

ORDINANCE NO. 01-07-08

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING OR REPEALING PROVISIONS OF SECTION 9.5-345 "ENVIRONMENTAL DESIGN CRITERIA" OF THE CITY CODE, PERTAINING TO DEVELOPMENT STANDARDS FOR PINELANDS, MANGROVES, SUBMERGED LANDS, DISTURBED AND UNDISTURBED WETLANDS, AND DISTURBED LANDS WITH SLASH PINE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CITY CODE; 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, the City of Marathon, Florida (the "City") is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, *Florida Statutes*; and

WHEREAS, Section 380.552, *Florida Statutes*, establishes Principles for Guiding Development in the FKACSC; and

WHEREAS, the Principles for Guiding Development provide that the Comprehensive Plan (the "Plan") and Land Development Regulations (the "LDRs") of the City shall protect its upland, shoreline and marine resources, its near shore waters, and the maximum well being of its residents through sound economic development; and

WHEREAS, the Plan went into effect in January, 1996; and

WHEREAS, pursuant to Policy 204.2.4 of the Plan, the City is required to amend its LDRs to adopt an ADID program to assess the functional value of disturbed wetlands in the City and develop an evaluation index to determine the appropriate level of development for disturbed wetlands; and

WHEREAS, pursuant to Section 163.3174, *Florida Statutes*, and Section 9.5-22 of the LDRs, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the LDRs set forth in this Ordinance (the "Amendments") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendments; and

WHEREAS, in accordance with Sections 163.3184 and 166.041, *Florida Statutes*, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the LDRs; and

WHEREAS, the City Council finds the adoption of this Ordinance is in the best interest of the City and complies with applicable State laws and rules; 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 FKACSC.

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. **Pinelands (High Quality).** Section 9.5-345(j) of the City Code is hereby repealed.

Section 3. **Pinelands (Low Quality).** Section 9.5-345(k) of the City Code is hereby repealed.

Section 4. **Mangroves and Submerged Lands.** Section 9.5-345(m) of the City Code is hereby repealed.

Section 5. Undisturbed Wetlands. Section 9.5-345(n) of the City Code is hereby re-lettered as 9.5-345(k), and amended to read as follows:

Sec. 9.5-345(k) Undisturbed Freshwater Wetlands:

- (1) Only utility pilings and elevated walkways shall be permitted in undisturbed freshwater wetlands; The filling of undisturbed freshwater wetlands is prohibited.
- (2) ~~All structures in freshwater wetlands shall be constructed on pilings or other supports; and~~
- (3) ~~No fill shall be permitted in any freshwater wetland.~~

Section 6. Disturbed Wetlands. Section 9.5-345(o) of the City Code is hereby re-lettered as Section 9.5-345 (m), and Section 9.5-345(o)(4) is amended to read as follows:

Sec. 9.5-345(m)(4) ~~Disturbed With Salt Marsh and Buttonwood Association~~ Disturbed Freshwater and Saltmarsh Wetlands:

Lands that meet the statutory definition of wetlands and that are classified as disturbed freshwater wetlands or disturbed saltmarsh wetlands of moderate or low functional capacity, as determined by a Keys Wetlands Evaluation Procedure (“KEYWEP”) analysis, may be filled for development. Any such fill and development shall be placed, located, designed, constructed, and mitigated in conformance with the applicable rules, regulations and Code provisions of the Army Corp of Engineers (“ACOE”), the Florida Department of Environmental Protection (“FDEP”), and the City. Approvals or exemption letters by the ACOE and FDEP shall accompany all City development applications for any proposed development in disturbed wetlands.

Section 7. Disturbed Lands with Slash Pine. Section 9.5-345(o)(5) of the City Code is hereby repealed.

Section 8. Repeal of Conflicting Provisions. Any Code or Ordinance provision inconsistent or in conflict with this Ordinance is hereby repealed.

Section 9. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall 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 10. 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 11. 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 Clerk 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 12. 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 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 on first reading this 22nd day of May, 2001

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

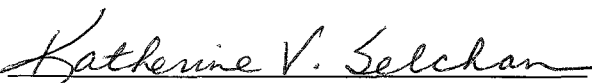
Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Absent</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

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



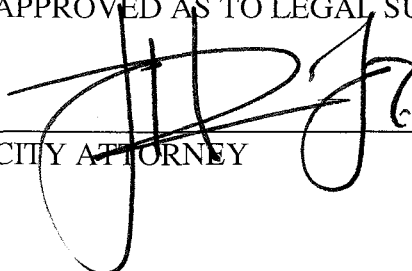
ROBERT MILLER, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY