

ORDINANCE NO. 07-2006

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 34 "VEGETATION", ARTICLE I, TO CREATE NEW CODE SECTION 34-10 TO BE ENTITLED "REGULATIONS FOR TREE PLANTINGS AND IMPROVEMENTS IN SWALES"; AND AMENDING CHAPTER 67, ARTICLE IV, SECTION 67-128 ENTITLED "DRAINAGE AND SWALES"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted general provisions pertaining to land development, roadway design standards, drainage, and swales which have been codified in Chapter 67, Article IV, Section 67-128 of the Code of Ordinances of the Town of Lake Park; and

WHEREAS, the Town Commission has also adopted general provisions pertaining to vegetation and plants which have been codified in Chapter 34 of the Code of Ordinances of the Town of Lake Park; and

WHEREAS, Town staff has recommended to the Town Commission that Town Code Section 67-128 be amended, and new Code Section 34-10 be created, to provide for additional regulations pertaining to the plantings and other improvements in swale areas within the Town; and

WHEREAS, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety and general welfare to amend the Town's Code to provide for such additional regulations and procedures; and

WHEREAS, the amendment of Section 67-128, and the creation of new Code Section 34-10, would preserve and protect the Town's swales and sidewalks and other Town property, and preserve and enhance property values within the Town, generally; and

WHEREAS, the purpose and intent of the amendment of these Code Sections is to regulate

the installation and maintenance of plantings and other improvements in swales within the Town.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are hereby incorporated as true and correct findings of fact of the Town Commission.

Section 2. Chapter 34, Article I, Section 34-10 of the Code of Ordinances of the Town of Lake Park, Florida is hereby created to read as follows:

Sec. 34-10 Regulations for tree plantings and improvements in swales.

(1) Sole risk of property owner. Liability for any injuries or damage which result from any work performed and/or improvements constructed, installed or placed in the swale area by the property owner(s), their successors or assigns shall be at the property owner's sole risk; and without recourse to the Town, even if improvements and other materials placed in the swale are required to be removed by the Town or any other entity with jurisdiction. The area from the property line to the edge of the street or roadway shall be considered the swale area for purposes of this Section.

(2) Permitted improvement in swales. The installation of trees or other improvements, objects, and structures, and the uses permitted within street swale areas within the Town are limited to the following:

- (a) Traffic control devices such as signal lights, stop signs and yield signs;
- (b) Utility systems and appurtenant structures;
- (c) Drainage systems and appurtenant structures;
- (d) Sod or herbaceous ground cover installed according to the requirements of the rights-of-way use and maintenance standards and maintained in such a manner as not to exceed 6 inches in height. Grass sodding or grass seeding of the swale area is required and shall be maintained by the property owner(s);
- (e) The planting of Town-approved single trunk trees shall be permitted in swale areas, provided that the property owner or the owner's authorized agent, applies for and obtains a swale-area permit for the proposed plantings from the Town as provided herein;
- (f) Low-profile, dome-shaped decorative button stones, blocks or markers not to exceed six (6) inches in diameter and four (4) inches in height, placed no closer than four (4) feet apart, shall not constitute items which interfere with the drainage of the swale areas and may be permitted by the Town's Director of Public Works along street rights-of-way, drives, and public walks in the Town. These dome-shaped decorative blocks or markers shall have rounded surface areas and no corners which make a

right-angle projection corner interface. In the event that dome-shaped decorative blocks or markers are placed in the swale area, they shall be painted white or with a white reflective material;

- (g) Underground sprinkler systems with flush or pop-up heads;
- (h) Mailboxes installed according to the requirements of the rights-of-way use and maintenance standards.

(3). Swale-area permit required.

- (a) A Town swale-area permit is required before any trees or decorative markers or underground sprinkler systems may be installed in a swale. The property owner or owner's authorized agent may apply for the swale-area permit using the form established by the Town Public Works Department, and must pay the permit fee which is established by resolution of the Town Commission. Proof of property ownership or owner's agent authorization must be provided to the Town at the time the permit application is submitted, together with a site sketch identifying the location, species, size, and the number of trees and/or decorative markers to be installed in the swale area, and such other information as is required by the application form or as may be required by the Public Works Director.
- (b) Approval of the permit may be granted if the proposed plantings and/or improvements do not create infrastructure maintenance problems, encroach into the roadside recovery area, create a hazard, or otherwise adversely affect citizens of the Town, or if the proposed improvement otherwise comports with the public interest. As a condition precedent to issuance of the swale-area permit, the property owner shall execute an indemnification and hold harmless agreement in favor of the Town, and in a form acceptable to the Town Attorney, which agreement shall be recorded against the property by the Town. The acceptance of a swale area permit by the person requesting a permit, shall constitute acceptance of all obligations pertaining thereto, and the permit holder shall be held responsible for fulfilling all of the requirements thereof. The duties and obligations of the swale-area permit, specifically including the indemnification and hold harmless agreement, shall constitute covenants running with the land, and shall be binding on the permit holder, the property owner(s), and their respective heirs, successors, and assigns.
- (c) Trees, vegetation and/or decorative markers, or other improvements, landscaping, structures or objects which are planted, installed, constructed or placed in the swale without a permit, shall be subject to immediate removal. When trees or decorative markers are placed in a swale without the required swale-area permit, the permit fee for the swale-area permit shall be tripled; however, the payment of the triple fee shall not relieve any person from fully complying with the requirements of this Section. Furthermore, if a swale-area permit is not applied for and obtained; the property owner and/or the tenant may be subject to code enforcement proceedings and the imposition of a fine, together with related administrative fees and costs through code enforcement proceedings. The Town may remove and dispose of the non-permitted plantings and/or markers, structures and other non-permitted objects from the swale, and charge the property owner and/or the tenant, the reasonable costs for removal and

disposal, and the costs for restoration of the swale, if any, in addition to the fine and related administrative costs.

(4) *Variety and location of trees.* The following regulations shall govern the variety and location of trees planted in swale areas:

- (a) Trees listed in paragraph 5 below and other tree species which are determined to be of the same character and which are deemed suitable and appropriate trees for swales areas as determined by the Director of Public Works, may be planted in a swale upon the issuance of a swale-area permit. Casuarina trees (Australian pine trees), Melaleuca trees, Brazilian oak, rubber trees, ficus trees, fruit trees and shrubs, and any other non-native species and exotic, pest and invasive plants as listed by the Florida Exotic Pest Plant Council are specifically prohibited.
- (b) Trees shall be planted not closer to the street pavement than one-half the distance between the property line and the street pavement.
- (c) Trees shall not be planted closer together than sixteen (16) linear feet, and on corner lots trees shall be planted not less than twenty (20) feet from the intersection of any street lines or street lines proposed.
- (d) No trees shall be less than four (4) feet clear trunk at the time of planting.
- (e) Trees shall be maintained by the property owner, and shall have a clearance of at least eight (8) feet above the sidewalk and fourteen (14) feet, six (6) inches above the street level so as to permit pedestrian and vehicular traffic beneath them without interference. The failure to maintain permitted trees shall be cause for the removal of any tree at the sole expense of the property owner.
- (f) If roots and branches of any trees, hedges, or other plant growth cause damage or destruction to any sidewalk, curb, gutter, street pavement, utility line or other Town-owned or publicly-owned property, code enforcement action and/or other legal action may be commenced by the Town. In addition, the Town may take action to bring the property into compliance with this section, including but not limited to, the trimming or removal of the trees and plant materials. In such event, the Town shall charge the property owner the reasonable costs of the work, together with any fines and other fees and costs which may be imposed as provided in this Code and Chapter 162, Florida Statutes.
- (g) Trees shall be planted so as not to impede the flow and storage of storm water. Trees shall be planted and maintained to provide safe sight triangle distances in accordance with the Florida Department of Transportation. Trees shall be planted in accordance with Florida Power and Light Company guidelines so as to avoid interference with overhead and underground utility lines. No roots from any vegetation located upon private property or adjacent rights-of-way shall be permitted to grow in such a manner that causes damage to paved rights-of-way, water, or sewer lines, or other elements of the Town's infrastructure.

- (h) The tree species, exact location and the permissible number of trees shall be determined by the Director of Public Works in the permitting process.

(5). List of permissible trees. The following is a non-exhaustive list of trees that may be permitted by the Town for planting in swale areas:

Small Palms / Common/Botanical Name

1. Silver Palm / *Coccothrinax argentata*
2. Bottle Palm / *Hyophorbe lagencaulis*
3. Spindle Palm / *Hyophorbe verschaffeltii*
4. Majesty Palm / *Ravenea glauca*
5. Needle Palm / *Rhapidophyllum hystrix*
6. Thatch Palm / *Thrinax spp.*
7. Christmas Palm / *Veitchii merrillii*

Large Palms / Common/Botanical Name

1. Paurotis/Everglades Palm / *Acoelorrhaphe wrightii*
2. Alexandra Palm / *Archontophoenix alexandrae*
3. Blue Lantania / *Latania loddigesii*
4. Bismark Palm / *Bismarkia nobilis*
5. Cabbage/Sabal Palm / *Sabal palmetto*
6. Chinese Fan Palm / *Livistonia chinensis*
6. Hurricane Palm / *Dictyosperma album*
7. Royal Palm / *Roystonea regia*
8. Triangle Palm / *Neodypsis decaryi*
9. Queen Palm/*Arecastrum romanzoffianum*
10. Fox Tail/*Wodyetia bifurcata*
11. Royal Palm/*Roystonea spp.*

(6) Applicability. The standards and regulations of this Section shall apply to all swales within the Town.

a. Existing Plantings as of August 16, 2006.

- i. Existing shade/canopy trees and Palm trees which are a minimum of ten (10) feet above grade as of the effective date of this ordinance shall be allowed to remain until they are removed die or are destroyed as long as they receive the appropriate permits as required below in section iv.
- ii. All other plantings shall be removed from the swale within one year from the effective date of this ordinance.
- iii. Existing plantings that pose a safety or maintenance hazard as determined by the Public Works Director shall be removed immediately.
- iv. Property owners with existing trees in a swale must obtain a swale area permit for the existing trees within one year of the effective date of this ordinance. The Town may waive the permit fee for applicants that have existing trees in a swale provided the property owner applies for the swale area permit within 12 months of the effective date of this ordinance.

(7) Reconstruction or repair by the Town. In the event it is necessary for the Town to reconstruct or repair its water and sewer lines or other infrastructure, the Town shall restore the swale areas disturbed by the reconstruction or repair. The Town shall not be responsible for restoration of any nonstandard or nonconforming surfaces or plantings in a rights-of-way, whether public or private, including, but not limited to surfaces such as bomanite, concrete block, slate, vegetation other than sod, or nonconforming pavement or other surfaces.

Section 3. Chapter 67, Article IV, Section 67-128, "Drainages and Swales" of the

Code of Ordinances of the Town is hereby amended to read as follows:

Sec. 67-128. Drainage and swales.

- (f) Swales and small ditches within the rights-of-way, and swales and small ditches of similar size and capacity elsewhere, shall have slopes not flatter than one-thousandth of a foot per foot in the direction of flow. Ditch pavement or other adequate permanent protection against scour shall be provided where necessary. Runoff may be accumulated and carried in the swales or ditches in the right-of-way along primary roads and streets up to but not above the point where flooding of the pavement or flooding of roadside property occurs; and runoff may be accumulated and carried in the swale in the right-of-way along each side of a secondary road or street until the quantity is such as to result in a wetted area of 3 3/4 square feet or until the quantity is such as to result in flooding of roadside property after ultimate completion of the road or street, whichever quantity is the least. Water in excess of these quantities shall not be carried in the roadside swales or ditches in the rights-of-way, but shall instead be diverted there from and carried away in storm sewers, or in outfall ditches or by other approved means separate from the roads or streets. All swales shall be sodded with grass sod capable of maintaining a healthy growth in South Florida and

shall be maintained in such condition by the property owner abutting or adjacent to the swale. No objects, structures, materials, plantings, or landscaping, other than grass sod, shall be placed, erected, installed, or located within any swale within the town with the following exceptions:

1. Traffic control devices such as signal lights, stop signs and yield signs;
2. Utility systems and appurtenant structures;
3. Drainage systems and appurtenant structures;
4. Sod or herbaceous ground cover;
5. Plantings as may be permitted by the Town in accordance with Section 34-10;
6. Low-profile, dome-shaped decorative button stones, blocks, or markers as may be permitted by the Town in accordance with Section 34-10;
7. Underground sprinkler systems with flush or pop-up heads;
8. Mailboxes installed according to the requirements of the rights-of-way use and maintenance standards.

Section 4. Severability. If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

Section 5. Repeal of Laws in Conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Codification. The provision of this Ordinance shall become and be made a part of the Code of Ordinances for the Town of Lake Park. The Sections of the ordinance maybe renumbered or relettered to accomplish such.

Section 7. Effective date. This Ordinance shall take effect immediately upon passage.

Upon First Reading this 16th day of August, 2006, the foregoing Ordinance 07-2006, was offered by Commissioner Osterman who moved its approval. The motion was seconded by Vice-Mayor Daly, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

Upon Second Reading this 6 day of September, 2006, the foregoing Ordinance 07-2006, was offered by Commissioner Osterman who moved its adoption. The motion was seconded by Commissioner Balius, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR PAUL CASTRO	<u>X</u>	_____
VICE MAYOR ED DALY	<u>X</u>	_____
COMMISSIONER CHUCK BALIUS	<u>X</u>	_____
COMMISSIONER JEFF CAREY	<u>X</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>X</u>	_____

The Mayor thereupon declared Ordinance No. 07-2006 duly passed and adopted this 6 day of September, 2006.

TOWN OF LAKE PARK, FLORIDA

BY:

Ed Daly
Mayor Paul Castro

ATTEST:

Vivian Mendez
Vivian Mendez
Town Clerk



Approved as to form and legal sufficiency:

Thomas J. Baird
Thomas J. Baird, Town Attorney