

ORDINANCE NO. 01-07-05

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE LAND USE DISTRICT (ZONING) MAP OF THE CITY OF MARATHON, CHANGING THE ZONING FROM COMMERCIAL FISHING SPECIAL DISTRICT 15 (CFSD 15) TO MIXED USE (MU) FOR PROPERTY DESCRIBED AS A PORTION OF GOVERNMENT LOT 3, KEY VACA, SECTION 10, TOWNSHIP 66 SOUTH, RANGE 32 EAST, WITH A REAL ESTATE NUMBER OF 00103340-000100, WHICH IS LOCATED OCEAN SIDE AT MILE MARKER 49; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, pursuant to the provisions of Chapters 163, 166 and 380 *Florida Statutes*, the City of Marathon, Florida (the "City") proposes to amend the City's Land Use District (the "Map") to change the land use district designation of property owned by the Monroe County, Florida, legally described as a Portion of Government Lot 3 and a Portion of Bay Bottom South of Lot 3, Key Vaca, Section 10, Township 66 South, Range 32 East (RE No. 00103340-000100) (the "Property"); and

WHEREAS, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"), and will allow for the development of the Property in a manner consistent with the character of the surrounding area; and

WHEREAS, pursuant to Sections 9.5-24, 9.5-226 and 9.5-511 of the City Code (the "Code"), the City's Development Review Committee has reviewed the proposed Map

amendment to determine its compliance and consistency with the goals, objectives, and policies of the Plan and Section 9.5-511 of the Code; and

WHEREAS, pursuant to Chapter 163, *Florida Statutes*, and Sections 9.5-22 and 9.5-511 of the Code, the Planning Commission sitting as the Local Planning Agency has publicly considered the proposed Map amendment at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

WHEREAS, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

WHEREAS, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Section 9.5-511 of the Code and promotes and protects the health, safety and welfare of the residents of the City; and

WHEREAS, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

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

Section 2. **Approval of Map Amendment.** In accordance with State law and the Code the Map designation of the Property is amended from its current designation of Commercial Fishing Special District 15 (CFSD 15) to Mixed Use (MU).

Section 3. **Repeal of Conflicting Provisions.** Any provision of the City Code that conflicts with this Ordinance is hereby repealed.

Section 4. **Severability.** 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 5. **Transmittal.** The City Manager or designee shall timely transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the “Department”), as required by Chapters 163 and 380, *Florida Statutes*.

Section 6. **Replacement of County Map.** That upon its effective date, the revised Map shall replace the Monroe County Land Use District Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

Section 7. **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 or designee 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 8. **Effective Date.** That this Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, *Florida Statutes*. No development orders, development permits, or land uses dependent on the revised Land Use

District Map may be issued or commenced before the corresponding revised FLUM designation of the Property has become effective.

The foregoing Ordinance as offered by Councilmember Greenman, 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>Absent</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 12th day of June, 2001.

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

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

PASSED AND ADOPTED on second reading this 10th day of July, 2001.


ROBERT MILLER, MAYOR

ATTEST:

Katherine V. Selchan
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

[Signature]
CITY ATTORNEY

592004\Ordinance\Approving Rezoning - FKM - #3615.v1

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 01-07-05

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 City of Marathon Ordinance No. 01-07-05 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 March 13, 2002, the Department received for review City of Marathon Ordinance No. 01-07-05 which was adopted by the City of Marathon City Council on July 10th, 2001 ("Ord. 01-07-05"). Ord. 01-07-05 amends the City Land Use District Map by re-designating the zoning classification of a parcel of land (Florida Keys Marina) from Commercial Fishing Special District 15 (CFSD 15) to Mixed Use (MU), in order to make the Zoning Map consistent with the transitional Future Land Use Map.
3. Ord. 01-07-05 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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).

5. 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*.

6. "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. 01-07-05 are land development regulations.

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 (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). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions. § 380.0552(7), *Fla. Stat.* (2001).

8. Ord. 01-07-05 promotes and furthers the following Principles, §380.0552(7), *Fla. Stat.* (2001):

(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.

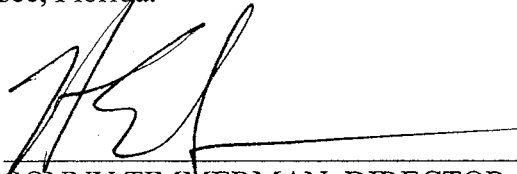
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

9. Ord. 01-07-05 is not inconsistent with the remaining Principles. Ord. 01-07-05 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 01-07-05 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.

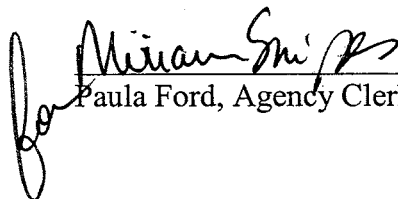
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 9th day of April, 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.
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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