

**ORDINANCE NO. 201-062017**

**AN ORDINANCE OF THE CITY OF GARDEN RIDGE ESTABLISHING THE POSITION OF FIRE MARSHAL; AUTHORIZING THE DULY APPOINTED COMAL COUNTY FIRE MARSHAL TO PERFORM THE DUTIES OF FIRE MARSHALL ON BEHALF OF THE CITY OF GARDEN RIDGE; GRANTING THE COMAL COUNTY FIRE MARSHAL THE POWERS, RIGHTS AND PRIVILEGE OF FIRE MARSHALL; ADOPTING THE COMAL COUNTY FIRE CODE, AS AMENDED; PROVIDING FOR SEVERABILITY; PROVIDING A REPEALER CLAUSE AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, City of Garden Ridge, pursuant to Chapter 22 of the Texas Local Government Code may appoint municipal officers; and,

**WHEREAS**, the City of Garden Ridge does not currently have an appointed Fire Marshal serving the needs of the community; and,

**WHEREAS**, the City Council has determined that for the purpose of promoting the health, safety, welfare and protection of property within the City it is necessary to adopt and provide enforcement regulations regarding fire safety; and,

**WHEREAS**, the City Council has determined that Section 233.061 (b), of the Texas Local Government Code authorizes the County to enter into an agreement to provide Fire Marshall services to the City pursuant to and under provisions of Chapter 791, Texas Government Code, authorizing interlocal agreements; and,

**WHEREAS**, the City and County have determined that it would be mutually advantageous to enter into an interlocal agreement for the enforcement of the Comal County Fire Code within the municipal boundaries of the City; and,

**WHEREAS**, the City Council finds that the adoption of the Comal County Fire Code, as amended, promotes uniform safety standards and fire-protection regulations;

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE, TEXAS:**

Section 1. The findings set out herein are found to be true and correct and are hereby adopted by the City Council and made a part of this Ordinance for all purposes.

Section 2. Creation of Office. In the interest of Fire Prevention and Fire Investigations, the office of Fire Marshal is hereby created pursuant to the Texas Local Government Code, Section 22.071 *et seq.* This office shall be independent of other City departments and the office shall have the powers, rights and privileges as those granted to the Comal County Fire Marshall.

Section 3. Job Summary. The Fire Marshal shall investigate, keep records of, and prosecute all fires and explosions or threats thereof within the City that damage or destroy property. The Fire Marshal shall also inspect for fire hazards and perform duties consistent with the services described in the Interlocal Agreement, attached as Exhibit A, and incorporated herein for all purposes.

Section 4. Duty to Enforce Laws. The Fire Marshall shall enforce all state, federal and local laws pertaining to fire investigation and fire protection.

Section 5. Right of Entry. The Fire Marshall shall have the authority to enter into any building or premises for the purpose of making inspections at any reasonable hour, pursuant to any provision of the Comal County Fire Code, as amended and any relevant City ordinance.

Section 6. Adoption of Fire Code. The Comal County Fire Code adopted May 8, 2008 and last amended on April 2, 2015 with an effective date of May 1, 2015, attached as Exhibit B, is hereby adopted and incorporated herein for all purposes. The provision shall be controlling within the corporate limits of the City of Garden Ridge.

Section 7. Severability Clause. That if any provision, word, sentence, paragraph, clause, phrase or section of this Ordinance or its application to any person or circumstances is adjudged or held invalid, void or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portions of this ordinance which shall remain in full force and effect.

Section 8. Repealing Clause. All provisions in conflict with the provisions of this Ordinance shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of the Ordinance shall remain in full force and effect.

Section 9. Effective Date. This ordinance shall be effective upon passage, approval and publication as provided by law.

PASSED AND APPROVED, the 7<sup>th</sup> day of June, 2017.

  
\_\_\_\_\_  
LARRY THOMPSON, MAYOR

ATTEST:


  
\_\_\_\_\_  
SHELLEY GOODWIN, CITY SECRETARY

EXHIBIT A

INTERLOCAL AGREEMENT WITH COMAL COUNTY

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**INTERLOCAL COOPERATION AGREEMENT  
BETWEEN COMAL COUNTY AND  
THE CITY OF GARDEN RIDGE FOR  
FIRE CODE ENFORCEMENT**

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This Interlocal Agreement is entered into between Comal County, Texas, a political subdivision of the State of Texas (“County”) and the City of Garden Ridge, a general law municipality located in Comal County, Texas (“City”).

**WHEREAS**, City desires to enter into this Agreement with County for fire code enforcement services; and

**WHEREAS**, City and County have each determined that it would be mutually advantageous for County to enforce the Comal County Fire Code within the municipal boundaries of City; and

**WHEREAS**, County is authorized to provide the services described in this Agreement and to enter into an exclusive agreement with City for the service by Section 233.061 (b), Texas Local Government Code; and

**WHEREAS**, this Agreement is made pursuant to and under the provision of Chapter 791, Texas Government Code.

**NOW THEREFORE**, in consideration of the mutual promises and covenants given and the mutual benefits received, which is hereby acknowledged by Comal County and the City of Garden Ridge, the parties agree as follows:

**ARTICLE 1 – PURPOSE AND OBJECTIVE**

The purpose of this Agreement is to define the terms under which the County will provide fire code enforcement services to the City of Garden Ridge.

**ARTICLE 2 – TERM AND TERMINATION**

This Agreement begins on the date when it has been executed by both parties and shall be effective for a term of one (1) year. This Agreement may be terminated for any reason at any time by either party upon ninety (90) days written notice to the other party.

**ARTICLE 3 – RESPONSIBILITY OF CITY**

3.1 **Exclusive Provider:** City grants County the exclusive right to provide the services described in this Agreement within the City of Garden Ridge.

- 3.2 **Creation of Fire Marshal's Authority:** Prior to or concurrent with the approval and execution of this Agreement, City shall pass whatever ordinances, orders, rules, or resolutions may be necessary under its governing documents to give the same powers, rights, and privileges to the Comal County Fire Marshal ("Fire Marshal") that the Fire Marshal would have as a designated department of the City. Despite this authority, employees of the Office of the Fire Marshal are not employees of City and work solely for County.
- 3.3 **Adoption of Comal County Fire Code:** Prior to or concurrent with the approval and execution of this Agreement, City shall pass an ordinance, order, rule or resolution adopting the Comal County Fire Code in City of Garden Ridge. If the Comal County Commissioners Court amends, revises, or replaces the Comal County Fire Code, City Council shall pass an ordinance, order rule or resolution adopting the amended revised or replaced Comal County Fire Code in City of Garden Ridge within thirty (30) days after the Commissioners Court takes its action.
- 3.4 **Copies of Ordinance, Rule or Resolution:** Prior to or concurrent with the approval of this Agreement, City shall provide County with copies of all ordinances, orders, rules and resolutions initially passed pursuant to this Agreement. Within thirty (30) days after City Council approves an ordinance, order, rule or resolution adopting the amended, revised or replaced Comal County Fire Code, City shall provide County with copies of the ordinances, orders, rules and resolutions adopting the amended, revised or replaced Comal County Fire Code.
- 3.5 **Establishment of Fees:** City authorizes Commissioners Court to set permit fees in the City of Garden Ridge at the same amount as fees for the unincorporated areas of Comal County set by Commissioners Court as amended from time to time. The initial fees are listed in Attachment A. County may change fees charged under this Agreement at any time.
- 3.6 **Payment for Services:** City assigns to County its right to receive any permit fees to be paid by applicants for permits under the Comal County Fire Code related to the construction of buildings and any fees payable for any inspections or services provided under this Agreement. City authorizes all applicants to pay the permit fees directly to the County through the Office of the Fire Marshal in accordance with the procedures established by County from time to time. City authorizes all establishments seeking other services under this Agreement to pay the applicable fees directly to the County through the Office of the Fire Marshal in accordance with the procedures established by County from time to time.
- 3.7 **Fire Code Inspection:** For Fire Code Inspections under this Agreement, City designates the Fire Marshal to receive information for administering the provisions of and prosecuting violations of the Comal County Fire Code. The procedures for requests for hearings and for actions taken as a result of those hearings are set forth in the Comal County Fire Code. City authorizes County to take whatever action is necessary to enforce

the Comal County Fire Code, including imposing any related penalties described in it, within the limits imposed by applicable law.

- 3.8 **Fire Regulation Inspection:** For Fire Regulation Inspections under this Agreement, City designates the Fire Marshal to receive information for prosecuting violations of any applicable federal, state and local rules or regulations related to fire control and prevention and establishing the requirement for annual permits and fees. City authorizes County to take whatever action is necessary to enforce the applicable rules, including any related penalties described in the other applicable federal, state and local rules or regulations related to fire control and prevention and establishing the requirement for annual permits and fees, within the limits imposed by applicable law.
- 3.9 **Legal Action:** In any civil legal action which is required as a result of the services provided under this Agreement, City Attorney is responsible for judicial prosecution of violations of the applicable Comal County Fire Code and any applicable federal, state and local rules or regulations related to fire control and prevention and establishing the requirement for annual permits and fees. Prosecution of all violations of the applicable federal, state and local rules or regulations related to fire control and prevention and establishing the requirement for annual permits and fees shall be brought in the Court of competent jurisdiction as set forth in those federal, state and local rules or regulations.
- 3.10 **Current Revenue:** City shall pay for its obligations under this Interlocal Agreement from current revenue funds available to City.
- 3.11 **Compliance with Laws:** City shall comply with all applicable laws, rules and regulations in performance of this agreement.

#### ARTICLE 4 – RESPONSIBILITIES OF COUNTY

- 4.1 **Enforcement of Comal County Fire Code:** To the extent allowed by law and this Agreement, County shall administer and enforce the Comal County Fire Code and carry out the following services related to it in City of Garden Ridge:
- 4.1.1 review plans of applicants for permits under the Comal County Fire Code,
  - 4.1.2 issue building permits under the Comal County Fire Code, and
  - 4.1.3 perform inspections of installations required by the Comal County Fire Code, and
  - 4.1.4 the investigation of complaints and the inspection of establishments upon receipt of requests or complaints about non-compliance with the Comal County Fire Code made to City, with City then contacting the Fire Marshal's Office, including all follow-up necessary to insure compliance with it.
- 4.2 **Complaint Investigation:** County shall investigate Comal County Fire Code complaints and complaints about violations of any other applicable federal, state and local rules or

regulations related to fire control and prevention that are made directly to City, with City then contacting the Fire Marshal's Office. If the investigations of a complaint reveal a violation of the Comal County Fire Code or any other applicable federal, state and local rules or regulations related to fire control and prevention, County shall enforce these legal requirements to the extent allowed by law, except that County's enforcement shall not include condemnation of buildings, enforcement of zoning ordinances, or enforcement of flood plain ordinances.

- 4.3 **Other Permit Inspections:** County shall routinely inspect establishments for compliance with any applicable federal, state and local rules or regulations that establish the requirement for permits and fees pursuant to those rules or regulations. These inspections include all follow-up necessary to insure compliance with the applicable federal, state and local rules or regulations. Routine inspections may be either inspection prior to and as part of both the initial state licensing process and all renewals of the state license or the annual inspection and all follow-up necessary to insure compliance with state rules and regulations.
- 4.4 **Credit for Fees:** County may perform any reasonable activities necessary to collect fees for services provided. County may retain all fees collected.
- 4.5 **Current Revenue:** County shall pay for its obligations under this Interlocal Agreement from current revenue funds.
- 4.6 **Compliance with Laws:** County shall comply with all applicable laws, rules and regulations in the performance of this agreement.

**ARTICLE 5 – MISCELLANEOUS**

- 5.1 **Notice:** Any notice required under the provisions of this Agreement shall be in writing and delivered in person or deposited in the United States Mail, registered or certified, return receipt requested. Any such notice must be addressed to the following addresses. Any notice shall be deemed received three days after the date of deposit in the United States Mail, unless proof is offered to the contrary. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

<p><u>COMAL COUNTY:</u>          Comal County Judge          150 N. Seguin Ave.          New Braunfels, Texas 78130  <b>With a copy to:</b>          Comal County Fire Marshal          145 David Jonas Drive          New Braunfels, Texas 78132</p>	<p><u>CITY OF GARDEN RIDGE:</u>          City Administrator          9400 Municipal Parkway          Garden Ridge, Texas 78266  <b>With a copy to:</b></p>
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- 5.2 **Amendment:** This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the parties hereto.

- 5.3 **Binding Agreement:** This Agreement has been duly executed and delivered by both parties and constitutes a legal, valid and binding obligation of the parties. Each person executing this Agreement on behalf of each party represents and warrants that they have full right and authority to enter into this Agreement.
- 5.4 **Severability:** In the event that one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
- 5.5 **Limits of Liability:** Both City and County shall be responsible for the acts or failure to act of their respective employees, agents or servants, provided, however, their responsibility shall be subject to the terms, provisions, and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.
- 5.6 **Immunity:** No provision of this agreement shall affect or waive any sovereign or governmental immunity available to either party and/or its elected officials, officers, employees and agents under Federal or Texas law nor waive any defenses or remedies at law available to either party and/or its elected officials, officers, employees and agents under Federal or Texas law.
- 5.7 **Venue:** This agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Exclusive venue shall be in a court of competent jurisdiction in Comal County, Texas.
- 5.8 **Third Party Rights Not Created:** This agreement is not intended and shall not be construed to create any rights or remedies in any person or legal entity that is not a party to it.
- 5.9 **Joint Venture and Agency:** The relationship between the parties to this Agreement does not create a partnership or joint venture between the parties. This Agreement does not appoint any party as agent for the other party.
- 5.10 **Headings:** The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions herein.
- 5.11 **Entire Agreement:** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement will be of no force or effect excepting a subsequent written modification executed by both parties.



<p>COMAL COUNTY, TEXAS:</p> <p>_____, 2017</p>	<p>CITY OF GARDEN RIDGE, TEXAS:</p> <p>June 7, 2017</p>
<p>_____  COUNTY JUDGE, SHERMAN KRAUSE</p>	<p>_____  MAYOR, LARRY THOMPSON</p>
<p>_____  ATTEST: COMAL COUNTY CLERK  BOBBIE KOEPP</p>	<p>_____  ATTEST: CITY SECRETARY  SHELLEY GOODWIN</p>

EXHIBIT B

2015 INTERNATIONAL FIRE CODE