**BOARD OF COUNTY COMMISSIONERS**
**AGENDA ITEM SUMMARY**

Meeting Date: December 21, 2005 Division: Growth Management

Bulk Item: Yes ___ No X Department: Plannning and Environmental Res.

Staff Contact Person: Timothy J. McGarry

**AGENDA ITEM WORDING:**
Public hearing on an Ordinance to amend Sections 9.5-233 Urban Residential District (UR), 9.5-234 Urban Residential Mobile Home District (URM), 9.5-236 Sub Urban Residential District (SR), 9.5-238 Sparsely Settled District (SS), 9.5-239 Native Area District (NA), and 9.5-242 Improved Subdivision District (IS) of the Monroe County Code to vest certain lawfully established non-residential uses made non-conforming by the 2010 Comprehensive Plan.

**(Second of two public hearings)**

**ITEM BACKGROUND:**
This is a Planning Department-sponsored amendment. The Development Review Committee and the Planning Commission recommended approval of the amendments.

**PREVIOUS RELEVANT BOCC ACTION:** None

**CONTRACT/AGREEMENT CHANGES:** N/A

**STAFF RECOMMENDATIONS:** Approval

**TOTAL COST:** N/A **BUDGETED:** Yes ___ No ___

**COST TO COUNTY:** N/A **SOURCE OF FUNDS:** ___

**REVENUE PRODUCING:** Yes ___ No ___ **AMOUNT PER MONTH** ___ **Year** ___

**APPROVED BY:** County Atty X OMB/Purchasing ___ Risk Management ___

**DIVISION DIRECTOR APPROVAL:** ___
Timothy J. McGarry, AICP

**DOCUMENTATION:** Included X Not Required ___

**DISPOSITION:** ___ **AGENDA ITEM #** ___

**ORDINANCE NO. _____**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTIONS 9.5-233 URBAN RESIDENTIAL DISTRICT (UR), 9.5-234 URBAN RESIDENTIAL-MOBILE HOME DISTRICT (URM), 9.5-236 SUB URBAN RESIDENTIAL DISTRICT (SR), 9.5-238 SPARSELY SETTLED DISTRICT (SS), 9.5-239 NATIVE AREA DISTRICT (NA), 9.5-242 IMPROVED SUBDIVISION DISTRICT (IS) OF THE MONROE COUNTY CODE, TO IMPLEMENT POLICIES 101.4.1, 101.4.2, 101.4.3, 101.4.4 OF THE COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMUMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.**

**WHEREAS,** Policies 101.4.1, 101.4.2, 101.4.3, and 101.4.4 of the Monroe County 2010 Comprehensive Plan mandate the adoption of land development regulations which allow nonresidential uses that were listed as permitted uses in the Land Development Regulations (LDRs) that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs), and that lawfully existed on such lands on January 4, 1996 to develop, redevelop, reestablish and/or substantially improve provided that the uses are limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive, and

**WHEREAS,** the current land development regulations do not recognize, respect, or allow nonresidential uses that have historically provided goods and services to the community, which are considered to be compatible with surrounding land uses according to community standards and have not created a nuisance, to redevelop, reestablish or make substantial improvements, and

**WHEREAS,** the inability of owners of recognized and respected nonresidential uses rendered nonconforming by the 2010 comprehensive plan to redevelop and make substantial improvements to these structures has caused the continual degradation of the quality and safety of the structures over time, and

**WHEREAS,** numerous workshops were held to define the public's interest regarding the issue of nonresidential uses rendered nonconforming by the 2010 comprehensive plan, which prohibited redevelopment, reestablishment, and substantial improvements to be made to properties, resulting in a reluctance of property owners to make reinvestments in their businesses without reassurance that they could redevelop, reestablish, or make substantial improvements to their businesses after a natural disaster, and

**WHEREAS,** without the reassurance of the ability to redevelop, reestablish, and make substantial improvements, in the aftermath of a hurricane, to recognized and respected businesses

lawfully existing before the adoption of the 2010 comprehensive plan, the decaying structures in which nonconforming uses are located will continue to degrade neighborhoods and community character, and

**WHEREAS,** citizens have expressed a concern about how the degradation of recognized and respected nonconforming, nonresidential uses will negatively impact their neighborhoods and the quality of life in the Keys in general, and

**WHEREAS,** this amendment will provide an incentive for reinvestment and redevelopment, and

**WHEREAS,** in light of the public's interest in preserving community character and the economic viability of recognized and respected nonconforming businesses as expressed in their concerns at public workshops, text amendments to Policies 101.4.1, 101.4.2, 101.4.3, and 101.4.4 of the 2010 comprehensive plan were adopted by the Monroe County Planning Commission and Board of County Commissioners to grandfather the nonconformities, and were found In Compliance by the Florida Department of Community Affairs (DCA), and

**WHEREAS,** there was no public challenge or opposition to the proposed comprehensive plan amendments to grandfather nonresidential uses rendered nonconforming by the 2010 comprehensive plan, and

**WHEREAS,** this amendment is consistent with the Principles For Guiding Development in the Florida Keys Area of Critical State Concern as a whole and is not inconsistent with any principle, and

**WHEREAS,** policies to grandfather nonresidential uses in certain land use districts are now in effect, and

**WHEREAS,** this amendment to the Land Development Regulations implements Policies 101.4.1, 101.4.2, 101.4.3, and 101.4.4 of the Monroe County 2010 comprehensive plan which recognize and respect nonresidential uses lawfully established under the pre-1996 LDRs and pre-2010 comprehensive plan that were rendered nonconforming by the 2010 comprehensive plan to develop, redevelop, reestablish, and make substantial improvements limited to the intensity, density and types of uses permitted in the pre 1996 LDRs and pre 2010 Comprehensive Plan for the Land Use Districts in which they were located on or before January 4, 1996;

**NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS** that the preceding Findings of Fact and Conclusions of Law support its decision to **APPROVE** amendments to the Monroe County Code, Article VII. Division 2, as follows;

**PROPOSED TEXT CHANGES** are presented in ~~strikethrough~~ to indicate deletions and <u>underline</u> to indicate additions.

**Section 1.** Amend Section 9.5-233 URBAN RESIDENTIAL DISTRICT (UR) as follows:

~~(c)(1) Marinas, provided that:~~

~~a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide;~~
~~b. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing producers;~~
~~c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;~~
~~d. Vessels docked or stored shall not be used for live-aboard purposes;~~

(c) ~~(2)~~ (1)
(c) ~~(3)~~ (2)
(c) ~~(4)~~ (3)

(d) The following lawfully established nonresidential uses in the Urban Residential Land Use District, which were rendered nonconforming by the 2010 comprehensive plan, but listed as permitted uses in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in article III, division 3.:

(1) Marinas, provided that:

a. The parcel has access to water at least four (4) feet below mean sea level at mean low tide;
b. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing producers;
c. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;
d. Vessels docked or stored shall not be used for live-aboard purposes; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

**Section 2.** Amend Section 9.5-234 URBAN RESIDENTIAL-MOBILE HOME DISTRICT (URM) as follows;

~~(c)(1) Marinas, provided that:~~
~~a. The parcel has access to water at least four (4) feet below mean sea level at mean low tide;~~
~~b. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing producers;~~
~~c. Vessels docked or stored shall not be used for live-aboard purposes;~~
~~d. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;~~
~~(c)(2) Commercial retail of low- and medium-intensity or office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area, provided that:~~

~~a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;~~
~~b. The structure must be located within two hundred (200) feet of the centerline of U.S. 1;~~
~~c. The commercial retail use does not involve the sale of petroleum products;~~
~~d. The commercial retail use does not involve the outside storage or display of goods or merchandise with the exception that outside sales and display for nurseries may be permitted with the stipulation that required open space and required buffer-yards may not be used for display and sales;~~
~~e. There is no direct access to U.S. 1 from the parcel of land on which the commercial retail use is to be located;~~
~~f. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C buffer-yard;~~
~~g. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C buffer-yard; and~~
~~h. No signage other than one (1) identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1;~~

(c) ~~(3)~~ (1)
(c) ~~(4)~~ (2)
(c) ~~(5)~~ (3)

(d) The following lawfully established nonresidential uses in the Urban Residential-Mobile Home Land Use District, which were rendered nonconforming by the 2010 comprehensive plan, but listed as permitted uses in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDR's) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in article III, division 3.:

(1) Marinas, provided that:

a. The parcel has access to water at least four (4) feet below mean sea level at mean low tide;

b. The sale of goods and services is limited to fuel, food, boating, diving, and sport fishing producers;

c. Vessels docked or stored shall not be used for live-aboard purposes;

d. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and

e. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive.

(2) Commercial retail of low- and medium-intensity or office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area, provided that:

a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;

b. The commercial retail use does not involve the sale of petroleum products;

c. The commercial retail use does not involve the outside storage or display of goods or merchandise with the exception that outside sales and display for nurseries may be permitted with the stipulation that required open space and required buffer-yards may not be used for display and sales;

d. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C buffer-yard;

e. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C buffer-yard;

f. No signage other than one (1) identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1; and

g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive.

**Section 3.** Amend Section 9.5-236 SUB URBAN RESIDENTIAL DISTRICT (SR) as follows;

~~(b)(4) Commercial retail of low- and medium-intensity or office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area, provided that:~~
~~a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;~~
~~b. The structure must be located within two hundred (200) feet of the centerline of U.S. 1;~~
~~c. The commercial retail use does not involve the sale of petroleum products;~~
~~d. The commercial retail use does not involve the outside storage or display of goods or merchandise with the exception that outside sales and display for nurseries may be permitted with the stipulation that required open space and required buffer-yards may not be used for display and sales;~~

~~e. There is no direct access to U.S. 1 from the parcel of land on which the commercial retail use is to be located;~~
~~f. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C buffer-yard;~~
~~g. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C buffer-yard; and~~
~~h. No signage other than one (1) identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1;~~

(b) ~~(5)~~ (4)
(b) ~~(6)~~ (5)
(b) ~~(7)~~ (6)
(b) ~~(8)~~ (7)
(b) ~~(9)~~ (8)
(b) ~~(10)~~ (9)

~~(c)(3) Marinas, provided that:~~
~~a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide;~~
~~b. The use does not involve the sale of goods and services other than private clubs, sport fishing charters, boat dockage and storage;~~
~~c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;~~
~~d. Vessels docked or stored shall not be used for live-aboard purposes;~~
~~e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and~~
~~f. The parcel proposed for development is separated from any established residential use by a class C buffer-yard;~~

(c) ~~(4)~~ (3)
(c) ~~(5)~~ (4)
(c) ~~(6)~~ (5)
(c) ~~(7)~~ (6)
(c) ~~(8)~~ (7)
(c) ~~(9)~~ (8)

(d) The following lawfully established nonresidential uses in the Suburban Residential Land Use District, which were rendered nonconforming by the 2010 comprehensive plan, but listed as permitted uses in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in article III, division 3.

(1) Commercial retail of low- and medium-intensity or office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area, provided that:

a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;

b. The commercial retail use does not involve the sale of petroleum products;

c. The commercial retail use does not involve the outside storage or display of goods or merchandise with the exception that outside sales and display for nurseries may be permitted with the stipulation that required open space and required buffer-yards may not be used for display and sales;

e. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C buffer-yard;

f. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C buffer-yard;

g. No signage other than one (1) identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1; and

(i) The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

(2) Marinas, provided that:

a. The parcel has access to water at least four (4) feet below mean sea level at mean low tide;

b. The use does not involve the sale of goods and services other than private clubs, sport fishing charters, boat dockage and storage;

c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;

d. Vessels docked or stored shall not be used for live-aboard purposes;

e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height;

f. The parcel is separated from any established residential use by a class C buffer-yard; and

(g) The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDR's for this district, whichever is more restrictive.

**Section 4.** Amend Section 9.5-238 SPARSELY SETTLED DISTRICT (SS) as follows;

~~(c)(2) Marinas, provided that:~~

~~a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide;~~

~~b. The use does not involve the sale of goods or services other than boat dockage and storage;~~

~~c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;~~

~~d. Vessels docked or stored shall not be used for live-aboard purposes;~~

~~e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and~~

~~f. The parcel proposed for development is separated from any established residential use by a class C buffer-yard;~~

~~(c)(4) Solid waste facility, provided that:~~

~~a. The parcel of land proposed for development is at least forty (40) acres;~~

~~b. All landfill activity occurs no closer than one hundred fifty (150) feet to any property line and at least a class F buffer is provided within this setback;~~

~~c. No fill shall exceed thirty-five (35) feet in height from the original grade of the property;~~

~~d. Such operations fully comply with F.S. § 403.701 et seq.;~~

~~e. A future reclamation plan for the landfill site is presented;~~

~~f. The incinerator is located so that its operations do not adversely affect surrounding properties; and~~

~~g. Road access to the side from U.S. 1 is limited to traffic serving the landfill;~~

(c) ~~(3)~~ (2)
(c) ~~(5)~~ (3)
(c) ~~(6)~~ (4)
(c) ~~(7)~~ (5)

(d) The following lawfully established nonresidential uses in the Sparsely Settled Land Use District, which were rendered nonconforming by the 2010 comprehensive plan, but listed as permitted uses in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make

substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in article III, division 3,:

(1) Marinas, provided that:

a. The parcel has access to water at least four (4) feet below mean sea level at mean low tide;

b. The use does not involve the sale of goods or services other than boat dockage and storage;

c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;

d. Vessels docked or stored shall not be used for live-aboard purposes;

e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and

f. The parcel is separated from any established residential use by a class C buffer-yard; and

g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

(2) Solid waste facility, provided that:

a. The parcel of land is at least forty (40) acres;

b. All landfill activity occurs no closer than one hundred fifty (150) feet to any property line and at least a class F buffer is provided within this setback;

c. No fill shall exceed thirty-five (35) feet in height from the original grade of the property;

d. Such operations fully comply with F.S. § 403.701 et seq.;

e. A future reclamation plan for the landfill site is presented;

f. The incinerator is located so that its operations do not adversely affect surrounding properties; and

g. Road access to the side from U.S. 1 is limited to traffic serving the landfill; and

h. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

**Section 5.** Amend Section 9.5-239 NATIVE AREA DISTRICT (NA) as follows;

~~(c)(2) Marinas, provided that:~~

~~a. The parcel proposed for development has access to water at least four (4) feet below mean sea level at mean low tide;~~

~~b. The use does not involve the sale of goods or services other than boat dockage and storage;~~

~~c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;~~

~~d. Vessels docked or stored shall not be used for live-aboard purposes;~~
~~e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and~~
~~f. The parcel proposed for development is separated from any established residential use by a class C buffer-yard;~~

~~(c)(3) Solid waste facility, provided that:~~
~~a. The parcel of land proposed for development is at least forty (40) acres;~~
~~b. All landfill activity occurs no closer than one hundred fifty (150) feet to any property line and at least a class F buffer is provided within this setback;~~
~~c. No fill shall exceed thirty-five (35) feet in height from the original grade of the property;~~
~~d. Such operations fully comply with F.S. § 403.701 et seq.;~~
~~e. A future reclamation plan for the landfill site is presented;~~
~~f. The incinerator is located so that its operations do not adversely affect surrounding properties; and~~
~~g. Road access to the side from U.S. 1 is limited to traffic serving the landfill;~~

(c) ~~(4)~~ (2)
(c) ~~(5)~~ (3)
(c) ~~(6)~~ (4)

(d) The following lawfully established nonresidential uses in the Native Area Land Use District, which were rendered nonconforming by the 2010 comprehensive plan, but listed as permitted uses in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDR's) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in article III, division 3.

(1) Marinas, provided that:
a. The parcel has access to water at least four (4) feet below mean sea level at mean low tide;
b. The use does not involve the sale of goods or services other than boat dockage and storage;
c. All boat storage is limited to surface storage on trailers or skids and no boats or other equipment is stored on any elevated rack, frame or structure;
d. Vessels docked or stored shall not be used for live-aboard purposes;
e. All outside storage areas are screened from adjacent uses by a solid fence, wall or hedge at least six (6) feet in height; and
f. The parcel is separated from any established residential use by a class C buffer-yard; and
g. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

(2) Solid waste facility, provided that:

a. The parcel of land is at least forty (40) acres;

b. All landfill activity occurs no closer than one hundred fifty (150) feet to any property line and at least a class F buffer is provided within this setback;

c. No fill shall exceed thirty-five (35) feet in height from the original grade of the property;

d. Such operations fully comply with F.S. § 403.701 et seq.;

e. A future reclamation plan for the landfill site is presented;

f. The incinerator is located so that its operations do not adversely affect surrounding properties; and

g. Road access to the side from U.S. 1 is limited to traffic serving the landfill; and

h. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

**Section 6.** Amend Section 9.5-242 IMPROVED SUBDIVISION DISTRICT (IS) as follows;

~~(d)(1) Commercial retail of low- and medium-intensity or office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area, provided that:~~

~~a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;~~

~~b. The structure must be located within two hundred (200) feet of the centerline of U.S. 1;~~

~~c. The commercial retail use does not involve the sale of petroleum products;~~

~~d. The commercial retail use does not involve the outside storage or display of goods or merchandise;~~

~~e. There is no direct access to U.S. 1 from the parcel of land on which the commercial retail use is to be located;~~

~~f. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C buffer-yard;~~

~~g. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C buffer-yard; and~~

~~h. No signage other than one (1) identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1.;~~

(d) ~~(2)~~ (1)
(d) ~~(3)~~ (2)
(d) ~~(4)~~ (3)

(e) The following lawfully established nonresidential uses in the Suburban Residential Land Use District, which were rendered nonconforming by the 2010 comprehensive plan, but listed as permitted uses in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs) and lawfully existed on such lands on January 4, 1996, which are damaged or destroyed may be permitted to be redeveloped, make substantial improvements, or be reestablished as an amendment to a major conditional use, subject to the standards and procedures set forth in article III, division 3.

(1) Commercial retail of low- and medium-intensity or office uses or any combination thereof of less than twenty-five hundred (2,500) square feet of floor area, provided that:

a. The parcel of land on which the commercial retail use is to be located abuts the right-of-way of U.S. 1, or a dedicated right-of-way to serve as a frontage road for U.S. 1;

b. The structure must be located within two hundred (200) feet of the centerline of U.S. 1;

c. The commercial retail use does not involve the sale of petroleum products;

d. The commercial retail use does not involve the outside storage or display of goods or merchandise;

e. There is no direct access to U.S. 1 from the parcel of land on which the commercial retail use is to be located;

f. The structure in which the commercial retail use is to be located is separated from the U.S. 1 right-of-way by a class C buffer-yard;

g. The structure in which the commercial retail use is to be located is separated from any existing residential structure by a class C buffer-yard; and

h. No signage other than one (1) identification sign of no more than four (4) square feet shall be placed in any yard or on the wall of the structure in which the commercial retail use is to be located except for the yard or wall that abuts the right-of-way for U.S. 1;

i. The use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to the permitted uses and/or the provisions for minor or major conditional uses allowed in the pre-1996 LDRs for this district, whichever is more restrictive.

**Section 7. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 8. Repeal of Conflicting Provisions.** The provisions of the Monroe County Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 9. Inclusion in the Code.** It is the intention of the Monroe County Board of County Commissioners and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Monroe County Code, that the sections of the Ordinance may be renumbered or re-lettered to accomplish such intentions.

**Section 10. Approval by the State Department of Community Affairs.** The County Clerk is authorized to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Chapter 380, Florida Statutes.

**Section 11. Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380. Florida Statutes.

**PASSED AND ADOPTED** by the Board of County Commissioners OF Monroe County, Florida at a regular meeting held on the _____ day of _____, 2005.

Mayor Dixie Spehar _____
Mayor Pro Tem Charles "Sonny" McCoy _____
Commissioner George Neugent _____
Commissioner David Rice _____
Commissioner Murry Nelson _____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Mayor Dixie Spehar

(SEAL)

ATTEST: DANNY L. KOHAGE, CLERK

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM
Kerry L. Willis
Date: 11-1-05

_____
Deputy Clerk

**MEMORANDUM**

| | |
|---|---|
| TO: | The Monroe County Board of County Commissioners |
| FROM: | The Planning Department |
| DATE: | October 31, 2005 |
| RE: | **Proposed text amendments to Sections 9.5-233 URBAN RESIDENTIAL DISTRICT (UR), 9.5-234 URBAN RESIDENTIAL-MOBILE HOME DISTRICT (URM), 9.5-236 SUB URBAN RESIDENTIAL DISTRICT (SR), 9.5-238 SPARSELY SETTLED DISTRICT (SS), 9.5-239 NATIVE AREA DISTRICT (NA), 9.5-242 IMPROVED SUBDIVISION DISTRICT (IS).** |

---

HEARING DATE: November 16, 2005

## I. BACKGROUND:

The Planning Department is proposing text amendments to Sections 9.5-241, 9.5-239, 9.5-238, 9.5-236, 9.5-237, 9.5-242, 9.5-242.5, 9.5-234, and 9.5-233 of the Monroe County Land Development Regulations to implement amended policies of the comprehensive plan (policies 101.4.1 Residential Conservation, 101.4.2 Residential Low, 101.4.3 Residential Medium, and 101.4.4 Residential High, specifically), which mandate the adoption of Land Development Regulations to grandfather nonresidential uses rendered non-conforming by the original language of the 2010 Monroe County comprehensive plan. When the comprehensive plan was adopted by the Board of County Commissioners in 1993, these policies contained provisions that allowed limited nonresidential uses so that the policies remained consistent with the Land Development Regulations that had been in place since 1986. However, the Department of Community Affairs struck those provisions, the consequence of which made many existing nonresidential uses nonconforming in those land use categories of the future land use map (FLUM).

Subsequently, the County amended these policies with language to mandate the adoption of land development regulations that would allow any nonresidential use that was listed as a permitted use in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs), and that lawfully existed on such lands on January 4, 1996 (the effective date of the 2010 comprehensive plan) to develop, redevelop, reestablish and/or substantially improve, provided that the use is limited in intensity, floor area, density and to the type of use that

existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive.

This proposed amendment seeks to implement the amended policies of the comprehensive plan by allowing non-conforming nonresidential uses to redevelop, reestablish, and make improvements after substantial damage or destruction, but limits the reestablishment of those uses to what already existed before 1996, thereby ensuring consistency with the most significant goals of the comprehensive plan encouraging protection of community character, redevelopment, sustaining economic viability, and limiting commercial growth in order to protect natural resources.

## II. ANALYSIS

### A. County requirements for changes to the land development regulations.

Article XI of Chapter 9.5 sets forth the requirements for amending the text of the land development regulations. Specifically, Sec. 9.5-511(d)(5)b sets forth six criteria for amending the land development regulations, at least one of which must be met. In this case, items (iv) *New Issues* and (v) *Recognition of a need for additional detail and comprehensiveness*, support the proposed amendment.

The land development regulations are currently inconsistent with the comprehensive plan's amended policies of grandfathering nonconforming uses rendered non-conforming by the original language of the 2010 comprehensive plan, which became effective in January of 1996. To correct this inconsistency, the amended policies mandate Monroe County to adopt land development regulations to grandfather those non-conforming, nonresidential uses.

These amendments will allow structures in which nonconforming uses are located and lawfully existed on January 4, 1996 to be rebuilt even if one hundred (100) percent destroyed, provided that the use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive.

The grandfathered non-conforming uses will be permitted to reestablish with major conditional use approval, in order to ensure that compatibility with surrounding land uses is maintained over time.

## B. Consistency with the 2010 Comprehensive Plan.

The proposed text amendment is consistent with and implements land use policies of the Monroe County Year 2010 Comprehensive Plan. The County has been working towards implementing these amended policies, which were developed as a result of numerous public workshops that obtained information from land owners affected by the Department of Community Affair's restriction on the redevelopment, reestablishment, and continuance of non-residential uses in these land use categories of the FLUM.

Amended Comprehensive Plan **Policy 101.4.1** stipulates that the "County shall adopt Land Development Regulations which allow any other nonresidential use that was listed as a permitted use in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs), and that lawfully existed on such lands on January 4, 1996 to develop, redevelop, reestablish and/or substantially improve provided that the use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive. Maximum permitted densities shall be based upon the results of the habitat analysis required by Division 8 of the Monroe County Land Development Regulations, as amended. [9J-5.006(3)(c) 1 and 7]."

Amended Comprehensive Plan **Policy 101.4.2** stipulates that the "County shall adopt land development regulations which allow any other nonresidential use that was listed as a permitted use in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs), and that lawfully existed on such lands on January 4, 1996 to develop, redevelop, reestablish and/or substantially improve provided that the use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive."

Amended Comprehensive Plan **Policy 101.4.2** stipulates that the "County shall adopt land development regulations which allow nonresidential uses that were listed as a permitted use in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan (pre-2010 LDRs), and that lawfully existed on such lands on January 4, 1996, to develop, redevelop, reestablish and/or substantially improve provided that the uses are limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive.

Lands within this land use category shall not be further subdivided. [9J-5.006(3)(c)1 and 7]."

Amended Comprehensive Plan **Policy 101.4.2** stipulates that the "County shall adopt land development regulations which allow nonresidential uses that were listed as a permitted use in the Land Development Regulations that were in effect immediately prior to the institution of the 2010 Comprehensive Plan, and that lawfully existed on such lands on January 4, 1996, to develop, redevelop, reestablish and/or substantially improve provided that the use is limited in intensity, floor area, density and to the type of use that existed on January 4, 1996 or limited to what the pre-2010 LDRs allowed, whichever is more restrictive. [9J-5.006(3)(c)1 and 7]."

