



## MEMORANDUM

DATE: June 16, 2016

TO: Mayor and City Commission

FROM: Stephen J. Noto, AICP  
City Planner

THRU: John Omana, Community Development Director

VIA: Jackie Sova, City Manager

SUBJECT: Ordinance No. 1545 - Repealing Chapter 132 of the Code of Ordinances entitled "Offenses Against Persons and Property", creating a new Section 157.24 "Injuring Shade Trees" and amending Section 4 "Sign Permits and Construction and Maintenance Standards" of Appendix I "Sign Code" to incorporate sign restrictions being repealed - First Reading (Public Hearing) (Steve Noto, City Planner)

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**BACKGROUND:** It was recently discovered that a number of regulations in Chapter 132 of the City's Code of Ordinances were either in direct conflict with State Statutes or were antiquated. As a result, through coordination with the City Clerk, City Attorney, and City Manager, staff has prepared a number of changes to Chapters 155, Appendix I (Sign Code) and Chapter 157 (Landscape Code). In addition, staff is requesting to repeal all of Chapter 132.

The changes to Chapter 155, Appendix I are as follows:

- Moving existing sections 132.12 (Sign Restrictions) and 132.13 (Violation of Sign Restrictions) to existing Chapter 155, Appendix I, Section 4 (Sign permits and construction and maintenance standards). The regulations are relevant, and are being moved to a more appropriate section of the Code of Ordinances.

The changes to Chapter 157 are as follows:

- Moving existing section 132.09 (Injuring Shade Trees) to a new section of Chapter 157 (157.24). The regulation is relevant, and is being moved to a more appropriate section of the Code of Ordinances.

The text of the regulations are outlined in the attached draft Ordinance.

**PLANNING AND ZONING BOARD:** At their regular May 24, 2016 meeting, the Planning and Zoning Board unanimously recommended approval, 5-0, of the requested changes to the Code of Ordinances as outlined above, with the following conditions:

1. In Section 154.27, add language “along the lines of unlawful for any person to intentionally, or recklessly, or maliciously remove, injure, or attempt to”. Something along a mens rea and an attempt qualification should be included.
2. Section 4, (5) ii, it says approved by “him”, which should either be the Building Official or by him/her for purposes of the statute.
3. Page 4, vii, recommended to add “as determined by the Building Official” or other appropriate person. Also to look at adding a metric or quantifier.

**FINDING OF FACT:** Staff recommends approval of the requested changes to the Code of Ordinances, which includes:

- Repealing Chapter 132 “Offenses Against Persons and Property”
- Creation of Section 157.24 of Chapter 157 “Landscaping and Arbor Regulations”
- Amending of Appendix I “Sign Code” of Chapter 155 “Subdivision Regulations”

**ATTACHMENTS:**

- Ordinance No. 1545
- May 24, 2016 Planning & Zoning Board Minutes

**ORDINANCE NO. 1545**

**AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA, REPEALING IN ITS ENTIRETY CHAPTER 132 “OFFENSES AGAINST PERSONS AND PROPERTY” OF THE CODE OF ORDINANCES OF THE CITY OF LAKE MARY; CREATING A NEW SECTION 157.24 “INJURING SHADE TREES” IN CHAPTER 157 “LANDSCAPING AND ARBOR REGULATIONS” TO INCORPORATE EXISTING LANDSCAPE RESTRICTIONS CONTAINED WITHIN CHAPTER 132; AMENDING SECTION 4 “SIGN PERMITS AND CONSTRUCTION AND MAINTENANCE STANDARDS” OF APPENDIX I “SIGN CODE” OF CHAPTER 155 “SUBDIVISION REGULATIONS” TO INCORPORATE EXISTING SIGN RESTRICTIONS REPEALED IN CHAPTER 132; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City requested a review of Chapter 132, “Offenses Against Persons and Property” of the City Code for the purpose of amending or repealing sections that have become antiquated or legally infirm; and

**WHEREAS**, Sections 132.01 through 132.13 address assault, throwing stones, missiles, trespass, stealing of bicycles, petit larceny, concealing stolen property, injuring property, taking or using property of another, injuring of shade trees, spitting or littering on public places, tampering with scales, sign restrictions and penalties; and

**WHEREAS**, assault is generally regulated pursuant to Section 784.011, Florida Statutes, and trespass is generally regulated pursuant to Chapter 810, Florida Statutes; and

**WHEREAS**, theft and petit theft is generally regulated pursuant to Chapter 812, Florida Statutes; and

**WHEREAS**, injuring property or criminal mischief is generally regulated pursuant to Section 806.13, Florida Statutes; and

**WHEREAS**, littering is regulated pursuant to the Florida Litter Law, Section 403.413, Florida Statutes, and tampering with scales is regulated pursuant to Chapter 531, Florida Statutes; and

**WHEREAS**, due to all of these statutory provisions, Chapter 132 is in large part antiquated and duplicative of state law; and

**WHEREAS**, the City Commission of the City of Lake Mary finds that the repeal of Chapter 132 and the relocation of existing landscaping and sign restrictions is in the best interests of the public health, safety, and welfare of the citizens of Lake Mary.

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

**Section 1. Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Commission of the City of Lake Mary.

**Section 2. Repeal of Chapter 132 “Offenses Against Persons and Property”.** That Chapter 132 “Offenses Against Persons and Property” of the Code of Ordinances of the City of Lake Mary is hereby repealed in its entirety.

**Section 3. Creation of Section 157.24 of Chapter 157 “Landscaping and Arbor Regulations”.** That Section 157.24 “Injuring Shade Trees” of Chapter 157 “Landscaping and Arbor Regulations” is hereby established as follows (underlined type indicates additions to the original text):

**Section 157.24     Injuring Shade Trees**

It shall be unlawful for any person to cut down, cut, bruise, or otherwise injure any municipally-owned shade tree within the corporate limits of the city.

**Section 4.**    **Amendment of Appendix I “Sign Code” of Chapter 155 “Subdivision Regulations”.** That Section 4 “Sign Permits and Construction and Maintenance Standards” of Appendix I “Sign Code” of Chapter 155 “Subdivision Regulations” is hereby amended to read as follows (underlined type indicates additions to the original text and strike through shall constitute deletions to the original text, and asterisks (\* \* \*) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance):

**SECTION 4 – SIGN PERMITS AND CONSTRUCTION AND MAINTENANCE STANDARDS**

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(B) Construction and maintenance standards. All signs shall be constructed and maintained in accordance with the following standards:

(1) Code compliance. All signs shall be constructed and maintained in accordance with the provisions and requirements of the city's building codes, electrical codes and all other applicable codes.

(2) Copy. All copy shall be maintained so as to be legible and complete.

(3) Structure. All signs shall be maintained in a vertical position unless originally permitted otherwise, and in good and safe condition at all times.

(4) Damage. Damaged faces or structural members shall be repaired.

(5) Safety. The construction and maintenance of all signs using electric power in any manner shall be subject to the following requirements:

i. Electrical systems and fasteners shall be maintained at all times in a safe condition.

ii. Plans and locations shall be approved by the Building Official, and such signs shall be inspected and approved by him/her before operation. All such signs must be installed by a qualified and licensed electrician in accordance with provision of the National Electrical Code.

iii. Proximity to electrical conductor: No signs shall be erected closer than ten feet to any overhead electrical conductor, where the difference in potential between any two conductors or between one conductor and ground exceeds 750 volts.

iv. All exterior electrical outlets for signs shall terminate in a galvanized box with a blank cover, which shall be flush with and not protrude beyond the finished surface of the exterior wall.

v. Transformer boxes, outlets, conduits, and other accessory equipment for any sign shall be placed so that they are not visible from the exterior.

vi. Wooden signs shall not have electrical lights or fixtures attached to them in any manner.

vii. No electrical sign shall be so lighted or maintained as to throw a glare or blinding light into any street, highway, or other public thoroughfare, which would be likely to blind or impair the vision of any motorists upon the street, highway, or thoroughfare.

**Section 5. Severability.** If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

**Section 6. Codification.** It is the intention of the City Commission of the City of Lake Mary, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Lake Mary, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

**Section 7. Conflicts.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

**Section 8. Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

**PASSED AND ADOPTED** this 16<sup>th</sup> day of June, 2016

FIRST READING: June 2, 2016

SECOND READING: June 16, 2016

CITY OF LAKE MARY FLORIDA

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DAVID J. MEALOR, MAYOR

ATTEST:

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CITY CLERK, CAROL A. FOSTER

FOR THE USE AND RELIANCE OF THE CITY OF LAKE MARY ONLY  
APPROVED AS TO FORM AND LEGALITY:

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CITY ATTORNEY, CATHERINE D. REISCHMANN

MINUTES OF THE LAKE MARY PLANNING & ZONING BOARD MEETING held May 24, 2016, 6:00 P.M., Lake Mary City Commission Chambers, 100 North Country Club Road, Lake Mary, Florida.

I. Call to Order

The meeting was called to order by Chairman Robert Hawkins at 6:00 P.M.

II. Moment of Silence

III. Pledge of Allegiance

IV. Roll Call – Determination of a Quorum

Chairman Robert Hawkins

Vice Chairman Colleen Taylor

Member Sam Aycoth

Member Steven Gillis

Member Justin York

Alternate Member Scott Threlkeld

John Omana, Community Development Dir.

Steve Noto, City Planner

Mary Campbell, Deputy City Clerk

V. Approval of Planning & Zoning Board Minutes – April 26, 2016

**Colleen Taylor moved to approve the Planning & Zoning Board minutes of April 26, 2016, seconded by Justin York and motion carried unanimously 5 - 0.**

VI. Citizen Participation: This is an opportunity for anyone to come forward and address this Board on any matter relating to this Board or its actions. This also includes: 1) any item not specifically listed on a previous agenda but discussed at a previous board meeting or 2) any item on tonight's agenda not labeled as a public hearing. Items requiring a public hearing are generally so noted on the agenda and public input will be taken when the item is considered.

No one came forward at this time and citizen participation was closed.

VII. City staff and the applicant, or the agent for the applicant, will make their presentations first, followed by questions from the Planning and Zoning Board members. After the presentations from staff and the applicant, the chairman will

open the public hearing portion of the meeting to allow interested parties to speak for or against the item being considered. The public is instructed to keep their presentation factual, not be redundant, and to direct all comments to the Board, not to the applicant or staff. From time to time, it may become necessary for the Chairman to limit the time that speakers may have. If a time limit is to be imposed, it will be announced at the time that the public hearing is opened. If a speaker wishes to be heard for the record but does not have any new information regarding the item being considered, the speaker shall give his/her name and address for the record and state that they agree with the presentation made by a previous speaker, giving the specific name of the person. When the Chairman believes that no additional information is forthcoming, the Chairman shall close the public hearing portion of the meeting.

#### VIII. Old Business

There was no old business to discuss at this time.

#### IX. New Business

- A. 2016-ZTA-01: A recommendation to the Mayor and City Commission regarding City initiated modifications to City Code Chapters 132, 155 Appendix I, and 157. Applicant: City of Lake Mary

Mr. Noto said this item is basically some code cleanup. As outlined in the staff report, the City has taken a look at Chapter 132 and all of its subsections and found it is part of the code that needs to be cleaned up, tossed out, moved around, etc. Planning staff has been put in charge of shifting some items from Chapter 132 that have to do with the sign restrictions and the injuring of shade trees. We moved the sign changes to Chapter 155, Appendix I and Chapter 157 will be for the landscape changes.

Mr. Noto said the items from Chapter 132 having to do with signage have more to do with building code issues and not so much our typical regulations. It has to do more with electrical information.

Mr. Noto said the shade tree regulations have to do with injuring City-owned trees. Chapter 157 already has rules and regulations as it relates to privately-owned trees so this will move the City-owned tree information into Chapter 157 into a new subsection.

Mr. Noto said these items will be moving on to the City Commission meeting of June 2<sup>nd</sup>. Staff is recommending approval of the changes. We have a draft ordinance as part of the report put together by the City Attorney so you can see more detail about the rules and regulations.

Vice Chairman Taylor said in 157.24 she had a question about the structure of it. It is kind of a legal question. There is no requirement of any kind of guilty mind so technically the way it is written if somebody hits me and my car crashes into a City tree and knocks it over, I have committed an unlawful act. There is nothing that says it needs to be intentional, reckless, malicious, or anything. The federal government is trying to move away from that because it traps well-meaning people in bad spots. I think the City should also move away from that and then it becomes a policy decision of what you



want that to be. Clearly you don't want it to be accidental. She recommended something along the lines of unlawful for any person to intentionally, or recklessly, or maliciously remove, injure, or attempt to. She thought a mens rea and an attempt qualification need to be in there. Generally in the statute it informs the person of the consequence and shall be punished by whatever means you want. Is it going to be codified as a secondary misdemeanor or if it's going to be punishable by City fine or ordinance. She said she didn't know the answers to those but thought those were things important to have in it.

Mr. Noto said we will pass those comments to the City Attorney.

Vice Chairman Taylor said in Section 4, (5) ii., it says approved by "him" which didn't bother her but does get some people riled up. It should either be the Building Official or by him/her for purposes of the statute.

Vice Chairman Taylor said on Page 4, vii, you want to enforce these and help people. She asked if there was a quantifier that decides when something is too glaring or blinding. If there is not a number or a meter that they use, she recommended to add "as determined by the Building Official" or whatever person. Someone has to be the one who says it. She was sure they wouldn't want the Council to have to take a vote on whether it is or not.

Chairman Hawkins said he didn't receive his packet until the mail today and didn't have a lot of time to research his two requests. Whether it is appropriate to put these requests into this modification of the sign code or subsequently research this and make a formal change, he would like to see two things added to the sign code. One is for panhandlers within the City. On September 16, 2014, the Sentinel had a good article on panhandlers. Sanford has an ordinance, Orange, Osceola, Hillsborough, Pasco Counties all have ordinances. The Cities of Orlando, Altamonte Springs, Casselberry, and Tampa all have ordinances. This is a public safety issue. There has been a newspaper guy killed when he stepped off a curb in front of a car. He thought that should have an exemption for non-profit people. Every year at Labor Day the firefighters collect money, and the Shriners collect money. All those people who aren't public officials like firefighters ought to have a permit to do this. He would like staff to research the panhandling ordinances and see if they can come up with some appropriate legal language. This has been passed everywhere around here and in Florida.

Chairman Hawkins said the second thing is to come up with some language about human billboards—the roadside solicitors. That one he didn't get a chance to do much research on. He thought Seminole County was headed that way but didn't know what they came up with. He would like to see some research into an ordinance to prohibit, license, or permit these guys twirling signs, doing dances, standing on ladders. It's a public safety issue because it's like having a flashing billboard. People pay attention to these and they are not paying attention to their driving.

Mr. Omana said he thought Casselberry had something along those lines. He recommended letting staff take those two items forward to administration and let this ordinance go on its own since it is a cleanup thing. We will bring that to the City Manager's attention and move forward.

Chairman Hawkins said he knew staff had all the phone numbers and e-mail addresses for all the cities and municipalities around here so they could send an e-mail asking them to send their ordinance.

Chairman Hawkins asked if anyone wanted to speak in reference to this item. No one came forward and the public hearing was closed.

Member York said he appreciated all the comments and suggestions that were made and thought they were good.

**Justin York moved to approve 2016-ZTA-01, recommendation to the Mayor and City Commission regarding City initiated modifications to City Code Chapters 132, 155 Appendix I, and 157 with the comments previously stated. Seconded by Sam Aycoth and motion carried unanimously 5 – 0.**