



COUNCIL AGENDA STATEMENT

Meeting Date: September 12, 2023
To: Honorable Mayor and City Councilmembers
From: Steven Williams, City Attorney

Agenda Item: **Ordinance 2023-18**, Amending City Of Marathon’s Code of Ordinances Section 10-5 Titled “Establishment of Special Magistrate System and Code Compliance Board.”; 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 Ordinance And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

This Ordinance is consistent with the direction of the City Council to dissolve the Code Compliance Board and allow for the option, in the future, to establish or dissolve via Resolution the Code Compliance Board. This Ordinance will amend Section 10-5 Titled “Establishment of Special Magistrate System and Code Compliance Board” of the City of Marathon’s Code of Ordinances.

CONSISTENCY CHECKLIST:

| | Yes | No |
|-----------------------|--------------|-------|
| 1. Comprehensive Plan | _____ | _____ |
| 2. Other _____ | _____ | _____ |
| 3. Not Applicable | <u> X </u> | _____ |

FISCAL NOTE:

RECOMMENDATION:

Approval of Ordinance

Sponsored By: Council
City Council Public Hearing Date: August 22, 2023
September 12, 2023
Enactment Date: September 12, 2023

**CITY OF MARATHON, FLORIDA
ORDINANCE 2023-18**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CITY OF MARATHON'S CODE OF ORDINANCES SECTION 10-5 TITLED "ESTABLISHMENT OF SPECIAL MAGISTRATE SYSTEM AND CODE COMPLIANCE BOARD."; 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 City of Marathon ("City") is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes, and

WHEREAS, Chapter 162, *Florida Statutes*, grants the City the power to establish, by ordinance, a code compliance system that shall provide for a Code Compliance Board and/ or a Special Magistrate; and

WHEREAS, the City of Marathon Code of Ordinances currently establishes both a Code Compliance Board and Special Magistrate; and

WHEREAS, the City seeks to dissolve the Code Compliance Board, however, wishes to have the power to establish and dissolve a Code Compliance Board via Resolution in the future.

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

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

SECTION 2. "Establishment of Special Magistrate System and Code Compliance Board." 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. Nothing in this section is intended to preclude the City from enforcing any ordinance or code ¹through 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.~~ **a specially appointed outside counsel to act as an interim Special Magistrate.**
- (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 30 days.
- (c) **As of the effective date of Ordinance 2023-XX, the Code Compliance Board is hereby dissolved. The City Council may, in the future, establish and dissolve the Code Compliance Board via Resolution.** ~~There is hereby created a code enforcement system which utilizes a Code Compliance Board. The Code~~

¹ ~~Strikethrough~~ = deletion

Bold underline = addition

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 (7) members and two (2) 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:
 - a. Two (2) members shall be appointed for a term of one (1) year each;
 - b. Three (3) members shall be appointed for a term of two (2) years each;
 - c. Two (2) members shall be appointed for a term of three (3) years each;
 - d. One (1) alternative member shall be appointed for a term of two (2) years and one (1) alternate member shall be appointed for a term of three (3) years;
 - e. Thereafter, all appointments shall be made by the City Council for a term of three (3) years;
 - f. 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 [and] shall elect a chairperson, who shall be a voting member, from among the members of the board.
 - (7) A minimum of four (4) members of the Code Compliance Board shall constitute a quorum. An alternate member shall be considered as one (1) 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) **If a constituted Code Compliance Board is in place at the time of an alleged violation,** Any **an** 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.

SECTION 3. 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 4. 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 5. 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 6. This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 12th DAY OF SEPTEMBER, 2023.**

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