

Sponsored by: Worthington
Introduction Date: October 25, 2011
Public Hearing Dates: November 8, 2011
December 13, 2011
Enactment Date: December 13, 2011

CITY OF MARATHON, FLORIDA
ORDINANCE 2011-16

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING ARTICLE VII OF CHAPTER 36 OF THE MARATHON CODE TO ALLOW THE ENFORCEMENT OF THE DIVING AND SNORKELING RESTRICTIONS DURING THE TWO-DAY SPORT LOBSTER SEASON THROUGH THE ISSUANCE UNIFORM BOATING CITATIONS BY ANY LAW ENFORCEMENT AGENCY ALLOWED TO ISSUE SUCH CITATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon, Florida (the "City") enacted the provisions of Article VII of Chapter 36 of the Marathon Code to abate the destruction of property, the deleterious environmental effects, and criminal trespass that results from 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 during the lobster mini-season (the "Lobster Diving Regulations"); and

WHEREAS, City desires to amend the Lobster Diving Regulation to enhance the ability of any local law enforcement agency personnel to enforce the Lobster Diving Regulations through the issuance of a Uniform Boating Citation.

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

(b) *Diving and snorkeling prohibited.* It is a public nuisance and unlawful for

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 ~~strike through~~.

any person to dive or snorkel in any navigable canal, marine, or within 300 feet of an improved residential or commercial shoreline during the entirety of the lobster mini-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. Section 36-178 of the Code of Ordinances, City of Marathon, Florida is hereby amended to read as follows:

(a) A violation of this Article may be enforced by issuance of a citation, summons, notice to appear in County court, arrest as provided in Fla. Stat. ch. 901, or in accordance with this Code, and punishable by a fine not to exceed \$500.00. Nothing contained herein, however, shall prohibit the City from enforcing this Article by any other lawful means; or

(b) In accordance with Section 1-7 of this Code; or

(c) In accordance with Chapter 10 of this Code; or

(d) A citation issued pursuant to Fla. Stat. § 327.74 (uniform boating citations) by any law enforcement agency authorized to issue such citations. Any person cited for a violation of this Article shall be deemed charged with a non-criminal infraction and shall be cited to appear before the county court. The civil penalty for any such infraction is \$50.00, except as otherwise provided in this section.

(1) Any person cited for an infraction under this section may:

a. Post a bond that shall be equal in amount to the civil penalty; or

b. Sign and accept a citation indicating a promise to appear in county court.

(2) The officer may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(3) Any person who willfully refuses to post a bond or sign and accept a citation is guilty of a misdemeanor of the second degree.

(4) Any person charged with a noncriminal infraction under this section may:

a. Pay the civil penalty, either by mail or in person within ten days of the date of receiving the citation; or

b. If a bond has been posted, forfeit the bond by not appearing in county court at the designated time and location.

- (5) If the person cited follows either of the procedures in subsection (4) of this section, he/she shall be deemed to have admitted the infraction and to have waived his/her right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings.
- (6) Any person electing to appear before the county court or who is required to appear shall be deemed to have waived the limitations on the civil penalty specified in this section. The county court, after a hearing shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the county court may impose a civil penalty not to exceed \$500.00.
- (7) At any county court hearing under this article the commission of a charged infraction must be proven beyond a reasonable doubt.
- (8) If a person is found by the county court to have committed an infraction, he/she may appeal that finding to the circuit court.
- (9) Failure to pay fines within 30 days shall be punished as a secondary misdemeanor.

Section 4. The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

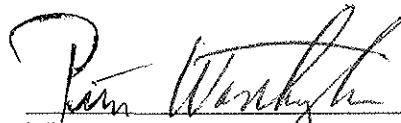
Section 5. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases 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 6. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. This Ordinance shall be effective immediately upon enactment.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13TH DAY OF DECEMBER, 2011.

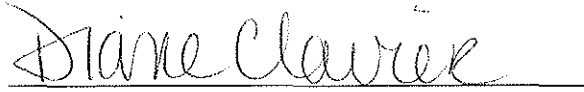
THE CITY OF MARATHON, FLORIDA



Mayor Pete Worthington

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

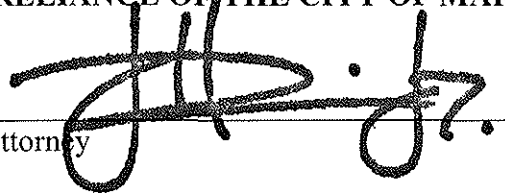
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney