

COUNCIL AGENDA STATEMENT



Meeting Date: August 9, 2022
To: Honorable Mayor and Council Members
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Item: **Ordinance 2022-20**, Amending Chapter 102 “Development Application Review Procedures”, Article 6 “Comprehensive Plan Amendment”, Amending Figure 102.22.1 “Comprehensive Plan Amendment Review Process”, And Article 7 “Land Development Text Amendment”, Amending Figure 102..28.1 “Land Development Regulation Text Amendment Process”, And Article 11 “Rezoning”, Amending Figure 102.62.1 “Rezoning Review Process”, And Article 13 “Conditional Use”, Amending Figure 102.80.1 “Conditional Use Permit Review Process”, And Article 17 “Appeals”, Amending Figure 102.98.1 “Appeals Review Process”, And Article 18 “Beneficial Use Determinations”, Amending Figure 102.104.1 “Beneficial Use Determinations Process”, And Article 19 “Vested Rights Determinations”, Amending Figure 102.112.1 “Vested Rights Determinations”, And Article 18 “Beneficial Use Determinations”, Amending Section 102.104 “Final Determination By Council”, And Article 19 “Vested Rights Determinations”, Amending Section 102.110 “Final Determination”; And Amending Chapter 110 “Definitions”, Article 2 “Acronyms”; To Update Language Pertaining To The Obsolete Department Of Community Affairs (DCA) To Reflect The Current Department Of Economic Opportunity (DEO); Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; Providing For Inclusion In The Code; 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 Department Of Economic Opportunity In Accordance With State Law.

RECOMMENDATION:

Staff recommends APPROVAL

BACKGROUND:

APPLICANT: City of Marathon

REQUEST:

The draft ordinance has been proposed to modify language in Chapters 102 & 110, of the City of Marathon Land Development Regulations, as they pertain to the Department of Community Affairs to now reflect the current Department of Economic Opportunity.

Purpose of Proposed Amendment:

The purpose of the amendment is to remove references to DCA in the flow charts and code sections to reflect the change to DEO.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

- A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.
- B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:
 - 1. The need and justification for the change;
 - 2. The consistency of the proposed amendment with the Comprehensive Plan; and
 - 3. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.
- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
 - 1. Approved as proposed;
 - 2. Approved with amendments proposed by the PC; or
 - 3. Denied

Section 102.27. - Hearing(s) by Council.

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

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

A. The need and justification for the change;

Chapter 2011-142, L.O.F. (the law), reorganized the land planning and community development, workforce development, and economic development functions of Florida's government into one state agency. This created the Department of Economic Opportunity, and the division of Community Development. The Division of Community Development includes former DCA

responsibilities and functions. Generally, the division assists local governments and communities in planning functions and administers state and federal community development and project planning grant programs.

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

The 2013 EAR amendments to the Comprehensive Plan included the references and changes from DCA to DEO. This LDR amendment is therefore consistent with those changes.

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 text amendments furthers the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by offering a clear, concise, and accurate definition and flow charts.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL

Sponsored by: Garrett
Introduction Date: July 18, 2022
Public Hearing Dates: July 18, 2022
August 9, 2022
City Council Hearing Date: August 9, 2022
Enactment Date: TBD

CITY OF MARATHON, FLORIDA
ORDINANCE 2022-20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 102 “DEVELOPMENT APPLICATION REVIEW PROCEDURES”, ARTICLE 6 “COMPREHENSIVE PLAN AMENDMENT”, AMENDING FIGURE 102.22.1 “COMPREHENSIVE PLAN AMENDMENT REVIEW PROCESS”, AND ARTICLE 7 “LAND DEVELOPMENT TEXT AMENDMENT”, AMENDING FIGURE 102..28.1 “LAND DEVELOPMENT REGULATION TEXT AMENDMENT PROCESS”, AND ARTICLE 11 “REZONING”, AMENDING FIGURE 102.62.1 “REZONING REVIEW PROCESS”, AND ARTICLE 13 “CONDITIONAL USE”, AMENDING FIGURE 102.80.1 “CONDITIONAL USE PERMIT REVIEW PROCESS”, AND ARTICLE 17 “APPEALS”, AMENDING FIGURE 102.98.1 “APPEALS REVIEW PROCESS”, AND ARTICLE 18 “BENEFICIAL USE DETERMINATIONS”, AMENDING FIGURE 102.104.1 “BENEFICIAL USE DETERMINATIONS PROCESS”, AND ARTICLE 19 “VESTED RIGHTS DETERMINATIONS”, AMENDING FIGURE 102.112.1 “VESTED RIGHTS DETERMINATIONS”, AND ARTICLE 18 “BENEFICIAL USE DETERMINATIONS”, AMENDING SECTION 102.104 “FINAL DETERMINATION BY COUNCIL”, AND ARTICLE 19 “VESTED RIGHTS DETERMINATIONS”, AMENDING SECTION 102.110 “FINAL DETERMINATION”; AND AMENDING CHAPTER 110 “DEFINITIONS”, ARTICLE 2 “ACRONYMS”; TO UPDATE LANGUAGE PERTAINING TO THE OBSOLETE DEPARTMENT OF COMMUNITY AFFAIRS (DCA) TO REFLECT THE CURRENT DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO); PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; 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 DEPARTMENT OF ECONOMIC OPPORTUNITY IN ACCORDANCE WITH STATE LAW.

WHEREAS, the City Council (the “Council”) enacted its Comprehensive Plan on July 5, 2005, and its Land Development Regulations (LDRs) on November 7, 2007; and

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

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WHEREAS, it is the desire of the City of Marathon City Council to amend its current LDRs to reflect the change from DCA to DEO; and

WHEREAS, pursuant to Section 163.3174 and 166.041, *Florida Statutes*, and Section 102, Article 7 of the Marathon Code, the City’s Planning Commission sitting as the Local Planning Agency on XXX 2022 publicly considered the amendments to Land Development Regulations set forth in this Ordinance (the “Amendment”) at a properly noticed public hearing and recommended to the City Council the adoption of the Amendment; and

WHEREAS, the City Council publicly considered the amendments to Land Development Regulations set forth in this Ordinance (the “Amendment”) at a properly noticed public hearing and finds the adoption of the Amendment, in the form attached hereto, is in the best interest of the City and complies with applicable State laws and rules

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA:

Section 1. Recitals. The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The Code of the City of Marathon, Florida is hereby amended as Exhibit A attached.

Section 3. Conflict. 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. Severability. 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. Inclusion in the Code of Ordinances. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Marathon Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “Section” or other appropriate word.

Section 6. Land Development Regulations. 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. Effective Date. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

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**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS XXth DAY OF XXX 2022.**

