years and fractional parts of years of service for which he has withdrawn his Accumulated Contributions from the Fund, unless the Firefighter or Volunteer Firefighter repays into the Fund the contributions he has withdrawn, with interest, as determined by the Board, within ninety (90) days after his reemployment.

The years or fractional parts of a year that a Member performs "Qualified Military Service" consisting of voluntary or involuntary "service in the uniformed services" as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) (P.L.103-353), after separation from employment as a Firefighter or Volunteer Firefighter with the City to perform training or service, shall be added to his years of Credited Service for all purposes, including vesting, provided that:

- A. The Member is entitled to reemployment under the provisions of USERRA.
- B. The Member returns to his employment as a Firefighter or Volunteer Firefighter within one (1) year from the earlier of the date of his military discharge or his release from active service, unless otherwise required by USERRA.
- C. The maximum credit for military service pursuant to this paragraph shall be five (5) years.
- D. This paragraph is intended to satisfy the minimum requirements of USERRA. To the extent that this paragraph does not meet the minimum standards of USERRA, as it may be amended from time to time, the minimum standards shall apply.

In the event a Member dies on or after January 1, 2007, while performing USERRA Qualified Military Service, the beneficiaries of the Member are entitled to any benefits (other than benefit accruals relating to the period of qualified military service) as if the Member had resumed employment and then died while employed.

Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

* * * * *

SECTION 2: That the City of Lake Mary Firefighters' Retirement System, adopted pursuant to Ordinance No. 1209, as subsequently amended, is hereby further amended by amending Section 4., Finances and Fund Management, subsection 6.B., to read as follows:

* * * * *

- B. All monies paid into or held in the Fund shall be invested and reinvested by the Board and the investment of all or any part of such funds shall be limited to:
- (1) Annuity and life insurance contracts with life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the Members in the Fund shall be entitled under the provisions of this System and pay the initial and subsequent premium thereon.
 - (2) Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund or a savings/building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

- (3) Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.
- (4) Bonds issued by the State of Israel.
- (5) Stocks, commingled funds ~~administered by national or state banks~~, and bonds or other evidences of indebtedness, provided that:
 - (a) Except as provided in subparagraph (b), all individually held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.
 - (b) Up to twenty-five percent (25%) of the assets of the Fund at market value may be invested in foreign securities.
 - (c) The Board shall not invest more than five percent (5%) of its assets in the common stock, capital stock, or convertible securities (including synthetics) of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent (5%) of the outstanding capital stock of that company; nor shall the aggregate of its investments in common stock, capital stock and convertible securities (including synthetics) at market exceed seventy percent (70%) of the assets of the Fund.
- (6) Real estate, provided the Board shall not invest more than fifteen percent (15%) at cost in real property or real estate.
- (7) Mutual funds and exchange traded funds (ETFs).

* * * * *

SECTION 3: That the City of Lake Mary Firefighters' Retirement System, adopted pursuant to Ordinance No. 1209, as subsequently amended, is hereby further amended by amending Section 15, Maximum Pension, to read as follows:

SECTION 15. MAXIMUM PENSION.

1. Basic Limitation.

Notwithstanding any other provisions of this System to the contrary, the Member contributions paid to, and retirement benefits paid from, the System shall be limited to such extent as may be necessary to conform to the requirements of Code Section 415 for a qualified retirement plan. Before January 1, 1995, a plan member may not receive an annual benefit that exceeds the limits specified in Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a plan member may not receive an annual benefit that exceeds the dollar amount specified in Code Section 415(b)(1)(A) (\$160,000), subject to the applicable adjustments in Code Section 415(b) and subject to any additional limits that may be specified in this System. For purposes of this Section, "limitation year" shall be the calendar year.

For purposes of Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Code Section 415(n) and to rollover contributions (as defined in Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

2. Adjustments to Basic Limitation for Form of Benefit.

If the form of benefit without regard to any benefit increase feature is not a straight life annuity, then the Code Section 415(b) limit applicable at the annuity starting date is reduced to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit. If the benefit under the plan is other than the annual benefit described in subsection 1., then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations. If the form of the benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Code Section 415(b) limit applicable at the annuity starting date or

adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefit as follows:

A. For a benefit paid in a form to which Section 417(e)(3) of the Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

(1) The annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same annuity starting date as the form of benefit to the Member, or

(2) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a five percent (5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Code); or

B. For a benefit paid in a form to which Section 417(e)(3) of the Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

(1) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial experience;

- (2) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one half percent (5.5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417(e)(3)(B) of the Code); or
- (3) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the Plan Year with a one-year stabilization period)) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Code (Notice 2008-85 or any subsequent Internal Revenue Service

guidance implementing Section 417(e)(3)(B) of the Code), divided by 1.05.

C. The actuary may adjust the 415(b) limit at the annuity starting date in accordance with subsections A. and B above.

3. Benefits Not Taken into Account.

For purposes of this Section, the following benefits shall not be taken into account in applying these limits:

- A. Any ancillary benefit which is not directly related to retirement income benefits;
- B. Any other benefit not required under §415(b)(2) of the Code and Regulations thereunder to be taken into account for purposes of the limitation of Code Section 415(b)(1); and
- C. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

4. COLA Effect.

Effective on and after January 1, 2003, for purposes of applying the limits under Code Section 415(b) (the "Limit"), the following will apply:

- A. A Member's applicable limit will be applied to the Member's annual benefit in the Member's first calendar limitation year of benefit payments without regard to any automatic cost of living adjustments;
- B. thereafter, in any subsequent calendar limitation year, a Member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but
- C. in no event shall a Member's benefit payable under the System in any calendar limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder.

Unless otherwise specified in the System, for purposes of applying the limits under Code Section 415(b), a Member's applicable limit will be applied taking into consideration cost of living increases as required by Section 415(b) of the Code and applicable Treasury Regulations.

5. Other Adjustments in Limitations.

- A. In the event the Member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this Section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Code Section 415(b) of the Code, so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) annual benefit beginning at age sixty-two (62).
- B. In the event the Member's benefit is based on at least fifteen (15) years of Credited Service as a full-time employee of the police or fire department of the City, the adjustments provided for in A. above shall not apply.
- C. The reductions provided for in A. above shall not be applicable to disability benefits pursuant to Section 8, or pre-retirement death benefits paid pursuant to Section 7.
- D. In the event the Member's retirement benefit becomes payable after age sixty-five (65), for purposes of determining whether this benefit meets the limit set forth in subsection 1 herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age sixty-five (65). This adjustment shall be made in accordance with regulations promulgated by the Secretary of the Treasury or his delegate.

6. Less than Ten (10) Years of Participation or Service.

The maximum retirement benefits payable under this Section to any Member who has completed less than ten (10) years of Credited Service with the City shall be the amount determined under subsection 1 of this Section multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10% of the limit determined

without regard to this subsection. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits paid pursuant to Section 8., or pre-retirement death benefits paid pursuant to Section 7.

7. Participation in Other Defined Benefit Plans.

The limit of this Section with respect to any Member who at any time has been a member in any other defined benefit plan as defined in Code Section 414(j) maintained by the City shall apply as if the total benefits payable under all City defined benefit plans in which the Member has been a member were payable from one plan.

8. Ten Thousand Dollar (\$10,000) Limit; Less Than Ten Years of Service.

Notwithstanding ~~the foregoing~~ anything in this Section 15, the retirement benefit payable with respect to a Member shall be deemed not to exceed the limit set forth in this subsection 8. of Section 15 if the benefits payable, with respect to such Member under this System and under all other qualified defined benefit pension plans to which the City contributes, do not exceed ten thousand dollars (\$10,000) for the applicable ~~Plan-Year~~ limitation year and for any prior ~~Plan-Year~~ limitation year and the City has not any time maintained a qualified defined contribution plan in which the Member participated; provided, however, that if the Member has completed less than ten (10) years of Credited Service with the City, the limit under this subsection 8. of Section 15 shall be a reduced limit equal to ten thousand dollars (\$10,000) multiplied by a fraction, the numerator of which is the number of the Member's years of Credited Service and the denominator of which is ten (10).

9. Reduction of Benefits.

Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the Member's benefit under any defined benefit plans in which Member participated, such reduction to be made first with respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be determined by the Board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the Member participated, such reduction to be made first with

respect to the plan in which Member most recently accrued benefits and thereafter in such priority as shall be established by the Board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the Board and the plan administrator of all other plans covering such Member.

