

CITY COUNCIL AGENDA STATEMENT



Meeting Date: May 9, 2023
To: Honorable Mayor and City Council
From: Brian Shea, Planning Director
Through: George Garrett, City Manager

Agenda Items: **Ordinance 2023-06**, Amending The City Of Marathon’s Comprehensive Plan Modifying Chapter One, “Future Land Use Element,” And Intending To Modify Policy 1-3.5.16, “Program For Transfer Of Density And Building Rights (TDR’s And TBR’s)”, 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 2023-07, Amending Chapter 107, Article 2, Entitled “Transfer Of Building Rights”, And Intending To Modify Section 107.15 Entitled “Site Criteria”; 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:

The Planning staff recommends approval of both Ordinances modifying provisions concerning the criteria for transfer of building rights.

APPLICANT: City of Marathon

REQUEST: Amend City of Marathon Comprehensive Plan and Land Development Regulations in order to further clarify the criteria and approval process for the Transfer of Building Rights.

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 the 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 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.

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 amendment and for future comprehensive plan amendments.

BACKGROUND

Staff is recommending changes to the below highlighted three sentences in the Comprehensive Plan. An analysis of properties that are over dense has noted that a majority of these sites were given the FLUM designation of RH. Based upon the current comprehensive plan, these over dense properties would only be able to transfer to other high-density properties, while still limited by the maximum density requirements of the LDRs. This does not meet the goals of infill development and reducing the potential for future takings cases. Under the existing LDRs, criteria are already in place stating that the receiving site must be zoned to meet the requested use, but also meet all other provisions of the Comp Plan and LDRs. This includes the requisite densities as set forth in Table 103.15.2. Additionally, even lots meeting the criteria as set forth in 108.13.A are eligible to

meet the density requirements. This ensures that despite the comprehensive plan change, the density requirements are still in effect, and the table referenced is still applicable to the TDR portion of the policy.

Additionally, below are the existing criteria as it pertains to environmental sensitivity. Based upon a strict interpretation of the code, this would mean that any dwelling existing on Class III habitat could not be transferred to any other lots, as there is no Class IV habitat less sensitive than Class III. This is counterintuitive, as the Affordable TBR BPAS is an allocation type specifically created that relies on units being able to be transferred. An affordable TBR is an affordable allocation granted through the BPAS process that then frees up the existing market rate, which may be transferred through the TBR process. However, as stated nothing can be less environmentally sensitive than developed land. So, by changing the wording from less to not more, this allows for the units to be transferred within the same Class, without creating additional impacts on environmentally sensitive lands.

One final change is clerical in nature. C.2 of the policy is self-referential, and states that it references c.2 above, however, there is only c.1 above. So, it simply strikes the self-referential words.

Policy 1-3.5.16 Program for Transfer of Density and Building Rights (TDR's and TBR's)

a. The transfer of density and building rights within the City's boundaries shall attempt to achieve the following:

1. Protect environmental resources in balance with the protection of property rights;
2. Encourage the replacement of substandard structures, non-conforming structures, structures within environmentally sensitive habitat; structures subject to repetitive flood damage, and units or non-residential square footage which exceeds density limitations;
3. Facilitate redevelopment and revitalize the commercial centers by concentrating mixed use activities;
4. Facilitate the redevelopment and revitalization of hotels and motels in the City;
5. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City;
6. Redistribute existing residential units or densities from more environmentally sensitive properties to less environmentally sensitive properties to encourage infill development and achieve planned densities without increasing the overall density;
7. Protect environmentally sensitive sites through the removal of existing dwelling units or allocated development rights;
8. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land;
9. Further the public good and the goals, objectives, and policies of the Plan;
10. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City.

b. Transfer of Residential Density (TDRs)

1. Residential density (TDRs) shall only be transferable from a FLUM category of lower density to one of higher density as defined in Table 1-1 of the Comprehensive Plan.

Properties with a FLUM category of Conservation shall not be eligible as TDR receiver sites. TDRs are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.8.

2. Increases in Residential Density which are greater than those allowed for a given FLUM category in Table 1-1 may occur, but shall only occur as a result of a TDR transfer. Such TDR transfers shall not exceed 20 percent of the Future Land Use Densities allowed by FLUM category in Table 1-1.
3. If a property owner intends to achieve a residential density higher than a 20 percent increase over that allowed in Table 1-1, then the owner must seek a FLUM change to a FLUM category which would allow a greater residential density. However, there shall be no presumption in any request that the request must be or will be granted by the City. If the FLUM change is granted, then the difference in residential density between the two FLUM categories must be achieved through a transfer of TDRs which shall not exceed the density allowed in Table 1-1 for the new FLUM category.
4. The transfer of TDRs is subject to approval by the City based on the criteria established in b. 1. and 2. above. All transfers of TDRs must identify the removal of the TDRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
5. Lands for which all residential density has been entirely removed must have a maintenance program to continuously remove exotic invasive vegetation or be transferred to an appropriate land management entity, such as the State of Florida or the City of Marathon.

c. **Transfer of Building Rights (TBRs)**

1. Transferable Building Rights (TBRs) shall only be transferable from a FLUM category of lower density to one of equal or higher density as defined in Table 1-1 of the Comprehensive Plan. Properties with a FLUM category of Conservation shall not be eligible as TBR receiver sites. Transferable Building Rights (TBRs) are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.8
2. The transfer of TBRs is subject to approval by the City based on the criteria established in c. 1. and 2. above. All transfers of TBRs must identify the removal of the TBRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
3. Alternatively, TBRs may be "banked" with the City for a period not to exceed two (2) years. TBRs so banked must identify the removal of the TBRs from the sender site and that they have been banked with the City pursuant to a specific agreement with the City, which shall be recorded in the chain of title of the sending site.

Policy 4-1.5.8 Require Clustering

Upon the effective date of the Plan, the City shall require development to minimize impacts on sensitive natural areas to the maximum extent feasible through the following clustering provisions. In the event development must be permitted, adverse impacts shall be mitigated by clustering.

Clustering requirements shall be as follows:

- a. Development which may impact sensitive natural resources may be required to utilize reduced construction ‘footprints’, modified construction techniques, innovative construction techniques, land use and development techniques which minimize negative environmental impacts or results, and the like;
- b. When a parcel proposed for development contains more than one (1) habitat type, development shall be:
 1. clustered on the least sensitive portion of the parcel, until the maximum allowable density is reached;
 2. if further development occurs, it shall be clustered on the next least sensitive portion of the parcel, until maximum allowable density is reached, etc.; and
 3. development permitted on the least sensitive portion(s) of a parcel shall be clustered within that portion(s) of the parcel.
 4. Modification of the development footprint to minimize the impact on existing native understory and canopy trees.

When a parcel proposed for development contains more than one (1) habitat type, all development shall be clustered on the least environmentally sensitive portions of the parcel. For the purpose of this policy, the relative sensitivity of separate habitat types shall be classified as shown below with Class I being the most sensitive and Class III being the least sensitive.

Class I

Saltmarsh and/or buttonwood association wetlands;
Beach or berm;
High quality hammock;
Moderate quality hammock;
Low quality hammock;

Class II

Disturbed beach or berm;
Disturbed with salt marsh and/or buttonwood association wetlands (lawfully converted to disturbed uplands);
Disturbed with hammock;

Class III

Disturbed; and
Disturbed with exotics.

Development within the least sensitive habitat shall achieve the maximum density or intensity allowable and shall fully utilize the net buildable area of the habitat prior to expanding to the next least sensitive habitat type on the site. The OSR for Class I habitat types shall be implemented by the developer/property owners execution of a Grant of Conservation Easement Agreement (GOCEA), stating the required amount of open space.

ANALYSIS

Natural Resources

No Significant Impact would result from the proposed change, as the proposed change still maintains that development should be directed to lands suitable for redevelopment and does not further allow transfers into areas deemed environmentally sensitive, nor zoned conservation.

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. The existing affordable housing compliance section is not being amended. By further allowing transfers that meet the development criteria under the LDRs and Comp Plan, funding will be collected for affordable housing.

Hazard Mitigation

No Significant Impact would result from the proposed change. However, the transfer process already has criteria that ensure the redevelopment of the transferred unit will be more resilient as it must meet the current Florida Building Code.

Coastal High Hazard Areas

No Significant Impact would result from the proposed change.

Hurricane Evacuation

No Significant Impact would result from the proposed change. The units must have been deemed to already have existed and are just being redistributed throughout the City with no net increase.

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 land acquisition. Criteria is already in place to allow for conservation of lands deemed environmentally sensitive if a unit is transferred off of the site.

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;

Erroneous interpretations made by those not specifically granted the powers under Section 102.138 may lead to a change in policy and procedure. By amending the LDR language as written, it ensures the program continues to be managed as intended. This also allows for the continuance of other code sections to be maintained that rely on this process.

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 protect the environment. Second, the Ordinance does not allow any additional impact on environmentally sensitive areas. 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 Amendments are 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 criteria for the transfer of building rights.

Sponsored By: Garrett
Planning Commission Public Hearing Date: April 17, 2023
City Council Public Hearing Date: May 9, 2023
XXX
Enactment Date: XXX

**CITY OF MARATHON, FLORIDA
ORDINANCE 2023-06**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY OF MARATHON'S COMPREHENSIVE PLAN MODIFYING CHAPTER ONE, "FUTURE LAND USE ELEMENT," AND INTENDING TO MODIFY POLICY 1-3.5.16, "PROGRAM FOR TRANSFER OF DENSITY AND BUILDING RIGHTS (TDR'S AND TBR'S)", 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, amending the Comprehensive Plan language ensures protection of environmentally sensitive lands, while encouraging infill developments; and

WHEREAS, the City does not want to unduly constrain development within the City of Marathon, so long as the growth is managed and environmentally appropriate; 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 1, Future Land Use Element, “Policy 1-3.5.16:”

Policy 1-3.5.16 Program for Transfer of Density and Building Rights (TDR’s and TBR’s)

a. The transfer of density and building rights within the City’s boundaries shall attempt to achieve the following:

1. Protect environmental resources in balance with the protection of property rights;
2. Encourage the replacement of substandard structures, non-conforming structures, structures within environmentally sensitive habitat; structures subject to repetitive flood damage, and units or non-residential square footage which exceeds density limitations;
3. Facilitate redevelopment and revitalize the commercial centers by concentrating mixed use activities;
4. Facilitate the redevelopment and revitalization of hotels and motels in the City;
5. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City;
6. Redistribute existing residential units or densities from more environmentally sensitive properties to less environmentally sensitive properties to encourage infill development and achieve planned densities without increasing the overall density;
7. Protect environmentally sensitive sites through the removal of existing dwelling units or allocated development rights;
8. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land;
9. Further the public good and the goals, objectives, and policies of the Plan;
10. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City.

b. **Transfer of Residential Density (TDRs)**

1. Residential density (TDRs) shall only be transferable from a FLUM category of lower density to one of higher density as defined in Table 1-1 of the Comprehensive Plan. Properties with a FLUM category of Conservation shall not be eligible as TDR receiver sites. TDRs are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.8.
2. Increases in Residential Density which are greater than those allowed for a given FLUM category in Table 1-1 may occur, but shall only occur as a result of a TDR transfer. Such TDR transfers shall not exceed 20 percent of the Future Land Use Densities allowed by FLUM category in Table 1-1.
3. If a property owner intends to achieve a residential density higher than a 20 percent increase over that allowed in Table 1-1, then the owner must seek a FLUM change to a FLUM category which would allow a greater residential density. However, there shall be no presumption in any request that the request must be or will be granted by the City. If the FLUM change is granted, then the difference in residential density between the two FLUM categories must be achieved through a transfer of TDRs which shall not exceed the density allowed in Table 1-1 for the new FLUM category.

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

4. The transfer of TDRs is subject to approval by the City based on the criteria established in b. 1. and 2. above. All transfers of TDRs must identify the removal of the TDRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
5. Lands for which all residential density has been entirely removed must have a maintenance program to continuously remove exotic invasive vegetation or be transferred to an appropriate land management entity, such as the State of Florida or the City of Marathon.

c. Transfer of Building Rights (TBRs)

1. ~~Transferable Building Rights (TBRs) shall only be transferable from a FLUM category of lower density to one of equal or higher density as defined in Table 1-1 of the Comprehensive Plan.~~ Properties with a FLUM category of Conservation shall not be eligible as TBR receiver sites. Transferable Building Rights (TBRs) are ~~only~~ **not** transferable to receiver site properties whose habitats are deemed by the City Biologist to be ~~less~~ **more** sensitive than the sender site properties as defined in policy 4-1.5.8
2. The transfer of TBRs is subject to approval by the City based on the criteria established in c. 1. ~~and 2.~~ above. All transfers of TBRs must identify the removal of the TBRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.
3. Alternatively, TBRs may be "banked" with the City for a period not to exceed two (2) years. TBRs so banked must identify the removal of the TBRs from the sender site and that they have been banked with the City pursuant to a specific agreement with the City, which shall be recorded in the chain of title of the sending site.

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 effective immediately upon approval by the 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 XXth day of XXX, 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 Williams, City Attorney