

**THE FOLLOWING ORDINANCE WAS MOVED FOR INTRODUCTION BY COUNCIL MEMBER ZUCKERMAN; SECONDED FOR INTRODUCTION BY COUNCIL MEMBER JILL MCGUIRE.**

**ORDINANCE NO. 22-25**

**AN ORDINANCE FOR THE CITY OF MANDEVILLE AMENDING THE CODE OF ORDINANCE, CITY OF MANDEVILLE, BY AMENDING SEC. 13-3, OBSTRUCTION OF STREET GENERALLY, AND AMENDING SEC. 13-4, OBSTRUCTION OF WALK, AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH**

**WHEREAS**, the City of Mandeville seeks to maintain the safety of its streets for emergency services and the public use, whether vehicular, pedestrian or bike traffic, by establishing a prohibition of the placement of certain objects within the street right-of-way fronting both public and private property such that emergency services and the public use, whether vehicular, pedestrian or bike traffic, do not encounter landscaping materials placed in the street right-of-way or setback areas fronting the streets of the City;

**WHEREAS**, the Comprehensive Land Use Regulation Ordinance of the City of Mandeville (the "CLURO") concerning street traffic and ease of passage provides regulations that have been established to lessen congestion in the streets, secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land to avoid undue concentration of population; and to facilitate the adequate provision of vehicular and pedestrian circulation, water, sewerage, storm drainage, schools, parks, open space and other public requirements;

**WHEREAS**, pursuant Code of Ordinance, City of Mandeville, § 13-3 and § 13-4, it is unlawful to obstruct highway commerce by placement of anything on the street right-of-way which renders movement thereon more difficult, and it is unlawful to obstruct the free, convenient and normal use of any public street by impeding, hindering, stifling, retarding or restraining traffic or passage thereon;

**WHEREAS**, Code of Ordinance, City of Mandeville, § 9-41 requires the removal of certain enumerated items from the public right-of-way adjacent to developed lots but, by specific mention, does not include landscaping materials as it more generally refers to trash and litter; and

**WHEREAS**, the City of Mandeville desires to amend the applicable ordinances to address the safety of its streets for emergency services and public use and in the interest of governmental efficiency in the administration and enforcement of the provisions of the CLURO.

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Mandeville, that Code of Ordinance, City of Mandeville Sec. 13-3, Obstruction of Street Generally, is hereby amended to read as follows:

(a) It shall be unlawful to obstruct a highway of commerce intentionally or in a criminally negligent manner by the placing of anything or performance of any act on any railway, railroad, navigable waterway, road, street, right-of-way, highway or thoroughfare, which will render movement thereon more difficult.

(b) The right-of-way is held by the City primarily for the purpose of pedestrian and vehicular passage and for the City's provision of essential public safety services, including police, fire and emergency medical response services, and public health services, including sanitary sewer, water and storm drainage. The purpose of this section is to provide standards in order to maintain the safety and the visual character of the City's right-of-way, and to maintain a greenbelt area of land within the property line and encompassing the street right-of-way such that the area is free from such non-living, durable landscaping materials that pose a danger to both vehicular and pedestrian travel.

It shall be unlawful for any person to place or cause to be placed any type of obstruction within ten (10) feet of the edge of any City street or as may be permitted by the City within the property lot line, whichever is less, except for the following:

- (1) A pole mounted curbside mailbox provided it is in the roadside portion of the right-of-way and:
  - a. it conforms to the rules and regulations of the U.S. Postal Service for construction and installation as well as to standards established in this section; and
  - b. it is erected contiguous to the privately owned property which it serves, unless prior written approval is obtained from the Department of Public Works; and
  - c. it is not erected in such a manner as to obstruct a free and clear vision of passing motorists and is not closer than twenty-five (25) feet from an intersection, measured from the nearest right-of-way line of the intersecting street; and
  - d. it is not designed or installed, by reason of the position, shape or color, to interfere with, obstruct the view of, or be confused with any authorized traffic control device; and
  - e. it does not have any attachments, not required or permitted by United States Postal regulations, which would constitute a prohibited sign under Article 10 of the CLURO; and
  - f. it is installed on a breakaway support post; a breakaway support means a supporting post which shall be no larger than a four-inch by four-inch wood post, four and one-half (4½) inch diameter wood post or a metal post with a strength no greater than a two-inch diameter schedule 40 steel pipe and which is buried no more than twenty-four (24) inches deep. Such a support post shall not be set in concrete unless specifically designed as a breakaway support system as defined in "A Guide for Erecting Mailboxes on Highways" published by ASHTO, May 24, 1984.



- (2) Plants and shrubs subject to the following:
- a. None shall be placed in the right-of-way of any interstate (freeway), arterial streets, and collector streets as designated by the City unless specifically approved by the department of public works or shown on a site plan approved by the City in accordance with the procedures of this Code, including but not limited to Article 9 of the CLURO.
  - b. All plants and shrubs shall be placed in such a manner as to avoid obstruction of traffic control devices and shall be placed to provide a window of view between two and one-half (2½) feet from the surface of the roadway at its edge and seven (7) feet, so as not to obstruct the view of vehicular or pedestrian traffic. In addition, all plants and shrubs shall be placed in such a manner as to avoid interference with any public utility, facility, or infrastructure.
- (3) The owner of private non-residential property that abuts the City right-of-way may request to establish or expand the use of City right-of-way for parking.
- (4) Any materials used pursuant to a permitted culvert pursuant to CLURO Section 5.2.6.1 or as otherwise regulated by the CLURO of Code of Ordinances.
- (5) Any object placed within the right-of-way which is in any way associated with a public utility or City agency, including but not limited to City equipment.
- (c) Any object placed within the right-of-way pursuant to subsections (b)(1) through (5) above shall be done so at the risk of the owner, who shall be fully responsible for the maintenance of same and shall not be due any compensation for the destruction or removal of said object by the City for any public reason whatsoever. Except in emergency situations, the City will give notice within ten (10) days of the removal or destruction by the City of any object placed within the right-of-way pursuant to subsections (b)(1) through (5) above which is deemed to be an obstruction by the department of public works.
- (d) Notwithstanding any of the provisions of this section, the department of public works may permit the placement of curbside mailboxes, decorative piping, plants, shrubs, or other similar structures which do not meet the requirements of this section, by hardship variance in the event bringing new or existing curbside mailboxes, decorative piping, plants, shrubs, or other similar structures is not possible, provided that the person placing or causing placement of any such obstruction executes a "hold-harmless" agreement with the City, which agreement shall be in a form prescribed by the City Attorney and which shall include at a minimum an assumption by the person placing or causing the placing of the obstruction of all risks and damages which may result from said placement, including the payment of the City's attorney's fees should it be made party to any litigation or claim as a result of such obstruction; and an agreement by the person placing or causing the placement of the obstruction to allow the City to remove the obstruction at any time and for any reason without notice to said person.



Permits granted under the provision of this section shall not be transferable. Any person owning property adjacent to a City right-of-way having thereon an obstruction which does not meet the requirements of section (b) herein shall obtain a permit for said obstruction under this subsection or shall remove said obstruction. The department of public works shall not be required to issue a permit for an otherwise illegal obstruction on a City right-of-way to the owner of the adjacent property, even if the department had issued such a permit to the previous property owner. The provisions of this section (d) do not apply to non-living, durable landscaping materials, or to structures linked together in any manner, which are not included in the exceptions listed in subsections (b)(1) through (5) above.

- (e) As set forth in Section 1.9.1-1.9.3 of the CLURO, the City is authorized to utilize City police deputies and/or may institute any appropriate action or proceedings to prevent such unlawful construction other violations, to restrain, to correct or to prevent any illegal act in or about such premises. Except as modified herein, the procedure for notice of violation and the assessment of penalty for violations of this Section shall be administered pursuant to CLURO Sections(s) 1.9.4 and 1.9.5
- (f) Whoever commits this crime shall be punished as provided in section 1-9 of this Code.

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Mandeville, that Code of Ordinance, City of Mandeville Sec. 13-4, Obstruction of Walk, be amended to read as follows:

- (a) It shall be unlawful to willfully obstruct the free, convenient and normal use of any public sidewalk, street, right-of-way, alley, road or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
- (b) The right-of-way is held by the City primarily for the purpose of pedestrian and vehicular passage and for the City's provision of essential public safety services, including police, fire and emergency medical response services, and public health services, including sanitary sewer, water and storm drainage. The purpose of this section is to provide standards in order to maintain the safety and the visual character of the City's right-of-way, and to maintain a greenbelt area of land within the property line and encompassing the street right-of-way such that the area is free from such non-living, durable landscaping materials that pose a danger to both vehicular and pedestrian travel.

It shall be unlawful for any person to place or cause to be placed any type of obstruction within ten (10) feet of the edge of any City street or as may be permitted by the City within the property lot line, whichever is less, except as outlined in Sec. 13-3 of this Code.

(c) Whoever commits this crime shall be punished as provided in section 1-9 of this Code.

**BE IT FURTHER ORDAINED** that this Ordinance shall take effect immediately upon the signature of the Mayor; and

**BE IT FURTHER ORDAINED** that the Clerk of this Council be, and she is hereby authorized and empowered to take any and all actions which she, in the exercise of her discretion, deems necessary to promulgate the provisions of this Ordinance.

The ordinance being submitted to a vote, the vote thereon was as follows:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

and the ordinance was declared and adopted this \_\_\_\_ day of \_\_\_\_\_, 2022

Kristine Sherer  
Clerk of Council

Rick Danielson  
Council Chairman

### SUBMITTAL TO MAYOR

The foregoing Ordinance was **SUBMITTED** by me to the Mayor of the City of Mandeville this \_\_\_\_ day of \_\_\_\_\_, 2022 at \_\_\_\_\_ o'clock a.m.

CLERK OF COUNCIL

### APPROVAL OF ORDINANCE

The foregoing Ordinance is by me hereby **APPROVED**, this \_\_\_\_ day of \_\_\_\_\_, 2022 at \_\_\_\_\_ o'clock a.m.

\_\_\_\_\_  
CLAY MADDEN, MAYOR

### VETO OF ORDINANCE

The foregoing Ordinance is by me hereby **VETOED**, this \_\_\_\_ day of \_\_\_\_\_, 2022, at \_\_\_\_\_ o'clock a.m.

\_\_\_\_\_  
CLAY MADDEN, MAYOR

**RECEIPT FROM MAYOR**

The foregoing Ordinance was **RECEIVED** by me from the Mayor of the City of Mandeville this \_\_\_\_\_ day of \_\_\_\_\_ 2022, at \_\_\_\_\_ o'clock a.m.

\_\_\_\_\_  
CLERK OF COUNCIL

**CERTIFICATE**

**I, THE UNDERSIGNED** Clerk of the City Council of the City of Mandeville do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the City Council of the City of Mandeville at a duly noticed, called and convened meeting of said City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 at which a quorum was present and voting. I do further certify that said Ordinance has not thereafter been altered, amended, rescinded, or repealed.

WITNESS MY HAND and the seal of the City of Mandeville this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Kristine Scherer, CLERK OF COUNCIL