Sponsored by: City Council
Introduction Date: June 18, 2007
Public Hearing Dates: June 26 and July 10, 2007
Enactment date: July 10, 2007

CITY OF MARATHON, FLORIDA
ORDINANCE 2007-14

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING AND RESTATING CHAPTERS 103, 104, 106 AND 107 OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF MARATHON CITY CODE; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS ("DEPARTMENT") AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW.

WHEREAS, the City Council of the City of Marathon, Florida (the "City") adopted Ordinance 2007-03 on February 13, 2007, which amended and restated the entire City's Land Development Regulations (the "LDRs") previously set forth in Chapters 9.5 and 19 of the Code; and

WHEREAS, the State Department of Community Affairs ("DCA"), pursuant to Final Order No. DCA07-OR-087, dated May 1, 2007, found Ordinance 2007-04 (with the exception of Sections 104.01, 106.27 and 106.38) to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern and thereby approved the ordinance. With respect to Sections 104.01, 106.27 and 106.38 of the LDRs, DCA rejected them as being inconsistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern; and

WHEREAS, the City now wishes to amend the LDRs to address the comments made by DCA and to address certain other issues that have arisen since their original adoption; and

WHEREAS, pursuant to Section 163.3174, Florida Statutes, and Section 9.5-22 of the Code, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the proposed revisions at a properly noticed public hearing and recommended to the City Council the adoption of the proposed revisions; and

WHEREAS, the City Council finds the adoption of this Ordinance is in the best interest of the City and complies with applicable State laws and rules; and

WHEREAS, the City Council finds that enactment of this Ordinance furthers the objectives, goals and policies of the City's Comprehensive Plan and the Principles for Guiding Development of the Florida Keys Areas of Critical State Concern.

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

Section 1. Chapter 103 of the Land Development Regulations of the City of Marathon, Florida is hereby amended and restated in its entirety to read as set forth in Exhibit A attached hereto.

Section 2. Chapter 104 of the Land Development Regulations of the City of Marathon, Florida is hereby amended and restated in its entirety to read as set forth in Exhibit B attached hereto.

Section 3. Chapter 106 of the Land Development Regulations of the City of Marathon, Florida is hereby amended and restated in its entirety to read as set forth in Exhibit C attached hereto.

Section 4. Chapter 107 of the Land Development Regulations of the City of Marathon, Florida is hereby amended and restated in its entirety to read as set forth in Exhibit D attached hereto.

Section 5. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of 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 6. The provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida, that the sections of the Ordinance may be renumbered or re-lettered to accomplish to such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 9. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 10th day of July 2007.

THE CITY OF MARATHON, FLORIDA

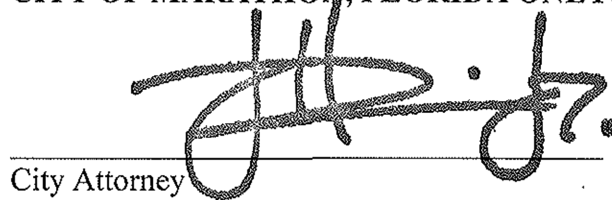
Christopher M. Bull, Mayor

AYES: Vasil, Tempest, Worthington, Cinque, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Diane Clavier
City Clerk

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



City Attorney

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2007-14

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to § 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2006), partially approving and partially rejecting a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Marathon is a local government within the Florida Keys Area.

2. On August 24, 2007, the Department received for review City of Marathon ("City") Ordinance No. 2007-14 ("Ord. 2007-14").

3. The purpose of Ord. 2007-14 is to amend and restate the City's previously existing Land Development Regulations ("LDR") applicable to the Interim Comprehensive Plan with revised LDRs specific to the City's adopted and approved Comprehensive Plan as required by § 163.3202, *Fla. Stat.* (2006). Ord. 2007-14 amends and restates Chapters 103, 104, 106, and 107 of the LDRs of the City of Marathon City Code, and provides for the repeal of all code provisions and ordinances inconsistent with Ord. 2007-14.

4. In Final Order No. DCA07-087, the Department found the previously proposed LDRs, with the exception of Sections 104.01, 106.27 and 106.38, consistent with the Principles for Guiding Development as set forth in § 380.0552(7), *Fla. Stat.* Ord. 2007-14 is in response to the Department's Final Order No. DCA07-087, and intended to address other issues that have arisen in the interim period. Ord. 2007-14 amends and restates Chapter 103 – Zoning Districts; Chapter 104 – Specific Use Regulations; Chapter 106 – Natural and Historic Resources Protection; and

Chapter 107 – General Development Standards; of the City's LDRs. With the exception of the specifically identified portions of Table 103.15.2 and Section 104.01, the remaining Chapters are consistent with the City's Comprehensive Plan.

5. Table 103.15.2 is amended to include density for affordable housing within the Residential Low (RL) zoning designation and is inconsistent with the City of Marathon Comprehensive Plan Table 1-1, Future Land Use Densities and Intensities, allocating zero units per acre for affordable housing for the Residential Low Future Land Use Category.

6. Section 104.01 Level of Review for Use applicable to (1) a Group Home, and (2) Hotels or Motels is inconsistent with the City's Comprehensive Plan, Objective 1-3.5 Manage Growth Rate within the City, Policy 1-3.5.4 Residential Building Permit Allocation System, and Section 110 of the LDRs providing a definition of a dwelling unit. Data and analysis accompanying the above referenced Section 104.01 Level of Review for Use provisions, Group Home and Hotels or Motels was found insufficient.

CONCLUSIONS OF LAW

7. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. § 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2006).

8. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2006) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code.*

9. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2006). The regulations adopted by Ord. 2007-14 are land development regulations.

10. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the "Principles") as set forth in § 380.0552(7), *Fla. Stat. See Rathkamp v. Department of*

Community Affairs, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd,* 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

11. Those portions of Ord. 2007-14 identified as Table 103.15.2 and Section 104.01 Levels of Review of Uses: Group Homes, Hotels or Motels, are inconsistent the following Principle:

> (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
>
> (e) To limit the adverse impacts of development on the quality of water throughout the Florida Keys.

12. Ord. 2007-14 with the exception of specifically identified portions of Table 103.15.2 and Section 104.1 Levels of Review of Uses: Group Homes, Hotels or Motels is consistent with the City's Comprehensive Plan and consistent with the following Principles:

> (b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
>
> (c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.
>
> (k) To provide adequate alternatives for the protection of public safety and welfare in the event of a natural disaster or manmade disaster and for a post disaster reconstruction plan.
>
> (l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida Resource.

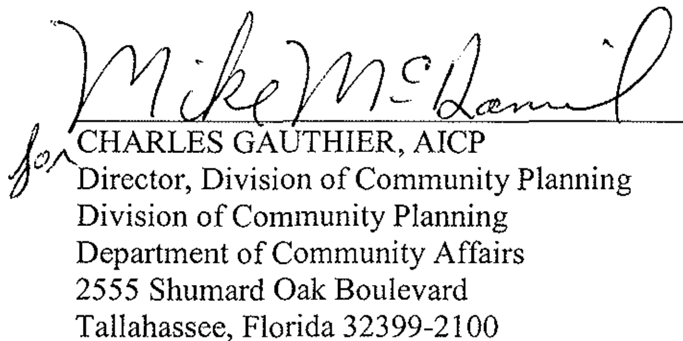
12.. With the exception of Table 103.15.2 and Section104.01, Levels of Review of Uses:

Group Homes, Hotels or Motels, Ord. 2007-14 is not inconsistent with the remaining Principles and is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that, with the exception of specifically identified portions of Table 103.15.2 and Section104.01, Levels of Review of Uses: Group Homes, Hotels or Motels, Ord. 2007-14 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED. Specifically identified Table 103.15.2 and Section 104.01 are found to be inconsistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and are hereby REJECTED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



for CHARLES GAUTHIER, AICP
Director, Division of Community Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE

ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

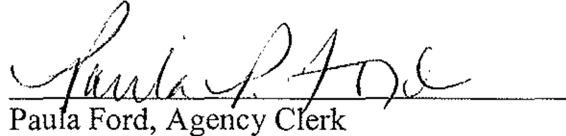
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 26th day of October, 2007.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Cindy Ecklund, City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

Mike Puto
Acting City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Jimmy L. Morales, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Suite 2200 Museum Tower
150 West Flagler Street
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

Clark Turner, ACSC Administrator
Mate Santa Maria, Biologist
Richard E. Shine, Assistant General Counsel

Chapter 103
Zoning Districts

Article 1 Establishment of Zoning Districts

Section 103.00 Purpose and Intent

This chapter is to establish districts where the comprehensive plan land uses are located and grouped together to create, protect and maintain a desirable living environment within the City of Marathon. Based on these districts the LDR also implements the goals, objectives and policies of the City Comprehensive Plan (the "Plan") and adopted maps. Zoning district uses, standards, dimensional and area requirements are established in this Chapter.

Table 103.00.1
Future Land Use Designation and Associated Zoning District

Future Land Use Designation	Zoning District
Airport	Airport (A)
Conservation	Native Area (C-NA) Offshore Island (C-OI) Residential Low – Conservation (RL-C)
Industrial	Industrial-General (I-G) Industrial-Maritime (I-M)
Mixed Use Commercial	Mixed Use (MU) Mixed Use – Maritime (MU-M)
Public Facility	Public (P)
Recreation	Park and Recreation (PR)
Residential High	Residential-MH (R-MH) Residential High (RH)
Residential Medium	Residential Medium (RM) Residential Medium – 1 (RM-1)* Residential Medium - 2 (RM-2)*
Residential Low	Residential Low (RL)

* Coco Plum subdivision only

Deleted: Residential Low – Conservation (RL-C)

Section 103.01 Zoning Districts

A. In order to carry out the purpose and intent of the LDRs, the City is hereby divided into the following zoning districts:

Airport (A) District
Conservation Native Area (C-NA) District
Conservation Offshore Island (C-OI) District
Industrial-General (I-G) District
Industrial-Maritime (I-M) District
Mixed Use (MU) District
Mixed Use – Maritime (MU-M) District
Parks and Recreation (PR) District
Public (P) District
Residential-Mobile Home (R-MH) District
Residential High (RH) District
Residential Medium (RM) District
Residential Medium – 1 (RM-1) District
Residential Medium – 2 (RM-2) District
Residential Low (RL) District
Residential Low-Conservation (RL-C) District

B. Natural and landscaped open spaces or transitional development and design practices shall be provided in accordance with the standards in Article 8 of Chapter 107 in order to adequately integrate development along the edges of different land use categories.

C. Standards for landscaping design practices and criteria for the required pervious open space are provided in Articles 8 and 9 of Chapter 107, "General Development Standards.

D. Allowed uses within each zoning district are established in this chapter and in Chapter 104 "Specific Use Regulations".

E. Natural and historic resource protection standards are established in Chapter 106.

F. Development review standards are established in Chapter 102 "Development Application Review Procedures".

G. Wastewater treatment facilities and wastewater treatment collection system(s) serving (a) use(s) may be located in any land use district provided that:

1. The wastewater treatment facility and wastewater treatment collection system(s) is (are) in compliance with all federal, state, and local requirements; and

2. The above-ground portions of the wastewater treatment facility, wastewater treatment collection system(s), and accessory uses shall be screened by structure(s) designed to:

(a) Be architecturally consistent with the character of the surrounding community; and

(b) Minimize the impact of any outdoor storage, temporary or permanent.

(c) The Director may require the installation of a solid fence.

H. All residential lot size requirements are to be calculated based upon the plat survey.

Section 103.02 Official Zoning Map Adopted

The Official Zoning Map of the City of Marathon, Florida on file in the Department, together with all explanatory matter thereon, is hereby adopted and made a part of the LDRs.

Section 103.03 Maintenance of Map

The Official Zoning Map, as amended from time to time in accordance with the provisions of the LDRs, shall be kept on file and made available for public reference in the office of the Director and the City Clerk.

Section 103.04 Application of Regulations within Boundaries

Except as otherwise specifically provided, a district symbol or name shown within district boundaries on the Official Zoning Map indicates that district regulations pertaining to the district extend throughout the area surrounded by the boundary line.

Section 103.05 Interpretation of Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the Director shall interpret the intent of the map as to location of such boundaries. The Director may rely on the Comprehensive Plan and Future Land Use Map, transcripts of minutes from any public meetings held concerning the property zoning, site inspection of the property or any other information that pertains to the determination of the boundary location. The Director shall complete the boundary interpretation pursuant to the interpretation procedures in Article 21 of Chapter 102. The written interpretation shall include findings and rationale.

Article 2 Description of Zoning Districts

Section 103.06 Airport (A) District

The A District is intended to establish areas appropriate for airport uses and other uses that are restrictive to the general public, designated within the Airport (A) future land use category on the Future Land Use Map (FLUM).

Section 103.07 Conservation Districts

A. **Conservation-Native Area (C-NA) Zoning District:** The Conservation-Native Area (C-NA) Zoning District implements the Conservation designation on the Future Land Use Map. This zoning district shall be used for properties which have natural limitations to development because of their sensitive environmental character. Development in the C-NA district shall be permitted only as provided in this article consistent with the land use designation and in accordance with natural and historic resources protections in Chapter 106.

B. **Conservation–Offshore Island (C-OI) Zoning District:** The Conservation–Offshore Island (C-OI) Zoning District implements the Conservation designation on the Future Land Use Map and this zoning district shall be used for properties which have natural limitations to development because of their sensitive environmental character. Sewage disposal and potable water service shall comply with all applicable Health Department requirements and environmental standards.

C. **Residential Low-Conservation (RL-C) District:** The RL-C District is intended to establish environmentally sensitive areas that to the greatest extent possible should be preserved in their natural state while allowing very limited residential uses, designated within the Conservation (C) future land use category on the Future Land Use Map (FLUM).

Deleted: Residential Low

Deleted: RL

D. **Sewage Disposal and Potable Water Service within the Conservation Districts:** Sewage disposal and potable water service shall comply with all applicable Health Department requirements and environmental standards. Sewage disposal systems and drainfields shall be sited in a manner to protect conservation areas from the discharge of elevated nutrients or improperly treated effluent. The dwelling unit shall be sited such that the location results in the least adverse impact to natural systems, as determined by the City Biologist.

E. **Maximum Density within the Conservation Districts:** Based upon conditions of the Comprehensive Plan and the LDRs, or as otherwise provided in this chapter, the maximum density for each parcel that is zoned C-NA, C-OI or RL-C shall be determined by the Director based upon the nature of any proposed development activity and the results of a habitat analysis applicable to each specific parcel. This approved density may be less than is permitted in Table 103.15.02.

Deleted: or

Section 103.08 Industrial Zoning Districts

A. **Industrial General (I-G) Zoning District**: The I-G zoning district is intended for lands appropriate for light industrial activities. Typical uses include assembly and fabrication industries, warehousing, distribution centers, administrative offices, business support services, affordable housing and heavy manufacturing. Commercial uses are generally limited to business support services and accessory sales for goods produced on-site.

B. **Industrial Maritime (I-M) Zoning District:** The I-M zoning district is intended to provide for certain maritime industrial and commercial fishing uses which have limited effects upon the use of surrounding land. No maritime industrial use is to be permitted which would bring about unfavorable or offensive conditions off site (beyond the property line) such as excessive noise, vibration, dust, heat, smoke, odor, or glare.

Section 103.09 Mixed Use Districts

The City of Marathon has two commercial districts to accommodate commercial and retail uses. The commercial areas are divided into the **Mixed Use (MU)** Zoning District and the **Mixed Use – Maritime (MU-M)** Zoning District.

A. **Mixed Use (MU) Zoning District:** The MU zoning district is designed to accommodate a wide variety of commercial and retail activities that will result in the most efficient and attractive use of the City's historic business district and the US 1 corridor, in an effort to recognize the role of US1 as the City of Marathon's "Main Street". Specifically, this district provides for land uses that have a strong pedestrian-oriented character, with a mixture and concentration of specialty shopping, transient lodging, retail, personal service, restaurant, cultural, fishing industry, affordable housing and entertainment uses in the Old Town area. The MU district also provides for large-scale retail and commercial business opportunities in other areas, including larger shopping centers, specialty shopping centers, individual multi-tenant commercial buildings, automobile services and sales, fast food restaurants, affordable housing residential uses, transient lodging and other retail establishments that serve the community at large. The (MU) district is designated within the Mixed Use Commercial (MUC) future land use category on the Future Land Use Map (FLUM).

B. **Mixed Use-Maritime (MU-M) Zoning District:** The MU-M zoning district is intended to establish areas suitable for uses which are essential to the commercial maritime industry, including sales and service of fishing equipment and supplies, seafood processing, fishing equipment manufacture and treatment, boat storage, restaurants, retail and affordable housing residential uses. The MU district is designated within the Mixed Use Commercial (MUC) future land use category on the Future Land Use Map (FLUM).

Section 103.10 Parks and Recreation (PR) Zoning District

The PR District is intended to establish areas for public or private parks and recreation purposes, designated as Recreation (R) on the Future Land Use Map (FLUM).

Section 103.11 Public (P) Zoning District

The P District is intended to establish areas appropriate for public service facilities, government facilities and institutions, designated within the Public Facilities (PF) future land use category on the Future Land Use Map (FLUM).

Section 103.12 Residential Zoning Districts

The purpose for the residential districts is to provide for a variety of residential densities while protecting environmentally sensitive areas. The districts will also provide areas for higher densities and more affordable housing opportunities.

A. **Residential-Mobile Home (R-MH) District:** The R-MH District is intended to establish areas of high-density residential uses characterized by mobile homes in mobile home parks and permanent RVs, designated within the Residential High (RH) future land use category on the Future Land Use Map (FLUM).

B. **Residential High (RH) District:** The RH District is intended to establish areas of high-density residential uses characterized by multi-family dwellings and mobile homes designated within the Residential High (RH) future land use category on the Future Land Use Map (FLUM).

C. **Residential Medium (RM) District:** The RM District is intended to establish areas of low-to medium-density residential uses characterized principally by single-family detached and two-family dwellings, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM).

D. **Residential Medium-1 (RM-1) District:** The RM-1 District is intended to establish an area in the Coco Plum subdivision to ensure that the traditional lot sizes are maintained for single-family detached dwellings, through additional limitations as noted within this subsection, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM).

E. **Residential Medium-2 (RM-2) District:** The RM-2 District is intended to establish areas in the Coco Plum subdivision of low-to medium-density residential uses characterized principally by single-family detached and two-family dwellings, designated within the Residential Medium (RM) future land use category on the Future Land Use Map (FLUM).

F. **Residential Low (RL) District:** The RL District is intended to establish areas of low-density residential uses characterized by single family detached dwellings, designated within the Residential Low (RL) future land use category on the Future Land Use Map (FLUM).

Article 3 Use and Intensity Tables

Deleted: <#>Residential Low-Conservation (RL-C) District: The RL-C District is intended to establish environmentally sensitive areas that to the greatest extent possible should be preserved in their natural state while allowing very limited residential uses, designated within the Residential Low (RL) future land use category on the Future Land Use Map (FLUM).¶

Section 103.13 Applicability

Permitted, conditional, accessory and prohibited uses are established in the following table by "Uses by Zoning District" of this article. The maximum floor area intensity per type of use is established in Tables 103.15.2 and 103.15.3 of this article. The use of all new or existing structures and properties shall conform to the requirements of the use and intensity tables and all other applicable requirements of the LDRs.

A use not listed in the use table, but possessing similar characteristics, including but not limited to size, intensity, density, operating hours, demands for public facilities such as water and sewer, traffic and environmental impacts, and business practices, may be allowed upon approval by the Director. Such uses will be determined based on the use category tables and definitions in Chapter 110 "Definitions". Similar uses shall be subject to all requirements of the uses to which they are similar.

Section 103.14 Types of Uses

A. **Permitted Use by Right (P)**: A "P" indicates a use that is permitted by right.

B. **Conditional Use Approval (C):** A "C" indicates that a use is permitted only where approved with a conditional use approval by the City Council in accordance with the procedures in Article 13 of Chapter 102 "Conditional Use".

C. **Limited Use Approval (L):** An "L" indicates that a use is permitted only where approved through an administrative process such as issuance of a license.

D. **Accessory Use Approval (A) to a principle Structure:** An "A" indicates that the use is only permitted as an accessory use.

E. **Prohibited Uses (Blank Cell):** A blank cell in the use table indicates that a use is not permitted in the respective district.

The following Codes are used in this table:

"P" = Permitted As of Right
"C" = Conditional Use
"L" = Limited (Special Standards/License Required)
"A" = Accessory to a Principle Structure
"Blank Cell" = Prohibited

Section 103.15 Standards

A. **Uses:** Certain uses, whether permitted as of right, limited, accessory or conditional uses may affect adjacent properties, the neighborhood, or community, even if the site planning and development standards of the applicable zoning district are satisfied. Uses in bold on Table 103.15.2 have special criteria contained in Article I of Chapter 104 "Specific Use Regulations", which are intended to mitigate potential problems and hazards, and to ensure consistency with the Plan.

B. **Zoning Districts:** The density, intensity, setbacks, and dimensional standards relative to each parcel are subject to the limitations of the zoning district as reflected in Tables 103.15.2 and 103.15.2.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Table 103.15.1
Uses by Zoning District
Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Accessory buildings and accessory uses			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory Business /Professional Office											A	A	A			
Adult day care			C	C	C	C	C	C	C	C						
Adult uses including product sales and entertainment												C				
Affordable Housing Unit				P	P	P	P	P	P	P	P	P	P		P	P
Airport public uses <5,000 square feet														P		
Airport public uses >5,000 square feet														C		
Alcohol Beverage										L	L	L	L			
Amusement or Sea life parks										C	C		C		C	
Artisan and photography studios and galleries										P	P					
Auto, RV, and truck storage										C		C				
Bars and taverns										C	C					
Beekeeping	P	P	P	P												
Boardwalk/Observation Platform	A	A	A	A	A	A	A	A	A	A	A		A		P	P
Boat Ramp					C			C		C	C	C	C		C	C
Boat storage +10 units, Dry											C	P	P		P	
Boat storage +10 units, wet											C	P	P		P	
Boat storage <10 units, dry										C	P	P	P		P	

Deleted: P

Deleted: Assisted living facility ... [1]

Deleted: Bed and breakfasts ... [2]

Table 103.15.1
Uses by Zoning District
Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Boat storage <10 units, wet										C	P	P	P			
Boat Yard											C		P			
Boat/ship dockage (non-commercial) 10+ slips								A	A							
Boat/ship (commercial) dockage or charter										A	A	A	A		C	C
Boat/ship dockage (non-commercial) + 100' in length: 1-9 slips	L	L	L	L	L	L	L	L	L							
Boat/ship dockage (non-commercial) up to 100' in length: 1-9 slips	A	A	A	A	A	A	A	A	A							
Bowling alley										C						
Broadcasting or Communications Tower	C	C								C	C	C	C	C	P	
Campground										C					C	C
Car wash										C						
Cemeteries										C						
Child care center									C	C						
Child care homes (up to 10 car trips per day)				C	C	C	C	C	C	C						
Clubs: Social, fraternal and lodges										P	P					
Community Workforce Housing Unit								A	A	A	A	A	A		A	A
Convenience store										P	C	C	C			
Dormitory										A						
Dry cleaning										P						
Duplex dwellings					C		C	P	P	C						

Table 103.15.1
Uses by Zoning District
Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Equipment, rental establishments with outdoor storage										C	C	C	C			
Equipment, rental establishments without outdoor storage										P	P	P	P			
Financial services (without drive through)										P		C			P	
Financial services (w/drive through)										C						
Food catering										P	P					
Fuel Sales										C	C		C			
Funeral homes (no crematory)										C						
Golf courses										C						C
Group Homes (<7 residents)			P	P	P	P	P	P	P	C						
Group Homes (7-14 residents)			C	C	C	C	C	C	C	C						
Hazardous Waste Small Generator										C		C	C		C	
Health and membership clubs										P						
Heavy equipment sales										C		P				
Heavy equipment Sales, Marine										C	P	P	P			
Helicopter Landing Pad										C				P	P	
Home occupations	L	L	L	L	L	L	L	L	L	L	L					
Hospitals										P						
Hotel/Motel/Resort lodging										C						C
Incidental Food Sales												A	A			

Table 103.15.1
Uses by Zoning District
Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Laundromats										P	C					
Liveaboard Vessels										C	C		C			
Manufacturing, assembly, storage, fabrication or distributions of goods and materials										C	C	P	P			
Manufacturing, Heavy												C				
Marina										C	P		P		P	C
Massage Therapist										L						
Media Sales & Rental										P						
Medical and dental offices and clinics										C				C	C	
Mineral resource processes and sales establishment												P				
Mobile Home Park								P	C	C						
Mobile Home: New Placement								P		C						
Mobile Home: Replacement					P	P	P	P	P	P	P	P				
Model Home								A	A	A						
Multi-family (<5) dwellings								P	P	C	P				C	
Multi-family (5+) dwellings								C	C	C	C				C	
Multi-tenant retail <10.000 sf FA										P	P					
Multi-tenant retail >10.000 sf FA										C						
Museum										P	P			P	P	P
Night clubs										C	A					
Nursing Home									C	C						
Open-air markets										C	C			C		

Table 103.15.1
Uses by Zoning District

Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Outdoor display										A	A		A			
Outdoor Storage										C	C	C	C			
Paint and body shop										C		C	C			
Parking lots and parking garages (as a principle use)										P		C			P	
Parks and recreational open space	C		C	C	C	C	C	C	C	P					P	P
Personal and service business shops										P	C					
Pharmacy										C	C					
Place of worship or assembly					C	C	C	C	C	P						
Plant nurseries & greenhouses										P						
Plumbing, electrical and carpenter shops										P	P	P	P			
Print shops										P	P	P	C			
Private educational and training facilities										C	C	C	C	C	P	C
Private schools for elementary, intermediate and high school education			C	C	C	C	C	C	C	C					C	
Professional offices										P	P				P	
Public schools for elementary, intermediate and high school education			C	C	C	C	C	C	C	C					P	
Public use or public facilities w or w/o business offices; with repair and storage										C	C	C	C	C	P	P

Table 103.15.1
Uses by Zoning District
Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Public use or public facilities w or w/o business offices; without repair and storage	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P
Recreational Vehicle (RV) Park										C					C	
Recycling facilities												P				
Research / Lab										C	C	C	C		C	
Restaurants with drive-throughs										P	C					
Restaurants/stand and fast food without drive throughs										P	P	P	P	A		
Retail and supply yard establishments with outdoor storage										C	C	P	P			
Retail establishments up to 2,500 square feet FA										P	P				P	
Retail establishments 2,500 -10,000 square feet FA										P	P					
Retail Establishment exceeding 10,000 square feet FA										C						
Safe house for battered or abused adults or children of up to eight (8) families									P	P						
Sales and leasing of heavy equipment and heavy excavation equipment												P	P			

Table 103.15.1
Uses by Zoning District

Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Sexually Oriented Business												C				
Single-family dwellings	P	P	P	P	P	P	P	P	P	C	C	C	C			A
Small animal shelters/boarding kennels										C	C	C	C		C	
Small Grocery Stores										P						
Storage (Indoor self)										C	C	P				
Storage, Auto, RV, or Boat										C	C	P	P			
Storage (Outdoor)										C	C	C	C			
Temporary Placement				L	L	L	L	L	L	L	L					
Temporary Use										L	L	L	L		L	L
Theatre (indoor)										C						
Trap Storage and Repair										C	P	C	P			
Triplex dwellings								P	P							
Utilities - Major			C	C	C	C	C	C	C	C	C	C	C	C	C	C
Utilities - Minor			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Vacation Rental units		L	L	L	L	L	L	L	L	L	L					
Vehicle, Vessel Repair										C	C	P	P			
Vehicle, Vessel sales										P	P	P	P			
Vendor Carts/Mobile Food Unit										L	L	L	L			
Veterinary facilities, small animal clinics/hospitals; including boarding										C	C					
Veterinary facilities, small animal clinics; no boarding										P	P					
Waterfront Walkways and docks	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Wireless - New Tower										C	C	C	C	C	C	C
Wireless Tower-Replacement existing	C							P	P	P	P	P	P	P	P	C

Table 103.15.1
Uses by Zoning District
Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Wireless – Satellite Earth Station	C									C	C	P	P			
Wireless Attached facility	C	C	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Wireless- Stealth Facility										C	C	P	P		P	
Zero Lot lines (affordable units)								C	C							

Deleted: C

*Permitted uses are limited to those which are related to the maritime industry

Note: Uses may be subject to additional requirements, see Chapter 104, Specific Use Regulations.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Table 103.15.2
DENSITY, INTENSITY AND DIMENSIONS FOR ZONING DISTRICTS

	A	C-NA	C-OI	I-G	I-M	MU	MU-M	P	PR	RH	R-MH	RM	RM-1	RM-2	RL	RL-C
Density Range (units per acre)		*	*			6-15	6-15		1/ 4ac	8-25	8-25	5-10	4	5	1	*
Market Rate (maximum)		.25	0.1			6	6			8	8	5	4	5	0.5	0.25
Affordable (maximum)[3]		N/A	N/A	5-10	5-10	15	15	10-25		15-25	25	10	4	5	0.5	N/A
Transient						5-25		3- 25	10	0	0	0	0	0	0	0
Min lot area per unit (square feet)																
Market Rate		4 acres	10 acres			7,260	7,260		10,890	5,445	5,445	8,712	10,000	8,712	2 acre	4 acres
Affordable		4 acres	10 acres	2000	2000	2,904	2,904			2,904	1,742	4,356	10,000	8,712	2 acre	4 acres
FAR	0.15-0.50	0.05-0.10	0.05-0.10	0.85	0.85	0.15-0.6[1]	0.15-0.6[1]	0.15-0.75	0.15-0.50							N/A
Setbacks																
Front, min	200	25	25	10	10	0-30	20	15	15	10	10	20	20	20	25	25
Rear, min	200	25	25	10	10	20	20	10	10	10	10	20	20	20	25	25
Side 1, min		10	10			0-10	10			5	5	5	10	10	10	10
Interior Side Min	200			5	5	10		5	5				10	5		
Side 2, min		10	10			0-10	10			5	5	5	10	10	10	10
Street Side Min	200			5	5	0-5		5	5							
Height Limit[3]	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37	37
Units Per Building* **										10	N/A					
Max Lot Coverage **		5,000 ft²	5%													
Open Space, Min. (%)**	0.20	0.50	0.95	0.20	0.20	0.20	0.20	0.20	0.20	.20	.20	.20	.20	.20	0.50	0.50
Minimum Street Frontage (Limited to													100'	100'		

Deleted: 6-15
Deleted: 0.25
Deleted: 15-25
Deleted: 0.25
Deleted: 1,742
Deleted: 2,000

Coco Plum Dr)																

Footnotes for Table 103.15.2

* determined by the Director, based upon Habitat Analysis

** Subject to Table 106.16.1" Open Space Requirements per Habitat Type"

*** Affordable dwelling units not subject to this limitation

**** Allocated densities for all zoning districts are subject to the following additional requirements:

- Salt marsh/ buttonwood association wetlands that are either undisturbed or of high functional capacity as defined in Article 4, of Chapter 106 shall be assigned a density of 0.25 units per acre for the sole purpose of transferring the density out of these habitats.
- Submerged lands, salt ponds and mangrove wetlands shall not be assigned density for any purpose (i.e., allocated density = 0).

[1] The FAR for mixed use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided

[2] Density bonus limited to deed-restricted affordable housing as established in Article 1, "Affordable Housing" of Chapter 104.

[3] Subject to the additional height restrictions of Article 5, Chapter 107.

Table 103.15.3
Commercial-Industrial Intensity Table

Type of Use	FAR[1]
Retail	
Low Intensity	.60
Med Intensity	.45
High Intensity	.25
Office	.60
Commercial Recreation	.15
Institutional	.30
Outdoor Recreational	.15
Public Buildings and Uses	.45
Restaurant/Bar	.60
Industrial	.85
Light Industrial in MU	.30

[1] The FAR for mixed use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided

Article 4 Special Requirements within the Zoning Districts

Section 103.16 Occupational Licenses

Applications for occupational licenses must be approved by the Department prior to applying to the Monroe County Tax Collector. As a condition for approval, the applicant must have a permanent Monroe County address and the property for which the license is being applied must be situated in a land use district permitting the proposed use.

Section 103.17 Animals

A. No livestock, such as cows, goats, sheep or pigs, barnyard animals such as chickens, ducks, or geese, shall be kept either penned or loose in any residential zoning district in the City. Domesticated pets (dogs, cats, etc.) shall be kept as provided in this section. Animals considered wild shall not be allowed in any residential zoning district in the City.

B. A maximum of four (4) domesticated pets shall be allowed on any residential property or in any residential unit.

C. All animals shall be kept in such a manner that complies with all sanitary regulations of the Department of Health. All food and water for such animals shall be kept in suitable covered containers and shall not be left exposed to flies, vermin or birds, shall not be left exposed to the sun and heat so as to cause putrescence and shall not be allowed to cause any offensive odors.

Section 103.18 Abandoned Vehicles

The storage of abandoned vehicles which are inoperative and/or unlicensed for a period of ten (10) working days shall be prohibited on any public right of way or on private property except within a completely enclosed garage except in the I-G zoning district.

Section 103.19 Abandoned Watercraft

The storage of abandoned watercraft which are inoperative and or unlicensed for a period of thirty (30) days and appear to be in a state of decay and/or abandonment, as determined by the City Manager, shall be prohibited on any waterway, shore, private or public property unless contained in a completely enclosed building except in the I-G and I-M zoning districts.

Section 103.20 Storage of Flammable Liquids

No buildings, structures or premises shall be used for the storage, sale or use of gasoline or any other liquefied gases with a flashpoint of sixty (60) degrees Fahrenheit or less where any of the boundaries of the lot upon which such gasoline or other liquid is stored, used nor sold are within two hundred (200') feet, measured in a straight line, of the nearest boundary line of any building or structure used as a church, school, hospital, home for aged, nursing home, orphanage, auditorium or theater, except open air theaters. This provision shall not prevent the use of liquefied gases for domestic heating purposes. Any storage of flammable liquids shall be subject to the requirements of the American Insurance Association.

Section 103.21 Aviation Hazards

No use shall be made of the land or water within the City in such a manner as to interfere with the operation of airborne aircraft. The following special requirements shall apply to each permitted use:

A. All lights and illumination for streets, parking, signs or use of land and structures shall be arranged and operated in such a manner that it is not misleading or dangerous to aircraft operating from a public or military airport or in the vicinity of an airport.

B. No operations from any use shall produce smoke glare or other visual hazards thin three (3) statute miles of a useable runway of the airport, unless approved by the Director and the Marathon Airport Aviation Director.

C. No operations from anywhere in the City shall produce electronic interference with navigation signals or radio communication between the airport and aircraft.

D. Notwithstanding the foregoing, the owner of any structure over two hundred (200') feet above ground level must install on that structure lighting in accordance with FAA Advisory Circular 70-7460-1C and seven hundred forty-nine (749') feet above mean sea level must install on that structure high intensity obstruction lights which must be in accordance with FAA Advisory Circular 70-7460-1C and amendments.

Section 103.22 Parking of Travel Trailers, Trailers and Trucks in Residential Districts

A. Within any residential district, no trucks, trailers or wagons of greater than one and one half (1.5) ton capacity or motor homes or motor coaches in excess of forty (40') feet in length and in excess of eight and one half (8.5') feet in width shall be parked for storage purposes, including overnight, on any public right of way or on private property except within a completely enclosed garage. Trailers of less one and one half (1.5) ton capacity, pleasure boat trailers, regardless of capacity, collapsible camping trailers and cargo trailers may be parked on private property in any district provided that such trailers are parked only within areas approved by the Director for parking. Only one (1) travel trailer, motor coach, motor home or recreational vehicle, as defined in Florida Statutes section 513.01 shall be permitted on any one (1) residential or mobile home lot for storage purposes as provided in this section. Trucks, trailers, wagons, motor homes or motor coaches may only be parked on the same lot with and after the principal structure is erected.

Formatted: Bullets and Numbering

Formatted: Indent: Left: 36 pt

B. All trailers, motor homes or motor coaches parked in accordance with this ordinance shall not be parked within any required setback, unless otherwise approved by the Director.

Formatted: Bullets and Numbering

Formatted: Indent: Left: 36 pt

C. Trailers, motor homes or motor coaches that are parked for storage shall not be used as a place of habitation.

Formatted: Bullets and Numbering

Formatted: Indent: Left: 36 pt

D. Vehicles approved for parking under this section must be registered in the name of the owner or the tenant of the property where they are parked.

Formatted: Bullets and Numbering

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Page 118: [1] Deleted	dlove	5/29/2007 5:40:00 PM
Page 118: [2] Deleted	dlove	5/8/2007 11:07:00 AM

Assisted living facility	C	C	C	C	C	C	C	C	C	C		

Chapter 104
Specific Use Regulations

Article 1 General Provisions

This chapter establishes regulations for certain land uses that may affect adjacent properties, the neighborhood, or community, even if the site planning and development standards of the applicable zoning district are satisfied. The regulations in this chapter are intended to mitigate potential problems and hazards, and to ensure consistency with community character and the provisions of the Plan.

Section 104.00 Purpose and Intent

Certain uses have unique characteristics that require the imposition of development criteria in order to ensure that they are not harmful to the health, safety, and welfare of residents, surrounding uses and surrounding properties. These criteria may be applied in relation to use, occupancy, location, construction, design, character, scale, manner of operation, or the necessity for making complex or unusual determinations. The uses are listed in this article together with the specific criteria that apply to each use, whether a permitted, a limited, an accessory or a conditional use. The uses are listed in alphabetical order and follow the Use Table (Table 103.15.1) in Chapter 103. These criteria shall be met in addition to all other standards of the LDRs, unless specifically exempted, and all applicable regulations of other governmental agencies.

Section 104.01 Levels of Review for Uses

Four types of Uses are identified in Table 103.15.1. The uses are listed in alphabetical order. They are denoted by Permitted (P), Limited (L), Accessory (A), or Conditional (C) lettering which indicates the Level of Review necessary to ensure the conditions are appropriately applied.

Permitted "P" uses are permitted by right and reviewed at the staff level through an existing permit procedure. Uses listed with a P might have extra conditions which are listed in the following section.

Limited "L" uses are reviewed by the staff but may involve multiple issues or departments. These uses are only permitted on a limited level through a special administrative approval process.

Accessory "A" uses are reviewed by the staff but may involve multiple issues or departments. These uses are only permitted an accessory to the principal structure or use on the property.

Conditional "C" uses are reviewed by staff and the Planning Commission and brought before the Council for approval in a public hearing. These uses involve multiple issues and potential significant off-site impacts.

Adult Day Care

Adult day care centers may be allowed pursuant to Table 103.15.1 and the following conditions:

A. **Licensing:** Adult day care is allowed, provided that the adult day care center maintains the required licensing from the Florida Agency for Health Care Administration and shall comply with the requirements of Chapter 400, Part V, Florida Statutes.

B. **Vehicle Circulation:** In addition to the requirements of Chapter 107, Article 6 "Parking, Loading and Stacking", an applicant for an adult care center shall provide a vehicular circulation plan showing onsite queuing and circulation based upon the location and number of patrons that utilize the facility.

Affordable Housing

Affordable housing units may be allowed pursuant to Table 103.15.1 and the following conditions:

Dwelling units shall contain less than or equal to one thousand eight hundred (1,800 ft^2) square feet of habitable space. Occupancy of affordable housing units is limited to those meeting the following income requirements:

A. *Very-low-income.* A household, whose income (excluding that of full-time students under 18 years of age) does not exceed fifty (50) percent of the median adjusted gross annual income for households within the county;

B. *Low-income.* A household, whose income (excluding that of full-time students under 18 years of age) does not exceed eighty (80) percent of the median adjusted gross annual income for households within the county;

C. *Median-income.* A household, whose income (excluding that of full-time students under 18 years of age) does not exceed one hundred (100) percent of the median adjusted gross annual income for households within the county;

D. *Moderate-income.* A household, whose income (excluding that of full-time students under 18 years of age) does not exceed one hundred twenty (120) percent of the median adjusted gross annual income for households within the county;

E. *Middle-income.* A household, whose income (excluding that of full-time students under 18 years of age) does not exceed one hundred sixty (160) percent of the median adjusted gross annual income within the county;

F. For the purposes of this section, "adjusted gross income" means all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household (that will be used to offset the purchase price of the dwelling unit), and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code. Income from assets is calculated at either the actual income from all assets or 2% of the value of all assets, whichever s greater. If total assets are less than $5,000, no income is considered. Asset inclusions: Cash accounts (checking, savings, IRA, Money Market...), investments, retirement accounts, boats, RV's. Income exclusions: Personal property, automobiles;

G. The maximum sales price shall not exceed three hundred (300) percent of that amount which represents one hundred sixty (160) percent of the median adjusted gross annual income for households within the county;

H. The monthly rent shall not exceed thirty (30) percent of that amount which represents the income bracket of the household, i.e., very low, low, median, moderate or middle, divided by twelve (12). In no case shall the monthly rent exceed one hundred sixty (160) percent of the median adjusted gross annual income for households within the county, divided by twelve (12); and

I. If the dwelling units utilize affordable housing BPAS allocations, the requirements of Section 107.06 (c) shall also apply.

J. Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.

Airport

Airport and public uses may be allowed pursuant to Table 103.15.1 and shall be permitted by right in the A zoning district if under 5,000 square feet and as a conditional use in the A district if over 5,000 square feet, subject to the following:

A. Within the overlay zones of public and military airports, those uses permitted shall comply with the height standards and the limitations set forth in the horizontal, conical approach, and transitional zones described in subsection (3) following.

B. Public airport height zones and limitations for the airport district and overlays:

1. *Primary zone:* The area longitudinally centered on each runway with the same length as the runway and is two thousand (2,000) feet wide. No structure that is not a part of the landing and takeoff area is permitted in the primary zone that is of greater height than the nearest point on to the runway.

2. *Clear zone:* The area extending one thousand (1,000) feet off each end of a primary runway surface and is the same width as the primary runway surface. No structure not a part of the landing and takeoff area is permitted that is a greater height than the end of the runway.

3. *Inner horizontal zone:* The area extending outward from the periphery of the primary zone with an outer perimeter formed by swinging arcs of seventy-five hundred (7,500) feet radius about the center line at the end of each primary zone and connecting adjacent arcs by lines tangent to these arcs. No structure will be permitted in the inner horizontal zone of greater height than one hundred fifty-six (156) feet MSL.

4. *Conical zone:* The area extending outward from the periphery of the inner horizontal zone for a distance of seven thousand (7,000) feet. Height limits in the conical zone commence at one hundred fifty-six (156) feet MSL at the inner boundary where it adjoins the inner horizontal zone and increases in permitted height at a rate of one (1) foot vertically for every twenty (20) feet of horizontal distance measured outward from the inner boundary to a height of five hundred six (506) feet MSL at the outer boundary.

5. *Outer horizontal zone:* The area extending outward from the outer periphery of the conical zone for a distance of thirty thousand (30,000) feet. The height limit within the outer horizontal zone is five hundred six (506) feet MSL.

6. *Approach zone:* The area longitudinally centered on each runway extended center line, with an inner boundary two hundred (200) feet out from the end of the runway and the same width as the primary zone, then extending outward for a distance of fifty thousand (50,000) feet, expanding uniformly in width to sixteen thousand (16,000) at the outer boundary. Height limits within the approach zones commence at the height of the runway end and increase at the rate of one (1) foot vertically for every fifty (50) feet horizontally for a distance of twenty-five thousand (25,000) feet, at which point it remains level at five hundred six (506) feet MSL to the outer boundary.

7. *Transitional zone:* The area within an inner boundary formed by the side of the primary zones, the first two hundred (200) feet of the clear zones and the approach zones, then extending outward at right angles to the runway center line and extended center line until the height matches the adjoining inner horizontal zone, conical zone, and outer horizontal zone height limit. The height limit at the inner boundary is the same as the height of the adjoining zone and increases at the rate of one (1) foot vertically for every seven (7) feet horizontally to the outer boundary of the transitional zone, where it again matches the height of the adjoining zone.

Alcohol Beverage

This section in conjunction with allowed uses in Table 103.15.1 is designed and intended to provide for reasonable regulation and control over the sale of alcoholic beverages within the City of Marathon by establishing an alcoholic beverage use permit procedure and providing criteria to be utilized to assure that all future proliferation of alcoholic beverage use enterprises within the City limits are compatible with the City's Comprehensive Plan and LDRs, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact upon the health, safety and welfare of the citizens and residents of the city. All persons, firms, partnerships, or corporations who have received approval from the PC under the former provisions of section 19-218 of the Monroe County Code, as same heretofore existed, shall retain all rights and privileges heretofore granted under said section.

A. **Permits:** After the effective date of this ordinance, all persons, firms, partnerships or corporations desiring to sell alcoholic beverages upon any premises located within the City and who desire to do so upon a premises not heretofore approved by the PC, shall obtain an alcoholic beverage use permit utilizing the procedure outlined in subsection (C) "Procedure", below.

B. **Classifications:** Corresponding to those alcoholic beverage license classifications as heretofore and hereafter adopted by the State of Florida, alcoholic beverage use permits hereafter issued pursuant to this ordinance shall be classified as follows:

1. 1APS: Beer, package only;
2. 1COP: Beer, on-premises and package;
3. 2APS: Beer and wine, package only;
4. 2COP: Beer and wine, on-premises and package;
5. 6COP: Beer, wine, and liquor, on-premises and package;
6. 6COP SRX: Restaurant, no package sales;

7. 6COP SR: Restaurant, package sales;
8. 6COP S: Motel, package sales;
9. 6COP SBX: Bowling, no package sales;
10. 6COP SPX: Boat, no package sales;
11. 3BPS: Beer, wine, liquor, package sales only;
12. 3M: Additional license for 6COP, over three (3) bars;
13. 12RT: Racetrack, liquor, no package sales.

C. **Procedure:** The following procedure shall be followed on any application for an alcoholic beverage use permit hereafter made:

1. Applications for alcoholic beverage use permits shall be submitted to the city manager or his designee in writing on forms provided by the director. Such applications must be signed by the owner of the real property for which the permit is requested. Lessees of the premises may apply for such permits provided that proper authorization from the owner of the premises is given and the application for permit is cosigned by such owner.

2. Upon receipt of a properly completed and executed application for alcoholic beverage use permit stating the exact classification requested along with the necessary fee, the city manager or his designee shall issue a notice of intent to issue the alcoholic beverage use permit if the application meets the guidelines established in subsection D, "Criteria", herein.

3. The city manager or his designee shall review the application and may deny or grant an alcoholic beverage use permit. In granting an alcoholic beverage use permit under this section, the city manager or his designee may prescribe appropriate and safeguards as are in his or her opinion necessary to protect the public interest and ensure harmony with the purpose and intent of this section.

4. Prior to issuance of an alcoholic beverage use permit, the city manager or his designee shall give the applicant notice of the City's intent to issue the alcoholic beverage use permit. Thereafter, in accordance with the provisions of Article 4 "Notice of Public Meetings and Hearings" of Chapter 102 of the LDRs, the applicant shall provide written notice to adjacent property owners of the City's intent to issue the alcoholic beverage use permit.

5. Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on an application for an alcoholic beverage use permit may be requested in writing to the city manager or his designee, by the applicant, an adjacent property owner or an aggrieved or adversely affected property owner located within three hundred (300) feet of the property that is subject to the alcoholic beverage use permit. If a public hearing is requested, in accordance with the provisions of Article 17 "Appeals", of Chapter 102, the City shall schedule a public hearing of the PC. The provisions of Article 21 of Chapter 102 shall govern any such hearing, and the person requesting the public hearing shall be responsible for providing notice of the hearing in accordance with the provisions of Article 4, "Notice of Public Meetings and Hearings" of Chapter 102 of the LDRs. The city manager or his designee shall issue the alcoholic beverage use permit if a public hearing is not requested in accordance with this subsection.

D. **Criteria for Approval:** The city manager or his designee or PC shall give due consideration to the following factors as they may apply to the particular application prior to rendering a decision to grant the requested permit:

1. The effect of such use upon surrounding properties and the immediately neighborhood as represent by property owners within a three hundred (300) feet of the premises. For the purposes pf this section, premises" shall mean the entire site of a shopping center.

2. The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties will be soundproofed. In the event music and entertainment is permitted, the premises shall be air conditioned.

3. Access, traffic generation, road capacities, and parking requirements.

4. Demands upon utilities, community facilities and public services.

5. Compliance with the City's restrictions or requirements and any valid regulations.

E. Approval by the City Manager or his designee or the PC. The city manager or his designee or the PC may grant approval based on reasonable condition considering the criteria outlines herein.

F. **Where Permitted:** Alcoholic beverage sales maybe permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located. Nothing contained herein shall exempt an applicant from obtaining a conditional approval when such is otherwise required by the City LDRs.

G. **Distance requirement**

1. **Generally**

(a) *Definition.* In this section, unless the context requires otherwise, "package sale vendor" means a person licensed pursuant to Chapters 561 through 568, *Florida Statutes*, to sell liquor (as defined in Section 565-01, *Florida Statutes*) as a package sale; however, a package sale vendor does not include: (i) a business operation, in regards to beer and malt beverages (as defined by Section 563.01, *Florida Statutes*) and wine (as defined by Section 564.01, *Florida Statutes)* for consumption off premises; or (ii) any bona fide hotel, motel or motor court in possession of a special license issued in accordance with Section 561.20(2)(a)1, *Florida Statutes.*

(b) *City package sale vendor distance requirements established.* For all of those certain areas of land in the City which lie within one thousand five hundred (1,500') feet of a package sale vendor's place of business as established, located and licensed, no other new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance.

(c) *Package sales within distance requirements restricted.* The purpose of creating the distance requirements mentioned in subsection (1)(b) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the City of Marathon shall be permitted to operate at a new location within a distance of one thousand five hundred (1,500') feet of the location of any package sale vendor which is both preexisting at the time of the package sale vendor's application to operate at the new location and is located within the City of Marathon.

(d) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirements set forth above in subsections (1)(b) and (1)(c) shall not be applied to the location of an existing package sale vendor when there is:

i. A renewal of an existing license;

ii. A transfer in ownership;

iii. A change in business name; or

iv. A decrease in the numerical designation of a state issued license that is of the same series (type);

Such exemption is allowed provided that the physical location of the package sale vendor establishment does not change. No increase in the numerical designation of a series (type) of state issued license that is of the same series (type) shall be permitted at or for a location (new or existing) except in compliance with the provision hereof.

(e) *Measurement of distances.* The distances provided in this Section shall be measured by following a straight line from the proposed main entrance of a package sale vendor who proposes to operate his place of business and is licensed under Chapters 561 through 568, *Florida Statutes*, to the main entrance of any other package sale vendor who is operating such a business. The package sale vendor seeking a new location must submit a scaled survey drawn by a registered land surveyor attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the Director of Planning that the minimum distance separation has been met.

(f) *Exemption for on-premises consumption only.*

i. In those situations in which the holder of an alcoholic beverage license pursuant to Chapters 561 through 568, *Florida Statutes*, has the ability to use such license for both on- premises and off-premises consumption sales, such licensee may at his option choose to forego off-premises consumption sales under his license for the location of business requested; thus such licensee would be deemed not to be a package sale vendor under this section for such a location and would not be subject to the distance requirements cited in subsections (b) and (c) above. To ensure that the public, safety and welfare are preserved, any licensee choosing to forego package sales for off-premises consumption, and thereupon being deemed not to be a package sale vendor, shall agree as a condition of obtaining his zoning use permit to prominently display at all times within his establishment in the vicinity of the main cash register a sign with letters no smaller than three (3) inches and printed in a legible style which states "No Package Sales."

ii. Upon any future relocation of such licensee's business in which the distance requirements of subsection (b) above are met, such licensee may resume package sales for off-premises consumption and would not be required to display the aforementioned sign.

2. **Schools**

(a) No new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within one thousand five hundred (1,500') feet of an established school.

(b) Distance from a school shall be measured by following a straight line from the main entrance of the place of business to the nearest point of the school grounds in use as part of the school facilities. The package sale vendor seeking a new location must submit a scaled survey drawn by a registered land surveyor attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the Director that the minimum distance separation has been met.

(c) The location of all existing places of business subject to this section shall not in any manner be impaired by this section, and the distance limitation provided in this section shall not impair any existing licensed location heretofore issued to and held by any such vendor nor shall such vendor's right of renewal be impaired by this section; provided, however, that the location of any such existing license shall not be transferred to a new location in violation of this section.

(d) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirement set forth above in subsections (2)(a) shall not be applied to the location of an existing vendor when there is:

i. A renewal of an existing license;

ii. A transfer in ownership;

iii. A change in business name; or

iv. A any decrease in the numerical designation of a state issued license which is of the same series (type);

Such exemption is allowed provided that the physical location of the vendor establishment does not change. No increase in the series (type) of state issued license shall be permitted at or for a location (new or existing) except in compliance with the provisions hereof.

3. **Variances:** The PC is authorized to grant variances to the distance requirements as established by subsections (1) and (2) above where the PC finds that such variance will not be contrary to the public interests. The application for a variance and the processing and hearing upon the application shall be in accordance with Article 20 "Variance", Chapter 102 of the LDRs. The decision of the PC may be appealed to the Council.

H. **Transferability:** Alcoholic beverage use permits issued by virtue of this section shall be deemed to be a privilege running with the land. The sale of the real property which has been granted an alcoholic beverage use permit shall automatically vest the purchases thereof with all rights and obligations originally granted or imposed to or on the applicant. Such privilege may not be separated from the fee simple interest in the realty.

I. **Appeals:** All persons aggrieved by the actions of the City Manager or the PC in granting or denying requested alcoholic beverage permits may request an appeal hearing in accordance with the provisions of Article 17 "Appeals" of Chapter 102.

J. **Successive Applications:** Whenever any application for alcoholic beverage approval is denied for failure to meet the substantive requirements of this section an application for alcoholic beverage approval for all or a portion of the same property shall not be considered for a period of two (2) years unless a supermajority of the PC decides that the original decision was based on a material mistake of fact or that there exists changed conditions and new facts not existing at the time of the original decision. Which would justify entertaining a new application before the expiration of the two-year period. However, in the case of a shopping center, as defined in Article 110 "Definitions", this section shall only apply to the commercial retail unit within the shopping center for which approval was sought and not the entire shopping center site itself.

Bar, Taverns and Night Clubs

Bars, taverns and night clubs may be allowed pursuant to Table 103.15.1 and with approval by the Director; an alcoholic beverage license issued by the State of Florida is needed. See the Alcohol Beverages regulations within this section.

Boat Ramps

Boat ramps may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. All boat ramps shall be located and designed so as not to create setback nonconformity for existing structures from the new MHW line created by the boat ramp and all new structures permitted subsequent to boat ramp approval must meet the new setback from MHW.

Deleted: Assisted Living Facility

An assisted living facility may be allowed pursuant to Table 103.15.1, subject to the following standards:

<#>**Compliance:** An assisted living facility (ALF) shall comply with the requirements of Chapter 400, Part III, Florida Statutes.

<#>**Minimum Living Space:** A minimum of 300 square feet of indoor living space shall be provided for each occupant of an ALF.

Page Break

<#>**Density Calculation:** For purposes of determining the maximum number of ALF units in relation to densities given in Table 103.15.2, every four beds shall be the equivalent of one dwelling unit.

<#>**Hurricane Evacuation:** An ALF shall develop a hurricane evacuation plan in conjunction with a suitable facility.

B. All boat ramps shall be confined to shorelines of manmade canals, channels, and basins with little or no native vegetation and shall be located in the least vegetated area of the shoreline.

C. The width of boat ramps, including side slopes, shall be limited to thirty-five (35) feet.

D. Boat ramps shall be designed such that all excavation necessary to build the ramp takes place at or landward of the MHW line that exists on the property prior to installation of the ramp.

E. A maximum of two accessory docks meeting all docking facility requirements may be allowed.

F. Boat ramps without accessory docks must meet the water depth and access criteria for a dock within ten (10') feet of the waterward end of the ramp to allow for a bottom slope.

G. Dredging and filling shall be limited to the minimum amount necessary to construct the boat ramp surface, side slopes, walls and mooring or dock pilings.

H. All such projects shall require approval by the Florida Department of Environmental Protection or the South Florida Water Management District and by the U.S. Army Corps of Engineers prior to issuance of a City permit.

Boat/Ship storage/dockage (see Marina or Waterfront Walkways and Docks)

Boat Repair/ Boat Yard (see Vehicle/Vessel Repair)

Broadcasting or Communications Tower (see also Wireless Facilities)

Broadcasting or communications towers may be allowed pursuant to Table 103.15.1, subject to the following standards.

A. Broadcasting or communications towers shall be located on the lot in such a manner that, in the event of collapse, the tower and supporting devices shall be contained within the confines of the property lines.

B. Tower supports, peripheral anchors, guy wires, or other supporting devices shall be located no closer than five (5') feet from any property line.

C. All towers shall comply with the airport zoning district restrictions mentioned in the airport section above.

Campground

A Campground may be allowed pursuant to Table 103.15.1 as a conditional use the MU, P and PR zoned districts, subject to the following standards:

A. Parking area shall be at least twenty (25) feet from residential neighboring uses.

B. Outdoor activities shall be limited to between 6 am and 10 pm.

C. Overnight camping is limited to campgrounds licensed by the Department of Health and which are properly licensed by the State of Florida and have an unexpired occupational license issued by Monroe County;

D. Camping is not permitted in public ROWs or anywhere that is not zoned and licensed for overnight camping.

Child Care

Centers:

Child care centers may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Licensing:** A child care facility shall be licensed by the Monroe County Health Department and the Florida Department of Children and Family Services.

B. **Vehicle Circulation:** In addition to the requirements of Chapter 107, Article 5 "Parking, Loading and Stacking", an applicant for a child care center shall provide a vehicular circulation plan showing onsite queuing and circulation based upon the location and number of patrons that utilize the facility.

C. **Recreational Facilities:** Outdoor recreational facilities shall be located in the rear yard.

D. **Landscaping:** In addition to the landscaping requirements of Article 7 of Chapter 107, one additional shade tree per 1,000 square feet of outdoor play or activity area shall be installed.

E. **Setbacks from Residential:** All stationary play equipment, dumpsters, garbage cans or recycling bins, and similar equipment shall be located at least 10 feet from any abutting residential property line.

F. **Hours of Operation:** Child care centers adjacent to residential areas shall not operate between the hours of 7:00 PM and 6:00 AM.

G. **Parking:** Parking areas for child care centers shall be located to the side or rear of the building.

Family Home:

Family child care homes may be allowed pursuant to Table 103.15.1, subject to the following standards.

A. **Compliance:** A family child care home shall comply with all applicable requirements of Chapter 402, Florida Statutes and all licensing requirements.

B. **Parking and Circulation:** A family child care home shall be limited to ten (10) trips per day and shall provide a pickup and drop-off facility, including queuing, circulation and parking spaces. Use of public right-of-way for such purposes may be approved by the Director.

Community Workforce Housing Unit

A community workforce housing unit may be permitted pursuant to Table 103.15.1 as an accessory use to a principal commercial activity. They can be attached or detached stand alone structures (on the same or adjacent parcel - unified) or may be within the same building envelope as the commercial/governmental use. Minimum size requirements are three hundred seventy-five (375 ft^2) square feet up to a maximum of one thousand eight hundred (1,800 ft^2) square feet. Occupancy of these units is limited to those meeting the income requirements of this chapter. Following requirements shall be met:

A. Affordable housing criteria set forth in this Chapter and Chapter 110 "Definitions";

B. Shall be permanently deed-restricted as affordable;

C. Shall be restricted to occupancy to households that derive at least seventy (70%) percent of their household income from gainful employment in Monroe County;

D. Shall be restricted to occupancy for 28 consecutive days or longer;

E. Shall not be used for vacation rental use; and

F. Shall not be sold separately as a condominium.

Convenience Store

A convenience store may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Additional Principal Uses:** A convenience store may offer an additional principal use, such as a restaurant or fuel sales. A convenience store with two or more principal uses shall comply with the standards for all of these uses.

B. **Maximum Gross Floor Area:** A convenience store, including additional principle uses, shall not exceed eight thousand (8,000 ft²) square feet of total floor area.

C. **Parking for Additional Principal Uses:** Parking for additional principal uses shall be calculated separately to determine the total number of required parking spaces.

Dormitory

A dormitory, as defined in Chapter 110 of these LDRs, is allowed pursuant to Table 103.15.1 as an accessory use to a hotel or motel, subject to the following standards:

A. A dormitory must be on the site of a hotel or motel and shall be used exclusively by the employees of such hotel or motel.

B. A dormitory shall contain the number of bedrooms, shared bathrooms and adequate common living area (e.g., common living rooms, television rooms, or other similar rooms for social activities) sufficient to serve the number of residents.

C. Every two thousand (2,000 ft²) square feet of climate controlled space shall be limited to not more than five (5) bedrooms, two (2) common living areas, one (1) full kitchen, and may contain one (1) or more bathrooms.

D. Each bedroom is limited to occupancy by no more than two (2) persons.

Equipment Rental with outdoor storage

Equipment Rental may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. Equipment shall not be placed in the front set back.

B. All outdoor storage shall be screened from off-site view.

Financial Services

Financial Services with a drive-through may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. Stacking lanes for drive-through windows shall be located so as to avoid conflict with the normal flow of traffic on the site.

B. A vehicle pass-by lane shall be constructed adjacent to each window to provide for complete, unimpeded circulation throughout the site.

Fuel Sales

Fuel sales may be allowed pursuant to Table 103.15.1 provided that the locations of fuel pump islands and fuel storage tanks meet the standards in this section. Other structures on the premises shall follow the standards for the zoning district. Within the I-M and MU-M districts, fuel sales shall be limited to vessels and other water vehicles.

A. **Location of Fuel Pump Islands:** Pump islands shall be a minimum of twenty-five (25') feet from any road right-of-way line, ten (10') feet from any other property line or twelve (12') feet from any building line. Canopies over the pump islands may extend up to ten (10') feet from any property line.

B. **Location of Fuel Tanks:** Gasoline and fuel storage tanks shall be located a minimum of twenty (20') feet from any property line or building.

Funeral Homes

Funeral homes may be allowed pursuant to Table 103.15.1. No crematory services shall be permitted. Notwithstanding the foregoing, public facilities may include crematory services, subject to conditional use approval. There shall be no outdoor storage or displays of products, such as monuments, or building materials. No building shall be located closer than twenty (20') feet to any street line or any lot which abuts residential district. No off-street parking or loading space shall be located closer than twenty (20') feet to any lot line which abuts a residential district.

Group Home

A community residential group home may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. The home shall not be located within a radius of one thousand (1,000) feet of another existing small community residential group home unless otherwise approved as part of a conditional use permit.

B. Such a home shall only be occupied by persons meeting the definition for a resident in F.S. 419.001, and are clients of the governmental agencies enumerated in F.S. 419.001 and not by persons found by a court to have committed a delinquent act.

C. The establishment must conform to setback and height regulations for the zoning district.

D. The home shall be located to assure the safe care and supervision of all clients.

E. Pursuant to F. S. 419.001, homes with six or fewer residents shall be deemed a single family dwelling unit for the purposes of zoning and shall be allowed as a permitted use within all residential zoning districts. New residential dwelling units shall be

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 36 pt + Tab after: 54 pt + Indent at: 54 pt

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 36 pt + Tab after: 54 pt + Indent at: 54 pt

subject to the requirements established in Article 1 "Building Permit Allocation System", of Chapter 107.

F. Homes with seven (7) to fourteen (14) residents shall require a conditional use approval. A dwelling unit allocation shall be obtained pursuant to Chapter 107, Article 1 "Building Permit Allocation System" for each housekeeping unit of the group home meeting the definition of "Dwelling Unit", as provided in Chapter 110.

Hazardous Waste - Small Generator

Uses which meet the criteria established in this section as a hazardous waste small generator, as defined in Chapter 110, of these LDRs, may be allowed pursuant to Table 103.15.1, subject to the following:

A. **General site plan:** A general site plan drawn at a legible scale which shall include, but not limited to, the location of all buildings, exterior storage facilities, permanent access ways, evacuation routes, parking lots, internal roads, chemical loading areas, equipment cleaning areas, storm and sanitary sewer accesses, emergency equipment and adjacent property uses. The exterior storage areas shall be identified with the hazard classes and the maximum quantities per hazard class or hazardous materials stored.

B. **Building floor plan:** A building floor plan drawn to a legible scale, which shall include, but not limited to, all hazardous materials storage facilities within the building and shall indicate rooms, doorways, corridors, exits, fire rated assemblies with their hourly rating, location of liquid tight rooms, and evacuation route. Each hazardous materials storage facility shall be identified on the plan with the hazard classes and quantity range per hazard class of the hazardous materials stored.

Helicopter Landing Pads

A helicopter landing pad may be allowed pursuant to Table 103.15.1, provided that it complies with the Federal Aviation Administration and National Fire Protection Association guidelines for heliport design, and only as an accessory to an existing or approved hospital, institutional, government or industrial facility. Special medical evacuation locations for helispots may be granted by the Director without meeting district requirements, as may be judged in the public interest, conditioned upon obtaining Florida DOT and FAA approvals for such use.

Home Occupations

A general home occupation may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Participation in Business:** Only lawful residents of a dwelling unit and one employee shall be engaged or employed on-site.

B. **General Standards:**

1. *Nature of Use:*

    (a) The use of the dwelling unit for the home-based business shall be clearly incidental and subordinate to its use for residential purposes.

    (b) There shall be no exterior structural or architectural modification to the dwelling related to the home occupation.

    (c) A home occupation shall not occupy more than twenty (20%) percent of the gross floor area of the dwelling, exclusive of the area of any open porch, attached garage, or similar space not suited for occupancy as living quarters of a dwelling.

    (d) A home-based business shall not be conducted in an accessory building, including a barn, carport, detached garage, porch, stable, or similar building or structure. In addition, accessory buildings shall not be used to store materials and supplies utilized for a home-based business.

2. *Parking:* A maximum of two additional off-street parking spaces may be required to accommodate a home occupation, and each additional space shall utilize the driveway serving the residence in which the activity is located.

3. *Visitation Hours and Trip Limits:* A home occupation shall limit hours of operation for the activities specified below:

    (a) Customer or client trips and all deliveries shall be limited to the hours from 8 a.m. to 8 p.m.

    (b) The business shall not generate more than six customer or client and delivery trips combined in any one day and no more than two clients may be present at any one time.

4. *Vehicle Storage:* The home occupation shall be limited to the parking and storage of one commercial vehicle on the premises, not to exceed a one-ton capacity. Such vehicles shall not be parked or stored in front of the home.

5. *Operation of Mechanical Equipment:* A home-based business shall be subject to the noise regulations in the City Code.

6. *Limitations on Use of Equipment and Materials*: A home occupation shall conform to the following limitations on the use and storage of material and equipment.

(a) The business shall not utilize equipment or processes that create vibration, glare, fumes, odors, or dust that are discernable at the property lines.

(b) The business shall not utilize any combustible materials in violation of all applicable fire prevention regulations.

(c) The business shall not utilize or maintain on site any hazardous materials in violation of Chapter __ of the City Code relating to hazardous materials management.

(d) The business shall not utilize equipment or processes which create electrical, visual, or audible interference in any radio or television receivers off-premises, or otherwise interfere with the off-premises use of electric or electronic devices of any kind.

7. *Sales:* All sales shall be incidental to the principal residential use and shall involve only the sale of goods or merchandise produced or processed by the home occupation. Retail sales of goods not produced or processed on the premises are prohibited.

C. **License:** The Department is responsible for the review and approval of a license for each separate home occupation subject to the following conditions:

1. No more than two permits for home-based businesses shall be issued for a single dwelling unit. However, in such cases the trip limits in subsection (B)(6), above apply to the dwelling unit for both home occupation permits combined.

2. Each applicant shall sign an affidavit acknowledging receipt of regulations applicable to such permits.

3. Each permit shall be valid for a period of up to two (2) years but shall be renewable upon application and continued conformance with the provisions of this Article.

4. Each home occupation is required to procure and maintain a Monroe County occupational license

Hospital or Emergency Clinic

An emergency clinic or hospital may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. The facility shall be set back a minimum of fifteen (15') feet from any residential zoning district, and

B. A solid masonry fence is installed, subject to the floodplain management standards of Article 12, Chapter 107, along the property line adjacent to the residential district.

Hotels or Motels

An existing hotel or motel may be redeveloped pursuant to Table 103.15.1, subject to the following standards:

Deleted: allowed

A. **General Provisions:**

1. Until such time as Council approves the use of residential dwelling unit allocations for hotel or motel units, no new hotel or motel units shall be allowed in the City of Marathon. Approval shall be limited to the redevelopment of existing hotels and motels, subject to the criteria established in subsection (B), below.

2. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.

Formatted: Bullets and Numbering

3. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attraction individually or in conjunction with other hotel or motel operators.

Formatted: Bullets and Numbering

4. All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of twenty (20%) percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types:

   (a) Dormitory;

   (b) Studio; or

   (c) One (1) or two (2) bedroom units;

Formatted: Bullets and Numbering

5. All entrances to a hotel or motel unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units.

Deleted: 4.

Formatted: Bullets and Numbering

B. **Redevelopment Criteria:**

Deleted: <#>A hotel or motel unit may be a single room or suite of rooms with a maximum of one (1) bedroom, may contain up to one and one-half (1.5) bathrooms, and may include a kitchenette area and one (1) other living area and shall not exceed one thousand five hundred (1,500 ft²) square feet of interior space.¶

Deleted: Units

1. An existing hotel or motel room may be redeveloped to a unit not exceeding one thousand five hundred (1,500 ft²) square feet of interior space and consisting of no more than two and one-half bathrooms, three (3) bedrooms and one (1) other living area, subject to the following rates of redevelopment:

(a) A one bedroom unit may redevelop as a one (1) bedroom unit, without a reduction in the number of units;

(b) A one bedroom unit may redevelop as a two (2) bedroom unit at the rate of ninety (90%) percent of the one (1) bedroom units being redeveloped as two (2) bedroom units; and

(c) A one (1) bedroom unit may redevelop as a three (3) bedroom unit at the rate of eighty-five (85%) percent of the one (1) bedroom units being redeveloped as three (3) bedroom units.

2. The number of units reduced and not included in the redevelopment shall be tracked over time and registered with the City as Conditional Redevelopment Units and reflected in the data and analysis of the Comprehensive Plan as it is amended.

3. Existing hotel units, which exceed allocated densities, may redevelop provided: (1) the parcel has a stormwater management system which meets the requirements of Article 11, of Chapter 107; (2) the wastewater treatment system meets Best Available Treatment wastewater standards; and (3) the structures meet the shoreline setback criteria as established in Article 4 "Open Water, Surface Waters and Wetlands" of Chapter 106.

4. As a condition of redevelopment, the developer and the City shall enter into a Development Agreement, in addition to compliance with all other provisions of the Code.

5. The City may consider, at a future time, proposed amendments to the LDRs to authorize the construction of Conditional Redevelopment Units. Prior to the consideration of such amendment, the City must demonstrate that: (1) a significant reduction in Hurricane Clearance Time has been achieved for the mandatory evacuation of permanent residents, (2) the Conditional Redevelopment Units have been tracked, and (3) other environmental and land use issues have been addressed.

6. Notwithstanding the foregoing, the developer of a hotel or motel containing less than twelve (12) units may convert existing, lawfully established accessory floor area in the hotel or motel to a second bedroom or third bedroom, as the case may be, to an adjacent existing hotel or motel unit without triggering the requirements of B.1 or B.4 above; provided, however, that the additional floor area hereunder shall not exceed four hundred twenty-five (425 ft^2) square feet per unit or eight hundred fifty (850 ft^2) square feet in the aggregate per property.

Incidental Food Sales

Food sales may be allowed pursuant to Table 103.15.1 as an accessory use to commercial and industrial uses, provided that the area utilized for the sales, storage, preparation, and service of foods does not exceed twenty (20%) percent of the gross floor area of the principal structure.

Junk, Salvage or Recycled Metal Yard

A junk, salvage, or recycled metal yard may be allowed pursuant to Table 103.15.1, subject to the following standards.

A. **Review and Approval:** An application to establish a junk, salvage or recycled metal yard shall include the following materials:

1. *Environmental Assessment:* The environmental assessment shall be prepared by a registered engineer, landscape architect, architect or environmental professional with the appropriate qualifications and shall include the following information:

2. All applicable federal, state and city and county standards for protection of water, air and other natural resources; and

3. The manner in which the proposed facility complies with all requirements.

4. *Plan of Operation*: A proposed plan of operation for the facility shall include the following:

(a) Days and hours of operation; and

(b) Manner of disposal or sale of waste products or recycled materials.

B. **Conditions of Approval:** As part of considering an application for development approval, the Council may include conditions that address the following:

1. containment structures and procedures to protect ground water resources;

2. dust and emission control;

3. fencing of processing, storage and shipping areas as required by subsection (e) below;

4. height of stockpiles of processed and unprocessed materials;

5. hours of operation;

6. lighting;

7. monitoring program for protection of air, natural and water resources;

8. litter control;

9. noise; and

10. traffic impacts, including any truck traffic on local residential roads.

C. **Prohibited Activities**

1. *Sale of Vehicles:* The sale of operable vehicles is prohibited.

2. *Processing of Debris*: A yard or facility shall not process any woody or vegetative wastes or construction or demolition debris.

D. **Compliance with Natural Resources Protection Laws:** A yard shall comply with all applicable federal, state, City and County regulations regarding protection of air, ground water, surface water and other environmental and natural resources.

E. **Screening:** All junk, salvage or recycled metal yards shall be screened from view of a public right-of-way on all sides by an opaque masonry wall a minimum of six (6') feet in height and with two (2') feet of ornamental superstructure. The required wall along a public right-of-way shall conform to the front yard requirement of the district in which it is located.

F. **Fire Protection:** The facility shall adopt and maintain a fire prevention and suppression program, including all necessary equipment that is acceptable to the City of Marathon Fire Marshall.

Live-aboard Vessel

Live-aboard facilities are not permitted within residential districts under any circumstances. Live-aboard facilities shall not be permitted other than pursuant to Table 103.15.1 without the appropriate zoning, infrastructure and solid waste facilities to support equivalent residential units.

Manufacturing

Manufacturing, assembly, storage and distributions of goods may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. All outdoor storage shall be screened from off-site view.

B. No activity shall be conducted that produces noise, odors, dust, fumes, fire hazard, or other nuisance beyond the property lines.

Marina

Preference shall be given to the expansion of suitable existing facilities rather than new construction. Marinas may be allowed pursuant to Table 103.15.1 and are subject to the following conditions:

A. **Marina Siting Criteria:**

1. *Concept Meeting*: The applicant shall schedule and attend a concept meeting with the TRC to review siting criteria, the development approval process and marina operating practices. The following information shall be submitted with the completed application:

   (a) Survey of the subject property;

   (b) Preliminary site plan;

   (c) Written description of size and type of development;

   (d) Location map of facility;

   (e) Aerial photograph of site;

   (f) Site photographs;

   (g) Bathymetry survey;

   (h) If available, the following information will also be useful at this meeting:

      i. Vegetation survey; or

      ii. Natural Resource Assessment.

2. *Review of Applications*: Marinas may be subject to the conditional use approval process established in Chapter 102, Article 13. In addition to the docking facility criteria established in Chapter 104, "Waterfront Walkways and Docks", and the requirements of Article 24 "Marina Operating Permit", Chapter 102. The City shall consider, in its review of permit applications under this section, the following criteria. If any of the following questions are answered in the affirmative, the application shall be denied or modified:

   (a) Would have a detrimental effect on the use of such waters for navigation, transportation, recreational or other public purposes and public conveniences;

   (b) Would restrict the free use of the waterways and navigable waters;

(c) Would have a material adverse effect upon the flow of water or tidal currents in the surrounding waters;

(d) Would have a material adverse effect upon erosion, erosion control, extraordinary storm drainage, shoaling of channels, or would be likely to adversely affect the water quality presently existing in the area or limit progress that is being made toward improvement of water quality in the area;

(e) Would have a material adverse effect upon the natural beauty and recreational advantages of the City;

(f) Would have a material adverse effect upon the conservation of wildlife, marine life, and other natural resources, including shorelines, so as to be contrary to the public interest;

(g) Would have a material adverse effect upon the uplands surrounding or necessarily affected by such plan or development;

(h) Would have a material adverse effect on the community character or safety, health and welfare of the general public; or

(i) Are inconsistent with adopted State plans (i.e., manatee protection plans), the City of Marathon Comprehensive Plan, other formally adopted natural resource management plans, or any other City ordinances or regulations.

3. It shall be the burden of the applicant for a permit under this article to provide data and testimony to show the effect of the proposed plan and development on the criteria established in this section.

4. The City shall have the option of requiring the analysis of alternative designs where such alternatives have the potential to reduce environmental impacts or navigational impacts. It shall be the burden of the applicant to prove that alternatives do not result in lesser impacts than the proposed design. An analysis of alternatives may be submitted at the time of application at the option of the applicant.

5. The use of alternative designs, such as the use of multiuse private docks in lieu of single family private docks, may be required where the assessment of cumulative impacts indicates that such cumulative impacts would violate the general provisions under this Chapter.

B. **Special Conditions:**

1. Prior to the issuance of any permit under this article, special conditions may be imposed for such permit. These conditions should include any item which can be

reasonably expected to enhance the probability that the proposed activity will be conducted in compliance with the intent of this article. Those conditions may include, but are not limited to field inspections by City staff, reports, monitoring, bonding, easements, guaranteed survival of non-affected and/or replanted vegetation, protective barriers, setbacks, protective earthwork, replants, signage, restoration and/or mitigation. Conditions may also be applied in order to assure consistency with the Comprehensive Plan.

2. Prior to the issuance of the Certificate of Occupancy, the marina shall obtain and maintain a Marina Operating Permit, in compliance with all standards of Article 24, Chapter 102.

3. It shall be unlawful for any person to deviate from the specific conditions of the permit as set forth by this article without the prior approval of the City Manager.

Massage Therapist

A massage therapist or other establishment operated or staffed by one or more massage therapists is allowed pursuant to Table 103.15.1 as a limited use, subject to the following standards.

A. **Licensing:**

1. The establishment shall be licensed by the Board of Massage Therapy in accordance with the Florida Massage Therapy Practice Act, as codified at Fla. Stats. Sect. 480.031 et seq.

2. Any massage therapists shall be licensed by the Board of Massage Therapy.

3. A massage therapist shall maintain posted on-premises copies of the licenses of the therapists who provide services at the establishment.

B. **Violation:** There shall be a rebuttable presumption that any therapist who is not licensed and any facility that does not have posted on its premises licenses of massage therapists who provide services there, is operating in violation of this Section and subject to enforcement action and penalty under Chapter 109, in addition to any violation of the Massage Therapy Practice Act.

C. **Massage Education:** Nothing in this Section shall be construed to limit the operation of a massage school in accordance with the applicable provisions of the Massage Therapy Practices Act or the provision of clinical experience to students of a massage school in a setting consistent with the provisions of the Massage Therapy Practices Act.

Media Sales and Rental

A retail establishment that devotes more than ten (10%) percent of its floor area or inventory to sexually explicit material, but that devotes less than thirty (30%) percent of its floor area or inventory to sexually explicit material sales and rental shall not be treated as a sexually-oriented media shop (see sexually oriented business) and may be allowed pursuant to Table 103.15.1, provided that it meets the following conditions:

A. All sexually-explicit media shall be maintained in a room that is separated from other material by an opaque wall that extends to the ceiling or eight feet above the floor, whichever is less.

B. Access to the room containing the sexually-explicit media shall be through an opaque, solid door.

C. The room containing sexually-explicit media shall be posted with a notice indicating that only persons 18 years of age or older may enter the room.

D. Access to the room shall be physically limited to adults through control of access by an employee of the store, through use of an access release located a minimum of 66 inches off the floor, or through constant monitoring of the room by an employee on duty through electronic means or through a window or mirror providing visibility into the room from the manager's or cashier's work station.

Medical and Dental Clinic

A medical or dental clinic may be allowed pursuant to Table 103.15.1, subject to the following standards.

A. **Permitted Activities:** Except for medical emergency purposes, overnight facilities for patient care are prohibited.

B. **Permitted Location:** A clinic may be located in a freestanding building or in a multiple tenant building.

C. **Maximum Building Size:** An outpatient clinic shall not exceed ten thousand (10,000ft^2) square feet, unless otherwise approved as part of a conditional use permit.

Mobile Home, Individual – New or Replacement

A mobile home may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Mobile Home Inspection and Certification Requirements:** Mobile homes shall comply with the following inspection and certification requirements:

1. *Compliance with State Requirements:*

   (a) Mobile homes shall be certified in compliance with Chapter 320, Florida Statutes regarding construction, alteration, modification, remodeling and repair of such units; and Section 15C-2.0081, Florida Administrative Code, regarding the repair and remodeling of mobile homes. Certification inspections of any repairs or remodeling shall be made by a licensed manufactured home dealer or a licensed inspection agency.

   (b) Any fees associated with the certification inspection shall be paid by the owner of the unit.

   (c) The placement of a mobile home shall require Department of Health approval.

2. *Mobile Home Installation Standards:* A mobile home shall not be used as a residence unless the installation complies with each of the following requirements.

   (a) Every mobile home not placed on a permanent foundation, as defined in Chapter 110, shall be located on an approved support system and be properly anchored in accordance with the manufacturer's specifications, the Florida Building Code, Chapter 320.8325, Florida Statutes and Chapter 15C-1.010, Florida Administrative Code.

   (b) Mobile homes shall comply with the additional anchoring and elevation requirements of Chapter 107, Article 12 "100-Year Floodplain".

   (c) A building permit from the City of Marathon shall be obtained prior to the installation of a mobile home on any mobile home park lot or parcel of land within the City. Such permit shall be deemed to authorize placement, erection and use of the mobile home only at the location specified in the permit. The building permit shall be posted prominently on the mobile home before such mobile home is moved onto the site.

3. *Mobile Home Storage:* Unoccupied mobile homes shall be permitted in districts permitting the sale and rental of mobile homes, or may be parked and stored in a mobile home park.

Mobile Home Park

In addition to the requirements of the Comprehensive Plan and the LDRs, a new or redeveloped mobile home park may be allowed pursuant to Table 103.15.1 and shall comply with each of the requirements listed below:

A. **Regulatory Approval:** Placement of all mobile homes shall require license and permit approval by the appropriate jurisdictional authority, including, but not limited to the Department of Health and the City of Marathon and shall be subject to the elevation and anchoring requirements of Article 12, "100-Year Floodplain" of Chapter 107 of the LDRs.

B. **District Standards:** Within the R-MH zoning district, the principal dwellings shall be in compliance with the standards established in Table 103.15.2.

C. **Mobile Home Space:**

   1. Each mobile home space shall be clearly defined and shall abut on a street or on a driveway with unobstructed access to a street.

   2. Each mobile home space shall contain a maximum of one dwelling and accessory structures.

D. **Street Lighting:** All streets or driveways within the park shall be lighted at night with electric lights providing a minimum average illumination of 0.2 foot candle.

E. **Water and Sewer Service:** Central potable water and sanitary sewer service shall be provided to each dwelling within a mobile home park.

F. **Garbage Receptacles:** Approved garbage cans with tight fitting covers shall be provided in quantities adequate to permit disposal no farther than three hundred (300') feet from any mobile home space. The cans shall be kept in good repair at all times. Garbage and rubbish shall be collected and disposed of as frequently as may be necessary to ensure that the garbage cans will not overflow. The use of a central garbage collection system may be permitted as an alternative.

G. **Fire Protection:** Every park shall have adequate fire fighting facilities approved by the Fire Marshall and the City Engineer.

H. **Required Recreational Area:** A minimum of five percent of the development, beyond the required twenty (20%) percent of pervious open space, shall be designated for developed recreational open space, such as community fields, greens, or sports facilities. Such open space shall be designed for use by residents of the development.

Model Home

A model home may be allowed as an accessory use pursuant to Table 103.15.1, subject to the density requirements of the district and to the following standards:

A. If a sales office is located in the model home, it is restricted to thirty (30%) percent of the floor area of the unit.

B. Permanent, hard surface parking shall not exceed that allowed for similar residential structures within the same development. Temporary parking, such as mulch, may be allowed on the adjoining lot.

C. One sign, no larger than seven and one-half (7.5 ft^2) square feet, may be allowed per unit.

D. When ninety (90%) percent of the lots within a development are sold, the home may no longer be used as a model home or office, residential use only may be permitted.

Multi-Family Dwellings (see Residential Dwelling Units)

Multi-Tenant Retail

Multi-tenant retail may be allowed pursuant to Table 103.15.1. If tenants share parking spaces, a parking study as required in Chapter 107, Article 6 "Parking, Loading and Stacking" shall be provided at the time of application.

Museum

Museums may be allowed pursuant to Table 103.15.1 providing that the type of museum is consistent with the intent for the uses allowed in the district.

Nursing Home

A nursing home may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. No building shall be located closer than forty (40') feet to any lot line which abuts residential districts.

B. A landscaped buffer shall be provided, at a minimum, between a nursing home and all abutting residential districts.

C. There shall be at a minimum fifty (50') feet of road frontage.

D. Adequate provisions shall be made for service vehicles with access to the building at a side or rear entrance, and without backing onto rights-of-way to exit the property.

E. All structures shall be built to a residential scale consistent with the surrounding neighborhood.

Outdoor Display

Temporary outdoor display of merchandise, inventory, equipment, or similar material is may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Storage Requirement:** Merchandise must be mobile and stored indoors overnight.

B. **Nature of Use:** Merchandise display must be accessory to a principal use located on the same property.

C. **Use Restrictions:** Merchandise shall not be located in or obstruct any required setback, loading space, loading area, vehicular use area, fire lane, landscape buffer, sidewalk, ADA accessibility route, or drainage easement.

Outdoor Storage

Outdoor storage of merchandise, inventory, equipment, or similar material may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Permitted Activity:** Except as otherwise provided, any outdoor storage shall be incidental and subordinate to the primary use located on the property.

B. **Location**: Outdoor storage areas shall not be located in any required setbacks, fire lanes or sidewalks as provided on an approved site plan.

C. **Screening:** The TRC may require any outdoor storage area to be screened from view by landscaping, fences, walls or buildings. Storage areas shall be located to the side or rear of the principal building and completely screened from view.

D. **Exceptions**: The following uses or materials are exempt from these requirements:

1. Storage of landscape plant material;

2. Storage of material used for road construction on a lot directly adjacent to the roadway under construction; and

3. Uses that allow outdoor storage by definition or as otherwise provided in the LDRs.

Paint and Body Shop Service

A vehicle or vessel paint and body shop may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. All work on vehicles shall occur within an enclosed structure.

B. In the I-M district, this use shall be limited to the repair and construction of vessels.

C. Bay doors shall be oriented to the side or rear of the building, whenever possible.

Parks and Recreational Facilities

Parks and recreational activities shall be allowed pursuant to Table 103.15.1 and shall be limited to the time between 7 am and 11 pm. All outdoor lighting shall be directional and shall not directly radiate onto adjacent residential properties.

Pharmacy

A pharmacy may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Location of Drive-Through Windows:** Drive-through windows shall be constructed as an integral part of the principal structure.

B. **Circulation:**

1. Stacking lanes for drive-through windows shall be located so as to avoid conflict with the normal flow of traffic on the site.

2. A vehicle pass-by lane shall be constructed adjacent to each window to provide for complete, unimpeded circulation throughout the site.

Place of Worship

A place of worship may be allowed pursuant to Table 103.15.1, subject to the following conditions:

A. There shall be at a minimum fifty (50') feet of road frontage.

B. The proposed parking facilities shall be setback at least twenty-five (25') feet from adjacent residential property.

C. Off-street parking areas shall be surfaced and maintained to provide a durable, dust free surface and shall provide adequate drainage facilities for disposal of all collected surface water. Surfacing materials may include pavement, gravel, wood chips, previous paving materials, or grass.

Public or Private Educational Facility

Educational facilities may be allowed pursuant to Table 103.15.1. Private educational facilities may also be allowed in the MU-M and I-M districts providing the course of study is consistent with the intent for uses allowed in the maritime districts. All educational facilities are subject to the following standards:

A. **Accessibility:**

1. Sites for all schools shall be located on publicly maintained paved roads.

2. All schools shall be linked with surrounding residential areas by bikeways and sidewalks.

3. All schools shall be designed to accommodate public bus transportation and/or other means of public transit.

B. **Minimum Setbacks:** All buildings shall comply with the yard and setback requirements of the district in which they are located; and, in no case shall be less than twenty-five (25') feet on the front, twenty (20') feet in the rear, and ten (10') feet on interior side, and twenty-five (25') feet on street side.

C. **Outdoor Lighting:** Any lighting installed for sports facilities or parking areas shall utilize flat glass lenses and house side shields. Illumination levels at any point on the property line adjacent to a residential area shall not exceed 0.5 footcandles. A photometric lighting plan, including specifications for fixtures, shall be required as part of any site plan.

D. **Vehicular Circulation:** In addition to the requirements of Chapter 107, Article 6, an applicant shall provide a vehicular circulation plan, showing onsite queuing and circulation, vehicle stacking, drop-off areas and interior roads, based upon the location of and number of patrons that utilize the facility.

E. **Hours of Operation:** No activities shall be conducted on-site between the hours of 11:00 PM and 6:00 AM unless approved otherwise as part of a conditional use permit.

F. **Additional Buffering:** All private facilities shall meet the landscape buffer requirements in Article 8, "Landscaping", of Chapter 107. For facilities serving one hundred (100) or more students, a minimum twenty-five (25) foot wide medium-density buffer shall be maintained along any boundaries adjacent to residential areas or as required by Article 8, Chapter 107, whichever is greater.

Residential Dwelling Units

In addition to other requirements of the LDRs and pursuant to Table 103.15.1, all residential dwelling units, except mobile homes, shall comply with the following:

A. Two (2) side yards are required for stacked duplexes.

B. Townhouses are limited to ten (10) dwelling units per row, except for affordable housing.

C. The private yard area for rooftop balcony dwelling is provided by the roof or balconies of the structure.

D. The total area of the mixed use or commercial apartments, including patios and access way shall not exceed the area covered by the ground floor and any covered walks or arcades.

E. Each unit shall have access to a balcony or patio that is separate from the access to the unit, provides adequate privacy and the size shall be two-tenths (0.2) of unit floor area or a minimum of sixty (60 ft^2) square feet in size.

F. The patio area may be wholly or partially replaced by the provision of a recreation yard provided on site. Recreational yards shall be a minimum one-tenth (0.1) of unit floor area.

Restaurant with Drive-Through

A restaurant with a drive-through may be allowed pursuant to Table 103.15.1, subject to the following standards.

A. **Location of Drive-Through Windows:** Drive-through windows shall be constructed as an integral part of the principal structure. Menu boards and equipment for ordering from a vehicle may be a standalone feature.

B. **Circulation:**

1. Stacking lanes for drive-through windows shall provide at least five stacking spaces for each drive-through service window. Such spaces shall be designed so as to avoid conflict between pedestrian and vehicular circulation on the site or any abutting street.

2. A vehicle pass-by lane shall be constructed adjacent to each window to provide for complete, unimpeded circulation throughout the site.

Seafood Processing and Packaging

Seafood processing and packaging may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. All access points shall have at a minimum fifty (50') feet of road frontage.

B. There shall be no external activity beyond loading and unloading of materials. All packaging shall be conducted within an enclosed structure.

C. All outdoor storage shall be screened from off-site view.

D. No activity shall be conducted that produces noise, odors, fumes, or other nuisance beyond the property lines.

Sexually Oriented Business

Sexually oriented businesses including but not limited to a cabaret, theater, media store or sex shop, may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. **Generally:** Sexually oriented businesses shall be allowed only in the zoning districts in which a specific sexually oriented business is listed as a conditional use in this chapter. Any sexually oriented business established or expanded after the adoption of this ordinance, in such a district shall be separated from other specified uses by the distances specified in Table, 104.01.1, below and the design standards of this chapter.

B. **Measurement:** Measurements shall be made from the nearest property line of the use which is not a sexually oriented business to the nearest property line of the sexually oriented business. If the sexually oriented business is located in a multi-tenant building, then the distance shall be measured from the nearest property line of the use which is not a sexually oriented business to the nearest line of the leasehold or other space actually controlled or occupied by the sexually oriented business.

C. **Limitations:** Any lawfully established sexually oriented business shall not be made non-conforming by the subsequent establishment of uses on surrounding properties which require separation standards.

Table 104.01.1
Minimum Separation Standards for Sexually Oriented Businesses

	Sexually Oriented Cabaret/Theater	**Sex Shop/Sexually Oriented Media Store**
Other Sexually Oriented Business	500 ft	500 ft.
Residentially Zoned Land	500 ft	500 ft
Place of Worship	750 ft	500 ft
School (Public and Private) and Daycare Centers	750 ft	500 ft
Public Park, Youth Center or other facilities used by children	750 ft	500 ft
Public Library	750 ft	500 ft

[THIS REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

D. **Sexually Oriented Cabarets Design Standards :**Any building used for the operation of a sexually oriented cabaret shall meet the following design standards:

1. *Stage Required:* The building shall include one or more stages, on which all performances shall take place. Each such stage shall be in a room open to all customers of the establishment and containing a minimum of six hundred (600 ft^2) square feet of floor area. The stage shall be raised a minimum of eighteen (18) inches above the level of the floor on which customers stand or are seated and shall be further separated from customers by a rail or other barrier a minimum of thirty (30) inches high. If the stage is a minimum of thirty (30) inches high, the additional barrier shall not be required.

2. *Performance Areas:*

   (a) All performances and interactions between performers and customers shall occur so that the performers (and any customer directly involved) are visible from the room in which the stage is located. No doors, curtains, screens, or other devices shall be used to obscure any part of the room or any booth.

   (b) Any private performance booth in existence on the date of the adoption of this ordinance may continue in use regardless of whether it is fully visible from the larger room, provided that it shall be visible from a hallway meeting the lighting standards required in subsection (c) below. Such hallway shall be open to all customers of the establishment and other persons lawfully entering onto the premises and the entrance to the booth shall not be obscured from the hallway by any doors, curtains, screens, or other devices.

3. *Lighting:* The lighting level in the primary area occupied by customers shall be a minimum of five footcandles at a height of three feet above the floor. This lighting standard shall not apply to the stage or to performance booths but shall apply in any hallway or other access area to the booths and in the area around the stage.

E. **Sexually Oriented Theaters Design Standards:** Any building used for the operation of a sexually oriented theater shall meet the following design standards:

1. *Presentation Area:* All screenings and presentations of motion pictures, videos or other media shall occur in a room open to all customers of the establishment and containing a minimum six hundred (600 ft^2) square feet of floor area. No doors, curtains, screens, or other devices shall be used to obscure any part of the room.

2. *Lighting:* The lighting level in the area occupied by customers shall be a minimum of two footcandles at floor level.

3. *Seating:* Seating shall consist of individual, theater-style chairs, with solid arms separating the chairs. No couches, benches, individual chairs, beds, loose cushions, mattresses or other forms of seating may be provided. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the Florida Building Code and the Americans with Disabilities Act.

Small Animal Shelter or Animal Day Care

Private and public animal shelters may be allowed pursuant to Table 103.15.1, subject to the following standards.

A. Hours of operation, including times for feeding and use of outdoor areas by the animals, shall occur between 6 a.m. and 7 p.m.

B. No boarding of animals as a commercial use shall be permitted.

Storage Facility, Self -Service

Self-service storage facilities may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. Individual storage areas shall not exceed four hundred (400 ft^2) square feet each.

B. Storage of boats, recreational vehicles and similar equipment may be allowed, subject to the following standards:

1. Storage shall occur only within a designated area, approved as part of the site plan.

2. Storage areas shall not exceed fifty (50%) percent of the lot area of the site.

3. Boats shall be stored on trailers with wheels.

4. Storage areas shall be completely screened from public rights-of-way or adjacent residential zoning districts, utilizing either the buildings associated with the storage facility or by an opaque masonry wall, or equivalent approved by the Director, a minimum of six feet in height.

Storage Yard (Outdoor)

A permanent outdoor storage yard may be allowed pursuant to Table 103.15.1, subject to the following standards:

A. An outdoor storage yard shall be a minimum of 15 feet from any public street.

B. Such yard shall be completely enclosed, except for necessary ingress and egress, by a solid fence or wall not less than six feet high.

C. Bulk storage of flammable liquids may only be allowed with a conditional use permit. In addition to the conditional use provisions of Article 13, of Chapter 102, the proposed use shall also comply with the following:

   1. A lot to be used for the bulk storage of flammable liquids shall be a minimum of two hundred (200') feet, measured in a straight line, from the nearest wall of any structure used as a place of worship, school, hospital, nursing home, or theater, except open-air or drive-in theaters.

   2. This provision shall not prevent the use of liquefied gases for domestic purposes.

Temporary Placement

Temporary placements of recreational vehicles, motor homes, or mobile homes may be permitted pursuant to Table 103.15.1 on a limited basis provided the conditions in Article 15 of Chapter 102 are met.

Temporary Use

Temporary use permits may be allowed pursuant to Table 103.15.1 and shall be obtained for motion picture production, seasonal sales, temporary sales and special events involving more than 250 persons pursuant to the requirements in Article 16 of Chapter 102.

Utilities

Major:

Wastewater treatment facilities and wastewater treatment collection system(s) serving (a) use(s) may be allowed pursuant to Table 103.15.1 provided that:

A. The wastewater treatment facility and wastewater treatment collection system(s) is (are) in compliance with all federal, state, and local requirements; and

B. The above-ground portions of the wastewater treatment facility, wastewater treatment collection system(s), and accessory uses shall be screened by structure(s) designed to:

   1. Be architecturally consistent with the character of the surrounding community;

   2. Minimize the impact of any outdoor storage, temporary or permanent; and

3. A solid fence may be required upon determination by the Director.

Minor:

Pursuant to Table 103.15.1, minor utilities may be allowed. Lift stations and all equipment cabinets must be completely screened pursuant to the landscape requirements of Article 8 of Chapter 107, within residential districts.

Vacation Rentals

Vacation rentals may be allowed pursuant to Table 103.15.1, subject to the following:

A. **Intent and Purpose:** The intent and purpose of this section is to protect residential neighborhoods from potential negative impacts of vacation rental uses; to limit the impact upon the affordable housing stock; to direct transient rental properties to areas where such uses are compatible; to provide a reasonable period of time for the amortization of existing licensed vacation rental units made non-compliant by the requirements of this section; and of the discontinuation of such uses which are not compatible with the character of the neighborhoods and the quiet enjoyment of residential properties therein.

B. **Vacation Rental License Required:** No owner of a vacation rental shall rent that unit for twenty-eight (28) consecutive calendar days or less without a valid vacation rental license for that unit issued pursuant to this chapter. If a lot has more than one legally existing dwelling on the property, a license must be obtained for each dwelling that is to be used for vacation rentals.

C. **Agency:** An owner may retain an agent, representative or local contact person to comply with the requirements of this chapter, including, without limitation, the filing of an application for a license, the management of the vacation rental and the compliance with the conditions of the license. The license shall be issued only to the owner of the vacation rental. The owner of the vacation rental is responsible for compliance with the provisions of this chapter and the failure of an agent, representative, or local contact person to comply with this chapter shall be deemed non-enforcement by the owner.

D. **General Provisions**

Any owner of property who obtains a Vacation Rental License and who uses the property for vacation rental after *<Insert effective date of this ordinance>*, shall comply with the following:

1. All trash and debris on the vacation rental property must be kept in covered trash containers, unless the trash containers are kept indoors or are kept in an outdoor enclosure; however, when placing trash containers out for curbside pickup, the trash containers shall be covered. Each vacation rental unit must be equipped with at least four (4) covered trash containers for such purpose.

2. A local contact person must be available twenty-four (24) hours per day, seven (7) days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the vacation rental. The name and phone number of the contact person shall be registered with the sheriff department by the City of Marathon Code Compliance Department.

3. Each non-waterfront dwelling shall be a minimum of one thousand, eight hundred (1,800 ft^2) square feet. Direct waterfront, those with indirect waterfront access or condominium dwelling units are exempt from this minimum size requirement.

4. Each licensed dwelling shall not contain more than one (1) kitchen.

5. The owner or vacation rental manager shall maintain a tenant and vehicle registration which shall include the name and address of each unit's tenant(s), and the make, year and tag number of the tenant's(s') vehicle(s). This information shall be readily available upon request of any officer of the City responsible for the enforcement of this Ordinance.

6. The owner shall provide off-street parking on property owned or lawfully leased by the owner of the property or the occupants for all vehicles, water craft and trailers to be used by the tenants during any occupancy. The watercraft may be moored at either an existing on-site docking facility or stored on a trailer in an approved parking space. Vehicles, watercraft and trailers shall not be placed on the street, right of way or within the required setbacks. All permissible uses shall comply with the City of Marathon parking, driveway and loading standards.

7. The total length of docked vessels shall not exceed the width of the property at the waterline, without rafting of vessels nor create any hazard to navigation. No boat docked at a vacation rental property shall be chartered to a person other that registered guests of the vacation rental unit or used for live-aboards, sleeping or overnight accommodations. In addition, recreation vehicles shall not be used for sleeping or overnight accommodations at the vacation rental unit.

8. The occupancy of an individual dwelling shall conform to the occupancy limits of the Florida Fire Prevention Code and the Florida Building Code and total occupancy in all cases shall be subject to the following:

(a) The maximum occupancy load of any vacation rental unit shall not exceed two adults for each bedroom (children over 12 shall be considered adults for purposes of this section), plus two persons.

(b) If an owner or applicant can show a written lease or rental agreement where the owner is obligated to rent the property with more occupants or persons gathered than allowed in this subsection and can show sufficient proof that the lease or rental agreement was in existence at the time of ratification of this Ordinance, then this subsection shall be waived for the period of time the lease or rental agreement is in effect, but will not be waived for any period beyond (more than) twelve (12) months after ratification of this Ordinance.

9. There shall be a written lease between a vacation rental dwelling owner and the tenant and it shall contain the tenant's agreements to the following:

   (a) The regulations contained in this section; and

   (b) Acknowledging responsibility for all occupants during the rental term to comply with such restrictions as a condition of the agreement, signed by such tenant prior to occupancy.

   (c) Violations of the posted occupancy and use restrictions may result in immediate termination of the rental agreement, eviction from the vacation rental unit by the Owner or Property Manager and appropriate fines levied by the City.

10. Nothing in this section is intended to exclude the application of any other ordinance of the City of Marathon to the property or to the related parties.

11. There shall be no overnight leases or any conversion from providing vacation rentals to operating an inn or motel. All leases, rentals or uses by a tenant must be for a minimum of seven (7) continuous nights.

12. Vacation rental units must be registered, licensed and meet all applicable state requirements contained in F.S. Ch. 212 (Florida Tax & Revenue Act) , F.S. Ch. 509 (Public Lodging Establishments), Chapter 69A-43 F.A.C (Uniform Fire Safety Standards for Transient Public Lodging Establishments), and Chapter 69A-60 F.A.C (The Florida Fire Prevention Code) as may be amended.

13. The vacation rental unit must comply with all State of Florida Department of Health and FDEP standards for wastewater treatment and disposal.

14. Complaints to the vacation rental manager concerning violations by occupants of vacation rental units to this section shall be responded to within one (1) hour. The neighbor who made the complaint shall be contacted by telephone or in person and informed as to the results of the actions taken by the manager. A record shall be kept of the complaint and the manager's response for a period of at least three (3) months after the incident, which shall be available for inspection by the City of Marathon Code Compliance Department during business hours.

E. **Noise:** All residential vacation rentals shall comply with the noise standards established under Chapter______of the City of Marathon Code.

F. **Application:** An application for a license shall be filed upon forms provided by the Department and approved by the City prior to use of the property as a vacation rental.

G. **Fees**

1. An application for a vacation rental license shall be accompanied by an initial fee established by resolution of the Council; an annual renewal fee will be established by resolution of the Council. The license shall expire at midnight on November 30th of each year.

2. Upon change of ownership or change of material fact, a new application for vacation rental license shall be submitted, accompanied by a transfer fee to be established by resolution of the city council.

3. Those licenses not renewed when due and payable are delinquent and subject to a delinquency penalty of ten (10%) percent for the first month of delinquency, plus a five (5%) percent penalty for each subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed twenty-five (25%) percent of the license fee for the unit. During the period of delinquency, the vacation rental license is deemed inactive and no rental activity may occur. A vacation rental unit that does not have its license renewed within one (1) year of its term will be ineligible for renewal.

H. **Sign and Notification Requirements:** Each vacation rental shall have a clearly visible and legible notice posted within the unit on or adjacent to the front door, containing the following information:

1. The name of the managing agency, agent, vacation rental manager, local contact or owner of the unit, and a telephone number at which that party may be reached on a 24-hour basis;

2. The maximum number of occupants permitted to stay in the unit;

3. The maximum number of vehicles allowed to be parked on the property;

4. The number and location of on-site parking spaces and the parking rules prohibiting on-street parking.

5. The trash pick-up day and notification that trash and refuse shall not be left or stored on the exterior of the property except from 6:00 p.m. of the day prior to trash pick-up to 6:00 p.m. on the day designated for trash pick-up;

6. Notification that an occupant may be cited ,fined and/or immediately evicted by the Owner or Vacation Rental Manager, pursuant to State law, in addition to any other remedies available at law, for creating a disturbance or for violating other provisions of this ordinance; and

7. Notification that failure to conform to the parking and occupancy, requirements of the structure is a violation of this ordinance; and

8. The VR license.

I. **Transferability**

1. The vacation rental license may not be assigned or transferred, pledged, sold, or otherwise transferred by the license holder to any other person, business, or entity. The license belongs solely to the owner and shall remain in the owner's name until such time that the owner ceases to use the property for a short term rental purpose or sells the property.

2. If a new owner wishes to continue to use the property for vacation rental, application, accompanied by a license transfer fee as established by resolution of the city council, must be made to the City within thirty days of the transfer of the property and thirty days before the first vacation rental of the property.

3. Notwithstanding the foregoing, if an owner or applicant can show a written lease or rental agreement where the owner is obligated to rent the property, which has a valid vacation rental license, during the period of transfer and can show sufficient proof that the lease or rental agreement was in existence at the time of sale of the property, then this subsection shall be waived for the period of time the lease or rental agreement is in effect.

J. Violations and Penalty

1. It shall be a violation of these regulations to enter into a long-term lease with a mutual intent to subvert the regulatory goals of this section. It shall be a violation of these regulations to sublease or allow the subleasing of a dwelling for less than twenty-eight (28) days with intent to subvert the regulatory goals of this Ordinance. It shall also be a violation of these regulations for a property owner to lease space to "roommates" for a period of less than twenty-eight (28) days when not licensed as provided in this section. For the purposes of enforcement, a rebuttable presumption that "roommates" are involved shall exist if the persons use a common entrance to the dwelling.

2. It shall be unlawful for any person, owner, tenant, broker, real estate agent, other agent or other representative of the owner to hold out or advertise a residential dwelling for vacation rental if the property has not been issued a vacation rental license. It shall further be unlawful to hold out and/or advertise a residential dwelling for occupancy or uses not licensed by these regulations. Sufficient evidence to prove vacation rental uses of a dwelling unit shall include (i) registration or licensing for short-term rental or transient rental use by the state under F.S. Chs. 212 (Florida Tax and Revenue Act) and 509 (public lodging establishments), (ii) advertising or holding out a dwelling unit for vacation rental use, (iii) reservations, booking arrangements or more than one (1) signed lease, sublease, assignment, or any other occupancy or agreement for compensation, trade, or other legal consideration addressing or overlapping any period of twenty-eight (28) days or less, or (iv) the use of an agent or other third person to make reservations or booking arrangements.

3. Any violation of this subsection of the regulations by any person, owner, tenant, agent, broker real estate agent or other representative of an owner shall be punishable as a second degree misdemeanor and by a fine of up to $500.00 per day, per unit, per violation and/or a sentence of thirty (30) days in jail.

4. The code compliance department may also enforce the terms of this section by bringing a case before the Code Compliance Board pursuant to Section 6.3-14, or by citation under Section 6.3-11; F.S. § 162.21 (as may be amended), or 76-435, Laws of Florida (as may be amended).

5. Each day the violation continues or occurs shall constitute a separate offense. In addition to any other remedy available to the City, the City or any adversely effected party may enforce these regulations or the terms of this Ordinance in law or in equity. The City or any party adversely affected by any violation may seek injunctive relief from a court of competent jurisdiction to prevent a violation of this section.

K. **Revocation or Suspension of Vacation Rental License**

Violations are subdivided into minor and major depending on the surrounding facts or circumstances as follows:

1. *Minor Violation:* A violation that does not pose an imminent public health risk but does require correction, usually by the next inspection or by a compliance schedule. Minor violations are shown only as the total number found on that date, rather than being listed individually.

   Minor violations include:

   (a) Trash and debris, including the number of cans and maintenance of lids on cans.

   (b) Parking violations.

   (c) Failure to maintain complaint record.

2. *Major Violation:* A violation that is not a minor violation and includes:

   (a) Rental or advertisement for rent of an unlicensed unit.

   (b) Failing to respond to complaints within one hour.

   (c) Failing to rent unit for minimum of seven (7) days.

   (d) Failing to properly post regulations in the unit.

   (e) Failing to maintain copies of the rental agreement and tenant vehicle registration.

   (f) Exceeding the number of watercraft allowed at the unit.

   (g) Failing to heed a "No Trespassing" request. Exceeding the maximum occupancy load of the unit. Failure to meet the Florida Building Code and Fire Safety Code requirements.

   (h) Excessive noise, in violation of the requirements of the City Code.

   (i) Failing to comply with the wastewater requirements established by the Department of Health or the Department of Environmental Protection.

L. **Resultant Penalties**

1. ***Minor Violation:***

   (a) *First Violation:* Within any 12-month period shall be a warning Notice of Violation.

   (b) *Second Violation:* Within any 12-month period shall be subject to the schedule of minor violation fines as established by City Council. An accumulation of $1000.00 in fines during any 12-month period shall result in the revocation of the vacation rental license.

   (c) *Third or additional Violation:* Within any 12-month period shall be considered a major violation.

2. ***Major Violation:***

   (a) *First Violation:* Within any 12-month period shall be a warning Notice of Violation.

   (b) *Second Violation:* Within any 12-month period shall be a Notice of Violation and a fine of $250.00 per day per violation.

   (c) *Third Violation:* Within any 12-month period shall be a Notice of Violation, a fine of $250.00 per day per violation and the license shall be revoked. An owner may petition the City Council for reinstatement no sooner than 12 months after revocation.

M. **Appeal:** An appeal of such decisions of the Director may be made by petition to the City Council in accordance with Article 17, Chapter 102 "Appeals" of the LDRs.

N. **License and Fees Not Exclusive:** Licenses and fees required by this chapter shall be in addition to any license, permit or fee required under any other chapter of the LDRs. The issuance of any license pursuant to this chapter shall not relieve the owner of the obligation to comply with all other provisions of the LDRs pertaining to the use and occupancy of the vacation rental or the property on which it is located.

O. **Private Actions to Enforce**

1. Alleged violations of these regulations or the Code may be reported to the Code Compliance Department, the Monroe County Sheriff's Office, or other such provider of municipal law enforcement services, who shall issue an appropriate warning, notice of violation, citation, summons or notice to appear for a violation of these regulations in pursuant to the City's adopted Code Compliance procedures. Any person who reports an alleged violation of these regulations must identify the location of the violation, the property manager and owner, if known, the date and time of the incident, and the name and address and telephone number of the complainant.

2. Any person who has suffered, or alleges to have suffered, damage to person or property because of a violation of this chapter may bring an action for money damages and any other appropriate relief in a court of competent jurisdiction against the party alleged to have violated this chapter. The prevailing party in any such litigation shall be entitled to recover reasonable litigation costs, including attorney's fees in an amount deemed reasonable by the court.

3. Nothing herein shall be deemed or construed to create any right of action against the city or any of its officers, employees, or agents. The sole purpose and intent of this section is to create a right of action between private parties, entities and interests, which are or may be impacted or affected by various aspects of vacation rentals within the city.

P. **Transitional Provision:** Owners of vacation rental units with a City of Marathon vacation rental license issued prior to <*Insert effective date of Ordinance*> shall conform to this section within one (1) year of the effective date of this section; otherwise the use shall be discontinued.

Q. **Mandatory Evacuation:** All vacation rental units shall be evacuated as required upon the posting of a non-resident evacuation order issued by the City, County or State.

R. **Standards for Denial; Review and Appeal of Denial:** If the Director finds substantial and credible evidence that one or more of the criteria of the "General provisions" have not been met, then the Director shall deny the applicant a license. If the license is denied, the applicant may request a review and reinspection by the Director. If the review and reinspection is denied or if, after review and reinspection, there is no change in the denial of the license, the owner/applicant may appeal the decision by petition to the PC.

S. **Ordinance Evaluation:** This ordinance will be evaluated six (6) months after its adoption, or as soon as practicable thereafter to determine the need, if any, to limit the number of vacation rental licenses available in the City.

Vehicle/Vessel Repair Service

Vehicle and vessel repair service is permitted pursuant to Table 103.15.1, subject to the following standards:

A. **Permitted Activities:** Vehicle/Vessel repair includes tune ups, oil and fluid changes and similar maintenance work. Vehicle repair also includes the repair or replacement work on the following parts or systems: air conditioning, alternators, brakes, front end alignment, mufflers, radiators, starters, tire alignment and balancing, tire repair and replacement, and window and lock repair and replacement. Vehicle repair does not include steam cleaning engines, paint and body repair and frame repair.

B. **Bay Doors:** Bay doors shall be oriented to the side or rear of the building, whenever possible.

Vehicle and Vessels Sales

Vehicle and vessels sales are permitted pursuant to Table 103.15.1, subject to the following standards:

A. In the I-M and MU-M districts, this use shall be limited to the sales and service of vessels.

B. All uses combined shall not exceed the allowable lot coverage under the applicable zoning district.

Vendor Carts and Mobile Food Units

The following regulations are established for non-motorized vendor carts, which are small, light-weight, and often mounted on a single axle (two-wheeled) chassis and mobile food units, which are vehicle mounted and are self-propelled, and designed to be movable from place to place.

Vendor carts and mobile food units are permitted pursuant to Table 103.15.1 as of right on developed private property in all commercial and industrial districts with the written consent of the property owner, subject to the following requirements:

A. **Size:** No vendor cart shall exceed forty-eight (48") inches in width (excluding wheels or wheel wells), six (6') feet in length (excluding push handles or trailer tongue), and seven (7') feet in height. The Director is authorized to grant minor deviations from these size requirements if the deviation is consistent with overall intent of this section.

B. **Location:** Vendor carts and mobile food units shall be placed only on properties with a legally operating permanent retail business and shall comply with the following location criteria:

   1. The cart shall be located near the principal entrance of the building or business, and the cart or mobile food unit shall not be located within any required front or street side yard setback; and

   2. The cart or mobile food unit shall not block or displace any required parking for permanent on-site businesses; and

   3. The cart or mobile food unit shall not interfere with vehicular and pedestrian movement or visibility, block required sight distances, or damage landscaped areas.

C. **Storage:** The vendor shall remove the cart or mobile food unit from the site, or store the cart indoors and out of public view at the end of each business day.

D. **Trash Receptacles:** The vendor shall provide receptacles for litter associated with the sales activity. The vendor shall leave the site in a clean state at the end of each business day.

E. **Additional Permits:** The vendor shall obtain all necessary permits, licenses, and inspections prior to conducting any business as may be required by the City, County, or State pursuant to Chapter 5K-4.002, Florida Administrative Code (F.A.C.)

Veterinary Clinic or Hospital

A non-boarding veterinary clinic or hospital is permitted pursuant to Table 103.15.1., subject to the following standards.

A. **Soundproofing Required:** Any veterinary clinic or hospital with indoor boarding facilities shall be completely enclosed and designed to suppress noise. Noise from the boarded animals at the property line shall be subject to the noise regulations in Chapter __ of the City Code.

B. **Outdoor Areas:** Outdoor areas associated with a veterinary clinic or hospital is only permitted if the facility complies with the following:

1. The facility shall be set back a minimum of fifteen (15') feet from any residential zoning district; and

2. A solid masonry fence is installed, subject to the floodplain management standards of Article 12, Chapter 107, along the property line adjacent to the residential district.

Waterfront Walkways and Docks

It is the intent of the Council to protect and enhance the City's bodies of water so that the public may continue to enjoy the traditional recreational uses of those waters such as swimming, boating, and fishing. These uses may be allowed pursuant to Table 103.15.1, subject to the following conditions:

A. **Water Access Structures:** Water access structures such as walkways and observation platforms, not intended for use as a docking facility, are permitted as an accessory use as limited or conditional uses in all zoning districts, subject to the limitations of Article 4, Chapter 106 and the following standards. If the water access structure is part of a larger project required to undergo conditional use approval then the water access structure shall be included in the conditional use review.

1. Walkways and access ways landward of mean high water, located in habitat types other than those listed in subsection (2) below, and that serve nonresidential uses or residential uses of more than three (3) dwelling units shall be no greater than eight (8') feet in width, Such walkways that serve all other uses shall not exceed five (5') feet in width.

2. All structures extending over mangrove, wetlands, or submerged lands shall be pile supported and not exceed four (4') feet in width.

3. All structures shall be approximately perpendicular to the shoreline. Through the Special Approval process the City may permit a non-perpendicular walkway.

4. Such structures shall not be used for docking purposes and shall bear signage indicating "No Mooring of Motorized Vessels".

5. All structures shall be designed to terminate in water no deeper than six (6) inches at MLW or begin the terminal platform no further than ten (10') feet beyond the waterward extent of mangroves;

6. All structures shall be designed so that the top of the decking, including the terminal platform, must be elevated at least five (5') feet above MHW, except for a ladder or steps that may be added for swimming access only in the absence of seagrasses or hardbottom communities;

7. Where a terminal platform is proposed, such platform shall not exceed one hundred and sixty (160 ft^2) square feet, inclusive of any steps or ladder. The terminal platform may include a non-enclosed gazebo that does not exceed one hundred (100 ft^2) square feet in area and the highest portion of the roof shall be no more than twelve (12') feet above the decking or terminal platform level. The terminal platform shall be designed and built in such a manner as to deter or restrict the structure for boating use. Such requirements may include, but are not limited to, double railing, no lower landings, ladders, superelevated decks and signage, etc.

B. **Docking Facilities:** The intent of this section is to address the design and construction of docking facilities extending from land located at or landward of the mean low water (MLW) line. Docking facilities not meeting the definition of a marina are permitted as of right as an accessory use in all zoning districts. Docking facilities meeting the definition of a marina are may be allowed as specified in Table 103.14.1, subject to the following criteria:

1. **Generally**

(a) The City, based on the location of natural resources, encourages, and may require, the use of a single mooring facility at apartments, condominiums, zero lot line attached units, and cooperative apartments.

(b) Docking facilities are allowed in all zoning districts. Type of use (principal or accessory), approval process, use restrictions and other standards shall be consistent with the zoning and/or lawful existing use of the applicable adjacent upland riparian property that is the subject of the application for development approval.

(c) No more than one dock structure can be constructed per single family residential property under common ownership, provided it complies with the other sections of this article and the provisions of Laws of Fla. ch. 311.82(1955).

(d) Docks for the joint use of adjacent waterfront property owners may be centered on the extended common property line without being in variance to the setback requirements.

(e) Boat lifts shall not be permitted where the installation of such lifts can reasonably be expected to have an adverse impact on the natural resources in the immediate vicinity of the installation.

(f) No building shall be permitted to be constructed over any wetland or submerged waters. Covered boat lifts without side walls may be permitted.

(g) Multi-family and commercial docks abutting adjacent waterfront single family residential property must be set back a minimum of twenty (20') feet from the adjacent waterfront residential property line and riparian line. This requirement may be waived by the Director provided that signed statements of no objection from the affected property owners have been submitted.

(h) The permitted structure over water shall not substantially interfere with the riparian rights of other property owners nor substantially obstruct a navigable channel or the navigation rights of other property owners.

(i) Except as provided below, no building, equipment, facility or any other type of structure shall be erected, placed, located, or maintained on a dock that extends above the walking surface of the dock:

i. Pilings, subject to a maximum height limit of eight and one-half (8.5') feet above the highest walking surface of the dock when a piling is attached to a boat dock, in all other cases the maximum height limit for a piling shall be eleven and one-half (11.5') feet above the mean high water line.

ii. Benches, guard rails, fish cleaning tables, ladders and equipment lockers which do not exceed a height of four (4') feet above the walking surface of the dock upon which such structures are placed or erected.

iii. Boat lifts adjacent to a boat dock or seawall. No part of the boat lift structure, except boat guides, shall exceed a height of five (5') feet, measured from the highest walking surface of the dock or seawall cap.

iv. Pile-mounted davits which do not exceed a height of eight and one-half (8.5') feet, measured from the highest walking surface of the dock.

2. **Protect Living Marine Resources:** Docking facilities shall not terminate over submerged lands which are vegetated with sea grasses or hard bottom communities, except as may be permitted by the FDEP and ACOE.

3. **Minimum Water Depth:** Except as otherwise provided within this ordinance, the siting of docking facilities shall require minimum minus four (-4) feet mean low water (MLW) depth at the terminal end. Where adequate depth at the terminal end of the dock is not available, the dock may be lengthened only enough to allow the centerline of an average width vessel to lie in four feet of water at MLW, subject to the maximum length standards of this section.

4. **Access to Open Water:** The docking facility must have continuous access to open water at depths of minus four (-4) feet or greater over a channel width of twenty (20') feet, or access to open water via a marked, Federal and State approved navigation channel. For the purposes of this requirement, "open water" means the portion of the Straits of Florida, Florida Bay, the Gulf of Mexico or the Atlantic Ocean, which consists of an uninterrupted expanse of water deeper than four (4') feet at MLW and continuous access means a natural passage or an existing manmade channel no shallower than four (4') feet at MLW and no narrower than twenty (20') feet.

5. **Maximum Length and Maintenance of Navigational Access**

   (a) The permitted length of docks shall be commensurate with the shoreline width of the land parcel at which the dock is located subject to a maximum length of one hundred (100') feet waterward from the mean low water line.

   (b) The length of docks shall not exceed ten (10%) percent of the width of the water body as measured laterally across the water body from the mean low water line at the proposed dock location to the mean low water line on the opposite shoreline. Where the minimum water depth pursuant to subsections (3) and (4) of this section cannot be reached, the dock may be lengthened only enough to allow the centerline of the vessel to be located at the required water depth.

   (c) Notwithstanding any other part of this section, in no case shall a dock or mooring structure together with a moored vessel preempt more than twenty-five (25%) percent of the navigable portion of a water body thereby creating a significant navigational obstruction.

6. **Dock Orientation and Design**

(a) All docks shall be approximately perpendicular to the shoreline. Through the Special Approval process the City may permit a non-perpendicular walkway where perpendicular designs are not feasible. Any existing bulkhead or bulkhead approved pursuant to Section 106.36 of Chapter 106 may be improved as a parallel dock by attaching a cantilever or pile-supported extension as needed to reach required water depths and comply with all other standards of this article. Any parallel structure shall not exceed eight (8') feet in width.

(b) Where a continuous mangrove fringe exists along the shoreline, a dock with a walkway perpendicular to the shoreline such as "T" or "L" dock may be permitted. Such structures shall be located to provide access through an existing break or existing trimmed area in the mangrove fringe or native shoreline vegetation; however, if no such break exists, a walkway, no more than four (4') feet in width, may be cut through the mangrove fringe or native shoreline vegetation. The terminal platform or shore-parallel end of such a "T" or "L" dock must be located entirely outside the mangrove fringe if navigational standards can be met. If they cannot be met, the terminal platform is restricted to 160 square feet in size and no wider than eight (8') feet and the design shall minimize mangrove trimming or removal.

(c) Pier type docks may be permitted provided that:

i. Such structures are oriented approximately perpendicular to the shoreline;

ii. Such structures are located in an existing break in the mangroves or shoreline vegetation; however, if no such break exists, a walkway, no more than four (4') feet in width, may be cut through the mangroves or shoreline vegetation;

iii. If proposed, the terminal platform is no wider than eight (8') feet in dimension and does not exceed a total of one hundred and sixty (160 ft^2) square feet in area. The terminal platform may include stairways for swimming access provided that all stairways are contained within the square footage allowed for the terminal platform.

iv. Any docking portions extending over water no shallower than four (4') feet at MLW may be supported by floats.

7. **Lighting**

   (a) No dusk to dawn lights are allowed. All dock facility lighting must be able to switch off or on by motion detector, or be activated by a 3-way switch.

   (b) Lights limited to one on the terminal platform and one on the landward end of the dock or pier, and one every one hundred (100') feet between the terminal platform and the landward end of the dock, except where a hardship exists.

   (c) All lights must be downward directed and have adequate shielding to prevent light trespass and minimize light pollution from light scatter.

   (d) The type and location of lighting fixtures must be included on the diagram of the dock or pier and submitted with permit application.

   (e) All docks shall have amber colored night time reflectors set at a minimum of one at each side in the middle and one at each side of the terminal end.

   (f) Lighting shall not exceed a height of six (6') feet, measured from the highest walking surface of the dock subject to Section 13-63 and 13-64 of Article IV of the City Code, Protection of Sea Turtles.

8. **Navigation Hazard Reductions:** All docks with boat lifts, davits or similar lifting mechanisms shall provide cleats, rings, or similar features that can be used to tie down the vessel when it is out of the water in order to stabilize the vessel during high wind.

   (a) *Other Agency Permits Required*: All applicable federal, state and water management district permits are received before the issuance of a building permit.

   (b) *Impact on Natural Systems*: A dock shall not be detrimental to the continued functioning of natural systems, including aquatic vegetation.

   (c) *Removal of Regulated Trees*: Removal of regulated trees, shall comply with Article 2, Trees and Native Vegetation, of Chapter 106, and shall be the minimum necessary to facilitate construction of a dock.

(d) *Marine Turtle Nesting Area Special Requirements*: No development other than pile supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within fifty (50') feet of any portion of any beach berm complex which is known to be or is potential nesting area for marine turtles.

i. The fifty (50') foot setback shall be measured from either the landward toe of the most landward beach berm or from fifty (50') feet landward of MHW, whichever results in the greater setback distance, but the maximum total setback shall be one hundred (100') feet from MHW.

ii. Within known or potential nesting areas for marine turtles, as determined by the City Biologist, the U.S. Fish and Wildlife Service, and/or other appropriate agencies, the City Biologist may, in cooperation with other appropriate agencies, determine that specific segments of shorelines have been previously, lawfully altered to such a degree that suitable nesting habitat for marine turtles is not longer present. In such case, the City Biologist in cooperation with the FDEP may recommend reasonable measures to restore the nesting habitat. If such measure is not feasible, the specific requirements of this subsection do not apply. Restoration of suitable nesting habitat shall be required for unlawfully altered beaches.

iii. Any such dock or walkway shall be designed to the following criteria to minimize adverse impacts on marine turtles.

(1) The structure shall have a minimum horizontal distance of four (4') feet between pilings or other upright members.

(2) The structure shall have a minimum clearance of two (2') feet above grade.

(3) If stairs or a ramp with less than the minimum two (2') feet clearance above grade is required, such stairs or ramp shall be enclosed with vertical barriers no more than two (2) inches apart.

(4) All outdoor and indoor artificial lighting complies with __________ of the City Code, Protection of Sea Turtles.

9. **Special Exceptions and Approvals:** A special approval may be granted for variances to the standards in subsections (5) and (6) only of this Section subject to the following guidelines and procedures.

   (a) The City Manager or his designee may approve exceptions to the standards in item (e) "Maximum Length and Maintenance of Navigational Access" subject to the following limitations and required findings:

      i. A dock length exceeding the standards in Item (e) of this Section may only be approved for the purpose of complying with minimum water depth requirements of Item (c) of this Section;

      ii. In no case shall any dock be approved that violates Item (e)3 of this Section that prohibits significant obstruction of navigational access;

      iii. Exceptions shall not be available for properties on beaches that serve as potential or known marine turtle nesting habitat, including but not limited to the oceanfront shoreline of Grassy Key,

      iv. Such special exceptions shall only be granted based on a written determination that, among other criteria, the proposed dock will not be inconsistent with community character, will not interfere with public recreational uses in or on adjacent waters, and will pose no navigational or safety hazard.

      v. At least thirty (30) calendar days prior to the issuance of a city permit under such a special exception, the City Manager shall ensure that shoreline property owners within three hundred (300') feet of the subject parcel are notified by regular mail of the proposed special exception in order to allow an opportunity for appeal.

10. **After-the-Fact Dock Permits:** Any person who undertakes to construct a dock without obtaining the required permit from the City shall have ten days from the date of written notice from the City to file an application for an after-the-fact permit, or to remove the unpermitted structure. Such after-the-fact application must comply with all the terms and conditions of this article.

11. **Disrepaired or Dilapidated Docks:** If any dock constructed under this article or continued in existence under this article falls into disrepair so as to become a dangerous structure involving risks to the safety and well-being of the community or individual members thereof, such structure must either be removed or repaired so as to conform with the requirements of this article. Upon determination by the City or its designated representative that any dock has become a dangerous structure, written notice thereof shall be given by registered/certified mail or personal service to the owner of record of the riparian upland property. Such party so informed shall have three days from the date of the notice within which to secure the area and respond to the City indicating the intent regarding the dilapidated structure. Such party shall have an additional sixty (60) days to remove the structure or apply for a permit to repair such structure to conform to the requirements of this article. The entire structure must be brought into conformance with the requirements of this article.

12. **Application Information**

    (a) All applications under this article are to be filed in accordance with Article 2, Chapter 102, "Common Development Application Elements". Processing fees shall be paid at the time of application.

    (b) Prior to the issuance of a permit under this article, the applicant must show that the proposed activity is consistent with the City Comprehensive Plan.

    (c) Prior to a final determination on an application under this article, the applicant may be requested to supply any other information necessary to promote a thorough review of a permit application.

    (d) All applications under this article must include a statement outlining the intended use of the project facility.

13. **Single Family Dock Application Information**

    (a) Adequate water depth at the slip and to navigable waters must be evidenced on applications for the expansion of existing dock facilities or the creation of new dock facilities.

    (b) In addition to the requirements of Article 2, Chapter 102, "Common Development Application Elements", the following information is required for applications for single family dock permits:

        i. The application form adopted by the City, properly filled out and signed.

        ii. A detailed statement describing the upland land use and activities.

iii. Satisfactory evidence of title or extent of interest of the applicant to the riparian upland ownership or submerged ownership with a copy of the trustee's deed in chain of title.

iv. A copy of the State Department of Environmental Protection permit or South Florida Water Management District permit, where applicable.

v. A copy of the U.S. Army Corps of Engineers permit, where applicable.

vi. An affidavit attesting to the dates any existing structures were built, and a copy of any prior authorization or permit for the structures, where applicable.

vii. Permit sketches clearly depicting the proposed project. The sketches and application package must include the following:

(1) Three copies of black and white drawings of the proposed project drawn to an appropriate scale showing plan view and representative cross section view(s).

(2) The drawings must clearly show the following:

a. Name of waterway.

b. North arrow and graphic scale.

c. Existing shoreline, and the apparent mean high water line.

d. Sufficient water depths in the affected areas.

e. Locations of existing structures.

f. Linear footage of riparian shoreline.

g. All drawings and legal descriptions pertaining to proof of ownership submitted as part of an application for a permit from the City must contain the required signature and seal of a registered professional land surveyor in accordance with F.S. 472.031(1).

h. Location of the proposed activity, including half section, township, range, affected water body, vicinity map, and legal description (lot, block and subchapter or parcel real estate number.

13. **Multi-Family Dock Application Information:** The following information is required for applications for multi-family docks:

    (a) All information required for single-family docks.

    (b) Except for applications for tie piling and previously approved lifts, all applications for multi-family docks shall have the signature and seal of a state registered professional engineer affixed to the plans submitted for approval.

    (c) Information shall be submitted, prepared by a state registered civil engineer, attesting to the fact that adequate flushing exists and that the project will not cause stagnation or water quality degradation.

    (d) The following additional information is required:

        i. A detailed statement describing the proposed activity and how it affects the Waters of the City.

        ii. A completed copy of the disclosure form provided by the City.

14. **Commercial Dock Application Information:** The following information is required for applications for commercial docks. If the commercial dock meets the definition of a marina, standards for marinas shall apply:

    (a) All information required for single-family docks and multi-family docks.

    (b) An approved hurricane preparedness plan.

    (c) Any other information deemed necessary by the Director to meet the criteria of this article.

15. **Minimum Construction Specifications:** All waterfront construction such as docks, piers, seawalls, or revetments shall be planned and designed by a professional engineer in accordance with the LDRs and the applicable standards of the City.

Submerged Mooring Facilities

The intent of this section is to address the design and construction of single-family mooring facilities that are designed to secure a vessel via a device attached to submerged lands at or waterward of the mean low water (MLW) line with no device or structural access extending to or from land above the MLW line.

A. One mooring facility per single family residence is allowed only for the purpose of storing a recreational vessel, or a commercial vessel where permitted by the zoning district. In no case shall a live-aboard vessel be moored at a single-family or other residential mooring site.

B. The mooring facility must be an accessory use associated with an upland property with an existing legal single family development and must be located within the riparian shoreline boundaries of the corresponding upland property boundaries. Any proposal for two or more mooring facilities will be reviewed as a mooring field under the marina siting criteria and applicable standards of this code.

C. Only seaworthy vessels may be moored at a single-family mooring site. Derelict vessels, floating docks, floating platforms and other such structures are prohibited.

D. The minimum water depth at a mooring site shall be minus four (-4) feet MLW.

E. Access to Open Water: The mooring site must have continuous access to open water at depths of minus four (-4) feet or greater over a channel width of twenty (20) feet, or access to open water via a marked, Federal and State approved navigation channel. For the purposes of this requirement, "open water" means the portion of the Straits of Florida, Florida Bay, the Gulf of Mexico or the Atlantic Ocean, which consists of an uninterrupted expanse of water deeper than four (4') feet at MLW and continuous access means a natural passage or an existing manmade channel no shallower than four (4') feet at MLW and no narrower than twenty (20') feet.

F. Mooring sites shall not block or hinder navigation through canals or channels or other routes of traditional or regular navigational access.

G. Mooring devices shall be installed using low-impact techniques which minimize alteration of bottom topography and sediments.

H. State and federal permits, including any required bay bottom lease approvals are required for construction of mooring sites prior to issuance of a City permit.

Wireless Services Facilities ("WSFs")

Wireless Services facilities may be allowed pursuant to Table 103.15, subject to the following conditions:

A. **Purpose and Intent:** The purpose and intent of this section is to:

1. Regulate the placement, construction and modification of new Wireless Communications Towers and Facilities without unreasonably discriminating among providers of functionally equivalent personal wireless services or prohibiting personal wireless services in the City;

2. Encourage the Collocation of Antennas, Ancillary Structures and associated Equipment Enclosures on existing Wireless Communications Towers in order to minimize the visual, aesthetic, public safety, natural environment and wildlife impacts of new Towers, and to reduce the need for additional Towers within the City;

3. Encourage the placement of Antennas, Ancillary Structures and Equipment Enclosures on existing buildings in order to minimize the visual, aesthetic, public safety, natural environment and wildlife impacts of new Towers, and to reduce the need for additional Towers within the City;

4. Encourage the Replacement of existing Wireless Communications Facilities through the use of Collocation; and

5. Minimize the visual, environmental and safety impacts of new Wireless Communications Facilities to the City by establishing standards for their location and structural integrity, in light of the location of the City within a high velocity hurricane zone to ensure compatibility with surrounding land uses and preservation of the City's community character.

B. **Applicability:** This chapter shall apply to the installation, construction, or modification of the following Wireless Communications Facilities:

1. Existing Towers;
2. Proposed Towers;
3. Replacement of Existing Towers;
4. Collocation;
5. Attached Wireless Communications facilities;
6. Stealth Wireless Communications facilities; and
7. Satellite Earth Stations;

C. **Exemptions:** The following items are exempt from the provisions of this section

1. Amateur radio Antennas as provided by federal law; and

2. The installation of satellite television or microwave receiving Antennas that do not exceed forty (40) inches in diameter provided that the Antenna is attached to a building used for a residential or commercial use or placed no more than twenty-four (24) inches above finished grade; and

3. Routine maintenance for any existing Wireless Communications facility; and

4. The substitution or change of existing Antennas or other equipment on an Existing Tower provided the substituted Antennas or equipment does not diminish the structural capacity of the Tower, and provided such change does not increase the overall height of the structure; and

5. City-owned towers.

D. **Specification of Land Use Classifications:** The placement of Wireless Communications Facilities shall be in accordance with Table 103.15.1 of the LDRs.

E. **Concept Meeting**

1. A concept meeting is required for any proposed Tower, Replacement Tower, Stealth Wireless Communications Facility, or Satellite Earth Station.

2. At the time a concept meeting is held, the applicant shall demonstrate that the following notice was mailed (via certified mail) to all interested parties, including other Wireless Communications Service Providers licensed to provide service within Monroe County as indicated on the list of wireless service providers and interested parties provided by the City of Marathon Planning Department (the "Planning Department"):

"Pursuant to the requirements of the City of Marathon Land Development Regulations, (name of provider) is hereby providing you with notice of our intent to meet with the Planning Department in a concept meeting to discuss the location of a Wireless Communications Facility that would be located at ________(location)________. In general, we plan to construct a support structure of ________ feet in height for the purpose of providing ________ (type of wireless service) ________. Please inform us and the Planning Department if you have any desire for placing additional wireless facilities or equipment within __________ miles of our proposed facility. Please provide us with this information within ten (10) business days after the date of this letter. Your cooperation is sincerely appreciated.

Sincerely, (pre-application applicant, wireless provider)"; and

3. Pursuant to all items agreed upon during the Concept Meeting, including but not limited to, the exact amount of additional providers to be accommodated on the proposed Wireless Communications Facility, shall be recorded in the letter of understanding resulting from the conference.

4. The City Manager or designee shall determine during the concept meeting the specific location(s) from which photo-simulated post construction renderings of the proposed Wireless Communications Facility shall be submitted with the application for a development permit from the City.

F. **Development Standards:** The following minimum standards shall apply to Wireless Communications facilities:

1. Basic submittal requirements for all Wireless Communication Facilities:

(a) A completed application form and any appropriate application fees.

(b) Three (3) sets of signed and sealed site plans indicating all new proposed structures.

(c) A property card for the subject property from the Monroe County Property Appraiser's Office or a Recorded Warranty Deed showing the ownership of the subject parcel.

(d) A signed lease agreement between the property owner and the owner of the Wireless Communication Facility if different than the property owner, and when applicable, a copy of the lease or sublease between the owner of a Wireless Communications Facility and an applicant seeking to collocate additional wireless equipment on the structure. Clauses related to lease term or rent may be deleted or censored.

(e) A stamped or sealed structural analysis of the proposed Wireless Communications Facility prepared by an engineer licensed by the State of Florida indicating the proposed and future loading capacity of the facility including a statement by said engineer that the facility is structurally sound and conforms to the applicable codes, including the standards set forth in this Chapter.

(f) An affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer stating:

i. That the radio frequency emissions comply with FCC standards for such emissions.

ii. That the construction and placement of the Wireless Communications Facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications service enjoyed by adjacent residential and non-residential properties.

iii. The technical need for the proposed Facility.

iv. Proof of an FCC license to transmit and receive radio signals in Monroe County.

(g) The following are additional submittal requirements for all New, Replacement or Stealth Towers and Satellite Earth Station facilities:

i. One (1) original and two (2) copies of a sealed land survey of the parent parcel(s) showing all existing uses, structures, and improvements.

ii. The required affidavit and supporting technical documentary evidence from a qualified Radio Frequency Engineer must additionally include:

(1) That the height of the proposed Wireless Communications Facility is the minimum necessary.

(2) Why an alternate Wireless Communications Facility such as Stealth or Attached, in accordance with the hierarchy established within this section of the LDRs could not be used.

(3) The Geographic Search Area of the proposed Facilities.

(4) A technical analysis demonstrating why none of the existing Wireless Communications Facilities located within the applicant's Geographic Search Area can accommodate the applicant's proposed Wireless Communications Facility. The analysis shall be based upon the applicant's radio frequency engineering requirements; antenna height requirements, structural support requirements, ground space requirements for associated Ancillary Structures and Equipment Enclosures and capacity for Collocation on the existing Facilities and available technology.

(5) A description of the technological design plan proposed by the applicant demonstrating why design alternatives to the proposed Wireless Communications Facility, such as microcell design, cannot be utilized to accomplish the provision of the applicant's proposed telecommunications services.

(6) Documentation of the efforts made by the applicant to install or to collocate the applicant's proposed Wireless Communications Facility on an Existing Tower.

iii. The required three (3) sets of signed and sealed site plans must additionally indicate the:

(1) Development Area;

(2) Fall Zone;

(3) All proposed new development including fencing;

(4) Stormwater Management Calculations for all new impervious surfaces, including the dimensions and locations of swales or berms;

(5) Landscaping bufferyards and planting lists;

(6) Open Space calculations

iv. Photographs of the proposed development site and if applicable, three (3) copies of a vegetation survey or Habitat Evaluation Index (HEI) and Transplantation Plan.

v. Photo-simulated post construction renderings of the proposed development as determined during the pre-application conference.

vi. A signed statement from the Tower owner, and the property owner if different from the Tower owner, agreeing to allow the Collocation of other wireless equipment on the proposed Tower.

vii. A coordination letter from the United States Fish and Wildlife Service (USFWS) indicating that the proposed Tower and Ancillary Structures will have no significant adverse impact upon wildlife including, but not limited to, migratory birds. Should the USFWS require mitigation, the mitigation strategy agreed upon by the applicant and the USFWS must be submitted to the City prior to issuance of the development permit from the City.

viii. An inventory and map indicating all existing structures within the Geographic Search Area, which can accommodate collocation of the proposed structures or equipment.

Formatted: Indent: Left: 90 pt, Hanging: 24 pt, Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 8 + Alignment: Left + Aligned at: 90 pt + Tab after: 108 pt + Indent at: 108 pt, Tabs: Not at 108 pt

ix. Proof of FAA compliance with Subpart C of the Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace, must be submitted for all New, Replacement or Stealth Tower facilities.

G. **Approval Criteria:** The following approval criteria apply to all Wireless Communications Facilities:

1. *Radio Frequency Emissions*: The Radio Frequency Emissions shall comply with FCC standards for such emissions.

2. *Open Space:* Pursuant to City LDRs, the development proposal shall be required to meet the open space ratio required for the land use district or the habitat where they are located. For the purposes of this Chapter the following shall be used to calculate open space.

   (a) The area beneath all Equipment Enclosures; plus

   (b) The area of the Wireless Communications Facility foundation at or above grade; plus

(c) The area beneath Ancillary Structures excluding that area which is beneath guy wires (if applicable); plus

(d) The area inside a lattice type structure framework.

3. *Security:* Fencing, in accordance with Chapter 107, Article 10 of the LDRs, and Anti-climbing Devices shall be required to preserve security on Wireless Communications Facilities.

4. *Signage*: The only signage that is permitted upon a Tower, Equipment Enclosures, or fence shall be for security or safety, such as a property management sign which may include the address and telephone numbers; or shall be informational for the purpose of identifying the Tower as well as the party responsible for the operation and maintenance of the facility. Any such sign must comply with the size limitations established in City LDRs.

5. *Structural Integrity*: The entire Wireless Communications Facility and all appurtenances shall be designed pursuant to the most current wind speed design requirements as set forth in the applicable building code. Any Collocation of an antenna on an existing tower shall not impair the tower's ability to maintain the most current wind speed design requirements as set forth in the applicable building code.

6. *Landscaping*: Landscaping and or screening in the form of at least a medium bufferyard pursuant to Chapter 107, Article 8 of the City LDRs shall be required around the Development Area for all new towers and Earth Satellite Stations. Landscaping and or screening in the form of at least medium bufferyard pursuant to the City LDRs shall be installed around the development area to the maximum extent practicable for any Replacement Tower. Landscaping or screening requirements for a Stealth Tower shall be at the discretion of the City Manager or for a Stealth Tower.

H. **Additional Criteria:** In addition to the provisions above, for all New, Replacement or Stealth Towers and Satellite Earth Stations the following conditions apply:

1. *Structural Integrity:* The new tower shall be designed to ensure that in the event of a structural failure or natural disaster, the tower shall collapse in a limited, defined fall zone.

2. *Structural Capacity:* The new tower shall be designed to accommodate the maximum number of providers whose antenna(e) can be collocated on the Tower and whose equipment enclosures can be accommodated in the subject parcel.

3. *Lighting:* Except at the discretion of the City Manager or designee, any new Tower shall not have lighting higher than twenty (20') feet above the ground unless required by the FAA or the FCC. Communication towers shall not be artificially lighted unless required by the FAA or any other authority with jurisdiction. If lighting is required, strobe lighting shall be utilized during daylight hours only and red lighting shall be utilized at night unless another form of lighting is required by the FAA or any other authority with jurisdiction.

4. *Aesthetics*: A new or replacement tower that is not regulated in appearance by the FAA shall maintain a galvanized gray finish or other accepted contextual or compatible color approved by the City Manager. No stealth facility, whether fully enclosed within a building or otherwise, shall have Antennas, Antenna Arrays, transmission lines, Equipment Enclosures or other ancillary equipment which is readily identifiable from the public right of way as wireless communications equipment. Satellite Earth Stations shall maintain contextual or compatible color(s) as determined by the City Manager or designee so as to maintain compatibility with surrounding land uses.

5. *Compatibility with Community Character:* The Communications Facility shall be compatible consistent with the community character of the immediate vicinity, and shall minimize adverse effects including visual impacts on adjacent properties. Where a Wireless Communications Facility is allowed as of right, compatibility shall be presumed unless the City can demonstrate otherwise. The following attributes shall be considered from vantage points within one (1) mile of the base of the proposed of Tower and from three hundred (300) feet from the base of a Satellite Earth Station:

   (a) Height;

   (b) Mass and scale;

   (c) Materials and color; and

   (d) Illumination.

6. An attached Wireless Communications Facility shall only be attached to a commercial retail or office, industrial, hotel, multifamily, institutional, or public building of at least thirty-five (35) feet in height.

7. The following height criteria applies to Wireless Communications Facilities:

   (a) A New, Replacement or Stealth Tower shall not exceed two hundred fifty (250') feet in height. In addition to the height limitations included in use regulations governing "Airports" within this chapter, the overall height of a tower located in the vicinity of a public or private airport shall be limited by the following:

      i. A 35:1 Glide Path ratio in the Horizontal Zone limiting the height of a Tower to one hundred fifty (150') feet within one (1) statutory mile (5,280 feet) from the edge of the private airport Primary Surface.

      ii. A 12:1 Glide Path ratio in the Conical Zone limiting the height of a Tower to six hundred (600') feet within one (1) statutory mile (5,280 feet) from the edge of the Horizontal Zone.

      iii. Any Collocation of an antenna on an Existing Tower shall not increase the overall height of the Tower.

      iv. For Attached Facilities, any Antenna, Antenna Array, attachment device, Ancillary Structure equipment or Equipment Enclosure shall not exceed the highest point of the building by more than twenty (20') feet.

      v. The maximum height for any portion of a Satellite Earth Station is thirty-five (35') feet. If any portion projects over thirty-five (35') feet as measured from the existing grade, the Wireless Communications Facility shall be reviewed under all provisions of the Code applicable to a New Tower Facility.

8. The following setback criteria apply to Wireless Communications Facilities:

   (a) All new Towers, Stealth Towers and Satellite Earth Stations and their Equipment Enclosures and associated Ancillary Structures shall meet the minimum setback requirements for the land use district where they are located pursuant to Table 103.15.2 of the City LDRs or meet the environment setback criteria established for shorelines, wetlands or Marine Turtle nesting habitat where applicable. Notwithstanding these setback requirements, the Tower or Dish Satellite Earth Station structure shall be located so that the Fall Zone is located entirely within the boundaries of the subject parcel.

(b) All Replacement Towers and their Equipment Enclosures and associated Ancillary Structures and those for Collocation antennas shall meet the minimum setback requirements listed above to the maximum extent practicable. Replacement Tower foundations shall not be any closer to the property lines than the foundation of the original Tower being replaced.

(c) All Attached Antenna or Antenna Arrays, Equipment Enclosures and ancillary equipment placed on the roof of a building shall be as close to the center of the roof as is feasible in light of any engineering limitations of the building, unless the Attached Wireless Communications Facility is camouflaged, screened, or painted so as to blend in with the building where it is located.

I. **Liability Insurance:** A holder of a permit for Wireless Communications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the permit in amounts as set forth below:

1. Commercial General Liability covering personal injuries, death and property damage: $1,000,000 per occurrence/$2,000,000 aggregate;

2. Automobile Coverage: $1,000,000 per occurrence/$2,000,000 aggregate;

3. Workers Compensation and Disability: Statutory amounts.

4. The Commercial General liability insurance policy shall specifically include the City and its officers, employees, committee members, attorneys, agents and consultants as additional named insured.

5. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

6. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

7. Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

8. Before construction of a permitted Wireless Communications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the permit, the holder of the permit shall deliver to the City a copy of the each of the policies or certificates representing the insurance in the required amounts.

J. **Hierarchy:** In addition to all other development requirements, a hierarchy shall be utilized to determine the approval or denial of an application for a particular development permit under this Chapter. Any application under this Chapter may be denied if a feasible alternative that is higher on the hierarchy is available. The hierarchy shall be in descending order as follows:

1. Collocation;

2. Attached Wireless Communications Facility;

3. Replacement Tower;

4. Stealth Wireless Communications Facility; and

5. New Tower or Satellite Earth Station.

K. **Abandoned Wireless Communications Facilities**

1. If the use of a Wireless Communications Facility is discontinued, the property owner or Provider shall provide written notice to the City of its intent to discontinue the use and the effective date of such discontinuance.

2. In the event the use of a Wireless Communications Facility has been discontinued for a period of one hundred eighty (180) days whether voluntarily, involuntarily, or upon revocation of the development permit or the biennial report required within this Section of the Code if not filed, the Facility shall be deemed to be abandoned. Upon receipt of a notice of discontinuation specified in Subsection (a) or upon abandonment under Subsection (b), the City Manager or designee shall provide the property owner with written notice of an abandonment determination by certified mail.

3. The property owner shall have 120 days from receipt of the notice to: (i) reactivate the use of the Wireless Communications Facility, (ii) transfer the Wireless Communications Facility to another owner who makes actual use of the facility within the 120 day period, or (iii) dismantle and remove the Wireless Communications Facility.

L. **Inspections**

1. The City Manager or designee shall require annual inspections of Wireless Communications Facilities every two years to ensure structural and electrical integrity and compliance with the applicable City Codes. Based upon the results of the inspection, the City may make impose additional requirements such as, but not limited to, additional landscaping, storm water retention, repair or removal of structures or the Wireless Communications Facility.

2. The owner(s) of Wireless Communications Facilities shall submit a report to the City performed by an engineer licensed by the State of Florida certifying structural and electrical integrity every two (2) years. The report shall be accompanied by a non-refundable fee of two hundred dollars ($200.00) to reimburse the City for the cost of review.

M. **Temporary Towers**

1. The City Manager may authorize the issuance of a permit for a temporary Wireless Communications Facility in order for a Provider to provide services when an existing Facility has been damaged in a declared emergency or when a development permit has been issued under this Chapter during the construction of the Facility.

2. The location of the temporary Wireless Communications Facility and the duration of the permit shall be determined by the City Manager; however, no permit shall extend beyond ninety (90) days.

3. The City Manager shall determine minimum insurance and bonding requirements for temporary facilities as a condition of issuance of the permit.

4. Temporary Facilities may be permitted at the discretion of the City Manager for a public assembly as part of a Public Assembly permit issued under the Code. A permit issued under this Subsection shall not exceed the duration of the public assembly permits.

N. **Expert Review**

1. The City Manager or designee may require a technical review of the application by applicable independent experts, which may include an engineer, a Radio Frequency Engineer, and a planner. The technical review shall address the following:

(a) The accuracy and completeness of the required submissions;

(b) The applicability of analysis, techniques and methodologies;

(c) The validity of the analysis submitted by the Applicant's Radio Frequency Engineer as to the technical needs of the Provider to locate the Facilities in the particular Geographic Search Area and the inability to locate on existing Facilities;

(d) Whether the proposed Wireless Communications Facility complies with the applicable approval criteria set forth in this Chapter; and

(e) Other matters deemed by the City Manager or designee to be relevant to determining whether a proposed Wireless Communications Facility complies with the provisions of this Chapter.

2. Based on the results of the technical review, the City Manager or designee may require changes to the applicant's application or additional submittals.

3. The cost to the City for the expert's technical review shall be paid by the applicant. At the applicant's option, the applicant may request an expedited review. Any additional costs associated with the expedited review shall also be paid by the applicant. The applicant shall reimburse the City within five (5) working days of the date of receipt of an invoice for expenses associated with the expert's review of the application. Failure by the applicant to make reimbursement pursuant to this Section shall abate further review of the application until the reimbursement is paid in full to the City.

O. **Equipment Enclosures:** Equipment Enclosures shall comply with the minimum bulk and height requirements of the applicable zoning district where such buildings are situated.

1. An Equipment Enclosure shall be considered a permanent structure, shall be unmanned, and shall not exceed 500 square feet in size. Multiple Equipment Enclosures may be permitted on a Development Area; provided, however, that the total aggregate square footage of such Equipment Enclosures shall not exceed one thousand (1,000 ft^2) square feet unless a Radio Frequency Engineer determines by technical review of the Code that additional square footage is required.

2. Mobile or immobile equipment, construction materials or vehicles not used in direct support of a Wireless Communications Facility shall not be stored or parked on the site, unless repairs to the Wireless Communications Facility are being made.

P. **Variances for Wireless Communications Facilities**

1. A variance to this Chapter shall be submitted to the City in accordance with the submittal requirements and review process set forth in Chapter 102, Article 20 of the LDRs.

2. When considering an application for a variance from the standards of this chapter, the following shall be the exclusive factors considered:

   (a) Whether failure to grant the variance would prohibit or have the effect of prohibiting the provision of personal Wireless Communications Services by the applicant;

   (b) Whether failure to grant the variance would unreasonably discriminate among providers of functionally equivalent personal Wireless Communications Services;

   (c) Physical characteristics of the proposed Wireless Communications Facility for which the variance is requested;

   (d) The importance to the community of the Wireless Communications Services to be provided if the proposed variance is granted;

   (e) The compatibility of the proposed variance with adjacent land uses, the visual impact of the scale of the Facilities on adjacent properties, and the availability of alternative sites and technologies in light of existing permitted development in the area;

   (f) Whether granting of the proposed variance will obviate the need for additional new Wireless Communications Facilities due to increased Collocation opportunities that would not be possible if the variance were not granted; and

   (g) Whether granting of the proposed variance is necessary to ensure adequate public safety and emergency management communications. A variance may be granted under this Section exclusively for the following approval criteria set forth in this Chapter:

i. Setbacks;

ii. Landscaping; and

iii. Height; and

iv. Environmental Design Criteria.

Q. **Administrative Deviations**

1. Notwithstanding the provisions of Article 20 "Variance", Chapter 102 of the LDRs, the City Manager or designee may approve a minor deviation from any development approval granted pursuant to this chapter, provided the deviation does not affect the safety of the Wireless Communications Facility.

2. A minor deviation shall not exceed ten (10%) percent of the applicable requirement, and may be granted exclusively for the following development criteria of this Chapter:

   (a) Location: A minor deviation allowing the relocation of the Antennae and its supporting structure, including a Tower, Equipment Enclosure, and Ancillary Structures up to ten (10%) percent of the distance shown on the approved site plan, or twenty-five feet, whichever is less. In no event, shall the relocation of the Antennae and its supporting structure, including a Tower, Equipment Enclosure, and Ancillary Structures result in an encroachment into the setbacks established in this Chapter;

   (b) Development Area;

   (c) Landscaping; and

   (d) Height: A minor deviation for height of up to ten (10%) percent of the approved plan, not to exceed an overall height of two hundred fifty (250') feet, may be approved if technical evidence is submitted justifying to request.

3. Any deviation in excess of that authorized by this chapter shall be subject to the requirements of Article 20 "Variance", Chapter 102, of the LDRs.

R. **Nonconforming Wireless Communications Facilities**

1. All Wireless Communications Facilities which do not meet the requirements of this Chapter, existing as of the effective date of this Chapter shall be considered nonconforming uses and structures under Article 2 "Nonconforming Structures, Chapter 108.

2. Notwithstanding the provisions of Subsection (a), the Replacement of, Collocation or the addition of Equipment Enclosures on an existing Wireless Communications Facility as provided in this section shall not be considered an expansion of a non-conforming structure.

S. **Application Denial**

1. Denial of any application shall be in writing and include written findings of fact.

2. In addition to any other grounds for denial, any application under this Chapter may be denied to the extent necessary to preserve a prehistoric or historic district or site, building, structure or object included in or eligible for inclusion on the National Register of Historic Places.

[THE REST OF THIS PAGE LEFT INTENIONALLY BLANK

Chapter 106
Natural and Historic Resources Protection

Article 1 General

Section 106.00 Purpose and Intent

It is the purpose and intent of this chapter to:

A. Preserve, protect, and improve the public health, safety, general welfare, and quality of life of the citizens of the City of Marathon, by conserving, managing, restoring, or enhancing natural and human-related resources that provide a healthful array of human, plant and animal life;

B. Implement the Comprehensive Plan, with particular emphasis on preserving and protecting biodiversity and the ecological values and functions of hammocks, wetlands, open bodies of water and flora and fauna; and

C. Protect the natural resources, open spaces, and historic character of the community in a manner that preserves and cultivates a unique sense of place while fostering economic well-being, maintaining adequate quality and quantity of water and land, and minimizing the present and future vulnerability to natural and man-made hazards.

Section 106.01 Natural and Historic Resources Regulated

It is unlawful for any person to develop any natural or historic resource regulated under this chapter without first obtaining the required natural or historic resources review and approval.

Section 106.02 Use of Sound Environmental Practices

The provisions in this chapter are intended to accommodate development while also protecting and preserving valuable natural and historic resources. To further this objective, applicants shall be required to use sound environmental practices, and to plan for proposed activities and projects in the context of natural systems and historic features of the landscape. Applicants are required to use conservation design techniques such as clustering and density transfer to produce marketable projects while protecting natural and historic resources.

A. **Satisfaction of Open Space Requirements:** When land development involves a parcel that contains regulated natural or historic resources, the City's open space requirements shall be fulfilled first with regulated natural or historic resources. These natural resource areas shall be protected as conservation management areas through a Grant of Conservation Easement in accordance with Article 8 "Conservation Management Areas".

B. **Clustering in Natural Areas:** Avoidance or minimization shall be required for all natural areas to the maximum extent feasible. Where the applicant demonstrates that all reasonable steps have been taken in the attempt to avoid significant adverse impact to regulated natural resources, and proposed impact is consistent with the upland habitat limitations of this chapter (see required open space percentages in Table 106.16.1), development in regulated upland resource areas may be authorized as follows:

   1. Shall not constitute a significant adverse impact.

   2. Density will be calculated within the regulated resource area at the lowest density allowed by the established zoning district. Maximum net density for parcels within the Conservation Future Land Use designation shall be established on a case-by-case basis, subject to the habitat open space requirements established in Table 106.16.1 and the density limitations of the district.

   3. For residential uses, reasonable access shall be allowed as follows:

      (a) A driveway shall not exceed twelve feet (12) in width serving single family uses; and twenty-four feet serving multi-family parcels. (excluding roadways serving multiple family parcels); and

      (b) Driveways and roadways shall be located and designed to avoid or minimize adverse impacts on the protected resource(s), balancing such resource protection with the need for safe access to the site.

   4. Parcels, lots, building areas, and driveways shall be configured to minimize overall impact to ecosystem integrity, utilizing reduced construction footprints, or modified or innovative construction techniques. Modification of the development footprint shall minimize the impact on existing native understory and canopy trees.

5. Development shall be clustered on the least environmentally sensitive portion of the parcel as listed in Table 106.16.1. When a parcel proposed for development contains more than one (1) habitat type, all development shall be clustered in the least environmentally sensitive portions of the parcel. Development permitted on the least sensitive portion(s) of a parcel shall be clustered within that portion(s) of the parcel to avoid impacts on existing native understory and canopy vegetation; shall achieve the maximum density or intensity allowable; and shall fully utilize the net buildable area of the habitat prior to expanding to the next least sensitive habitat type on the site.

6. Clearing of native vegetation shall be limited to the immediate development area which shall be shown as the area of approved clearing on the site plan approved by the City Biologist and shall be subject to the mitigation and management requirements of this chapter.

7. Champion trees and specimen trees shall not be disturbed.

8. No impact shall be allowed to wetlands or associated wetland buffer areas, except as consistent with the requirements of Section 106.28 "Water Resource and Wetland Buffer".

C. **Eligibility for Transfer of Development Rights (TDR):** Transfers of Development Rights (TDR) may be proposed for two or more separate tracts of land to facilitate transfers of density rights from regulated natural resource areas pursuant to Article 3 "Transfer of Development Rights", Chapter 107. Such sending sites shall be designated as conservation areas on the City of Marathon Habitat Maps and shall be protected as conservation management areas through a Grant of Conservation Easement.

Section 106.03 Resources Assessment Requirements

Unless otherwise exempted elsewhere in this article, all applications for proposals with potential adverse impact to natural resources (including any of the habitats listed in Table 106.16.1, except disturbed with exotics and scarified), including, but not limited to, applications for land use change, zoning change, and site plan approval, shall include an assessment of the natural resource information, including a Habitat Analysis where applicable. The assessment shall be complete at or before the preliminary development review stage.

A. **Minimum Contents**: The assessment shall include, at a minimum, the following:

1. Cover letter and/or executive summary, including written explanation of the need and intent of the project and description of construction or alteration methodologies.

2. Maps drawn to scale, including a north arrow and scale showing the following:

3. Location of project site in relation to major roads or other readily identifiable landmarks, showing parcel boundaries with dimensions.

4. Existing roads, structures, utilities, and other existing conditions and noteworthy features.

5. Identification of all regulated natural resources, labeled by resource type.

6. Proposed location of protected conservation resources and open space.

7. Potential connections to existing adjacent preservation or conservation resources.

8. Statement of the proposed measures to protect natural resources, or to avoid, minimize, or mitigate impacts on natural resources, including the development siting and construction and stormwater management plans.

B. **Additional Information:** Additional data and analysis may be required by the City Biologist as appropriate to the complexity of the proposed activity and types of natural or historic resources identified. Such information may include but is not limited to:

1. A Habitat analysis prepared according to Section 106.18 of this Chapter.

2. Wildlife corridors, biodiversity hot spots, strategic habitat conservation areas, or element occurrences identified by the U.S. Fish and Wildlife, Florida Department of Environmental Protection, Florida Natural Areas Inventory, or South Florida Regional Planning Council, to analyze potential habitat connectivity issues.

3. A mitigation and monitoring plan.

C. **Use of Assessment:** The City shall review and evaluate the natural resources assessment to determine whether the proposal is consistent with the Comprehensive Plan and the LDRs and to identify appropriate site designs and strategies that maintain and protect the functions and values of natural and historic resources.

Section 106.04 Relation to Other Approval Processes

A. **Federal, State, and Water Management District:** An applicant for any approval subject to this Code shall provide to the City of Marathon copies of permit applications, approvals, and compliance and enforcement actions, with the South Florida Water Management District and state and federal environmental permitting agencies. Applicants are encouraged to coordinate site inspections between the City and other relevant agencies in order to streamline review and approval.

B. **Administrative Approvals:** Building permits, certificates of occupancy, and other administrative permits and approvals shall not be issued until documentation of all appropriate approvals has been received by the City. This includes but is not limited to copies of all applicable federal, state, and water management district permits, as well as local permits, natural and historic resource inventories and assessments.

C. **Best Management Practices:** All mitigation and management plans shall be subject to the stormwater management standards of this chapter, Article 11 "Stormwater Management" of Chapter 107 and must be consistent with the requirements of DEP, SFWMD and ACOE.

D. **Public Projects:** Public projects, including utilities, public facilities, and travel corridor modifications, shall meet the same standards as private projects. In the case of a public project for which it is demonstrated that there is no prudent and feasible alternative that avoids adverse impacts to regulated natural and historic resources, the project shall incorporate appropriate design features that enhance habitat connectivity, provide for safe wildlife passage and other significant environmental benefits.

E. **Other Permits Not Determinative:** The issuance of a dredge and fill permit, environmental resource permit, or other such permit or approval by a federal or state agency, water management district, or other governing body shall not obligate the City of Marathon to grant approval pursuant to this chapter, and shall not be deemed to satisfy the requirements of the Plan and LDRs.

Section 106.05 Exemptions

The following activities are exempt from submitting a natural resource assessment with their application for development approval.

A. **Single Family Residence:** Projects that propose development of a single family residence, subject to approval by the City Biologist; however, a habitat analysis may be required.

B. **Removal of Invasive Vegetation:** Projects for which a plan has been approved by a federal, state, or local agency or water management district for the removal of undesirable invasive or non-native vegetation on lands owned, controlled, or managed for conservation purposes, excluding vegetation in surface waters and wetlands.

C. **Parks and Recreation:** Alteration of vegetation pursuant to an adopted management plan for government maintained parks, recreation areas, conservation areas and preserves.

D. **Activities Authorized by City Approved Management Plan:** Activities consistent with a management plan adopted by, or reviewed and approved by the City of Marathon, provided that the activity furthers the natural values and functions of the ecological communities present, such as construction of fences.

E. **Existing Utility Installations and Road Right-of-Way:** Alteration of vegetation within an existing utility easement post installation, where the vegetation is interfering with services provided by a utility or alteration of vegetation within an existing road right-of-way for normal maintenance activities. Alteration associated with new construction, or with the acquisition or transfer of easements or right-of-way, is not an exempt activity.

F. **Fencing:** The minimal removal of trees or understory along a path of three (3') feet or less in width as necessary to install a fence or wall authorized pursuant to a City development permit, provided that no equipment heavier than a one-ton pick-up truck, handheld outdoor power equipment or a standard farm-type tractor is used in clearing for the fence or installing the fence, no excavation or fill is required other than the installation of posts and fence materials, and navigational access will not be impaired by the fence construction.

G. **Survey or Other Test Required:** The necessary removal of vegetation by, or at the direction of, a State of Florida licensed professional surveyor and mapper, professional geologist, or professional engineer to conduct a survey or other required test, provided that the path cleared does not exceed three feet in width.

Article 2 Trees and Native Vegetation

Section 106.06 Purpose

The purpose of this article is to implement policies contained in the City Comprehensive Plan to preserve, protect, and encourage the proliferation of trees and native vegetative cover within the City of Marathon, as well as relocation or replacement where necessary, and to control and eliminate invasive non-native species.

Section 106.07 Applicability

A. Regulated trees include Champion trees, Specimen trees, commercially exploited, threatened or endangered trees, regional important and native species. Examples of tree species that are of significant value to the natural environmental systems and to the population in general are identified on Table 106.12.1 "Regulated Trees"; for a complete list of regulated trees, contact the City Biologist.

B. All land clearing and regulated tree removal in all land uses and zoning districts shall be prohibited without prior approval.

C. Regulated trees shall not be removed after the issuance of a certificate of occupancy without securing a tree removal permit.

D. Existing native vegetation on a development site shall be protected in accordance with the following requirements in the LDRs:

   1. Provision of Open Space in accordance Table 106.16.1 and with Article 9 of Chapter 107;

   2. Protection of natural plant and wildlife habitat in accordance with Article 3 of this chapter;

   3. Protection of all other conservation areas as identified in this chapter;

E. The planting of non-native vegetation listed in F.A.C. 62C-52.011, Florida Prohibited Aquatic Plants List, and F.A.C. Rule 5B-57, Florida Noxious Weed List, shall be prohibited. The removal or control of all non-native invasive species shall be encouraged where not required to be removed by this chapter.

F. For the purposes of this chapter, a qualified professional includes a landscape architect, approved biologist, certified environmental professional, certified urban forester, or certified arborist. Additionally, for the purposes of mangrove trimming, a qualified professional shall also include a professional mangrove trimmer as certified by the Department of Environmental Protection.

Section 106.08 Permitting

A tree removal permit is required for the removal of trees and alteration of associated native vegetation as set forth below.

A. **Development Applications:** All development applications shall be subject to the permit conditions for tree removal set forth below.

1. At a minimum, applicants for site plans shall be required to have a vegetation survey prepared to locate any regulated trees.

2. Unless prohibited by the City Biologist, removal or eradication of prohibited and discouraged non-native vegetation, identified in this section should be completed for the entire parcel concurrent with the permitted tree removal.

3. Site plans shall be developed in consultation with the City Biologist and shall incorporate each regulated tree and associated native vegetation in its original location to the greatest extent possible within the drip line area of the regulated tree. In creating a plan to minimize the removal of regulated trees and associated native vegetation, consideration shall also be given to preserving non-invasive trees that exhibit the following characteristics:

   (a) Trees located within regulated natural resource areas or habitats, which may be protected as conservation management areas. Required conservation and open space area within natural resource areas shall remain completely undisturbed including canopy, understory and groundcover vegetation and substrate.

   (b) Creation or extension of connectivity or linkages to other natural areas in the form of tree and vegetation corridors.

   (c) Existing regulated trees and native vegetation.

   (d) Existing natural tree and vegetative groupings.

   (e) Plantings that complement the project's design including enhancement of the architecture, landscape architecture, and streetscape appearance.

   (f) Plantings located in required buffer areas.

   (g) Plantings that screen unpleasant views or those that augment desirable views.

   (h) Plantings that provide shade to structures, seating areas, or other pedestrian activity areas within or associated with the project.

   (i) Plantings that complement or augment stormwater system design.

(j) Plantings that are disease and insect resistant.

(k) Plantings that have strong branching and root characteristics with resistance to high winds.

(l) Plantings that are salt tolerant.

B. **Additional Permit Conditions:** A tree removal permit may also be issued for the removal of regulated trees, provided the City has determined there will be no significant adverse environmental impacts under the following circumstances:

1. Trees that are under attack from infestations of harmful insects, fungi, viruses, or other diseases that are not generally present on other trees of the same species but may reasonably be expected to spread to trees not currently so infested.

2. Trees that constitute an immediate safety hazard either to persons, domestic animals, buildings and other structures, or to motor, bicycle, or pedestrian traffic.

3. Trees that by the growth of its branches or roots is or will cause progressive damage to buildings or structures and where no reasonable correction or prevention method is available other than removal of the trees.

C. **Application Requirements:** At the time of permit application, and prior to any land clearing or alteration, all applicants for a tree removal permit shall submit information necessary to fully understand the extent, nature, and potential impacts of the proposed project.

1. *Permit Applications:* In addition to a completed application form, the applicant shall at a minimum submit a vegetation survey and a description of the project with the identification of location and extent of all areas proposed for tree removal or clearing including the methods to be used for removal. Description shall also include areas of the project that contain utilities, utility easements, and proximity to buildings and other structures on the site.

2. *Site Plan Approval:* In addition to the common application requirements in Chapter 102 Article 2 "Common Development Application Elements", the following information shall be required with applications for site plan approval:

   (a) A recent aerial photograph with the parcel clearly delineated and representative color photographs;

(b) A certified site plan or survey, where applicable, showing all easements (both plan view and cross-sectional view sketches may be required);

(c) Identification of the type and location of native vegetation in the vicinity of, and likely to be affected by the project. This information is to be incorporated into one or more of the following noted documents (in subsections b, d, e, and f, herein);

(d) A Vegetation Survey for the entire parcel proposed for development. The Vegetation Survey shall graphically depict the location of each regulated tree and/or vegetated area to remain undisturbed on the parcel during construction and shall list all species found on site along with a general description of the condition of the vegetation. This Vegetation Survey shall be incorporated as a part of a Site plan package;

(e) Either as a separate numbered list or a numbered tabular list on the Vegetative Plan a complete summary of all regulated trees and vegetation within the proposed building area (area to be cleared) indicating the species of tree, the diameter at breast height (DBH) in caliper inches, the condition of the tree, and whether it is proposed to be keep in place, relocated, removed, or mitigated for the removal;

(f) Methods of erosion control;

(g) All required documents of these sections must be prepared by a biologist, landscape professional, arborist or other qualified professional approved by the City Biologist.

D. **Vegetation Physical Protection during Construction:**

1. *Undisturbed Area:* The boundary of the area to be protected shall be at least equal to the area of the drip line of the outermost tree or trees in the undisturbed area. All natural resource areas, especially hammocks, cactus barrens, and any wetlands that are outside of approved clearing areas shall be protected from construction impacts.

2. *Barrier Placement and Usage:*

   (a) The required vegetation protection within fifty (50') feet of any construction activity or area used for storage of construction materials shall be enclosed within a protective barrier to limit access to the protected area, prevent the compaction of soil and the destruction or damage of the trees.

   (b) Prior to any construction activity, the installation of the barriers shall be approved by the City Biologist.

   (c) The protective barriers shall not be relocated without the approval of the City Biologist.

   (d) The protective barriers shall remain in place and intact until construction is completed.

3. *Barrier Construction:*

   (a) The posts shall be wood posts a minimum of 2" x 4", steel or galvanized posts a minimum of 2" diameter, or other post material of equivalent size and strength.

   (b) The posts shall be placed not more than twelve feet apart, and implanted deeply enough in the ground to be stable with at least three feet of the post visible above the ground. A top rail shall be attached to all posts.

   (c) The posts and top rail shall be linked together by a brightly colored net fence fabric.

   (d) The barrier shall not be located in such a way as to cause harm to the protected vegetation.

   (e) As an alternative to the above fencing details the City may require alternative fencing materials, such as chain link fencing, on a case by case basis where additional protection is necessary due to intensity of construction activity, vulnerability of trees or native vegetation to be protected, or similar circumstance.

4. *Restrictions within the Undisturbed Areas:*

   (a) All construction activities shall be prohibited within the undisturbed area including all digging, trenching, construction lay-down areas, placement of hazardous materials, including fuels and solvents, placement of fill or soils, and parking of construction vehicles or employee vehicles.

   (b) No attachments or wires other than those of a protective and non damaging nature shall be attached to any tree.

   (c) No grade changes shall be made within any undisturbed area without prior approval of the City Biologist. If a grade change is made and roots larger than one inch in diameter are damaged or exposed, they shall be cut cleanly and re-covered with soil and completed under the direct supervision of a certified arborist.

   (d) Planting in undisturbed areas outside the approved clearing area, including natural resource conservation areas and required open space areas is strictly prohibited. Only in the case of enforcement action approved by the City Biologist in response to unauthorized clearing or vegetation damage in this area shall planting be allowed and then, only pursuant to a plan approved by the City Biologist.

5. *Repair of Damage*: Trees that have been destroyed or received major damage during construction shall be replaced prior to the issuance of the Certificate of Occupancy and in accordance with Table 106.11.1 "Tree Removal Mitigation Table".

Section 106.09 Relocation, Replacement and Mitigation Required

Relocation, replacement, or mitigation shall be required for the alteration of regulated trees as set forth below:

A. A regulated tree may be relocated in a manner to ensure survivability if there is no reasonable alternative that allows incorporation of the tree into the parcel design, as determined by the project's landscape architect and approved by the City Biologist.

B. The parcel owner shall provide irrigation, mulch, and other practical means to ensure survival of any relocated tree. If a relocated tree does not survive within a period of one year, it shall be replaced with a native tree of similar size or by another mitigated method required by the City Biologist.

C. If a regulated tree cannot be retained or relocated, the parcel owner shall install replacement plantings pursuant to Table 106.11.1 "Tree Removal Mitigation Table".

D. If on-site planting is not feasible due to physical constraints such as limited space or unsuitable soils, off-site replacement may be allowed on public lands, within common areas, or native upland areas but with plantings approved and in quantity as designated by the City Biologist.

E. Unless otherwise approved by the City Biologist, at least sixty-five (65%) percent of the trees planted as mitigation for the removal of regionally important plant species trees shall be the same species as the trees removed, provided that the mitigation tree is locally available.

F. If suitable receiver sites (public lands, common areas) are not available at the time of mitigation, payment to the City Restoration Fund shall be made pursuant to Section 106.20(C).

Section 106.10 Mitigation or Restoration

A. **Monitoring Time Frames**: Monitoring time frames shall be established for mitigation and replacement trees, as needed. Native trees that are planted, in excess of the requirements for landscaping within Article 8 of Chapter 107, may count toward mitigation requirements for tree replacement.

B. **Size and Type of Replacements:** Replacement trees shall consist of native vegetation, indigenous to the area, and be Florida Grade No 1 or better in quality according to the current, most recent edition of "Grades and Standards for Nursery Plants," published by the Florida Department of Agriculture and Consumer Services, Article of Plant Industry.

Section 106.11 Unauthorized Removal

When regulated trees or vegetation are removed or damaged without a permit or when trees that were to be preserved in place or relocated are damaged or destroyed during activities conducted with a permit, they shall be replaced at double the rate identified in Table 106.11.1, below.

Table 106.11.1
Tree Removal Mitigation Table

Tree Type	Number of Replacement Trees *(per regulated tree)*
Native greater than 4 inches DBH	3
Listed species (any size)	3
Regionally important plant species (any size)	3

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Section 106.12 Tree Lists

A. **Regulated Tree List:** The list of trees identified in Tables 106.11.1 and 106.12.1 includes those native trees identified by the City to be of notable interest or high value for their species because of their age, size, condition, historic association or uniqueness. As part of the development review process, protection of these species through preservation or relocation will be determined on a tree-by-tree basis by the City Biologist.

B. **Prohibited Invasive Exotic List:** In addition to the species identified in Table 106.12.2 includes species expressly prohibited in the Florida Keys, as recommended by the Florida Keys Invasive Exotics Task Force.

Table 106.12.1
Regulated Trees

Latin Name	*Common Name*	*Latin Name*	*Common Name*
Acacia farnesiana	*Sweet acacia*	*Gymnathes lucida*	*Crabwood*
Annona glabra	*Pond apple, alligator apple*	*Hypelate trifoliata*	*White ironwood*
Ardisia escallonioides	*Marlberry, marbleberry*		
Avicennia germinans	*Black Mangrove*		
Bourreria suculenta var. revoluta	*Strongbark*	*Krugiodendron ferreum*	*Black ironwood*
Bumelia spp.	*Buckthorn, saffron plum, bumelia*	*Languncularia racemosa*	*White mangrove, white buttonwood*
Bursera simaruba	*Gumbo Limbo, tourist tree*	*Lysiloma latisiliqua*	*Wild tamarind*
Canella alba	*Wild cinnamon*	*Metopium toxiferum*	*poisonwood*
Chrysophyllum oliviforme	*Satin leaf*	*Mastichodendron foetidissimum*	*Mastic*
Citharexylum fruticosum	*Fiddlewood*	*Myrcianthes fragrans*	*Twinberry*
Clusia rosea	*Pitch apple, autograph tree*	*Myrica cerifera*	*Wax myrtle*
Coccoloba diversifolia	*Pigeon Plum*	*Nectandra coracea*	*Lancewood*
Coccoloba uvifera	*Sea grape*		
Coccothrinax argentata	*Silver palm*	*Piscidia piscipula*	*Jamaican dogwood; fish-poison tree*
Conocarpus erectus	*Buttonwood*	*Prunus myrtiflia*	*West Indian cherry*
Cordia sebestena	*Geiger Tree*	*Psuedophoenix sargentii*	*Buccaneer palm, cherry palm*
Dipholis salicifolia	*Willow-leaved bustic*		
Eugenia spp.	*Stoppers*	*Reynosia sptentrionalis*	*Darling Plum*
Exostema caribaeum	*Princewood*	*Rhizophora mangle*	*Red mangrove*
Ficus aurea	*Strangler Fig*	*Thrinax radiata*	*Florida thatch palm*
Ficus citrifolia	*Shortleaf Fig*	*Sabal palmetto*	*Cabbage palmetto, sabal palm*
Guaiacum sanctum	*Lignum Vitae*	*Schaefferia frutescens*	*Florida boxwood*
Guapira discolor	*Blolly*	*Swietenia mahogani*	*Mahogany*
Guettarda elliptica	*Everglades velvetseed*	*Thrinax morrisii*	*Key Thatch Palm*
Guettarda scabra	*Rough velvetseed*	*Zanthoxylum fagara*	*Wild lime*

**** The list is by no means a complete inventory of the subtropical or tropical tree species that are native to South Florida or the Florida Keys. For a determination of what constitutes a regulated tree, contact the City Biologist.***

Table 106.12.2
Prohibited Invasive Exotic List

Latin Name	*Common Name*
Casuarinia equisetifolia	*Australian Pine*
Colubrina asiatica	*Leather leaf, asiatic colubrina*
Ficus microcarpa	*Laurel fig*
Neyraudia reynaudiana	*Silk reed, cane grass, burma reed*
Scaevola sericea	*Beach naupaka*
Schefflera actinophylla	*Schefflera*
Schinus terbinthifolius	*Brazilian Pepper*
Thespesia populnea	*Seaside Mahoe*

Article 3 Natural Plant and Wildlife Habitat

Section 106.13 Purpose

The purpose of this Article is to implement the City of Marathon Comprehensive Plan, to protect natural upland plant communities which have the potential to maintain healthy and diverse populations of plants or wildlife, to preserve the ecological values and functions of significant plant and wildlife habitats, to provide for habitat corridors and minimize habitat fragmentation, in order to maintain and enhance the diversity and distribution of plant and animal species which are of aesthetic, ecological, economic, educational, historical, recreational, or scientific value to the City and its citizens.

Section 106.14 Applicability

Development activities on all parcels containing natural plant and wildlife habitat (including hammocks, cactus barrens, beaches, and all wetland types listed in Table 106.16.1) or listed species habitat shall be evaluated by the City Biologist prior to any approval for alteration of the habitat.

Section 106.15 Habitat Connectivity Preservation

Parcels containing natural plant and animal habitat shall not be segmented, processed in piecemeal fashion, reviewed or developed in any manner that results in lesser natural resources protections than would otherwise be required if all land under common ownership or control were considered as a single proposal.

Section 106.16 Clustering

Natural plants, animals and wildlife habitat of any size shall remain undisturbed to the greatest extent practicable; therefore, clustering of the development shall be required, subject to the habitat classification open space requirements in Table 106.16.1 and the mitigation and monitoring requirements of Article 10. To this end, the following shall be required:

A. A detailed natural resources assessment shall be provided for the proposed project area according to this chapter. Regulated natural and historic resources shall be inventoried using the best available data for the remainder of the planning parcel, and all natural plant and wildlife habitat and listed species habitat shall be identified.

B. Where regulated habitat or listed species habitat is identified, in order to proceed, the applicant must demonstrate that the proposed project will minimize disturbance of the connectivity of the habitat corridor and will be clustered on the least sensitive portion of the parcel according to habitat classification, pursuant to Table 106.16.1. An area containing Class III habitat is considered the least environmentally sensitive and an area containing Class I habitat is considered the most environmentally sensitive. The habitats within each Class category in Table 106.16.1 are listed in order of sensitivity from greatest sensitivity to least sensitivity

C. Unless otherwise exempted herein, a management plan for the parcel shall be prepared pursuant to Article 9 "Management Plans" which shall be subject to approval by the TRC.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Table 106.16.1
Open Space Requirements by Habitat Type

Classification	Habitat Type	Open Space (%)
Class I	Submerged Lands	100
	Mangroves	100
	Undisturbed Saltmarsh and/or buttonwood association wetlands	100
	Disturbed with salt marsh and/or buttonwood association wetlands of high functional capacity as defined in Section 106.30, Art. 4.	100
	Undisturbed beach or berm	95
	Cactus Barrens	95
	Palm Hammock	90
	Cactus Hammock	90
	High Quality Tropical Hardwood Hammock	90
	Moderate Quality Tropical Hardwood Hammock	70
	Low Quality Tropical Hardwood Hammock	50
Class II	Disturbed beach/berm	40
	Disturbed with salt marsh and/or buttonwood association wetlands of moderate or low functional capacity as defined in Section 106.27, Art. 4 of this chapter	60
	Disturbed with tropical hardwood hammock	40
Class III	Disturbed/Scarified	20
	Disturbed with Exotics	20

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Section 106.17 Identification

A. **Automatic High Quality Hammock Classification:** Hammocks that meet the following criteria shall be automatically classified as high quality hammock without the need for a habitat analysis:

1. *Category 1*: Tropical hardwood hammocks of twelve and on-half (12.5) acres or more in size.

2. *Category 2:* Tropical hardwood hammocks owned by federal, state or local governments or by private organization that are managed or were purchased for the primary purpose of conservation.

3. *Category 3*: Tropical hardwood hammocks on off shore islands.

4. *Category 4*: Palm Hammocks. A hammock or portion of a hammock which contains a prevalence of palms of the genus Thrinax.

5. *Category 5:* Berm Hammocks.

6. *Category 6:* Cactus hammocks with a prevalence of native cactus species of the genera *Opuntia* or *Cereus*.

7. *Category 7:* Cactus Barrens.

B. **Listed Plant and Animal Species:** Listed plant and animal species include those species identified in 50 CFR 17.11 and 17.12, Endangered and Threatened Wildlife and Plants, F.A.C. 5B-40.0055, Regulated Plant Index, F.A.C. 68A-27, Rules Relating to Endangered or Threatened Species, the City of Marathon Habitat and Species Maps and those identified as S1, S2, or S3 by the Florida Natural Areas Inventory (available at www.fnai.org). Maps of the habitats with which these species are commonly associated are maintained by the Department.

C. **Applications for Administrative Permits**: At the applicant's request or at the City's discretion, the City shall conduct ground-truthing for administrative applications involving listed species habitat. The applicant shall not be required to submit a habitat analysis where the habitat does not contain tropical hardwood hammocks but the City Biologist may require a vegetation survey. When a habitat analysis is not provided, presence of listed species may be presumed and habitat protected in accordance with the standards outlined in this Section, in any of the following circumstances:

1. A listed species individual has been recently documented on the planning parcel;

2. A portion of the planning parcel is within the known or suspected range of certain listed species; or

3. The land by itself, or in connection with other lands, meets the minimum habitat needs for a viable population, nesting pair, or nesting colony of listed species.

Section 106.18 Habitat Analysis

If the tropical hardwood hammock does not automatically qualify for one of the high quality categories, as established in 106.17 (A) above, as a part of an application for approval of development on lands classified on the Habitat map as tropical hardwood hammock, an applicant shall submit a habitat analysis prepared by a qualified biologist pursuant to the methodology and standards contained in this Section. Such analysis is subject to approval by the City Biologist. The City Biologist may, after a site visit, waive or limit the requirements for a habitat analysis.

A. **General Mapping:** The locations and general extent of natural communities that comprise natural plant and animal habitat are shown on the City of Marathon Habitat and Species Maps. These maps should be used as a guide and are subject to verification via site inspection and periodic data updates. A final determination of habitat types, locations and boundaries and the use or value of the habitat to listed species shall be made by the City Biologist.

B. **Site-specific Identification:**

1. The applicant shall review and analyze various digital data sources, including but not limited to the following:

   (a) City of Marathon Habitat and Species Maps

   (b) U.S. Fish and Wildlife maps of land cover, strategic habitat conservation areas, and biodiversity hot spots.

   (c) Florida Natural Areas Inventory maps of areas of potential conservation interest and element occurrences.

   (d) South Florida Water Management District land cover maps.

   (e) Various digital aerial photographic series.

2. Natural areas mapping shall be required in accordance with this section in order to identify the existence, scope and extent of the natural plant and animal habitat associated with the application.

3. Natural plant and animal habitat shall be delineated and identified based on consideration and assessment of at least the following factors:

   (a) Habitat classification as described in the Definitions (Chapter 110).

   (b) Quality of natural plant and animal ecosystem.

   (c) Overall quality of biological diversity.

   (d) Wildlife habitat value.

   (e) Presence of listed, uncommon, or rare species.

   (f) Grouping, contiguity, compactness of natural plant and animal vegetation.

   (g) Proximity to other natural preserve areas and corridors.

   (h) Impact by prohibited and invasive non-native vegetation.

   (i) Size of individual trees measured in calipers at DBH.

4. *Professional Standards*: The Habitat Analysis shall be conducted in accordance with the requirements for a natural resources assessment under Section 106.03 and must also meet the following standards:

   (a) Non-destructive techniques designed to minimize disturbance of species shall be required.

   (b) The Analysis shall include detailed descriptions and maps indicating:

      i. Field methods, conditions, dates, times of day, observations and results.

      ii. Transect and sampling locations, where applicable.

      iii. Habitats or natural communities as field checked across the site.

      iv. Representative color photographs taken at ground level.

v. Recent aerial photographs.

vi. List of observed and potential plant and animal species, including indicators (sightings, signs, tracks, trails, rests, evidence of feeding, etc.), population estimates, and occupied habitat boundaries.

vii. Professional opinions and conclusions regarding ecological and habitat value of the site.

viii. Overall quality of biological diversity.

ix. Presence of listed species

x. Grouping, contiguity, compactness of natural vegetation.

xi. Proximity to other natural preserve areas and corridors.

xii. Impact by prohibited and invasive non-native vegetation.

(c) *City Verification*: The City shall be notified of the schedule for significant fieldwork and allowed the opportunity to observe or independently verify the analysis techniques. Results may be field verified by the City.

C. **Scoring and Quality Determination of the Habitat:** The Analysis shall be conducted according to the methodology set forth in this section and the quality of the hammock shall be determined on the basis of the cumulative scores as follows:

D. **High Hammock:** A cumulative score of twenty-seven (27) or higher shall indicate a high quality high hammock; a cumulative score of sixteen (16) or more but less than twenty-seven (27) shall indicate a moderate quality high hammock; and a cumulative score of less than sixteen (16) shall indicate a low quality high hammock.

1. *Tree size*: Larger trees indicate older, more mature hammocks which are culturally and ecologically important and which:

(a) The three dominant canopy tree species have average DBHs of six (6) inches or more shall receive a score of 1.5.

(b) Two of the three dominant canopy tree species have average DBHs of six (6) inches or more shall receive a score of 1.0.

(c) One of the three dominant canopy tree species has an average DBH of six (6) inches or more shall receive a score of 0.5.

(d) None of the dominant canopy tree species has an average DBH of six (6) inches or more shall receive a score of 0.

2. *Soil Depth*: Hammocks with greater soil humus depth are generally older and more mature and generally present a greater diversity and integrity of microhabitats for wildlife and plants including soil organisms and stable soil chemistry, which contains:

   (a) An average soil depth of four (4) inches or more shall receive a score of 2.0.

   (b) An average soil depth of two (2) inches or more but less than four (inches shall receive a score of 1.0.

   (c) An average soil depth of less than two (2) inches shall receive a score of 0.

3. *Woody Plant Species Diversity*: Hammocks with higher diversity are ecologically and culturally significant as a natural seed source for plant species dispersal and may represent more mature forests, which contains:

   (a) Thirty-four (34) or more native woody species present shall receive 6.0.

   (b) Twenty-nine (29) to thirty-three (33) native woody species present shall receive a score of 5.0.

   (c) Twenty-four (24) to twenty-eight (28) native woody species present shall receive a score of 4.0.

   (d) Nineteen (19) to twenty-three (23) native woody species present shall receive a score of 3.0.

   (e) Fourteen (14) to eighteen (18) native woody species present shall receive a score of 2.0.

   (f) Nine (9) to thirteen (13) native woody species present shall receive a score of 1.0.

   (g) Less than nine (9) native woody species shall receive a score of 0.

4. *Threatened, Endangered, Commercially Exploited and Regionally Important Plants*: A hammock that provides habitat and conditions for regulated plants to flourish has a relatively significant ecological and cultural value and which contains:

    (a) Ten (10) or more listed species present shall receive a score of 3.0.

    (b) Five (5) to nine (9) listed species present shall receive a score of 2.0.

    (c) One (1) to four (4) listed species present shall receive a score of 1.0.

    (d) No listed species present shall receive a score of 0.

5. *Invasive exotic plant infestations:* The more susceptible (less resistant) a hammock is to exotic invasion, the more likely it is that the habitat is of lower complexity or integrity or that it is not sufficiently insulated from such effects.

    (a) Total invasive exotic infestation of five (5) percent or less indicates a score of 4.0.

    (b) Total invasive exotic infestation is more than five (5) percent but infestation by combined category one (1) invasives is at five (5) percent or less indicates a score of 3.5.

    (c) Six (6) percent to ten (10) percent infestation by category 1 invasives indicates a score of 3.0.

    (d) Eleven (11) percent to twenty (20) percent infestation by category 1 invasives indicates a score of 2.0.

    (e) Twenty-one (21) percent to thirty (30) percent infestation by category 1 invasives indicates a score of 1.0.

    (f) More than thirty (30) percent infestation by category 1 invasives indicates a score of 0.

6. *Threatened and endangered animal species*: Hammock that provides habitat for listed animal species is presumed to provide important and intact wildlife refuge areas that should be preserved for ecological and cultural reasons. Potential habitat is extremely important for provision of recovery areas and temporary refuge.

(a) The hammock is a known or probable habitat for listed animal species indicates a score of 3.0.

(b) The hammock is a potential habitat for listed animal species indicates a score of 2.0.

(c) The hammock has no mapped or documented status for listed animal species indicates a score of 0.

7. *Forest size:* Larger forests are less subject to disturbance due to an insulating effect. They are also more likely to contain a higher structural, microhabitat, and species diversity due to the heterogeneous nature of tropical hammock plant distribution. Larger forests are also more attractive habitat for birds and other wildlife as indicated primarily by the keynote species studies done for various birds.

   (a) The contiguous hammock is ten (10) or more acres in size indicates a score of 5.0.

   (b) The contiguous hammock is at least seven (7) but less than ten (10) acres in size indicates a score of 4.0.

   (c) The contiguous hammock is at least four (4) but less than seven (7) acres in size indicates a score of 3.0.

   (d) The contiguous hammock is at least one (1) but less than four (4) acres in size indicates a score of 2.0.

   (e) The contiguous hammock is at least 0.375 acres but less than one (1) acre in size indicates a score of 1.0.

   (f) The contiguous hammock is less than 0.375 acres in size indicates a score of 0.

8. *Perimeter disturbance*: The level of fragmentation of a hammock, measured as the amount of perimeter disturbance related to size, has been shown to lower the resistance of hammocks to direct and secondary effects of the disturbance, especially where development exists. These disturbances include exotic invasion sources, exotic predators, human intrusion, and others. The integrity of the hammock habitat can be lowered by the extent and nature of perimeter disturbance versus the ability of the hammock to withstand it.

(a) An edge to area ratio of 0.005 or less indicates a score of 3.0.

(b) An edge to area ratio of more than 0.005 but less than 0.01 indicates a score of 2.0.

(c) An edge to area ratio of 0.01 or more but less than 0.02 indicates a score of 1.0.

(d) An edge to area ratio of 0.02 or more indicates a score of 0.

9. *Wildlife habitat*: A primary hammock function in the Keys is availability of food sources for resident and migratory birds and other animals. In fact, the development of our highly diverse tropical Caribbean hammocks is owed in large part to transport of Caribbean flora by the white-crowned pigeon and other migrating birds. This availability is relatively easy to determine. It is measured by the quality and amount of fruit produced by the hammock. The better the fruit production of the hammock, the more likely it is that birds and other animals on which hammock distribution and seed dispersal depend will utilize the resource. These areas are also considered important for maintenance of resident and migratory bird populations.

   (a) Fifteen (15) or more species of category 1 fruit producers indicates a score of 3.0.

   (b) Twelve (12) or more species of category 1 fruit producers, or, twenty-two (22) or more species of combined categories 1 and 2 fruit producers indicates a score of 2.5.

   (c) Ten (10) or more species of category 1 fruit producers, or, eighteen (18) or more species of combined categories 1 and 2 fruit producers indicates a score of 2.0.

   (d) Twenty (20) or more species of any category fruit producers indicates a score of 1.5.

   (e) Fifteen (15) to nineteen (19) species of any Category fruit producers (at least one species must be in category 1 or 2) indicates a score of 1.0.

   (f) Less than fifteen (15) of any category fruit producers, or, all fruit producers are in category 3 indicates a score of 0.

10. *Community connectivity*: Nearly as important as size is the landscape position of the hammock within the local island and overall Keys island ecosystem. Isolation from other useable habitats caused by intervening development has short term effects on behavior patterns influencing forest availability to wildlife, and long term effects on dispersal and breeding patterns affecting species populations.

    Award only one of the following scores (if applicable):

    (a) The hammock is part of a contiguous closed canopy hammock, buttonwood and/or mangrove forest (any combination of these habitats) with a combined contiguous closed canopy of at least twelve and one-half (12.5) acres in size but less than thirty (30) acres in size indicates a score of 0.5.

    (b) The hammock is part of a contiguous closed canopy hammock, buttonwood and/or mangrove forest (any combination of these habitats) with a combined contiguous closed canopy of thirty (30) acres or more in size indicates a score of 1.0.

    (c) Award only one of the following scores (if applicable) and add it to the score from subsection a or b above (if awarded) to obtain the total score for this criterion:

    (d) The hammock is contiguous with or within three hundred (300) feet of at least ten (10) acres but less than fifty (50) acres of contiguous undisturbed habitat of any class or combination of classes including salt marsh, buttonwood wetlands, hammock, beach berm, coastal rock barrens, freshwater wetlands, freshwater ponds, salt ponds, mangroves and/or enclosed/semi-enclosed embayments indicates a score of 0.5.

    (e) The hammock is contiguous with or within three hundred (300) feet of fifty (50) or more acres of contiguous undisturbed habitat of any class or combination of classes including salt marsh, buttonwood wetlands, hammock, beach berm, coastal rock barrens, freshwater wetlands, freshwater ponds, salt ponds, mangroves, and/or enclosed semi-enclosed embayments indicates a score of 1.0.

E. **Low Hammocks:** A cumulative score of twenty-four (24) or higher shall indicate a high quality low hammock; a cumulative score of fifteen (15) or higher but less than twenty-four (24) shall indicate a moderate quality low hammock; and a cumulative score of less than fifteen (15) shall indicate a low quality low hammock.

1. *Woody plant species diversity:* Hammocks with higher diversity are ecologically and culturally significant in that they are a natural seed source for plant species dispersal and may represent more mature forests. These hammocks represent a storehouse of biological diversity and essentially define hardwood forest character in the Florida Keys.

   (a) Twenty-three (23) or more native woody species present indicates a score of 6.0.

   (b) Twenty (20) to twenty-two (22) native woody species present indicates a score of 5.0.

   (c) Seventeen (17) to nineteen (19) native woody species present indicates a score of 4.0.

   (d) Fourteen (14) to sixteen (16) native woody species present indicates a score of 3.0.

   (e) Eleven (11) to thirteen (13) native woody species present indicates a score of 2.0.

   (f) Eight (8) to ten (10) native woody species present indicates a score of 1.0.

   (g) Less than eight (8) native woody species present indicates a score of 0.

2. *Threatened, endangered, commercially exploited and regionally important plants:* Hammocks that provide habitat and conditions for rare and listed plants to flourish have a relatively significant ecological and cultural value. The presence of rare plants often indicates a greater habitat stability in terms of microclimate and niche availability for these plants.

   (a) Six (6) or more listed species present indicates a score 3.0.

   (b) Three (3) to five (5) listed species present indicates a score of 2.0.

   (c) One (1) to two (2) listed species present indicates a score of 1.0.

   (d) No listed species present indicates a score of 0.

3. *Invasive exotic plant infestations*: The more susceptible (less resistant) a hammock is to exotic invasion, the more likely it is that the habitat is of lower complexity or integrity or that it is not sufficiently insulated from such effects.

   (a) Total invasive exotic infestation of five (5) percent or less indicates a score of 4.0.

   (b) Total invasive exotic infestation is more than five (5) percent but infestation by combined category 1 invasives is at five (5) percent or less indicates a score of 3.5.

   (c) Six (6) percent to ten (10) percent infestation by category 1 invasives indicates a score of 3.0.

   (d) Eleven (11) percent to twenty (20) percent infestation by category 1 invasives indicates a score of 2.0.

   (e) Twenty-one (21) percent to thirty (30) percent infestation by category 1 invasives indicates a score of 1.0.

   (f) More than thirty (30) percent infestation by category 1 invasives indicates a score of 0.

4. *Threatened and endangered animal species*: Hammock that provides habitat for listed animal species is presumed to provide important and intact wildlife refuge areas that should be preserved for ecological and cultural reasons. Potential habitat is extremely important for provision of recovery areas and temporary refuge.

   (a) The hammock is a known or probable habitat for listed animal species indicates a score of 3.0.

   (b) The hammock is a potential habitat for listed animal species indicates a score of 2.0.

   (c) The hammock has no mapped or documented status for listed animal species indicates a score of 0.

5. *Forest size*: Larger forests are less subject to disturbance due to an insulating effect. They are also more likely to contain a higher structural, microhabitat, and species diversity due to the heterogeneous nature of tropical hammock plant distribution here. Larger forests are also more attractive habitat for birds and other wildlife as indicated primarily by the keynote species studies done for various birds.

   (a) The contiguous hammock is ten (10) or more acres in size indicates a score of 5.0.

   (b) The contiguous hammock is at least seven (7) but less than ten (10) acres in size indicates a score of 4.0.

   (c) The contiguous hammock is at least four (4) but less than seven (7) acres in size indicates a score of 3.0.

   (d) The contiguous hammock is at least one (1) but less than four (4) acres in size indicates a score of 2.0.

   (e) The contiguous hammock is at least 0.375 acres but less than one (1) acre in size indicates a score of 1.0.

   (f) The contiguous hammock is less than 0.375 acres in size indicates a score of 0.

6. *Perimeter disturbance*: The level of fragmentation of a hammock, measured as the amount of perimeter disturbance related to its size, has been shown to lower the resistance of hammocks to direct and secondary effects of the disturbance, especially where development exists. These disturbances include exotic invasion sources, exotic predators, human intrusion, and others. The integrity of the hammock habitat can be lowered by the extent and nature of perimeter disturbance versus the ability of the hammock to withstand it.

   (a) An edge to area ratio of 0.005 or less indicates a score of 3.0.

   (b) An edge to area ratio of more than 0.005 but less than 0.01 indicates a score of 2.0.

   (c) An edge to area ratio of 0.01 or more but less than 0.02 indicates a score of 1.0.

   (d) An edge to area ratio of 0.02 or more indicates a score of 0.

7. *Wildlife habitat*: A primary hammock function in the Keys is availability of food sources for resident and migratory birds and other animals. In fact, the development of our highly diverse tropical Caribbean hammocks is owed in large part to transport of Caribbean flora by the white-crowned pigeon and other migrating birds. This availability is a relatively easy to determine. It is measured by the quality and amount of fruit produced by the hammock. The better the fruit production of the hammock, the more likely it is that birds and other animals on which hammock distribution and seed dispersal depend will utilize the resource. These areas are also considered important for maintenance of resident and migratory bird populations.

   (a) Ten (10) or more species of category 1 fruit producers indicates a score of 3.0.

   (b) Eight (8) or more species of category 1 fruit producers, or, fifteen (15) or more species of combined categories 1 and 2 fruit producers indicates a score of 2.5.

   (c) Five (5) or more species of category 1 fruit producers, or, twelve (12) or more species of combined categories 1 and 2 fruit producers indicates a score of 2.0.

   (d) Fifteen (15) or more species of any category fruit producers (at least one species must be in category 1 or 2) indicates a score of 1.5.

   (e) Ten (10) to fourteen (14) species of any category fruit producers (at least one (1) species must be in category 1 or 2) indicates a score of 1.0.

   (f) Less than ten (10) of any category fruit producers, or all fruit producers are in category 3 indicates a score of 0.

8. *Community connectivity*: Nearly as important as size is the landscape position of the hammock within the local island and overall Keys island ecosystem. Isolation from other useable habitats caused by intervening development has short term effects on behavior patterns influencing forest availability to wildlife, and long term effects on dispersal and breeding patterns affecting species populations.

   (a) Award only one of the following scores (if applicable):

i. The hammock is part of a contiguous closed canopy hammock, buttonwood and/or mangrove forest (any combination of these habitats) with a combined contiguous closed canopy of at least twelve and one-half (12.5) acres in size but less than thirty (30) acres in size indicates a score of 0.5.

ii. The hammock is part of a contiguous closed canopy hammock, buttonwood and/or mangrove forest (any combination of these habitats) with a combined contiguous closed canopy of thirty (30) acres or more in size indicates a score of 1.0.

(b) Award only one of the following scores (if applicable) and add it to the score from subsection (1)(a) or (1)(b) above (if awarded) to obtain the total score for this criterion:

i. The hammock is contiguous with or within three hundred (300) feet of at least ten (10) acres but less than fifty (50) acres of contiguous undisturbed habitat of any class or combination of classes including salt marsh, buttonwood wetlands, hammock, beach berm, coastal rock barrens, freshwater wetlands, freshwater ponds, salt ponds, mangroves and/or enclosed/semi-enclosed embayments indicates a score of 0.5.

ii. The hammock is contiguous with or within three hundred (300) feet of fifty (50) or more acres of contiguous undisturbed habitat of any class or combination of classes including salt marsh, buttonwood wetlands, hammock, beach berm, coastal rock barrens, freshwater wetlands, freshwater ponds, salt ponds, mangroves, and/or enclosed semi-enclosed embayments indicates a score of 1.0.

F. **Palm Hammocks:** If a low hammock has an abundance and density of thatch palms such that twenty (20) percent of the dominant canopy plants or any portion thereof are palms, the hammock shall be considered a palm hammock.

Section 106.19 Onsite Protection

All high quality hammocks shall be designated and permanently protected in place on the site and managed in accordance with the standards in Article 8 of this chapter for Conservation Management Areas. Low and moderate quality hammocks may qualify for alternatives to in place and on-site protection subject to the limitations of this section, Article 8 Conservation Management Areas and the mitigation and monitoring provisions of Article 9 of this chapter.

A. **Conditions of Approval:** Development approval conditions may limit or preclude development of structures, impervious surfaces, and other uses within an appropriate distance from locations of protected habitat, if necessary for the continued viability of the protected habitat. The following special design standards may be required adjacent to protected listed species habitat to minimize disturbance:

   1. A minimum setback from the protected listed species habitat may be required for construction activities. The setback distance would be determined on a case-by-case basis by the City Biologist, and in no case shall it be less than ten (10') feet. Clearing, grading, and filling may be prohibited within the setback area unless the applicant can demonstrate that habitat within the protected area will not be damaged.

   2. Landscaping within associated buffers or construction setbacks shall require utilization of native vegetation that is compatible with existing native plant communities, soils, and climatic conditions.

B. **Boundaries of the Protected Habitat**: The boundaries of the protected habitat shall be designated in a certified survey submitted to the City for approval prior to issuance of the development approval.

Section 106.20 Alternatives to Onsite Habitat Protection

A. **When Considered:** Alternatives to on-site protection for low or moderate quality hammock, that is not located within the minimum required open space area, may be considered in the following circumstances:

   1. When physical constraints of the parcel preclude maintenance of ecological integrity of preserved vegetation, given considerations as to size of the development site, habitat quality, connectivity, adjacent uses, and feasibility of management;

   2. When opportunities exist for long-term protection and management of significant habitat of equal or greater habitat value than would not have otherwise been protected; or

   3. When establishment of conservation management areas within a project would result in small, fragmented areas with limited habitat value compared to available alternatives.

B. **Standards:** If protection of the existing natural plant and animal habitat area outside of the required open space is not feasible due to one of the circumstances identified in this section, an applicant may, with the approval of the City Biologist and state or federal agencies or SFWMD, if applicable, pursue one of the following options:

1. The applicant may relocate existing vegetation to another portion of the site or establish a new area of natural plant and animal vegetation on another portion of the site in accordance with the requirements of Article 9, "Avoidance, Minimization, Mitigation and Monitoring" and as part of an approved management plan in accordance with the requirements of Article 8, "Management Plans" of this chapter; or

2. The applicant may provide an off site management area pursuant to Article 8 of this chapter. The City may consider alternative proposals that provide equal or greater protection.

3. Alternatives to onsite protection shall be evaluated and approved by the City Biologist in accordance with the criteria of this chapter. In any case, strict adherence to the minimum open space percentages for each individual habitat on the development site is required and in addition, no habitat within the buildable area of a parcel may be altered unless part of an approved clearing plan containing approved development (i.e., removal of natural habitat strictly for the purpose of providing lawns, gardens and the like is prohibited).

C. **Payment in Restoration Fund:** If determined in writing by the City Biologist that onsite transplantation will not be conducive to the long term survivability of the plants, the applicant shall comply with one of the following:

1. The applicant shall pay a fee, according to the schedule of fees established by Council into the City Restoration Fund; or

2. Subject to the consent of the City, the applicant shall donate nursery stock identical in species composition to that which will be lost to development. Stock shall be donated according to the replacement schedule established in Table 106.11.1 Tree Removal Mitigation Table.

D. **Other Alternatives:** The City may consider alternative mitigation proposals which provide greater protection.

Section 106.21 Management Plan

If the habitat survey identifies the presence of listed species or listed species habitat, or potential for adverse impacts to any listed species habitat, the applicant shall submit to the City for review and approval a management plan that ensures protection of the habitat, as conservation management areas, pursuant to Article 8 of this chapter, with no adverse effect on species survival. The management plan shall meet the requirements of Article 9, "Management Plans" of this chapter and the standards set forth in this article.

Section 106.22 Intergovernmental Coordination

Where listed species are regulated by the state or federal government, the applicant shall complete and submit to the City the habitat survey and associated management or mitigation plans prior to or concurrent with submittal of applications to the relevant state or federal agency. The City shall consult and coordinate with appropriate agencies to streamline the permitting process. All activities shall comply with applicable state and federal laws, regulations, performance standards, and management guidelines.

Section 106.23 Limit to Other Regulatory Authority

The applicant is responsible for meeting the permitting criteria for federal and state regulatory agencies regarding the disturbance of any natural plant and animal habitat. The issuance of a dredge and fill permit, environmental resource permit, or other such permit or approval by a federal or state agency, water management district, or other governing body shall not obligate the City of Marathon to grant approval pursuant to this section, and shall not be deemed to satisfy the requirements of the LDRs.

Section 106.24 Violations

For the purposes of this Section, the alteration or removal of any listed species habitat without prior review and approval shall be considered a violation.

Article 4 Open Water, Surface Waters and Wetlands

Section 106.25 Purpose

It is the purpose of this chapter to preserve, protect, and improve the public health, safety, and general welfare of the citizens of City of Marathon, and to conserve and protect open bodies of water, surface waters, submerged lands, wetlands, and the natural and scenic resources of City of Marathon, and to implement the City of Marathon Comprehensive Plan.

Section 106.26 Applicability

A. **Waters Included**: A water resource is a comprehensive term that includes:

1. All those waters; having a measurable salinity at some point during the tidal cycle and lying within the legal boundaries of the City; or

2. All those areas which are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation specifically adapted to life in saturated conditions, as listed in the Florida Administrative Code. These waters include, but are not limited to, lakes, and open waters, whether such waters are on private or public lands and whether such waters are manmade or natural.

B. **Regulated Activities:** Except as otherwise expressly provided in this article, no alteration shall occur in, on or over a surface water or wetland area or buffer, and no alteration shall occur adjacent to or connected to a surface water or wetland area, such that the water regime is modified in a way that precludes the area in question from maintaining surface water or hydroperiod necessary to sustain wetland structure and function equivalent to pre-alteration levels

Section 106.27 Jurisdiction and Delineation

The City of Marathon shall have regulatory authority over all open waters within one thousand, two hundred (1,200) feet of the shoreline, all surface waters and all wetlands located within the City.

A. **Delineation Methodology:** The City of Marathon shall utilize the uniform statewide methodology adopted by the Florida Department of Environmental Protection and Water Management Districts to delineate wetlands, as outlined in Florida Administrative Code Rule 62-340.300 for wetlands, and Rule 62-340.600 for surface waters. The City shall not be limited by the threshold or connection requirements utilized by these agencies for purposes other than delineation.

B. **General Mapping:** The locations and general extent of surface waters and wetlands in the City of Marathon are generally depicted on the City of Marathon Habitat Maps. The maps are intended for use only as a general reference for determining location and approximate extent of surface waters and wetlands. The provisions of this chapter shall apply to all open water, surface waters and wetlands, and adjacent areas, and shall not be limited to those depicted on maps described above.

C. **Site Specific Determination:**

1. Applicants for any activity in, on or over a jurisdictional surface water or wetland or buffer, or adjacent to (same or contiguous tax parcel) or connected to a surface water or wetland, regardless of size, shall be required to submit a natural resources assessment that includes identification of all surface waters, wetlands, and buffers. Applicants are encouraged to arrange a concept meeting with City staff prior to submittal of an application.

2. The City shall provide verification of the development potential of wetlands prior to approval of any activity in a buffer area or on or adjacent to a surface water or wetland utilizing the Keys Wetland Evaluation Procedure (KEYWEP), herein incorporated by reference and the Uniform Mitigation Assessment Methodology (UMAM) as set forth in Chapter 62-345, Florida Administrative Code and reasonable scientific judgment. Wetland quality categories based upon the KEYWEP scoring are:

   (a) "Red-flag" wetlands have a high level of functional capacity and lack of disturbance. Any type of development is prohibited.

   (b) High functional capacity wetlands score at 5.5 or higher, regardless of previous disturbance. Any type of development is prohibited.

   (c) Moderate functional capacity wetlands score below 5.5 but greater than or equal to 4.6. These wetlands are suitable for development with appropriate mitigation.

   (d) Low functional capacity wetlands score less than 4.6 or are assigned a "green-flag" designation as suitable for development with appropriate mitigation.

3. If the applicant has received a delineation of the extent of a surface water or wetland by the Florida Department of Environmental Protection or the South Florida Water Management District, pursuant to a formal determination under Section 373.421(2), Fla. Stat., or pursuant to a permit issued under Chapter 373, Fla. Stat. in which the delineation was field-verified by the permitting agency and specifically approved in the permit, the delineation shall be binding on the City for the duration of the formal determination or federal or state permit.

Deleted: 7.0

Deleted: 7.0

D. **Final Drawings**: All final drawings for applications shall be sealed or certified by:

1. A Florida registered professional engineer; or
2. A Florida registered professional surveyor; or
3. A Florida registered professional landscape architect; or
4. An environmental professional certified by the National Association of Environmental Professionals or the Florida Association of Environmental Professionals.

Section 106.28 Water Resource and Wetland Buffers

A. Buffers are integral to the maintenance of water resources and wetland structure and function. A buffer shall be required between all proposed activity and the landward extent of the water resource or wetlands as established in this chapter. The following buffer widths shall apply for the resources set forth in Table 106.28.1 below.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Table 106.28.1

Water Resource and Wetland Buffers

Type of Development/Protected	Resource Buffer Distance (ft)	Buffer Standards
Principal structure on manmade canals, channels, basins and lawfully altered shorelines.	20	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Principal structure on open water for all unaltered or unlawfully altered shorelines.	50	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Principal structure on open water where original slope landward of the water has been significantly altered by filling, where no bulkhead, significant armoring or mangrove fringe exists.	30 minimum	Measured from the MHWL. Minimum buffer criteria: native vegetation exists or is planted and maintained in at least ten (10) feet width across the entire shoreline, otherwise the setback shall be fifty (50') feet. **Shall not be available for recognized Marine Turtle nesting habitats.**
Principal structures on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL	20 minimum	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward; City Planning Director may evaluate community character, environmental features and setbacks on adjacent developed properties within two parcels on either side of the proposed development and may allow buffer as far back as practicable or in line with adjacent principal structures. If existing pattern of setback is greater than thirty (30) feet, a buffer of fifty (50) feet is required. **Shall not be available for recognized Marine Turtle nesting habitats.**
Marine Turtle Nesting habitat	50-100 minimum	Measured from the MHWL or the landward extent of the beach berm. No development other than pile supported docks and walkways within 50 feet of any portion of the beach berm. All other development: 100 feet
Accessory structure[1] on all manmade canals, channels, basins and lawfully altered shorelines.	10 minimum	Measured from MHWL
Accessory structure on all unaltered shore- lines.	25 minimum**	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Accessory structure1 ***on all significantly filled shorelines on open water with a contiguous mangrove fringe.	15 minimum**	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Accessory structure1 ***on significantly filled open water shorelines where there is no significant armoring, continuous mangrove fringe or bulkhead.	15 minimum **	Provided that native vegetation exists or is planted and maintained in at least a ten (10) foot wide buffer across the entire shoreline or must maintain setbacks for an unaltered shoreline. Measured from the landward edge of the shoreline buffer
Wetlands, except for tidally inundated mangrove fringes, on properties classified as disturbed or scarified	25 minimum*	May be reduced to minimum regardless of buildable area if the entire buffer area is planted and maintained in native vegetation with a site-suitable management plan and placed under conservation easement.
Wetlands that include listed habitat or animal species	25 minimum*	Buffer may be reduced to allow for up to 2,000 square feet of principal structure footprint of reasonable configuration.

Footnotes for Table 106.28.1

* If the buffer precludes all economically viable use of a particular property, development as defined in the F.S. 380.05, may be allowed within the buffer in accordance with Plan policy 4-1.4.2.
** Exception: docks, docking facilities, utility pilings, fences, boat ramps, slips and basins; seawalls, retaining walls, riprap, bulkheads, walkways, water observation platforms and walkways.
***A minimum five (5) foot side yard setback shall be maintained for all structures within the shoreline setback area except for docks, seawalls, bulkheads, retaining walls, riprap, fences, boat ramps, boat shelters or fish cleaning tables.

---

[1]*Limited to utility pilings, fences, docks, boat ramps, boat slips, boat shelters, seawalls, retaining walls, riprap, bulkheads, walkways and outdoor sport and recreational accessory structures such as, but not limited to, non-enclosed decks, gazebos, pools, spas, permanent barbecues, or fish cleaning tables.*

B. The buffer shall retain the existing undisturbed vegetation. No activity shall occur within a buffer area, except as expressly provided in this Section or as approved by the City of Marathon in accordance with standards set forth in this article. The above shall not be interpreted to prohibit the removal of non-native vegetation or the planting of native vegetation.

C. In the event that alteration to a surface water buffer or wetland buffer area occurs without first obtaining the approval required by this chapter, restoration or other corrective action shall be required of the responsible party at a ratio of 3:1.

Section 106.29 General Approval Criteria

Final approval of an application may not be granted pursuant to this Section until it is determined that each of the following criteria will be met:

A. Development of wetlands that results in conversion to uplands is permitted only within the disturbed salt marsh and buttonwood association habitat and shall comply with minimum required open space ratios in accordance with Table 106.16.1.

B. There shall be no net loss of wetland values and functions, as determined by the City Biologist.

C. The project is designed to minimize adverse impacts regarding the conservation of populations of fish or wildlife or their habitats, as determined by the City Biologist.

D. The project is designed to control and will not cause excessive erosion, as determined by the City Biologist.

E. The project will not adversely affect commercial or recreational fisheries or their habitats, as determined by the City Biologist.

F. Listed species and/or their critical habitats will not be adversely impacted, as determined by the City Biologist.

G. The project will not adversely impact historic or archeological resources, according to the Director.

H. Project alternatives and modifications to lessen impacts have been determined, by the City Biologist, to be infeasible, i.e. there are no reasonable design alternatives or modifications available to lessen impacts.

I. The project does not conflict with any other federal, state or local designated preserve or conservation area.

J. Any structure proposed in, on or over surface water is water-dependent. If not water-dependent, the structure must clearly demonstrate an overriding public interest and health, safety and welfare.

K. There will be no violation of water quality standards; the project complies with state and local water quality rules and standards set forth in Florida Administrative Code Chapters 62-302, 62-550, and 40C-4.301(1)(e).

L. In conjunction with other projects, the project will not result in cumulative impacts that in the aggregate fail the criteria of this section.

M. **Land and Water Uses Classified and Prioritized:**

1. Water Dependent: The following non-exhaustive list of land and water uses and activities are considered to be "water-dependent." Such uses are economically and physically dependent upon a coastal location and are given a higher priority than those land and water uses and activities that are not water-dependent. Water dependent uses include, but may not be limited to:

   (a) Boat harbors;
   (b) Freight, fuel or other docks;
   (c) Marine-based tourism facilities;
   (d) Boat repair, haul outs, marine ways and accessory attached house;
   (e) Shipwrights;
   (f) Facilities that service the transportation of good and services between the marine transportation system and the road system;
   (g) Mariculture activities and fish processing; and
   (h) Facilities to provide public access to coastal waters.

2. Water Related: The following non-exhaustive list of uses and activities are considered to be "water-related:"

   (a) Commercial activities such as hotels, restaurants and other similar uses that provide views and access to the waterfront. Commercial uses that promote physical or visual use of shorelines by the public will be given preference over other commercial uses in developing shoreline locations.

   (b) Residential development.

3. Prioritization of Uses:

   (a) Facilities for water-dependent recreation, such as fishing, swimming, and boating, and water-related recreation such as picnicking, hiking and walking shall be located near the shoreline, while non-water-related recreation facilities shall be located upland where practicable.

(b) Uses and activities that are neither water-dependent nor water-related, but for which there is no practicable upland alternative to meet the public need for the use or activity, receive the lowest priority for a coastal location.

Section 106.30 Permanent Protection

Applicants not exempted under this section shall be required to designate and protect through a Grant of Conservation Easement in conservation management area all surface waters, wetlands, and associated buffers on the parcel for which development activity is proposed, except for those portions on which impact is authorized pursuant to Section 106.33 below. Permanent protection, maintenance and monitoring shall be in accordance with this chapter.

Section 106.31 Mitigation and Monitoring Plan

For projects that do not meet the general approval criteria of this chapter, and are not specifically exempted by this Section, the City may evaluate proposals for mitigation. Mitigation plans shall be evaluated as part of preliminary plan review by the TRC.

Section 106.32 When to Evaluate Mitigation Proposals

Where impact is allowed under one of the scenarios identified in this section, mitigation shall be required in accordance with this chapter. Impact may be allowed if all of the following criteria are met:

A. Mitigation may be permitted for new wetland loss only where the applicant demonstrates that the activity cannot practically be located on the upland portion of the parcel or contiguous parcels under common ownership or control. The applicant must show that one of the following applies:

1. Overriding public interest; or

2. All economically viable use of the property is otherwise precluded.

B. An applicant may be permitted to mitigate for wetland loss only where the applicant has made all practicable project modifications to avoid and minimize wetland loss and degradation in accordance with this chapter;

C. An applicant may be permitted to mitigate for wetland loss where the applicant can demonstrate that the existing wetlands that are to be converted to upland uses are of low or moderate functional capacity and value based on their size, soils, hydrology, plant and animal life, pursuant to Keys Wetland Evaluation Procedure (KEYWEP); and that the measures necessary to sustain or restore the existing wetlands would be less feasible than the proposed mitigation plan;

D. If the fifty (50') foot buffer results in less than two thousand (2,000 ft^2) square feet principal structure, then the setback may be reduced to allow for a two thousand (2,000 ft^2) square foot principal structure of reasonable configuration, provided that a minimum wetland buffer of twenty-five (25') feet be maintained.

E. On properties classified as scarified adjacent to wetlands, the wetland setback may be reduced to twenty-five (25') feet, without regard to buildable area if the entire setback area is planted and maintained in native vegetation with a site-suitable stormwater management plan that meets the provisions Article 11 "Stormwater Management" of Chapter 107 and thereafter designated as a conservation area, and managed pursuant to the requirements of Article 8, 9 and 10 of this chapter.

F. The wetland buffer required by this article shall not apply to mangrove or wetland fringes occurring along manmade canals, channels or basins.

Section 106.33 Standards for Accepting Mitigation Proposals

In order to be considered, a mitigation proposal must ensure the long-term viability of the mitigation project, advance the City's natural resources conservation objectives and policies, and meet the minimum standards for mitigation of conservation areas generally as set forth in this chapter. Specifically:

A. Mitigation shall occur in areas designated by the City, the Florida Department of Environmental Protection (DEP) or the U.S. Army Corps of Engineers (ACOE). A determination by the ACOE or the DEP that mitigation can be satisfied through an in-lieu fee program or mitigation bank will also satisfy the City's mitigation requirements.

B. Mitigation shall be determined for individual projects by applying the Uniform Mitigation Assessment Method (UMAM), pursuant to Chapter 62-345, Florida Administrative Code.

Section 106.34 Corrective Action for Unauthorized Impact

In the event that alteration occurs to a wetland or surface water without first obtaining the appropriate review and approval required by this article, the following corrective actions may be required:

A. Onsite restoration of buffers, habitat, and hydrology of the original wetland area at a rate of 3:1.

B. In the event that damage is irreparable, purchase and permanent protection of comparable natural resource features, including natural communities, shall be required at a ratio of between 5:1 and 10:1 acreage of compensation area to impacted area, based on factors including but not limited to: habitat rarity, uniqueness, value, function and quality; and the nature, degree and extent of unauthorized impact, as calculated by the City Biologist.

C. Payment of an environmental restoration fee calculated as follows: the cost to create or recreate lost function and value of the resource, multiplied by the number of years necessary to restore function and value to pre-alteration levels. The fee shall be deposited into the City Restoration Fund for use in the restoration and management of wetlands.

D. In addition to other penalties provided in this section, the City Attorney may institute or participate in any appropriate civil or administrative action or proceeding to declare, prevent, restrain, correct or abate any violation of any provision of this article. The City may also seek civil remedies pursuant to Laws of Fla. Ch. 90-403.

E. The City Manager may withhold the issuance of other certificates, licenses, or permits on related developments or projects where violations of this article are outstanding until the violations of this article have been abated.

Section 106.35 Shoreline Preservation

All shoreline development shall preserve native upland, wetland and aquatic vegetation and communities to the maximum extent possible and must offer protection from erosion, contribute to the natural soil building process, provide habitat for a diverse community of endangered, threatened or species of special concern and be aesthetically pleasing and can be reasonable incorporated as a landscaping asset for waterfront development. All development at or below the MHWL shall be subject to the applicable provisions of the ACOE, FDEP, SFWMD and the City of Marathon regulations. City approval of shoreline uses shall be subject to the classifications of Section 106.36, below.

Section 106.36 Criteria for Approval

In addition to the provisions of Article 1, "Marinas" and "Waterfront Walkways and Docks" of Chapter 104 and Article 5 "Setbacks and Height", Chapter 107, all shoreline development shall be subject to the following:

A. **Tidal Flushing and Circulation:** Coastal development shall be located, designed and operated, to the extent practicable, to minimize adverse impact upon important physical shore features and processes, including tidal flushing and circulation patterns, accretion shore forms, beaches, and littoral drift. Any project that may produce changes in circulation patterns shall be approved only after sufficient hydrographic information is available to allow an accurate evaluation of the possible impacts of the project.

B. **Scenic Quality:** Waterfront businesses shall not detract from the scenic qualities of the shoreline and shall be compatible in design with their surroundings and to the greatest extent practicable shall not significantly block scenic vistas.

C. **Shoreline Access:** New shoreline development shall provide physical and visual access to shorelines when such access does not interfere with operations or present a hazard to life or property.

D. **Consolidation of Facilities:** To the extent practicable, facilities and activities shall be located adjacent to similarly used facilities and areas.

E. **Compatibility:** Activities on and uses of lands and waters shall be compatible with adjacent land and water uses. Compatibility shall be given priority attention when maritime industrial uses locate adjacent to or share facilities with docks used by tourists. Compatibility may be achieved by visual and sound buffering and screening.

F. **Stormwater and Pollutant Runoff:** All structures shall be designed such that stormwater and pollutant runoff is contained on site, consisted with the stormwater management standards of Article 11 of Chapter 107. Pools, spas, fish cleaning tables, and similar pollutant sources shall not discharge directly into surface waters. Structures should be made of permeable materials, whenever practical, to allow the infiltration of stormwater runoff.

G. **Development in the Coastal High Hazard Zone**: Development shall be sited, constructed and operated to reduce the impact of flooding, to allow for natural drainage and to minimize damage to life and property. To the extent practicable, development is discouraged within the VE zones. Those areas can be developed if structural requirements reflect the physical opportunities and constraints of the site (e.g., flooding and a high groundwater table) pursuant to Article 12 "100-Year Floodplain" of Chapter 107.

H. **Hardened Shorelines:** Bulkheads, seawalls and other hardened vertical shoreline structures may be permitted on residential canals and altered shorelines only in the following situations and then only where rip-rap or sloping rock revetments in conjunction with biotechnical erosion control and geotextiles or geogrids will not suffice as determined by the City Biologist:

1. Bulkheads, seawalls or rip-rap may be allowed when it is replacing an existing deteriorated bulkhead or seawall or to stabilize a severely eroded shoreline area where it is demonstrated that rip-rap with biotechnical erosion control is not sufficient and they are necessary for erosion control. Seawalls may have a cap of two (2) feet in width.

2. Bulkheads, seawalls or rip-rap do not constitute a docking facility by themselves. All elements, such as lifts, davits or cleats, which constitute a docking facility, must comply with the requirements of the LDRs for docking facilities.

3. No new vertical seawalls or bulkheads shall be permitted on open water shorelines.

4. No seawalls, bulkheads, rip-rap, retaining walls or other shoreline hardening structures shall be permitted on or waterward of any portion of a sea turtle nesting beach or within the setback from a sea turtle nesting area.

5. The design of the permitted rip-rap, bulkhead or seawall system must include a minimum six (6") inch retention swale, berm or curb directly landward of the proposed system.

6. The bulkhead line shall be located at the average mean high water line of the property at the time a permit for the bulkhead is requested. Reclamation of eroded property through bulkheading and backfilling is prohibited. Significant inconsistencies with adjacent existing bulkheads shall be resolved through the use of angled bulkhead lines and/or rip-rap placed at the base of the new bulkhead.

7. Rip-rap or sloping rock revetments shall meet the following guidelines:

   (a) Be used, with biotechnical erosion control, only to the minimum extent necessary

   (b) Be placed landward of any existing mangroves.

   (c) Whenever feasible, be placed at the base of solid seawalls to dissipate wave energy and provide a substrate for marine organisms.

   (d) Be constructed in a manner that would not prevent the establishment of native vegetation.

(e) Consist only of natural boulders or clean concrete rubble six (6) inches to three (3) feet in diameter (average dimensions).

(f) The slope of the rip-rap is no steeper than a ratio of 2 Horizontal to 1 Vertical and the horizontal distance from the landward edge or mean low water line is no more than eight (8) feet.

(g) There are no reinforcing rods or other similar protrusions in concrete rubble and all rubble or boulders are free of attached sediments.

(h) Neither the distance nor the use of the rip-rap interferes with safe navigation or infringes upon the riparian rights of the adjacent property owners.

(i) There is no filling or dredging associated with the placement of rip-rap other than the rip-rap material itself.

8. Shoreline stabilization projects on open water that do not conform to the requirements of this section may only be approved upon a determination by the Director, in consultation with the City Biologist, that the project has a valid public purpose that furthers the objectives, goals and policies of the Plan.

Section 106.37 Beach Renourishment

A. Beach renourishment projects shall be subject to the standards pursuant to Chapter 161 F.S., Chapter 62b-36 F.A.C, Section 370.12(1), F.S., Army Corps of Engineers, "CECW-EW Coastal Engineering Manual - Part V, July 31, 2003" and the Department of Environmental Protection: Office of Beaches and Coastal Systems, "Strategic Beach Management Plan, Florida Keys Region", 2000. The sand used for any renourishment project shall be sand which is similar to the native beach sand in both coloration and grain size and is free of construction debris, rocks, clay, or other foreign matter.

B. Beach construction activities shall take place outside of sea turtle nesting season. During activities that require dredging, a qualified endangered species monitor shall be on station on the dredge at all times to ensure that no sea turtles or marine mammals are harmed by the project.

Section 106.38 Allowable Activities

Deleted: Exemptions

The following activities are allowed on submerged lands, mangroves, regulated surface waters, wetlands and wetland buffers, subject to the specified limitations, restrictions and conditions. Persons wishing to make use of this section shall submit a natural resources inventory or comparable administrative notice in order to demonstrate that they qualify and must obtain all necessary federal, state and water management district approvals and a permit from the City prior to initiating any of the following activities in surface waters, wetlands, and buffers:

Deleted: exemption

Deleted: for exemption

A. **Bona Fide Aquaculture Activities:** Aquaculture operations restricted to submerged lands and surface waters and conducted in accordance with the practices outlined in Best Management Practices for Aquaculture (October, 2002 edition published by the Department of Agriculture and Consumer Services, Article of Aquaculture). No fill or enclosed structures shall be permitted in submerged lands, mangroves, surface waters or undisturbed wetlands.

B. **Accessory Structures:** Accessory structures, as defined in Chapter 110, within the shoreline buffer are subject to the following:

1. Not more than sixty (60%) percent of the required buffer along manmade canals, channels, basins and lawfully altered shorelines may be utilized by accessory structures; and

2. All other shorelines shall be limited to a maximum of thirty (30%) percent of the required buffer for all accessory structures; and

3. Only pile supported docks and walkways shall be allowed in submerged lands, mangroves, surface waters and undisturbed wetlands. No fill is permitted in these habitat types.

C. **Water Access Structures:** Construction and maintenance of public or private water access structures providing that the requirements of Article 1"Waterfront Walkways and Docks" and "Water Access Structures" of Chapter 104 are met.

D. **Water Observation Platform and Boardwalks:** The installation of a water observation platform or boardwalk provided the requirements of Article 1 "Waterfront Walkways and Docks" of Chapter 104 are met.

E. **Docking Facilities:** The installation of a dock provided that the requirements of Article 1 "Waterfront Walkways and Docks" of Chapter 104 are met.

F. **Bulkheads, Seawalls, and Riprap:** Bulkheads, seawalls, and riprap may be permitted provided that the requirements of Section 106.36(H) "Hardened Shorelines" are met.

G. **Navigational Aids:** The installation of aids to navigation, including but not limited to bridge fender piles, "No Wake" and similar regulatory signs, and buoys associated with such aids, provided that the devices are marked pursuant to F.S. § 327.40.

H. **Treatment Wetlands:** In the case where specific permitted use(s) and associated required modifications are allowed in "treatment wetlands" or in a "wetlands stormwater discharge facility" pursuant to Chapter 62-611 and Rule 62-25.042, Florida Administrative Code, respectively. Failure to comply with operating conditions of such permit(s) shall nullify this exemption.

I. **Connection of Stormwater Facilities:** Dredging or filling which is required to connect stormwater management facilities permitted by the South Florida Water Management District or the City of Marathon Department of Public Works to nontidal wetlands, which is integral to a properly permitted project and incidental to the construction of such stormwater management facilities. Plans should indicate where dredging and filling will take place and the issuance of the permit is deemed to allow dredging and filling only as approved on the submitted plan. Incidental dredging or filling shall include:

1. Headwalls and discharge structures; and

2. Erosion control devices or structures to dissipate energy which are associated with discharge structures; and

3. The connection of ditches dug through the uplands where the dredging or filling for the connection to wetlands extends less than twenty (20') feet in length into the wetland; and

4. Other dredging or filling which the City Biologist determines will have a similar effect as those activities listed above.

J. **Repair or Replacement:** The repair or replacement of existing vehicular bridges, functional piers, mooring piles, boat ramps, or stormwater discharge pipes, at the same location and of the same dimensions and configuration as the original being repaired or replaced, provided that no more dredging or filling is performed than necessary, and no debris from original structures shall be allowed to remain in jurisdictional wetlands.

K. **Emergency Repairs:** Emergency repairs consistent with the requirements of Rule 62-312.090, Florida Administrative Code.

L. **Dredging:** All dredging activities shall require permitting from FDEP and the ACOE prior to making application to the City of Marathon.

1. No new dredging shall be permitted in the City except to maintain a consistent water depth within existing navigable channels maintained by the US Coast Guard or for canals that were unevenly dredged as documented in a report from a qualified expert. The removal of a natural or man-made barrier separating a canal or canal system from adjacent waters does not qualify for exemption.

2. In addition to other federal, state or city regulations, such dredging is subject to the following conditions:

   (a) Dredging shall be limited to the minimum required to match surrounding depths, not to exceed minus seven (-7) feet MLW.

   (b) During all dredging activities a qualified endangered species monitor will be on station on the dredge at all times to ensure that no sea turtles or marine mammals are harmed by the project.

   (c) Control devices shall be used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during dredging.

   (d) The performance of maintenance dredging of existing man-made ditches, canals, channels, and intake and discharge structures, provided that:

   (e) Area to be dredged is not vegetated with sea grass beds or characterized by hard bottom communities, except for maintenance dredging in public navigation channels; and

   (f) No more dredging is performed than is necessary to restore the canals, channels, and intake and discharge structures to original design specifications, but shall not exceed depths greater than minus seven (-7) feet MLW unless other wise permitted by ACOE and DEP to maintain safe, navigable waters; and

   (g) Control devices shall be used at the dredge site to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging.

M. **Altered Wetlands**: In instances where the water regime of a wetland has been artificially altered, but the dominant vegetation of the area in question continues to be comprised of wetland species, a feasibility of hydrologic restoration shall be made by City staff. Hydrologic restoration that can be accomplished by minor earth work or drainage controls, and would not be contrary to the public health, safety, and welfare, shall be viewed as the preferable alternative to the proposed development activity. This provision for exemption is not intended to apply in the case where a surface water and/or wetland has been filled or altered in violation of any rule, regulation, statute, or this chapter.

N. **Artificial Wetlands:** All man-made impoundments, lakes, streams, ponds, artificial or created wetlands, and all stormwater management facilities, provided that development activities in these areas will not adversely impact natural or mitigation surface waters and wetlands. If these facilities were required as a mitigation project they shall not be exempt from this chapter. If any wetlands or surface waters are part of a stormwater management facility approved by the City, the same function must be provided and any modifications shall be subject to approval by the City.

O. **Fill:** No fill shall be permitted in any mangroves, wetlands or submerged lands except as follows:

1. In conjunction with the construction of bulkheads, seawalls, riprap and boat ramps and elevated, pile designed water access structures that meet all other standards of these regulations;

2. To fill a manmade, excavated water body such as a canal, boat ramp, boat slip, boat basin or swimming pool, providing that the City Biologist determines there will be no significant impact upon marine or wetland communities;

3. As needed for shoreline stabilization or beach renourishment projects with a valid public purpose that further the goals of the Plan as determined by the City Biologist;

4. As approved for Disturbed Saltmarsh and Buttonwood Association Wetlands with appropriate mitigation, as established in this chapter.

5. All such projects shall require approval by the FDEP and ACOE prior to submission to the City.

Article 5 Historic Structures and Sites

Section 106.39 Applicability

Historic resource is a comprehensive term that refers to both historic structures and sites, and archaeological resources and properties. For the purposes of this article only, historic structures and sites, and archaeological resources, are treated as two distinct categories.

A. **Purpose:** It is the purpose of this Section to implement the City of Marathon Comprehensive Plan; and to preserve, protect, restore, rehabilitate, and encourage adaptive use consistent with preservation of historic character of structures, sites, travel routes, cemeteries, districts, buildings, objects, or other real or personal properties with intrinsic historical or architectural value relating to the history, government, and culture of the State and City.

B. **Significant Historic Structures and Sites**: Significant historic structures and sites are those historic structures and sites that are listed or regulated by the State of Florida.

Section 106.40 Identification

A. **General Mapping:** Maps of known historic structures and sites are maintained by the Florida Department of State, Article of Historical Resources, Master Site File, and by the City of Marathon Planning Department.

B. **Site Specific Determination:** Surveys and analyses for historic structures and sites shall be required prior to alteration of a property known or likely to contain structures or sites of historical significance.

1. Where historic structures or sites are mapped, surveys and analyses shall be required by the City without recommendation of the Department of State, Article of Historical Resources.

2. Where historic structures or sites are not mapped, surveys and analyses may be required by the City upon recommendation of the Department of State, Article of Historical Resources, or qualified professional.

C. **Standards for Authorized Investigation:** Surveys and analyses for historic structures and sites shall be conducted in accordance with standards and methodology for the natural and historic resources assessment. Authorized investigations and reporting of historic structures and sites shall, at a minimum, conform to Chapter 1A-46, Florida Administrative Code, and the provisions and standards contained in the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation", Sept. 29, 1983 (see www.cr.nps.gov/local-law/arch_stnds_0) prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the National Historic Preservation Act of 1966, as amended). These documents are adopted and made part of this chapter by reference. Copies are available from the City Planning Department.

Section 106.41 Prohibited Activities

Except as otherwise expressly provided in this section, no activity shall occur on a property that contains, or has reasonable potential to harbor, structures or sites of historical significance, without the appropriate analysis and opportunity for mitigation, as specified below.

Section 106.42 Standards for Protection

A. Preservation, restoration, or rehabilitation of historic structures shall be encouraged and incentives provided where possible.

B. The demolition of a historic structure or a structure that is integrally related to a historic structure shall be prohibited without allowing an opportunity for the acquisition of fee or less-than-fee interest in the property by a governmental unit, an organization, or by any other entity committed to the preservation, restoration, or rehabilitation of the structure(s).

C. Adaptive use of historic structures consistent with preservation of their historic character shall be encouraged. Where possible, variances to building Codes and regulations shall be made to facilitate the rehabilitation and maintenance of historic structures. Historic structures originally built for residential use shall be maintained as residential dwellings to the greatest extent possible, but may be adapted to other uses.

Article 6 Mining

Section 106.43 Prohibition

Due to the lack of appropriate areas and the irretrievable losses that such intense activities may potentially impose on the ecosystem, mining of mineral activities shall not be permitted within the City.

Article 7 Archaeological Resources

Section 106.44 Purpose

It is the purpose of this article to implement the City of Marathon Comprehensive Plan, and to preserve, protect, and restore archaeological resources. These resources constitute the physical evidences of past human activity, as well as evidences of the effects of that activity on the environment, including but not limited to: monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned watercraft, engineering works, treasure troves, artifacts, or other sites, landforms, properties, objects or features with intrinsic archaeological value.

Section 106.45 Significant Archaeological Resources

Significant archaeological resources are those archaeological resources that are listed or regulated by the State of Florida.

Section 106.46 Identification

A. **General Mapping:** Maps of known archaeological sites are maintained by the Florida Department of State, Article of Historical Resources, Master Site File.

B. **Site-specific Determination:** Surveys and analyses for archaeological resources shall be required prior to alteration of a property known or likely to contain resources of archaeological significance, as set forth for historic sites and structures in

C. **Standards for Authorized Investigation:** Surveys and analyses for archaeological resources shall be conducted in accordance with standards and methodology appropriate to archaeological resources, as set forth for historic sites and structures in this article.

Section 106.47 Prohibited Activities

Except as otherwise expressly provided in this Section, no development activity involving ground disturbance shall occur on a property containing, or having reasonable potential to harbor, resources of archaeological significance, without the appropriate analysis and opportunity for mitigation as specified in this article.

Section 106.48 Standards for Protection

Avoidance, minimization, and mitigation (in that order of preference) of adverse impacts on significant archaeological resources shall be required as appropriate to the scale and significance of the resource.

Development orders for parcels containing known or suspected areas of archaeological significance shall be conditioned, where appropriate based on recommendation from qualified professional, to accomplish the following:

A. Insure proper archaeological investigation prior to construction; and, where appropriate, avoidance, minimization, and mitigation of impacts.

B. Preserve and provide perimeter buffering around significant archaeological sites in order to maintain the security and integrity of the resource. This may include, if necessary, alteration to the proposed or originally approved site plan.

C. Where archaeological sites are to be preserved, incentives to encourage retention of these areas may be provided.

D. Mitigation of archaeological resources may include but is not limited to the following:

1. The excavation of an archaeological resource or an object or property that is integrally related to a significant archaeological resource shall be prohibited without allowing an opportunity for the acquisition of fee or less-than-fee interest in the property by a governmental unit, an organization, or by any other entity committed to the preservation, restoration, or rehabilitation of the resource(s).

2. Adaptive use of archaeological landforms or properties consistent with preservation of their archaeological character shall be encouraged.

Article 8 Conservation Management Areas

Section 106.49 Purpose

The purpose of this article is to provide for the conservation and management of natural resources when undergoing review as part of a development application. Regulated natural and historic resources shall be protected onsite through a conservation easement as conservation management areas as set forth below.

Section 106.50 Size

The amount of land to be protected within a conservation management area shall include the entire regulated natural or historic resource, as well as additional areas such as buffers, setbacks and linkages that preserve natural systems functions.

Section 106.51 Site Selection and Design

Conservation management areas shall be designed and maintained in areas with intact vegetation, including canopy, understory and groundcover where applicable, in functional, clustered arrangement, with logical contiguous boundaries to eliminate or minimize fragmentation to the greatest extent practicable. Where alternative sites exist, the site or sites selected for onsite protection shall be the best suited to preserve ecological integrity, maximize use by wildlife and maintain the long-term viability of natural plant or animal communities. The selection shall be based upon the following:

A. Function and value of natural resources;

B. Quality and condition of natural resources;

C. Protectability and manageability;

D. Size and shape (emphasis should be on avoiding enclaves of development or areas fragmented by development; and, on providing, where appropriate, adequate buffers from the secondary impacts of development and adequate wildlife corridors);

E. Contiguity with adjacent existing habitat, functional wetland system, floodplain, or habitat corridor;

F. Existing species population sizes and life history requirements;

G. Proximity and accessibility to other populations of the same species;

H. Compatibility of conservation with adjacent land uses; and

I. Recommendations from the U.S. Fish and Wildlife Service and other appropriate agencies.

Section 106.52 Location

Conservation management areas shall be located in one or a combination of the following configurations:

A. Common open space;

B. Entirely within the boundaries of a single individual lot; or

C. Across multiple lots, designed to minimize impact to conservation resources.

Section 106.53 Permitted Uses

The use of conservation management areas shall be limited to that which is compatible with protection of the ecological integrity of the protected resources. The following uses may be permitted as part of an approved management plan, provided they do not adversely affect natural resource function and ecological integrity:

A. Nature trails (mulched walking paths, elevated wooden walkways);

B. Low intensity, passive recreational activities such as wildlife viewing and hiking;

C. Scientific and educational activities (interpretive trails, observation points);

D. Site investigative work such as surveys, soil logs, and percolation tests;

E. Scenic, historic, wildlife, or scientific preserves;

F. Ongoing Aquacultural activities that:

1. Are consistent with the protection of the natural resource(s) identified on the site for protection under the management plan; and

2. To the extent consistent with the protection of such resources, follow certification programs or Best Management Practices as set forth in Section 106.38 (A);

G. Constructing fences where no fill activity is required and wildlife movement corridors are maintained; and

H. Other uses demonstrated to be compatible with natural resource protections as outlined in the management plan.

Section 106.54 Prohibited Activities

The following activities are prohibited unless part of an approved management plan:

A. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

B. Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

C. Removal or destruction of native trees, shrubs, or other vegetation.

D. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

E. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

F. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

G. Acts or uses detrimental to such retention of land or water areas.

H. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

Section 106.55 Discharges to Protected Areas

Wastewater and stormwater discharges to conservation management areas are generally prohibited. Discharges may be allowed only in surface waters and wetlands features if the following criteria are satisfied:

A. The quantity, timing, and quality of discharge maintain or improve water quality, biological health, and function of the natural ecosystem.

B. Downstream waters are not affected by nutrient loading.

C. The project owner or developer prepares and implements maintenance and monitoring plan acceptable to the City.

D. The project owner or developer corrects any failures in design or operation of the system that cause degradation of water quality, biological health, or the function of the natural ecosystem.

E. The owner or developer posts a performance bond or similar financial guarantee to assure implementation of maintenance and monitoring in conjunction with this article.

F. Treatment is provided in accordance with the requirements of the South Florida Water Management District.

Section 106.56 Protection During Construction

Prior to and during parcel alteration, the conservation management area boundaries shall be clearly marked and appropriately protected as follows.

A. Physical protection barriers shall be installed around the outer extent of the set aside portion of conservation management areas as necessary to prevent disturbance by individuals and equipment. Protective barriers must be installed and approved prior to commencement of permitted activities, including grading or site preparation and maintained in place until activities are complete.

B. Erosion and turbidity control measures shall be required in order to prevent runoff of turbid water into conservation management areas.

C. In addition to mitigation required pursuant to this chapter, the developer shall completely restore any portion of a protected conservation management area damaged during the proposed activity. Certificates of occupancy shall not be issued until restoration activity has been completed.

Section 106.57 Permanent Protection

Conservation management areas shall be permanently protected as follows:

A. **Dedication:** All areas protected under this section shall be restricted from further subdivision, and protected in perpetuity using a legal instrument that runs with the land, in a form acceptable to the City and duly recorded in the public record which assures the preservation and continued maintenance of the conservation management area.

   1. The required legal instrument shall be a conservation easement in accordance with F.S. 704.06, to be recorded in the public records of Monroe County, which shall restrict the use of the land in perpetuity to non-development uses and be expressly enforceable by the City.

2. Other forms of dedication may be considered by the City if comparable protection is demonstrated which assures the preservation and continued maintenance of the conservation management area.

3. The City may issue development approval subject to the recording of the approved legal instrument. Issuance of construction and building permits shall be withheld until proof of recordation is provided to the City.

B. **Plat Notations:** The boundaries of designated conservation management areas, including any required buffers, and the building area limitation as required by this article for lots located within the conservation management areas shall be clearly delineated on site plans, plats, and deed restrictions, and a legal description of the boundaries shall be included. A plat shall identify express prohibitions preceded by the following statement:

"The activities/acts/uses identified below are prohibited in designated 'conservation management area(s)' unless part of an approved management plan without express written permission from the City of Marathon. Violation of any one of these provisions without such written permission shall be considered a discrete violation of a Development Order issued by the City Council. Development Order terms are enforceable by the City of Marathon Code Compliance Board. Violations may result in monetary penalties and/or order to restore conservation area(s) to preexisting conditions at the expense of the owner(s). Failure to comply with Code Compliance Board orders may result in liens against the property.

Prohibited activities/acts/uses in 'conservation management area(s)':

1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

2. Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

3. Removal or destruction of native trees, shrubs, or other vegetation.

4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

7. Acts or uses detrimental to such retention of land or water areas.

8. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance."

C. **Field Markers:** Permanent survey markers using iron or concrete monuments to delineate the boundary between conservation management areas and contiguous land shall be set, according to current survey standards. Markers shall be installed prior to issuance of the initial certificate of occupancy or other final approval, and shall be maintained by the owner in perpetuity.

D. **Signs:**

1. The perimeter of conservation management areas shall be permanently identified with uniform signs that identify the area as protected conservation area.

2. When signage is required by another governmental agency and coincides with City requirements, the alternate signage shall satisfy this requirement.

E. **Identification on Habitat and Species Maps**: Areas protected as conservation management areas shall be indicated as such on the Habitat and Species Maps of City of Marathon, and may be rezoned to a conservation zoning category with landowner approval at the City's expense.

Section 106.58 Management Requirements

Conservation management areas shall be maintained in compliance with standards set forth in this chapter and any required management plan.

A. **Responsibility:** Unless otherwise agreed by the City, the cost and responsibility of managing the protected area shall be borne by the owner or responsible entity.

B. **Minimum Requirements:** Management shall maintain or enhance the ecological value of the protected area and support the survival of listed species. Management shall include but not be limited to the following:

1. Non-native vegetation shall not be introduced into the protected area. Invasive vegetation shall be removed if possible, or reduced to a level of noninterference with the growth of native vegetation. Removal shall be accomplished utilizing ecologically sound techniques, including manual removal, and hand-held power equipment. Trees which are actually used as nest or perch trees shall be retained but controlled. All vegetative debris must be disposed of outside the protected area.

2. Dead trees that are not a hazard to humans and that provide habitat for wildlife shall remain in the protected area.

3. Where removal occurs, replacement with appropriate native species may be required.

4. Future owners, tenants, or other users of the protected area and resource shall be informed of the specific requirements of the approved management plan, and relevant state and federal laws. Information shall consist of tangible materials, including but not limited to deed or title notes, brochures and signage.

5. Fencing may be required to control access to the protected area.

C. **Management Plan**:

1. A management plan may be required in order to provide long-term protection and maintenance of the values and functions of the conservation management area, in accordance with this chapter.

2. The parcel owner shall maintain the protected area in accordance with the management plan. Adequate financial resources to maintain and manage the protected area may be required.

3. Modifications to the management plan are prohibited without prior written approval by the City.

D. **Failure to Maintain:** In addition to any other remedies provide by the LDRs, if the conservation management area is not properly maintained or managed, the City may assume responsibility of maintenance and may charge the property owners or responsible entity a fee which covers maintenance and administrative costs.

Section 106.59 Ownership of Conservation Management Area

A. The conservation management area may be owned by one or a combination of the following:

1. Landowner;

2. Homeowners' association;

3. Established land trust;

4. Non-profit conservation organization;

5. City of Marathon, with approval;

6. Other public agency with conservation responsibilities and expertise (e.g. South Florida Water Management District).

B. If the conservation management area is not properly maintained in accordance with the approved management plan, the City may assume responsibility of maintenance and charge the property owner or homeowners' association a fee which covers maintenance and administrative costs.

Article 9 Management Plans

Section 106.60 When Required

A management plan shall be required for all development applications involving properties with regulated natural resources areas whether or not impact is proposed. The management plan shall be submitted for review and approval concurrent with submittal of the application.

Section 106.61 Professional Standards

The management plan shall be prepared at the expense of the applicant by person(s) qualified in the appropriate fields of study, and conducted according to professionally accepted standards.

Section 106.62 Contents

The management plan shall provide for the following:

A. Description of goals and objectives based on type of natural resources to be managed;

B. Description of all proposed uses, including existing and any proposed physical and access improvements;

C. Description of prohibited activities, such as mowing in wetland buffers, or removal of native vegetation in protected habitat areas;

D. Descriptions of ongoing activities that will be performed to protect, restore, or enhance the natural resources to be protected. This may include:

1. Removal or control of invasive vegetation and debris;

2. Replanting with native vegetation as necessary;

3. Provision for listed species habitat needs, including restricting, at appropriate times, intrusions into sensitive foraging, breeding, roosting, and nesting areas;

4. Fencing or other institutional controls to minimize impact of human activities on wildlife and vegetation, such as predation by pets;

5. Cooperative efforts and agreements to help promote or conduct certain management activities, such as cleanups, maintenance, public education, observation, monitoring, and reporting;

6. Any additional measures determined to be necessary to protect and maintain the functions and values of conservation areas in accordance with the requirements of this chapter;

7. Set of schedules, estimated costs, staffing requirements, and assignments of responsibility for specific implementation activities to be performed as part of the management plan, and identification of means by which funding will be provided;

8. Performance standards with criteria for assessing goals and objectives;

9. Five-year monitoring plan with schedule and responsibility;

10. Ownership and party responsible for management activities;

11. Provision for changes to be reviewed and approved by the City; and

12. Contingency plans for corrective measures or change if performance standards are not met, and recognition of City enforcement authority.

E. **Revision of an Approved Management Plan**: Modifications to an approved management plan that do not result in lesser protection of the resource(s) present may be allowed, subject to approval by the City development review body that approved the original management plan.

F. **Management Standards in lieu of Plan:** The agreement to use management practices in accordance with a standard management plan template provided by the City may satisfy the requirement of a management plan.

G. **Enforceability:** The existence of the management plan shall be noted on plans and plats, covenants and restrictions, conservation easements and other documents as appropriate to the type of development and manner of protection provided. The management plan shall be specifically enforceable by the City.

Article 10 Avoidance, Minimization, Mitigation and Monitoring

Section 106.63 Applicability

Approval shall only be granted for proposed activities that are located, designed, constructed, and maintained to avoid, minimize, and, where necessary, mitigate unavoidable adverse impacts on regulated natural and historic resources, consistent with upland habitat limitations, the requirements for surface waters and wetlands and the requirements for tree preservation of this chapter.

A. **Avoidance Measures:** Specific measures for avoidance which will be required prior to authorization of any adverse impact may include, but are not limited to, the following:

1. Limiting the scope, degree or magnitude of the proposed activity.

2. Using appropriate and best available technology.

3. Sensitive site design, sitting of facilities, and construction staging activities.

4. Exploring alternative on-site locations to avoid or reduce impacts of activities.

(a) Scheduling proposed activities at times of minimum biological activity to avoid periods of migration, rearing, resting, nesting and other species-specific cycles and activities.

(b) Managing the access to conservation management areas, such as fencing designed to separate wildlife and pets or to exclude humans from sensitive denning or breeding areas.

B. **Minimization Measures:** The following special design standards may be required to minimize disturbance caused by activities adjacent to natural resources:

1. Minimum setbacks for clearing of natural vegetation adjacent to regulated natural resources or setbacks for the location of impervious surfaces greater than 100 square feet in base coverage.

2. Limiting natural vegetation removal to the minimum necessary to carry out the proposed activity or to meet fire hazard standards. Protection of tree crowns and root zones may be required for all trees planned for retention.

3. Roads and other development features located to follow existing topography and minimize cut and fill.

4. Designing stormwater to maximize natural overland flow through natural drainage systems and grassed overland (roadside and lot line) swales; multi-purpose use of stormwater management systems; use across or for multiple properties.

5. Siting waste treatment systems and drainfields to prevent discharges that adversely impact the environmental quality of regulated natural and historic resources.

6. Limiting residential density and building area in accordance with this chapter.

7. Other reasonable protective measures necessary to minimize adverse effects may be required depending on conditions specific to a particular site.

C. **Mitigation Measures:** Where impacts to regulated natural resources cannot be avoided, mitigation may be required subject to the requirements of Section 106.64 below. Mitigation of adverse impacts to environmentally sensitive areas within the City shall be required for both public and private projects, in accordance with criteria specific to the resource and criteria generally applicable to mitigation proposals as set forth herein.

Section 106.64 Mitigation

Mitigation of significant adverse impacts on regulated natural resources shall include funding for the acquisition and management, preservation, replacement, or restoration of significant ecological resources. A proposal for mitigation of significant adverse impacts must meet the following general mitigation standards. Mitigation of impact to wetlands and wetland buffers is provided in Article 4 of this chapter. Mitigation of impact to regulated trees is provided in Article 2, "Trees and Native Plants" of this chapter.

A. **Determination of Impact:** Significant adverse impacts to regulated natural resources shall be evaluated based on the terms of the natural function and value of the resource. Mitigation shall be acceptable only where it is determined that mitigation will result in no actual net loss of the resource function and value.

B. **Characteristics of Mitigation Proposals:** All proposals shall provide compensation for all functions and values of the natural habitat. Wetland mitigation shall be determined for individual projects by applying the Uniform Mitigation Assessment Method (UMAM), pursuant to Chapter 62-345, Florida Administrative Code as determined in this chapter. The following characteristics shall be included in the proposal:

1. The hydrologic, soil, slope, and other basic characteristics of the proposed project must be adequate to achieve proposed project goals.

2. The mitigation area must be at least as persistent as the existing natural resource it is intended to replace.

3. The size of the mitigation area shall be based on the quality of habitat or vegetation on both the area of impact and the area of proposed mitigation. In the case of wetland resources, the size shall be determined from the results of the UMAM analysis.

C. **Resource-Based Mitigation:** Where mitigation is required by this chapter, resource-based mitigation may be provided on or adjacent to the site, or offsite. The order in which mitigation will be considered shall be:

1. *Onsite Restoration or Enhancement:* An applicant may mitigate for impacts onsite by replanting on or adjacent to the parcel, relocating movable resources from one portion to another portion of the parcel, or other measures to restore the quality, function and value of the resource. An easement may be required to ensure the continued viability of the area to be restored or enhanced.

2. *Offsite Preservation:* The applicant may provide offsite mitigation through the preservation of land through offsite dedication, transfer of fee or less than fee simple title to a land conservation agency, non-profit conservation organization, or other entity approved by the City. Portions of offsite conservation management areas requiring protection under this chapter shall not be used as credit towards a mitigation proposal. Mitigation of impacts to a listed plant or animal species or its habitat that is required by a State or federal agency (such as the ACOE and SFWMD) shall be applied towards off-site mitigation if it is for the same development project and meets the following requirements:

(a) Offsite protection sites shall meet all appropriate size, site selection and design, protection, ownership and maintenance, and other provisions of this chapter applicable to onsite conservation management areas. Fencing may be required to control access to the mitigation area.

(b) Offsite conservation management areas shall be located in the City and may include:

i. Sites composed of addition of land to existing publicly managed areas held for conservation purposes, such as State or City parks or preserves;

ii. Sites recommended for preservation or restoration by a State or local governmental land conservation agency; or

iii. Other suitable sites within an ecosystem or watershed in proximity to the conservation or preservation area being adversely impacted by development.

D. **Fee-in-Lieu of Land:** As an alternative to the protection of land, the City may allow contribution of a fee-in-lieu-of-land to the environmentally sensitive lands fund, under which the City shall purchase or manage land to protect natural resources in accordance with standards of this chapter. Where fee-in-lieu of land is allowed, the cash payment shall be equivalent to 150% of the average per acre-appraised market value, at the time of permit application, multiplied by the number of acres of regulated natural resource for which mitigation is required, plus estimated total cost of management required to establish the viability of that type of resource.

E. **Submittal of Proposal:** A mitigation proposal shall be submitted in conjunction with the requirements for resource assessment requirements under Article 3. The mitigation proposal shall require the same assessment and specify the same details for mitigation areas as required for areas otherwise protected under this chapter. The cost and timing of any monetary contribution or offsite acquisitions shall be specified. A management plan shall be required in accordance with this chapter, and shall include contingency plans for corrective measures or change if performance criteria are not met.

F. **Mitigation before Alteration**: The initial construction, earthwork and planting for mitigation, or payment of fee-in lieu, shall be completed prior to the permitted alteration of regulated natural resources. However, in special situations where the City determines that this requirement will place an unreasonable scheduling hardship on the applicant, the applicant shall post double the required performance guarantee to ensure that the mitigation project will be completed.

G. **Management and Monitoring:** For all mitigation projects, the City shall require management and monitoring for a minimum of five years. This period may be extended as necessary, based on the complexity of the resource or type of mitigation proposed, in order to demonstrate substantial establishment and success of mitigation. In conjunction with a management plan per this chapter, the following shall apply:

1. Where plantings are required, success shall be measured by maintenance of 100 percent survivorship rate per species for all planted material. Semiannual replanting shall be required to maintain required survivorship.

2. Nuisance or invasive exotic vegetation shall be eliminated or controlled.

3. Monitoring reports of the status of the mitigation area shall be submitted to the City Biologist no less than annually. Indicators appropriate to the resource shall be tracked and evaluated. Such indicators may include water quality chemistry, number of surviving plantings and any plantings made to maintain required survivorship.

H. **Performance Guarantee:** A performance guarantee shall be required in an amount equal to 110% of the estimated cost of mitigation, management and monitoring activities, to ensure the adequate monitoring and long-term viability of mitigation activities. The guarantee shall be provided for the duration of the time period required for maintenance and monitoring, but in no case less than two years.

1. *Execution*: The performance guarantee shall be executed by a person with a bonafide legal interest in the parcel. The performance guarantee shall be kept in full force until all obligations are satisfied.

2. *Form of guarantee*: The guarantee shall be:

   (a) Cash deposit or certificate of deposit assigned to the City;

   (b) Escrow agreement for the benefit of the City and on a City approved form;

   (c) Performance bond issued by a State of Florida registered Guarantee Company which shall be listed by the U.S. Department of Treasury Fiscal Services, Bureau of Government Financial Operations, and on a City approved form;

   (d) Irrevocable letter of credit on a City-approved form; or

   (e) Similar security acceptable to the City.

3. *Certification:* Within six months of the completion of the period established for management and monitoring, the applicant shall submit a final report that includes, at a minimum, the following:

   (a) Discussion of the projected relative success or failure of the project in mitigating for lost natural resource area value and function;

   (b) Analysis of measures undertaken during the project that contributed to success;

   (c) Analysis of problems encountered during the project that decreased success;

   (d) Recommendations to increase the success of similar, future projects; and Summary of data collected.

4. *Failure to Mitigate, Manage or Monitor*: The City may exercise its option on the performance guarantee in the event that mitigation, management or monitoring is not in compliance with proposed plan. In the event the City exercises its option on the guarantee, all obligations of the applicant under the mitigation and monitoring plan shall cease.

Chapter 107
General Development Standards

Article 1 Building Permit Allocation System (BPAS)

Section 107.00 Purpose and Intent

The purpose and intent of this division is to manage the rate of new development to protect the quality of life for residents and retain the predominately small scale character of development in the City by: enhancing and protecting natural resources; assuring that such growth proceeds in an orderly manner and does not exceed the availability of public facilities and services; establishing a building permit allocation system that encourages the development of affordable workforce housing; directs the rate and location of new growth to further discourage deterioration of public facility service levels, environmental degradation and potential land use conflicts; encourages appropriate in-fill development; promotes the upgrading and expansion of existing small-size businesses, regulates; and supports long term owner occupancy of market rate dwelling units to stabilize residential neighborhoods.

Section 107.01 Administration

The administration of the building permit allocation program is the responsibility of the Planning Director or his or her designee. Council shall evaluate the program on a bi-annual basis commencing one year from the effective date of this ordinance and continuing every two years thereafter. This evaluation shall include an assessment of the need for specific annual allocations and all other aspects of the program. The program shall run on a semi-annual basis.

Section 107.02 Numerical Limits of Allocation

A. **Dwelling Units**

1. The annual issuance of allocations shall be limited to thirty (30) dwelling units to be distributed as follows: Eighty (80%) percent Market and twenty (20%) percent Affordable. The annual market to affordable ratio may vary, but it shall not exceed the annual unit restriction for any continuous, sequential five-year period, i.e. no more than (150) allocations may be issued for any given five-year period.

2. If any part of the thirty (30) unit annual allocation remains unused, then such excess allocations may be reallocated in subsequent periods, providing that the five-year maximum is not exceeded.

3. For the purpose of administration of this article, the Council shall, by resolution, establish an annual allocation quantity for each category of dwelling unit allocations and may make certain numerical adjustments among the categories from time to time.

4. No dwelling unit allocations shall be available for the development of new hotel or motel units.

Formatted: Indent: Left: 54 pt

Formatted: Bullets and Numbering

B. **Commercial Floor Area:** The annual issuance of allocations shall be limited to 25,000 square feet of commercial floor area for the next continuous, sequential ten-year allocation periods, to not exceed a total of 250,000 square feet during the next ten years.

Section 107.03 Establishment of Allocation Equivalency Factor

Council creates the following allocation equivalencies:

Table 107.03.1
Allocation Equivalency Factors

Type of Dwelling Unit	Allocation Equivalency Factor	Note(s):
Single or two-family	1.00	(3)
Community Workforce	1.00	(1) & (4)
Multi-family	1.00	(3)
Dormitory	1.00	(2)
Group Home (per dwelling unit)	1.00	(4) & (5)

Deleted: Hotel or Motel ¶

Formatted Table

Deleted: 1.00

Formatted: Centered

Footnotes:
(1) Limited to up to two bedrooms unless an additional bedroom is approved as a variance by the Council. If such variance is approved, the total square footage shall not exceed the maximum square footage for the applicable equivalency factor
(2) A dormitory is limited to a maximum of 2000 ft² of climate controlled space.
(3) Dwelling units utilizing affordable housing allocations are subject to a maximum size of 1800 ft² of habitable space
(4) Minimum size shall be greater than 375 ft² of habitable space
(5)Each housekeeping unit comprising a group home which meets the definition of a dwelling unit, as established in Chapter 110, shall require an allocation

Section 107.04 Establishment of Allocation Pools

For the purpose of administration of this article, Council hereby creates the following described allocation pools:

A. **Dwelling Units**

1. ***Market Rate*:**

(a) *Owner-occupied Pool:* For each respective allocation period in the market pool, one (1) allocation will be issued to each owner-occupier applicant, in order of their ranking and controlling date and time, if sufficient allocations are available.

(b) *General Market Pool:* For each respective allocation period in the general market pool, allocations will be issued to each applicant, in order of their ranking and controlling date and time, if sufficient allocations are available. One (1) application per allocation period will receive the application score; however, in the case of subsequent applications, filed by the same applicant during the same allocation period, five (5) points shall be deducted from the total application score.

2. ***Affordable***

(a) *General Affordable Pool*: For each respective allocation period in the general affordable pool, allocations will be issued to each applicant, in order of their ranking and controlling date and time, if sufficient allocations are available.

(b) *Community Workforce Pool:* For each respective allocation period in the community workforce pool, allocations will be issued in order of their controlling date and time, if sufficient allocations are available.

B. **Commercial Floor Area**

1. For each respective allocation period in the commercial floor area pool, allocations will be issued in order of their ranking and controlling date and time, if sufficient allocations are available.

2. If the amount of floor area represented in the allocation applications is equal to or less than the available allocation, the Director may recommend to Council that all of the allocation applications be granted allocation awards.

3. If the total amount of floor area represented in the allocation applications is greater than the available floor area, the Director shall submit an evaluation report to the Council indicating the evaluation rankings and identifying those applications whose ranking puts them within the allocation, and those applications whose ranking puts them outside of the allocation.

C. **Administrative Relief Pool:** BPAS administrative relief allocations are distributed by the Council at their discretion following request from an applicant, and subject to a finding through the administrative relief process that all of the following conditions exist:

1. That the applicant has applied for an allocation, but has not received an allocation for residential development during four (4) consecutive years in the BPAS, during which the ownership has not changed and the application has not been withdrawn;

2. The issuance of an allocation, pursuant to the recommendation of the Planning Director, will not adversely affect the public interest or the purposes of the Plan;

3. Is the most appropriate option for the use of the property. Such options may include award an allocation, purchase of the property or other agreed option;

4. Allocations are available in the BPAS administrative relief pool; and that the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Marathon, except the provisions of this Division.

Section 107.05 General Provisions

A. **Level of Service Requirement:** The number of years over which allocations may be granted for a given application shall be based on the size of the application and the availability of infrastructure.

B. **Transfer Prohibited:** Allocations are site specific and may not be transferred from one application to another. Allocations may be transferred with the conveyance of a lot.

C. **Exemptions:** The following classes of permits and approvals are not subject to all or a portion of the restrictions of the Building Permit Allocation System:

1. Building permits for additions, remodeling, or demolition or reconstruction of existing dwelling units.

2. Publicly owned facilities are exempted from the allocation system for commercial floor area, provided that such shall not be placed in hammocks or environmentally sensitive areas with the exception of the following: fill may be placed in wetlands,

subject to ACOE and DEP approvals, as needed for the siting of necessary public facilities when it can be demonstrated, pursuant to the requirements of the Plan, that the siting will serve a legitimate public purpose.

3. Upon request and recommendation for exemption by the Director, Council may approve, at a Public Hearing, the issuance of allocations for perpetually income deed-restricted dwelling units needed to meet the quantified objectives for affordable housing, as set forth in the Housing Element of the Comprehensive Land Use Plan.

   (a) Such dwelling units issued under this provision will not increase the total affordable dwelling allocations available for issuance during the allocation period.

   (b) Criteria for issuance of such allocations: An affordable residential dwelling allocation (s) may be issued if the proposed site meets all of the following criteria:

      i. The use shall be an allowed use in the land use and zoning districts which apply to the site; and
      ii. The site is listed as scarified or disturbed based upon the City of Marathon Habitat Maps.

D. **Eligibility**

1. To apply for allocations, a development must have completed all steps otherwise necessary to apply for and receive a building permit including habitat assessment (if required by the City Biologist), other agency approvals or letters of coordination and the requisite construction plans, zoning and subdivision approvals.

2. In order to qualify for issuance of an allocation, revised construction plans, if required by the Building Official, which meet the requirements of the most recent version of the Florida Building Code and the City of Marathon Land Development Regulations, must be received by the Building Department no later than sixty (60) days after notification of award.

3. Proof of ownership, in the form of a copy of the Monroe County Property Appraiser record card or a copy of the recorded warranty deed, which has been certified as true and correct by the Monroe County Clerk of the Court, must be supplied at the time of application.

4. For purposes of this program, the applicant is the owner of record of the lot for which the permit is sought and is presently in physical possession of the lot;

5. For purposes of this program, an applicant, or entity in which the applicant holds an interest, his or her spouse and un-emancipated children under the age of 18, shall be considered the same applicant.

Section 107.06 Limitations

In addition to the limitations herein, an allocation is subject to the specific provisions for each allocation pool as follows:

A. **Market Rate Owner-occupied Allocation Pool**

1. Allocations will be issued only in the owner occupant applicant's name.

2. Eligibility for this pool is limited to one per lifetime per applicant.

3. The applicant shall have personally resided or have been employed within the City of Marathon during the two (2) years immediately prior to applying for an allocation from this pool.

4. The applicant shall occupy the unit for a minimum of two (2) years from the date of issuance of the Certificate of Occupancy. Upon finding of good cause, as established in Chapter 110 "Definitions" the City Manager or his/her designee, may waive the minimum occupancy requirements and the applicant may sell the property during the two year minimum occupancy period. However, at the time of closing, the applicant shall only receive up to the "SLE" as calculated using the indexed formula, as established in subsection 7, below and the City of Marathon shall receive the difference between the "SLE" and the "ONP" to be used for affordable housing.

5. The applicant shall occupy the dwelling unit for at least nine (9) months of each year. Occupancy by children or other immediate family members or dependents of Applicant shall be considered occupancy by Applicant.

6. Proof of Homestead Exemption, issued by the Monroe County Property Appraiser's office, must be supplied to the Planning Department within one (1) year of the issuance of Certificate of Occupancy for the dwelling unit.

7. Prior to the issuance of the building permit for any dwelling unit developed under this provision, the applicant shall, on a form supplied by the city, record in the official records of Monroe County, a deed restriction running with the land, which limits the occupancy of the dwelling unit to the stated applicant(s) for a minimum of two (2) consecutive years after the date of issuance of the Certificate of Occupancy.

8. The deed restriction shall also include the provision for a shared limited equity factor based upon the following indexed formula:

OWNERS' NET PROCEEDS ("ONP"), at time of closing,
multiplied by INDEX equals SHARED LIMITED EQUITY (SLE); or
"ONP" x "INDEX" = "SLE"
Where:
"ONP" is the Owner's Net Proceeds for the dwelling unit.
"INDEX" shall be percentage of increase (or decrease) for all expenditures as listed in the Consumer Price Index for All Urban Consumers (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics or any successor thereto, for the period of time that includes December 31 of the year in question as compared to the household median income reported for the period of time that includes December 31 of the previous year.
"SLE" is Shared Limited Equity.

B. **General Market Rate Pool**

1. For purposes of this program, an applicant or entity in which the applicant holds an interest, his or her spouse and un-emancipated children under the age of 18, shall be considered the same applicant.

2. Development of multi-family dwellings shall provide for employee housing pursuant to the requirements of the LDRs or development agreements as approved by the Council.

3. No residential dwelling unit allocations shall be made available for the development of new hotel or motel rooms.

Deleted: hotels, motels and

Formatted: Bullets and Numbering

C. **General Affordable Pool**

1. Lot size for development of a single family residence is subject to the zoning district of the subject parcel.

2. Single-family and multi-family dwelling units are limited to a maximum of one thousand, eight hundred (1,800) square feet of habitable space.

3. The maximum rental or sales price for the dwelling unit shall meet the requirements as established for affordable housing in Chapter 104 "Specific Use Regulations" and Chapter 110 "Definitions". If the dwelling unit is designated for employee housing, as defined in Chapter 110, the use of the dwelling is restricted to households that derive at least seventy (70%) percent of their household income from gainful employment in Monroe County. Eligibility of a potential renter of the employee housing shall be determined by the Department at the time the potential renter applies to occupy the dwelling unit.

4. The Department shall review the lease agreement, annual verification from business, letter of employment or occupational license of an occupant for the

dwelling unit on an annual basis to ensure that, rent for the unit does not exceed the affordable rent standard established for affordable housing in Chapter 110 "Definitions"; the occupant is gainfully employed in Monroe County; and the employee housing is occupied by employees meeting the income limitations as established for "Affordable Housing" in Chapter 104 and as defined in Article 110 "Definitions". Annual income qualification, lease or employment verification, as applicable, by the City, or its designee, shall be limited to rental and employee housing dwelling units. Income verification for owner occupied dwellings shall be performed and approved by the City or its designee prior to the sales closing and occupancy of the dwelling unit.

5. Prior to the issuance of the building permit for any dwelling unit developed under this provision, the applicant shall, on a form supplied by the city, record in the official records of Monroe County, a deed restriction running with the land which limits the occupancy of the dwelling unit to households meeting the income and occupancy restrictions established for "Affordable Housing" in Chapter 104, and as defined in Chapter 110 "Definitions".

D. **Affordable Community Workforce Pool**

1. Shall be limited to the development of community workforce units (CWUs) as established in Chapter 104 and defined in Chapter 110 "Definitions";

2. The unit is not to be sold as a condominium and may not be used for vacation rental purposes. The maximum rental price for the dwelling unit shall meet the requirements as established for "Affordable Housing" in Chapter 104, and as defined in Chapter 110 "Definitions." Occupancy of the dwelling unit is restricted to households that derive at least seventy (70%) percent of their household income from gainful employment in Monroe County.

3. Prior to the issuance of the building permit for any dwelling unit developed under this provision, the applicant shall, on a form supplied by the city, record in the official records of Monroe County, a deed restriction running with the land which limits the occupancy of the dwelling unit to households meeting the restrictions established for "Affordable Housing" in Chapter 104 and as defined in Chapter 110 "Definitions."

4. The Council may grant all, some, or none of the available allocations to a given development application based on the Council's determination of the proposed application's ability to meet the city's affordable housing objectives. Allocations may be granted for a single or for a multi-year period at the discretion of the Council, subject to the provisions of Section 107.10 "Banking or Borrowing of Allocations."

5. Eligibility of a potential renter of community workforce dwelling unit shall be determined by the Department at the time the potential renter applies to occupy the dwelling unit.

6. The Department shall review the lease agreement, annual verification from business, letter of employment or occupational license of an occupant for the dwelling unit on an annual basis to ensure that, rent for the unit does not exceed the affordable rent standard established for affordable housing in Chapter 110 "Definitions"; the occupant is gainfully employed in Monroe County; the employee housing is occupied by employees meeting the income limitations as established for "Affordable Housing" in Chapter 104, and as defined in Chapter 110 "Definitions."

E. **Commercial Floor Area Pool**

1. Allocations are only available for properties within the MU and I land use districts.

2. An individual entity or organization may have only two (2) active applications per site in the annual allocation period.

3. There shall be no limit on the number of separate projects for which applications may be submitted by an individual, entity or organization.

4. The amount of non-residential floor area to be allocated shall be limited to a maximum of twenty-five thousand (25,000) square feet for any one site.

5. Development of structures to be devoted to nonresidential use in all commercial zoning districts shall provide for employee housing pursuant to the requirements of the LDRs or development agreements as approved by the Council.

Deleted: hotels, motels or

Section 107.07 Applications

A. Applications for allocations shall be on a form provided by the City. Complete applications must be submitted to the City no later than the allocation process deadlines as periodically established by the Department.

B. A processing fee, as may be established by resolution of the Council, shall accompany each BPAS application.

C. Each dwelling unit or commercial floor area request must obtain an allocation; however, allocation requests within a development under common ownership shall be combined and treated as a single application. Each separate lot shall be treated as separate applications.

D. An application for an allocation must include other applicable permits and approvals, i.e., Army Corps of Engineers, Department of Environmental Protection, and Department of Health. The City may permit evidence of compliance with the requirements of other jurisdictional entities to be demonstrated by "coordination letters" in lieu of approvals or permits.

E. The Director shall establish the application submittal requirements for allocation requests, which will include information necessary for the Council to determine whether the proposed application meets the established objectives of the BPAS.

F. The Director or his or her designee shall assign each application a score in accordance with the criteria established in Section 107.09 "Scoring System."

G. The Council shall hold a public hearing and shall approve or amend the assigned score; and based upon the recommendation of the Director, Council shall establish a ranking for each development application based upon the application score and controlling date and time. The Council shall finalize the evaluation rankings within sixty (60) days following initial receipt of the Director's evaluation ranking, report and recommendations.

H. The planning process for Land Development Regulation amendments, zone changes, specific plans, and other legislative acts may proceed unaffected by the regulations of this article. The approval of any such legislative act is not a commitment on the part of the city that the proposal will ultimately receive allocations.

I. Within ninety (90) days of receipt of notice of the granting of an allocation award by Council, the applicant must pick up the associated building permit pursuant to the requirements of Chapter 6 of the City Code, unless subject to the provisions of Section 107.10 "Banking or Borrowing of Allocations."

J. **Revisions to Applications**

1. **Prior to Issuance of the Building Permit**

   (a) A permit holder of an individually owned single lot may make a one-time substitution of plans prior to the issuance of the building permit.

   (b) A permit holder of multiple permits for separate lots under the same ownership may make a one-time substitution of one set of plans, prior to the issuance of the building permit for one lot only, regardless of the number of permits held or lots owned.

   (c) No revisions shall be made to any aspect of the proposed development which formed the basis for the evaluation review, determination of points and allocation rankings, unless such revision would have the effect of either maintaining or increasing the points originally awarded.

2. **After the Issuance of a Certificate of Occupancy or Final Inspection**

   No revision shall be made to any aspect of the completed development which formed the basis for the evaluation, review, determination of points and allocation rankings, unless such revisions are accomplished pursuant to a new building permit and unless such revisions would have the net effect of either maintaining or increasing the points originally awarded.

K. **Withdrawal of Application:** An applicant may elect to withdraw a BPAS application without prejudice at any time up to the date of evaluation and ranking. Resubmitted applications shall be considered "new" and shall meet all the requirements of this article, including payment of appropriate fees and receipt of a new controlling date.

Section 107.08 Allocation Waiting List

A. An allocation waiting list shall be established and maintained as a public record by the Department and may be separated into one or more categorical waiting lists for such categories as commercial floor area; owner-occupied and general market rate; general affordable; and commercial workforce dwelling unit applications.

B. Within each such category on the allocation waiting list, the total points assigned and approved, and the date and time upon which the Director accepted an application as complete shall determine the relative position of eligible applications.

C. With the exception of development under Section 107.10 "Banking or Borrowing of Allocations", an allocation may only be issued if there is one available in the appropriate allocation category.

D. Notice of the allocation hearing shall be mailed (by registered return receipt) to each applicant on the allocation waiting list pursuant to the requirements of Article 4, Chapter 102, "Notice of Public Meetings and Hearings."

E. An allocation issued for a permit, which is subsequently returned, abandoned, or otherwise voided, may be rolled over into the following year's allocation. Any excess market rate dwelling unit allocations may be rolled over into the next year's allocations provided that at least one-half of the unallocated market rate allocations are rolled over into affordable dwelling unit allocations. If the number of unallocated market rate allocations is odd, the odd numbered allocation shall rollover to an affordable allocation.

Section 107.09 BPAS Scoring System

A. **Purpose:** This Section establishes the BPAS scoring system and related procedures.

B. **Evaluation Criteria:** The Department shall evaluate and assign an initial numerical score to each application, based upon the assumption that the development shall be within the area of the parcel that provides the greatest number of points, in accordance with the scoring criteria established in this section. Should an alternate location on a parcel be desired for construction, a new assessment by the city must be performed.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

1. **Dwelling Units:**

Environmentally Sensitive Areas[1]
Minor Category (0-4 points)

Applications that propose development within the following areas will not receive any points:

	Criteria:
	• High quality hammock; • Unscarified beach/berm; • Saltmarsh/buttonwood wetlands; • Palm hammock; • Known habitat of a documented threatened/endangered species; • Within one hundred (100) feet of any known nesting area for marine turtles; • Within a probable or potential habitat of a threatened/endangered species; and • Within the habitat of a wide-ranging threatened/endangered species or a species of special concern. • Offshore Island (COBRA)

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

[1] As determined by the City Biologist

Environmentally Sensitive Areas (Continued)[1]
Minor Category (0-4 points)

Point Assignment:	Criteria:
1	Application proposes development on parcels containing moderate quality hammock as determined by a city biologist-approved habitat assessment.
2	Application proposes development on parcels containing low quality hammock as determined by a city biologist-approved habitat assessment.
3	Application proposes development on parcels that contain disturbed beach berm, with no known threatened or endangered species.
4	Application proposes development on parcels that are classified as scarified or disturbed w/exotics, with no known, probable or wide-ranging threatened or endangered species.

FEMA "AE" Zone
Moderate Category (5-9 points)

Applications that propose development in "AE" zones may receive the following points:

Point Assignment:	Criteria:
9	An application which proposes a development within a "AE" zone on the FEMA flood insurance rate map.

FEMA "VE" Zone
Moderate Category (5-9 points)

Applications that propose development in "VE" zones may receive the following points:

Point Assignment:	Criteria:
5	An application which proposes a development within a "VE" zone on the FEMA flood insurance rate map.

[1] As determined by the City Biologist

Extinguish Development Rights
Moderate Category (5-9 points)

Applications that extinguish development rights may receive the following points:

Point Assignment:	Criteria:
5	Voluntarily reduces the allocated density of the parcel of land proposed for development by between fifty (50) and sixty-six (66) percent.
5	Aggregates a contiguous vacant, legally platted, buildable RM, RM-1, RM-2 or R-MH lot together with the parcel proposed for development.
7	Voluntarily reduces the allocated density of the parcel of land proposed for development by between sixty-seven (67) and seventy-five (75) percent.
8	Voluntarily reduces the allocated density of the parcel of land proposed for development by greater than seventy-five (75) percent.

Local Residency
Moderate Category (5-9 points)

Applicants who live or work in the City of Marathon limits may receive the following points for every two (2) years of continuous residency or employment within the City of Marathon limits:

Point Assignment:	Criteria:
1	Applicant is submitted by a local resident for owner occupancy.* Applicant lives or is currently employed at business, government office or other employer within the city limits of Marathon. The maximum points available in this category are nine (9).

*In order to be considered for this point the applicant must reside a minimum of nine (9) months per year in the City of Marathon. Such residency or employment shall be for no less than 2 years immediately prior to the date of the application. Proof of residency is required to be produced at the time of application. Such proof may include utility statements or leases.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Lot Dedication or Cash-in-Lieu of Dedication
Minor Category (0-4 points)

Applicants that dedicate buildable lots or cash-in-lieu of dedication may receive the following points:

Point Assignment:	Criteria:
2	Donation of a cash fee to the City of Marathon, for the purposes of land acquisition. The required fee shall not be less than the average of the appraised value of an acre of Conservation (C) land in the City.
2	An application which includes the dedication to City of one (1) vacant, legally platted buildable lot, or at least one (1) acre of unplatted buildable land, located within a conservation area or areas proposed for acquisition by governmental agencies for the purposes of conservation and resource protection.*
4	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a vacant, legally platted, buildable lot **which is not environmentally sensitive as determined by the city biologist.***

*An applicant may dedicate up to two lots to obtain the maximum allowable points under the Minor Category.
**To be used for the purposes of perpetually income deed-restricted affordable housing
*** An applicant may dedicate a maximum of one (1) lot to obtain the maximum points under this category.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Lot Dedication or Cash-in-Lieu of Dedication
Moderate Category (5-9 points)

Applicants that dedicate buildable lots or cash in lieu of dedication may receive the following points:

Point Assignment:	Criteria:
5	Donation of a cash fee to the City of Marathon, for the purposes of affordable housing. The required fee shall be established by the Council.
6	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a legally platted, buildable lot * within the City containing one or more existing affordable dwelling units.**

* An applicant may dedicate a maximum of one lot to obtain the maximum allowable points under the Moderate Category.
**To be used for the purposes of perpetually income deed-restricted affordable housing

Provision of Affordable Housing with a Market Rate Development
Moderate Category (5-9 points)

Applications that provide affordable housing** may receive the following points:

Point Assignment:	Criteria:
5	An application which proposes 1-3 dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.
7	An application which proposes 4-6 dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.
9	An application which proposes 7 or more dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.

**To be used for perpetually income deed restricted affordable housing

Scarified Lot without Existing Paved or Unpaved Road or Utilities
Moderate Category (5-9 points) or Major Category (10-20 points)

Applications that propose development on a scarified lot may receive the following points:

Point Assignment:	Criteria:
5	Application which proposes a dwelling unit on a scarified lot outside of a legally platted, recorded subdivision.
9	Application which proposes a dwelling unit on a scarified lot within a legally platted, recorded subdivision.

Scarified Lot with Existing Paved or Unpaved Road or Utilities
Major Category (10-20 points)

Applications that propose development on a scarified lot may receive the following points:

Point Assignment:	Criteria:
12	Application which proposes a dwelling unit on a scarified lot outside of a legally platted, recorded subdivision, but the lot or parcel proposed for development is served by existing infrastructure, which includes potable water, electricity and roadways which are paved, as determined by the Public Works Department.
13	Application which proposes a dwelling unit on a scarified lot within a legally platted, recorded subdivision, but the lot or parcel proposed for development is served by existing infrastructure, which includes potable water, electricity and roadways which are paved, as determined by the Public Works Department.