THE CITY OF MARATHON, FLORIDA

John Bartus, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

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:**

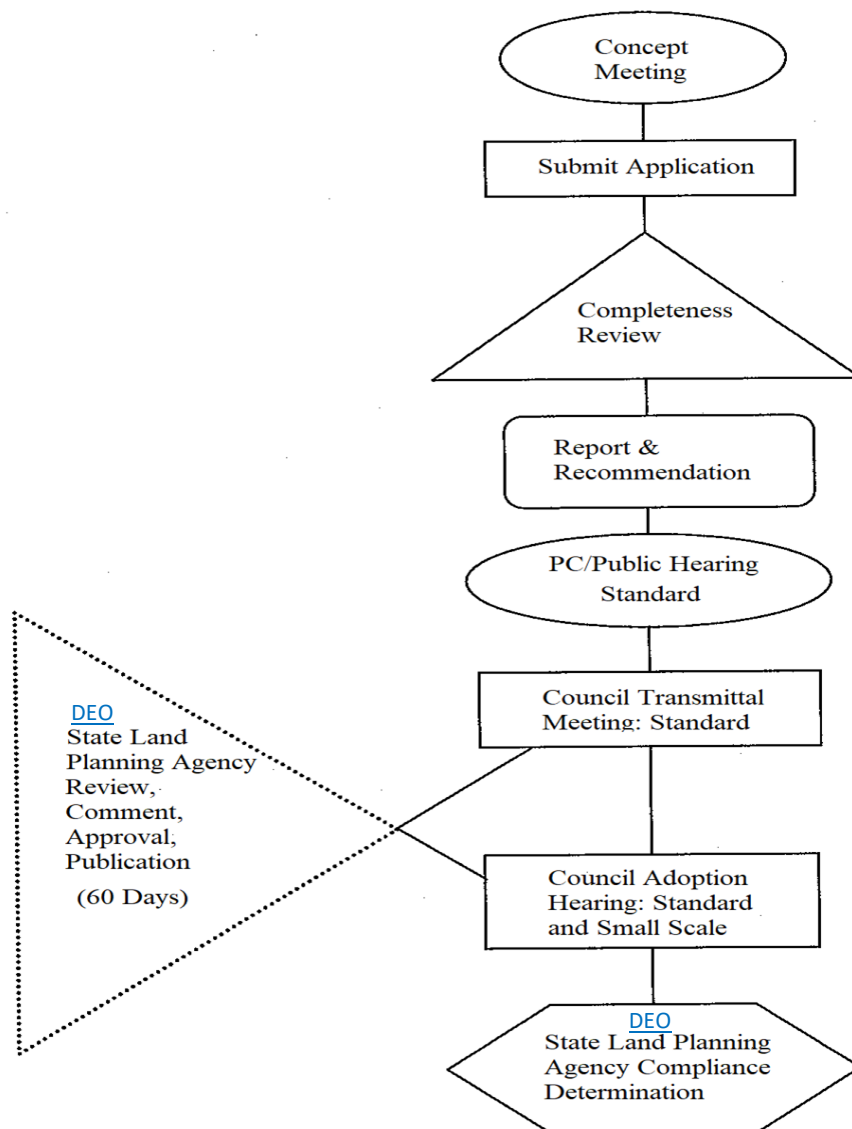
Steven Williams, City Attorney

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Section 102.22. Review of Applications.

- A. *Planning Commission Review:* The PC shall review and consider all applications for standard amendments to the Comprehensive Plan in accordance with Fla. Stat. ch. 163, and shall submit a recommendation, including the proposals' consistency with the Comprehensive Plan, to the Council regarding each application, and may recommend that an application be:
1. Approved;
 2. Approved subject to modifications; or
 3. Denied.

Figure 102.22.1
Comprehensive Plan Amendment Review Process



- B. *Council Review:*

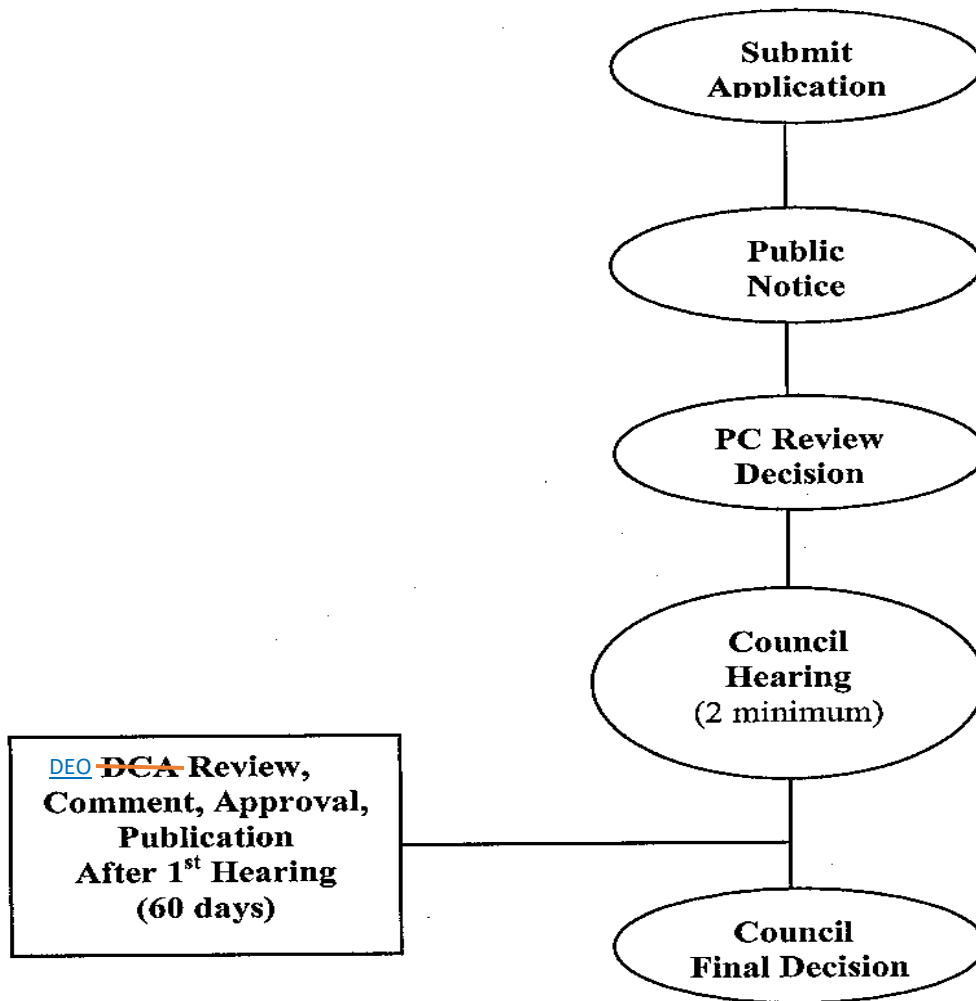
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1. *Required Public Hearings for Standard Amendments:* Unless otherwise provided by state law, the Council shall hold two (2) public hearings, as provided below, to consider all Standard Comprehensive Plan amendments.
 - (a) *Transmittal Public Hearing:* A public hearing shall be held prior to transmittal of all proposed Comprehensive Plan amendments to the Stand Land Planning Agency for review. The hearing shall be held on a weekday at least seven (7) days after the day that the first advertisement is published pursuant to the requirements of Fla. Stat. ch. 125 and ch. 166.
 - (b) *Adoption Public Hearing:* A public hearing shall be held after receipt from the State Land Planning Agency with [any] objections, recommendations and comments report on each proposed Comprehensive Plan amendment. The hearing shall be held on a weekday at least five (5) days after the day that the second advertisement is published pursuant to the requirements of Fla. Stat. ch. 125 and ch. 166.
 - i. The public hearing shall be held within 60 days after receipt of the report from the State Land Planning Agency or after notification that no report will be issued. The hearing date shall not be extended beyond 180 days, as failure to hold the hearing within that timeframe will result in the amendment being deemed withdrawn pursuant to Fla. Stat. § 163.3184(4)(e).

(Ord. No. 2021-22 , § 2, 10-12-2021)

Section 102.28. Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes or deny the proposed amendment.

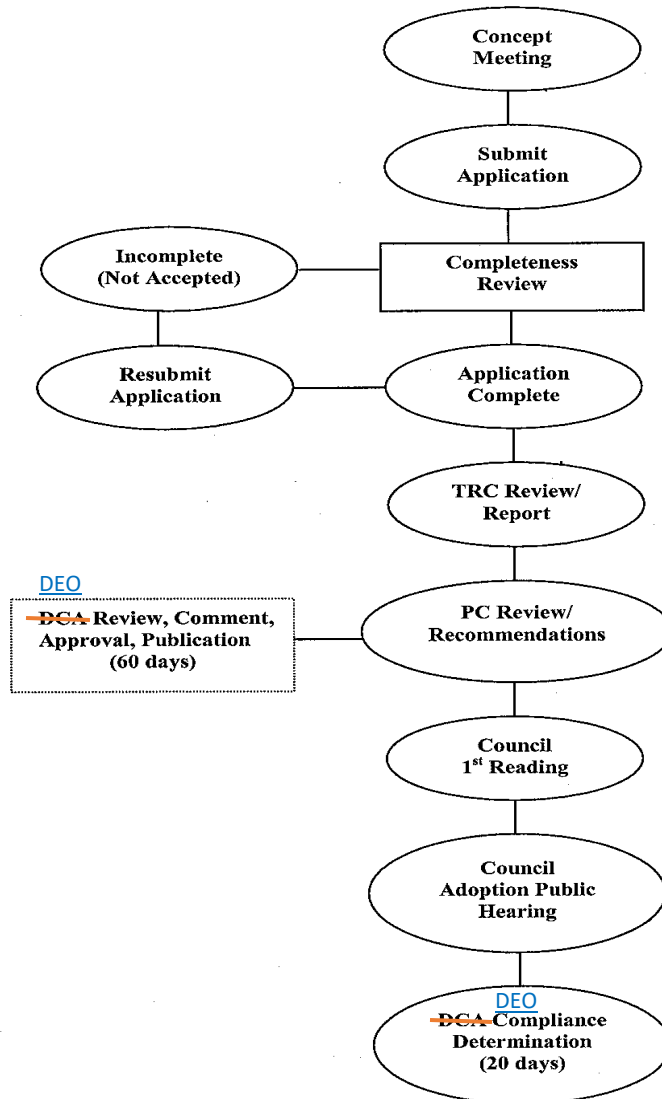
Figure 102.28.1
Land Development Regulation Text Amendments Process



Section 102.62. Review by the Planning Commission.

- A. *Consideration by Planning Commission:* All rezoning applications shall be considered by the PC at a public hearing, prior to public hearing or action by the Council.
- B. *Standards and Criteria:* The PC shall review and make a recommendation to the Council on the proposed rezoning based on the standards in Section 102.64, "Review Criteria and Standards for Rezoning Applications".

Figure 102.62.1
Rezoning Review Process



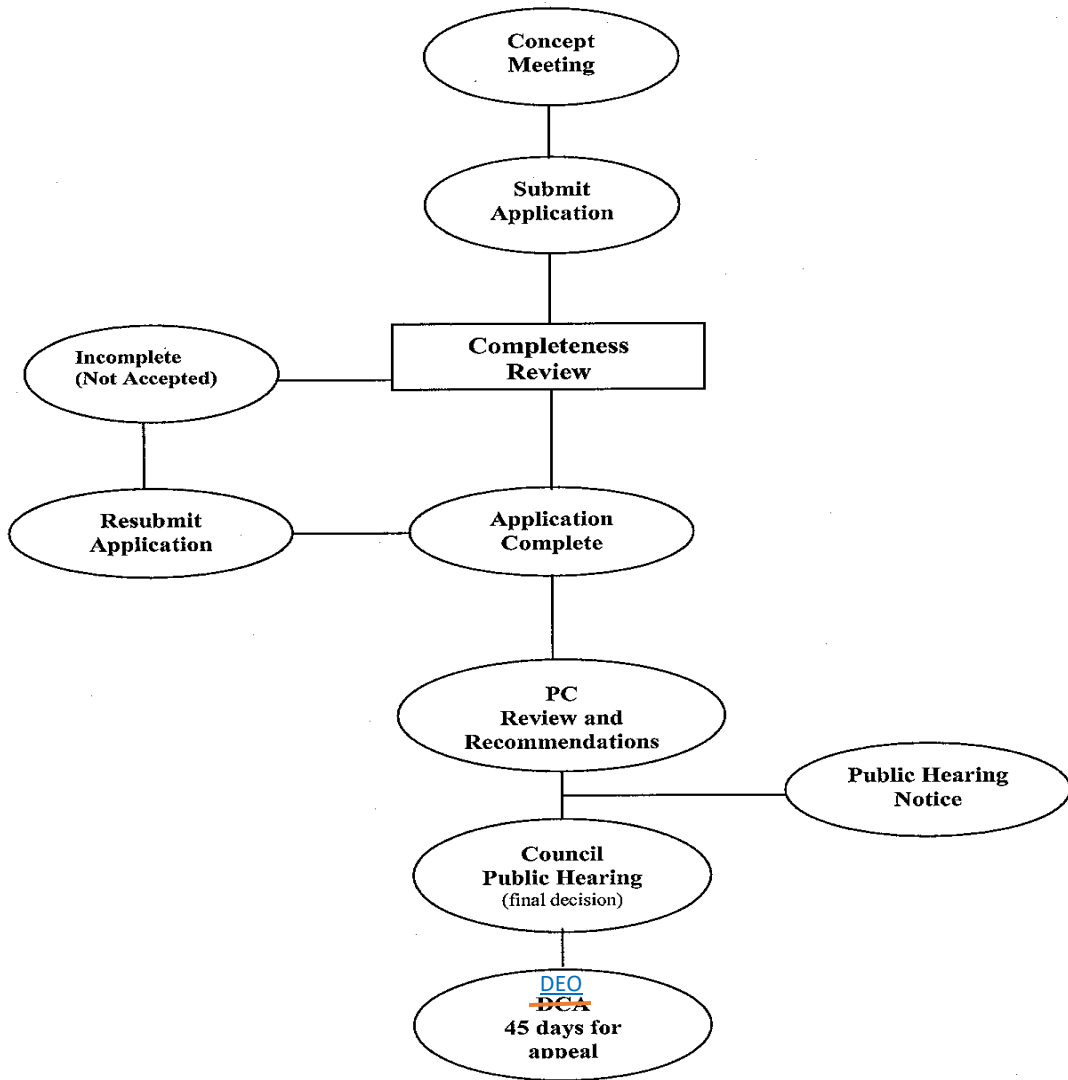
C. *Planning Commission Recommendation:* A recommendation shall be prepared and forwarded to the Council. The recommendation shall indicate if the proposed rezoning should be:

1. Approved;
2. Approved with conditions, where conditions may be attached to the proposed rezoning;
3. Denied.

Section 102.80. Appeal.

The applicant and any aggrieved person may appeal the decision of the Council by filing a petition for a writ of certiorari in the Circuit Court in and for Monroe County, in accordance with the procedure provided by the Florida Rules of Civil Procedure and the Florida Rules of Appellate Procedure. The alleged adverse interest may be shared in common with others members of the community at large, but shall exceed in degree the general interest in community good shared by all persons.

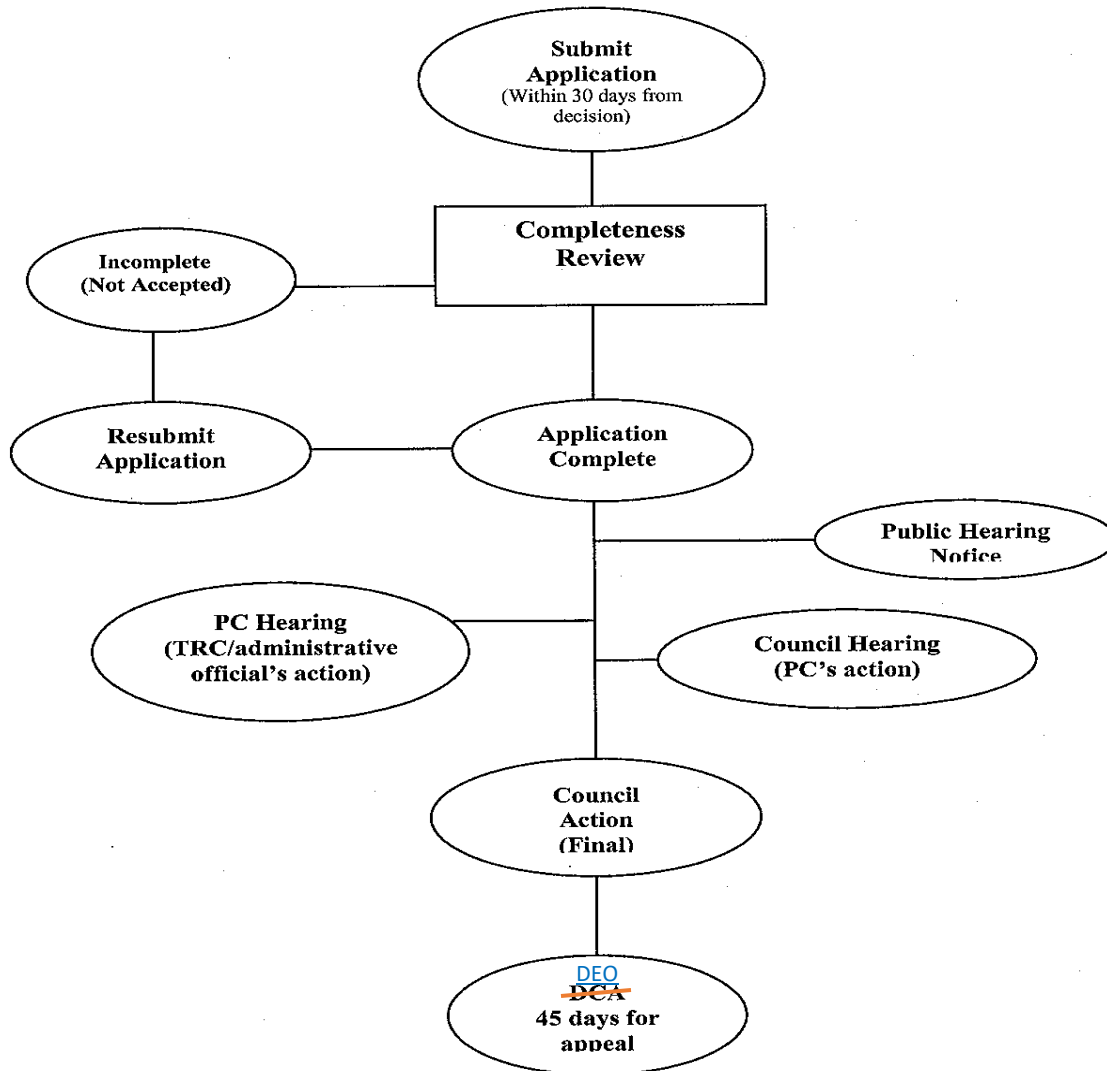
Figure 102.80.1
Conditional Use Permit Review Process



Section 102.98. Effective Date.

The decision of the Council and PC on an appeal shall be effective immediately.

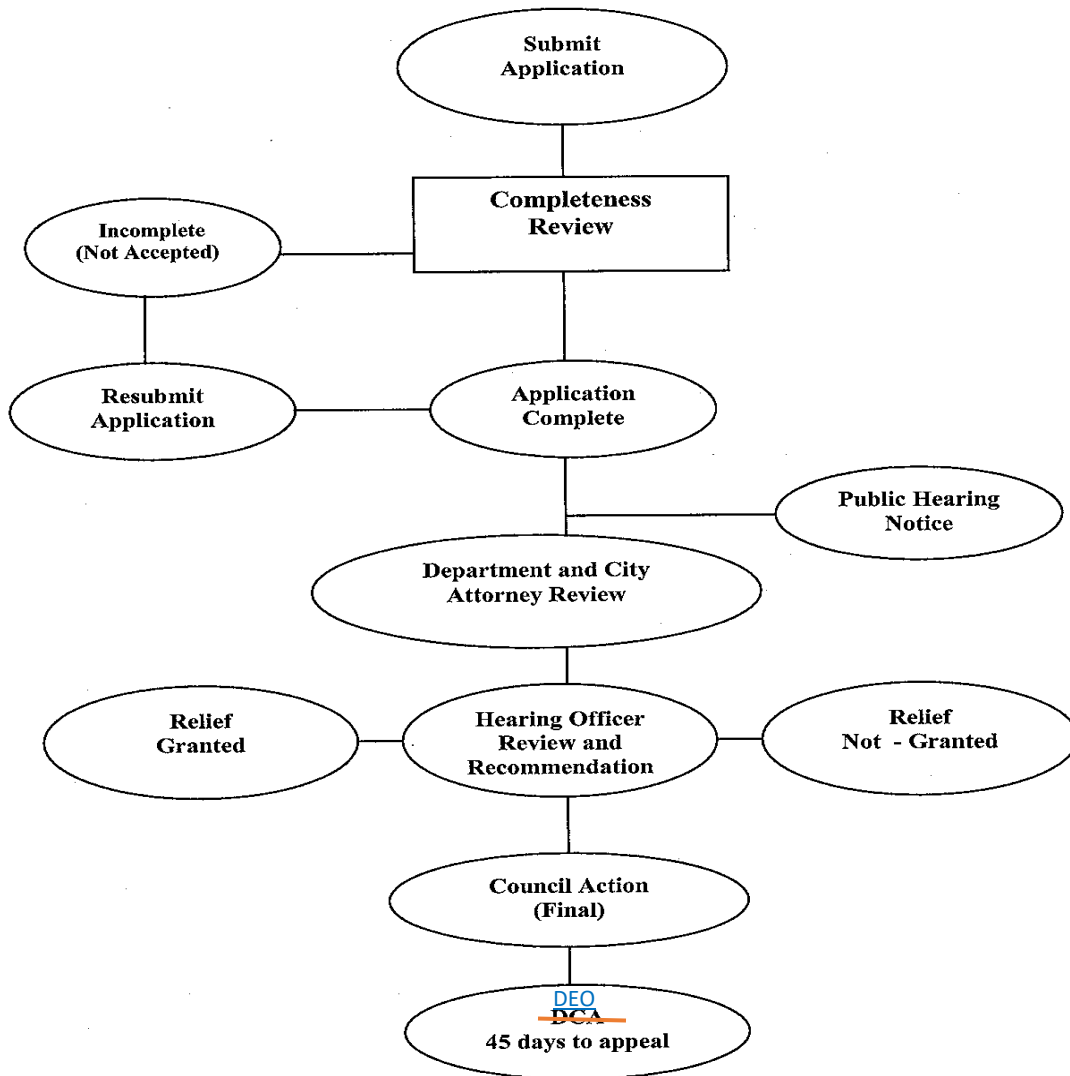
Figure 102.98.1
Appeals Review Process



Section 102.104. Final Determination by Council.

The Council is the only entity which has final authority to grant or deny beneficial uses subject to appeal by ~~DCA~~ DEO under Chapter 380. In approving, denying or modifying an order from a Hearing Officer granting or denying an applicant beneficial use, the Council will ensure that the Hearing Officer has conducted the evidentiary hearing in a manner that is consistent with this article and the Comprehensive Plan. The Council will approve or reject the Hearing Officer's determination during a public hearing. The public shall be given the opportunity to be heard and make arguments for or against the determination during the Council's public hearing.

Figure 102.104.1
Beneficial Use Determinations Process



Section 102.110. Final Determination.