## C. Public Welfare Issues.

The amendments will provide the same level of protection of public welfare to all land owners in the Residential Low, Residential Medium and Residential High categories of the FLUM by allowing any lawfully existing nonresidential uses to be reconstructed, improved, and redeveloped as needed after a natural disaster, provided it is not causing a public nuisance and remains compatible with surrounding land uses.

Public workshops held by the planning department in four areas of the Keys revealed that the current nonconforming status of many Keys businesses meant that owners were unwilling to make improvements or investments in the quality of their structires without some reassurances that they could rebuild their businesses in the event of a natural disaster. The unwillingness of owners to make investments in their properties has resulted in a degraded character in many areas throughout the Keys. Citizens (both residents and business owners) have expressed concern about how the degradation of these uses negatively impacts their neighborhoods and the quality of life in the Keys in general.

The LDR amendments ensure internal consistency with other goals, objectives, and policies of the comprehensive plan which limit intensification of grandfathered uses. The proposed amendments support smart growth principles and the mixed use pattern of development, which protects the uniqueness of the Keys character and discourages urban sprawl.

## D. Benefits to Property Owners:

Since the enactment of the comprehensive plan, the Planning Department has received numerous letters and phone calls from property owners concerned about how the comprehensive plan has affected their property.

In addition, reinvestment into businesses rendered non-conforming by the 2010 comprehensive plan was also a topic discussed at public workshops held by the planning department in four areas of the Keys. The workshops revealed that property owners were unwilling to make additional investments into their businesses and make improvements in the structures in which they are located without some reassurances that they could rebuild after substantial damage or destruction caused by a natural disaster. The current nonconforming status of many Keys businesses limits development to normal repair and maintenance and seeks to ultimately eliminate the uses over time.

Consequently, without an amendment to the LDRs to implement the comprehensive plan's policy of encouraging improvements to these structures, the quality and safety of affected properties will slowly degrade over time, and therefore degrade the quality the neighborhoods in which they are located. Eventually, the unwillingness of owners to make investments in their properties will result in a degraded character throughout the county, and citizens have expressed concern about how the degradation of these structures and the inability of business to reestablish after a natural disaster negatively impacts their neighborhoods and the quality of life in the Keys in general.

Therefore, these amendments are proposed in order to provide relief to property owners impacted by the original language of the land use policies of the 2010 comprehensive plan. Relief will be limited only to those existing uses affected by land use Policies 101.4.1, 101.4.2, 101.4.3, and 101.4.4. The amendments will apply to those nonresidential uses that were lawfully established before January 4, 1996 to continue, but be limited to pre-existing intensity to ensure consistency with policies of the comprehensive plan regarding protection of community character.

# III. PROPOSED REVISIONS:

The proposed amendment to Sections 9.5-241, 9.5-239, 9.5-238, 9.5-236, 9.5-237, 9.5-242, 9.5-242.5, 9.5-234, and 9.5-233, is attached.

## IV. CONCLUSIONS:

1. The proposed text amendment is consistent with Section 9.5-511 of the Monroe County Code.

2. The proposed text amendment is in the interest of public welfare.

3. The proposed text amendment is consistent with and furthers the policies of the Monroe County Year 2010 Comprehensive Plan.

4. The proposed amendment is consistent with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern as a whole, and is not inconsistent with any principle.

## V. PLANNING COMMISSION ACTION

After further review by planning staff since Planning Commission approval, amendments to Sections 9.5-241 OFFSHORE ISLAND DISTRICT (OS), 9.5-237 SUB URBAN RESIDENTIAL DISTRICT (LIMITED) (SR-L), and 9.5-242.5 IMPROVED SIBDIVISION DISTRICT – VACATION RENTAL DISTRICT were omitted from this Ordinance because they were superfluous in that they were not affected by policies of the comprehensive plan that made nonresidential uses in these land use districts nonconforming.

## VI. RECOMMENDATION:

The Planning staff recommends **APPROVAL** of the proposed Ordinance amending to Sections 9.5-233, 9.5-234, 9.5-236, 9.5-238, 9.5-239, and 9.5-242 of the Land Development Regulations.