

ORDINANCE NO. 2007-005

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, ESTABLISHING RULES AND REGULATIONS GOVERNING THE CONSTRUCTION, ERECTION, MAINTENANCE AND USE OF SIGNS WITHIN THE CORPORATE LIMITS OF THE CITY; APPLICATION OF RULES AND REGULATIONS TO CITY'S EXTRATERRITORIAL JURISDICTION; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT.

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WHEREAS, the Board of Aldermen of the City of East Bernard, Texas (the "City") finds that the unregulated construction and erection of outdoor signs, billboards and other structures designed to make an announcement to the general public can create structural hazards and can present impediments and dangers to traffic along City roadways and easements, and

WHEREAS, the Board of Aldermen of the City of East Bernard finds that portable signs present special traffic hazards when towed on public streets or displayed on public rights-of-way and present dangers to the health and safety of the citizens of the City;

WHEREAS, the Board of Aldermen of the City of East Bernard recognizes that protection of the City's visual environment will benefit both residential and commercial property owners and will promote a positive image of the City; and

WHEREAS, the Board of Aldermen desires to promote the reasonable, orderly, and effective display of signs and to ensure that signs do not create or become hazards; now therefore,

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EAST BERNARD, TEXAS:

Section 1. The facts and recitations set forth in the preamble of this Ordinance are found to be true and correct.

Section 2. The City of East Bernard, Texas (the "City"), adopts this Ordinance that establishes rules and regulations relating to the construction, erection, maintenance and use of signs within the City.

Section 3. Definitions. The following terms, when used in this Ordinance, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

Ancillary sign shall mean a sign which conveys information regarding a service, facility, or product subsidiary or ancillary to the main or principal business use of a property, such as telephone signs, restroom signs, credit card signs, open signs, or signs displaying the hours of operation for the business or entity.

Monument sign shall mean any sign mounted on the ground or supported by one or more columns, poles, uprights, or braces anchored in the ground, but not elevated above the ground by any device that holds the sign off the ground and not attached to any building, including reader panels.

Non-commercial sign shall mean a sign that contains a non-commercial message only.

Non-commercial message shall mean a civic, political, religious, seasonal, or personal message that is not displayed for a fee, for compensation, or for the promotion of a product, service or other business, and is located on property owned or lawfully occupied by the person displaying the message.

Off-premise sign shall mean any sign, which directs attention to a business, person, activity, good, product, service, or entertainment sold or offered elsewhere than on the premises where such sign appears.

Portable sign shall mean any sign designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted upon a trailer, wheeled carrier, or other non-motorized mobile structure. A portable sign which has its wheels removed shall still be considered a portable sign hereunder.

Sign shall mean any structure, part thereof, or inscription which is located upon, attached to, or painted or represented on any land, or on the outside of any building or structure, or on an awning, canopy, marquee, or similar appendage, or permanently affixed to the glass on the outside of the building or structure, and which displays or includes any numeral, letter, word, model, banner, emblem, insignia, symbol, device, monogram, heraldry, trademark, light, or other

representation used as or in the nature of an announcement, advertisement, attention arrestor, direction, warning, or designation of any person, firm, group, organization, corporation, association, place, commodity, product, service, business, establishment, profession, enterprise, industry, activity, or any combination thereof; where the word sign is used herein without further modification, the same shall be understood to embrace all regulated signs and replicas.

Snipe sign shall mean a sign which is tacked, nailed, posted, pasted, glued, or otherwise attached to a tree, stake, fence, utility pole, or other like object, the advertising matter of which is not applicable to the present use of the premises on which the sign is located.

Temporary sign shall mean any sign constructed of materials with short life expectancies. A portable sign shall not necessarily be considered a temporary sign.

Wind device sign shall mean any flag, pennant, banner, streamer, balloon, inflatable device or similar-type object made of cloth, canvas, nylon, plastic, or other flexible material, with or without a frame or other supporting structure, that moves, or is intended to move or blow with the wind.

Section 4. Form, structure, construction and maintenance of signs.

A. Purpose. It is the stated purpose of this ordinance to allow reasonable signage for commercial and free speech activities, while managing the structural and aesthetic elements of such communication.

B. Design. All signs permitted by this ordinance shall be designed and constructed in one of two formats.

1. Monument Signs.

a. For those properties located on the south side of F. M. 1093 and east of F. M. 359 and on the north side of E. M. 1093 and west of F. M. 359, monument signs shall be constructed to substantially appear as a solid mass, such as cylinder, block, rectangle, or square from ground level to the highest portion of the sign, otherwise commonly known as Monument Signs. The bottom portion of the sign shall rest flush against the ground, allowing no space between the ground and the bottom of the sign structure. The portion of the sign containing the message shall not exceed one-hundred twenty (120) total square feet of area. The total height of the sign, including the sign structure and the portion containing the message of the sign, shall not exceed fourteen feet (14'), subject to the decorative caps defined below. The total width of the sign, including the sign structure and

the portion containing the message of the sign, shall not exceed twelve feet (12'). If one commercial property contains more than ten (10) different businesses and has more than 350' of road frontage, the property shall be allowed two (2) monument signs at that location, both of which must comply in all respects with this Ordinance.

b. For all other properties, monument signs shall be constructed to substantially appear as a solid mass, such as cylinder, block, rectangle, or square from ground level to the highest portion of the sign, otherwise commonly known as Monument Signs. The bottom portion of the sign shall rest flush against the ground, allowing no space between the ground and the bottom of the sign structure. The portion of the sign containing the message shall not exceed seventy-two (72) total square feet of area. The total height of the sign, including the sign structure and the portion containing the message of the sign, shall not exceed ten feet (10'). The total width of the sign, including the sign structure and the portion containing the message of the sign, shall not exceed twelve feet (12'). If one commercial property contains more than ten (10) different businesses and has more than 350' of road frontage, the property shall be allowed two (2) monument signs at that location, both of which must comply in all respects with this Ordinance.

c. Each monument sign authorized by subsections a. and b. above shall be permitted a decorative cap which shall not be included in the total sign height restrictions recited above. Each decorative cap shall be no more than two feet (2') in height and shall extend beyond the permitted width of each such sign by no more than one foot (1') on each side. Any decorative cap permitted by this subsection shall be purely ornamental, and shall be constructed of construction materials identical to or similar to the construction materials used in the construction of the sign or the construction of the building located on the premises.

2. Façade or Wall Signs. Façade or wall signs shall be allowed provided there is no more than one (1) such sign per street frontage for each business located within a discreet portion of a building. Façade or wall signs may be mounted or painted upon the wall, and must be maintained in good condition at all times. The sign shall contain information identifying the business located on the site. The sign area shall not exceed ten percent (10%) of the area of the façade or wall on which it is mounted or painted.

B. Maintenance. All signs within the City shall be erected and maintained in compliance with all applicable federal and state statutes and regulations and with the building code, electrical code, and other applicable ordinances of the City. In the event of conflict between this ordinance and other statutes, regulations or ordinances, the most restrictive standard shall apply. All signs shall be kept in good repair and neat appearance. Maintenance shall be performed on all signs at reasonable intervals, and shall include replacement of defective parts, painting, repainting, and cleaning. The owner of a sign and the owner of the property upon which the sign is located shall be jointly and severally responsible for the sign's maintenance and repair. The Mayor of the City, or his designee, shall inspect all signs on a regular basis and shall require maintenance or repair of any sign deemed in violation of this Section.

Section 5. Prohibited signs. It is unlawful for any person to construct, erect, install, construct, display, maintain, reconstruct, place, locate, relocate or make use of any of the following signs within the City:

- A. Revolving or moving signs.
- B. Signs that contain or have attached thereto banners, posters, pennants, ribbons, streamers, strings of light bulbs, spinners, flash tags, or other similar devices.
- C. Portable signs.
- D. Snipe signs.

