



COUNCIL AGENDA STATEMENT

Meeting Date: May 13, 2025

To: Honorable Mayor and City Councilmembers

From: Steven Williams, City Attorney

Agenda Item: **Ordinance 2025-02**, Amending Chapter 18, Article 3 (“Abatement Of Criminal Nuisances”) By Deleting Sections 18-186, 18-187, 18-888, 18-189, And 18-190; 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.

BACKGROUND & JUSTIFICATION:

This Ordinance deletes the provisions in the City of Marathon Code of Ordinances pertaining to a Nuisance Abatement Board due to the fact that the City has not recently used such a board. This Ordinance and the removal of the sections related to the Nuisance Abatement Board, does not restrict the right of any person to proceed against any public nuisance nor restrict the City Attorney from bringing a civil proceeding under Florida Statute Section 823.05.

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 2025-02 Abatement of Criminal Nuisances

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:
 - ☐ Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements, and development permits;
 - ☐ 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:

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 2025-02 amends Chapter 18, Article 3 titled "Abatement of Criminal Nuisances" of the City of Marathon Code of Ordinances by deleting six (6) sections related to the creation of a Nuisance Abatement Board and the duties and powers of same. The City has not recently used a Nuisance Abatement Board and there are other avenues to address nuisance claims contained in the Code of Ordinances. As such, this proposed ordinance removes moot provisions of the Code of Ordinances.

- 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 2025-02 does not impose a direct compliance cost on businesses as the ordinance pertains to public nuisances and the avenues to address same.

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

Ordinance 2025-02 does not impose a new charge or fee on businesses as the ordinance pertains to removing moot language having to do with public nuisances and a Nuisance Abatement Board.

- (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: Williams
City Council Public Hearing Date: April 8, 2025
May 13, 2025
Enactment Date: May 13, 2025

**CITY OF MARATHON, FLORIDA
ORDINANCE 2025-02**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 18, ARTICLE 3 (“ABATEMENT OF CRIMINAL NUISANCES”) BY DELETING SECTIONS 18-185, 18-186, 18-187, 18-888, 18-189, AND 18-190; 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 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, Section 893.138, *Florida Statutes*, grants the City the ability to establish a Nuisance Abatement Board, which was created through Ordinance 2008-28; and

WHEREAS, Chapter 18, Section 18-183 of the City of Marathon Code of Ordinances allows the City Attorney to sue the person or persons maintaining a nuisance, and the owner or agent of the building or ground on which the nuisance exists; and

WHEREAS, Chapter 18, Section 18-184 of the City of Marathon Code of Ordinances does not restrict the right of any person to proceed against any public nuisance; and

WHEREAS, the City has not recently used a Nuisance Abatement Board and, therefore, the City Council deems that the Sections of the Marathon Code of Ordinances pertaining to a Nuisance Abatement Board are moot.

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 18 of the Code of Ordinances, City of Marathon, Florida, is hereby amended to be read as follows:

Sec 18-183 Enjoining Of Nuisances

When any nuisance as defined in Fla. Stat. § 823.05 exists, the City Attorney may sue, in the name of the State on his relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

Sec 18-184 Rights Preserved

This Division does not restrict the right of any person to proceed against any public nuisance under Fla. Stat. § 60.05.

~~Sec 18-185 Definitions~~

~~The following definitions shall apply in the interpretation and enforcement of this Article:~~

~~*Board* means the Nuisance Abatement Board of the City of Marathon.~~

~~*City Attorney* means the legal counselor for the City of Marathon or any Assistant City Attorney.~~

~~*Clerk* means the person appointed by the local governing body of the City of Marathon to perform the clerical duties necessary to carry out the activities of the Board.~~

~~*County* means Monroe County, Florida.~~

~~*Operator* means the tenant, lessee or person having control or possession of the premises.~~

~~*Public nuisance* means any place or premises within the City, which has been used on more than two (2) occasions within a six month period as; (i) the site of the unlawful sale or delivery of controlled substances as defined in Fla. Stat. ch. 893; (ii) the site of prostitution activity in violation of Fla. Stat. § 796.07; (iii) by a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by Fla. Stat. § 874.03; or (iv) the site of a violation of Fla. Stat. § 812.019; relating to dealing in stolen property.~~

~~Sec 18-186 Nuisance Abatement Board Established~~

~~There is hereby created and established a Nuisance Abatement Board (the "Board"), to hear evidence relating to the existence of criminal public nuisances on premises located in the City. The City Council shall sit as the Nuisance Abatement Board.~~

~~Sec 18-187 Complaint Review Procedures~~

- ~~(a) Any employee, officer or resident of the City may file a complaint with the Clerk regarding the existence of a public nuisance on premises located in the City.~~
- ~~(b) When the Clerk receives a complaint, the City Attorney shall review the complaint to determine if the complaint properly alleges that a public nuisance exists on the premises. If the City Attorney determines that the complaint properly alleges that a public nuisance exists on the premises, the Clerk shall promptly request a hearing before the Board.~~
- ~~(c) The Board, through its Clerk, shall schedule a hearing, and written notice of the hearing shall be sent to the owner and operator(s) of the premises complained of, at their last known addresses at least five (5) days prior to the scheduled hearing.~~
- ~~(d) The notice of hearing shall include:
 - ~~(1) A statement of the time, place and nature of the hearing;~~
 - ~~(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;~~
 - ~~(3) A reference to the particular sections of the statutes and ordinances involved; and~~
 - ~~(4) A short and plain statement summarizing the nuisance complaint.~~~~

~~Sec 18-188 Conduct Of Hearings~~

- ~~(a) The Chairman of the Board may call hearings of the Board. Hearings may also be called by written notice signed by at least three (3) members of the Board. The Board, at a hearing, may set a future hearing date. The Board shall attempt to convene no less frequently than once every month, but may meet more or less often as the demand necessitates. The Board shall adopt rules for the conduct of its hearings. Minutes shall be kept of all hearings, and all hearings shall be open to the public. The Board shall have the power to subpoena owners, operators, witnesses and evidence to hearings. The City shall provide clerical and administrative personnel as may be reasonably required for the proper performance of the Board's duties.~~
- ~~(b) The City Attorney shall present cases before the Board. All parties shall have an opportunity to present evidence and argument on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. When appropriate, the public may be given an opportunity to present oral or written communications. The Board may consider any evidence, including evidence of the general reputation of the place or premises. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Orders of the Board shall be based on competent and substantial evidence, and any finding that a nuisance exists must be based on a "preponderance of the evidence" standard.~~
- ~~(c) The concurring votes of at least four (4) Board members are required in order to approve any Board order concerning the abatement of a public nuisance.~~
- ~~(d) After considering all evidence, the Board may declare the place or premises to be a public nuisance and may enter an order as follows:~~

- (1) Immediately prohibiting the maintaining of the nuisance;
 - (2) Immediately prohibiting the operating or maintaining of the place or premises including the closure of the place or premises or any part thereof;
 - (3) Immediately prohibiting the conduct, operation or maintenance of any business or activity on the premises which is conducive to such nuisance; or
 - (4) Requiring the owner of such place or premises declared to be a public nuisance to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance.
- (e) ~~An order entered under Subsection (d) shall expire after one (1) year, or at such earlier time as stated in the order. The Board may retain jurisdiction to modify its orders prior to the expiration of the orders.~~
- (f) ~~In the event that orders of the Board expire and/or are not complied with, or are for any reason ineffective, the Board may then bring a complaint under Fla. Stat. § 60.05, seeking temporary and permanent injunctive relief against any public nuisance described.~~
- (g) ~~A certified copy of a Board order may be recorded in the public records of the County and shall constitute notice to any subsequent purchasers, successors in interest or assigns if the violation concerns real property and the finding therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest or assigns. If an order is recorded in the public records of the County pursuant to this Subsection and the order is complied with by the date specified in the order, the Board shall issue an order acknowledging compliance that shall be recorded in the public records of the County.~~
- (h) ~~The Board, upon notification by the City that an order of the Board has not been complied with by the set time or, upon finding, of a public nuisance, may order the violator to pay a fine in an amount specified in this Section for each day the violation continues past the date set by the Board for compliance. In the case of a recurring public nuisance, for each date a recurring public nuisance continues beginning with the date the recurring public nuisance is found to have occurred by the City. A fine imposed pursuant to this Section shall not exceed \$250.00 per day for the violation and shall not exceed \$500.00 per day for a recurring public nuisance.~~
- (i) ~~A certified copy of an order imposing a fine may be recorded in the public records and thereafter shall constitute a lien against the property upon which the violation exists. A lien arising from a fine imposed pursuant to this Section runs in favor of the City and the City may execute a satisfaction or release of lien entered pursuant to this Section. The City shall be entitled to collect all costs incurred, including reasonable Attorney fees, in the recording of, the filing of a satisfaction of and foreclosure of a valid lien. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the Sheriffs of this State, including levy against the personal property, but shall not be deemed to be a court judgment expect for enforcement purposes.~~
- (j) ~~After three (3) months from the filing of any lien which remains unpaid, the Nuisance Abatement Board may authorize the City Attorney to foreclose upon the lien. No lien~~

~~created pursuant to the provisions of this Chapter may be foreclosed on real property which is a "homestead" under Article X, Section 4 of the State Constitution.~~
~~(k) If the City prevails in prosecuting a case before the Board, it shall be entitled to recover all costs, including reasonable Attorney's fees, incurred in investigating and prosecuting the case at hearings before the Board or on appeal.~~

~~Sec 18-189 Appeals~~

~~Any aggrieved party may appeal a final decision of the Nuisance Abatement Board to the Circuit Court of Monroe County, Florida. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the Board. An appeal shall be filed within 30 days of the date of the Board decision appealed from.~~

~~Sec 18-190 Remedies~~

~~This Article does not restrict the right of any person to proceed under Fla. Stat. § 60.05, or similar law against any public nuisance.~~

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 13th DAY OF MAY, 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 Williams, City Attorney