

CITY COUNCIL AGENDA STATEMENT



Meeting Date: May 8, 2023
To: Honorable Mayor and City Council
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Items: **Ordinance 2023-08**, Amending The City Of Marathon’s Comprehensive Plan Modifying Chapter One, “Future Land Use Element,” And Intending To Modify Policy 1-3.4.5, “Protect Established Live-Aboard Vessels”, Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After The First Hearing By The City Council; And Providing For An Effective Date.

Ordinance 2023-09, Amending Chapter 107, Article 2, Entitled “Transfer Of Building Rights”, And Intending To Modify Section 107.14 Entitled “Types Of Transfers”; Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; And Providing For Inclusion In The Code Of Ordinances, City Of Marathon, Florida; And Providing For An Effective Date.

RECOMMENDATION:

The Planning staff recommends approval of both Ordinances modifying provisions concerning the criteria for liveaboard vessels, and their ability to transfer under the transfer of building rights.

APPLICANT: City of Marathon

REQUEST: Amend City of Marathon Comprehensive Plan and Land Development Regulations in order to further clarify the criteria and approval process for the transfer of liveaboard vessels and their protections.

ANALYSIS OF COMPREHENSIVE PLAN CHANGE REQUEST:

Preface

The current Land Development Regulations provide only brief guidance concerning the review of a proposed Comprehensive Plan Amendment.

Section 102.19 simply states:

Section 102.19. Standards for Review.

When considering an application for a Comprehensive Plan Amendment, the review shall include all standards and criteria of Fla. Stat. ch. 163.

Standards in Chapter 163, F.S. offer some additional guidance, but are limited. Pertinent sections of Chapter 163 promulgate process rather than establishing criteria for the development of a proposed Comprehensive Plan Amendment. Chapter 163.3184, Process for adoption of comprehensive plan or plan amendment, define the sequential process for transmittal, review, and approval of a Comprehensive Plan Amendment. Most relevant to this delineation of process is the definition of “**compliance**” which is recited for review below:

163.3184 Process for adoption of comprehensive plan or plan amendment. --

(1) DEFINITIONS. --As used in this section, the term:

(b) "In compliance" means consistent with the requirements of ss. [163.3177](#), when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable. Thus, leading through an exhaustive process, the State Land Planning Agency must find a Comprehensive Plan or Plan Amendment in compliance in accordance with the above definition. Process as further defined in the section leads from Local Government Transmittal through review by the State Land Planning Agency and other required local and state government bodies to a finding of “in compliance” by the State Land Planning Agency.

Review is contemplated and expected to be completed by such agencies as the South Florida Regional Planning Council, whose responsibility it is to review the proposal for consistency with the Strategic Regional Policy Plan. Such review is not therefore, the responsibility of the local government to determine consistency in this regard and will not be addressed herein. Though referenced in the definition of compliance and elsewhere Chapters 163.3177, 163.3191, 163.3245, and 369 will not be reviewed as a compliance matter. Chapter 163.3177 defines required elements in a comprehensive plan. The City has an approved comprehensive plan which must be assumed to have all required elements. Chapter 163.3191 refers to the required Evaluation and Appraisal Report (EAR); a review of an approved comprehensive plan required of the City every seven years. The City is not subject to an EAR at this juncture and therefore is not relevant as a criterion to the review herein. Finally, Chapter 163.3245 refers to the development of an optional sector plan. This optional element of an approved comprehensive plan was not adopted by the City and therefore will not be used as a criterion for review in this proposed amendment. Chapter 369 refers to invasive aquatic plant control and the Wekiva River area and similarly will not be the subject of compliance review herein.

Other pertinent review elements leading to a determination of compliance are found in Chapter 163.3178 Coastal management, Chapter 163.3180 Concurrency, and the principals for guiding development in the Florida Keys Area of Critical State Concern.

Compliance Discussion

Relevant criteria promulgated in Chapters 163 and 380 F.S. can be itemized in bullets as follows based on the critical concerns more specifically identified in the City's comprehensive plan:

- Natural Resource Protection
 - Wetlands
 - Estuaries
 - Living marine resources
 - Beaches / Dunes
 - Unique wildlife habitat
 - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
 - Wastewater
 - Stormwater
 - Potable Water
 - Solid Waste
 - Transportation
- Affordable Housing
- Hazard Mitigation
 - CHHA
 - Hurricane Evacuation
- Ports
 - Marina Siting
- Public Use
 - Shoreline use and Access
 - Water dependent and independent activity
- Land Acquisition
 - Conservation
 - CHHA
 - Public Services

These bullet items should be utilized as the focus points for review of the proposed amendment and for future comprehensive plan amendments.

BACKGROUND

Staff is recommending changes to the below highlighted three sentences in the Comprehensive Plan and LDRs to allow for the protection of liveaboards and ensure proper tracking as part of redevelopment of marinas. The amendment to the comprehensive plan further delineates protection of liveaboard units by ensuring they are protected and maintained through proper permitting and procedures. The City has documented and updated the inventory of all floating structures, and all liveaboards. Liveaboards were documented under the City's Marina Siting Plan. The proposed changes thus allow for those documented liveaboards to be tracked further through the TBR process, as part of Marina redevelopment. Additionally, as the actual vessels themselves

can be sailed from one liveaboard slip to another, the TBR process is purely a tracking mechanism. Therefore, the affordable compliance section is specifically not applicable to the movement of these vessels.

Policy 1-3.4.4 Protect Established Floating Structures

All floating structures anchored, moored, or otherwise located within the City on or before May 7, 2004 may remain as a legal nonconforming use in the City subject to the following conditions and criteria:

- a. The City shall maintain an inventory of the number and locations of floating structures in existence within the City on or before March 9, 2004.
- b. Owners of all such floating structures shall register with the City. Any floating structure identified in the City's inventory of floating structures that does not register within this time frame shall not be deemed to be a legal nonconforming use and shall be required to leave the City. As part of the registration process the city shall inspect the floating structure for compliance with the criteria contained in this policy.
- c. The owner of the floating structure shall execute and record in the public records of Monroe County a hold harmless agreement indemnifying the City from all claims or causes of action arising from the presence of the floating structure within the City.
- d. No density or intensity shall be allocated to any floating structure.
- e. No registered floating structure shall be entitled to transfer any density, intensity or building rights to any upland property.
- f. All registered floating structures shall be moored, anchored or otherwise located immediately adjacent to its registered location. Within thirty days of the sale, transfer, or conveyance of a registered floating structure, the owner shall update the registration information on file with the City. Failure to do so will result in the loss of its status as a legal nonconformity and shall result in its immediate removal from the City.
- g. Within one year of the registration deadline, all floating structures shall have an approved sewage receiving tank and ejection device. The onboard sewage device shall be connected to an approved moorage sewage collection system.
- h. Prior to such time as being connected to an approved moorage sewage collection system, all floating structures shall contract with an approved pump-out contractor for appropriate sewage disposal.
- i. The destruction or damage of the floating structure equal to 50 percent or more of the pre-destruction appraised value of the structure shall result in the loss of its status as a legal nonconformity and shall result in its immediate removal from the City.
- j. Floating structures shall not be required to be brought into compliance with the state minimum building code, provided:¹
 1. The building or structure is structurally sound and in occupiable condition for its intended use;
 2. The occupancy use classification for the structure is not changed as a result of the move;
 3. The structure is not substantially remodeled;
 4. Electrical, gas, and plumbing systems meet the codes in force at the time of construction and are operational and safe for reconnection. Any repairs or

¹ Source for items 1-4, Florida Building Code

remodeling of the registered floating structure, however, shall comply with the state minimum building code as adopted by the City.

- k. If the use of a floating structure is abandoned or derelict for a period of ninety days the floating structure shall lose its status as a legal nonconformity and shall result in its immediate removal from the City.

Policy 1-3.4.5 Protect Established Live-aboard Vessels

All live-aboard vessels docked, moored, anchored, or otherwise located within the City may remain in the City subject to the Policies in the Comprehensive Plan, including:

- a. Live-aboard inventory per Policy 4-1.12.4;
- b. The Marina Operating Permit process per Policy 4-1.12.3;
- c. Zoning District Regulations per Policy 1-3.4.6; and,
- d. Pump-out criteria per Policy 4.1.12.5.

Policy 4-1.12.2 Marina Construction

The City shall continue to maintain Land Development Regulations to implement marina siting criteria through the development approval process. Marina uses are defined as conditional uses in all zoning districts. Marina siting criteria will consist of the policies under this objective as well as additional objectives and policies in this Plan, including, but not limited to:

- Live-aboard Vessels: Policies 1-3.4.5 and 1-3.4.6
- Natural Resource Protection: Policies 4-1.2.2, 4-1.2.3, 4-1.2.11, 4-1.2.12, 4-1.3.1, 4-1.3.2, 4-1.3.4, 4-1.4.1, 4-1.4.4, 4-1.4.6, 4-1.5.1, 4-1.5.2, 4-1.5.3, 4-1.5.5, 4-1.5.6, 4-1.5.7, 4-1.5.8, 4-1.5.11, 4-1.7.1, 4-1.11.1, 4-1.11.7 and 4-1.11.8
- Shoreline Alterations: Policies 4-1.3.5, 4-1.3.6, 4-1.3.7, 4-1.3.8, 4-1.3.9 and 4-1.5.13
- Water Quality: Policies 4-1.3.10, 4-1.4.3, 4-1.11.13, 4-1.11.14 and 4-1.18.6
- Waste Management: Policy 4-1.9.1
- Development Approval: Policies 4-1.4.5, 4-1.5.14, 4-1.11.5 and 4-1.18.1
- Setbacks: 4-1.4.2, 4-1.4.8, 4-1.4.9, 4-1.4.10 and 4-1.4.12
- Walkways: 4-1.4.11
- Dock and Mooring Restrictions: Policies 4-1.11.2, 4-1.11.3, 4-1.11.4, 4-1.11.6 and 4-1.11.15
- Prioritization of Uses: Policies 4-1.13.1 and 4-1.13.2,
- Public Access: Objective 4.1.14 and Policies 4-1.3.5, 4-1.14.2 through 4-1.14. 4
- Hazard Mitigation: Policies 4-1.3.3, 4-1.15.1 and 4.1.22.8
- Concurrency: Policy 4-1.17.2
- Dredging: Policies 4-1.18.2, 4-1.18.3 and 4-1.18.4

New and redeveloping marinas must demonstrate consistency with all the criteria listed above in order to receive development approval.

Policy 1-2.2.1 Implement Staged/Phased Hurricane Evacuation for Major Hurricanes (Category 3 – 5)

In order to provide for safe and efficient evacuation of the residents in the event of a major hurricane (category 3 – 5), the City shall implement, in coordination with Monroe County, the following staged/phased evacuation procedures to achieve and maintain an overall 24-hour hurricane evacuation

clearance time for the resident population.

- a. Approximately 48 hours in advance of tropical storm winds, a mandatory evacuation of non-residents, visitors, recreational vehicles (RVs), live-boards (transient and non-transient), and military personnel from the Keys shall be initiated. State parks and campgrounds should be closed at this time and entry into the Florida Keys by non-residents should be strictly limited.
- b. Approximately 36 hours in advance of tropical storm winds, a mandatory evacuation of mobile home residents, special needs residents, and hospital and nursing home patients from the Keys shall be initiated.
- c. Approximately 30 hours in advance of tropical storms winds, a mandatory phased evacuation of permanent residents, by evacuation zone shall be initiated.

The actual sequence of the evacuation by zones will vary depending on the individual storm. The concepts embodied in this staged evacuation procedures should be embodied in the appropriate county operational emergency management plans.

ANALYSIS

Natural Resources

No Significant Impact would result from the proposed change.

Historical and Cultural Resources

No Significant Impact would result from the proposed change.

Infrastructure

No Significant Impact would result from the proposed change.

Wastewater infrastructure

No Significant Impact would result from the proposed change. Liveaboard marinas are required to have the appropriate pump out facilities.

Stormwater infrastructure

No Significant Impact would result from the proposed change.

Potable Water

No Significant Impact would result from the proposed change.

Solid Waste

No Significant Impact would result from the proposed change.

Transportation

No Significant Impact would result from the proposed change.

Affordable Housing

No Significant Impact would result from the proposed change.

Hazard Mitigation

No Significant Impact would result from the proposed change.

Coastal High Hazard Areas

No Significant Impact would result from the proposed change.

Hurricane Evacuation

No Significant Impact would result from the proposed change. Liveaboards are already documented in the Marina Siting Plan and accounted for in the Hurricane Evacuation.

Ports – Marina Siting

No Significant Impact would result from the proposed change. Siting of new marinas requires a conditional use except in MUM zoning. However new liveaboards require conditional use in all the zonings they may be permitted in. With the proposed changes, additional safeguards will be in place for the siting of new liveaboard marinas.

Public Use – Access to Water

No Significant Impact would result from the proposed change.

Land Acquisition

No Significant Impact would result from the proposed change.

Alternate Compliance Review Criteria

Since there are no internal Comprehensive Plan change review criteria available in Chapter 102, Article 6, those that would apply for an LDR text change request (Chapter 102, Article 7) are useful. The basis for the LDR text change criteria is the same as for a Comprehensive Plan change

ultimately.

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

The City adopted the existing LDRs and Comp Plan, which included specific language for Marinas and more specifically liveaboard vessels at marinas. Table 103.15.1 lists liveaboards as a conditional use. Liveaboards themselves are documented finite units that are accounted for in the hurricane evacuation model. These units are documented in the Marina Siting Plan and are additionally documented under the Marina Operating Permits. Therefore, the only way to place new liveaboards is to first obtain the conditional use approval, and then transfer the liveaboard rights to the marina. However, the mechanism for the transfer is not clearly delineated in either the Comp Plan or LDRs. The two proposed ordinances tie the mechanisms together and create a process to track and document those properties redeveloping marinas.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

The proposed Ordinance meets three principal areas of concern reflected in the City's Comprehensive Plan. First, the proposed amendment seeks to meet all the necessary requirements that liveaboard units be accounted for and protected. Second, the Ordinances do not allow any liveaboards to be transferred upland, just to be transferred from one marina site to another marina site. This would then be similar and consistent with the existing floating structure requirements, but still maintain that liveaboards and floating structures are two distinct entities. Third, the proposed amendment seeks to maintain the traditional community character of Marathon, which is so closely tied to the environment, and has a strong history of maritime communities and uses.

C. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed regulations do further the basic goals and premises outlined in the introductory to the City's Comprehensive Plan as follows (highlighting for emphasis):

“With the knowledge that the City needs redevelopment and new development to provide the necessary improvements to guarantee the residents of the City a clean, healthy environment and a sound economy in which to live and enjoy their families, it is the desire and intent of the City through the Goals, Objectives and Policies of the adopted Comprehensive Plan and Land Development Regulations implementing the Plan to protect our character, environment and viability through:

- Protection of the small-town family feel of the community
- Continued utilization of the established mixed-use pattern of the community
- Protection of the heritage of the commercial fishing industry
- Acknowledgement and protection of a character that is unique to the Keys
- Protection of existing and increased affordable housing opportunities

- Implementation of effective surface water management strategies
- Systematic removal of failing and inadequate on-site wastewater disposal systems
- Maintenance and management of central wastewater and stormwater facilities
- Protection and enhancement of sensitive upland, wetland, and submerged land habitat
- Protection for the existing uses, densities, and intensities
- Providing new investment and reinvestment opportunities
- Ensuring new development and redevelopment protects the environment
- Ensuring new and redevelopment compliments and enhances community character
- Implementation of thoughtful, managed growth.”

CONCLUSION:

The proposed Amendments are consistent with and furthers the goals of the City of Marathon Comprehensive Plan and Land Development Regulations.

RECOMMENDATION:

The Planning staff recommends approval of both Ordinances modifying provisions concerning the criteria for the transfer of building rights.

Sponsored By: Garrett
Planning Commission Public Hearing Date: April 17, 2023
City Council Public Hearing Date: May 9, 2023
XXX
Enactment Date: XXX

**CITY OF MARATHON, FLORIDA
ORDINANCE 2023-08**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY OF MARATHON'S COMPREHENSIVE PLAN MODIFYING CHAPTER ONE, "FUTURE LAND USE ELEMENT," AND INTENDING TO MODIFY POLICY 1-3.4.5, "PROTECT ESTABLISHED LIVE-ABOARD VESSELS", PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER THE FIRST HEARING BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Economic Opportunity ("DEO"), pursuant to Chapters 163 and 380, Florida Statutes; and

WHEREAS, liveaboard units were documented under the Marina Siting Plan; and

WHEREAS, Marina operating permits are required as part of redevelopment of marinas, and

WHEREAS, liveaboard units are accounted for in the hurricane evacuation model, and therefore the siting of new liveaboard slips requires the transfer of documented existing liveaboard rights from one location to another; and

WHEREAS, the City does not want to unduly constrain development within the City of Marathon, so long as the growth is managed and environmentally appropriate; and

WHEREAS, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Goals, Objectives, and Policies of the Comprehensive Plan to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

WHEREAS, this Ordinance, thus passed at its first reading, shall be transmitted to DEO and sister State Agencies for their coordinated Comprehensive Plan review to obtain and receive the DEO Objections, Recommendations, and Comments (ORC) prior to final adoption,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT

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

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

SECTION 2. Amend the Comprehensive Plan, Chapter 1, Future Land Use Element, “Policy 1-3.4.5:”

Policy 1-3.4.5 Protect Established Live-aboard Vessels

All live-aboard vessels docked, moored, anchored, or otherwise located within the City may remain in the City subject to the Policies in the Comprehensive Plan, including:

- a. Live-aboard inventory per Policy 4-1.12.4;
- b. The Marina Operating Permit process per Policy 4-1.12.3;
- c. Zoning District Regulations per Policy 1-3.4.6; and,
- d. Pump-out criteria per Policy 4.1.12.5.
- e. **Liveaboards may be transferred from one marina site to another subject to Policy 1-3.5.16. In no instance shall the liveaboard right be entitled to transfer any density, intensity or building rights to any upland portion of the property.**

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of 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 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 4. The provisions of this Ordinance constitute a “Comprehensive Plan amendment” as defined by State law. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the DEO and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be effective immediately upon approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this XXth day of XXX, 2023.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

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

Steven Williams, City Attorney