

Sponsored by: Bartus
Introduction Date: March 22, 2016
Public Hearing Dates: April 12, 2016
April 26, 2016
Enactment date: April 26, 2016

**CITY OF MARATHON, FLORIDA
ORDINANCE NO. 2016-04**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, CREATING SECTION 18-125 OF THE CITY CODE TO PROVIDE FOR CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND FOR POSSESSION OF DRUG PARAPHERNALIA; SETTING FORTH PENALTIES AND ENFORCEMENT RESPONSIBILITIES FOR VIOLATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) has the authority under the Municipal Home Rule Powers Act, Fla. Stat. § 166.021 et seq., to enact regulations for the public peace, morals and welfare of the City so long as the regulations do not conflict with State Law; and

WHEREAS, the City Council of the City of Marathon (“the “City Council”) desires to create and establish Section 18-125 of the City Code of Ordinances (the “City Code”), which would prohibit any act within the City, that is, or shall be recognized, by the laws of the State of Florida as a misdemeanor; and

WHEREAS, a person convicted for commission of an act defined as a misdemeanor pursuant to Section 18-125, will be punished by a fine or imprisonment or both, but in no case shall the fine and/or imprisonment imposed be greater than the maximum fine or penalty for the same offense under Florida Statutes; and

WHEREAS, several states and municipalities have modified their drug laws to create civil violations for possession of *de minimis* amounts of marijuana, which is only enforceable by a monetary fine and does not subject that person to arrest or criminal prosecution; and

WHEREAS, filing criminal charges for possession of twenty (20) grams or less of marijuana for personal use is expensive and time consuming for law enforcement officers, who could otherwise be spending their time addressing more serious crimes; and

WHEREAS, the City Council has determined that enacting monetary civil penalties for possession of twenty (20) grams or less of marijuana and drug paraphernalia may act as an additional deterrent to such violations; and

WHEREAS, this ordinance will provide an alternative and additional mechanism under the City’s Code to enforce these violations; and

WHEREAS, the Monroe County Sheriff’s Office shall have the discretion to issue a civil citation pursuant to this ordinance or to arrest a person for the commission of a misdemeanor under State Law; and

WHEREAS, the City Council has further determined that a civil citation fine of One Hundred Dollars (\$100.00) for first time violations and Two Hundred and Fifty Dollars (\$250.00) for repeat violations is an appropriate penalty for the possession of twenty (20) grams or less of marijuana or misdemeanor possession of marijuana drug paraphernalia; and

WHEREAS, the City Council has determined that adoption of this Ordinance is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendment to the City Code; Establishing Section 18-125 “Offenses under state law; Prohibited.” Section 18-125 entitled “Offenses under state law; Prohibited.” is hereby created and established within the City Code as follows:

Additional text is shown as underlined; Deleted text is shown as ~~strike through~~

Sec 18-125. Offenses under state law; Prohibited.

- (a) It shall be unlawful within the City, for any person to commit any act or fail to perform any duty, the commission of which, or the failure of which, constitutes a misdemeanor under the laws of the State of Florida.
- (b) Whoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is provided by the laws of the State.
- (c) Notwithstanding subsection (a) the following misdemeanors under State law are eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence, incident involving domestic violence, or violent crime, as those terms are defined under State law.
 - (1) Possession of Cannabis in an amount of twenty (20) grams or less, as set forth in section 893.13(6) (b) of Florida Statutes, as such may be amended from time to time; and/or

(2) Possession of Drug Paraphernalia, as set forth in Section 893.146 and 893.147(1) (b) of Florida Statutes, as such may be amended from time to time.

(3) Penalties and enforcement.

(a) A person violating subsection (c)(1) or (c)(2) shall receive a civil fine of One Hundred Dollars (\$100.00) for first time violators and Two Hundred Fifty Dollars (\$250.00) for repeat violations within a one (1) year period.

(b) Enforcement. The Monroe County Sheriff's Office shall enforce this section within the City. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a police officer finds a violation of (c)(1) or (c)(2), the police officer will be authorized to issue a civil citation. The citation shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before the code compliance board within ten (10) days after service of the citations, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(c) Rights of violators; Payment of fine; Right to appear; Failure to pay civil fine or to appeal; Appeals from decisions of the special magistrate.

i. A violator who has been served with a civil citation under this Section must elect to either:

a. pay the civil fine in the manner indicated on the citation; or

b. request an administrative hearing before the code compliance board to appeal the citation, which must be requested within ten (10) days of the service of the citation.

ii. The procedures for appeal by administrative hearing of the citation shall be as set forth in this section and section 10-8 of the City Code. Applications for hearings must be accompanied by a Fifty Dollar (\$50.00) administrative fee, which shall be refunded if the named violator prevails in the appeal.

- iii. If the named violator, after issuance of the civil citation, fails to pay the civil fine, or fails to timely request an administrative hearing before the code compliance board, the City's code director may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the code compliance board, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgement by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgement except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
- v. Any party aggrieved by a decision of the code compliance board may appeal that decision to a court of competent jurisdiction.
- vi. The code compliance board shall be prohibited from hearing the merits of the citation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the citation.
- vii. The code compliance board shall not have discretion to alter the penalties described herein.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance is 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 5. Repeal of Conflicting Provisions. The provisions of the Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 26TH DAY OF APRIL, 2016.

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Bartus, Zieg, Coldiron, Kelly
NOES: Senmartin
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



David Migut, City Attorney