



**Austin City Code Amendment
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 49
AGENDA DATE: Thu 04/22/2004
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SUBJECT: Conduct a public hearing and approve an ordinance adopting a new Chapter 1-3 of the City Code relating to Citation Program; amending Section 10-5-44 of the City Code relating to placing objects on public property; amending Section 25-10-103 of City Code relating to signs on public property; creating offenses; and providing penalties.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Neighborhood Planning **DIRECTOR'S**
DEPARTMENT: and Zoning **AUTHORIZATION:** Alice Glasco

FOR MORE INFORMATION CONTACT: Cora D. Wright, NPZD, 974-7673

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: April 13, 2004 the Planning Commission passed the ordinance on consent.

BACKGROUND:

On October 23, 2003, the City Council directed staff to expedite plans to create a citywide Citation Program as an additional enforcement tool for addressing right-of-way sign violations (e.g. bandit signs). This directive was consistent with the Planning Commission recommendation on September 10, 2003, to ticket individuals who violate the sign regulations. City Council also directed staff to continue exploring the feasibility of creating an escalating fine structure for repeat sign violations.

Approval of this ordinance results in:

1. Creation of a citywide Citation Program as an additional enforcement tool for City inspectors, code enforcement, or other designated City employees to issue one or more citations (or tickets) to a person or business that has engaged in conduct that violates a law or City ordinance.
2. Creation of an escalating fine structure for repeat offenses involving illegal placement of objects (including illegal right-of-way signs—otherwise known as bandit signs) on or over public property or public right-of-way.
3. Creation of a civil penalty against a person or business that fails to remove illegally placed objects within 48 hours after being notified of the offense in writing by an authorized City employee.
4. Deletion of the requirements for a culpable mental state for conviction of a bandit sign offense.
5. Maintain the maximum fine for sign violations at \$500/violation/day.

ORDINANCE NO.

AN ORDINANCE ADOPTING A NEW CHAPTER 1-3 OF THE CITY CODE RELATING TO CITATION PROGRAM; AMENDING SECTION 10-5-44 OF THE CITY CODE RELATING TO PLACING OBJECTS ON PUBLIC PROPERTY; AMENDING SECTION 25-10-103 OF THE CITY CODE RELATING TO SIGNS ON PUBLIC PROPERTY; CREATING OFFENSES; AND PROVIDING PENALTIES.

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

PART 1. A new chapter 1-3 is adopted to read:

CHAPTER 1-3 CITATION PROGRAM.

§ 1-3-1 APPLICABILITY.

This chapter does not apply to law enforcement by licensed peace officers who are employed by the City as peace officers.

§ 1-3-2 AUTHORITY TO ISSUE CITATIONS TO APPEAR IN MUNICIPAL COURT.

A director of a City department may issue one or more citations to a person to appear in municipal court, if the director reasonably believes that the person has engaged in conduct that violates a law or ordinance the director is responsible for enforcing.

§ 1-3-3 DESIGNATED EMPLOYEES.

- (A) A department director may designate employees to issue citations.
- (B) A person designated under this section must:
 - (1) be an employee of the director's department; and
 - (2) successfully complete a training program approved by the director.
- (C) A person designated under this section:
 - (1) is not a peace officer; and
 - (2) is not authorized to arrest an individual for violation of a City ordinance.

(D) The department director shall provide a designated employee with an identification card, including the department name, the name of the employee, and a photograph of the employee.

(E) A designated employee shall show the employee's identification card on request.

§ 1-3-4 CITATION.

(A) A citation issued under this section must be on a form approved by the municipal court clerk that includes the following information:

- (1) the name, address, date of birth, or driver's license number and physical description, and telephone number of the person cited;
- (2) the offense for which the person is charged;
- (3) the date and location of the offense;
- (4) an appearance date;
- (5) a statement requiring the person receiving the citation to appear at municipal court on or before the appearance date indicated on the citation;
- (6) a statement of the person's promise to respond to the citation by the appearance date indicated on the citation, including a place for the person cited to provide the person's signature;
- (7) the signature of the person issuing the citation; and
- (8) other information as determined by the director of the issuing department.

(B) Upon receipt of a completed citation, the municipal court clerk shall process the citation and cause a complaint to be filed, in the same manner as a citation issued by a peace officer.

§ 1-3-5 DUTY TO RESPOND TO CITATION.

(A) On or before the appearance date indicated on a citation, a person cited shall submit a plea to each charge indicated on the citation. The person may enter a plea of guilty, not guilty, or no contest. The plea may be submitted by mail, in person, or by other method acceptable to the municipal court.

