

ORDINANCE NO. 02-07-09

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 6.3 OF THE CITY CODE RELATING TO CODE COMPLIANCE PROCEDURES; ADOPTING CHAPTER 162, FLORIDA STATUTES, AS AMENDED HEREIN AS THE CITY'S CODE COMPLIANCE PROCEDURE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon, Florida, wishes to streamline its code compliance procedures in order to provide for an equitable, expeditious, effective, and inexpensive method of enforcing its Code.

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

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

Section 2. Amendment to the Code. A new Chapter 6.3 is adopted which shall read as follows:

CHAPTER 6.3

CODE COMPLIANCE

Section 6.3-1. Adoption of Chapter 162, Florida Statutes.

Chapter 162, Florida Statutes, as it may be amended from time to time, is hereby adopted by reference as though it was copied fully herein, subject to the amendments set forth herein.

Section 6.3-2. Intent and Purpose.

It is the intent and purpose of this Chapter to promote, protect, and improve the health, safety and welfare of the residents of the City, by authorizing the establishment of Code Compliance

procedures to provide an equitable, expeditious, effective and inexpensive method of enforcing any code provision, ordinance, approval, development permit or order, or resolution issued pursuant to any ordinance or provision of the Code of the City.

Section 6.3-3. Applicability.

Pursuant to 162.03, Florida Statutes, the City may establish, by resolution, a code compliance system that shall provide for a Code Compliance Board or Special Master.

Section 6.3-4. Definitions.

For the purposes of this Chapter and Parts I and II, Chapter 162, Florida Statutes, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include future, words in the plural number include the singular number and vise-a-versa. The word "shall" is always mandatory and not merely directory.

"Code" means the City of Marathon, Florida, Code of Ordinances and adopted Ordinances, and any approval, development permit or order, or resolution issued pursuant to any provision of the Code.

"Code Compliance Board means the Code Compliance Board of the City of Marathon, Florida.

"Code Compliance Officer" means any authorized agent or employee of the City whose duty it is to ensure compliance with the Code.

"Continuing Violation" means a violation which remains uncorrected beyond the time period for correction contained in either the Notice of Violation or the Final Order of the Code Compliance Board, whichever is applicable. Each day such violation continues shall

be declared to constitute a continuing and separate violation and no additional notice shall be required.

"Manager" means the City Manager or designee.

"Notice of Violation" means a violation notice issued to a Violator. A notice of violation may include a citation issued pursuant to the Part II, Chapter 162, Florida Statutes.

"Repeat Violation" means a violation of a provision of the Code by a person who has been previously found by the Code Compliance Board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding that the violations occur at different locations.

"City Council" means the Council of the City of Marathon, Florida.

"City" means the City of Marathon, Florida.

"Violator" means that person or entity responsible for a violation of the Code.

"Uncorrectable Violation" means a violation which is irreparable or irreversible in nature and which cannot be remedied after the violation has been committed because the violation constitutes a single prohibited act rather than an ongoing condition or circumstance.

Section 6.3-5. Continuances.

The provisions of Section 162.07, Florida Statutes, as adopted by this ordinance, are hereby amended to read as follows:

- (1) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the Code Compliance Board prior to the hearing. When considering a request for a continuance, the Code Compliance Board may consider whether the party requesting the continuance is working towards compliance with the Code, the timeliness of the request for continuance, whether

the party requesting the continuance acted diligently in doing so, the unavailability of a necessary witness or other evidence without inexcusable neglect on the part of the party wishing to call said witness or present said evidence, and any other exigent circumstances including a medical emergency, an act of God or other unforeseen event. Inexcusable neglect on the part of the party requesting it, shall not constitute good cause for a continuance. If a continuance is granted, the City Manager or designee shall notify the Code Compliance Officer and the Violator of the date and time of the rescheduled hearing.

(2) The Code Compliance Board shall not postpone a hearing because the named Violator, prior to the scheduled hearing date, files with the duly authorized City board of appropriate jurisdiction, if any, an administrative appeal concerning the interpretation or application of the Code provisions upon which the alleged Violation was based. Rather the hearing shall take place as provided in this Chapter and an order shall be issued subject to a determination in favor of the Violator by said duly authorized Board. If the appeal is unsuccessful the fine assessed by the Code Compliance Board will be retroactively imposed. However, once an issue has been determined by a Code Compliance Board in a specific case, that issue may not be further reviewed by a City board in that specific case unless an appeal was filed with the Board prior to the Code Compliance hearing.

