

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 2022-08**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, 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.

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 Land Development Regulations corresponding to a similar amendment to the City’s 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 second reading, shall be transmitted to DEO for review and approval,

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 Land Development regulations, Chapter 106, “Natural and Historic Resources Protection,” Article 4, “Open Water, Surface waters And Wetlands,” Section 106.28:

Section 106.28. Water Resource and Wetland Buffers.

- A. Buffers are integral to the maintenance of water resources and wetland structure and function. A buffer shall be required between all proposed activity and the landward extent of the water resource or wetlands as established in this chapter. The following buffer widths shall apply for the resources set forth in Table 106.28.1 below.

Table 106.28.1
Water Resource and Wetland Buffers

| Type of Development/Protected | Resource Buffer Distance (ft) | Buffer Standards |
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| Principal structure on manmade canals, channels, basins and lawfully altered shorelines. | 20 | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward. |
| Small lots less than 4,500 square feet principal structure on manmade canals, channels, basins and lawfully altered shorelines | 10 | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward. |
| Principal structure on open water for all unaltered or unlawfully altered shorelines. | 50 | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward. |
| Principal structure on open water where original slope landward of the water has been significantly altered by filling, where no bulkhead, significant armoring or mangrove fringe exists. | 30 minimum | Measured from the MHWL. Minimum buffer criteria: native vegetation exists or is planted and maintained in at least ten (10) feet width across the entire shoreline, otherwise the setback shall be fifty (50) feet. Shall not be available for recognized Marine Turtle nesting habitats. |
| Principal structure on open water where original slope landward has been significantly altered by filling but a mangrove fringe exists that is contiguous from side lot line to side lot line and is at least ten (10) feet wide at the root zone. | 30 minimum | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward. |
| Principal structures on in-fill lots, along open water shorelines not adjacent to manmade canals, channels, or basins, and which have | 20 minimum | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward; City Planning |

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

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| been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL | | Director may evaluate community character, environmental features, and setbacks on adjacent developed properties within two parcels on either side of the proposed development and may allow buffer as far back as practicable or in line with adjacent principal structures. If existing pattern of setback is greater than thirty (30) feet, a buffer of fifty (50) feet is required. Shall not be available for recognized Marine Turtle nesting habitats. |
| Marine Turtle Nesting habitat | 50 | Setback measured from the nesting area which is the first fifty (50) feet from MHWL for a total one hundred (100) feet from MHWL or the landward toe of the most landward beach berm not to exceed one hundred (100) feet from MHWL. |
| Accessory structure ¹ on all manmade canals, channels, basins and lawfully altered shorelines. | 10 minimum** | Measured from MHWL <u>or the landward extent of the root system of the mangroves, whichever is further landward.</u> |
| Accessory structure on all unaltered shorelines. | 25 minimum** | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward. |
| Accessory structure ¹ on all significantly filled shorelines on open water with a contiguous mangrove fringe. | 15 minimum** | Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward. |
| Accessory structure ¹ on significantly filled open water shorelines where there is no significant armoring, continuous mangrove fringe or bulkhead. | 15 minimum** | Provided that native vegetation exists or is planted and maintained in at least a ten (10) foot wide buffer across the entire shoreline or must maintain setbacks for an unaltered shoreline. Measured from the landward edge of the shoreline buffer |
| Wetlands, except for tidally inundated mangrove fringes <u>that include listed habitat or animal species***</u> | 50 | May be reduced to a minimum of twenty-five (25) feet to allow for 2,000 sq. ft. of principal structure if fifty (50) foot setback results in less than 2,000 sq. ft. of principal structure of reasonable configuration. |
| Properties classified as scarified adjacent to wetlands <u>Wetlands, except for tidally inundated mangrove fringes that do not include listed habitat or animal species***</u> | 50* | May be reduced to minimum <u>an average of</u> twenty-five (25) feet <u>but no less than fifteen (15) feet</u> without regard to buildable area if entire setback is planted and maintained in native vegetation with a site suitable stormwater management plan and placed under conservation easement. <u>Buffer must include a solid wall or fence a minimum of six foot tall.</u> |
| Wetlands that include listed habitat or animal | 25 | Buffer may be reduced to allow for up to 2,000 |

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| species*** | minimum* | square feet of principal structure footprint of reasonable configuration. |
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Footnotes for Table 106.28.1

* If the buffer precludes all economically viable use of a particular property, development as defined in the F.S. 380.05, may be allowed within the buffer in accordance with Plan policy 4-1.4.2.

** Exception: docks, docking facilities, utility pilings, fences, boat ramps, slips and basins; seawalls, retaining walls, riprap, bulkheads, walkways, water observation platforms and walkways.

*** 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.

¹*Limited to utility pilings, fences, docks, boat ramps, boat slips, boat shelters, seawalls, retaining walls, riprap, bulkheads, walkways and outdoor sport and recreational accessory structures such as, but not limited to, non-enclosed decks, gazebos, pools, spas, permanent barbecues, or fish cleaning tables.*

- B. The buffer shall retain the existing undisturbed vegetation. No activity shall occur within a buffer area, except as expressly provided in this Section or as approved by the City of Marathon in accordance with standards set forth in this article. The above shall not be interpreted to prohibit the removal of non-native vegetation or the planting of native vegetation.
- C. Wetlands or other surface waters shall not be filled to achieve the setback buffer requirement.
- ED. In the event that alteration to a surface water buffer or wetland buffer area occurs without first obtaining the approval required by this chapter, restoration or other corrective action shall be required of the responsible party at a ratio of 3:1.

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 an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity 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.

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ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF AUGUST, 2022.

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

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:**

Steven Williams, City Attorney