

Sponsored By: Garrett
Planning Commission Public Hearing Date: January 23, 2023
City Council Public Hearing Date: February 14, 2023
March 14, 2023
Enactment Date: March 14, 2023

**CITY OF MARATHON, FLORIDA
ORDINANCE 2023-04**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 102, ARTICLE 13, ENTITLED "CONDITIONAL USE PERMITS"; 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.

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, 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 January 23, 2023 and a first hearing before the City Council on February 14, 2023 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. The Ordinance was noticed for a second hearing on March 14, 2023; and

WHEREAS, the Ordinance was heard on March 14, 2023, 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 Land Development Regulations, Chapter 102, "Development Application Review Procedures," Article 13, "Conditional Use Permits," as attached in Exhibit A.

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 become effective upon approval by the Florida Department of Economic Opportunity pursuant to Chapters 163, 166, and 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 14th DAY OF MARCH, 2023.



THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor


AYES: Still, Smith, Landry, Matlock, Gonzalez
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:



Steven T. Williams, City Attorney

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

ARTICLE 13. CONDITIONAL USE PERMITS

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. ~~Property survey no older than two (2) years from date of application. Five (5) copies and one (1) digital set (CD of DVD, No Flash Drives) of the following plans, drawn to scale, signed and sealed by a Florida registered Surveyor, Architect or Engineer:~~
 7. ~~One (1) digital set (CD of DVD, No Flash Drives) of the following plans, drawn to scale, signed and sealed by a Florida registered Surveyor, Architect or Engineer: Property survey no older than two (2) years from date of application.~~
 8. *Site plans.* Including but not limited to:
 - a. Property lines, Mean High Water Line (MHWL), and dimensions of the parcel
 - b. Areas and dimensions of existing and proposed structures
 - c. Adjacent roadways and uses of adjacent property
 - d. Setbacks and buffers
 - e. Parking (including handicap parking) and loading zone locations and dimensions
 - f. Calculations for open space ratios, floor area ratios, density and parking
 - g. Outdoor lighting location, type, power and height
 - h. Extent and area of wetlands, open space areas, and landscape areas
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- i. Location of solid waste separation, storage and removal
 - j. Type of ground cover such as asphalt, grass, pea rock
 - k. Sewage treatment facilities
 - l. Location of bike racks (if required)
 - m. Flood zones pursuant to the Flood Insurance Rate Map (FIRM)
 - n. Show Fire hydrants per following schedule:
 - o. Commercial Non-Fire Sprinkler Protected Buildings:
 - p. 350 feet between hydrants
 - q. No building further than 175 feet from a fire hydrant.
 - r. No building further than 250 feet from a hydrant.
 - s. Provide location of fire lanes (marked fire apparatus roads) and fire lane marking details on plans. NFPA 1 (2012) 18.2.3.5.1
 - t. Provide a minimum 42-foot curb radius at driveways. Reference City of Marathon Turning Radius requirements NFPA 1 (2012) 18.2.3.4.3.1
 - u. Provide minimum 13 feet six (6) inches vertical clearance for all canopies and road overhangs. NFPA 1 (2012) 18.2.3.4.1.2.
 - v. Fire department access roads shall have an unobstructed width of not less than 2 feet. NFPA 1 (2012) 18.2.3.4.1.1
 - w. Dead-end fire department access roads in excess of 150 feet in length shall be provided with approved provisions for the fire apparatus to turn around. NFPA 1 (2012) 18.2.3.4.4
 - x. Marine areas shall comply with NFPA 303
9. *Landscape plans.* Including but not limited to:
- a. Open space preservation areas
 - b. Size and type of buffer yards including the species, size, and number of plants
 - c. Parking lot landscaping including the species, size and number of plants
 - d. Existing natural features
 - e. Specimen trees, or threatened and endangered plants to be retained and those to be relocated or replaced
 - f. 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.
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.*
- a. 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.
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- b. 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. **Reserved.** [Creation of Condominium Pursuant to Section 718.104\(2\), Florida Statutes. A condominium created pursuant to Section 718.104, Florida Statutes, shall comply with the following requirements of the City's Land Development Regulations:](#)

Section 102.45.C	No building erected unless adequate public utility services are available
Section 102.47.A.8	identify the location of existing utilities
Section 102.47.A.13	a statement of utility plan indicating types and provider of services
Section 102.47.A.18	street layout and traffic study
Section 102.45.A.19	lot and driveways and access management
Section 102.47.A.20	layout of utilities
Section 102.47.A.21	conceptual stormwater plan
Section 102.47.E.1	complete stormwater management plans; engineering plans (roads, streets, fire hydrants, sanitary sewer, storm water, stormwater management facilities)
Section 102.47.E.2, E.3 and E.4	landscape
Section 102.48	Minor Subdivision Improvement Requirements
Section 102.49	Major Subdivision Improvement Requirements
Section 102.50	Construction Guarantee Amount
Section 102.51	Forms of Guarantee
Section 102.52	Other Forms of Guarantee

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:

- a. City of Marathon, City Fire Marshall's Office
- b. City of Marathon, Utilities Manager
- c. Florida Department of Environmental Protection (FDEP)
- d. Florida Department of State, Division of Historic Resources
- e. Florida Department of Transportation (FDOT)
- f. Florida Keys Aqueduct Authority (FKAA)
- g. Florida Keys Electric Cooperative (FKEC)
- h. Monroe County Department of Health
- i. South Florida Water Management District (SFWMD)
- j. U.S. Army Corps of Engineers (ACOE)
- k. U.S. Fish and Wildlife Service (USFWS)
- l. Other, as applicable to the project

Section 102.79. Minor and Major Amendments to Existing Conditional Use Permits.

- A. *Minor Amendments:* A minor amendment to an existing Conditional Use permit shall only require review and approval by the Director. [The minor amendment shall be memorialized in writing to the applicant, and the Department shall maintain an official record of all amendments, which shall include a detailed analysis of compliance with the criteria in Section 102.79.A.1. through Section 102.79.A.5. of the City's Land Development Regulations.](#) Minor amendments shall be limited to:
1. The relocation of not more than 20 percent of the impervious area, as long as it complies with the standards of this article;
 2. Redesign or change in use, where there is no increase in traffic impact;
 3. The reduction or relocation of areas set aside for community open space or recreation provided that such changes do not result in a substantial change in the approved amount, boundary configuration, or character;
 4. An overall increase of no more than five (5%) percent of the total square footage covered by any structure as long as it complies with the requirements of this article;
 5. Relocation of access points.
- B. *Major Amendments:* A major amendment to an existing Conditional Use permit is any change that is not deemed to be a minor amendment in accordance with Subsection A. above. A major amendment to an existing Conditional Use permit shall be reviewed by the PC and the Council in the same manner as a new application.
- C. *Time Limits:* Unless a business license has been issued for the use, or a building permit issued for the project within a period of one (1) year from the date of conditional use approval, the conditional use approval shall expire.
- D. *Administrative Time Extensions:* The Director may grant, at his discretion, a one-time extension, for a maximum of one (1) year, if a complete and sufficient application, in accordance with Article 3, "Preliminary Procedures for All Applications", of this chapter has been submitted a minimum of 60 days prior to the expiration of the time limit.
- E. *Phasing:* Development of the conditional use shall commence as provided for in this chapter. Phased projects must include 20 percent of the project's land area in the development of each phase, unless a site-specific phasing schedule is approved by the Council. Otherwise, the development permit for the conditional use shall be subject to the time limitations of this article.
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STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON,
ORDINANCE NO. 2023-04

FINAL ORDER APPROVING CITY OF MARATHON ORDINANCE NO. 2023-04

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. 2023-04 (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 March 14, 2023 and rendered to the Department on March 20, 2023.
3. The Ordinance amends the City’s Land Development Code (“Code”) to provide necessary transparency and accountability in the actions of the City’s Planning Department. The Ordinance modifies provisions within Section 102.74 of the Code regarding the minimum application requirements for conditional use permits to clarify that condominiums created pursuant to section 718.104, Florida Statutes, are not exempt from the specified infrastructure requirements. Additionally, the Ordinance modifies Section 102.79 of the Code to ensure that minor amendments to a conditional use permit are memorialized in writing to the applicant and that the City’s Planning Department will maintain an official record and detailed analysis of such amendments.

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 1-3.1.2, Goal 9-1 and Objective 9-1.1.

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.

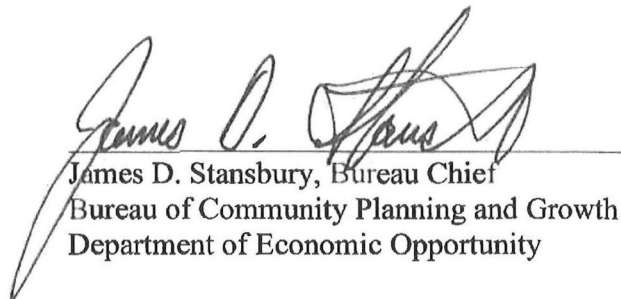
8. The Ordinance is consistent with the Principles for Guiding Development in Section 380.0552(7), Florida Statutes and is specifically consistent with the following Principles:

- (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.
- (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.
- (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. 2023-04 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 18th day of May 2023.



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
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