

COUNCIL AGENDA STATEMENT



Meeting Date: November 12, 2019

To: Honorable Mayor and Council Members

From: George Garrett, Planning Director

Through: Chuck Lindsey, City Manager

Agenda Items: **Ordinance 2019-12**, Amending The City’s Comprehensive Plan To Modify Comprehensive Plan, Chapter 1, “Future Element”; Goal 1-3, “Manage Growth”; Objective 1-3.2, “Regulate Density And Intensity”; Policy 1-3.2.5 “Maximum Height Limitation”, Increasing The Maximum Building Height To Forty-Two Feet (42) For Residential Structures To Provide Compensation For Increases In Required Elevations For The New FEMA FIRM Maps; Providing That No Structure Shall Thereby Exceed Three Stories Above Grade; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After Final Adoption By The City Council; And Providing For An Effective Date.

Ordinance 2019-13, Amending The City’s Land Development Regulations, Chapter 103, Table 103.15.2, “Density, Intensity And Dimensions For Zoning Districts”; Chapter 107, Article 5, “Setbacks And Height”; Section 107.40, “Maximum Height” And Figure 107.40.1, “Building Height Measurement”, Increasing The Maximum Building Height To Forty-Two Feet (42) For Residential Structures To Provide Compensation For Increases In Required Elevations For The New FEMA Firm Maps; Providing That No Structure Shall Thereby Exceed Three Stories Above Grade; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; Providing For The Transmittal Of This Ordinance To The State Department Of Economic Opportunity After Final Adoption By The City Council; And Providing For An Effective Date.

RECOMMENDATION:

The Planning Commission reviewed the proposed Ordinances, both Comprehensive Plan and LDRS, on October 21, 2019 at a regularly schedule Planning Commission meetings and unanimously (4/0 with an excused absence) recommends approval of both Ordinances modifying provisions concerning the maximum height of any structure.

APPLICANT: City of Marathon

REQUEST: Amend City of Marathon Comprehensive Plan and Land Development Regulations in order to ensure that the City is able to comply with the proposed Working Draft FEMA NFIP FIRMs, while not significantly impacting the construction industry’s ability to build structures up to three (3) stories.

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.

DRAFT FEMA NFIP MAPS:

The Draft FEMA NFIP Maps were release on August 22, 2019 at meetings held in both Key West and Marathon. The Maps should be considered “Working Maps” at this juncture, but little significant change is expected upon their anticipated official release in December of this year (2019). An official appeal period of the maps will begin when the maps are released through a Legal Notice in the Federal Register, expected sometime in late January or February.

BACKGROUND

To emphasize that flood risks are changing and to make sure property owners are aware that new FEMA FIRM maps will be adopted in the near future, the City of Marathon Building Department will be requiring Owner’s to sign a form with permits that acknowledges the issuance of these new DRAFT coastal flood maps and the fact that these maps may indicate a future change to the required elevation of a building currently in the permit process. This is intended to help homeowners understand that what they are proposing to build today, under the existing flood maps, could become non-conforming after the new draft maps are formally adopted. This could make their flood risk and insurance costs greater. Owners should think about designing their improvements to meet the proposed draft maps to assure they are addressing potential future risk.

As the DRAFT maps are rolled out, the City is considering its options to hire a consultant that would be charged with analyzing how flood risks are changing within its municipal boundaries based on the new DRAFT FIRMs and the best available science and technology. If hired, the technical consultant would also be reviewing the maps and modeling conducted by FEMA and would be prepared to appeal any of the maps that do not appear to be correct.

To view the City’s DRAFT FIRM maps, please click on the following link [DRAFT Marathon coastal flood maps](#). This link will open to an Index map of the Florida Keys which you can then utilize to navigate to individual specific maps concerning your area of the City. In order to view other DRAFT FIRM maps outside of the City of Marathon, but within Monroe County, please click the following link [HERE: DRAFT coastal flood maps](#). This link will open a FEMA FIRM Draft Maps mapping tool. Simply click in the FIRM Panel section where property is located to view the popup containing a link to the Draft Map (PDF).

IMPORTANT: These maps don't show an additional difference in elevation due to a change in mapping standards between the old and new proposed flood maps (datum NGVD29 to datum NAVD88). This means that all NGVD29 elevations (e.g., BFE, Lowest Floor Elevation) need to be converted to NAVD88. While there is no set conversion factor, as it varies throughout Monroe County, on average there is -1.5 foot conversion factor. To account for this change, ON AVERAGE you should add +1.5-feet to any apparent increase. For example: If your building was in an AE-8 flood zone and is still shown in an AE-8 zone, then it actually experienced an increase of 1.5 feet. Another example: If your building was in an AE-6 flood zone and is proposed to be in

an AE-9 zone, the increase appears to be three-feet. However, the actual increase would be 4.5'-feet.

Immediate Concerns - The Draft maps show some immediate and obvious difference from the old maps. Account for the change in datum, many homes in Marathon will see an increase in their FEMA NFIP Flood Zone of from 0.5 feet to as many as 5.5 feet (See Table below)

The City is already recognizing that the release of the DRAFT Working Maps will influence current construction and the construction that we see in the coming months BEFORE the maps actually reach final adoption.

For instance, a residential permit issued today at BFE – AE 7 or 8 may become an AE 10. At that juncture, it will be 3.5 to 4.5 feet below the necessary flood level when the draft maps are adopted. Permits issued in the future will be advised that the owners should consider meeting the new flood zones NOW.

Considerations & Suggestions - The new map provisions are going to strain the City’s maximum height restriction as required base elevations go up. Staff is proposing that we look at the maximum height restrictions, rather than creating a “free board” provision or enact a combination of the two so that home builders will not be constrained by the additional elevation requirements of the new maps. We would also suggest that no addition habitable floors be allowed as part of any new Code modifications (No more than three levels & more likely two levels are achievable now).

Relative Flood Zones / Conversion from NGVD29 to NAVD88

	NAVD88	7	8	9	10	11	12	NE W
NGVD 29								
6		2.43	3.43	4.43	5.43	6.43	7.43	
7		1.43	2.43	3.43	4.43	5.43	6.43	
8		0.43	1.43	2.43	3.43	4.43	5.43	
9		0.57	0.43	1.43	2.43	3.43	4.43	
10		1.57	0.57	0.43	1.43	2.43	3.43	
11		2.57	1.57	0.57	0.43	1.43	2.43	
12		3.57	2.57	1.57	0.57	0.43	1.43	
13		4.57	3.57	2.57	1.57	0.57	0.43	
14		Water	Water	Water	Water	Water	Water	
15		Water	Water	Water	Water	Water	Water	
OLD								
NAVD88 = NGVD29 - 1.43' (Avg. Marathon) (Conversion Range = -1.39' to -1.47')								

ANALYSIS

Natural Resources - No Significant Impact would result from the proposed change.

Historical and Cultural Resources - No Significant Impact would result from the proposed change.

Infrastructure - No Significant Impact would result from the proposed change.

Wastewater infrastructure - No Significant Impact would result from the proposed change.

Stormwater infrastructure - No Significant Impact would result from the proposed change.

Potable Water - No Significant Impact would result from the proposed change.

Solid Waste - No Significant Impact would result from the proposed change.

Transportation - No Significant Impact would result from the proposed change.

Affordable Housing - The proposed amendment will not affect the construction of affordable housing appreciably. As with other types of structures and uses, the proposed amendment will provide maximum flexibility in meeting the new FEMA NFIP flood map base elevations while still allowing for the construction of up to three functional stories above grade.

Hazard Mitigation - No Significant Impact would result from the proposed change.

Coastal High Hazard Areas - Implementation of the proposed Ordinance will have some, but limited, impact on the City's current enforcement of regulations regarding the Coastal High Hazard Areas (CHHAs as we already heavily regulate development in what are otherwise known as Category 1 surge zones or VE Zones.

Hurricane Evacuation - No Significant Impact would result from the proposed change.

Ports – Marina Siting - No Significant Impact would result from the proposed change.

Public Use – Access to Water - No Significant Impact would result from the proposed change.

Land Acquisition - No Significant Impact would result from the proposed change.

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;

The Draft maps show some immediate and obvious difference from the old maps. Account for the change in datum, many homes in Marathon will see an increase in their FEMA NFIP Flood Zone of from 0.5 feet to as many as 5.5 feet (See Table below)

The City is already recognizing that the release of the DRAFT Working Maps will influence current construction and the construction that we see in the coming months BEFORE the maps actually reach final adoption.

For instance, a residential permit issued today at BFE – AE 7 or 8 may become an AE 10. At that juncture, it will be 3.5 to 4.5 feet below the necessary flood level when the draft maps are adopted. Permits issued in the future will be advised that the owners should consider meeting the new flood zones NOW.

The new map provisions are going to strain the City’s maximum height restriction as required base elevations go up. Staff is proposing that we look at the maximum height restrictions, rather than creating a “free board” provision or enact a combination of the two so that home builders will not be constrained by the additional elevation requirements of the new maps. We would also suggest that no addition habitable floors be allowed as part of any new Code modifications (No more than three levels & more likely two levels are achievable now).

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

The proposed Ordinance meets three principle areas of concern reflected in the City’s Comprehensive Plan. First, the proposed amendment seeks to meet all of the necessary requirements of the FEMA Floodplain management program and the City’s standing in the Community Rating System (CRS while at the same time continuing to allow development consistent with that allowed in the past, particularly, structures of up to three (3) stories. Second, The Ordinance does not allow any additional stories above what could have been reasonably or potentially permitted under the current Planning guidelines and regulations. Third, the proposed amendment seeks to maintain the traditional community character of Marathon by limiting the potential to turn the additional height allowance into something more than that ability to meet new FEMA regulations while maintaining current standards for the number of stories typically allowed.

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.

The proposed regulations does further the basic goals and premises outlined in the introductory to the City’s Comprehensive Plan as follows:

“With the knowledge that the City needs redevelopment and new development to provide the necessary improvements to guarantee the residents of the City a clean, healthy environment and a sound economy in which to live and enjoy their families, it is the desire and intent of the City through the Goals, Objectives and Policies of the adopted Comprehensive Plan and Land Development Regulations implementing the Plan to protect our character, environment and viability through:

- Protection of the small town family feel of the community
- Continued utilization of the established mixed-use pattern of the community
- Protection of the heritage of the commercial fishing industry
- Acknowledgement and protection of a character that is unique to the Keys
- Protection of existing and increased affordable housing opportunities
- Implementation of effective surface water management strategies
- Systematic removal of failing and inadequate on-site wastewater disposal systems
- Maintenance and management of central wastewater and stormwater facilities
- Protection and enhancement of sensitive upland, wetland and submerged land habitat
- Protection for the existing uses, densities and intensities
- Providing new investment and reinvestment opportunities
- Ensuring new development and redevelopment protects the environment
- Ensuring new and redevelopment compliments and enhances community character
- Implementation of thoughtful, managed growth.”

CONCLUSION:

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

RECOMMENDATION:

The Planning Commission reviewed the proposed Ordinances, both Comprehensive Plan and LDRS, on October 21, 2019 at a regularly schedule Planning Commission meetings and unanimously (4/0 with an excused absence) recommends approval of both Ordinances modifying provisions concerning the maximum height of any structure.

Sponsored By: Lindsey
Planning Commission Public Hearing Date: October 21, 2019
City Council Public Hearing Date: November 12, 2019
tbd
Enactment Date: tbd

**CITY OF MARATHON, FLORIDA
ORDINANCE 2019-12**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN TO MODIFY COMPREHENSIVE PLAN, CHAPTER 1, "FUTURE ELEMENT", GOAL 1-3, "MANAGE GROWTH;" OBJECTIVE 1-3.2, "REGULATE DENSITY AND INTENSITY;" POLICY 1-3.2.5; "MAXIMUM HEIGHT LIMITATION," INCREASING THE MAXIMUM BUILDING HEIGHT TO FORTY-TWO FEET (42) FOR RESIDENTIAL STRUCTURES TO PROVIDE COMPENSATION FOR INCREASES IN REQUIRED ELEVATIONS FOR THE NEW FEMA FIRM MAPS; PROVIDING THAT ANY STRUCTURE SHALL NOT THEREBY EXCEED THREE STORIES ABOVE GRADE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Economic Opportunity ("DEO"), pursuant to Chapters 163 and 380, Florida Statutes; and

WHEREAS, FEMA has recently released National Flood Insurance Program (NFIP), Working Draft Flood Insurance Rate Maps (FIRM) which in some areas may significantly alter the currently adopted Base Flood Elevations (BFE); and

WHEREAS, it is the City's intent to raise the height limitations to provide some flexibility in building construction under the constraint that many Base Flood Elevations have increased from the current adopted maps; and

WHEREAS, the City does not want to unduly constrain construction in the City so long as the proposed increase in maximum building height does not allow additional building stories and said construction does not exceed three (3) stories; and

WHEREAS, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Goals, Objectives and Policies of the Comprehensive Plan in order to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

WHEREAS, this Ordinance, thus passed at its first reading, shall be transmitted to DEO and sister State Agencies for their coordinated Comprehensive Plan review so as to obtain and receive the DEO Objections, Recommendations, and Comments (ORC) prior to final adoption,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT

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

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

SECTION 2. Amend the Comprehensive Plan, Chapter 1, Conservation and Coastal Element, “Purpose:”

Policy 1-3.2.5 Maximum Height Limitation

The maximum height of any structure **permitted for maintenance, repair, expansion or new construction within the City of Marathon** shall be **forty-two feet (42)** ~~thirty-seven (37)~~ feet with the exception of permitted projections, unless further restricted by the Land Development Regulations. **No structure shall exceed three (3) stories whether a story is utilized for building entry, parking, storage, habitation or a valid commercial or industrial use. The purpose of this provision is to allow some flexibility in meeting the City’s Floodplain regulations and revised FEMA Floodplain Maps. Government Facilities are exempt with the approval of the City Council. Nonconforming structures may be repaired, maintained or expanded as long as any alterations to the structure does not increase the nonconformity.**

SECTION 3. 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 4. The provisions of this Ordinance constitute a “Comprehensive Plan amendment” as defined by State law. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the DEO and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be scheduled for a second hearing immediately upon approval by the Florida Department of Economic Opportunity as a part of their Objections, Recommendations, and Comments (ORC) review, pursuant to Chapters 163 and 380, Florida Statutes.

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this
___ day of _____, 2020.

THE CITY OF MARATHON, FLORIDA

Mayor Steven Cook

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk

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

David Migut, City Attorney