

City of Houston Ordinance No. 2008- 992

AN ORDINANCE REPEALING CURRENT SECTION 28-37 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, AND ADOPTING A NEW SECTION 28-37 RELATING TO THE REGULATION AND PROHIBITION OF ATTENTION-GETTING DEVICES; CONTAINING DEFINITIONS; MAKING VARIOUS PROVISIONS AND FINDINGS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; PROVIDING EFFECTIVE DATES; AND DECLARING AN EMERGENCY.

* * *

WHEREAS, the City Council of the City of Houston finds there are a large number of diverse devices, including, without limitation, pennants, streamers, balloons, lights, banners and other similar devices (referred to in these findings as "attention-getting devices") currently in use in the City of Houston that are placed in such a manner as to visually attract the attention of motorists and pedestrians to the location of commercial businesses or enterprises; and

WHEREAS, in an attempt to regulate such devices the City Council adopted Section 28-37 to the Code of Ordinances of the City of Houston, providing for the registration of attention-getting devices, limiting the period of display, and otherwise attempting to control the proliferation of such devices; and

WHEREAS, Houston traffic remains among the worst in the nation according to the Texas Transportation Institute's annual Urban Mobility Report, and any impediment to safe driving in such heavy traffic represents a hazard to the traveling motorist; and

WHEREAS, studies conducted in conjunction with the National Highway Traffic Safety Administration have identified driver inattention as the single greatest cause of highway accidents and near accidents; and

WHEREAS, such studies have also concluded that the causes of driver inattention often include off-road distractions as well as those distractions occurring on the driving surface; and

WHEREAS, studies conducted by the University of Toronto, the Minnesota Department of Transportation, and the Michigan State Highway Department, among others, have concluded that off-road signs and sign-like devices, such as attention-getting devices, distract drivers, lead to driver inattention, and contribute to the incidence of traffic collisions; and

WHEREAS, research conducted by and on behalf of the City of Houston has ascertained that at least seventeen other major population centers/cities in the United States impose total or partial bans on the use of attention getting devices; and,

WHEREAS, such attention-getting devices are not generally suitable as nor do they comply with the minimum structural standards for treatment, classification, permitting or administrative enforcement purposes as "signs" under the various classifications and provisions of the Houston Sign Code, Chapter 46 of the City of Houston Building Code, and are thus not regulated under the Sign Code; and

WHEREAS, the City Council of the City of Houston finds and determines that such devices are structurally unsound and do not comply with minimum structural standards designed to withstand wind loads and other weather-related stresses indigenous to Houston, and the proliferation of such devices constitutes a substantial threat to the health, safety, and welfare of the citizens of the City of Houston; and

WHEREAS, based on the foregoing, the City Council of the City of Houston finds that such attention-getting devices are nuisances that could pose substantial problems of traffic safety similar to and, in many instances, more serious than, conventional commercial advertising signs; and

WHEREAS, the City Council of the City of Houston finds that the extensive use and proliferation of such attention-getting devices within the City contributes to urban visual clutter and blight and adversely affects the aesthetic environment and the safety and quality of life for the community and the citizens of the City of Houston; and

WHEREAS, based on the foregoing, the City Council of the City of Houston concludes that regulation of attention-getting devices is ineffective and that for the future prohibition rather than regulation of such devices is in the best interests of the citizens of the City of Houston; **NOW, THEREFORE**,

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

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That, as of the effective date of this ordinance, current Section 28-37 of the Code of Ordinances, Houston, Texas, is hereby repealed.

January 1, 2010

SECTION 3. That, effective ~~May 1, 2008~~, a new Section 28-37 to the Code of Ordinances, Houston, Texas, is hereby adopted to read as follows:

"Sec. 28-37. Attention-getting devices.

(a) As used in this section, *attention-getting devices* shall mean devices erected, placed or maintained outdoors so as to attract attention to any commercial business, or any goods, products or services available on the premises of a commercial business, including but not limited to the following devices: banners; cut out figures; discs; festooning, including tinsel, strings of ribbons, and pinwheels; inflatable objects, including balloons; non-governmental flags; pennants; propellers; steam- or smoke-producing devices; streamers; whirligigs; wind devices; blinking, rotating, moving, chasing, flashing, glaring, strobe, scintillating, search, flood or spot lights; or similar devices, any of which are located or employed in connection with the conduct of a commercial business. Attention-getting devices shall not include any structure or device that is permitted under the Houston Sign Code, Chapter 46 of the Building Code.

(b) It shall be unlawful for any person to place, erect, maintain, or display any attention-getting device on any private or public property within the city. No attention-getting device shall be eligible for a permit under the Houston Sign Code.

(c) Enforcement of this section shall be the duty of the sign administration division of the public works and engineering department or any law enforcement officer.

(d) Any person who shall violate any provision of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than \$300 and not more than \$500 for each violation. Each day in which any violation shall occur shall constitute a separate offense."

Section 4. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that

no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND APPROVED this 12th day of November, 2008.

B. D. White
Mayor of the City of Houston

Prepared by Legal Dept. [Signature]
LWS:asw 11/7/2008
Requested by _____
L.D. File No. _____

Senior Assistant City Attorney

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE:

NOV 18 2008