

**CALL TO ORDER** - A Meeting of the City Council of Marathon, Florida was held on December 13, 2022 in the Marathon Council Chambers, 9805 Overseas Hwy., Marathon, Florida, Mayor Gonzalez called the meeting to order at 5:30 pm.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**ROLL CALL - There were present:**

Councilmember Landry

Councilmember Matlock

Councilmember Smith

Vice Mayor Robyn Still

Mayor Gonzalez, comprising a quorum

Also, in attendance were:

City Manager, George Garrett

City Clerk, Diane Clavier

Attorney, Steve Williams

Planning Director, Brian Shea

Finance Director, Jennifer Johnson

Parks & Rec Director, Paul Davis

Utilities Director, Dan Saus

Deputy Utilities Director, Libby Frazier

Public Works Director, Carlos Solis

Building Official, Gerard Roussin

Code Director, Ted Lozier

Monroe County Sherriff's Office Sargent David Fernandez

Monroe County Sherriff's Office Lt. Mark Jones

Mayor Gonzalez recognized the Key Colony Beach Vice Mayor Ramsay and Mayor Treffery as well as Lt. Mark Jones and Sargent Fernandez and Daniel Samess.

### **Approval of Agenda & Consent Agenda**

Still added Grants for Non-Profits Discussion as item 5F, Smith added Boy Scout Flag Retirement Ceremony as item 5G. Landry removed the Public Works Report from the consent agenda. Garrett removed Resolution 2022-133 from the consent agenda.

**MOTION:** Still moved to approve the agenda as amended.

**SECOND:** Smith

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

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

Discussion Concerning The Acquisition Of An Attorney General's Opinion Concerning The City's Ability To Modify Its Vacation Rental Ordinance (Councilmember Smith) Smith explained why he asked for an Attorney General opinion to clarify section 509 language to ensure we are doing everything in our power to be able to modify our ordinance. Gonzalez commented that we have discussed this with the attorney what we can do, we must be careful because we could forfeit the ordinance we have, and then nightly rentals would be allowed. Williams explained any amendment would forfeit our ordinance there is not an effective way to test this, Attorney General Opinions are not binding, and it would expose us to a greater risk, we could enforce more strictly. Williams provided examples of Attorney General Opinions where a City in Florida tried to allow more vacation rentals and the opinion was denial of the request for additional rentals. Still questioned if the City were to lose our Vacation Rental ordinance, who would enforce the vacation rentals. Williams commented that complaints would go to the DBPR (Department of Business and Professional Regulations).

**MOTION:** Smith moved to request an Attorney General Opinion

**SECOND:** None, motion failed for lack of a second.

Discussion of House Boats as Vacation Rentals (Councilmember Still) – Williams explained we were not the first government entity to address this while explaining the definitions of floating structures, vessels, etc. overlap. While vacation rentals are enforced by code, “livery” is enforced by FWC. Williams suggested that Captain Dipre with FWC be invited to a future meeting and have this subject as an agenda item to figure out enforcement as we would need a comprehensive approach as we need to be careful how we enforce.

Mike Malard – questioned who issues the permits to have liveaboard slips. Garrett explained there was a marina siting study that counted all the slips in Marathon, and DEP, ACORP, and the City issue permits, as our zoning terminates at mean high water.

Council tabled for a future meeting such as February 14, 2023 Williams commented that he would advertise the ordinance the County approved (05-2018).

BPAS Fee Discussion (Councilmember Smith) Smith explained in June of 2022 the Council passed Resolutions 2022-50 and 2022-51 which amended (doubled) fees in the market rate pool. The Resolution became effective July 14, 2022. Smith requested that anyone prior to June 14<sup>th</sup> be grandfathered in and requested the data to back up the fees. Gonzalez asked Shea how many periods were left. Shea commented four. Matlock questioned how many permits we were holding. Shea responded half must go towards affordable, but the Council can waive the fee for owner occupied, there is a two-year minimum deed restriction, four years would require an LDR change. Council agreed to table and bring back the discussion.

Use of Fourth Tuesday Council Meetings (Councilmember Smith) Smith proposed the fourth Tuesday of the month be used for a roundtable discussion and use our PIO Officer to let everyone know starting the first of the year. Matlock suggested every other month, he still liked the idea of not having a structured meeting. Landry commented he was in favor of having a second meeting a month. Gonzalez stated the second meeting is always available.

Josh Mothner – commented that having a second meeting available is not the same as scheduling a meeting.

Diane Scott – commented that she would like to have a second meeting.

Smith commented that he would like the second meeting to be a workshop or roundtable. Williams explained that no action could be taken at a workshop or round table meeting, there must be an agenda, minutes must be taken, and the meeting must be noticed.

Grants for Non-Profits Discussion (Still) Still commented that in the past, the City gave grants to nonprofits and asked if it would be possible to reinstate the program. Johnson commented previously we awarded up to \$90,000 a year from ad valorem taxes, so it is tax payer money. Smith spoke against the idea since it was tax payer funds. Matlock also spoke against the idea. Gonzalez suggested to research and come up with criteria. Williams commented that we could contact Monroe County and get their procedures. Council agreed to table so this could be researched.

Josh Mothner – commented that the County has a human service advisory board, this can be done.

Boy Scout Flag Retirement Ceremony – Smith commented that the Boy Scouts would like to have their flag retirement ceremony on January 27<sup>th</sup>. Council gave a head nod to allow the Boy Scouts to have a fire on City property and hold their ceremony.

### **Citizens' comments**

Diane Scott – commented the City needed their own police department.

Greg Chorebanian – voiced his complaints about Manor Lane.

Leo Meyer - voiced his complaints about Manor Lane.

Garrett informed the Council the landowner was processing rocks and the contractor was issued a notice of violation. Gonzalez asked Garrett to have the mosquito pit addressed soon. Smith questioned the ingress and egress. Garrett responded the City was using the site for Irma debris.

### **City Manager Report**

- \* A. MCSO Marathon Substation Report
- \* B. Grants Update
- \* C. Building Report
- \* D. Park and Recreation Report
- \* E. Marathon Fire Rescue Report
- \* F. Marina Report
- \* G. Code Report
- \* H. Wastewater Utilities Report

I. Public Works Report – Landry commented that we are spending a lot of money on the Quay property and asked for an update. Solis explained he was not comfortable with the fees for the redesign of the property, this was going to be on this agenda, but he needed some time to negotiate with the contractor. Gonzalez asked for an update on Coco Plum Bridge. Solis explained the beams were replaced last week and the traffic was shifted, the contractor would be installing beams and pave on December 22<sup>nd</sup>, the bridge should be opened the last week of December. Gonzalez asked for the status of the parking meters. Solis informed everyone there were some supply chain issues, but the pay stations should be delivered before the end of the year, staff will have the pads constructed for the stations and they will be ready to install once received. Smith commented that the swales on Sombrero are flooding over. Solis explained that there was a drainage project a while back, but the injection wells are tidal influenced, and it is a low road.

J. Establishment of Legislative Priorities for the 2023 Legislative Session – Garrett gave an overview of his written report explaining protection of the 1300 early evacuation affordable units was the priority followed by vacation rental legislation preempting local authority potential carve out for ACSC. Garrett informed everyone we have been trying to have a carve out for vacation rentals for the last seven years. Garrett asked for head nods. Council gave approval.

### **Quasi-Judicial Public Hearings:**

**Resolution 2022-131**, Consideration Of A Request By Coco Vista Community, LTD and VC Seaview, LTD. For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Conditional Use Permits”, Authorizing The Development Of Sixty-Four (64) Affordable Housing Units Located At 96 Coco Plum Dr. Which Is Legally Described As Block 7 Lot 9 Coco Plum Beach PB4-166 Fat Deer Key, Monroe County, Florida, Having Real Estate Number 00363700-000000, Block 7 Lot 11, and Adjacent Canal Coco Plum Beach PB4-166 Fat Deer Key, Monroe County, Florida, Having Real Estate Number 00363720-000000 And Block 7 Lot 10 And Adjacent Canal Coco Plum Beach PB4-166 Fat Deer Key, Monroe County, Florida, Having Real Estate Number 00363710-000000. Nearest Mile Marker 54.

**Resolution 2022-132**, Consideration Of A Request Coco Vista Community, LTD. For A Conditional Use Permit, Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (“The Code”) Entitled “Conditional Use Permits”, Authorizing The Development Of Sixty (60) Affordable Housing Units Located At 120 And 130 Pescayo Ave, Which Is Legally Described As Lot 7 Seaview Commons II-Ave A PB7-96 A Subdivision Being Re-Plat of Lots 5 And 6 Block 6 Coco Plum Beach PB4-166, Monroe County, Florida, Having Real Estate Number 00363551-000700. Nearest Mile Marker 54.

The Clerk swore in speakers. Council stated they did not have exparte communications.

Shea explained the request for a conditional use for both items, but there would be two separate votes. Shea provided a PowerPoint for both items, one site located on three properties located at Avenue D and Coco Plum for 64 units and a conditional use for the project on the corner of Avenue B and Pescayo for 60 residential units. Shea recommended conditional approval provided that all conditions he outlined are met prior to permit issuance.

Smith asked to make sure onsite management is included as part of the early evacuation permits and asked to button up the early evacuation deed restrictions. Shea commented that he would address in both. Matlock asked if there was any inside information on the 1300 units and liability to the City. Williams explained there was potential liability in either direction, but his understanding is that Bart Smith’s clients want to get this worked out in Tallahassee but if the City were to issue permits, and face action, they are willing to take the head of the spear and deal with it. This is applicant driven. Bart Smith explained his clients are pursuing multiple options but would pay for his service if any challenge was made. His services would be paid for if the City is named as codefendant. Councilmember Smith asked if we would be getting an indemnification waiver or hold harmless. Williams commented he would get anything he could.

The Mayor called for Speakers.

Mike Millard- spoke against the project and asked the Council to wait until the legislature approves the units.

Dolly Sadowski – spoke against the resolutions, as three judges in Miami said we could not give out the units, the City will be fined if we go forward.

Williams commented that there are other ways for the applicant to get the units.

