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ORDINANCE NO. 1499

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA, AMENDING SECTION 154.09 (DEFINITIONS) AND SECTION 154.10(A)(4) (NONCONFORMING USES), CHAPTER 154, ZONING CODE, AND ADDING A NEW SECTION 154.130 (OUTDOOR ADVERTISING), ZONING CODE; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Lake Mary finds and determines that it is appropriate to update and revise Chapter 154, Zoning Code, of its Land Development Code;

WHEREAS, the City of Lake Mary finds and determines that it is appropriate to specifically include the business of outdoor advertising as a prohibited land use in all zoning districts, by adding a new section, Section 154.130 (Outdoor Advertising), to Chapter 154;

WHEREAS, the City of Lake Mary finds and determines that a definition for "Outdoor Advertising" should be included in Section 154.09 (Definitions) of the Zoning Code;

WHEREAS, the City of Lake Mary finds and determines that Section 154.10 (Nonconforming Uses) of the Zoning Code should be amended to provide that a sign permitted under Chapter 479, Florida Statutes, shall not be deemed destroyed under the Zoning Code unless the sign is destroyed within the meaning of Rule 14-10.007, Florida Administrative Code;

WHEREAS, the City of Lake Mary finds and determines that Rule 14-10.007(6)(a), Florida Administrative Code, was promulgated to implement provisions of Chapter 479, Florida Statutes, insofar as those provisions pertain to nonconforming outdoor advertising signs;

WHEREAS, the City of Lake Mary finds and determines that Rule 14-10.007(6)(a), Florida Administrative Code, defines destruction of a nonconforming sign in a manner that does not involve calculating the percentage of replacement value for the nonconforming sign, but instead follows a formula that evaluates the condition of the upright supports of the sign structure;

WHEREAS, the City of Lake Mary finds and determines that Rule 14-10.007(6)(a), Florida Administrative Code, provides that a nonconforming sign will be considered "destroyed" if more than 60% of the upright supports of a sign structure are physically damaged such that normal repair practices of the industry would call for, in the case of wooden sign structures, replacement of the broken supports and, in the case of a metal sign structure, replacement of at

1 least 25% of the length above ground of each broken, bent, or twisted support,
2 and further provides that a sign will not be considered “destroyed” where the
3 destruction is caused by vandalism or other criminal or tortuous act;
4

5 **WHEREAS**, the City of Lake Mary finds and determines that under the
6 Zoning Code it is appropriate to define “destruction” of a nonconforming outdoor
7 advertising sign utilizing the same definition that is currently utilized by the
8 Florida Administrative Code, as set forth in the foregoing preamble;
9

10 **WHEREAS**, the City of Lake Mary finds and determines that the
11 amendments, as set forth herein, are consistent with all applicable policies of the
12 City’s adopted Comprehensive Plan;
13

14 **WHEREAS**, the City of Lake Mary finds and determines that the
15 amendments, as set forth herein, are not in conflict with the public interest;
16

17 **WHEREAS**, the City of Lake Mary finds and determines that one of the
18 City’s goals under its comprehensive plan and included within the future land use
19 element is to promote, protect, and improve the public health, safety and welfare
20 of the City’s residents through the provision of appropriate land uses;
21

22 **WHEREAS**, the City of Lake Mary finds and determines that under its
23 comprehensive plan it is a goal within the future land use element to promote,
24 protect, and improve the public health, safety, and welfare of the City’s residents
25 through the provision of appropriate land uses;
26

27 **WHEREAS**, the City of Lake Mary finds and determines that the
28 prohibition of outdoor advertising within the city limits advances the public
29 welfare;
30

31 **WHEREAS**, the City of Lake Mary finds and determines that as far back
32 as 1954 the United States Supreme Court recognized that “the concept of the
33 public welfare is broad and inclusive,” that the values it represents are “spiritual
34 as well as physical, aesthetic as well as monetary,” and that it is within the power
35 of the legislature “to determine that the community should be beautiful as well as
36 healthy, spacious as well as clean, well balanced as well as carefully patrolled”
37 [Justice Douglas in *Berman v. Parker*, 348 U.S. 26, 33 (1954)];
38

39 **WHEREAS**, the City of Lake Mary finds and determines that aesthetics is
40 a valid basis for zoning, and that the prohibition of certain types of signs can be
41 based upon aesthetic grounds alone as promoting the general welfare [see

1 *Merritt v. Peters*, 65 So. 2d 861 (Fla. 1953); *Dade Town v. Gould*, 99 So. 2d 236
2 (Fla. 1957); *E.B. Elliott Advertising Co. v. Metropolitan Dade Town*, 425 F.2d
3 1141 (5th Cir. 1970), *cert. dismissed*, 400 U.S. 805 (1970)];

4
5 **WHEREAS**, the City of Lake Mary finds and determines that the
6 enhancement of the visual environment is critical to a community's character and
7 image;

8
9 **WHEREAS**, the City of Lake Mary finds and determines that the zoning
10 changes set forth herein further enhance a sense of character and ambiance that
11 distinguishes the city as one with a commitment to maintaining and improving an
12 attractive environment so as to improve the public welfare;

13
14 **WHEREAS**, the City of Lake Mary finds and determines that another one
15 of the City's goals under its comprehensive plan and included within the future
16 land use element is to minimize threats to natural and manmade resources;

17
18 **WHEREAS**, the City of Lake Mary finds and determines that in its
19 comprehensive plan it is a City objective to implement land uses consistent with
20 the community's character;

21
22 **WHEREAS**, the City of Lake Mary finds and determines that in its
23 comprehensive plan it is a City objective to continue to implement appropriate
24 land use techniques which ensure that all future development activities protect
25 natural resources including vegetation;

26
27 **WHEREAS**, the City of Lake Mary finds and determines that Article II,
28 Section 7, of the Florida Constitution, as adopted in 1968, provides that it shall be
29 the policy of the state to conserve and protect its scenic beauty;

30
31 **WHEREAS**, the City of Lake Mary finds and determines that the
32 prohibition of the business of outdoor advertising within the zoning districts of the
33 City is consistent the policy articulated in Article II, Section 7, of the Florida
34 Constitution, by conserving and protecting scenic beauty;

35
36 **WHEREAS**, the City of Lake Mary finds and determines that the goals,
37 objectives and policies from planning documents developed over the years have
38 demonstrated a strong, long-term commitment to maintaining and improving the
39 city's natural resources, including an attractive visual environment;

40

1 **WHEREAS**, the City of Lake Mary finds and determines that the presence
2 of outdoor advertising on parcels of an industrial nature does not preclude
3 concerns over preventing the aesthetic deterioration of the highway or guarding
4 against the deterioration of a city’s character [see *Interstate Outdoor Advertising,*
5 *L.P. v. Zoning Board of the township of Mount Laurel*, 706 F.3d 527, 532 (3rd Cir.
6 2013)];

7
8 **WHEREAS**, the City of Lake Mary finds and determines that, from a
9 planning perspective, one of the most important community goals is to define and
10 protect aesthetic resources and community character;

11
12 **WHEREAS**, the City of Lake Mary finds and determines that the
13 amendments herein are intended to maintain and improve the quality of life for all
14 citizens of the City;

15
16 **WHEREAS**, the City of Lake Mary finds and determines that the business
17 of outdoor advertising, as defined herein, detracts from the natural and manmade
18 beauty of the City;

19
20 **WHEREAS**, the City of Lake Mary finds and determines that the presence
21 of outdoor advertising along the federal interstate and the federal-aid primary
22 highway systems will prevent public property from being used for beautification
23 purposes due to view zones established by state law and administrative rule;

24
25 **WHEREAS**, the City of Lake Mary agrees with the American Society of
26 Landscape Architects’ determination that billboards tend to deface nearby
27 scenery, whether natural or built, rural or urban;

28
29 **WHEREAS**, the City of Lake Mary finds and determines that states such
30 as Vermont, Alaska, Maine, and Hawaii have prohibited the construction of
31 billboards in their states and are now billboard-free in an effort to promote
32 aesthetics and scenic beauty;

33
34 **WHEREAS**, the City of Lake Mary finds and determines that the
35 prohibition of outdoor advertising is consistent with the policy set forth in the
36 Florida Constitution that it shall be the policy of the state to conserve and protect
37 its scenic beauty;

38
39 **WHEREAS**, the City of Lake Mary agrees with the courts that have
40 recognized that outdoor advertising signs tend to interrupt what would otherwise
41 be the natural landscape as seen from the highway, whether the view is

1 untouched or ravished by man, and that it would be unreasonable and illogical to
2 conclude that an area is too unattractive to justify aesthetic improvement [see *E.*
3 *B. Elliott Adv. Co. v. Metropolitan Dade Town*, 425 F.2d 1141 (5th Cir. 1970),
4 *cert. dismissed*, 400 U.S. 805 (1970); *John Donnelly & Sons, Inc. v. Outdoor*
5 *Advertising Bd.*, 339 N.E.2d 709, 720 (Mass. 1975)];

6
7 **WHEREAS**, the City of Lake Mary finds that billboards attract the attention
8 of drivers passing by the billboards, thereby adversely affecting traffic safety and
9 constituting a public nuisance and a noxious use of the land on which the
10 billboards are erected;

11
12 **WHEREAS**, the City of Lake Mary recognizes that billboards are a form of
13 advertisement designed to be seen without the exercise of choice or volition on
14 the part of the observer, unlike other forms of advertising that are ordinarily seen
15 as a matter of choice on the part of the observer [see *Packer v. Utah*, 285 U.S.
16 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*,
17 289 Mass. 149, 193 N.E. 799 (1935)];

18
19 **WHEREAS**, the City of Lake Mary acknowledges that the United States
20 Supreme Court and many federal courts have accepted legislative judgments
21 and determinations that the prohibition of billboards (outdoor advertising)
22 promotes traffic safety and the aesthetics of the surrounding area [see
23 *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *National*
24 *Advertising Co. v. City & Town of Denver*, 912 F.2d 505, 409 (10th Cir. 1990),
25 and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 1231, 1239 (D. Kan.
26 1999)];

