

ORDINANCE NO. 22-004

**AN ORDINANCE OF THE CITY OF MARLIN, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY OF MARLIN BY AMENDING CHAPTER 25, STREETS AND SIDEWALKS, BY AMENDING ARTICLE I ADOPTING REGULATIONS REGULATING THE PLACEMENT, APPEARANCE, AND USE OF TRASHCAN AND PLANTER RECEPTACLES ON CITY SIDEWALKS; DECLARING VIOLATIONS OF THESE REGULATIONS TO BE A NUISANCE; PROVIDING FOR THE ABATEMENT OF NUISANCES; PROVIDING FOR NOTICE OF VIOLATIONS AND THE ENFORCEMENT OF THIS ORDINANCE; PROVIDING FOR PENALTIES AND REMEDIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; AMENDMENT OF CONFLICTING ORDINANCES; EFFECTIVE DATE; AND OPEN MEETINGS CLAUSES.**

**WHEREAS**, businesses located in the downtown area of the City of Marlin ("City") have participated in a program to place painted metal trash receptacles used to hold trash and painted planter receptacles used for planting flowers or plants, to be placed on City sidewalks in front of or near downtown business locations. Many of such receptacles are currently being used as trash receptacles;

**WHEREAS**, when the metal trash receptacles and planter receptacles ("receptacles") deteriorate and become damaged, the receptacles cease performing their function and contribute to the collection and accumulation of trash and refuse in and along sidewalk areas of the City;

**WHEREAS**, receptacles placed and kept on City sidewalks have become degraded, faded, and have deteriorated, and therefore, have become damaged. When the receptacles deteriorate and become damaged, the receptacles can present a potential for danger to members of the public who use the City's sidewalks;

**WHEREAS**, in order to provide for a more uniform clean and neat appearance and to further promote, preserve, and protect the City's sidewalks in the downtown area of the City, the City Council for the City of Marlin ("City Council") desires and intends to adopt reasonable regulations providing for the replacement or repainting of old, worn, and deteriorating metal trash receptacles placed and maintained on City sidewalks in order to protect the general welfare of the City and its residents;

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MARLIN, TEXAS THAT:**

**Section 1. Authority.** This ordinance is adopted pursuant to the authority of the City Charter, as well as the police powers and authority given to home rule cities by the constitution, codes, and general laws of the State of Texas, including but not limited to Chapt. 51 and Chapt. 217, Tex. Local Gov't. Code, and Chapt. 341, Tex. Health & Safety Code.

**Section 2. Findings of Fact.** The findings and recitations set out in the preamble of this Ordinance are found to be true and correct and that they are hereby adopted by the City Council and made a part hereof for all purposes.

**Section 3. Amendment of Article I to Chapter 25, Streets and Sidewalks, of the Code of Ordinances of the City of Marlin.** Article I of Chapter 25 of the Code of Ordinances of the City of Marlin is amended to add Sec. 25-9 which shall read as follows:

**Sec. 25-9. Placement of Receptacles on Sidewalks.**

Metal trash receptacles and planter receptacles ('receptacles') kept and maintained on the City's sidewalks by businesses located in the downtown area of the City shall be kept clean and in good repair. Such receptacles shall be kept in a clean and neat appearance. Any receptacles deteriorating due to rust or other forms of damage shall be removed and replaced with a new metal trash receptacle at the owner's expense.

**Section 4. Amendment of Article I to Chapter 25, Streets and Sidewalks, of the Code of Ordinances of the City of Marlin.** Article I of Chapter 25 of the Code of Ordinances of the City of Marlin is amended to add Sec. 25-10 which shall read as follows:

**Sec. 25-10. Declaration of Nuisance.**

Metal trash receptacles or planter receptacles kept and maintained on the City's sidewalks which are degraded, faded, and deteriorated, and which have become damaged, are declared to be a nuisance. The City is entitled and authorized to abate nuisances as provided by the City's ordinances.

**Section 5. Amendment of Article I to Chapter 25, Streets and Sidewalks, of the Code of Ordinances of the City of Marlin.** Article I of Chapter 25 of the Code of Ordinances of the City of Marlin is amended to add Sec. 25-11 which shall read as follows:

**Sec. 25-11. Notice of Violations; Abatement of Nuisance.**

(a) Should the City's Code Enforcement Officer, or any other person as designated by the City, determine that there is a violation of Sec. 25-9 or Sec. 25-10, the City's Code Enforcement Authority shall give written notification of the violation by certified mail return receipt requested and regular U.S. mail to each business or property who owns the receptacle. Such notice shall include:

- (1) the address or legal description of the property where the violation was observed;
- (2) a statement that the violation is a nuisance as provided in Sec. 25-9 or Sec. 25-10; and
- (3) a statement of the violation and the corrective actions necessary in order to comply with the City's ordinance;

(b) Upon delivery of notice, the business or property owner where the receptacle is kept or maintained shall remediate the violations within ten (10) days unless this time period is extended in writing by the City's Code Enforcement Authority.

(c) If the recipient of the notice under this section contends that they do not own the receptacle, the recipient must submit a sworn affidavit that includes the statement that the recipient of the notice does not own the receptacle and additional facts and information to support such statement. A failure to provide a sworn affidavit within twenty (20) days of receipt of the notice will

result in a presumption that the recipient or the notice is the owner of the trash receptacle or planter receptable.

**Section 6. Amendment of Article I to Chapter 25, Streets and Sidewalks, of the Code of Ordinances of the City of Marlin.** Article I of Chapter 25 of the Code of Ordinances of the City of Marlin is amended to add Sec. 25-12 which shall read as follows:

**Sec. 25-12. City Right to Abate Nuisance by Removal.**

The City may abate any nuisance created by any deteriorated or degraded metal trash receptacles or planter receptacles as set forth in Sec. 25-9 or Sec. 25-10 by removing the receptacle from the City's sidewalk. Upon removal, the City may immediately dispose of the receptacle.

**Section 7. Amendment of Article I to Chapter 25, Streets and Sidewalks, of the Code of Ordinances of the City of Marlin.** Article I of Chapter 25 of the Code of Ordinances of the City of Marlin is amended to add Sec. 25-13 which shall read as follows:

**Sec. 25-13. Enforcement**

Trash receptacles which are maintained in violation of Sec. Sec. 25-9 or Sec. 25-10 are declared to be a nuisance. The provisions of this Ordinance shall be enforced by the City's Code Enforcement Officer, or any other person authorized to abate a nuisance in the City by any other City ordinance. It shall be a violation of this Article to interfere with a peace officer or any other person authorized to enforce the provisions of this Ordinance in the performance of his or her duties

**Section 8. Amendment of Article I to Chapter 25, Streets and Sidewalks, of the Code of Ordinances of the City of Marlin.** Article I of Chapter 25 of the Code of Ordinances of the City of Marlin is amended to add Sec. 25-14 which shall read as follows:

**Sec. 25-14. Penalties**

Any person who violates Sec. 25-9 or Sec. 25-10, or who shall fail to comply with notice provided under Sec. 25-11, shall be deemed guilty of a misdemeanor and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2,000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein.

**Section 9. Remedies for Violation of this Ordinance.** Any remedies cited herein are in addition to and not in lieu of all remedies permitted to the City by law.

**Section 10. Amendment and Repeal of Conflicting Ordinances.** All parts of ordinances in conflict herewith are hereby amended and repealed to the extent of such conflict only.

**Section 11. Severability.** 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, void or invalid, the validity of the remaining portions of this Ordinance or the 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 be 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 12. Effective Date.** This Ordinance shall, upon final passage, be published in the official newspaper of the City of Marlin, Texas, as required by law and shall become effective ten (10) days after the date of the last publication thereof.

**Section 13. Open Meetings Act.** That it is hereby officially found and determined that the meeting which this Ordinance was passed was open to the public as required by law and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act; Tex. Gov't Code.

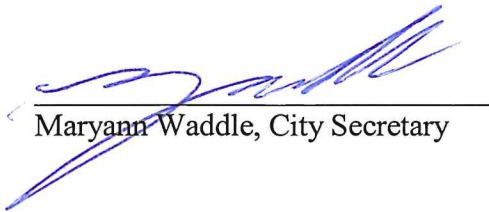
**FIRST READING** on the 11th day of January, 2022.

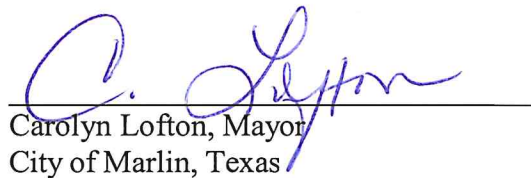
**SECOND READING** on the 8 day of March, 2022.

**PASSED AND APPROVED** on this the 8 day of March, 2022.

**ATTEST:**

**CITY OF MARLIN, TEXAS**

  
Maryann Waddle, City Secretary

  
Carolyn Lofton, Mayor  
City of Marlin, Texas