

Informational Letter 0012-2007

Revision of Chapter 46 Section 4619(c)

IMPORTANT UPDATE Effective Immediately

Whereas the constitutionality of the Sign Code has been called into question in the cause of action styled RTM Media, L.L.C. v. City of Houston, CA No. 07-02944, pending in the United States District Court for the Southern District of Texas and whereas the City Council desires to modify the application of the Sign Code during the pendency of said lawsuit, while reaffirming the City's commitment to the purpose and goals of said Code.

City Council passed an ordinance 2007-1197, October 31, 2007, which reaffirms the prohibition of new off-premise signs. The ordinance also removes the exception previously given to non-profit groups or non-commercial signs as previously defined in 4619(c). All signs, regardless of their use (commercial or non-commercial, on-premise or off-premise) are required to comply with all aspects of Chapter 46 of the Building Code also known as the Sign Code.

City of Houston Ordinance No. 2007-1197

AN ORDINANCE TEMPORARILY PROHIBITING THE CONSTRUCTION OR ERECTION OF NEW OFF-PREMISE SIGNS; REQUIRING COMPLIANCE BY NEW ON-PREMISE SIGNS; PRESERVING THE EXISTING SIGN CODE; MAKING OTHER FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, on May 8, 1980, the City Council of the City of Houston, Texas, adopted Ordinance No. 80-351, which approved a new Chapter 46 to the Building Code entitled "Sign Code" (hereinafter the "Sign Code"); and,

WHEREAS, the City Council of the City of Houston, in adopting said comprehensive Sign Code, found and determined that, among other things, the unregulated proliferation of signs and billboards presented dangers to traffic, diminished property values of adjacent property, and generally threatened the health and safety of the citizens of the City of Houston, Texas; and,

WHEREAS, on January 15, 1992, the City Council of the City of Houston adopted Ordinance No. 92-36, amending the Sign Code to strengthen the provisions relating to off-premise signs in the interest of the health, safety and welfare of the public by, among other things, improving traffic safety and enhancing the appearance and economic prospects of the community; and,

WHEREAS, by adoption of said ordinance the City Council adopted a new Section 4619(c) to the Sign Code to, among other things, implement the Council's stated purpose that the Sign Code was never intended to impose limitations on ideological, political or other similar speech; and,

WHEREAS, the constitutionality of the Sign Code has been called into question in that cause of action styled *RTM Media, L.L.C. v. City of Houston*, CA No. 07-02944, pending in the United States District Court for the Southern District of Texas; and,

WHEREAS, the City Council desires to modify the application of the Sign Code during the pendency of said lawsuit, while reaffirming the City's commitment to the purpose and goals of said Code; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That the following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section:

- (1) *Off-premise sign* shall mean any sign that advertises or provides information about a business, person, activity, goods, products or services not usually located on the premises where the sign is installed and maintained or that directs persons to any location not on the premises, regardless of whether the furnishing of display space is for consideration, exchange, by donation, or otherwise. For the purposes of this Ordinance, *off-premise sign* shall include any new sign that would otherwise meet this definition, but that would be excluded from regulation by Section 4619(c) of the Sign Code.
- (2) *On-premise sign* shall mean any sign identifying, advertising, or providing information about the business, person, activity, goods,

products or services primarily sold or offered for sale on the premises where the sign is installed and maintained. For the purposes of this Ordinance, *on-premise sign* shall include any new sign that would otherwise meet this definition, but that would be excluded from regulation by Section 4619(c) of the Sign Code.

- (3) *Sign* shall mean any new 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 is designed, intended, or used to advertise or inform. The term *sign* shall include the sign structure.
- (4) *Sign Code* shall mean the City of Houston Sign Code, Chapter 46 of the City of Houston Building Code.

Section 3. That from and after the adoption of this Ordinance, the construction, erection, placement, attachment, painting, installation or other implementation of new off-premise signs is prohibited. This prohibition shall not be construed to prohibit the relocation of off-premise signs to the extent authorized under the Sign Code or other City ordinance or agreement. This prohibition shall not apply to the erection or construction of official signs of the federal, state, or local government, including the City of Houston, nor to political signs required to be authorized under Section 216.903 of the Texas Local Government Code.

Section 4. That from and after the adoption of this Ordinance, any new on-premise sign must comply with all applicable requirements of the Building Code, the Sign Code and this Ordinance.

Section 5. That subject to the terms and provisions of this Ordinance, all terms and provisions of the Sign Code shall remain in full force and effect, and shall be implemented as written except to the extent of any conflict herewith. Provided further, this Ordinance shall not be construed to limit or restrict the City of Houston in its defense of the Sign Code in that litigation styled *RTM Media, L.L.C. v. City of Houston*, CA No. 07-02944, pending in the United States District Court for the Southern District of Texas.

Section 6. That this Ordinance shall remain in full force and effect until ninety (90) days following a final resolution of that cause of action styled *RTM Media, L.L.C. v. City of Houston*, CA No. 07-02944, pending in the United States District Court for the Southern District of Texas, or until this Ordinance is amended or repealed by action of the City Council, whichever event shall occur first.

Section 7. That failure to comply with this Ordinance shall subject the violator to those penalties and other remedies specified in the Sign Code, including prosecution in municipal court, forfeiture of bond, revocation of permit, and any other enforcement process available under the Sign Code, the Building Code, or otherwise available under the law. The city attorney is hereby authorized to take all actions, both legal and equitable, including filing an action in a court of competent jurisdiction for injunctive relief, as is deemed necessary to assure compliance with this Ordinance.

Section 8. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, unenforceable, void or invalid, the validity or enforceability of the remaining portions of this Ordinance or their application to other persons or sets of

circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 9. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed and approved by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 31st day of October, 2007.

APPROVED this 31st day of October, 2007.



Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

Prepared by Legal Dept. 

LWS:ps 10/25/07

Sr. Assistant City Attorney

Requested by: _____

L.D. File No. _____

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CAPTION PUBLISHED IN DAILY COURT

REVIEW

DATE:

NOV 06 2007