



COUNCIL AGENDA STATEMENT

Meeting Date: February 11, 2025

To: Honorable Mayor and City Councilmembers

From: Steven Williams, City Attorney

Agenda Item: **Ordinance 2025-01**, Creating Section 18-126, Under Chapter 18, Article III Of The City Code Of Ordinances, To Be Titled “Trespass Warnings; Authorization To Issue Trespass Warning For Public Property; And Appeal Process.”; Authorizing The Enforcement Of Trespass Offenses On City Property; Providing For An Appeal Process; Providing For The Repeal Of All Ordinances Or Parts Thereof Found To Be In Conflict; Providing For Severability; And Providing An Effective Date.

BACKGROUND & JUSTIFICATION:

This Ordinance outlines the authorization of enforcement of trespass offenses on City property and creates a formal procedure to provide notice to persons who may be subject to trespass from certain City property. 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. The City currently has a Resolution with very similar language, but an ordinance is more readily searchable by all governmental agencies.

CONSISTENCY CHECKLIST:

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

FISCAL NOTE:

RECOMMENDATION:

Approval of Ordinance

Business Impact Estimate Form

This Business Impact Estimate Form is provided to document compliance with and exemption from the requirements of Sec. 166.041(4), Fla. Stat. If one or more boxes are checked below under “Applicable Exemptions”, this indicates that the City of Marathon has determined that Sec. 166.041(4), Fla. Stat., does not apply to the proposed ordinance and that a business impact estimate is not required by law. If no exemption is identified, a business impact estimate required by Sec. 166.041(4), Fla. Stat. will be provided in the “Business Impact Estimate” section below. In addition, even if one or more exemptions are identified, the City of Marathon may nevertheless choose to provide information concerning the proposed ordinance in the “Business Impact Estimate” section below. This Business Impact Estimate Form may be revised following its initial posting.

Proposed ordinance’s title/reference:

Proposed Ordinance 2025-XX Creating Section 18-126 titled “Trespass Warnings; Authorization to Issue Trespass Warning for Public Property; and Appeal Process”

Applicable Exemptions:

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - ☐ Development orders and development permits, as those terms are defined in s.163.3164, and, development agreements, as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - ☐ Comprehensive Plan Amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - ☐ Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - ☐ Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - ☐ Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

Business Impact Estimate:

Business Impact Estimate Form
Form Revised 11/26/24
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Note to Staff: This form should be completed and included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the City’s website by the time notice of the proposed ordinance is published (10 days prior).

The City of Marathon hereby publishes the following information:

- 1. A summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):**

Ordinance 2025-XX creates Section 18-126, under Chapter 18, Article III of the City of Marathon Code of Ordinances, to provide a formal procedure for the issuance of trespass warnings from City property and an appeal process. Courts have held that in order to satisfy the Due Process Clause of the U.S. 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.

- 2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the municipality, including the following, if any:**

- (a) An estimate of direct compliance costs that businesses may reasonably incur if the ordinance is enacted:**

Ordinance 2025-XX does not impose a direct compliance cost on businesses as the ordinance pertains to City Property, which are owned by the City of Marathon.

- (b) Identification of any new charge or fee on businesses subject to the proposed ordinance, or for which businesses will be financially responsible:**

Ordinance 2025-XX does not impose a new charge or fee on businesses as the ordinance pertains to City Property, which are owned by the City of Marathon.

- (c) An estimate of the municipality's regulatory costs, including an estimate of revenues from any new charges or fees that will be imposed on businesses to cover such costs:**

None.

- 3. A good faith estimate of the number of businesses likely to be impacted by the ordinance:**

None.

4. Additional information the governing body determines may be useful (if any):

No additional information.

Note: *The City's provision of information in the Business Impact Estimate section above, notwithstanding an applicable exemption, shall not constitute a waiver of the exemption or an admission that a business impact estimate is required by law for the proposed ordinance. The City's failure to check one or more exemptions below shall not constitute a waiver of the omitted exemption or an admission that the omitted exemption does not apply to the proposed ordinance under Sec. 166.041(4), Fla. Stat., Sec. 166.0411, Fla. Stat., or any other relevant provision of law.*

Sponsored by: Garrett
Introduction Date: February 11, 2025
Public Hearing Dates: February 11, 2025
Enactment Date:

CITY OF MARATHON, FLORIDA
ORDINANCE 2025-01

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, CREATING SECTION 18-126, UNDER CHAPTER 18, ARTICLE III OF THE CITY CODE OF ORDINANCES, TO BE TITLED “TRESPASS WARNINGS; AUTHORIZATION TO ISSUE TRESPASS WARNING FOR PUBLIC PROPERTY; AND APPEAL PROCESS.”; AUTHORIZING THE ENFORCEMENT OF TRESPASS OFFENSES ON CITY PROPERTY, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING 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 166, *Florida Statutes*, grants the City broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting regulations for the protection of the public; and

WHEREAS, the City of Marathon Council has determined that it is in the best interests of the City to provide as safe as possible all City property and facilities for staff, citizens, patrons and visitors to enjoy; 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 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. Section 18-126 “Trespass warnings; authorization to issue trespass warning for public property; and appeal process” is hereby to be read as follows:

- (a) Scope. For purposes of this section, 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, fire stations, 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 Manager and any City employee designated by the City Manager to have control over a City Property are authorized to issue a trespass warning to any individual who violates any ordinance, rule or regulation, or state law or lawful directive of a City employee or deputy sheriff, if said violation is committed while on or within City Property for the specific property where the violation occurred.
- (c) When no City employee designated by the City Manager is present at a facility, 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 county or city ordinance or state law which was committed while on or within a City Property for the specific City Property where the violation occurred.
- (d) 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 one (1) year.
 - (2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two (2) years.
- (e) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the City employee or deputy having control over the City Property. The written trespass warning shall advise of the right to appeal and the manner for filing the appeal.
- (f) Any person found on or within any City Property in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.
- (g) The City Manager may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary City business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof and shall not be unreasonably denied.
- (h) This section shall not be construed to limit the authority of any City employee or deputy to issue a trespass warning to any person for any lawful reason for any City Property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the City employee or deputy.
- (i) Appeal of trespass warning. A 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 three (3) business days of the issuance of the warning, and shall include the appellant's name, address, and phone number, if any. No fee shall be charged for filing the appeal.

- (2) The appeal shall be filed at the office of the City of Marathon, c/o City Attorney, located at 9805 Overseas Highway, Marathon, Florida 33050.
- (3) Appeals shall be heard by the City Attorney or their designee.
- (4) Within five business days following the filing of the appeal, the City Attorney or their 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; and
 - b. Posting the notice at the office of the City of Marathon.
 - c. If appellant cannot be reached by mail, then notice posted at the office of the City of Marathon shall be sufficient.
- (5) The City Attorney 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 City's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.
- (7) At his or her own expense, the appellant shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross-examine witnesses and to present evidence. The appellant shall have the right to bring a court reporter, at their own expense.
- (8) The City Attorney or his designee shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.
- (9) The City shall bear the burden of proof by a preponderance of the evidence that the trespass warning was properly issued pursuant to the criteria of this section.
- (10) If the appellant fails to attend a scheduled hearing, the City Attorney or his designee shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- (11) Within five business days of the hearing, the City Attorney or his designee shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the information desk of the City of Marathon located at 9805 Overseas Highway, Marathon, Florida 33050.

- (12) The decision of the City Attorney or their designee shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant.
- (13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

Section 4. The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. 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 6. It is the intention of the City Council and it is hereby ordained 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 word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. This Ordinance shall become effective immediately upon adoption on second reading.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS ____ DAY OF _____, 2025.

THE CITY OF MARATHON, FLORIDA

Lynn Landry, 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 T. Williams, City Attorney