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Introduction Date: June 11, 2019
Public Hearing Dates: June 11, 2019
July 9, 2019
Enactment Date:

**CITY OF MARATHON, FLORIDA
ORDINANCE NO. 2019-11**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 18-125 OF THE CITY CODE REGARDING CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND FOR POSSESSION OF DRUG PARAPHERNALIA; CLARIFYING THE CITATION PROCEDURE; ESTABLISHING A NEW PROCEDURE TO CONTEST A CITATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on April 26, 2016, the City Council of the City of Marathon (the “City Council”) enacted Ordinance No. 2016-04, which gave law enforcement officers the option of issuing city ordinance code violation to a person in possession of less than 20 grams of marijuana; and

WHEREAS, Ordinance 2016-04 has been codified into the City Code of Ordinances (the “City Code”) at Section 18-125; and

WHEREAS, Marathon City Code Section 18-125, *Offenses under state law; Prohibited*, sets forth provisions governing the issuance of a civil citation for possession of less than 20 grams of marijuana; and

WHEREAS, the City Council finds that Marathon City Code Section 18-125 needs clarification to permit law enforcement officers to issue the citations; and

WHEREAS, the City Council finds that Marathon City Code Section 18-125 needs clarification for citizens to understand the procedures used if a civil citation is issued; and

WHEREAS, the City Council finds that Marathon City Code Section 18-125 needs clarification in the procedure the Clerk of the Circuit Court of Monroe County will utilize in processing the citation; and

WHEREAS, the City Council finds that Marathon City Code Section 18-125 needs to be amended to add that that a citation may be referred to the Office of the State Attorney for possible criminal prosecution should the person fail to act on the citation; and

WHEREAS, the City Council finds that Marathon City Code Section 18-125 needs to be amended to update the minimum and maximum fines to be assessed for the citation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Section 18-125 entitled “Offenses under state law; Prohibited.” is hereby amended to read as follows:

Sec 18-125. Offenses under state law; Prohibited.

- (a) It shall be unlawful within the City, for any person to commit any act or fail to perform any duty, the commission of which, or the failure of which, constitutes a misdemeanor under the laws of the State of Florida.
- (b) Whoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is provided by the laws of the State.
- (c) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - (1) Adult shall mean any person 18 years of age or older.
 - (2) Cannabis shall mean all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "low-THC cannabis," as defined in F.S. § 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with F.S. § 381.986.
 - (3) Clerk shall mean the Clerk of the Circuit Court of Monroe County, Florida.
 - (4) Drug paraphernalia shall have the same meaning as that term has been defined in F.S. § 893.145. In determining whether an object is drug paraphernalia, a court or other authority or jury shall consider, in addition to all other logically relevant factors, the factors identified in F.S. § 893.146.
 - (5) Marijuana shall have the same meaning as the term "cannabis."

~~(c)~~(d) Notwithstanding subsection (a) the following misdemeanors under State law are

eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence, incident involving domestic violence, or violent crime, as those terms are defined under State law.

(1) Possession of Marijuana Cannabis in an amount of twenty (20) grams or less, as set forth in section 893.13(6) (b) of Florida Statutes, as such may be amended from time to time; and/or

(2) Possession of Drug Paraphernalia, as set forth in Section 893.146 and 893.147(1) (b) of Florida Statutes, as such may be amended from time to time.

(3) Penalties and enforcement.

(a) A person violating subsection ~~(e)(d)~~(1) or ~~(e)(d)~~(2) shall receive a civil fine of ~~One Hundred Dollars (\$100.00) for first time violators and Two Hundred Fifty Dollars (\$250.00) for repeat violations within a one (1) year period.~~ in the amount of at least \$105.00 but not to exceed \$500.00.

