

**CITY OF ELEPHANT BUTTE**

**ORDINANCE NO. 132**

**AN ORDINANCE OF THE CITY OF ELEPHANT BUTTE, NEW MEXICO PROVIDING FOR THE REPEAL OF SIGN ORDINANCE 64 AND DECLARING SAME TO BE NULL AND VOID AND OF NO EFFECT, AND CREATING A NEW ORDINANCE TITLED “SIGN ORDINANCE” REGULATING SIGNS, STREET GRAPHICS, AND ADVERTISING DEVICES TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF CITIZENS, TO PROTECT THE COMMUNITY’S CHARACTER, AND ASSIST THE COMMUNITY’S BUSINESS CLIMATE**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ELEPHANT BUTTE:**

**SECTION 1. TITLE.**

This chapter shall be known as and may be cited as Sign Ordinance of the City of Elephant Butte.

**SECTION 2. PURPOSE AND INTENT.**

(A) Exterior signs, street graphics, banners, advertising displays, and attention getting devices significantly impact a community’s scenic character and aesthetic quality. As a resort community on the largest lake in New Mexico, the City is committed to maintaining a calming, attractive visual environment and motorist safety for visitors and residents while promoting a healthy business climate for tourism development and economic opportunity. The purpose of this ordinance is to:

- (1) Establish a comprehensive yet flexible system for regulating all signs, street graphics, and advertising devices in order to eliminate visual clutter and promote the general health, safety, welfare, and community environment;
- (2) Balance the needs of businesses that rely on signs as an essential communication tool, the public who relies on signs for information and way finding, safety of pedestrian and vehicular traffic, protection of property, and enjoyment of the community’s appearance and character;
- (3) Strive for tasteful signs, displays, and street graphics that are newly constructed or like-new, freshly painted, neat, not dilapidated, not offensive, resort friendly, and constructed and installed to meet public health and safety standards; and
- (4) Establish the City’s authority to fairly and consistently administer and enforce these regulations.

### **SECTION 3. STATUTORY AUTHORITY AND JURISDICTION.**

This chapter is created and adopted pursuant to the authority set forth in NMSA § 3-21-1 through 3-21-11, as amended, and shall be applicable to all property within the corporate limits of the City.

### **SECTION 4. COMPLIANCE AND CONFLICT.**

The regulations of this chapter are held to be the minimum standards to carry out the purpose of the ordinance. This chapter is not intended to interfere with or abrogate any other valid ordinance.

(A) *Compliance with City Code.* In addition to requirements set forth in this Chapter, all signs shall comply with applicable provisions of the City's Code of Ordinances. All signs shall be attached or installed in compliance with the City and State Building Code. Signs, street graphics, and displays allowed under this Chapter, either with or without a sign permit, shall be installed or placed in accordance with applicable height, size and setback requirements and shall conform to applicable lighting standards, electrical standards, and other standards, restrictions and conditions set forth in this Chapter and in the City Code.

(B) *Federal and State Conflict.* Any provision of the United States and/or New Mexico state law which imposes a greater duty, standard, or requirement than those contained herein shall supercede the provisions of this chapter.

(C) *Conflict within this Chapter.* When 2 (two) or more provisions of this chapter are conflicting, the most restrictive will apply.

### **SECTION 5. ADMINISTRATION OF SIGN ORDINANCE.**

(A) *Signs and Street Graphics Requiring a Permit*

(1) The following signs, displays, and street graphics require a City permit. Additional signs requiring a permit may be included in the *Sign Review Guidelines*.

- (a) On-Premise Signs:
  - Illuminated (externally and internally illuminated)
  - Changeable Electronic Variable Message Signs
  - Permanent Freestanding Signs (monument or blade, pylon, pole, ground or low profile)
  - Permanent Wall or Fascia Signs
  - Roof Signs (flat roof mount, sloping roof mount)
  - Canopy Signs on Freestanding Canopies (example: gas station)
  - Projecting Signs
  - Hanging Signs
  - Fascia Signs on Roof-Like Projections (marquee, mansard mount, pent eave mount)

Awnings with Graphics  
Home Occupation Signs  
Temporary Signs that become Permanent  
Temporary New Business Signs  
Temporary Special Event Signs (grand opening, going out of business, street banners)  
Temporary Portable Sidewalk Signs with Illumination  
Existing Non-Conforming Signs (extension to maintain non-conformance)  
Non-Conforming Signs with Changes to the Sign Face  
Non-Conforming Signs that Change Ownership

(b) Billboards and Off-Premise Signs:

(2) Applications for signs and street graphics that require a City permit but do not require a Comprehensive Signage Plan shall be submitted to the City's Code Enforcement Officer for review. Upon review, the Code Enforcement Officer shall approve, deny, or submit the sign permit application to the Planning and Zoning Commission for design review.

