

ORDINANCE NO. 20-105

AN ORDINANCE OF THE CITY OF GARRETT, TEXAS, RELATING TO SIGN REGULATION; PROVIDING FOR DEFINITIONS; PROVIDING FOR NONCONFORMING SIGNS; TO EXPRESSLY PROHIBIT THE USE OF BILLBOARDS WITHIN THE CITY LIMITS AND THE EXTRA-TERRITORIAL LIMITS; PROVIDING A SAVINGS CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Garrett, Texas, (the "City Council") has investigated and determined that prohibiting certain types of signs, regardless of their content, as a whole in the City's city limits and the City's extraterritorial jurisdiction are effective in maintaining and improving the quality of life for all citizens of the City; and

WHEREAS, the City finds that billboards detract from the natural and manmade beauty of the City, and can be dangerous to travelers on City and State roadways as they can cause a distraction; and

WHEREAS, the City agrees with the American Society of Landscape Architects' determination that billboards tend to deface nearby scenery, whether natural or built, rural or urban, which does not promote the health, safety and welfare of the community; and

WHEREAS, the City recognizes that states such as Vermont, Alaska, Maine, and Hawaii have prohibited the construction of billboards in their states and are now billboard-free in an effort to promote aesthetics and scenic beauty and the health, safety and welfare of the community; and

WHEREAS, the City finds that billboards attract the attention of drivers passing by the billboards, thereby adversely affecting traffic safety and constituting a public nuisance and a noxious use of the land on which the billboards are erected; and

WHEREAS, the City finds that billboards are a form of advertisement designed to be seen without the exercise of choice or volition on the part of the observer, unlike other forms of advertising that are ordinarily seen as a matter of choice on the part of the observer [*see Packer v. Utah*, 285 U.S. 105 (1932); and *General Outdoor Advertising Co. v. Department of Public Works*, 289 Mass. 149, 193 N.E. 799 (1935)]; and

WHEREAS, the City acknowledges that the United States Supreme Court and many federal courts have accepted legislative judgments and determinations that the prohibition of billboards promotes traffic safety and the aesthetics of the surrounding area. [*see Markham Adver. Co. v. State*, 73 Wash. 2d 405, 439 P.2d 248 (1969), appeal dismissed for want of a substantial federal question, 439 U.S. 808 (1978); *Markham Adver. Co., Inc. v. State*, Case No. 648, October Term, 1968, Appellants' Jurisdictional Statement, 1968 WL 129277 (October 14, 1968); *Suffolk Outdoor Adver. Co., Inc. v. Hulse*, 43 N.Y.2d 483, 372 N.E.2d 263 (1977), appeal dismissed for want of a substantial federal question, 439 U.S. 808 (1978); *Suffolk*

Outdoor Adver. Co., Inc. v. Hulse, Case No. 77-1670, October Term, 1977, Appellant's Jurisdictional Statement (March 23, 1978); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 509-510 (1981); *Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 806-807 (1984), *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 425 and 442 (1993); *National Advertising Co. v. City and County of Denver*, 912 F.2d 405, 409 (10th Cir. 1990), and *Outdoor Systems, Inc. v. City of Lenexa*, 67 F. Supp. 2d 1231, 1239 (D. Kan. 1999)]; and

WHEREAS, the City finds that a prohibition on the erection of billboards will reduce the number of driver distractions and the number of aesthetic eyesores along the roadways and highways of the City [see, e.g., *E. B. Elliott Adv. Co. v. Metropolitan Dade County*, 425 F.2d 1141, 1154 (5th Cir. 1970), cert. denied, 400 U.S. 878 (1970)]; and

WHEREAS, the City finds that billboard signs are public nuisances given their adverse impact on both traffic safety and aesthetics; and

WHEREAS, the City finds that billboards are a traffic hazard and impair the beauty of the surrounding area, and the prohibition of the construction of billboards will reduce these harms [see *Outdoor Systems, Inc. v. City of Lenexa*, 67 F.Supp.2d 1231, 1239 (D. Kan. 1999)]; and

WHEREAS, the City finds that in order to preserve, protect and promote the safety and general welfare of the residents of the City, it is necessary to regulate billboard signs or billboards, so as to prohibit the construction of billboards in the City limits and the City's extraterritorial jurisdiction, and to provide that the foregoing provisions shall be severable; and

WHEREAS, the City finds that anything beside the road which tends to distract the driver of a motor vehicle directly affects traffic safety, and that signs, which divert the attention of the driver and occupants of motor vehicles from the highway to objects away from it, may reasonably be found to increase the danger of accidents, and agrees with the courts that have reached the same determination [see *In re Opinion of the Justices*, 103 N.H. 268, 169 A.2d 762 (1961); *Newman Signs, Inc. v. Hjelle*, 268 N.W.2d 741 (N.D.1978)]; and

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

SECTION 1. *Billboards:* All billboard signs, regardless of make, model, design, or material are prohibited. This provision does not prohibit the ordinary maintenance of such previously erected signs during the amortization schedule for removal, but such signs shall not be improved nor enlarged. If a billboard sign is fifty (50) percent or more destroyed, as determined by the Building Official, it shall be removed by the owner and not re-erected.

SECTION 2. That the above property shall be used only in the manner and for the purpose provided for by the Comprehensive Zoning Ordinance of the City of Garrett, as heretofore amended, and as amended herein, and that the development of the property herein shall be in accordance with building regulations, zoning ordinances, and any applicable ordinances except as may be specifically altered or amended herein.

SECTION 3. That all provisions of the ordinances of the City of Garrett in conflict with the provisions of this ordinance be and the same are hereby repealed and all ordinances not so in conflict shall remain in full force and effect, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 4. That an offense committed before the effective date of this ordinance is governed by the prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 5. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision hereof other than the part so decided to be unconstitutional, illegal or invalid, and shall not affect the validity of the Ordinance as a whole.

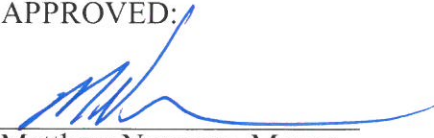
SECTION 6. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the City Council in the manner provided for by law.

SECTION 7. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provide.

SECTION 8. The Recitals set forth above are incorporated into the body of this Ordinance as if fully set forth herein.


DULY PASSED by the City Council of the City of Garrett, Texas, on the 21th day of August 2020.

APPROVED:



Matthew Newsom, Mayor

ATTEST:



Judy Braddock, City Secretary