

Sponsored by: Cinque
Planning Commission Public Hearing Date: February 17, 2009
City Council Public Hearing Dates: March 10, 2009 and March 31, 2009
Enactment date: March 31, 2009

**CITY OF MARATHON, FLORIDA
ORDINANCE 2009-12**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 107.18 C OF THE LAND DEVELOPMENT REGULATIONS; CONCERNING THE AFFORDABLE HOUSING PROGRAM FUND; REDUCING THE CASH IN LIEU PAYMENT PERCENTAGE FROM THIRTY PERCENT TO TEN PERCENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (THE "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 (the "City") adopted affordable housing requirements as part of Chapter 107, Article 2, Transfer of Building Rights, of the Code of the City (the "Code") in order to protect the existing affordable housing stock and to establish a pool for the development of new affordable housing ; and

WHEREAS, Section 107.18 of the Code contemplates that from time to time the City Council could adjust by Resolution the cost of an affordable house; and

WHEREAS, although the cost of construction of an affordable house has not changed significantly since the adoption of Section 107.18, the current economic down-turn has made it difficult for those seeking to transfer a building right to absorb the additional cost of an in-lieu payment to the City's Affordable Housing Program Fund; and

WHEREAS, the City Council has determined that it is in the best interests of the City to attempt to stimulate new construction or redevelopment in the City by reducing the amount of payment required to the Affordable Housing Program Fund at this time;

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

~~Strikethrough~~ = deletion **bold underline** = addition

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Section 107.18 of Chapter 107 of the Land Development Regulations, Code of Ordinances, City of Marathon, Florida, is hereby amended to read as follows:

Section 107.18. Affordable Housing Requirements.

An applicant proposing to transfer any non-transient dwelling unit building right must comply with one (1) 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 30 percent 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, stormwater, flood elevation, landscaping, bufferyards, 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 stormwater, landscaping, building code (but only as to roof, electric, plumbing and storm shutters), and fire code requirements.

C. *Affordable Housing Program Fund:* In lieu of Subsection 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 10 percent (to be reviewed at least annually and which may be adjusted from time to time by majority Resolution of the City Council) 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 (1) building unit equals \$200,000 payment to affordable housing fund).

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.

E. *Alternative Compliance:* The applicant may choose, with the City's consent, some combination of the above Subsections.

Section 3. The Provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

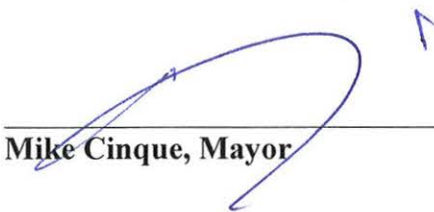
Section 4 The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. 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 6. 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 31st day of March, 2009.**

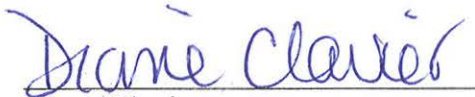
THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

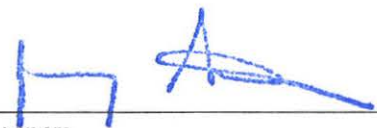
AYES: Ramsay, Snead, Cinque
NOES: Worthington, Vasil
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier
City Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY 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. 2009-12

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.* (2008), approving 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 ("City") is a local government within the Florida Keys Area.
2. On May 4, 2009, the Department received for review City of Marathon Ordinance No. 2009-12 that was adopted by the City of Marathon Board of City Commissioners on March 31, 2009 ("Ord. 2009-12"). The purpose of Ord. 2009-12 is to amend Section 107.18 C of the Land Development Regulations to reduce the Affordable Housing Program Fund in-lieu payment option from thirty percent to ten percent that is associated with the transfer of building rights.
3. Ord. 2009-12 is consistent with the City's 2010 Comprehensive Plan: Policy 1-3.5.16, Institute a program for Transfer of Density and Building Rights; and Chapter Two Housing Element, Purpose.

CONCLUSIONS OF LAW

4. 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.* (2008).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2008) and Rule 31-31.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

6. “Land development regulations” include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2008). The regulations adopted by Ord. 2009-12 are land development regulations.

7. 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.

8. Ord. 2009-12 is consistent with the following Principle:

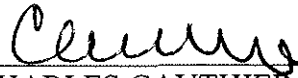
- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.

9. Ord. 2009-12 is neutral with respect to the remaining Principles. Ord. 2009-12 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2009-12 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby **APPROVED**.

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.



CHARLES GAUTHIER, AICP
Director, 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.

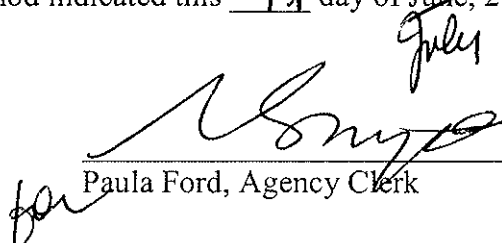
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 31-106.201(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 19th day of June, 2009.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Mike Cinque, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Diane Clavier, City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

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

Jimmy 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:

Rebecca Jetton, ACSC Administrator
Richard E. Shine, Assistant General Counsel