

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on April 9, 2019 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Bartus called the meeting to order at 6:10 pm.

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Councilmember Luis Gonzalez

Councilmember Mark Senmartin

Councilmember Dr. Daniel Zieg

Vice Mayor Steven Cook

Mayor John Bartus, comprising a quorum

Also in attendance were:

City Manager, Chuck Lindsey

City Attorney, David Migut

City Clerk, Diane Clavier

Finance Director Jennifer Johnson

Planning Director George Garrett

Growth Management Director, Doug Lewis

Public Works Director, Carlos Solis

Parks and Recreation Director, Jimmy Schmidt

Sheriff Rick Ramsay, Monroe County Sheriff's Office

Captain Don Hiller, Monroe County Sheriff's Office

Marina Director, Sean Cannon

### **Approval of Agenda and Consent Agenda**

Lindsey added cancellation of the April 23<sup>rd</sup> City Council Meeting and an Update on FKWQIP (Florida Keys Water Quality Improvement Project) Trip under City Manager Report. Lindsey also added Resolution 219-34 to the consent agenda.

**MOTION:** Zieg moved to approve the agenda as amended.  
**SECOND:** Gonzalez

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

### **City Council Items**

#### **\* Approval of Minutes**

Monroe County Sherriff's Office Return of Unspent Funds – Sherriff Ramsay presented a check to the City for \$84,000 and informed everyone crime was down 16.3 percent. Mayor Bartus thanked the MSCO and commented that every year they are able to give back funds.

Keys 100 Race Request for May 18-19 – Lindsey explained the request and commented that the race had never been an issue.

**MOTION:** Cook moved to approve  
**SECOND:** Gonzalez

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

Autism Awareness Month – Jill Campbell invited everyone to participate in the events scheduled and accepted the proclamation.

National Safe Boating Week Proclamation (Mayor Bartus) USCG Auxiliary Commander Mathews thanked Vice Mayor Cook and the City for their support of Coast Guard Members following the Federal shutdown and accepted the proclamation.

Child Abuse Prevention Month – Guardian Ad Litem volunteers accepted the proclamation

Community Announcements – Community announcements were read. Zieg reminded everyone of the car show benefitting soldiers at the Quay property. Bartus informed everyone of the Rotary Easter Egg Hunt on April 20<sup>th</sup> at 10 am.

## **City Manager Report**

City Seal Update (Migut) – Migut explained at the last meeting, Councilmember Senmartin gave a 30 day notice to cease use of the City seal. Migut stated his findings are that the application did not give him any trademark rights to the City seal and the City can continue to use its City seal. Migut explained that worldwide, there are two systems commonly referred to as first to use and first to register. The United States is a first to use country, and case law in the United States has continuously held that the use of a trademark protects an entity from someone coming later using the same trademark even if no trademark application was ever filed. While the City has never officially adopted the City seal, it is common knowledge that the City has been using at least two different versions of its seal since shortly after incorporation. Therefore, the fact that someone else has registered the City's seal with the State does not legally affect the City's right and ability to continue to use its seal. Migut also explained that under both Federal and State law, a municipal insignia, such as a city seal cannot be registered as a trademark.

Senmartin thanked Migut for all of his great, quality work and explained that trademark law was confusing. Senmartin commented that one of the key arguments is that the trademark shall not be registered if it consists or compromises a flag, coat of arms, or other insignia of the United States, any state or municipality and that was Migut's basis for saying he could not trademark the seal. Senmartin stated the problem is that it does not belong to this municipality since we have never adopted it as ours, we use it, but it does not belong to us, so technically, yes, I can trademark the seal for myself stated Senmartin. Other cities have adopted their seal for protection and there was no reason why the City should not adopt the seal Senmartin explained.

Bartus stated he would like to protect the seal, but it was not the will of the Council to adopt it by ordinance.

Senmartin stated that the City does not have control over the seal, which means anyone in the room or this town does not need the permission of the City to use the seal but they would need his permission because he is the trademark holder at this point.

Migut disagreed with his first part of the argument. Migut explained the only thing in Florida law that says we have to adopt a seal is if we want to have the criminal prosecution aspect at our disposal. We can still send cease and desist correspondence if we feel someone is using the seal improperly.

Senmartin stated a cease and desist carries no weight if you are not the owner of the seal.

Bartus commented that Florida and US are the first use right Country and State. Migut agreed, we are well protected since we have been using the seal.

Senmartin stated if the City refuses to adopt and protect the seal, then don't worry, he would, it is safe with him until we have a Council that understands and will move forward.

Cook commented as a side note, Senmartin does not actually own the seal, it is an application; all we have to do is say that it has been in use for the last 19 years.

**Citizens' Comments:**

Diane Scott – spoke about dogs without leashes and asked the law be enforced. Scott asked that the seal be adopted and disagreed with the attorney regarding trademark law, as she had done some research.

Parks and Recreation Report – Schmidt gave an overview of his report and highlighted some of the park programs. Bartus thanked Schmidt for the incredible amount of events going on at the parks.

Public Works Report – Solis reported that Sombrero Beach construction was moving at a quick pace and explained the change order for the beach on the agenda and informed everyone that FEMA approved funding for this change order for a three foot wall with a fence to help hold the sand on the beach along with a few other tweaks. Solis also commented that FKAA was installing seven injection wells. Solis informed everyone the Quay Boat parking would be amended per the sketch he distributed to allow for better traffic flow and stacking on the property and not US1. Zieg asked for an update regarding the bus stop tiki huts. Solis explained this was held up as they had to get an easement at K-Mart and FDOT would have to reapply for a permit. Senmartin asked for an update regarding the lighting on Sombrero Beach Road. Solis explained this will have to be put out to bid because of the costs to repair, however, this would be reimbursable by FEMA. Senmartin also commented on an area on Sombrero Beach Road where the edge drops off. Solis explained FKAA would repair the road and he would put this on the list to address the drop off. Bartus commented on the soccer and baseball fields change order and suggested by all means to make that happen and questioned if the entire beach would be open by July 4<sup>th</sup>. Solis explained the beach would substantially be completed by July 4<sup>th</sup> and final completion by the end of July.

Wastewater Utility Report – Lindsey explained Saus was not able to attend tonight's meeting, but he would try to answer any questions.

Cancellation of April 23<sup>rd</sup> meeting – Lindsey requested cancellation of this meeting as there are no items. The Council gave a head nod to cancel the meeting.

Update on FKWQIP (Florida Keys Water Quality Improvement Project) Trip – Lindsey explained that the City was successful in obtaining FKWQIP in the past and that Dan Saus, Mayor Bartus and he along with Key Largo Wastewater District and the Village of Islamorada would be traveling to DC to ask for funding. Lindsey also mentioned that there was an item we placed on consent tonight and the filter upgrade project will be completed with the newer technology that will make our system even better and will be paid for solely with FKWQIP funding. Bartus commented that he and Garrett were involved in the past to ask for this funding, and it has been a long time coming. Lindsey commented that the City received four million last year.

**Ordinances (To be continued)**

**Ordinance 2019-06** - Consideration Of An Ordinance To Amend The City Of Marathon Comprehensive Plan Modifying Chapter One, "Future Land Use," Table 1-1, "Future Land Use Densities And Intensities," To Provide For Affordable Housing Repurposing Units; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing

For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity;  
And Providing For An Effective Date Upon The Approval Of This Ordinance By The State  
Department Of Economic Opportunity.

**Ordinance 2019-07** - Consideration Of An Ordinance To Amend The City Of Marathon Land  
Development Regulations, Chapter 103, Article 3, "Use And Intensity Tables, Table 103.15.1,  
" Uses By Zoning District," To Provide For Affordable Housing Repurposing Units; And  
Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing  
For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity;  
And Providing For An Effective Date Upon The Approval Of This Ordinance By The State  
Department Of Economic Opportunity

Migut explained these items were continued at the last meeting and staff was not able to  
complete these items in time for the packet. Migut explained the items would come back and  
suggested the Council not take any action on them and continue them, however, there are  
people from the public that may want to comment and Migut recommended that if they still  
want to speak they be allowed. Bartus commented that he does want to hear what the public  
has to say and thanked the public for sticking around during the power outage.

Bruce Farraro – spoke against the ordinance as it would negatively impact the owners of  
Skipjack condos.

Lawrence McKenna – spoke against the ordinances and asked everyone to raise their hands  
in the audience that were against the ordinance.

Sari Mundie – read letters from those against the ordinance.

Migut explained if the ordinances were approved and enacted, this would apply City-wide it  
is not just Skipjack.

Everet Breland – spoke against the ordinances, and not being made aware of what was  
happening.

Tom Wright – on behalf of the owners, stated his client was told this was going to be  
continued, and that allowing speakers was fundamentally unfair and wanted his objection on  
the record.

**MOTION:** Senmartin moved to continue Ordinance 2019-06

**SECOND:** Zieg

With no objection from the members of Council, Mayor Bartus declared the motion approved by  
unanimous consent.

**MOTION:** Senmartin moved to continue Ordinance 2019-07

**SECOND:** Cook

With no objection from the members of Council, Mayor Bartus declared the motion approved by unanimous consent.

**Quasi-Judicial Public Hearing:**

**Resolution 2019-33**, Consideration Of A Request For An Amendment To A Conditional Use Permit For Blue Water Resort Hospitality, LLC In Coordination With Marathon Hospitality LLC, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled "Conditional Use Permits," For The Addition Of A Drive Through As Part Of The Redevelopment Of The Properties As A Hotel/Motel Resort, Located At 2222 Overseas Highway, Which Is Legally Described As Part Of Lot 2, And Bay Bottom Adjacent To Lot 2, Key Vaccas, Marathon, Florida, Having Real Estate Number 00102730-000000; And Located At 2146 Overseas Highway, Which Is Legally Described As Part Of Lot 2, And Part Of Old State Road 4A, Key Vaccas, Marathon, Florida, Having Real Estate Number 00102810-002000. Nearest Mile Marker 48.

The clerk swore in speakers. Council stated they had no exparte communications.

Garrett explained the project and request for the amendment to the conditional use. Senmartin questioned the direction to travel for the drive thru as well as the entrance on the site plan and if the housing would have issue regarding headlights at night. Garrett replied it was commercial next door. Senmartin suggested a light barrier.

Jorge Ceparo, agent for applicant explained this was the last piece of hotel and retail portion of the project, this is for only the drive thru, as the retail portion was already approved.

Zieg questioned is we needed to calculate the water and wastewater impacts on what this is and explained we may want to delay this until we know the impacts.

Lindsey explained the wastewater calculations were requested and there is no way to evaluate the numbers unless we knew what was going in there.

Zieg commented if there was something more we should do to know what the impact was before we give blanket approval. George commented that Saus did have some concerns, there will be some ultimate evaluations; we could put a limit on that number. Ceparo explained that once a tenant is chosen, they will need to come in and get a permit and if they exceed the impact, they will not be able to get a permit.

Mayor Bartus called for public comments; hearing none closed comments.

**MOTION:** Senmartin moved to approve Resolution 2019-33  
**SECOND:** Cook

Vote of the Motion:

Yes: Senmartin, Cook, Gonzalez, Zieg, Bartus  
No: None

Absent: None  
Abstain: None

Vote on the Motion: 5 Yes, 0 No, 0 Absent, 0 Abstain

### **Resolutions for Adoption**

**\*Resolution 2019-34** Authorizing A “Sole-Source” Purchase Pursuant To The City’s Purchasing Policies And Procedures And Approving The Purchase of two Eqovua, DAVCO, Forty-X Disc filters for Service Area 3 WWTP In An Amount Not To Exceed \$380,000.00; Authorizing The City Manager To Enter Into Agreements In Connection Therewith, Appropriating And Expending Budgeted Funds; And Providing For An Effective Date

**\* Resolution 2019-35**, Approving Change Order No. 1 To Contract Between The City And Discount Rock & Sand, Inc. In The Original Amount Of \$1,343,241.00 For The Reconstruction of Sombrero Beach From Hurricane Irma Damages; Increasing The Contract In An Amount Not To Exceed \$157,400 For Construction Of The Exterior Wall In Lieu Of A Fence As Approved By FEMA For Hazard Mitigation, And Various Other Items; Authorizing The City Manager To Execute The Change Order And Appropriate and Expend Budgeted Funds On Behalf Of The City; And Providing For An Effective Date.

**\* Resolution 2019-36**, Providing An Amendment Document For Extension Of The Term Specified In Section 3, “Term” Of The Interlocal Agreement Between The City Of Marathon And Monroe County Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Ownership Of Key Vaca LLC, To Be Located Between 4700 And 4800 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327110-000000, 00327120-000000, 00327130-000000, And 00327140-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-107; And Providing For An Effective Date.

**\* Resolution 2019-37**, Providing An Amendment Document For Extension Of The Term Specified In Section 3, “Term” Of The Interlocal Agreement Between The Monroe County And The City Of Marathon Transferring Affordable Housing Residential Dwelling Unit Allocations For An Approved Project In The Ownership/Of Crystal Cove Market Site LLC (Formerly HTG Crystal Cove), To Be Located 4900 Overseas Highway, Marathon, Florida On Properties Including Real Estate Numbers 00327150-000000, 00327910-000000, 00327920-000000, 00327990-000000, 00328000-000000, 00328010-000000, 00328020-000000, And 00328030-000000. Nearest Mile Marker 50; Rescinding Resolution 2017-106; And Providing For An Effective Date.

### **Citizens' Comments:**

Diane Scott – asked to put the bus stop back to its previous location and suggested a water fountain and phone charger at the bus stop. Scott asked for a pavilion at the Jesse Hobbs Park and commented that the Church would be celebrating its 70<sup>th</sup> anniversary.

### **Council Comments**

Gonzalez informed everyone that former Councilmember Marilyn Tempest, she had a severe fall and will be having surgery tomorrow and then will go to a rehab center for two months. Gonzalez wished her a speedy recovery and our thoughts and prayers are with her and her family..

Zieg thanked Gonzalez for the information and asked for thoughts and prayers to Marilyn Tempest and her family. Zieg thanked Marathon Fire Rescue as well as MSCO and FHP on a personal note for doing their jobs last week very well. Zieg gave a history of events in 1865, 2003 and 2005. Zieg commented that at the last meeting during the Tallahassee trip discussion, his comments of "show me the money" and "check please" were left out of the minutes.

Senmartin commented that the Sherriff's office check represents officers we did not have here largely because of the affordable housing shortage. Senmartin also commented on the Marathon High School presentation of Mama Mia is this weekend.

Cook thanked the staff, volunteers, Marathon Fire Rescue and MSCO officers who worked the bridge run and asked everyone to keep Mike Card and family in their prayers and wished everyone a happy Easter.

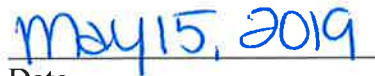
Bartus also asked for thoughts and prays for the Card family and Tempest family. Bartus congratulated MSCO, EMS, and volunteers for the successful bridge run and gave a special thanks to Solis and Schmidt for doing everything they did to try to get power restored.

### **ADJOURNMENT**

With no further business to come before the Council, Mayor Bartus adjourned the meeting at 7:35 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of April 9, 2019

  
Diane Clavier, City Clerk

  
Date