**ORDINANCE NO. 2018-01**

**AN ORDINANCE RELATING TO SIGN REGULATIONS; PROVIDING FOR THE REPEAL AND REPLACEMENT OF ARTICLE XVIII, OF CHAPTER 102 OF PART II OF THE BELLEAIR BLUFFS CODE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING SIGN REGULATIONS FOR ZONING DISTRICTS; PROVIDING FOR A PERMITTING PROCESS; PROVIDING FOR NONCONFORMING SIGNS; AMENDING ARTICLE VIII OF CHAPTER 102 OF PART II OF THE BELLEAIR BLUFFS CODE BY ADDING A NEW SUBSECTION E TO § 102-43 TO EXPRESSLY PROHIBIT THE BUSINESS OF OUTDOOR ADVERTISING WITHIN THE CITY; AMENDING ARTICLE II OF CHAPTER 102 OF PART II OF THE BELLEAIR BLUFFS CODE BY DELETING CERTAIN DEFINITIONS IN § 102-10 THEREOF; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City of Belleair Bluffs (the City) finds and determines that it is appropriate to update and revise its Land Development Code relative to signs; and

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

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

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

**WHEREAS,** the City finds that the limitations on the size (area), height, number, spacing, and setback of signs, adopted herein, is based upon the sign types; and

**WHEREAS,** the City finds that limitations on various types of signs are related to the zoning districts for the parcels and properties on which they are located; and

**WHEREAS,** the City finds that various signs that serve as signage for particular land uses, such as drive-through lanes for businesses, are based upon content-neutral criteria in recognition of the functions served by those land uses, but not based upon any intent to favor any particular viewpoint or control the subject matter of public discourse; and

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

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

**WHEREAS,** the City finds that the sign standards and regulations adopted hereby allow and leave open adequate alternative means of communications, such as newspaper advertising and communications, internet advertising and communications, advertising and communications in shoppers and pamphlets, advertising and communications in telephone books, advertising and communications on cable and satellite television, advertising and communications on UHF and/or VHF television, advertising and communications on AM and/or FM radio, advertising and communications on satellite and internet radio, advertising and communications via direct mail, and other avenues of communication available in the City of Belleair Bluffs [*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 966, 980-981 (9th Cir. 2009), *aff'd in part & remanded in part on other grounds*, 832 F. Supp. 2d 1070, *aff'd*, 707 F.3d 1057, 1063 (9th Cir. 2013), *cert. granted*, 134 S. Ct. 2900 (2014), *rev'd on other grounds & remanded*, 135 S. Ct. 2218 (2015)]; and

**WHEREAS**, the City finds that the provisions of the new Article XVIII of Chapter 102 of the City code that replace the current regulations at that same location are consistent with all applicable policies of the City's adopted Comprehensive Plan; and

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

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

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

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

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

**WHEREAS,** the City recognizes that until a recent Supreme Court decision released in June 2015, there had not been clarity as to what constitutes a content-based law as distinguished from a content-neutral law; and

**WHEREAS,** the City recognizes that in *Reed v. Town of Gilbert, Ariz.*, — U.S. —, 135 S. Ct. 2218, 2221, 192 L. Ed. 2d 236 (2015), the United States Supreme Court, in an opinion authored by Justice Thomas, and joined in by Chief Justices Roberts, Scalia, Alito, Kennedy and Sotomayer,

addressed the constitutionality of a local sign ordinance that had different criteria for different types of temporary noncommercial signs; and

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

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

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

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

**WHEREAS,** the City recognizes that in *Reed*, Justice Alito in a concurring opinion joined in by Justices Kennedy and Sotomayer pointed out that municipalities still have the power to enact and enforce reasonable sign regulations; and

**WHEREAS,** the City recognizes that Justice Alito in the concurring opinion joined in by Justices Kennedy and Sotomayer provided a list of rules that would not be content-based; and

**WHEREAS,** the City recognizes that Justice Alito noted that these rules, listed below, were not anything like a comprehensive list of such rules; and

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

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

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

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

**WHEREAS,** the City recognizes that as a result of the *Reed* decision the U.S. District Court for the District of Arizona on remand did not strike down the entirety of the Town of Gilbert sign ordinance but instead severed those specific provisions that had been identified as constituting an unconstitutional distinction among categories of temporary noncommercial speech; and

**WHEREAS,** the City recognizes that in *Reed*, only the regulation of temporary *noncommercial* speech was at issue before the Supreme Court. Specifically, three categories of temporary signs were discussed: Temporary Directional Signs (applied to limit the speech of the petitioners), Political Signs, and Ideological Signs; and

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

**WHEREAS,** the City recognizes that *Reed* only involved *noncommercial* speech; and that commercial speech was not challenged in the *Reed* decision; and

**WHEREAS,** the City recognizes that in *Reed* the Supreme Court did not strike down the Town of Gilbert sign ordinance, which can be found at Article 4.4 of the Town of Gilbert Land Development Code as it then existed [*see* Brief for Respondents 1, *Reed v. Town of Gilbert*, No. 13-502, 2014 WL 6466937 (November 14, 2014)]; and further recognizes that in applying the majority decision of six Justices, the federal district court thereafter entered a Consent Order on December 30, 2015, which Consent Order stated: "[T]he Court permanently enjoins Defendants from enforcing Section 4.402P of the Town of Gilbert's Land Development Code entitled 'Temporary Directional Signs Relating to a Qualifying Event.'" *Reed v. Town of Gilbert*, United States District Court for the District of Arizona, Phoenix Division, Case No. 2:07-cv-00522-SRB Document 137 (December 30, 2015); and

**WHEREAS,** the City recognizes that in *Reed* commercial speech was not impacted and that the Town of Gilbert sign ordinance was not struck down in its entirety; and that only one provision, Section 4.402P, of the Town's sign ordinance was enjoined from being enforced against the petitioners. (*See* Section 4.402P within Attachment 2 [Joint Appendix in *Reed*, available at 2014 WL 4631244, with Excerpts of Article 4.4, inclusive of 4.402P]); and

**WHEREAS,** the City recognizes that government speech is not subject to First Amendment scrutiny as was confirmed by the United States Supreme Court in *Walker v. Texas*

*Division, Sons of Confederate Veterans, Inc.*, 135 S.Ct. 2239 (2015), released in June 2015 the same day as the *Reed* decision, and the *Confederate Veterans* decision has been followed as to government signs by the Eleventh Circuit in *Mech v. School Bd. Of Palm Beach County*, 806 3d 1070 (11th Cir. 2015), *cert. denied*, 137 S.Ct. 73 (2016); and

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

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

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

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

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

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

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

**WHEREAS,** the City finds that it should continue to prohibit discontinued signs regardless of whether or not there was any intent to abandon the sign; and

**WHEREAS,** the City finds that a traffic control device sign, exempt from regulation under the City's land development regulations for signage, is any government 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); and

**WHEREAS,** the City finds that it is appropriate to prohibit certain vehicle signs similar to the prohibition suggested in Article VIII (Signs) of the Model Land Development Code for Cities and Counties, prepared in 1989 for the Florida Department of Community Affairs by the UF College of Law's Center for Governmental Responsibility and by a professional planner with Henigar and Ray Engineering Associates, Inc., and that is nearly identical to 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.); and

**WHEREAS,** the City is just under ½ of a square mile of land in size and is almost completely built-out with approximately 2200 inhabitants, and is made up of approximately 200 commercial and professional businesses, 540 single-family homes, 320 apartments and 650 condominium units; and

**WHEREAS,** the City provides for its residents and visitors a wide range of living choices and shopping opportunities which, while small, serve the needs of both the City and its neighboring communities as it serves as one of the gateways to Pinellas County's gulf beaches; and

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

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

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

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

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

**WHEREAS,** the City finds that as far back as 1954 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)]; and

**WHEREAS,** the City finds 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 County v. Gould*, 99 So. 2d 236 (Fla. 1957); *E.B. Elliott Advertising Co. v. Metropolitan Dade County*, 425 F.2d 1141 (5th Cir. 1970), *cert. dismissed*, 400 U.S. 878 (1970)]; and

**WHEREAS,** the City finds that the enhancement of the visual environment is critical to a community's image; and

**WHEREAS,** the City finds that the sign control principles set forth herein create a sense of character and ambiance that distinguishes the City as one with a commitment to maintaining and improving an attractive environment; and

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

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

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

**WHEREAS**, the City finds and determines that two decades ago a growing number of local governments had begun prohibiting pole signs, allowing only ground signs (also referred to as monument signs), and that monument signs have become a sign type preferred by vacation destinations, planned communities, and local governments seeking to create a distinctive image, and that the City seeks to maintain that distinctive image as part of its community character; and

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

**WHEREAS,** the City of Belleair Bluffs finds and determines that the sign regulations in Exhibit A attached to this Ordinance are intended to enable the identification of places of residence and business; and

**WHEREAS,** the City finds that the sign regulations in Exhibit A attached to this Ordinance are intended to allow for the communication of information necessary for the conduct of commerce; and

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

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

**WHEREAS,** the City finds that the sign regulations in Exhibit A attached to this Ordinance are intended to protect the public from the dangers of unsafe signs; and

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

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

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

**WHEREAS,** the City finds that the sign regulations in Exhibit A attached to this Ordinance 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; and

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

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

**WHEREAS,** the City finds that the sign regulations in Exhibit A attached to this Ordinance are intended to require signs to be constructed, installed and maintained in a safe and satisfactory manner; and

**WHEREAS,** the City finds that the sign regulations in Exhibit A attached to this Ordinance are intended to preserve and enhance the natural and scenic characteristics of this coastal community; and

**WHEREAS,** the City finds 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 through Florida Statutes § 163.3202(2)(f); and

**WHEREAS,** the City finds that it has adopted a land development code in order to implement its comprehensive plan, and to comply with the minimum requirements of Florida Statutes § 163.3202, including the regulation of signage and future land use; and

**WHEREAS,** the City finds that its Land Development Code is the manner by which the City has chosen to regulate signage; and

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

**WHEREAS**, the City finds 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; and

**WHEREAS**, the City finds that consistent with the foregoing preambles, it is appropriate to prohibit and/or to continue to generally prohibit the sign types listed in Exhibit A of this Ordinance; and

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

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

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

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

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

**WHEREAS**, the City finds that the prohibition of the construction of billboards and certain other sign types, as well as the establishment and continuation of height, size and other standards for on-premise signs, is consistent with the policy set forth in the Florida Constitution that it shall be the policy of the state to conserve and protect its scenic beauty; and

**WHEREAS**, the City agrees with 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 County*, 425 F.2d 1141 (5th 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)]; and

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

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

**WHEREAS**, the City finds 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)]; and

**WHEREAS**, the City acknowledges that the United States Supreme Court and many federal courts have accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area. [*see Markham Adver. Co. v. State*, 73 Wash. 2d 405, 439 P.2d 248 (1969), *appeal dismissed for want of a substantial federal question*, 439 U.S. 808 (1978); *Markham Adver. Co., Inc. v. State*, Case No. 648, October Term, 1968, Appellants' Jurisdictional Statement, 1968 WL 129277 (October 14, 1968); *Suffolk Outdoor Adver. Co., Inc. v. Hulse*, 43 N.Y.2d 483, 372 N.E.2d 263 (1977), *appeal dismissed for want of a substantial federal question*, 439 U.S. 808 (1978); *Suffolk Outdoor Adver. Co., Inc. v. Hulse*, Case No. 77-1670, October Term, 1977, Appellant's Jurisdictional Statement (March 23, 1978); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806-807 (1984), *City of Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. 410, 425 and 442 (1993); *National Advertising Co. v. City and County of Denver*, 912 F.2d 405, 409 (10th Cir. 1990), and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999)]; and

**WHEREAS**, the City finds 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 County*, 425 F.2d 1141, 1153 (5th 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)]; ad

**WHEREAS**, the City finds 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 City [*see, e.g., E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F.2d 1141, 1154 (5th Cir. 1970), *cert. denied*, 400 U.S. 878 (1970)]; and

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

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

**WHEREAS**, the City finds that the presence of billboards along 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; and

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

**WHEREAS**, the City recognizes that more than three 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; and

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

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

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

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

**WHEREAS**, the City acknowledges that the seven Justices' views in *Metromedia*, as expressly recognized in the later Supreme Court decisions in *Taxpayers for Vincent* and *Discovery Network*, have never been overturned; and that more than a dozen published Circuit Court of Appeal decisions followed *Metromedia* on the permissible distinction between onsite signs and

offsite signs-when it comes to government's substantial interest in prohibiting the latter sign type (the offsite sign), including: *Major Media of the Southeast, Inc. v. City of Raleigh*, 792 F.2d 1269, 1272 (4th Cir. 1986); *Georgia Outdoor Advertising, Inc. v. City of Waynesville*, 833 F.2d 43, 45-46 (4th Cir. 1987); *Naegele Outdoor Adver., Inc.* v. *City of Durham*, 844 F.2d 172, 173-174 (4th Cir. 1988); *Nat'l Adver. Co. v. City and County of Denver,* 912 F.2d 405, 408-411 (10th Cir. 1990); *Nat'l Adver. Co.* v. *Town of Niagara,* 942 F.2d 145, 157-158 (2nd Cir. 1991); *Outdoor Systems, Inc. v. City of Mesa*, 997 F.2d 604, 610-612 (9th Cir. 1993); *Outdoor Graphics, Inc. v. City of Burlington, Iowa,* 103 F.3d 690, 695 (8th Cir. 1996); *Ackerley Communications of Northwest* v. *Krochalis*, 108 F.3d 1095, 1099 (9th Cir. 1997); *Southlake Property Associates, Ltd. v. City of Morrow, Ga.*, 112 F.3d 1114, 1117·1119 (11th Cir. 1997), *cert. denied, 525* U.S. 820 (1998); *Bad Frog Brewery, Inc. v. New York State Liquor Authority,* 134 F.3d 87, 99 (2nd Cir. 1998); *Lavey v. City of Two Rivers*, 171 F.3d 1110, 1114-1115 (7th Cir. 1999); *Long Island Bd. of Realtors, Inc. v. Incorp. Village of Massapequa Park,* 277 F.3d 622, 627 (2d Cir. 2002); *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 814-816 (9th Cir. 2003); *Riel v. City of Bradford,* 485 F.3d 736, 753 (3rd Cir. 2007); *Naser Jewelers, Inc. v. City of Concord, N.H.*, 513 F.3d 27, 36 (1st Cir. 2008); and *RTM Media, L.L.C. v. City of Houston,* 584 F.3d 220, 225 (5th Cir. 2009); and

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

**WHEREAS,** the City of Belleair Bluffs acknowledges that the significance of *Suffolk Outdoor* is that it was a merits decision that recognized that it is constitutionally permissible to distinguish between on-site signs and off-site signs (Billboards) for regulatory purposes, and to ban the latter, and that this merits decision has never been overturned; and

**WHEREAS**, the City finds, consistent with the foregoing preambles, that the business of outdoor advertising should be a prohibited use in each of the City's zoning districts and in all of the City's zoning districts; and

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

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

do not identify a particular product, service, or facility; and

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

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

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

**WHEREAS,** the City finds that the district court in *Granite State Outdoor Advertising, Inc. v. Clearwater, Fla. (Granite-Clearwater)*, 213 F.Supp.2d 1312 (M.D. Fla. 2002), *aff'd in part and rev'd in part on other grounds*, 351 F.3d 1112 (11th Cir. 2003), *cert. denied*, 543 U.S. 813 (2004), cited the severability provisions of 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 Land Development Code [*see Granite-Clearwater* at 1326, n.22]; and

**WHEREAS,** the City finds that in *Mitchell v. Mobile County*, 313 So.2d 172, 175 (Ala. 1975), the Alabama Supreme Court held that the presence of a severability clause is persuasive authority that the Legislature intends valid portions of legislative enactments to survive; and

**WHEREAS,** the City finds that in *State ex rel. Pryor ex rel. Jeffers v. Martin*, 735 So.2d 1156 (Ala. 1999), the Alabama Supreme Court noted that "To be sure, '[t]he inclusion of a severability clause is a clear statement of legislative intent to that effect [striking the offending provision and leaving the remainder in place], but the absence of such a clause does not necessarily indicate the lack of such an intent or require a holding of inseverability.'" *Id.* at 1158 quoting *City of Birmingham v. Smith*, 507 So.2d 1312, 1315 (Ala. 1987); and

**WHEREAS,** the City finds that the Land 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; and

**WHEREAS,** the City finds that in *Newton v. City of Tuscaloosa*, 36 So.2d 487, 493 (Ala. 1948), the Alabama Supreme Court noted: "A criterion to ascertain whether or not a statute is severable so that by rejecting the bad the valid may remain intact is: "The act 'ought not to be held wholly void unless the invalid portion is so important to the general plan and operation of the law in its entirety as reasonably to lead to the conclusion that it would not have been adopted if the legislature had perceived the invalidity of the part so held to be unconstitutional.'" *See also A.*

