

**CITY OF MARATHON, FLORIDA
RESOLUTION 2022-46**

RESOLUTION OF THE CITY OF MARATHON, FLORIDA APPROVING A REVISED MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF MARATHON, FLORIDA AND THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY IN CONSIDERATION OF STATUTORY REQUIREMENTS PURSUANT TO SECTION 380.07 (2) FLORIDA STATUTES AND RULE 73C-44.002 REQUIRING THAT THE CITY RENDER DEVELOPMENT ORDERS TO THE DEPARTMENT; THIS REVISED RESOLUTION AND MOU IS HEREBY ADOPTED AS A REPLACEMENT FOR RESOLUTIONS 2022-36 AND 2022-30 AND 2004-097 AND A SUBSEQUENT AMENDMENT LETTER CONCERNING RESOLUTION 2004-097 FROM THEN SECRETARY THADDEUS L. COHEN DATED JANUARY 11, 2005 ALL OF WHICH ARE HEREBY REPEALED; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Pursuant to Chapter 380.07(2) and Rule 73C-44.002, Development Orders issued by the City of Marathon must be rendered for Review to the Department of Economic Opportunity ; and

WHEREAS, Resolution 2004-097 and a subsequent amendment letter from then Secretary Thaddeus L. Cohen dated January 11, 2005 act as the most recent “template” by which the City Renders Development Orders to the State; and

WHEREAS, On February 8, 2022 the City adopted Resolution 2022-30 to replace the old MOU, as noted. That Resolution and MOU were sent to DEO for their review and approval. Over the course of the past four weeks, DEO has been reviewing permits and making revisions to the MOU as now reflected in a revised MOU; and

WHEREAS, On April 12, 2022 the City adopted Resolution 2022-36 to replace the old MOU, as noted. That Resolution and MOU were sent to DEO for their review and approval. Over the course of the past four weeks, DEO has been reviewing permits and making revisions to the MOU as now reflected in another revised MOU; and

WHEREAS, the attached MOU provides current and new procedures for rendering development orders based on the Department’s termination of the previous MOU effective March 3, 2022; and

WHEREAS, the State is statutorily required to enter into an interlocal agreement with the City pursuant to Chapter 380.051(2)(c); and

WHEREAS, it is in the City’s best interest pursuant to said statutory requirements to adopt the following Resolution and Memorandum of Understanding,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Attached Memorandum Of Understanding between the City of Marathon, Florida and the Florida Department of Economic Opportunity is hereby adopted.

Section 3. This Resolution shall take effect immediately upon the signature of both parties.

Section 4. The City Clerk is directed to transmit this Resolution to the Department of Economic Opportunity.

Section 5. The City Manager is hereby authorized to sign any further amendments to the Memorandum Of Understanding between the City of Marathon, Florida and the Florida Department of Economic Opportunity.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 10TH DAY OF MAY, 2022.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

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

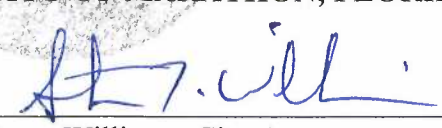
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



Steve Williams, City Attorney

MEMORANDUM OF UNDERSTANDING
BETWEEN THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY
AND THE CITY OF MARATHON

This Memorandum of Understanding (“MOU”) is being entered into by and between the State of Florida Department of Economic Opportunity (“Department”) and the City of Marathon (“City”) to provide better coordination between the Department and the City in the implementation of the provisions of chapter 380, Florida Statutes, and the City of Marathon Comprehensive Plan and Land Development Regulations. The Department and the City may be referred herein individually as a “Party” and collectively as “the Parties.”

WITNESSETH

WHEREAS, the Department is the state land planning agency authorized to administer the provisions of chapter 380, Florida Statutes, and all rules and regulations promulgated thereunder; and

WHEREAS, the State of Florida has recognized the Florida Keys as a significant resource for its environmental, natural, and historical characteristics. The Florida Keys Area of Critical State Concern, designated by chapter 380 of the Florida Statutes and chapter 28 of the Florida Administrative Code, was established to ensure a land use management system was in place to protect the water quality, habitat areas, and character of the Florida Keys while also providing adequate housing and citizen safety throughout the Florida Keys; and

WHEREAS, the City is a local government located within the area that has been designated as the Florida Keys Area of Critical State Concern pursuant to section 380.05 and 380.0552, Florida Statutes, and has adopted a comprehensive plan and land development regulations, approved by the State as required by law; and

WHEREAS, local governments located in Areas of Critical State Concern are required to issue and render development orders to the Department pursuant to sections 380.05 and 380.07, Florida Statutes; and

WHEREAS, the Department has adopted rules providing requirements for the rendition and effectiveness of development orders in Areas of Critical State Concern under Rule 73C-44.002 and Rule 73C-44.003, Florida Administrative Code; and

WHEREAS, the City is also required to issue development orders in conformity with its approved Comprehensive Plan and Land Development Regulations while taking into consideration the Principles for Guiding Development established for the Florida Keys Area of Critical State Concern; and

WHEREAS, the Department is authorized to appeal a development order to the Florida Land and Water Adjudicatory Commission if the Department determines a development order is issued inconsistent with the Comprehensive Plan, Land Development Regulations, or the Principles for Guiding Development; and

WHEREAS, the Department, as provided in Rule 73C-44.002(3), Florida Administrative Code (the “Rule”), may exempt particular types of development orders from the requirements of the Rule; and

WHEREAS, the Department does hereby exempt certain development orders issued by the City from the requirements of the Rule; and

WHEREAS, the Department and the City do mutually agree as follows:

I. Required Renderings

A. As provided in Rule 73C-44.002(3), Florida Administrative Code, the Department may, on its own initiative or at the request of an affected governmental entity,

provide in writing that particular types of local government development orders or categories of local government development orders are exempt from the requirements of Rule 73C-44.002, Florida Administrative Code.

B. In accordance with Rule 73C-44.002(3), Florida Administrative Code, the Department exempts the City from rendering development orders to the Department except for the following types and categories of development orders:

1. Any development order for the construction or expansion of the footprint of any principal structure.
2. Any development order for the construction, expansion, or redevelopment of a hotel, motel, guesthouse, or resort.
3. Any development order for the construction, expansion, or redevelopment of Institutional Residences.
4. Any development order for the conversion of mobile home and/or recreational vehicle (RV) parks.
5. Any development order or development agreement authorizing any of the following:
 - a. Transfer of Rate of Growth Ordinance Exemptions;
 - b. Transfer of Building Rights or Transfer of Development Rights;
 - c. Determination of Vested Rights;
 - d. Variances from the City's Land Development Code, such as a variance to setbacks, dock length, or floor area ratio requirements;
 - e. New marinas or expansion of or reconfiguration of existing marinas;
 - f. All subdivisions and plats;

- g. Accessory uses, such as swimming pools, tiki huts, or caretaker cottages;
 - h. Any development activity that provides overnight sleeping quarters; or
 - i. Any development activity that provides temporary or permanent transient residential uses.
- 6. Any development order for the construction, expansion, or redevelopment of institutional, public building, research, educational, or other non-residential uses.
- 7. All conditional use approvals and their subsequent permits, plats, and approvals.
- 8. Any development order for new or maintenance dredging.
- 9. Any amendments to the City's Official Zoning Map.
- 10. Any beneficial use or administrative relief determination.
- 11. Any development order recommended for denial by the Local Planning Commission that is subsequently approved by the City Council.
- 12. Any development order permitting or renewing a resource extraction activity mining.

Additionally, any development order category designated with an "X" on the *Additional Required Renderings Table*, which is attached as Exhibit A and incorporated herein, must be rendered by the City to the Department.

C. Development orders required to be rendered by Section I.B. of this MOU, and pursuant to section 380.07 of the Florida Statutes and Rule 73C-44.003 of the

Florida Administrative Code, must be rendered to the Department within five days after the expiration of the City's applicable appeal period, or if a local administrative appeal is filed, within five days after resolution of the local administrative appeal.

- D. For all development orders issued by the City, regardless of whether the development order category is exempt from the Rule by this MOU, the City acknowledges that no development order issued by the City shall take effect or be acted upon by any developer until the City's applicable appeal period has expired.
- E. For all development orders rendered to the Department, the City acknowledges that no development order shall take effect or be acted upon by the developer unless the Department's 45-day review period has expired, the Department has waived its right to appeal, or until the conclusion of any administrative appeal brought by the Department pursuant to its authority under chapter 380 of the Florida Statutes.
- F. The City shall provide an annual report by September 1 of each year to the Department indicating the number and type of allocations awarded and the number of allocations rolled over by type for that building permit allocation system year. The annual report shall also include the number of allocations issued for administration relief and beneficial use.
- G. The City shall submit all building permit allocation system rankings to the Department within five days after the expiration of the City's applicable appeal period if no local administrative appeal is filed. If a local administrative appeal is filed, the rankings shall be submitted to the Department within five days after resolution of the local administrative appeal.

II. Severability

- A. If any term or provision of this MOU is determined to be invalid or unenforceable to any extent, the remaining terms and provisions shall not be affected thereby; and each remaining term and provision shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms and provisions would prevent the accomplishment of the original intent of the MOU between the Parties.
- B. The Department reserves the right to request that any development order issued by the City, whether listed in Section I of this MOU or not, be rendered to the Department. The City agrees to render any requested development order or relevant document(s) to the Department in an expeditious manner.
- C. The Department retains the right to monitor development throughout the City. If a pattern develops showing noncompliance with the Principles for Guiding Development, the City's Comprehensive Plan, or Land Development Regulations, the Department will exercise its right to modify or terminate this MOU and may initiate enforcement action pursuant to section 380.11, Florida Statutes.

III. Modification

Modifications to this MOU shall only be valid and effective when they have been reduced to writing and duly signed by each of the Parties.

IV. Termination

Either Party may terminate this MOU at any time, with or without cause. Termination shall take effect one week or five working days, whichever is earlier, after receipt of written notification as evidenced by certified mail return receipt.

V. Notifications

All notices must be in writing and addressed as follows (or to any other address which either Party may designate by written notice):

A. For the Department:

The Department of Economic Opportunity
Division of Community Development
Areas of Critical State Concern Administrator
107 East Madison Street
Caldwell Building
Tallahassee, Florida 32399-4120

B. For the City:

City of Marathon
City Manager
With a copy to City Attorney
9805 Overseas Highway
Marathon, Florida 33050
(305) 289-4130

VI. Effective Date

This MOU shall become effective upon execution by both Parties, and shall end upon the termination of the Florida Keys Area of Critical State Concern designation, unless terminated earlier pursuant to Section IV of this MOU.

(The remainder of this page is intentionally left blank. Signature page to follow.)

IN WITNESS WHEREOF, the Parties agree to the terms and conditions set forth in this MOU, and upon placing their signatures below, have hereby caused this 10-page MOU to be executed.

CITY OF MARATHON, FLORIDA



John Bartus, Mayor
5/10/2022
Date

ATTEST:




Diane Clavier
City Clerk
5/10/2022
Date

Approved as to legal sufficiency:



City Attorney
5/10/22
Date

STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY



Dane Eagle, Secretary
5/11/22
Date

Approved as to legal sufficiency:



Karen Gates
General Counsel
5/11/22
Date

EXHIBIT A
ADDITIONAL REQUIRED RENDERINGS TABLE

Permit Type	Residential	Non-Residential	Residential Subsequent to CUP
Abandonment of Onsite Septic System			
Building	X	X	X
Building Sewer Connection			
Concrete Restoration			
Demolition	X	X	X
Dredging	X	X	X
Electrical			
Elevator			
Fencing			
Fire Alarm System			
Fire Main			
Fire Outside Plumbing			
Fire Sprinkler			
Fire Suppression			
Fire System			
Gas			
Hood System			
Hurricane Shutters			
Irrigation			
Marine	X	X	X
Mechanical			
Plumbing			

Pools/Spas	X	X	X
Propane Gas			
Refrigeration			
Renovation/Remodel	X	X	X
Right of Way			
Roof/Reroof			
Secondary Meter			
Security System			
Signs			
Site Work	X	X	X
Solar			
Tanks			
Temp Trailer	X	X	X
Utilities			
Windows/Doors Replacement			

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AMENDMENT ONE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY
AND
THE CITY OF MARATHON

On May 11, 2022, the State of Florida, Department of Economic Opportunity ("Department") and the City of Marathon ("City") entered into a Memorandum of Understanding (MOU) to provide better coordination between the Department and the City in the implementation of the provisions of chapter 380, Florida Statutes, and the City of Marathon's Comprehensive Plan and Land Development Regulations. The Department and the City may be referred herein individually as a "Party" and collectively as "the Parties."

