

AN ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, AMENDING ARTICLE X (SIGNS) OF PART III (LAND DEVELOPMENT CODE) OF THE HOLMES BEACH CODE OF ORDINANCES; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS AND STATUS OF EXISTING NONCONFORMING SIGNS; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Holmes Beach (the City) last adopted comprehensive revisions to its sign code by Ordinance 07-04, adopted on March 27th 2007, and that recent developments in constitutional law as well as practical experience administering its code have created a desire on the City's part to update its Land Development Code relative to sign regulations; and

WHEREAS, the City finds that it is appropriate to delete sections, subsections, paragraphs, subparagraphs, divisions, subdivisions, clauses, sentences, phrases, words, and provisions of the existing ordinance which are obsolete or superfluous, and/or which have not been enforced, and/or which are not enforceable, and/or which would be severable by a court of competent jurisdiction; and

WHEREAS, Florida Statutes § 163.3164 (26) provides that sign regulations are land development regulations and Florida Statutes § 163.3202(2)(f) requires the City's land development regulations to specifically set forth regulations concerning signage; and

WHEREAS, the City finds that it is appropriate to ensure that the Land Development Code's sign rules are compliant with constitutional and other legal requirements; and

WHEREAS, the purpose, intent and scope of the City's signage standards and regulations should be detailed so as to further describe the beneficial aesthetic and other effects of the City's sign standards and regulations, and to reaffirm that the sign standards and regulations are concerned with the secondary effects of speech and are not designed to censor speech or regulate the viewpoint of the speaker; and

WHEREAS, to ensure content neutrality, the City's limitations on the size (area), height, number, spacing, and setback of signs adopted herein is based upon sign types, not content; and

WHEREAS, the City's limitations on various types of signs are related to their context within the zoning districts for the parcels and properties on which they are located; and

WHEREAS, the City finds that various signs that serve as signage for particular land uses, such as drive-through lanes for businesses, are based upon content-neutral criteria in recognition

of the functions served by those land uses, but not based upon any intent to favor any particular viewpoint or control the subject matter of public discourse; and

WHEREAS, the City finds that it is appropriate to take into account the City's zoning districts when determining the appropriate size, number, and nature of certain sign types; and

WHEREAS, the City finds that the sign standards and regulations adopted in this Ordinance allow adequate alternative means of communications for both non-commercial and commercial speech; and

WHEREAS, the sign standards adopted in this Ordinance allow and leave open such alternative means of speech as advertising and communications via newspaper, social media, website, targeted texts, physical pamphlets distributed by hand or mail, physical and web-based business directories, over-the-air television and streaming services, radio, direct mail, and other avenues of communication available in the City of Holmes Beach; and

WHEREAS, the City finds that the provisions of this Ordinance are consistent with all applicable policies of the City of Holmes Beach's adopted Comprehensive Plan; and

WHEREAS, the City finds that the provisions of this Ordinance are consistent with the public interests to be served by this municipal government; and

WHEREAS, the amendments to the current City Code contained in this Ordinance will not result in incompatible land uses; and

WHEREAS, the City recognizes that under established Supreme Court precedent, a law that is content-based is subject to strict scrutiny under the First Amendment of the U.S. Constitution, and such law must therefore satisfy a compelling governmental interest; and

WHEREAS, the City recognizes that under established Supreme Court precedent, a compelling government interest is a higher burden than a substantial or significant governmental interest; and

WHEREAS, the City recognizes that under established Supreme Court precedent, aesthetics is not a compelling governmental interest but is a substantial governmental interest; and

WHEREAS, the City recognizes that until 2015, federal court opinions were not clear as to what constituted a content-based law as distinguished from a content-neutral law; and

WHEREAS, this question was clarified in *Reed v. Town of Gilbert, Ariz.*, — U.S. —, 135 S. Ct. 2218, 2221, 192 L. Ed. 2d 236 (2015), wherein the United States Supreme Court, in an opinion authored by Justice Thomas, and joined in by Chief Justices Roberts, Scalia, Alito, Kennedy and Sotomayer, addressed the constitutionality of a local sign ordinance that had different criteria for different types of temporary noncommercial signs; and

WHEREAS, the City recognizes that in *Reed*, the Supreme Court held that content-based regulation is presumptively unconstitutional and requires a compelling governmental interest; and

WHEREAS, *Reed* held that government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed; and

WHEREAS, the City recognizes that in *Reed*, the Supreme Court held that even a purely directional message, which merely gives the time and location of a specific event, is one that conveys an idea about a specific event, so that a category for directional signs is therefore content-based, and event-based regulations are not content neutral; and

WHEREAS, the City recognizes that in *Reed*, the Supreme Court held that if a sign regulation on its face is content-based, neither its purpose, nor function, nor justification matter, and the sign regulation is therefore subject to strict scrutiny and must serve a compelling governmental interest; and

WHEREAS, the City recognizes that in *Reed*, Justice Alito in a concurring opinion, clarified that municipalities still have the power to enact and enforce reasonable sign regulations and provided a non-exhaustive list of sign rules that would not be content-based; and

WHEREAS, Justice Alito noted the following rules would not be content-based: (1) rules regulating sign size, which rules may distinguish among signs based upon any content-neutral criteria; (2) rules regulating the locations in which signs may be placed, which rules may distinguish between freestanding signs and those attached to buildings; (3) rules distinguishing between lighted and unlighted signs; (4) rules distinguishing between signs with fixed messages and electronic signs with messages that change; (5) rules that distinguish between the placement of signs on private and public property; (6) rules distinguishing between the placement of signs on commercial and residential property; (7) rules distinguishing between on-premises and off-premises signs; (8) rules restricting the total number of signs allowed per mile of roadway; and (9) rules imposing time restrictions on signs advertising a one-time event, where rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed; and

WHEREAS, Justice Alito further noted that in addition to regulating privately-placed signs, government entities may also erect their own signs consistent with the principles that allow governmental speech [see *Pleasant Grove City v. Summum*, 555 U.S. 460, 467-469 (2009)], and that government entities may install all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots; and

WHEREAS, Justice Alito observed that the *Reed* opinion, properly understood, will not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate aesthetic objectives, including rules that distinguish between on-premises and off-premises signs; and

WHEREAS, the City recognizes that as a result of the *Reed* decision, it is appropriate and necessary for local governments to review and analyze their sign standards and regulations, beginning with their temporary sign standards and regulations, so as to make the necessary changes to conform with the holding in *Reed*; and

WHEREAS, the City recognizes that in *Reed* the Supreme Court determined that the Town of Gilbert's differing treatment of Temporary Directional Signs and the two other categories of signs was "content-based," meaning that the City would have to survive strict scrutiny and show a compelling government interest in its differing treatment of noncommercial speech as applied to the petitioners' use of temporary directional signs to announce the time and location of their services; and

WHEREAS, the City recognizes that *Reed* only involved noncommercial speech; and that commercial speech was not at issue in the *Reed* case; and

WHEREAS, the City recognizes that government speech is not subject to First Amendment scrutiny as was confirmed by the United States Supreme Court in *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015), released in June 2015 the same day as the *Reed* decision, and that the *Confederate Veterans* decision has been followed as to government signs by the Eleventh Circuit in *Mech v. School Bd. Of Palm Beach County*, 806 3d 1070 (11th Cir. 2015), cert. denied, 137 S.Ct. 73 (2016); and

WHEREAS, the City recognizes that under established Supreme Court precedent, commercial speech may be subject to greater restrictions than noncommercial speech and that doctrine is true for both temporary signs as well as for permanent signs; and

WHEREAS, the City finds that under Florida law, whenever a portion of a statute or ordinance is declared unconstitutional, the remainder of the act will be permitted to stand provided (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the legislative body would have passed the one without the other, and (4) an act complete in itself remains after the valid provisions are stricken [see *Waldrup v. Dugger*, 562 So. 2d 687 (Fla. 1990)]; and

WHEREAS, the City finds that there have been several judicial decisions where courts have not given full effect to severability clauses that applied to sign regulations and where the courts have expressed uncertainty over whether the legislative body intended that severability would apply to certain factual situations despite the presumption that would ordinarily flow from the presence of a severability clause; and

WHEREAS, the City finds that the City has consistently adopted and enacted severability provisions in connection with its ordinance code provisions, and that the City wishes to ensure that severability provisions apply to its land development regulations, including its sign standards; and

WHEREAS, the City finds that there be an ample record of its intention that the presence of a severability clause in connection with the City’s sign regulations be applied to the maximum extent possible, even if less speech would result from a determination that any provision is invalid or unconstitutional for any reason whatsoever; and

WHEREAS, the City finds that objects and devices such as grave yard and cemetery markers visible from a public area, vending machines or express mail drop-off boxes visible from a public area, decorations that do not constitute advertising visible from a public area, artwork that does not constitute advertising, a building’s architectural features visible from a public area, or a manufacturer’s or seller’s markings on machinery or equipment visible from a public area, are not within the scope of what is intended to be regulated through “land development” regulations that pertain to signage under Chapter 163 of the Florida Statutes; and

WHEREAS, the City finds that the aforesaid objects and devices are commonly excluded or exempted from being regulated as signs in land development regulations and sign regulations, and that extending a regulatory regime to such objects or devices would be inconsistent with the free speech clause of the First Amendment; and

WHEREAS, the City finds that it is appropriate to prohibit certain vehicle signs similar to the prohibition suggested in Article VIII (Signs) of the Model Land Development Code for Cities and Counties, prepared in 1989 for the Florida Department of Community Affairs by the UF College of Law’s Center for Governmental Responsibility and by a professional planner with Henigar and Ray Engineering Associates, Inc., and that is nearly identical to § 7.05.00(x) of the Land Development Regulations of the Town of Orange Park, which were upheld against a constitutional challenge in *Perkins v. Town of Orange Park*, 2006 WL 5988235 (Fla. Cir. Ct.); and

WHEREAS, the City finds that in order to preserve the City as a desirable community in which to live and do business, a pleasing, visually-attractive urban environment is of foremost importance; and

WHEREAS, the City finds that the regulation of signs within the City is a highly contributive means by which to achieve this desired end, and that the sign standards and regulations in this Ordinance are prepared with the intent of enhancing the urban environment and promoting the continued well-being of the City; and

WHEREAS, the City finds that Article II, Section 7, of the Florida Constitution, as adopted in 1968, provides that it shall be the policy of the state to conserve and protect its scenic beauty; and

WHEREAS, the City finds that the regulation of signage for purposes of aesthetics is a substantial governmental interest and directly serves the policy articulated in Article II, Section 7, of the Florida Constitution, by conserving and protecting its scenic beauty; and

WHEREAS, the City finds that the regulation of signage for purposes of aesthetics has long been recognized as advancing the public welfare; and

WHEREAS, the City finds that as far back as 1954, Justice Douglas ruled in *Berman v. Parker*, 348 U.S. 26, 33 (1954) that “the concept of the public welfare is broad and inclusive,” that the values it represents are “spiritual as well as physical, aesthetic as well as monetary,” and that it is within the power of the legislature “to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled;” and

WHEREAS, the City finds that aesthetics is a valid basis for zoning, and that regulation of the size of signs and the prohibition of certain sign types can be based on aesthetic grounds alone as promoting the general welfare [see *Merritt v. Peters*, 65 So. 2d 861 (Fla. 1953); *Dade County v. Gould*, 99 So. 2d 236 (Fla. 1957); *E.B. Elliott Advertising Co. v. Metropolitan Dade County*, 425 F.2d 1141 (5th Cir. 1970), cert. dismissed, 400 U.S. 878 (1970)]; and

WHEREAS, the City finds that the enhancement of the visual environment is critical to a community’s image and that the sign control principles set forth herein create a sense of character and ambiance that distinguishes the City as one with a commitment to maintaining and improving an attractive environment; and

WHEREAS, the City finds that the goals, objectives and policies from planning documents developed over the years, demonstrate a strong, long-term commitment to maintaining and improving the City’s attractive and visual environment; and

WHEREAS, the City finds that, from a planning perspective, one of the most important community goals is to define and protect aesthetic resources and community character; and

WHEREAS, the City finds that, from a planning perspective, sign regulations can create a sense of character and ambiance that distinguishes one community from another; and

WHEREAS, the City finds that two decades ago, a growing number of local governments had begun prohibiting pole signs, allowing only ground signs (also referred to as monument signs), and that monument signs are typically used and preferred by resorts, planned communities, and communities that seek a distinctive image, preservation of sky views, and lower chance of fallen signs due to high winds, and the City also seeks to regulate pole signs for these same goals; and

WHEREAS, the overarching purpose of the City’s regulation of signs as set forth in this Ordinance is to promote the public health, safety and general welfare through a comprehensive system of reasonable, consistent, and nondiscriminatory sign standards and requirements; and

WHEREAS, the sign regulations in this Ordinance are intended to enable the identification of places of residence and business and to allow for the communication of information necessary for the conduct of commerce; and

WHEREAS, the sign regulations in this Ordinance are intended to lessen hazardous situations, confusion and visual clutter caused by proliferation, improper placement, illumination, animation and excessive height, area and bulk of signs which compete for the attention of pedestrian and vehicular traffic; and

WHEREAS, the sign regulations in this Ordinance are intended to enhance the attractiveness and economic well-being of the City as a place to live, vacation and conduct business; and

WHEREAS, the sign regulations in this Ordinance are intended to protect the public from the dangers of unsafe signs; and

WHEREAS, the sign regulations in this Ordinance are intended to permit signs that are compatible with their surroundings and aid orientation, and to preclude placement of signs in a manner that conceals or obstructs adjacent land uses or signs; and

WHEREAS, the sign regulations in this Ordinance are intended to encourage signs that are appropriate to the zoning district in which they are located and consistent with the category of use to which they pertain; and

WHEREAS, the sign regulations in this Ordinance are intended to curtail the size and number of signs and sign messages to the minimum reasonably necessary to identify a residential or business location and the nature of any such business; and

WHEREAS, the sign regulations in this Ordinance are intended to establish sign size limits which are in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains; and

WHEREAS, the sign regulations in this Ordinance are intended to preclude signs from conflicting with the principal permitted use of the site or adjoining sites; and

WHEREAS, the sign regulations in this Ordinance are intended to regulate signs in a manner so as to not interfere with, obstruct vision of or distract motorists, bicyclists or pedestrians; and

WHEREAS, the sign regulations in this Ordinance are intended to require signs to be constructed, installed and maintained in a safe and satisfactory manner; and

WHEREAS, the sign regulations in this Ordinance are intended to preserve and enhance the natural and scenic characteristics of this coastal resort community where tourism and an emphasis on the beach are major elements of the City's economy and identity; and

WHEREAS, the City finds that the City has adopted a land development code in order to implement its comprehensive plan, and to comply with the minimum requirements in the State of Florida's Growth Management Act, Florida Statutes § 163.3202, including the regulation of signage and future land uses; and

WHEREAS, the City's Land Development Code, including its signage regulations, is intended to maintain and improve the quality of life for all citizens of the City; and

WHEREAS, in meeting the purposes and goals set forth in these exordial clauses, it is appropriate to prohibit and/or to continue to prohibit certain sign types; and

WHEREAS, the City finds that billboards detract from the natural and manmade beauty of the City; and

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

WHEREAS, the City agrees with the Sierra Club's opposition to billboard development and proliferation; and

WHEREAS, the City agrees with the American Society of Civil Engineers Policy Statement 117 on Aesthetics that aesthetic quality should be an element of the planning, design, construction, operations, maintenance, renovation, rehabilitation, reconstruction, and security enhancement of the built environment; and

WHEREAS, the City recognizes 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; and

WHEREAS, the City finds that the prohibition of the construction of billboards and certain other sign types, as well as the establishment and continuation of height, size and other standards for on-premise 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; and

WHEREAS, the City agrees with 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 [*E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F.2d 1141 (5th Cir. 1970), cert. dismissed, 400 U.S. 878 (1970)]; and

WHEREAS, the City recognizes 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)]; and

WHEREAS, the City 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; and

WHEREAS, the City finds and recognizes that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on the part of the observer, unlike other forms of advertising that are ordinarily seen as a matter of choice on the part of the observer [see *Packer v. Utah*, 285 U.S. 105 (1932)]; and

WHEREAS, the City acknowledges that the United States Supreme Court and many federal courts have accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area. [see *Markham Adver. Co. v. State*, 73 Wash.2d 405, 439 P.2d 248 (1969), appeal dismissed, 439 U.S. 808 (1978); *Suffolk Outdoor Adver. Co., Inc. v. Hulse*, 43 N.Y.2d 483, 372 N.E.2d 263 (1977), appeal dismissed, 439 U.S. 808 (1978); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806-807 (1984), *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993); *National Advertising Co. v. City and County of Denver*, 912 F.2d 405, 409 (10th Cir. 1990), and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999)]; and

WHEREAS, the City finds and recognizes that on-site business signs are considered to be part of the business itself, as distinguished from off-site outdoor advertising signs, and that it is well-recognized that the unique nature of outdoor advertising and the nuisances fostered by billboard signs justify the separate classification of such structures for the purposes of governmental regulation and restrictions [see *E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F.2d 1141, 1153 (5th Cir. 1970), cert. denied, 400 U.S. 878 (1970)]; and

WHEREAS, the City finds that billboard signs are public nuisances given their adverse impact on both traffic safety and aesthetics; and

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

WHEREAS, the City finds that the presence of billboards along federal interstate and federal-aid primary highway systems prevents public property in other jurisdictions from being used for beautification purposes due to view zones established by state administrative rule; and

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

WHEREAS, the City recognizes that hundreds of Florida communities have adopted ordinances prohibiting the construction of billboards in their communities in order to achieve aesthetic, beautification, traffic safety, and/or other related goals; and

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

WHEREAS, the City finds that the prohibition of billboards as set forth herein will improve the beauty of the City, foster overall improvement to the aesthetic and visual appearance

of the City, preserve and open up areas for beautification on public property adjoining the public roadways, increase the visibility, readability and/or effectiveness of on-site signs by reducing and/or diminishing the visual clutter of off-site signs, enhance the City as an attractive place to live and/or work, reduce blighting influences, and improve traffic safety by reducing driver distractions; and

WHEREAS, the City wishes to assure that new billboards are effectively prohibited as a sign-type within the City; and

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

WHEREAS, the City acknowledges that the Seven Justices' views in *Metromedia*, as expressly recognized in the later Supreme Court decisions in *Taxpayers for Vincent* and *Discovery Network*, have never been overturned; and that more than a dozen published Circuit Court of Appeal decisions followed *Metromedia* on the permissible distinction between onsite signs and offsite signs-when it comes to government's substantial interest in prohibiting the latter sign type (the offsite sign), including: *Major Media of the Southeast, Inc. v. City of Raleigh*, 792 F.2d 1269, 1272 (4th Cir. 1986); *Georgia Outdoor Advertising, Inc. v. City of Waynesville*, 833 F.2d 43, 45-46 (4th Cir. 1987); *Naegele Outdoor Adver., Inc. v. City of Durham*, 844 F.2d 172, 173-174 (4th Cir. 1988); *Nat'l Adver. Co. v. City and County of Denver*, 912 F.2d 405, 408-411 (10th Cir. 1990); *Nat'l Adver. Co. v. Town of Niagara*, 942 F.2d 145, 157-158 (2nd Cir. 1991); *Outdoor Systems, Inc. v. City of Mesa*, 997 F.2d 604, 610-612 (9th Cir. 1993); *Outdoor Graphics, Inc. v. City of Burlington, Iowa*, 103 F.3d 690, 695 (8th Cir. 1996); *Ackerley Communications of Northwest v. Krochalis*, 108 F.3d 1095, 1099 (9th Cir. 1997); *Southlake Property Associates, Ltd. v. City of Morrow, Ga.*, 112 F.3d 1114, 1117-1119 (11th Cir. 1997), cert. denied, 525 U.S. 820 (1998); *Bad Frog Brewery, Inc. v. New York State Liquor Authority*, 134 F.3d 87, 99 (2nd Cir. 1998); *Lavey v. City of Two Rivers*, 171 F.3d 1110, 1114-1115 (7th Cir. 1999); *Long Island Bd. of Realtors, Inc. v. Incorp. Village of Massapequa Park*, 277 F.3d 622, 627 (2nd Cir. 2002); *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 814-816 (9th Cir. 2003); *Riel v. City of Bradford*, 485 F.3d 736, 753 (3rd Cir. 2007); *Naser Jewelers, Inc. v. City of Concord, N.H.*, 513 F.3d 27, 36 (1st Cir. 2008); and *RTM Media, L.L.C. v. City of Houston*, 584 F.3d 220, 225 (5th Cir. 2009); and

WHEREAS, the City recognizes that the distinction between the location of off-premises signs and on-premises signs is a time, place and manner regulation, and recognizes that in 1978 in *Suffolk Outdoor*, over the objection of Justices Blackmun and Powell, the U.S. Supreme Court denied review of the underlying decision for the want of a substantial federal question and that the denial on this basis was a decision on the merits, wherein the decisions was framed by the petitioner's jurisdictional statement which presented its first question as to whether a total ban on billboards within an entire municipality was constitutional, claiming that this disparate treatment

of off-premises billboards from on-premises accessory signs was a violation of the First Amendment; and

WHEREAS, the City finds and determines that it is appropriate to prohibit discontinued signs and/or sign structures because the same visually degrade the community character and are inconsistent with the general principles and purposes of the regulations as set forth in this Ordinance; and

WHEREAS, the City finds that under state law, which may be more permissive than local law, a nonconforming sign is deemed “discontinued” when it is not operated and maintained for a set period of time, and the following conditions under Chapter 14-10, Florida Administrative Code, shall be considered failure to operate and maintain the sign so as to render it a discontinued sign: (1) signs displaying only an “available for lease” or similar message; (2) signs displaying advertising for a product or service which is no longer available; or (3) signs which are blank or do not identify a particular product, service, or facility; and

WHEREAS, the City finds that it is appropriate to specify that in addition to land development regulations identified this Ordinance, signs shall comply with all applicable building and electrical code requirements; and

WHEREAS, the City recognizes that it has allowed noncommercial speech to appear wherever commercial speech appears; and desires to continue that practice through the specific inclusion of a substitution clause that expressly allows non-commercial messages to be substituted for commercial messages; and

WHEREAS, the City finds that by confirming in this Ordinance that noncommercial messages are allowed wherever commercial messages are permitted, it will continue to overcome any constitutional objection that its ordinance impermissibly favors commercial speech noncommercial speech [see *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1236-1237 (D. Kan. 1999)]; and

WHEREAS, the City finds that the district court in *Granite State Outdoor Advertising, Inc. v. Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312 (M.D. Fla. 2002), aff’d in part and rev’d in part on other grounds, 351 F.3d 1112 (11th Cir. 2003), cert. denied, 543 U.S. 813 (2004), cited the severability provisions of that city’s code as a basis for severing isolated portions of sign regulations in its Land Development Code; and

WHEREAS, the City is aware that there have been billboard developers who have mounted legal challenges to a sign ordinance, either in its entirety or as to some lesser portion, and argued that there existed a vested right to erect a billboard through the mere submission of one or more prior permit applications, so that in the event that the billboard developer succeeds in obtaining a judicial decision that the entirety or some lesser portion of a sign ordinance or its permit provisions are invalid or unconstitutional, the billboard developer might then seek to compel the

local governmental unit to issue a permit to allow the billboard developer to erect a permanent billboard structure within the local government's jurisdiction; and

WHEREAS, the City desires to make clear that billboards are not a compatible land use within the City and that there can be no good faith reliance by any prospective billboard developer under Florida vested rights law in connection with the prospective erection or construction of new or additional billboards within the jurisdictional limits of the City; and

WHEREAS, the City finds that it is appropriate to allow for the display of allowable temporary signage without any prior restraint or permit requirement; and

WHEREAS, the City finds that when an application for a permanent sign is deemed denied that the applicant shall have an avenue to immediately request in writing a written explanation as to why the application was not approved and the City shall promptly respond in writing and provide the reason(s) the application was not approved [see *Covenant Media of South Carolina, LLC v. City of North Charleston*, 493 F.3d 421, 435-437 (4th Cir. 2007)]; and

WHEREAS, the City finds that an applicant for a sign permit who is aggrieved by the decision of the permitting official, or aggrieved by any failure by the permitting official or by any other City official to act upon a sign permit application in accordance with the LDC, must have the right to seek judicial review of the final decision of the City by the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, or by any other court of competent jurisdiction, filed in accordance with the requirements of law, seeking such appropriate remedy as may be available; and

WHEREAS, the City finds that an applicant shall have access to prompt judicial relief in the circumstances where applicant's sign permit application is either denied, deemed denied or not approved in a timely manner, as set forth in the City's sign permitting regulations, and acknowledges that the display of temporary signs in compliance with the City's sign standards and regulations is not subject to any permitting whatsoever.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Holmes Beach, Florida:

Section 1. Article X (Signs) of Part III (Land Development Code) of the Holmes Beach Code of Ordinances is hereby deleted in its entirety and replaced with the following:

ARTICLE X SIGNS

10.1 Purpose and intent.

1. It is the purpose and intent of this article to create a comprehensive and balanced system of sign control that accommodates both the need for a well-maintained, safe, and attractive community and the need for effective business identification, advertising, and communication. It is the purpose of this article to promote the health, safety, convenience, aesthetics, and general welfare of the community by controlling indiscriminate erection of signs that are intended to communicate to the public and to authorize the use of signs that are:
 - a. Compatible with their surroundings;
 - b. Designed, constructed, installed, and maintained in a manner that does not impede the flow or otherwise interfere with traffic safety, public safety, or unduly distract motorists;
 - c. Consistent with the land uses applicable to each zoning district;
 - d. Of a size and height to allow the messages or expressions on signs be conveyed without regard to the content of such signs; and
 - e. Reflective of the unique character, history, and environment of the city.

2. The standards and regulations contained herein are intended and designed to protect citizens and residents of the city against:
 - a. The unlimited proliferation in number and location of off-site and on-site signs, including mobile signs;
 - b. Construction and placement of oversized, unsightly, animated, flashing, and other aesthetically unpleasant or unsafe signs which dominate and detract from the enjoyment and pleasure in the natural scenic beauty of the city, the surrounding visual environment, and which, in turn, injuriously affect the economic well-being of the citizenry;
 - c. Sign types placed in residential zones which are inconsistent with the character of such neighborhoods for residents and visitors;
 - d. Signs being constructed and placed without first obtaining all required permits and the permission of the owner of the property on which the signs are placed;
 - e. Signs failing to be properly constructed or maintained; and

- f. Signs that are placed dangerously in or near street intersections and rights-of-way which pose actual or potential hazards to traffic and pedestrians.

The requirements of this article shall apply to all land within the jurisdictional boundaries of the city. Where signs are regulated elsewhere in the City Code, to the extent such regulations conflict with this article, this article shall prevail.

10.2 Definitions.

Unless the context shall clearly require otherwise, the following terms shall have the following meanings for the purposes of this ordinance:

Abandoned or discontinued sign or sign structure. A sign or sign structure is considered abandoned or discontinued when its owner fails to operate or maintain a sign for a period of at least sixty (60) days. The following conditions shall be considered as the failure to operate or maintain a sign:

1. a sign displaying advertising for a product or service which is no longer available or displaying advertising for a business which is no longer licensed, or
2. a sign which is blank. This definition includes signs on which is advertised a business that is no longer licensed, no longer has a certificate of occupancy, or is no longer doing business at that location or any other sign for any purpose for which the purpose has lapsed. If the sign is a conforming sign in compliance with building codes and all other applicable City Ordinances, then only the sign face will be considered abandoned.

Advertising. Any commercial sign copy intended to aid, directly or indirectly, in the sale, use or promotion of a product, commodity, service, sales event, activity, entertainment, or real or personal property.

Advertising vessel. Any boat, watercrafts, motorboat, sailboat, rowboat, dingy, canoe, airboat, houseboat, barge, floating structure, floating home, or any contrivance of any nature whatsoever which is waterborne, whether or not the same is capable of moving under its own power or by sail, which is displaying advertising upon any waters, waterways, marine area, or other waters within the city's jurisdictional limits, which advertising is visible to others from either land or water. To be deemed an advertising vessel one of the following conditions must be met:

1. The vessel contains advertising that directs attention to a profession, business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the premises of the vessel and is not accessory to a use on such vessel.
2. The vessel contains advertising for a business entity which is not the majority owner of the vessel;
3. The vessel is operated continuously with or without stopping while displaying some form of general advertisement;

4. The vessel that is moored or driven in a repetitive back-and-forth, oval, or similar pattern;
5. The vessel is capable of automatically changing the advertising messages displayed without stopping; or
6. The vessel lacks the ability to serve any purpose other than advertising.

Animated sign. Any sign which includes action, motion, or color changes, or the optical illusion of action, motion, or color changes, including signs using electronic ink, signs set in motion by movement of the atmosphere, or made up of a series of sections that turn, including any type of screen using animated or scrolling displays, such as an LED (light emitting diode) screen or any other type of video display.

Architectural detail or embellishment. Any projection, relief, change of material, window or door opening, exterior lighting, inlay, or other exterior building features not specifically classified as a sign. The term includes, but is not limited to, relief or inlay features or patterns that distinguish window or door openings, exterior lighting that frames building features, and changes in façade materials to create an architectural effect.

Area of sign. The square foot area within a continuous perimeter enclosing the extreme limits of the sign display, including any frame or border. Curved, spherical, or any other shaped sign face shall be computed based on the actual surface area. In the case of painted wall signs composed of letters, shapes, or figures, or skeleton letters mounted without a border, the sign area shall be the area of the smallest rectangle or other geometric figure that would enclose all the letters, shapes and figures. The calculation for a double-faced sign shall be the area of one face only. Except for sandwich board signs, double-faced signs shall be so constructed that the perimeter of both faces coincide and are parallel and not more than twenty-four (24) inches apart.

Artwork. A two- or three-dimensional representation of a creative idea that is expressed in an art form but does not convey the name of the business or a commercial message.

Attached sign. Any sign attached to, on, or supported by any part of a building (e.g., walls, awning, windows, or canopy), which encloses or covers usable space.

Awning. Any secondary covering attached to the exterior wall of a building. It is typically composed of canvas woven of acrylic, cotton or polyester yarn, or vinyl laminated to polyester fabric that is stretched tightly over a light structure of aluminum, iron or steel, or wood.

Awning sign or canopy sign. Any sign that is a part of or printed, stamped, stitched, or otherwise applied to a protective awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area. A marquee is not a canopy.

Backlighting. The process of illuminating the subject from the back.

Banner. A sign made of wind and weather resistant cloth or other lightweight material, intended to hang either with or without frames or in some other manner as not to be wind activated, and possessing characters, letters, illustrations, or ornamentations applied to paper, plastic, or fabric of any kind. Flags, feather flags and flutter flags shall not be considered banners for the purpose of this definition.

Banner, vertical streetlight. A temporary government sign made of wind and weather resistant cloth, or other lightweight material displaying government speech and hung in the public right-of-way from rods and brackets attached to a government-owned streetlight pole.

Beacon sign. A stationary or revolving light which flashes or projects illumination, single color or multicolored, in any manner which has the effect of attracting or diverting attention, except, however, this term does not include any kind of lighting device which is required or necessary under the safety regulations of the Federal Aviation Administration or other similar governmental agency. This definition does not apply to any similar type of lighting device contained entirely within a structure and which does not project light to the exterior of the structure.

Bench/bus shelter sign. A bench or bus shelter upon which a sign is drawn, painted, printed, or otherwise affixed thereto.

Billboard. An advertising sign or other commercial sign which directs attention to a business, commodity, service, entertainment, or attraction sold, produced, offered, or furnished at a place other than upon the same lot where such sign is displayed.

Building. Any structure, either temporary or permanent, having a roof and supported by columns or walls, used or built for the shelter, enclosure, support, or protection of persons, animals, chattels, or property of any kind.

Business establishment. Any individual person, nonprofit organization, partnership, corporation, or other organization or legal entity holding a valid business tax receipt or occupying distinct and separate physical space and located in a business activity zoning district.

Bus stop informational sign. A freestanding or attached noncommercial government sign erected by a public transit agency which is located at an official bus stop and provides information as to the route, hours, or times of service.

Cabinet sign. A sign that contains all the text or logo symbols within a single enclosed cabinet and may or may not be illuminated.

Canopy. An overhead roof or structure that can provide shade or shelter.

Canopy sign. A permanent sign which is suspended from, attached to, supported from, printed on, or forms a part of a canopy.

Changeable copy/message sign. A sign with the capability of content change by means of manual or remote input, including the following types:

1. *Manually activated.* Changeable sign whose message copy can be changed manually on a display surface.
2. *Electronically activated.* Changeable sign whose message copy or content can be changed by means of remote electrically energized on/off switching combinations of alphabetic or pictographic components arranged on a display surface. Illumination may be integral to the components, such as characterized by lamps or other light-emitting devices, or may be from an external light source designed to reflect off of the changeable component display. See also *Electronic message sign.*

Character. Any symbol, mark, logo, or inscription.

Color. Any distinct tint, hue or shade including white, black, or gray.

Commercial mascot. Humans or animals used as advertising devices for commercial establishments, typically by the holding of a separate sign or wearing of insignia, masks, or costumes associated with the commercial establishment. This definition includes sign twirlers, sign clowns, etc.

Commercial message. Any sign wording, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, service, sale, or sales event or other commercial activity.

Construction sign. A temporary sign, on the site of a development or subdivision, erected and maintained by the developer only during active construction of the development or subdivision. A development or subdivision sign is an on-site sign.

Copy means the linguistic or graphic content of a sign.

Damaged sign. A sign missing more than ten percent of one or more sides of a sign face.

Dark sky friendly. Lighting that limits the amount of blue light during the nighttime to a correlated color temperature to not more than 3000 degrees and shielded to prevent light trespass.

Decoration. Any decoration visible from a public area that does not include lettering or text and is not displayed for commercial advertising.

Direct illumination. A means of lighting a sign in which illumination is a result of light emitted directly from a bulb, luminary, or lamp, not diffused through translucent signs (internal illumination) or light reflected from other surfaces such as the ground or building faces.

Double-faced sign. A sign which has two display surfaces backed against the same background, one face of which is designed to be seen from one direction and the other from the opposite direction, every point on which face being either in contact with the other face or in contact with the same background.

Electrical sign. A sign in which electric wiring, connections, or fixtures are used as part of the sign proper, or which themselves constitute a sign.

Electronic message sign. An electronically activated changeable copy sign whose variable message capability can be electronically programmed.

Erect. To construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any way bring into being or establish. It does not include any of the foregoing activities when performed as an incident to the change of advertising message or customary maintenance or repair of a sign.

External illumination sign. Illumination of a sign which is affected by an artificial light source which is exterior to the sign itself.

Façade. The exterior wall of a building exposed to public view or that wall viewed by persons not within the building.

Feather sign or flutter sign. A sign extending in a sleeve-like fashion down a telescoping or fixed pole that is mounted in the ground or on a building or stand. A feather sign or flutter sign is usually shaped like a sail or feather and attached to the pole support on one vertical side.

Fence. An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

Fixed aerial advertising sign. Any aerial advertising medium that is tethered to or controlled from the ground.

Fixture. Any physical property that is permanently attached (fixed) to real property (usually land).

Flag. A sign made of a piece of cloth or other material of individual size, color, and design, used as a symbol, signal or emblem, or to convey a message. Flags are distinct by the way that they are displayed. Flags are secured on one side, usually on a flagpole, and usually at two points leaving the remainder of the cloth or material hanging limply or drooping. A flag that is secured to a flagpole or other object, living or nonliving, that is at an angle of less than 65 degrees or more than 115 degrees as measured from the horizontal, or is otherwise displayed so that it does not droop, shall be considered a banner. A flag that is greater than 15 square feet shall be considered a banner.

Flagpole. A pole on which to raise a flag. A flagpole is not a pole sign.

Flashing sign. Any illuminated sign on which the artificial source of light is not maintained stationary or constant in intensity and color at all times when such sign is illuminated. For the purposes of this definition, any moving illuminated sign affected by intermittent lighting shall be deemed a flashing sign.

Freestanding (ground) sign. A detached sign which shall include any signs supported by uprights or braces placed upon or in or supported by the ground and not attached to any building. A free-standing (ground) sign may be a pole sign or a monument sign.

Frontage, Street means all or a portion of a lot line which directly abuts an officially recorded street or separates property from a street, excluding alleys and private driveways.

Government sign or statutory sign. Any temporary or permanent sign erected by or on the order of a public official or quasi-public entity at the federal, state, or local government level in the performance of any duty including, but not limited to, noncommercial signs identifying a government building, program, or service (including bus or other public transit services), traffic control signs, street name signs, street address signs, warning signs, safety signs, informational signs, traffic or other directional signs, public notices of government events or actions, proposed changes of land use, any proposed rezoning, or any other government speech. This term includes signs erected on government property pursuant to lease, license, concession, or similar agreements requiring or authorizing such signs.

Ground level. The average grade within a 25-foot radius of the sign base on a parcel of land, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating a sign. Ground level on marine docks or floating structures shall be the average grade of the landward portion of the adjoining parcel.

Indirectly illuminated sign. Any sign that is lit by means of the source light being reflected off some surface which is then directed at the sign; any lighted sign that is not otherwise lit by direct or internal means.

Internal illumination. Illumination of a sign which is affected by an artificial source of light which is contained within the sign itself.

LED sign. Any sign or portion thereof that uses light emitting diode technology or other similar semiconductor technology to produce an illuminated image, picture, or message of any kind whether the image, picture, or message is moving or stationary. This type of sign includes any sign that uses LED technology of any kind whether conventional (using discrete LEDs), surface mounted (otherwise known as individually mounted LEDs), transmissive, organic light emitting diodes (OLED), light emitting polymer (LEP), organic electro luminescence (OEL), or any similar technology.

Light trespass. Light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located.

Linear light source. A light source whose dimension along a line is significantly greater than its other dimensions as, for example, a line of fluorescent lamps or a rope light as opposed to a square or round shape luminaire.

Location. A lot, premises, building, wall, or any place whatsoever upon which a sign is located.

Lollipop sign. A sign which is attached to any pole or stake that is designed to be driven into the ground and which is not stabilized into the ground or affixed in place by any device other than the stake to which the sign is attached.

Lumen. A unit of measurement for the brightness of light. The higher the lumens the brighter the light.

Luminaire. A complete lighting system, including a lamp or lamps and a fixture.

Machinery and equipment sign. Any sign that is integral to the machinery or equipment and that identifies the manufacturer of the machinery or equipment that is placed on the machinery or equipment at the factory at the time of manufacture.

Maintenance. The repairing or repainting of a portion of a sign or sign structure, periodically changing changeable copy, or renewing copy, which has been made unusable by ordinary wear.

Marquee. Any permanent wall or roof-like structure projecting beyond a building or extending along and projecting beyond the wall of the building, generally designed and constructed to provide protection from the weather. A Marquee is not an awning or canopy.

Marquee sign. Any sign painted or printed onto or otherwise attached to a marquee.

Monopole. A vertical self-supporting structure, not guyed, made of spin-cast concrete, concrete, steel, or similar material, presenting a solid appearance.

Monument sign. A type of freestanding sign that is not supported by a pole structure and is placed upon the ground independent of support from the face of a building and that is constructed of a solid material such as wood, masonry, or high-density urethane.

Multi-prism or tri-vision sign. A sign made with a series of triangular sections that rotate and stop, or index, to show multiple images or messages in the same area at different times.

Mobile billboard advertising. Any vehicle, or wheeled conveyance which carries, conveys, pulls, or transports any sign or billboard for the primary purpose of advertising.

Mural. Any type of display or artistic endeavor applied as paint, film, or any other covering to any external wall or other integral part of a building which does not include any words or advertisement or any other promotion message or content, including logos and trademarks.

Nonconforming sign. A sign that was validly installed under laws or ordinances in effect prior to the effective date of the LDC or subsequent amendments, but which conflicts with the provisions of the LDC or subsequent amendment.

Nonconforming use. Any use of a building or structure which, at the time of the commencement of the use, was a permitted use in the zoning district until the effective date of the LDC, but which does not, on the effective date of the LDC or amendment thereto, conform to any one of the current permitted uses of the zoning district in which it is located. Such nonconforming use may be referred to as a nonconformity.

Offsite/off-premises commercial sign. A non-accessory billboard or sign that displays offsite commercial advertising.

On-site sign. Any commercial sign which directs attention to a commercial or industrial occupancy, establishment, commodity, good, product, service or other commercial or industrial activity conducted, sold, or offered upon the site where the sign is maintained. The on-site/off-site distinction applies only to commercial message signs. For purposes of this article, all signs with noncommercial speech messages shall be deemed to be “on-site,” regardless of location.

Owner. Any part or joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety with legal or beneficial title to whole or part of a building or land.

Pendant sign. An auxiliary or supplementary sign fixed or hung below another and supplementing the main sign.

Pennant. Any pieces or series of pieces of cloth, plastic, paper, or other material attached in a row at only one or more edges, or by one or more corners (the remainder hanging loosely) to any wire, cord, string, rope, or similar device. The term includes, but is not limited to, string pennants, streamers, spinners, ribbons, and tinsel.

Permanent interior sign means that if located on a window or within a distance equal to the greatest dimension of the window and if able to view from the exterior, it shall be considered an exterior sign for purposes of this article, excluding window sign allowance.

Permanent sign. Any sign which is intended to be and is so constructed as to be of lasting and enduring condition, remaining unchanged in character, condition (beyond normal wear and tear) and position and in a permanent manner affixed to the ground, wall or building. Unless otherwise provided for herein, a sign other than a temporary sign shall be deemed a permanent sign unless otherwise indicated elsewhere in this Land Development Code.

Person. Any person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer or any other entity whatsoever or any combination of such, jointly or severally.

Pole sign. A type of freestanding permanent ground sign that is supported by one or more poles more than four feet in height and otherwise separated from the ground by air.

Portable sign. Any sign, banner, or poster that is not permanently attached to the ground or to a structure that is attached to the ground or a sign capable of being transported, including, but not limited to, signs designed to be transported by means of wheels or carried by a person, and

signs converted to an A-Frame sign or a T-frame sign. For purposes of this chapter, a cold air inflatable sign shall be considered a portable sign. For purposes of this article, a sign not bearing a commercial message which is carried by a person (whether worn or held by hand) shall not be considered a portable sign, and such signs shall be permitted to be carried in any location such person is otherwise lawfully allowed to be present, including on the City's sidewalks and parks.

Projected light sign. A sign which is generated from a light source which projects a static or changeable image, text, logo, or other image onto a building's surface.

Projecting sign. Any sign affixed perpendicular, or at any angle to a building or wall in such a manner that its leading edge extends more than twelve (12) inches beyond the surface of such building or wall. Standard channel set letters on signs do not render a sign a projecting sign.

Property. The overall area represented by the outside boundaries of a parcel of land or development containing one or more business establishments or residential units.

Reader-boards. Computerized and programmable electrical visual communication devices that contain LED lightbulbs.

Right-of-way. The area of a highway, road, street, way, parkway, electric transmission line, gas pipeline, water main, storm or sanitary sewer main, or other such strip of land reserved for public use, whether established by prescription, easement, dedication, gift, purchase, eminent domain, or any other legal means.

Roofline. Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette, and where a building has several roof levels, this roof or parapet shall be the one belonging to that portion of the building on whose wall the sign is located.

Roof sign. Any sign which is mounted on the roof of a building, or which extends above the top edge of the wall of a flat roofed building, the eave line of a building with a hip, gambrel, or gable roof.

Rotating sign (or revolving sign). An animated sign that revolves or turns or has external sign elements that revolve or turn. Such sign may be power-driven or propelled by the force of wind or air.

Sandwich board sign. A portable, freestanding, movable and double-faced sign not exceeding thirty-two (32) inches wide and forty-eight (48) inches high.

Service island sign. A sign mounted permanently on, under, or otherwise mounted on a service island canopy.

Shopping center and business center. A group of three or more business establishments within a single architectural plan, with common ownership of property, or cooperative or condominium ownership.

Sign. Any device, fixture, placard or structure, including its component parts, which draws attention to an object, product, place, activity, opinion, person, institution, organization, or place of business, or which identifies or promotes the interests of any person and which is to be viewed from any public street, road, highway, right-of-way or parking area. For the purposes of this article, the term Sign shall include all structural members. A sign shall be construed to be a display surface or device containing organized and related elements composed to form a single unit. In cases where matter is displayed in a random or unconnected manner without organized relationship of the components, each such component shall be considered to be a single sign. The term Sign for purposes of this article shall not include the following objects:

1. Decorative or structural architectural features of buildings (not including lettering, trademarks or moving parts);
2. Symbols of noncommercial organizations or concepts including, but not limited to, religious or political symbols, when such are permanently embedded or integrated into the structure of a permanent building which is otherwise legal;
3. Items or devices of personal apparel, decoration or appearance, including tattoos, makeup, costumes (but not including commercial mascots);
4. Manufacturers' or seller's marks on machinery or equipment visible from a public area;
5. The display or use of fire, fireworks or candles;
6. Motor vehicle or vessel license plates or registration insignia;
7. Grave stones and cemetery markers visible from a public area;
8. News racks and newsstands;
9. Artwork that does not constitute advertising visible from a public area;
10. Decorations that do not constitute advertising visible from a public area;
11. Vending machines or express mail drop-off boxes visible from a public area.

Sign content. The view, message, and expression printed, engraved, or otherwise posted on the sign. Content includes the author of the view, message, or expression or, if different, the person who adds or removes the view, message, or expression from the sign.

Sign height means the vertical distance from the average finished grade of the ground below the sign excluding any filling, berming, mounding or excavating solely for the purposes of increasing the height of the sign, to the top edge of the highest portion of the sign. The base or structure erected to support or adorn a monument, pole or other freestanding sign is measured as part of the sign height.

Sign, neon. Any sign that uses neon, argon, mercury or a similar gas to fill tubing, made of glass or similar material, which is charged with electricity and used to create an illuminated tubular sign or an illuminated decorative element. The tubing may contain an alternative illumination technology, such as, but not limited to, light-emitting diodes (LEDs).

Sign size means *area of sign*.

Sign structure. Any structure which is designed specifically for the purposes of supporting a sign. This definition shall include decorative covers, braces, wires, supports, or components attached to or placed around the sign structure.

Snipe sign. A sign made of any material when such sign is tacked, nailed, posted, pasted, glued or otherwise attached to or placed on public property such as but not limited to a public utility pole, a public street sign, a public utility box, a public fire hydrant, a public right-of way, public street furniture, or other public property; except for A-frame and T-frame signs that are temporarily placed on public property under such limitations and constraints as may be set forth in the Land Development Code.

Street. A right-of-way for vehicular traffic, designated as an alley, avenue, boulevard, court, drive, expressway, highway, lane, road, street, or thoroughfare (also referred to as roadway). A street may be dedicated to the public or maintained in private ownership, but open to the public.

Street address sign. Any sign denoting the street address of the premises on which it is attached or located.

Structure. Anything constructed, installed or portable, the use of which requires location on land. It includes a movable building which can be used for housing, business, commercial, agricultural or office purposes, either temporarily or permanently. It also includes roads, walkways, paths, fences, swimming pools, tennis courts, poles, tracks, pipelines, transmission lines, signs, cisterns, sheds, docks, sewage treatment plants and other accessory construction.

Substantial damage. Damage to a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the damage occurred.

Temporary sign. A sign intended for a use not permanent in nature. Unless otherwise provided for in the LDC, a sign with an intended use for a period of time related to an event or occurrence at a future time shall be deemed a temporary sign. Such events could include, but are not limited to, scheduled community athletic or charity events, contractor notices of construction projects in progress, elections scheduled to occur in the future, or sales or leases of real property, goods or services by retailers, Realtors, or individuals where same will be completed by some

future date or upon the completion of the lease or sale. A sign advertising a reduced price or other promotional benefit associated with a product or service sold or offered on a parcel shall not constitute a temporary sign.

Traffic control device sign. Any governmental or statutory sign located within the right-of-way that is used as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard. A traffic control device sign includes those government signs that are classified and defined by their function as regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide signs (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, special event or cultural information).

Trailer sign. Any sign that is affixed to or placed on a trailer or other portable device that may be pulled by a vehicle.

Umbrella sign. A sign printed on umbrellas used for legal outdoor eating and drinking establishments, pushcarts, sidewalk cafes and which is made of a lightweight fabric or similar material.

Unsafe sign. A sign posing an immediate peril or reasonably foreseeable threat of injury or damage to persons or property.

Uplighting. A lighting effect created by strategically placing lighting fixtures on the floor and pointing them up. Thus, creating the effect of "uplighting".

Vehicle/vehicular sign. A sign which covers more than ten (10) square feet of the vehicle, which identifies a business, products, or services, and which is attached to, mounted, pasted, painted, or drawn on a motorized or drawn vehicle, and is parked and visible from the public right-of-way; unless said vehicle is used for transporting people or materials in the normal day to day operation of the business.

Wall wrap sign. A sign composed of fabric, plastic, vinyl, mylar or a similar material that drapes or hangs over the side of a building, wall, or window.

Wall sign. Any sign attached parallel to, but within twelve (12) inches of a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

Warning sign or safety sign. A sign which provides warning of a dangerous condition or situation that might not be readily apparent or that poses a threat of serious injury (e.g., gas line, high voltage, condemned building, etc.) or that provides warning of a violation of law (e.g., no trespassing, no hunting allowed, etc.).

Wayfinding/directional sign. A non-commercial sign, which may or may not be a governmental/statutory sign, that shows route designations, destinations, directions, distances,

services, points of interest, or other geographical, recreational, or cultural information for the aid of the traveling public, for facilitating a safe and orderly traffic flow and preventing sudden stops.

Wind sign. A sign which uses objects or material fastened in such a manner as to move upon being subjected to pressure by wind, and shall include, pennants, ribbons, spinners, streamers, or captive balloons, however, the term wind sign shall not include flags.

Window. A panel of transparent material surrounded by a framing structure and placed into the construction material comprising a building façade.

Window or door sign, permanent. Any sign visible from the exterior of a building or structure which is painted, attached, glued, or otherwise affixed to a window or door.

10.3. Prohibited signs.

Unless otherwise authorized in this article, the following sign types are prohibited in all districts within the city:

1. Abandoned signs not removed by the owner within thirty days after receipt of notification;
2. Advertising vessels;
3. Animated or moving signs;
4. Banner signs except as provided in association with a Special Event or Temporary Use Permit;
5. Beacon signs;
6. Bench/bus shelter advertising signs;
7. Billboards;
8. Commercial Mascots and Commercial Message signs that are carried, waved or otherwise displayed by persons either on public rights-of-way or in a manner visible from public rights-of-way. This provision is directed toward such displays intended to draw attention for a commercial purpose, and is not intended to limit the display of placards, banners, flags or other signage by persons participating in demonstrations, political rallies, or otherwise exercising their valid First Amendment rights;
9. Illuminated signs in residential districts, unless expressly allowed in this article, or located on the property of houses of worship, government buildings, and subdivision entrances;
10. Electronic changeable copy/message signs;
11. Electronic signs other than traffic control devices;

12. Feather or flutter signs;
13. Flashing signs;
14. Inflatable or balloon signs;
15. Marquee signs;
16. Mobile Billboard Advertising and trailer signs;
17. Obscene signs that meet the definition of obscenity under Florida Statutes § 847.001 et seq., as amended;
18. Offsite/off-premises commercial signs;
19. Pavement markings, except official traffic control markings and street addresses applied by government agencies or pursuant to government laws or regulations;
20. Pennant signs;
21. Portable signs;
22. Projected light signs;
23. Projecting signs;
24. Revolving or rotating signs;
25. Roof signs;
26. Umbrella signs;
27. Signs that contain any food or other substance that attracts large numbers of birds or other animals and causes them to congregate on or near the sign;
28. Signs that emit sound, vapor, smoke, odor, particles, flame, or gas with the exception that signs emitting audible sound erected to accomplish compliance with the Americans with Disabilities Act shall be authorized;
29. Signs in or upon any river, bay, lake, canal, or other body of water within the limits of the City, other than government signs, warning or safety signs or signs otherwise required by local, state, or federal law;
30. Signs attached to piers, docks, tie poles or seawalls, other than government signs, warning or safety signs or signs otherwise required by local, state, or federal law;

31. Signs that obstruct, conceal, hide, or otherwise obscure from view any official traffic or other government sign, signal, or device;
32. Signs which move, twirl or swing, including multi-prism and tri-vision signs;
33. Signs containing intermittent lights or exposed neon tubing;
34. Signs on mailboxes. The display on a mailbox of the address associated with the mailbox to assist the delivery of mail or parcels is not to be considered a sign. Address numbers and letters shall not be more than three inches high;
35. Signs that are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled public rights-of-way thereby creating a potential traffic or pedestrian hazard or a nuisance to inhabitants of an adjacent neighborhood. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal;
36. Signs on any non-residential building, structure or property which faces residentially zoned property, except signs placed at the front of an existing non-residential building currently being used for a commercial purpose other than the display of signs;
37. Snipe signs;
38. Vehicle signs visible from a street or right-of-way within one hundred (100) feet of the vehicle and where the vehicle is parked for more than two (2) consecutive hours in any twenty-four (24) hour period within one hundred (100) feet of said street or right-of-way;
39. Wall wrap signs;
40. Wind signs;
41. Window signs. Any window sign existing and in use upon the adoption of this ordinance shall be allowed to continue for a period of not more than two years from the date of the adoption of this ordinance, after which all window signs shall immediately be removed and brought into complete conformance with the provisions of this article;
42. Any sign located on real property without the permission of its owner;
43. Any sign in or over the public right-of-way, other than government signs or warning or safety signs;
44. Any sign which is designed to approximate, mimic, or emulate an official government sign, including unofficial "stop" signs posted on or above any street or right-of-way, or within fifty feet thereof;

45. Any sign nailed, fastened, affixed to, hanging from, or painted on any tree or other vegetation, or part thereof (living or dead); and
46. Any sign prohibited by state or federal law.

10.4. Safety, placement, general requirements.

1. Signs must be located on private property and not closer than 10 feet from the edge of the roadway pavement. No part of a sign may be located closer than three (3) feet to the inside edge of any sidewalk.
2. Signs must be placed so as not to obstruct entrances to, or exits from, buildings, nor may signs impede the visibility of oncoming traffic or its safe and efficient flow. The visual clearance and sight triangle, to assure adequate sight distance at the intersection of two public roadways and at the intersection of a public roadway or other private roadway and an access way or driveway, shall follow the criteria of the current Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways or its equivalent amended document, or criteria otherwise specified by the Planning and Zoning Administrator.
3. Signs shall not overhang walkways, sidewalks, streets, or public rights-of-way.
4. Signs shall not be placed in a location that might prove dangerous to individuals or the public.
5. No illuminated sign shall be erected or maintained where its position will interfere with traffic or obstruct the view of, or be confused with, any traffic sign or device, or shall glare upon any waterway or adjacent property.
6. When a freestanding sign or ground sign is removed, any hole shall be filled or covered in a manner that will ensure the public safety.
7. *Ground signs.* No ground sign exceeding two and one-half square feet in area shall be erected within the triangular space bounded by two intersecting street rights-of-way and a straight line connecting two points on the street right-of-way lines 25 feet from the point of intersection.
8. *Illuminated signs.* Illuminated signs shall limit the amount of shorter wavelength (blue-violet) light to the least amount needed. Illuminated signs, whether they are electrical signs or signs illuminated by spotlight or otherwise, will not be permitted on vacant or unoccupied lands.
9. *Inspection.* Signs for which a permit is required under this article may be inspected periodically by the building official, or his or her designee, for compliance with this article, other codes of the City, the Florida Building Code, other applicable laws, and all terms upon which the sign permit may have been conditioned. To the extent Florida Statutes §

933.20 et seq. requires it, the building official shall ensure a proper inspection warrant is obtained.

10. *Maintenance.* All signs and components thereof shall be kept in good repair and in a safe, neat, clean, and attractive condition with no fading, cracking, or chipping visible. No consideration, however, shall be given to the content of the sign copy when making the determination that the sign should be removed due to a violation of this subsection.
11. *Removal of signs.* The building official, or designee, may order the removal of any sign erected or maintained in violation of this article, or that are declared a nuisance either by court order or under the provisions of the city code. In non-emergency situations where the sign is not an imminent danger to the health and safety of the residents of the city, he or she shall give 30 days' notice in writing to the owner of such sign, at the address reflected on the Manatee County Property Appraiser's website. If the sign is not removed within the 30-day notice period, the city shall cause the sign to be removed at the cost of the owner. Removal shall not moot any other enforcement or collection efforts the city may engage in because of any violation of this article.
12. *Unsafe signs.* Absent an emergency where a sign poses an imminent danger to the health or safety of the public (in which case no notice is needed), if the building official determines any sign or sign structure to be in an unsafe condition, he or she shall immediately notify, in writing, the owner or lessee of the property upon which such sign is located, who shall correct such condition within forty-eight (48) hours. If the correction has not been made within forty-eight (48) hours, and if the building official determines it creates a danger to the public safety, he or she may have the sign removed or have any necessary repairs or maintenance performed at the expense of the owner or lessee of the property upon which the sign is located. If in his or her professional opinion the sign poses an immediate risk to the public, the city may take all other necessary steps to remedy the condition following a reasonable attempt to notify the owner of the hazardous condition.
13. *Abandoned signs.* Any sign that advertises a business or other activity that is not in operation on the premises shall be deemed an abandoned sign beginning 60 days after the business or other activity ceases operation. The following regulations shall apply to such signs:
 - a. A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business establishment which it advertises is no longer conducted on the premises or the sign no longer is being used by the owner or lessee of the premises for its intended advertising purposes for a period in excess of 60 days;
 - b. Instead of removal, if the sign is a conforming sign, the owner or lessee of the premises may:

- i. Paint over the message on the sign that advertises the business or other activity;
 - ii. Remove the sign face and replace it with a blank sign face; or
 - iii. Reverse the sign face and not illuminate the sign from the interior;
 - c. If the owner or lessee fails to remove it, the Planning and Zoning Administrator, or designee, shall give the owner 30 days' written notice to remove it;
 - d. Upon failure to comply with this notice, or refusal to accept delivery of notification by certified mail that such removal is required, the Planning and Zoning Administrator, or designee, may authorize modification, as set forth in this subsection, or removal of the sign at cost to the owner;
 - e. Where a successor owner or lessee to a defunct business establishment agrees to maintain the conforming sign at issue as provided in this article, this removal requirement shall not apply; however, a new owner or lessee of a business establishment shall not be allowed to maintain a nonconforming sign, and upon change of ownership of the business establishment, either by sale, assignment, lease or other means of transfer of rights, all signs shall be brought into compliance with this article; and
 - f. If an existing building or structure is demolished, any existing freestanding sign shall be considered either an abandoned sign or an impermissible off premises sign and shall be removed at the time of demolition unless the sign complies with the requirements of this article. In the event destruction of a building or structure is caused by hurricane, collision with a vehicle or similar reason not attributable to the owner, the Planning and Zoning Administrator ~~building official~~ is authorized to approve of a reconstruction plan which, if complied with, will not result in the sign being deemed abandoned or an impermissible off premises sign.
14. Every freestanding sign, pendant sign, and any sign affixed to any building or structure by chain, rope or other material that will allow the sign to "swing in the breeze", shall be removed within six hours of the issuance of an official tropical storm warning or hurricane warning.
15. Signs shall not be located on publicly owned land or easements or inside the street rights-of-way except bus stop informational signs, governmental signs, and safety or warning signs, or as otherwise allowed by license agreement approved by the city commission. In addition to other remedies hereunder, the city shall have the right to recover from the owner or person placing such sign the cost of removal and disposal of such sign. There shall be no property right in such sign; all property rights are forfeited and such signs are abandoned property. Such signs may, at the city's option, also be treated as litter with persons

responsible for the placement of such signs subject to the provisions of Florida Statutes § 403.413.

16. Nothing in this article shall be construed to prevent or limit the display of legal notices, warnings, informational, direction, traffic, or other such signs which are legally required or necessary for the essential functions of government agencies.
17. All signs shall comply with the applicable building and electrical code requirements. Sign face replacements not requiring a permit shall comply with all applicable building and electrical code requirements, this includes sign face replacements when the permitted sign is not structurally or electronically altered, like materials are used, the sign face is the same size within the frame as the permitted sign and is installed in the same manner as originally permitted.
18. If no height or size restriction is specifically provided regarding any sign located in the City the height and size restrictions for a structure in the zone in which the sign is located will govern.
19. Pursuant to Florida Statutes § 553.79(20)(a), all signage advertising the retail price of gasoline shall be clearly visible and legible to drivers of approaching motor vehicles from a vantage point on any lane of traffic in either direction on a roadway abutting the station premises and shall meet the height, width, and spacing standards for Series C, D, or E signs, as applicable, published in the latest edition of Standard Alphabets for Highway Signs published by the United States Department of Commerce, Bureau of Public Roads, Office of Highway Safety.
20. Any building or land use not conforming to the zoning ordinance provisions for the zone in which it is located shall, nevertheless, comply with all provisions of this article for the zone in which it is located.
21. Permanent monument signs may be placed on the owner's private property up to the right-of-way line in recognition of this sign type's aesthetic desirability to the City. The setback shall be measured from the nearest protrusion of the sign or sign face to the property line.
22. No business shall have more than one exterior wall sign on any street it faces; or one sign per window. Existing window signs shall not cover more than 50% of any window and shall comply with all fire safety codes.
23. Wall signs may not project more than twelve (12) inches from a wall. Any wall sign that projects more than two and one-half (2.5) inches from a wall shall be mounted so that the bottom of the sign is no closer than nine (9) feet to the ground at the finished grade immediately below the sign.
24. In any zone where both residential and nonresidential uses are allowed, the signage rights and responsibilities applicable to any particular use shall be determined as follows:

- a. Residential uses shall be treated as if they were located in the residential zoning district where that type of use would be allowed as a matter of right.
 - b. Nonresidential uses shall be treated as if they were located in a zoning district where that particular use would be allowed, either as a matter of right or subject to a conditional use permit.
25. Off-site permanent monument neighborhood identification signs, where permitted, shall be located at the corner of the intersection of two streets, one of which is the primary ingress and egress to the neighborhood. The monument sign must be located on private property within the neighborhood associated with the sign, or in the public right-of-way or on public lands upon approval by the city commission. The monument sign shall not exceed twenty-four (24) square feet per sign face and shall not exceed six (6) feet in height. One double-sided sign or two single-sided signs may be placed at each entrance. The monument sign shall be set back a minimum of thirty (30) feet from the intersection of the right-of-way lines and fifteen (15) feet from all front and side right-of-way lines.
 26. No sign may be displayed without the consent of the legal owner of the real or personal property on which the sign is mounted or displayed.
 27. This article does not modify or affect the law of fixtures, sign-related provisions in private leases regarding signs (so long as they are not in conflict with this article), or the ownership of sign structures.
 28. No sign shall be erected to obstruct any fire escape, required exit, window, or door opening intended as a means of egress.
 29. No sign shall be erected which interferes with any opening required for ventilation.
 30. Signs shall maintain a minimum of six feet horizontal and twelve feet vertical clearance from electrical conductors and from all communications equipment or lines.
 31. Signs and their supporting structures shall maintain clearance and noninterference with all surface and underground facilities and conduits for water, sewage, electricity, or communications equipment or lines. Placement shall not interfere with natural or artificial drainage or surface or underground water.
 32. No sign shall be attached to a standpipe, gutter, drain, or fire escape, nor shall any sign be installed to impair access to a roof.
 33. The building official may order the repair of signs declared a nuisance. A sign not kept in good repair and in a neat and clean appearance is a public nuisance.

10.5. Sign construction specifications.

1. Construction and erection of signs shall be in accordance with Florida Building Code.

2. *Materials.* Paper, cardboard, and cloth shall not be primary construction materials for permanent signage but may be used as construction materials for temporary signs which are not subjected to sustained weathering.
3. *Construction standards.* All signs shall be installed and constructed in a professional and workmanlike manner and shall be maintained in good and safe structural condition and good physical appearance. All exposed structural components shall be painted, coated or made of rust or wood rot inhibitive material.

10.6. Sign illumination standards.

To allow vehicular travelers to safely identify and access such properties, hotels, motels, timesharing uses, multi-family condominiums and multi-family rentals in the A-1 District, and multi-family condominiums and multi-family rentals, and existing nonconforming motels in the R-2 and R-4 Districts, may have one illuminated sign with no more than two sign faces, subject to the following conditions:

1. Signs may be lighted externally or internally. All sign lighting must be designed, directed, and shielded in such a manner that the light source is not visible beyond the property boundaries where the sign is located.
 - a. External Illumination
 - i. An externally illuminated sign is characterized by the use of artificial light reflecting off its surface.
 - ii. Whenever an external artificial light source is used to illuminate a sign, such source shall be fully shielded and placed close to, and directed upon, the sign face such that only the sign face is illuminated.
 - iii. A receptacle or device housing a permitted light source shall be top mounted and directed below the horizontal, except for ground-mounted signs no higher than six feet which may be illuminated with ground-mounted or bottom-mounted lighting fixtures.
 - iv. The light source must be stationary and static in color.
 - v. All lights must shine downward directly onto the sign and shall be positioned no higher than the top edge of the sign face.
 - vi. No receptacle or device housing an external artificial light source shall protrude more than twelve inches (12") from the face of the sign or building to which it is attached.
 - vii. The area occupied by the luminaire and its supports will not be included when calculating the square footage of the sign.

- viii. Externally illuminated signs shall not emit more than ten (10) lumens of light when measured at night, five feet perpendicular from the center of the sign.

b. Internal Illumination

- i. An internally illuminated sign is characterized by the use of artificial light projecting through its surface.
 - ii. Internal illumination is limited to letters, numbers, symbols, and accents.
 - iii. All lamps intended for internal illumination must be fully concealed from view.
 - iv. For signs that are internally illuminated, the illumination, with a designation of "warm white" shall be emitted through no more than 25 percent of the sign face with the remainder of the sign face opaque.
 - v. No internally illuminated sign shall have a transparent background, allowing direct view of the light source.
 - vi. Internally illuminated signs shall not emit more than ten (10) lumens of light when measured at night, five feet perpendicular from the center of the sign.
2. *Brightness.* No sign is allowed to be illuminated in a manner other than that which is necessary for clear and adequate visibility.
 3. Light sources visible to the beach must be Sea Turtle Compliant, in conformance with the lighting standards provided in City Code Chapter 66, Article II, Division 2.
 4. All lighted signs must have stationary and constant lighting.
 5. Sign lighting shall be designed and located so as not to cause confusion with traffic control devices.
 6. All exterior lighting shall be designed and installed to prevent glare and light trespass. Light shall not be allowed to cause glare affecting motorists, bicyclists, or other users of the roads, driveways, and bicycle paths. Light shall not trespass over property lines.
 7. Back-lighting, reader boards and blinking lights are prohibited.

10.7. Permits and fees.

1. *Generally.* Signs subject to this article shall be designed, constructed, and maintained in compliance with the city's building, electrical, maintenance, and all other applicable codes and ordinances and in compliance with all applicable state and federal law, codes, and regulations. If a court of competent jurisdiction were to strike or nullify any section of this

article, the city's land development code will govern sign maximum size, height, and setback limitations for signs in the city.

