

ORDINANCE NO. 060208

**AN ORDINANCE AMENDING ORDINANCE NO. 100305 REGULATING SIGNS AND BILLBOARDS; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE SCOPE AND PURPOSE OF THE ORDINANCE; IDENTIFYING PROHIBITED SIGNS AND EXEMPT SIGNS; ESTABLISHING REGULATIONS FOR NONCONFORMING SIGNS; PROHIBITING OFF-PREMISE SIGNS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Niederwald, Texas ("City") is a Type A general-law municipality; and

**WHEREAS**, Section 51.001 of the Texas Local Government Code authorizes the City of Niederwald to adopt an ordinance that the City Council deems is for the good government, peace or order of the City; and

**WHEREAS**, the City Council desires to protect the health, safety, and general welfare of the citizens of the City of Niederwald; and

**WHEREAS**, Texas Local Government Code, Chapter 216, provides that a municipality may regulate signs within the city's limits and the extraterritorial jurisdiction of the City; and

**WHEREAS**, the City Council hereby finds that outdoor advertising signs tend to deface nearby scenery, whether natural or built, rural or urban; and

**WHEREAS**, the City Council hereby finds that outdoor advertising signs tend to interrupt what would otherwise be the natural landscape as seen from the streets and highways, whether the view is untouched or altered by human activity, and that it would be unreasonable and illogical to conclude that an area is too unattractive to justify aesthetic improvement; and

**WHEREAS**, the City Council hereby finds that outdoor advertising signs, including changeable electronic variable message signs, pose a distraction to drivers, bikers and pedestrians from the streets and roadways; and

**WHEREAS**, the City Council hereby finds 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 hereby finds 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; and 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 off-premise signs, also commonly known as billboards, are inconsistent with the herein-stated goals and findings; and

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

**WHEREAS**, the City Council finds that Section 216.902 of the Local Government Code provides for the application of its outdoor advertising sign regulations to extend into the extraterritorial jurisdiction (ETJ) of the City; and

**WHEREAS**, it is in the interest of the health, safety, welfare, convenience and enjoyment of the general public to regulate signs in the City of Niederwald and in the City's extraterritorial jurisdiction;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS, THAT ORDINANCE NO. 100305 IS HEREBY AMENDED TO READ AS FOLLOWS IN ITS ENTIRETY, AS AMENDED:**

## **SECTION 1. DEFINITIONS**

**ADMINISTRATOR:** The City Administrator or other designated employee whose responsibility it is to administer the provisions of this Ordinance.

**BILLBOARD:** A billboard is an off-premise object, device, display, sign, or structure, or part thereof, displayed outdoors or visible from a public way, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location, or to express a point of view, by any means, including words, letters, figures, design, symbols, advertising flags, fixtures, colors, illuminations or projected images. Each substantially different face of a billboard structure shall constitute a separate billboard. Billboards do not include on-premise commercial or political signage nor small commercial or non-commercial signs

temporarily placed in residential lawns by residents, owners, contractors, realtors, or by or on behalf of political candidates or issues.

**CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGN (CEVMS):** A sign which permits light 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 but not limited to an LED (light emitting diode) or digital sign, and which varies in intensity or color. A CEVMS sign does not include a sign located within the public right-of-way that functions as a traffic control device and that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) approved by the Federal Highway Administrator as the National Standard.

**DIRECTIONAL SIGN:** A sign erected and maintained by local officials within the public right-of-way, to indicate to the traveling public the route and distance to public accommodations, facilities, commercial services and points of scenic, historical, cultural, recreational or educational interest.

**NON-CONFORMING SIGN:** A sign which was lawfully erected and maintained at the effective date of this Ordinance, but does not comply with the provisions of this Ordinance.

**OFF-PREMISE SIGN:** A sign that pertains to a business, person, organization, activity, event, place, service or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

**ON-PREMISE SIGN:** A sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity.

**PREMISES:** The contiguous land in the same ownership or control which is not divided by a street.

**SIGN:** Any surface, fabric, device, display or visual medium, including the component parts, which bears letters, pictorial forms or sculptured matter, including logos, used or intended to be used to convey information or to attract attention to the subject matter of such sign. Graphics painted upon the side of a building which carry no advertising shall not be construed to be a sign, except where such graphics pictorially display products or business that convey an advertising intent. The term "sign" includes a billboard. The term "sign" includes the sign structure.

**STRUCTURE:** Anything installed, constructed, built or erected that requires a permanent location.

## **SECTION 2. SCOPE AND PURPOSE**

This Ordinance shall be applicable within the corporate limits of the City and the area of its extraterritorial jurisdiction as defined by Chapter 42 of the Texas Local Government

Code The purpose of this Ordinance is to protect the health, safety, welfare, convenience and enjoyment of the general public and to protect the public from injury which may be caused by the unregulated installation, construction or erection of off-premise and other types of signs. It is the intent of these regulations to achieve the following:

1. Enhance the economic value of the landscape by avoiding visual clutter which is potentially harmful to property values and business opportunities;
  2. Promote the safety of persons and property by providing that signs do not create a hazard, due to collapse, fire, collision, weather or decay;
  3. Protect the safety and efficiency of the public's road system by reducing the confusion or distraction to motorists and enhancing motorists' ability to see pedestrians, obstacles, other vehicles and traffic signs;
  4. Enhance the impression of the City which is conveyed to tourists and visitors;
- and
5. Protect adjacent and nearby properties from the impact of billboard signs.

### **SECTION 3. PROHIBITED SIGNS**

The following signs are expressly prohibited within the City of Niederwald and the City's extraterritorial jurisdiction:

1. Off-premise signs, including billboard signs;
2. Signs erected in violation of the City's building, electrical or sign codes, or other applicable local regulations;
3. Signs erected in violation of federal or state law;
4. Portable signs;
5. Signs erected in or projecting into the public right-of-way unless an encroachment agreement is approved by the City Council; and
6. Changeable electronic variable message signs (CEVMS).

### **SECTION 4. EXEMPT SIGNS**

The following signs are exempted from the requirements of Section 3 of this Ordinance:

1. Signs on vehicles.
2. Temporary signs, as follows:
  - a) Temporary decorative flags.
  - b) Temporary public interest signs, including portable signs and banners, announcing activities or other events of a public, civic, philanthropic or religious organization, subject to the following:
    - 1) Temporary signs shall be maintained for no more than fourteen (14) days in a twelve (12) month period.
3. Warning, security and directional signs for parking, traffic control, and special events.
4. Municipal government signs, flags, insignia, or legal notices.
5. Political signs, subject to the following restrictions:
  - a) Said signs shall not be erected more than sixty (60) days prior to any primary or general election to which the sign pertains.

- b) Said signs shall be removed within ten (10) days after the general or run-off election to which the sign pertains.
- 6. Homebuilder/Subdivision signs, subject to the following:
  - a) Signs shall not be located in the public right-of-way.
  - b) Written permission shall be obtained from owners of property where sign is located.
  - c) Height shall not exceed eight (8) feet measured from the ground at grade level to the top-most portion of the sign structure.
  - d) The total surface area of the sign shall not exceed thirty-six (36) square feet.
- 7. On-premise development signs (signs identifying a developer's property and sales office/model home sites), subject to the following:
  - a) Sales Office/Model Homes:
    - 1) No sign shall be illuminated between the hours of 10:00 p.m. and 7:00 a.m.
    - 2) Sign must be located on the site of the model home.
    - 3) Height shall not exceed eight (8) feet measured from the ground at grade level to the top-most portion of the sign structure.
    - 4) The total surface area of the sign shall not exceed thirty-six (36) square feet.
- 8. Nameplate and street address signs.
- 9. Real estate signs, temporary in nature, advertising the sale or lease of real property on which the sign is located or announcing contemplated improvements of real property on which the sign is located. The height of such a sign shall not exceed eight (8) feet measured from the ground at grade level to the top-most portion of the sign structure. The total surface area of the sign shall not exceed thirty-six (36) square feet.
- 10. Construction signs, denoting the owner, architect, financial institution, general contractor, subcontractor or any statement pertaining to the project on the real property on which the sign is located. The height of such a sign shall not exceed eight (8) feet measured from the ground at grade level to the top-most portion of the sign structure. The total surface area of the sign shall not exceed thirty-six (36) square feet.
- 11. "No Dumping" and "No Trespassing" signs.

## **SECTION 5. NONCONFORMING SIGNS**

A nonconforming sign may be altered only as follows, subject to complying with permitting requirements set out in this Ordinance:

- a) The letters, symbols or other matter on the sign may be changed, except no sign may be converted to a changeable electronic variable message sign (CEVMS).
- b) A sign which has been blown down or otherwise destroyed by wind, fire or damages from any other source, may be repaired, provided that the cost of repairing the sign is sixty (60) percent of the cost of erecting a new sign of the same type at the same location, or less. If the cost of repairing the sign is more than sixty (60) percent of the cost of erecting a new sign of the same type at the



same location, the sign may not be altered, reconstructed, repaired or replaced, and the owner shall remove the sign.

c) Maintenance operations may be performed on the sign. For purposes of this Ordinance, "maintenance operations" means the process of keeping a sign in good repair. Maintenance operations include cleaning, painting, repair or replacement of parts in a manner that does not alter or remove the basic design or structure of the sign. Examples of actions that are not maintenance operations include, without limitation, conversion of a sign from a multiple pole structure to a monopole structure, replacement of wooden poles with metal poles, and any task that requires removal of the display surface from its supporting structure for any purpose other than changing letters, symbols or other matter on the sign. If a sign is dismantled for any purpose other than maintenance operations or for changing the letters, symbols or other matter on the same, the sign may not be altered, reconstructed, repaired or replaced, and the owner shall remove the sign or bring it into compliance with the applicable ordinances of the City. All other alterations of any nature whatsoever in connection with nonconforming signs are prohibited. If any such alteration is performed, the owner shall remove the sign or bring it into compliance with this Ordinance, and all other applicable ordinances.

d) Under no conditions may an existing nonconforming sign be converted or altered to a changeable electronic variable message sign (CEVMS).

#### **SECTION 6. OFF-PREMISE SIGNS**

No person, firm, corporation or other entity shall erect, construct or install an off-premise sign, including but not limited to a billboard sign or changeable electronic variable message sign (CEVMS), at any location within the corporate limits or the extraterritorial jurisdiction of the City of Niederwald, Texas.

#### **SECTION 7. ORDINANCE CUMULATIVE**

This Ordinance shall be cumulative of all provisions of ordinances and of the City of Niederwald, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event conflicting provisions of such ordinances are hereby repealed.

#### **SECTION 8. SEVERABILITY**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### **SECTION 9. PENALTY**

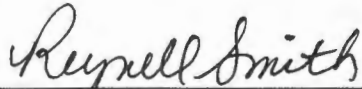
Any person, firm, corporation or other entity who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Ordinance shall be fined not more

than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 10. EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

READ, APPROVED AND ADOPTED this 2<sup>nd</sup> day of June, 2008.



HON. REYNELL SMITH, MAYOR

ATTEST:



ANGIE SCHULZE, CITY SECRETARY

