

1 City's adopted Comprehensive Plan;

2
3 **WHEREAS**, the City of Lake Mary finds and determines that the
4 amendments, as set forth herein, are not in conflict with the public interest;

5
6 **WHEREAS**, the City of Lake Mary finds and determines that the
7 amendments, as set forth herein, will not result in incompatible land uses;

8
9 **WHEREAS**, the City of Lake Mary finds and determines that one of the
10 City's goals under its comprehensive plan and included within the future land use
11 element is to promote, protect, and improve the public health, safety and welfare
12 of the City's residents through the provision of appropriate land uses;

13
14 **WHEREAS**, the City of Lake Mary finds and determines that another one
15 of the City's goals is to minimize threats to natural and manmade resources;

16
17 **WHEREAS**, the City of Lake Mary finds and determines that in its
18 comprehensive plan it is a City objective to implement land uses consistent with
19 the community's character;

20
21 **WHEREAS**, the City of Lake Mary finds and determines that in its
22 comprehensive plan it is a City objective to continue to implement appropriate
23 land use techniques which ensure that all future development activities protect
24 natural resources including vegetation;

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

30
31 **WHEREAS**, the City of Lake Mary finds and determines that in order to
32 preserve the city as a desirable community in which to live, vacation and do
33 business, a pleasing, visually-attractive urban environment is of foremost
34 importance;

35
36 **WHEREAS**, the City of Lake Mary finds and determines that the regulation
37 of signs within the city is a highly contributive means by which to achieve this
38 desired end, and that the modification of sign regulations, as set forth herein, is
39 prepared with the intent of enhancing the environment and promoting the
40 continued well-being of the city;

1 **WHEREAS**, the City of Lake Mary finds and determines that Article II,
2 Section 7, of the Florida Constitution, as adopted in 1968, provides that it shall be
3 the policy of the state to conserve and protect its scenic beauty;
4

5 **WHEREAS**, the City of Lake Mary finds and determines that the regulation
6 of signage for purposes of aesthetics directly serves the policy articulated in
7 Article II, Section 7, of the Florida Constitution, by conserving and protecting its
8 scenic beauty;
9

10 **WHEREAS**, the City of Lake Mary finds and determines that the regulation
11 of signage for purposes of aesthetics has long been recognized as advancing the
12 public welfare;
13

14 **WHEREAS**, the City of Lake Mary finds and determines that as far back
15 as 1954 the United States Supreme Court recognized that “the concept of the
16 public welfare is broad and inclusive,” that the values it represents are “spiritual
17 as well as physical, aesthetic as well as monetary,” and that it is within the power
18 of the legislature “to determine that the community should be beautiful as well as
19 healthy, spacious as well as clean, well balanced as well as carefully patrolled”
20 [Justice Douglas in *Berman v. Parker*, 348 U.S. 26, 33 (1954)];
21

22 **WHEREAS**, the City of Lake Mary finds and determines that aesthetics is
23 a valid basis for zoning, and that the regulation of the size of signs and the
24 prohibition of certain types of signs can be based upon aesthetic grounds alone
25 as promoting the general welfare [see *Merritt v. Peters*, 65 So. 2d 861 (Fla.
26 1953); *Dade Town v. Gould*, 99 So. 2d 236 (Fla. 1957); *E.B. Elliott Advertising*
27 *Co. v. Metropolitan Dade Town*, 425 F.2d 1141 (5th Cir. 1970), *cert. dismissed*,
28 400 U.S. 805 (1970)];
29

30 **WHEREAS**, the City of Lake Mary finds and determines that the
31 enhancement of the visual environment is critical to a community’s image and its
32 continued presence as a tourist destination;
33

34 **WHEREAS**, the City of Lake Mary finds and determines that the sign
35 control principles set forth herein create a sense of character and ambiance that
36 distinguishes the city as one with a commitment to maintaining and improving an
37 attractive environment;
38

39 **WHEREAS**, the City of Lake Mary finds and determines that the goals,
40 objectives and policies from planning documents developed over the years have

1 demonstrated a strong, long-term commitment to maintaining and improving the
2 City's attractive and visual environment;

3
4 **WHEREAS**, the City of Lake Mary finds and determines that, from a
5 planning perspective, one of the most important community goals is to define and
6 protect aesthetic resources and community character;

7
8 **WHEREAS**, the City of Lake Mary finds and determines that the purpose
9 of the regulation of signs is to promote the public health, safety and general
10 welfare through a comprehensive system of reasonable, consistent and
11 nondiscriminatory sign standards and requirements;

12
13 **WHEREAS**, the City of Lake Mary finds and determines that the sign
14 regulations are intended to enable the identification of places of residence and
15 business;

16
17 **WHEREAS**, the City of Lake Mary finds and determines that the sign
18 regulations are intended to allow for the communication of information necessary
19 for the conduct of commerce;

20
21 **WHEREAS**, the City of Lake Mary finds and determines that sign
22 regulations are intended to lessen hazardous situations, confusion and visual
23 clutter caused by proliferation, improper placement, illumination, animation and
24 excessive height, area and bulk of signs which compete for the attention of
25 pedestrian and vehicular traffic;

26
27 **WHEREAS**, the City of Lake Mary finds and determines that the sign
28 regulations are intended to enhance the attractiveness and economic well-being
29 of the city as a place to live and conduct business;

30
31 **WHEREAS**, the City of Lake Mary finds and determines that the sign
32 regulations are intended to protect the public from the dangers of unsafe signs;

33
34 **WHEREAS**, the City of Lake Mary finds and determines that the sign
35 regulations are intended to permit signs that are compatible with their
36 surroundings and aid orientation, and to preclude placement of signs in a manner
37 that devalue adjacent properties and land uses;

38
39 **WHEREAS**, the City of Lake Mary finds and determines that the sign
40 regulations are intended to encourage signs that are appropriate to the zoning

1 district in which they are located and consistent with the category of use to which
2 they pertain;

3
4 **WHEREAS**, the City of Lake Mary finds and determines that the sign
5 regulations are intended to curtail the size and number of signs and sign
6 messages to the minimum reasonably necessary to identify a residential or
7 business location and the nature of any such business;

8
9 **WHEREAS**, the City of Lake Mary finds and determines that the sign
10 regulations are intended to preclude signs from conflicting with the principal
11 permitted use of the site or adjoining sites;

12
13 **WHEREAS**, the City of Lake Mary finds and determines that the sign
14 regulations are intended to regulate signs in a manner so as to not to distract
15 motorists;

16
17 **WHEREAS**, the City of Lake Mary finds and determines that the regulation
18 of signage was originally mandated by Florida's Local Government
19 Comprehensive Planning and Land Development Regulation Act in 1985 (see
20 Chapter 85-55, §14, Laws of Florida), and this requirement continues to apply to
21 the City of Lake Mary through Section 163.3202(2)(f), Florida Statutes;

22
23 **WHEREAS**, the City of Lake Mary finds and determines that in the 1980's
24 model provisions for the regulation of signage by cities and counties in Florida
25 were initially developed within Article VIII (Signs) of the Model Land Development
26 Code for Cities and Counties, prepared in 1989 for the Florida Department of
27 Community Affairs by the UF College of Law's Center for Governmental
28 Responsibility and by a professional planner with Henigar and Ray Engineering
29 Associates, Inc.;

30
31 **WHEREAS**, the City of Lake Mary finds and determines that the City of
32 Lake Mary has adopted the Lake Mary Sign Code in order to implement its
33 comprehensive plan, and to comply with the minimum requirements in the State
34 of Florida's Growth Management Act, at Section 163.3202, Florida Statutes;

35
36 **WHEREAS**, the City of Lake Mary finds and determines that it is required
37 to regulate signage;

38
39 **WHEREAS**, the City of Lake Mary finds and determines that its signage
40 regulations were and are intended to maintain and improve the quality of life for
41 all citizens of the City;

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WHEREAS, the City of Lake Mary finds and determines that off-site commercial signs, referred to herein as billboards, detract from the natural and manmade beauty of the City;

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

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

WHEREAS, the City of Lake Mary finds and determines that the prohibition of the construction of billboards and certain other sign types such as pole signs and electronic signs is consistent with the policy set forth in the Florida Constitution that it shall be the policy of the state to conserve and protect its scenic beauty;

WHEREAS, the City of Lake Mary agrees with the courts that have recognized that outdoor advertising signs tend to interrupt what would otherwise be the natural landscape as seen from the highway, whether the view is untouched or ravished by man, and that it would be unreasonable and illogical to conclude that an area is too unattractive to justify aesthetic improvement [see *E. B. Elliott Adv. Co. v. Metropolitan Dade Town*, 425 F.2d 1141 (5th Cir. 1970), *cert. dismissed*, 400 U.S. 805 (1970); *John Donnelly & Sons, Inc. v. Outdoor Advertising Bd.*, 339 N.E.2d 709, 720 (Mass. 1975)];

WHEREAS, the City of Lake Mary finds that local governments may separately classify off-site and on-site advertising signs in taking steps to minimize visual pollution [see *City of Lake Wales v. Lamar Advertising Association of Lakeland Florida*, 414 So.2d 1030, 1032 (Fla. 1982)];

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

WHEREAS, the City of Lake Mary recognizes that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on

1 the part of the observer, unlike other forms of advertising that are ordinarily seen
2 as a matter of choice on the part of the observer [see *Packer v. Utah*, 285 U.S.
3 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*,
4 289 Mass. 149, 193 N.E. 799 (1935)];

5
6 **WHEREAS**, the City of Lake Mary acknowledges that the United States
7 Supreme Court and many federal courts have accepted legislative judgments
8 and determinations that the prohibition of billboards promotes traffic safety and
9 the aesthetics of the surrounding area. [see *Metromedia, Inc. v. City of San*
10 *Diego*, 453 U.S. 490, 509-510 (1981); *National Advertising Co. v. City & Town of*
11 *Denver*, 912 F.2d 505, 409 (10th Cir. 1990), and *Outdoor Systems, Inc. v. City of*
12 *Lenexa*, 67 F. Supp. 1231, 1239 (D. Kan. 1999)];

13
14 **WHEREAS**, the City of Lake Mary acknowledges that the United States
15 Supreme Court and many federal courts have held that a complete prohibition on
16 offsite commercial billboards is constitutional [see *Members of the City Council of*
17 *L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 806-07 (1984) (noting that in
18 *Metromedia* seven Justices had concluded that an aesthetic interest was
19 sufficient to justify a prohibition of billboards; *City of Cincinnati v. Discovery*
20 *Network, Inc.*, 507 U.S. 410, 425, n. 20 (1993) (seven Justices in the *Metromedia*
21 case were of the view that San Diego could completely ban offsite commercial
22 billboards for reasons unrelated to the content of those billboards); *City of Ladue*
23 *v. Gilleo*, 512 U.S. 43, 49 n. 8 (1994) (a majority of the Members of the Court in
24 *Metromedia* had approved of the city's decision to prohibit off-site commercial
25 billboards while permitting on-site billboards); *Ballen v. City of Redmond*, 466 F.3d
26 736, 744 (9th Cir. 2006) (the externalities of billboards include perdurable visual
27 pollution that pervades a substantial volume of our eyesight and grows into an
28 unignorable part of our cultural landscape); *RTM Media, L.L.C. v. City of Houston*,
29 584 F.3d 220, 223 (5th Cir. 2009) (*Metromedia* unambiguously held that the city
30 could discriminate between on- and off-premise commercial speech); *Coastal*
31 *Outdoor Advertising Group, L.L.C. v. Township of East Hanover*, N.J., 630
32 F.Supp.2d 446, 456 (D.N.J. 2009), *aff'd*, 397 Fed. Appx. 794 (3rd Cir. 2010)
33 (noting Supreme Court statement that a blanket prohibition on billboards may be
34 the only effective way to solve the aesthetic and traffic problems that billboards
35 create); *CBS Outdoor, Inc. v. Village Plainfield, Ill.*, --- F.Supp.2d ----, 2013 WL
36 3975171 (N.D. Ill. 2013) (banning billboards has long been considered to be a
37 reasonable regulation of expression that is narrowly tailored to serve interests of
38 aesthetics and traffic concerns);

39
40 **WHEREAS**, the City of Lake Mary recognizes that on-site business signs
41 are considered to be part of the business itself, as distinguished from off-site