(B) A person may enter a plea of guilty or no contest to a charge on a citation

by paying the fine for the charge.

§ 1-3-6 OFFENSES.

(A) A person commits an offense if the person has been issued a citation and the person fails to enter a plea to a charge indicated on the citation on or before the appearance date indicated on the citation.

(B) A person commits an offense if the person interferes with, hinders, or molests a City employee in the performance of the employee's duties under this chapter.

(C) A person commits an offense if the person gives a false or fictitious name, address, or other information to a director or designated employee at the time the director or designated employee issues the person a citation.

§ 1-3-7 CUMULATIVE REMEDIES.

The remedies authorized in this chapter are cumulative of other remedies. This chapter does not require a department director or designated employee to issue a citation in lieu of other remedies.

PART 4. Section 10-5-44 of the City Code is amended to read:

§ 10-5-44 PLACING OBJECTS ON PUBLIC PROPERTY.

(A) A person commits an offense if the person places, or authorizes to be placed, an object designed to attract the attention of the public on a tree, building, pole, or structure that is on or over public property or public right-of-way.

~~(B) If a violation of Subsection (A) occurs, the primary beneficiary of [a person identified by]~~ the object is presumed to have committed the violation.

(C) It is a defense to prosecution that placement of the object was authorized or required by city, state, or federal law.

(D) Proof of a culpable mental state is not required for conviction of an offense under this section.

(E) An offense under this section is punishable by a fine of not less than:

(1) \$ 50 for a first conviction;

(2) \$ 200 for a second conviction within any 24-month period; and

(3) \$ 400 for a third or subsequent conviction within any 24-month period.

(F) To determine the minimum fine under Subsection (E), one or more fines assessed during a 24-hour period beginning at midnight and ending at 11:59 p.m. constitute a single conviction.

(G) A person who commits an offense under Subsection (A) shall remove the object. In addition to other enforcement remedies, a person who fails to remove an object within 48 hours after being notified of the offense in writing by an authorized City representative is subject to a civil penalty of \$200 per day for every day or part of a day the object is in place.

(H) The city manager may remove an object placed on or over public property or public right-of-way in violation of this section. The city manager is not required to give notice to the owner or beneficiary of an object removed under this section, either before the removal or before the disposition or destruction of the object.

(I) The remedies authorized under this section are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

PART 5. Section 25-10-103 of the City Code is amended to read:

§ 25-10-103 SIGNS PROHIBITED IN PUBLIC RIGHT-OF-WAY.

(A) A person may not cause or authorize a sign to be installed, used, or maintained on or over a public property or public right-of-way, except as authorized by this chapter.

(B) The primary beneficiary of any sign installed in violation of this section is presumed to have authorized or caused the installation, use, or maintenance of the sign in violation of this section and commits an offense.

(C) Proof of a culpable mental state is not required for conviction of an offense under this section.

(D) An offense under this section is punishable by a fine of not less than:

(1) \$ 50 for a first conviction;

(2) \$ 200 for a second conviction within any 24-month period; and

(3) \$ 400 for a third or subsequent conviction within any 24-month

period.

- (E) To determine the minimum fine under Subsection (D), one or more fines assessed during a 24-hour period beginning at midnight and ending at 11:59 p.m. constitute a single conviction.
- (F) A person who commits an offense under Subsection (A) shall remove the object. In addition to other enforcement remedies, a person who fails to remove an object within 48 hours after being notified of the offense in writing by an authorized City representative is subject to a civil penalty of \$200 per day for every day or part of a day the object is in place.
- (G) ~~[(C)]~~ The city manager may remove a sign or other advertising device installed, used, or maintained on or over any public property or public right-of-way in violation of this chapter. Notice is not required to be given to the owner or beneficiary of a sign removed under this section, either before the removal or before the disposition or destruction of the sign.
- (H) ~~[(D)]~~ This section does not prohibit the installation, use, or maintenance in the public right-of-way of:
- (4) a sidewalk sign;
 - (5) a projecting sign in the downtown sign district;
 - (6) a street banner; or
 - (7) a wall sign that is mounted flat against the building and extends not more than 18 inches from the facade of a building and into public right of way.
- (I) ~~[(E)]~~ A sign installed, used, or maintained on or over public property or public right-of-way is presumed to be abandoned, unless the sign is authorized by this chapter. Chapter 9-1 ~~[10-1]~~ (*Abandoned Property and Vehicles*) does not apply to a sign abandoned under this section.
- (J) The remedies authorized under this section are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

PART 6. This ordinance takes effect on _____, 2004.

PASSED AND APPROVED

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_____, 2004

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk