

**TOWNSHIP OF ELMIRA  
ORDINANCE NO. 1 OF 2001,  
As Amended 2003, 2005, 2009**

AN ORDINANCE TO REGULATE BILLBOARDS ALONG M-32 WITHIN THE TOWNSHIP PURSUANT TO ACT 106 OF THE PUBLIC ACTS OF 1972, AS AMENDED.

THE TOWNSHIP OF ELMIRA HEREBY ORDAINS:

**Section 1. Title.**

This ordinance shall be known as the Elmira Township Billboard Ordinance.

**Section 2. Purpose.**

The purpose of this ordinance is to improve and enhance the scenic beauty of the township by regulating and controlling outdoor advertising billboards adjacent to M-32. The township board finds that this regulation and control is essential to the township's economic health, safety, and welfare by reducing visual pollution from those highway corridors.

**Section 3. Definitions.** As used in this ordinance,

- (a). **"Billboard"** means any outdoor display, painting, drawing, message, placard, poster, or other device, whether placed individually or on a V-type, back-to-back, or double-faced display, which is intended or used to identify or communicate a commercial or non-commercial message related to an activity conducted, a service rendered, or a commodity sold at a location different than the property on which the billboard is located. However, a billboard shall not include a tourist-oriented directional sign for which a permit has been issued by the Michigan Transportation Department pursuant to Public Act 299 of the Public Acts of 1996, as amended.
- (b). **"Billboard Structure"** means the assembled components which make up a billboard, including but not limited to uprights, supports, facings, and trim.
- (c). **"Business Area"** means a strip of land adjacent to either side of a primary highway 3,000 feet deep as measured perpendicularly from the nearest edge of a highway right-of-way which is zoned General Business (B-2), Business & Light Manufacturing (B-3), and Industrial (I) under the Otsego County Zoning Ordinance 2003-02, as amended, February 2007.  
(As amended by Ordinance No. 1 of 2009)
- (d). **"Double Faced Billboard"** means a billboard having back-to-back message display areas.
- (e). **"Erect"** means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
- (f). **"Maintain"** means to allow to exist and includes the periodic changing of advertising messages, customary maintenance and repair of a billboard.  
(As amended by Ordinance No. 1 of 2009)

- (g). **"Person"** means an individual, firm, corporation, association, partnership, estate, trust, limited liability company, or other legal entity.
- (h). **"Primary Highway"** means those portions of M-32 located within Elmira Township, Otsego County, Michigan.
- (i). **"V-Type Billboard"** means a billboard constructed in a "V" pattern but having only one message display area visible to traffic proceeding from any given direction on a highway. (As amended by Ordinance No. 1 of 2003)
- (j). **"Visible"** means capable of being seen and read by a person of normal visual acuity.

#### **Section 4. Prohibited Conduct.**

No person shall erect or maintain or cause to be erected or maintained a billboard visible from a primary highway, except as provided in this ordinance.

#### **Section 5. Procedure to Obtain Billboard Permit.**

- (a). A person desiring to erect or maintain a billboard visible from a primary highway shall submit an application for a billboard permit to the township planning commission, or its designated representative, and shall pay the required permit application fee as established by resolution of the township board. The application shall contain the following information:
  - (1). The names and addresses of the persons having a legal interest in the proposed billboard.
  - (2). The names and addresses of all persons having an interest in the property on which the proposed billboard will be located.
  - (3). A map showing the location of the proposed billboard.
  - (4). A copy of a signed agreement or lease between the owner(s) of the proposed billboard and the owner(s) of the property on which the billboard will be located granting permission for the billboard to be placed on the property.
  - (5). A site plan. A free standing billboard whose message display area is greater than fifteen (15) square feet, or whose overall height is greater than eight (8) feet must have a site plan and sealed professional architectural or engineering drawings showing compliance with the provisions of this ordinance. A billboard mounted on a wall whose message display area is twelve (12) square feet or larger and which extends four (4) or more inches from the side of a building must have a site plan and sealed professional architectural or engineering drawings showing compliance with the provisions of this ordinance. All other billboard applications shall have a site plan and drawings, but sealed professional architectural or engineering drawings showing compliance with the provisions of this ordinance are not needed.  
(As amended by Ordinance No. 1 of 2005)
- (b). After receiving the information required in subsection (a) above, the township board, or its designee, shall within forty-five (45) days decide whether to issue the billboard permit. If the applicant fails to provide all the information required by this ordinance, then the

application shall be deemed incomplete and may be denied on that basis. The decision of the township board, or its designee, to issue a billboard permit shall be made pursuant to standards contained in section 6 of this ordinance. In granting a billboard permit, the township board, or its designee, may attach reasonable conditions to the permit to assure compliance with this ordinance. If the township board, or its designee, denies the billboard permit, a written decision, including the reasons for the permit denial, shall be given to the applicant.

- (c). Expiration and renewal of billboard permits.
- (1). All billboard permits shall expire on April 30. Any billboard permit issued pursuant to this ordinance shall be valid from the date of issuance until the date of expiration (April 30), as written on the billboard permit. Provided, however, for a billboard permit issued after January 1 of a given year, that billboard permit shall not expire until April 30 of the succeeding year.
- (2). The person to whom a billboard permit is issued, or his or her successor, shall renew that billboard permit annually by filing a billboard permit renewal application with the township board, or its designated representative, and paying the required permit renewal application fee. After receiving the application and fee, the township board, or its designated representative, shall inspect the billboard and shall issue a billboard permit renewal if the billboard continues to comply with the requirements of this ordinance.  
(As amended by Ordinance No. 1 of 2003)

**Section 6. Standards for the Issuance of a Billboard Permit.** A billboard permit shall be granted when all of the following standards are met:

- (a). The proposed billboard will be located in a business area.
- (b). The proposed billboard will not be located within 3,000 feet of another billboard abutting either side of the highway. As used in this subsection, the 3,000 feet is measured along the center of the highway from the point on the center line nearest the proposed billboard to the point on the center line nearest the existing billboard. This spacing requirement shall not be limited to the township's boundaries where the highway extends beyond such boundaries. Double-faced billboards and V-type billboards shall be considered one billboard.
- (c). The proposed billboard will be located no closer than 500 feet from any property zoned R1, R2, R3, or RR under the Otsego County Zoning Ordinance 2003-02, as amended, February 2007.  
(As amended by Ordinance No. 1 of 2009)
- (d). The proposed billboard will be located no closer than thirty (30) feet from any highway right-of-way and no closer than twenty (20) feet from any property line of the property on which the billboard is located.
- (e). Any message display area of the proposed billboard will not exceed 72 square feet.
- (f). The overall height of the proposed billboard will not exceed twenty (20) feet above the natural grade upon which the billboard will be placed.  
(As amended by Ordinance No. 1 of 2003)

- (g). The proposed billboard will not be placed on top of, cantilevered, or otherwise suspended above the roof of any building.
- (h). The proposed billboard will have no flashing, rotating, oscillating or intermittent light, animation, or moving messages.
- (i). If externally illuminated, the lights on the proposed billboard shall be mounted on the top of the billboard, shall be directed downward onto the billboard, and shall be shielded so as to prevent rays of light from being directed into the sky or onto any portion of the highway or adjacent properties.  
(As amended by Ordinance No. 1 of 2009)
- (j). The proposed billboard will be constructed and/or maintained in accordance with the applicable provisions of the building code in effect for Otsego County, as amended, so as to withstand a 90 miles per hour 3-second wind gust.  
(As amended by Ordinance No. 1 of 2009)
- (k). The Applicant is not in violation of this Ordinance for any other billboard within Elmira Township and has complied with all enforcement orders from courts of competent jurisdiction concerning past violations of this Ordinance, including but not limited to the payment of all assessed fines and costs and the removal of billboards found to be in violation of this Ordinance, if required by the court.
- (l). Except as provided in this subsection, the proposed billboard will not display any type of message that revolves, moves, flashes, or with electronic changeable message boards runs animated displays (including scrolling and movable text and video messages), or any combination of the foregoing. A proposed billboard, however, with static messages or images that change are permissible if the rate of change between two static messages or images is not less than ten minutes, if the change of messages or images is accomplished by instantaneous re-pixilation, and if the proposed billboard is configured to default to a static display in the event of mechanical or electronic failure.  
(As amended by Ordinance No. 1 of 2009)
- (m). If internally illuminated or if the sign has a light emanating surface, all light sources and reflecting surfaces immediately adjacent to the light source shall be shielded from view. Sign luminance level, beginning one hour after sunrise and continuing until one hour before sunset, shall not be greater than 3,000 candelas per meter squared, nor greater than 100 candelas per meter squared at all other times.  
(As amended by Ordinance No. 1 of 2009)

## **Section 7. Nonconforming Billboards.**

- a. Billboards that were lawfully in existence at the time of the adoption of this Ordinance, but which do not comply with the provisions of this Ordinance, may continue to be used subject to the regulations of this Section.
- b. No nonconforming billboard may be enlarged, altered, moved, or in any other way changed in such a way as to increase its nonconformity.

- c. Normal repair and maintenance of a nonconforming billboard shall be allowed for the purpose of ensuring public safety.
- d. If a nonconforming billboard is completely destroyed, damaged to an extent greater than fifty percent (50%) of its replacement value, or removed by the property owner, and the owner or any other person desires to rebuild, repair, or replace the billboard, the township board shall require that the billboard be rebuilt, repaired, or replaced in complete conformance with the requirements of this Ordinance, unless the township board finds the cost of building a conforming billboard exceeds one hundred fifty percent (150%) of the cost of rebuilding the destroyed or removed billboard with the same nonconformity.  
(As amended by Ordinance No. 1 of 2003)
- e. If the owner of a nonconforming billboard has an intent to abandon the nonconforming billboard and in fact abandons the nonconforming billboard for a period of one (1) year or more, then any subsequent use of the billboard shall conform to the requirements of this Ordinance. When determining the intent of the owner of the billboard to abandon a nonconforming billboard, the township board shall consider the following factors:
  - 1. Whether electricity to the billboard has been disconnected.
  - 2. Whether the billboard has fallen into disrepair.
  - 3. Whether the billboard contains an advertising message that has fallen into disrepair or has been removed.
  - 4. Whether the owner of the billboard has paid the annual renewal fee for the billboard.
  - 5. Other information or actions that evidence an intention on the part of the owner to abandon the nonconforming billboard.
- f. Before any determination of abandonment, the township board shall send to the owner of the nonconforming billboard a notice of hearing stating the date, time, and place of its intent to consider the issue of abandonment of the nonconforming billboard. The notice shall be sent to the owner by certified mail, restricted delivery no less than thirty (30) days before the scheduled hearing. Upon a finding of abandonment by the township board, the owner of the nonconforming billboard shall remove the billboard and billboard structure within thirty (30) days after receiving written notice of the abandonment from the township board.
- (g) A nonconforming billboard may only be converted to a form of electronic display when brought into full compliance with the requirements of this Ordinance.  
(As amended by Ordinance No. 1 of 2009)

## **Section 8. Violations and Penalties.**

Any person who violates any provision of this ordinance shall be responsible for a municipal civil infraction as defined in Public Act 12 of 1994, amending Public Act 236 of 1961, being Section 600.101 - 600.9939 of the Michigan Compiled Laws, and shall be subject to a fine of not more than five hundred (\$500.00) dollars. Each day this ordinance is violated shall be considered a separate violation.

## **Section 9. Enforcement Officer.**

The township planning commission chairperson or other person designated by the township planning commission is hereby designated as the authorized official to issue municipal civil infraction citations directing alleged violators of this Ordinance to appear in court.  
(As amended by Ordinance No. 1 of 2005)

**Section 10. Nuisance Per Se.**

A violation of this Ordinance is hereby declared to be a nuisance per se and is declared to be offensive to the public health, safety, and welfare.

**Section 11. Separate Court Action.**

In addition to enforcing this ordinance through the use of a municipal civil infraction proceeding, the township may initiate proceedings in the circuit court to abate or eliminate the nuisance per se or any other violation of this ordinance.

**Section 12. Validity.**

If any section, provision or clause of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not effect any remaining portions or application of this ordinance which can be given effect without the invalid portion or application.

**Section 13. Effective Date.**

This ordinance shall become effective thirty (30) days after its publication in a newspaper of general circulation within the township.