

ORDINANCE NO. 00-09-12

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING SECTIONS 9.5-45, 9.5-46, 9.5-68 AND 9.5-511 OF THE CITY CODE (THE "CODE"), REVISING THE PROCEDURES FOR PROVIDING NOTICE OF PUBLIC HEARINGS AND NOTICE OF INTENT TO ISSUE DEVELOPMENT APPROVALS, DEVELOPMENT ORDERS, AND DEVELOPMENT PERMITS AND AMENDMENTS TO THE TEXT OF THE CITY'S LAND DEVELOPMENT REGULATIONS AND ZONING MAP; 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 (THE "DEPARTMENT"); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW.

WHEREAS, the City of Marathon, Florida (the "City") desires to streamline and standardize the procedures in the Code concerning notice of public hearings, development approvals, development orders, development permits and amendments to the text of the City's Land Development Regulations (the "LDRs") and zoning map; 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

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

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

Section 2 **Notice.** Section 9.5-45 "Notice" of the Code is hereby amended to read as follows:

(a) Whenever a public hearing is required, an applicant shall provide notice of the hearing as follows:

~~(a)(1)~~ *Content of Notice:* Every required notice shall include the date time and place of the hearing, the address where known, a description of the site of the proposed development to identify it for others to locate, the legal description of the subject property with reference to the closest mile marker, a summary of the proposal to be considered, and identification of the body conducting the hearing.

~~(b)(2)~~ *Publication:* Notice of public hearings shall be given at least ~~thirty (30)~~ fifteen (15) days in advance of the hearing date by publication in the non-legal section of the local newspapers of general circulation in ~~Lower, Middle and Upper Keys of Monroe County~~ except, however, that the City notice for amendments to the text of these regulations shall be given at least ~~fifteen (15)~~ fifteen (15) days excluding Sundays and holidays in advance of the hearing by publication in either the legal or non-legal section of the local newspapers of greatest general circulation in the ~~Lower, Middle, and Upper Keys of Monroe County.~~

* **

~~(e)(3)~~ *Posting of Notice:* At least ~~thirty (30)~~ fifteen (15) days prior to any public hearing, all applicants, excluding governmental agencies, shall post the property that is the subject of the hearing with a waterproof sign at least four (4)

square feet in front surface area, which is so lettered that the date, time and location of the hearing shall be easily visible from all public streets and public ways abutting the property. Failure to provide proper notice as per the ~~Monroe County~~ City Code or other reason resulting in a delayed hearing shall result in the re-noticing and a rehearing of the original proposal, ~~and~~ which shall be at the expense of the applicant and which shall be an amount equal to double the appropriate application fee. The applicant shall remove the posted notice within ten (10) days after completion of the hearing.

~~(d)~~(4) *Mailing of Notice for Major Conditional Use Public Hearings:* Notice of a public hearing to consider a major conditional use shall be mailed by the ~~county~~ applicant to all owners of real property located within three hundred (300) feet of the property proposed to be developed as a major conditional use, including any residents of the parcel proposed for development based upon the most recent Monroe County ad valorem tax record, at least ~~thirty (30)~~ fifteen (15) days prior to a public hearing. The real property owners required to be provided notice by this subsection shall be determined with a certified survey from a Band surveyor registered in the State. The survey shall indicate all properties within a three hundred (300) feet radius of the property proposed to be developed as a major conditional use, as measured by following a straight line from the nearest property line of the proposed major conditional use to the nearest property line of adjacent properties. ~~A list of such owners, as shown by the latest available records in the Monroe County Property Appraiser's office, shall be provided by the applicant with an application for development approval.~~

~~(e) *Other Notice:* Notice of all public hearings shall be mailed by the applicant to all organizations associations and other interested persons or groups which have registered with the department of planning and paid an annual fee to defray the cost of mailing.~~

~~(f)(5) *Affidavit and Photograph of Notice:* An affidavit and photographic evidence shall be provided by the applicant at the public hearing that the applicant has complied with the notice provisions required by this section.~~

~~(6) *Cost:* The costs of written notice, publication, and mailing are to be borne by the applicant.~~

(b) Whenever an applicant is required to provide written notice of any development approval, development order, or development permit where a public hearing is not required, the applicant shall:

(1) Notify by mail all owners of real property located within three hundred (300) feet of the applicant's property, based upon the most recent Monroe County ad valorem tax record, of any development approval, development order or development permit. The real property owners required to be provided notice by this subsection shall be determined with a certified survey from a land surveyor registered in the State. The survey shall indicate all properties within a three hundred (300) feet radius of the property proposed to be developed, as measured by following a straight line from the nearest property line of the property proposed to be developed to the nearest property line of adjacent properties.

(2) The notice shall be on a form issued by the city manager or his designee.

(3) The applicant shall publish notice of the development approval, development order or development permit in a newspaper of local circulation in the City by advertisement in the legal section.

(4) The costs of publication and written notice are to be borne by the applicant.

(c) Notice for amendments to the text of these regulations shall be given in accordance with the requirements of Section 166.048, Florida Statutes.

Section 3. Hearing Procedures for Applications for Development Approval

Section 9.5-46(a) of the Code is hereby amended to read as follows:

(a) *Setting the Hearing:* When the department review coordinator determines that an application for development approval is complete and that a public hearing is required by this chapter, he shall consult with the secretary of the body or bodies required to conduct the hearing and shall select a place and time certain for the required hearing and shall ~~cause published, written and posted notices of the hearing to be given.~~ give the applicant notice of the applicant's responsibility to provide notice of the hearing in accordance with the provisions of Section 9.5-45(a) of the Code.

* * *

Section 4. Minor Conditional Uses. Sections 9.5-68(d) & (f) of the Code is hereby amended to read as follows:

* * *

(d) *Notice of Grant of a Minor Conditional Use Permit:* ~~The director of planning shall give notice of any development order granting a minor conditional~~

~~use by sending a written notice to all owners of real property located within three hundred (300) feet of the property that is subject to the minor conditional use permit, and notice of the intent to issue the minor conditional approval shall be published in newspapers of local circulation in the county by advertisement in the legal section. The costs of publication and written notice are to be borne by the applicant. Notice by the planning director shall be by regular mail on the day of the granting of the minor conditional use. Prior to issuance of the minor conditional use permit, the city manager or his designee shall give the applicant notice of the City's intent to issue the minor conditional 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 minor conditional use permit.~~

* * *

(f) *Public Hearing on an Application for a Minor Conditional Use Permit:* ~~The public hearing on an application for minor conditional use, if requested by the applicant, an adjacent property owner, or an aggrieved or adversely affected person, as defined by section 163.3215(2), Florida Statutes (1985), or any resident or real property owner, shall be conducted by the planning commission in accordance with the provisions of section 9.5-521(e). Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on an application for a minor conditional 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 minor conditional use permit. The real property owners required to~~

be provided notice by this subsection shall be determined with a certified survey from a land surveyor registered in the State. The survey shall indicate all properties within a three hundred (300) feet radius of the property proposed to be developed as a minor conditional use, as measured by following a straight line from the nearest property line of the proposed minor conditional use to the nearest property line of adjacent properties. 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 bearing, 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 minor conditional use permit if a public hearing is not requested in accordance with this subsection.

Section 5. Amendments to Chapter 9.5 of the Code. Section 9.5-511(d) of the Code

is hereby amended to read as follows:

* * *

(d) *Procedures:*

(1) *Proposals by ~~board of county commissioners~~ City Council, ~~planning commission or director of planning~~ city manager or his designee:* Proposals for amendments by the ~~board of county commissioners~~ City Council, the planning commission or the ~~director of planning~~ city manager or his designee shall be transmitted to the planning department and the development review committee for review and recommendation to the planning commission.

(2) *Proposals by affected landowners:* Any landowner or other person having a contractual interest in property desiring to petition the ~~board of county commissioners~~ City Council for an amendment to the land use district map shall be required to file an application with the ~~director of planning~~ city manager or his designee accompanied by a nonrefundable application fee as established from time to time by the ~~board of county commissioners~~ City Council to defray the actual cost of processing the application [see section 9.5-522]. The ~~director of planning~~ city manager or his designee shall transmit the proposed amendment to the planning department and the development review committee for review and preparation of a recommendation to the planning commission.

(3) *Public hearing(s):* The planning commission and the ~~board of county commissioners~~ City Council each shall hold at least one (1) public hearing on a proposed amendment to the text of this chapter or to the land use district map. Notice of a proposed amendment to either the text of this chapter or the land use map shall be given in accordance with Section 166.041, Florida Statutes.

~~(a) — Notice: Notice of a proposed amendment to either the text of this chapter or the land use map shall be provided by publication of advertisements of all required public hearings, the advertisements to be no less than one quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisements to be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited~~

~~subject matter. It is the intent that, whenever possible, the advertisements shall appear in a newspaper that is published at least five (5) days a week. The advertisements for amendments to the land use map shall be in the following form:~~

~~NOTICE OF CHANGE OF LAND USE REGULATIONS~~

~~Monroe County proposes to regulate the use of land within the area shown in the map in this advertisement.~~

~~Public hearings on the proposal will be held on (date and times) at (meeting places).~~

~~The advertisements also shall contain a geographic location map which clearly indicates the area covered by the proposal. The map shall include major street names as a means of identification of the area.~~

~~(i) The advertisement for an amendment to the text of this chapter shall state in a brief form the nature of the amendment to be considered at the public hearing.~~

~~(ii) Notice by publication shall be provided, in the case of amendments to the land use district map, at least thirty (30) days prior to any required public hearing and in the case of amendments to the text of this chapter at least fifteen (15) days prior to any required public hearings.~~

~~b. *Posting of notice:* At least thirty (30) days prior to any public hearing required under this section, the planning department shall post on the property that is~~

~~the subject of the hearing a sign or signs in accordance with the requirements of section 9.5-45.~~

~~e. *Other notice:* Notice of all public hearings shall be mailed to all organizations, associations and other interested persons or groups which have registered with the department of planning and paid an annual fee to defray the cost of mailing.~~

* * *

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 declared to be severable and if my 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 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 Miller, who moved for its adoption. This motion was seconded by Councilmember Mearns, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

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

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

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

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


ROBERT MILLER, MAYOR

ATTEST:

Carol Chamberlain

CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

MBQ

CITY ATTORNEY

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**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 00-09-12

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Marathon is a local government within the Florida Keys Area.
2. On January 31, 2002, the Department received for review City of Marathon Ordinance No. 00-09-12 which was adopted by the City of Marathon City Council on September 26, 2000 ("Ord. 00-09-12").
3. Ord. 00-09-12 amends the City's Land Development Regulations to streamline and standardize the procedures concerning notice of public hearings, development approvals, development orders, development permits, and amendments to the text of the Land Development Regulations and zoning maps.
4. Ord. 00-09-12 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2001) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

7. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2001). The regulations adopted by Ord. 00-09-12 are land development regulations.

8. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the "Principles") set forth in § 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). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 00-9-12 promotes and furthers the following Principles:

(a) 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.

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

(g) To protect the historical heritage of the Florida Keys.

(l) To protect the public health, safety, and welfare of the citizens


of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

10. Ord. 00-09-12 is not inconsistent with the remaining Principles. Ord. 00-09-12 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 00-09-12 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is 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.



SONNY TIMMERMAN, 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.

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, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

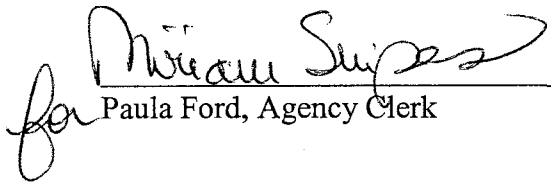
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 20th day of March, 2002.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Robert K. Miller
Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Katherine V. Selchan
City Clerk
City of Marathon
210 University Drive
Coral Springs, Florida 33071

Craig Wrathell
City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

John R. Herin, Jr.
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.
City Attorneys
City of Marathon
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee