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**CITY OF MARATHON, FLORIDA
RESOLUTION 2006-107**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, DIRECTING THE PLANNING DEPARTMENT TO DEFER THE PROCESSING OF DEVELOPMENT APPLICATIONS AND THE ISSUANCE OF DEVELOPMENT APPROVALS FOR SEXUALLY ORIENTED BUSINESSES; CONTINUING THIS POLICY UNTIL NEW LAND DEVELOPMENT REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COUNCIL OR UNTIL THE PASSAGE OF 270 DAYS FROM JULY 11, 2006, WHICHEVER OCCURS FIRST; PROVIDING DEFINITIONS; AND DIRECTING STAFF TO CONTINUE PREPARATION OF NEW LAND DEVELOPMENT REGULATIONS.

WHEREAS, the City Council and City staff have been working on a complete rewrite of the land development regulations of the City of Marathon; and

WHEREAS, such rewrite includes a re-examination of all uses and conditional uses in the various zoning categories in the City of Marathon; and

WHEREAS, the City Council discussed the need to regulate the location of sexually oriented businesses in the City of Marathon at its meetings of June 7, 2006 and July 11, 2006; and

WHEREAS, the City Council desires to limit the location of sexually oriented businesses to the Industrial land use district and require a conditional use for any such business in the City of Marathon; and

WHEREAS, in order to make effective the land use limitation on sexually oriented businesses while the City prepares land development regulations, it is necessary to temporarily halt any development approvals or applications regarding sexually oriented businesses; and

WHEREAS, the City wishes to place all parties on notice that it is considering amending its LDRs and that parties who are considering opening sexually oriented businesses in the City will be reviewed for compliance with such changes as of July 11, 2006.

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

Section 1. That pursuant to the pending legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980), City staff shall defer the processing of development applications and the issuance of development approvals for sexually oriented businesses in the City of Marathon.

Section 2. That this policy shall be in effect until new LDRs or amended LDRs are adopted by the City Council or until the passage of two hundred seventy (270) days from July 11, 2006, whichever occurs first.

Section 3. That the following definitions apply in this Resolution:

Sex shop: A retail sales and services establishment that meets any of the following tests:

- a. It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items make up more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area; or.
- b. More than five percent (5%) of its stock in trade consists of sexually-oriented toys or novelties; or.
- c. More than five percent (5%) of its gross public floor area is devoted to the display of sexually-oriented toys or novelties

Sexual conduct: The engaging in or the commission of an act of sexual intercourse, oral-genital contact, masturbation, or the touching of the sexual organs, pubic region, buttock or female breast of another person for the purpose of arousing or gratifying the sexual desire of another person.

Sexually explicit media: Magazines, books, videotapes, movies, slides, CD ROMs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "sexual conduct" or "specified anatomical areas".

Sexually oriented business: An inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented motion picture theater; motion picture arcade; massage parlor or shop unless operated by a massage therapist licensed by the State of Florida; retail sales and services falling into the category of sex shop or sexually oriented media shop. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the zoning Code or other applicable ordinances.

Sexually oriented cabaret: A building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment which constitutes the “primary live entertainment” is distinguished or characterized by an emphasis on the exhibiting of “sexual conduct” or “specified anatomical areas” for observation by customers therein. The fact that an establishment does not serve alcoholic beverages shall not remove it from classification as a “sexually oriented cabaret” if it otherwise falls under this definition.

Sexually oriented media store: A retail sales and services establishment that rents and/or sells media. and that meets any of the following three tests:

- a. More than thirty percent (30%) of the gross public floor area is devoted to sexually oriented media; or
- b. More than thirty percent (30%) of the stock in trade consists of sexually oriented media; or
- c. It is advertised, marketed, or holds itself out in any forum as “XXX,” “adult,” “sex” or otherwise as a sexually-oriented business.

Sexually oriented motion picture theater: A cinema or motion picture theater which shows hardcore features on more than half the days that it is open, or which is marketed as or offers features described as “adult”, “XXX”, or sexually oriented.

Section 4. That until the earlier of the adoption of the new LDRs or the expiration of this Resolution, no building permit application or planning approval identified in Section 1 herein shall be granted pursuant to an application or request with a submittal date of July 11, 2006 or later.

Section 5. That Planning Department staff is directed to continue the preparation and adoption of LDR amendments.

Section 6. The City declares that City planning staff is preparing and processing amendments to the LDRs. Parties who contemplate opening sexually oriented businesses in the City will, as of July 11, 2006, be reviewed for compliance with the provisions of the proposed amendments to the LDRs.

Section 7. Any property owner may apply for administrative relief from this Resolution where the property owner can demonstrate each of the following:

- (1) Relying in good faith;
- (2) Upon some act or omission of the City;

(3) That the property owner made a substantial change in position or incurred such extensive obligations that it would be highly inequitable to deny the property owner the right to have his/her/its development application processed under the existing LDRs.

Any property owner claiming an exemption under this Section 7 must file an application with the City Planning Department within thirty (30) days of the effective date of this Resolution for an exemption determination. The application shall be accompanied by a sworn statement as to the basis upon which the exemption is asserted, and any other documentary evidence supporting the claim. The City Planning Department shall evaluate the application and make a determination to grant, grant with conditions or deny the application. The applicant may appeal a denial to the City Council in the same manner as an administrative appeal as set forth in Section 9.5-521 of the City Code, as amended. The City Council shall hold a quasi-judicial public hearing to review staff's determination and based upon the evidence submitted shall make a determination as to whether the property owner has met the standards set forth in this Section.

Section 8. No property owner claiming that this Resolution as applied constitutes or would constitute a temporary or permanent taking of private property, or an abrogation of property rights, may pursue such claim unless he/she/it has first exhausted the administrative relief provided in this Resolution.

Section 9. The adoption of this Resolution shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this Resolution. A copy of this Resolution shall also be posted at City Hall for the next two hundred seventy (270) days.

PASSED AND ADOPTED by the City Council of the City of Marathon, Florida, this 25th day of July, 2006.

THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier

Diane Clavier
City Clerk

(City Seal)

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

[Handwritten Signature]

City Attorney

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