

ORDINANCE NO. 02-07-12

AN ORDINANCE RELATING TO THE PROVISION OF WATER AND WASTEWATER SERVICES, FACILITIES, AND PROGRAMS BY THE FLORIDA KEYS AQUEDUCT AUTHORITY IN THE CITY OF MARATHON, FLORIDA; REQUIRING CONNECTION TO FLORIDA KEYS AQUEDUCT WASTEWATER FACILITIES WHEN AVAILABLE; PROVIDING FOR DEFINITION OF "ONSITE SEWAGE TREATMENT DISPOSAL SYSTEMS" AND OTHER DEFINITIONS; PROVIDING FOR ENFORCEMENT, PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

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

ARTICLE I

INTRODUCTION

SECTION 1.01. DEFINITIONS. As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

“Authority” means the Florida Keys Aqueduct Authority or any governmental successor in function, including without limitation the City.

“Available” as applied to a governmentally owned sewerage system, means that the governmentally owned sewerage system is capable of being connected to the plumbing of an establishment or residence, is not under a Department of Environmental Protection moratorium, and has adequate permitted capacity to accept the sewage to be generated by the establishment or residence, and unless determined by a court of competent jurisdiction to be as otherwise provided by law:

(1) For a residential subdivision lot, a single-family residence, or non-residential

establishment or Building, any of which has an estimated sewage flow of 1,000 gallons per day or less, a gravity sewer line to maintain gravity flow from the property's drain to the sewer line, or a low pressure or vacuum sewage collection line in those areas approved for low pressure or vacuum sewage collection, exists in a public easement or right-of-way that abuts or is within 250 feet of the property line of the lot, residence, establishment or Building;

(2) For any residential or non-residential establishment, Building or development with an estimated combined sewage flow exceeding 1,000 gallons per day, a sewer line, force main, or lift station exists in a public easement or right-of-way that abuts the property line of the establishment, Building or development, is within 500 feet of the property line thereof as accessed via existing right-of-way or easements;

(3) For proposed residential subdivisions with more than 50 lots, for proposed non-residential subdivisions with more than 5 lots, and for areas zoned or used for an industrial manufacturing purpose or its equivalent, a sewerage system exists within one-fourth mile of the property line of the development or Building as measured and accessed via existing easement or right-of-way; or,

(4) For repairs or modifications within areas zoned or used for an industrial or manufacturing purpose or its equivalent, a sewerage system exists within 500 feet of such

establishment's, Building's or development's sewer stub-out or property line as measured and accessed via existing right-of-way or easements;

“Blackwater” means that part of domestic sewage carried off by toilets, urinals, and kitchen drains.

“Boat Slip/Dock/Berth” means a slip, dock or berth bordered by a seawall, or a fixed or floating pier used for mooring or docking boats, houseboats, barges, or other types of floating modules or vessels used for or capable of being used for residential, or non-residential use at either marina facilities or on private waterways and properly zoned for such purposes.

“Building” means any Premises or structure, either temporary or permanent, built for the support, shelter or enclosure of Persons, chattels or property of any kind, or any other improvement, use, or structure which creates or increases the potential demand on the water, wastewater and/or reclaimed water utility system operated by the Authority. This term includes trailers, mobile homes, Boat Slip/Dock/Berth, or any vehicle serving in any way the function of a Building. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintained during the term of a Building Permit.

“Building Permit” means an official document or certificate issued by the authority having jurisdiction, authorizing the construction or siting of any Building. The term “Building Permit” also includes tie-down permits or other similar authorizations for

those structures or Buildings, such as a mobile home or a Boat Slip/Dock/Berth, that does not otherwise require a Building Permit in order to be occupied.

“City” means the City of Marathon, Florida, its governing body, or the incorporated area of the City, as the context requires.

“Domestic Sewage” means human body waste and wastewater, including bath and toilet waste, residential laundry waste, residential kitchen waste, and other similar waste from appurtenances at a residence or establishment.

“Graywater” means that part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

“Onsite Sewage Treatment and Disposal System” means a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a closing tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; a sanitary pit privy that is installed or proposed to be installed beyond the Building on land of the owner or on other land to which the owner has the legal right to install a system; and package sewage treatment facilities, including those facilities that are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal. As used in this definition the reference to “package sewage treatment facilities” shall include any wastewater treatment facility permitted for

operation by the Florida Department of Environmental Protection, or its successor in function.

“Ordinance” means this Wastewater Facilities Use Ordinance.

“Owner” means a Person who is the record Owner of any Premises, or any Person claiming by through or under such Person.

“Person” means any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

“Premises” means any and all real property and tangible personal property affixed to real property served or capable of being served by the Authority.

SECTION 1.02. INTERPRETATION; CONSTRUCTION.

(A) Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Ordinance; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 1.03. AUTHORITY AND PURPOSE.

(A) Pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Sections 166.021 and 166.041, Florida Statutes, the City Council has all powers of local self-government to perform municipal functions and render municipal services except

when prohibited by law and such power may be exercised by the enactment of City ordinances.

(B) Pursuant to Section 4, Chapter 99-395, Laws of Florida, the City is expressly authorized to enact certain provisions of this Ordinance: (1) requiring connection to Authority wastewater facilities and (2) providing for the use of certain definitions relating to on-site sewage treatment and disposal systems.

(C) Pursuant to Chapter 76-441, Laws of Florida, as amended, the Authority shall have exclusive jurisdiction over the administration, maintenance, development and provision of wastewater services in the City unless otherwise pre-approved by the Authority; this Ordinance has been pre-approved and requested by the Authority.

(D) The purpose of this Ordinance is intended to assist and will advance the delivery by the Authority of water and wastewater services, facilities, and programs within the City.

ARTICLE II

CONNECTION TO AUTHORITY FACILITIES

SECTION 2.01. FINDINGS. It is hereby ascertained, determined, and declared that:

(A) The Florida Legislature has identified the Florida Keys as an area of critical state concern; pollution and questionable water quality resulting from the absence of adequate wastewater treatment throughout the Florida Keys is a threat to the environment and the health, safety and welfare of landowners and Persons inhabiting the Florida Keys.

(B) The Florida Legislature has charged the Authority with the responsibility to plan and provide for water and sewer systems within the Florida Keys and to enforce the use of its wastewater facilities whenever and wherever they are accessible.

(C) The Florida Legislature has empowered the Authority to both prohibit the use of and mandate the use of wastewater facilities within the Florida Keys.

(D) The Florida Legislature has authorized the City to enact local legislation that: (1) requires connection to a central sewerage system within specified time periods; and (2) provides a definition of on-site sewage treatment and disposal systems that does not exclude package sewage treatment facilities even if facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

(E) The Authority has embarked upon the creation of a wastewater system to equitably, ecologically and economically manage wastewater and improve water quality in the Florida Keys. The presence of the Authority's wastewater facilities will enhance and benefit the environment and the health, safety and general welfare of landowners and Persons inhabiting the City of Marathon and the Florida Keys.

(F) Mandatory connection to the Authority's wastewater facilities is fundamental to the successful financing, creation and operation of the Authority's wastewater systems. Mandatory connection to a governmental utility system and the subsequent charges flowing therefrom have long been held to be a proper exercise of the governmental power to regulate and protect the welfare of the public.

SECTION 2.02. MANDATORY CONNECTION TO AUTHORITY FACILITIES.

(A) The Owner of an improved parcel of land or Premises shall, at the Owner's expense, connect any On-Site Sewage Treatment and Disposal System (including decommissioning any such On-Site Sewage Treatment and Disposal System and connection of the collection facilities served thereby to the Authority's wastewater system) and or a Building's plumbing to the Authority's wastewater system upon written notification that the Authority's wastewater facilities are available for connection. Connection shall occur within thirty (30) days of notice of availability of services, or as otherwise provided by law.

(B) No less than one (1) year prior to the date the Authority's wastewater system is expected to become available, the Authority has agreed to notify the affected Owners of the anticipated availability of such wastewater facilities and such Owners shall be required to connect, at their expense, to the Authority's wastewater facilities within thirty (30) days of actual availability, or as otherwise may be provided by law. Failure to timely provide such notice or failure of any individual Owner to timely receive such notice shall not serve as a bar to enforcement of mandatory connection by the Authority.

