



COUNCIL AGENDA STATEMENT

Meeting Date: February 14, 2023

To: Honorable Mayor Senmartin and Council Members

From: Brian Shea, Planning Director

Through: George Garrett, City Manager

Agenda Item: **Ordinance 2023-04** Amending Chapter 102, Article 13, Entitled "Conditional Use Permits"; Providing For The Repeal Of All Code Provisions And Ordinances Inconsistent With This Ordinance; Providing For Severability; And Providing For Inclusion In The Code Of Ordinances, City Of Marathon, Florida; And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL

BACKGROUND:

APPLICANT: City of Marathon

REQUEST:

The draft ordinance has been proposed to modify language in Chapters 102, Article 13, of the City of Marathon Land Development Regulations, as they pertain to the Application requirements and amendments.

Purpose of Proposed Amendment:

The purpose of the amendment is trifold. The first is clerical clean up of items listed. Secondly, to specifically state that amendments will be documented in writing. And thirdly, to add language as it pertains to construction guarantees for infrastructure. This language exists in the Platting code section however, some applicants may seek to create a condominium, and the additional language further protects the City if this route is taken.

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;

Clerical consistency changes are required for the purposes of having correct language. By adding the language of formal documents memorializing minor amendments, the approvals can be clearly documented for all to see and follow. In regards to number 13 of Section 102.74, this is further removing ambiguity regarding the City's inability to control the creation of condominiums, while still ensuring that projects that may seek to use this process have met the requirements of Conditional Use approval, as well as have provided the information required to ensure that the infrastructure needed will be completed pursuant to the required levels of service.

Section 718.104, Florida Statutes describes all that is required to be included in the condo declaration. The declaration includes within its definition any amendments which may be made to it, and all exhibits which are attached and incorporated by reference. The typical exhibits to the declaration include the document or documents creating the association, a copy of the bylaws, a survey of the land, a graphic description of the land, and a plot as

demonstrated by building plans, floor plans, maps, surveys, or sketches. More specifically 718.104(4)(c),(d) and (e) call for the legal description of the land, a unique identification of each unit (much like a platted lot number) and a land survey and plot plan. What is important to note is that there is no platting requirement in Chapters 718 or 720.

So by adding the additional language from the platting section pertaining to construction guarantees, the City ensures that the private condominium elements are consistent with the required levels of service. By addressing this as part of the Conditional Use process, all projects seeking these levels of improvements will be addressed. Existing developments already having infrastructure in place would therefore not be required to fulfil this requirement if completing the statutory required processes laid out in Chapters 718 or 720.

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

The Private Property Rights Element of the Comprehensive Plan was adopted in January of 2022. This was a statutory requirement adopted to ensure that the City respects private property owner's rights as enumerated below.

PROPERTY RIGHTS ELEMENT
GOALS, OBJECTIVES, AND POLICIES

Purpose

Pursuant to Chapter 163.3177(6)(i)2 F.S. the purpose of the Property Rights Element is to ensure that governmental entities respect judicially acknowledged and constitutionally protected private property rights. §163.3177(6)(i)2 F.S.

Goal 10-1 Respecting Property Rights

The City of Marathon will make decisions with respect for property rights and with respect for people's rights to participate in decisions that affect their lives and property.

Objective 10-1.1 The City of Marathon will respect judicially acknowledged and constitutionally protected private property rights.

Policy 10-1.1.1 The City of Marathon will consider in its decision-making the right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 10-1.1.2 The City of Marathon will consider in its decision-making the right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 10-1.1.3 The City of Marathon will consider in its decision-making the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 10-1.1.4 The City of Marathon will consider in its decision-making the right of a property owner to dispose of his or her property through sale or gift.

By adding the additional infrastructure guarantee language, the City is able to ensure the property rights are being protected, while still furthering the goals of ensuring adequate facilities and services will be able to be provided pursuant to the required levels of service.

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 clear and concise requirements, reducing ambiguity. It also creates a concrete form of documentation that can be reviewed should staff changes or unforeseen circumstances occur.

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
Planning Commission Public Hearing Date: January 23, 2023
City Council Public Hearing Date: February 14, 2023
XXX, 2023
Enactment Date: XXX, 2023

**CITY OF MARATHON, FLORIDA
ORDINANCE 2023-04**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 102, ARTICLE 13, ENTITLED “CONDITIONAL USE PERMITS”; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES, CITY OF MARATHON, FLORIDA; 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, 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 in order to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

WHEREAS, this Ordinance had a hearing before the Planning Commission on January 23, 2023 and a first hearing before the City Council on February 14, 2023 during which both entities, took staff testimony, all public comment, and having duly deliberated, determined that the Ordinance was in the best interest of the public, supporting the public health, safety, and welfare. The Ordinance was noticed for a second hearing on XXX at which time, the Ordinance was passed unanimously, and

WHEREAS, the Ordinance was heard on XXX, passing unanimously on that date,

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 102, “Development Application Review Procedures,” Article 13, “Conditional Use Permits,” as attached in Exhibit A.

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of 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 become effective upon approval by the Florida Department of Economic Opportunity pursuant to Chapters 163, 166, and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS XX DAY OF XX, 2023.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, 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 T. Williams, City Attorney

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

ARTICLE 13. CONDITIONAL USE PERMITS

Section 102.74. Application Requirements.

An application for a Conditional Use permit shall be submitted in accordance with Article 2, "Common Development Application Elements" and shall include any other information that may be required by the City in order for the Department, the TRC, PC and Council to make informed decisions. At a minimum, the specific application requirements follow:

MINIMUM APPLICATION REQUIREMENTS CONDITIONAL USE PERMITS

These requirements are not to be considered ALL inclusive of the requirements for the proposed work. The Planning Department may require additional drawings, specifications or information in order to complete the review of the application. Equally, not all items noted below may be required at the discretion of the Planning Director based his or her review of a project proposal and the requirements of the City's Comprehensive Plan and Land Development Regulations (LDRs).

THE FOLLOWING MUST BE PROVIDED IN ORDER TO BE A COMPLETE APPLICATION:

1. Application completed in full.
 2. Proof of ownership (copy of deed or tax statement).
 3. Agent authorization (as applicable).
 4. Vegetation Survey or Habitat Evaluation Index (as applicable).
 5. Location map and photographs of site from the main adjacent road and/ or aerial photograph.
 6. ~~Property survey no older than two (2) years from date of application. Five (5) copies and one (1) digital set (CD of DVD, No Flash Drives) of the following plans, drawn to scale, signed and sealed by a Florida registered Surveyor, Architect or Engineer:~~
 7. ~~One (1) digital set (CD of DVD, No Flash Drives) of the following plans, drawn to scale, signed and sealed by a Florida registered Surveyor, Architect or Engineer: Property survey no older than two (2) years from date of application.~~
 8. *Site plans*. Including but not limited to:
 - a. Property lines, Mean High Water Line (MHWL), and dimensions of the parcel
 - b. Areas and dimensions of existing and proposed structures
 - c. Adjacent roadways and uses of adjacent property
 - d. Setbacks and buffers
 - e. Parking (including handicap parking) and loading zone locations and dimensions
 - f. Calculations for open space ratios, floor area ratios, density and parking
 - g. Outdoor lighting location, type, power and height
 - h. Extent and area of wetlands, open space areas, and landscape areas
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- i. Location of solid waste separation, storage and removal
 - j. Type of ground cover such as asphalt, grass, pea rock
 - k. Sewage treatment facilities
 - l. Location of bike racks (if required)
 - m. Flood zones pursuant to the Flood Insurance Rate Map (FIRM)
 - n. Show Fire hydrants per following schedule:
 - o. Commercial Non-Fire Sprinkler Protected Buildings:
 - p. 350 feet between hydrants
 - q. No building further than 175 feet from a fire hydrant.
 - r. No building further than 250 feet from a hydrant.
 - s. Provide location of fire lanes (marked fire apparatus roads) and fire lane marking details on plans. NFPA 1 (2012) 18.2.3.5.1
 - t. Provide a minimum 42-foot curb radius at driveways. Reference City of Marathon Turning Radius requirements NFPA 1 (2012) 18.2.3.4.3.1
 - u. Provide minimum 13 feet six (6) inches vertical clearance for all canopies and road overhangs. NFPA 1 (2012) 18.2.3.4.1.2.
 - v. Fire department access roads shall have an unobstructed width of not less than 2 feet. NFPA 1 (2012) 18.2.3.4.1.1
 - w. Dead-end fire department access roads in excess of 150 feet in length shall be provided with approved provisions for the fire apparatus to turn around. NFPA 1 (2012) 18.2.3.4.4
 - x. Marine areas shall comply with NFPA 303
9. *Landscape plans.* Including but not limited to:
- a. Open space preservation areas
 - b. Size and type of buffer yards including the species, size, and number of plants
 - c. Parking lot landscaping including the species, size and number of plants
 - d. Existing natural features
 - e. Specimen trees, or threatened and endangered plants to be retained and those to be relocated or replaced
 - f. Transplantation plan (if required).
10. Floor plans and elevations of all proposed structures with the elevations of the following features referenced to NAVD 88: Existing grade, finished grade, finished floor elevations (lowest supporting beam for V-zone development), roofline and highest point of the structure.
11. *Drainage plans with drainage calculations.* The plan must show existing and proposed topography, all drainage structures, retention areas and drainage swales, and existing and proposed permeable and impermeable areas.
12. *Wastewater flow calculations.*
- a. Residences with six (6) bedrooms or less will be assumed to equate to one (1) Equivalent Dwelling Unit (EDU) at 167 gallons per day. System development and connection charges, as well as monthly base and flow charges will accrue and be billed as a single-family residence.
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- b. Residences with seven (7) bedrooms or more will be assessed based on a calculation of average wastewater flows developed and provided by a qualified wastewater engineer. Such wastewater flow will be calculated into the one-time System Development and Connection charges and be billed accordingly.
13. ~~Reserved.~~ [Creation of Condominium Pursuant to Section 718.104\(2\), Florida Statutes. A condominium created pursuant to Section 718.104, Florida Statutes, shall comply with the following requirements of the City's Land Development Regulations:](#)

