

ORDINANCE NO. 2008-07

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY ADDING THE DEFINITION OF “CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGN (CEVMS)” TO SECTION 60-1 THEREOF; BY ADDING A NEW SECTION 60-11 TO CHAPTER 60 THEREOF, PROHIBITING ALL ON-PREMISE AND OFF-PREMISE CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS) WITHIN THE CORPORATE LIMITS OF THE CITY AND THE AREA OF ITS EXTRATERRITORIAL JURISDICTION; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR EACH DAY OF VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

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WHEREAS, the City Council is authorized to regulate signage within its territorial limits and extraterritorial jurisdiction (ETJ), in accordance with Chapter 216 of the Texas Local Government Code; and

WHEREAS, the City Council has determined that changeable electronic variable message signs (CEVMS), pose a distraction to drivers, bikers and pedestrians from the roadway; and

WHEREAS, the City Council has determined that in order to preserve and enhance the City as a desirable community in which to live and do business, a pleasing, visually attractive environment is of foremost importance; and these regulations are a highly contributive means by which to achieve this desired end and have been prepared with the intent of enhancing the visual environment of the City and promoting safety and continued well-being; and

WHEREAS, the City Council agrees with the American Society of Landscape Architects’ determination that changeable electronic variable message signs (CEVMS) tend to deface nearby scenery, whether natural or built, rural or urban; and

WHEREAS, the City Council has determined that these regulations maintain and enhance the aesthetic environment, improve pedestrian and traffic safety, lessen unnecessary visual clutter that competes for the attention of pedestrian and vehicular traffic, regulates signs in a manner so as to not interfere with, obstruct the vision of or distract motorists, bicyclists or pedestrians, conserve, protect, and enhance the aesthetic quality of the City, protect property values by precluding sign-types that create a nuisance to the occupancy or use of other properties; and

WHEREAS, the City Council has determined that changeable electronic variable message signs (CEVMS), as defined herein, are inconsistent with the above-stated goals; now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

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

Section 2. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding the definition of “Changeable electronic variable message signs (CEVMS)” to Section 60-1 thereof, to provide as follows:

“Sec. 60-1. Definitions.

* * *

Changeable electronic variable message signs (CEVMS) means a sign which permits lights to be turned on or off intermittently or which is operated in a way whereby light is turned on or off intermittently, including any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an light emitting diode (LED) or digital sign, and which varies in color or intensity. A CEVMS sign does not include a sign located within the right of way which functions as a traffic control device and which is described and identified in the Manual on Uniform Traffic Control Devices (MUCTD) approved by the Federal Highway Administrator as the National Standard.”

Section 3. The Code of Ordinances of the City of Tomball, Texas, is hereby amended by adding a new Section 60-11 to Article I of Chapter 60 thereof, to provide as follows:

“Sec. 60-11. Prohibition of Changeable Electronic Variable Message Signs (CEVMS).

Changeable electronic variable message signs (CEVMS) shall be prohibited within the corporate limits and the extraterritorial jurisdiction of the City, except that changeable electronic variable message signs shall permitted for public tax-supported schools to provide public information. No new permit shall be issued for the installation, erection, or replacement of a CEVMS, including any conversion or modification of an existing sign to a CEVMS, within the corporate limits or the extraterritorial jurisdiction of the City, except as provided herein.

***Changeable Electronic Variable Message Sign (CEVMS) Regulations
for Public Tax-Supported Schools:***

1. Images or messages shall be static in nature and shall not blink, flash, scroll or be animated in such a manner as to constitute a distraction to passing motorists.
2. No image or message may be displayed for less than six (6) seconds.
3. The changeable message portion shall be limited to one (1) color, and shall be limited to white, gold, yellow, red, blue, or green. The Building Official shall determine whether proposed colors conform to these colors.
4. The face or display of the sign shall be placed toward a public right-of-way.

Section 4. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 6. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance 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 City Council of the City of Tomball, 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.

Section 7. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5TH DAY OF MAY 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 19TH DAY OF MAY 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

(signed) Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

(signed) Doris Speer
Doris Speer, City Secretary