*(B) Comprehensive Signage Plans.* New and existing businesses may submit Comprehensive Signage Plans and revised plans which are reviewed by the Planning and Zoning Commission and require a public hearing. A Comprehensive Signage Plan (CSP) is a coordinated program of all signs, including exempt and temporary signs for a business, or businesses, located on a development site. The CSP shall include, but not be limited to site plans and drawings for the sign locations; drawings of the signs including: dimensions, height, shapes, colors, letter styles, sign types, architectural character, text, graphics, sign structures or mounting devices; materials; type and measurement of illumination if any; permanent or temporary time period designations; time period or phases of installation; maintenance plan; and sign function of all signs to be installed on a site.

(1) Additional information on Comprehensive Signage Plans is included in the *Sign Review Guidelines*.

(2) For purposes of this section, commercial signage includes signs for businesses, industrial operations, churches, non-profit organizations, agricultural activities, government and public entities in any zone, and does not include home occupations.

(3) While waiting for Comprehensive Signage Plan review, businesses are allowed, with a valid City Permit, to install temporary or permanent signs, street graphics, and displays up to the total combined allowable square footage for the premise.

(4) Sign users with the following signs and street graphics shall submit a Comprehensive Signage Plan:

(a) Commercial signage on a lot that is 2,200 (two thousand two-hundred) square feet or larger with a permanent or temporary single business and total combined signage requiring a City permit exceeding 220 (two-hundred twenty) square feet;

(b) Commercial signage on a lot less than 2,200 (two thousand two-hundred) square feet with a permanent or temporary single business and total combined signage requiring a City permit exceeding 10 (ten) percent of the square footage of the entire lot;

(c) Commercial lot with two or more businesses;

(d) Signs and street graphics that exceed the permitted dimensions or exceed the permitted height;

(e) Changeable Electronic Variable Message Signs (CEVMS);

(f) Externally or internally illuminated signs;

(g) Restaurants with an outdoor menu sign or signs;

(h) Any sign or logo incorporated into a structure's architectural feature;

(i) Neighborhood Identification Signs for neighborhood, subdivision, or tract identification;

(j) The Code Enforcement Officer or other designated City official determines that a Comprehensive Signage Plan is needed because of special project characteristics; and

(k) An applicant submits a Comprehensive Signage Plan for review.

(5) The Planning and Zoning Commission may approve a Comprehensive Sign Plan if the graphics visually represented in the plan are:

(a) Consistent with the purposes of this ordinance and the City's adopted *Sign Review Guidelines*; and

(b) Compatible with the theme, visual quality, and overall character of the premise and surrounding area;

(c) Appropriately related in size, shape, materials, lettering, color, illumination, and character to the function and architectural character of the building or premise on which they will be displayed, and are compatible with existing adjacent activities; and

(d) Consistent with the City's Code of Ordinances.

(6) Businesses shall submit major revisions to approved Comprehensive Signage Plans including the number of signs, size, shapes, color, and height of signs, sign structures and mounting devices, architectural character, illumination, and location of signs on the property to

the Planning and Zoning Commission for review. The Code Enforcement Officer will review minor revisions and may consult with the Planning and Zoning Commission.

*(C) Conformity Requirement.*

(1) All signs and street graphics in the city limits for which a permit is issued after the effective date of this ordinance shall be placed or maintained as provided in this code. All signs that do not comply with the provisions of this Chapter are declared to be in violation of the permit, and as such may be abated as provided by law.

(2) Any noncommercial sign may be substituted for any sign allowed by this ordinance. The substitution or addition of any noncommercial sign shall not increase or decrease the sign budget for the property on which the noncommercial sign is located.

(3) No sign shall be placed in the right-of-way or on public property except those installed by a governmental entity for a governmental purpose such as but not limited to traffic management and street or signs specifically permitted by the government entity.

*(D) Non-Conforming Signs and Sign Structures.*

(1) Additional information on nonconforming signs is included in the *Sign Review Guidelines*.

(2) A nonconforming sign is any sign that was constructed in accordance with the ordinances and other applicable laws in effect on the date of its construction, but which by reason of its size, height, location, design, structure, or construction is not in conformance with the requirements of the *Sign Review Guidelines*, this Chapter, or any amendment thereto.

(3) Any sign approved by a variance and any sign approved as part of a Comprehensive Signage Plan, or any other sign protected from such provisions by New Mexico law are exempt from the provisions in this section.

(4) A non-conforming sign or sign structure shall not be relocated or replaced, except when mandated by the city or state government for a public works project, or the relocation or replacement shall bring the sign into compliance with this chapter. Non-conforming signs or sign structures that are relocated in violation of this chapter shall be removed at the owner's expense.

(5) When ownership of property changes, nonconforming signs shall obtain a city permit and be brought into compliance or apply for an extension to continue the nonconformance.

(6) If questions are raised as to whether a non-conforming sign exists, it shall be a question of fact decided by the Code Enforcement Officer, and subject to appeal to the Planning and Zoning Board and/or the City Council.

(E) *Variance Application.* The Planning and Zoning Commission may grant variances from the regulations contained in this ordinance and the *Sign Review Guidelines* to permit a setback for a sign or street graphic that is less than the required setback, and to permit the area or height of a street graphic to be increased more than the maximum height or area allowed.

(1) *Approval standards.* The Planning and Zoning Commission may grant a variance authorized by this Section if it finds the variance requested is required by special or unique hardship because of:

(a) Exceptional narrowness, shallowness, or shape of the premises on which a street graphic is located; or

(b) Exceptional topographic conditions or physical features uniquely affecting the premises on which a street graphic is located.

(2) *Additional requirements.* The Planning and Zoning Commission shall grant a variance only if it also finds that the variance is consistent with the comprehensive plan and there are no other reasonable alternatives for displaying a sign or street graphic permitted by this ordinance if the variance is not granted.

(3) The Planning and Zoning Commission shall not grant a variance solely because the display of a sign or street graphic would be more profitable if the variance were granted.

(F) *Appeal Process.*

(1) Citizens have the right to appeal decisions made by the Code Enforcement Officer to the Planning and Zoning Commission and the right to appeal decisions made by the Planning and Zoning Commission to the City Council.

(2) Applicants and permit holders shall file a notice of appeal within 15 (fifteen) calendar days following receipt of a written decision by the Code Enforcement Officer or by the Planning and Zoning Commission. Appeals shall be submitted on the City's official Appeals Form with the required fee.

(3) Appeals are subject to public hearing and require fifteen (15) days public notice prior to the next regularly scheduled meeting.

(G) *Application, Permit Procedures, and Permit Fee.*

(1) *Sign Permit Required.* Except as otherwise indicated in this code or in the *Sign Review Guidelines*, it shall be unlawful for any person to install, substantially modify, or relocate any sign or other advertising structure within the city limits without first obtaining a sign permit from the City. When a sign permit has been issued, it shall be unlawful to substantially modify the sign without the prior approval of the Code Enforcement Officer or Planning or Zoning Commission or to deviate from the terms and conditions of the permit and this Code. A written record of such approval shall be entered upon the original permit application and maintained in

the Code Enforcement Officer's files. The changing of the advertising copy or message on signs that are specifically designed for the use of replaceable copy shall not require a sign permit unless the sign is non-conforming. Signs requiring a City permit that are installed without a legally authorized sign permit are deemed illegal and are subject to the City's enforcement standards.

(2) The procedures for permit application, permit review, and appeal are included in the *Sign Review Guidelines*.

(3) Seal of Compliance. Any sign for which a permit is required shall bear a seal of compliance upon approval of the application. A Seal of Compliance shall be affixed to the sign or sign structure by the Code Enforcement Officer after an inspection has shown that the sign conforms to the provisions of this Code.

(H) *Inspection of Signs*. The City Code Enforcement Officer shall have the right to inspect each sign regulated by this code to ascertain whether the same is secure or insecure or is in need of repair or removal.

(I) *Procedure for Removal of Unsafe or Unlawful Signs*. The City shall give written notice to Property Owner if the City finds that any sign or other advertising structure or device regulated herein is unsafe or insecure; is a menace to the public; has been constructed, installed, or is being maintained in violation of the provisions of this section. Property Owner has 30 (thirty) days from the date of the City's written notice to comply with the standards of these sections or remove the nuisance sign or sign structure at owner's expense. Signs not removed or repaired by the Property Owner are subject to removal by the City at the owner's expense. The City shall refuse to issue a permit and may impose additional penalties to any owner who refuses to pay costs so assessed. The City may cause any sign or other advertising structure that is an immediate peril to persons or property to be removed summarily and without notice. The City's Code Enforcement Officer is authorized to remove any illegal sign placed in the public right-of-way or attached to public property without notification.

(J) *Installation of Signs*.

(1) Signs shall be constructed and installed in accordance with the current City Code and State Construction Industries Division (CID) requirements.

(2) Companies that mount, install, alter, relocate, dismantle or repair wall, pole, monument, and off-premise signs within city limits shall possess a current state license and current City Business License and shall comply with state CID requirements.

(3) Signs with electricity shall comply with state CID requirements.

(4) The City Code Enforcement Officer will make final inspection of the sign once it is in place. If the sign is in compliance, the Code Enforcement Officer will approve the final inspection by signature on the permit and place a permit sticker on the sign or sign structure. If the sign is not in compliance, the City may proceed with enforcement.

(5) An applicant is allowed 90 (ninety days) or the number of days indicated and approved on the permit in exceptional cases from the date of approval of his or her sign application to install the signage approved by the permit. If the signage is not installed within the allowed 90 (ninety days) or other approved time frame, the applicant shall resubmit a new application and the process starts over again.

(K) *Liability for Damages.* The provisions of this ordinance shall not be construed to relieve or to limit in any way, the responsibility or liability of any person, firm, or corporation which installs or owns any sign, from personal injury or property damage caused by the sign; nor shall the provisions of this ordinance be construed to impose upon the City, its officers, or its employees, any responsibility or liability by reason of the approval of any sign under the provisions of this ordinance.

(L) *Issues not Addressed:* All issues not addressed in this chapter may be referred to the Planning and Zoning Commission.

## **SECTION 6. EXEMPT SIGNS.**

A list of signs that do not require the issuance of a sign permit is located in the *Sign Review Guidelines*. All signs, including signs not requiring a permit, shall conform to City Code.

## **SECTION 7. PROHIBITED SIGNS.**

(A) Additional information on prohibited signs is included in the *Sign Review Guidelines*.

(B) *Generally prohibited signs.* The following signs and street graphics in this subsection are in general prohibited, however the City recognizes continuing advances in technology that may make previously prohibited materials viable for future application in the community. Sign applicants may request Planning and Zoning Commission review when considering use of prohibited materials and technology. Some devices are specifically allowed under special circumstances (for example: see *Sign Review Guidelines* Temporary Signs – Grand Opening Signs).

(1) Signs that employ any searchlights, strobe lights, or rotating, pulsating, or oscillating beacons of light; lights that constitute a nuisance or hazard due to the intensity of light; pulsating, flashing, traveling, or blinking lights; animated features (except on Changeable Electronic Variable Message Signs); varying intensity; pennants, tinsel, streamers, fringe, fluttering devices, propellers, discs, rotating or spinning parts; mirrors, glaring objects, holograms, fluorescent or dayglow paint; or oversized flags are generally prohibited.

(2) Signs and street graphics that are greater than 220 square feet of total combined signage requiring a City permit on lots 2,200 square feet or larger and signs and street graphics that exceed 10 (ten) percent of the square footage of a lot that is less than 2,200 square feet without a Comprehensive Signage Plan and Planning and Zoning Commission Review;

Billboards that exceed 200 square feet; and Off-Premise Signs that exceed 48 square feet are generally prohibited.

(C) *Expressly prohibited signs.* The following signs are expressly prohibited.

(1) Signs that may be confused with or construed as a traffic control sign, signal or device, or the light of an emergency vehicle or road equipment by reason of their size, location, movement, content, coloring or manner or illumination;

(2) Signs that shield from view any traffic control device, sign, signal or other government sign;

(3) Signs on residential property except home occupation signs, temporary non-commercial signs, real estate and construction signs, signs described in §152.06 Exempt Signs and the corresponding *Sign Review Guidelines*, and other signs in this ordinance as approved for residential properties;

(4) Signs that emit smoke, visible vapors, particles, pyrotechnics, or odors;

(5) Signs, displays, or other similar advertising structures that display any obscene, indecent, immoral, sexually suggestive images or matter; nudity or partial nudity; violent content; threatening or foul language, images, or gestures; or that includes words or images commonly interpreted as insulting, vulgar, or repulsive;

(6) *Vehicular Billboards:* Signs for attention getting, identification, or advertising purposes attached or painted on motor vehicles, recreational vehicles, trailers, boats, or other movable device parked and visible from the right-of-way are expressly prohibited where the primary purpose of the vehicle is to advertise merchandise, equipment, a product, or business or to direct people to a business or activity either on or off-premise. No person shall park an advertising vehicle or trailer on a public right-of-way or on public property for more than four hours without a City permit. For purposes of this ordinance advertising signs, logos, identification, and markings painted on, permanently attached, or magnetically attached to licensed commercial delivery, service vehicles, business vehicles, buses, and taxis not consistently parked in a fixed location and primarily used in normal day-to-day business operations are permitted and not considered vehicular billboards;

(7) Roof signs in residential zones;

(8) Signs projecting in or on any public property or public right-of-way except as otherwise authorized by this chapter;

(9) Graffiti;

(10) *Snipe and Bandit Signs, Posters, Fliers, Handbills.* Any signs placed on or affixed to any public property, utility poles, street furniture, benches, bus stops, trees or other natural

vegetation, or rocks, or placed in a right-of-way without a City permit or compliance with other provisions of City Code;

(11) Additional expressly prohibited signs listed in the *Sign Review Guidelines*; and

(12) All other signs not expressly permitted by City Code unless approved by the City.

(D) The city shall have the authority to remove any prohibited sign at owner's expense.

## **SECTION 8. SIGN REVIEW GUIDELINES.**

(A) *Purpose:* The city's *Sign Review Guidelines* will be used in the evaluation of sign permit applications and Comprehensive Signage Plans to ensure that signs are well designed, compatible with their surroundings, and do not detract from the overall visual quality of the city.

(B) *Adopted by Resolution:* The *Sign Review Guidelines* are adopted by City Resolution as part of this Sign Ordinance.

## **SECTION 9. EFFECTIVE DATE.**

This chapter shall take effect 5 days after passage or publication as provided by law.

## **SECTION 10. ENFORCEMENT AND PENALTY.**

(A) The City Code Enforcement Officer shall initially determine compliance with this chapter. Any person who violates this chapter or fails to comply with any of its requirements, shall be subject to a penalty. The City is hereby authorized to require removal of any illegal sign, revoke any permit authorizing the installation of a sign that has been constructed or is being maintained in violation of the permit, enforce this ordinance, and to make all inspections required to ensure such enforcement.

(B) First offense will result in a written warning issued by the Code Enforcement Officer in the form of a notice issued personally on the owner and/or permittee, or by certified letter, return receipt requested addressed to the owner and/or permittee at the address specified in the permit or the last known address. The notice shall state the violation charged, and the reasons and grounds for removal, specifying the deficiencies or defects and what repairs, if any, will make the sign conform to the requirements of this ordinance, and specify that the sign must be removed or made to conform with the provisions of this ordinance within the notice period stated. The notice period for permanent signs shall be 30 (thirty) calendar days. The notice period for temporary signs shall be 48 (forty-eight) hours. Failure to respond to the warning within 30 (thirty) calendar days for permanent signs and within 48 (forty-eight) hours for temporary signs will result in the issuance of a citation. Subsequent offenses will result in the issuance of a citation without a written warning.

(C) The owner and/or permittee of the permit may appeal in writing the City's decision to revoke the permit to the Planning and Zoning Commission within fifteen (15) calendar days from the date when the notice was served.

(D) If the sign is not removed or brought into compliance with the provisions of this ordinance and the *Sign Review Guidelines* to the satisfaction of the City and no appeal has been submitted at the end of 15 (fifteen) calendar days, the permit is revoked. The City may then initiate the process for the removal of the illegal sign and impose penalties.

(E) Second and subsequent violations will result in a suspension of the privilege to obtain a sign permit for a minimum period of 6 (six) months up to a maximum period of 1 (one) year and a fine not to exceed \$500.00 (five hundred) for each offense.

(F) Re-installation of any sign or substantially similar sign on the same premises after a violation notice has been issued shall be deemed a continuation of the original violation.

(G) Upon revocation of any permit the sign and/or sign structure shall be removed by the owner within 30 (thirty) calendar days or will be subject to removal by the city at the owner's expense through action for recovery that may be brought by the City.

(H) Notwithstanding the above, the City may cause the immediate removal or repair (without notice to the owner of the sign, or of the property on which it is located) of any unsafe or defective sign that creates an immediate hazard to persons or property. The City shall document its actions and avoid acts that are arbitrary or capricious.