

ORDINANCE NO. 110-2008

**AN ORDINANCE OF THE CITY OF LONE OAK, TEXAS, TO ENACT CITY REGULATIONS PERTAINING TO CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS; PROVIDING DEFINITIONS; PROVIDING FOR PENALTIES; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION.**

**WHEREAS**, the City Council of the City of Lone Oak, Texas ("City Council"), in order to preserve, promote and provide for the public health, safety, and welfare of the citizens of the City of Lone Oak ("City") is permitted to enact certain rules and regulation; and

**WHEREAS**, the City Council has determined that this ordinance will serve to preserve, promote and provide for the general health, safety, and welfare of the citizens of the City; to maintain and enhance the visual environment, and preserve the right of citizens to enjoy the City's aesthetic beauty; to improve pedestrian and traffic safety; and to minimize or lessen the possible adverse effect of certain billboards on nearby public and private property; and

**WHEREAS**, the City Council has determined that Changeable Electronic Variable Message Signs ("CEVMS"), as defined herein, pose a distraction to drivers, bikers and pedestrians from the roadway; and are inconsistent with the above-stated goals;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE OAK, TEXAS:**

SECTION 1. Finding Incorporated.

The findings set forth above are incorporated into the body of this ordinance as if fully set forth herein.

SECTION 2. Definitions.

Sign: Any outdoor display, design, pictorial or other representation that shall be so constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever so that the same shall be used for advertising. The term "sign" shall include the sign structure.

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 does not include a

sign located within a right-of-way that functions as a traffic control device and/or that is described and identified in the Manual on Uniform Traffic Control Devices (“MUTCD”) approved by the General Highway Administrator as the National Standard.

### SECTION 3. Prohibitions.

From and after the effective date of this ordinance, Changeable Electronic Variable Message Signs (“CEVMS”), as defined above, are expressly prohibited within the city limits and the extraterritorial jurisdiction of the City as defined by Section 42.021 of the Texas Local government Code.

### SECTION 4. Billboard Regulation Exemptions.

The following signs are allowed and exempt even if they meet the definition of a CEVMS:

- a) Traffic control signs;
- b) Traffic flow informational signs;
- c) Directional signs;
- d) Temporary signs; and.
- e) Safety control signs.

### SECTION 5. Penalty.

Any person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$100.00 and not more than \$500.00 for each violation. Each day in which any violation continues shall constitute a separate offense. To the extent that any violation of any provision of this chapter also constitutes a violation of state law, then it shall be punishable as provided by the applicable state law.

### SECTION 6. Severability.

Should any section, subsection, sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall be deemed a separate, distinct, and independent provision, shall remain in full force and effect, and such holding shall not affect the validity of the remaining portions thereof.

### SECTION 7. Savings/Repealing Clause.

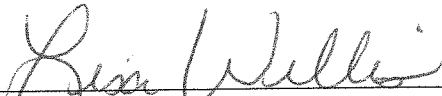
All ordinances and resolutions or parts or provisions of any ordinance or resolution in conflict with this ordinance are repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any

violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

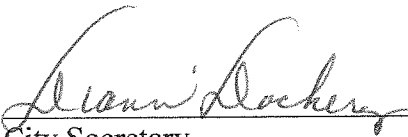
SECTION 8. Effective Date.

This ordinance shall be in full force and effect ten (10) days after the date of its passage and publication, and the City Secretary is hereby directed to publish notice of its adoption, as required by law.

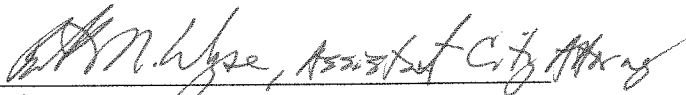
**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LONE OAK, TEXAS, this 9 day of June, 2008.**

  
\_\_\_\_\_  
Lisa Willis, Mayor  
City of Lone Oak

ATTEST:

  
\_\_\_\_\_  
Diann Lockery  
City Secretary  
City of Lone Oak

APPROVED AS TO FORM:

  
\_\_\_\_\_  
M. Wyse, Assistant City Attorney  
City Attorney  
City of Lone Oak

110-2008

# MESSER, CAMPBELL & BRADY

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# 100 00

May 22, 2008

Via Facsimile: 903.662.0037 and first-class mail

Mayor Lisa Willis  
and City Councilmembers  
City of Lone Oak  
P.O. Box 127  
Lone Oak, Texas 75453

Re: New TxDOT Rules Permitting the Placement of Electronic Light Emitting Diode ("LED") Billboards on Highways within a City's Corporate Limits or Extraterritorial Jurisdiction

Dear Mayor Willis and City Councilmembers:

On February 28, 2008, the Texas Transportation Commission (TxDOT Highway Commissioners) voted to allow multi-colored electronic changeable message light emitting diode (LED) billboards to be placed within cities and their extraterritorial jurisdiction ("ETJ") on State Highways.

Beginning June 1, 2008, the newly enacted TxDOT rules will allow these color changeable-message electronic billboards (which look like giant TV screens) to be erected along every Interstate and Federal Highway that runs through cities and their ETJ.

As is often the case, technology has outpaced most cities' sign ordinances which do not address such types of signs. The issues involve both safety and aesthetics. Large, bright, flashing and/or scrawling electronic signs can be a distraction to drivers. Although the images on the digital signs are prohibited by the new regulations from scrolling or moving digital images, they can have a new image every eight (8) seconds. The size of the typical billboard is 14 feet tall by 48 feet wide.

Fortunately, local governments must give written consent before TxDOT will issue a permit allowing such a billboard to be installed, or for an existing sign to be upgraded to an electronic sign, even if the city has no sign regulations in place.

One suggestion is that the city place a moratorium on such signs to give the city council and staff time to take a look at how other cities have and are reacting to this new technology.

While Texas cities have the authority to stop new billboard construction both within the city limits and their ETJ, there is no authority to stop new billboard construction outside the cities' ETJ.

Statewide there are reportedly over 30,000 billboards and 550 new permits granted each year by TxDOT. The billboard industry employs less than 1500 people in Texas and pay no sales tax on their advertising revenue and pay very little property taxes. They pay nothing to construct, maintain, or operate our highways, and there are no highway user fees. At the same time, billboard companies demand, without compensation, use of our highway system for their benefit and they demand huge sums when a highway project requires a sign's removal or relocation thus interfering with highway construction.

Digital signs currently cost around \$350,000.00 each and typically require another \$100,000.00 in engineering and structural work.

A proactive measure is for cities to adopt an ordinance that prohibits such changeable electronic variable message signs ("CEVMS") if there are none within the corporate and ETJ limits of the city, or to prohibit all new CEVMS within both corporate and ETJ limits.

Such an ordinance should be adopted as soon as possible. A proposed ordinance is attached for the city's review and consideration.

Although only State Highways will be affected and most likely these "million dollar signs" will probably not be placed in small cities or towns unless there is a lot of traffic, that situation could change as the cost of this new technology decreases and becomes more and more commonplace.

Please review the attached proposed ordinance and if you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



BENNETT M. WYSE

Enclosure/attachment