(b) Enforcement. The Monroe County Sheriff's Office shall enforce this section within the City. This shall not preclude other law enforcement agencies from any action to assure with this section and all applicable laws. If a police officer finds a violation of ~~(e)(d)~~(1) or ~~(e)(d)~~(2), the police officer will be authorized to issue a civil citation. The citation shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, ~~instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before the code compliance board within ten (10) days after service of the citations, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.~~ and contain at least the following:

- i. The date and time of issuance;
- ii. The name and address of the person to whom the citation was issued;
- iii. The date on which the infraction occurred;
- iv. The name and title of the law enforcement officer;
- v. The procedure to pay the penalty or to contest the citation;
- vi. The applicable penalty if the citation is contested;
- vii. A conspicuous statement that the violation may be contested by requesting to appear before a county court judge, and that if the violator fails to pay the fine or fails to schedule an appearance to contest before a county court judge, the Clerk

shall refer the matter to the Office of the State Attorney for possible criminal prosecution.

- (c) Rights of violators; Payment of fine; Right to appear; Failure to pay civil fine or to appeal; ~~Appeals from decisions of the special magistrate.~~
- i. A violator who has been served with a civil citation under this Section must elect to either:
 - a. pay the civil fine in the manner indicated on the citation; The minimum penalty for a violation shall be a fine in the amount of at least \$105.00 but not to exceed \$500.00; or
 - ~~b. request an administrative hearing before the code compliance board to appeal the citation, which must be requested within ten (10) days of the service of the citation.~~
 - b. contact the Clerk to schedule a court hearing within thirty (30) days of the issuance of the citation to contest the citation.
 - ii. ~~The procedures for appeal by administrative hearing of the citation shall be as set forth in this section and section 10-8 of the City Code. Applications for hearings must be accompanied by a Fifty Dollar (\$50.00) administrative fee, which shall be refunded if the named violator prevails in the appeal.~~
 - iii. ~~If the named violator, after issuance of the civil citation, fails to pay the civil fine, or fails to timely request an administrative hearing before the code compliance board, the City's code director may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the code compliance board, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.~~
 - iv. ~~A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator,~~

~~which may be enforced in the same manner as a court judgement by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgement except for enforcement purposes. On or after the sixty first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.~~

- v. ~~Any party aggrieved by a decision of the code compliance board may appeal that decision to a court of competent jurisdiction.~~
- vi. ~~The code compliance board shall be prohibited from hearing the merits of the citation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the citation.~~
- vii. ~~The code compliance board shall not have discretion to alter the penalties described herein.~~
- ii. Uncontested citation. If the person cited does not contest the citation, the penalty shall be \$105.00, which shall be paid within (30 days) of the issuance of the citation, by U.S. Mail or in person at the Clerk's office. The Clerk is authorized to establish procedures for accepting payment by mail for uncontested citations.
- iii. Contested citation. If the person contests the citation he shall, within thirty (30) days of the issuance of the citation, contact the Clerk to schedule a court hearing. The Clerk shall provide a court date for the person cited and to the issuing office to appear before a county court judge. After a hearing, if the Court finds that a violation of this provision has occurred, fines up to \$500, plus court costs, may be imposed by the court. The Court may make a finding that the person cited has an inability to pay the citation and may order court supervised community service in lieu of the fine.
- iv. Referral to the Office of the State Attorney. If the named violator fails to pay the civil fine, or fails to contact the Clerk to schedule a court hearing to contest the citation, the Clerk shall refer the matter to the Office of the State Attorney to forward the citation to the Office of the State Attorney to review for possible criminal prosecution for failure to comply, which may result in a fine not to exceed \$500 or

by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.

v. Inability to pay uncontested citation. If the person cited has an inability to pay the minimum fine amount, the person cited shall follow the procedure described in subsection (iii) above.

d. Applicability. Juvenile offenders are not eligible to be charged under this section.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is 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 4. Repeal of Conflicting Provisions. The provisions of the Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9th DAY OF JULY, 2019.

Mayor John Bartus

ATTEST:

Diane Clavier, City Clerk

Approved As To Form and Legality for the Use and Reliance of the City Of Marathon Only

David Migut, City Attorney