

Sponsored By: Council

City Council Public Hearing Date: February 9, 2021

March 9, 2021

Enactment Date: March 9, 2021

**CITY OF MARATHON, FLORIDA
ORDINANCE 2021-09**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, ESTABLISHING A HYBRID CODE ENFORCEMENT SYSTEM UTILIZING A SPECIAL MAGISTRATE AND A CODE COMPLIANCE BOARD; AMENDING CHAPTER 10 (“CODE COMPLIANCE”) OF THE CODE OF ORDINANCES OF THE CITY OF MARATHON BY AMENDING SECTIONS 10-3, 10-4, 10-5, 10-6, 10-7, 10-8 AND 10-10; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the provisions of Chapter 162, Part I, Florida Statutes (F.S. § 162.01 et seq.) authorize the City of Marathon to create an alternate code enforcement system as provided herein; and

WHEREAS, the City has historically utilized a Code Compliance Board to hear alleged violations of the Marathon Code of Ordinances, but opted to use a Special Magistrate system on Jul 11, 2017; and

WHEREAS, the Marathon City Council has identified issues with the new Special Magistrate system and wishes to amend it such that a Code Compliance Board be established and made available to alleged violators in lieu of a hearing before the Special Magistrate; and

WHEREAS, it is in the best interest of the citizens of the City of Marathon to provide for these alternate code enforcement methods.

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

~~Strikethrough~~ = deletion

Bold underline = addition

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

SECTION 2. Chapter 10, Section 10-3 “Applicability” is hereby amended to read as follows:

Sec. 10-3. – Applicability.

Pursuant to Fla. Stat §162.03, the City may establish, by resolution, a code compliance system that shall provide for a Code Compliance Board and/or a Special Master.

SECTION 3. Chapter 10, Section 10-4 “Definitions” is hereby amended to read as follows:

Sec. 10-4. – Definitions.

For the purposes of this chapter and Fla. Stat. ch. 162, pt. I (Fla. Stat. § 162.01 et seq.) and pt. II (Fla. Stat. § 162.21 et seq.), the following terms, phrases, words, and their derivations shall have the meaning given herein.

Code means the City of Marathon, Florida, Code of Ordinances and adopted Ordinances, and any approval, development permit or order, or resolution issued pursuant to any provision of the Code.

Code Compliance Board means the Code Compliance Board of the City of Marathon, Florida, ~~which has been dissolved as of the effective date of the initial appointment of the Special Magistrate.~~

Code Compliance Officer means any authorized agent or employee of the City whose duty it is to ensure compliance with the Code.

Continuing violation means a violation which remains uncorrected beyond the time period for correction contained in either the notice of violation or the Final Order of the Code Compliance Board, whichever is applicable. Each day such violation continues shall be declared to constitute a continuing and separate violation and no additional notice shall be required.

Manager means the City Manager or designee.

Notice of violation means a violation notice issued to a violator. A notice of violation may include a citation issued pursuant to Fla. Stat. ch. 162, pt. II (Fla. Stat. § 162.21 et seq.).

Repeat violation means a violation of a provision of this Code by a person who has been previously found by the Code Compliance Board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding that the violations occur at different locations.

Special Magistrate means a person appointed pursuant to this chapter to hold hearings, assess fines, and order mitigation of violations of codes. Any reference to the Code Compliance Board in the City Code, not including this chapter, shall also be deemed to refer to the Special Magistrate, except where context otherwise dictates.

Stipulation means a form of a contract entered into between the parties (i.e., the City and the respondent).

Uncorrectable violation means a violation which is irreparable or irreversible in nature and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.

Violator means that person or entity responsible for a violation of this Code.

SECTION 4. Chapter 10, Section 10-5 “Establishment of Special Magistrate System” is hereby amended to read as follows:

Sec. 10-5. – Establishment of Special Magistrate System **and Code Compliance Board**

- (a) There is hereby created pursuant to Fla. Stat. § 162.03(2), an alternate code enforcement system. ~~This alternate code enforcement system shall have the same status as a code enforcement board.~~ Nothing in this section is intended to preclude the City from enforcing any ordinance or code through a court of competent jurisdiction.
- (b) There is hereby created a code enforcement system which utilizes Special Magistrates, each of whom is to be appointed by the City Council. Special Magistrates shall have the authority to conduct hearings to determine whether a violation of any code or an ordinance of the City of Marathon within the Special Magistrate jurisdiction has occurred and upon a finding that a violation has occurred, impose fines, costs, and liens against the violators.
 1. **All Special Magistrates shall be attorneys for at least five (5) years prior to appointment, who are in good standing with the Florida Bar. The Special Magistrate must demonstrate satisfactory knowledge of municipal law and the general procedures for enforcement of municipal codes as well as demonstrate a temperament suitable for the exercise of the quasi-judicial powers vested in each Special Magistrate.**
 2. **The City Council shall appoint as many Special Magistrates as are deemed necessary. All Special Magistrates shall be appointed for a term of one (1) to four (4) years and may be reappointed by the City Council. Despite the term for which they are appointed, all Special Magistrates serve at the pleasure of City Council and may be removed from office by majority vote. If any Special Magistrate fails to attend two (2) of three (3) successive hearings without good cause, the position shall be considered vacated, and the City Council shall promptly fill the remainder of the unexpired term.**
 3. **If any Special Magistrate called on to sit in a particular case shall find that his/her private or personal interests are involved in the matter coming before him/her, the Special Magistrate shall disqualify himself/herself from all participation in the case and the case shall be heard by the Code Compliance Board.**

4. Should the Special Magistrate be unable to issue a decision immediately following any hearing because of questions of law or other matters of such nature that a decision cannot immediately be made, the Special Magistrate may withhold issuing his or her decision for a period not exceeding thirty (30) days.
- (c) There is hereby created a code enforcement system which utilizes a Code Compliance Board. The Code Compliance Board shall have the authority to conduct hearings to determine whether a violation of any code or an ordinance of the City of Marathon within the Code Compliance Board jurisdiction has occurred and upon a finding that a violation has occurred, impose fines, costs, and liens against the violators.
1. The Code Compliance Board shall be comprised of seven members and two alternate members appointed by the City Council. Members of the Code Compliance Board shall include, whenever possible, an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.
 2. Each member of the Code Compliance Board shall be a permanent resident of Marathon and shall serve without compensation.
 3. Members may be reimbursed for such travel, mileage, and per diem expenses as may be authorized, in advance, by the City Council.
 4. Code Compliance Board members shall serve at the pleasure of the City Council and may be suspended or removed for cause by a majority vote of the quorum of the City Council. If any member fails to attend two (2) of three (3) successive hearings without good cause, the position shall be considered vacated, and the City Council shall promptly fill the remainder of the unexpired term.
 5. The initial appointment of the Code Compliance Board shall be as follows:
 - i. Two members shall be appointed for a term of one year each;
 - ii. Three members shall be appointed for a term of two years each;
 - iii. Two members shall be appointed for a term of three years each;
 - iv. One alternative member shall be appointed for a term of two years and one alternate member shall be appointed for a term of three years;
 - v. Thereafter, all appointments shall be made by the City Council for a term of three years;
 - vi. In the event any member's term, including that of any alternate member's term, expires during the pendency of a case(s) which has not reached conclusion by a final vote, such member's expired term

shall automatically be extended for the limited time and for the limited purpose of presiding over such particular case(s) until conclusion and final vote and the time for rehearing has passed. In the event a rehearing is granted, such member's term shall continue for the limited time and limited purpose to rehear the matter and reach conclusion by final vote.

6. **The members of the Code Compliance board shall elect a chair, who shall be a voting member shall elect a chairperson, who shall be a voting member, from among the members of the board.**
 7. **A minimum of four members of the Code Compliance Board shall constitute a quorum. An alternate member shall be considered as one of such members for quorum purposes.**
 8. **A member of the Code Compliance Board may not simultaneously serve as a member of the Planning Commission.**
- (d) **The City Manager, or designee, shall provide clerical and administrative support to the Special Magistrate or Code Compliance Board as may be reasonably required for the proper performance of their duties.**
- (e) **The City Attorney, when requested by the City Manager, may represent the City and present cases before the Special Magistrate or Code Compliance Board. In no case shall the City Attorney act as counsel for the Special Magistrate or Code Compliance Board, thereby eliminating possibilities of a conflict of interest. The City Council shall appoint an attorney who is a member of the Florida Bar, to represent and act as legal counsel to the Code Compliance Board, and such person shall attend all meetings of the Code Compliance Board. Said attorney shall be compensated as provided by the City Council.**
- (f) **Any alleged violator may elect to have a hearing either before the Special Magistrate or the Code Compliance Board. If the alleged violator fails to make such an election, the default position is that the Special Magistrate shall hear all matters.**

~~(e) All Special Magistrates shall be attorneys for at least five (5) years prior to appointment, who are in good standing with the Florida Bar. The Special Magistrates must demonstrate satisfactory knowledge of municipal law and the general procedures for enforcement of municipal codes, and must demonstrate a temperament suitable for the exercise of the quasi-judicial powers vested in each Special Magistrate.~~

~~(d) The City Council shall appoint as many Special Magistrates as are deemed necessary. All Special Magistrates shall be appointed for a term of one (1) to four (4) years and may be reappointed by the City Council. Despite the term for which they were appointed, all Special Magistrates serve at the pleasure of City Council and may be removed from office by majority~~

~~vote. If any Special Magistrate fails to attend two (2) of three (3) successive hearings without good cause, the position shall be considered vacated, and the City Council shall promptly fill the remainder of the unexpired term.~~

~~(e) The City Manager, or designee, shall provide clerical and administrative support to the Special Magistrates as may be reasonably required for the proper performance of their duties.~~

~~(f) If any Special Magistrate called on to sit in a particular case shall find that his/her private or personal interests are involved in the matter coming before him/her, the Special Magistrate shall disqualify himself/herself from all participation in the case, and an alternate Special Magistrate shall hear the case. The City Manager is authorized to provide an attorney otherwise qualified to sit as a Special Magistrate for an individual case where all Special Magistrates disqualify themselves.~~

~~(g) The City Attorney, when requested by the City Manager, may represent the City and present cases before the Special Magistrate. In no case shall the City Attorney act as counsel for the Special Magistrate, thereby eliminating possibilities of a conflict of interest.~~

~~(h) Should the Special Magistrate be unable to issue a decision immediately following any hearing because of questions of law or other matters of such nature that a decision cannot immediately be made, the Special Magistrate may withhold issuing his or her decision for a period not exceeding 30 days.~~

SECTION 5. Chapter 10, Section 10-6 "Fines and related terms construed" is hereby amended to read as follows:

Sec. 10-6. – Fines and related terms construed

(a) For each day of a continued violation, an additional fine in the same amount as that prescribed for in the first day of violation shall be added without the need for additional notice.

(b) If the violator is found to have violated the Code, the violator shall be held liable for the reasonable costs of prosecution as set forth by resolution of the City Council (the "administration fee") upon such finding. Should the violator fail to correct the violation within the time period granted by the Special Magistrate **or Code Compliance Board**, an additional administration fee shall be imposed at the hearing for noncompliance.

(c) For the first repeat violation, the amount of the fine shall be at least double the amount of fine prescribed for the original violation, but shall not exceed \$500.00. The amount of the fine due for each subsequent repeat violation shall be \$500.00. A repeat violation, which remains uncorrected beyond the time prescribed for correction in the notice shall be treated as a continuing violation.

(d) Fines for a continuing violation shall accrue from the date of correction given in the notice until the violation is corrected. Upon notification by the Code Compliance Officer that correction of the violation was not made within the period ordered, or upon finding that a repeat violation has been committed, the Special Magistrate **or Code Compliance Board** may enter an Order imposing a fine for each day a continuing or repeat violation continues.

(e) If the Special Magistrate **or Code Compliance Board** finds that a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the Special Magistrate **or Code Compliance Board** shall notify the City Manager, who may order all repairs in order to bring the property into compliance. The City may assess the violator with the cost of the repairs.

(f) Fines assessed pursuant to this chapter are due and payable to the City on the last day of the period allowed for the filing of an appeal from the Special Magistrate's **or Code Compliance Board's** decision, or, if a proper appeal is made, when the appeal has been finally decided adversely to the named violator. Fines shall continue to accrue during the pendency of an unsuccessful appeal.

(g) The City may institute proceedings in a court of competent jurisdiction to compel payment of fines or costs of repairs authorized herein.

(h) A fine imposed pursuant to this chapter shall continue until a compliance inspection is requested by the violator and the Code Compliance Officer finds that all violations were corrected.

(i) A certified copy of a notice of assessment of cost of repairs may be recorded in the public records and thereafter constitutes a lien on the property on which the repairs were performed. Upon petition to the Circuit court, such notice of assessment may be enforced in the same manner as a court judgment by the Sheriffs of this State, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three (3) months from the date of filing of any such notice of assessment, which remains unpaid, the City may foreclose or otherwise execute on the lien. Alternatively, the City may sue to recover a money judgment for the amount of the lien plus accrued interest. Such liens shall be superior and paramount to the interest in such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of State, County and City taxes, and providing for the exemption of a super priority bank foreclosure, and shall be on parity with the lien of such State, County and City taxes.

(j) Upon payment of the fine or notice of assessment by the violator or the successor, assign or heir of the violator, the City Clerk is authorized to execute and record in the public records of Monroe County the appropriate release of lien document.

(k) No lien provided under this chapter shall continue for a period longer than 20 years after the certified copy of an order imposing a fine or notice of assessment has been recorded, unless within that time an action to foreclose on a lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party may recover interest and all costs, including a reasonable attorney's fee, incurred in the action. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(l) A certified copy of an order imposing an assessment of cost of repairs recorded in the public records shall constitute notice of the violation and any fine or costs imposed therein to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property. The findings therein shall be binding upon the violator, and if the violation concerns real property, any subsequent purchasers, mortgagees, judgment creditors, successors in interest or assigns.

(m) If an order is recorded in the public records and it is complied with by the date specified, the Special Magistrate **or Code Compliance Board** shall issue an order acknowledging compliance which shall be recorded in the public records. A hearing shall not be required to issue such an order acknowledging compliance.

(n) The City may charge the violator for all costs incurred in recording and satisfaction of an order imposing fines, and a notice of lien or assessment.

(o) The Special Magistrate **or Code Compliance Board** shall have the power to order the reduction of fines as provided herein.

(1) A lien arising from a fine or notice of assessment runs in favor of the City. Upon payment in full of all outstanding fines and administrative fees, the City Manager, or designee, may record a satisfaction of lien. The City shall charge the violator, or other party requesting a satisfaction of the lien, for all costs incurred in recording the satisfaction.

(2) The violator, or the violator's successors or assigns, may file a request for a reduction of the fine before the Special Magistrate **or Code Compliance Board** only after a compliance inspection is completed during which a Code Compliance Officer finds that all violations were corrected. Upon receipt of a written request for reduction of fine, and the filing of an affidavit of partial compliance by the Code Compliance Officer which sets forth that all outstanding violations of the Order of the Special Magistrate **or Code Compliance Board** have been corrected, except for payment of any outstanding fines, the Manager or designee, shall set the matter for hearing as provided for in Fla. Stat. § 162.07. If the City has initiated further enforcement action to obtain compliance with the Order of the Special Magistrate **or Code Compliance Board**, including but not limited to an action for injunctive relief, foreclosure, or money judgment, the violator may not file a request for reduction of fine and no hearing shall be set. If the violator has already filed a request for reduction of fine, and a hearing has already been set, the hearing will not take place.

(3) At the hearing, the fact-finding determination of the Special Magistrate **or Code Compliance Board** shall be limited to evidence establishing:

- a. Good cause for a reduction of fine;
- b. The amount of the reduction; and

- c. Any equitable considerations raised by the violator or relating to good cause or the amount of the reduction.

Said hearing shall not be an opportunity to appeal any finding of fact or conclusions of law set forth in any prior Order of the Special Magistrate **or Code Compliance Board**, or any administrative determination of the City.

(4) The Special Magistrate **or Code Compliance Board** may reduce a fine once a violator has otherwise complied with an Order of the Special Magistrate **or Code Compliance Board** based on a showing of good cause, but, except as provided in Subsection [10-6\(o\)\(12\)](#), the fine shall not be reduced below the costs incurred by the City in its prosecution of violations, including but not limited to, any attorney fees and staff time. In no event shall any administrative fees previously ordered by the Special Magistrate **or Code Compliance Board** be waived or reduced.

(5) In determining good cause, and the amount of the reduction, if any, the Special Magistrate **or Code Compliance Board** shall consider:

- a. The gravity of the violation.
- b. Any actions taken by the violator to correct the violation.
- c. Any previous or other outstanding violations committed by the violator or pertaining to the property to which the lien attaches, unless an order finding a violation is under appeal at the time of the determination.
- d. Whether the violation is irreparable or irreversible in nature.
- e. Whether the violator's failure to timely comply with an Order of the Special Magistrate **or Code Compliance Board** is due to an inability to comply based on factors beyond the control of the violator.

(6) Upon a finding of good cause, the Special Magistrate **or Code Compliance Board** has the sole discretion to grant or deny the request for a reduction of fine according to the following guidelines, provided the reduction is not less than the costs incurred by the City:

- a. If compliance occurs within three (3) months of the date for compliance set forth in the Order of the Special Magistrate **or Code Compliance Board**, a maximum reduction of 95 percent of the total fine (the original fine plus the continuing fine amounts);
- b. If compliance occurs more than three (3) months but less than 18 months from the compliance date, a maximum reduction of 75 percent of the total fine amount;
- c. If compliance occurs from 18 months to 36 months of the compliance date, a maximum reduction of 50 percent of the total fine amount; and

d. If compliance occurs 36 months or more after the compliance date, a maximum reduction of 25 percent of the total fine amount.

(7) The Special Magistrate **or Code Compliance Board** has the authority where there is a demonstrated showing of financial hardship, or other good cause, to reduce fines below the fine reduction guidelines. A violator alleging financial hardship or other good cause, has the burden of presenting evidence of inability to pay the fines or that good cause exists.

(8) If a fine is reduced, the Order of the Special Magistrate **or Code Compliance Board** shall provide that, if the violator fails to pay the reduced fine by the date ordered, then the original amount of the fine shall be automatically reinstated.

(9) A certified copy of the order reducing the fine shall not be recorded in the public records and the order shall so provide.

(10) Upon receipt of timely payment in full of the amount of the reduced fine and the recording costs, the City Manager, or designee, shall record a copy of the order reducing the fine and a satisfaction of lien.

(11) A reduction of fine may only be granted once as to any violation of an Order of the Special Magistrate **or Code Compliance Board**.

(12) An order on a request for reduction of fine shall be considered a recommendation to the City Council. The violator, or successors or assigns, may file with the City Manager a written request for reconsideration by the City Council within 30 days of the date the Order of the Special Magistrate **or Code Compliance Board** is entered. Such request must be accompanied by a non-refundable \$500.00 application fee to cover the costs of staff time necessary to administer and process the request. If such a request is timely filed the City Manager shall place the order on the agenda for the next available Council meeting. If no such request is timely filed, the order shall become final. Any deadline in the Order of the Special Magistrate **or Code Compliance Board** for payment of the reduced fine shall not be tolled by the filing of a request for reconsideration, however the City Council may extend the deadline. Any order of the City Council on a request for reconsideration may be governed by the provisions of this section relating to reductions of fines. The City Council may, for good cause shown, reduce the fine below the fine reduction guidelines. The City Council may also, for good cause shown, reduce the application fee or allow it to be used as a set off against the original or reduced fine. The City Manager, or designee, shall remand the matter to the Special Magistrate **or Code Compliance Board** for entry of an order consistent with the determination of the City Council and providing a deadline for payment of the reduced fine. A hearing shall not be required to issue such order.

(13) Upon written request of a violator, the Special Magistrate **or Code Compliance Board** may, for good cause shown, including but not limited to good faith efforts by the

violator to bring the violation into compliance, suspend the accrual of additional fines subsequent to the entry of an order of violation or order imposing fine.

(p) Notwithstanding the above subsections, at the discretion of the Manager, a Stipulation may be entered into to avoid the necessity of a hearing/trial. A Stipulation shall include an admission of guilt or responsibility upon the part of the Respondent, time to correct, and a penalty and/or an agreed upon penalty in the case of non-compliance.

SECTION 7. Chapter 10, Section 10-7 “Appeal of orders” is hereby amended to read as follows:

Sec. 10-7. – Appeal of orders

An Order of the Special Magistrate **or Code Compliance Board** containing findings of fact and conclusions of law that a violation of the City Code has occurred shall be a final administrative order, as provided in Fla. Stat. § 162.11. Any appeal taken from this order must be filed within 30 days of the execution of the order as provided in Fla. Stat. § 162.11. An order imposing fine, entered for failure to comply with an Order of the Special Magistrate **or Code Compliance Board**, shall only be considered a final administrative order for the purposes of an appeal to determine whether the violator complied with the order containing findings of fact and conclusions of law. Failure to file an appeal within the prescribed 30-day period shall render the Order of the Special Magistrate **or Code Compliance Board** conclusive, binding and final.

SECTION 8. Chapter 10, Section 10-8 “Procedures for implementation of Fla. Stat. ch 162, pt. II – Citation” is hereby amended to read as follows:

Sec. 10-8. – Procedures for implementation of Fla. Stat. ch 162, pt II – Citation

- (a) A violation of the City Code, an ordinance, a resolution issued pursuant to any provision of the Code, or any development permit or order of the City, is a civil infraction.
- (b) A Code Compliance Officer with reasonable cause to believe that a person has committed an act in violation of the City Code or ordinance may issue a notice and citation in the manner and form prescribed by Fla. Stat. ch. 162.
- (c) The maximum fine for a civil infraction shall not exceed \$500.00 per violation. Specifically, violation of Subsection [22-22\(c\)](#) shall carry a fine of \$100.00, subject to change by resolution of the City Council as provided herein.
- (d) Each violation of the Code shall be a separate civil infraction. Each day a violation continues shall be deemed to constitute a separate civil infraction and no additional citation shall be required.
- (e) The City Council may adopt by resolution a schedule of fines for citations.
- (f) The fine for a violation shall be reduced if the violator does not contest the citation.
- (g) The City Manager may refer a citation to County court for disposition.

(h) A violator may elect to contest the citation before the Special Magistrate, **the Code Compliance Board**, or County court by requesting a hearing with the City within 14 days of the date of the violation.

(i) If the violator has been previously cited for the same violation at least two (2) times within a 12-month period, upon the issuance of a third or subsequent citation, the violator shall not have the option of paying the reduced fine but instead shall appear before the Special Magistrate, **the Code Compliance Board**, or the County Court to answer the charge. The Special Magistrate, **the Code Compliance Board**, or County Court, after a hearing on the citation, shall make a determination whether or not a violation of the Code has been committed. If a violation is found to have occurred, the Special Magistrate, **the Code Compliance Board**, or County Court shall enter a final order against the violator imposing the mandatory fine as set forth by resolution, plus the reasonable costs of prosecution as set forth by resolution of the City Council. The final order shall also specify that the violator shall abate or correct the violation.

(j) Should the cited violator schedule a hearing as provided for herein and thereafter fail to appear at such hearing, the violator shall be deemed to have waived the right to contest the citation, and the Special Magistrate, **the Code Compliance Board**, or Court shall enter a final order against the violator imposing an amount up to the maximum fine as set forth in this chapter plus the reasonable costs of prosecution as set forth by resolution of the City Council. The final order shall also specify that the violator shall abate or correct the violation.

(k) If the violator fails to comply with the Special Magistrate's **or Code Compliance Board's** final order to pay the fine and abate or correct the violation, the City may petition a Court of competent jurisdiction to enforce the final order in the same manner as a court judgment.

(l) In the event the Special Magistrate **or Code Compliance Board** enters a final order assessing a fine against the cited violator as provided herein, the City may record a certified copy of said final order in the public records. The recorded final order shall constitute a lien against the real and personal property owned by the violator. After three (3) months from the date of filing of any such lien, which remains unpaid, the City may foreclose or otherwise execute on the lien.

(m) The City Manager may refer a citation to County court for disposition. The Clerk of Court or City Manager or designee shall notify the violator of the date, time, and location of any scheduled hearing. If the violator fails to appear for the scheduled court hearing, the violator shall have waived any right to contest the citation and a judgment shall be entered against the violator in an amount up to the maximum fine plus any applicable court costs. In addition, an Order to Show Cause may be issued by the County Judge requiring the person cited to appear in County court to explain the person's failure to appear in court. Failure to respond to the Order to Show Cause may result in issuance of a civil contempt order.

(n) A County Judge, after a hearing on the citation shall make a determination whether or not a violation of the Code has been committed. If a violation is found to have occurred, the County Judge shall order the violator to correct the violation and impose a fine up to the maximum fine allowed plus all applicable costs of prosecution, legislative assessments, and court costs.

(o) If the violator fails to pay the fine or correct the violation within the time provided, the County Judge shall enter a civil judgment against the violator in an amount up to the maximum fine.

(p) Should the violator fail to comply with a court order to abate or correct the violation, the court, after due notice and hearing on the matter, may hold the violator in civil contempt and may enter an order to that effect.

(q) In the event that a civil judgment is entered against the violator as provided herein, the City may record a certified copy of said judgment in the public records.

(r) If the violator so refuses to sign the citation, the Code Compliance Officer shall write the words "Refused" or "Refused to Sign" in the space provided for the violator's signature and shall then leave a copy of the citation with the violator, if possible.

(s) Any violator who willfully refuses to sign and accept a citation issued by a Code Compliance Officer shall be guilty of a misdemeanor of the second degree pursuant to Fla. Stat. § 162.21(6).

(t) A separate administrative fee shall be imposed for each hearing on violation and hearing of noncompliance for which the violator is found to be in violation or noncompliance, respectively.

SECTION 9. Chapter 10, Section 10-10 "Amendments to Fla. Stat. ch. 162" is hereby amended as follows:

Sec. 10-10. Amendments to Fla. Stat. ch. 162

The provisions of Fla. Stat. § 162.07, as adopted by this chapter, are hereby amended to read as follows:

(1) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the Special Magistrate **or Code Compliance Board** at least six (6) days prior to the hearing. When considering a request for a continuance, the Special Magistrate **or Code Compliance Board** may consider whether the party requesting the continuance is working towards compliance with the Code, the timeliness of the request for continuance, whether the party requesting the continuance acted diligently in doing so, the unavailability of a necessary witness or other evidence without inexcusable neglect on the part of the party wishing to call said witness or present said evidence, and any other exigent circumstances including a medical emergency, an act of God or other unforeseen event. Inexcusable neglect on the part of the party requesting it shall not constitute good cause for a continuance. If a request for continuance is received less than six (6) days prior to the hearing, the continuance may only be granted upon a finding of a medical emergency, an act of God or other unforeseen event. If a continuance is granted, the City Manager or designee shall notify the Code Compliance Officer and the violator of the date and time of the rescheduled hearing.

(2) The Special Magistrate **or Code Compliance Board** shall not postpone a hearing because the named violator, prior to the scheduled hearing date, files with the duly authorized City board of appropriate jurisdiction, if any, an administrative appeal concerning the interpretation or application of the Code provisions upon which the alleged violation was based. Rather the

hearing shall take place as provided in this chapter and an order shall be issued subject to a determination in favor of the violator by said duly authorized Board. If the appeal is unsuccessful, the fine assessed by the Special Magistrate **or Code Compliance Board** will be retroactively imposed. However, once an issue has been determined by the Special Magistrate **or Code Compliance Board** in a specific case, that issue may not be further reviewed by a City board in that specific case unless an appeal was filed with such board prior to the Code Compliance hearing.

SECTION 10. Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 11. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or 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 12. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the “Ordinance” shall be changed to “Section” or other appropriate word.

SECTION 13. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS XX DAY OF XXXX, 2021.**

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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:**

Steven Williams, City Attorney