

**ORDINANCE NO. 2020-02**

**ORDINANCE ENACTING PROVISIONS FOR RIOT PREVENTION AND DISASTER CONTROL IN A STATE OF EMERGENCY AS ALLOWED UNDER THE OKLAHOMA RIOT CONTROL AND PREVENTION ACT; PROVIDING FOR THE FOLLOWING: TITLE; DEFINITIONS; PROCLAMATION AND TERMINATION OF STATE OF EMERGENCY; POWERS OF MAYOR DURING STATE OF EMERGENCY; OFFENSES DURING STATE OF EMERGENCY INCLUDING FOR DESTROYING OR DAMAGING PROPERTY OR INJURING ANOTHER PERSON, FOR ENTRY INTO SCENE OF EMERGENCY, FOR REFUSAL TO LEAVE; FOR LEAVING AN AREA OF QUARANTINE; PROVIDING FOR PENALTY; AMENDMENT OF SECTION 2-174 OF THE MARIETTA CODE OF ORDINANCES; AND REPEAL OF CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY**

**WHEREAS**, the Oklahoma Riot Control and Prevention Act, which pertains to proclamations by the Governor during a state of emergency, stating what acts may be proclaimed as prohibited, has been enacted by the State of Oklahoma and is codified as Title 21, Oklahoma Statutes, Sections 1321.1 et seq.;

**WHEREAS**, cities and towns are authorized by Section 1321.9 of said Oklahoma Riot Control and Prevention Act to enact ordinances in general conformity with the provisions of said Oklahoma Riot Control and Prevention Act;

**WHEREAS**, it in the best interest of the City of Marietta to enact an ordinance in conformity with the provisions of the Oklahoma Riot Control and Prevention Act, and further to allow the City Council or the Mayor, or both, to declare an emergency with regard to suspending competitive bidding under Section 2-174 of the Marietta Code of Ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARIETTA, OKLAHOMA:**

**Section 1. Title.**

This ordinance shall be known as the State of Emergency Riot Prevention and Disaster Control Ordinance.

**Section 2. Definitions.**

For the purposes of this ordinance, the definition of "Mayor" shall mean the Mayor of the City of Marietta or the acting Mayor as head of government under Oklahoma law. Further, the term "City" shall mean the City of Marietta.

**Section 3. Proclamation and termination of a state of emergency.**

- (a) The Mayor, after finding that a public disorder, disaster or riot exists within the City or any part thereof, which affects life, health, property or the public peace, may proclaim a state of emergency in the area affected.
- (b) The proclamation of a state of emergency shall be in writing and shall be signed by the Mayor and shall then be filed with the City Clerk.
- (c) The Mayor shall give as much public notice as practical through the news media of the issuance of a proclamation pursuant to this section.
- (d) The state of emergency shall cease to exist upon the issuance of a proclamation of the Mayor declaring its termination; provided that, the Mayor must terminate the state of emergency when order has been restored in the area affected.

**Section 4. Powers of Mayor during a state of emergency.**

- (a) The Mayor, with the agreement of the Council President, during the existence of a state of emergency, by proclamation, may, in the area described by the proclamation, which proclamation shall not cover any part or portion of the City not affected by public disorder, disaster or riot at the time the proclamation is issued, prohibit:
  - (1) Any person being on the public streets, or in the public parks or at any other public place during the hours declared by the Mayor to be a period of curfew;
  - (2) Such number of persons, as designated by the Mayor, from assembling or gathering on the public streets, parks or other areas of the City, either public or private;
  - (3) The manufacture, transfer, use, possession or transportation of a Molotov cocktail or any other device, instrument or object designed to explode or produce uncontained combustion;
  - (4) The transporting, possessing or using of gasoline, kerosene or combustible, flammable or explosive liquids or materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;
  - (5) The sale, purchase or dispensing of alcoholic beverages;

(6) The sale, purchase or dispensing of other commodities or goods, as the Mayor reasonably believes should be prohibited to help preserve and maintain life, health, property or the public peace;

(7) The use of certain streets, highways or public ways by the public; and

(8) Such other activities as the Mayor reasonably believes should be prohibited to help preserve and maintain life, health, property, or the public peace.

(b) In imposing the restrictions provided for by this section, the Mayor, with the agreement of the Council President, may impose them for such times, upon such conditions, with such exceptions and in such areas of this City as the Mayor, from time to time, deems necessary.

**Section 5. Offenses during the state of emergency—Generally.**

(a) The provisions of this section shall apply during a state of emergency.

(b) A person is guilty of riot and an offense when he participates with two or more persons in the course of disorderly conduct:

(1) With intent to commit or facilitate the commission of a felony or misdemeanor; or

(2) With intent to prevent or coerce official action; or

(3) When the accused or any other participant, to the knowledge of the accused, uses or plans to use a firearm or other deadly weapon.

(c) Any person upon any public way within the described area who is directed by the authorities to leave the public way but refuses to do so shall be guilty of an offense.

(d) A person is guilty of an offense under this section committed by another person when:

(1) Acting with the state of mind that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in conduct constituting the offense; or

(2) Intending to promote or facilitate the commission of the

offense he:

- a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or
- b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or
- c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so; or

(3) His conduct is expressly declared by a statute of this state to establish his complicity.

(e) In any prosecution for an offense under this section in which the criminal liability of the accused is based upon the conduct of another person under this section, it is no defense that:

(1) The other person is not guilty of the offense in question because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the conduct in question or for the accused's criminal purpose, or because of other factors precluding the mental state required for the commission of the offense; or

(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question, or has previously been acquitted thereof, or has been convicted of a different offense or in a different degree, or has legal immunity from prosecution for the conduct in question.

(f) "Disorderly conduct," as used in this section, means a course of conduct by a person who:

(1) Causes public inconveniences, annoyance or alarm, or recklessly creates a risk thereof by:

- a. Engaging in fighting or in violent, tumultuous or threatening behavior; or
- b. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present; or
- c. Dispersing any unlawful procession or meeting of persons not being a peace officer of this City and

without lawful authority; or

- d. Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

(2) Engages with at least one other person in a course of disorderly conduct, as defined in subsection (f)(1) of this section, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm, and refuses or knowingly fails to obey an order to disperse, made by a peace officer to the participants.

**Section 6. Destroying or damaging property or injuring another person.**

(a) During a state of emergency, any person who maliciously destroys or damages any real or personal property or maliciously injures another person shall be guilty of an offense.

(b) Any person 16 years of age or over, who violates the provisions of this section, shall be prosecuted as an adult.

(c) A person is guilty of an offense under this section committed by another person when:

(1) Acting with the state of mind that is sufficient for commission of the offense, he causes an innocent or irresponsible person to engage in conduct constituting the offense; or

(2) Intending to promote or facilitate the commission of the offense he:

- a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or
- b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or
- c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.

(d) In any prosecution for an offense under this section in which the criminal liability of the accused is based upon the conduct of another person pursuant to this section, it is no defense that:

(1) The other person is not guilty of the offense in question because of unawareness of the criminal nature of the conduct in question or of the accused's criminal purpose, or because of other

factors precluding the mental state required for the commission of the offense; or

(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question, or has previously been acquitted thereof, or has been convicted of a different offense or in a different degree, or has legal immunity from prosecution for the conduct in question.

**Section 7. Entry into the scene of emergency; refusal to leave; areas of quarantine.**

(a) Any person entering an area declared by Marietta to be the scene of an emergency, which area contains a continuing threat to human life and health, when said person is not a part of the organized rescue efforts controlled by the City of Marietta or the State of Oklahoma or the United States Government, shall be guilty of an offense unless said person is carrying a pass issued by appropriate governmental authority and performing tasks authorized or permitted by said governmental authority.

(b) After being instructed to leave by authorized emergency personnel, any person refusing to leave an area declared by Marietta to be the site of an emergency which contains an ongoing threat to human life or health shall be guilty of an offense.

(c) Any person attempting to leave an area which has been declared by Marietta to be an area of quarantine containing an ongoing threat to human life and health through the spread of contagion, infection, or contamination, shall be guilty of an offense.

**Section 8. Penalty.**

Any person convicted of an offense under this ordinance, or convicted of any violation of the lawful proclamations of the Mayor of the City of Marietta (or authorized designee) during a proclaimed state of emergency, shall be guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars and No Cents (\$500.00) plus costs. Each such violation and each day of a continuing violation shall be prosecutable as a separate offense.

**Section 9. Amendment of Section 2-174.**

Section 2-174 of the Code of Ordinances of the City of Marietta is amended as follows:

Sec. 2-174. Emergencies.

limited to conditions resulting from a sudden unexpected happening or unforeseen occurrence or condition and situation wherein the public health or safety is endangered. The reasons for declaring an emergency and not complying with the sections of this division relating to competitive bidding shall be entered into the official minutes of the City Council.

**Section 10. Repeal.**

Any ordinances and code provisions in conflict with the provisions of this ordinance are repealed.

**Section 11. Codification.**

Sections 1 through 8 of this ordinance shall be codified as Article VIII, Sections 70-400 to 70-407, respectively, under Chapter 70, which is titled "Offenses and Miscellaneous Provisions" of the Marietta City Code.

**Section 12. Emergency.**

It being immediately necessary for the preservation of the peace, health, safety and public good of the City of Marietta and the inhabitants thereof that the provisions of this ordinance be put into full force and effect, an emergency is declared to exist, and by reason of which this ordinance shall take effect and be in full force from and after the date provided herein as provided by law.

PASSED by the City Council the City Marietta, Oklahoma and SIGNED by the Mayor on this 20<sup>th</sup> day of March, 2020.

CITY OF MARIETTA:

  
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KIMBERLY FRAIRE, MAYOR

ATTEST:

  
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DOTTIE GWIN, CITY CLERK

