

ORDINANCE NO. 00-09-10

AN ORDINANCE OF THE CITY OF MARATHON (THE CITY”), FLORIDA AMENDING SECTIONS 9.5-4(H-6) HOME OCCUPATION,” 9.5-523 VARIANCE,” AND 19-218 "ALCOHOLIC BEVERAGES,” OF THE CITY CODE CODE”), AND ESTABLISHING SECTION 9.5-50, "HOME OCCUPATION APPROVALS,” OF THE CODE; AUTHORIZING THE DIRECTOR OF PLANNING TO ADMINISTRATIVELY ISSUE HOME OCCUPATION SPECIAL USE PERMITS, VARIANCES, AND ALCOHOLIC BEVERAGE USE PERMITS; ESTABLISHING A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE PLANNING DIRECTOR’S INTENT TO ISSUE A HOME OCCUPATION SPECIAL USE PERMIT, VARIANCE, OR ALCOHOLIC BEVERAGE USE PERMIT; ESTABLISHING A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR HOME OCCUPATION SPECIAL USE PERMITS, VARIANCES, AND ALCOHOLIC BEVERAGE USE PERMITS; ESTABLISHING CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS DEPARTMENT”); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW.

WHEREAS, the existing procedures in the Code for the issuance of home occupation special use permits, variances, and alcoholic beverage use permits are cumbersome and time consuming; and

WHEREAS, the City Council finds that enactment of this Ordinance furthers the objectives, goals, and policies of the City's Comprehensive Plan and the Principles for guiding development of the Florida Keys Area of Critical State Concern.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AS FOLLOWS:¹

Section 1. **Recitals.** The above recitals are true, correct, and incorporated herein by this reference.

Section 2. **Home Occupation Special Use Permits** Section 9.5-4(H6) "Home Occupation" of the Code is hereby amended to read as follows:

Sec. 9.5-4(H-6) *Home Occupation* means a business, profession, occupation or trade conducted within a residential building or accessory structure for gain or support by a resident of the dwelling, which:

- (1) ~~Is incidental and secondary to the residential use of the building;~~
- (2) ~~Does not change the essential residential character of the use;~~
- (3) ~~Employs no more than one (1) person who is a nonresident of the building;~~
- (4) ~~The resident of the dwelling unit holds a valid occupation license for the use;~~
- (5) ~~Is confined to no more than twenty (20) percent of the total floor area of the dwelling;~~
- (6) ~~Does not display or sell any stock in trade on the premises;~~
- (7) ~~Is not visible from any other residential structure;~~
- (8) ~~Does not store outside of the dwelling any equipment or materials used in the home occupation;~~
- (9) ~~Does not utilize mechanical, electrical or other equipment which produces noise;~~

¹ / Additions to existing text are shown by underline, deletions are shown as ~~strikethrough~~

~~electrical or magnetic interference vibration, heat, glare, or other nuisance outside the residential building or accessory structure; and~~

- (10) ~~Does not increase the average daily automobile trips generated by the residence in which the home occupation is located.~~

~~Such a home occupation may be conducted only after approval of the planning director, planning commission which shall hold a special use hearing on the request except in commercial fishing residential where a special use permit is not required. The planning director may deny or grant a special use permit for the home occupation with such other conditions deemed in the public interest and consistent with these requirements.~~

Section 3. Home Occupation Approvals Section 9.5-50 of the Code is hereby created to read as follows:

(1) A home occupation may be allowed in residential zoning districts only after approval of the city manager or his designee. However, in commercial fishing residential zoning districts a home occupation permit shall not be required.

(2) An application for a home occupation permit shall be submitted in a form prescribed by the city manager or his designee and in accordance with the provisions of Sections 9.5-41 through 9.5-44 of the Code.

(3) The city manager or his designee shall review the application to determine if the proposed home occupation meets the following criteria:

- (a) Is incidental and secondary to the residential use of the building;
- (b) Does not change the essential residential character of the use;
- (c) Employs no more than one (1) person who is a nonresident of the building;

- (d) The resident of the dwelling unit holds a valid occupational license for the use;
- (e) Is confined to no more than twenty (20) percent of the total floor area of the dwelling;
- (f) Does not display or sell any stock-in-trade on the premises;
- (g) Is not visible from any other residential structure;
- (h) Does not store outside of the dwelling any equipment or materials used in the home occupation;
- (i) Does not utilize mechanical, electrical or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisance outside the residential building or accessory structure; and
- (j) Does not increase the average daily automobile trips generated by the residence in which the home occupation is located.

(4) The city manager or his designee shall review the application and may deny or grant a home occupation permit. In granting a home occupation under this section, the city manager or his designee may prescribe appropriate conditions and safeguards as are in his or her opinion necessary to protect the public interest and ensure harmony with the purpose and intent of this section.

(5) Prior to issuance of the home occupation permit, the city manager or his designee shall give the applicant notice of the City's intent to issue the home occupation permit. Thereafter, in accordance with the provisions of Section 9.5-45(b) of the Code, the applicant shall provide written notice to adjacent property owners of the City's intent to issue the home occupation permit.

(6) Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on an application for a home occupation permit may be requested in writing to the city manager or his designee, by the applicant, an adjacent property owner or an aggrieved or adversely affected property owner located within three hundred (300) feet of the property that is subject to the home occupation permit. If a public hearing is requested, in accordance with the provisions of Section 9.5521(e) of the Code, the City shall schedule a public hearing of the planning commission. The provisions of Article XII of this Chapter shall govern any such hearing, and the person requesting the public hearing shall be responsible for providing notice of the hearing in accordance with the provisions of Section 9.5-45(a) of the Code. The city manager or his designee shall issue the home occupation permit if a public hearing is not requested in accordance with this subsection.

Section 4. Administrative Variances. Section 9.5-523 "Variance" of the Code is hereby amended to read as follows:

(a) Variances may be granted to the requirements contained in divisions 10, 9, 4, 11, and 14, article VII, pursuant to the standards and procedures set forth in ~~subparagraph~~ subsections (e) and (f) of this section, but only if a variance is not otherwise available as part of the conditional use approval process.

(b) Variances may be granted from the open spaces ratio requirements of sections ~~9.5-182~~ 9.5-267 and 9.5-269 according to the standards and procedures set forth in subsections (e) and (f) of this section. ~~However, no variance shall be granted under this section if such variance would result in an open space ratio less than that required by section 9.5-343.~~

(f) Notwithstanding the foregoing, the city manager or his designee may grant an administrative variance of up to twenty-five percent (25%) of the applicable provisions contained in divisions 10, 9, 4, 11 and 14, article VII of the Code as follows:

(1) An application for an administrative variance shall be submitted in a form prescribed by the city manager or his designee and in accordance with the provisions of Sections 9.5-41 through 9.5-44 of the Code.

42) The city manager or his designee in granting or denying an administrative variance under this subsection, shall consider whether the following conditions are met:

a. The proposed administrative variance is compatible with the surrounding land uses and will not be detrimental to the community as a whole; and

b. That the administrative variance maintains the stability and appearance of the community; and

c. That the administrative variance is the minimum necessary to make possible the use of the property that is the subject of the administrative variance.

That the administrative variance will not have an adverse impact on the near shore waters of the City.

e. That the administrative variance will not have an adverse impact upon the City's existing affordable housing stock.

(3) The city manager or his designee shall review the application and map deny or grant an administrative variance. In granting an administrative variance under this section, the city manager or his designee map prescribe appropriate conditions and safeguards as are in his or her opinion necessary to protect the public interest and ensure harmony with the purpose and intent of this section.

(4) Prior to issuance of an administrative variance, the city manager or his designee shall give the applicant notice of the City's intent to issue the administrative variance. Thereafter, in accordance with the provisions of Section 9.5-45(b) of the Code, the applicant shall provide written notice to adjacent property owners of the City's intent to issue the administrative variance.

(5) Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on an application for an administrative variance may be requested in writing to the city manager or his designee, by the applicant, an adjacent property owner or an aggrieved or adversely affected property owner located within three hundred (300) feet of the property that is subject to the administrative variance. If a public hearing is requested, in accordance with the provisions of Section 9.5521(e) of the Code, the City shall schedule a public hearing of the planning commission. The provisions of Article XII of this Chapter shall govern any such hearing, and the person requesting the public hearing shall be responsible for providing notice of the hearing in accordance with the provisions of Section 9.5-45(a) of the Code. The city manager or his designee shall issue the

administrative variance if a public hearing is not requested in accordance with this subsection.

(6). The city manager or his designee or the planning commission shall not grant a variance under this section to permit a use not permitted in the applicable zoning district. No non-conforming use of neighboring property, buildings or structures shall be considered as a valid basis for the granting of a variance under this section.

Section 5. Alcoholic Beverages. Section 19-218 of the Code is hereby amended to read as follows:

(d) *Procedure:* The following procedure shall be followed on any application for an alcoholic beverage use permit hereafter made:

(1) Applications for alcoholic beverage use permits shall be submitted to the city manager or his designee in writing on forms provided by the director. Such applications must be signed by the owner of the real property for which the permit is requested. Lessees of the premises may apply for such permits provided that proper authorization from the owner of the premises is given and the application for permit is cosigned by such owner.

(2) Upon receipt of a properly completed and executed application for alcoholic beverage use permit stating the exact classification requested along with the necessary fee, the city manager or his designee shall issue a notice of intent to issue the alcoholic beverage use permit if the application meets the criteria in subsection

~~(e) herein schedule a public hearing before the planning commission and shall advise the applicant of the date and place of said public hearing.~~

~~Notice of the application and of the public hearing thereon shall be mailed by the director of planning to all owners of real property within a radius of five hundred (500) feet of the affected premises. In the case of a shopping center, the five hundred (500) feet shall be measured from the perimeter of the entire shopping center itself rather than from the individual unit for which approval is sought. Notice shall also be provided in a newspaper of general circulation in the matter prescribed in section 9.5-45.~~

~~a. For the purposes of this ordinance, a shopping center shall mean a contiguous group of individual units, in any combination, devoted to commercial retail low-intensity uses, commercial retail medium-intensity uses, commercial retail high-intensity uses, and office uses, as those phrases are defined in section 9.5-4, with immediate off-street parking facilities, and originally planned and developed as a single project. The shopping center's single project status shall not be affected by the nature of the ownership of any of the individual office or commercial retail units, within the shopping center.~~

~~(3) The city manager or his designee shall review the application and map deny or grant an alcoholic beverage use permit. In granting an alcoholic beverage use permit under this section, the city manager or his designee may prescribe appropriate conditions and safeguards as are in his or her opinion necessary to~~

protect the public interest and ensure harmony with the purpose and intent of this section.

(4). Prior to issuance of an alcoholic beverage use permit, the city manager or his designee shall give the applicant notice of the City's intent to issue the alcoholic beverage use permit. Thereafter, in accordance with the provisions of Section 9.5-45(b) of the Code, the applicant shall provide written notice to adjacent property owners of the City's intent to issue the alcoholic beverage use permit.

(5). Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on an application for an alcoholic beverage use permit may be requested in writing to the city manager or his designee, by the applicant, an adjacent property owner or an aggrieved or adversely affected property owner located within three hundred (300) feet of the property that is subject to the alcoholic beverage use permit. If a public hearing is requested, in accordance with the provisions of Section 9.5521(e) of the Code, the City shall schedule a public hearing of the planning commission. The provisions of Article XII of this Chapter shall govern any such hearing, and the person requesting the public hearing shall be responsible for providing notice of the hearing in accordance with the provisions of Section 9.5-45(a) of the Code. The city manager or his designee shall issue the alcoholic beverage use permit if a public hearing is not requested in accordance with this subsection.

~~(4) At the hearing before the planning commission, all persons wish to speak for or against the application shall be heard. Recommendations or other input~~

~~from the director of planning may also be heard prior to any decision by the planning commission.~~

(e) *Criteria.* The city manager or his designee or planning commission shall give due consideration to the following factors as they may apply to the particular application prior to rendering a decision to grant or deny the requested permit:

(1) The effect of such use upon surrounding properties and the immediately neighborhood as represented by property owners within ~~five hundred~~ three hundred (~~500~~300) feet of the premises, For the purposes of this section, "premises" shall mean the entire project site of a shopping center.

(2) The suitability of the premises in regard to its location, site characteristics and intended purpose. Lighting on the permitted premises shall be shuttered and shielded from surrounding properties, and construction of such permitted properties will be soundproofed. In the event music and entertainment is permitted, the premises shall be air conditioned.

(3) Access, traffic generation, road capacities, and parking requirements.

(4) Demands upon utilities, community facilities and public services.

(5) Compliance with the ~~county's~~ City's restrictions or requirements and any valid regulations.

(f) *Approval by the City Manager or his designee or the Planning Commission.* The city manager or his designee or the planning commission may grant approval based on reasonable conditions considering the criteria outlined herein.

(g) *Where Permitted.* Alcoholic beverage use permits may be granted in the following land use districts: urban commercial; suburban commercial; suburban residential where the site abuts U.S. 1; destination resort; mixed use; industrial and maritime industries. Notwithstanding the foregoing, alcoholic beverage sales may be permitted at restaurants, hotels, marinas and campgrounds regardless of the land use district in which they are located. Nothing contained herein shall exempt an applicant from obtaining a major or minor conditional use approval when such is otherwise required by the ~~Monroe County~~ City Land Development Regulations [chapter 9.5].

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*

(i) *Appeal.* All persons aggrieved by the actions of the city manager or his designee or the planning commission is granting or denying requested alcoholic beverage permits may request an appeal hearing before the planning commission as set forth in subsection (d)(4) or a hearing officer under the hearing office appellate article (art. XIV, chap 9.5, ~~Monroe County~~ of the Code) by filing the notice required by that article within thirty (30) days after the date of the written decision of the planning commission.

(j) *Successive Applications.* Whenever any application for alcoholic beverage approval is denied for failure to meet the substantive requirements of ~~this ordinance~~ section an application for alcoholic beverage approval for all or a portion of the same property shall not be considered for a period of two (2) years unless a supermajority of the planning commission decides that the original decision was based on a material mistake of fact or that there exists changed conditions and new facts not existing at the time of the original decision, which would justify entertaining a new application "afore the expiration of the two-year period. However, in the case of a shopping center, as defined in subsection (d)(3)a. of this section, this subsection shall only apply to the commercial

retail unit within the shopping center for which approval was sought and not the entire shopping center site itself.

Section 6. Repeal of Conflicting Provisions. Any provision of the City Code that conflicts with this Ordinance is hereby repealed.

Section 7. Severability The provisions of this Ordinance are dedared 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 my part.

Section 8. Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 9. Approval by the State Department of Community Affairs. The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Manager is authorized to forward a copy of this Ordinance to the Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 10. Effective Date. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

The foregoing Ordinance as offered by Councilmember _____, who moved for its adoption. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller _____
Vice Mayor John Bartus _____
Councilman Frank Greenman _____
Councilman Jon Johnson _____
Councilman Randy Mearns _____

PASSED on first reading this 13th day of September, 2000.

The foregoing Ordinance as offered by Councilmember _____, who moved for its adoption. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller _____
Vice Mayor John Bartus _____
Councilman Frank Greenman _____
Councilman Jon Johnson _____
Councilman Randy Mearns _____

PASSED AND ADOPTED on second reading this 26th day of September, 2000.



Carol N. Chamberlain
MY COMMISSION# CC682322 EXPIRES
September 22, 2001
BONDED THRU TROY FAIN INSURANCE, INC


ROBERT MILLER, MAYOR

ATTEST:

Carol Chamberlain
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

592004\Ordinance re Administrative Approval of Development Applications-4th Draft

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON, FLORIDA
LAND DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 00-09-10