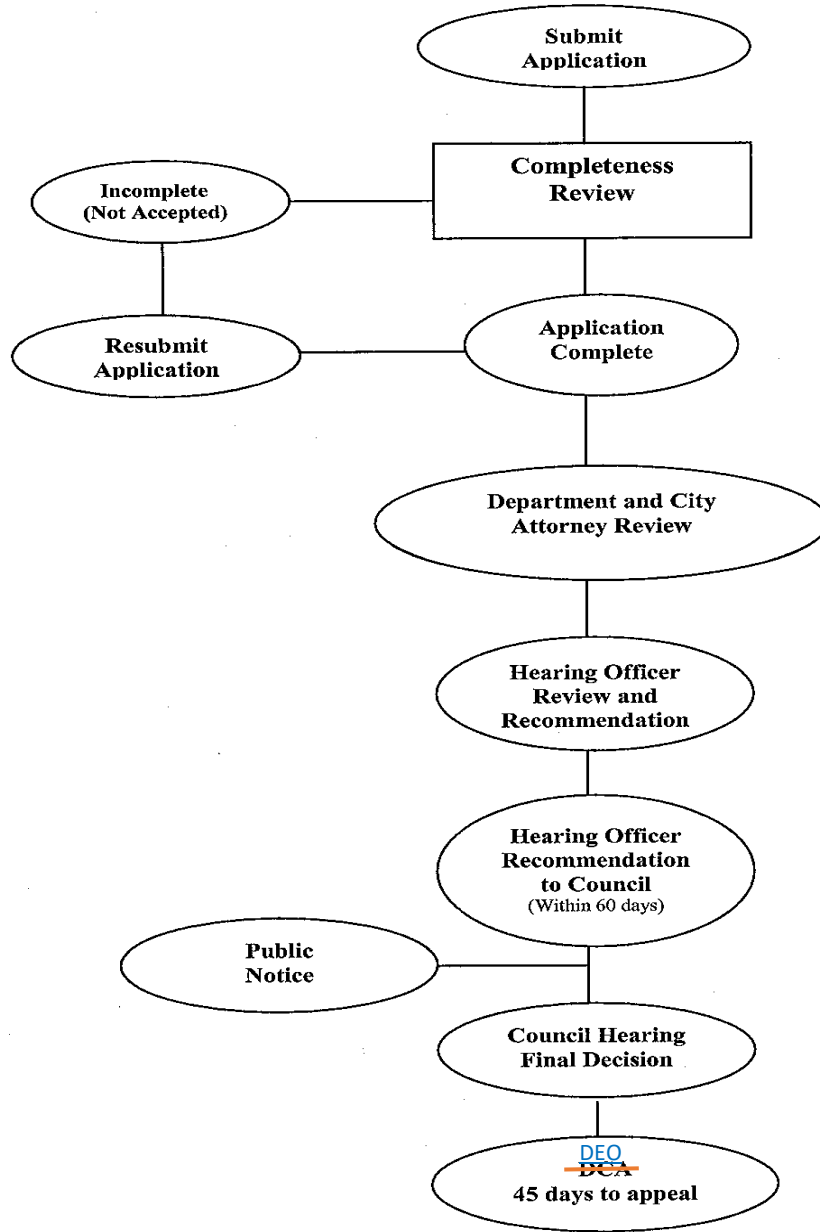
The Council may adopt, reject or modify the Hearing Officer's determination, subject to appeal by ~~DCA~~ DEO under Fla. Stat. ch. 380.

Section 102.112. Waiver of Time Limits.

Any time limits herein may be waived upon receipt by the Department of a written stipulation requesting such waiver and signed by the applicant and the Director.

Figure 102.112.01
Vested Rights Determinations

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ARTICLE 2. ACRONYMS

A: Airport Zoning District

AASHTO: American Association of State Highway and Transportation Officials

ACOE: Army Corps of Engineers

ADT: Average Daily Traffic

BPAS: Building Permit Allocation System

CLSC: Certificate of Level of Service
C-NA: Conservation-Native Area Zoning District
C-OI: Conservation -Offshore Island Zoning District
DCA: Florida Department of Community Affairs
DEO: Department of Economic Opportunity
FAA: Federal Aviation Administrator
FDEP: Florida Department of Environmental Protection
FDOT: Florida Department of Transportation
FEMA: Federal Emergency Management Agency
FKAA: Florida Keys Aqueduct Authority
FKEC: Florida Keys Electric Cooperative
FLUM: Future Land Use Map
FWCC: Florida Fish & Wildlife Conservation Commission
GIS: Geographic Information System
HUD: US Department of Housing and Urban Development
I-G: Industrial-General
I-M: Industrial-Maritime
KEYWEP: Keys Wetland Evaluation Procedure
LDRs: Land Development Regulations
LOS: Level of Service
MHWL: Mean High Water Line
MLW: Mean Low Water
MU: Mixed-use
MUC: Mixed-use Commercial
MUD: Mixed-use Development
MU-M: Mixed-use Maritime
NPDES: National Pollutant Discharge Elimination System
P: Public Zoning District
PC: Planning Commission
PR: Parks and Recreation Zoning District
RH: Residential High Zoning District
RL: Residential Low Zoning District
RL-C: Residential Low-Conservation
RM: Residential Medium Zoning District
RM-1: Residential Medium-1 Zoning District (Coco Plum Subdivision)

RM-2: Residential Medium-2 Zoning District (Coco Plum Subdivision)

R-MH: Residential-Mobile Home Zoning District

RV: Recreational Vehicle

SFWMD: South Florida Water Management District

SWPPP: Stormwater Pollution Prevention Plan

TBR: Transfer of Building Right

TDR: Transfer of Development Right

TRC: Technical Review Committee

UMAM: Uniform Mitigation Assessment Method

VPH: Vehicles per hour