Cheryl Miller – spoke against the resolutions considering the 1300 unit’s case. She asked that the items be tabled and commented that the density and intensity of the projects will negatively impact the neighborhood.

Michael Ottery – asked the Council to put this on hold, with the number of units proposed, he felt the traffic study was incorrect.

Jean Tarlton – commented on enforcement of early evacuation for those who will live in the units, we will need their services during a storm.

Thomas Tarlton – spoke against the resolutions as the wastewater plant is overburdened and we are adding 200 more units and he was not sure the wastewater plant was capable of handling these. Tarlton also suggested the developer tend to these issues.

Councilmember Smith informed everyone this is not a development agreement, it is a conditional use, it is not issuing permits. Smith commented that the language needs to be implemented that this does not convey a right to a permit. Williams commented that nothing will be issued without a legal test. Gonzalez commented that it will be the applicant’s responsibility to pursue all permits.

An audience member interrupted the meeting, the Mayor called a three-minute recess at 7:47 pm. The meeting was reconvened at 7:51 pm.

**MOTION:** Smith moved approval with more defined than just subsection C language  
**SECOND:** Landry

**Vote of the Motion:**

Yes: Smith, Landry, Still, Gonzalez  
No: Matlock  
Absent: None  
Abstain: None

**Vote on the Motion:** 4 Yes, 1 No, 0 Absent, 0 Abstain

**MOTION:** Landry moved approval of Resolution 202132  
**SECOND:** Smith

**Vote of the Motion:**

Yes: Landry, Smith, Still, Gonzalez  
No: Matlock  
Absent: None  
Abstain: None

**Vote on the Motion:** 4 Yes, 1 No, 0 Absent, 0 Abstain

**Resolutions for Adoption:**

**A. Resolution 2022-133, Encouraging Governor Ron DeSantis To Appoint Dr. Daniel Zieg To The Florida Housing Finance Corporation Board.**

The Mayor called for Speakers.

Diane Scott – spoke against the Resolution.

Smith questioned if he could vote on this since he did not have knowledge of the Whereas clauses. Williams explained he could. Gonzalez explained the Council will do this several times, in this instance, the County has already passed a similar resolution. The Council gave head nods of approval.

**\*B. Resolution 2022-134**, Approving Cyber Security Software In The Amount Of \$39,600 Annually; Authorizing The Waiver Of Bidding Procedures; Authorizing The City Manager To Expend Budgeted Funds; And Providing An Effective Date

**\*C. Resolution 2022-135**, Amending Resolution 2022-25, To Adjust The Rounding Error For The New Wastewater Rates As Described In Exhibit “B”, Authorizing The City Manager To Administer the Updated Assessment Charges; And Providing An Effective Date

**\*D. Resolution 2022-136**, Approving a Contract Between The City of Marathon And Errol Williams and Miriam Reyes for the Purchase of the Property at 398 116<sup>th</sup> Street Ocean, Marathon, FL with Parcel ID 00346050-000000; Appropriating Funds; And Providing For An Effective Date

**\*E. Resolution 2022-137**, Approving A Project Specific Agreement With The Firm Of Florida Technical Consultants (FTC), A Continuing Services Contractor; Authorizing The City Manager To Sign The Agreement; And Providing For An Effective Date

**F. Resolution 2022-138**, Amending The Building Department Fee Schedule; Providing For The City’s Reduction In Building Permit Fees In The Coming Year and Potentially The Following Year Based On The Large Fees Being Levied From Two Large Projects, Including The Valhalla Project, Providing For Additional Modification Of Those Fees As The City’s Rate Consultants Are Able To Analyze Our Current Rates More Thoroughly, And Providing For An Effective Date

Garrett explained the recommendation of the rate structure. Smith commented that he received exhibit A at 10:40 this morning and it is not enough time to review. Smith asked for the methodology and asked if we could refund some of the fees. Smith also stated he was not able to vote on this because he does not have the methodology and was not in favor of approving it. Johnson explained we are trying to comply with the state statute, and it would put a terrible burden on staff to refund, and do you refund the owner or contractor and what if the home sold, etc. Landry commented that this should be an annual review.

**MOTION:** Smith moved to table the resolution until next month.

**SECOND:** Matlock

**Vote of the Motion:**

Yes: Smith, Matlock, Landry, Still, Gonzalez

No: None

Absent: None

Abstain: None

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

**Council Comments**

Landry commented he was looking forward to the workshops and wished everyone a Merry Christmas.

Matlock wished everyone a Merry Christmas.

Smith wished everyone Happy Holidays and thanked staff.

Still thanked everyone for attending and thanked staff, wished everyone Happy Holidays and stay safe. Still commented that the Council welcomes comments.

Gonzalez commented that he was finally able to meet his in-laws and are glad they are in the US. Gonzalez wished the newly opened businesses the best of luck and informed everyone of a few community events, thanked staff and wished everyone happy holidays.

**ADJOURNMENT**

With no further business to come before the Council, Mayor Gonzalez adjourned the meeting at 8:15 pm by unanimous consent.

I certify the above represents an accurate summary of the regular Council meeting of December 13, 2022.

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Diane Clavier, City Clerk

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Date