

## COUNCIL AGENDA STATEMENT



**Meeting Date:** August 13, 2019

**To:** Honorable Mayor and Council Members

**From:** George Garrett, Planning Director

**Through:** Chuck Lindsey, City Manager

**Agenda Item:** **Ordinance 2019-08**, Amending The City Of Marathon Comprehensive Plan Modifying Chapter One, “Future Land Use,” Table 1-1, “Future Land Use Densities And Intensities,” To Provide Assurances That Residences Within RL-C Zoning May Be Rebuilt; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity; And Providing For An Effective Date Upon The Approval Of This Ordinance By The State Department Of Economic Opportunity.

**Ordinance 2019-09**, Amending Chapter 103 “Zoning Districts”, Article 3 “Use And Intensity Tables”, Modifying Table 103.15.1 “Uses By Zoning District” And Table 103.15.2 “Density, Intensity, And Dimension For Zoning Districts;” Amending Chapter 108, Article 3, “Nonconforming Uses,” Section 108.12, “Nonconforming Density And Intensity” And Article 4, “Nonconforming Lots,” Section 108.13, “Nonconforming Lots;” Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; Providing For Inclusion In The Code Of Ordinances, City Of Marathon, Florida; And Providing An Effective Date.

### **RECOMMENDATION**

Planning Commission provides a unanimous recommendation for approval.

### **BACKGROUND AND REQUEST:**

Currently, the City of Marathon Comprehensive Plan and Land Development Regulations (LDRs) does not clearly provide that a single family residence may be rebuilt if it exists on a lot that is substandard in size, and therefore density. As an example, Residential Medium (RM) zoned lots are required to be a minimum of 8,712 square feet. Over one half of the RM zoned lots within the City of Marathon are less than the 8,712 square foot minimum lot size.

The proposed Comprehensive Plan and Land Development Regulation Ordinances attached are intended to compliment one another and make absolutely clear that at least one single family residence will be allowed on lots zoned Residential High (RH) Residential Medium (RM), or Residential Mobile Home (R-MH). The Ordinance also makes it clear that at least one single family residence may be rebuilt on ANY nonconforming lot upon which a residence or residences currently exists. Further, the

Ordinance establishes a provision for lots and blocks within RL-C zoned subdivisions such that if a block within a subdivision zoned RL-C is greater than 90 percent developed, than any vacant lot within the block is deemed buildable.

The proposed Ordinances are attached. Only one substantive revision is required to the Comprehensive plan whereas several revisions are suggested to the LDRs as there are two pertinent chapters that need some revision.

The City Council provided a unanimous vote of approval for both Ordinances (Comprehensive Plan and LDRs) on March 26, 2019. The Comprehensive Plan Ordinance was transmitted to and approved by The Department of Economic Opportunity on July 1, 2019. They requested no changes to the Ordinance.

**APPLICANT:** City of Marathon

**REQUEST:**

Comprehensive Plan

- Chapter One, “Future Land Use,” Table 1-1, “Future Land Use Densities And Intensities,”

Land Development Regulations

- Chapter 103 “Zoning Districts”, Article 3 “Use And Intensity Tables”, Table 103.15.1 “Uses By Zoning District”
- Chapter 103, Table 103.15.2 “Density, Intensity, And Dimension For Zoning Districts;”
- Chapter 108, Article 3, “Nonconforming Uses,” Section 108.12, “Nonconforming Density And Intensity”
- Chapter 108, Article 4, “Nonconforming Lots,” Section 108.13, “Nonconforming Lots;”

**ANALYSIS OF COMPREHENSIVE PLAN CHANGE REQUEST:**

**Preface**

The current Land Development Regulations provide only brief guidance concerning the review of a proposed Comprehensive Plan Amendment.

Section 102.19 simply states:

[Section 102.19. Standards for Review.](#)

[When considering an application for a Comprehensive Plan Amendment, the review shall include all standards and criteria of Fla. Stat. ch. 163.](#)

Standards in Chapter 163, F.S. offer some additional guidance, but are limited. Pertinent sections of Chapter 163 promulgate process rather than establishing criteria for the development of a proposed

Comprehensive Plan Amendment. Chapter 163.3184, Process for adoption of comprehensive plan or plan amendment, define the sequential process for transmittal, review, and approval of a Comprehensive Plan Amendment. Most relevant to this delineation of process is the definition of “**compliance**” which is recited for review below:

**163.3184 Process for adoption of comprehensive plan or plan amendment.--**

(1) DEFINITIONS.--As used in this section, the term:

(b) "In compliance" means consistent with the requirements of ss. [163.3177](#), when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable. Thus, leading through an exhaustive process, the State Land Planning Agency must find a Comprehensive Plan or Plan Amendment in compliance in accordance with the above definition. Process as further defined in the section leads from Local Government Transmittal through review by the State Land Planning Agency and other required local and state government bodies to a finding of “in compliance” by the State Land Planning Agency.