Infill Lot with Existing Paved Roads, Water and Electric Service
Major Category (10-20 points)

Applications that propose development on an infill lot may receive the following points:

Point Assignment:	Criteria:
15	Application which proposes a dwelling unit within a legally platted, recorded subdivision on lot(s) located adjacent to U.S. 1 served by existing infrastructure, including potable water, electricity, and roadways which the Public Works Department determines is paved

Infill Lot with Existing Paved Roads, Water, Electric and Sewer Service
Major Category (10-20 points)

Applications that propose development on an infill lot may receive the following points:

Point Assignment:	Criteria:
17	Application which proposes a dwelling unit within legally platted, recorded subdivision on lot(s) located adjacent to, or within five hundred (500') feet of U.S. 1 served by existing infrastructure, including potable water, electricity, sewers and roadways which the Public Works Department determines is paved.
20	Application which proposes an affordable dwelling unit (as defined by Chapter 104 and Chapter 110) within legally platted, recorded subdivision on lot(s) located adjacent to U.S. 1 served by existing infrastructure, including potable water, electricity, sewers and roadways which the Public Works Department determines is paved.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

2. **Commercial Floor Area:**

Environmentally Sensitive Areas[1]
Minor Category (0-4 points)

Applications that propose development within the following areas will not receive any points:

	Criteria:
	• High quality hammock; • Unscarified beach/berm; • Saltmarsh and buttonwood wetlands; • Palm hammock; • Known habitat of a documented threatened/endangered species; • Within one hundred (100) feet of any known nesting area for marine turtles; • Within a probable or potential habitat of a threatened/endangered species; and • Within the habitat of a wide-ranging threatened/endangered species or a species of special concern. • Offshore Island (COBRA)

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

[1] As determined by the City Biologist

Environmentally Sensitive Areas (Continued) [1]
Minor Category (0-4 points)

Point Assignment:	Criteria:
1	Application proposes development on parcels containing moderate quality hammock as determined by a city biologist-approved habitat assessment.
2	Application proposes development on parcels containing low quality hammock as determined by a city biologist-approved habitat assessment.
3	Application proposes development on parcels that contain disturbed beach beam, with no known threatened or endangered species.
4	Application proposes development on parcels that are classified as scarified or disturbed w/exotics, with no known, probable or wide-ranging threatened or endangered species.

FEMA "AE" Zone
Moderate Category (5-9 points)

Applications that propose development in "AE" zones may receive the following points:

Point Assignment:	Criteria:
9	An application which proposes a development within a "AE" zone on the FEMA flood insurance rate map.

FEMA "VE" Zone
Moderate Category (5-9 points)

Applications that propose development in "VE" zones may receive the following points:

Point Assignment:	Criteria:
5	An application which proposes a development within a "VE" zone on the FEMA flood insurance rate map.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

[1] As determined by the City Biologist

Extinguish Development Rights
Moderate Category (5-9 points)

Applications that extinguish development rights may receive the following points:

Point Assignment:	Criteria:
5	Voluntarily reduces the allocated intensity of the parcel of land proposed for development to twenty-three (23%) percent or less.
	Additional Requirements: A legally binding restrictive covenant running in favor of the city that limits the floor area ration of the property to a maximum of twenty three (23%) percent for a period of twenty (20) years shall be approved by the Council and recorded prior to the issuance of any building permit pursuant to an allocation award.

Local Business Owner
Moderate Category (5-9 points)

Applicants who live in Monroe County and own a business in the City of Marathon limits may receive the following points for every two (2) years of continuous business ownership within the City of Marathon limits immediately prior to applying:

Point Assignment:	Criteria:
1	Application is submitted by a local resident business owner.* Applicant currently lives in Monroe County and owns a business within the city limits of Marathon. The maximum points available in this category are nine (9).

*In order to be considered for this point the applicant must reside a minimum of nine (9) months per year in Monroe County. Proof of residency is required to be produced at the time of application. Such proof may include utility statements or leases.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Lot Dedication or Cash-in-Lieu of Dedication
Minor Category (0-4 points)

Applicants that dedicate buildable lots or cash-in-lieu of dedication may receive the following points:

Point Assignment:	Criteria:
2	Donation of a cash fee to the City of Marathon, for the purposes of land acquisition. The required fee shall not be less than the average of the appraised value of an acre of Conservation (C) land in the City.
2	An application which includes the dedication to the City of one (1) vacant, legally platted buildable lot or at least one (1) acre of unplatted buildable land located within the City of a conservation area or areas proposed for acquisition by governmental agencies for the purposes of conservation and resource protection.*
4	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a vacant, legally platted, buildable lot, **within the City, which is not environmentally sensitive as determined by the city biologist.***

* An applicant may dedicate up to two lots to obtain the maximum allowable points under the Minor Category.
**To be used for the purposes of perpetually income deed-restricted affordable housing
***An applicant may dedicate a maximum of one (1) lot to obtain the maximum allowable points under the Minor Category.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Lot Dedication or Cash-in-Lieu of Dedication
Moderate Category (5-9 points)

Applicants that dedicate buildable lots or cash in lieu of dedication may receive the following points:

Point Assignment:	Criteria:
5	Donation of a cash fee to the City of Marathon, for the purposes of affordable housing. The required fee shall be established by the Council.
6	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a legally platted, buildable lot *within the City containing one or more existing affordable dwelling units.**

* An applicant may dedicate a maximum of one (1) lot to obtain the maximum allowable points under the Moderate Category.
**To be used for the purposes of perpetually income deed-restricted affordable housing

Provision of Affordable Housing with a Non-Residential Development
Moderate Category (5-9 points)

Applications that provide affordable housing may receive the following points:

Point Assignment:	Criteria:
5	An application which proposes 1-3 dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.
7	An application which proposes 4-6 dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.
9	An application which proposes 7 or more dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.

**To be used for the purposes of perpetually income deed-restricted affordable housing

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Transportation Impacts
Moderate Category (5-9 points)

Point Assignment:	Criteria:
5	The development's parking lot is connected to an adjacent non-residential parking lot; or the applicant records a driveway easement in favor of the public to connect the applicant's parking lot to an adjacent, non-residential parking lot; or the development does not propose an additional driveway onto US Highway 1.
	Additional Requirements: Properties with no access to US Highway 1 are only eligible to receive these points if direct access is to a State Road or City collector road as designated in the Comprehensive Plan.

Scarified Lot without Existing Paved or Unpaved Road or Utilities
Moderate Category (5-9 points)

Applications that propose development on a scarified lot may receive the following points:

Point Assignment:	Criteria:
5	Application which proposes non residential development on a scarified lot outside of a legally platted, recorded subdivision.
9	Application which proposes non-residential development on a scarified lot within a legally platted, recorded subdivision.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Scarified Lot with Existing Paved or Unpaved Road or Utilities
Major Category (10-20 points)

Applications that propose development on a scarified lot may receive the following points:

Point Assignment:	Criteria:
12	Application which proposes non-residential development on a scarified lot outside of a legally platted, recorded subdivision, but the lot or parcel proposed for development is served by existing infrastructure, which includes potable water, electricity and roadways which are paved, as determined by the Public Works Department.
13	Application which proposes non-residential development on a scarified lot within a legally platted, recorded subdivision, but the lot or parcel proposed for development is served by existing infrastructure, which includes potable water, electricity and roadways which are paved, as determined by the Public Works Department.

Infill Lot with Existing Paved Roads, Water and Electric Service
Major Category (10-20 points)

Applications that propose development on an infill lot may receive the following points:

Point Assignment:	Criteria:
15	Application which proposes non residential development within a legally platted, recorded subdivision on lot(s) located adjacent to U.S. 1 served by existing infrastructure, including potable water, electricity, and roadways which the Public Works Department determines is paved

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Infill Lot with Existing Paved Roads, Water, Electric and Central Sewer Service
Major Category (10-20 points)

Applications that propose development on an infill lot may receive the following points:

Point Assignment:	Criteria:
17	Application which proposes non residential development within legally platted, recorded subdivision on lot(s) located adjacent to, or within five hundred (500') feet of U.S. 1 served by existing infrastructure, including potable water, electricity, central sewers and roadways which the Public Works Department determines is paved.
20	Application which proposes non-residential development within legally platted, recorded subdivision on lot(s) located adjacent to U.S. 1 served by existing infrastructure, including potable water, electricity, central sewers and roadways which the Public Works Department determines is paved.

3. **Points Cumulative**: All points are assessed cumulatively.

4. **Identical Rankings:** If two (2) or more allocation applications receive an identical evaluation ranking and both (or all) cannot be granted allocation awards within the allocation period, the Council shall award the allocation to the completed application first submitted, based on the controlling date and time of the application.

C. **Changes in BPAS Score:** Upon review of the allocation applications and evaluation worksheets, the City Council may adjust the points awarded for meeting particular criteria, adjust the rankings as a result of changes in points awarded, or make such other changes as may be appropriate and justified. The basis for the Council changes shall be specified in the form of a motion to adopt the allocation rankings and may include the following:

1. An error in the designation of the application's size classification.

2. A mistake in the application of one (1) or more of the evaluation criteria.

3. A misinterpretation of the applicability of an evaluation criterion.

Section 107.10 Borrowing and Banking of Dwelling Unit Allocations

A. **Applicability**

1. **Banking of Allocations:** For applications for multi-unit development projects which require phased construction development, the process of extending the period of issuance of allocations in this Section is referenced as "Banking of Allocations". The maximum period of banking is five (5) years, pursuant to the allocation limits set forth in Section 107.02 "Numerical Limits of Allocations." Council shall determine at a hearing upon reasonable notice to the public, as provided in Article 4, Chapter 102, "Notice of Public Meetings and Hearings," whether or not banking, as requested, is appropriate.

2. **Borrowing Allocations:** For applications for multi-unit development projects which require allocations in excess of those available in a given allocation period, the process of issuing future allocations shall be referenced as "Borrowing of allocations."

   (a) The Council may, after a hearing held upon reasonable notice to the public, as provided in Article 4, Chapter 102 "Notice of Public Meetings and Hearings", borrow allocations and subtract this number from subsequent years' allocations.

   (b) The Council shall specify the allocation year from which the allocations are borrowed and shall not borrow from any year beyond five (5) years.

   (c) Such borrowed allocations shall be subject to all other provisions of this chapter.

B. **Eligibility**: Banking or borrowing of allocations will be permitted in the following circumstances only:

1. The Director shall approve an application for banking of allocations for multi-family dwelling units if the number of units to be banked corresponds to that found in an entire building or buildings in the application, and if the allocations are proposed to be used within the same allocation year as the initial award of allocation.

2. Council may approve a banking plan for multi-family or multiple single-family dwelling units for the purpose of banking beyond the end of an allocation year, upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.

3. Council may approve a request for borrowing of allocations for multi-family or multiple single-family dwelling units upon a finding that the proposed development will meet the quantified objectives for affordable housing, as set forth in the Housing Element of the Comprehensive Land Use Plan.

C. **Applications**

1. An application for banking allocations within the same allocation year shall be submitted to the Director within ten (10) days after the allocations are granted and shall include the number of allocations being banked and the reason(s) for doing so.

2. Application for borrowing of allocations beyond the same allocation year shall be made at or before the time of the allocation application.

3. The application shall set forth a borrowing or banking plan, which includes the total number of dwelling units in the development, the number of allocations sought to be borrowed or banked. In the case of banking, the application shall include the time period during which the validity of allocations is proposed for extension, and the reason for the request.

4. Unless specifically waived, abated or rebated by Council, a non-refundable fee shall be assessed in conjunction with each approved multi-year banking plan to cover the cost of the city administering banking plans. The fee shall be set by Council by resolution and shall be based upon the number of dwelling units in the approved banking plan. The fee shall be payable on a pro-rata (per unit) basis at the time of distribution of allocations to the banking plan. Failure to pay any installment of the fee within thirty (30) days of distribution of allocations to the banking plan shall cause a forfeiture of such allocations.

D. **Banking and Borrowing Criteria:** Requests for borrowing allocations or for banking of allocations beyond the end of the allocation year of the application shall be subject to the following conditions:

1. All allocations acquired within the banking period must be used during this time period.

2. Banking plans will be approved only for a number of units, which correspond to that found in an entire building or buildings in the development.

3. The Council, may, upon a show of "good cause", as established in Chapter 110 "Definitions", approve an extension of up to one year to an existing banking plan, to allow use of the banked allocations. The holder of the allocations may not acquire further allocations during the period of such extension.

4. Surrendered or forfeited allocations distributed to an applicant or an approved banking plan shall be made available for redistribution in accordance with the applicable provisions of this ordinance.

5. The annual reports to Council pertaining to the administration of the BPAS shall include information regarding the number of banked allocations approved in the current year, used in the current year, and the total number of banked allocations by individual application

Section 107.11 Transitional Provision

Effective 5 p.m. on March 13, 2007, no further applications shall be accepted for the ROGO system.

A. Applicants in the ROGO system shall be re-evaluated based upon the BPAS and shall retain their existing controlling date and time.

B. Applicants in the ROGO system may make a one-time withdrawal and resubmission, while retaining their controlling date and time.

C. Points accrued for categories in the ROGO system, which are not included within the BPAS system, may be retained and carried forward by the applicant, if approved by the Director upon a showing of "good cause".

Section 107.12 Appeal

A party aggrieved by the decision of the City Manager on such issue may, within 15 days of the date of the decision, apply to the PC for a review of said decision pursuant to the provisions of Article 17 "Appeals" of Chapter 102

Article 2 Transfer of Building Rights

Section 107.13 Purpose and Intent

The purpose of this Article is to provide for the transfer of existing lawfully established dwelling units, transient units, and commercial floor area from their existing locations to other locations in the City. Through the transfer of building rights, it is the intent of this Article to reduce and reallocate excess densities; provide alternatives to BPAS through the use of existing building rights; eliminate uses which are inconsistent with these regulations and the Comprehensive Plan; encourage the redevelopment and revitalization of the City's existing commercial centers; to preserve and protect environmentally sensitive lands; protect existing affordable housing; provide incentives for the creation of additional affordable housing and recognition of private property rights.

Section 107.14 Types of Transfers

Transfer of building rights is limited to the following activities:

A. Transferring lawfully established commercial floor area from one site to another site.

B. Transferring a lawfully established transient unit from one site to another site.

C. Transferring a lawfully established dwelling unit from one site to another, more specifically:

1. Removing a market rate dwelling unit from one site and rebuilding on another site as a market rate or deed-restricted affordable dwelling unit.

2. Removing a deed-restricted affordable dwelling unit; a dwelling unit that is subsidized by or constructed with public money (including, but not limited to the Monroe County Land Authority, SHIP, HOME, CDBG, etc.); or a permanent RV from one site and rebuilding as a deed-restricted affordable dwelling unit on another site.

Section 107.15 Site Criteria

A. **Sending Site Criteria**

1. The parcel must have a documented building right.

2. The sending site shall not have any open permits or active code violations.

3. All bonds, assessments, back city taxes, fees and liens (other than mortgages) affecting the parcel shall be paid in full prior to recordation of the warranty deed for the transfer of the building rights.

B. **Receiving Site Criteria:** The parcel must:

1. Be classified by the City Biologist as less environmentally sensitive than the sending site, as scored using the BPAS scoring criteria, established in Article 1 of this chapter applicable to the type of use;

2. Be zoned to allow the requested use; and

3. Meet all provisions of the LDRs and the Comprehensive Plan relating to the type and magnitude of the proposed development.

Section 107.16 Transfer Process

A. The developer of a receiving site is encouraged to schedule a concept meeting with staff prior to submission of an application for transfer. The purpose of the meeting is to discuss the development and/or redevelopment of the sending and receiving sites and to understand any limitations that may be imposed upon the sending and receiving sites.

B. The developer of a receiving site shall make application for the approval of the transfer of the building right(s) on a form provided by the City, and provide such information requested by the City to approve the transfer. At a minimum, the information shall include the following:

   1. Identification of the sending and receiving sites; and

   2. Proof of ownership of the receiving site and the building right(s) from the sending site.

   3. A description of the proposed development or redevelopment of the sending and receiving sites.

C. The City will review the application to determine:

   1. Compliance with the receiving site criteria;

   2. If the proposed use of the receiving site can be permitted as of right or requires conditional use approval. Development plans and approvals for the receiving site shall be subsequently processed as provided in the Comprehensive Plan and the LDRs according the magnitude and type of the development proposed for the site; and

   3. The validity of the sending site building right(s) (e.g. the building right(s) have a valid "Determination of Building Right" issued by the City as per Article 23 "Verification of Building Right" of Chapter 102 and the right (s) has not been previously transferred).

D. Upon approval, the City will issue the receiving site a TBR permit using a unique identifier number for tracking and monitoring by the City. This permit may include conditions of approval.

Section 107.17 General Provisions

In addition to the affordable housing requirements of Section 107.18, below, the transfer of building rights shall be subject to the following:

A. **Deed of Transfer:** Prior to the issuance of a building permit authorizing the development of the TBR on the receiving site, a deed of transfer shall be recorded in the chain of title of the sending site containing a covenant prohibiting the further use of the building right(s) utilized; and

B. **Warranty Deed:** A warranty deed shall be recorded in the chain of title of the receiving site evidencing the transfer of the building right; however, all bonds, assessments, back city taxes, fees and liens (other than mortgages) affecting the parcel shall be paid in full prior to recordation of the warranty deed for the transfer of the building right.

C. **Sending or Affordable Housing Site Compliance:** Prior to issuance of a Certificate of Occupancy on the receiving site, the sending site and, if applicable, the Affordable Housing Site, must be brought into compliance with the requirements of the Code and any conditions of approval required by the TBR permit must be met. These conditions may include but are not limited to:

    1. Bringing the sending site and, if applicable, the Affordable Housing Site, into compliance with landscaping, buffer-yards, waste treatment, storm water, and access requirements; and

    2. In the case of a non-transient dwelling unit, the structure containing the building right to be transferred may be demolished and a cash-in-lieu payment pursuant to Section 107.18 (b) hereof shall be made to the City, or must obtain a BPAS allocation to either continue use of the existing structure on the sending site or, if demolished, to rebuild the structure on the sending site or, if applicable, the Affordable Housing Site.

    3. The owner of such structure(s) shall upgrade the roof, electric and plumbing of any structure to meet the most recent requirements of the Florida Building Code, and must provide storm shutters that comply with the Florida Building Code. If the structure is rebuilt, the Certificate of Occupancy for such structure must be obtained prior to issuance of the Certificate of Occupancy on the receiving site.

A. **Environmental Mitigation**

    1. For parcels which contain tropical hardwood hammocks, palm hammocks or high quality wetlands, as determined by the City Biologist, from which less than all building rights have been transferred, the following will be required:

(a) A restrictive covenant shall be recorded with the Monroe County Clerk of the Court, at the applicant's expense, restricting transfer of building rights back to the parcel; and

(b) The sending site shall be restored pursuant to a restoration plan approved by the City Biologist. The restoration shall be certified as completed by the City Biologist within six (6) months from the approval of the transfer.

2. For parcels which contain tropical hardwood hammocks, palm hammocks or high quality wetlands, as determined by the City Biologist, from which all building rights have been transferred, the following will be required:

(a) A Grant of Conservation Easement shall be recorded with the Monroe County Clerk of the Court, at the applicant's expense, permanently restricting the sending site as open space; and

(b) The sending site shall be restored pursuant to a restoration plan approved by the City Biologist. The restoration shall be certified as completed by the City Biologist within six (6) months from the approval of the transfer.

B. **Allocation Availability:** The City will endeavor to make available to applicants hereunder affordable housing BPAS allocations for purposes of meeting the affordable housing requirements of this Article. The City, however, shall have no obligation to make such allocations available to any particular application hereunder, and shall have no liability to any applicant hereunder or any third party if additional affordable housing BPAS allocations have not been authorized by the State Department of Community Affairs or are otherwise not available.

C. **Duration of Right to Use:** After its transfer, the right to use the TBR would extend only for the period in which the owner of the receiving site must complete the conditions of development.

Section 107.18 Affordable Housing Requirements

An applicant proposing to transfer any non-transient dwelling unit building right must comply with one of the following "Affordable Housing" requirements:

A. **Replacement:** For each non-transient dwelling unit building right transferred as market rate, the applicant may choose to reconstruct or rehabilitate not less than thirty percent (30%) of an affordable deed restricted dwelling unit on the sending site, the receiving site or some other acceptable site in the City (the "Affordable Housing Site"). In the event of reconstruction, this shall include, but is not limited to, bringing the sending site or the Affordable Housing Site, as the case may be, into compliance with all setbacks, storm water, flood elevation, landscaping, buffer-yards, open space,

B. building code, and fire code requirements. In the event of rehabilitation, this shall include, but is not limited to, bringing the sending site and any of its remaining structures into compliance with all storm water, landscaping, building code (but only as to roof, electric, plumbing and storm shutters), and fire code requirements.; or

C. **Affordable Housing Program Fund:** In lieu of subparagraph (a) above, the applicant may choose, for each dwelling unit building right transferred as market rate, to make a cash payment to the City's affordable housing program fund in an amount not less than thirty percent (30%) of the affordable housing cash-in-lieu payment per building right then in effect, as amended from time to time by Resolution of the Council (e.g. in 2006, one building unit equal $200,000 payment to affordable housing fund); or

D. **Land Donation:** In lieu of the foregoing, the applicant may choose to donate a buildable parcel located in the City suitable for the development of affordable housing with a value that meets the minimum requirements of Subsections (a) and (b) above, such parcel to be acceptable to the City in its reasonable discretion; or

E. **Alternative Compliance:** The applicant may choose, with the City's consent, some combination of the above subparagraphs.

Article 3 Transfer of Development Rights

Section 107.19 General

A property owner may apply to the City for verification and documentation of residential development rights. All development rights established in Table103.15.2 may be transferable in whole or in part from one parcel of land to any other, subject to the limitations of this article.

A. **Sender Site Criteria**:

1. The sender site density may be transferred, in whole or in part, only from areas identified as Class I habitat type, pursuant to Table 106.16.1 and as identified on the City of Marathon Habitat and Species maps, subject to groundtruthing by the City Biologist.

2. Such sending areas shall be designated as conservation areas on the City of Marathon Habitat Maps and shall be protected as conservation management areas through a Grant of Conservation Easement, pursuant to the requirements of Article 8 "Conservation Management Areas" and Article 9 "Management Plans" of Chapter 106 of these LDRs.

3. No application for determination of development right shall be accept if the sender site has any open permits or active code violations.

4. All bonds, assessments, back city taxes, fees and liens (other than mortgages) affecting the parcel shall be paid in full prior to recordation of the warranty deed for the transfer of the development rights.

B. **Receiver Site Criteria:**

1. The receiver site shall be evaluated for its viability as an area of increased development. Factors include infrastructure, environmental suitability and the land uses of the surrounding areas.

2. Receiver sites shall be limited to Class II or Class III habitat pursuant to Table 106.16.1 and as identified on the City of Marathon Habitat and Species Maps, subject to groundtruthing by the City Biologist.

3. Development of the receiver site is subject to the limitations of the zoning district.

Section 107.20 Application and Determination Process

The City will review the application and pertinent material in order to verify the amount of residential density associated with the site. Upon determination of the development right(s), a unique identifier number shall be assigned for the site for tracking and monitoring and the City shall issue the owner a "Determination of Development Right" stating the amount of approved residential density available.

Section 107.21 Transfer Process

A. The developer of a receiver site is encouraged to schedule a concept meeting with staff prior to submission of an application for transfer. The purpose of the meeting is to discuss the development and/or redevelopment of the sender and receiver sites and to understand any limitations that may be imposed upon the sender and receiver sites.

B. The developer of a receiver site shall make application for the approval of the transfer of the development right(s) on a form provided by the City, and provide such information requested by the City to approve the transfer. At a minimum, the information shall include the following:

1. Identification of the sender and receiver sites; and

2. Proof of ownership of the receiver site and the development right(s) from the sending site.

3. A description of the proposed development or redevelopment of the receiver site.

C. The City will review the application to determine:

1. Compliance with the receiving site criteria;

2. If the proposed use of the receiving site can be permitted as of right or requires conditional use approval. Development plans and approvals for the receiving site shall be subsequently processed as provided in the Comprehensive Plan and the LDRs according the magnitude and type of the development proposed for the site; and

3. The validity of the sending site development right(s) (e.g. the development right(s) have a valid "Determination of Development Right" issued by the City as per this chapter and the right (s) has not been previously transferred).

D. Upon approval, the City will issue the receiving site a TDR permit using a unique identifier number for tracking and monitoring by the City. This permit may include conditions of approval.

Section 107.22 Additional Provisions

In addition to the sender and receiver criteria requirements established Section 107.21, above, the transfer of development rights shall be subject to the following:

A. **Deed of Transfer:** Prior to the issuance of a building permit authorizing the development of the TDR on the receiver site, a deed of transfer shall be recorded in the chain of title of the sender site containing a covenant prohibiting the further use of the development right(s) utilized; and

B. **Warranty Deed:** A warranty deed shall be recorded in the chain of title of the receiver site evidencing the transfer of the development right(s).

Article 4 Density Bonus

Section 107.23 Purpose and Intent

The purpose and intent of the following Sections is to provide incentives to encourage the production of quality housing for affordable workforce citizen segments of the community. This article implements the Housing Element of the City of Marathon Plan.

Section 107.24 Eligibility for Density Bonus and Incentives

In order to be eligible for a density bonus and other incentives as provided by this article, a proposed residential development project shall consist of five or more units.

Section 107.25 Concept Meeting Required

Developers seeking the incentives offered by this article are required to submit a written proposal and project plans for review during a concept meeting to the Department prior to making a formal development application.

Section 107.26 Bonus and Incentives

Eligible residential development projects shall be granted the following incentives:

A. **Density Bonus:** For projects providing dwelling units that meet the affordability classifications described in Article 1, "Affordable Housing" of Chapter 104 and as defined in Chapter 110 "Definitions", the City may grant a density bonus of up to 25 units per acre, subject to the limitations of the zoning district of the project.

B. **Waiver of Fees:** In addition to the Density Bonus above, the Council may waive or rebate any fees associated with the development of the affordable units.

Section 107.27 Limitation Imposed by Development Agreement or Other Restrictions

No density bonus shall be granted that would exceed the densities established or fixed by the Plan, development agreements or site plans. In such cases, the City may grant other incentives of equivalent financial value.

Section 107.28 Term of Affordability

The affordable dwelling units shall be rented or sold exclusively to their intended households as provided in Article 1, "Affordable Housing" of Chapter 104, and defined in Chapter 110, "Definitions," in perpetuity or as allowed by law, for a minimum period of 50 years ("reservation period"). The appropriate compliance mechanism(s) shall be determined by the Director and be specified in the conditions of approval for the development.

Section 107.29 Affordability

A. **Rental Units**: During the reservation period, affordable dwelling units shall be affordable at a rent that does not exceed 30% of the household's income category (very low, low, median, moderate, or middle), divided by 12, but in no case shall the household income exceed 160% of the County median income.

B. **Owner-Occupied**

1. An applicant shall agree to, and the City shall ensure that, the initial occupant of the units shall be a household earning no more than 160% of County Median Income.

2. Upon resale, the reseller of the unit shall agree to, and the City shall ensure that, the occupant of the units shall be a household earning no more than 160% of County Median Income.

3. Contact the Department for further information on resale limitations.

Section 107.30 Design of Affordable Units

The exterior of affordable units shall be visually indistinguishable from the market rate units in the development in terms of overall design, execution, and use of materials. Affordable units may be smaller than the market rate units but shall be proportionally comparable in bedroom count to the market rate units in the development. An affordable unit shall not exceed one thousand eight hundred (1,800) square feet of habitable space. It is strongly encouraged that affordable dwelling units not be clustered, unless subject to the environmental clustering requirements of Chapter 106, "Natural and Historic Resource Protection", but shall be interspersed within the upland portion of the development.

Section 107.31 Expiration

Any density bonus and/or incentive granted under this article shall expire if the associated building permit is not issued within twelve (12) months of the Council approval date. The Council may extend the validity of density bonuses and incentives for up to twenty-four (24) months at any one time prior to the date of expiration.

Article 5 Setbacks and Height

Section 107.32 Principal Building on Lot

A. Except in commercial and industrial districts, or as provided in these regulations, only one principal building and its customary accessory buildings may be erected on any lot of record. Any dwelling shall be deemed to be the principal building on the lot upon which it is located. An addition to any building shall not be construed as a principal building.

B. Housing developments of two or more single- or multiple-family dwellings constructed on a lot under single ownership, not subdivided in the customary streets and lots, and which shall not be so subdivided, may be developed in any R-M, R-MH, or R-H district, provided that:

1. Maximum percent of lot coverage shall not exceed that which is required for the district in which the project is located.

2. Setback requirements shall be met in accordance with the district in which such housing is permitted.

Section 107.33 Permitted Building Area

The principal building on any lot or parcel of land shall be erected within the area bounded by the building lines established by setback requirements. Accessory buildings may be erected within any building line established for the principal building or as may be otherwise provided in the LDRs.

Section 107.34 Setback Encroachment Prohibited

The minimum setbacks required by these regulations shall not be encroached upon, except in accordance with Sections 107.35 and 107.36, below.

Section 107.35 Measurement and Allowable Projections

A. **Measurement:** In measuring a setback, the horizontal distance between the lot line and the further most project of the principal building shall be used. Every required front setback from a street shall be measured at right angles (90°) from the property line.

B. **Allowable Projections**

   1. Every part of a required setback shall be open from its lowest point to the sky, unobstructed, except that certain building features and structures are allowed to project into required setbacks, provided that such structures do not require the placement of fill for foundations or for frame adjustments pursuant to the administrative variance approval criteria established in Article 20, Chapter 102 "Variance." No building features or structures shall encroach across adjacent property lines or result in the creation of or diversion of stormwater runoff that adversely affects adjacent properties.

   2. Generally, porches, decks, patios, open or closed fire escapes, outside stairways, or balconies shall not extend into any required setback. However, ramps required to provide handicap accessibility for dwelling units in the residential zoning districts may encroach up to 25% of the required setback through a request for an administrative variance pursuant to Article 20, Chapter 102.

   3. Gasoline pump canopies may be allowed to extend within 10 feet of the property line.

4. Underground waste treatment systems and utilities may be installed within the setback.

Section 107.36 Exception to Setback

A. **Side Yard:**

1. For parcels in the MU districts, and for duplexes and multi-unit, affordable dwellings in certain residential zoning districts, the required interior side yard setbacks may be reduced through the conditional use process established in Article 13, Chapter 102.
2. Driveways, which may include a turnaround area; walkways not to exceed five (5') feet wide and landscape features such as, but not limited to decorative fountains and landscape lighting may be allowed provided that:
   a. All accessory structures in the front yard setback shall maintain the required side setback;
   b. Must be detached from principle structure and be non-enclosed;
   c. Must maintain all required bufferyard and landscape street treatments of Article 8 "Landscaping" of this Chapter;
   d. The open space requirements of Article 9 of this Chapter are met;
   e. Shall be located within existing cleared areas before encroaching into areas of native vegetation;
   f. All new impervious area is subject to the stormwater management requirements established in Article 11 of this Chapter.

B. **Small Lots:**
In all residentially zoned districts, for parcels 4,500 square feet or less in size, the front and rear setback requirements are reduced to 10' each.

C. **Front Yard:** In all residentially zoned districts, driveways, which may include a turnaround area; walkways not to exceed five (5') feet wide and landscape features such as, but not limited to decorative fountains and landscape lighting may be allowed provided that:

1. All accessory structures in the front yard setback shall maintain the required side setback;
2. Must be detached from principle structure and be non-enclosed;
3. Must maintain all required bufferyard and landscape street treatments of Article 8 "Landscaping" of this Chapter.
4. The open space requirements of Article 9 of this Chapter are met;
5. Shall be located within existing cleared areas before encroaching into areas of native vegetation.
6. All new impervious area is subject to the stormwater management requirements established in Article 11 of this Chapter.

D. **Rear Yard:** For landlocked residential parcels an exception to the rear yard setback may be allowed for detached accessory structures provided that:

Formatted: Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 54 pt + Tab after: 72 pt + Indent at: 72 pt

Formatted: Numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 2 + Alignment: Left + Aligned at: 54 pt + Tab after: 72 pt + Indent at: 72 pt

Formatted: Numbered + Level: 2 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 72 pt + Tab after: 90 pt + Indent at: 90 pt

Formatted: Indent: Left: 48 pt, Hanging: 18 pt

Formatted: Indent: Left: 48 pt

Formatted: Numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 48 pt + Tab after: 66 pt + Indent at: 66 pt

Formatted: Indent: Left: 54 pt

Formatted: Numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 4 + Alignment: Left + Aligned at: 36 pt + Tab after: 54 pt + Indent at: 54 pt

Formatted: Indent: Left: 36 pt

1. The entire parcel is brought into compliance with the stormwater management requirements established in Article 11 of this Chapter.
2. A minimum five (5') foot setback from each property line in the rear setback is maintained;
3. Must maintain all required bufferyard and landscape street treatments of Article 8 "Landscaping" of this Chapter.
4. The open space requirements of Article 9 of this Chapter are met;
5. Shall be located within existing cleared areas before encroaching into areas of native vegetation.

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 60 pt + Tab after: 78 pt + Indent at: 78 pt

Section 107.37 Fences

Fences shall be allowed within the front setback in all zoning districts pursuant to the criteria established in Article 10 "Fences, Walls and Hedges" and the limitations of Sections 106.05 (f) and 106.53 (g) of Chapter 106, "Natural and Historic Resource Protection".

Section 107.38 Retaining Walls

Nothing in these regulations shall be construed to prohibit or to prevent the erection of a retaining wall on any property provided that such retaining wall does not adversely affect the natural flow of surface water or create any other adverse affect upon adjacent or adjoining properties. However, any application for a retaining wall shall be subject to the approval of the Building Official before the issuance of a permit.

Section 107.39 Trash Facilities

Multiple-family developments containing more than 10 dwelling units in total and all commercial, mixed-use, and industrial developments 5,000 square feet or greater shall provide dumpsters and recycling collection bins.

A. **Location:** All dumpsters and recycling bins shall be located within designated areas in the principle building or within a rear or interior side setback.

B. **Screening:** All dumpsters and recycling bins shall be fully enclosed and screened as follows:

   1. Screening may be achieved by designating an enclosed space for trash facilities within a principal building or within an accessory structure.

2. Where trash storage areas are not enclosed within a principal building or accessory structure, they must be completely screened on all sides, with an opaque, lockable gate on one side. Screening shall be constructed of masonry walls or wood fencing up to a height of six (6') feet.

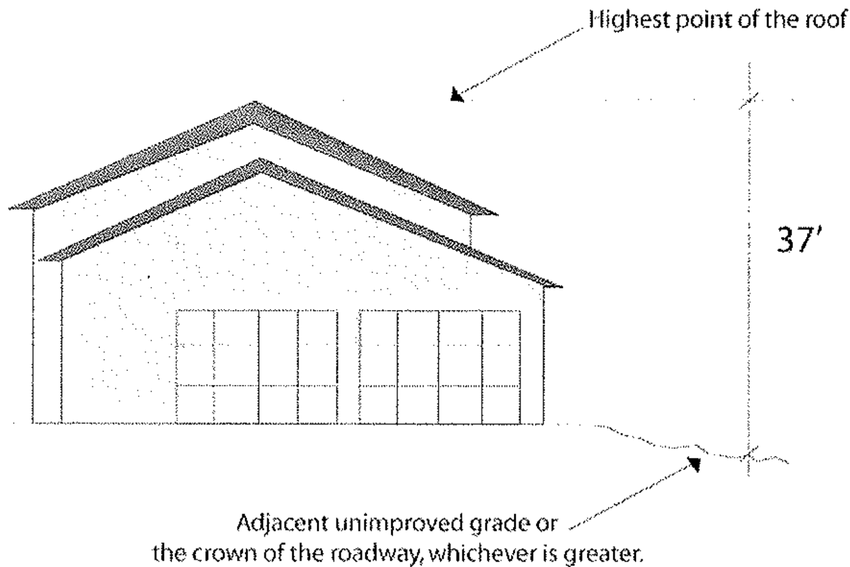
Section 107.40 Maximum Height

A. Unless provided for elsewhere in the LDRs, the maximum height of any structure shall be thirty-seven (37') feet, as measured from the unimproved grade directly adjacent to the structure or from the crown of the roadway, whichever is greater. Government facilities are exempt with the approval of the Council.

B. Building height shall be measured to the highest point of the roof. The height measurement shall be to the roof peak for structures with pitched roofs and the roof slab for structures with flat roofs.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

Figure 107.40.1
Building Height Measurement



Section 107.41 Height – Exceptions to Limits

The following structures may be erected above the height limits of this Code: minor decorative architectural features as determined by the Director, mechanical equipment, skylights, flagpoles, air conditioner units, plumbing stacks, church steeples, ham radio antennas, and antenna supporting structures. Except for architectural features, all such structures shall be screened from view; screening is allowed only to the minimum height necessary.

Section 107.42 Flag Poles

Notwithstanding the maximum height standards in Section 107.40, above, flag poles shall not exceed twenty (20') feet in height in a residential district and thirty (30') feet in height in a commercial or industrial districts.

Section 107.43 No Obstruction to Vision for Traffic Safety

Sight triangles shall be clear of obstructions that would prohibit a driver's view of potentially conflicting vehicles as illustrated in Figure 107.40.1; therefore, in order to minimize accidents caused by obstruction to vision at road intersections and driveways, the following regulations shall apply in all districts:

A. **Road Intersections**

1. All corner building sites located in use districts that require a front and side yard shall maintain a clear sight triangle at the intersection of the street rights-of-way for the purpose of traffic safety.

2. In clear sight distance at intersections within the area formed by the rights-of-way lines of intersecting roads and a straight line connecting points on such rights-of-way lines, there shall be a clear space with no obstruction to vision between the height of three feet and a height of ten feet above the average grade of each road as measured at the centerline that is consistent with criteria outlined in the Florida Department of Transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

B. **Driveways:** Sight distance is also required at driveways to allow the drivers of stopped vehicles a sufficient view of the intersecting street. There shall be a clear space with no obstruction to vision between the height of three (3') feet and a height of eight (8') feet at the intersection of the driveway and the road right of way.

C. **Clear Sight Triangle Requirements**

1. At a minimum, the angle of this triangle shall be formed by the intersecting street rights- of-way and the sides of the triangle as measured along the property lines from said angle twenty (20) feet in length; the third side of such triangle shall be a straight line connecting the ends of the two (2) aforementioned lines, as illustrated in Figure 107.43.1, below.

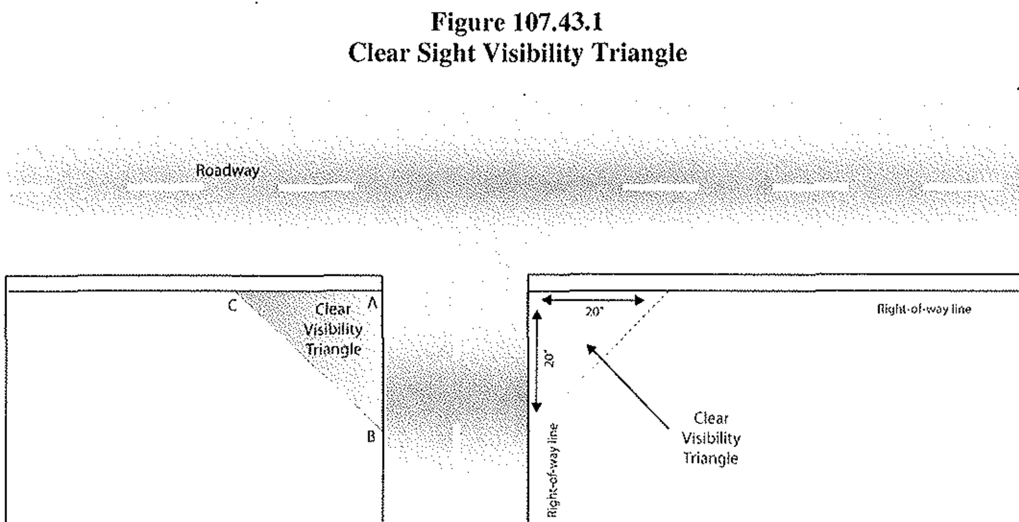
2. The City may alter the clear sight triangle. Such alteration is contingent on unusual site topography, proposed site design features, and other unique circumstances pertaining solely to the site and surrounding properties. The City shall make written findings that the alteration does not constitute a traffic or pedestrian safety hazard.

3. Street lights, power poles, traffic signs, or similar street fixtures less than one (1) foot wide or other objects above ten (10) feet in height above the adjacent street elevation shall be allowed in the clear sight triangle unless the City determines that, individually or cumulatively, they would pose a public safety hazard. The Director may authorize other objects in the clear sight triangle which do not comply with this standard upon determining that they would not pose a risk to public safety.

4. Trees, either existing or newly planted, shall be permitted in the clear space, provided that foliage is cut away within the prescribed heights

5. The requirements of this Section shall not be deemed to prohibit any necessary retaining wall.

Figure 107.43.1
Clear Sight Visibility Triangle



Distance from "A" to "B" is the length of leg of the site triangle along the minor road. This distance is measured from the driver's eye in the stopped vehicle to the center of the nearest lane on the major road for vehicles approaching from the left, and to the center of the nearest lane for vehicles approaching from the right.

Distance from "A" to "C" is the length of the leg of the sight triangle along the major road measured from the center of the minor road entrance lane.