

## ORDINANCE NO. 8343-12

**AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA RELATING TO SIGNS; MAKING FINDINGS; AMENDING SECTION 102 (DEFINITIONS) OF ARTICLE 8 (DEFINITIONS AND RULES OF CONSTRUCTION) OF THE COMMUNITY DEVELOPMENT CODE; REPEALING DIVISION 18 (SIGNS) OF ARTICLE 3 (DEVELOPMENT STANDARDS) OF THE COMMUNITY DEVELOPMENT CODE; ADOPTING A NEW DIVISION 18 (SIGNS) OF ARTICLE 3 (DEVELOPMENT STANDARDS) OF THE COMMUNITY DEVELOPMENT CODE; PROVIDING SECTION 1801 (GENERAL PRINCIPLES); PROVIDING SECTION 1802 (PURPOSE); PROVIDING SECTION 1803 (EXEMPT SIGNS); PROVIDING SECTION 1804 (PROHIBITED SIGNS); PROVIDING SECTION 1805 (GENERAL STANDARDS); PROVIDING SECTION 1806 (SIGNS PERMITTED WITHOUT A PERMIT); PROVIDING SECTION 1807 (PERMITTED SIGNS REQUIRING DEVELOPMENT REVIEW); PROVIDING SECTION 1808 (COMPREHENSIVE SIGN PROGRAM); PROVIDING SECTION 1809 (SEVERABILITY); PROVIDING AN EFFECTIVE DATE.**

### **Initial General Preambles**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to update and revise its Community Development Code relative to signs;

**WHEREAS**, the City of Clearwater finds and determines 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;

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to ensure that the Community Development Code as it relates to signs is in compliance with all constitutional and other legal requirements;

**WHEREAS**, the City of Clearwater finds and determines that the purpose and intent provisions of its signage regulations should be even more detailed than they are now so as to further describe the beneficial aesthetic and other effects of the City's sign regulations, and to reaffirm that the sign regulations are concerned with the secondary effects of speech and are not designed to censor speech or regulate the viewpoint of the speaker;

**WHEREAS**, the City of Clearwater finds and determines that its sign regulations have undergone judicial review in three reported final decisions during the past three decades, including *Don's Porta Signs, Inc. v. City of Clearwater*, 829 F.2d 1051 (11th Cir. 1987), *cert. denied*, 485 U.S. 981 (1988), *Dimmitt v. City of Clearwater*, 782 F. Supp. 586 (M.D.Fla. 1991), *affirmed and modified*, 985 F.2d 1565 (11th Cir. 1993), and *Granite State Outdoor Advertising, Inc. v. City of 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 48 (2004), and has also been the subject of a non-final preliminary decision in *The Complete Angler, L.L.C. v. City of Clearwater, Fla.*, 607 F.Supp.2d 1326 (M.D.Fla. 2009), which was settled before a final decision was reached;

**WHEREAS**, the City of Clearwater finds and determines that the issue of content neutrality in the First Amendment context has been addressed in *Hill v. Colorado*, 530 U.S. 703, 719-20 (2000); that the content neutrality of the City's own sign regulations was extensively addressed in the published decision of the district court in *Granite State-Clearwater*, and that the issue of content-neutrality has been addressed by other decisions, including *Solantic v. Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005), *Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421, 432 (4th Cir. 2007), and in *H.D.V.-Greektown, LLC v. City of Detroit*, 568 F.3d 609, 621-622 (6th Cir. 2009);

**WHEREAS**, the City of Clearwater finds and determines that the issue of content neutrality of the sign regulations of another nearby municipality was recently addressed by a state appellate panel in *Shanklin v. State*, 2009 WL 6667913 (Fla.Cir.Ct. App. Div.);

**WHEREAS**, the City of Clearwater recognizes that under current jurisprudence its sign regulations may be under-inclusive in their reach to serve the City's interests in aesthetics and traffic safety, while at the same time balancing the interests protected by the First Amendment [*see, e.g., Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984); Cordes, Sign Regulation After Ladue: Examining the Evolving Limits of First Amendment Protection, 74 Neb.L.Rev. 36 (1995)], and the City of Clearwater may from time to time modify the sign regulations herein so as to provide additional limitations to further serve the City's interests in aesthetics and/or traffic safety;

**WHEREAS**, the limitations on the height, size, number, and setback of signs, adopted herein, is based upon the sign types and sign functions;

**WHEREAS**, sign types described herein are related in other ways to the functions they serve and the properties to which they relate (*e.g.*, subdivision entrance signs are allowed at subdivision entrances, real estate signs are directly related to the property on which they are posted or, in the case of directional signs, are limited to a certain distance from the property to which they relate [*see Bond, Making Sense of Billboard Law: Justifying Prohibitions and Exemptions*, 88 Mich.L.Rev. 2482 (1980)]);

**WHEREAS**, limitations on various types of signs by the function they serve are also related to the zoning districts for the properties on which they are located;

**WHEREAS**, various signs that serve and function as signage for particular land uses, such as drive-thru restaurants or for businesses within a tourist district, are allowed some additional features or have different criteria in recognition of the differing or special 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;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations adopted hereby still allow adequate alternative means of communications;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations adopted hereby allow and leave open adequate alternative means of communications, such as newspaper advertising, internet advertising and communications, advertising in shoppers and pamphlets, advertising in telephone books, advertising on cable television, advertising on UHF and/or VHF television, advertising on AM and/or FM radio, advertising on satellite radio, advertising on internet radio, advertising via direct mail, and other avenues of communication available in the City of Clearwater [*see State v. J & J Painting*, 167 N.J. Super. 384, 400 A.2d 1204, 1205 (Super. Ct. App. Div. 1979); *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 477 (1989); *Green v. City of Raleigh*, 523 F.3d 293, 305-306 (4th Cir. 2007); *Naser Jewelers v. City of Concord*, 513 F.3d 27 (1st Cir. 2008); *Sullivan v. City of Augusta*, 511 F.3d 16, 43-44 (1st Cir. 2007); *La Tour v. City of Fayetteville*, 442 F.3d 1094, 1097 (8th Cir. 2006); *Reed v. Town of Gilbert*, 587 F.3d 866, 980-981 (9th Cir. 2009)];

**WHEREAS**, the City of Clearwater finds and determines that the amendments to Article 3, Division 18, and to Article 8, as set forth herein, are consistent with all applicable policies of the City's adopted Comprehensive Plan;

**WHEREAS**, the City of Clearwater finds and determines that these amendments are not in conflict with the public interest;

**WHEREAS**, the City of Clearwater finds and determines that these amendments will not result in incompatible land uses;

## Definitions

### General

**WHEREAS**, the City of Clearwater finds and determines that Section 102 (Definitions) of Article 8 (Definitions and Rules of Construction) should be updated, modified and expanded to complement revisions to Division 18 (Signs) of Article 3 (Development Standards) of the City of Clearwater's Community Development Code;

**WHEREAS**, the City of Clearwater finds and determines that in *Scadron v. City of Des Plaines*, 734 F. Supp. 1437, 1442 (N.D.Ill. 1990) (per Rovner, J.), *aff'd*, 989 F.2d 502 (Table), 1993 WL 64838 at \*2 (7th Cir. 1993) (adopting analysis of district court), the Seventh Circuit noted that five justices (Brennan, Blackmun, Burger, Stevens and Rehnquist) in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), believed that the limited exceptions to an ordinance's general prohibition of off-premises advertising were too insubstantial to constitute discrimination on the basis of content;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), held that Article 3 in general was not content-based, notwithstanding *de minimis* exceptions such as holiday decorations [§ 3-1805.D.], garage/yard sale signs [§ 3-1805.H.], and marina slip numbers [§ 3-1805.T.];

### **Art work**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “art work” should be updated (a) to more specifically identify what is artwork, while still providing that artwork does not include a representation specifically conveying the name of a business or a commercial message, and (b) to identify objects that are not intended to be covered within the scope of land development regulations pertaining to signage in the context of Chapter 163 of the Florida Statutes;

### **Holiday and seasonal decorations**

**WHEREAS**, the City of Clearwater finds and determines that the definition for “sign, holiday decoration” should be deleted and replaced with a definition for “decorations, holiday and seasonal” to identify objects that are not intended to be covered within the scope of land development regulations pertaining to signage in the context of Chapter 163 of the Florida Statutes;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff’d in part and rev’d in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), had noted that Article 3 in general was not content-based, notwithstanding *de minimis* exceptions such as holiday decorations [§ 3-1805.D.];

### **Graphic element**

**WHEREAS**, the City of Clearwater finds and determines that there should be a definition for “element, graphic” in connection with a sign, especially in conjunction with provisions pertaining to awnings or lighting;

### **Sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign” should be clarified that it includes a sign visible from a public street or public sidewalk, as well as a public right-of-way;

**WHEREAS**, the City of Clearwater finds and determines that objects and devices such as artwork, holiday or seasonal decorations, cemetery markers, machinery or equipment signs (inclusive of vending machine signs), and memorial signs or tablets 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;

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign” should be modified to provide that it does not include objects and devices, such as artwork, holiday or seasonal decorations, cemetery markers, machinery or equipment signs (inclusive of vending machine signs), and memorial signs or tablets, inasmuch as the foregoing are not signage intended to be regulated by the land development regulations described in Section 163.3202 of Chapter 163 of the Florida Statutes;

### **Acknowledgment sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, adopt a park” should be expanded and clarified to “sign, adopt a park or acknowledgement” that functions to recognize a sponsoring agency that has installed and maintained landscaping at the site on city rights-of-way or city-owned property where the landscaping is located or recognizing grant providers for other amenities;

### **Cabinet sign**

**WHEREAS**, the City of Clearwater finds and determines that a definition of “sign, cabinet” should be added to identify this sign type in connection with its reference in the regulations;

### **Construction sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, construction” should be revised to identify the function served by this temporary sign type that distinguishes the same from other temporary signs;

### **Discontinued sign (in lieu of abandoned sign)**

**WHEREAS**, the City of Clearwater finds and determines that the current definition for “sign, abandoned” should be changed to “sign, discontinued,” to eliminate any issue that would require a determination of the intent of the sign owner or sign operator, and to better define what constitutes a sign that would be considered a prohibited sign because the sign (a) displays advertising for a product or service which is no longer available or displays advertising for a business which is no longer licensed (b) is blank, or (c) advertises a business that is no longer doing business or maintaining a presence on the premises where the sign is displayed, but provided that the foregoing circumstances for (a), (b) or (c) have continued for a period of at least one hundred eighty days;

### **Election sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, election” should be added to identify a temporary sign erected or displayed for the purpose of expressing support or opposition to a candidate or stating a position regarding an issue upon which the voters of the City may vote;

### **Exempt sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition for “sign, exempt” is obsolete, and that the definition should be removed and combined with the addition of Section 1803 (Exempt Signs) to Division 3 (Signs) in Article 3 (Development Standards);

### **Free expression sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, free expression” should be added to identify a sign that functions to communicate information or views on matters of public policy or public concern, or containing any other noncommercial message that is otherwise lawful;

**Garage-yard sale sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, garage-yard sale” should be added to identify a lawful temporary sign that functions to communicate information pertaining to the sale of personal property at or upon any residentially-zoned property located in the City;

**Gasoline price signs**

**WHEREAS**, the City of Clearwater finds and determines that the definition for “sign, gasoline price display” should be revised to re-emphasize that the same is an on-site sign that functions exclusively to display the prices of gasoline for sale, and continues to be a content-neutral sign category consistent with the prior precedent of *Hill v. Colorado*, 530 U.S. 703, 719-20 (2000);

**Identification sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition for “sign, identification” should be revised to clarify that it serves to indicate no more than the name, address, company logo and occupation or function of an establishment or premises on which the sign is located;

**Machinery or equipment signs**

**WHEREAS**, the City of Clearwater finds and determines that 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, et al., recommended an exemption for signs incorporated into machinery and equipment by a manufacturer or distributor, which identify or advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps;

**WHEREAS**, the City of Clearwater finds and determines that a definition should be added for “sign, machinery or equipment” to identify objects that are not intended to be covered within the scope of land development regulations pertaining to signage in the context of Chapter 163 of the Florida Statutes, and that such objects include signs which are integral and incidental to machinery or equipment, and that are incorporated into machinery or equipment by a manufacturer or distributor to identify or advertise the product or service dispensed by the machine or equipment, such as signs customarily affixed or incorporated into vending machines, telephone booths, gasoline pumps, newspaper racks, express mail drop-off boxes, and the like;

**Raceway sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, raceway” should be added to identify this sign type in connection with its reference in the regulations;

**Safety sign**

**WHEREAS**, the City of Clearwater finds and determines that in addition to the definition of “sign, warning,” a definition for “sign, safety” should be added to identify a sign that functions to provide a warning or caution 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.);

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff’d in part and rev’d in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), noted that signs are speech and can only be categorized or differentiated by what they say; that this makes it impossible to overlook a sign’s content or message in formulating regulations and making exceptions for those signs that are narrowly tailored to a significant governmental interest of safety (i.e., warning signs) [*see Granite-Clearwater* at 1333];

**Sidewalk sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, sidewalk,” sometimes referred to as a sandwich board sign, should be added to identify this unique sign type in connection with the parameters for its use in the land development regulations;

**Snipe sign**

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff’d in part and rev’d in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), struck and severed the words “other objects” in the definition of Section 8-102 in order to remove a conflict between Section 3-1806.B.3 (allowing attached signs) and Section 3-1803.T (prohibiting snipe signs that would include attached signs to objects other than those listed) [*see Granite-Clearwater* at 1335];

**WHEREAS**, the City of Clearwater finds and determines that the text of the definitions in Section 8-102 [Section 102 of Article 8] should be revised to reflect the removal of the words “other objects” and to restate the definition of “Sign, snipe” in the Community Development Code;

**Statutory sign**

**WHEREAS**, the City of Clearwater finds and determines that a definition for “statutory sign” should be added to identify a sign that is lawfully required by any statute or regulation of

the State of Florida or the United States, and to identify such sign types as ones that are exempt from regulation under the City’s land development regulations;

**Temporary yard sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition of “sign, temporary yard” is obsolete with the addition of a definition for “sign, garage-yard sale” and the regulation of the latter in the land development regulations;

**Traffic control device sign**

**WHEREAS**, the City of Clearwater finds and determines that a definition for “traffic control device sign” should be added to identify the sign types that are exempt from regulation under the City’s land development regulations;

**WHEREAS**, the City of Clearwater finds and determines that a traffic control device sign, exempt from regulation under the City’s land development regulations for signage, is any sign located within the right-of-way that functions 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, and that according to the MUTCD traffic control device signs include those 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, or cultural information);

**WHEREAS**, the City of Clearwater finds and determines that the classification of traffic control device signs is a logical classification for purposes of establishing an exemption based upon their unique purpose and function, and that such classification is not impermissibly content-based under the controlling precedent of *Hill v. Colorado*, 530 U.S. 703, 719-20 (2000);

**Vehicle sign**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to substitute a new definition for vehicle sign that is similar to one 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 Section 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.);

**Vending sign**

**WHEREAS**, the City of Clearwater finds and determines that the definition for “sign, vending” should be deleted and replaced with “sign, machinery and equipment” to clarify the objects excluded from the definition of “sign” and not intended to be regulated through “land development” regulations under Chapter 163 of the Florida Statutes;



## **General Principles**

### **Mission**

**WHEREAS**, the City of Clearwater finds and determines that the city is a resort community on the west coast of the state with more than five miles of beaches on the Gulf of Mexico and that this city has an economic base which relies heavily on tourism;

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

**WHEREAS**, the City of Clearwater finds and determines that the regulation of signs within the city is a highly contributive means by which to achieve this desired end, and that the sign regulations in the attached Division 18 are prepared with the intent of enhancing the urban environment and promoting the continued well-being of the city;

### **Florida Constitution**

**WHEREAS**, the City of Clearwater finds and determines 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;

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

### **Aesthetics**

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

**WHEREAS**, the City of Clearwater finds and determines that as far back as 1954 the United States Supreme Court recognized 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” [Justice Douglas in *Berman v. Parker*, 348 U.S. 26, 33 (1954)];

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

**WHEREAS**, the City of Clearwater finds and determines that the enhancement of the visual environment is critical to a community's image and its continued presence as a tourist destination;

**WHEREAS**, the City of Clearwater finds and determines 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;

**WHEREAS**, the City of Clearwater finds and determines that the attractiveness of the City has been substantially enhanced as a result of more restrictive sign regulations (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 27, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that the enhancement of the visual environment is critical to a community's image and its continued presence as a tourist destination (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 26, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that the positive effect of sign regulations on the City's visual character has been demonstrated in photographic comparison of a City streetscape in 1988 and 2002, underscoring the importance of regulating both the size and number of signs to reduce visual clutter (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at pages 24 and 27, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that the beauty of Clearwater's natural and built environment has provided the foundation for the economic base of the City's development, and that the City's sign regulations not only help create an attractive residential community for its residents, but also bolster Clearwater's image as an international tourist destination (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 3, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that the goals, objectives and policies from planning documents developed over the years, including but not limited to the Clearwater Downtown Development Plan, the Guidelines for the Urban Center District, Beach by Design, and The Downtown Peripheral Plan, have all demonstrated a strong, long-term commitment to maintaining and improving the City's attractive and visual environment (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 13, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that, from a planning perspective, one of the most important community goals is to define and protect aesthetic resources and community character (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 14, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that, from a planning perspective, sign regulations are especially important to counties with a tourist-based economy, and that sign control can create a sense of character and ambiance that distinguishes one

community from another (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 14, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that preserving and reinforcing the uniqueness of a tourist community like Clearwater attracts tourists and, more importantly, establishes a permanent residential and commercial base to ensure the future viability of the community (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 15, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that the City of Clearwater has regulated signs based upon function and not content (*see Enhancing The Visual Environment Through Sign Regulations, Volume One, at page 15, Engelhardt, Hammer & Associates, Inc. (2002)*);

**WHEREAS**, the City of Clearwater finds and determines that the City has continued the attention to aesthetic considerations and many of the considerations mentioned above through the Clearwater Downtown Redevelopment Plan, requiring design guidelines for the entire downtown plan area;

### **Purposes**

**WHEREAS**, the City of Clearwater finds and determines that the purpose of the regulation of signs as set forth in the attached Division 18 is to promote the public health, safety and general welfare through a comprehensive system of reasonable, consistent and nondiscriminatory sign standards and requirements;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to enable the identification of places of residence and business;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to allow for the communication of information necessary for the conduct of commerce;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 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;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to enhance the attractiveness and economic well-being of the city as a place to live, vacation and conduct business;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to protect the public from the dangers of unsafe signs;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 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;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 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;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 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;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to establish sign size in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to preclude signs from conflicting with the principal permitted use of the site or adjoining sites;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to regulate signs in a manner so as to not interfere with, obstruct vision of or distract motorists, bicyclists or pedestrians;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to require signs to be constructed, installed and maintained in a safe and satisfactory manner;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 are intended to preserve and enhance the natural and scenic characteristics of this waterfront resort community;

**WHEREAS**, the City of Clearwater finds and determines that the sign regulations in Division 18 have been the subject of extensive study by urban planners, culminating in a study entitled *Enhancing the Visual Environment Through Sign Regulations*, (Two Volumes) prepared for the City of Clearwater, Florida by Engelhardt, Hammer & Associates, Inc., Urban Planners, dated April 10, 2002, which addressed planning for the community vision, the rationale for regulating signs, prohibited signs such as bench signs and changeable signs, the general effectiveness of the City's sign regulations in protecting the visual character of the City of Clearwater, and photographs documenting the enhancement and preservation of the City's character over a span of 14 years along Gulf-to-Bay Boulevard;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision found that most provisions of Article 3 of the Community Development Code, alleged to be content-based, were not content-based [see *Granite-Clearwater* at 1327];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the Granite-Clearwater decision noted that § 3-1802 of Clearwater's Code identified substantial and carefully enumerated government interests, and that the City's time, place and manner regulations (with appropriate parts severed) were reasonable and narrowly tailored to advance those interests [*see Granite-Clearwater* at 1340];

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

**WHEREAS**, the City of Clearwater finds and determines that in the 1980's model provisions for the regulation of signage by cities and counties in Florida were initially developed within 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.;

**WHEREAS**, the City of Clearwater finds and determines that the City of Clearwater has adopted a land development code, known as the Community 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, at Section 163.3202, Florida Statutes, including the regulation of signage and future land use;

**WHEREAS**, the City of Clearwater finds and determines that the Community Development Code is required to regulate signage;

**WHEREAS**, the City of Clearwater finds and determines that the Community Development Code and its signage regulations were and are intended to maintain and improve the quality of life for all citizens of the City;

#### **Exempt Signs - By Sign Type**

**WHEREAS**, the City of Clearwater finds and determines that land development regulations for signage are not intended to reach certain signs, including (1) a sign, other than a window sign, located entirely inside the premises of a building or enclosed space, (2) a sign on a car other than a prohibited vehicle sign or signs, (3) a statutory sign, (4) a traffic control device sign, and (5) any sign not visible from a public street, sidewalk or right-of-way or from a navigable waterway or body of water; except a sign for a commercial use that is visible from an abutting residential use;

**WHEREAS**, the City of Clearwater finds and determines that a new Section should be added to Division 18 so as to identify such exempt signs;

**WHEREAS**, the City of Clearwater finds and determines that the exemption for a sign (other than a window sign) located entirely inside the premises of a building is not based upon the content of the message of any such sign, and is based upon practical consideration of not

overreaching in the regulation of signage, absent a substantial reason to extend sign regulations to reach the visibility of signage located inside a building, other than a window sign that is oriented to be viewed by pedestrian or vehicular traffic outside the building;

**WHEREAS**, the City of Clearwater finds and determines that the exemption for a sign on a car, other than a prohibited vehicle sign or signs, is not based upon the content of the message of any such sign, and further finds and determines that the prohibition of vehicle sign or signs is based upon time, place and manner considerations;

**WHEREAS**, the City of Clearwater finds and determines that the exemption for a sign that is required by any lawful statute or regulation of the State of Florida or the United States (known as a statutory sign) is not a sign categorized by any impermissible content-based distinction;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code for local governments at Section 10.01.00.D recommended an exemption for legal notices and official instruments, which exemption would be consistent with an exemption for "statutory signs" as proposed hereby;

**WHEREAS**, the City of Clearwater finds and determines that a "traffic control device sign" is a sign located within the right-of-way that functions 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;

**WHEREAS**, the City of Clearwater finds and determines that traffic control device signs are those 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, or cultural information);

**WHEREAS**, the City of Clearwater finds and determines that a traffic control device sign should be exempt from the City of Clearwater's land use regulations as set forth in Division 18, and further finds that such exemption is not based upon an impermissible content-based distinction;

**WHEREAS**, the City of Clearwater finds and determines that any sign that is not visible from a public street, sidewalk or right-of-way, or from a navigable waterway or body of water, should be exempt from the City's sign regulations within Division 18, except for a sign for a commercial use that is visible from an abutting residential use;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code for local governments at Section 10.01.00.A recommended an exemption for signs that are not designed or located so as to be visible from any street or adjoining property;

### **Prohibited Signs**

#### **Prohibited Signs by Sign Type**

**WHEREAS**, the City of Clearwater finds and determines that in meeting the purposes and goals established in these preambles, it is appropriate to prohibit and/or to continue to prohibit certain sign types, with limited exceptions that are based upon function or use in contrast to the content of the message displayed;

### **Prohibited Signs - In General**

**WHEREAS**, the City of Clearwater finds and determines that consistent with the foregoing preamble, it is appropriate to prohibit and/or to continue to generally prohibit the following sign types, except as otherwise provided in the Community Development Code: balloons, cold air inflatables, streamers and pennants; bench signs; billboards; electronic changeable message signs; menu signs that change more rapidly than once every three hours; pavement markings; portable signs; roof or above-roof signs; sidewalk signs; signs attached to or painted on piers or seawalls; signs in or upon any body of water; signs located on publicly-owned land or easements or inside street rights-of-way; signs that emit sound, vapor, smoke, odor, particles, or gaseous matter; signs that have unshielded illuminating devices or which reflect lighting onto public rights-of-way thereby creating a potential traffic or pedestrian hazard; signs that move, revolve, twirl, rotate, flash, scintillate, blink, flutter, or appear to display motion in any way whatsoever, including animated signs, multi-prism signs, floodlights and beacon lights; signs that obstruct, conceal, hide, or otherwise obscure from view any traffic control device sign or official traffic signal; signs that present a potential traffic or pedestrian hazard, including signs which obstruct visibility; signs attached to or placed on any tree or other vegetation; signs carried, waved, or otherwise displayed on public rights-of-way or visible from public-rights-of way that are intended to draw attention for a commercial purpose; snipe signs; three-dimensional objects that are used as signs; vehicle signs and portable trailer signs; and any permanent sign that is not specifically described or enumerated as permitted within the specific zoning district classifications in the City's Community Development Code;

### **Balloons, Cold Air Inflatables, Streamers, Pennants - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that would prohibit balloons, streamers, pennants, and other wind-activated sign types, at Section 10.02.02.H., specifically prohibiting "Signs, commonly referred to as wind signs, consisting of one or more banners, flags, pennants, ribbons, spinners, streamers or captive balloons, or other objects or material fastened in such a manner as to move upon being subjected to pressure by wind," as a prohibition that would further governmental purposes of aesthetics and otherwise;

**WHEREAS**, the City of Clearwater finds and determines that cold air inflatable signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that the prohibition of the same was supported by the purposes set forth in the City of Clearwater's sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained a similar prohibition on cold air inflatables, banners and pennants (St.

Petersburg’s Code at § 16-671(5), prohibiting “pennants, streamers, cold air inflatables, and banners, except for special occasions for a limited time and frequency as permitted in sections 16-712(1)h. and 16-713”), and a similar prohibition on inflatable devices that are tethered and do not touch the ground (St. Petersburg’s Code at § 16-671(6)), were determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg’s Code that stated at § 16-667(b)(2) that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit balloons, cold air inflatables, streamers and pennants, with limited exceptions for their use on public property under the limited circumstances set forth in the current Code at Section 3-1805.V. [to be amended and renumbered to Section 3-1806.R.], because such wind-activated devices utilized as signs to draw attention from passing motorists are generally distracting in nature, serve to degrade community aesthetics, and are inconsistent with the general principles and purposes of Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision addressed current Section 3-1803.B.’s prohibition on “[b]alloons, cold air inflatable, streamers, and pennants, except where allowed as *governmental and public purpose* signs for special events of limited time and frequency, as approved by the city manager or the city commission,” and the court struck Section 3-1803.B. upon determining that the distinction between “governmental and public purpose signs” and “non-governmental and non-public purpose signs” for such special events lacked the necessary reasonable fit as it relates to furthering the governmental interests in aesthetics and traffic safety, especially insofar as the prohibition’s exception did not state that it was only limited to “public property” [see *Granite-Clearwater* at 1335];

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to address the concerns expressed by the district court in the *Granite-Clearwater* decision and to adopt a modified version of the former Section 3-1803.B. [to be renumbered as Section 3-1804.A.] and expressly limiting the exception to the limited circumstances when balloons, cold air inflatables, streamers and pennants are located on public property subject to criteria set forth in the Code, and to similarly modify the provisions of the current Section 3-1805.V. [to be renumbered Section 3-1806.R.] by clarifying that the exception for balloons, cold air inflatable, streamers, and pennants is limited to when their use is on “public property” [see *Granite-Clearwater* at 1335; see also *Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 467, 129 S.Ct. 1125, 1131 (2009) (the First Amendment’s Free Speech Clause does not extend to government speech)], and by setting forth in these preambles the rationale for the adoption of the prohibition and limited exceptions, as clarified;

**Bench Signs - Prohibited**  
**(Other than Identification of Transit Company or Route Schedule)**



**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit bench signs because the same visually degrade the community character and are inconsistent with the general principles and purposes of Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed prohibition on bench signs, at 10.02. T. ("Signs placed upon benches, bus shelters or waste receptacles, except as may be authorized in writing [pursuant to a state statute]");

**WHEREAS**, the City of Clearwater finds and determines that bench signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that this prohibition supports the purposes of the City of Clearwater's sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained a similar prohibition on bus shelter signs and bench signs (St. Petersburg's Code at § 16-671(2), prohibiting "bus shelter signs and bench signs except when approved by a local government, pursuant to F.S. § 337.407(2)(a)" but not prohibiting "the identification of the transit company or its route schedule") was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg's Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334], and this would be inclusive of the prohibition on bench signs, other than the signage necessarily associated with the identification of the transit company and the route schedule, which functions to identify the benches and the related transit routes;

### **Billboards - Prohibited**

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

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

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

**WHEREAS**, the City of Clearwater finds and determines 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;

**WHEREAS**, the City of Clearwater agrees with the courts that have recognized that outdoor advertising signs tend to interrupt what would otherwise be the natural landscape as seen from the highway, whether the view is untouched or ravished by man, and that it would be unreasonable and illogical to conclude that an area is too unattractive to justify aesthetic improvement [*see E. B. Elliott Adv. Co. v. Metropolitan Dade Town*, 425 F.2d 1141 (5<sup>th</sup> Cir. 1970), *cert. dismissed*, 400 U.S. 878 (1970); *John Donnelly & Sons, Inc. v. Outdoor Advertising Bd.*, 339 N.E.2d 709, 720 (Mass. 1975)];

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

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

**WHEREAS**, the City of Clearwater 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 *General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799 (1935)];

**WHEREAS**, the City of Clearwater 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 Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *National Advertising Co. v. City & Town of Denver*, 912 F.2d 505, 409 (10th Cir. 1990), and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 1231, 1239 (D. Kan. 1999)];

**WHEREAS**, the City of Clearwater recognizes that on-site business signs are considered to be part of the business itself, as distinguished from off-site outdoor advertising signs, and finds and determines 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 Town*, 425 F.2d 1141, 1153 (5<sup>th</sup> Cir. 1970), *cert. denied*, 400 U.S. 878, 91 S.C. 12, 27 L. Ed. 2d 35 (1970), quoting *United Advertising Corp. v. Borough of Raritan*, 93 A.2d 362, 365 (1952)];

**WHEREAS**, the City of Clearwater finds and determines that a prohibition on the erection of off-site outdoor advertising signs will reduce the number of driver distractions and

the number of aesthetic eyesores along the roadways and highways of the Town [*see, e.g., E. B. Elliott Adv. Co. v. Metropolitan Dade Town*, 425 F.2d 1141, 1154 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970)];

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

**WHEREAS**, the City of Clearwater finds and determines 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)];

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

**WHEREAS**, 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*];

**WHEREAS**, more than two hundred 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;

**WHEREAS**, the City of Clearwater finds and determines 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;

**WHEREAS**, the City of Clearwater finds and determines 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;

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

**WHEREAS**, the City of Clearwater hereby finds and determines 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)];

### **Discontinued Signs - Prohibited**

**WHEREAS**, the City of Clearwater 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 Division 18;

**WHEREAS**, the City of Clearwater finds and determines 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 period of twelve months, 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;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as abandoned signs), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

### **Electronic changeable Message Signs - Prohibited**

**[Except 3-1806(B)(5), Menu Signs and Legal Nonconforming Message Signs (general messages signs that change no more frequently than every six hours and existing time/temperature signs that do not change more than once per minute)]**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit electronic changeable message signs, with limited exceptions for menus display signs, legally nonconforming message signs consisting of (a) general message signs that change no more frequently than once every six hours, and (b) time/temperature signs that change no more frequently than once every minute, because such devices are distracting in nature and serve to degrade community aesthetics and are inconsistent with the general principles and purposes of Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility’s 1989 Model Code contained a proposed prohibition on signs with lights or illumination that flash, move, rotate, scintillate, blink, flicker or vary in intensity or color except for time-temperature-date signs, at 10.02.02.F. (“Signs with lights or illumination that flash, move, rotate, scintillate, blink, flicker, or vary in intensity or color except for time-temperature-date signs”);

**WHEREAS**, the City of Clearwater finds and determines that changeable message signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that such prohibition supports the purposes of the City of Clearwater’s sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed limited exception from the general prohibition on changing signs for time and temperature signs, but only as permanent accessory signs on commercial parcels and subject to other criteria, at 10.04.04 of the Model Code;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision addressed Section 3-1804.F., General Standards, wherein the City specifically regulated the placement, size and location of time and temperature signs [*see Granite-Clearwater* at 1336];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision rejected the contention that Section 3-1804.F. was an impermissible content-based exception rendering the ordinance unconstitutional, and the court observed that this sign category (time and temperature signs) and its regulations were also a good example of how the ordinance was content-neutral [*see Granite-Clearwater* at 1336];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision concluded that the category was content-neutral inasmuch as the provision was not an attempt to censor speech or enforce regulations based on viewpoint; and the court determined that inasmuch as a time and temperature sign has no viewpoint and merely relates factual information, the provision was not an attempt to censor speech or limit the free expression of ideas-especially in light of the City of Clearwater's specific prohibition in Section 3-1804.H. on placing any limitation on a sign based on the content of the message [*see Granite-Clearwater* at 1336];

**WHEREAS**, the City of Clearwater finds and determines that City of St. Petersburg's sign code contained provisions that allowed for "time and temperature signs" not to exceed 20 square feet within certain land uses [*see* St. Petersburg's Code at §§ 16-709(1)a.5., 16-709(1)b.3., 16-710(1)a.5., 16-710(1)b.3., 16-712(1)e., and 16-712(2)c.] and that these six provisions were among more than fifty different provisions that were challenged by Granite State in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*12, n.23 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004) [*see also Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, Case No. 8:01-cv02250-JSM (M.D.Fla.), Doc. 1, Exh. A and Doc. 54, p. 11, n. 6];

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that the foregoing provisions pertaining to "time and temperature signs" did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the ordinance was content-neutral based in large part upon the fact that the government's stated interest in regulating speech (*see* St. Petersburg's Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government's objective in regulating speech was the controlling

consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that changeable message signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that such prohibition supports the purposes of the City of Clearwater's sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that in the future there is no longer a need for time and temperature signs due to the expansion of electronic devices and instruments that display time and temperature, and that it would serve the stated interests of the Clearwater Development Code to prohibit proliferation of distracting and incongruous changing message signs by eliminating the exception for time and temperature signs, while grandfathering existing time and temperature signs for their continued operation;

**Menu Signs on which Message Changes More  
Often than Every 3 Hours - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit signs that change messages more frequently than every three hours because the same visually degrade the community aesthetics and character and are inconsistent with the general principles and purposes of Division 18, with an exception for signs that function as menu display signs so as to allow for changing messages for different menus during the course of the day;

**WHEREAS**, the City of Clearwater finds and determines that a changeable electronic message sign provides more visual stimuli than a traditional sign and that it has been judicially noticed that such changeable electronic message signs will logically will be more distracting and more hazardous (*see Naser Jewelers, Inc. v. City of Concord*, 513 F.3d 27 (1st Cir. 2008));

**WHEREAS**, the City of Clearwater finds and determines that it has been judicially noticed that the alternative of allowing electronic message centers but imposing certain conditions on them, such as limiting the number of times per day a message can change, would have steeper monitoring costs and other complications and that such considerations support a municipality's outright prohibition on electronic changing message signs (*see Naser Jewelers, Inc. v. City of Concord*, 513 F.3d 27 (1st Cir. 2008));

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as menu signs on which the message changes more rapidly than once every three hours), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

**Pavement Markings - Prohibited  
(Except for Street Addresses)**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit pavement markings, with an exception for street addresses, because the same visually degrade

the community character and are inconsistent with the general principles and purposes of Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed prohibition on signs painted on the pavement, except for house numbers and traffic control signs (*see* Model Code at 10.02.02.S, stating "Signs that are painted, pasted, or printed on any curbstone, flagstone, pavement, or any portion of any sidewalk or street, except house numbers and traffic control signs");

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit pavement markings that are not traffic control device signs (which are exempt from regulation under the City's land development regulations) and except for street addresses (which are not content-based and are necessary for commerce and function for health and safety concerns) because such markings are distracting in nature and serve to degrade community aesthetics and are inconsistent with the general principles and purposes of Division 18 of Article 3 of the Clearwater Code;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based, and that categories for prohibited signs, such as pavement markings with certain exceptions [former Section 3-1803.F.], were not content-based [*see Granite-Clearwater* at 1334, n.36 and 1345-1347];

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's similar prohibition on pavement markings (St. Petersburg's Code at § 16-671(4) prohibiting "pavement markings, except official traffic control markings or where otherwise authorized") was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*12, n. 23 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004);

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that the foregoing provision prohibiting "pavement markings," with limited exceptions, did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review in *Granite State v. St. Petersburg*, confirmed that the ordinance was content-neutral based in large part upon the fact that the government's stated interest in regulating speech (*see* St. Petersburg's Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government's objective in regulating speech was the controlling consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Portable Signs - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to continue to prohibit portable signs as unnecessary visual clutter and that such sign type is inconsistent with the goals and purposes of the City's land development regulations expressed in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the sign type known as a portable sign may be legally prohibited (*see Harnish v. Manatee County*, 783 F.2d 1535, 1540 (11th Cir. 1986); *Lindsay v. San Antonio*, 821 F.2d 1103, 1111 (5th Cir. 1987));

**WHEREAS**, the City of Clearwater finds and determines that the prohibition of portable signs reasonably advances the governmental goal of protecting the aesthetic environment of the City [*see Harnish v. Manatee Town*, 783 F.2d 1535 (11th Cir. 1986) and *Don's Porta Signs, Inc. v. City of Clearwater*, 298 F.2d 1051 (11th Cir. 1987), *cert. denied* 485 U.S. 98 (1988)];

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that prohibited portable signs [*see prohibition in Model Code, § 10.02.02.Y., and see definition of "portable signs" at Model Code, § 10.00.04 ("Any sign which is manifestly designed to be transported by trailer or on its own wheels, including such signs even though the wheels may be removed and the remaining chassis or support structure converted to an A or T frame sign and attached temporarily to the ground")*], and that cited the Eleventh Circuit's opinion in *Harnish v. Manatee County*, 783 F.2d 1535 (11th Cir. 1986), as support for such a prohibition;

**WHEREAS**, the City of Clearwater finds and determines that portable signs were also among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that the prohibition of this sign type was found by that study to support the stated purposes of the City of Clearwater's sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained a similar prohibition on portable signs (St. Petersburg's Code at § 16-671(6), prohibiting "portable signs, including ...") was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004);

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that prohibitions, similar to the one on "portable signs," did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23), and noted that a municipality may choose to prohibit all portable signs in furtherance of its aesthetic concerns (*id.* at \*10, citing *Messer v. City of Douglasville, Ga.*, 975 F.2d 1505, 1510 (1992));

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review in *Granite State v. St. Petersburg*, confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity,



preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as portable signs), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

### **Roof and Above Roof Signs - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to prohibit roof and above roof signs because such signs are distracting in nature, serve to degrade community character, and aesthetics and are inconsistent with the general principles and purposes of Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that would prohibit roof signs at Section 10.04.00, which allowed for permanent accessory signs but did not allow a permanent accessory sign to be a roof sign (which is defined at Section 10.00.04 as "A sign placed above the roof line of a building or on or against a roof slope of less than forty-five (45) degrees");

**WHEREAS**, the City of Clearwater finds and determines that roof and above roof signs were identified among the examples of prohibited sign types in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that the prohibition of such sign types supported the purposes of the City of Clearwater's sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained a similar prohibition on roof signs (St. Petersburg's Code at § 16-671(7), prohibiting "roof signs, except integral roof signs in nonresidential districts") was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004);

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that a prohibition on signs, similar to the one on roof signs, did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different

types of signs (such as roof signs), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

**Sidewalk Signs - Prohibited**  
**(Except as otherwise provided)**

**WHEREAS**, the City of Clearwater finds and determines that sidewalk signs, sometimes known as sandwich board signs (except as then allowed in the Downtown District), were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to generally prohibit sidewalk signs because such signs add to sign clutter and are inconsistent with the general principles and purposes of Division 18, except in limited instances, such as where sidewalk signs in commercial districts may serve a temporary function of providing information when the construction of public improvements is ongoing, or in other limited circumstances where such signs provide important information to the public, and that this prohibition is consistent with the prohibition upheld by the district court in the *Granite-Clearwater* decision;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision reviewed former Section 3-1803.L., which at that time prohibited sandwich board signs except to the extent permitted in the Downtown District, and upheld that restriction after striking unrelated provisions from former Section 3-1803.L. [*see Granite-Clearwater* at 1339];

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on sandwich board signs (St. Petersburg’s Code at § 16-671(8), prohibiting “sandwich board signs”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**Signs Attached to or Painted on Piers. Seawalls - Prohibited**  
**(Other than Official Regulatory or Warning Signs)**

**WHEREAS**, the City of Clearwater finds and determines that signs attached to or painted on piers and seawalls, other than official regulatory or warning signs, detract from the aesthetic environment and that such signs conflict with the purposes of Division 18, such as enhancing the attractiveness and economic well-being of the city as a place to live, vacation and conduct business, and preserving and enhancing the natural and scenic characteristics of the City of Clearwater as a waterfront community;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on signs attached to or painted on piers or seawalls (St. Petersburg’s Code at § 16-671(9), prohibiting “signs attached to or painted on piers or seawalls, unless otherwise authorized, such as official regulatory or warning signs approved by the City Manager”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs painted on piers and seawalls were among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that such prohibition supported the purposes of the City of Clearwater’s sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as signs attached to or painted on piers and seawalls, other than official regulatory or warning signs), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

**Signs in or upon Any River, Bay Lake,  
or Other Body of Water - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that signs in or upon any river, bay, lake, or other body of water, detract from the aesthetic environment and that such signs conflict with the purposes of Division 18, such as enhancing the attractiveness and economic well-being of the city as a place to live, vacation and conduct business, and preserving and enhancing the natural and scenic characteristics of the City of Clearwater as a waterfront community;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on signs in or upon any river, bay, lake, or other body of water (St. Petersburg’s Code at § 16-671(10), prohibiting “signs in or upon any river, bay, lake, or other body of water, unless otherwise authorized by the City Manager, such as official regulatory or warning signs”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs on or upon a river, bay, lake or water were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as signs in or upon any river, bay, lake, or other body of water), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

**Signs on Publicly-Owned Land or Easements or Street Rights-of-Way, (except (a) as allowed in Section 3-1806.S., (b) signs on transit shelters erected pursuant to Section 3-2203 and permitted pursuant to Section 3-1807.B.5., (c) sidewalk signs to the extent permitted in Section 3-1806.U. or Section 1807.B.4., (d) as allowed in Section 3-1807.A., and (e) as allowed in Section 3-1806.V. and 3-1806.W.)**

**WHEREAS**, the City of Clearwater finds and determines that signs on publicly-owned land or easements or street rights-of-way [except (a) as allowed in the renumbered Section 3-1806.S, (b) signs on transit shelters erected pursuant to Section 3-2203 and permitted pursuant to the renumbered Section 3-1807.B.5, (c) sidewalk signs to the extent permitted in Section 3-1806.U., or the renumbered Section 1807.B.4., (d) as allowed in the renumbered Section 3-1807.A., and (e) as allowed in the renumbered Section 3-1806.V. and renumbered Section 3-1806.W.] detract from the aesthetic environment and that such signs conflict with the purposes of Division 18, such as enhancing the attractiveness and economic well-being of the city as a place to live, vacation and conduct business;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility’s 1989 Model Code for local governments at Section 10.01.00.A., recommended an exemption for signs necessary to promote health, safety and welfare, and other regulatory, statutory, traffic control or directional signs erected on public property with permission as appropriate from the State of Florida, the United States, of city or county governments, and that exemptions for statutory signs and traffic control device signs from regulation under Division 18 are incorporated into the new Section 3-1803.C. and Section 3-1803.D., and are not within the scope of the prohibited signs listed in the new Section 3-1804.M.;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision reviewed and upheld former Section 3-1803.L, after striking thirteen words as set forth below, which at that time prohibited certain signs, including “[s]igns located on publicly owned land or easements or inside street rights-of-way, except signs required or erected by permission of the city manager or city commission, signs or transit shelters erected pursuant to section 3-2203, and sandwich board signs to the extent permitted in the downtown district,” and which further provided that “[p]rohibited signs shall include but shall not be limited to handbills, posters, advertisements, or notices that are attached in any way upon lampposts, telephone poles, utility poles, bridges, and sidewalks” [*see Granite-Clearwater* at 1339] [*see also Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 467, 129 S.Ct. 1125, 1131 (2009)];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision struck the following language that then appeared in Section 3-1803.L, “signs required or erected by permission of the city manager or city commission,” due to a determination that the same allowed officials to exercise undue discretion, and upheld the remaining provisions of Section 3-1803.L. [*see Granite-Clearwater* at 1339];

**WHEREAS**, the City of Clearwater finds and determines that subsequent amendments were made to the Clearwater Development Code to limit any undue discretion of the city manager and city commission and to provide criteria to address the concerns raised by the district court in the *Granite-Clearwater* decision;

**WHEREAS**, the City of Clearwater finds and determines that signs on easements or right-of-way were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on signs that are erected upon or project over public rights-of-way (St. Petersburg’s Code at § 16-671(11), prohibiting “signs that are erected upon or project over public rights-of-way or present a potential traffic or pedestrian hazard” and which “includes signs which obstruct visibility”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon (1) the government’s interest in regulating speech and (2) the statement in the St. Petersburg Code at § 16-667(b)(2) that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**Signs that Emit Sound, Vapor, Smoke, Odor,  
Particles, or Gaseous Matter - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that signs that emit sound, vapor, smoke, odor, particles, or gaseous matter conflict with the purposes of Division 18, such as enhancing the attractiveness and economic well-being of the city as a place to live, vacation and conduct business;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility’s 1989 Model Code contained a proposed land development regulation that would prohibit signs that emit sound, odor, or visible matter such as vapor, smoke, particles, or gaseous matter, at Model Code 10.02.02.J., prohibiting “Signs that emit audible sound, odor, or visible matter such as smoke or steam,” as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility’s 1989 Model Code contained a proposed land development

regulation that would prohibit signs that incorporate emit any sound that is intended to attract attention, at Model Code 10.02.I., prohibiting “Signs that incorporate projected, emit any sound that is intended to attract attention, or involve the use of animals,” as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on signs that emit sound, vapor, smoke, odor, particles, or gaseous matter (St. Petersburg’s Code at § 16-671(12), prohibiting “signs that emit sound, vapor, smoke, odor, particles, or gaseous matter”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs emitting sound, vapor, smoke, and/or odor were identified among the examples of prohibited sign types in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that the prohibition of such sign types supported the purposes of the City of Clearwater’s sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (which included signs that emit sound, vapor, smoke, odor, particles, or gaseous matter), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

### **Signs That Have Unshielded Illuminating Devices - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, signs that have unshielded illuminating devices or which reflect lighting onto public rights-of-way thereby creating a potential traffic or pedestrian hazard should continue to be prohibited in Section 3-1804.O.;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility’s 1989 Model Code contained a proposed land development regulation that would prohibit “[s]igns that are of such intensity or brilliance as to cause glare or impair the vision of any motorist, cyclist, or pedestrian using or entering a public way, or that of a hazard or a nuisance to occupants of any property because of glare or other characteristics” at Model Code 10.02.02.P., as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on signs that have unshielded, illuminating devices (St. Petersburg’s Code at § 16-671(13), prohibiting “signs that have unshielded, illuminating devices”) was determined to be content-neutral and not content-based in *Granite State Outdoor*

*Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs with unshielded illuminated devices were identified among the examples of prohibited sign types in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), and that the prohibition of such sign types supported the purposes of the City of Clearwater's sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that signs Section 479.11(5), Florida Statutes, prohibits the erection, use, operation, or maintenance of certain specified signs, including any sign which displays intermittent lights not embodied in the sign, or any rotating or flashing light within 100 feet of the outside boundary of the right-of-way of any highway on the State Highway System, interstate highway system, or federal-aid primary highway system or which is illuminated in such a manner so as to cause glare or to impair the vision of motorists or otherwise distract motorists so as to interfere with the motorists' ability to safely operate their vehicles;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as signs that have unshielded illuminating devices or which reflect lighting onto public rights-of-way thereby creating a potential traffic or pedestrian hazard), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

**Signs that Move, Revolve, Twirl, Rotate, Flash, Scintillate, Blink, Flutter or Appear to Display Motion, including Animated Signs, Multi-Prism Signs, Tri-Vision Signs, Floodlights and Beacons Lights (Except When Required by the FAA or Other Governmental Agency) Unless Otherwise Expressly Allowed - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that a prohibition on signs that move, revolve, twirl, rotate, flash, scintillate, blink, flutter or appear to display motion, including animated signs, multi-prism signs, floodlights and beacon lights (except when required by the Federal Aviation Agency or other governmental agency), unless otherwise expressly allowed, is consistent with the purposes of Division 18, including the lessening of hazardous situations, protecting the public from the dangers of unsafe signs, regulation of signs in a manner so as to not interfere with, obstruct vision of, or distract motorists, bicyclists or pedestrians;

**WHEREAS**, the City of Clearwater finds and determines that a prohibition on the aforesaid signs is consistent with the purpose of the land development regulations to enhance the attractiveness of the community and to preserve and enhance the natural and scenic characteristics of a waterfront and resort community;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that would prohibit "[s]igns with visible moving, revolving, or rotating parts or visible mechanical movement of any description or other apparent visible movement achieved by electrical, electronic, or mechanical means, except for traditional barber poles," at Model Code 10.02.02.D., as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that would prohibit "[s]igns with the optical illusion of movement by means of a design that presents a pattern capable of giving the illusion of motion or changing of copy," at Model Code 10.02.02.E., as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that would prohibit "[s]igns with lights or illumination that flash, move, rotate, scintillate, blink, flicker, or vary in intensity or color except for time-temperature-date signs," at Model Code 10.02.02.F., as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code contained a proposed land development regulation that would prohibit "[s]earchlights used to advertise or promote a business or to attract customers to a property" at Model Code 10.02.02.R., as a prohibition that would further governmental purposes of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained a similar prohibition on signs that move, revolve, twirl, rotate, flash, including animated signs, multi-prism signs, and beacon lights (St. Petersburg's Code at § 16-671(14), prohibiting "signs that move, revolve, twirl, rotate, flash, including animated signs, multi-prism signs, and beacon lights except when required by the Federal Aviation Administration or other governmental agency") was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs that move, revolve, rotate, and/or flash were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater's sign regulations in Division 18;



**WHEREAS**, the City of Clearwater finds and determines that a prohibition on signs utilizing beacon lights should not apply, and that beacon lights utilized as a sign should be exempted from prohibition if and when the same is required by the Federal Aviation Agency or other governmental agency for a public purpose;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as signs that move, revolve, swirl, rotate, flash, including animated signs, multi-prism signs, tri-visions signs), and that Article 3 in general was not content-based [see *Granite-Clearwater* at 1334];

**Signs that Obscure a Traffic Control Device Sign  
or Official Traffic Signal - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, signs that obstruct, conceal, hide, or otherwise obscure from view any traffic control device sign or official traffic signal should be prohibited;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on signs that obstruct, conceal, hide, or otherwise obscure from view any official traffic sign (St. Petersburg’s Code at § 16-671(15), prohibiting “signs that obstruct, conceal, hide, or otherwise obscure from view any official traffic or government sign, signal, or device”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs obstructing traffic or other governmental signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as signs that obstruct, conceal, hide or otherwise obscure from view any official traffic or government sign, signal or device), and that Article 3 in general was not content-based [see *Granite-Clearwater* at 1334];

**Signs That Present Potential Hazards - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that a prohibition on signs that present a potential traffic or pedestrian hazard, including signs which obstruct visibility, are

consistent with the purposes of Division 18, including the lessening of hazardous situations, protecting the public from the dangers of unsafe signs, regulation of signs in a manner so as to not interfere with, obstruct vision of, or distract motorists, bicyclists or pedestrians;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code for local governments, at Model Code 10.02.02.M., prohibited "Signs that obstruct the vision of pedestrians, cyclists, or motorists traveling on or entering public streets," and at Model Code 10.02.02.P., prohibited "Signs that are of such intensity or brilliance as to cause glare or impair the vision of any motorist, cyclist, or pedestrian using or entering a public way, or that of a hazard or a nuisance to occupants of any property because of glare or other characteristics";

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained similar prohibitions on signs that present a potential traffic or pedestrian hazard, which included signs which obstruct visibility (St. Petersburg's Code at § 16-671(11), prohibiting "signs that . . . present a potential traffic or pedestrian hazard. This includes signs which obstruct visibility") was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that signs that present potential traffic or pedestrian hazards were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater's sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as signs that present a potential traffic or pedestrian hazard, including signs which obstruct visibility), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

#### **Signs Attached to Tree or Vegetation - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that signs attached to or placed on any tree or other vegetation add to visual pollution and clutter, and should be prohibited to further the purposes of the City's land development regulations and Division 18 of Article 3 of the City's Code;

**WHEREAS**, the City of Clearwater finds and determines that signs attached to a tree or vegetation were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3,

Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that Chapter 479, Florida Statutes, at Section 479.11(9) (2010), prohibits any sign erected, used, operated, or maintained that is nailed, fastened, or affixed to any tree and which is adjacent to the right-of-way of any portion of the interstate highway system or the federal-aid primary highway system;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based, and that categories for prohibited signs, such as signs attached to vegetation [former Section 3-1803.R, now renumbered to Section 3-1804.S] were not content-based [see *Granite-Clearwater* at 1334, n.36 and 1345-1347];

### **Human Signs - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that signs intended to draw attention for a *commercial* purpose and 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 (which does not include or limit the display of placards, banners, flags or other signage by persons participating in demonstrations, political rallies and similar events) conflict with the purposes of Division 18, such as enhancing the attractiveness of the city as a place to live, vacation and conduct business, and regulating signs in a manner so that they do not interfere with, obstruct the vision of, or distract motorists, bicyclists or pedestrians;

**WHEREAS**, the City of Clearwater finds and determines that the renumbered Section 3-1803.T expressly prohibits signs that are intended to draw attention for a commercial purpose and 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, and that the foregoing provision is not intended to limit the display of placards, banners, flags or other signage by persons participating in demonstrations, political rallies and similar events;

**WHEREAS**, the City of Clearwater finds and determines that in meeting the purposes and goals established in these preambles, it is appropriate to prohibit and/or to continue to prohibit the display of what has become known as “human signs”;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision addressed the restriction in former Section 3-1803.S [renumbered as Section 3-1803.T] which prohibited signs that are “carried, waved or otherwise displayed” in public rights-of-way or “in a manner visible from public rights-of-way” and “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 demonstrating in demonstrations, political rallies or similar events” [see *Granite-Clearwater* at 1340-1341];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision found that the restriction in former Section 3-1803.S [renumbered as Section 3-1803.T] was content or viewpoint-neutral and justified by Clearwater’s stated interests in safety and aesthetics, and that the additional guidance provided in the provision

assures that government officials are not given unbridled discretion [see *Granite-Clearwater* at 1340-1341];

### **Snipe Signs - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that off-premises signs that are tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, or fences, and which are not otherwise expressly allowed as a permitted sign, also known as “snipe signs,” add to visual pollution and clutter, and should be prohibited to further the purposes of the City’s land development regulations and Division 18 of Article 3 of the City’s Code;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision upheld the prohibitions on snipe signs after severing the words “other objects” in the definition of Section 8-101 in order to remove a conflict between Section 3-1806.B.3 (allowing attached signs) and Section 3-1803.T (prohibiting snipe signs that would include attached signs to objects other than those listed) [see *Granite-Clearwater* at 1335];

**WHEREAS**, the City of Clearwater finds and determines that snipe signs were among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that supported the purposes set forth in Division 18 of Article 3 of the City’s Code;

**WHEREAS**, the City of Clearwater finds and determines that Chapter 479, Florida Statutes, at Section 479.11(9) (2010), prohibits any sign erected, used, operated, or maintained that is nailed, fastened, or affixed to any tree and which is adjacent to the right-of-way of any portion of the interstate highway system or the federal-aid primary highway system, in the interests of aesthetics and traffic safety;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on snipe signs (St. Petersburg’s Code at § 16-671(16), prohibiting “snipe signs”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004);

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that the foregoing provision prohibiting “snipe signs” did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon, where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg’s Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Three Dimensional Objects Used As Signs - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that three dimensional objects used as signs conflict with the purposes of Division 18, such as enhancing the attractiveness of the city as a place to live, vacation and conduct business,

**WHEREAS**, the City of Clearwater finds and determines that three-dimensional objects used as signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg’s sign code that contained a similar prohibition on three-dimensional objects that are used as signs (St. Petersburg’s Code at § 16-671(18), prohibiting “three-dimensional objects that are used as signs”) was determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff’d in part and rev’d in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government’s interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (which included three-dimensional objects that are used as signs), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

### **Vehicle And Portable Trailer Signs - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that vehicle signs and portable trailer signs detract from the aesthetic environment and that such signs conflict with the purposes of Division 18, such as enhancing the attractiveness and economic well-being of the city as a place to live, vacation and conduct business, and preserving and enhancing the natural and scenic characteristics of the City of Clearwater as a waterfront community;

**WHEREAS**, the City of Clearwater finds and determines that vehicle signs and portable trailer signs were identified among the examples of prohibited sign types identified in the study, *Enhancing the Visual Environment Through Sign Regulations*, Volume One, at Section 3, Engelhardt, Hammer & Associates, Inc. (2002), that were supported by the purposes set forth in the City of Clearwater’s sign regulations in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility’s 1989 Model Code for local governments, at Model Code 10.02.02.W., prohibited vehicle signs with a total sign area on any vehicle in excess of ten (10) square feet, when the vehicle: (1) is parked for more than sixty consecutive minutes within one hundred (100) feet of any street right of way, (2) is visible from the street right of way that the vehicle is within one hundred (100) feet of, and (3) is not regularly used in the conduct of the

business advertised on the vehicle; and further providing that a vehicle used primarily for advertising, or for the purpose of providing transportation for owners or employees of the occupancy advertised by the vehicle, shall not be considered a vehicle used in the conduct of business;

**WHEREAS**, the City of Clearwater finds and determines that nearly identical prohibitions on vehicle signs have upheld against a constitutional challenges (*see Perkins v. Town of Orange Park*, 2006 WL 5988235 (Fla. Cir. Ct.);

**WHEREAS**, the City of Clearwater finds and determines that the Center for Governmental Responsibility's 1989 Model Code for local governments at Model Code 10.02.02.Y, prohibited "portable signs as defined by this Code," and therein at 10.00.04 defined "portable sign" as "any sign which is manifestly designed to be transported by trailer or on its own wheels, including such signs even though the wheels may be removed and the remaining chassis or support structure converted to an A or T frame sign and attached temporarily to the ground" and that a similar prohibition was upheld in *Harnish v. Manatee County*, 783 F.2d 1535, 1540 (11th Cir. 1986);

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained similar prohibitions on portable signs and vehicle signs (St. Petersburg's Code at § 16-671(6) and (19)), were determined to be content-neutral and not content-based in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (such as portable signs and vehicle signs), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

### **Signs Not Specifically Permitted - Prohibited**

**WHEREAS**, the City of Clearwater finds and determines that any permanent sign that is not specifically described or enumerated as permitted within the specific district classifications in the Community Development Code should continue to be prohibited in the renumbered Section 3-1804.X, with clarification that the foregoing prohibition pertains to *permanent* sign types;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code that contained a similar prohibition on signs not specifically described or enumerated as permitted within the specific land use classifications in the article 16 of the St. Petersburg Code (St. Petersburg's Code at § 16-671(20), prohibiting "any sign that is not specifically described or enumerated as permitted within the specific land use classifications in this article") was determined to be content-neutral and not content-based in *Granite State Outdoor*

*Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004), where a *de novo* appellate review confirmed that the ordinance was content-neutral based in large part upon the government's interest in regulating speech and the St. Petersburg Code at § 16-667(b)(2) that stated that its enactment was to promote uniformity, preserve aesthetics and foster safety and that relied upon the precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that former Section 3-1803 prohibited twenty-five different types of signs (which included any sign that is not specifically described or enumerated as permitted within the specific district classifications in the Development Code), and that Article 3 in general was not content-based [*see Granite-Clearwater* at 1334];

### **General Standards**

**WHEREAS**, the City of Clearwater finds and determines that in carrying out and implementing the purposes of the land development regulations governing signage it is appropriate to establish general standards including the following: the establishment of a minimum setback for signs of five feet from the property line; the allowance of neon signs and lighting and providing the circumstances whereby neon lighting is counted toward the allowable area of permissible signage; the establishment of certain conditions whereby illuminated signs may be operated; the allowance of banners and flags and providing the circumstances whereby the same are counted toward the allowable area of permissible signage; the allowance of signs that function to display changing gasoline prices (gasoline price display signs) except where specifically prohibited, and also providing certain height limitations and the circumstances whereby the same are counted toward the allowable area of permissible freestanding signage; the allowance of signage on awnings subject to certain limitations such as size; a provision that makes it clear that other codes may be applicable, namely building and electrical codes; a provision that specifies that signs shall not have limitations based upon the content of the message contained on the signs; and a provision codifying that noncommercial speech may be substituted for commercial speech;

### **Setbacks**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of both aesthetics and traffic safety, no sign shall be located within five feet of a property line of a parcel proposed for development;

### **Neon Signs And Lighting**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of aesthetics and traffic safety it is appropriate to address circumstances when neon lighting should not be regarded as signage for purpose of land development regulations that regulate signage, and to provide for circumstances when neon lighting used as freestanding designs or murals or as attached murals or designs unrelated to the architectural features of the building should be

counted toward the allowable area of the property's or occupancy's freestanding or attached signage, as applicable;

### **Illuminated Signs**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of aesthetics and traffic safety it is appropriate to provide that the light from any illuminated sign shall be shaded, shielded, or directed away from adjoining street rights-of-way and properties; that no sign shall have blinking, flashing, or fluttering lights or other illumination devices which have a changing light intensity, brightness, color, or direction or as otherwise prohibited in the new Section 3-1804; that no colored lights shall be used at any location or in any manner so as to be confused with or construed as traffic-control devices; that neither the direct nor the reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares; and that the light which illuminates a sign shall be shaded, shielded, or directed so that no structure, including sign supports or awnings, are illuminated by such lighting;

### **Banners And Flags**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of aesthetics and traffic safety it is appropriate to provide that a banner or flag may be used as a permitted freestanding or attached sign and, if so used, the area of the banner or flag shall be included in, and limited by, the computation of allowable area for freestanding or attached signs on the property, unless otherwise provided in Division 18, such as in the new Section 3-18056.G;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based, and that there were legally required or justifiable exceptions such as construction signs [former Section 3-1805.F.] and for sale signs [former Section 3-1805.O.], and that the exceptions for flags [former Section 3-1805.G.], was also not content-based [see *Granite-Clearwater* at 1334, n.36 and 1345-1347];

### **Gasoline Price Signs**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, gasoline price display signs shall be allowed in all non-residential districts except where specifically prohibited; gasoline price display signs shall be placed in the vicinity of the pump islands and shall not extend above any pump island canopy or they shall be attached to the primary freestanding sign for the property; if attached to the freestanding sign, the area of the gasoline price display sign shall be counted toward the allowable area for the freestanding sign; and a gasoline price display sign may be changed manually or electronically in recognition of intermittent changes in fuel prices which may occur more often than once per day;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), addressed Article 3, Division 18's General Standards, wherein the City specifically regulated the placement, size and location of gasoline price signs [see *Granite-Clearwater* at 1336], rejected



the contention that former Section 3-1804.E [now renumbered to Section 3-1805.E] was an impermissible content-based exception rendering the ordinance unconstitutional, and observed that this sign category (gasoline price signs) and its regulations were a good example of how the ordinance was content-neutral [see *Granite-Clearwater* at 1336];

**WHEREAS**, the City of Clearwater finds and determines that the federal district court in the *Granite-Clearwater* decision concluded that the category for “gasoline price signs” was content-neutral inasmuch as the provision was not an attempt to censor speech or enforce regulations based on viewpoint inasmuch as a gasoline price sign has no viewpoint and merely relates factual information; hence, the provision is not an attempt to censor speech or limit the free expression of ideas-especially in light of the City of Clearwater’s specific prohibition in then Section 3-1804.H on placing any limitation on a sign based on the content of the message [see *Granite-Clearwater* at 1336];

#### **Awnings**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of both aesthetics and traffic safety it is appropriate to regulate signage, inclusive of graphic elements, that appear on awnings;

#### **Building and Electrical Code Compliance**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to specify that in addition to land development regulations identified in Division 18, signs shall comply with all applicable building and electrical code requirements;

#### **Message Content**

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision cited former Section 3-1804.H. (providing “no sign shall be subject to any limitation based on the content of the message”) in determining that the challenger could not make a facial challenge to Article 4 of the Code; and the district court stated that the City’s ordinance was content-neutral under *Thomas v. Chicago Park*, 534 U.S. 316 (2002) [see *Granite-Clearwater* at 1325, n.20];

**WHEREAS**, the City of Clearwater finds and determines that, consistent with prior code provisions contained within former Section 3-1804.H. [renumbered to Section 3-1805.H.], notwithstanding any other provision of the Community Development Code, no sign shall be subject to any limitation based on the content of the message contained on such sign;

#### **Substitution of Noncommercial Speech for Noncommercial Speech**

**WHEREAS**, the City of Clearwater finds and determines that the City has allowed noncommercial speech to appear wherever commercial speech appears; and the City 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;

**WHEREAS**, the City of Clearwater finds and determines that by confirming in its ordinance that noncommercial messages are allowed wherever commercial messages are permitted, the City 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)];

### **Signs Permitted Without a Permit**

**WHEREAS**, the City of Clearwater finds and determines that there are many signs and sign types that may be allowable and permitted without development review pursuant to Article 4 of the Community Development Code;

### **Address Signs**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, there should be allowed without permitting one address sign of no more than two square feet of total sign face area for each parcel of land used for residential purposes and no more than one square foot for each number contained in the property address for each parcel of land used for non-residential purposes, with the square footage for the address sign being allowed in addition to the total square signage footage allowed in the renumbered and modified Section 3-1807;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code contained a provision that exempted "address numbers" from permitting and other regulatory requirements (*see* St. Petersburg's Code at § 16-670(a)(1)) and that this provision was among more than 50 different provisions that were challenged by Granite State in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*12, n.23 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004);

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that the foregoing provision exempting "street addresses" did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the ordinance was content-neutral based in large part upon the fact that the government's stated interest in regulating speech (*see* St. Petersburg's Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government's objective in regulating speech was the controlling consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Temporary Free Expression Signs**

**WHEREAS**, the City of Clearwater finds and determines that under current jurisprudence [*see, e.g., Linmark Associates v. Town of Willingboro*, 431 U.S. 85 (1977)], on-site real estate signs, such as "for sale" signs, should be allowed given the important role and unique function that real estate signs, such as "for sale" signs, perform on the premises where they are

located; and also that under current jurisprudence [*see, e.g., Ladue v. Gilleo*, 512 U.S. 43 (1994)], signs that allow property owners, especially residential homeowners, to freely express a particular point of view on their own property should be reasonably accommodated and may be uniquely valuable, which may be accommodated by the allowance of a free expression sign;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), addressed the constitutionality of provisions governing non-election yard signs in residential areas, which provisions contained both a six-foot size limitation and a durational limitation of ninety days during a one year period [*see Granite-Clearwater* at 1336-1338];

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite-Clearwater* agreed with the reasoning of *Brayton v. City of New Brighton*, 519 N.W.2d 243 (Minn.1994) (upholding an ordinance that allowed one non-commercial sign all year long and additional non-commercial signs during the election season), and found that the provisions were constitutional if the ninety-day durational limitation was struck and severed, thereby allowing one temporary yard sign (in residential areas) all year long [*see Granite-Clearwater* at 1336-1338], which may function as a free expression sign;

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to expressly provide for the display of one temporary free-expression sign on each parcel within the City without any durational limitation, and that the allowance of a free expression sign on each parcel be in addition to the right to display temporary election signs prior to an election to maximize the opportunity for political speech, subject to reasonable time, place and manner provisions that address height, size, number, location, setback, and other factors that control the spread of visual blight and sign clutter, and that such right to display a temporary free expression sign be in addition to the right to utilize a message substitution clause to display a noncommercial message in lieu of a commercial message on a lawful sign;

### **Temporary Election Signs**

**WHEREAS**, the City of Clearwater finds and determines that under current jurisprudence, election signs are generally accorded a higher level of protection under the First Amendment than any other classification or type of speech;

**WHEREAS**, the City of Clearwater finds and determines that durational limitations on election signs, sometimes referred to as political signs, are frequently problematic when the limitations affect the posting of election signs *prior* to the election concerning the candidate or ballot issue to which they pertain, but durational limits requiring the removal of election signs following such election are generally permissible [*see, e.g., Election Signs and Time Limits, Evolving Voices in Land Use Law*, 3 Wash. U.J.L. & Pol'y 379 (2000)];

**WHEREAS**, the City of Clearwater finds and determines that free expression signs are sufficient to allow for political speech *unrelated* to particular candidates or ballot issues;

**WHEREAS**, the City of Clearwater finds and determines that, as set forth above, it intends to expressly provide that property owners may display at least one temporary sign for free expression at all times (free expression signs), and that *in addition thereto* it intends to expressly provide that property owners may maintain additional temporary signs displaying their support or opposition to political candidates and ballot issues before the election to which they pertain (election signs);

**WHEREAS**, the City of Clearwater finds and determines that the provisions for temporary real estate signs, free expression signs, election signs, and certain other sign types are not intended to diminish or lessen the City's interests in aesthetics or traffic safety, but the same are adopted in recognition of the useful functions and practical needs served by such signage in the City's commerce and/or in the political freedom that must be accorded its citizens to freely express their points of view and political desires;

**WHEREAS**, the City of Clearwater recognizes that under current jurisprudence its sign regulations may be under-inclusive in their reach to serve the City's interests in aesthetics and traffic safety, while at the same time balancing the interests protected by the First Amendment [*see, e.g., Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789 (1984); Cordes, Sign Regulation After Ladue: Examining the Evolving Limits of First Amendment Protection, 74 Neb.L.Rev. 36 (1995); *Longview Outdoor Advertising Co., L.L.C. v. City of Winter Garden, Florida*, 426 F.Supp.2d 1269, 1272 (M.D.Fla. 2006)]; and the City of Clearwater finds and determines that the City may from time to time modify the sign regulations herein so as to provide additional limitations to further serve the City's interests in aesthetics and/or traffic safety;

### **Holiday Decorations**

**WHEREAS**, the City of Clearwater finds and determines that "holiday decorations," as defined in the accompanying amendments, should not be included within the definition of the term "sign" for purposes of the land development regulations under Article 3, Division 18, of the Community Development Code, and that the definition of "sign," as defined in the accompanying amendments, has been revised to accomplish the exclusion of such decorations from the definition of "sign";

**WHEREAS**, in light of the foregoing, the City of Clearwater finds and determines that it is appropriate to delete the provisions of the current Section 3-1805.D. that allows holiday decorations as signs falling under a land development regulation;

### **Temporary Grand Opening and Special Event Signs**

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), determined that the provisions incorporated into the former Section 3-1805.C.2 allowing temporary special event and/or public purpose signs of a temporary nature had lacked sufficient criteria to guide an official's decision as to the type of sign, size, design and length of display,

and the provision was severed in its entirety as providing an official with too much discretion to withstand constitutional scrutiny [*see Granite-Clearwater* at 1338-1339];

**WHEREAS**, the City of Clearwater finds and determines that the City amended former Section 3-1805.C.2., previously struck by the district court from the Community Development Code, to eliminate the undue discretion and to add content-neutral objective criteria [*see Ordinance No. 6997-02, Section 2, adopted on July 18, 2002*];

**WHEREAS**, the City of Clearwater finds and determines that given the unique function served by temporary grand opening signs and temporary special event or public purpose signs, it is appropriate to continue to allow such temporary signs without a permit;

**WHEREAS**, the City of Clearwater finds and determines that one temporary grand opening sign shall be permitted for thirty (30) days after the issuance of an occupational license for any new business, new owner of an existing business, or business name change, and that such sign shall not exceed twelve (12) square feet in total sign face area or such sign may be a temporary covering, such as a toaster cover, sign boot, or sign sock, which covers an existing lawful and permitted sign, whether an attached sign or a freestanding sign;

**WHEREAS**, the City of Clearwater finds and determines that in order to provide flexibility for the holding of a special event or for the display of information for a public purpose it is necessary to allow for temporary special event or public purpose signs that meet certain objective content-neutral criteria, as initially developed and adopted in July 2002 by way of Ordinance No. 6997-02, Section 2;

**WHEREAS**, the City of Clearwater finds and determines that temporary special event or public purpose signs shall be allowed subject to approval by the community development coordinator provided the temporary signs meet the following criteria: (a) the signs are temporary signs for a limited time and frequency, (b) the signs are for a special event or a public purpose of a temporary nature, (c) the signs do not exceed the maximum height and size requirements for freestanding signs under the Community Development Code, (d) the display of temporary signs for a special event shall not begin any earlier than two calendar days before the event and shall be removed within one business day after the event, and (e) the signs will meet the following purposes of Article 3, Division 18, to wit: (1) the signs will not conceal or obstruct adjacent land uses or signs [Section 3-1802.F.], (2) the signs will not conflict with the principal permitted use of the site or adjoining sites [Section 3-1802.J.], (3) the signs will not interfere with, obstruct vision of or distract motorists, bicyclists or pedestrians [Section 3-1802.K.], and (4) the signs will be installed and maintained in a safe manner [Section 3-1802.L.];

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the general standards in renumbered Section 3-1805, the approval or disapproval of temporary special event or public purpose signs shall not be based on the content of the message contained (*i.e.*, the viewpoint expressed) on such signs, that the community development coordinator shall render a decision within ten (10) days after an application is made for such signs, and that such decision shall be deemed an administrative interpretation and any person adversely affected has the right to appeal the decision to the community development board pursuant to Section 4-501(A);

### **Valet Parking Station Sign**

**WHEREAS**, the City of Clearwater finds and determines that given the prevalence of valet parking within areas frequented by visiting tourists and given the unique function served by on-premise signage that indicates the location of a valet station, it is appropriate to allow for a single sign indicating a valet parking station, provided such sign meets reasonable criteria that is based upon the purposes of Division 18 and further provided that such sign is visible only during the hours that the valet is operating;

### **Temporary Construction Signs**

**WHEREAS**, the City of Clearwater finds and determines that it is necessary and appropriate to allow one temporary construction sign located on a parcel proposed for development during the period that a building permit is in force, provided that such sign does not exceed a reasonable size restriction based upon the nature of the land use as residential or non-residential;

**WHEREAS**, the City of Clearwater finds and determines that it is necessary and appropriate to establish reasonable criteria for the dimensions of such signs based upon the zoning districts and/or land use;

**WHEREAS**, the City of Clearwater finds and determines that the balance achieved for the modest display of temporary construction signs as limited by land use classification and placement strikes the appropriate balance that meets the principles of the City's land use regulations;

**WHEREAS**, the City of Clearwater finds and determines that it is not necessary to require a permit for temporary construction signs as allowed under Division 18 of Article 3 of the City's Community Development Code;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), rejected the assertion that the allowance of a temporary construction sign as provided in former Section 3-1805.F.1 ran afoul of equal protection considerations inasmuch as that provision was among the City's time, place and manner regulations that were both reasonable and narrowly tailored to advance the substantial and carefully enumerated government interests set forth in Section 3-1802 of the Community Development Code, and the district court further noted that private residences are given ample alternatives to express their viewpoint by a window sign, a temporary yard sign, or a flag [*see Granite-Clearwater* at 1340];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based, and that there were legally required or justifiable exceptions such as construction signs [former Section 3-1805.F] [*see Granite-Clearwater* at 1334, n.36 and 1345-1347];

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code contained a similar provision that exempted "construction/contractor signs" not to exceed a certain size while the work was in progress or during the period of time that a building permit was valid from permitting and other regulatory requirements (*see* St. Petersburg's Code at § 16-670(a)(5)) and that this provision was among the provisions that were challenged by Granite State in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*15-16 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004) [*see also Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, Case No. 8:01-cv02250-JSM (M.D.Fla.), Doc. 1, Exh. A and Doc. 54, p. 11, n. 6];

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that provisions such as the one that exempted "construction/contractor signs" did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the St. Petersburg ordinance was content-neutral based in large part upon the fact that the government's stated interest in regulating speech (*see* St. Petersburg's Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government's objective in regulating speech was the controlling consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Flags**

**WHEREAS**, the City of Clearwater finds and determines that in a prior version of the land development regulations, in effect in 1991, there was an impermissible distinction drawn within the text of those regulations as to flags of a governmental unit or body, such as the American Flag or the flag of the State of Florida, and non-governmental flags, such as hypothetical examples of a Greenpeace logo or a union affiliation, and that this content-based distinction between flags was struck down in *Dimmitt v. City of Clearwater*, 782 F. Supp. 586 (M.D.Fla. 1991), *affirmed and modified*, 985 F.2d 1565 (11th Cir. 1993);

**WHEREAS**, the City of Clearwater finds and determines that in 1992 the City of Clearwater adopted amendments designed to eliminate impermissible content distinctions between government flags and non-government flags (*see* Ordinance No. 5257-92 adopted September 17, 1992);

**WHEREAS**, the City of Clearwater finds and determines that there is no intent to distinguish between flag messages, and the content neutrality of flag regulations established by ordinance in September 1992 is continued within the accompanying sign regulations;

**WHEREAS**, the City of Clearwater finds and determines that for flags displayed on a flag pole not exceeding thirty-five feet in height or on an attached bracket it is appropriate to allow one flag per detached dwelling unit, three flags per parcel of land used for multifamily residential purposes, and three flags per parcel of land used for non-residential purposes, and this

allowance strikes the appropriate balance between allowing flags on the one hand, and controlling clutter on the other hand, and that this balance meets the principles of the City's land use regulations, and that if so used the area of the flag shall not be included in, and limited by, the computation of allowable area for freestanding or attached signs on the property;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), noted that Article 3 in general was not content-based, and that the exceptions for flags [§ 3-1805.G], was not content-based [see *Granite-Clearwater* at 1334, n.36 and 1345-1347];

### **Garage-Yard Sale Signs**

**WHEREAS**, the City of Clearwater finds and determines that just as there should be reasonable accommodation for temporary on-premise real estate signs to facilitate the purchase, sale or rental of real property, there should also be reasonable accommodation for the temporary display of signage for a garage or yard sale of personal property that is limited to the day of the sale, that is limited in size to no more than a total of four square feet of sign face area per sign, and that is limited to no more than one such sign on the property where the sale is conducted and no more than two such signs on other privately owned parcels of land;

**WHEREAS**, the City of Clearwater finds and determines that there should be no restraint on the content of such temporary signage for the sale of personal property, and that the provisions are designed to be content-neutral;

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004), noted that Article 3 in general was not content-based, notwithstanding *de minimis* exceptions such as the provision for garage/yard sale signs [§ 3-1805.H] [see *Granite-Clearwater* at 1334, n.36 and 1345-1346];

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code contained a provision that exempted "garage or yard sale signs" not exceeding four square feet from permitting and other regulatory requirements (see St. Petersburg's Code at § 16-670(a)(18)) and that this provision was among more than 50 different provisions that were challenged by Granite State in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*12, n.23 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004) [see also *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, Case No. 8:01-cv02250-JSM (M.D.Fla.), Doc. 1, Exh. A and Doc. 54, p. 11, n. 6];

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg* determined that the provision exempting "garage or yard sale signs" did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);



**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the ordinance was content-neutral based in large part upon the fact that the government’s stated interest in regulating speech (*see* St. Petersburg’s Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government’s objective in regulating speech was the controlling consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Machinery-Equipment Signs**

**WHEREAS**, the City of Clearwater finds and determines that “machinery and equipment signs,” as defined in the accompanying amendments, should not be included within the definition of the term “sign” for purposes of the land development regulations under Article 3, Division 18, of the Community Development Code, and that the definition of “sign,” as defined in the accompanying amendments, has been revised to accomplish the exclusion of such objects from the definition of “sign”;

**WHEREAS**, in light of the foregoing, the City of Clearwater finds and determines that it is appropriate to delete the provisions of the current Section 3-1805.I. that allow signs which are integral and incidental to equipment, or machinery and cover not more than 20 percent of the exterior surface of such equipment, facilities or machinery;

### **Attached Menu Signs**

**WHEREAS**, the City of Clearwater finds and determines that menu signs serve a unique function in connection with land used for restaurants within the City, and that given the unique function served by such menu signage it is important to allow for the same in addition to any other permanent freestanding or attached signage allowed on a non-residential parcel;

**WHEREAS**, the City of Clearwater finds and determines that it is therefore appropriate to continue to allow for attached menu signs with reasonable criteria as to their dimensions based upon their function;

### **Onsite Directional and Traffic Control Signs**

**WHEREAS**, the City of Clearwater finds and determines that it is necessary and appropriate to allow onsite directional and traffic control signs subject to reasonable dimensional criteria in recognition of their function;

**WHEREAS**, the City of Clearwater finds and determines that the provisions set forth in Section 3-1806.J. for onsite directional and traffic control signs are consistent with the general principles and purposes set forth in Division 18;

### **Parking Space Number Signs**

**WHEREAS**, the City of Clearwater finds and determines that it is necessary and appropriate to continue to allow signs identifying parking space numbers provided that such

signs are painted on the paved surface of each space or do not exceed one-half square foot of sign face area per sign;

**WHEREAS**, the City of Clearwater finds and determines that the provisions set forth in Section 3-1806.K. for signs identifying parking space numbers are consistent with the general principles and purposes set forth in Division 18;

### **Marina Slip and Directional Signs**

**WHEREAS**, the City of Clearwater finds and determines that it is necessary and appropriate to allow signs identifying marina slip numbers provided that such signs are painted on the dock in front of each slip or do not exceed one square feet of sign face area per sign;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based, notwithstanding *de minimis* exceptions such as marina slip numbers [former Section 3-1805.T.] [see *Granite-Clearwater* at 1334, n.36 and 1345-1346];

**WHEREAS**, the City of Clearwater finds and determines that the provisions set forth in Section 3-1806.L for marina slip and directional signs are consistent with the general principles and purposes set forth in Division 18, and are based upon and oriented to the function served by such signs in connection with marinas;

### **Temporary Yard Signs**

**WHEREAS**, the City of Clearwater finds and determines that it is appropriate to delete the provisions of the current Section 3-1805.N. that pertained to temporary yard signs and to separate those provisions into separate sections pertaining to temporary free expression signs and temporary election signs, as Section 3-1806.B. and Section 3-1806.C., given the different functions that each such sign type serves, and to codify current practice;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision addressed the constitutionality of provisions governing yard signs for a political candidate or issue, which provisions contained both size limitations and durational limitations [see *Granite-Clearwater* at 1336-1338];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision found that based on the totality of the case law and commentary on this issue the sixty (60) day time limit on such signs before an election was unconstitutional and that the seven (7) day limit on removing the sign after the election was constitutional and a reasonable limitation justified by Clearwater's purpose of controlling aesthetics, and severed the sixty day time period [see *Granite-Clearwater* at 1336-1338];

**WHEREAS**, the City of Clearwater finds and determines that the guidance of the district court is incorporated into the codified revisions that appear in the new Section 3-1806.C., governing temporary election signs;

### **Temporary Real Estate Signs**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, it is necessary and appropriate to allow one temporary real estate sign per parcel of land indicating that a parcel of land or a building located on the parcel of land or part thereof is for sale, for lease or otherwise available for conveyance, provided that such sign does not exceed a reasonable dimensional or other restrictions based upon the designation and/or use of the land, such as family dwellings, duplexes and townhouse units, multi-family purposes other than town house units, or non-residential purposes;

**WHEREAS**, the City of Clearwater finds and determines that the balance achieved for the modest display of real estate signs as limited by land use and placement strikes the appropriate balance that meets the general principles and purposes of the City's land use regulations as set forth in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that the dimensional criteria set forth in the new Section 3-1806.M. for temporary real estate signs are appropriate based upon their function and based upon the general principles and purposes set forth in Division 18;

**WHEREAS**, the City of Clearwater finds and determines that allowing exemptions or exceptions for certain signage based upon the function served by the signage (*e.g.*, warning signs, directional signs, real estate signs, and other sign types described herein), is preferred to requiring permits for all such signs or alternatively, banning all such signs;

**WHEREAS**, the City of Clearwater finds and determines that under current jurisprudence [*see, e.g., Linmark Associates v. Town of Willingboro*, 431 U.S. 85 (1977)], on-site real estate signs, such as "for sale" signs, should be allowed given the important role and unique function that real estate signs, such as "for sale" signs, perform on the premises where they are located;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that Article 3 in general was not content-based, and that "for sale signs" were among the legally required or justifiable exceptions [*see Granite-Clearwater* at 1334, n.36 and 1345-1347];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision rejected the argument that an exception of "for sale signs" was impermissibly content-based, describing that argument as an "almost-conclusory mandate" or "conclusory theory" [*see Granite-Clearwater* at 1327-1334];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that signs are speech and can only be categorized or differentiated by what they say; that this makes it impossible to overlook a sign's content or message in formulating regulations and making exceptions for distinctions required by law (*i.e.*, for sale signs), and that there is no other way to make an exemption or classify a "for sale" sign as a "for sale" sign without reading the words "For Sale" on the sign [*see Granite-Clearwater* at 1333];

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision noted that in looking at the general principles of the First

Amendment, as guided by *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), the real issue is whether the distinctions or exceptions to a regulation are a disguised effort to control the free expression of ideas or to censor speech; and further noted that common sense and rationality would dictate that the only method of distinguishing signs for purposes of enforcing even content-neutral regulations, such as number, size or height restrictions, is by their message [*see Granite-Clearwater*];

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code contained a provision that exempted "real estate signs" (sometimes known as for sale signs) from permitting and other regulatory requirements (*see* St. Petersburg's Code at § 16-670(a)(12)) and that this provision was among more than 50 different provisions that were challenged by Granite State in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*12, n.23 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004) [*see also Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, Case No. 8:01-cv02250-JSM (M.D.Fla.), Doc. 1, Exh. A and Doc. 54, p. 11, n. 6];

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that the foregoing provision exempting "real estate signs" did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the similar ordinance at issue in St. Petersburg was content-neutral based in large part upon the fact that the government's stated interest in regulating speech (*see* St. Petersburg's Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government's objective in regulating speech was the controlling consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Stadium Signs Not Visible Outside Stadium**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of aesthetics and traffic safety it is not necessary to regulate through the issuance of sign permits for those signs within a stadium provided the same are not oriented toward and readable from outside of a stadium;

### **Window Signs**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, window signs should have a size limitation that limits such signs or combination of such signs to twenty-five percent (25%) of the total area of the window where the sign or signs are located and face a right-of-way, with the twenty-five percent limitation allowed for the window sign(s) that face each right-of-way where there is a corner lot or through lot; provided further that in no case shall the cumulative area of all window signs located inside an enclosed area for purposes of advertising exceed fifty square feet, if oriented toward and visible from an adjoining roadway or navigable waterway or body of water;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision struck the former prohibition in former Section 3-1803.U. (prohibiting temporary window signs in residential areas) due to its conflict with former Section 3-1805.Q. (allowing window signs of up to eight square feet in area, not to exceed 25% of the window area, without making a residential/non-residential distinction within former Section 3-1805.Q.) [see *Granite-Clearwater* at 1335], but upheld the restriction in former Section 3-1805.Q that allowed window signs of up to eight square feet in area, but not to exceed twenty-five percent (25%) of the window area;

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, it is appropriate to continue a similar size limitation in former Section 3-1805.Q for window signs as modified in a revised Section 3-1806.O.;

### **Safety and Warning Signs**

**WHEREAS**, the City of Clearwater finds and determines that in the interest of aesthetics and traffic safety it is appropriate to continue to provide for the allowance of safety or warning signs subject to reasonable dimensional criteria;

**WHEREAS**, the City of Clearwater finds and determines that the City of St. Petersburg's sign code contained a provision that exempted "warning signs" not to exceed six square feet from permitting and other regulatory requirements (see St. Petersburg's Code at § 16-670(a)(15)) and that this provision was among more than 50 different provisions that were challenged by Granite State in *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, 2002 WL 34558956, \*12, n.23 (M.D.Fla. 2002), *aff'd in part and rev'd in part*, 348 F.3d 1278, 1281-1282 (11th Cir. 2003), *cert. denied*, 541 U.S. 1086 (2004) [see also *Granite State Outdoor Advertising, Inc. v. City of St. Petersburg, Fla.*, Case No. 8:01-cv02250-JSM (M.D.Fla.), Doc. 1, Exh. A and Doc. 54, p. 11, n. 6];

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State v. St. Petersburg*, determined that the foregoing provision exempting "warning signs" did not render the ordinance unconstitutional *per se* (*id.* at \*12, n. 23);

**WHEREAS**, the City of Clearwater finds and determines that the Eleventh Circuit, upon a *de novo* appellate review, confirmed that the ordinance was content-neutral based in large part upon the fact that the government's stated interest in regulating speech (see St. Petersburg's Code at Section 16-667(b)(2)) was to promote uniformity, preserve aesthetics and foster safety, and based upon the fact that the government's objective in regulating speech was the controlling consideration under the governing precedent of *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989);

### **Substitution Clause**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the principles and purposes of Division 18 and constitutional considerations, it is appropriate to continue the substitution clause in the current Section 3-1805.S. in the renumbered Section 3-1806.Q., specifying that "a change in a sign message or panel on a previously approved, lawful sign, e.g., any sign allowed under this ordinance may contain, in lieu of any other copy, any

otherwise lawful noncommercial message that complies with all other requirements of this ordinance.” And clarifying that the provision does not permit “design” changes from a sign previously approved under the Comprehensive Sign Program;

### **Vessel Slip Signs**

**WHEREAS**, the City of Clearwater finds and determines that the provisions of the current Section 3-1805.T. will be obsolete upon the adoption of the new Section 3-1806.L.;

### **Balloons, Cold Air Inflatables, Streamers, Pennants - As Governmental and Public Purpose Signs**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, it is an appropriate balance to allow “balloons, cold air inflatables, streamers, and pennants” as governmental and public purpose signs if the city manager finds that this sign type meets the following criteria: (1) the sign type is for a special event, (2) the special event is for a limited time, (3) the special event is for a limited frequency, and (4) the sign type, if allowed for a limited time and frequency, will meet the following purposes of Division 3, to wit: (a) the signs will not conceal or obstruct adjacent land uses or signs (Section 3-1802.F.), (b) the signs will not conflict with the principal permitted use of the site or adjoining sites [Section 3-1802.J.], (c) the signs will not interfere with, obstruct vision of or distract motorists, bicyclists or pedestrians [Section 3-1802.K.], and (d) the signs will be installed and maintained in a safe manner [Section 3-1802.L.], provided that consistent with the general standards in the new Section 3-1805, the approval or disapproval shall not be based on the content of the message contained (i.e., the viewpoint expressed) on any such sign, and further provided that the city manager renders a decision within ten days after an application is made for utilizing this sign type at a special event;

### **Signs on Publicly Owned Land, Easements, Inside Street Rights-of-Way**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes of Division 18, it is appropriate to allow a sign on publicly owned land or easements or inside street rights-of-way if the city manager finds that the sign meets certain criteria as set forth in the proposed Section 3-1806.S. and provided that consistent with the general standards in the proposed Section 3-1805 the approval or disapproval shall not be based on the content of the message contained (i.e., the viewpoint expressed) on such sign;

### **Directional/Informational Signs Serving a Public Purpose**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes set forth in Division 18, it is appropriate to allow a permanent sign on public easements or inside street rights-of-way provided the city manager finds that the sign meets the criteria set forth in the renumbered Section 3-1806.T.;

### **Signs During Construction Projects**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes set forth in Division 18, it is appropriate to continue to allow temporary sidewalk signs

during construction subject to reasonable criteria based upon the function that such temporary signs serve for properties abutting public construction projects that are scheduled to last one hundred eighty days or longer;

### **City Park/Recreational Facility Signs**

**WHEREAS**, the City of Clearwater finds and determines that, consistent with the purposes set forth in Division 18, it is appropriate to allow one attached sign per city park or city recreation facility for the purposes of identifying a program provider or information concerning programs at such park or recreation facility based upon dimensional criteria that takes into account the sign function and subject to a design established by the appropriate governmental agency for a sign on city-owned property;

### **Adopt-a-Park and Acknowledgement Signs**

**WHEREAS**, the City of Clearwater finds and determines that consistent with the City's interest in aesthetics and traffic safety it is appropriate to make provision for adopt-a-park and acknowledgement signs within Division 18;

**WHEREAS**, the City of Clearwater finds and determines that provisions should be included within a new Section 3-1806.W. of the land development regulations to provide content-neutral criteria for adopt-a-park and acknowledgement signs on city rights-of-way and city-owned property, where the criteria is based upon the unique function served by such signage and sign types;

**WHEREAS**, the City of Clearwater finds and determines that the provisions allowing for adopt-a-park and acknowledgement signs are limited to a unique class of signs located on city rights-of-way and city-owned property (*see Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 467, 129 S.Ct. 1125, 1131 (2009) (the First Amendment's Free Speech Clause does not extend to government speech));

## Permitted Signs Requiring Development Review

**WHEREAS**, the City of Clearwater finds and determines that there are permitted signs and sign types that should have development review as part of the City of Clearwater's land development regulations, and that development review of such sign types is continued in Division 18 of Article 3 of the City's Community Development Code as a renumbered Section 3-1807;

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision determined that the categories and regulations set forth in then Section 3-1806.A.1.-3. for freestanding subdivision development entry signs, freestanding multifamily entry signs, school and park monument identification signs, and transit shelter signs were not impermissible content-based provisions inasmuch as these provisions did not limit the expression of ideas or censor speech [*see Granite-Clearwater* at 1338];

**WHEREAS**, the City of Clearwater finds and determines that the criteria set forth in the renumbered Section 3-1807 (renumbered from Section 3-1806) for various sign types in different zoning districts and for different land uses and various are based upon the purposes set forth in Division 18 and are not content-based distinctions but are instead based upon the function and location of the signs described;

**WHEREAS**, the City of Clearwater finds and determines that in connection with transit shelter signs the City settled litigation with Clear Channel Outdoor, Inc., formerly known as Eller Media Company (previously known as Patrick Media) in that certain case captioned *Patrick Media Group, Inc. v. City of Clearwater*, Case No. 93-174-CI (21), in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, in a stipulated settlement whereby Eller Media Company agreed to remove numerous billboard structures throughout the City of Clearwater upon certain conditions precedent, including the City of Clearwater's adoption of an ordinance that would allow up advertising on up to 50 transit shelters that might be placed within the boundaries of the City of Clearwater pursuant to an interlocal agreement between the City of Clearwater and Pinellas County dated January 14, 1992;

**WHEREAS**, the City of Clearwater finds and determines that it agreed to allow signs on transit shelters as necessary to secure the removal of much larger billboard structures that were inconsistent with the City of Clearwater's land development regulations and the City's aesthetic goals, and such signs were permitted on transit shelters approved in accordance with Article 3, Division 22 of the Clearwater Development Code, and subject to restrictions that were identified in the provisions of the current Section 3-1806.B.3.a.-d. and that are carried forward in the renumbered Section 3-1807.B.5.a.-d. of the Clearwater Development Code;

**WHEREAS**, the City of Clearwater did not agree to or accept any further incursion of advertising on street furniture within its public rights-of-way other than as set forth in the interlocal agreement and secured the removal of more than twenty billboard structures as the end result of the stipulated settlement terms and the adoption of Ordinance No. 6306-98, the Transit Shelter Ordinance;



**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision addressed then Section 3-1806.B.5 which allowed certain signs by permit through the development review process, including “[c]hangeable copy signs provided located on public property serving a significant public purpose,” and rejected the argument that that the phrase “significant public purpose” gave officials impermissible discretion, and further found that this discretion was reasonable especially given that this section only applied to signs on public property [*see Granite-Clearwater* at 1339];

**WHEREAS**, the City of Clearwater finds and determines that its determination of significant public purpose may extend to certain properties that host large entertainment venues, provided that criteria are established to prohibit impermissible discretion;

### **Comprehensive Sign Program**

**WHEREAS**, the City of Clearwater finds and determines that the City of Clearwater has previously adopted a comprehensive sign program that was the subject of judicial scrutiny in *Granite State Outdoor Advertising, Inc. v. City of Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312, 1334, n. 6 and 1345-1346 (M.D.Fla. 2002), *aff’d in part and rev’d in part on other grounds*, 351 F.3d 1112, 1118-1119 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 48 (2004);

**WHEREAS**, the City of Clearwater finds and determines that the district court in the *Granite-Clearwater* decision addressed a challenge made in 2001 to the discretion afforded in the City’s Comprehensive Sign Program, as the same was then set forth in Section 3-1807, and the court determined that the flexibility criteria were sufficiently objective and clear, including those references to “community character,” “existing unattractive signage,” and “improvement of appearance” [*see Granite-Clearwater* at 1339];

**WHEREAS**, the City of Clearwater finds and determines that the City has made several changes to the Comprehensive Sign Program to refine that program based upon experience, including modifications as set forth in Ordinance No. 6928-02, §§ 88-91, Ordinance No. 6997-02, §§ 5-7, Ordinance No. 7631-06, § 17, and Ordinance No. 7835-07, § 29, while maintaining objective and clear flexibility criteria;

**WHEREAS**, the City of Clearwater finds and determines that, based upon further experience with the Comprehensive Sign Program and based upon the recommendations from its professional planning staff, several additional changes to the Comprehensive Sign Program would be appropriate;

**WHEREAS**, the City of Clearwater finds and determines that the permitted signage under the Comprehensive Sign Program should continue to preclude and bar all prohibited sign types, including all prohibited signs identified in the renumbered Section 3-1804, as set forth in the attachment hereto, and other prohibited signs or sign types that would not be appropriate for the Comprehensive Sign Program;

