

ORDINANCE NO. 2008-001

**AN ORDINANCE PROVIDING FOR THE
REGULATION OF THE USE OF SIGNS IN THE
CITY OF NEW BERLIN, TEXAS; PROVIDING FOR
SEVERABILITY; AND PROVIDING A PENALTY
FOR VIOLATION**

This Ordinance shall hereafter be known and cited as the 'Sign Ordinance.'

WHEREAS, the City Council wishes to facilitate the creation, construction, erection, and maintenance of certain signs within the jurisdiction of the City of New Berlin, Texas; and

WHEREAS, the City Council seeks to maintain the value of the City of New Berlin's scenic and natural resources, which are the keystones of the City's economic strength and quality of life, through a comprehensive regulatory program that includes land use and development ordinances restricting signs; and

WHEREAS, the City Council finds that improperly constructed and poorly maintained signs can be safety hazards that constitute a public health risk and can devalue adjacent properties; and

WHEREAS, the City Council finds that certain signs overwhelm the public, unduly distract and confuse motorists by diverting attention away from the roadway, and result in safety threats to vehicular and pedestrian traffic; and

WHEREAS, the City Council finds that certain signs constitute aesthetic harm by cluttering the rural landscape and highway corridors and adversely affecting the naturally scenic views and native environment; and

WHEREAS, the City Council finds that certain signs may conceal or obstruct windows, doors, or significant architectural features or details of buildings; and

WHEREAS, the City Council finds that properly constructed and maintained signs can create a pleasing environment for residents, visitors, shoppers, and the entire community; and

WHEREAS, the City Council finds it to be in the best interest of the public safety, health, and general welfare to regulate the construction, design, repair, demolition, maintenance, and use of signs so as to preserve the quality of life for the City of New Berlin's residents, visitors, and property owners, maintain the public rights-of-way, prevent threats to public safety, prevent traffic hazards,

restrict signs that unduly interfere with scenic views and constitute a public nuisance, and deter signs that are detrimental to property values; and

WHEREAS, the City Council finds it to be in the best interest of the public to regulate signs so as to promote roadway and pedestrian safety, encourage effective communication with the public, improve the appearance of the City of New Berlin, uphold the principles of free speech, including commercial speech, and enhance the community's small town character while preserving the authentic cultural heritage of the area within the boundaries of the City of New Berlin; and

WHEREAS, the City Council is authorized to regulate signs by virtue of the Texas Constitution, the City of New Berlin's police power, and Texas Local Government Code Chapter 216; and

WHEREAS, these findings of the City Council are found to be true and correct and are hereby incorporated into the body of this Ordinance as if copied in their entirety.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BERLIN, TEXAS:

SECTION 1. PURPOSE. The City has adopted this Ordinance in order to specifically protect the health, safety and welfare of its citizens, to protect the public from damage or injury caused or attributed to distractions and improperly located signs, to promote property values, to promote community environmental settings and appearances especially when scenic beauty is important and to support the City's Comprehensive Plan.

A. Safety. To promote the safety of persons and property by providing that signs do not:

1. Create a hazard due to collapse, fire, decay, or abandonment;
2. Obstruct firefighting or police surveillance; or
3. Create traffic hazards by confusing or distracting pedestrians, obstacles, or other vehicles from reading traffic signs.

B. Communications efficiency. To promote the efficient transfer of information in sign messages provided that:

1. Those signs which provide public safety messages and information are given priority;
2. Businesses and services may identify themselves;

3. Customers and other persons may locate a business or services;
4. No person or group is arbitrarily denied the use of the sight lines from the public rights-of-way for communication purposes;
5. Persons exposed to signs are not overwhelmed by the number of messages presented and are able to exercise freedom of choice to observe or ignore such messages, according to the observer's purpose; and
6. The right of free speech exercised through the reasonable use of signs is preserved.

C. Landscape quality and preservation. To protect the public welfare and to enhance the appearance and economic value of the landscape by providing that signs:

1. Do not interfere with scenic views;
2. Do not create a nuisance to persons using the public rights-of-way;
3. Do not create a nuisance to occupants of adjacent and contiguous property by their brightness, size, height, or movement;
4. Are not detrimental to land or property values;
5. Do not contribute to visual blight or clutter; and
6. Are architecturally compatible and harmonious with the structure to which they pertain and to neighboring structures.

SECTION 2. GENERAL. No person may construct, reconstruct, place, install, repair, maintain, relocate, alter or use a sign after the effective date of this Ordinance unless such installation, construction, reconstruction, placement, repairs, maintenance, relocation, alteration or use meets all the provisions of this and all other applicable ordinances adopted by the City Council of the City of New Berlin.

SECTION 3. JURISDICTION. The provisions of this Ordinance shall apply within the city limits and ETJ of the City of New Berlin, as defined by state law (Section 42.021 of the Local Government Code).

SECTION 4. DEFINITIONS. Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this ordinance, but are defined in other ordinances of the City of

New Berlin, shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only and shall not be used in the interpretation of this Ordinance.

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 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 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.

MOBILE SIGN – A permanent or temporary sign affixed to a trailer or vehicle. The primary purpose of said display is to attract the attention of the public to the subject matter advertised on the sign rather than to serve the customary identification purpose of said trailer or vehicle.

FLASHING SIGN – Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity or color at any times when such sign is in use. For the purpose of this chapter, any revolving illuminated sign shall be considered a flashing sign.

OWNER – Person, or partnership or association, company or corporation holding title to the land and/or building or structure upon which said sign or advertising structure is erected, supported or affixed.

SIGN – Any name, identification, description, display, or illustration which is affixed, painted, or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business.

TEMPORARY SIGN – Not permanent; signs meant to be exhibited on a limited basis as outlined in the ordinance.

OFF-PREMISE SIGN – A sign displaying copy 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 that is installed and maintained on the same premises as the business, person, or activity.

NON-CONFORMING SIGNS – Signs which have been installed prior to the effective date of this Ordinance are in use as of the effective date of this Ordinance, and which do not conform to this Ordinance.

SECTION 5. PROHIBITED SIGNS.

Any signs not specifically authorized within this Ordinance are hereby prohibited.

SECTION 6. PERMITS REQUIRED.

A. Erection permit. It shall be unlawful for any person to erect, alter or maintain within the City of New Berlin any sign, as defined within this Ordinance, without first obtaining an erection permit from the City Secretary.

B. Application for erection permit. Application to erect a sign shall be made upon blanks provided by the City Secretary and shall contain or have attached thereto the following information:

1. Name, address and telephone of applicant, together with the name, address, and telephone of the owner of the land or structure upon which the sign is to be located.
2. Designation of tile type or types of signs or advertising structures, including whether permanent or temporary.
3. Location of building, structure or lot to which or upon which the sign or advertising structure is to be attached or erected.
4. Exact position of the sign or other advertising structure in relation to buildings, structures, highways and/or adjacent properties.

SECTION 7. SIGN RESTRICTIONS.

A. Height: A permanent sign shall not be larger than one hundred twenty (120) square feet and the top of the sign shall not be higher than twenty-five (25) feet from the ground.

B. An on-premise sign facing a public highway shall be no closer to one another than 500 feet.

C. No on-premise sign shall be located within 300 feet of a school, library, church or hospital.

D. Permits can be issued for a temporary sign announcing the opening of a newly established commercial activity or a charitable non-profit organization. This

permit to be limited to one (1) per activity and the sign shall be removed on or before the expiration of thirty (30) days after the issuance of the permit. This sign shall not be larger than thirty-two (32) square feet or a mobile sign of similar size as approved by the City Council.

E. Signs cannot emit sound, smoke or steam.

F. Signs cannot block, either physically or visually, any governmental entity sign or signs identifying the owner of the property.

G. Signs cannot utilize any revolving beacon, oscillating light, flashing light, strobe light, or may not be designed to imitate any emergency vehicle warning light.

H. Signs painted on the exterior surface of a building or structure shall be subject to all applicable sections of this chapter and shall be properly repaired and painted as necessary to maintain their appearance. If repairs and painting are not provided by the owner within sixty (60) days after notice from the City Secretary, the City Council may cause their removal.

I. No sign or advertising structure shall be erected, relocated or maintained so as to prevent free ingress to or egress from any door, window or fire escape. No sign of any kind shall be attached to a standpipe or fire escape.

J. No sign, as regulated by this chapter, shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision, or at any location where it may interfere with or obstruct the view of pedestrians, operators of vehicles and others or be confused with any authorized traffic sign, signal or device; or which makes use of any word, phrase, symbol or character in such manner as to interfere with, mislead or confuse traffic.

K. All temporary signs shall be removed promptly upon completion of the work, or, when erected for a public event, shall be removed by the property owner when the circumstances leading to their erection shall no longer apply.

SECTION 8. ENFORCEMENT.

A. If the Mayor shall find that any sign regulated herein is unsafe or insecure or is a menace to the public or has been constructed or erected or is being maintained in violation of the provisions of this Ordinance he/she shall give written notice to the owner thereof.

B. If the owner fails to remove or alter the sign so as to comply with the standards herein set forth within thirty (30) days after such notice, such sign or other advertising structure may be removed, and the expense thereof shall be levied against the owner of the land, building or structure to which said sign was

attached. The Mayor may cause any sign or advertising structure which is an immediate peril to persons or property to be removed summarily and without notice.

C. Any off-premise sign or other sign hereafter existing which no longer advertises a bona fide business conducted, or a product sold, shall be taken down and removed, painted over or eradicated by the owner, permittee or person having beneficial use of the land, building or structure upon which said sign may be found within thirty (30) days after written notification by the City Secretary. Upon failure to comply with such removal notice, within the time specified in said notice, the Mayor is hereby authorized to cause removal of such sign, and any expenses incidental thereto shall be levied upon and paid by the owner of the land, building or structure to which said sign is attached.

SECTION 9. AUTHORIZED SIGNS. The following signs are authorized under the provisions of this ordinance:

A. Real estate signs not exceeding eighteen (18) square feet in area which advertise the sale, rental or lease of premises on which said signs are located. Not more than one sign is to be placed upon any property unless such property fronts upon more than one street. In such event, an additional sign may be erected along each frontage. Such sign or signs shall be promptly removed after the premises have been sold or leased.

B. Permanent bulletin boards not exceeding fifteen (15) square feet in area for public, charitable or religious institutions when the same are located on the premises of said institution.

C. Signs denoting the architect, engineer, contractor mechanic, painter and other artisan when placed on work while in progress. Such signs are to be removed promptly upon completion of the work.

D. Memorial signs, name of building and date of erection when cut into any masonry surface or any constructed of bronze or any incombustible materials.

E. Garage sale signs may be placed on any private property with the permission of the owner. These signs will be promptly removed when the sale is completed and in any case may not be displayed in excess of three (3) days.

F. On-Premise Signs properly permitted pursuant to this Ordinance.

SECTION 10. NONCONFORMING SIGNS.

Every sign or other advertising structure lawfully in existence on the adoption of this chapter shall not be substantially repaired, altered, or installed unless it is made to comply with the provisions of this chapter.

SECTION 11. SIGNS PROHIBITED IN CITY RIGHT-OF-WAYS OR EASEMENTS.

No signs, placards, notices, or any advertisement device of any nature whatsoever shall be placed in a City right-of-way or easement including but not limited to any utility pole erected, used or maintained in the city in support of telegraph or telephone wires, or electric lights.

SECTION 12. SEVERABILITY

That if any of the provisions of this Ordinance shall be held void or unconstitutional, it is hereby provided that all other part of the same which are not held void or unconstitutional shall remain in full force and effect.

SECTION 13. PENALTY

A. Civil and Criminal Penalties. The City of New Berlin shall have the power to administer and enforce the provisions of this ordinance as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

B. Criminal Prosecution. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$500.00, except that the fine for a violation that relates to fire safety, zoning, or public health and sanitation may not exceed \$2,000.00. Each day that a provision of this ordinance is violated shall constitute a separate offense. An offense under this ordinance is a Class C Misdemeanor.

C. Civil Remedies. Nothing in this ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this ordinance and to seek remedies as allowed by law, including, but not limited to the following:

1. Injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and
2. A civil penalty up to \$250.00 a day, except that a fine for a violation that relates to fire safety, zoning, or public health and sanitation may not exceed \$1,000.00, when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance; and
3. Any and all other available relief allowed by law.

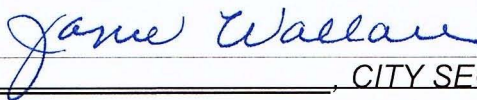
This Ordinance shall become adopted and effective after publication in the City of New Berlin official newspaper pursuant to ~~the Charter of the City of New Berlin.~~ *State Law. GRM*

PASSED AND APPROVED: This the 21st day of April 2008.

CITY OF NEW BERLIN, TEXAS

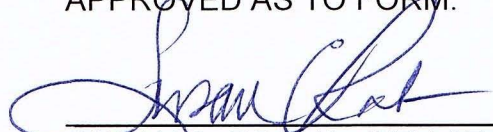
BY: 
GILBERT R. MERKLE, MAYOR

ATTEST:



CITY SECRETARY

APPROVED AS TO FORM:



SUSAN C. ROCHA, CITY ATTORNEY