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**CITY OF MARATHON, FLORIDA
RESOLUTION 2020 - 43**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING THE ENFORCEMENT OF TRESPASS OFFENSES ON CITY PROPERTY, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order No. 20-52, declaring a State of Emergency for the State of Florida related to COVID-19; and

WHEREAS, Florida Statute § 252.38(2) authorizes municipalities like the City of Marathon to establish local emergency management programs; and

WHEREAS, on April 1, 2020, the Governor of Florida issued Executive Order 20-91 requiring all persons in Florida to limit their movements and personal interactions outside their home to only those necessary to obtain or provide essential services or conduct essential activities; and

WHEREAS, state and local officials from Miami-Dade, Broward and Palm Beach Counties have recognized that those three counties have seen the gravest infection rates in the State of Florida; and

WHEREAS, according to representatives of the Monroe County Tourist Development Council, much of the summer tourism market in the Keys stems from residents of Miami-Dade, Broward and Palm Beach counties; and

WHEREAS, the City of Marathon Council finds that it is in the best interest of public health, safety and welfare of the residents, workers, and visitors of the Florida Keys to restrict public access to certain City property; and

WHEREAS, the Courts have held that in order to satisfy the Due Process Clause of the United States Constitution, a government entity must provide persons trespassed from public property notice and an opportunity for a hearing at a meaningful time and in a meaningful manner; and

WHEREAS, the City of Marathon Council wishes to provide a formal procedure so as to provide notice to persons who may be subject to trespass from certain City property whose access is closed or restricted due to COVID-19 and to protect the due process rights of those individuals who have been subject to such trespass; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

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

Section 2. *Authorization to Issue Trespass Warnings*

(a) Scope: for purposes of this resolution, the term “City Property” shall mean any parcel of property owned or leased by the City of Marathon, including but not limited to government centers, vacant parcels, parks, and beaches. The term “City Property” does not include a right-of-way owned or maintained by the City of Marathon

(b) The City of Marathon hereby authorizes the City Manager, or any City employee designated by the City Manager or City Council to have control or supervision over a City Property to issue a trespass warning to any individual who violates any ordinance, rule, regulation or directive approved and adopted by the City of Marathon Council if said violation is committed while on or within City Property. Said trespass warning shall be limited to the specific City Property where the violation occurred.

(c) When no City employee listed in Section 2(b) of this Resolution is present at City Property, the Monroe County Sheriff and his deputies, or any state or municipal law enforcement officer present, is authorized to issue a trespass warning to any individual who violates any ordinance, rule, regulation or directive approved and adopted by the City of Marathon Council if said violation is committed while on or within City Property. Said trespass warning shall be limited to the specific City Property where the violation occurred.

Section 3. *Trespass Warnings; Effect of Trespass Warnings*

(a) Trespass warnings shall be issued as follows:

(1) For the first violation, the individual may be issued a trespass warning for a period not to exceed ninety (90) days.

(2) For the second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed one (1) year.

(b) A copy of any trespass warning issued to a person in accordance with this resolution shall be provided by mail or hand delivery to the individual and shall advise of the right to appeal and the manner for filing the appeal, as set forth by this Resolution.

(c) Any person found on or within City Property in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.

Section 4. Appeal of Trespass Warning

(a) Any person to whom a trespass warning is issued under this section shall have the right to appeal as follows:

- (1) An appeal of the trespass warning must be filed, in writing, within five (5) business days of the issuance of the warning. Appeal filings must contain the appellant's name, address, and phone number, if any. No fee shall be charged for filing the appeal. The trespass warning shall remain in effect during the appeal and review process, including any judicial review.
- (2) The appeal shall be filed at the Offices of the City of Marathon, c/o [REDACTED], located at 9805 Overseas Highway, Marathon, FL 33050.
- (3) Appeals shall be heard by the **City Manager** or their designee.
- (4) Within five (5) business days following the filing of the appeal, the **City Manager** or his designee shall schedule a hearing. Notice of the hearing shall be provided to the appellant by:
 - a. Written notification, sent to an address provided by the individual in their appeal filing; or
 - b. If appellant cannot be reached by mail, posting the notice at the Offices of the City of Marathon
- (5) Upon receipt of an appeal, the **City Manager** or their designee shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven (7) days following the filing of the appeal and no later than fifteen (15) days from the filing of the appeal.
- (6) Copies of documents in the control or custody of the City of Marathon to be used at the hearing, and which directly relate to the issuance of the trespass warning, shall be made available to the appellant upon request at no cost.
- (7) At the hearing, the appellant shall have the right to testify, to call witnesses, to cross-examine witnesses, and to present evidence. At his or her own expense, the appellant shall have the right to attend the hearing with the representation of an attorney and may bring a court reporter.
- (8) The **City Manager** or their designee shall consider testimony, reports, and other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental principles of due process shall govern the proceedings. The City of Marathon shall bear the burden of proving that the trespass warning was properly issued by a preponderance of the evidence.

- (9) Within five (5) business days of the hearing, the **City Manager** or their designee shall issue a written decision on the appeal, which shall be mailed to the appellant at the address providing in their initial filing. If no address is provided, or appellant cannot be reached at the address provided, a copy of the decision shall be posted at the Offices of the City of Marathon located at 9805 Overseas Highway, Marathon, FL 33050.
- (10) The decision of the **City Manager** or their designee shall be final. Upon the issuance of a written decision on the appeal, appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review as provided for under Florida law.

Section 5. Severability If any portion of this Resolution is for any reason held invalid or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this Resolution. If this Resolution or any provision thereof is held to be inapplicable or invalid to any person, property or circumstances, such holding shall not affect its applicability to any person, property or circumstances.

Section 6. Effective Date This resolution shall take effect immediately upon its adoption, and shall remain in effect until overruled by act of the City of Marathon Council.

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PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 24TH DAY OF JULY, 2020.

THE CITY OF MARATHON, FLORIDA

Steve Cook, Mayor

Mayor Steve Cook _____
Vice-Mayor Louis Gonzalez _____
Councilman John Bartus _____
Councilman Mark Senmartin _____
Councilman Daniel Zieg _____

ATTEST:

Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:

Dirk M. Smits, B.C.S., City Attorney