- E. Signs located on a roof or otherwise attached to or painted on a building if it projects above the highest point on the building.
- F. Signs, or any portion thereof, that are located on or project or extend over any public sidewalk, street, alley, or other public property.
- G. Signs that are deteriorated, dilapidated, or unsafe.
- H. Signs that contain statements, words, or pictures of an obscene, indecent, or immoral character as will offend public morals or decency.
- I. Signs located on or attached to a streetlight, utility pole, fire hydrant, bridge, traffic-control device, street sign, or other building, facility, structure or equipment owned by the City without the prior written consent of the City.
- J. More than one ground-mounted monument sign for any lot or development site, or for any individual shopping center or strip center; provided, however, if a lot or development site, shopping center or strip center has frontage on two public streets, one ground-mounted monument sign shall be permitted for each such street frontage.
- K. Signs that do not comply with this Ordinance or other ordinances of the City.
- L. Signs located or illuminated so that they obscure or interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the view of approaching, emerging or intersecting traffic, or prevent any traveler on any street from obtaining a clear view of approaching vehicles.
- M. Illuminated signs which:
 - 1. Are illuminated to such intensity or without proper shielding so as to constitute a hazard to the operation of motor vehicles upon a public street or substantially interfere with the reasonable enjoyment of residential property; or
 - 2. Have any type of intermittent illumination, including flashing, fading, revolving or blinking lights, or any type of moving, traveling or changing message by means of lights or illumination.
- N. Any sign that violates any sight visibility regulations of the City. O. Signs located in public rights-of-way.

P. Signs placed on private property without the consent of the owner or person in possession of the property.

Q. Off-premise signs.

R. Wind Device Signs

Section 6. Exceptions. This Ordinance shall not apply to the following types of signs:

A. Governmental signs. Any sign:

1. Erected or maintained pursuant to and in discharge of any governmental function;
2. Required by law, ordinance or governmental regulation; or
3. Located on property owned, leased, or under the control of any federal, state or local governmental entity or subdivision thereof.

B. Private traffic control signs. Signs on private property containing no advertising that direct the movement of traffic, warn of obstacles or overhead clearances, or control parking, including entrance and exit signs.

C. Railway signs. Any sign on property owned by a railroad placed or maintained in reference to the operation of the railway.

D. Utility and hazard signs. Any sign marking utility or underground communication or transmission lines or pipes and hazards.

E. Plaques. Historical and commemorative plaques of recognized historical societies and organizations provided that such signs are less than fifteen (15) square feet in total area.

F. Mailboxes, and addresses. Addresses and names printed on a standard size on mailbox.

G. Vehicle signs. Signs displayed or used upon motor vehicles and trailers, unless the vehicle or trailer is permanently stationed or regularly used at a fixed location to serve the same or similar purpose of a permanent or portable sign.

H. Real estate signs.

Real estate signs shall be permitted as follows:

1. For parcels ten (10) acres in size or smaller, signs not exceeding six (6) square feet in total sign area per sign face and no taller than five feet (5') above natural grade;
2. For undeveloped parcels greater than ten (10) acres in size, signs not exceeding eight feet (8') in height above natural grade and not exceeding eight feet (8') in width.

All signs allowed by this subsection shall pertain to the sale or rental of the property on which they are located. Additionally, for all signs allowed by this subsection, any real estate agent posting this sign must have an exclusive listing to market the subject property, or written permission to install the sign from the landowner on which the sign is located. A property owner may post a sign in compliance with this subsection indicating that the property is for sale or lease by the owner. Only one sign per road frontage shall be permitted by this subsection.

I. Athletic field signs. Signs located on the field side of scoreboards and fences of athletic fields.

J. National or state flags. A national or state flag, or both, provided that they do not exceed thirty-six (36) square feet in total area.

K. Holiday signs and lights. Temporary signs, including Christmas lights, containing only holiday messages and no commercial advertising.

L. Non-commercial signs. Signs advertising or promoting a candidate or proposition in conjunction with an election, or otherwise containing a noncommercial message, provided that:

1. No non-commercial sign shall be erected before forty-five (45) days before the election date on which the office or proposition is to be determined;
2. All such non-commercial signs shall be removed within seven (7) days following the election on which the office or proposition is finally determined in accordance with the Texas Election Code;
3. No such non-commercial sign shall exceed sixteen (16) square feet in total area nor exceed six feet (6') in height above natural ground level; and
4. Such temporary non-commercial sign shall otherwise comply with all provisions of this Ordinance.

M. Property identification signs. Any sign erected at the entrance of acreage or residential property that identifies the property by name of the property or by name of the owner, as in the case of farm or ranch identification signs.

N. Temporary Banners. One temporary sign, in the form of a banner, not to exceed five feet (5') in height or thirty-two (32) total square feet in sign area may be displayed on nonresidential property by a new business for a period not to exceed ninety (90) days. One temporary sign, in the form of a banner, not to exceed five feet (5') in height or thirty-two (32) total square feet in sign area may be displayed on nonresidential property for a period not to exceed seven (7) days in a calendar quarter. The seven days per calendar quarter permitted by this subsection shall not accumulate from calendar quarter to calendar quarter. A permit for the placement of a temporary banner allowed by this subsection shall

not be required, provided, however, that any person who erects a temporary banner shall register said banner with the City providing the date on which said banner was first placed on site. The location of banner must comply with permit application at all times. Any person who registers a temporary banner allowed by this subsection shall pay to the City a non-refundable fee in the amount of fifty dollars (\$50.00).

O. Non-profit announcement signs. Signs announcing events or programs by a not-for-profit organization not to exceed five feet (5') in height or thirty-two (32) total square feet in sign area, so long as the sign is erected no more than fourteen (14) days prior to the event being announced and is removed no more than seven (7) days following the event. A permit for the placement of a non-profit announcement sign allowed by this subsection shall not be required, provided, however, that any person who erects a non-profit announcement sign shall register said sign with the City providing the date on which said sign was first placed on site. Any person who registers a non-profit announcement sign allowed by this subsection shall pay to the City a refundable fee in the amount of fifty dollars (\$50.00). This registration fee will be returned upon proof that the non-profit announcement sign has been removed within the time specified by this subsection.

P. Temporary Construction – Announcement Signs. An office or retail business shall be permitted to construct a temporary sign announcing the prospective opening of the business at that site while the business is under the permitting process and construction. Such temporary construction signs shall be erected for a maximum of six (6) months and shall be no larger than eight feet (8') in height above natural grade by eight feet (8') in width.

Q. Temporary Construction – Additional Signs. Any office or retail business which is permitted a temporary construction announcement sign authorized in subsection P. above, shall be issued a permit for two (2) additional

signs which may be used to announce the contractor, subcontractors, architects, engineers, or financial institutions associated with the project. The determination of which entities are permitted to use any such signs authorized by this subsection shall be at the discretion of the owner of the property. Each such sign authorized by this subsection shall be no larger than eight feet (8') in height above natural grade by four (4') in width.

R. Ancillary Signs. A business or other entity shall be allowed up to three (3) ancillary signs placed on the door or exterior wall or window of the premises. No permit will be required under this Ordinance for such ancillary signs. All ancillary signs shall be no larger than four square feet (4') in total sign area.

Section 7. Obsolete signs. Signs which have been abandoned or have become obsolete due to the closing of a business, change in the nature or name of the business establishment, or for any other reason rendering the sign non-applicable to the property upon which it is displayed, shall be removed by the owner of the building or premises upon which it is situated within sixty (60) days from the date of the action that caused the sign to be abandoned or become obsolete.

Section 8.

A. Signs lawfully in existence as of the effective date of this ordinance shall be considered and deemed as lawfully existing nonconforming signs and may be continued as such. Notwithstanding the foregoing, the person or entity who is in ownership or control of the property on which such sign is located shall be required to register such signs with the City, at no fee, and otherwise comply with all requirements of this Ordinance relating to nonconforming signs and sign structures.

B. Lawfully existing nonconforming signs shall be kept in good repair and visual appearance and no structural or message alterations shall be made thereto. In the event that more than fifty-percent (50%) of the area of a lawfully existing nonconforming sign is damaged or changed, the sign shall be removed, made to conform or replaced with a conforming sign.

C. When a nonconforming sign is replaced, the replacement sign must comply in all respects with this Ordinance.

D. The installation of any new sign is prohibited on a site while a nonconforming sign remains in use.

Section 9. **Application to extraterritorial jurisdiction.** The regulations established this Ordinance are hereby applicable to all signs located in the extraterritorial jurisdiction of the City, as established by Chapter 42 of the Texas Local Government Code.

Section 10. **Permits.** It is unlawful for any person to place, locate, relocate, erect, construct, replace or alter the size or shape of any sign, including the face or other integral part thereto, or to thereafter make use of a sign without having first obtained a sign permit from the City, except as otherwise provided in this Ordinance.

Section 11. **Permit exemptions.** A sign permit is not required:

A. To repaint a sign or to restore a conforming sign to its original condition if the sign otherwise complies with this Ordinance; or

B. To periodically change only the letters, numbers or message portion of a lawful sign specifically designed for that purpose;

Section 12. **Application and permits.** The application for a sign permit, together with an application fee in the amount of seventy-five and no/100 dollars (\$75.00), shall be submitted on such forms provided by the City and must be accompanied by the information,

drawings and descriptive data required by the City Secretary to ensure proper regulation of the sign and the ensure compliance with this Ordinance. The permit application fee required by this section shall not be required for noncommercial signs, but noncommercial signs shall comply with this Ordinance in all other respects.

Section 13. **Issuance of permits.** If the plans and specifications for a sign set forth in any application for a permit conform to all of the requirements of this Ordinance, and any other applicable City regulations, the City Secretary shall issue the appropriate permit.

Section 14. **Duration.** Unless earlier revoked, a sign permit to construct, erect, locate, or place is valid for 180 days from the date of issuance.

Section 15. **Revocation.** A sign permit may be revoked for violation of this Ordinance. The City Secretary shall give prior written notice of a proposed revocation to the permittee and an opportunity to respond to the reasons for revocation within ten (10) days of said written notice. The permit shall not be revoked prior to the expiration of ten (10) days from the date of such written notice.

Section 16. **Appeal.** Any person aggrieved by a decision of the City Secretary in the application of this Ordinance may appeal the decision to the Planning Commission of the City by delivering, in writing, a notice of appeal stating therein the decision complained of and the reasons for appeal. The Planning Commission shall hear the appeal at its next regularly scheduled meeting; provided, however, that the appeal shall be heard within thirty (30) days of the filing of the appeal. Any decision of the Planning Commission with respect to an appeal heard under this section may be further appealed to the Board of Aldermen of the City in the same manner the appeal was made to the Planning Commission. The Board of Aldermen shall hear the appeal at its next regularly scheduled meeting; provided, however, that the appeal shall be heard within thirty (30) days of the filing of the appeal.

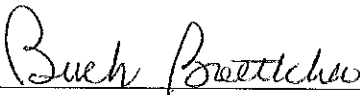
Section 17. **Penalty.** Any person, corporation, or entity who or which intentionally, knowingly, recklessly or with criminal negligence violates any provision of this

Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000. Each day in which any violation shall occur, or each occurrence of any violation, shall constitute a separate offense.

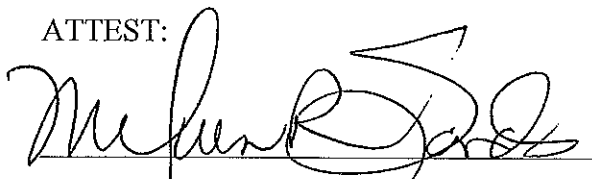
Section 18. Repealer. All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 19. Severability. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the Board of Aldermen of the City of East Bernard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 21st day of May, 2007.



Buck Boettcher, Mayor

ATTEST:


Melvin R. Sands, City Secretary