

Ordinance No. 13-001

AN ORDINANCE OF THE CITY OF MARLIN, TEXAS AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF MARLIN, TEXAS, "HEALTH AND SAFETY," TO ADD DIVISION 1 A, "WEEDS AND WILD GROWTH" PROVIDING FOR REGULATION OF THE GROWTH OF VEGETATION ON PROPERTIES WITHIN THE CITY; PROHIBITING PERSONS FROM ALLOWING WEEDS, GRASS OR OTHER VEGETATION TO GROW IN EXCESS OF 12 INCHES HIGH ON PROPERTIES OF FIVE ACRES OR LESS; CONTAINING PROHIBITIONS AND REQUIREMENTS WITH REGARD TO THE GROWTH OF WEEDS, GRASS OR OTHER VEGETATION ON PROPERTIES IN EXCESS OF FIVE ACRES; MAKING PROPERTY OWNERS RESPONSIBLE FOR MOWING ADJACENT PUBLIC RIGHT-OF-WAY; PROVIDING FOR NOTICE OF VIOLATION; PROVIDING FOR ENFORCEMENT; PROVIDING FOR ABATEMENT AND ASSESSMENT OF ABATEMENT EXPENSES; PROVIDING FOR THE IMPOSITION AND ENFORCEMENT OF A LIEN FOR ABATEMENT EXPENSES; PROVIDING FOR THE ABATEMENT OF WEEDS HIGHER THAN 48 INCHES WITHOUT NOTICE AND PROCEDURES RELATING THERETO; MAKING VIOATION A CRIMINAL OFFENSE (MISDEMEANOR) PUNISHABLE BY A FINE NOT TO EXCEED \$500.00 PER DAY OF VIOLATION; PROVIDING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY

WHEREAS, the unrestricted growth of weeds, grass, or brush upon premises located within the city poses a health hazard to the citizens of Marlin and is injurious to the public by creating a habitat promoting the infestation of rodents, insects, and other pests, and creating a fire hazard; and

WHEREAS, the city council now finds it prudent and in the best interest of the city and its citizens to enact additional regulations to control the unrestricted growth of weeds, grass, or brush.

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

SECTION 1. The foregoing recitals are made findings of fact and incorporated by reference herein.

SECTION 2. Chapter 26 of the Code of Ordinances of the City of Marlin, Texas is amended to add Division 1A, Weeds and Wild Growth, which reads as follows:

DIVISION 1A. - WEEDS AND WILD GROWTH

- Sec. 15-21. Application of division.
- Sec. 15-22. Large Tracts.
- Sec. 15-23. Property adjoining public right-of-way.
- Sec. 15-24. Notice of Violation
- Sec. 15-25. Enforcement.
- Sec. 15-26. Lien for Expenses of the City
- Sec. 15-27. Abatement of weeds without notice.

Sec. 15-21. - Application of division.

No person may allow weeds, grass, or other vegetation to grow in excess of 12 inches upon property consisting of five acres or less within the city limits.

Sec. 15-22. – Large Tracts.

(a) No person may allow weeds, grass, or other vegetation to grow in excess of 12 inches within 50 feet of any adjoining right-of-way or property line upon properties five acres or larger in size. If the Fire Chief finds that allowing weeds, grass, or other vegetation to grow in excess of 12 inches on any other part of the property constitutes a fire hazard, those parts of the property must also be cleared.

(b) No person may allow weeds, grass or other vegetation to grow in excess of 12 inches within 100 feet of any structure which is located on a property of five acres or larger in size. If the Fire Chief finds that allowing weeds, grass, or other vegetation to grow in excess of 12 inches on any other part of the property constitutes a fire hazard, those parts of the property must also be cleared.

(c) No person may allow weeds, grass or other vegetation to grow in excess of 12 inches on a property of five acres or larger in size within 100 feet of the property line of an adjoining property upon which an occupied residence or business is located.

Sec. 15-23. - Property adjoining public right-of-way.

Any right-of-way adjoining private property within the city must be maintained by the owner, occupant, lessee or person in control of such adjoining private property. Any growth of weeds and grass may not exceed 12 inches in height and all brush must be cleared from such right-of-way. It shall be an affirmative defense to any violation of this section that the adjoining right-of-way had not been used by and is unusable by the owner, occupant, lessee or person in control of the adjoining private property.

Sec. 15-24. - Notice of violation.

An owner, occupant, lessee or person in control of property in the city that does not comply with any of the requirements set forth in sections 15-21, 15-22, or 15-23 will be given notice of said violation and given ten (10) days to comply with the requirements.

- (a) The notice must be given:
 - (1) Personally to the owner in writing;
 - (2) By letter addressed to the owner at their address as recorded in the appraisal district records of the appraisal district in which the property is located; or
 - (3) If personal service cannot be obtained:
 - a. By publication in the official newspaper of the city at least once;
 - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
- (b) If a notice mailed to an owner in accordance with subsection (a) is returned as "refused" or "unclaimed" by the United States Postal Service, the validity of the notice is not affected, and the notice is considered as delivered.
- (c) The city may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature on or before the first anniversary of the date of the notice, the city without further notice may correct the violation at the expense of the owner and assess the expense against the property. If a violation covered by a notice under this section occurs within a one-year period, and the city has not been informed in writing by the owner of an ownership change, then the city without notice may take any action permitted by sections 15-25 and 15.26.
- (d) The notice will contain:

- (1) An identification of the property;
- (2) A description of the violation that is present on the property.

Sec. 15-25. - Enforcement.

If the owner of the property does not comply with the requirements within ten (10) days after receiving the notice of violation the city will either:

- (1) refer the property owner to municipal court for criminal prosecution; or
- (2) perform work or improvements to abate the violation, or pay for the work done or improvements made to abate the violation, and charge the expenses to the owner of the property. The city may assess expenses incurred in the abatement against the property on which the work is done or improvements made.

Sec. 15-26. – Lien for Expenses of the City.

(a) To obtain a lien against the property, the mayor or the municipal official designated by the mayor, will file a statement of expenses with the County Clerk of Falls County, Texas. The statement to be filed must include the name of the owner, if known, and the legal description of the property. The lien attaches when filed.

(b) The lien will serve as security for the payment of the expenditures made by the city, and interest accruing at the rate of ten percent (10%) on the amount due from the date of payment or incurrence by the City. This lien is inferior only to:

- (1) tax liens; and
- (2) liens for street improvements.

(c) The city may bring suit for foreclosure of the lien in the name of the city to recover the expenditures and interest due. A statement of expenses or a certified copy of the statement of expenses is prima facie proof of the expenses incurred by the city in doing work or making the improvements.

Sec. 15-27. - Abatement of weeds without notice.

The city may abate, without notice, weeds, grass and other vegetation:

- (1) that have grown higher than 48 inches; and
- (2) are an immediate danger to the health, life, or safety of any person.

Not later than the tenth day after the date the city abates weeds, grass, or other vegetation pursuant to this section the city will give notice to the property owner of the abatement. The notice will be given: personally to the owner in writing; by letter addressed to owner at the owner's post office address; or if personal service cannot be obtained or the owner's post address is unknown, by publication at least twice within ten consecutive days; or by posting the notice on or near the front door of each building on the property to which the violation relates. The notice will contain: an identification, which is not required to be a legal description, of the property; a description of the violation of the ordinance that occurred on the property; a statement that the city abated the weeds, grass, or other vegetation; and an explanation of the property owner's right to request a hearing about the city's abatement. The building standards commission will conduct a public hearing on the city's abatement of the weeds, grass, or other vegetation pursuant to this section if, not later than the thirtieth day after the date of the abatement, the property owner files with the city a written request for a hearing. The building standards commission will conduct a public hearing not later than the twentieth day after the date a request for a hearing is filed. The property owner may

testify or present any witnesses or written information relating to the city's abatement. If no building standards commission is seated, the appeal is to the city council. If the abatement is upheld, the expenses will be assessed and the lien obtained as set forth in the preceding sections.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4. This ordinance shall become effective upon passage and publication in accordance with laws of the State of Texas and the Charter of the City of Marlin.

SECTION 5. The fact that the present ordinances and regulations of the City of Marlin, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency which requires that this ordinance become effective from and after the date of its passage and publication, and it is accordingly so ordained.

SECTION 6. The City Secretary is hereby directed to publish the caption of this Ordinance at least one time in the official City newspaper.

SECTION 7. It is found and declared that the City Council meeting at which this Ordinance has been adopted was open to the public and was noticed and held in accordance with Chapter 551 of the government code.

FIRST READING PASSED this 8 day of January, 2013 by a vote of 7 AYES to 0 NAYS with 0 Absentions.



Elizabeth Nelson
Elizabeth Nelson, Mayor
Sandra Herring
Sandra Herring, City Secretary

SECOND READING PASSED this 12 day of February, 2013 by a vote of 7 AYES to 0 NAYS with 0 Absentions.



Elizabeth Nelson
Elizabeth Nelson, Mayor
Sandra Herring
Sandra Herring, City Secretary