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), 380.05 (11), and 380.0552(9), *Fla. Stat.* (2000), which require the Department to enter a final order approving or rejecting land development regulations adopted by the City of Marathon ("Marathon"). This Final Order rejects in part and approves the remainder of Marathon Ordinance No. 00-09-10 as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Marathon is a unit of government within the Florida Keys Area of Critical State Concern.
2. On December 15, 2000, the Department received for review Marathon Ordinance No. 00-09-10 which was adopted by the Marathon City Council on September 26, 2000 ("Ord. 00-09-10"). Ord. 00-09-10 amended Marathon's procedures and requirements for obtaining home occupation permits, variances, and alcoholic beverage use permits.
3. Section 1 of Ord. 00-09-10 incorporates the Ordinance's recitals by reference. Section 2 of Ord. 00-09-10 amends the definition for 'Home Occupation' contained in Marathon Code Sec. 9.5-4(H-6). Section 3 of Ord. 00-09-10 amends Code Sec. 9.5-50 and sets forth procedures and requirements for obtaining a home occupation permit. Section 4 of Ord. 00-09-10

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amends Code Sec. 9.5-523 regarding the procedures and requirements for obtaining a variance and further creates new procedures for administrative review and approval. Section 5 of Ord. 00-09-10 amends Code Sec. 19-218 regarding the procedures and requirements for obtaining an alcoholic beverage use permit. Section 6 of Ord. 00-09-10 contains a conflict provision; Section 7 contains a severability provision; Section 8 contains a codification provision; Section 9 refers to review by the Department; and Section 10 provides an effective date.

4. Specifically, subsection 4(b) of Ord. 00-09-10 allows Marathon to issue variances to the open space requirements in Code Secs. 9-5.267, 9-5.269 and 9-5.343. This subsection is contrary to Objectives 102.1, 102.2, 102.3, and 205.2 of Marathon's Comprehensive Plan (including the policies thereunder).

CONCLUSIONS OF LAW

1. The Department is required to approve or reject any and all land development regulations that are enacted, amended or rescinded by any unit of government in the Florida Keys Area of Critical State Concern within 60 days of receipt by the Department. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2000).

2. Marathon is a unit of government within the Florida Keys Area of Critical State Concern. §380.0552, *Fla. Stat.*; Rule 28-29.002 (superseding Chapter 27F-8, *Fla. Admin.*; and Ch. 99-427, Laws of Fla. (1999) .

3. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* The regulations adopted

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by Ord. 00-09-10 are land development regulations, as defined by statute.

4. All land development regulations enacted, amended or rescinded by Marathon must be consistent with the Principles for Guiding Development (the "Principles"). § 380.0552(7), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). In reviewing the land development regulations for consistency, the Principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions. § 380.0552(7), *Fla. Stat.*

5. The Department has reviewed all provisions of Ord. 00-09-10 for consistency with the Principles for Guiding Development. Paragraphs (g), (h), (i), (j) and (k) of the Principles do not apply to Ord. 00-09-10.

6. The first Principal for Guiding Development proscribes: "To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation." § 380.0552(7)(a), *Fla. Stat.* It follows, *a fortiori*, that any land development regulation proposed by Marathon that is inconsistent with its own comprehensive plan undermines its capability to manage land use and development. *Rathkamp, supra*. Moreover, a local government in the Florida Keys Area which adopts land developments which are inconsistent with its comprehensive plan cannot achieve the objectives described in the other Principles for Guiding Development [paragraphs (b) through (l)], and should reasonably expect that the area of critical state concern designation will continue. *Id.* Therefore, land development regulations must also be reviewed for consistency with

Marathon's Comprehensive Plan.

7. Here, the granting of a variance to the open space requirements contained in Code Secs. 9-5.267, 9-5.269 and 9-5.343 (as per subsection 4(b) of Ord. 00-09-10) is not consistent with the Principles for Guiding Development as a whole. Specifically, this is not consistent with paragraph (a) of the Principles to the extent that it is inconsistent with the previously referenced objectives and policies of Marathon's Comprehensive Plan and regulations thereunder. This is also not consistent with paragraphs (b), (c), (e) and (l) of the Principles due to the potential adverse impacts to the natural and unique resources of the Florida Keys. Further, such potential reductions in net open space will not enhance the natural and scenic vistas of the Florida Keys or promote the aesthetic benefits of the environment pursuant to paragraph (f) of the Principles. § 380.0552(7)(a), (b), (c), (e), (f) and (l), *Fla. Stat.* Accordingly, the amendments to the Marathon Code provided for in subsection 4(b) of Ord. 00-09-10 is deemed not consistent with the Principles for Guiding Development as a whole.

