

**Sponsored by: Lindsey**  
**Introduction Date:** October 21, 2019  
**Public Hearing Dates:** November 12, 2019  
January 14, 2020  
**Enactment date:** January 14, 2020

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2019-14**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS TO MODIFY CHAPTER 102, ARTICLE 13, CONDITIONAL USE PERMITS, SECTION 102.74, "APPLICATION PROCESS;" CHAPTER 103, ARTICLE 3, "USE AND INTENSITY TABLES," TABLE 103.15.1, "USES BY ZONING DISTRICT;" AND ADDING A SECTION TO CHAPTER 104, ARTICLE 1, TO BE TITLED "PERMITTING OF RESIDENTIAL UNITS WHICH EXCEED SIX (6) BEDROOMS" AS DEFINED THEREIN; AMENDING CHAPTER 110 TO PROVIDE RELATED DEFINITIONS FOR BEDROOMS, DWELLING UNITS, AND KITCHENS; 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 FINAL ADOPTION BY THE CITY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE.**

**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

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the "Keys ACSCs"; and

**WHEREAS**, Keys' Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

**WHEREAS**, Chapter 166, *Florida Statutes*, grants the City of Marathon (the "City") broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting business regulations for the protection of the public; and

~~Strikethrough~~ = deletion      **bold underline** = addition

WHEREAS, the purpose of the proposed Ordinance is to manage growth and development in residential neighborhoods and zoning categories when large single family residential development are proposed (greater than six (6) bedrooms, thus requiring a Conditional Use Permit review and approval,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Amend Chapter 102, Article 13. Section 102.74, "Application Requirements" to add language identifying minimum application requirements as follows:

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. **Five (5) copies and 1 digital set (CD or DVD, No Flash Drives) of the following plans, drawn to scale, signed and sealed by a Florida registered Surveyor, Architect or Engineer:**
7. **Property Survey no older than two years from date of application.**
8. **Site Plans. Including but not limited to:**

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- Property lines, Mean High Water Line (MHWL), and dimensions of the parcel
- Areas and dimensions of existing and proposed structures
- Adjacent roadways and uses of adjacent property
- Setbacks and Buffers
- Parking (including handicap parking) and loading zone locations and dimensions
- Calculations for open space ratios, floor area ratios, density and parking
- Outdoor lighting location, type, power and height
- Extent and area of wetlands, open space areas, and landscape areas
- Location of solid waste separation, storage and removal
- Type of ground cover such as asphalt, grass, pea rock
- Sewage treatment facilities
- Location of bike racks (if required)
- Flood zones pursuant to the Flood Insurance Rate Map (FIRM)
- Show Fire hydrants per following schedule:
- Commercial Non-Fire Sprinkler Protected Buildings:
- 350 feet between hydrants
- No building further than 175 feet from a fire hydrant.
- No building further than 250 feet from a hydrant.
- Provide location of fire lanes (marked fire apparatus roads) and fire lane marking details on plans. NFPA 1 (2012) 18.2.3.5.1
- Provide a minimum 42 ft curb radius at driveways. Reference City of Marathon Turning Radius requirements NFPA 1 (2012) 18.2.3.4.3.1
- Provide minimum 13' 6" vertical clearance for all canopies and road overhangs. NFPA 1 (2012) 18.2.3.4.1.2.
- Fire department access roads shall have an unobstructed width of not less than 20'. NFPA 1 (2012) 18.2.3.4.1.1
- Dead-end fire department access roads in excess of 150ft in length shall be provided with approved provisions for the fire apparatus to turn around. NFPA 1 (2012) 18.2.3.4.4
- Marine areas shall comply with NFPA 303

9. Landscape Plans. Including but not limited to:

- Open space preservation areas
- Size and type of buffer yards including the species, size, and number of plants
- Parking lot landscaping including the species, size and number of plants
- Existing natural features
- Specimen trees, or threatened and endangered plants to be retained and those to be relocated or replaced
- 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.

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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.

- 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.
- 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. Residential Allocations: Any Dwelling Unit or Single-family Residence which supports seven (7) or more bedrooms, shall be required to obtain one (1) Transferable Building Right for each additional six (6) bedrooms greater than six (6) bedrooms. No more than three (3) residential allocations shall be required for any Dwelling Unit or Single-family Residence. Such additional allocations shall not be available through the BPAS system as provided for in Chapter 107, Article 1. Therefore, each additional allocation must be obtained as a Transferable Building Right (TBR) and shall be subject to the provisions of Chapter 107, Article 2, particularly TBR transfer fees.~~

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 3. Amend Chapter 103, Article 3, Table 103.15.1 to add a use to be titled "Single-Family dwellings; 6 Bedrooms or less and More than 6 Bedrooms to read as follows:

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Table 103.15.1  
Uses By Zoning District

Uses in bold have specific conditions listed in Chapter 104																
ZONING DISTRICTS	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M	I-G	I-M	A	P	PR
***																
<b>Sexually Oriented Business</b>																
Single-family dwellings ( <b>6 Bedrooms or less</b> )	P	P	P	P	P	P	P	P	P	P	P	P	P			A
<b>Single-family dwellings (7 Bedrooms or more)</b>					<u>C</u>	<u>C</u>	<u>C</u>		<u>C</u>							
Small animal shelters/boarding kennels											C	C	C	C		C
***																

**SECTION 3.** Amend Chapter 104, Article 1, “General Provisions,” to add Section 104.52, “Single-family dwellings (7 Bedrooms or more),” and renumber subsequent sub-sections as will follow:

**Section 104.52**

**The approval of Single-family dwellings (Seven (7) Bedrooms or more) requires a Conditional Use Permit review and approval pursuant to Chapter 102, Article 13 of the Land Development Regulations.**

**Single-family residential structures which include seven (7) or more bedrooms in number have a greater impact on the community than a more typical residence of six (6) bedrooms or less. Therefore, the City requires that the permission of such structures be considered in the wider context of a Conditional Use Permit. Particularly, the City must understand at a minimum, the greater impacts of the project related to the size of the property in question, the parking requirements, the traffic impacts, and the impacts on infrastructure such as water, sewer, electricity, and solid waste. However, as noted in the application submittal requirements below, other considerations and additional review areas may be considered and additional information may be requested.**

Strikethrough = deletion

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**SPECIFIC APPLICATION REQUIREMENTS**  
**CONDITIONAL USE PERMITS**

**These requirements are to be met in addition to those requirements of Chapter 102, Article 13, Section 102.75. The Planning Department may require additional drawings, specifications or information in order to complete the review of the application.**

**1. Wastewater Flow Calculations.**

- **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.**
- **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.**

**2. Parking space needs analysis. The City will require a minimum of one (1) parking space per bedroom unless otherwise justified and validated by the Conditional Use Permit applicant.**

**3. A Traffic Study prepared by a licensed traffic engineer.**

**SECTION 4.** Amend Chapter 110, Article 3, “Defined Terms” to add the following term, “bedroom:”

**Bedroom: a room generally intended for sleeping in, typically for one or two individuals and perhaps a small child. A bedroom typically is defined on the basis of the following conditions, but may vary:**

- **Doors: Typically contains at least one door for entry, though may not have a door in open living plans**
- **Minimum square footage: 60 to 70 square feet.**
- **Minimum horizontal footage: A minimum of at least 7 feet in any horizontal direction.**
- **Two means of egress: There have to be two ways out of a bedroom.**
- **Minimum ceiling height: At least half of the bedroom ceiling has to be at least 7 feet tall and meet the Florida Building Code (FBC).**
- **Minimum window size: The window opening must be a minimum size, usually 5.7 square feet and must meet the Florida Building Code (FBC).**
- **A heating/cooling element:**
- **May have a closet, an associated bathroom, small refrigerator, and/or a microwave.**

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For the sake of calculating the number of bedrooms, the City may count an office, den, game/recreation room, alcove, or similar room or semi-enclosed space as a bedroom dependent on the apparent purpose and use for the space.

SECTION 5. Amend Chapter 110, Article 3, “Defined Terms” to modify the following terms:

Dwelling, Apartment: A multi-family building in which units share common **entrances** or accesses to individual units.

Dwelling, Attached: ~~A residential dwelling unit consisting of more than one (1) residential unit that area development without open yards on all sides of the dwelling unit.~~ Means a dwelling unit that is located on a separate lot and shares a wall on one or both sides with a neighboring dwelling unit. Townhomes and duplexes are attached dwelling units.

Dwelling, Detached: A residential dwelling unit that is developed with open yards on all sides of the dwelling unit, but not including mobile homes or recreational vehicles. A stand-alone house (also called a Dwelling Unit or Single-family Residence, detached residence or detached house) is a free-standing residential building. Sometimes referred to as a single-family home, as opposed to a duplex or multi-family residential dwelling.

Dwelling, Duplex: Two-family dwelling units with the units either side-by side or in any over-under configuration. In the side-by side configuration, the units share a common wall, while in the over-under configuration, they are stacked.

Dwelling, Townhouse: An attached dwelling with only one (1) dwelling unit from ground to roof attached to its neighbors on no more than two (2) sides.

Dwelling Unit (Single-family residence): A single unit providing complete and independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, cooking (~~meaning a food preparation area larger than a one (1) bin wet bar, that was is intended or designed to be used for cooking or the preparation of food and a range, oven or utility connections for such~~) and sanitation. The term is applicable to both permanent ~~and transient~~ or rental residential development and living.

Dwelling units with seven (7) or more bedrooms are subject to Conditional Use Permit review and approval (see Chapter 104, Article 13). Dwelling units with seven (7) or more bedrooms shall not be set up in the fashion of a hotel or motel, so defined herein, to provide common area facilities for reservations, cleaning services, site management, and reception.

For the purposes of calculation within the Building Permit Allocation System (BPAS), any Dwelling Unit or Single-family Residence which supports more than one complete kitchen shall be considered a Duplex (at least), must meet the minimum residential density requirements, and shall be required to obtain one (1) additional Residential allocation for each additional kitchen.

SECTION 6. Amend Chapter 110, Article 3, “Defined Terms” to add the following term, “kitchen:”

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**Kitchen, complete: For residential purposes typically and for the sake of calculating allocation requirements in BPAS, a complete kitchen shall be defined as a room for preparing and cooking meals to include a sink (or multiple sinks), a stove, a refrigerator, kitchen cabinets, and a kitchen work surface or surfaces. A kitchen may include a microwave, a dishwasher, and a garbage disposal. Outdoor, non air conditioned cooking facilities are excepted. Each complete kitchen (as a proxy for a residential unit) shall require one (1) BPAS allocation. Indoor wet bars are generally excepted unless, in design or at the discretion of the Planning Director and/or Building Official, the wet bar, as shown in construction plans, constitutes a complete kitchen as described herein.**

**SECTION 7.** 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 8.** 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 9.** It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

**SECTION 10.** 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 11.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14<sup>th</sup> DAY OF JANUARY, 2020.**

**THE CITY OF MARATHON, FLORIDA**



**Steve Cook, Mayor**

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AYES: Bartus, Zieg, Senmartin, Gonzalez, Cook  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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:**

  
\_\_\_\_\_  
David Migut, City Attorney

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**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON  
ORDINANCE NO. 2019-14

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**FINAL ORDER  
APPROVING CITY OF MARATHON ORDINANCE NO. 2019-14**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to sections 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2019-14 (the “Ordinance”).

**FINDINGS OF FACT**

1. The Florida Keys Area is designated by section 380.0552, Florida Statutes, as an area of critical state concern. The City of Marathon (“City”) is a local government within the Florida Keys Area.

2. The Ordinance was adopted by the City on January 14, 2020, and rendered to the Department on July 23, 2020.

3. The Ordinance amends Section 102.74 to establish minimum application requirements for a Conditional Use Permit; amends Table 103.15.1 to identify single-family dwellings with 7 bedrooms or more as a use that requires a Conditional Use Permit approval; creates Section 104.52 to establish specific application requirements for single-family dwellings with 7 bedrooms or more; and amends Chapter 110, Article 3 to add definitions for “Kitchen, complete”, amend definitions for “Dwelling, attached” and “Dwelling, detached”, and add a requirement for Dwelling Units to obtain one additional Residential allocation for each additional kitchen permitted.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* § 380.05(6), Fla. Stat.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is consistent with the City’s Comprehensive Plan as required by Section 163.3177(1), Florida Statutes, generally, and is specifically consistent with Objective 1-3.5 and Policy 1-3.5.1 of the Plan.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. *See* § 380.05(6), Fla. Stat. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in section 380.0552(7), Florida Statutes.

8. The Ordinance is consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern as a whole, and is specifically consistent with the following principles:

(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation;

(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development;

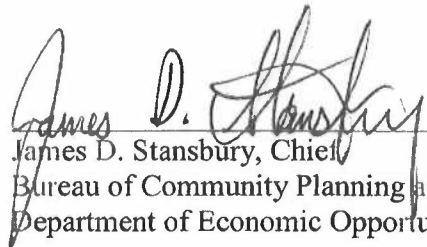
(f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys; and

(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2019-14 is consistent with the City of Marathon Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the *Florida Administrative Register* unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.

  
James D. Stansbury, Chief  
Bureau of Community Planning and Growth  
Department of Economic Opportunity

**NOTICE OF ADMINISTRATIVE RIGHTS**

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, BY FILING A PETITION.

A PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
OFFICE OF THE GENERAL COUNSEL  
107 EAST MADISON ST., MSC 110  
TALLAHASSEE, FLORIDA 32399-4128  
FAX 850-921-3230  
AGENCY.CLERK@DEO.MYFLORIDA.COM

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

PURSUANT TO SECTION 120.573, FLORIDA STATUTES, AND CHAPTER 28, PART IV, FLORIDA ADMINISTRATIVE CODE, YOU ARE NOTIFIED THAT MEDIATION IS NOT AVAILABLE.

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 16th day of September, 2020.



Agency Clerk

Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

By U.S. Mail:

Steve Cook, Mayor  
City of Marathon, City Council  
9805 Overseas Highway  
Marathon, FL 33050

Diane Clavier, City Clerk  
City of Marathon, City Clerk  
9805 Overseas Highway  
Marathon, FL 33050

George Garrett, Planning Director  
City of Marathon, Planning Department  
9805 Overseas Highway  
Marathon, FL 33050