10. Service Credit Purchase Limits.

- A. Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, as allowed in Section 26 and 27, then the requirements of this Section will be treated as met only if:
 - (1) the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Code Section 415(b), or
 - (2) the requirements of Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Code Section 415(c).
- (3) For purposes of applying subparagraph (1), the System will not fail to meet the reduced limit under Code Section 415(b)(2)(c) solely by reason of this subparagraph (3), and for purposes of applying subparagraph (2) the System will not fail to meet the percentage limitation under Section 415(c)(1)(B) of the Code solely by reason of this subparagraph (3).
- B. For purposes of this subsection the term "permissive service credit" means service credit—
 - (1) recognized by the System for purposes of calculating a Member's benefit under the plan,
 - (2) which such Member has not received under the plan, and

- (3) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may, if otherwise provided by the System, include service credit for periods for which there is no performance of service, and, notwithstanding clause B.(2), may include service credited in order to provide an increased benefit for service credit which a Member is receiving under the System.

11. Contribution Limits.

- € A. For purposes of applying the Code Section 415(c) limits ~~in this subsection~~ ~~to~~ which are incorporated by reference and for purposes of this subsection 11., only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a calendar limitation year, except as noted below and as permitted by Treasury Regulations Section 1.415(c)-2, or successor regulations. Unless another definition of compensation that is permitted by Treasury Regulations Section 1.415(c)-2, or successor regulation, is specified by the System, compensation will be defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

- (1) However, for calendar limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For calendar limitation years beginning after December 31, 2000, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of Code Section 132(f)(4).
- (2) For limitation years beginning on and after January 1, 2007, compensation for the calendar limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the calendar limitation year that includes the date of the employee's severance from employment if:
 - (a) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or
 - (b) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.
- (3) Back pay, within the meaning of Treasury Regulations Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back

pay represents wages and compensation that would otherwise be included under the definition of "Salary" in Section 1., Definitions.

⊖ B. Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Code Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment deduction plan for the Member to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.

C. If the annual additions for any Member for a limitation year exceed the limitation under Section 415(c) of the Code, the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

D. For limitation years beginning on or after January 1, 2009, a Member's compensation for purposes of this subsection 11. shall not exceed the annual limit under Section 401(a)(17) of the Code.

⊕ 12. Additional Limitation on Pension Benefits.

Notwithstanding anything herein to the contrary:

A. The normal retirement benefit or pension payable to a Retiree who becomes a Member of the System and who has not previously participated in such System, on or after January 1, 1980, shall not exceed one hundred percent (100%) of his Average Final Compensation. However, nothing contained in

this Section shall apply to supplemental retirement benefits or to pension increases attributable to cost-of-living increases or adjustments.

- B. No Member of the System shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the Member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.

SECTION 4: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Lake Mary.

SECTION 5: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 7: That this Ordinance shall become effective upon adoption.

PASSED ON FIRST READING, this _____ day of _____, 2013.

PASSED AND ADOPTED ON SECOND READING, this _____ day of _____, 2013.

CITY OF LAKE MARY, FLORIDA

DAVID MEALOR, MAYOR

ATTEST:

CAROL A. FOSTER, CITY CLERK

Approved as to form:

CATHERINE D. REISCHMANN,
CITY ATTORNEY

dm/lm/fire/06-13-13.ord



MEMORANDUM

DATE: August 8, 2013

TO: City Commission

VIA: Jackie Sova, City Manager

FROM: Bruce Paster, P.E., Director of Public Works

SUBJECT: Ordinance No. 1493 - Amending Chapter 150, Appendix C, Stormwater Management, providing for clarification of stormwater management fee billing methodology- First Reading (Public Hearing) (Bruce Paster, Public Works Director)

DISCUSSION: In an effort to update and provide additional clarification to the City's Code of Ordinances staff has prepared the attached Ordinance to amend Chapter 155, Appendix C, Section 7, Stormwater Management Utility.

In order to clarify the billing methodology per building type and provide for a start date for billing of the City's stormwater fees the ordinance provides for the following amendments:

1. Revising the designation "his" to "his/her" in several locations to make the Code section gender neutral.
2. Removing the definition of Multiple Dwelling Unit as it no longer applies.
3. Adding the following to paragraph (D)(1) "Apartment buildings will be classified a non-residential due to the commercial nature of the property."
4. Adding the following to paragraph (E)(1) "Additionally, common areas and/or tracts that fall under the responsibility of a developer/homeowners association and so forth shall be classified and billed as non-residential."
5. Revising paragraphs (E)(3) and (4) to clarify the minimum charge for developed property.

6. Adding the following to paragraph (I)(1) “The start date for the billing of the stormwater management utility fee shall be at the time of site construction permit approval.”

RECOMMENDATION: The City Commission adopt Ordinance No. 1493 amending Chapter 155, Appendix C, Stormwater Management Regulations, Section 7, Stormwater Management Utility.

ORDINANCE NO. 1493

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA, AMENDING CHAPTER 155, APPENDIX C, OF THE CODE OF ORDINANCES ENTITLED "STORMWATER MANAGEMENT REGULATIONS"; PROVIDING FOR CLARIFICATION OF STORMWATER MANAGEMENT FEE BILLING METHODOLOGY; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the City Commission implemented Stormwater Management Regulations in 1993 which provided for stormwater fees; and

WHEREAS, the City Commission desires to amend the code to provide clarification to the stormwater management fee billing methodology; and

WHEREAS, the City Commission desires to amend the code to provide for gender neutrality; and

WHEREAS, words with underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text.

IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:

Section 1 Chapter 155, Appendix C, Stormwater Management Regulations, is amended as follows:

Amend Section 7 (B) Definitions as follows:

DIRECTOR. The Public Works Director or his/her designee.

~~MULTIPLE DWELLING UNIT. A building or facility consisting of more than one dwelling unit, each such unit consisting of one or more rooms with bathroom and kitchen facilities designed for occupancy by one family.~~

Amend Section 7 (D) as follows:

(1) A stormwater fee is hereby imposed upon each lot and parcel within the city for services and facilities provided by the stormwater management utility system. For purposes of imposing the stormwater fee, all lots and parcels within the city are classified as residential or non-residential. Apartment buildings will be classified as non-residential due to the commercial nature of the property.

(2) The City Manager or his/her designee is directed to prepare a list of lots and parcels within the city and assign a classification of residential or non-residential to each lot or parcel.

Amend Section 7 (E) as follows:

(1) Residential. Each single family residential unit shall be billed at a flat fee based upon one equivalent drainage unit (EDU) per dwelling unit. ~~For multi-family residential developments, the property owner shall be billed the fee established by the City Council for an EDU multiplied by the number of residential units.~~ Additionally, common areas and/or tracts that fall under the responsibility of a developer/homeowners association and so forth shall be classified and billed as non-residential.

(2) Non-residential. For non-residential properties, the number of equivalent drainage units (EDU) shall be determined. All non-residential properties, ~~not covered by subsection (a) of this section,~~ shall be billed based on the total applicable contributing area of the property divided by the Equivalent Drainage Unit factor and then multiplied by the rate established for an EDU. The calculation of the EDU amount shall be done to the nearest tenth (0.1) of an equivalent drainage unit. Gross parcel area and applicable contributing area shall be determined for each parcel using site plans, tax maps, REDI maps, aerial photos, and any other appropriate information. For non-residential properties, the total bill will be sent to the property owner as determined by the city.

(3) Charge per EDU. The charge per EDU will be \$3.00 per month and will consist of a base fee of \$1.45 per EDU applicable to all properties, plus a contribution fee of \$1.55 per EDU, applicable to all properties. All non-residential property with site mitigation facilities will ~~not pay the contribution fee~~ minimum charge consistent with (4) below.

(4) The minimum charge for developed property, in addition to the base rate charge, shall be a contribution fee of one (1) EDU.

Amend Section 7 (G) as follows:

(1) Any person disagreeing with the calculation of EDUs as determined by the city, may appeal such determination to the City Manager or his/her designee. Any appeal must be filed in writing and, as determined by the City Manager, shall include a survey prepared by a registered surveyor showing total property area, in addition to pervious and impervious surface area. Based upon the information provided by the city and the appealing party, the City Manager shall make a final calculation of pervious and impervious surfaces. The City Manager shall notify the parties, in writing, of his/her decision. If still dissatisfied, a party may appeal the City Manager's decision to the City Commission in the same manner as preceding. The decision of the City Commission

shall be final. Any adjustment to the originally determined area shall be retroactive to commencement of the charges and fees, provided said adjustment was requested within one year from the commencement of the charges and fees; thereafter any adjustment to the impervious area shall apply only from the date of the request for the adjustment.

Amend Section 7 (I) as follows:

(1) The stormwater management utility fee shall be billed and collected with the monthly utility bill for those lots or parcels of developed property utilizing city utilities and billed and collected separately as stormwater management utility fees for those lots or parcels of property and owners thereof not utilizing other city utilities. The start date for the billing of the stormwater management utility fee shall be at the time of site construction permit approval. All such bills for stormwater management utility fees shall be rendered monthly by the Finance Department and shall become due and payable in accordance with the rules and regulations of the Finance Department pertaining to the collection of utility fees. The stormwater management utility fee is part of a consolidated statement for utility customers which is generally paid by a single payment. In the event that a partial payment is received, the payment shall first be applied to garbage and trash, next applied to stormwater management, next applied to sewer, and finally applied to the water account.

Section 2. Codification: It is the intention of the City Commission that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Lake Mary, Florida and the word “ordinance” may be changed to “section”, “article”, or other appropriate word or phrase and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

Section 3. Conflicts: All ordinances or resolutions or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of any conflict.

Section 4. Severability: If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

Section 5. Effective date: This Ordinance shall be effective immediately upon passage and adoption.

PASSED AND ADOPTED this _____ day of _____, 2013.

FIRST READING: _____

SECOND READING _____

CITY OF LAKE MARY, FLORIDA

MAYOR, DAVID J. MEALOR

ATTEST:

CITY CLERK, CAROL A. FOSTER

Approved as to form and legality:

CITY ATTORNEY, CATHERINE REISCHMANN



MEMORANDUM

DATE: August 8, 2013

TO: City Commission

FROM: Jackie Sova, City Manager

SUBJECT: Resolution No. 922 - Annual Local Improvement and Essential Service Assessment for Lake Mary Woods Wastewater Improvements (Jackie Sova, City Manager)

In accordance with Ordinance No. 1166 relating to capital improvements and essential services providing a special benefit to local areas within the City, staff has prepared the attached Resolution. The Ordinance requires the City Commission, during its budget adoption process, to adopt an Annual Local Improvement and Essential Service Assessment Resolution for each fiscal year in which assessments for Lake Mary Woods will be imposed re-approving the assessment roll. As you know, this is the ninth year of the program. Eleven property owners have paid the assessment in full with the remaining ninety five being billed \$574.43 on their property tax bill.

RECOMMENDATION:

The Commission adopt the attached Annual Local Improvement and Essential Service Assessment Resolution for Lake Mary Woods Wastewater Improvements.

RESOLUTION NO. 922

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LAKE MARY, FLORIDA, APPROVING THE ASSESSMENT ROLL FOR THE LAKE MARY WOODS ASSESSMENT AREA ESTABLISHED PURSUANT TO ORDINANCE NO. 1166; ESTABLISHING THE LIEN ASSOCIATED THEREWITH; DIRECTING THAT THE ASSESSMENT ROLLS BE CERTIFIED TO THE SEMINOLE COUNTY TAX COLLECTOR; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission (the "Commission") of the City of Lake Mary, Florida, enacted Ordinance No. 1166 on June 2, 2005, (the "Ordinance"), to provide for the creation of the assessment areas and authorize the imposition of special assessments to fund the local improvements to serve the property located therein; and

WHEREAS, pursuant to the Ordinance, the Commission created and imposed a special assessment within the Lake Mary Woods Assessment Area on August 25, 2005; and

WHEREAS, pursuant to the provisions of the Ordinance, the Commission is required to adopt an "Annual Assessment Resolution" during its budget process for each fiscal year to approve the assessment roll for such fiscal year.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE MARY, FLORIDA, AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are affirmed and incorporated as part of this resolution.

SECTION 2. AUTHORITY. This Resolution is adopted pursuant to the Ordinance, Chapter 166, Florida Statutes, and other applicable provision of law.

SECTION 3. DEFINITIONS. This Resolution is the Annual Local Improvement Assessment Resolution as defined in the "Ordinance". All capitalized terms in this Resolution shall have the meanings defined in the "Ordinance" and the implementing resolutions adopted pursuant thereto.

SECTION 4. APPROVAL OF ASSESSMENT ROLLS. The assessment rolls on file with the City Clerk for the Lake Mary Woods Assessment Area are hereby approved. Pursuant to Section 197.3632, Florida Statutes, each assessment roll shall be certified to the Seminole County Tax Collector prior to September 15th of each year.

