

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING CHAPTER 29, "SIGN STANDARDS AND PERMITS" OF THE CITY'S CODE OF ORDINANCES RELATIVE TO PERMITTING EXISTING OFF-PREMISE COMMERCIAL BILLBOARDS TO BE CONVERTED TO CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGNS ("CEVMS") SUBJECT TO SPECIFIC APPROVAL OF THE CITY COUNCIL; AMENDING VARIOUS SECTIONS OF THE SIGN REGULATIONS TO BE CONSISTENT WITH THE ABILITY TO CONVERT EXISTING COMMERCIAL BILLBOARDS INTO CEVMS; REPEALING ALL CONFLICTING ORDINANCES; REQUIRING A SIGN FACE EXCHANGE RATIO FOR DIGITAL DISPLAY SIGNS; PROVIDING OPERATIONAL REQUIREMENTS FOR DIGITAL DISPLAY SIGNS; REQUIRING AN ANNUAL REGISTRATION FEE; PROVIDING A PENALTY NOT TO EXCEED \$2,000; PROVIDING A SAVING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**Whereas**, Chapter 216 of the Texas Local Government Code provides for the municipal regulation of signage, including but not limited to relocation, reconstruction and removal of signs; and

**Whereas**, on or about July 7, 2009, the City Council for the City of Kyle enacted Ordinance No. 576, relative to sign regulations, including (CEVMS); and

**Whereas**, the City Council of the City of Kyle, Texas, has determined that it is in the best interest of the public and in support of the health, safety, morals, and general welfare of the citizens of the City, and to achieve the City's economic development goals, that the Code of Ordinances provisions relative to the regulation of signs, be amended relative to the use and regulations of CEVMS signs as hereinafter stated; and

**WHEREAS**, the placement of digital signage may be used for AMBER ALERTS, public warnings, notices and other official business which will benefit both municipal residents and the motoring public traversing IH 35 into the City of Kyle;

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

**Section 1.** That Section 29-9, "Prohibited Signs," of Chapter 29, "Sign Standards and Permits," "Kyle Code of Ordinances: Ordinance No. 576, Section 9, Subsection (12) "Changeable electronic variable message signs except as specifically provided in this ordinance," is hereby deleted in its entirety, and added a new Section 17(7), "Changeable Electronic Variable Message Sign Display on Certain Existing Off-Premise Signs." to read as follows:

**"SECTION 17(7)"**

**CHANGEABLE ELECTRONIC VARIABLE MESSAGE SIGN DISPLAY ON CERTAIN EXISTING OFF-PREMISE SIGNS.**

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(a) In general. Certain nonconforming off-premise signs may be modified to use CEVMS display technology subject to the restrictions in this section.

(b) Application. The owner of the sign must submit a CEVMS sign permit application for a face modification. After the building official approves the CEVMS sign permit, the owner must apply for a demolition permit to remove sign face area in accordance applicable ratio in Subsection (d). The owner must complete demolition of sign face according to the applicable ration in Subsection (d) before the sign face is modified.

(c) Compliance required.

(1) Except as provided in this section, CEVMS signs must fully comply with the size, height, spacing, setback, and other restrictions in this article for detached non-premise signs.

(2) CEVMS sign support structures must be built to comply with the building code.

(3) CEVMS signs must comply with Title 43 Texas Administrative Code Section 21.163, "Electronic Signs," as amended.

(4) Both existing and new CEVMS signs must comply with all lighting and safety standards mandated by federal, state, or local rules or statues, including standards adopted or amended after the date of passage of these requirements. Lighting and safety standards include brightness; message duration; and proximity of the sign to other digital displays, ramps, and interchanges.

(d) Sign Face exchange ratio.

(1) Except as provided in Paragraph (2), for every one (1) square foot of sign face modified to use CEVMS display technology, three (3) square feet of detached off-premise sign face are must be removed from within the city limits. Removal of any detached off premise sign outside the city limits will not count toward the required removal.

(A) To receive credit for the area of a conventional face removed, the conventional sign face removed must result in elimination of a sign structure (if a face is removed from the structure, the entire structure must be removed).

(B) At least one structure removed must be within a **five mile** radius of the conventional face being converted. **Mario is this possible? What if they don't have one within five miles? I thought the main goal was within the city limits? What about ETJ?** If the most extreme northern billboard and southern billboard along IH-35 were measured within the City limits, the distance would roughly be 5.5 miles. In addition, they are owned by different companies. There is only one billboard located on FM 150 in the Kyle's ETJ. This billboard owner would not be eligible to convert to LED because the ordinance applies to billboards along IH-35 only, per (e),(2). I would suggest that this section of the ordinance be deleted.

(C) No credit is given for the area of the conventional face removed to convert to a CEVMS display.

(D) Removal of sign face area must be completed before modification of sign area to use CEVMS display technology.

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(2) A company holding a valid state advertising license and that maintains 61 or fewer registered expressway non-premise signs on January 1, 2011 shall be allowed one sign face modification without complying with Paragraph (1). The new CEVMS sign face may be no larger than the preexisting conventional sign face. Any subsequent modifications must comply with Paragraph (1).

(e) Location and Number.

(1) A maximum of four (4) off-premise locations with CEVMS displays are permitted in the city. The director shall time stamp all applications upon receipt. The director shall review applications in order of submittal. If the director determines that an application is incomplete or does not meet the requirements of this section, the director shall reject the application and then review the next application. If the initial number of applications exceeds the number of permits available, the director shall provide for a lottery to distribute the permits.

(2) The conversion of existing off-premise advertising billboard signs to digital billboards shall only be allowed on lots with frontage to Interstate Highway 35 located within the City limits.

(3) For support structures with only one CEVMS sign, signs must be located a minimum of 1,500 feet from any other digital display sign oriented to the same traffic structures with two CEVMS signs, signs must be located a minimum of 2,000 feet from any other digital display sign along the same expressway, measured linearly.

(4) CEVMS signs may not be located within 300 feet of any lot located in a residential district, measured from the sign face only in the direction the sign face is oriented.

(5) CEVMS signs may not be located within 500 feet of a lot in a historic district or the escarpment zone. **Does City have historic district?** The City of Kyle does not currently have a designated historical district. I would suggest that this section be deleted. This was an oversight in my part.

(f) CEVMS sign support structures.

(1) CEVMS sign support structures may not exceed an overall height of 50 feet or 42.5 feet above the nearest point on the nearest travel surface of the nearest expressway, whichever is higher, except that no CEVMS sign may be higher than the conventional sign it replaced.

(2) Sign support structures and faces being converted to accommodate CEVMS signs may not be modified to change the angle of a sign face.

(3) Electrical service to sign support structures with CEVMS signs must be underground between the property line and the sign.

(g) Display.

(1) All CEVMS signs must automatically adjust the sign brightness so that the brightness level of the sign is no more than 0.3 foot-candles over ambient light conditions at a distance of 250 feet from the sign. A digital display sign must be equipped with both a dimmer control and photocell that automatically adjusts the display's intensity according to natural ambient light conditions.



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- (2) A CEVMS sign may not increase the light level on a lot in a residential district over ambient conditions without the digital display, measured in foot-candles at the point closest to the sign that is five feet inside the residential lot and five feet above the ground.
- (3) Before the issuance of a CEVMS sign permit, the applicant shall provide written certification from the sign manufacturer that:
  - (A) the light intensity has been factory programmed to comply with the maximum brightness and dimming standards in this subsection; and
  - (B) the light intensity is protected from end-use manipulation by password-protected software or other method satisfactory to the building official.
- (h) Change of message. Changes of message must comply with the following:
  - (1) Each message must be displayed for a minimum of eight seconds.
  - (2) Changes of message must be accomplished within two seconds.
  - (3) Changes of message must occur simultaneously on the entire sign face.
  - (4) No flashing, dimming, or brightening of message is permitted except to accommodate changes of message.
- (i) Malfunction. CEVMS signs operators must respond to a malfunction or safety issue within one hour after notification and must remedy that malfunction or safety issue within 12 hours after notification. In case of sign malfunction, the digital display must freeze until the malfunction is remedied.
- (j) Display of emergency information. The city may exercise its police powers to protect public health, safety, and welfare by requiring emergency information to be displayed on digital display signs. Upon notification, the sign operators shall display: Amber Alerts, Silver Alerts, information regarding terrorist attacks, natural disasters, and other emergency situations in appropriate sign rotations. Emergency information messages must remain in rotation according to the issuing agency's protocols.
- (k) Sunset. This section expires on August 1, 2014, unless re-enacted with amendment before that date. The Planning Commission and City Council shall review this section before its expiration date."

**SECTION 2.** That Chapter 29, "Signs," of Article IV, "Building Permit Fee Components," of Code Section 29-70, "Permit Fee," is amended by adding a new Subsection 29-71, "Annual Registration Fee for an Off-Premise Digital Display Sign," to read as follows:

**"29-71 Annual registration fee for an off-premise digital display sign.** The annual registration fee for a permit for an off-premise digital display sign under Kyle Code of Ordinances, Section 29-71 is \$2,000 per digital sign face."

**SECTION 3.** That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

**SECTION 4.** That Chapter 29 of the Kyle City Code shall remain in full force and effect, save and except as amended by this ordinance.

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**SECTION 5.** That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of chapter 1 of the Kyle city Code, as amended.

**SECTION 6. LIABILITY AND RESERVATION OF SOVEREIGN IMMUNITY.** The provisions of this section shall not be construed as relieving or limiting in any way the responsibility or liability of any person erecting or owning any sign from personal injury or property damage resulting from the placing of the sign, or resulting from the negligence or willful acts of such person, or such person's agents, employees or workers, in the design, construction, maintenance, repair or removal of any sign erected in accordance with a permit issued under the provisions hereof. Nor shall it be construed as waiving sovereign immunity nor imposing upon the Town or its officers or employees, or the zoning commission any responsibility or liability by reason of the approval of any signs, materials, and devices herein.

**SECTION 7. SEVERABILITY.** If any provision of this code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.

**SECTION 8.** That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Kyle, and it is accordingly so ordained.

**PASSED AND APPROVED** on the \_\_\_\_ day of \_\_\_\_\_, 2013.

**PASSED AND FINALLY APPROVED** on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

**ATTEST:**

**CITY OF KYLE, TEXAS**

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Amelia Sanchez, City Secretary

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Lucy Johnson, Mayor