

**Sponsored By:** Council  
**City Council Public Hearing Date:** June 8, 2021  
July 13, 2021  
**Enactment Date:** July 13, 2021

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2021-16**

**AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 100, ARTICLE I (“GENERAL”), CHAPTER 101, ARTICLE III (“PLANNING COMMISSION”), AND CHAPTER 102, ARTICLE 17 OF THE CODE OF ORDINANCES OF THE CITY OF MARATHON BY AMENDING SECTIONS 100.06, 100.09 & 101.02; AMENDING SECTION 102, ARTICLE 17 IN CONFORMANCE THEREWITH PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulations 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, pursuant to Sections 380.05 and 380.0552, Florida Statutes; and

**WHEREAS**, Florida 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**, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes, and

**WHEREAS**, there exists within the Marathon Code of Ordinances certain typographical errors as well as certain outdated or unused sections that are overbroad or are otherwise unenforceable; and

**WHEREAS**, it is in the best interest of the citizens of the City of Marathon to remedy and/or clarify these identified code sections.

**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.** Chapter 100, Article 1, Section 100.06 "Interpretation and Administration" is hereby amended to read as follows:

Section 100.06. – Interpretation and Administration.

In the interpretation and administration of the LDR's, all provisions shall be:

- A. *Generally:* In the interpretation and application of the LDRs all provisions shall be liberally construed in favor of the objectives and purposes of the City and deemed neither to limit nor repeal any other powers granted under State Statutes.
- ~~B. *Responsibility:* In the event that any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of the LDRs, the Director shall be responsible for interpretation and shall look to the Plan for guidance. Responsibility for interpretation by the Director shall be limited to standards, regulations and requirements of the LDRs, but shall not be construed to include interpretation of any technical codes adopted by reference in the LDRs, and shall not be construed as overriding the responsibilities given to any commission, board or official named in other sections or Articles of the LDRs.~~
- ~~C. *Delegation of Authority:* Unless otherwise specified in the LDRs, the identification of certain officials, including the City Manager, Planning Director, City Attorney or any other Department Director or City Official to perform a task or carry out a specific responsibility, shall also include the designee of such official. Unless otherwise specified in the LDR, the term "Director" shall mean the Planning Director and the term "Department" shall mean the Planning Department.~~
- B. *Delegation of Authority:* Unless otherwise specified in the LDRs, the identification of certain officials, including the City Manager, Planning Director, City Attorney or any other Department Director or City Official to perform a task or carry out a specific responsibility, shall also include the designee of such official. Unless otherwise specified in the LDR, the term "Director" shall mean the Planning Director and the term "Department" shall mean the Planning Department.**
- C. *Responsibility:* In the event that any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of the LDRs, the Director shall be responsible for interpretation and shall look to the Plan for guidance. Responsibility for interpretation by the Director shall be limited to standards, regulations and requirements of the LDRs, but shall not be construed to include interpretation of any technical codes adopted by reference in the LDRs, and shall not be construed as overriding the responsibilities given to any commission, board or official named in other sections or Articles of the LDRs.**

**SECTION 3.** Chapter 100, Article 1, Section 100.09 “Other Regulatory Authority” is hereby amended to read as follows:

Section 100.09. – Other Regulatory Authority.

The issuance of a permit or approval by a federal or state agency, water management district, or other governing body shall not obligate City of Marathon to grant approval, and shall not be deemed to satisfy the requirements of the LDRs.

Where applicable, pursuant to Fla. Stat. ch. 380, the ~~Department of Community Affairs~~ **State Land Planning Agency** has appeal authority over actions taken by the City.

**SECTION 4.** Chapter 101, Article 3, Section 101.02 “Powers and Duties” is here amended to read as follows:

Section 101.02 – Powers and Duties.

The Planning Commission (PC) shall have the powers and duties as provided in Fla. Stat. 163.3174, including, but not limited to:

- A. *Appeals:* The PC shall hear and decide appeals where it is alleged that an error has been committed in any order requirement, decision or determination made by ~~any administrative official~~ **the Director or the Department** made pursuant to the LDRs, except where state or City LDRs specifically provide otherwise as provided in Article 17 “Appeals” of Chapter 102.

**SECTION 5.** Chapter 102, Article 17

Article 17. – Appeals

An action by ~~any administrative official or body~~ made pursuant to the provisions of the LDRs may be ~~appealed in accordance with the provisions of this article.~~ **or interpretation made by the Director or the Department made pursuant to the provisions of the LDRs may be appealed to the Planning Commission in accordance with the provisions of this article. An action or interpretation made by the building official or other administrative official may be appealed to the City Council in accordance with the provisions of this article.**

Section 102.94. – Application and Contents of Appeal.

An application for appeal shall be filed ~~on a form provided by the City, with the City Manager, and the body, office or department whose action is the basis for appeal~~ accompanied by a filing fee, **on a form provided by the Department**. The appeal shall be in writing and state the basis of the appeal by citing the inadequacy of the findings made by the ~~administrative officer~~ **appropriate person or body**. Such reasons shall be based upon the evidence presented to the administrative officer or body prior to the original decision. Failure of the appellant to present such reasons shall be deemed cause for denial of the appeal.

**SECTION 6.** Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 7.** 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, or 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 8.** It is the intention of the City Council and it is hereby ordained that 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 "Ordinance" shall be changed to "Section" or other appropriate word.

**SECTION 9.** 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 Section 380.05(6) and (11), Florida Statutes.

**SECTION 10.** This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,  
THIS 13 DAY OF JULY, 2021.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Luis Gonzalez, Mayor

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

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk  
(City Seal)

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

  
\_\_\_\_\_  
Steven Williams, City Attorney

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON,  
ORDINANCE NO. 2021-16

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**FINAL ORDER  
APPROVING MARATHON ORDINANCE NO. 2021-16**

The Department of Economic Opportunity (the “Department”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon (the “City”), Ordinance No. 2021-16 (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 is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on July 13, 2021 and rendered to the Department on August 18, 2021.
3. The Ordinance amends existing provisions that set forth the appeal process under Chapter 101 and Chapter 102 of the City’s Code of Ordinances. The Ordinance specifies that the decisions, determinations, and interpretations of the Planning Director, rather than any administrative official, are appealable to the Planning Department. Actions or interpretations made by the building official or other administrative issues are appealable to the City Council.

**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* Section 380.05(6), Florida Statutes.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. 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 1-3.6.1 Establish Vested Rights Criteria and Procedures for the Plan, Policy 1-3.6.2 Establish Vested Rights Criteria and Procedures for LDRs, and Policy 1-3.5.12 Establish Beneficial Use Criteria and Procedures.

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* Section 380.05(6), Florida Statutes. 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 in Section 380.0552(7), Florida Statutes 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.

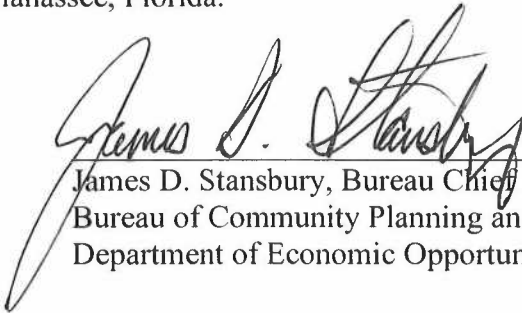
(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon

Ordinance No. 2021-16 is consistent with the City of Marathon's Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Final Order becomes final 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, Bureau Chief  
Bureau of Community Planning and Growth  
Department of Economic Opportunity

**NOTICE OF ADMINISTRATIVE RIGHTS**

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

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.

ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER 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

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



**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 30<sup>th</sup> day of September, 2021.

*Midem Foss*

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

By U.S. Mail:

The Honorable Luis Gonzalez, 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

Brian Shea, Planning Director  
City of Marathon, Planning Department  
9805 Overseas Highway  
Marathon, FL 33050