

The ability to remove signs from the City's Right-Of-Way depends on if they meet the criteria/definition of a 'Bandit Sign'.

Listed below are the relevant provisions of the City Code regarding Bandit Signs

Bandit sign shall mean any sign posted on a utility pole, street sign or other street furniture or a sign posted in violation of this chapter in the public right of way having six (6) square feet or less of advertising area and made of vinyl, paper, cloth or fabric, polyboard, coroplas, corrugated plastic, poster board, plastic core, cardboard or plywood including signs with wood or wire framing, posts or stakes. No sign owned or placed by the city, the state, or a public utility shall be considered a bandit sign.

Sec. 28-152. - Signs on roads and highways maintained by the city.

(a)

No person may place a sign on the public right-of-way of a road or highway maintained by the city.

(b)

Temporary weekend signs are permitted to be placed on the right-of-way of a road or highway maintained by the city provided that the following regulation of time, place, and manner are observed and appropriate fees have been paid.

(1)

Schedule: Temporary weekend signs are permitted from Friday until no later than 9:00 p.m. the following Monday. If a federally recognized holiday falls on a Friday, then the signs are permitted from the preceding Thursday until no later than 9:00 p.m. the following Monday. If a federally recognized holiday falls on a Monday, then signs are permitted from Friday until no later than 9:00 p.m. the following Tuesday. Signs may not be either placed or picked up between the hours from 6:00 a.m. to 9:00 a.m. or from 4:00 p.m. to 7:00 p.m. on weekdays.

(2)

Size: Signs shall not exceed twenty-four (24) inches by thirty-two (32) inches in size. Irregular shaped signs shall fit in a twenty-four (24) inches by thirty-two (32) rectangle. The total height of the sign may not exceed three (3) feet above the ground measured from the base of the sign. Signs may be two-dimensional only and shall have a non-reflective surface.

(3)

Spacing between signs:

a.

A minimum of five (5) feet must be maintained between each temporary weekend sign of different advertisers.

b.

The signs of each advertiser must be spaced so that no two (2) signs advertising the same good, service, business, political campaign, or particular piece of real property (for sale or lease), are closer than two hundred (200) feet from each other measured in a straight line. If a new residential subdivision or development is being advertised, no sign of any advertiser may be closer than two hundred (200) feet from any other sign of the same advertiser.

(4)

Sign location:

a.

Signs must be self supporting and placed into the ground by a single stake. No temporary weekend sign shall be permitted on a utility pole, street light pole, sign pole, fence, tree or other manmade or natural feature.

b.

No sign may be placed closer than twenty-five (25) feet from a street intersection or median opening. Any temporary weekend sign determined to be in a location that causes an immediate hazard to public safety may be immediately removed by the city.

c.

Signs shall be placed no closer than three (3) feet from the edge of the sign to the street curb or, if there is no curb, the edge of pavement. Signs shall not encroach on either the sidewalks or streets.

d.

No sign may be placed on any esplanade or island that is located between a road or highway or otherwise divides traffic.

e.

Except for political signs, no sign shall be placed further than three miles from the property, location, or business that is being advertised.

(5)

Registration, permits and fees:

a.

An annual permit fee of fifty dollars (\$50.00) must be paid by each advertiser. Where an advertiser wishes to advertise multiple locations, a permit must be obtained for each business location subdivision location, or service location to be advertised by temporary weekend signs.

b.

Upon payment of said fee, the permittee may purchase annual temporary weekend registration decals. The cost of each decal shall be one dollar (\$1.00). A temporary weekend sign shall not be placed on the right-of-way of a road or highway unless an annual temporary weekend decal is affixed on the face of the temporary weekend sign.

(6)

Map, listing, and state department of transportation approval:

a.

In addition to payment of the appropriate fees the advertiser shall provide a map and listing identifying the street and block number where each sign shall be placed.

b.

The department of building inspections shall submit the application for review by the Texas Department of Transportation to insure the location identified in the map and listing for sign placement is not within the state highway system. If the department of transportation fails to respond within ten (10) working days after receipt of plan, it shall be assumed that the site plan is conforming to state law.

Note: Application of section 28-152(b)(6)b. is contingent on the state department of transportation's cooperation in providing such confirmation. The director of the planning and development services department may accept confirmation from another governmental agency where appropriate.

(c)

Confiscation, notice, and public auction.

(1)

Any sign placed in violation of the provisions of this section is hereby declared a nuisance to the public health, safety and welfare and may be confiscated.

(2)

If the owner of a confiscated sign is known, he or she shall be notified by certified mail, return receipt requested, not later than the tenth (10th) day after the date of the confiscation. If the owner of the sign is not known, notice of the confiscation shall be published in a newspaper of general circulation in the county not later than the 10th day after the date of the confiscation.

(3)

A notice must:

a.

Include a description of the sign and the location from which the sign was confiscated;

b.

Include a statement that the owner may reclaim the sign before the twenty-first (21st) day after the date the notice was mailed or published if all fines that are imposed under this section are paid; and

c.

State the date, time, and location of the public auction where the sign will be sold if the sign is not reclaimed.

(4)

A notice by publication may contain multiple listings of confiscated signs.

(5)

The city may sell a sign at public auction if, before the twenty-first (21st) day after the date notice was mailed or published, the sign has not been reclaimed. The city shall sell the sign to the highest bidder at the auction.

(6)

The city shall remit the proceeds of an auction under section 28-192(c)(6) to the general fund.

(d)

Exemption from notice requirements.

(1)

City council hereby determines that any sign that is of similar size as a temporary weekend sign is unlikely to be reclaimed if confiscated.

(2)

Such signs are exempt from the notice requirements of section 28-152(c).

(3)

Such signs shall be held for twenty-one (21) days after the date of confiscation and shall be made available for reclamation by the owner. After that period, the sign(s) may be discarded. Before reclamation, the owner shall pay five dollars (\$5.00) per sign for storage and administrative costs.

(e)

Placement of unauthorized sign: Criminal offense, penalty. This subsection may be enforced by the departments of building inspections, police, or other departments designated by the city manager against any violator of any provision of this section who is not a holder of a valid annual temporary sign permit.

(1)

A person commits an offense if the person places a sign on the public right-of-way of a road or highway maintained by the city in violation of this section. The presence of a sign in the public right-of-way creates a rebuttable presumption that the person named on such sign is the person responsible for the placement of such sign. If more than one person is named on a sign, there is rebuttable presumption that each person is individually and severally responsible for the placement of such sign.

(2)

There shall be a rebuttable presumption that the person in whose name a telephone number displayed on the sign is listed with the telephone company is the person responsible for the placement of such sign.

(3)

An offense under this section is punishable as follows:

a.

First offense by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00);

b.

Second offense by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00); or

c.

Third offense or thereafter by a fine of not less than three hundred dollars (\$300.00) and more than five hundred dollars (\$500.00).

(f)

Defense.

(1)

It is a defense to prosecution under this section that:

a.

The sign is placed on the right-of-way of a road or highway maintained by the city by a person other than the defendant; and

b.

Without the knowledge of the defendant.

(g)

Administrative penalties. The director of the planning and development services department shall apply the administrative procedures prescribed in this subsection, rather than bring criminal charges, where the alleged violation of any provision of this section is by the holder of a valid annual temporary sign permit.

(1)

The penalty the director shall impose against any permit holder who has been found to violate a provision of this section shall be as follows:

a.

First violation: A written warning shall be given.

b.

Second violation: Revocation of permit and require double fee for new permit.

c.

Third violation: Revocation of permit and require double fee for new permit; said permit shall not be issued until one hundred twenty (120) days has passed from the date of revocation.

d.

Fourth violation and thereafter: revocation of permit and require double fee for new permit; said permit shall not be issued until three hundred sixty-five (365) days has passed from the date of revocation.

(2)

The director of the planning and development services department shall make his determination based on the submission of a written report submitted by the city employee (the "accuser") alleging a violation has occurred by the accused permit holder (the "accused").

a.

The accuser shall submit a copy of the written report to the director (and the accused, by certified mail, return receipt requested) not later than thirty (30) days from the date of the alleged violation. Exhibits such as city records and photographs may be attached to the report.

b.

Within ten (10) days of receipt of the report the accused may submit a written response. Three copies of the response shall be mailed to the director (certified mail, return receipt requested). Exhibits may be attached to the response. The accused may in lieu of, or along with, the response request to appear before the director to present evidence in response to the charge or charges asserted. If a hearing is requested, the director shall set the matter for a public hearing and notify the accused by certified mail, return receipt requested. The notice shall provide the accused with the time, date and location of the hearing and be received by the accused at least five (5) days prior to the date of the hearing.

c.

If the accused does not request a hearing, the director shall make a determination within thirty (30) days of receipt of the initial report by the accuser. If the accused requests a hearing, the director shall make a determination within forty-five (45) days of receipt of the request for the hearing; but, in no instance, shall a determination of true be made before the hearing is conducted. The determination shall be based

solely on the report, response, exhibits, and oral presentation, if applicable. The director shall make a determination that the allegation is true or not true. To determine that an allegation is true, the director must find by a preponderance of the evidence that the allegation made is true and constitutes a violation of this section.

d.

Before the expiration of the applicable time periods referenced immediately above, the director shall send by certified mail, return receipt requested written confirmation of his determination. If such determination is not sent within the prescribed time limit, the allegation will be assumed to be not true.

e.

The time periods prescribed in this subsection may be waived only by the written consent of the director and the accused.

(3)

If the director determines an allegation to be true, the accused may appeal to city council.

a.

The request for appeal must be submitted to the city clerk, by registered mail, return receipt requested, within ten (10) days of receipt of the director's determination.

b.

The city clerk shall place the appeal on the first available regularly scheduled meeting of the city council. The clerk shall forward copies of the report, the response, and any exhibits to each member of the city council.

c.

The director of the planning and development services department' determination shall stand unless a motion to reverse the decision is made, seconded and received a majority vote of the council members present at the hearing.

d.

After hearing the appeal, city council may defer action for thirty (30) days. If the council fails to take action before the expiration of thirty (30) days after the appeal is heard, the decision of director shall stand.

(h)

Section not applicable to federal, state or local governments. This section is not applicable to any sign placed in the right-of-way of the city by, or at the direction of the federal, state or local government.

(i)

Permission of abutting property owners necessary. Nothing in this section authorizes the placement of signage contrary to existing property law. The advertiser must secure all necessary permission of any and all parties having a property interest in the right-of-way prior to placing any temporary weekend sign.

(j)

Provisions not severable.

(1)

If any provision of this section is found to be in violation of either the federal or state constitution or other applicable law by a court of competent jurisdiction, then this section is repealed in its entirety and the regulation of signage in the right-of-way shall thereafter be controlled by Texas Transportation Code § 393.001 et seq.

(Ord. No. 87156, § 2, 12-18-97; Ord. No. 87849, § 1, 5-21-98; Ord. No. 91129, § 1, 1-13-00; Ord. No. 93110, §§ 1, 2, 12-14-00; Ord. No. 2006-05-11-0573, § 5, 5-11-06; Ord. No. 2006-06-08-0700, § 1, 6-8-06; Ord. No. 2007-12-06-1247, § 2, 12-6-07; Ord. No. 2009-01-29-0071, § 3, 1-29-09)

Sec. 28-153. - Bandit signs.

(a)

Bandit signs are hereby declared to be abandoned trash at the time of posting and may be removed and discarded without notice notwithstanding any conflicting regulation or requirement within this chapter.

(b)

Any citizen removing a bandit sign or other sign in the public right of way shall do so at his or her own risk, and neither the city nor any public utility exercising control of the right-of-way, pole or fixture shall be liable for damage, loss or injury due to such independent acts.