

CTIY OF HOMESTEAD

ORDINANCE NO. 2023-03-04

AN ORDINANCE OF THE CITY OF HOMESTEAD, FLORIDA, AMENDING THE CITY CODE OF ORDINANCES BY AMENDING CHAPTER 23 “SIGNS AND ADVERTISING,” ARTICLE III, “SIGNS,” MODIFYING REGULATIONS RELATED TO OFF-PREMISE ADVERTISING; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City of Homestead (the “City”), as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 166, Florida Statutes, is authorized and empowered to consider changes to its land development regulations; and

WHEREAS, the City Council finds and determines that the Zoning Code is required to regulate signs as provided by Section 163.3202(2)(f), Florida Statutes; and

WHEREAS, the City Council does not wish to censor speech, but rather to provide for the public welfare by regulating signage in the City in a manner that enhances the aesthetics of the community, reduces visual pollution, provides

clear information and minimizes distractions to drivers in the interests of traffic safety; and

WHEREAS, the City Council desires to modify and update its regulation of signs in order to provide a regulatory scheme as it relates to billboards and/or outdoor off-premises signs; and

WHEREAS, the City finds and determines that the purpose and intent provisions of its signage regulations should be detailed so as to further describe the beneficial aesthetic, traffic safety, 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; and

WHEREAS, various signs that serve as signage for particular land uses 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 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 (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); and *Reed v. Town of Gilbert*, 587 F.3d 866, 980-981 (9th Cir. 2009)); and

WHEREAS, 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 aesthetic objectives, including rules that distinguish between on-premises and off-premises signs; and

WHEREAS, under established Supreme Court precedent and Eleventh Circuit 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 and determines that the regulation of signs within the City strongly contributes to the development and maintenance of a pleasing, visually attractive environment, and that these sign regulations are prepared with the intent of enhancing the environment and promoting the continued well-being of the City; and

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

WHEREAS, the City 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 "[i]t 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" (*Berman v. Parker*, 348 U.S. 26, 33 (1954)); and

WHEREAS, the City finds and determines that aesthetics is a valid basis for zoning, and that the regulation of the size and appearance 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 and determines that these sign regulations further the character and ambiance of the City, and reflect its commitment to maintaining and improving an attractive environment; and

WHEREAS, the City finds and determines that the beauty of the City'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 help create an attractive residential community for its residents; and

WHEREAS, the City finds and determines that the goals, objectives and policies of its plans 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 the purpose of the regulation of signs as set forth in this Ordinance is to promote the public health, safety and general welfare through a comprehensive system of reasonable, consistent and nondiscriminatory sign standards and requirements; and

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

WHEREAS, the City finds and determines that these sign regulations are intended to protect the public from the dangers of unsafe signs; and

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

WHEREAS, the City finds and determines that in meeting the purposes and goals established in these findings, it is appropriate to prohibit or to continue to prohibit certain sign types; and

WHEREAS, the City finds and determines that the prohibition of certain 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 finds that local governments may separately classify off-premise and on-premise 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 and determines that regulations on the erection of off-premise outdoor advertising signs will reduce the number of driver distractions and the number of aesthetic eyesores along the roadways 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 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-premise advertising signs, so as to prohibit the construction of billboards_and/or outdoor off-premises signs in all zoning districts, except for commercial and industrial zoning districts, and to provide that the foregoing provisions shall be severable; and

WHEREAS, the City 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); and *Newman Signs, Inc. v. Hjelle*, 268 N.W.2d 741 (N.D.1978)); and

WHEREAS, the City 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; and

WHEREAS, the City finds and determines that, by confirming in this 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 over

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 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)); and

WHEREAS, the City 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; and

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

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

WHEREAS, the City finds and determines that there must 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; and

WHEREAS, the City finds and determines that there must be 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 ordinance code provisions, or other laws, for any reason(s) whatsoever; and

WHEREAS, the City Council finds that it is in the best interest of the City and its residents to amend Chapter 23, "Signs And Advertising," Article III, "Signs;" and

WHEREAS, the City Council reiterates its desire that there be an ample and unequivocal record of its intention that the severability clauses it has adopted related to its sign regulations shall be applied to the maximum extent possible, even if less speech would result from a determination that any exceptions, limitations, variances, or other sign provisions are invalid or unconstitutional for any reason whatsoever; and