*Bertolla & Sons v. State,* 24 So.2d 23, 25 (Ala. 1945); *Union Bank & Trust Co. v. Blan,* 155 So. 612 (Ala. 1934); and

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

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

**WHEREAS,** the City finds that the 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; and

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

**WHEREAS,** the City finds that there is an ample record of its intention that the presence of a severability clause in connection with its 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; and

**WHEREAS,** the City finds 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 its sign regulations, other code provisions, or other laws, for any reason(s) whatsoever; and

**WHEREAS,** the City finds that there is 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 its sign regulations, other code provisions, or other laws, for any reason(s) whatsoever; and

**WHEREAS,** the City finds that there is an ample record that it intends that each prohibited sign-type continue in effect regardless of the invalidity or unconstitutionality of any, or even all, other provisions of the City's sign regulations, other code provisions, or other laws, for any reason(s) whatsoever; and

**WHEREAS,** the City finds 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; and

**WHEREAS,** the City finds 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; and

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

**WHEREAS**, the City finds that it is appropriate to prohibit direct illumination of the surface of any temporary sign but such prohibition shall not be construed to constrain the general illumination of flags and flagpoles unless otherwise expressly prohibited.

**NOW, THEREFORE, BE IT ORDAINED** by the City Commission of the City of Belleair Bluffs, Florida, as follows:

**Section 1**. *Adoption of recitals.* The foregoing exordial clauses are hereby adopted by the City Commission in support of this Ordinance.

**Section 2**. The current Article XVIII of Chapter 102 of Part II of the City Code for the City of Belleair Bluffs, consisting of § 102-133.1 through § 102-137.4 and comprising the City's sign code, is hereby repealed in its entirety.

**Section 3**. A new Article XVIII of Chapter 102 of the City Code for the City of Belleair Bluffs, entitled Sign Regulations and consisting of § 102-133.1 through § 102-133.15, is hereby adopted as fully set forth in **EXHIBIT A** attached hereto and incorporated herein.

**Section 4**. Section 102-43 of Article VIII of Chapter 102 of Part II of the City Code of the City of Belleair Bluffs is hereby amended by adding a new subsection E as follows:

**Sec. 102-43. - Prohibited uses.**

A. Drive-in eating establishments. There shall not be allowed within any land use classification within the city limits any drive-in eating or food establishment, temporary or portable food-vending establishments or devices, promotional or advertising food-distribution vehicles or devices or other similar facilities. Drive-through pickup windows are permissible.

B. Excavation pits and quarries. No excavation pits or quarries shall be allowed within any land use classification within the city.

C. Landfills. No landfills or sanitary landfills shall be allowed in any land use district within the city, except such landfills as shall be approved by the Planning Board and which shall be for the specific purpose of creating an acceptable finish grade to a lot, parcel or tract when the same is done in conjunction with and as a part of a construction project for the lot, parcel or tract being so filled. All plans submitted to the Planning Board which shall contemplate or require fill areas shall be specific in required details, in accordance with such regulations as may be set forth by the Planning Board and the City Engineering Department.

D. Arcade amusement centers. There shall not be allowed within any land use classification within the city limits any arcade amusement center. The term "arcade amusement center," as used in this article, shall mean a place of business of which the primary use is the operation of coin-operated amusement games or machines on the premises as an amusement facility.

E. Business of outdoor advertising prohibited. The business of outdoor advertising shall not be allowed or permitted within any land use classification within the city, and is a prohibited use in all zoning districts.

**Section 5**. Section 102-10 of Article II of Chapter 102 of Part II of the City Code of the City of Belleair Bluffs is hereby amended by deleting the following definitions contained therein as follows:

~~*Advertising flags* means pole or structure mounted advertising flag signs, such as the types of signs commonly referred to as a "swooper flag," "feather flag," or "teardrop flag."~~

~~*Amplification sign* means minor or amplifying signs limited to the identification and pricing of a product or service on a premises.~~

* * *

~~*Awning sign* means a tenant identification sign designed as part of an awning.~~

* * *

~~*Cabinet sign* means a graphic on clear or opaque plastic usually two-sided, enclosed in a case or frame which contains the bulbs or neon tubes for lighting.~~

* * *

~~*Canopy signs* means a pedestrian-oriented sign designed as part of an awning.~~

~~*Changeable copy signs* means a sign on which the message copy is changed manually through moveable letters, numbers, etc. *Changeable copy signs* means a sign on which the message copy is changed manually through moveable letters, numbers, etc.~~

* * *

~~*Directional signs* means a sign erected for the direction or safety of the public.~~

~~*Directory sign* means a sign listing only the names and/or use, or location of more than one business, activity or professional office conducted within a building, group of buildings or commercial center.~~

* * *

~~*Flat signs* means a sign erected parallel to and extending not more than 12 inches from the facade of any building to which it is attached and supported throughout its entire length by the facade and not extending above the building.~~

~~*Flat wall plaque* means a small flat sign mounted on a building wall near an entry.~~

* * *

~~*Freestanding sign* means a sign supported by a sign structure secured in the ground and which is wholly independent of any building, fence, vehicle or object other than the sign structure, for support, including pole and monument signs.~~

* * *

~~*Gasoline pricing sign* means a sign incorporated into a service station identity sign for displaying of price changes.~~

* * *

~~*Graphic* means any letter, number, symbol, figure, character, mark, plane, design, pictorial stroke, stripe, trademark, lights or combination of these which is used to gain the attention of the public.~~

* * *

~~*Ingress/egress sign* means a sign which designates only the direction of ingress or egress of a parking area or driveway, such as "In," "Out," "One-Way."~~

~~*Items of information* means a defined visual element or area of design or message in a sign that causes a breakup of visual graphics and separates attention.~~

* * *

~~*Menu pricing sign* means a changeable copy sign for displaying a menu selection/pricing of products for sale at a drive-up window.~~

~~*Monument sign* means a sign constructed of stone, wood, metal, etc., in the shape of a tablet or monument generally having parallel sides from top to bottom.~~

* * *

~~*Parallel sign* means a sign which is parallel to the property frontage.~~

* * *

~~*Perpendicular sign* means a sign which is perpendicular to the property frontage.~~

* * *

~~*Pole sign* means a sign attached to a slender piece of wood or metal, usually rounded sometimes used in pairs, which are sunken in the ground and exposed to view.~~

* * *

~~*Project sign* means any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor or materials vendor upon which the property such individual is furnishing labor, services or material.~~

* * *

~~*Real estate sign* means a sign erected by the owner, or his agent, advertising the real property upon which the sign is located for rent, for lease or for sale.~~

~~*Rear entrance sign* means a sign placed at a secondary entry for identifying a remote or rear entrance.~~

~~*Roof sign* means any sign or graphic, erected, constructed and/or maintained upon, against or directly above a roof or on top of or above a parapet on the top of a building.~~

* * *

~~*Sandwich sign* means any sign or graphic, double-faced or single-faced, lighted or not, which is portable and may readily be moved from place to place.~~

~~*Sign band* means an unobstructed surface of a wall, building, or sign structure that is architecturally intended for sign positioning.~~

~~*Snipe sign* means any small sign, generally of a temporary nature made of any material, where such sign is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, fences or other objects and the advertising matter appearing thereon is not applicable to the present use of the premises upon which such sign is located.~~

* * *

~~*Subdivision development sign* means a sign identifying areas under development such as subdivisions, condominiums and complexes.~~

~~*Subdivision entrance sign* means a sign which designates the name of a subdivision or of a residential district and is located at or in close proximity to the main entrance.~~

* * *

~~*Temporary sign* means any sign erected for a limited time period, usually not to exceed one year.~~

~~*Theater sign* means a sign of changeable copy for displaying a listing of performances for a cinema or theater.~~

**Section 6**. Section 102-10.1 of Article II of Chapter 102 of Part II of the City Code of the City of Belleair Bluffs, entitled *Illustrations of type of signs and methods of measurement*, is hereby repealed in its entirety.

**Section 7**. For purposes of codification of any existing section of the Belleair Bluffs Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 8**. The Codifier shall codify the substantive amendments to the Belleair Bluffs Code contained in Sections 2 through 6 of this Ordinance as provided for therein, and shall not codify any other sections not designated for codification.

**Section 9**. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect at 12:01 a.m. on the tenth day after its adoption.

**DULY ADOPTED** with a quorum present and voting this ___ day of _____, 2018.

**BELLEAIR BLUFFS, FLORIDA**

ATTEST: CITY CLERK

By:_____
Mayor Chris Arbutine, Sr.

By:_____
Debra S. Sullivan, MMC
City Clerk

PASSED ON FIRST READING: _____

PLANNING BOARD HEARING: _____

PASSED ON SECOND READING: _____