Review is contemplated and expected to be completed by such agencies as the South Florida Regional Planning Council, whose responsibility it is to review the proposal for consistency with the Strategic Regional Policy Plan. Such review is not therefore, the responsibility of the local government to determine consistency in this regard and will not be addressed herein. Though referenced in the definition of compliance and elsewhere Chapters 163.3177, 163.3191, 163.3245, and 369 will not be reviewed as a compliance matter. Chapter 163.3177 defines required elements in a comprehensive plan. The City has an approved comprehensive plan which must be assumed to have all required elements. Chapter 163.3191 refers to the required Evaluation and Appraisal Report (EAR); a review of an approved comprehensive plan required of the City every seven years. The City is not subject to an EAR at this juncture and therefore is not relevant as a criterion to the review herein. Finally, Chapter 163.3245 refers to the development of an optional sector plan. This optional element of an approved comprehensive plan was not adopted by the City and therefore will not be used as a criterion for review in this proposed FLUM amendment. Chapter 369 refers to invasive aquatic plant control and the Wekiva River area and similarly will not be the subject of compliance review herein.

Other pertinent review elements leading to a determination of compliance are found in Chapter 163.3178 Coastal management, Chapter 163.3180 Concurrency and the principals for guiding development in the Florida Keys Area of Critical State Concern. This application for a FLUM amendment will be analyzed against the limited compliance issues found in sections of Chapter 163 F.S. and Chapter 380 F.S. noted immediately above. Relevant sections are provided in EXHIBITS 2, 3, & 4 attached or with website references for your review

### **Compliance Discussion**

Relevant criteria promulgated in Chapters 163 and 380 F.S. can be itemized in bullets as follows based on the critical concerns more specifically identified in the City's comprehensive plan:

- Natural Resource Protection
  - Wetlands
  - Estuaries
  - Living marine resources
  - Beaches / Dunes
  - Unique wildlife habitat
  - Water Quality
- Historical Resources
- Infrastructure / Concurrency Management
  - Wastewater
  - Stormwater
  - Potable Water
  - Solid Waste
  - Transportation
- Affordable Housing
- Hazard Mitigation
  - CHHA
  - Hurricane Evacuation
- Ports
  - Marina Siting
- Public Use
  - Shoreline use and Access
  - Water dependent and independent activity
- Land Acquisition
  - Conservation
  - CHHA
  - Public Services

These bullet items should be utilized as the focus points for review of the proposed FLUM amendment and for future comprehensive plan amendments.

## **SUMMARY**

The Planning Commission reviewed the proposed Ordinance on February 25, 2019. After extensive deliberation, the Planning Commission recommended that the Ordinance be moved forward to the City Council for review and approval.

## **ANALYSIS**

### Natural Resources

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to natural resources.

### Historical and Cultural Resources

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to historical and cultural resources.

### Infrastructure

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to the City's overall infrastructure.

### Wastewater infrastructure

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to wastewater infrastructure.

### Stormwater infrastructure

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to natural resources. Redevelopment would allow the City, through the permit process, to impose any current stormwater retention requirements.

### Potable Water

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to potable water resources.

### Solid Waste

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to solid waste.

### Transportation

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to transportation.

### Affordable Housing

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to affordable housing options or opportunities.

### Hazard Mitigation

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to City Infrastructure which would require any additional hardening of these facilities.

### Coastal High Hazard Areas

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no new construction within the Coastal High Hazard Areas.

### Hurricane Evacuation

No Significant Impact would result from the proposed change.

### Ports – Marina Siting

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to ports or marina siting.

### Public Use – Access to Water

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no impacts to public access to marine waters.

### Land Acquisition

As the proposed Ordinance only allows for the redevelopment of existing single family residential units and essentially no new units, there will be no changes to the normal land acquisition process.

### **Alternate Compliance Review Criteria**

Since there are no internal Comprehensive Plan change review criteria available in Chapter 102, Article 6, those that would apply for an LDR text change request (Chapter 102, Article 7) are useful.

The basis for the LDR text change criteria are the same as for a Comprehensive Plan change ultimately.

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

**A. The need and justification for the change;**

Currently, the City of Marathon Comprehensive Plan and Land Development Regulations (LDRs) does not clearly provide that a single family residence may be rebuilt if it exists on a lot that is substandard in size, and therefore density. As an example, Residential Medium (RM) zoned lots are required to be a minimum of 8,712 square feet. Over one half of the RM zoned lots within the City of Marathon are less than the 8,712 square foot minimum lot size.

The proposed Comprehensive Plan and Land Development Regulation Ordinances attached are intended to compliment one another and make absolutely clear that at least one single family residence will be allowed on lots zoned Residential High (RH) Residential Medium (RM), or Residential Mobile Home (R-MH). The Ordinance also makes it clear that at least one single family residence may be rebuilt on ANY nonconforming lot upon which a residence or residences currently exists. Further, the Ordinance establishes a provision for lots and blocks within RL-C zoned subdivisions such that if a block within a subdivision zoned RL-C is greater than 90 percent developed, than any vacant lot within the block is deemed buildable.

**B. The consistency of the proposed amendment with the Comprehensive Plan; and**

The proposed Ordinances do not modify, but, clarify existing policies within the Comprehensive Plan and corresponding sections within the LDRs.