(C) Where the Authority's wastewater system is available to a Premises with an existing Onsite Sewage Treatment and Disposal System, the Owner shall decommission, abandon, or otherwise disconnect from the existing Onsite Sewage Treatment and Disposal System in accordance with the requirements of the Florida Department of

Health and the Florida Department of Environmental Protection, and shall connect the Buildings on the property or Premises to the Authority's wastewater system.

(D) All connections shall be consistent with and governed by the Authority's agreement for service provisions and all other applicable Authority rules and regulations relating to water and wastewater and the provision thereof.

(E) In the event an Owner fails or refuses to timely connect the Premises, any On-Site Disposal System and/or a Building to the Authority wastewater facilities within the time prescribed herein, or by state and/or local rules and regulations, the Authority may seek and employ any legally available remedy to cause the installation of the on-site wastewater facilities necessary to effectuate the connection of the Premises to the Authority's wastewater system. Under such circumstances, any installation by the Authority may be performed after reasonable efforts by the Authority to solicit, and in deference to, the Owner's requests, if any, concerning the placement, manner, use and disposition of the installation on the Premises subject to the applicable Authority's minimum design and construction standards and specifications which are reasonably necessary to protect the efficiency and integrity of the Authority's wastewater system.

(F) In the event an Owner fails or refuses to timely connect the Premises, any On-Site Sewage Treatment Disposal System and/or a Building to the Authority's wastewater facilities within the time prescribed herein, or by state and/or local rules and regulations, either the Authority or the City, as applicable, may:

(1) Discontinue water service until such time as the Owner properly connects to Authority wastewater system; or alternatively or concurrently,

(2) Seek to otherwise compel connection by any other available means, including judicial process.

(G) In the event the City or the Authority is required to seek a writ or order, or otherwise litigate any action compelling connection, all costs of such action experienced by the City and or the Authority, including attorney fees and court costs, may be assessed to the Owner.

ARTICLE III

GENERAL PROVISIONS

SECTION 3.01. ENFORCEMENT AND PENALTIES.

(A) Violations of this Ordinance may be enforced as authorized by Chapter 162, Florida Statutes, a notice to appear in County Court issued under Section 162.23, Florida Statutes, a citation issued pursuant to Section 162.21, Florida Statutes, or by any other method authorized by law for assuring compliance with the terms of this Ordinance, including suits for injunctive relief.

SECTION 3.02. SEVERABILITY. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

SECTION 3.03. ALTERNATIVE METHOD.

(A) This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the City and the Florida Keys, shall be liberally construed to effect the purposes hereof.

(B) In the event the City is vested with jurisdiction over the administration, maintenance, development, and provision of wastewater services in the City, either as a result of an interlocal agreement with the Authority or by law, this Ordinance and all of the provisions hereof shall be applicable to the City as a successor in function to the Authority.

SECTION 3.04. EFFECTIVE DATE. This Ordinance shall be in force and take effect immediately upon its passage and adoption.

The foregoing Ordinance as offered by Councilmember Greenman, who moved for its adoption. This motion was seconded by Councilmember Mearns, and upon being put to a vote, the vote was as follows:

Mayor John Bartus	yes
Vice Mayor Randy Mearns	yes
Councilman Frank Greenman	yes
Councilman John Repetto	yes
Councilman Pete Worthington	yes

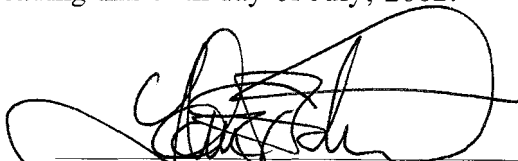
PASSED on first reading this 11th day of June, 2002.

The foregoing Ordinance as offered by Councilmember Repetto who moved for its adoption. This motion was seconded by Councilmember Greenman and upon being put to a vote, the vote was as follows:

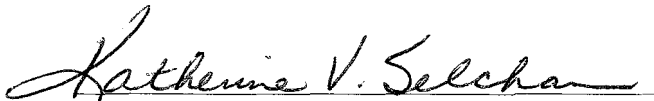
Mayor John Bartus	yes
Vice Mayor Randy Mearns	yes
Councilman Frank Greenman	yes
Councilman John Repetto	yes
Councilman Pete Worthington	yes

PASSED AND ADOPTED on second reading this 17th day of July, 2002.

ATTEST:



JOHN BARTUS, MAYOR



Katherine V. Selchan
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

SCANNED

7/22/02 #6042 KS✓