

**Sponsored by: Snead**  
**Introduction Date:**  
**Public Hearing Dates:**

**Enactment date:**

**CITY OF MARATHON, FLORIDA**  
**ORDINANCE 2009-XX**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 36-177 OF THE CITY OF MARATHON CODE OF ORDINANCES TO EXPAND THE TIME PROHIBITING DIVING AND SNORKELING IN THE WATERWAYS OF MARATHON; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 2001-292, Laws of Florida, authorizes the City of Marathon to exercise its police powers 1,200 feet into the tidal waters adjacent to its corporate limits to regulate “the abatement of nuisances, the enforcement of sanitary laws and regulations, the regulations of zoning and the suppression of crime;” and

**WHEREAS**, the Marine Fisheries Department of the Florida Fish and Wildlife Conservation Commission authorizes a two-day sport season each year for the harvesting of spiny lobster; and

**WHEREAS**, the City of Marathon finds that the increased diver and boat traffic in the navigable canals and within 300 feet of marinas, improved residential, and commercial shorelines during both the sport season and the commercial lobster season presents heightened public safety problems not generally applicable at other times of the year; and

**WHEREAS**, the City of Marathon finds and declares public safety problems associated with the seasons to constitute a public nuisance, detrimental to the community as a whole, due the level of policing and emergency services required to respond to accidents and collisions that occur because of the close proximity of divers and vessel traffic in small areas; and

**WHEREAS**, the close proximity of divers to public and private property, as well as their interaction and exploration of docks, piers, and bulkheads in search of spiny lobster, leads to the destruction of property and deleterious environmental effects; and

**WHEREAS**, the City of Marathon finds and declares that the interaction of divers with publicly and privately owned docks, piers, and bulkheads, in the canals, marinas and along improved residential and commercial shorelines, additionally constitutes the crime of trespass under state law; and

**WHEREAS**, the City of Marathon finds that some divers choose to harvest lobster

before and after the authorized two day season; and

**WHEREAS**, the City of Marathon finds that the prohibition of diving and snorkeling does not intrude upon the Florida Fish and Wildlife Conservation Commission's jurisdiction over the harvesting of spiny lobster, but rather furthers the Commission's stated intent of protecting and conserving Florida's spiny lobster resources.

**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.**      Section 36-177 of the Code of Ordinances, City of Marathon, Florida is hereby amended to read as follows:

\* \* \*

(a) *Definitions.* The following words, terms, and phrases when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**"Commercial lobster season" means the period of time designated for harvesting of lobster, currently from August 6 through March 31 of the following year, authorized by Marine Fisheries Department of the Florida Fish and Wildlife Conservation Commission pursuant to Section 68B-24.005, Florida Administrative Code, as amended from time to time.**

"Dive" means to wholly or partially submerge one's body while equipped with a mask or goggles, whether or not any type of underwater breathing apparatus is used.

"Lobster mini-season" means the two-day sport season authorized by the Marine Fisheries Department of the Florida Fish and Wildlife Conservation Commission pursuant to Section 68B-24.005, Florida Administrative Code, as amended from time to time.

(b) *Diving and snorkeling prohibited.* It is a public nuisance and unlawful for any person to dive or snorkel in any navigable canal, marina, or within three hundred (300) feet of an improved residential or commercial shoreline **beginning the Friday prior to the opening of lobster mini-season and continuing until the opening of the commercial lobster season.** A map reflecting the boundaries of the prohibited areas shall be available at the City Hall for reference by the public and shall be incorporated by reference into this Article. The prohibited areas shall be marked by signs on the shoreline at conspicuous places, at marinas and along the main arterial waterways of the City. Idle speed markers as well as buoys provided in accordance with applicable State and Federal regulations, shall indicate the boundaries of the prohibited areas that extend to the open ocean. Nothing in this Article shall prohibit diving incidental to vessel or dock

maintenance provided the diver performing the maintenance lawfully displays a diver down flag and otherwise complies with the requirements of Fla. Stat. ch. 327.

**Section 3.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall 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.** This Ordinance shall become effective immediately upon adoption on second reading.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,** this \_\_\_ day of \_\_\_\_\_, 2009.

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**Mike Cinque, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**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