WHEREAS, in accordance with the requirements of Chapter 163, Florida Statutes, the City Council, acting as the Local Planning Agency, has reviewed the proposed Ordinance and has determined that the proposed regulation is consistent with the City's Comprehensive Plan; and

WHEREAS, the City Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the City Council has determined that this Ordinance is consistent with the City Comprehensive Plan and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOMESTEAD, FLORIDA:

Section 1. Findings. The foregoing Whereas clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. City Code Amended. That Chapter 23, "Signs And Advertising," Article III, "Signs," of the City Code of Ordinances is hereby

amended to read as follows¹:

Chapter 23 – SIGNS AND ADVERTISING

ARTICLE III. – SIGNS

Sec. 23-76. – Prohibited signs.

(a) It shall be unlawful for any person to erect, place or use within the city the following signs:

(1) Snipe signs;

~~(2) Billboards and off-premises signs.~~

(32) Animated or flashing signs;

(43) Roof signs;

(54) Painted signs;

(65) Vehicle advertising signs;

(76) Reserved;

(87) Hazardous signs;

(98) Attention attracting devices;

(109) Any sign illuminated with exposed lightbulbs or neon bulbs;

(11) Pole signs;

(1210) Any sign which obstructs, or is painted or inscribed upon, a sidewalk or other public right-of-way;

(1311) Any other type or kind of sign which does not comply with the term, conditions, provisions and intent contained in these regulations and ordinances amendatory thereof and supplemental thereto.

~~(14) V-shaped signs.~~

Sec. 23-77. – Signs permitted and regulated.

No sign of any kind shall be permitted to be constructed, erected, or maintained in various zoning districts of the city, except the signs in section 23-

¹ ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted double-strikethrough and double underline.

78 et seq. or those signs otherwise exempted in section 23-61 et seq.; Notwithstanding the foregoing exceptions and regulations, Billboards shall comply with the regulations set forth in this section of the city code.

Sec. 23-91.1 – Billboards.

The provisions of this section shall supersede and control over the provisions of any other law, ordinance, rule or regulation of the city.

Sec. 23-91.2 – Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Billboards shall mean commercial signs advertising an establishment, activity, product, service or entertainment, which is sold, produced, manufactured, available or furnished at a place other than on the property on which the sign is located.

Detached Billboard shall mean any sign not attached to or painted on a building, but which is affixed and permanently attached to the ground. Permanently attached as used herein shall mean that the supporting structure of the Billboard is attached to the ground by a concrete foundation.

Digital technology shall mean electronic technology that allows for changes to Billboard copy resulting from digital data input. Included in this technology are Billboards that use series of lights, including light emitting diodes (LED), fiber optics, or other similar technology.

Embellishment shall mean letters, figures, images, mechanical devices, or lighting extending beyond the sign face of a Billboard.

Nits (nt) shall mean the unit of measurement for luminance. Luminance is the measure of the light emanating from an object with respect to its size and is the term used to quantify electronic Billboard brightness. A nit is the total amount of light emitted from a Billboard divided by the surface area of the Billboard (candelas per square meter (cd/m²)).

Billboard structure. A structure erected exclusively for the display or support of outdoor off-premises advertising.

V-shaped Billboard. Any structure composed of two sign faces that are grouped together and placed at an angle to form a single “V”.

Sec. 23-91.3 – Permit required; application.

No Billboard shall be erected or maintained unless a permit for the erection of such Billboard has been granted by the city in accordance with this chapter.

Sec. 23-91.4 – Design, construction and location standards.

Notwithstanding any other provisions to the contrary, Billboards may only be erected within the commercial and industrial zoning districts along the FDOT Turnpike Corridor (the “FDOT Turnpike ROW”) located within the jurisdictional limits of the city, provided that all of the conditions in this section are met:

- (a) Size: Maximum size of fourteen (14) feet by forty-eight (48) feet (672 square feet) plus embellishment providing overall size of sign does not exceed 750 square feet.
- (b) Number: No more than two (2) signs shall be placed in a group except when such signs are less than forty-eight (48) feet long and form a triangle or back-to-back sign.
- (c) Minimum Setbacks: Billboards shall be set back a minimum of fifteen (15) feet from the FDOT Turnpike ROW.
- (d) Minimum Distance to Another Billboard on the Same Side of the FDOT Turnpike ROW (Digital or Static):
 - (1) The minimum distance between Billboards on the same side of the FDOT Turnpike ROW shall be 2,000 feet.
 - (2) V-shaped Billboard sign shall be considered a single sign for the purpose of these requirements if the two sign faces are the same size and the angle between the faces is 60 degrees or less.
- (e) Height:
 - (1) Total sign height of a Billboard shall not exceed fifty (50) feet. However, the total sign height of a Billboard located within 300 feet of a residential use shall not exceed thirty (30) feet in height, as measured from the crown of the main-traveled way to which the sign is oriented to the top of the Billboard.
- (f) Illumination:
 - (1) Billboards may illuminate the entirety of their sign faces with digital technology, only in accordance with the regulations

below, provided that embellishments do not contain digital illumination.

(a) Static Billboards. Billboards illuminated by flashing, moving, intermittent, chasing or rotating lights are prohibited. Signs may be illuminated by exposed bulbs, fluorescent tubes, interior lighting, or by indirect lighting from any external source. Indirect lighting, such as floodlights, shall not shine directly on adjacent property, motorists or pedestrians. Illumination shall be such that it will provide reasonable illumination and eliminate glare and intensity which might pose safety hazards to drivers and pedestrians. Revolving and rotating signs shall be illuminated by internal lighting only.

(b) Digital Billboards. Where digital technology is allowed, it shall be provided in compliance with the following:

(i) No auditory message or mechanical sounds shall be emitted from the Billboard.

(ii) The Billboard shall not display any illumination that moves, appears to move, blinks, fades, rolls, dissolves, flashes, scrolls, shows animated movement, or changes in intensity during the static display period.

(iii) All Digital Billboards shall be modulated so that, from sunset to sunrise, the brightness shall not be more than 500 Nits. Sunset and sunrise times are those times established by the Miami office of the National Weather Service. At all other times, the maximum brightness levels shall not exceed 5,000 Nits. All Digital Billboards shall have installed ambient light monitors and at all times shall allow such monitors to automatically adjust the brightness level of the sign based on ambient light conditions.

(iv) The message display shall not change more often than once each eight (8) seconds, with all moving parts or illumination moving or changing simultaneously.

(v) Any Digital Billboard that malfunctions, fails, or ceases to operate in its usual or normal programmed manner shall immediately revert to a

black screen and shall be restored to its normal operation conforming to the requirements of this section within twenty-four (24) hours.

(g) Orientation:

- (1) Billboards shall be primarily oriented toward the FDOT Turnpike ROW and shall be subject to the requirements regarding setbacks and spacing from residential uses as set forth in this section.

Sec. 23-91.5 - Opt-out of Miami-Dade County Code for signs in proximity to expressways.

The City of Homestead opts-out of Section 33.121.12 of the Miami-Dade County Code of Ordinances and expressly allows signs within 660 feet of an expressway in accordance with provisions outlined in this section.

Section 3. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the City Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the City of Homestead; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such

intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED on first reading this 14th day of December, 2022.

PASSED AND ADOPTED on second reading this 29th day of March, 2023.

STEVEN D. LOSNER,
Mayor

ATTEST:

ELIZABETH SEWELL, MPA, MMC, FCRM
City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
FOR THE USE AND BENEFIT OF THE CITY ONLY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
City Attorney

Motion to adopt by Councilman Fletcher, seconded by Vice Mayor Guzman.

FINAL VOTE AT ADOPTION

<i>Mayor Steven D. Losner</i>	<u>YES</u>
<i>Vice Mayor Julio Guzman</i>	<u>YES</u>
<i>Councilwoman Erica G. Ávila</i>	<u>YES</u>
<i>Councilwoman Jenifer N. Bailey</i>	<u>YES</u>
<i>Councilwoman Patricia D. Fairclough- Staggers</i>	<u>YES</u>
<i>Councilman Sean L. Fletcher</i>	<u>YES</u>
<i>Councilman Larry Roth</i>	<u>YES</u>