

Sponsored By: Lindsey
Planning Commission Public Hearing Date: October 21, 2019
City Council Public Hearing Date: November 12, 2019
March 10, 2020
June 9, 2020
Enactment Date: June 9, 2020

**CITY OF MARATHON, FLORIDA
ORDINANCE 2019-13**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, CHAPTER 103, TABLE 103.15.2, "DENSITY, INTENSITY AND DIMENSIONS FOR ZONING DISTRICTS, CHAPTER 107, ARTICLE 5, "SETBACKS AND HEIGHT," SECTION 107.40, "MAXIMUM HEIGHT" AND FIGURE 107.40.1, "BUILDING HEIGHT MEASUREMENT," INCREASING THE MAXIMUM BUILDING HEIGHT TO FORTY-TWO FEET (42) FOR ALL STRUCTURES TO PROVIDE COMPENSATION FOR INCREASES IN REQUIRED ELEVATIONS FOR THE NEW FEMA FIRM MAPS; 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 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, FEMA has recently released National Flood Insurance Program (NFIP), "Working Draft Flood Insurance Rate Maps (FIRM) which in some areas may significantly alter the currently adopted Base Flood Elevations (BFE); and

WHEREAS, it is the City's intent to raise the height limitations to provide some flexibility in building construction under the constraint that many Base Flood Elevations have increased from the current adopted maps; 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 October 21, 2019 and a first hearing before the City Council on November 12, 2019 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; and

WHEREAS, this Ordinance, having received an ORC from DEO after its first hearing and rendering to DEO, was thus noticed for a second hearing on March 10, 2020 at which time, the Ordinance was passed unanimously, and

WHEREAS, it has been subsequently determined that changes suggested by DEO and made by staff for the March hearing were significant enough and in consideration of the fact that the hearing occurred during the City's problems with its computer network an additional hearing was warranted, and

WHEREAS, the Ordinance was heard on June 9, 2020, 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 Comprehensive Plan, Chapter 107, "General Development Standards," Article 5, "Setbacks and Height," Section 107.40:

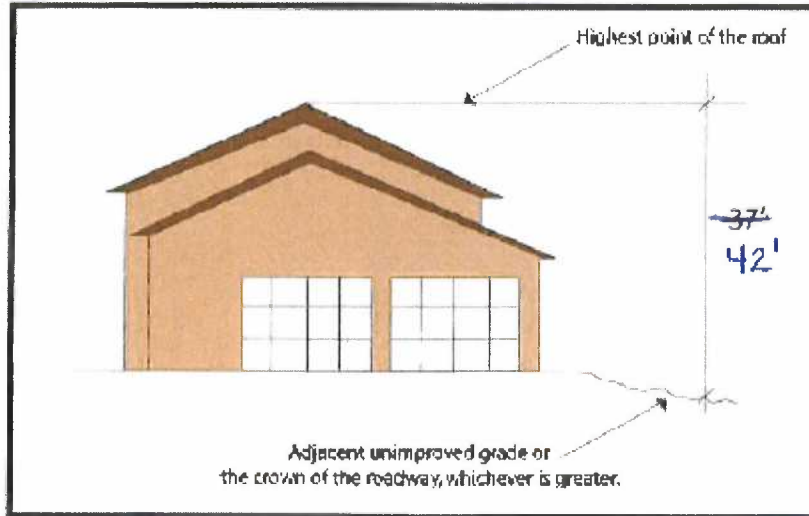
Section 107.40. - Maximum Height.

A. Unless provided for elsewhere in the LDRs, the maximum height of any structure **permitted for maintenance, repair, expansion or new construction within the City of Marathon** shall be **forty-two (42) feet (in Datum NAVD88) (37)** feet; as measured from the unimproved grade directly adjacent to the structure or from the crown of the roadway, whichever is greater. **The purpose of this provision is to allow some flexibility in meeting the City's Floodplain regulations and revised FEMA Floodplain Maps. Nonconforming structures may be repaired, maintained or expanded as long as any alterations to the structure does not increase the nonconformity. Government Facilities are exempt with the approval of the City Council.**

B. Building height shall be measured to the highest point of the roof. The height measurement shall be to the roof peak for structures with pitched roofs and the roof slab for structures with flat roofs.

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

Figure 107.40.1
Building Height Measurement



SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. The provisions of this Ordinance constitute an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be scheduled for a second hearing immediately upon approval by the Florida Department of Economic Opportunity as a part of their Objections, Recommendations, and Comments (ORC) review for the corresponding Comprehensive Plan amendment, pursuant to Chapters 163 and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 9TH DAY OF JUNE, 2020.

THE CITY OF MARATHON, FLORIDA

Steven Cook, Mayor

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

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

ATTEST:



Diane Clavier, City Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**



Dirk Smits, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2019-13

FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2019-13

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. 2019-13 (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 June 9, 2020, and rendered to the Department on July 23, 2020.
3. The Ordinance amends Section 107.40, Maximum Height, of the Land Development Code, to permit for maintenance, repair, expansion, or new construction within the City of Marathon to be up to 42 feet (in Datum NAVD88). The stated purpose of the amendment is to permit flexibility in meeting modified floodplain regulations and revised FEMA floodplain maps. The Ordinance also provides for non-conforming uses to be repaired, maintained or expanded as long as any alterations to the structure do not increase the nonconformity.

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 Policy 1-3.2.5 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; and

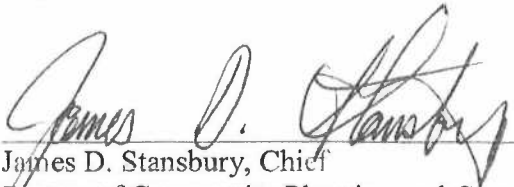
(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2019-13 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
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