

## CITY COUNCIL AGENDA STATEMENT



**Meeting Date:** August 9, 2022

**To:** Honorable Mayor and Members of City Council

**Through:** George Garrett, City Manager

**From:** Brian Shea, Planning Director

**Agenda Items:** **Ordinance 2022-07**, Amending The City Of Marathon’s Comprehensive Plan Modifying Chapter Four, “Conservation And Coastal Element,” And Intending To Modify Policy 4-1.4.2, “Maintain A 50 Foot Buffer Adjacent To Wetlands,” 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 The First Hearing By The City Council; And Providing For An Effective Date.

**Ordinance 2022-08**, Amending Chapter 106 “Natural And Historic Resources Protection”, Article 4 “Open Water, Surface Waters And Wetlands”, Updating Table 106.28.1 “Water Resource And Wetland Buffers”; 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:**

The Planning staff recommends approval of both Ordinances modifying provisions concerning the setback of structures from wetlands. Planning Commission voted 3-0 recommending approval.

**APPLICANT:** City of Marathon

**REQUEST:** Amend City of Marathon Comprehensive Plan and Land Development Regulations in an effort to streamline regulations to be consistent with external agency approvals.

### **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.

### **BACKGROUND**

Subsection 62-330.010(4) of the Florida Administrative Code adopted by reference the Environmental Resource Permit Applicant Handbook Volume I (General and Environmental), including appendices G, H, and I only. This is used by the following agencies for review of environmental resource permits:

- Florida Department of Environmental Protection

- Northwest Florida Water Management District
- Suwannee River Water Management District
- St. Johns River Water Management District
- Southwest Florida Water Management District
- South Florida Water Management District

The Florida Department of Environmental Protection (“Department” or “DEP”) and Florida’s five water management districts (“Districts” or “WMDs”) developed this Applicant’s Handbook to help persons understand the rules, procedures, standards, and criteria that apply to the environmental resource permit (ERP) program under Part IV of Chapter 373 of the Florida Statutes (F.S.). The ERP program is authorized under Part IV of Chapter 373 F.S. More specifically, Section 373.4131, F.S., authorizes implementation of the statewide ERP rules. Chapter 120, F.S. (Administrative Procedures Act) also governs licensing, rulemaking, and administrative procedures under the ERP program. Chapter 403, F.S. (Environmental Control) governs aspects of the ERP program related to water quality, program implementation, exemptions, and general permits.

Part 1.5.3 of the handbook discusses how the proposed land use to be served by an activity regulated under Chapter 62-330, F.A.C., does not have to be consistent with the local government's comprehensive plan or existing zoning for the site. It then goes on to further state that it is strongly recommended that applicants obtain necessary permits from local governments prior to applying to these external agencies as part of the ERP application. The applicant can reduce or eliminate the need for subsequent permit modifications which may be necessary as a result of conditions imposed by the local government.

In an effort to avoid these issues, the City is proposing to match the existing external agency regulations. Specifically, by updating the Comprehensive Plan and LDRs to adopt the following wetland setback criteria.

“Secondary impacts to the habitat functions of wetlands associated with adjacent upland activities will not be considered adverse if buffers, with a minimum width of 15 ft. and an average width of 25 ft., are provided abutting those wetlands that will remain under the permitted design, unless additional measures are needed for protection of wetlands used by bald eagles for nesting, or listed species for nesting, denning, or critically important feeding habitat. The mere fact that a species is listed does not imply that all its feeding habitat is critically important. Buffers shall be maintained in an undisturbed vegetated condition, except when the permit requires removal of exotic and nuisance vegetation or the planting of appropriate native species to prevent adverse secondary impacts to the habitat functions of the wetlands. Drainage features such as spreader swales and discharge structures are acceptable within the buffer, provided the construction or use of these features does not adversely impact wetlands. [...] Wetlands or other surface waters shall not be filled to achieve this buffer requirement.”

## **ANALYSIS**

### Natural Resources

No Significant Impact would result from the proposed change, as the proposed change is consistent with external agency approvals. In addition, the additional buffering and conservation easement requirements furthers the future protection of the natural resources.

#### 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. The additional language pertaining to stormwater measures in the buffer areas furthers the goals of this section and preserves the natural functioning wetlands capacity to absorb stormwater.

#### 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. It may allow for the relocation of affordable housing on site to change the overall site plan but does not change the maximum densities for affordable housing.

#### Hazard Mitigation

No Significant Impact would result from the proposed change. However, the recording of conservation easements over wetland areas can be credited for points in the FEMA community rating system.

### Coastal High Hazard Areas

No Significant Impact would result from the proposed change.

### 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 in regard to the CHHA and public services. However, there would be the beneficial impact of conservation easements being recorded on existing wetlands within the City of Marathon.

## **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 is 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;**

City Council, Planning Commission, and citizens have asked staff to look into streamlining regulations to make them consistent with external agency approvals. Often applicants seek approval from external agencies prior to applying for permits or approvals from the City of Marathon. The City has the ability to be more restrictive in regulations, but not less restrictive. In this instance current regulations state that a 50-foot setback is required to protect wetlands. However, there are instances where the code allows this to be reduced. This reduction is still consistent with, and not less restrictive than said external agency approvals. Expanding the definitions of when the reduction can occur based upon the external agency approvals will make reviews consistent with multiple agencies. Therefore, staff is recommending meeting those same restrictions, while still applying additional restrictions and reviews consistent with other sections of the code and comprehensive plan.

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

The proposed Ordinance meets three principal areas of concern reflected in the City's Comprehensive Plan. First, the proposed amendment seeks to meet all the necessary requirements that all new development and redevelopment protects the environment. Second, The Ordinance does not allow any additional impact to wetlands and provides for the protection and enhancement of sensitive uplands. Third, the proposed amendment seeks to maintain the traditional community character of Marathon, which is so closely tied to the environment.

**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 do further the basic goals and premises outlined in the introductory to the City's Comprehensive Plan as follows (highlighting for emphasis):

“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 staff recommends approval of both Ordinances modifying provisions concerning the setback of structures from wetlands. Planning Commission voted 3-0 recommending approval.

**Sponsored By:** Garrett  
**Planning Commission Public Hearing Date:** April 18, 2022  
**City Council Public Hearing Date:** May 10, 2022  
August 9, 2022  
**Enactment Date:** August 9, 2022

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2022-07**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY OF MARATHON’S COMPREHENSIVE PLAN MODIFYING CHAPTER FOUR, “CONSERVATION AND COASTAL ELEMENT,” AND INTENDING TO MODIFY POLICY 4-1.4.2, “MAINTAIN A 50 FOOT BUFFER ADJACENT TO WETLANDS,” 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 THE FIRST HEARING 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**, Subsection 62-330.010(4) of the Florida Administrative Code adopted by reference the Environmental Resource Permit Applicant Handbook Volume I (General and Environmental), including appendices G, H, and I only; and

**WHEREAS**, The Florida Department of Environmental Protection (“Department” or “DEP”) and Florida’s five water management districts (“Districts” or “WMDs”) developed this Applicant’s Handbook to help persons understand the rules, procedures, standards, and criteria that apply to the environmental resource permit (ERP) program under Part IV of Chapter 373 of the Florida Statutes (F.S.); and

**WHEREAS**, it is the City’s intent to amend the wetland setback criteria to provide consistency with the external agency approval process noted above; and

**WHEREAS**, the City does not want to unduly constrain construction in the City so long as the proposed construction is consistent with the protection of wetlands; 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 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 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 4, Conservation and Coastal Element, “Policy 4-1.4.2:”

Policy 4-1.4.2                      Maintain a 50 Foot Buffer Adjacent to Wetlands

The City shall require minimum vegetated setbacks of fifty (50) feet to be maintained as an open space buffer for development occurring adjacent to all types of wetlands except for tidally inundated mangrove fringes or permitted under Objective 4-1.11. If a fifty (50) foot setback results in less than 2,000 square feet of principal structure footprint of reasonable configuration then the setback may be reduced to allow for 2,000 square feet of principal structure footprint of reasonable configuration, provided the setback is not reduced to less than twenty-five (25) feet. ~~On properties classified as searified adjacent to wetlands,~~ The wetland setback may be reduced to an average of twenty-five (25) feet, but no less than fifteen (15) feet, without regard to buildable area if the entire setback area is planted and maintained in native vegetation with a site-suitable stormwater management plan, and thereafter placed under conservation easement. The wetland setback reduction shall not apply to wetlands used by bald eagles for nesting, or listed species for nesting, denning, or critically important feeding habitat. The mere fact that a species is listed does not imply that all of its feeding habitat is critically important. The wetland setback required by this subsection shall not apply to mangrove or wetland fringes occurring along man-made canals, channels, or basins. Wetlands or other surface waters shall not be filled to achieve the setback buffer requirement. ‘Development’ shall include all activities as currently defined in the F.S. 380.05, hereby incorporated by reference. §163.3177(6)(d)2. j. F.S.

**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 DCA and other state agencies for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 5.** This Ordinance shall be effective immediately upon approval by Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.

<sup>1</sup>Additions 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 9<sup>TH</sup> DAY OF AUGUST, 2022.**

**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

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

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Steven Williams, City Attorney