

Sponsored by: Hernstadt
Introduction Date: September 28, 2010
Public Hearing Dates: September 28, 2010
October 12, 2010
Enactment date: October 12, 2010

**CITY OF MARATHON, FLORIDA
ORDINANCE 2010-09**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, CREATING CHAPTER 3, ARTICLE II TO BE ENTITLED 'FAIR HOUSING CODE;' PROVIDING FOR A DECLARATION OF POLICY TO PROHIBIT DISCRIMINATION IN HOUSING ON THE BASIS OF RACE, COLOR ANCESTRY, NATIONAL ORIGIN, RELIGION, SEX, MARITAL STATUS, FAMILIAL STATUS, HANDICAP OR AGE; PROVIDING DEFINITIONS; DESIGNATING AS UNLAWFUL CERTAIN DISCRIMINATORY PRACTICES IN THE SALE OR RENTAL OF HOUSING, AS WELL AS IN ADVERTISING IN CONNECTION THEREWITH, IN THE FINANCING OF HOUSING, AND IN BROKERAGE SERVICES RELATED TO EXCEPTIONS; PROVIDING FOR AN ADMINISTRATOR TO BE DESIGNATED BY THE CITY COUNCIL AND PRESCRIBING THE GENERAL POWERS AND DUTIES OF SUCH ADMINISTRATOR, PRESCRIBING ACTION UPON A DETERMINATION OF PROBABLE CAUSE, AND AUTHORIZING THE PROMULGATION OF FORMS AND REGULATIONS; MAKING PROVISIONS FOR THE FILING OF COMPLAINTS AND RESPONSES THERETO, AND THE PROCESSING THEREOF BY THE ADMINISTRATOR; PROVIDING FOR ADDITIONAL REMEDIES; PROHIBITING UNTRUTHFUL COMPLAINTS OR FALSE TESTIMONY; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CODIFICATION, REPEAL OF CONFLICTING PROVISIONS, SEVERABILITY; AND AN EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the City of Marathon, Florida (the "City") has established a Community Development Block Grant Committee (the "CDBG Committee") to assist in the oversight of project funding associated with the City's efforts to provide grant assistance for connection to the City's wastewater utility; and

WHEREAS, the CDBG Committee assists in the acquisition of CDBG funds; and

WHEREAS, the CDBG Committee helps the City ensure that its CDBG and other assistance funds are spent in a fair and equitable manner; and

WHEREAS, this ordinance will provide additional assurances, in accordance with federal and state law, regulations, and guidelines, that City residents will be protected from unfair housing practices during transactions within the City’s jurisdiction; and

WHEREAS, this ordinance will provide the basis for the City to receive additional points in the future review of grants for CDBG funding,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:¹

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

Section 2. Article II of Chapter 3 of the Code of Ordinances, City of Marathon, Florida, is hereby created to read as follows:

Chapter Three _____

Article II Fair Housing Ordinance

Section 3-20. Declaration of policy.

It is the policy of the City of Marathon, Florida, to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain housing of such person’s choice within the City without regard to race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age, and, to that end, to prohibit discrimination in housing by any person.

Section 3-21. Definitions.

(1) The terms as used herein shall be defined as follows:

(a) Administrator: That person appointed by the City Council pursuant to Section 6 hereof.

(b) Age: Unless the context clearly indicates otherwise, the word “age” as used herein shall refer exclusively to persons who are 18 years of age or older.

¹/ Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

(c) Discriminatory Housing Practice: An act that is unlawful under Section 3-22 hereof.

(d) Family: One or more persons living together as a single housekeeping unit in a dwelling.

(e) Housing or Housing Accommodation: Any building, structure, or portion thereof, mobile home or trailer, or other facility which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home or trailer or other facility.

(f) Lending Institution: Any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information, including, but not limited to credit bureaus.

(g) Owner: Any person, including, but not limited to a lessee, sublease, assignee, manager, or agent, and also including the City of Marathon and its departments or other subunits, having the right of ownership or possession or the authority to sell or lease any housing accommodation.

