

ORDINANCE NO. 2012-002

AN ORDINANCE OF THE KEY LARGO FIRE RESCUE AND EMERGENCY MEDICAL SERVICES DISTRICT RELATING TO OPEN BURNING; PROVIDING FOR RECITALS; PROVIDING FOR DECLARATION AND INTENT; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITIONS; PROVIDING FOR LIMITATIONS; PROVIDING FOR OPEN BURNING ALLOWED WITHIN DISTRICT; PROVIDING FOR ENFORCEMENT; PROVIDING FOR FEES, FINES AND PENALTIES; PROVIDING FOR SCHEDULE OF FEES; PROVIDING FOR ISSUANCE OF FEE ASSESSMENT; PROVIDING FOR FAILURE TO PAY; PROVIDING FOR APPEAL PROCEDURE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the Key Largo Fire Rescue and Emergency Medical Services District (the "District") is a legally established Independent Special Fire District under Florida Statutes (FS) 189 and 191, and under Laws of Florida 2005-329 (House Bill No. 1291);

WHEREAS, the District is authorized under FS 191.006(5) to adopt ordinances and resolutions that are necessary to conduct District business so long as the ordinance does not conflict with a Monroe County, Florida, ordinance; and

WHEREAS, no Monroe County, Florida, ordinance exists that would directly conflict with an ordinance addressing the open burning of materials outdoors; and

WHEREAS, the District is authorized under FS 191 and Laws of Florida 2005-329 (House Bill No. 1291) Section 7 to assess and collect user fees.

WHEREAS, the District finds that adopting an open burning ordinance to control outdoor burning for public safety and to assess and collect user fees to limit expenses to the District for extinguishing burning adverse to public is necessary for conducting District business.

NOW THEREFORE, BE IT ORDAINED BY THE KEY LARGO FIRE RESCUE AND EMERGENCY MEDICAL SERVICES

DISTRICT AS FOLLOWS:

Section 1. **Recitals.**

The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Declaration and Intent.**

The District finds and declares that the open burning of materials outdoors may result in or contribute to air pollution and may cause hazards to public safety. The District finds that regulation of open burning will reduce both air pollution and public safety hazards significantly. It is the intent of the District to require that open burning be conducted in a manner, under conditions and within certain periods, that will reduce or eliminate the deleterious and noisome effect of air pollution and other hazards caused by open burning. The District further finds that extinguishing open burns which are adverse to the public safety imposes economic costs upon the District and that those costs should be borne by the person(s) responsible for such open burns.

Section 3. **Areas Embraced.**

All territory described as those lands on the island of Key Largo, in Monroe County, to wit:

All of Cross Key and that part of Key Largo from South Bay Harbor Drive and Lobster Lane to the southern boundary of the right-of-way County Roads 905 and 905-A.

Section 4. Definitions.

The following phrases or terms when used in this ordinance shall, unless the content otherwise indicates, have the following meanings:

- (a) Extinguished: No visible flame, coals, smoke, or emissions exist.
- (b) Fire Department: The Key Largo Volunteer Fire Rescue Department which is an independent contractor for the District or whatever entity is providing fire protection services for the District at that time as an independent contractor.
- (c) Fire Pit: A structure made of ceramic, metal, or other such material which sits at least six (6) inches off the ground and is covered by screening or mesh designed to contain sparks that might otherwise escape and spread new fires.
- ~~(d)~~ Nuisance: A nuisance is the unreasonable, unwarrantable, or unlawful use by a person of his own property, either real or personal, or from his/her own improper, indecent, or unlawful personal conduct, to include open burning, that works an obstruction of or injury to the right of another or of the public.
- ~~(d)~~(e) Open Burning: The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the outdoor atmosphere without passing through a stack or chimney.
- ~~(e)~~(f) Sunset: The official time the sun will set as set forth by the U.S. Naval Observatory (tables are available at national Weather Service offices and on the internet at www.usno.navy.mil).

~~(f)~~(g) Trash: Waste materials resulting from the construction, renovation or demolition of a structure and other debris such as paper, cardboard, packing material, pharmaceuticals, cloth, glass, street sweepings, vehicle tires and other like matter.

Trash is not synonymous with yard waste.

~~(g)~~(h) Treated Wood: Wood coated or infused with paint, glue, filler, pentachlorophenol, creosote, tar, asphalt, chromated copper arsenate (CCA), or other wood preservatives or treatments.

~~(h)~~(i) Yard Waste: Vegetative matter resulting from landscaping and yard maintenance operations and other such routine property cleanup activities. It includes, but is not limited to, materials such as leaves, shrub trimmings, brush and palm fronds.

Section 5. Prohibitions.

(a) All open burning is prohibited within the Key Largo Fire & EMS District except as specifically allowed pursuant to this regulation as specified in Section 7. No person shall ignite, cause to be ignited, permit to be ignited, suffer, allow, burn, conduct or maintain any open burning which is not permitted pursuant to this ordinance. The Fire Department may extinguish or cause to be extinguished any fire that is unauthorized or which does not comply with this regulation. Any person responsible for unlawful open burning shall be charged a user fee as set forth below.

(b) Any and all prohibitions specified in Chapter 62-256 and Chapter 51-2 of the Florida Administrative Code (F.A.C.) are included by reference in this regulation.

(c) No open burning may be conducted, including those burns specified in Section 7 below and burn permitted by the Florida Forest Service, during a National Weather Service Air Stagnation Advisory, a Florida Department of Environmental

Protection Air Stagnation Advisory or a local air pollution advisory, or if the appropriate authorities determine that weather conditions are unfavorable for proper, safe, open burning.

(d) The burning of treated wood, paper, trash, rubber materials, tires, pesticides, paint, aerosol containers, or other waste material is prohibited.

(e) A permit may be granted by the Florida Department of Forestry for certain open burning activities.

Section 6. Limitations.

Nothing in this ordinance may be construed to allow open burning which causes or constitutes a hazard to air traffic which artificially reduces visibility on public roadways to less than one thousand (1,000) feet, or which violates other laws, rules, regulations, or ordinances.

Section 7. Open Burning Allowed Within District

(a) This ordinance does not prohibit the use of grills, camp stoves or similar devices designed for cooking, fueled by LP gas, butane, naphthalene or other liquid fuel and which are not used to burn yard waste or other material.

(b) This ordinance does not prohibit the use of manufactured fire pits, but such fire pits are limited to using clean burning charcoal, coal, manufactured fire logs or untreated dry wood as fuels. Fire Pits must be covered with screening or mesh. The burning of treated wood, paper, trash, rubber materials, tires, pesticides, paint, aerosol containers, or other waste material is prohibited. The burning shall be attended at all times and adequate means of extinguishing the open burn shall be present.

(c) This ordinance does not prohibit recreational or ceremonial fires which meet the following criteria:

- (1) The fire shall be no larger than three (3) feet in diameter;
- (2) The fire shall be no taller than two (2) feet in height;
- (3) The fire shall be at least twenty-five (25) feet from all combustible structures (houses, fences, sheds, garages,

wooden decks, and similar structures), except that pre-manufactured self-contained fire pits may be used less than twenty-five feet from structures, but must be used in accordance with labeling from the manufacturer and are attended at all times and an adequate means of extinguishing the fire shall be present;

- (4) The fire shall be conducted on non-combustible surfaces;
- (5) The fire shall be attended at all times;
- (6) The burning of treated wood, paper, trash, rubber materials, tires, pesticides, paint, aerosol containers, or

other waste material is prohibited.

- (7) Adequate means of extinguishing the fire shall be present;
- (8) The fire shall be attended at all times;
- (9) The fire, resulting smoke, or noxious odor shall not create a nuisance; and
- (10) A fire shall not be conducted during high winds.

(d) Yard Waste may be burned so long as:

- (1) The yard waste was generated on the property of the person responsible for the burning;
- (2) The yard waste will fit in and not be larger than an 8 ft diameter pile or non-combustible container;
- (3) The fire is ignited after 9:00 AM Eastern Time and is extinguished one hour before sunset;

- (4) The burning is not a hazard or nuisance;
- (5) The burning is at least fifty (50) feet from any paved road;
- (6) The burning is at least one hundred and fifty (150) feet from any occupied building other than that owned

or leased by the individual responsible for the burning;

- (7) The burning is at least twenty-five (25) feet from any wildlands, brush, or combustible structure;
- (8) The burning is at least fifty (50) feet from the house of the person responsible for the burning;
- (9) The area around the pile must be cleared down to the bare soil to prevent the fire from spreading;
- (10) The burning shall be attended at all times;
- (11) Adequate means of extinguishing the open burn shall be present.
- (12) The moisture content and composition of material to be burned is favorable to good burning which will

minimize smoke.

(e) A natural disaster emergency burn will be approved by the Monroe County Fire Marshall in accordance with Rule 62-256.700(8), F.A.C., when it is deemed necessary by the Fire Department.

(f) Fires to abate a fire hazard may be allowed, providing a hazard is declared by the local fire district, and the fire could not have been classified as a fire department training burn.

(g) Fires for the prevention or control of disease or pests may be approved by the Monroe County Fire Marshall.

- (h) Open Burning shall be allowed for the instruction and training of firefighters.
- (i) Open Burning shall only be allowed pursuant to Section 7 paragraphs (a) through (h) if such burning does not create a nuisance. The Key Largo Fire Rescue and Emergency Medical Services District, shall have final say as to what constitutes a nuisance. Upon complaint or order from the Fire Department, any fire must be extinguished. Notwithstanding that the fire or other open burning may comply with the requirements in this Ordinance, in the event of dry weather conditions, the Department will have the authority to extinguish, or require the extinguishment of an open burn if in the Department determines that it poses a potential hazard.

(j)

Section 8. **Enforcement**

The Fire Department shall have authority to enter upon the premises where such burning is taking place and enforce this ordinance. The Fire Department shall have the authority to either require the extinguishment of any fire not in compliance with this ordinance or which, in the opinion of the Fire Personnel present, creates a threat to public health or safety, or they may extinguish the fire themselves. Further, the District shall have the authority to assess a user fee for time and extinguishment by the Fire Department.

Section 9 **Fees, Fines and Penalties.**

Any person violating any of the provisions of this ordinance shall be liable for all damages caused by such violation, which damages shall be recoverable in any court of competent jurisdiction. The civil liability shall obtain whether there be criminal prosecution and conviction or not. The liability for the costs of suppression shall extend to the person, firm or corporation causing, directing or permitting the activity as well as to the actual violator.

Section 10. **Schedule of Fees**

Fees are per each violation. The period is determined on the basis of the date of violation(s). The fee is determined by time spent correcting the violation. No individual fee shall exceed \$ 1,000.00 The fees are as follows:

1. First offense within a one year period- Warning.
2. Second offense within a one year period - \$ 125.00 per hour.
3. Third offense within a one year period - \$ 250.00 per hour.
4. Fourth and subsequent offense within a one year period - \$ 400.00 per hour.

Section 11. **Issuance of Fee Assessment**

The fee assessment shall be issued by the District, who shall send by Certified U.S. Mail to the violator a fee assessment for the violation. The violator shall be responsible for paying the fee assessment to the District within thirty (30) days of receipt of the fee assessment. The fee shall be mailed to:

KLFR & EMS District

P.O. Box 371023
Key Largo, FL 33037-1023

Section 12: **Failure to Pay**

In addition to the fees set forth in Section 10, if any violator refuses to pay or fails to pay within thirty (30) days of the fee assessment, the violator will be deemed to have further violated this Ordinance and will incur an additional fee of not less than \$25.00 nor more than \$500.00 for each offense plus all legal fees and all costs caused by enforcement. The District is entitled to have a lien upon any real property, motor vehicle, marine vessel, aircraft, or rail car for any charge assessed under Florida Statute Section 191.009.

Section 13. **Appeal Procedure**

All violators who are assessed fees in accordance with this ordinance shall have the right to an appeal of their fee by the District in accordance with the informal appeal procedure established below:

(a) **Step One:** The violator may appeal the assessment of fees by notifying the District in writing within fifteen (15) days of receipt of notice of fees that such fee is being appealed, briefly stating why the fee is not proper. Proper notification shall stay the imposition of a fee until a decision is made by the District.

(b) **Step Two:** The District shall consider the written appeal along with the circumstances surrounding the issuance of the fee and render a decision. The District shall send by Certified U.S. Mail the District's decision.

(c) Step Three: If the District affirms the issuance of the fee, the violator shall be responsible for paying the fee assessment to the District within thirty (30) days of receipt of the decision.

Section 14. **Severability.**

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 15. **Repeal of Conflicting Provisions.**

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

Section 16. **Effective Date.**

This Ordinance shall be effective on the date of the adoption of this Ordinance.

REMAINING BALANCE INTENTIONALLY LEFT BLANK

PASSED AND ADOPTED by the Key Largo Fire Rescue and Emergency Medical Services District at a regular meeting of the

Board of Commissioners held on the ____ day of _____ 2017.

Tony Allen, Chairman

ATTEST:

Vicky Fay, Clerk

APPROVED AS TO FORM
FOR THE USE AND BENEFIT OF THE
KEY LARGO FIRE RESCUE AND EMERGENCY
MEDICAL SERVICES DISTRICT

District Attorney