

ORDINANCE NO. 2021-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 34, ENVIRONMENT, ARTICLE 5, AIR POLLUTION, OF THE SAN MARCOS CITY CODE BY ADDING A NEW DIVISION 4, CLEAN AIR, THAT PROVIDES SUPPLEMENTAL REGULATIONS CONCERNING THE EMISSION OF AIR CONTAMINANTS AND CONTROLLING OR ABATING AIR POLLUTION; CREATING ASSOCIATED OFFENSES AND PENALTIES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The city council seeks to safeguard the air resources of the city from air pollution and to promote the protection of the public health, safety, general welfare, and physical property of the people within the city by regulating the emission of air contaminants and by controlling or abating air pollution.
2. Enacting such regulations is in the interest of the public health, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The city council adopts the recitals as true and correct and such recitals are made a part hereof.

SECTION 2. Chapter 34, Environment, Article 5, Air Pollution, of the San Marcos City Code is amended by adding a new Division 4, Clean Air, to read as set forth below. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

DIVISION 4. CLEAN AIR

Sec. 34.405. Short title.

This division may be cited as the City of San Marcos Clean Air Ordinance.

Sec. 34.406. Declaration of policy.

It is the policy of the City of San Marcos to safeguard the air resources of the city from air pollution and to promote the protection of the public health, safety, general welfare, and physical property of the people within the city by regulating emission of air contaminants and by controlling or abating air pollution. The provisions of this division are to be construed, according to the fair import of their terms, to affect this policy.

Sec. 34.407. Definitions.

The following definitions shall apply to this division. The definition of a term in this section applies to each grammatical variation of the term in this division, unless the context requires a different definition.

Air contaminant means dust, fumes, gas, mist, odor, particulate matter, toxic materials, smoke, or vapor, individually or in combination.

Air pollution means the presence in the atmosphere of one or more air contaminants in such concentration and of such duration:

- (1) as to have or tend to have an injurious or adverse effect on human health or safety, animal or vegetable life, or property; or
- (2) as to interfere with the normal use or enjoyment of property.

Director means the director of the department designated by the city manager to enforce and administer this division and includes representatives, agents, or city employees designated by the director to assist in the enforcement and administration of this division.

Nuisance means one or more air contaminants, or combination thereof, in such concentration and of such duration equal to or exceeding the levels in Section 34.410 that:

- (1) are, or may tend to be, injurious to, or to adversely affect, human health or welfare, animal life, vegetation, or property; or
- (2) interferes with the normal use and enjoyment of property.

Person means an individual, corporation, agency, trust, partnership, limited liability company or other business organization, or two or more persons having a joint or common economic interest.

Used oil means any oil, regardless of source, including, but not limited to, industrial, commercial, or household oil and any oil that has been refined from refined from crude oil, or any synthetic oil, any of which that has been used and as a result of such use is contaminated by physical or chemical impurities (*see* 40 CFR 279.1).

Sec. 34.408. General authority and duty of director.

The director is the principal air pollution control officer of the city. The director shall implement and enforce this division and may establish such rules, not inconsistent with this division, as he determines are necessary to discharge his duty under, or to affect the policy of, this division. The director shall evaluate the effect of proposed zoning changes on air pollution and shall endeavor to coordinate his activities with those of the Planning and Development Services Department in order to achieve optimum management of the air resources of the city. The director will cooperate, in a manner consistent with the policy of this division, with other governmental agencies concerned with air pollution. The director will publicize information on air pollution data, administrative hearings, progress in abatement programs and decisions affecting pollution control, and to inform and cooperate with citizen groups and industry associations concerned with air pollution. The director shall recommend to the city manager enforcement measures and policies to achieve and maintain air quality in the city.

Sec. 34.409. Texas Commission on Environmental Quality rules.

The city hereby adopts by reference the following rules of the Texas Commission on Environmental Quality ("TCEQ"), in their current form and as they may hereafter be amended, including the tables, graphs, figures, appendices, and other matter promulgated as part of the TCEQ's rules, all of which are incorporated by reference as though written fully word for word in this division. TCEQ rules are promulgated in the Texas Administrative Code, Chapter 30.

Sec. 34.410. City air pollution standards.

(a) Odors (emission standard). A stationary source may not emit beyond its property line an odor, as measured by the director, the strength of which equals or exceeds:

- (1) two odor units on a Barnaby-Cheney Scentometer; or
- (2) two dilution-to-threshold (Dm units on a St. Croix Sensory Nasalranger, or equivalent units on an equivalent odor-testing device.

(b) Particulates (emission standard). Neither a stationary source nor a portable source may emit nuisance level emissions beyond its property line as determined by USEPA Method 22. In addition, both a stationary source and a portable source must:

- (1) maintain all dust collection and fugitive controls in good working order at all times;
- (2) install and operate such controls at such times to control fugitives from aggregate stockpiles, transfer points, conveyor systems, and

collection facilities (e.g., baghouses); and

- (3) meet the most stringent USEPA and TCEQ standards for Best Available Control Technology (BACT) applicable to the specific source.

(c) Used oil (fuel standard). Neither a stationary source, nor a portable source within the corporate limits of the City of San Marcos, Texas shall burn used or waste oil, regardless of the source of such used oil, for any purpose whatsoever.

(d) Additional regulations. The director shall prescribe by rule such additional regulations as he determines are necessary to implement this section and may provide by rule for temporary suspension of the application of the air pollution standards prescribed by this section to a source that is operating under unusual conditions or circumstances that prevent compliance.

Sec. 34.411. Compliance order and emergency action.

(a) If the director determines that a source is in violation of the emission standard prescribed by section 34.410, the director by written order may require a person who owns, controls, or manages the source to take such action as the director determines is necessary to promote or effect compliance with the emission standard.

(b) If the director determines that an imminent and serious threat to the public health or safety exists because of violation of section 34.410, the director may take or cause to be taken such immediate action as is necessary under the circumstances to abate the threat.

(c) Exercise of authority granted by this section is not a prerequisite to prosecution of an offense under section 34.416.

Sec. 34.412. Monitoring requirements.

(a) The director by rule may prescribe reasonable requirements for monitoring or measuring emission of air contaminants by a person who owns, controls, or operates a source that emits an air contaminant.

(b) The director by rule may prescribe reasonable requirements for maintaining records on monitoring or measuring emissions by a person who is required to monitor or measure emission of air contaminants under subsection (a) of this section.

Sec. 34.413. Inspection of records.

The director may examine during regular business hours such records as are

required by state or city law or rule to be maintained in connection with the operation of air pollution or emission control equipment or facilities or in connection with the emission of air contaminants.

Sec. 34.414. Notice.

Notice required or authorized under this division must be served on the person to be notified either personally, by email, or by mailing to the person at the address last known to the director. The effective date of notice required or authorized under this division is the date that the notice is personally served, emailed, or postmarked.

Sec. 34.415. Nuisance.

A violation of a standard prescribed by this division constitutes a nuisance as that term is defined herein. The city attorney may file suit to obtain such orders or process as are necessary to abate the nuisance.

Sec. 34.416. Offenses.

(a) A person commits an offense if the person:

(1) violates a rule of the TCEQ identified in section 34.409;

(2) owns, controls, or manages a source that violates the emission standard prescribed by this chapter;

(3) interferes with the director in the exercise of his authority under this division;

(4) creates a nuisance or violates a rule or standard established under this division;

(5) refuses to allow or interferes with an inspection authorized under this division; or

(6) violates a variance or order granted or issued by the TCEQ under the Texas Clean Air Act.

(b) A culpable mental state is not required for the commission of an offense under this division unless the provision defining the offense expressly requires a culpable mental state.

(c) An offense committed under this division is punishable by a fine of not more than \$2,000.00.

(d) A separate offense is committed each day in which an offense under this division occurs.

(e) If an enforcing officer designated by the director has probable cause to believe that a person has committed an offense under this division, the enforcing officer may issue the person a written citation requiring that person to appear in municipal court to answer the charge. If, upon request by the enforcing officer, the person believed by the enforcing officer to have committed the offense refuses to promise to appear in court by signing the citation, the enforcing officer may cause the person to be arrested. The citation must include the name of the person cited for the offense, identification and date of offense alleged, and date of citation. The enforcing officer issuing a citation shall sign it.

(f) In addition to the criminal enforcement remedies in subsection (e), the authority of the director under Sections 34.411-34.413, and other authority or remedies provided in this division, the director may pursue any other legal or equitable remedies, including civil penalties or injunction, to enforce the provisions of this division. Prosecution for an offense under this division does not prevent the use of such other civil enforcement remedies or procedures applicable to the person charged with or the conduct involved in the offense.

Secs. 34.417. Exemptions.

The following are exempt from this ordinance:

- (1) Outdoor cooking. Charcoal burners, open flame cooking appliances, LP gas burners, outdoor grills, barbecue grills, residential smoker, or any other outdoor cooking appliance that generates sufficient heat to cook in, on, or about the appliance, provided the foregoing shall not be operated or stored on balconies or within 15 feet of a structure or combustible material, or in violation of other applicable ordinances.
- (2) General. Any open burning, bonfire, fire pit, recreational fire, or portable outdoor fireplace, conducted and approved in accordance with Sections 307.1.1 through 307.5, or other applicable and successor provisions of the International Fire Code, together with local amendments, then in effect under Chapter 38.
- (3) Residential fireplace.

Secs. 34.405-34.700. Reserved.

SECTION 3. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 4. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 5. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 6 This ordinance will take effect after its passage, approval and adoption on second reading and publication in accordance with the City Charter.

PASSED AND APPROVED on first reading on May 4, 2021.

PASSED, APPROVED AND ADOPTED on second reading on May 18, 2021.

Jane Hughson
Mayor

Attest:

Approved:

Tammy K. Cook
Interim City Clerk

Michael J. Cosentino
City Attorney