

Sponsored by: Hernstadt
Introduction Date: November 27th, 2012
Public Hearing Dates: November 27th, 2012
December 11th, 2012
Enactment date: December 11th, 2012

CITY OF MARATHON, FLORIDA
ORDINANCE 2012-15

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 36 OF THE CODE OF ORDINANCES, CITY OF MARATHON, FLORIDA ENTITLED, "WATERWAYS" CREATING A NEW ARTICLE ENTITLED "ANCHORING AND MOORING RESTRICTED AREAS" TO REGULATE THE ANCHORING OR MOORING OF VESSELS OUTSIDE THE MARKED BOUNDARIES OF PUBLIC MOORING FIELDS; 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, in 1992 the Monroe County Department of Marine Resources prepared *The Boating Impacts Management Plan Final Report* which documented liveaboard vessel impacts associated with unmanaged anchorages throughout the Keys; and

WHEREAS, in 2005 the City of Marathon (the "City") adopted a *Marina Siting Plan* which included an evaluation of anchorages throughout the City, including Boot Key Harbor and recognized the need to address negative boating impacts associated with those unmanaged anchorages; and

WHEREAS, in 2009 the Florida Legislature directed the Florida Fish & Wildlife Conservation Commission (the "FWC"), in consultation with the Florida Department of Environmental Protection, to establish a Pilot Program to explore potential options for regulating the anchoring or mooring of non-liveaboard vessels outside the marked boundaries of public mooring fields (327.4105 F.S.); and

WHEREAS, the goals of the Pilot Program are to encourage the establishment of additional public mooring fields and to develop and test policies and regulatory regimes that: promote the establishment and use of mooring fields, promote public access to waters of the state, enhance navigational safety, protect maritime infrastructure, protect marine environment, and deter improperly stored, abandoned or derelict vessels; and

WHEREAS, in November 2009 Monroe County (the "County") sent a Letter of Interest to FWC to participate in the Pilot Program in partnership with the City and the City of Key West ("Key West"), each of which operate public mooring fields; and

WHEREAS, the City, Key West and the County entered into an Inter-local Agreement providing for coordinated partnerships in the FWC Pilot Program; and

WHEREAS, the County retained consultants to complete vessel surveys inside and outside of public mooring fields at the City and Key West and in the anchorage at Boca Chica basin, and all three local governments conducted stakeholder workshops to take public input on anchoring and mooring issues and potential regulatory regimes, in accordance with the criteria of the FWC Pilot Program; and

WHEREAS, FWC staff evaluated the County's vessel surveys, considered public input provided at stakeholder workshops, and provided a recommendation to the FWC to approve the County, City and Key West for participation in the Pilot Program; and

WHEREAS, at its February 2011 meeting the FWC approved the County, in partnership with the City and Key West, as one of five local governments in the state to participate in the Pilot Program, including St. Petersburg, Sarasota, St. Augustine and Martin County; and

WHEREAS, the City, County and Key West held numerous public meetings from 2009 to the present to discuss, and take public input on FWC Pilot Program objectives, anchoring impacts in unmanaged Keys anchorages, and viable solutions to address those anchoring impacts; and

WHEREAS, the City Council provided direction for City staff to draft an anchoring ordinance to provide for managed anchoring zones within Boot Key Harbor; and

WHEREAS, it is the intention of the City to optimize the incentive for vessel owners, who contribute to Boating Improvement Funds through vessel registration fees and contribute to DEP Clean Vessel Act Program funds through marine fuel taxes, to properly pump-out and comply with existing sewage discharge regulations within the federal No Discharge Zone in the Keys, by providing free pump-out service to vessels located in managed anchoring zones and which are served by the City's pump-out program; and

WHEREAS, because the anchoring ordinance is a test program the City desires that vessel owners be provided warnings by enforcement officers prior to the issuance of citations, to allow every opportunity for the vessel owner to comply with the described regulations; and

WHEREAS, the anchoring ordinance shall provide for the regulation of both liveaboard and non-liveaboard vessels; and

WHEREAS, the City encourages FWC to fully implement the agency's At Risk Program in designated managed anchoring zones as a tool to identify vessels which exhibit conditions known to precede a derelict vessel condition.

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

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

Section 2. Chapter 36 of the Code of Ordinance, City of Marathon, Florida is amended to read as follows:

Chapter 36
WATERWAYS

ARTICLE __
ANCHORING AND MOORING RESTRICTED AREAS

Sec. 36- . Purpose. It is the purpose of this article to provide for anchoring and mooring restricted areas where unmanaged anchoring or mooring and associated environmental and navigational impacts exist. These areas and restrictions are created in accordance with F.S. § 327.4105, and by approval of the Florida Fish and Wildlife Conservation Commission which has been directed by the Florida State Legislature to establish a Pilot Program to explore potential options for regulating the anchoring or mooring of non-liveaboard vessels outside the marked boundaries of public mooring fields. These restrictions are deemed to be necessary to protect the public health, safety and welfare. These restrictions also include the regulation of liveaboard vessels and floating structures, as provided for in F.S. § 327.60(3).

Sec. 36- Definitions.

Proof of pump-out means an acceptable form of proof that a vessel has had its vessel sewage legally pumped out, or disposed of (in the case of a Porta-Potti or other portable toilet). Acceptable forms of proof include a pumpout registration sticker or tag issued by the City of Marathon pump-out program indicating that the vessel receives routine pump-outs or a pump-out receipt from a pump-out facility (including portable toilet dump stations) or pump-out vessel within the past ten (10) days.

Derelict Vessel means any vessel, as defined in F.S. § 327.02, that is left, stored, or abandoned:

- (a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.
- (b) At any port in this state without the consent of the agency having jurisdiction thereof.
- (c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property

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~~.

Sec. 36- . Anchoring and Mooring Restricted Areas.

(a) Managed Anchoring Zones. Managed Anchoring Zones are established for the purpose of protecting the marine environment, enhancing navigational safety, and deterring improperly stored, abandoned, or derelict vessels. Managed Anchoring Zones are created as a tool to regulate anchoring activity in currently unmanaged anchorages.

(1) Managed Anchoring Zones shall be established in the following described geographic areas: Maps delineating the Managed Anchoring Zones are attached hereto as Attachment A, and are incorporated herein by reference and will be made available in the City of Marathon offices.

a. Boot Key Harbor: To include the area of Boot Key Harbor (excluding the permitted public mooring field and No-Anchoring Buffer Zone) occurring south of the Vaca Key shoreline, east of Boot Key Harbor main channel entrance marker 7 located at position 24° 42.13' N 81° 06.84' W, north of the Boot Key shoreline, and west of the far eastern side of Boot Key Harbor at position 24° 42.54' N 81° 04.99' W, and including the entirety of Sisters Creek south to marker 4 at the entrance of Sisters Creek, and including the area occurring from Sisters Creek marker 4 at position 24° 41.35' N 81° 05.26' W running east to the shoreline of Vaca Key at position 24° 41.43' N 81° 04.93' W and running north along the shoreline of Vaca Key and continuing to the west along the shoreline of Sombrero Beach.

(2) The following regulations shall apply within Managed Anchoring Zones:

a. Vessels determined to exhibit conditions known to precede a derelict vessel condition are prohibited, including:

- 1) Vessel is not able to be used for navigation.
- 2) Vessel is listing.
- 3) Vessel is aground.
- 4) Vessel is in danger of breaking its mooring.
- 5) Vessel is sinking.
- 6) Vessel is dragging anchor.
- 7) Vessel has broken its mooring and has been secured for the protection of the health, safety and welfare of the residents, boaters and environment.

b. Derelict vessels are prohibited.

c. Vessels anchored or moored for more than ten (10) consecutive days, and which are required to have a marine sanitation device in accordance with F.S. § 327.53, must provide proof of pump-out. Vessel owners may utilize a pump-out service which may be provided by the City or other

authorized vessel pump-out facility or vendor. The City's pump-out service is structured to provide ongoing pump-outs for vessels located within managed anchoring zones, and may provide a registration process by which vessel owners sign up for regular pump-outs at a frequency based on anticipated need, with a minimum of one pump-out per month. A monthly, color coded, registration sticker or tag may be provided which vessel owners may display on their vessel, indicating participation in the City's pump-out program, and which will be considered proof of pump-out. The City's pump-out program shall maintain registration documentation and pump-out logs throughout the duration of the Pilot Program, which shall be available for review by any law enforcement officer. If a vessel owner utilizes another vessel pump-out provider the vessel owner is required to maintain documentation and pump-out logs to demonstrate use of pump-out to any law enforcement officers.

(b) *No-Anchoring Buffer Zones.* No-Anchoring Buffer Zones are established outside of, and immediately adjacent to, permitted public mooring fields for the purpose of protecting maritime infrastructure, enhancing navigational safety and promoting public access and the use of public mooring fields.

(1) No-Anchoring Buffer Zones shall be established in the following described geographic areas. Maps delineating the No Anchoring Zones are attached hereto as Attachment B, and are incorporated herein by reference and will be made available in the City of Marathon Offices.

a. Boot Key Harbor: To include a fifty foot (50') wide area immediately adjacent to, and outside of, the perimeter of the east and west mooring fields and the leased anchoring area.

(2) The following regulations shall apply within No-Anchoring Buffer Zones:

No anchoring or mooring of any kind (vessels or floating structures) except for vessels mooring within established permitted public mooring fields by permission of the mooring field owner or manager, vessels within a leased anchoring area associated with a mooring field, commercial vessels (e.g. barges) engaged in marine related work, military operations, vessels anchored for the purpose of fishing or other recreational activities (but not overnight), or in the case of an emergency (e.g. weather, mechanical, medical) causing the need for a vessel to temporarily anchor.

Sec. 36- . Enforcement. This Article may be enforced by City code compliance personnel or any law enforcement officer.

Sec. 36- . Penalties.

(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; or

- (b) In accordance with Section 1-7 of this Code; or
- (c) In accordance with Chapter 10 of this Code; or
- (d) A Uniform Boating 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 noncriminal infraction. A written warning shall be issued to provide the vessel owner 30 days for corrective action or removal of the vessel prior to the issuance of a citation. Vessel owners will be provided thirty (30) days between issuance of citations. Fines associated with citations are established as follows:

- (1) First offense- \$50
- (2) Second offense- \$100
- (3) Third offense- \$250
- (4) Fourth or subsequent offenses- \$250 and FWC will request that the owner remove the vessel from the Managed Anchoring Zone or No-Anchoring Buffer Zone

- (e) Any person who fails to properly respond to a Uniform Boating Citation issued for a violation of this article shall, in addition to the charge relating to the violation of this article, be charged with the offense of failing to respond to such citation and upon conviction be guilty of a misdemeanor of the second degree punishable as provided in F.S. § 775.082 and F.S. § 775.083.

- (f) If a law enforcement officer determines that a vessel is derelict, the violation shall be processed in accordance with F.S. § 823.11

- (g) Allowance shall be provided for vessels in need of safe harbor due to severe weather conditions or temporary mechanical issues which may otherwise prohibit a vessel from safely departing a managed anchoring zone.

Sec. 36- . Exemptions. The following exemptions are provided:

- (a) Vessels equipped with only incinerating or composting toilets are not required to provide proof of pump-out, as those types of toilets are not designed to be pumped out. However, effluent from those toilets is not allowed to be disposed of in the waters of the No Discharge Zone within the Florida Keys.

- (b) Stored vessels are not required to provide proof of pump-out.

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.

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.

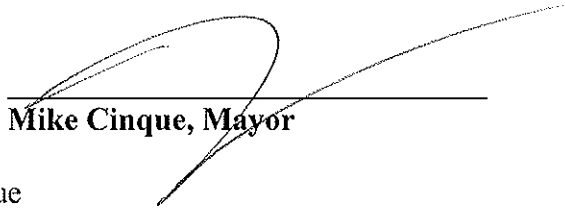
Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. This Ordinance shall be effective upon approval by Florida Fish and Wildlife Conservation Commission (FWC).

Section 7. The FWC Pilot Program is scheduled to expire on July 1, 2014, unless extended by the Florida State Legislature. Accordingly, this Ordinance shall expire or be extended concurrently with the FWC Pilot Program.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 11th DAY OF DECEMBER, 2012.

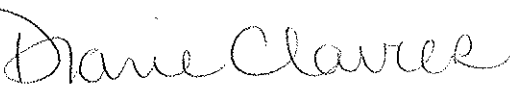
THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

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

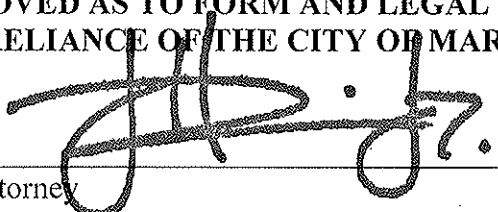
ATTEST:



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