## Severability

**WHEREAS**, the City of Clearwater finds and determines that the district court in *Granite State Outdoor Advertising, Inc. v. City of 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 both Section 1-107 of the Code and the Development Code, Ord. No. 6348-99, § 4 (January 21, 1999), as a basis for severing isolated portions of Article 3 of the Community Development Code [see *Granite-Clearwater* at 1326, n.22];

**WHEREAS**, the City of Clearwater finds and determines that the Community Development Code's severability clause was adopted with the intent of upholding and sustaining as much of the City's regulations, including its sign regulations, as possible in the event that any portion thereof (including any section, sentence, clause or phrase) be held invalid or unconstitutional by any court of competent jurisdiction;

**WHEREAS**, the City of Clearwater finds and determines 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, e.g., *Waldrup v. Dugger*, 562 So. 2d 687 (Fla. 1990)];

**WHEREAS**, the City of Clearwater finds and determines 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;

**WHEREAS**, the City of Clearwater finds and determines that the failure of some courts to uphold severability clauses has led to an increase in litigation seeking to strike down sign ordinances in their *entirety* so as to argue that the developers' applications to erect prohibited sign types, such as billboards, must be granted;

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

**WHEREAS**, the City of Clearwater finds and determines 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 exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever;

**WHEREAS**, the City of Clearwater finds and determines that the prohibition on billboards, as contained herein, continue in effect regardless of the invalidity or unconstitutionality of any, or even all, other provisions of the City's sign regulations, other ordinance code provisions, or other laws, for any reason(s) whatsoever;

**WHEREAS**, the City of Clearwater finds and determines that there be an ample record that it intends that the height and size limitations on free-standing and other signs continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the City's sign regulations, other ordinance code provisions, or other laws, for any reason(s) whatsoever;

**WHEREAS**, the City of Clearwater finds and determines that there be an ample record that it intends that each prohibited sign-type identified in Section 3-1804 (Prohibited signs) continue in effect regardless of the invalidity or unconstitutionality of any, or even all, other provisions of the City's sign regulations, other ordinance code provisions, or other laws, for any reason(s) whatsoever;

**WHEREAS**, even though there are other provisions that pertain to severability and that extend to Article 3, Division 18, of the Community Development Code, the City of Clearwater finds and determines that it is appropriate to emphasize the importance of severability and the desires expressed herein above that severability be applied even if less speech results, and that a new Section 3-1809 (Severability) be added to Article 3, Division 18, as set forth in the new Division 18 attached hereto and made a part hereof;

**WHEREAS**, the City of Clearwater finds and determines that it 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 is successful in obtaining a judicial decision that the entirety or some lesser portion of a sign ordinance or its permitting 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;

**WHEREAS**, the City of Clearwater finds and determines that it 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;

WHEREAS, now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
CLEARWATER, FLORIDA:

Section 1. Article 8, Section 8-102, City of Clearwater Community Development Code, is hereby amended to read as follows, with deletions noted by strike-throughs and additions noted by double -underlining.:

~~Art work means drawings, pictures, symbols, paintings or sculpture which do not identify a product or business and which are not displayed in conjunction with a commercial, for profit or nonprofit enterprise.~~

Artwork means a two- or three-dimensional representation of a creative idea that is expressed in a form and manner so as to provide aesthetic beauty, appeal or enjoyment rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed; however, artwork shall not include any object, drawing, picture, symbol, painting (including the painting of patterns or designs), or sculpture, which promotes a speaker's economic interests, provides a commercial message or otherwise identifies a product, service or business sold or available on the property where the same is displayed.

\* \* \*

Decorations, holiday and seasonal mean decorations that pertain to legally or otherwise recognized holidays or to a season of the year.

\* \* \*

Element, graphic, in connection with a sign, means any non-text logo, symbol, mark, illustration, image, or other design element, used either alone or in combination with text, to draw attention to a sign surface, fabric, device or display.

\* \* \*

Sign means any surface, fabric, device or display which bears lettered, pictorial or sculptured matter, including forms shaped to resemble any human, animal or product designed to convey information to the public and is visible from an abutting property, from a public street, sidewalk or right-of-way, or from a body of water. For the purpose of this development code, the term "sign" shall include all structural members. A sign shall be construed 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 a single sign. Except for banner, flags, temporary and portable signs, all signs shall be permanently affixed to, and/or incorporated into, the sign cabinet, or building wall or other base material. All signs shall be constructed of materials designed to be permanent, withstand weather conditions, and shall have permanent supports appropriate for its size. The term sign shall not include: artwork, holiday or seasonal decorations, cemetery markers, machinery or equipment signs, memorial signs or tablets.

~~*Sign, abandoned* means any sign and/or sign structure which no longer advertises a bona fide business activity conducted or product available, is no longer licensed, no longer has a certificate of occupancy, or is no longer doing business or maintaining a presence on the premises where the sign is displayed and such circumstances have continued for a period of 30 days.~~

*Sign, adopt a park or acknowledgment* means a sign that functions to recognize ~~recognizes~~ a sponsoring agency which has been given the opportunity to install and maintain landscaping in city rights-of-way or on a city-owned property at the site where the landscaping is located.

\* \* \*

*Sign area or surface area* means the area, in square feet, enclosed by a rectangle, parallelogram, triangle, circle, semicircle, cross, other geometric figures, or other architectural design, the side of which make contact with the extreme points or edges of the sign, excluding the supporting structure which does not form part of the sign proper or of the display. Unless otherwise indicated, area means area per sign face. The sign area of a double-faced sign, as defined herein, shall be based on the area of a single sign face. Illuminated portions of a sign structure shall be considered part of the sign area. Also, any portion of the surface area of a freestanding sign structure that exceeds 50 percent of the permitted area of the sign face shall be considered part of the sign area. The area of a sign for attached signs is based on the smallest geometric shape(s) around the graphics/text; area for sign cabinets used as attached signs shall be based on the entire sign cabinet.

\* \* \*

*Sign, billboard* means a non-point-of-sale sign that exceeds twenty-four square feet and ~~which~~ advertises a business, organization, event, person, place or thing or other commercial message.

*Sign, cabinet* means a three-dimensional structure which includes a frame, borders and sign face within the frame on which the sign letters and logos are placed or etched. The sign may include internal lighting.

\* \* \*

~~*Sign, construction* means a temporary sign which identifies those involved in construction of any building or structure.~~

*Sign, construction* means a temporary on-premise sign that functions to identify the ongoing construction activity during the time that a building permit is active and prior to completion of the work for which the permit was issued, and that may function to identify the contractor and/or any subcontractor engaged to perform construction activity on the site.

\* \* \*

Sign, discontinued means any sign and/or sign structure (a) displaying advertising for a product or service which is no longer available or displaying advertising for a business which is no longer licensed, (b) which is blank, or (c) which advertises a business that is no longer doing business or maintaining a presence on the premises where the sign is displayed; provided that such circumstances have continued for a period of one hundred eighty days.

\* \* \*

Sign, election means a temporary sign erected or displayed for the purpose of expressing support or opposition to a candidate or stating a position regarding an issue upon which the voters of the City may vote.

~~Sign, exempt~~ means any sign for which a permit is not required. (See Section 4-1002(B))

\* \* \*

Sign, free expression means a sign, not in excess of three square feet in total sign face area and whose top is not more than six feet off the ground, that functions to communicate information or views on matters of public policy or public concern, or containing any other noncommercial message that is otherwise lawful.

\* \* \*

Sign, garage-yard sale means any temporary sign pertaining to the sale of personal property at or upon any residentially-zoned property located in the City of Clearwater, provided that the on-site sale at a residentially-zoned parcel is lawful under the land use regulations and other applicable laws of the City of Clearwater.

Sign, gasoline price display means any on-site sign which functions exclusively to displays the prices of gasoline for sale.

\* \* \*

~~Sign, holiday decoration~~ means any display during a holiday season which shall be removed within ten days of the conclusion of the holiday.

Sign, identification means any sign which indicates no more than the name, address, company logo and occupation or function of an establishment or premises on which the sign is located.

\* \* \*

Sign, machinery or equipment means a sign which is integral and incidental to machinery or equipment, and that is incorporated into machinery or equipment by a manufacturer or distributor to identify or advertise the product or service dispensed by the machine or equipment, such as a sign customarily affixed or incorporated into a

vending machine, a telephone booth, a gasoline pump, a newspaper rack, an express mail drop-off box, or the like.

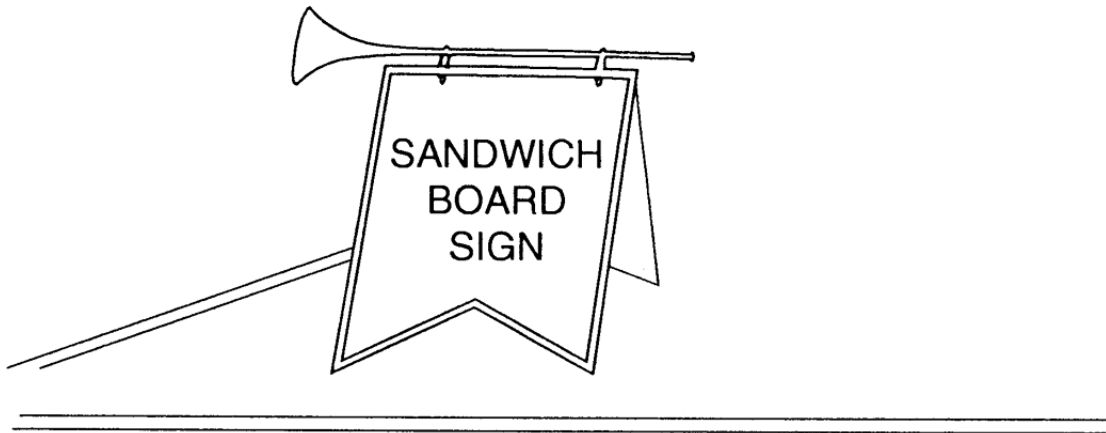
\* \* \*

Sign, raceway means a sign comprised of channel or other cut-out figures or letters mounted to an electrical enclosure, with the enclosure being smaller than the height of the attached letters.

\* \* \*

Sign, safety means a sign that functions to provide a 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.).

Sign, sandwich board means any single or double faced A-FRAME sign which is portable and may readily be moved from place to place. This sign is generally freestanding and not affixed to the ground in any way, although some temporary type of attachment to the ground is occasionally used.



**sign, sandwich board**

Sign, sidewalk (sometimes referred to as a sandwich board sign) means any freestanding single or double faced sign which is designed to be placed upon, but not affixed to, the ground, or sidewalks or pavement, and that is portable and readily moved from place to place.



Wind Sign Style

**sign, sidewalk**

*Sign, snipe* means an off-premises sign which is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, or fences, or to other objects.

*Sign, statutory* means a sign required by any statute or regulation of the State of Florida or the United States.

\* \* \*

*Sign, temporary yard* means a sign which is displayed for a limited period of time, usually less than one year but not to exceed the time authorized by this development code for a particular temporary sign use.

\* \* \*

*Sign, traffic control device* means any sign located within the right-of-way that functions 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. *Traffic control device sign* includes those 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, or cultural information).



\* \* \*

Sign, vehicle means one or more signs which have a total sign area on any vehicle in excess of ten (10) square feet, when the vehicle is not “regularly used in the conduct of the business or activity” advertised on the vehicle, and (a) is visible from a street right-of-way within one hundred (100) feet of the vehicle, and (b) is parked for more than five (5) consecutive hours within one hundred (100) feet of any street right of way; for the purposes of this definition, a vehicle shall not be considered “regularly used in the conduct of the business or activity” if the vehicle is used primarily (i) for advertising, or (ii) for the purpose of advertising, or (iii) for the purpose of providing transportation for owners or employees of the business or activity advertised on the vehicle.

~~Sign, vehicle~~ means a sign attached to or placed on and/or inside of a vehicle, including automobiles, trucks, boats, campers, and trailers, that is parked on or is otherwise utilizing a public right-of-way or other public property or is on private property so as to be intended to be viewed from a vehicular right of way for the basic purposes of providing advertisement of products or services or directing people to a business or activity. This definition is not to be construed to include those signs on a licensed transit carrier, or signs that identify a firm or its principal products on a vehicle, unless such vehicle is parked in a location prominently visible from a street right of way where there are other, less prominently visible parking spaces available on the site or is parked in such a manner that it is intended to provide advertisement of products or services or to direct people to a business or activity. This definition shall not include any vehicle with signs when and during that period of time such vehicle is regularly and customarily used to traverse the public highways during the normal course of business and providing the signs do not present a hazard to the public.

~~Sign, vending~~ means a sign attached to newspaper and other product vending machines, telephones, gasoline pumps or similar machines and providing information regarding the product or service being dispensed.

\* \* \*

Sign, window means (a) any sign placed inside or upon a window facing the outside and which is intended to be seen from the exterior through a window or other opening, and (b) any sign or combination of signs that exceed fifty square feet in sign area and that is located inside an enclosed area and oriented toward and visible from an adjoining roadway or navigable waterway or body of water for purposes of advertising. Window signs may be permanent or temporary with different requirements for each type of window sign.

\* \* \*

Total sign face area means the sign area of a single-faced signs, a double-faced sign, or any other sign face configuration.

Section 2. Article 3, Division 18, Signs, City of Clearwater Community Development Code, Sections 3-1801 through 3-1807, is hereby repealed and replaced in its entirety by Revised Article 3, Division 18, Sections 3-1801 through 3-1809, City of Clearwater Community Development Code, to read as set forth in the new Division 18 attached hereto as “**Exhibit 1,**” which is hereby adopted as part of the City of Clearwater Community Development Code.

Section 3. All references to Article 3, Division 18, of the City of Clearwater Community Development Code contained elsewhere in said Code or in other Ordinances or Resolutions of the City shall be deemed to refer to Revised Article 3, Division 18 as of the effective date of this Ordinance.

Section 4. This ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING  
AS AMENDED

\_\_\_\_\_

PASSED ON SECOND AND FINAL  
READING AND ADOPTED

\_\_\_\_\_

\_\_\_\_\_  
George N. Cretekos  
Mayor

Approved as to form:

Attest:

\_\_\_\_\_  
Leslie K. Dougall-Sides  
Assistant City Attorney

\_\_\_\_\_  
Rosemarie Call  
City Clerk