

Sponsored by: Worthington
Introduction Date: October 28, 2008
Public Hearing Dates: October 28 and November 10, 2008
Enactment date: November 10, 2008

**CITY OF MARATHON, FLORIDA
ORDINANCE 2008-28**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA,
AMENDING CHAPTER 18 OF THE CITY CODE BY CREATING
SECTIONS 18-185, 18-186, 18-187, 18-188, 18-189, 18-190; PROVIDING
FOR THE ESTABLISHMENT OF A NUISANCE ABATEMENT BOARD
PURSUANT TO SECTION 893.138, FLORIDA STATUTES; PROVIDING
FOR NOTICE, HEARING AND OPERATION PROCEDURES;
ENFORCEMENT AUTHORITY; JUDICIAL REVIEW; PROVIDING
SEVERABILITY, AND AN EFFECTIVE DATE.**

WHEREAS, the State of Florida enacted Section 893.138, Florida Statutes, to allow a local government to establish a Nuisance Abatement Board to address the issues of prostitution, criminal street gang activity, dealing in stolen property, and the sale of controlled substances on property within the local government's jurisdiction; and

WHEREAS, the City of Marathon ("City") recognizes the significant efforts of its residents and the Monroe County Sheriff's Office in working together to control these types of nuisances throughout the City; and

WHEREAS, in addition to these efforts, the City finds that in order to further protect its residents' health, safety and welfare, the establishment of a Nuisance Abatement Board is necessary to provide additional assistance in the continued efforts to control these types of nuisances; and

WHEREAS, the City finds that the Nuisance Abatement Board process, as authorized by Section 893.138, Florida Statutes, will provide the City's residents an effective method of addressing nuisances within the City.

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

~~Strikethrough~~ = deletion **bold underline** = addition

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Chapter 18 of the Code of Ordinances, City of Marathon, Florida, is hereby amended to read as follows:

* * *

Sec. 18-185. Definitions.

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

(a) Board means the Nuisance Abatement Board of the City of Marathon.

(b) City attorney means the legal counselor for the City of Marathon or any assistant city attorney.

(c) 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.

(d) County means Monroe County, Florida.

(e) Operator means the tenant, lessee or person having control or possession of the premises.

(f) Public nuisance means any place or premises within the City, which has been used on more than two (2) occasions within a six (6) month period as (i) the site of the unlawful sale, or delivery of controlled substances as defined in Chapter 893 of the Florida Statutes, (ii) the site of prostitution activity in violation of Section 796.07, Florida Statutes, (iii) by a criminal street gang for the purpose of conducting a pattern of criminal street gang activity as defined by Section 874.03, Florida Statutes, or (iv) the site of a violation of Section 812.019, Florida Statutes, 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. 135.40. 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 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 F.S. Section 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 two hundred fifty dollars (\$250.00) per day for the violation and shall not exceed five hundred dollars (\$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 thirty (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 Section 60.05 of the Florida Statutes or similar law against any public nuisance.

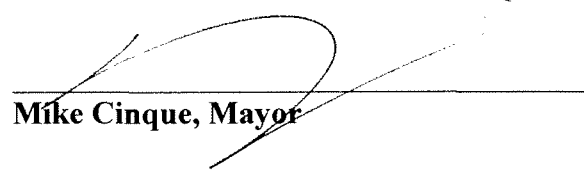
Section 3. The Provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. The provisions of this Ordinance are declared to be severable, and if any sentence, section, 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 sentences, sections, clauses or phrases of the 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. This Ordinance shall be effective immediately upon adoption by the City Council.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, this 10th day of November, 2008.**

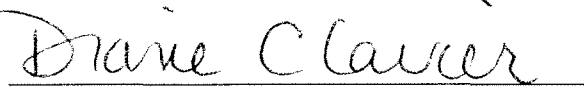
THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

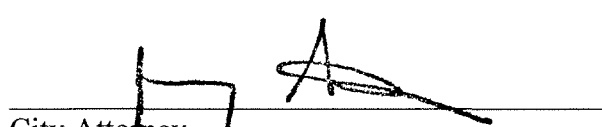
AYES: Snead, Worthington, Ramsay, Cinque
NOES: None
ABSENT: Vasil
ABSTAIN: None

ATTEST:



Diane Clavier
City Clerk

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



City Attorney