

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-94**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING A REQUEST BY JOHN S. KOTCH AND MARATHON SUNSET GRILL, INC FOR AN AMENDMENT TO A CONDITIONAL USE PERMIT PURSUANT TO SECTION 102.79 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “MINOR AND MAJOR AMENDMENTS TO EXISTING CONDITIONAL USES” SEEKING TO AMEND CONDITION NUMBER 3 OF RESOLUTION 2006-73, DEVELOPMENT ORDER 2006-05, WHICH CURRENTLY READS, “THERE SHALL BE NO AMPLIFIED MUSIC AND ALL MUSIC SHALL STOP AT 9:00 PM” TO READ INSTEAD, “BETWEEN THE HOURS OF NINE P.M. AND ELEVEN A.M, NO MUSIC OR AMPLIFIED SOUND MAY EMANATE FROM THE RESTAURANT SITE AT A VOLUME THAT IS PLAINLY AUDIBLE ON ANY RESIDENTIAL LOT IN THE VILLAGE OTHER THAN THE RESIDENTIAL CHAPLIN LOTS. NO MUSIC OR AMPLIFIED SOUND THAT IS UNREASONABLY LOUD MAY EMANATE FROM THE RESTAURANT SITE AT ANY TIME”; FOR PROPERTY LOCATED ON KYLE WAY WEST, KNIGHTS KEY, AND FURTHER DESCRIBED AS LOTS 1, 2, AND 3, BLOCK 1, KNIGHTS KEY VILLAGE, KNIGHTS KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00319530-000000. NEAREST MILE MARKER 47.

WHEREAS, John S. Kotch (Marathon Sunset Grill, Inc., the “Applicant”) filed an Application on July 7, 2014 for an amendment to its Conditional Use Permit issued under Resolution 2006-073 pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

WHEREAS, the application was held in abeyance from the initial application date until the Planning Commission hearing held on July 18, 2016; and

WHEREAS; the Applicant proposes to modify Condition 3 of the existing Conditional Use Permit approval – Resolution 2006-073 (Related Resolution 2014-073); and

WHEREAS, Condition 3 currently reads as follows:

“3. There shall be no amplified music and all music shall stop at 9:00 PM;” and

WHEREAS, the proposed modified language reads as follows:

“3. Between the hours of nine P.M. and eleven A.M. no music or amplified sound may emanate from the restaurant site at a volume that is plainly audible on any residential lot in the village other than the residential Chaplin lots. No music or amplified sound that is unreasonably loud may emanate from the restaurant site at any time;” and

WHEREAS, City staff reviewed the Applicant’s request for a modification to the existing Conditional Use Permit determining that the Applicant’s proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) if conditions were applied as outlined in the staff report; and

WHEREAS, on the 18th day of July, 2016, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 9th day of August, 2016, the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant; and

WHEREAS, the City Council voted at said meeting in motions both to approve the request and then to deny it. As one member of the Council had recused himself from the vote, both motions failed, tying in a deadlock vote 2 vote to 2; and

WHEREAS, on September 27, 2016 the Council voted affirmatively, 3 votes to 2, to re-hear the item. It was stated in taking the vote that any previous conflicts were relieved and no longer existed; and

WHEREAS, on October 25, 2016 the City Council conducted a second properly advertised public hearing, accepting all competent and substantial evidence from staff, the applicant and the public present, accepting all other public comment and input, affording all necessary and legal due process, did vote affirmatively in a 3 to 2 majority to approve the request for a modification to an existing Conditional Use Permit with additional conditions, and

WHEREAS, the City Council made a determination that the Applicant’s request for an amendment to an existing Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

WHEREAS, the City Council made a determination that the Applicant's request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

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

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The City Council hereby approves Development Order 2016-10, a copy of which is attached hereto as Exhibit "A", granting a modification to the Conditional Use Permit originally approved under Resolution 2006-073 subject to the Conditions imposed. The Director of Planning is authorized to sign the development order on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 25th DAY OF OCTOBER, 2016.

THE CITY OF MARATHON, FLORIDA



Mark Senmartin, Mayor

AYES: Bartus, Kelly, Senmartin
NOES: Coldiron, Zicg
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier
City Clerk

(City Seal)

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



David Migut, City Attorney



**CITY OF MARATHON, FLORIDA
CONDITIONAL USE
DEVELOPMENT ORDER # 2016-10**

A DEVELOPMENT ORDER APPROVING THE REQUEST BY JOHN S. KOTCH AND MARATHON SUNSET GRILL, INC FOR AN AMENDMENT TO A CONDITIONAL USE PERMIT PURSUANT TO SECTION 102.79 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “MINOR AND MAJOR AMENDMENTS TO EXISTING CONDITIONAL USES” SEEKING TO AMEND CONDITION NUMBER 3 OF RESOLUTION 2006-73, DEVELOPMENT ORDER 2006-05, WHICH CURRENTLY READS, “THERE SHALL BE NO AMPLIFIED MUSIC AND ALL MUSIC SHALL STOP AT 9:00 PM” TO READ INSTEAD, “BETWEEN THE HOURS OF NINE P.M. AND ELEVEN A.M, NO MUSIC OR AMPLIFIED SOUND MAY EMANATE FROM THE RESTAURANT SITE AT A VOLUME THAT IS PLAINLY AUDIBLE ON ANY RESIDENTIAL LOT IN THE VILLAGE OTHER THAN THE RESIDENTIAL CHAPLIN LOTS. NO MUSIC OR AMPLIFIED SOUND THAT IS UNREASONABLY LOUD MAY EMANATE FROM THE RESTAURANT SITE AT ANY TIME”; FOR PROPERTY LOCATED ON KYLE WAY WEST, KNIGHTS KEY, AND FURTHER DESCRIBED AS LOTS 1, 2, AND 3, BLOCK 1, KNIGHTS KEY VILLAGE, KNIGHTS KEY, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBER 00319530-000000. NEAREST MILE MARKER 47.

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WHEREAS, the application was held in abeyance from the initial application date until the Planning Commission hearing held on July 18, 2016; and

WHEREAS; the Applicant proposes to modify Condition 3 of the existing Conditional Use Permit approval – Resolution 2006-073 (Related Resolution 2014-073); and

WHEREAS, Condition 3 currently reads as follows:

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WHEREAS, City staff reviewed the Applicant's request for a modification to the existing Conditional Use Permit determining that the Applicant's proposal was in compliance with the City's Comprehensive Plan and Land Development Regulations (LDRs) if conditions were applied as outlined in the staff report; and

WHEREAS, on the 18th day of July, 2016, the City of Marathon Planning Commission (the "Commission") conducted a properly advertised public hearing (the "Public Hearings") regarding the request submitted by the Applicant pursuant to Chapter 102, Article 13 of the LDRs; and

WHEREAS, on the 9th day of August, 2016, the City Council (the "Council") conducted properly advertised public hearings (the "Public Hearings") regarding the request submitted by the Applicant; and

WHEREAS, the City Council voted at said meeting in motions both to approve the request and then to deny it. As one member of the Council had recused himself from the vote, both motions failed, tying in a deadlock vote 2 vote to 2; and

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WHEREAS, the City Council made a determination that the Applicant's request for an amendment to an existing Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City's Comprehensive Plan and LDRs and further, that the approval is in the public interest, is consistent with, and will further the health, safety and welfare of the residents of Marathon; and

WHEREAS, the purpose of the Conditional Use Permit is to allow for the integration of certain land uses and structures within the City of Marathon, based on conditions imposed by the Council. Review is based primarily on compatibility of the use with its proposed location and with surrounding land uses and on the basis of all zoning, subdivision and other ordinances applicable to the proposed location and zoning district,

FINDINGS OF FACT:

1. The applicant has requested and through this Resolution received approval to allow amplified music at his restaurant subject to conditions.

2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
 - a. With the conditions imposed, the proposed use is consistent with the Comprehensive Plan and LDRs;
 - b. With the conditions imposed, the proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
 - c. With the conditions imposed, the proposed use shall not adversely affect the health, safety, and welfare of the public; and
 - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
 - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
 1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
 2. Off-street parking and loading areas where required through conditions imposed herein;
 3. The noise, glare or odor effects of the conditional use on surrounding properties, particularly in consideration of Condition No. 1 as imposed herein;
 4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
 5. Utilities, with reference to location and availability;
 6. Screening and buffering with reference to type, dimensions and character;
 7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
 8. Required yards and other open space;
 9. General compatibility with surrounding properties; and

CONDITIONS IMPOSED:

The City Council of the City of Marathon, Florida grants approval of the Application subject to the following conditions:

Conditions of Approval

1. Between the hours of 9:00 (nine) P.M. and 11:00 (eleven) A.M, no music or amplified sound may emanate from the restaurant. No music or amplified sound that fails to meet the City noise ordinance shall emanate from the restaurant site at any time.
2. Pursuant to Chapter 107, Article 6, "Parking, Loading, and Stacking," the required parking and seating ratio shall be continuously maintained during all hours that Sunset Grille is open for business.

VIOLATION OF CONDITIONS:

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
 - (a) Accorded procedural due process;
 - (b) Observed the essential requirements of the law;
 - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

EFFECTIVE DATE:

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

10-31-16
Date



George Garrett, Director of Planning

This Development Order was filed in the Office of the City Clerk of this 31 day of October 2016.

Diane Clavier

Diane Clavier, City Clerk

NOTICE

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Economic Opportunity waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 73C-44, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Economic Opportunity. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to Frank Greenman, 5800 Overseas Hwy this 1 day of November 2016. suite 41, Marathon, FL 33050

Diane Clavier

Diane Clavier City Clerk