Section 102.45.C	No building erected unless adequate public utility services are available
Section 102.47.A.8	identify the location of existing utilities
Section 102.47.A.13	a statement of utility plan indicating types and provider of services
Section 102.47.A.18	street layout and traffic study
Section 102.45.A.19	lot and driveways and access management
Section 102.47.A.20	layout of utilities
Section 102.47.A.21	conceptual stormwater plan
Section 102.47.E.1	complete stormwater management plans; engineering plans (roads, streets, fire hydrants, sanitary sewer, storm water, stormwater management facilities)
Section 102.47.E.2, E.3 and E.4	landscape
Section 102.48	Minor Subdivision Improvement Requirements
Section 102.49	Major Subdivision Improvement Requirements
Section 102.50	Construction Guarantee Amount
Section 102.51	Forms of Guarantee
Section 102.52	Other Forms of Guarantee

14. *Construction management plan:* (State how impacts on near-shore water and surrounding property will be managed - i.e. erosion control, construction barriers, hay bales, flagging. etc.).
15. Construction Phasing Plan (as applicable).
16. A traffic study prepared by a licensed traffic engineer.
- Letters of Coordination may be required.* The applicant must check with the Planning Department to identify other agencies expected to review the project. These may include:
- City of Marathon, City Fire Marshall's Office
 - City of Marathon, Utilities Manager
 - Florida Department of Environmental Protection (FDEP)
 - Florida Department of State, Division of Historic Resources
 - Florida Department of Transportation (FDOT)
 - Florida Keys Aqueduct Authority (FKAA)
 - Florida Keys Electric Cooperative (FKEC)
 - Monroe County Department of Health
 - South Florida Water Management District (SFWMD)
 - U.S. Army Corps of Engineers (ACOE)
 - U.S. Fish and Wildlife Service (USFWS)
 - Other, as applicable to the project

Section 102.79. Minor and Major Amendments to Existing Conditional Use Permits.

- A. *Minor Amendments:* A minor amendment to an existing Conditional Use permit shall only require review and approval by the Director. [The minor amendment shall be memorialized in writing to the applicant, and the Department shall maintain an official record of all amendments, which shall include a detailed analysis of compliance with the criteria in Section 102.79.A.1. through Section 102.79.A.5. of the City's Land Development Regulations.](#) Minor amendments shall be limited to:
1. The relocation of not more than 20 percent of the impervious area, as long as it complies with the standards of this article;
 2. Redesign or change in use, where there is no increase in traffic impact;
 3. The reduction or relocation of areas set aside for community open space or recreation provided that such changes do not result in a substantial change in the approved amount, boundary configuration, or character;
 4. An overall increase of no more than five (5%) percent of the total square footage covered by any structure as long as it complies with the requirements of this article;
 5. Relocation of access points.
- B. *Major Amendments:* A major amendment to an existing Conditional Use permit is any change that is not deemed to be a minor amendment in accordance with Subsection A. above. A major amendment to an existing Conditional Use permit shall be reviewed by the PC and the Council in the same manner as a new application.
- C. *Time Limits:* Unless a business license has been issued for the use, or a building permit issued for the project within a period of one (1) year from the date of conditional use approval, the conditional use approval shall expire.
- D. *Administrative Time Extensions:* The Director may grant, at his discretion, a one-time extension, for a maximum of one (1) year, if a complete and sufficient application, in accordance with Article 3, "Preliminary Procedures for All Applications", of this chapter has been submitted a minimum of 60 days prior to the expiration of the time limit.
- E. *Phasing:* Development of the conditional use shall commence as provided for in this chapter. Phased projects must include 20 percent of the project's land area in the development of each phase, unless a site-specific phasing schedule is approved by the Council. Otherwise, the development permit for the conditional use shall be subject to the time limitations of this article.
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