(h) Person: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mortgage companies, joint stock companies, trusts, unincorporated organizations, or public corporations, including, but not limited to the City of Marathon or any department or subunit thereof.

(i) Real Estate Agent: Any real estate broker, any real estate salesperson, or any other person, employee, agent, or otherwise, engaged in the management or operation of any real property,

(j) Real Estate Broker or Salesperson: A person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself or herself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these.

(k) Real Estate Transaction: Includes the sale, purchase, exchange, rental or leases of real property, and any contract pertaining thereto.

(l) Rent: Includes leases, sublease, assignment, and rental, including any contract to do any of the foregoing, or otherwise granting for a consideration the right to occupy premises that are not owned by the occupant.

(m) Respondent: Any person against whom a complaint is filed pursuant to this ordinance.

(n) Sale: Includes any contract to sell, exchange, or to convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

Section 3-22. Unlawful Housing Practices.

(1) Except as provided in Section 3-23 hereof, it shall be unlawful and a discriminatory housing practice for an owner, or any other person engaging in a real estate transaction, or for a real estate broker, because of race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age:

(a) To refuse to engage in a real estate transaction with a person or to otherwise make unavailable or deny housing to any person.

(b) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith.

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person.

(d) To refuse to negotiate for a real estate transaction with a person.

(e) To represent to a person that housing is not available for inspection, sale, rental or lease when, in fact, it is so available, or to fail to bring a property listing to such person's attention, or to refuse to permit him or her to inspect the housing.

(f) To steer any person away from or to any housing.

(g) To make, print, publish, circulate, post or mail, or cause to be made, printed, published or circulated, any notice, statement, advertisement or sign, or to use a form of application or photograph for a real estate transaction or, except in connection with a written affirmative action plan, to make a record or oral or written inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly an intent to make a limitation, specification, or discrimination with respect thereto.

(h) To offer, solicit, accept, use or retain a listing of housing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.

(i) To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of housing owned, used or occupied by any person protected by the terms of this ordinance.

(j) To make any misrepresentations concerning the listing for sale or rental, or the anticipated listing for sale or rental, or the sale or rental of any housing in any area in the City of Marathon for the purpose of inducing or attempting to induce any such listing or any of the above transactions.

(k) To retaliate or discriminate in any manner against any person because of his or her opposing a practice declared unlawful by this ordinance, or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or conference under this article.

(l) To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by the provisions of this ordinance, or to obstruct or prevent any person from complying with the provisions of this ordinance, or any conciliation agreement entered into thereunder.

(m) By canvassing to compel any unlawful practices prohibited by the provisions of this article.

(n) Otherwise to deny to, or withhold, any housing accommodations from a person.

(o) To promote, induce, influence or attempt to promote, induce or influence by the use of postal cards, letters, circulars, telephone, visitation or any other means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any housing by referring as a part of a process or pattern of indicating neighborhood unrest, community tension, or fear of racial, color, religious, nationality or ethnic change in any street, block, neighborhood or any other area, to the race, color, religion, neighbors, tenants or other prospective buyers of any housing.

(p) To place a sign or display any other devise either purporting to offer for sale, lease, assignment, transfer or other disposition or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer or other disposition.

(q) For any lending institution, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining housing, or to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age of such person or of any person associated with such person in connection with such loan or other assistance, or of the present or prospective owners, lessees, tenants or occupants of the housing in relation to which such loan or other financial assistance is to be made or given; provided that nothing contained

in this subsection shall impair the scope or effectiveness of the exceptions contained in this article.

(r) To deny any person access to or membership or participation in any multiple listing service, real estate brokers organization or other service, organization, or facility related to the business of selling, or renting housing, or to discriminate against such person in the terms or conditions of such access, membership or participation because of race, color, ancestry, national origin, religion, sex, marital status, familial status or age.

Section 3-23. Exemptions and Exceptions.

(1) Nothing contained in this article shall prohibit a religious organization, association, or society, or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting or from advertising the sale, rental or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(2) Nothing in Section 3-22 hereof, other than subsection (g) of subsection (1) thereof, shall apply to:

(a) Any single-family house sold or rented by an owner: provided, that such private individual owner does not own more than three such single family houses at any one time; provided, further, that in the case of the sale of any such single family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period; provided, further, that it does not own any interest in, nor is there owned or reserved on such owner's behalf, under any express or voluntary agreement, title to or any rights to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; provided, further, that the owner sells or rents such housing (1) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent, salesperson, or person and (2) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection (g) of subsection (1) of Section 3-22 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(b) Rooms or units in housing containing living quarters occupied or intended to be

occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as such owner's residence, provided that the owner sells or rents such rooms or units (1) without the use in any manner of the sales or rental services of any real estate broker, agent or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent salesperson, or person and (2) without the publication, posting or mailing, after notice in violation of subsection (g) of subsection (1) of Section 3-22 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(3) For the purpose of this subsection a person shall be deemed to be in the business of selling or renting housing if:

(a) He or she has, within the preceding twelve months, participated as principal, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in three or more transactions involving the sale or rental of any housing or any interest therein; or

(b) He or she has, within the preceding twelve months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any housing or any interest therein; or

(c) He or she is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(4) Nothing in Section 3-22 hereof shall be construed to:

(a) Bar any person from restricting sales, rentals, leases or occupancy, or from giving preference, to persons of a given age for bona fide housing intended solely for the elderly or bona fide housing intended solely for minors.

(b) Make it an unlawful act to require that a person have legal capacity to enter into a contract or lease.

(c) Bar any person from advertising or from refusing to sell or rent any housing which is planned exclusively for, and occupied exclusively by, individuals of one sex, to any individual of the opposite sex.

(d) Bar any person from selling, renting, or advertising any housing which is planned exclusively for, and occupied exclusively by, unmarried individuals to unmarried individuals only.

(e) Bar any person from advertising or from refusing to sell or rent any housing

which is planned exclusively for married couples without children or from segregating families with children to special units of housing.

(f) Bar any person from refusing a loan or other financial assistance to any person whose life expectancy, according to generally accepted mortality tables, is less than the term for which the loan is requested.

Section 3-24. Administrator Authority and Responsibilities.

(1) The authority and responsibility for administering this Article shall be vested in the City Manager who shall appoint an administrator.

(2) The administrator shall:

(a) Receive written complaints as hereinafter provided relative to alleged unlawful acts under this article when a complaint seeks the administrator's good offices to conciliate.

(b) Upon receiving written complaint, make such investigations as the administrator deems appropriate to ascertain facts and issues.

(c) Utilize methods of persuasion, conciliation, and meditation or information adjustment of grievances.

(d) Establish, administer or review programs at the request of the City Council and make reports on such programs to the City Council.

(e) Bring to the attention of the City Council items that may require City Council notice or action to resolve.

(f) Render to the City Council annual written reports of his or her activities under the provisions of this article along with such comments and recommendations as he or she may choose to make.

(g) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this article.

(3) If after fully processing the complaint in the manner hereafter provided, the administrator determines that there is probable cause to believe that there has been a violation of the provisions of this article, the administrator shall refer the matter, along with the facts he or she has gathered in the investigations, to the proper county, state or federal authorities for appropriate legal action.

(4) The administrator shall promulgate, publish, and distribute the necessary forms, rules, and regulations to implement the provisions of this article.

Section 3-25. Complaints.

(1) A person who claims that another person has committed a discriminatory housing practice against him or her may report that offense to the administrator by filing an informal complaint within forty-five (45) days after the date of the alleged discriminatory housing practice and not later.

(2) The administrator shall treat a complaint referred by the Secretary of Housing and Urban Development or the Attorney General of the United States under the Fair Housing Act of 1968, Public Law 90-284, as an informal complaint filed under subsection (1).

(3) An informal complaint must be in writing verified or affirmed, on a form to be supplied by the administrator and shall contain the following:

(a) Identity and address of the respondent.

(b) Date of offense and date of filing the informal complaint.

(c) General statement of facts of the offense including the basis of the discrimination (race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age).

(d) Name and signature of the complainant.

(4) Each complaint shall be held in confidence by the administrator to the extent authorized by federal or state law unless and until the complainant and the respondent(s) consent in writing that it shall be made public.

(5) Within fifteen (15) days after the filing of the informal complaint, the administrator shall transmit a copy of the same to each respondent named therein by certified mail, return receipt requested. Thereupon, the respondent(s) may file a written, verified informal answer to the informal complaint within twenty (20) days of the date of the receipt of the informal complaint.

(6) An informal complaint or answer may be amended at any time, and the administrator shall furnish a copy of each amended informal complaint or answer to the respondent(s) complaint, respectively, as promptly as practicable.

(7) The administrator shall assist complainants or respondents when necessary in the preparation and filing of informal complaints or answers or any amendments thereto.

(8) The administrator shall advise complainants of their rights and options provided

in Section 760.34, Florida Statutes.

Section 3-26. Processing Complaints.

(1) Within thirty (30) days after the filing of an informal complaint, the administrator shall make such investigation as is deemed appropriate to ascertain facts and issues. If the administrator shall deem that there are reasonable grounds to believe that a violation has occurred and can be resolved by conciliation, the administrator shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done in the course of the informal conference with the individuals to resolve the dispute may be public or used as evidence in a subsequent proceeding by either party without the written consent of both the complainant and the respondent(s), or as otherwise authorized by state law.

(2) If the parties desire to conciliate, the terms of the conciliation shall be reduced to writing in the form approved by the administrator and must be signed and verified by the complainant and respondent(s) and approved by the administrator. The conciliation agreement shall be for conciliation purposes only and shall not constitute an admission by any party that the law has been violated.

(3) If the administrator deems that there is not probable cause to believe that the alleged discriminatory housing practice has been committed, the administrator shall take no further action with respect to the alleged offense.

(4) If the administrator, with respect to any matter involves a contravention of this article by failure to conciliate a complaint after the parties, in good faith, have attempted such conciliation; or determining that the violation alleged in the complaint cannot be resolved by conciliation, the administrator shall notify both the complainant and the respondent(s) within thirty (30) days of the failure or the determination, and then shall proceed as provided in paragraph (3) of Section 3-24 herein above.

Section 3-27. Additional Remedies.

(1) The procedure prescribed by this article does not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this article shall be deemed to modify, impair or otherwise affect any right or remedy conferred by the Constitution or laws of the United States or the State of Florida, and the provisions of this article shall be in addition to those provided by such other laws.

Section 3-28. Education and Public Information.

(1) The administrator may conduct educational and public informational activities that are designed to promote the policy of this article.

Section 3-29. Untruthful Complaints or Testimony.

(1) It shall be a violation of this article for any person knowingly and willfully to make false or untrue statements, accusations or allegations in a complaint filed hereunder or to give false testimony concerning violations of this article.

Section 3-30. Penalty.

(1) Any person who violates any provisions of this article may be subject to the penalties provided for in Section 1-7 of the Marathon Code.

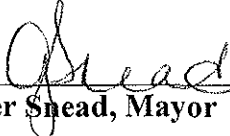
Section 3. The provisions of the Marathon Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed for the term of this Ordinance.

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.

PASSED AND ADOPTED ON SECOND READING THIS 12TH DAY OF OCTOBER, 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

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

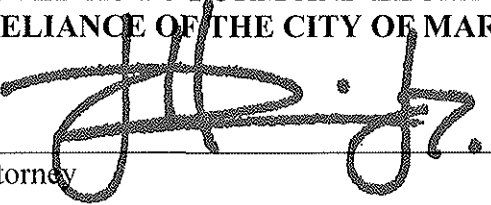
ATTEST:



Maria Thorley, Acting City Clerk

(City Seal)

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a horizontal line.

City Attorney

STATE OF FLORIDA
COUNTY OF MONROE

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Before the undersigned authority personally appeared Randy G. Erickson, who on oath says that he is Vice-President of Advertising Operations of the Key West Citizen, a daily newspaper published in Key West, in Monroe County, Florida; that the attached copy of advertisement, being a legal notice in the matter of

Public Hearing

was published in said newspaper in the issue(s) of

September 18, 2010

Affiant further says that the Key West Citizen is a newspaper published in Key West, in said Monroe County, Florida and that the said newspaper has heretofore been continuously published in said Monroe County, Florida every day, and has been entered as second-class mail matter at the post office in Key West, in said Monroe County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Randy G. Erickson
Signature of Affiant

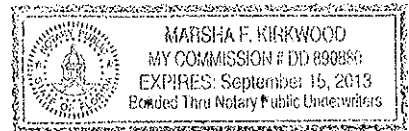
Sworn and subscribed before me this 20 day of September, 2010

Notary Public:

Marsha F. Kirkwood

Marsha F. Kirkwood

Expires: September 15, 2013



Notary Seal

Personally Known x Produced Identification _____
Type of Identification Produced _____

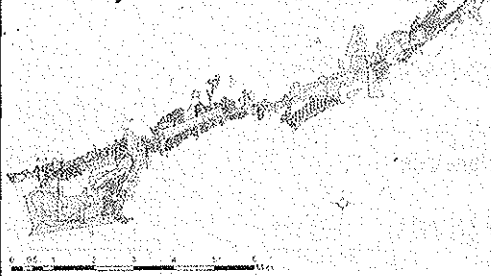


CITY OF MARATHON, FLORIDA NOTICE OF PUBLIC HEARINGS

The Marathon City Council will hold a public hearing on **Tuesday, September 28, 2010** and adoption on **October 12, 2010** at 5:30 p.m. at the Marathon Government Center, EOC Room, 2798 Overseas Highway. The purpose of the public hearing is to consider the following item.

1. **An Ordinance** Of The City Of Marathon, Florida, Creating Chapter 3, Article II To Be Entitled 'Fair Housing Code;' Providing For A Declaration Of Policy To Prohibit Discrimination In Housing On The Basis Of Race, Color Ancestry, National Origin, Religion, Sex Marital Status, Familial Status, Handicap Or Age; Providing Definitions; Designating As Unlawful Certain Discriminatory Practices In The Sale Or Rental Of Housing, As Well As In Advertising In Connection Therewith, In The Financing Of Housing, And In Brokerage Services Related To Exceptions; Providing For An Administrator To Be Designated By The City Council And Prescribing The General Powers And Duties Of Such Administrator, Prescribing Action Upon A Determination Of Probable Cause, And Authorizing The Promulgation Of Forms And Regulations; Making Provisions For The Filing Of Complaints And Responses Thereto, And The Processing Thereof By The Administrator; Providing For Additional Remedies; Providing For Prohibiting Untruthful Complains Or False Testimony; Providing For Penalties For Violation Of Such Code; Providing For The Transmittal Of This Ordinance To The State Department Of Community Affairs (The "Department"); And Providing For An Effective Date Upon The Approval Of This Ordinance By The Department In Accordance With State Law.

The City of Marathon



Interested parties may appear at the public hearing(s) and be heard with respect to the proposed items. A copy of the application is available from the City of Marathon Planning Department located at 9805 Overseas Highway, Marathon, Florida, Monday through Friday between the hours of 8:00 am and 5:00 pm.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Council with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.

ADA Assistance: Anyone needing special assistance at the City Council hearing due to disability should contact the City of Marathon at (305) 743-0033 at least two days prior thereto.

Please note that one or more City Council members may be present at this meeting.