**C. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.**

As the purpose of these ordinance is to strengthen the Comprehensive Plan and LDRs through clarification of existing policies and sections, the purposes of both documents are fully retained without modification.

**CONCLUSION:**

The proposed Amendment is consistent with and furthers the goals of the City of Marathon Comprehensive Plan and Land Development Regulations.

**RECOMMENDATION:**

The City Council granted approval of both Ordinances at their March 26, 2019 City Council meeting. The Ordinance before you are unchanged from that time and are before you for their second hearing..

**Sponsored by: Lindsey**  
**Introduction Date:** February 25, 2019  
**Public Hearing Dates:** March 12, 2019  
August 13, 2019  
**Enactment date: August 13, 2019**

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-08**

**CONSIDERATION OF AN ORDINANCE TO AMEND THE CITY OF MARATHON COMPREHENSIVE PLAN MODIFYING CHAPTER ONE, “FUTURE LAND USE,” TABLE 1-1, “FUTURE LAND USE DENSITIES AND INTENSITIES,” TO PROVIDE ASSURANCES THAT RESIDENCES WITHIN RL-C ZONING MAY BE REBUILT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

**WHEREAS**, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting business regulations for the protection of the public; and

**WHEREAS**, the purpose of the proposed Ordinance is to preserve the rights of individual single family residential lot and property owners through a clarification of language in the City’s Land Development Regulations,

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

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

**SECTION 2.** Amend Chapter One, Table 1-1 to read as follows:

Policy 1-3.2.7 Restrict Density and Intensity of Development

Table 1-1 establishes the maximum range of allocated density and intensity (F.A.R.) permitted in each future land use category per acre. New development and redevelopment, unless otherwise specified, shall not exceed the thresholds established in the table below.

With the exception of mixed use development that contains affordable/work force housing, when a proposed development is for a combination of uses, the acreage required for each use shall be determined independently based on the floor area ratio in Table 1-1 for each individual use.

**TABLE 1-1  
Future Land Use Densities and Intensities\***

Future Land Use Category	Permitted Residential Density (Units per acre)			Hotel/Motel/RV Spaces (Units per acre)	Maximum Intensity (floor area ratio)	Minimum Open Space Ratio
	Market Rate	Affordable	Licensed Mobile Home or RV Parks			
Airport (AD)	0		0	N/A	0.15 - 0.50	0.2
Conservation (C)	0.1- 0.25 <sup>7</sup>	0.1-0.25 <sup>7</sup>	0	N/A	0.05 - 0.10	0.5
Industrial (I)	0	5-10	0	N/A	0.85	0.2
Mixed Use Commercial (MUC)	2 – 6	10 – 15	10-25	5 - 25	0.15 - 0.60 <sup>4</sup>	0.2
Public <u>Uses (PU)</u>	0	15-25	0	3 – 25	0.15 - 0.75	0.2
Recreation (R)	0.25	0.25	0	5 – 15	0.15 - 0.50	0.2
Residential High (RH)	8	15 - 25	15-25	0	0	0.2
Residential Medium (RM)	5	10	0	0	0	0.2
Residential Low (RL)	0.5	0.5	0	0	0	0.5

Note:

1. See Objective 1-3.9 and subsequent policies.
2. The allocated and maximum net densities for submerged lands shall be 0.
3. For properties consisting of hammocks or disturbed wetlands within the Mixed Use Commercial future land use categories, the floor area ratio shall be 0.10 and the maximum net residential density shall be 0.
4. Open space shall be increased based upon the requirement for a habitat evaluation and shall conform to Table 4-1 of the Coastal and Conservation Element.
5. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided.

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**TABLE 1-1  
Future Land Use Densities and Intensities\***

Future Land Use Category	Permitted Residential Density (Units per acre)	Hotel/Motel/RV Spaces (Units per acre)	Maximum Intensity (floor area ratio)	Minimum Open Space Ratio
<p>6. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16</p> <p>7. <del>Existing Single Family Residences may be repaired, modified, or replaced. Individual vacant Lots within Blocks defined within a Platted Subdivision subject to RL-C zoning may be built upon IF the sum of all Lots within an individual Block are over 90% developed with single family residences as of the date that DEO accepts the Ordinance whichever occurs first.</del> <b>Existing Single Family Residences may be repaired, modified, or replaced. Individual vacant Lots within Blocks defined within a Platted Subdivision subject to RL-C zoning may be built upon IF the sum of all Lots within an individual Block are over 90% developed with single family residences as of the date that DEO accepts the Ordinance whichever occurs first.</b></p>				

\*All development and redevelopment shall comply with this Plan and the Land Development regulations.

**SECTION 3.** The Provisions of the Code of Ordinances, City of Marathon, Florida 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.** It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Comprehensive Plan, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**SECTION 6.** 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 Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 7.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

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**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF AUGUST, 2019.**

**THE CITY OF MARATHON, FLORIDA**

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**John Bartus, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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Diane Clavier, City Clerk

(City Seal)

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

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David Migut, City Attorney

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