1 outdoor advertising signs, and finds and determines that it is well-recognized that
2 the unique nature of outdoor advertising and the nuisances fostered by billboard
3 signs justify the separate classification of such structures for the purposes of
4 governmental regulation and restrictions [see *E. B. Elliott Adv. Co. v.*
5 *Metropolitan Dade Town*, 425 F.2d 1141, 1153 (5th Cir. 1970), *cert. denied*, 400
6 U.S. 805, 91 S.C. 12, 27 L. Ed. 2d 35 (1970), quoting *United Advertising Corp. v.*
7 *Borough of Raritan*, 93 A.2d 362, 365 (1952)];
8

9 **WHEREAS**, the City of Lake Mary finds and determines that a prohibition
10 on the erection of off-site outdoor advertising signs will reduce the number of
11 driver distractions and the number of aesthetic eyesores along the roadways and
12 highways of the City [see, e.g., *E. B. Elliott Adv. Co. v. Metropolitan Dade Town*,
13 425 F.2d 1141, 1154 (5th Cir. 1970), *cert. denied*, 400 U.S. 805 (1970)];
14

15 **WHEREAS**, the City of Lake Mary finds and determines that billboard
16 signs are public nuisances given their adverse impact on both traffic safety and
17 aesthetics;
18

19 **WHEREAS**, the City of Lake Mary finds and determines that billboards are
20 a traffic hazard and impair the beauty of the surrounding area, and the prohibition
21 of the construction of billboards will reduce these harms [see *Outdoor Systems,*
22 *Inc. v. City of Lenexa*, 67 F.Supp.2d 1231, 1239 (D. Kan. 1999)];
23

24 **WHEREAS**, the City of Lake Mary finds and determines that the presence
25 of billboards along the federal interstate and the federal-aid primary highway
26 systems has prevented public property in other jurisdictions from being used for
27 beautification purposes due to view zones established by state administrative
28 rule;
29

30 **WHEREAS**, Scenic America, Inc. recommends improvements in the
31 scenic character of a community's landscape and appearance by prohibiting the
32 construction of billboards, and by setting height, size and other standards for on-
33 premise signs [see Scenic America's Seven Principles for Scenic Conservation,
34 Principle #5];
35

36 **WHEREAS**, more than two hundred fifty Florida municipalities have
37 adopted ordinances prohibiting the construction of billboards in their communities
38 in order to achieve aesthetic, beautification, traffic safety, and/or other related
39 goals;
40

1 **WHEREAS**, the City of Lake Mary finds and determines that in order to
2 preserve, protect and promote the safety and general welfare of the residents of
3 the City, it is necessary to regulate off-site advertising signs, commonly known as
4 billboard signs or billboards, so as to prohibit the construction of billboards in all
5 zoning districts, and to provide that the foregoing provisions shall be severable;

6
7 **WHEREAS**, the City of Lake Mary finds and determines that the
8 prohibition of billboards as set forth herein will improve the beauty of the City,
9 foster overall improvement to the aesthetic and visual appearance of the City,
10 preserve and open up areas for beautification on public property adjoining the
11 public roadways, increase the visibility, readability and/or effectiveness of on-site
12 signs by reducing and/or diminishing the visual clutter of off-site signs, enhance
13 the City as an attractive place to live and/or work, reduce blighting influences,
14 and improve traffic safety by reducing driver distractions;

15
16 **WHEREAS**, the City of Lake Mary wishes to assure that new billboards
17 are effectively prohibited as a sign-type within the City;

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

27
28 **WHEREAS**, the City of Lake Mary finds and determines that there should
29 be a definition for “billboard” and that billboards should be included among the
30 signs prohibited in the City without any exception;

31
32 **WHEREAS**, the City of Lake Mary finds and determines that the definition
33 of “electronic sign” should be revised so as to provide more specificity;

34
35 **WHEREAS**, the City of Lake Mary finds and determines that there should
36 be definitions for “animated sign” and “intermittent sign” and that animated signs
37 and intermittent signs should be included among signs prohibited in the City;

38
39 **WHEREAS**, the City of Lake Mary finds and determines that ground signs
40 greater than one hundred square feet in size (area) should be included among
41 the signs prohibited in the City;

1
2 IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:
3

4 **SECTION 1.** Section 3, Definitions, of Appendix I: Sign Code, of Chapter
5 155, Subdivision Regulations, is hereby amended to add a definition for
6 “Animated Sign” as follows:
7