Section 6.3-6. Fines and Related Terms Construed.

(1) For each day of a Continued Violation, an additional fine in the same amount as that prescribed for in the first day of Violation shall be added without the need for additional notice.

(2) If the Violator is found to have violated the Code, the Violator shall be held liable for the reasonable costs of prosecution in the amount of \$250.00.

(3) For the first Repeat Violation, the amount of the fine shall be at least double the amount of fine prescribed for the original Violation, but shall not exceed five hundred dollars (\$500.00.) The amount of the fine due for each subsequent Repeat Violation shall be five hundred dollars (\$500.00). A Repeat Violation, which remains uncorrected beyond the time prescribed for correction in the Notice shall be treated as a Continuing Violation.

4) Fines for a Continuing Violation shall accrue from the date of correction given in the Notice until the Violation is corrected. Upon notification by the Code Compliance Officer that correction of the Violation was not made within the period ordered, or upon finding that a Repeat Violation has been committed, the Code Compliance Board may enter an Order imposing a fine for each day a Continuing or Repeat Violation continues.

(5) If the Code Compliance Board finds that a Violation presents a serious threat to the public health, safety and welfare, or if the Violation is irreparable or irreversible in nature, the Code Compliance Board shall notify the City Manager, who may order all repairs in order to bring the property into compliance. The City may assess the Violator with the cost of the repairs.

(6) Fines assessed pursuant to this Chapter are due and payable to the City on the last day of the period allowed for the filing of an appeal from the Code Compliance Board's decision, or, if a proper appeal is made, when the appeal has been finally decided adversely to the named Violator. Fines shall continue to accrue during the pendency of an unsuccessful appeal.

(7) The City may institute proceedings in a court of competent jurisdiction to compel payment of fines or costs of repairs authorized herein.

(8) A fine imposed pursuant to this Chapter shall continue until a compliance inspection is requested by the Violator and the Code Compliance Officer finds that all violations were corrected.

(9) A certified copy of a notice of assessment of cost of repairs may be recorded in the public records and thereafter constitutes a lien on the property on which the repairs were performed. Upon petition to the circuit court, such notice of assessment may be enforced in the same manner as a court judgment by the Sheriffs of this State, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the date of filing of any such notice of assessment, which remains unpaid, the City may foreclose or otherwise execute on the lien. Alternatively, the City may sue to recover a money judgment for the amount of the lien plus accrued interest. Such liens shall be superior and paramount to the interest in such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of state, county and City taxes and shall be on parity with the lien of such state, county and City taxes.

(10) Upon payment of the fine or notice of assessment by the Violator or the successor(s), assign(s) or heir(s) of the Violator, the City Clerk is authorized to execute and record in the public records of Monroe County the appropriate Release of Lien document.

(11) No lien provided under this Chapter shall continue for a period longer than 20 years after the certified copy of an order imposing a fine or notice of assessment has been recorded, unless within that time an action to foreclose on a lien is commenced in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party may recover interest and all costs, including a reasonable attorney's fee,

incurred in the action. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(12) A certified copy of an order imposing an assessment of cost of repairs recorded in the public records shall constitute notice of the Violation and any fine or costs imposed therein to any subsequent purchasers, successors in interest, or assigns if the Violation concerns real property. The findings therein shall be binding upon the Violator, and if the Violation concerns real property, any subsequent purchasers, mortgagees, judgment creditors, successors in interest or assigns.

(13) If an order is recorded in the public records and it is complied with by the date specified, the Code Compliance Board shall issue an order acknowledging compliance which shall be recorded in the public records. A hearing shall not be required to issue such an order acknowledging compliance.

(14) The City may charge the Violator for all costs incurred in recording and satisfaction of an order imposing fines, and a notice of lien or assessment.

Section 6.3-7. Appeal of orders.

An order of the Code Compliance Board containing findings of fact and conclusions of law that a violation of the City Code has occurred shall be a final administrative order of the Code Enforcement Board as provided in Section 162.11, Florida Statutes. Any appeal taken from this order must be filed within 30 days of the execution of the order as provided in Section 162.11, Florida Statutes. An order imposing fine, entered for failure to comply with an order of the Code Enforcement Board, shall only be considered a final administrative order of the Code Compliance Board for the purposes of an appeal to

determine whether the Violator complied with the order containing findings of fact and conclusions of law. Failure to file an appeal within the prescribed 30-day period shall render the order of the Code Compliance Board conclusive: binding and final.

Section 6.3-8. Procedures for Implementation of Chapter 162, Part II.

- (1) A Violation of the City Code, an ordinance, a resolution issued pursuant to any provision of the Code, or any development permit or order of the City, is a civil infraction.
- (2) A code compliance officer who has reasonable cause to believe that a person has committed an act in violation of the City Code or ordinance, may issue a notice and citation in the manner and form prescribed by Chapter 162, Florida Statutes.
- (3) The maximum fine for a civil infraction shall not exceed \$500.00 per Violation.
- (4) Each Violation of the Code shall be a separate civil infraction. Each day a Violation continues shall be deemed to constitute a separate civil infraction and no additional citation shall be required.
- (5) The City Council may adopt by resolution a schedule of fines for citations.
- (6) The fine for a Violation shall be reduced if the Violator does not contest the citation.
- (7) The City Manager may refer a Citation to county court for disposition.
- (8) A Violator may elect to contest the Citation before the Code Compliance Board or County Court by requesting a hearing with the City within fourteen (14) days of the date of the violation.
- (9) If the Violator has been previously cited for the same Violation at least two (2) times within a twelve (12) month period, upon the issuance of a third or subsequent citation, the Violator shall not have the option of paying the reduced fine but instead shall

appear before the Code Compliance Board or the County Court to answer the charge. The Code Compliance Board or County Court, after a hearing on the citation, shall make a determination whether or not a Violation of the Code has been committed. If a Violation is found to have occurred, the Code Compliance Board or County Court shall enter a final order against the Violator imposing the mandatory fine as set forth by resolution, plus the reasonable costs of prosecution in the amount of \$250.00. The final order shall also specify that the Violator shall abate or correct the Violation.

(10) Should the cited Violator schedule a hearing as provided for herein and thereafter fail to appear at such hearing, the Violator shall be deemed to have waived the right to contest the citation, and the Code Compliance Board or Court shall enter a final order against the Violator imposing an amount up to the maximum fine as set forth in this Chapter plus the reasonable costs of prosecution in the amount of \$250.00. The final order shall also specify that the Violator shall abate or correct the Violation. A hearing date shall not be postponed or continued because the Violator fails to attend unless a request for continuance, showing good cause for such continuance, is received in writing by the Code Compliance Board prior to the date set for the hearing. A hearing may only be continued once. Provided, however, that the Code Compliance Board shall have the discretion to continue or reschedule any hearing if the Code Compliance Board determines that good cause exists and that doing so will further the interests of justice. In arriving at such a determination, the Code Compliance Board may consider the timeliness of the request for continuance, whether the party requesting the continuance acted diligently in doing so, the unavailability of a necessary witness or other evidence without excusable neglect on the part of the party wishing to call said witness or present said evidence, and any other exigent

circumstances including a medical emergency, an act of God or other unforeseen event, and whether a prior continuance has been granted. Inexcusable neglect on the part of the party requesting it, shall not constitute good cause for a continuance. In such an event, the Code Compliance Board shall notify the Code Compliance Officer and the Violator cited of the date and time of the rescheduled hearing.

(11) If the Violator fails to comply with the Code Compliance Board's final order to pay the fine, and abate or correct the Violation, the City may petition a Court of competent jurisdiction to enforce the final order in the same manner as a court judgment.

(12) In the event the Code Compliance Board enters a final order assessing a fine against the cited Violator as provided herein, the City may record a certified copy of said final order in the Public Records. The recorded final order shall constitute a lien against the real and personal property owned by the Violator. After three (3) months from the date of filing of any such lien, which remains unpaid, the City may foreclose or otherwise execute on the lien.

(13) The City Manager may refer a Citation to county court for disposition. The Clerk of Court or City Manager or designee shall notify the Violator of the date, time, and location of any scheduled hearing. If the Violator fails to appear for the scheduled court hearing, the Violator shall have waived any right to contest the citation and a judgment shall be entered against the Violator in an amount up to the maximum fine plus any applicable court costs. In addition, an Order to Show Cause may be issued by the county judge requiring the person cited to appear in county court to explain the person's failure to appear in court. Failure to respond to the Order to Show Cause may result in issuance of a civil contempt order.

(14) A county judge, after a hearing on the citation shall make a determination whether or not a violation of the Code has been committed. If a violation is found to have occurred, the county judge shall order the Violator to correct the violation and impose a fine up to the maximum fine allowed plus all applicable costs of prosecution, legislative assessments, and court costs.

(15) If the Violator fails to pay the fine or correct the violation within the time provided, the county judge shall enter a civil judgment against the Violator in an amount up to the maximum fine.

(16) Should the Violator fail to comply with a court order to abate or correct the violation, the court, after due notice and hearing on the matter, may hold the Violator in civil contempt and may enter an order to that effect.

(17) In the event that a civil judgment is entered against the Violator as provided herein, the City may record a certified copy of said judgment in the Public Records.

(18) If the Violator so refuses to sign the citation, the Code Compliance Officer shall write the words "Refused" or "Refused to Sign" in the space provided for the Violator's signature and shall then leave a copy of the citation with the Violator, if possible.

(19) Any Violator who willfully refuses to sign and accept a citation issued by a Code Compliance Officer shall be guilty of a misdemeanor of the second degree pursuant to Section 162.21(6), Florida Statutes.

Section 6.3-9. Proceedings Are Supplemental.

Nothing contained in this Chapter shall prohibit the City from enforcing its Code, resolutions, development orders and development permits by any means including, but not limited to, a notice of violations, a citation, a summons, a notice to appear in the County Court, an arrest, a civil action

for injunctive relief, a stop work order or demolition. The enforcement procedures outlined herein are cumulative to all others and shall not be deemed to be prerequisites to filing suit for the enforcement of any section of this Code.

Section 3: Repeal of Conflicting Provisions.

Chapter 6.3 of the City Code, concerning Code Enforcement, as it exists immediately prior to the adoption of this Ordinance, is hereby repealed. Any other provision of the City Code that conflicts with this ordinance is hereby repealed.

Section 4: Severability. If any section, subsection, sentence, clause, or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

Section 5: Inclusion in the Code. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Marathon, Florida, as an addition or amendment thereto, and shall be appropriately numbered to conform to the uniform numbering system of the Code.

Section 6: Effective date. This Ordinance shall be effective immediately upon its adoption.

The foregoing Ordinance was offered by Councilman Greenman, who moved for its adoption. This motion was seconded by Councilman Mearns, and upon being put to a vote, the vote was as follows:

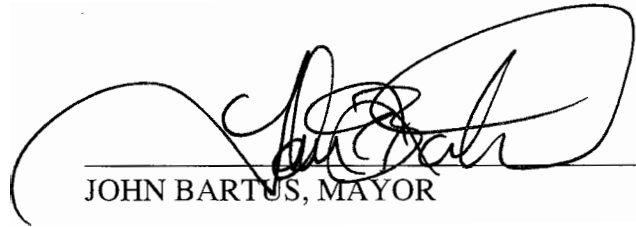
Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>

PASSED on first reading this 30th day of April, 2002.

The foregoing Ordinance was offered by Councilman Greenman, who moved for its adoption. This motion was seconded by Councilman Repetto, and upon being put to a vote, the vote was as follows:

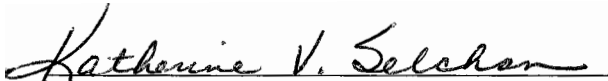
Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>

PASSED AND ADOPTED on second reading this 9th day of July, 2002.




JOHN BARTUS, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

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SCANNED
7/15/02 #6000 KS✓

MEMORANDUM*City of Marathon*

TO: Mayor, City Council and City Manager

FROM: Alexander L. Palenzuela

DATE: June 20, 2002

MEETING DATE: July 9, 2002

SUBJECT: Ordinance Amending Chapter 6.3 on Code Compliance (the "Ordinance")

ITEM:

The attached Ordinance, which was approved at First Reading on April 30, 2002, amends Chapter 6.3 in its entirety and sets forth new code compliance procedures.

STATEMENT OF PURPOSE:

The purpose of the Ordinance is to set forth with greater particularity the procedures for code compliance before the Code Compliance Board and for referring citations to the County Court. Among the specific areas covered in the Ordinance are requests for continuances and administrative costs. The ordinance was amended after first reading to take into account the comments received at a special call meeting of the Code Compliance Board.

ADDITIONAL INFORMATION:

None.

BUDGET IMPACT:

None.

AGENCY IMPACT:

None.

STAFF IMPACT:

None.

RECOMMENDATION:

Approval.