

**ORDINANCE NO. 02-12-03**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE CITY OF MARATHON COMPREHENSIVE PLAN FROM MIXED USE/COMMERCIAL FISHING (MCF), MIXED USE/COMMERCIAL (MC) AND PUBLIC FACILITIES (PF) TO MIXED USE COMMERCIAL (MC) FOR PROPERTY DESCRIBED AS A PORTION OF GOVERNMENT LOT 3, KEY VACA, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, WITH A REAL ESTATE NUMBER OF 00103340-000000, WHICH IS LOCATED OCEAN SIDE AT MILE MARKER 49; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the provisions of Chapter 163, *Florida Statutes*, the City of Marathon, Florida (the "City") proposes to amend the Future Land Use Map (the "FLUM") of the City Comprehensive Plan (the "Plan") to change the future land use designation of property owned by the Florida Keys Electric Cooperative, legally described as a Portion of Government Lot 3, Key Vaca, Section 10, Township 66 South, Range 32 East (RE No. 00103340-000000) (the "Property"); and

**WHEREAS**, amending the FLUM designation of the Property furthers the goals, objectives and policies of the Plan, and will allow for the development of the Property in a manner consistent with the character of the surrounding area; and

**WHEREAS**, pursuant to Section 9.5-24 of the City Code (the "Code"), the City's Development Review Committee has reviewed the proposed FLUM amendment to determine its compliance and consistency with the goals, objectives, and policies of the Plan; and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Section 9.5-22 of the Code, the Planning Commission sitting as the Local Planning Agency has publicly considered the proposed FLUM amendment at a duly noticed public hearing, and has recommended approval of the proposed FLUM amendment to the City Council; and

**WHEREAS**, in accordance with Sections 163.3184 and 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed FLUM amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed FLUM amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed FLUM amendment, in accordance with State law.

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

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

**Section 2.**     **Approval of FLUM Amendment.** In accordance with State law and the Code the FLUM designation of the Property is amended from its current designation of Mixed Use/Commercial Fishing (MCF), Mixed Use/Commercial (MC) and Public Facilities (PF) to Mixed Use/Commercial (MC).

**Section 3**      **Repeal of Conflicting Provisions.** Any provision of the City Code that conflicts with this Ordinance is hereby repealed.

**Section 4.**      **Severability.** 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 5.**      **Transmittal.** The City Manager or designee shall timely transmit the revised FLUM reflecting the FLUM amendment, and all data and analysis supporting the FLUM amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 6.**      **Replacement of County FLUM.** That upon its effective date, the revised FLUM shall replace the Monroe County Comprehensive Plan Future Land Use Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

**Section 7.**      **Effective Date.** That this Ordinance shall be effective immediately upon adoption by the City Council on second reading, except that the effective date of the amended FLUM approved by this Ordinance shall be the date a final order is issued by the Department or Administration Commission finding the amended FLUM “in compliance” in accordance with Section 163.3184, *Florida Statutes*, whichever occurs earlier. No development orders, development permits, or land uses dependent on the revised FLUM may be issued or commenced before the revised FLUM has become effective. The Department’s notice of intent to find the revised FLUM

“in compliance” shall be deemed a final order if no timely petition challenging the amended FLUM is filed.

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

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

PASSED on first reading this 12<sup>th</sup> day of June, 2001.

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

Mayor Robert Miller	<u>yes</u>
Vice Mayor John Bartus	<u>yes</u>
Councilman Frank Greenman	<u>yes</u>
Councilman Jon Johnson	<u>yes</u>
Councilman Randy Mearns	<u>yes</u>

PASSED AND ADOPTED on second reading this 18<sup>th</sup> day of December, 2001.

  
ROBERT MILLER, MAYOR

ATTEST:

Katherine V. Selchan  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

Mike B  
CITY ATTORNEY

592004\Ordinance\Amending FLUM - FKEC - (2<sup>nd</sup> & Final Reading - #3476)

**SCANNED**

12/20/01 #4711 KSV



STATE OF FLORIDA  
**DEPARTMENT OF COMMUNITY AFFAIRS**

"Dedicated to making Florida a better place to call home"

JEB BUSH  
 Governor

STEVEN M. SEIBERT  
 Secretary

*Craig Fax + Copy*  
*Sandra Copy*  
*Kathy (Fax)*  
*Emmett (Copy)*  
*N. Bonietti*  
*A. Herin* 3 fax

March 12, 2002

John Bartus, Mayor  
 City of Marathon  
 10045 - 55 Overseas Highway  
 Marathon, Florida 33050

Dear Mayor Bartus:

The Department has completed its review of the adopted Comprehensive Plan Amendment (Ordinance Nos. 02-12-01, 02-12-02, 02-12-03; DCA No. 01-01) for the City of Marathon, as adopted on December 18, 2001 and determined that it meets the requirements of Chapter 163, Part II, Florida Statutes, for compliance, as defined in Subsection 163.3184(1)(b). The Department is issuing a Notice of Intent to find the plan amendment In Compliance. The Notice of Intent has been sent to the Florida Keys Keynoter for publication on March 13, 2002.

Please note that a copy of the adopted Marathon Comprehensive Plan Amendment, the Department's Objections, Recommendations and Comments Report and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Marathon City Hall located at 11045-55 Overseas Highway, Marathon, Florida.

The Department's notice of intent to find a plan amendment in compliance shall be deemed to be a final order if no timely petition challenging the amendment is filed. Any affected person may file a petition with the agency within 21 days after the publication of the notice of intent pursuant to Section 163.3184(9), F.S. No development orders, or permits for a development, dependent on the amendment may be issued or commence before the plan amendment takes effect.

If this determination of compliance is challenged by an affected person, you will have the option of mediation pursuant to Subsection 163.3189(3)(a), F.S. If you choose to attempt to resolve this matter through mediation, you must file the request for mediation with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation will not affect the right of any party to an administrative hearing.

MAP 1

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100  
 Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781  
 Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE  
 2796 Overseas Highway, Suite 212  
 Marathon, FL 33050-2227  
 (305) 289-2402

COMMUNITY PLANNING EMERGENCY MANAGEMENT  
 2555 Shumard Oak Boulevard  
 Tallahassee, FL 32399-2100  
 (850) 488-2356

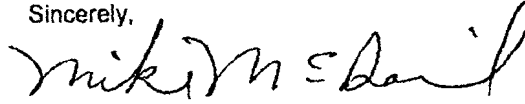
2555 Shumard Oak Boulevard  
 Tallahassee, FL 32399-2100  
 (850) 413-9969

HOUSING & COMMUNITY DEVELOPMENT  
 2555 Shumard Oak Boulevard  
 Tallahassee, FL 32399-2100  
 (850) 488-7956

Mayor Bartus  
March 12, 2002  
Page Two

If you have any questions, please contact me, or Kenneth Metcalf, Community Program Administrator, at (850) 487-4545.

Sincerely,



Mike McDaniel  
Growth Management Administrator  
Bureau of Local Planning

MDM/km

Enclosures: Notice of Intent

cc: Craig Wrathell, City Manager  
Carolyn Dekle, Executive Director, South Florida Regional Planning Council

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FIND THE  
CITY OF MARATHON  
COMPREHENSIVE PLAN AMENDMENT  
IN COMPLIANCE  
DOCKET NO. 01-1-NOI-4406-(A)-(I)


The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for the City of Marathon, adopted by Ordinance Nos. 02-12-01 through 02-12-03 on December 18, 2001, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted City of Marathon Comprehensive Plan Amendment and the Department's Objections, Recommendations and Comments Report, (if any), are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of Marathon City Hall, Planning and Building Department, 10045 Overseas Highway, Marathon, Florida 33050.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendment to the City of Marathon Comprehensive Plan is In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Management Services, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.

  
Charles Gauthier, AICP  
Chief, Bureau of Local Planning  
Department of Community Affairs  
Division of Community Planning  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100