8 “ANIMATED SIGN.” A sign which includes action, motion, or color
9 changes, or the optical illusion of action, motion, or color changes, including a
10 sign set in motion by movement of the atmosphere, or made up of a series of
11 sections that turn.
12

13 **SECTION 2.** Section 3, Definitions, of Appendix I: Sign Code, of Chapter
14 155, Subdivision Regulations, is hereby amended to add a definition for
15 “Billboard” as follows:
16

17 “BILLBOARD.” A non-point-of-sale commercial sign which advertises a
18 product, service, business, organization, event, person, place, or thing.
19

20 **SECTION 3.** Section 3, Definitions, of Appendix I: Sign Code, of Chapter
21 155, Subdivision Regulations, is hereby amended to revise the definition of
22 “Electronic Sign” to add the following underscored language:
23

24 “ELECTRONIC SIGN.” A sign on which the copy changes automatically
25 on a lamp bank or in a similar fashion, including but not limited to LED (light
26 emitting diodes), LCD (liquid crystal displays), CEVMS (commercial electronic
27 variable message signs), plasma displays, dynamic displays, projected images,
28 or any other functionally equivalent technology, and which is capable of
29 automated, remote or computer control to change the image, or through any
30 electronically illuminated, scrolling or moving text, symbols or other images,
31 utilizing LED, LCD, CEVMS, or other digital or electronic technology, commonly
32 known as electronic message or reader boards, electronic marquees, message
33 centers, moving message displays, or digital signs.
34

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35 **SECTION 4.** Section 3, Definitions, of Appendix I: Sign Code, of Chapter
36 155, Subdivision Regulations, is hereby amended to add a definition for
37 “Intermittent Sign” as follows:
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39 “INTERMITTENT SIGN.” Any illuminated sign which contains, includes, or
40 is illuminated by any intermittent light or lights, except those giving public service
41 information such as time, date, weather, or similar information.

1
2 **SECTION 5.** The current Subsection 5(B)(19), of Section 5, Exempt and
3 Prohibited Signs, of Appendix I: Sign Code, of Chapter 155, Subdivision
4 Regulations, is hereby repealed in its entirety.

5
6 **SECTION 6.** New Subsections 5(B)(19), (20), (21), and (22), of Section 5,
7 Exempt and Prohibited Signs, of Appendix I: Sign Code, of Chapter 155,
8 Subdivision Regulations, are hereby added:

9
10 (19) Billboards.

11
12 (20) Animated signs.

13
14 (21) Intermittent signs.

15
16 (22) Ground signs greater than one hundred square feet in size (area).

17
18 **SECTION 7. CODIFICATION.** It is the intention of the City Commission
19 that the provisions of this Ordinance shall become and be made part of the Code
20 of Ordinances of the City of Lake Mary, Florida and the word “ordinance” may be
21 changed to “section”, “article”, or other appropriate word or phrase and the
22 sections of the Ordinance may be renumbered or re-lettered to accomplish such
23 intention.

24
25 **SECTION 8. CONFLICTS.** All ordinances or resolutions or parts of
26 ordinances or resolutions in conflict herewith are hereby repealed to the extent of
27 any conflict.

28
29 **SECTION 9. SEVERABILITY.** If any section, sentence, phrase, word or
30 portion of this Ordinance is determined to be invalid, unlawful or unconstitutional,
31 said determination shall not be held to invalidate or impair the validity, force or
32 effect of any other section, sentence, phrase, word, or portion of this Ordinance
33 not otherwise determined to be invalid, unlawful, or unconstitutional.

34
35 **SECTION 10. EFFECTIVE DATE.** This Ordinance shall take effect
36 immediately upon passage and adoption.

37
38 PASSED AND ADOPTED this _____ day of _____, 2013.

39
40 FIRST READING: _____, 2013

1 SECOND READING: _____, 2013

2

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CITY OF LAKE MARY, FLORIDA

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MAYOR, DAVID J. MEALOR

8 ATTEST:

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11

12 CITY CLERK, CAROL A. FOSTER

13 For the use and reliance of the City

14 of Lake Mary only. Approved as to

15 form and legal sufficiency.

16

17

18 CATHERINE REISCHMANN, CITY ATTORNEY

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