27
28 **WHEREAS**, the City of Lake Mary recognizes that on-site business signs
29 are considered to be part of the business itself, as distinguished from off-site
30 outdoor advertising signs, and finds and determines that it is well-recognized that
31 the unique nature of outdoor advertising and the nuisances fostered by billboard
32 signs justify the separate classification of such structures for the purposes of
33 governmental regulation and restrictions [see *E. B. Elliott Adv. Co. v.*
34 *Metropolitan Dade Town*, 425 F.2d 1141, 1153 (5th Cir. 1970), *cert. denied*, 400
35 U.S. 805, 91 S.C. 12, 27 L. Ed. 2d 35 (1970), quoting *United Advertising Corp. v.*
36 *Borough of Raritan*, 93 A.2d 362, 365 (1952)];

37
38 **WHEREAS**, the City of Lake Mary finds and determines that a prohibition
39 on outdoor advertising as a permissible land use will reduce the number of driver
40 distractions and the number of aesthetic eyesores along the roadways and
41 highways bordering or passing through the city [see, e.g., *E. B. Elliott Adv. Co. v.*

1 *Metropolitan Dade Town*, 425 F.2d 1141, 1154 (5th Cir. 1970), *cert. denied*, 400
2 U.S. 805 (1970)];

3
4 **WHEREAS**, the City of Lake Mary finds and determines that outdoor
5 advertising in the form of billboard signs are public nuisances given their adverse
6 impact on both traffic safety and aesthetics;

7
8 **WHEREAS**, the City of Lake Mary finds and determines that billboards are
9 a traffic hazard and impair the beauty of the surrounding area, and the prohibition
10 of outdoor advertising will reduce these harms [see *Outdoor Systems, Inc. v. City*
11 *of Lenexa*, 67 F.Supp.2d 1231, 1239 (D. Kan. 1999)];

12
13 **WHEREAS**, the City of Lake Mary hereby finds and determines that
14 anything beside the road which tends to distract the driver of a motor vehicle
15 directly affects traffic safety, and that signs, which divert the attention of the
16 driver and occupants of motor vehicles from the highway to objects away from it,
17 may reasonably be found to increase the danger of accidents, and agrees with
18 the courts that have reached the same determination [see *In re Opinion of the*
19 *Justices*, 103 N.H. 268, 169 A.2d 762 (1961); *Newman Signs, Inc. v. Hjelle*, 268
20 N.W.2d 741 (N.D.1978)];

21
22 **WHEREAS**, the City of Lake Mary finds and determines that the
23 prohibition of the business of outdoor advertising as set forth herein will improve
24 the beauty of the City, foster overall improvement to the aesthetic and visual
25 appearance of the City, preserve and open up areas for beautification on public
26 property adjoining the public roadways, increase the visibility, readability and/or
27 effectiveness of on-site signs by reducing and/or diminishing the visual clutter of
28 off-site signs, enhance the City as an attractive place to live and/or work, reduce
29 blighting influences, and improve traffic safety by reducing driver distractions;

30
31 **WHEREAS**, the City of Lake Mary finds and determines that in order to
32 preserve, protect and promote the safety and general welfare of the residents of
33 the City, it is appropriate to prohibit the business of outdoor advertising in all
34 zoning districts, and to provide that the foregoing provisions shall be severable;

35
36 IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:

37
38 **SECTION 1.** Section 154.09 of Chapter 154, Zoning Code, is hereby
39 amended to add a definition for “Outdoor Advertising” as follows:
40

1 of Ordinances of the City of Lake Mary, Florida and the word "ordinance" may be
2 changed to "section", "article", or other appropriate word or phrase and the
3 sections of the Ordinance may be renumbered or re-lettered to accomplish such
4 intention.

5
6 **SECTION 5. CONFLICTS.** All ordinances or resolutions or parts of
7 ordinances or resolutions in conflict herewith are hereby repealed to the extent of
8 any conflict.

9
10 **SECTION 6. SEVERABILITY.** If any section, sentence, phrase, word or
11 portion of this Ordinance is determined to be invalid, unlawful or unconstitutional,
12 said determination shall not be held to invalidate or impair the validity, force or
13 effect of any other section, sentence, phrase, word, or portion of this Ordinance
14 not otherwise determined to be invalid, unlawful, or unconstitutional.

15
16 **SECTION 7. EFFECTIVE DATE.** This Ordinance shall take effect
17 immediately upon passage and adoption.

18
19 PASSED AND ADOPTED this _____ day of _____, 2013.

20
21 FIRST READING: _____, 2013

22
23 SECOND READING: _____, 2013

24
25 CITY OF LAKE MARY, FLORIDA

26
27
28
29 _____
MAYOR, DAVID J. MEALOR

30 ATTEST:

31
32
33 _____
34 CITY CLERK, CAROL A. FOSTER
35 For the use and reliance of the City
36 of Lake Mary only. Approved as to
37 form and legal sufficiency.

38
39 _____
40 CATHERINE REISCHMANN, CITY ATTORNEY