8. The Department has determined that the remainder of Ord. 00-09-10 (excluding the subsection cited in the preceding paragraph) are deemed consistent with the Principles for Guiding Development as a whole. Specifically, Ord. 00-09-10 amends the procedures and regulations regarding home occupation permits and alcoholic beverage permits in furtherance of paragraph (d) of the Principles regarding promoting sound economic development.

WHEREFORE, IT IS ORDERED that subsection 4(b) of Ord. 00-09-10 is found not to be consistent with the Principles at § 380.0552(7), *Fla. Stat.*, and, therefore, is hereby REJECTED in

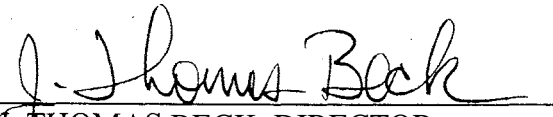
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its entirety, and shall hereby be deemed stricken from Ord. 00-09-10.

Except as referenced above, all other provisions of Ord. 00-09-10 are found to be consistent with the Principles at § 380.0552(7), *Fla. Stat.*, as a whole, and are hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.


J. THOMAS BECK, DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

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, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

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IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 255.5 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

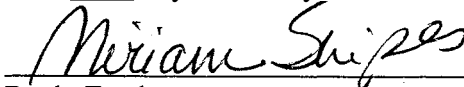
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

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 persons listed below by the method indicated this 31st day of January, 2001.



for Paula Ford
Agency Clerk

By U.S. Mail:

Honorable Robert K. Miller
Mayor, City of Marathon
11090 Overseas Highway
Marathon, FL 33050

Dina Michael
Acting City Clerk, Marathon
210 N. University Drive, Suite 301
Coral Springs, FL 33071

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA
Ken Metcalf, Community Program Administrator, DCA
Rebecca Jetton, Manager Florida Keys Field Office, DCA
Geoffrey T. Kirk, Assistant General Counsel, DCA

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March 2, 2001

MAR - 6 2001

The Honorable Mayor and Councilmembers
City of Marathon
P.O. Box 500430
Marathon, FL 33050

**Re: City of Marathon Ordinance No. 00-09-10; Home Occupations
and Administrative Variances (the "Ordinance")**

Dear Mayor and Councilmembers:

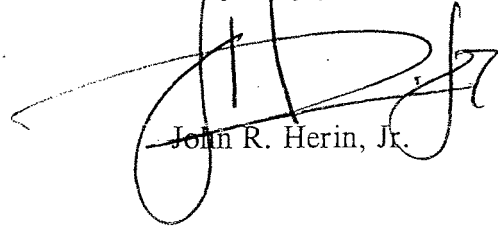
On January 31, 2001, the Department of Community Affairs (the "Department") issued Final Order number DCAOI-OR-004 approving in part and rejecting in part the Ordinance. The portion of the Ordinance rejected by the Department concerns the open space ratios for the various zoning districts in the City. Since several of the open space ratios address environmentally sensitive habitat on properties within the City, the Department determined that the amendments to this Section of the City Code was inconsistent with the Principals for Guiding Development in the Florida Keys Area Critical State Concern, as well as the City's Comprehensive Plan.

We have already advised the Department the deletion of the open space ratios as set forth in the Ordinance was an inadvertent error, and that we will be correcting this error in an upcoming ordinance. Notwithstanding the foregoing, we wish to emphasize that the Final Order approves all other provisions of the Ordinance, and as a result, City staff can now process home occupation permits and certain types of variances without the need for a public hearing unless one is requested.

The Honorable Mayor and Councilmembers
March 2, 2001
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If you have any questions concerning the Ordinance or the Final Order, please do not hesitate to give us a call.

Very truly yours,



John R. Herin, Jr.

JRH/ms
592004

cc: Craig Wrathell, City Manager
Emmet Wainwright, Assistant City Manager
Christina Nolan, Director of Planning
Sandra Lee, Planner
Donny Lang, Planner
Nina L. Boniske, Esq.