

ORDINANCE NO. 2011-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, AMENDING SECTION 60-11, CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS (CEVMS), OF CHAPTER 60, SIGNS, OF THE CITY'S CODE OF ORDINANCES RELATING TO CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS TO ALLOW CEVMS AS ON PREMISE SIGNS ON PROPERTIES LOCATED ADJACENT TO ALL STATE RIGHTS-OF-WAYS; TO ALLOW CEVMS ON PROPERTIES NOT LOCATED ADJACENT TO A STATE RIGHT-OF-WAY UPON APPLICATION AND APPROVAL BY THE CITY COUNCIL; PROVIDING REGULATIONS FOR SUCH CEVMS; PROVIDING A PENALTY OF UP TO \$2,000.00 FOR VIOLATIONS WITH EACH DAY CONSTITUTING A SEPARATE VIOLATION; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO.

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WHEREAS the City Council is authorized to regulate signage within its city limits and extraterritorial jurisdiction pursuant to Texas Local Government Code Chapter 216;

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;

WHEREAS, the City Council has determined it appropriate to authorize CEVMS for properties adjacent to all State rights-of-way;

WHEREAS, the City Council has determined it appropriate to authorize CEVMS for properties not adjacent to a State right-of-way upon application to and approval by the City council;

WHEREAS, the City Council has determined it appropriate that no image or message on a CEVMS may be displayed for less than eight (8) seconds;

WHEREAS, the City Council has determined it appropriate that CEVMS message transitions shall be limited to one (1) second;

WHEREAS, the City Council has determined CEVMS faces or displays should not be required to be placed toward a public right-of-way;

WHEREAS, the City Council has determined brightness limits for CEVMS shall be set at a maximum of 0.3 foot candle illumination from a distance of 250 feet between sunset and

sunrise, and each CEVMS shall be fitted with a qualified light sensing device to automatically adjust the brightness;

WHEREAS, the City Council has determined that CEVMS shall be limited to 32 square feet for a single-business or use and 50 square feet for a multi-tenant business or use;

WHEREAS, the City Council has determined that CEVMS shall require a usage permit with annual fee;

WHEREAS, the City Council has determined that if a CEVMS is found to be operating incorrectly, it must be turned off until it is repaired and inspected by the City of Tomball;

WHEREAS, the City Council has determined the images displayed on the CEVMS must be directly related to the on-premise business(s) with the exception of messages relating to time, temperature, national news, local news, sporting events, or upcoming events for the City of Tomball; and

WHEREAS, the City Council has determined CEVMS shall only be permitted as on-premise signs;

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

Section 1. The City Council finds that the facts and matters set forth in the preamble of this Ordinance are true and correct.

Section 2. Section 60-11, Changeable Electronic Variable Message Signs, of Chapter 60, Signs, of the Code of Ordinances of the City of Tomball, Texas is hereby deleted in its entirety and a new Section 60-11, Changeable Electronic Variable Message Signs, is hereby added with the new Section 60-11 to read as follows:

“Sec. 60-11. Changeable Electronic Variable Message Signs.

- (a) 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 be permitted for properties adjacent to all State rights-of-ways and for public tax-supported schools to provide public information. Changeable electronic variable message signs may be permitted on properties not adjacent to a State right-of-way upon application to and approval by the City Council. 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.

- (b) Changeable Electronic Variable Message Sign (CEVMS) Regulations:
- (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 eight (8) seconds.
 - (3) Message transitions shall be limited to one (1) second.
 - (4) The brightness of any CEVMS shall not exceed 0.3 foot candle illumination from a distance of 250 feet between sunset and sunrise, and each sign shall be fitted with a qualified light sensing device to automatically adjust the brightness in accordance with these standards.
 - (5) All CEVM signs shall be limited to 32 square feet for a single-business or use and 50 square feet for a multi-tenant business or use.
 - (6) All CEVMS shall require a usage permit with annual fee. The annual fee shall be established by resolution of the City Council
 - (7) If a CEVMS is found to be operating incorrectly, it must be turned off until it is repaired and inspected by the City of Tomball.
 - (8) The images displayed on the CEVMS must be directly related to the on-premise business with the exception of messages relating to time, temperature, national news, local news, sporting events, or upcoming events for the City of Tomball.
- (c) CEVMS shall only be permitted as on-premise signs.”

Section 3. All provisions of any ordinance in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinance shall remain in full force and effect.

Section 4. In the event any section, paragraph, subdivision, 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 any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 5. Any person who shall 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 \$2,000. Each day of violation shall constitute a separate offense.

Section 6. This Ordinance shall become effective fourteen days after the final reading and adoption of this Ordinance when the caption hereof is caused to be published once in the official newspaper of the City, by the City Secretary, as required by law. The City Secretary is directed to publish the caption of this Ordinance in the City’s official newspaper within 14 days after the passage of the ordinance.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON JULY 18, 2011.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND ADOPTED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON JULY 26, 2011.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>NAY</u>
COUNCILMAN DODSON	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary