

Ordinance 2017-04

An ordinance of the City of Penitas, Texas amending the Code of Ordinances, "Political signs and banners; removal," adding such sections to provide for the placement of political signs on private property, to provide for the regulation of electioneering on public property and election polling places; to provide a repealing clause; to provide a severability clause; to provide a penalty for each offense; and to provide an effective date.

WHEREAS, the 83rd Texas Legislature passed House Bill 259 in 2013, modifying Texas Election Code Sections 61.003 and 85.036 and requiring an entity that controls or owns a public building used as a polling location to allow electioneering on the premises subject to reasonable regulations on time, place, and manner; and

WHEREAS, according to this new law, "electioneering" includes the posting, use, or distribution of political signs or literature; and

WHEREAS, polling locations include facilities that simultaneously are used for other purposes and for which adequate parking and safe access must be maintained and light, distraction, and nuisance must be mitigated in service to the whole community; and

WHEREAS, desiring to balance civil liberties with public safety, the Council finds that the adoption of regulations is warranted to preserve the general health and welfare of the citizens of Penitas.

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

SECTION 1. That the Code of Ordinances, "Political signs and banners; removal," is hereby amended to read as follows:

- (a) Definitions. The following words or phrases as used in this article shall have the meanings as set forth:

Canvassing shall mean where one person engages another person by a verbal exchange, provides literature or brochure to another person with a message that involves a political issue or material.

Electioneering shall mean the posting, use, or distribution of political signs or literature, including but not limited to the use of trailers, chairs, booths, tables, tents, and canopies or other furniture, structures or devices to post, use or distribute political signs or literature.

Polling Place shall mean any property, building and grounds, wherein federal, state, or local election officials are conducting voting under the Texas Election Code and/or Home Rule Charter.

Political Signs shall mean placards, banners, or other printed materials that promote the adoption or defeat of any place on the ballot, including the candidacy of an individual, proposition, or referendum.

Public Property shall mean real property, streets, roadways, easements, alleys, parks, buildings and grounds owned or controlled by any public taxing authority, including the City, School District, College Campus, Drainage or Irrigation District, or other governmental entity, or any property designated as a lawful polling place under the Texas Election Code.

Voting Period shall mean the advertised time certain when polls open until the polls close, or the last voter has voted, whichever is later, on Election Day, the Early Voting Period, and any Election Runoff period or day.

- (b) A property owner may place or maintain on private property sign(s) with a political reference or message regarding an issue or candidate in conformance with the permitted signs by type and zoning district as outlined in this Code, no closer than five feet from the edge of the street pavement or anywhere that obstructs vision for traffic. All signs must comply with all state and federal requirements, including Texas Election Code Chapter 255 and Section 61.003 and Texas Transportation Code Chapters 392 and 393. No sign permit is required for political signs on private property.
- (c) These regulations shall not apply to any City of Penitas authorized signs, materials, or other messages on its property.
- (d) Nothing contained in this section shall impair any right to engage in constitutionally protected free speech in other public forums subject to the restrictions set forth herein. Nor shall anything in this article be construed as authorizing electioneering within any area of the premises of a polling place in violation of any provision of the Texas Election Code.
- (e) Canvassing and electioneering shall be prohibited on public property except as regulated at a polling place and only during the voting period defined as follows:

Time

It is an offense should any candidate or person cause, permit, suffer or allow canvassing or electioneering at a polling place any sooner than 5:30 p.m. the regular business day immediately preceding when the polls open and any later than 72-hours after the polls close for each voting period.

The ability to conduct electioneering on public property under this Article is limited to the property on the premises where the voting is conducted and only for the voting period.

Place

Physical space visible to voters accessing the polling place and outside the 100-foot distance from the entrance to the polling place shall be available for electioneering.

Except in an area designated, it is an offense to engage in electioneering on driveways, parking areas, or medians within parking areas of a polling place. It is an offense to electioneer within twenty-five (25) feet of the public road adjacent to the public property hosting the polling place and] any fire hydrant or fire lane. This restriction shall not apply to electioneering materials attached to a personal vehicle lawfully parked at the premises of a polling location.

Exercising final authority on appropriate place, the City Manager or designee may provide a description of the designated areas for permitted electioneering and may determine a procedure for equitable assignment of such space.

Manner

Political signs at a polling place shall not exceed eight feet in height measured from the ground to the highest point, shall not exceed 36 square feet, shall not exceed two sides or faces, shall not be illuminated, shall not contain any moving parts or elements. The political sign must directly pertain to a candidate or measure in an ongoing election at the polling place; there shall be no more than four political signs at a polling place for each candidate or measure with a place on the ballot.

It is an offense to attach or affix any political sign or electioneering material to any building, plants, utility pole, street light, fence, fire hydrant, bench or other improvement on public property at a polling place.

It is an offense to puncture, damage, cut, carve, mark, remove, transplant, break, pick, or in any way injure, damage, destroy, or deface any real property improvements, personal property, equipment, irrigation systems, plants, turf, asphalt or concrete within or upon any public property in which a polling place is located. For the purpose of this section, plants shall be defined to include any vegetation, shrubs, bushes, trees, vines, hedges, grasses, or flowers.

SECTION 2. CUMULATIVE All provisions of the Code of Ordinances of the City of Penitas, Texas, codified or uncodified, in conflict with the provisions of this ordinance are hereby repealed and all other provisions not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. SEVERABLE Any word, phrase, paragraph, or section of this Ordinance is severable and should any part of this Ordinance be declared unconstitutional, illegal or invalid by any court of competent jurisdiction, such declaration shall not affect any remaining word, phrase, paragraph, or section.

SECTION 4. SAVINGS The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance. All rights and remedies of the City of Penitas are expressly saved as to any and all violations of the provisions of the Code accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5. PENALTY Any person, firm, or corporation violating any of the provisions or terms of this section, as amended hereby, shall be guilty of a misdemeanor and upon conviction in the Municipal Court of the City of Penitas, Texas shall be subjected for each offense to a fine as prescribed by the Master Fee Schedule, not to exceed \$500.00 for each offense; each political sign or electioneering material and every day such violation continues shall be deemed to constitute a separate offense. In addition to any criminal penalty, political signs and other electioneering materials in violation of this section may be removed and disposed of at the direction of the official in charge of the polling place.


An offense committed before the effective date of this ordinance is governed by 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 6. EFFECTIVE DATE This Ordinance shall be in full force and effect upon its final passage.

SECTION 7 The City Charter requirement that all ordinances be read, considered, and approved on three separate readings is hereby waived by a majority vote of the City Council as allowed by City Charter Section 2.13(b).

READ, CONSIDERED, and APPROVED on First Reading waiving the Second and Third Reading this 16th day of October, 2017, at a Special Meeting of the City Council of the City of Peñitas, there being a quorum present,

APPROVED:


Mayor Rodrigo "Rigo" Lopez



10/16/2017
Date

ATTEST:

Ana M. Valdez
City Secretary Ana Valdez

10/16/17
Date