

**AN ORDINANCE OF MONTGOMERY COUNTY, TEXAS
PROHIBITING THE PLACEMENT OF SIGNS ON
A RIGHT-OF-WAY OF PUBLIC ROADS
AND IMPOSING CRIMINAL PROSECUTION FOR VIOLATION**

WHEREAS, the Commissioners' Court of Montgomery County, Texas is aware of the multitude of signs, known as "bandit signs," being placed in the rights-of-way of public roads by persons without governmental authorization;

WHEREAS, Montgomery County officials have been confiscating said bandit signs in accordance with the authority granted in the Texas Transportation Code, Chapter 393; however, the placement of these signs continues to be problematic for the County;

WHEREAS, House Bill 413, passed by the 80th Texas Legislative Regular Session and effective September 1, 2007, amends the Texas Transportation Code Chapter 393 to provide additional enforcement tools to protect the public rights-of-way from the placement of these signs;

WHEREAS, the Commissioners' Court of Montgomery County, Texas determined that a necessity exists for the County by way of this Ordinance to implement a prohibition of the placement of signs on rights-of-way of public roads and violation of this Ordinance will result in criminal prosecution of all violators; and

WHEREAS, as amended, Section 393.003(a) of the Texas Transportation Code authorizes the Commissioners' Court to appoint trained volunteers to assist overburdened local officials in the confiscation and disposal of these bandit signs.

**NOW, THEREFORE, BE IT ORDERED BY THE COMMISSIONERS'
COURT OF MONTGOMERY COUNTY, TEXAS:**

Article I. Definitions

Section 1.1 In this Ordinance, the following words and phrases shall have the meaning ascribed in this Section 1.1:

Person: An individual, company, partnership, firm, corporation, association or other legal entity.

Right-of-way of public road: The right-of-way of a public road or highway that is in the unincorporated areas of the County and is not part of the state highway system.

Sign: An outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, or other thing designed, intended, or used to advertise or inform.

Article II. Offense

Section 2.1 Pursuant to the provisions of Chapter 393 of the Texas Transportation Code, a person may not place, nor commission the placement of a sign on a right-of-way of a public road, unless the placement is authorized by state law.

Section 2.2 A person commits an offense if the person violates Section 2.1.

Article III. Exception

Section 3.1 The offense does not apply to a temporary directional sign or kiosk approved by the state, or erected or approved by the County as part of a program approved by the Texas Department of Transportation and administered by the state or the County on a public road within the unincorporated areas of Montgomery County, Texas.

Section 3.2 The offense does not apply to a sign placed in a right-of-way by a public utility or its contractor for purposes of the utility.

Article IV. Criminal Prosecution

Section 4.1 A person found to have committed the offense set forth under Article II of this Ordinance shall be subject to criminal prosecution by the District or County Attorney.

Section 4.2 An offense under Article II of this Ordinance is a Class C misdemeanor and is punishable by a fine not to exceed \$500.00, pursuant to Section 12.23 of the Texas Penal Code.

Article V. Confiscation and Notice

Section 5.1 A Sheriff, Constable, or other trained volunteer authorized by the Commissioners' Court of the County may confiscate a sign placed in violation of this Ordinance.

Section 5.2 Subject to Articles VI and VIII of this Ordinance, if the owner of a confiscated sign is known, the Sheriff or Constable shall notify the owner of the confiscation by certified mail, return receipt requested, not later than the 10th day after the date of the confiscation. If the owner of the sign is not known, the Sheriff or Constable shall publish notice of the confiscation in a newspaper of general circulation in the County not later than the 10th day after the date of the confiscation.

Section 5.3 A notice under Section 5.2 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 21st day after the date the notice was mailed or published if all fines that are imposed under this chapter 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.

Section 5.4 A notice by publication under Section 5.2 may contain multiple listings of confiscated signs.

Article VI. Exemptions from Notice Requirements

Section 6.1 The Sheriff, Constable, or other trained volunteers authorized by the Commissioners' Court of the County may discard a sign of less than \$25.00 in value without giving the notice required in Article V of this Ordinance. Signs deemed to have a value of \$25.00 or less are those signs constructed of paper, cardboard or coroplast (corrugated plastic) and normally used for a temporary purpose. Signs for candidates for elective public office are excluded from this Section 6.1.

Section 6.2 The Commissioners' Court of the County has determined that the following types of signs are unlikely to be reclaimed if confiscated, and hereby exempt the following types of signs from the notice requirements of Article V of this Ordinance:

- (a) any yard signs advertising garage sales, the sale of vehicles, the sale of animals, and the sale of furniture, electronic equipment or any other household item, or any similar items;
- (b) any signs regarding leisure activities, including but not limited to sporting registration and gym membership;
- (c) any signs advertising real estate development and property sales, including but not limited to real estate for sale by owner or by a licensed real estate agent or brokerage company;
- (d) any signs relating to commercial retail activities; and
- (e) any signs promoting general solicitation.

Article VII. Disposition of Confiscated Signs

Section 7.1 The Sheriff or Constable shall store a confiscated sign exempted from notice pursuant to Section 6.2 of this Ordinance for twenty-one (21) days after the date the sign is confiscated and shall make the sign available for reclamation by the owner. After the 21st day, the Sheriff or Constable may discard the sign.

Section 7.2 For those signs not authorized to be automatically discarded or exempted from notice under Article VI of this Ordinance, the Sheriff or Constable may sell the sign at public auction if, before the 21st day after the date notice under Section 5.2 of this Ordinance was mailed or published, the sign has not been reclaimed. The Sheriff or Constable shall sell the sign to the highest bidder at the auction.

Section 7.3 The Sheriff or Constable shall remit the proceeds of an auction under Section 7.2 to the County Treasurer for deposit to the credit of a fund in the County treasury designated by the Commissioners' Court.

Article VIII. Political Candidate Signs

Section 8.1 A Sheriff, Constable, or other trained volunteer authorized by the Commissioners' Court of the County may confiscate a sign of a political candidate running for an elective public office which is placed in violation of this Ordinance. Trained volunteers shall relinquish confiscated political candidate signs to the Sheriff or Constable for disposition. Upon confiscation or receipt of a confiscated sign, the Sheriff or Constable shall immediately notify the candidate or a representative of the candidate of the sign's confiscation and the political candidate's sign shall be held by the Sheriff or Constable for reclamation by the candidate or a representative of the candidate for twenty-one (21) days after the date the sign is confiscated. After the 21st day, if the candidate or a representative of the candidate fails to reclaim the sign, the Sheriff or Constable may discard the sign.

Article IX. Trained Volunteers

Section 9.1 A trained volunteer is a person who has been specifically appointed and approved by the Commissioners' Court of the County to assist local officials in the confiscation of signs in accordance with this Ordinance. Trained volunteers must be at least eighteen (18) years of age. Each trained volunteer must execute an acknowledgement of review and receipt of this Ordinance, certify his or her ability to carryout the provisions herein, and receive a certificate of training issued by the County.

Section 9.2 Trained volunteers must strictly comply with Articles V and VI of this Ordinance in confiscating signs. Signs that exceed the \$25.00 value, that are for a candidate for elective public office, or that are not specifically exempt from notice hereunder must be surrendered to the Sheriff or Constable for further handling as provided in Articles V and VII of this Ordinance within twenty-four (24) hours of confiscation. Trained volunteers must submit to the Sheriff or Constable the required information set forth in Section 5.3(a)-(c) of this Ordinance in compliance with the notice requirements.

Section 9.3 Trained volunteers shall be responsible for its (their) own actions and shall assume all risks involved in the confiscation of said signs, hereby releasing the County of all liability.

Article X. Defense

Section 10.1 It is a defense to prosecution for a violation under this Ordinance if at the time of the alleged violation the defendant is a candidate for an elective public office and the sign is placed:

- (a) by a person other than the candidate; and
- (b) in connection with a campaign for an elective public office by the candidate.

Article XI. Effective Date

Section 11.1 The effective date of this Ordinance shall be October 8, 2007.

Article XII. General Provisions

Section 12.1 All ordinances or parts of ordinances inconsistent with the terms of this Ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency of other ordinances regulating and governing the subject matter covered by this Ordinance.

Section 12.2 If any provision, section, exception, subsections paragraph, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void or invalid, such provision(s) of this Ordinance or its (their) application to other sets of circumstances are declared to be severable.

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Section 12.2 If any provision, section, exception, subsections paragraph, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void or invalid, such provision(s) of this Ordinance or its (their) application to other sets of circumstances are declared to be severable.

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10-8-2007

RESOLUTION AND ORDER

On this the 8th day of October, 2007, at a Regular Session meeting of the Commissioners Court of Montgomery County, Texas, there came on for consideration and approval a motion for the Commissioners Court to approve and adopt an Ordinance Prohibiting the Placement of Signs on A Right-of-way of Public Roads and Imposing Criminal Prosecution for Violation as set for in House Bill 413, passed by the 80th Texas Legislative Regular Session amending the Texas Transportation Code, Chapter 393, in accordance with the Ordinance attached hereto and incorporated herein.

Motion was made by Commissioner Meador and seconded by Commissioner Doyal, that said Commissioners' Court does hereby acknowledge the need for such regulation and approves and adopts the attached document as Rules and Regulations for Montgomery County.

Said Motion being put to vote, it carried by a vote of 4 "aye" votes to 0 "naye" votes.

THEREFORE, IT IS HEREBY APPROVED AND ORDERED that the attached Ordinance Prohibiting the Placement of Signs on A Right-of-way of Public Roads and Imposing Criminal Prosecution for Violation shall be applicable to all effective October 8, 2007, in accordance with the terms and provisions contained in the Ordinance.

ATTEST:

Mark Turnbull

Mark Turnbull,
County Clerk

COUNTY OF MONTGOMERY

Alan B. Sadler

Alan B. Sadler, County Judge

Mike Meador

Mike Meador, Commissioner Pct. 1

Craig Doyal

Craig Doyal, Commissioner Pct. 2

Ed Chance

Ed Chance, Commissioner Pct. 3

Ed Rinehart

Ed Rinehart, Commissioner Pct. 4