SECTION 5. ASSESSMENT LIENS. Special Assessments imposed within the assessment area listed on the rolls described in Section 4 hereto shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other liens, titles and claims, until paid. The lien shall be deemed perfected upon adoption of this Resolution and shall attach to the property included on the assessment roll as of January 1 of this tax period, the lien date for ad valorem taxes.

SECTION 6. SEVERABILITY. If any section, clause, phrase, word, or provision of this resolution is for any reason held invalid or unconstitutional by a court of competent jurisdiction, whether for substantive or procedural reasons, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this resolution.

SECTION 7. EFFECTIVE DATE. This Resolution shall become effective immediately upon passage and adoption.

PASSED AND ADOPTED this 8th day of August, 2013.

CITY OF LAKE MARY, FLORIDA

DAVID J. MEALOR, MAYOR

ATTEST:

CAROL A. FOSTER, CITY CLERK

2220305050A000060	MC CARN KEN B	489	ELMWOOD	CIR	1	\$574.43	LMWWW
2220305050A000260	PACHECO BOBBY A & MARTHA K	369	LAKWOOD	CT	1	\$574.43	LMWWW
2220305050A000320	DILLON DONALD H & JEANNE M	379	SPRUCEWOOD	RD	1	\$574.43	LMWWW
2220305050B000140	CURRAN CHRISTOPHER & LYNN	340	SPARROW WOOD	CT	1	\$574.43	LMWWW
2220305050B000200	KINSON CAROL J	339	SPARROW WOOD	CT	1	\$574.43	LMWWW
2220305050A000050	NATALE CONO & BARBARA	474	ELMWOOD	CIR	1	\$574.43	LMWWW
2220305050B000380	DONAHOU CURTIS & EDEN LIFE EST	300	OAKWOOD	CT	1	\$574.43	LMWWW
2220305050B000110	LIZARDO FRANCIS A & OLGA M	600	PUGH	ST	1	\$574.43	LMWWW
22203051400000040	BURCHILL DENNIS T III & BARBARA D	306	LAKE	RD	1	\$574.43	LMWWW
22203051400000110	TIMMONS HARRY M & LINDA S	336	LAKE	RD	1	\$574.43	LMWWW
2220305050B0000360	UNDERWOOD HOLLY & ANTHONY	308	OAKWOOD	CT	1	\$574.43	LMWWW
2220305050B0000400	KLEIN JEFF J & LISA C	309	OAKWOOD	CT	1	\$574.43	LMWWW
2220305050B000040	BLEVINS WILLIAM C & KAREN S	315	LAKE	RD	1	\$574.43	LMWWW
2220305050B0000290	CASH GABRIELLE R	320	SPRUCEWOOD	RD	1	\$574.43	LMWWW
2220305050A0000280	BREWER DONALD R JR & MARJORIE	354	SPRUCEWOOD	RD	1	\$574.43	LMWWW
2220305050C000110	RAWLINS MICHAEL W & CYNTHIA R	349	SPRUCEWOOD	RD	1	\$574.43	LMWWW
					95	\$54,570.85	



CITY MANAGER'S REPORT

DATE: August 8, 2013
TO: City Commission
FROM: Jackie Sova, City Manager
SUBJECT: City Manager's Report

ITEMS FOR COMMISSION ACTION:

1. 2013 Cold Mix Paving Project. **(ATTACHMENT #1)**
2. Public Safety Training Agreement. **(ATTACHMENT #2)**



CITY MANAGER'S REPORT

DATE: August 8, 2013
TO: City Commission
FROM: David Dovan, Assistant Director of Public Works
SUBJECT: 2013 Cold Mix Paving Project

DISCUSSION: This year's cold mix paving program will include the milling, cold mix overlay and fog seal of Crystal Dr., W. Grandbend Ave., W. Alma Ave., and a portion of Shealey Rd. Currently there are grade differences between the existing pavement and the cold mix that will be repaired. The process includes milling the existing surface down to 2" below existing asphalt and transitioning onto the new overlay and then applying a fog seal.

This year we will also be overlaying several streets to control unraveling. These include Wood St., Van Buren Ave., Seminole Ave. (portion), 7th St., 8th St., 4th St., Lake Mary Ave., E. Alma Ave., 1st St. (portion), and 2nd St. (portion). The cold mix overlay shall be placed at a uniform thickness of 3" – 4" and compacted to 1-1/2" and then fog sealed.

Also, this year we will be fog sealing a number of roads to prevent unraveling and oxidizing. They shall include E. Grandbend Ave., E. Lake Mary Ave., 1st St., (portion), 2nd St. (portion), Greenleaf Lane, N. Lake St., Hollis St., and N. High St. All streets will be swept, a uniform coat of emulsion sprayed, and then sanded.

The City of Lake Mary advertised for bids for Cold Mix Paving per ITB 13-07. On July 26, 2013 we received submittals from the following two firms:

Hubbard Construction Company
North Florida Emulsions, Inc.

The most responsive bid (see attached bid summary) was received from North Florida Emulsions, Inc. with a base bid of \$299,320.50. The 2013 Cold Mix Paving budget

current balance is \$314,932.89. The work will include a three year warranty and we have also checked the references that North Florida Emulsions provided.

This year's cold mix program work includes the budgeted paving of roads planned in 2012 as well as 2013. The benefit from bidding a larger project is that the City has saved approximately 2% (~\$5,354.00) by combining two years of paving.

RECOMMENDATION: Commission authorize the City Manager to enter into an agreement with North Florida Emulsions, Inc. in an amount not to exceed \$299,320.50 for the above described road work.

Attachment



CITY OF LAKE MARY, FLORIDA
COLD MIX PAVING PROJECT, ITB #13-07

Bids were opened at approximately 2:02 PM on July 26, 2013 by Jill J. Alvarez, Purchasing Coordinator. Also present were Jackie Sova, City Manager, Dave Dovan, Assistant Public Works Director and two vendor representatives.

	Vendor Name	Total
1	Hubbard Construction Company	\$ 468,451.70
2	North Florida Emulsions, Inc	\$ 299,320.50

Bids will be evaluated for responsiveness and a recommendation will be made to the City Commission upon completion of said evaluation.



CITY MANAGER'S REPORT

DATE: August 8, 2013
TO: City Commission
FROM: Craig E. Haun, Fire Chief
SUBJECT: Public Safety Training Agreement

Attached is a "License Agreement for Public Safety Related Training" with the Orlando Housing Authority.

The City of Sanford has access to the Redding Garden Apartments to use for training for firefighters. We frequently respond into and with Sanford, and train with them on a regular basis. The training will consist of a number of objectives including, ventilation, hose drills, forcible entry, etc., but will not include any actual fires.

In addition, Seminole State College will be using these buildings for a "Live Fire Instructor" class, which five of our personnel will be attending. This class will be using the buildings for training on how to prepare a building for live fire training, but again will not be doing any actual fires.

We have just been advised that the training with SSC will take place on the 21st of August. In order for our employees to participate in this training we need to have this agreement signed.

RECOMMENDATION:

Request Commission authorize City Manager to execute license agreement with the Orlando Housing Authority for Public Safety Related Training.

Attachment

**LICENSE AGREEMENT
FOR
PUBLIC SAFETY RELATED TRAINING**

THIS LICENSE AGREEMENT (hereinafter "License" or "Agreement" as the case may be) is made and entered on the last date below written between THE CITY OF LAKE MARY, FLORIDA, a municipality of the State of Florida (hereinafter also referred to as "Licensee" or the "City"), whose address is 100 North Country Club Rd., Lake Mary, Florida 32746 and Orlando Housing Authority, an agency of State government, (hereinafter referred to as the "Licensor"), whose address is 390 Bumby Ave. Orlando FL 32803.

1. *General Intent of License/Grant of License.* The Licensee is hereby granted the right to use the building and land, commonly known as Redding Garden Apartments (collectively herein referred to as the "building") for the purposes expressed herein. The building is assigned Tax Parcel Identification Number 30-19-31-511-0G00-0010 by the Seminole County Property Appraiser. (See the indemnification exhibit hereto which is incorporated herein by this reference thereto.) The property may be used for Lake Mary Fire Department training for the benefit of the public by the Licensee. The term "Licensee" includes the City as well as its personnel and public safety personnel training with the City.

2. *Dates of Training Sessions.* The Licensee may use the building on dates that are mutually agreed to by the Licensor and the Licensee in a letter drafted for such purpose on each occasion that dates are desired to be established by the parties. The Licensor delegates to Mr. Flemming, agent for the Licensor, the authority to execute letters providing for dates of usage and the Licensee delegates signatory authority

to execute such letters to its Police Chief and Fire Chief, or others. During those days as specified in such letters, the Licensee will use all of the property exclusively and the Licensor will not be entitled to otherwise use the property in any way.

3. *License Fees/Term/Termination.* This non-exclusive License Agreement shall begin on the date executed by both parties hereto. The parties may terminate this License at any time with written notice being provided to the other party at least five (5) working days in advance of the termination. There shall be no fees assessed against the Licensee by the Licensor in recognition of the public benefit served and attained by means of the use of the property by the Licensee.

4. *Care and Maintenance.* The Licensee shall not be responsible for any item within the property or part of the property which is damaged during the course of training exercise.

5. *Alterations.* The Licensee shall not, without first obtaining the written consent of Licensor, make any alterations, additions, or improvements in, to or about the property.

6. *Ordinances, Statutes, Rules and Regulations.* The Licensee shall comply with all statutes, ordinances and requirements of all municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the property.

7. *Assignment.* The Licensee shall not assign this Agreement without prior written consent of the Licensor, which may be withheld for any reason. Any such assignment without consent shall be void and, at the option of the Licensor, it may terminate this License Agreement.

8. *Utilities.* All applications and connections for necessary utility services on the property shall be made in the name of Licensee and only with the consent of the Licensor, Licensee shall be solely responsible for all of its charges and expenses relating to utility and other services which it may procure and use hereunder.

9. *Indemnifications.* Each party shall not be liable for any damage or injury to the other party, or any other person, or to any property, occurring on or in the property which results from the negligent actions of the other party. Each party hereby, to the extent and limit permitted by State law, but without obligation to provide insurance of any nature to the other party, shall hold harmless and indemnify the other party from and against any and all liability, assertions, loss, claims, damages, costs, attorney's fees, judgments and expenses of whatsoever kind or nature which the other party may sustain, suffer or incur or be required to pay by reason of a loss resulting from the negligent acts or omissions of the party. To the extent and limit permitted by State law, in the event that any action, suit or proceeding is brought against a party upon any alleged liability arising out of this Agreement asserted to have resulted from the negligence of the other party, the party against whom the action, suit or proceeding is brought shall promptly provide notice in writing thereof to the other party by registered or certified mail addressed to the party against whom the action, suit or proceeding is brought at the address herein provided. Upon receiving such notice, the party receiving notice, at its own expense, shall diligently defend the party against whom the action, suit, or proceeding is brought against such assertions, actions, lawsuits, or proceedings and take any and all appropriate actions to prevent the obtaining of a judgment against the party against whom the action, suit or proceeding is brought. Nothing in this Agreement or any action relating to this Agreement

shall be construed as a waiver of sovereign immunity beyond the limits set forth in Section 768.28, *Florida Statutes*, even if the indemnity action sounds in contract rather than tort. Persons employed by a party and the agents of that party taking actions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the other party's officers and employees. Additionally, there are no third party beneficiaries to this Agreement.

10. *Communication.* The parties hereby commit to the implementation and maintenance of clear, open communication between the Licensee and the Licensor.

11. *Non-Waiver.* No waiver of any clause of this Agreement or of the breach thereof shall be taken to constitute a waiver of any subsequent breach of said Agreement, nor to justify or authorize the non-observance of any other occasion of the same or any other agreement nor shall any waiver or indulgence granted by Licensor to Licensee be taken as an estoppel against the Licensor.

12. *No Liens.* It is expressly agreed that nothing in this Agreement shall ever be construed as empowering the Licensee to encumber or cause to be encumbered the title or interest of Licensor in the agreement in any manner whatsoever.

13. *Notices.* Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to the other party at the address shown above, or at such other places as may be designated in writing by the parties from time to time. Notices to the Licensee shall be directed to the City Manager and notices to the Licensor shall be directed to Mr. Flemming.

14. *Entire Agreement.* The foregoing constitutes the entire agreement between the parties and may be modified only in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date herein below last written.

ATTEST:

**LICENSEE:
CITY OF LAKE MARY, FLORIDA**

Date ___ / ___ / ___

Jacqueline B. Sova, City Manager

LICENSOR SIGNATURE BLOCK FOLLOWS

ATTEST:

LICENSOR:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date