

Sponsored by: Janke
Introduction Date: October 29, 2003
Public Hearing Dates: November 25, 2003
December 9, 2003
Enactment date: December 9, 2003

**CITY OF MARATHON, FLORIDA
ORDINANCE 2003-24**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, CREATING A NEW SECTION OF THE MARATHON CODE PROHIBITING DIVING AND SNORKELING WITHIN NAVIGABLE CANALS AND WITHIN 300 FEET OF MARINAS, IMPROVED RESIDENTIAL AND COMMERCIAL SHORELINES DURING THE ENTIRETY OF THE TWO-DAY SPORT SEASON FOR SPINY LOBSTER

WHEREAS, Chapter 2001-292, Laws of Florida, authorizes the City of Marathon to exercise its police powers 1,200 feet into the tidal waters adjacent to its corporate limits to regulate “the abatement of nuisances, the enforcement of sanitary laws and regulations, the regulation of zoning, and the suppression of crime;” and

WHEREAS, the Marine Fisheries Department of the Florida Fish and Wildlife Conservation Commission authorizes a two-day sport season each year for the harvesting of spiny lobster; and

WHEREAS, the City of Marathon finds that the increased diver and boat traffic in the navigable canals and within 300 feet of marinas, improved residential, and commercial shorelines during the two-day sport season presents heightened public safety problems not generally applicable at other times of the year; and

WHEREAS, the City of Marathon finds and declares public safety problems associated with the season to constitute a public nuisance, detrimental to the community as a whole, due to the level of policing and emergency services required to respond to accidents and collisions that occur because of the close proximity of divers and vessel traffic in small areas; and

WHEREAS, the close proximity of divers to public and private property, as well as their interaction and exploration of docks, piers, and bulkheads in search of spiny lobster, leads to unnecessary destruction of property and deleterious environmental effects; and

WHEREAS, the City of Marathon declares this unnecessary destruction of property and the deleterious environmental effects caused in the navigable canals, marinas, and along improved residential and commercial shorelines to be a public nuisance; and

WHEREAS, the City of Marathon finds and declares that the interaction of divers with publicly and privately owned docks, piers, and bulkheads, in the canals, marinas, and along improved

residential and commercial shorelines, additionally constitutes the crime of trespass under state law; and

WHEREAS, The City of Marathon finds that the prohibition of diving and snorkeling does not intrude upon the Florida Fish and Wildlife Conservation Commission’s jurisdiction over the harvesting of spiny lobster and in fact furthers the Commission’s stated intent of protecting and conserving Florida’s spiny lobster resources.

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

Section 1. Article ___ of Chapter 5.5 of the City Code “Boats, Docks, And Waterways” is hereby created to read as follows:

Chapter 5.5 Boats, Docks, and Waterways

* * *

Article . Diving and snorkeling during the lobster mini-season.

Sec. 5.5 - Intent and purpose.

The intent and purpose of this Article is to abate the destruction of property, deleterious environmental effects, and criminal trespass that results from the close proximity of divers to public and private property, as well as, their interaction and exploration of docks, piers, and bulkheads in search of spiny lobster during the lobster mini-season, which activities constitute a public nuisance.

Sec. 5.5 - Diving and snorkeling restricted during the two-day sport lobster season.

(a) Definitions. The following words, terms, and phrases when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

“Dive” means to wholly or partially submerge one’s body while equipped with a mask or goggles, whether or not any type of underwater breathing apparatus is used.

“Lobster mini-season” means the two-day sport season authorized by the Marine Fisheries Department of the Florida Fish and Wildlife Conservation Commission pursuant to Section 68B-24.005, Florida Administrative Code, as amended from time to time.

(b) Diving and snorkeling prohibited. It is a public nuisance and unlawful for any person to dive or snorkel in any navigable canal, marine, or within 300 feet of an improved residential or commercial shoreline during the entirety of the lobster mini-season. A map reflecting the boundaries of the prohibited areas shall be available at the City Hall for reference by the public and shall be incorporated by reference into

this ordinance. The prohibited areas shall be marked by signs on the shoreline at conspicuous places, at marinas and along the main arterial waterways of the City. Idle speed markers as well as buoys provided in accordance with applicable state and federal regulations, shall indicate the boundaries of the prohibited areas that extend to the open ocean. Nothing in this ordinance shall prohibit diving incidental to vessel or dock maintenance provided the diver performing the maintenance lawfully displays a diver down flag and otherwise complies with the requirements of Chapter 327, Florida Statutes, as amended from time to time.

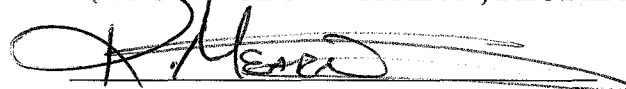
Sec. 5.5 - Penalties.

A violation of this Article may be enforced by issuance of a citation, summons, notice to appear in county court, arrest as provided in Chapter 901, Florida Statutes, or in accordance with Article () of Chapter () of the City Code, and punishable by a fine not to exceed \$500.00. Nothing contained herein, however, shall prohibit the City from enforcing this Article by any other lawful means.

Section 2. This Ordinance shall take effect immediately upon its adoption.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,
this 9th day of December 2003.

THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

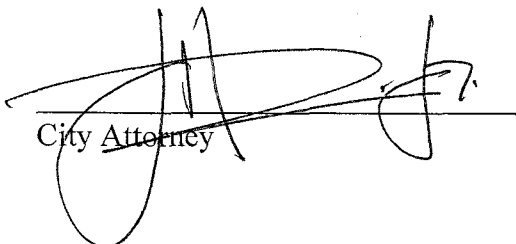
AYES: Pinkus, Bartus, Worthington, Repetto, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

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



City Attorney