

Sponsored by: Council
Introduction Date: May 13, 2014
Public Hearing Dates: May 27, 2014
June 10, 2014
June 24, 2014
Enactment date: June 24, 2014

CITY OF MARATHON, FLORIDA
ORDINANCE 2014-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, PROVIDING FOR A BINDING REFERENDUM ON SEVERAL AMENDMENTS OF THE CITY CHARTER TO BE PRESENTED TO THE ELECTORS OF THE CITY, SPECIFICALLY TO AMEND SECTION 5, "CITY COUNCIL" SUBSECTION 2. "TERM OF OFFICE" AND SUBSECTION 12 "NON-INTERFERENCE BY CITY COUNCIL"; TO AMEND SECTION 8. "ELECTIONS" TO ADD SUBSECTION 6. TO PROVIDE FOR PROCESS IN THE EVENT OF A TIE VOTE; AND AMENDING NEW SUBSECTION 8. TO PROVIDE FOR A CHANGE IN THE COMPOSITION TO THE CITY CANVASSING BOARD; TO MAKE CLARIFICATIONS TO THE INITIATIVE AND REFERENDUM SECTIONS; TO AMEND SECTION 9. "TRANSITION SCHEDULE" TO ELIMINATE SOME LANGUAGE AND RETAIN BALANCE OF LANGUAGE "FOR HISTORICAL PURPOSES"; PROVIDING FOR NOTICE OF ELECTION; PROVIDING FOR PERMISSION TO CORRECT ANY EXISTING SCRIVENER'S ERRORS AND CHANGE NUMERATION AS NECESSARY IN CHARTER; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO ELECTORS IN CONJUNCTION WITH THE GENERAL ELECTION IN NOVEMBER, 2014; PROVIDING FOR COPIES OF THESE CHARTER AMENDMENTS TO BE AVAILABLE FOR PUBLIC INSPECTION; PROVIDING FOR THE CLERK TO UTILIZE THE SERVICES OF MONROE COUNTY SUPERVISOR OF ELECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR ADOPTION OF ENABLING RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 11 of the City Charter in accordance with the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes, provides the manner in which charter amendments shall be proposed; and

WHEREAS, the City Council wishes to submit these proposed charter amendments for approval or rejection by the electors; and

WHEREAS, pursuant to law, the electors of the City shall have the power to approve or reject at the polls any ordinance submitted by the City Council to a vote of the electors.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA HEREBY ORDAINS:

Section 1. Recitals: The recitals are incorporated herein and made a part of this Ordinance by reference.

Section 2. Referendum. A binding referendum election is hereby called to be held in conjunction with the general election for Tuesday, November 4, 2014, to present to the electors of the City of Marathon the proposed charter amendments provided in Section 3. of this Ordinance.

Section 3. Proposed Amendments:

The Charter of the City of Marathon subject to a vote of the electorate is hereby amended as follows:

A. Section 5. City Council is amended as follows:

Subsection (2) *Term of office.* The term of office for council members shall be ~~2-three~~ (3) years commencing in November, 2015. Each council member shall remain in office until a successor is elected and assumes the duties of the position, except as otherwise provided herein. No council member shall serve more than ~~three-two~~ (2) consecutive terms of office retaining the six year total term limitation. Term-limited council members must sit out a minimum of a full term before running again.

Subsection (3) The mayor; powers and duties.

a) The city council, at its first regular meeting after the first Tuesday after the first Monday of each November, shall elect from its membership a mayor and vice-mayor who shall serve at the pleasure of the city council and who shall have the same legislative powers and duties as any other council member, ~~except as provided in paragraph (b). In the event a runoff election is required pursuant to Section 8(4), the election of the mayor and vice-mayor shall occur at the first regular meeting after the first Tuesday after the first Monday in December.~~

Subsection (12) *Noninterference by city council.* Except for the purposes of inquiry and information, the council and its members, including committees thereof, are expressly prohibited from interfering with the performance of the duties of any employee of the city government who is under the direct or indirect supervision of the city manager or city attorney. Such action shall be malfeasance ~~within the meaning of F.S. § 112.51,~~ and shall be punishable as provided in F.S. §§ 112.317, 775.082 or 775.083. The following definitions shall apply to this charter section unless the context requires otherwise:

(a) “Interfering” is the act of interposing oneself, whether verbally, physically, or impliedly to a city employee in a way that:

1. Hinders or impedes the employee's carrying out of his or her duties; or
2. Directs the employee's carrying out of his or her duties.

(b) "Malfeasance" means any of the following:

1. Doing an act that is prohibited or made or declared unlawful, an offense, a violation or a misdemeanor by charter, ordinance or by rule or regulation authorized by ordinance; or
2. Failure to perform an act that is required to be performed by charter, ordinance or by rule or regulation authorized by ordinance; or
3. Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation or a misdemeanor by charter, ordinance or by rule or regulation authorized by ordinance.

(c) Any violation of the charter shall be reported to the City Manager. A person convicted of a violation of this charter shall be punished to the maximum extent allowed by State law. If a violation of this charter is also a violation of State law, the violation shall be punished in the same manner and within the same limits as are prescribed for such violation of State law. In addition to the remedies stated herein, the city council may enforce the charter by any method authorized by law, including by injunctive or other equitable relief as provided by Ordinance adopted by the City Council.

B. Section 8. Elections. is amended as follows:

(4) *Schedule for general elections and runoffs.* The regular city elections shall be on the first Tuesday after the first Monday in November of each election year. Such city elections shall be general city elections. Electors shall vote for the number of qualified candidates for the office of city council equal to the number of city council seats to be elected. ~~A runoff election, if necessary, shall be held on the first Tuesday after the first Monday in December.~~

(5) *Schedule for other elections.*

(a) An election to fill the remainder of an unexpired term shall be held as provided in subsection (4).

(b) Special municipal elections shall be held in the same manner as regular elections, except that the city council, by ordinance, shall fix the time for holding of such elections.

(6) *Determination of election to office.* At any general or special municipal election held under the provisions of this Charter for election to the office of city council, the candidates for the office of city council in a number equal to the number of city council seats to be elected, who shall have received the greatest number of votes cast (the "Winning Candidates"), shall be declared elected; provided, however, that if one of the

city council seats to be elected represents the unexpired term of a vacancy, then the Winning Candidate receiving the lowest vote total shall be deemed elected to serve the unexpired term. ~~In the event a tie between two or more candidates makes it impossible to determine which of those candidates has been selected for the final seat, the names of such candidates shall be placed upon the runoff election ballot. If the vote at the runoff election results in a tie, the outcome shall be determined by lot under the direction of the City Clerk.~~ In the event of a tie between two or more candidates which makes it impossible to determine which of those candidates has been selected, the outcome shall be determined by lot. If the number of candidates that qualify for an office equals the number of city council seats to be elected, said candidates shall be deemed to be elected.

Subsection (7) *City canvassing board.* ~~The city canvassing board shall be composed of those members of the city council who are not candidates for reelection and~~ The canvassing board shall consist of the City Manager, City Clerk and the City Attorney serving at the time the election is called and the city clerk, who shall act as chairperson. In the event any member is unable or unwilling to serve, the city manager has the authority to appoint alternate members to the city canvassing board. In the event the city manager is unable to perform this function, the chief judge of the judicial circuit (or designee) may appoint alternate members to the city canvassing board. However, two members of the canvassing board shall constitute a quorum for all purposes hereunder. At the close of the polls of any city election, or as soon thereafter as practicable, the canvassing board shall meet at a time and place designated by the chairperson and shall proceed to publicly canvass the vote as shown by the returns then on file in the office of the city clerk, and then shall publicly canvass the absentee elector ballots. The canvassing board shall prepare and sign a certificate containing the total number of votes cast for each candidate or other measure voted upon. The certificate shall be placed on file with the city clerk.

Subsection (9) *Initiative and referendum.*

1. ~~Power of~~ to initiate and reconsider ordinances.

(c) *Petitions.*

1. Ordinances and other measures providing for the exercise of any city powers, granted by the Florida Constitution or the State to municipalities, may be proposed by initiative petition. However, no such initiative petition shall impair an existing contractual agreement or franchise, or impair any right guaranteed by the United States or Florida Constitutions. Initiative and referendum petitions must be signed by registered electors of the city equal in number to at least ten percent of the total number of electors registered to vote in the last regular city election.

2. Prior to submitting an initiative petition to the electors, the proponent(s) of the initiative petition shall file with the city clerk a notice of intention do so, with the name and address of the proponent(s). The notice shall be accompanied by the written text of the initiative petition. Within 20 days of receipt of the text of the

initiative petition the clerk shall forward it to the city attorney, or his designee, for review to determine whether or not the proposed initiative petition is within the jurisdiction of the city or is otherwise lawful. If the city attorney determines that the initiative petition is outside the jurisdiction of the city, or unlawful, he shall deliver his opinion to the city clerk and the proponent(s), in writing. If it is denied, the proponents of the initiative may appeal that decision to the City Council. The decision of the City Council shall be final agency action, and further appeals shall be in the circuit court, de novo. If the city attorney approves the initiative petition, the proponents may proceed to obtain the requisite signatures.

2. ~~2~~ 3. All papers of the initiative petition shall be assembled as one instrument of filing. Each signature shall be executed in ink and shall be followed by the printed name and address of the person signing. ~~Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed or sought to be reconsidered.~~
3. ~~3~~ 4. Each paper of a petition shall have attached to it, when filed, an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all signatures were affixed in his or her presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be, and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered.
4. ~~4. Except as otherwise provided in sub-subparagraph (a)2.b., all initiative and referendum petitions must be filed within 60 days after the date on which proceedings with respect to such initiative or referendum are commenced, and all requirements of the process, including, but not limited to, the submission of the signatures required, must be completed no later than 90 days following the date of filing said initiative or referendum petition.~~

5. Within 20 days after an initiative petition or a referendum petition is filed with the city clerk proposing an ordinance or other measure by initiative petition, the city clerk shall in coordination with the office of the Supervisor of Elections, examine all signatures on the petition to determine the number of electors of the municipality who signed the petition. If the city clerk determines that 10% or more of the total number of electors registered to vote in the last regular city election have signed the initiative petition, the city clerk shall, after ten (10) days, transmit a certified copy of the text of the proposed ordinance or measure to the city council together with a statement attesting to the number of such electors who signed the petition. Petitions without the required signatures may be re-filed one time within 60 days of receiving notice that the petition is insufficient. The city clerk shall return all incomplete initiative petitions to the proponent(s) of the petition.

6. Within the next two (2) regularly scheduled meetings the city council shall review, approve or reject the initiative petition. If the city council approves the initiative petition without substantive alteration the city clerk shall authenticate

and record in full any ordinance or resolution approved via initiative petition in the properly indexed book kept for that purpose.

7. If the city council rejects the proposed initiative petition, it shall submit the initiative petition for approval or rejection by the electorate of the city at the next general election occurring subsequent to 60 days after the city clerk certifies the sufficiency and validity of the initiative petition to the city council. Nothing in the section is intend to prohibit the city council from setting a special election for the proposed initiative petition, so long as at least 60 days prior notice of the election is provided. No ordinance or other measure proposed by initiative petition and approved by majority of electors voting upon the measure shall be subject to the veto or rejection by the city council. No substantial modification or amendment to the approved measure shall be made until at least one city-wide election has been conducted.

8. If a majority of qualified electors voting on the proposed initiative petition vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. The city clerk shall authenticate and record in full any ordinance or resolution approved via initiative petition in the properly indexed book kept for that purpose.

9. If a majority of the qualified electors voting on the proposed initiative petition vote against it, it shall be considered withdrawn or not adopted upon certification of the election results.

10. The proponent(s) of the initiative petition may withdraw it at any time prior to the election.

(d) Procedure for filing:

~~1. Within 20 days after an initiative petition or a referendum petition is filed, the city clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective, and shall promptly send a copy of the certificate to the petitioner's committee by registered mail. Grounds for insufficiency are only those specifies in subparagraph (c)3. that are not met. A petition certified insufficient for lack of the required number of valid signatures may be amended once if the petitioner's committee files a notice of intent to amend it with the designated official within two business days after receiving the copy of the certificate and files a supplementary petition upon additional papers within two days after receiving the copy of such certificate. Such supplementary petition shall comply with original petition requirements and, within five days after it is filed, the city clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the petitioner's committee by registered mail. If a petition or an amended petition is certified sufficient, or is a petition or amended petition is certified insufficient and~~

~~the petitioner's committee does not elect to amend or request the city council review under subparagraph 2, within the time required the city clerk shall promptly present a certificate to the city council and such certificate shall then be a final determination as to the sufficiency of the petition.~~

~~2. *The city council review.* If a petition has been certified insufficient and the petitioner's committee does not file notice of intent to amend it or if an amended petition has been certified insufficient, the committee may, within two business days after receiving the copy of such certificate, file a request that it be reviewed by the city council. The city council shall review the certificate at its next meeting following the city council's filing of such request and approve or disapprove it, and determination shall then be final as to the sufficiency of the petition.~~

~~(e) *Action on petitions.*~~

~~1. *Action by city council.* When an initiative or referendum petition has been determined sufficient, the city council shall promptly consider the proposed initiative ordinance, or reconsider the referendum ordinance by voting its repeal. The repeal of an ordinance relating to the levy of ad valorem taxes shall be by ordinance. If the city council fails to adopt a proposed initiative ordinance without any change in substance within 45 days or fails to repeal the referendum ordinance within 30 days or, in the case of a referendum authorized pursuant to sub-subparagraph (a) 2.c., within five days after the date on which the petition is determined to be sufficient, it shall submit the proposed initiative or referendum ordinance to the electors of the city. If the city council fails to act on a proposed initiative ordinance or a referendum ordinance within the time period specified, the city council shall be deemed to have failed to adopt the proposed initiative ordinance, or failed to repeal the referendum ordinance on the last day that the city council was authorized to act on such matter.~~

~~2. *Submission to electors.* The vote of the city on a proposed initiative or referendum ordinance shall be held not less than 30 or more than 50 days from the date the city council acted or was deemed to have acted pursuant to subparagraph 1, that the petition was determined sufficient. If no regular election is to be held within the period described in this paragraph, the city council shall provide for a special election, except that the city council may, in its discretion, provide for a special election at an earlier date within the described period. Copies of the proposed initiative or referendum ordinance shall be made available at the polls.~~

~~3. *Withdrawal of petitions.* An initiative or referendum petition may be withdrawn at any time prior to the 15th day preceding the day scheduled for a vote of the city by filing with the city clerk a request for withdrawal signed by at least eight members of the petitioner's committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.~~

~~(f) *Results of election.*~~

~~1. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.~~

~~2. If a majority of the qualified electors voting on a referendum ordinance vote against it, it shall be considered repealed upon certification of the election results.~~

C. Section 9. Transition Schedule. [Retained language is for historical reference only]

~~(4) First-year expenses. The city council, in order to provide moneys for the expenses and support of the city, shall have the power to borrow money necessary for the operation of city government until such time as a budget is adopted and revenues are raised in accordance with the provisions of this charter.~~

~~(5) Transitional ordinances and resolutions. The city council shall adopt ordinances and resolutions required to effect the transition. Ordinances adopted within 60 days after the first council meeting may be passed as emergency ordinances, shall be effective for no longer than 90 days after adoption, and thereafter may be readopted, renewed, or otherwise continued only in the manner normally prescribed for ordinances.~~

~~(6) Transitional comprehensive plan and land development regulations and solid waste collection plan:~~

~~(a) Until such time as the city adopts a comprehensive plan, the applicable provisions of the Comprehensive Plan of Monroe County, as the same exists on the day the city commences corporate existence, shall remain in effect as the city's transitional comprehensive plan. However, all planning functions, duties, and authority shall thereafter be vested in the City Council of Marathon which shall be deemed the local planning agency until and unless the council establishes a separate local planning agency. Prior to the adoption of a city comprehensive master plan, any amendment to any zoning as established in the current county land use plan shall only be by an ordinance adopted by the affirmative vote of not less than four members of the council. Any increase in the residential density or intensity, as established in the current county land use plan which is adopted by the city shall only by an ordinance adopted by the affirmative vote of not less than four members of the council.~~

~~(b) All powers and duties of the planning commission, zoning authority, any boards of adjustment, and the County Commission of Monroe County, as set forth in these transitional zoning and land use regulations, shall be vested in the City Council of Marathon until such time as the city council delegates all or a portion thereof to another entity.~~

~~(e) Subsequent to the commencement of the city's corporate existence, no amendment of the comprehensive plan or land development regulations enacted by the Monroe County Commission shall be deemed as an amendment of the city's regulations or otherwise take effect within the city's corporate limits unless approved by the city council.~~

Section 3. Form of Ballot: The form of ballot of the charter amendments provided for in Section 2 shall be as follows:

1. Election and Term of Office of Councilmembers.

Starting in 2015, the City Councilmembers may serve two three (3) year terms instead of three two (2) year terms reducing the number of required elections.

Shall the above-described amendment be adopted?

Yes []

No []

2. Noninterference by city council.

The Charter does not currently define “interference” with administration or “malfeasance” by a Council member nor does it provide a remedy if the section is violated. It is proposed to define these terms and provide remedies for violation.

Shall the above-described amendment be adopted?

Yes []

No []

3. Tie Votes

The current charter provides in the event of a tie vote between two or more candidates, a runoff election will be required to resolve the tie, with a tie vote in the run-off election to be resolved by lot, e.g. drawing straws. It is proposed that a tie vote be resolved in the first instance by lot under the direction of the City Clerk, without the need for separate election.

Shall the above-described amendment be adopted?

Yes []

No []

4. Composition of City Canvassing Board

The current charter provides that the city canvassing board shall be composed of those members of the city council who are not candidates for reelection. It is proposed to change the composition of the canvassing board to be the city manager, city clerk and city attorney with the manager selecting substitute member(s) if one or more cannot serve.

Shall the above-described amendment be adopted?

Yes []

No []

5. Initiatives and Referendum

The charter allows initiative petitions to be filed with the Clerk for action by City Council and submitted to the electorate. It is proposed that initiative petitions, once filed, be reviewed within 20 days by the City Attorney for legal sufficiency, with mandatory action by the Council to be taken at the next two regularly scheduled council meetings and submission, if necessary, to the electorate at the next general election.

Shall the above-described amendment be adopted?

Yes []

No []

6. Transition Provisions and Correction of Scrivener Errors

The current charter contains transition provisions relating to the City's incorporation. It is proposed to eliminate some transition language and retain the balance for historical reference purposes and to correct any existing scrivener's errors and change numeration as necessary.

Shall the above-described amendment be adopted?

Yes []

No []

Section 4. Public Inspection. Charter Amendment to be Available for Public Inspection, and for the City Clerk to Utilize the Services of County Supervisor of Elections: The place, information and the full text of the proposed charter amendments are available at the Office of the City Clerk located at 9805 Overseas Highway, Marathon, Florida 33050. Copies of this ordinance providing for this charter amendment subject to this referendum approval is on file in the Office of the City Clerk and available for public inspection during regular business hours. The City Clerk is authorized to utilize the services of County Supervisor of Elections for any assistance required in the administration of the election.

Section 5. Providing for Inclusion in the City Charter: It is the intention of the Mayor and City Council and it is hereby ordained that the provisions of this ordinance shall become and made a part of the Charter of the City of Marathon, Florida, as to each charter amendment measure approved by a majority of voters on such measure in such election; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intentions; and the word "ordinance" shall be changed to "section" or other appropriate word.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the City at least 30 days prior to said election, the first publication to be in the fifth week prior to the election, and the second publication to be in the third week prior to the election, and shall be in substantially the following form:

“NOTICE OF ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO ORDINANCE NO. _____ ADOPTED BY THE CITY OF MARATHON, FLORIDA, AN ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE CITY ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2014 BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY.

Section 7. Severability: 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, 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 8. Effective Date: This ordinance shall become effective upon adoption on second reading, and each of the charter amendment measures provided herein shall be effective only upon approval of a majority of electors voting on the measure, effective upon certification of the election results. If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 24th DAY OF JUNE, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

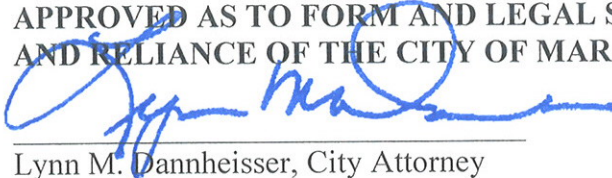

AYES: Senmartin, Bartus, Bull, Keating, Ramsay
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

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



Lynn M. Dannheisser, City Attorney

1 The words that are underscored constitute the proposed amendments to the section once it is approved.