2. *Permit requirements.* No sign shall be erected, constructed, altered, or relocated without a sign permit being issued, except as otherwise provided in this article. Where electrical permits are required, a building permit shall be obtained at the same time as the sign permit. Sign permits shall be obtained separate from building permits and shall be reviewed for compliance by the Planning and Zoning Administrator. The requirement for a building or electrical permit is separate and independent of the requirement for a sign permit under this article. No sign shall be erected, constructed, relocated, altered, or maintained without compliance with all permit requirements under local ordinance, state or other applicable law.
3. *Fees.* Each application for a sign permit shall be accompanied by the applicable fees. When a sign has been erected or constructed before a permit is obtained, the permit fee shall be tripled. Before issuance of a permit, the building department shall collect the necessary sign permit fees, which shall be established by the city commission from time to time.
4. *Signage plan.* For any site on which the owner proposes to erect one or more signs requiring a permit the owner, or representative, shall submit to the Planning and Zoning Administrator or designee two copies of a signage plan containing the following:
 - a. An accurate plan of the site, at such scale as the Planning and Zoning Administrator or designee may reasonably require;
 - b. Location of buildings, parking lots, driveways, and landscaped areas on such site;
 - c. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the site under this code;
 - d. An accurate indication on the plan of the proposed location of each present and future sign of any type, whether requiring a permit or not;
 - e. Detailed drawings to show the dimensions, design, structure and location of each particular sign (when depicting the design of the sign it is not necessary to show the content of the sign as the sign reviewer is prohibited from taking this factor into consideration);
 - f. Details on the proposed internal or external illumination;
 - g. Name of person, firm, corporation or association erecting the sign;

- c. A legal nonconforming sign may not be altered in any manner not in conformance with this article. This does not apply to reasonable repair and maintenance of the sign or to a change of copy provided that by changing the copy structural alterations are not required.
- d. Any building permit for an addition, alteration, or improvement valued at more than fifty (50) percent of the fair market value of the structure or building for work at locations where any nonconforming sign exists shall specify and require that such nonconforming signs located within the boundaries of the development site, and within the limits of the applicant's control, shall be brought into conformance with the provisions of this article, provided that if the nonconforming sign is a type of sign that has subsequently been made prohibited under this article, it shall be removed.
- e. Legal nonconforming signs that are located on a parcel of property that is severed from a larger parcel of property and acquired by a public entity for public use by condemnation, purchase or dedication may be relocated on the remaining parcel without extinguishing the legal nonconforming status of that sign provided that the nonconforming sign:
 - i. Is not increased in area or height to exceed the limits of the zoning district in which it is located;
 - ii. Remains structurally unchanged except for reasonable repairs or alterations;
 - iii. Is placed in the most similar position on the remaining property that it occupied prior to the relocation; and
 - iv. Is relocated in a manner so as to comply with all applicable safety requirements.

After relocation pursuant to this subsection, the legal nonconforming sign shall be subject to all provisions of this section in its new location.

2. Signs rendered nonconforming:

- a. Except as provided in this section, a nonconforming sign may continue in the manner and to the extent that it existed at the time of the adoption, amendment or annexation of the provision that rendered the sign nonconforming, including in the event there is a change in ownership. This section shall not prohibit reasonable repairs and alterations to nonconforming signs.
- b. A nonconforming sign shall not be re-erected, relocated or replaced unless it is brought into compliance with the requirements of this article. An existing monument sign that conforms to the size and height limitations set forth herein, but

is otherwise nonconforming, may be relocated a single time to another location on the same parcel.

- c. Any nonconforming sign shall be removed or rebuilt in full conformity to the terms of this article if it is damaged or allowed to deteriorate to such an extent that the cost of repair or restoration is fifty (50) percent or more of the cost of replacement of such sign.
3. Signs for a legal nonconforming use:
 - a. New or additional signs for a nonconforming use shall not be permitted. A change in ownership shall require a nonconforming sign to be removed or brought into conformity.
 - b. A nonconforming sign for a nonconforming use that ceases to be used for a period of sixty (60) consecutive days or is replaced by a conforming use, shall be considered a prohibited sign and shall be removed or brought into conformance upon establishment of a conforming use.
 4. Discontinued signs:
 - a. Sign structures that remain vacant, unoccupied, or devoid of any message, or display a message pertaining to a time, event or purpose that no longer applies shall be deemed to be discontinued.
 - b. A nonconforming sign deemed discontinued shall immediately terminate the right to maintain such sign.
 - c. Within sixty (60) days after a sign structure has been discontinued, it shall be the responsibility of the property owner or the property owner's authorized agent to remove the discontinued sign and to patch and conceal all damage to any other structure resulting from removal of the sign.
 - d. Removal of a discontinued nonconforming sign shall include all sign support components, angle irons, poles, and other remnants of the discontinued sign that are not currently in use or proposed for immediate reuse as evidenced by a sign permit application for a permitted sign.
 5. Unsafe signs:
 - a. If the building official determines any sign or sign structure to be in an unsafe condition, he or she shall immediately notify, in writing, the owner of such sign who shall correct such condition within forty-eight (48) hours.
 - b. If the correction has not been made within forty-eight (48) hours, the building official may have the sign removed if it creates a danger to the public safety or have

any necessary repairs or maintenance performed at the expense of the sign owner or owner or lessee of the property upon which the sign is located.

6. Special provisions regarding pre-existing nonconforming signs.
 - a. Except for the reader board sign at 6306 Gulf Drive which must remain darkened and nonoperational from August 24, 2021, forward, existing internally illuminated and/or backlighted signs currently located at 6306 Gulf Dr., 6504 Gulf Dr., 6600 Gulf Dr., and 2710 Gulf Dr., and any and all other internally illuminated and/or backlighted signs in existence in the A-1, R-2, and R-4 Zoning Districts existing and in use on August 24, 2021, shall be allowed to continue in operation for a period of not more than five years from August 24, 2021, after which each of said signs shall immediately be removed or brought into complete conformance with the provisions of this article.
 - b. Existing off-premises/offsite commercial signs shall allowed to continue in operation for a period of not more than two (2) years from date of adoption of this ordinance, after which each of said signs shall immediately be removed.

10.9. General Sign standards.

1. Permanent monument signs may be placed on the owner's private property up to the right-of-way line in recognition of this sign type's aesthetic desirability to the City. The setback shall be measured from the nearest protrusion of the sign or sign face to the property line. Signs must be located on private property and not closer than 10 feet from the edge of the roadway pavement. No part of a sign may be located closer than three (3) feet to the inside edge of any sidewalk.
2. No business shall have more than one exterior wall sign on any street it faces; or one sign per window. Permanent window signs shall not cover more than 50% of any window and shall comply with all fire safety codes. Wall signs may not project more than twelve (12) inches from a wall. Any wall sign that projects more than two and one-half (2.5) inches from a wall shall be mounted so that the bottom of the sign is no closer than nine (9) feet to the ground at the finished grade immediately below the sign.
3. In any zone where both residential and nonresidential uses are allowed, the signage rights and responsibilities applicable to any particular use shall be determined as follows:
 - a. Residential uses shall be treated as if they were located in the residential zoning district where that type of use would be allowed as a matter of right.
 - b. Nonresidential uses shall be treated as if they were located in a zoning district where that particular use would be allowed, either as a matter of right or subject to a conditional use permit.

4. Off-site permanent monument neighborhood directional signs, where permitted, shall be located at the corner of the intersection of two streets, one of which is the primary ingress and egress to the neighborhood. The monument sign must be located on private property within the neighborhood associated with the sign. Alternative locations may be permitted with written approval of the Superintendent of Public Works, provided that the monument sign shall not exceed twenty-four (24) square feet per sign face and shall not exceed six (6) feet in height. One double-sided sign or two single-sided signs may be placed at each entrance. The monument sign shall be set back a minimum of thirty (30) feet from the intersection of the right-of-way lines and fifteen (15) feet from all front and side right-of-way lines.

10.10. Signs that do not require a permit.

1. Temporary signs. Temporary signs shall be allowed on each parcel, only by permission of the property owner, within the city only as follows:
 - a. Temporary signs displayed outdoors shall be constructed of metal, plastic, wood, or pressed wood, but not of cardboard or paper, and shall be fastened to a support not exceeding four (4) inches by four (4) inches. Temporary window signs displayed on the inside of a window may be constructed of cardboard or paper, as well as metal, plastic, wood, or pressed wood.
 - b. Temporary signs may be installed on any sign type authorized within the relevant zone. Alternatively, a temporary sign may be installed using an H frame, spider step stake, inverted L frame, banjo-style frame, or T frame. Any such alternative installation option used must be firmly secured to the ground or to a building located on the parcel.
 - c. Temporary signs not affixed to a permanent sign structure but using one of the alternative installation options listed above, must be removed and securely stored during any days for which the National Weather Service has issued a tropical storm warning covering the city.
 - d. Duration. Unless otherwise provided for in this article, temporary signs shall not be erected for more than forty-five (45) days prior to the event being advertised on the temporary sign begins, and they shall be removed promptly at the event's conclusion. Temporary signs not advertising an event to occur on a specific date but which are related to the occurrence of an expected future event or transaction, including but not limited to temporary real estate for sale signs, shall not be subject to the forty-five (45) day provision of this subsection, but such signs shall also be removed promptly upon the earliest of the occurrence of the event or transaction, or the expiration of the listing or other similar change in facts eliminating the opportunity of the future event or transaction from occurring.

- e. In the R-1AA, R-1, R-2, R-3, R-4, A-1, and PUD zoning districts, no temporary signs are permitted except for the following:
 - i. Each parcel may display one temporary sign per street frontage, which shall not exceed four (4) square feet, and four (4) feet in height. Such signs shall be permissible only during active listing for sale or for annual rental of the property.
 - ii. Each parcel may display temporary signs, which shall not exceed four (4) square feet, and four (4) feet in height. Such temporary signs may be erected no earlier than 45 days prior to an upcoming election, and all such signs shall be treated as temporary signs and shall be removed within 48 hours after the election.
 - iii. Any land developer or licensed contractor, architect or engineer is authorized, with the consent of the landowner, to install a maximum of (3) three temporary signs at a permitted active construction site, as that term is defined in Florida Statutes § 810.011(13), or on land upon which the city has given preliminary approval of plans to construct a building or other structure. Such sign shall be subject to the following conditions:
 - 1. The sign is located on a construction site which has a valid building permit displayed on site.
 - 2. Each sign shall not exceed four (4) square feet, and four (4) feet in height sign area.
 - 3. All signs shall maintain a minimum setback of ten (10) feet from the right of way.
 - 4. All signs shall be removed by no later than the date upon which a certificate of completion, temporary or final certificate of occupancy is issued by the construction permitting authority.
- f. In the C-1, C-2, C-3, REC, POS, PRES, CON, PSP and MXD zoning districts, each parcel may display two temporary signs which shall not exceed twenty-four (24) square feet in sign area and six (6) feet in height; except that 45 days prior to any national, state, or local election each parcel may display up to an additional 4 temporary signs resulting in no more than six temporary signs, which must be removed within 3 days after the election.

2. Flags.
 - a. In the R-1AA, R-1, R-2, R-3, R-4, A-1, and PUD zoning districts, two flags not greater than fifteen (15) square feet in sign area each may be displayed. One (1) freestanding flagpole is allowed for each parcel not to exceed 25 feet in height. The vertical height of any freestanding flagpole shall not be greater than 90 percent of the horizontal distance from its base to the nearest property line.
 - b. In the C-1, C-2, C-3, REC, POS, PRES, CON, PSP and MXD zoning districts, three (3) flags not greater than twenty-four (24) square feet in sign area (each) may be displayed. Two (2) flagpoles are allowed for each parcel not to exceed 35 feet in height. The vertical height of any freestanding flagpole shall not be greater than 90 percent of the horizontal distance from its base to the nearest property line.
3. Parking space signs, non-residential. Onsite parking space number or identification signs, not exceeding two (2) square foot of sign face per sign, shall be allowed on each parcel of non- residential use having multiple parking spaces onsite. One such sign shall be allowed for each parking space. The maximum height for a freestanding or attached wall sign shall be six (6) feet unless otherwise required by applicable law.
4. Street address signs. The present owners of all improved property located in the city shall affix and maintain street (address) numbers in accordance with the following:
 - a. Residential one- and two-family dwellings. Each number shall be a minimum of four inches in height street address sign shall not exceed two (2) square feet in sign area.
 - b. Nonresidential buildings, and any residential building not included within subsection (1). Each number shall be a minimum of six inches in height and the street address sign shall not exceed four (4) square feet in sign area. Individual units within multi-unit structures shall have numbers not less than three inches in height.
 - c. Standards. Numbers and letters shall be plain, and in an easily readable style. Script or cursive characters shall not be used. Numbers and lettering shall contrast with the background upon which they are mounted. Address numbering shall be posted where they are clearly visible from the street where the structure is located.
 - d. Waterfront structures. All waterfront structures, including gulf, bay and canal fronting structures, shall post their addresses numbers on their waterfront sides in addition to posting their addresses on their street frontages.
5. Warning signs and safety signs. Warning signs and safety signs, not exceeding four (4) square feet in sign area, shall be allowed in all districts. The maximum height for these signs shall be four (4) feet unless otherwise required by applicable law.

6. Waterfront identification signs. Each lot abutting a navigable waterway shall be allowed one attached wall identification sign that is visible from the water. Waterfront identification signs shall not exceed four (4) square feet in sign area.
7. Wayfinding/directional signs. Non-commercial wayfinding signs when erected as part of a wayfinding system the city may adopt.
8. Temporary window signs. In the C-1, C-2, C-3, REC, POS, PRES, CON, PSP and MXD zoning, one or more temporary window signs may be displayed on the inside of the window. The temporary window sign(s) shall not cover more than 50% of the area of the window, except that if the business displaying such sign(s) is also displaying any permanent window sign authorized in this article, then the total area of the window covered by a combination of these shall not exceed 65% of the area of the window.
9. Traffic control device signs.
10. Murals and artwork.
 - a. Murals without logos, text, numbers, or other symbols related to a business, service or product are not considered a sign.
 - b. Freestanding artwork such as sculptures or other decorated physical items without logos, text, numbers, or other symbols related to a business, service or product are not considered a sign.
 - c. That portion of a mural containing logos, text, numbers, or other symbols related to a business, service, or product, shall be calculated towards the maximum area of signage allowed on the property.
 - d. The "sign area" of a mural is the area contained within a rectangle drawn in the following manner: From the highest point of the logo, text, number or other symbol and from the leftmost and rightmost points of logo, text, number or other symbol in the mural.
 - e. Artwork, such as a painting, that is mounted on a building shall be treated as a mural.

10.11. Signs permitted in R-1, R1AA, R-2, R-3, R-4, POS, and PUD districts; permit required.

Except for those signs and sign-types allowed in accordance with § 10.10 and § 10.11 of this article, no additional signs or sign-types shall be permitted, except for the following sign-types:

1. On a parcel with an apartment building or condominium complex, one permanent wall, window or monument sign is allowed for each such building or complex not exceed

twenty-four (24) square feet in size (area); however, such a monument sign shall not exceed six (6) feet in height.

2. For permitted land uses other than residential uses in these zones one permanent monument sign shall be allowed on each parcel or lot. This sign shall not exceed sixteen (16) square feet in area and shall not exceed four (4) feet in height.
3. Onsite directional signs not exceeding four (4) square feet in area.

10.12. Sign types permitted in C-1, C-2, C-3, PSP, REC and A-1 districts; permit required.

Except for those signs and sign-types allowed in accordance with § 10.10 and § 10.11 of this article, no additional signs or sign-types shall be permitted, except for the following sign-types:

1. Temporary banner signs not exceeding thirty-five (35) square feet in area and eight (8) feet in height may be displayed by a business within districts set forth in this section in conjunction with a grand opening for a maximum of sixty (60) days from the date the business first opens to customers. The term “grand opening” as used in this subsection shall mean the initial opening of a new business (including businesses marketing goods, services or residential units). The term includes the opening of a new location of a pre-existing business, and the re-opening of a pre-existing business which has been shut down for longer than one month due to renovations, remodeling, or repairs.
2. One freestanding sign per abutting state, county, or city collector roadway. A maximum of thirty-two (32) square feet shall be allowed per each freestanding sign face (sign faces must be back-to-back). The freestanding sign shall not exceed fifteen (15) feet in height and must not be a traffic visibility hazard as determined by the city's traffic engineer. For commercial buildings containing more than two tenants or multiple business tax receipts, the maximum sign area and height shall be:
 - a. For each street frontage abutting a state, county, or city collector roadway, one freestanding sign shall be permitted. Size shall not exceed thirty-two (32) square feet base sign plus eight (8) square feet multiplied by the total number of businesses on the property. Signage may be apportioned to each tenant business as determined by the landlord; however, each tenant’s portion of the monument sign must be clearly visible from the street. The freestanding sign shall not exceed fifteen (15) feet in height and must not be a traffic visibility hazard as determined by the city’s traffic engineer based upon adopted city standards.
3. Attached wall signs shall be allowed only on the first-floor level. Each individual business may have one or more attached wall signs, the total area of which shall not exceed 60 square feet.
4. A canopy or awing sign may be permitted in lieu of a wall sign at an individual, single-occupant, premises, only on the first-floor level. The canopy or awning and signage square footage combined shall not exceed the total permissible square footage for a wall sign.

5. Wayfinding/directional signs on commercial property provided such signs do not exceed four (4) square feet in area. The directional sign may be displayed as an attached sign, window sign, or as a monument sign; if displayed as a monument sign, the monument sign shall not exceed four (4) feet in height.
6. Sandwich board signs shall be allowed, pursuant to the sandwich board regulations set forth in §10.13.

10.13. Sandwich board signs.

1. The placement of sandwich board signs by the owners or lessees of properties may be allowed on any commercial property.
2. One sandwich board sign shall be allowed on each street frontage per retail or restaurant use.
3. Sandwich board signs shall be freestanding and moveable. They may be single-sided or double-sided. They shall be removed during inclement weather and high winds. They shall be taken inside at the end of each business day.
4. Sandwich board signs shall not exceed an overall height of 42 inches above ground level or an overall width of 30 inches.
5. Sandwich board signs may be composed of chalkboard-type material capable of being written on with chalk.
6. Sandwich board signs are prohibited on all public sidewalks or walkways and shall be placed to allow for an unobstructed path of travel for pedestrians of five (5) feet at all times.
7. No sandwich board sign may be directly illuminated either internally or externally.
8. Any sandwich board sign which encroaches upon pedestrian or vehicular movement or safety or interferes with the lawful use of the public right-of-way or violates the Florida Building Code or any state or local fire or security code shall be prohibited and removed or relocated.
9. Sandwich board signs shall be readable, properly maintained, and kept in good working condition.

10.14. Planning and Zoning Administrator to enforce article's provisions.

The Planning and Zoning Administrator, or designee, is authorized and directed to enforce all the provisions of this article. However, notwithstanding anything in this article to the contrary, no sign or sign structure shall be subject to any limitation based on the content or viewpoint of the message contained on such sign or displayed on such sign structure. In conformance with applicable state and federal laws, and upon presentation of proper credentials, the Planning and Zoning

Administrator, or designee, may enter at reasonable times any building, structure, or premises in the city to perform any duty imposed upon him or her by this article. To the extent Florida Statutes § 933.20 et seq. requires it, the building official shall ensure a proper inspection warrant is obtained.

10.15. Right of appeal.

1. Any person aggrieved by any decision or order of the building official, or designee, pertaining to signs under this article may appeal to the Development Special Magistrate (the magistrate) by serving written notice to the city's Planning and Zoning Administrator, or designee, who in turn shall immediately transmit the notice to the magistrate. If an administrative appeal is filed by the applicant, and the magistrate fails to meet within 45 days, the appeal will be deemed denied and the decision or order of the building official, or designee, will be deemed final. Once a decision is appealed to the magistrate, the building official, or designee, shall take no further action on the matter pending the magistrate's decision, except for unsafe signs as provided for in this article. The magistrate shall have the following powers:
 - a. To hear and decide appeals where it is alleged that there is an error in the decision or interpretation of the building official, or designee, in the enforcement of this article. Such determination shall be conclusive and no right of appeal to the city commission with respect to such action shall exist.
 - b. To hear and authorize or deny requests for conditional use permits or setback variances. Decisions by the magistrate shall be final.
2. Any aggrieved person must file an appeal of any adverse decision or action as provided for above within twenty (20) calendar days of the date the administrative decision was made or action taken.

10.16. Variances.

The only variance that may be applied for in connection with signage in the city is a variance from required setbacks.

10.17. Substitution of speech and construction.

1. Notwithstanding anything contained in this article or code to the contrary, any sign erected pursuant to the provisions of this article or code or otherwise lawfully existing with a commercial message may, at the option of the owner, contain a non-commercial message in lieu of a commercial message. The non-commercial message may occupy the entire sign face or any portion thereof. The sign face may be changed from commercial to non-commercial messages, or from one non-commercial message to another, as frequently as desired by the owner of the sign, provided that the sign is not a prohibited sign or sign-type and provided that the size, height, setback, and other dimensional criteria contained in this article and code have been satisfied.

2. Notwithstanding anything contained in this article or code to the contrary, the sign content of all signs approved or permitted by action of this code may be replaced without further approval or action by the city; provided that the sign size, height, and other dimensional features are not changed, and placement and time continue to satisfy the provisions of this code. The intent of this section is to ensure that signs permitted by this code are not permitted because of their content, but rather because of their size, location, and time or frequency of placement.
3. Notwithstanding anything contained in this article or code to the contrary, any code provision that permits signs based on whether the owner or permittee of the sign is a governmental, charitable, civic, religious, or similar organization shall be construed as not limiting those signs only to those organizations and shall be construed to permit any individual or entity under the same conditions to display such sign. It is the intent of this provision to ensure that the city does not permit or allow signs based only on the speaker of the message conveyed but rather based on the size, location, and time or frequency of the placement of the signs.
4. Any ambiguity in or construction of this article shall be in favor of disregarding sign content and focusing on regulating only the size, manner, location, and time or frequency of placement of signs. Notwithstanding anything herein to the contrary, signs which provide traffic regulation or have similar functional purposes shall be strictly construed in favor of the city only and shall not provide individuals with a basis to have signs of a similar type and condition.

10.18. Rights not transferrable.

The rights contained in this article, including but not limited to those associated with sign sizes, numbers, types and allowances, as well as rights associated with nonconforming signs and appeal rights may not be transferred in any manner to any other person, nor aggregated with the sign rights of any other person, so as to apply to a property, sign, structure or building other than the property, sign, structure or building associated with the right in question.

10.19. Severability.

1. Generally. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article.
2. Severability where less speech results. Without diminishing or limiting in any way the declaration of severability set forth above in subsection A., or elsewhere in this article or this code, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality

shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.

3. Severability of provisions pertaining to prohibited signs. Without diminishing or limiting in any way the declaration of severability set forth above in subsection A., or elsewhere in this article or this code, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this article that pertains to prohibited signs, including specifically those signs and sign-types prohibited and not allowed in this article.

Section 2. In addition to the detailed statement of severability contained in Section 1 of this Ordinance, if any section, subsection, sentence, clause, provision or word of this Ordinance is held invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 3. The Codifier shall codify the substantive amendments to the Holmes Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify any other sections not designated for codification.

Section 4. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED, by the City Commission of the City of Holmes Beach, Florida, in regular session assembled, this _____ day of _____, 2024.

First Reading: _____

Publication Date: _____

Second Reading and Public Hearing Date: _____

(Signatures – Next Page)

Carol Soustek

Dan Diggins

Greg Kerchner

Terry W. Schaefer

Pat Morton

APPROVED BY ME THIS _____ DAY OF _____, 2024

Judy Titsworth, Mayor

ATTEST:
Stacey Johnston, MMC, City Clerk
