

ORDINANCE NO. 22-005

AN ORDINANCE OF THE CITY OF MARLIN, TEXAS, ADOPTING AMENDMENTS TO CHAPTER 12, FIRE PROTECTION AND PREVENTION, OF THE CODE OF ORDINANCES FOR THE CITY OF MARLIN, TEXAS; AMENDING ARTICLE I AND ARTICLE II OF CHAPTER 12 TO PROVIDE FOR THE REGULATION OF OUTDOOR BURNING; PROVIDING FOR ENFORCEMENT AND PENALTIES FOR VIOLATIONS OF THE ORDINANCE; PROVIDING FOR THE APPOINTMENT, RESPONSIBILITIES, AND AUTHORITY OF THE FIRE CHIEF; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY, SAVINGS, EFFECTIVE DATE, AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, outdoor burning and the risk of fire represents a serious threat to the residents of the City of Marlin as well as to the property and homes of the residents of the City as well as the environment and natural resources of the City;

WHEREAS, the City Council or the City of Marlin finds that the regulation and prevention of outdoor burning is necessary for the public health of the citizens and the protection of the environment and natural resources of the City; and

WHEREAS, it is reasonable and necessary that the City to adopt reasonable regulations prohibiting outdoor burning and regulating certain forms of outdoor burning, providing for penalties and the authority to enforce these regulations and clarifying the authority of the fire chief,

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

Section 1. Authority. This ordinance is adopted pursuant to the authority given to the City by the City Charter, by to the police powers and authority of the City under Texas law, the Constitution, and the codes and the laws of the State of Texas, including but not limited to Chapter 51, Tex. Loc. Gov't. Code.

Section 2. Findings of Fact. The foregoing 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 as findings of fact.

Section 3. Amendment of Article I, Chapter 12 Fire Prevention and Protection, of the Code of Ordinances of the City of Marlin. Article I of Chapter 12 of the Code of Ordinances of the City of Marlin is amended in its entirety and adopted to read as follows:

ARTICLE I. OUTDOOR BURNING

Sec. 12-1. Prohibited acts; exceptions

It shall be unlawful for any person within the city limits, in any way, to intentionally, knowingly or carelessly burn or cause to be burned any combustibles, including but not limited to grass, weeds, timber, rubbish, leaves, or other natural or synthetic materials, garbage, trash, rubbish, litter, solid waste, hazardous waste or any such like substances, on any street, alley, lot or premises. Such prohibited fires shall include bonfires and fires used for ceremonial purposes not in compliance herewith. The following exceptions to burning apply:

- (1) Burning may be conducted for the purposes of outdoor cooking in a device designated and constructed for such a purpose in compliance with this article. No burning of waste or garbage shall be permitted in cooking devices.
- (2) Firefighter training conducted under the supervision of the fire chief.
- (3) On-site land clearing on lots of greater than two acres upon which the owner intends to clear the lot itself of selected trees, brush and other plant growth. When approved by the fire chief, burning may be permitted in a manner approved by the fire chief, provided a standby firefighter is present if required by the fire chief and the on-site land clearing is conducted in compliance with state, federal and local laws and regulations. A permit shall be acquired and approved safety measures shall be employed.

Sec 12-2 Land clearing

On-site land clearing may occur only in compliance with the state and federal laws and regulations. In addition to complying with the state and federal laws and regulations, a person clearing a lot of greater than two acres of selected trees, brush and plant growth originating on such property may only burn such vegetation cleared from the property with the express permission of the fire marshal in compliance with any additional requirements of the state or federal laws and regulations stipulated by the fire marshal.

Sec. 12-3. Duty to report fire or smoke

In the event of a fire or discovery of a fire or discovery of impermissible smoke discharge caused by fire, burning or smoldering combustibles on any property, the owner, occupant or person in control of the property or person in control of the fire from which the fire or smoke is emanating shall immediately report such condition to the local fire department.

Sec. 12-4 Noxious smoke

It shall be unlawful for any person within the city limits, in any way, to intentionally, knowingly or carelessly burn or cause to be burned any combustibles which cause noxious smoke, toxic order [odor] or smoke of a significant quantity or quality to be released so as to inhibit the use and

enjoyment of neighboring properties. Such release of smoke is hereby declared a nuisance and is hereby prohibited.

Sec. 12-5. Outdoor cooking devices

The operator of an outdoor cooking device shall use and maintain the device in a safe and properly operating condition when intended to be used. Such devices shall not be utilized in close proximity to a building or other combustible materials.

Sec. 12-6. Burn bans

During periods of time in which Falls County adopts or institutes a total burn ban for the entire county, the city prohibits any burning, except as provided in section 12-1(1) herein, for the duration of the burn ban.

Sec. 12-7. Cleanup of property damaged by fire or smoke

(a) All properties damaged by fire are hereby declared a nuisance and must be secured and cleaned up by the owner, occupant or person in control of the property.

(b) Any person, firm or corporation responsible for any fire or impermissible smoke discharge shall institute and complete all actions necessary to remedy and assist in the remedy of all the effects of such fire and/or smoke at no cost to the city.

(c) Whenever any building or other structure is partially or totally burned, the owner or occupant of the property or the person in charge or control thereof, within ten (10) days after notice from the fire marshal, shall remove from the premises all refuse, debris, charred and partially burned lumber and material as directed in such notice. If such building or other structure is burned to such an extent that it is rendered incapable of being repaired, the owner or occupant of the property upon which the same is located or the person in control thereof, within ten (10) days after notice from the fire marshal, shall remove from the premises all of the remaining portions of the building or structure that are damaged beyond repair and immediately secure the property as directed.

(d) The fire marshal may direct the owner, occupant or person in control of the property in the necessary measures to secure the premises after a fire. The owner, occupant or person in control of the property shall promptly comply with the directive of the fire marshal. Failure to comply with the written directives of the fire marshal within ten (10) days of the notice shall be a violation of this article.

(e) When deemed necessary by the fire marshal due to an imminent threat to the public safety or an attractive nuisance constituting an imminent threat, the fire marshal may cause immediate cleanup to be initiated by the fire department or by an authorized individual or firm.

(f) All costs associated with such cleanup shall be borne by the owner, operator, person in control of the property or other person responsible for the fire or impermissible discharge of

smoke. Failure of a person deemed responsible for a fire to pay the costs of cleanup shall be deemed a violation of this article.

Sec. 12-8. Inspection of premises emanating fire or smoke

Any premises emanating fire or smoke shall be subject to inspection by the fire marshal, or authorized representative, the city marshal or the code enforcement officer at any reasonable hour or at any hour in cases of suspected fire or smoke discharge.

Sec. 12-9. Penalty

A violation of this article implicates fire safety and affects the public health and safety. Accordingly, any person who shall violate any of the provisions of this article, or shall fail to comply therewith, or with any of the requirements thereof, within the city limits shall be deemed guilty of an offense and shall be liable for a fine or penalty not to exceed 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.

Sec. 12-10. Enforcement

The civil and criminal provisions of this article shall be enforced by those persons or agencies designated by municipal authority. The fire marshal, and his or her designee, and the city marshal are at all times granted authority to enforce this article. The fire marshal or his authorized representative may extinguish any fire and prohibit burning until the matter can be resolved through the proper legal processes. It shall be a violation of this article to interfere with or to violate any lawful verbal or written directives of the fire marshal or a firefighter in the performance of his or her duties.

Secs. 12-11—12-14. Reserved.

Section 5. Amendment of Article II, Chapter 12 Fire Prevention and Protection, of the Code of Ordinances of the City of Marlin. Article II of Chapter 12 of the Code of Ordinances of the City of Marlin is amended in its entirety and adopted to read as follows:

ARTICLE II. FIRE CHIEF

Sec. 12-15 Responsibilities and authority of fire chief.

The fire chief shall be responsible for the supervision and operation of the City of Marlin Fire Department.

Sec. 12-16. Supervision, appointment, and discharge of the fire chief.

The fire chief shall be under the supervision of the City Manager, however, the fire chief shall be appointed by the City Council and may only be discharged by the City Council.

Secs. 12-17—12-20. Reserved.

Section 6. Repeal of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict only. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City regulating or applicable to outdoor burning or the responsibilities and authority of the fire chief, the terms and provisions of this Ordinance shall govern.

Section 7. Severability. If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance shall not be affected. No portion of this ordinance shall be inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, therefore, all provisions of this Ordinance are declared to be severable.

Section 8. Savings Clause. All rights and remedies of the City of Marlin are expressly saved as to any and all violations of the provisions of any ordinances affecting animals, licensing and registration within the City which have 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 9. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 10. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

FIRST READING on the 12th day of April, 2022.

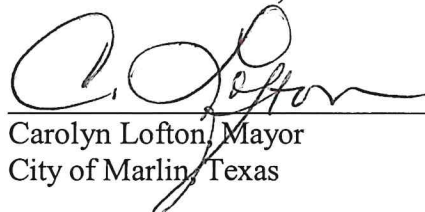
SECOND READING on the 10 day of May, 2022.

PASSED AND APPROVED on this the 10 day of May, 2022.

ATTEST:


Maryann Waddle, City Secretary

CITY OF MARLIN, TEXAS


Carolyn Lofton, Mayor
City of Marlin, Texas

