



**City of Marathon Planning Commission**  
**Monday April 17, 2023**  
**9805 Overseas Hwy**  
**City Hall Council Chambers**  
**5:30 PM**

1. **Call To Order**
  2. **Pledge Of Allegiance**
  3. **Roll Call**
  4. **Approval Of Minutes**
  5. **Items For Public Hearing**
  6. **Adjournment**
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**5. Items For Public Hearing**

1. **PULLED BY APPLICANT.** Consideration Of A Request For A Conditional Use Permit For Scott Ebert Pursuant To Chapter 102, Article 13 Of The City Of Marathon Land Development Regulations (Code) Entitled “Conditional Use Permits” To Covert A Triplex Into A Single Family Residential With 11 Bedrooms; Located At 213 S. Anglers Dr; Which Is Legally Described As Lot 38 Sombrero Anglers Club South Boot Key PB6-87, Monroe County, Florida; Having Real Estate Number 00355418-000500, Nearest Mile Marker 50.
2. 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 1-3.5.16, “Program For Transfer Of Density And Building Rights (TDR’s And TBR’s)”, 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.
3. An Ordinance Of The City Of Marathon, Florida Amending Chapter 107, Article 2, Entitled “Transfer Of Building Rights”, And Intending To Modify Section 107.15 Entitled “Site Criteria”; 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.
4. 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.

5. An Ordinance Of The City Of Marathon, Florida 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.

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission 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 Planning Commission Meeting 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 Marathon City Council members may participate in the meeting.)**



**City of Marathon Planning Commission  
Monday January 23, 2023  
9805 Overseas Hwy  
City Hall Council Chambers**

**MINUTES**

Sexton called the meeting of the Planning Commission to order on Monday, January 2023 at 5:30 pm.

In attendance: Planning Director Brian Shea, Attorney Steve Williams, Planner Amber Stonik, Planner Erin Dafoe, Admin Assistant Lorie Mullins, and members of the public.

The Pledge of Allegiance was recited.

The roll was called. Mark Senmartin-present; Mary Ann Royse-present; Mike Cinque-present; Andrew George-present; Matt Sexton-present.

Sexton called for an approval of the Minutes from the last meeting. Senmartin moved to approve. George seconded. The motion was approved 5-0.

The quasi-judicial statement was read into the record.

**Item 1** was read into the record: A Request For A Conditional Use Permit And Preliminary Plat Approval Pursuant To Chapter 102 Article 10 And Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Subdivision Of Land/Plats And Re-Plats,” And “Conditional Use Permits” Respectively, For A Plat And Site Plan Approval As Submitted by Vaca Homes, LLC. Located At 11901 Overseas Highway; Which Is Legally Described As Part Of Lot 3 South Of Overseas Highway, Section 5, Township 66 South, Range 33, Fat Deer Key, Monroe County, Florida; Having Real Estate Number 00100740-000000, Nearest Mile Marker 53.

Dafoe presented the item.

Senmartin and Royse had ex-parte communications on the item, they stated it would not affect their decisions.

After discussions on potential traffic problems, left hand turns, acceleration and deceleration lanes, bonding requirements, and the possibility of ‘No U Turn’ signs being installed at Fish Tales, Senmartin moved to approve the item with the additional conditions of the U-turn sign at the west end of Vaca Cut bridge, request from DOT for the acceleration lane and the CO language discussed earlier.

Royse seconded. The roll was called. The item was approved 3-2, Cinque and Sexton dissenting.

**Item 2** was read into the record: Consideration Of A Request For A Conditional Use Permit For A Preliminary Plat And Site Plan Approval As Submitted By La Palma 101 Inc For A Plat Pursuant To Chapter 102, Article 10 And Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled “Subdivision Of Land/Plats And Re-Plats,” And “Conditional Use Permits”

Respectively, Particularly, 400-800 101 And 104th Street Which Is Described As Part Of Government Lot 2, And Adjacent Bay Bottom, Section 6, Township 66S, Range 33E, Key Vaca, Monroe County, Florida, Having Real Estate Number 00104460-000100 And 00104460-000000. Nearest Mile Marker 52.

Shea presented the item.

All commissioners had ex-parte communications on the item, they stated it would not affect their decisions.

After a brief discussion on the required conservation easements and the 5' easement that could be used as a vegetative buffer or to widen the street, Senmartin moved to approve the item. Royse seconded. The roll was called. The item was approved 3-2, George and Sexton dissenting.

**Item 3** was read into the record: An Ordinance Of The City Of Marathon, Florida, Amending The City's Land Development Regulations, Chapter 104, "Specific Use Regulations," Article 1, "General Provisions," Section 104.64, "Waterfront Walkways And Docks:"; 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 Final Adoption By The City Council; And Providing For An Effective Date.

Shea presented the item.

Royse moved to approve the item. Senmartin seconded. The roll was called. The item was approved 5-0.

**Item 4** was read into the record: An Ordinance Of The City Of Marathon, Florida, Amending The City Of Marathon's Comprehensive Plan Modifying Chapter Seven, "Transportation Element," And Intending To Modify Policies 7-3.1.1 Through 7-3.1.3, "Ensure Consistency With The Plan," "Protect Environmentally Sensitive Lands," And "Protect The Airport Hammock Buffer," Respectively, 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.

Shea presented the item.

There was one public speaker: Eleanor Burgess.

Sexton moved to approve the item with the added condition of a sound barrier. Senmartin seconded. The roll was called. The item was approved 4-1, Cinque dissenting.

**Item 5** was read into the record: An Ordinance Of The City Of Marathon, Florida Amending Chapter 102, Article 13, Entitled "Conditional Use Permits"; 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.

Shea presented the item.

Senmartin moved to approve the item. Sexton seconded. The roll was called. The item was approved 5-0.

Motion and second to adjourn at 6:54 pm.

ATTEST:

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Matt Sexton-Planning Commissioner Chair

ATTEST:

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Lorie Mullins-Admin Assistant  
City of Marathon Planning Department

**Audio-Video is available upon request.**

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission 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 Planning Commission Meeting 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 Marathon City Council members may participate in the meeting.)**

## PLANNING COMMISSION AGENDA STATEMENT



**Meeting Date:** April 17, 2023  
**To:** The City of Marathon Planning Commission  
**From:** Brian Shea, Planning Director

**Agenda Items:** 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 1-3.5.16, "Program For Transfer Of Density And Building Rights (TDR's And TBR's)", 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.

An Ordinance Of The City Of Marathon, Florida Amending Chapter 107, Article 2, Entitled "Transfer Of Building Rights", And Intending To Modify Section 107.15 Entitled "Site Criteria"; 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 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 Building Rights.

### **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 the 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. An analysis of properties that are over dense has noted that a majority of these sites were given the FLUM designation of RH. Based upon the current comprehensive plan, these over dense properties would only be able to transfer to other high-density properties, while still limited by the maximum density requirements of the LDRs. This does not meet the goals of infill development and reducing the potential for future takings cases. Under the existing LDRs, criteria are already in place stating that the receiving site must be zoned to meet the requested use, but also meet all other provisions of the Comp Plan and LDRs. This includes the requisite densities as set forth in Table 103.15.2. Additionally, even lots meeting the criteria as set forth in 108.13.A are eligible to



meet the density requirements. This ensures that despite the comprehensive plan change, the density requirements are still in effect, and the table referenced is still applicable to the TDR portion of the policy.

Additionally, below are the existing criteria as it pertains to environmental sensitivity. Based upon a strict interpretation of the code, this would mean that any dwelling existing on Class III habitat could not be transferred to any other lots, as there is no Class IV habitat less sensitive than Class III. This is counterintuitive, as the Affordable TBR BPAS is an allocation type specifically created that relies on units being able to be transferred. An affordable TBR is an affordable allocation granted through the BPAS process that then frees up the existing market rate, which may be transferred through the TBR process. However, as stated nothing can be less environmentally sensitive than developed land. So, by changing the wording from less to not more, this allows for the units to be transferred within the same Class, without creating additional impacts on environmentally sensitive lands.

One final change is clerical in nature. C.2 of the policy is self-referential, and states that it references c.2 above, however, there is only c.1 above. So, it simply strikes the self-referential words.

Policy 1-3.5.16 Program for Transfer of Density and Building Rights (TDR's and TBR's)

a. The transfer of density and building rights within the City's boundaries shall attempt to achieve the following:

1. Protect environmental resources in balance with the protection of property rights;
2. Encourage the replacement of substandard structures, non-conforming structures, structures within environmentally sensitive habitat; structures subject to repetitive flood damage, and units or non-residential square footage which exceeds density limitations;
3. Facilitate redevelopment and revitalize the commercial centers by concentrating mixed use activities;
4. Facilitate the redevelopment and revitalization of hotels and motels in the City;
5. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City;
6. Redistribute existing residential units or densities from more environmentally sensitive properties to less environmentally sensitive properties to encourage infill development and achieve planned densities without increasing the overall density;
7. Protect environmentally sensitive sites through the removal of existing dwelling units or allocated development rights;
8. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land;
9. Further the public good and the goals, objectives, and policies of the Plan;
10. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City.

b. Transfer of Residential Density (TDRs)

1. Residential density (TDRs) shall only be transferable from a FLUM category of lower density to one of higher density as defined in Table 1-1 of the Comprehensive Plan.

Properties with a FLUM category of Conservation shall not be eligible as TDR receiver sites. TDRs are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.8.

2. Increases in Residential Density which are greater than those allowed for a given FLUM category in Table 1-1 may occur, but shall only occur as a result of a TDR transfer. Such TDR transfers shall not exceed 20 percent of the Future Land Use Densities allowed by FLUM category in Table 1-1.
3. If a property owner intends to achieve a residential density higher than a 20 percent increase over that allowed in Table 1-1, then the owner must seek a FLUM change to a FLUM category which would allow a greater residential density. However, there shall be no presumption in any request that the request must be or will be granted by the City. If the FLUM change is granted, then the difference in residential density between the two FLUM categories must be achieved through a transfer of TDRs which shall not exceed the density allowed in Table 1-1 for the new FLUM category.
4. The transfer of TDRs is subject to approval by the City based on the criteria established in b. 1. and 2. above. All transfers of TDRs must identify the removal of the TDRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
5. Lands for which all residential density has been entirely removed must have a maintenance program to continuously remove exotic invasive vegetation or be transferred to an appropriate land management entity, such as the State of Florida or the City of Marathon.

c. **Transfer of Building Rights (TBRs)**

1. Transferable Building Rights (TBRs) shall only be transferable from a FLUM category of lower density to one of equal or higher density as defined in Table 1-1 of the Comprehensive Plan. Properties with a FLUM category of Conservation shall not be eligible as TBR receiver sites. Transferable Building Rights (TBRs) are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.8
2. The transfer of TBRs is subject to approval by the City based on the criteria established in c. 1. and 2. above. All transfers of TBRs must identify the removal of the TBRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
3. Alternatively, TBRs may be "banked" with the City for a period not to exceed two (2) years. TBRs so banked must identify the removal of the TBRs from the sender site and that they have been banked with the City pursuant to a specific agreement with the City, which shall be recorded in the chain of title of the sending site.

Policy 4-1.5.8      Require Clustering

Upon the effective date of the Plan, the City shall require development to minimize impacts on sensitive natural areas to the maximum extent feasible through the following clustering provisions. In the event development must be permitted, adverse impacts shall be mitigated by clustering.

Clustering requirements shall be as follows:

- a. Development which may impact sensitive natural resources may be required to utilize reduced construction ‘footprints’, modified construction techniques, innovative construction techniques, land use and development techniques which minimize negative environmental impacts or results, and the like;
- b. When a parcel proposed for development contains more than one (1) habitat type, development shall be:
  - 1. clustered on the least sensitive portion of the parcel, until the maximum allowable density is reached;
  - 2. if further development occurs, it shall be clustered on the next least sensitive portion of the parcel, until maximum allowable density is reached, etc.; and
  - 3. development permitted on the least sensitive portion(s) of a parcel shall be clustered within that portion(s) of the parcel.
  - 4. Modification of the development footprint to minimize the impact on existing native understory and canopy trees.

When a parcel proposed for development contains more than one (1) habitat type, all development shall be clustered on the least environmentally sensitive portions of the parcel. For the purpose of this policy, the relative sensitivity of separate habitat types shall be classified as shown below with Class I being the most sensitive and Class III being the least sensitive.

**Class I**

Saltmarsh and/or buttonwood association wetlands;  
 Beach or berm;  
 High quality hammock;  
 Moderate quality hammock;  
 Low quality hammock;

**Class II**

Disturbed beach or berm;  
 Disturbed with salt marsh and/or buttonwood association wetlands (lawfully converted to disturbed uplands);  
 Disturbed with hammock;

**Class III**

Disturbed; and  
 Disturbed with exotics.

Development within the least sensitive habitat shall achieve the maximum density or intensity allowable and shall fully utilize the net buildable area of the habitat prior to expanding to the next least sensitive habitat type on the site. The OSR for Class I habitat types shall be implemented by the developer/property owners execution of a Grant of Conservation Easement Agreement (GOCEA), stating the required amount of open space.

**ANALYSIS**

### Natural Resources

No Significant Impact would result from the proposed change, as the proposed change still maintains that development should be directed to lands suitable for redevelopment and does not further allow transfers into areas deemed environmentally sensitive, nor zoned conservation.

### 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.

#### 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

The proposed amendment will not affect the construction of affordable housing appreciably. The existing affordable housing compliance section is not being amended. By further allowing transfers that meet the development criteria under the LDRs and Comp Plan, funding will be collected for affordable housing.

### Hazard Mitigation

No Significant Impact would result from the proposed change. However, the transfer process already has criteria that ensure the redevelopment of the transferred unit will be more resilient as it must meet the current Florida Building Code.

### Coastal High Hazard Areas

No Significant Impact would result from the proposed change.

### Hurricane Evacuation

No Significant Impact would result from the proposed change. The units must have been deemed to already have existed and are just being redistributed throughout the City with no net increase.

### Ports – Marina Siting

No Significant Impact would result from the proposed change.

### 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 in regard to land acquisition. Criteria is already in place to allow for conservation of lands deemed environmentally sensitive if a unit is transferred off of the site.

## **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;**

Erroneous interpretations made by those not specifically granted the powers under Section 102.138 may lead to a change in policy and procedure. By amending the LDR language as written, it ensures the program continues to be managed as intended. This also allows for the continuance of other code sections to be maintained that rely on this process.

### **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 all new development and redevelopment protect the environment. Second, the Ordinance does not allow any additional impact on environmentally sensitive areas. Third, the proposed amendment seeks to maintain the traditional community character of Marathon, which is so closely tied to the environment.

**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-XXX**

**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 1-3.5.16, "PROGRAM FOR TRANSFER OF DENSITY AND BUILDING RIGHTS (TDR'S AND TBR'S)", 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**, amending the Comprehensive Plan language ensures protection of environmentally sensitive lands, while encouraging infill developments; 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 1-3.5.16:”

Policy 1-3.5.16            Program for Transfer of Density and Building Rights (TDR’s and TBR’s)

a.        The transfer of density and building rights within the City’s boundaries shall attempt to achieve the following:

1. Protect environmental resources in balance with the protection of property rights;
2. Encourage the replacement of substandard structures, non-conforming structures, structures within environmentally sensitive habitat; structures subject to repetitive flood damage, and units or non-residential square footage which exceeds density limitations;
3. Facilitate redevelopment and revitalize the commercial centers by concentrating mixed use activities;
4. Facilitate the redevelopment and revitalization of hotels and motels in the City;
5. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City;
6. Redistribute existing residential units or densities from more environmentally sensitive properties to less environmentally sensitive properties to encourage infill development and achieve planned densities without increasing the overall density;
7. Protect environmentally sensitive sites through the removal of existing dwelling units or allocated development rights;
8. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land;
9. Further the public good and the goals, objectives, and policies of the Plan;
10. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City.

b.        Transfer of Residential Density (TDRs)

1. Residential density (TDRs) shall only be transferable from a FLUM category of lower density to one of higher density as defined in Table 1-1 of the Comprehensive Plan. Properties with a FLUM category of Conservation shall not be eligible as TDR receiver sites. TDRs are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.8.
2. Increases in Residential Density which are greater than those allowed for a given FLUM category in Table 1-1 may occur, but shall only occur as a result of a TDR transfer. Such TDR transfers shall not exceed 20 percent of the Future Land Use Densities allowed by FLUM category in Table 1-1.
3. If a property owner intends to achieve a residential density higher than a 20 percent increase over that allowed in Table 1-1, then the owner must seek a FLUM change to a FLUM category which would allow a greater residential density. However, there shall be no presumption in any request that the request must be or will be granted by the City. If the FLUM change is granted, then the difference in residential density between the two FLUM categories must be achieved through a transfer of TDRs which shall not exceed the density allowed in Table 1-1 for the new FLUM category.

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



4. The transfer of TDRs is subject to approval by the City based on the criteria established in b. 1. and 2. above. All transfers of TDRs must identify the removal of the TDRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
5. Lands for which all residential density has been entirely removed must have a maintenance program to continuously remove exotic invasive vegetation or be transferred to an appropriate land management entity, such as the State of Florida or the City of Marathon.

c. Transfer of Building Rights (TBRs)

1. ~~Transferable Building Rights (TBRs) shall only be transferable from a FLUM category of lower density to one of equal or higher density as defined in Table 1-1 of the Comprehensive Plan.~~ Properties with a FLUM category of Conservation shall not be eligible as TBR receiver sites. Transferable Building Rights (TBRs) are ~~only~~ **not** transferable to receiver site properties whose habitats are deemed by the City Biologist to be ~~less~~ **more** sensitive than the sender site properties as defined in policy 4-1.5.8
2. The transfer of TBRs is subject to approval by the City based on the criteria established in c. 1. ~~and 2.~~ above. All transfers of TBRs must identify the removal of the TBRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
3. Alternatively, TBRs may be "banked" with the City for a period not to exceed two (2) years. TBRs so banked must identify the removal of the TBRs from the sender site and that they have been banked with the City pursuant to a specific agreement with the City, which shall be recorded in the chain of title of the sending site.

**SECTION 3.** The provisions of this Ordinance are declared to be severable and if any section, sentence, 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 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.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this XX<sup>th</sup> day of XXX, 2023.**

**THE CITY OF MARATHON, FLORIDA**

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

---

**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

**Sponsored By:** Garrett  
**Planning Commission Public Hearing Date:** April 17, 2023  
**City Council Public Hearing Date:** May 9, 2023  
June 13, 2023  
**Enactment Date:** June 13, 2023

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

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 107, ARTICLE 2, ENTITLED “TRANSFER OF BUILDING RIGHTS”, AND INTENDING TO MODIFY SECTION 107.15 ENTITLED “SITE CRITERIA”; 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.**

**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**, it is the City’s intent to amend the LDRs to ensure protection of environmentally sensitive lands, while encouraging infill developments; 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 Land Development Regulations corresponding to a similar amendment to the City’s 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 second reading, shall be transmitted to DEO for review and approval,

**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 Land Development regulations, Chapter 107, “General Development Standards,” Article 2, “Transfer of Building Rights,” Section 107.15:

**Section 107.14. Site Criteria.**

A. *Sending Site Criteria:*

1. The parcel must have a documented building right.
2. The sending site shall not have any open permits or active code violations.
3. All bonds, assessments, back city taxes, fees, and liens (other than mortgages) affecting the parcel shall be paid in full prior to recordation of the warranty deed for the transfer of the building rights.

B. *Receiving Site Criteria:* The parcel must:

1. Be classified by the City Biologist as less **not more** environmentally sensitive than the sending site, as scored using the BPAS scoring criteria, established in Article 1 of this Chapter applicable to the type of use;
2. Be zoned to allow the requested use; and
3. Meet all provisions of the LDRs and the Comprehensive Plan relating to the type and magnitude of the proposed development.

**SECTION 3.** The provisions of this Ordinance are declared to be severable and if any section, sentence, 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 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 an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity 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.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>TH</sup> DAY OF JUNE 2023.**

**THE CITY OF MARATHON, FLORIDA**

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**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:**

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Steven Williams, City Attorney

## PLANNING COMMISSION AGENDA STATEMENT



**Meeting Date:** April 17, 2023  
**To:** The City of Marathon Planning Commission  
**From:** Brian Shea, Planning Director

**Agenda Items:** 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.

An Ordinance Of The City Of Marathon, Florida 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 liveboards and ensure proper tracking as part of redevelopment of marinas. The amendment to the comprehensive plan further delineates protection of liveboard 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 liveboards. Liveboards were documented under the City's Marina Siting Plan. The proposed changes thus allow for those documented liveboards to be tracked further through the TBR process, as part of Marina redevelopment. Additionally, as the actual vessels themselves can be sailed from one liveboard 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:<sup>1</sup>
  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 remodeling of the registered floating structure, however, shall comply with the state minimum building code as adopted by the City.

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<sup>1</sup> Source for items 1-4, Florida Building Code

- 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 are 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-XXX**

**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 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 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.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this XX<sup>th</sup> day of XXX, 2023.**

**THE CITY OF MARATHON, FLORIDA**

---

**Luis Gonzalez, Mayor**

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



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

**Sponsored By:** Garrett  
**Planning Commission Public Hearing Date:** April 17, 2023  
**City Council Public Hearing Date:** May 9, 2023  
June 13, 2023  
**Enactment Date:** June 13, 2023

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

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA 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.**

**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, tracked, and environmentally appropriate; and

**WHEREAS**, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Land Development Regulations corresponding to a similar amendment to the City's 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 second reading, shall be transmitted to DEO for review and approval,

**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 Land Development regulations, Chapter 107, “General Development Standards,” Article 2, “Transfer of Building Rights,” Section 107.14:

**Section 107.14. Types of Transfers.**

Transfer of building rights is limited to the following activities:

- A. Transferring lawfully established commercial floor area from one (1) site to another site.
- B. Transferring a lawfully established transient unit from one (1) site to another site.
- C. Transferring a lawfully established dwelling unit from one (1) site to another, more specifically:
  - 1. Removing a market rate dwelling unit from one (1) site and rebuilding on another site as a market rate or deed-restricted affordable dwelling unit.
  - 2. Removing a deed-restricted affordable dwelling unit; a dwelling unit that is subsidized by or constructed with public money (including, but not limited to, the Monroe County Land Authority, SHIP, HOME, CDBG, etc.); or a permanent RV from one (1) site and rebuilding as a deed-restricted affordable dwelling unit on another site.
  - 3. Removing a liveaboard unit from a marina site and relocating on another marina site as a liveaboard unit. Transfer of a liveaboard unit is not subject to Section 107.18.**

**SECTION 3.** The provisions of this Ordinance are declared to be severable and if any section, sentence, 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 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 an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity 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.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>TH</sup> DAY OF JUNE 2023.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

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

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Steven Williams, City Attorney