WHEREAS, section III, Modification, of the MOU provides that any modification to the MOU shall be in writing and executed by the Parties thereto;

WHEREAS, the Parties wish to modify the MOU as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. Section I.B. is hereby deleted and replaced with the following:

B. In accordance with Rule 73C-44.002(3), Florida Administrative Code, the Department exempts the City from rendering development orders to the Department except for the following types and categories of development orders:

1. Any development order for the new construction or for the expansion of the footprint of any existing principal structure which would require residential,

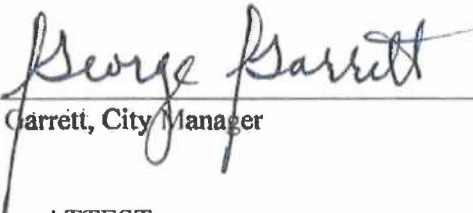
commercial Building Permit Allocation system (BPAS) or BPAS exemptions. This shall include caretaker cottages and mother-in-law apartments of units, which require a building permit allocation.

2. Any development order for the construction, expansion, or redevelopment of a hotel, motel, guesthouse, or resort.
3. Any development order for the construction, expansion, or redevelopment of Institutional Residences.
4. Any development order for the conversion of mobile home and/or recreational vehicle (RV) parks.
5. Any development order or development agreement authorizing any of the following:
 - a. Transfer of Building Rights or Transfer of Development Rights;
 - b. Determination of Vested Rights;
 - c. Variances from the City's Land Development Code, such as a variance to setbacks, dock length, or floor area ratio requirements;
 - d. New marinas or expansion of or reconfiguration of existing marinas;
 - e. All subdivisions and plats;
 - f. Accessory uses, such as swimming pools, tiki huts, or caretaker cottages;
 - g. Any development activity that provides overnight sleeping quarters;
 - h. Any development activity that provides temporary or permanent transient residential uses;
 - i. Any demolition affecting BPAS;
 - j. Any renovation or remodel that creates a new unit; or
 - k. Site work for clearing purposes.
6. Any development order for the construction, expansion, or redevelopment of institutional, public building, research, educational, or other non-residential uses.

7. All conditional use permit approvals and their subsequent permits, plats, and approvals.
 8. Any development order for new or maintenance dredging.
 9. Any amendments to the City's Official Zoning Map.
 10. Any beneficial use or administrative relief determination.
 11. Any development order recommended for denial by the Local Planning Commission that is subsequently approved by the City Council.
 12. Any development order permitting or renewing a resource extraction activity mining.
 13. To the extent that building permits are rendered for actual structures, the City shall include at a minimum, property surveys, site plans, civil site plans which define the location, setbacks, stormwater control, and Federal Emergency Management Agency heights or restrictions for existing and permitted structures. Rendered documents shall not include sealed engineering or architectural renderings subject to the Florida Building Code and any Notice of Authorization concerning elements of such structures.
 14. Site Work which includes a variety of activities including removal of exotic vegetation, removal of native vegetation, placement of fill, creation of stormwater swales, and installation of pavers. Paver permits shall not be required to be rendered to the Department.
 15. Interior / exterior renovations or remodels shall not be required to be rendered to the Department as long as Section B.1. above does not apply.
 16. Permit revisions that do not result in additional square footage, impervious surface, or requires additional clearing do not need to be rendered to the Department.
2. Exhibit A, Additional Required Renderings Table, is hereby deleted in its entirety.
 3. All other terms and conditions of the MOU remain in effect.

IN WITNESS WHEREOF, the Parties agree to the terms and conditions set forth in the MOU, as amended by this Amendment One, and upon placing their signatures, have hereby caused this four-page Amendment to be executed.

CITY OF MARATHON, FLORIDA


George Garrett, City Manager
10/13/2022
Date

ATTEST:


Diane Clavie
City Clerk
10/13/2022
Date

Approved as to legal sufficiency:


City Attorney
10/13/2022
Date

STATE OF FLORIDA, DEPARTMENT OF ECONOMIC OPPORTUNITY


Dane Eagle, Secretary
10/27/22
Date

Approved as to legal sufficiency:


Karen Gates
General Counsel
10/26/2022
Date