

Sponsored by: Burnett  
Planning Commission Public Hearing Date: February 17, 2009  
City Council Public Hearing Dates: March 10, 2009 and March 31, 2009  
Enactment date: March 31, 2009

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2009-07**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 107.09 (B)(1) OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR REVISED EVALUATION CRITERIA FOR THE “RESIDENTIAL BUILDING PERMIT ALLOCATION SYSTEM (RBPAS)”;** PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; 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 recently revised its Comprehensive Plan (Ordinance 2008-08) in compliance with Chapter 163 and 380 to revise Policy 1-3.5.3 “Residential Building Permit Allocation System (RBPAS)” to amend the Development Criteria and Weighting Categories of the RBPAS evaluation criteria; and

**WHEREAS**, the Department of Community Affairs raised no “Objections, Recommendations, and Comments” concerning Ordinance 2008-08 approving it as written; and

**WHEREAS**, the City of Marathon (the “City”) enacted the City of Marathon Land Development Regulations which became effective on November 7, 2007 in Compliance with its approved Comprehensive Plan; and

**WHEREAS**, this Ordinance revises the City of Marathon Land Development Regulations to comply with the City of Marathon Comprehensive Plan, Policy 1-3.5.3.

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

~~Strikethrough~~ = deletion      **bold underline** = addition

**Section 1.**     The above recitals are hereby confirmed and adopted.

**Section 2.**     Section 107.09(B)(1) of the Land Development Regulations is hereby amended to read as follows:

**1. Dwelling Units:**

**Environmentally Sensitive Areas<sup>1</sup>  
Minor Category (0-4 points)**

Applications that propose development within the following areas will not receive any points:

	Criteria:
	<ul style="list-style-type: none"><li>• High quality hammock;</li><li>• Unscarified beach/berm;</li><li>• Saltmarsh/buttonwood wetlands;</li><li>• Palm hammock;</li><li>• Known habitat of a documented threatened/endangered species;</li><li>• Within one hundred (100) feet of any known nesting area for marine turtles;</li><li>• Within a probable or potential habitat of a threatened/endangered species; and</li><li>• Within the habitat of a wide-ranging threatened/endangered species or a species of special concern.</li><li>• Offshore Island (COBRA)</li></ul>

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<sup>1</sup> As determined by the City Biologist

**Environmentally Sensitive Areas (Continued)<sup>2</sup>  
Minor Category (0-4 points)**

Point Assignment:	Criteria:
1	Application proposes development on parcels containing moderate quality hammock as determined by a city biologist-approved habitat assessment.
2	Application proposes development on parcels containing low quality hammock as determined by a city biologist-approved habitat assessment.
3	Application proposes development on parcels that contain disturbed beach berm, with no known threatened or endangered species.
4	Application proposes development on parcels that are classified as scarified or disturbed w/exotics, with no known, probable or wide-ranging threatened or endangered species.

**Perseverance Points  
Minor Category (0-4 points)**

**Points are intended to accrue to an application based upon years spent in the Building Permit Allocation System without receiving an allocation award:**

Point Assignment:	Criteria:
<u>1</u>	<b><u>A point shall be awarded on the anniversary of the controlling date for each year that the application remains in the allocation system.</u></b>

**\* If, after gaining a perseverance point or points, an application should be revised for any reason, the perseverance point(s) gained shall be retained; however, a new controlling date shall be established. All eligible applications shall be awarded perseverance points retroactively from November 13, 2007.**

**FEMA "AE" Zone  
Moderate Category (5-9 points)**

Applications that propose development in "AE" zones may receive the following points:

Point Assignment:	Criteria:
9	An application which proposes a development within a "AE" zone on the FEMA flood insurance rate map.

<sup>2</sup> As determined by the City Biologist

**FEMA "VE" Zone  
Moderate Category (5-9 points)**

Applications that propose development in "VE" zones may receive the following points:

Point Assignment:	Criteria:
5	An application which proposes a development within a "VE" zone on the FEMA flood insurance rate map.

**Extinguish Development Rights  
Moderate Category (5-9 points)**

Applications that extinguish development rights may receive the following points:

Point Assignment:	Criteria:
5	Voluntarily reduces the allocated density of the parcel of land proposed for development by between fifty (50) and sixty-six (66) percent.
5	Aggregates a contiguous vacant, legally platted, buildable RM, RM-1, RM-2 or R-MH lot together with the parcel proposed for development.
7	Voluntarily reduces the allocated density of the parcel of land proposed for development by between sixty-seven (67) and seventy-five (75) percent.
8	Voluntarily reduces the allocated density of the parcel of land proposed for development by greater than seventy-five (75) percent.

**Local Residency  
Moderate Category (5-9 points)**

Applicants who live or work in the City of Marathon limits may receive the following points for every two (2) years of continuous residency or employment within the City of Marathon limits:

Point Assignment:	Criteria:
1	Applicant is submitted by a local resident for owner occupancy.* Applicant lives or is currently employed at business, government office or other employer within the city limits of Marathon. The maximum points available in this category are nine (9).

\*In order to be considered for this point the applicant must reside a minimum of nine (9) months per year in the City of Marathon. Such residency or employment shall be for no less than 2 years immediately prior to the date of the application. Proof of residency is required to be produced at the time of application. Such proof may include utility statements or leases.

**Lot Dedication or Cash-in-Lieu of Dedication  
Minor Category (0-4 points)**

Applicants that dedicate buildable lots or cash-in-lieu of dedication may receive the following points:

Point Assignment:	Criteria:
2	Donation of a cash fee to the City of Marathon, for the purposes of land acquisition. The required fee shall not be less than the average of the appraised value of an acre of Conservation (C) land in the City.
2	An application which includes the dedication to City of one (1) vacant, legally platted buildable lot, or at least one (1) acre of unplatted buildable land, located within a conservation area or areas proposed for acquisition by governmental agencies for the purposes of conservation and resource protection.*
4	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a vacant, legally platted, buildable lot **which is not environmentally sensitive as determined by the city biologist.***

\*An applicant may dedicate up to two lots to obtain the maximum allowable points under the Minor Category.

\*\*To be used for the purposes of perpetually income deed-restricted affordable housing

\*\*\* An applicant may dedicate a maximum of one (1) lot to obtain the maximum points under this category.

**Lot Dedication or Cash-in-Lieu of Dedication  
Moderate Category (5-9 points)**

Applicants that dedicate buildable lots or cash in lieu of dedication may receive the following points:

Point Assignment:	Criteria:
5	Donation of a cash fee to the City of Marathon, for the purposes of affordable housing. The required fee shall be established by the Council.
6	An application which includes the dedication to the City or agencies or appropriate 501 (c) (3) nonprofit organizations as approved by Council of a legally platted, buildable lot * within the City containing one or more existing affordable dwelling units.**

\* An applicant may dedicate a maximum of one lot to obtain the maximum allowable points under the Moderate Category.

\*\*To be used for the purposes of perpetually income deed-restricted affordable housing

**Provision of Affordable Housing with a Market Rate Development  
Moderate Category (5-9 points)**

Applications that provide affordable housing\*\* may receive the following points:

Point Assignment:	Criteria:
5	An application which proposes 1-3 dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.
7	An application which proposes 4-6 dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.
9	An application which proposes 7 or more dwelling units which meets the definition of affordable housing and restricts the dwelling unit to a household with a gross annual income limit as defined in Chapter 104 and Chapter 110.

\*\*To be used for perpetually income deed restricted affordable housing

**Water and Energy Conservation**  
**Moderate Category (5-9 points)**

**Applications that propose water and energy conservation may receive the following points:**

<b><u>Point Assignment:</u></b>	<b><u>Criteria:</u></b>
<u>7</u>	<b><u>Application which proposes one of the following: Primary Source Cistern of 12,500 gallons or Secondary Source Cistern of 2,500 gallons. Cistern must be connected to irrigation system.</u></b>
<u>5</u>	<b><u>Energy Performance Index of 70 or lower</u></b>
<u>5</u>	<b><u>HVAC Energy Rating of 12 or greater.</u></b>
<u>5</u>	<b><u>Application which proposes one of the following: Solar Hot Water Heater, Photovoltaic Panels, Heat Recovery Unit, or Wind Generator.</u></b>
<u>5</u>	<b><u>Application which proposes strategic landscape plan and maintenance schedule comprised of native vegetation and xeriscaping techniques that utilizes 75% of required open space, in addition to any landscape buffer requirements.</u></b>

**Structural Integrity of Construction**  
**Moderate Category (5-9 points)**

**Applications that propose high standards of structural integrity may receive the following points:**

<b><u>Point Assignment:</u></b>	<b><u>Criteria:</u></b>
<u>5</u>	<b><u>Application which proposes a minimum peak wind speed of 155 mph or greater.</u></b>
<u>5</u>	<b><u>Application which proposes a dwelling unit with the first habitable floor at least 13 inches above the Base Flood Elevation (BFE).</u></b>

**Scarified Lot without An Existing Paved or Unpaved Road or Utilities**  
**Moderate Category (5-9 points) or Major Category (10-20 points)**

Applications that propose development on a scarified lot may receive the following points:

<b><u>Point Assignment:</u></b>	<b><u>Criteria:</u></b>
5	Application which proposes a dwelling unit on a scarified lot outside of a legally platted, recorded subdivision.
9	Application which proposes a dwelling unit on a scarified lot within a legally platted, recorded subdivision.

**Scarified Lot with Existing Paved or Unpaved Road or Utilities  
Major Category (10-20 points)**

Applications that propose development on a scarified lot may receive the following points:

Point Assignment:	Criteria:
12	Application which proposes a dwelling unit on a scarified lot outside of a legally platted, recorded subdivision, but the lot or parcel proposed for development is served by existing infrastructure, which includes potable water, electricity and roadways which are paved, as determined by the Public Works Department.
13	Application which proposes a dwelling unit on a scarified lot within a legally platted, recorded subdivision, but the lot or parcel proposed for development is served by existing infrastructure, which includes potable water, electricity and roadways which are paved, as determined by the Public Works Department.

**Infill Lot with Existing Paved Roads, Water and Electric Service  
Major Category (10-20 points)**

Applications that propose development on an infill lot may receive the following points:

Point Assignment:	Criteria:
15	Application which proposes a dwelling unit within a legally platted, recorded subdivision on lot(s) located adjacent to U.S. 1 served by existing infrastructure, including potable water, electricity, and roadways which the Public Works Department determines is paved

**Infill Lot with Existing Paved Roads, Water, Electric and Sewer Service  
Major Category (10-20 points)**

Applications that propose development on an infill lot may receive the following points:

Point Assignment:	Criteria:
17	Application which proposes a dwelling unit within legally platted, recorded subdivision on lot(s) located adjacent to, or within five hundred (500') feet of U.S. 1 served by existing infrastructure, including potable water, electricity,



	sewers and roadways which the Public Works Department determines is paved.
20	Application which proposes an affordable dwelling unit (as defined by Chapter 104 and Chapter 110) within legally platted, recorded subdivision on lot(s) located adjacent to U.S. 1 served by existing infrastructure, including potable water, electricity, sewers and roadways which the Public Works Department determines is paved.

**Section 3.** The Provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 4.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, 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 sentences, sections, clauses or phrases of the 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.** The provisions of this Ordinance constitute a "Land Development Regulation" as State law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 6.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.


**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA,** this 31st day of March, 2009.

**THE CITY OF MARATHON, FLORIDA**

  
 \_\_\_\_\_  
**Mike Cinque, Mayor**

AYES: Snead, Worthington, Ramsay, Cinque  
 NOES: None  
 ABSENT: Vasil  
 ABSTAIN: None

**ATTEST:**

  
 \_\_\_\_\_  
 Diane Clavier  
 City Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2009-07

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**FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2008), 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 ("City") is a local government within the Florida Keys Area.
2. On May 4, 2009, the Department received for review City of Marathon Ordinance No. 2009-07 that was adopted by the City of Marathon Board of City Commissioners on March 31, 2009 ("Ord. 2009-07"). The purpose of Ord. 2009-07 is to amend Section 107.09 (B)(1) of the Land Development Regulations to reflect the revised evaluation criteria of the Residential Building Permit Allocation System established in Comprehensive Plan Policy 1-3.5.3.
3. Ord. 2009-07 is consistent with the City's 2010 Comprehensive Plan: Policy 1-3.5.3 Residential Building Permit Allocation System; Policy 1-2.2.3 Reduce Potential Loss of Life and Property Damage; and Objective 1-3.5 Manage Growth Rate within the City.

**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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2008).
5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2008) and Rule 31-31.002 (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.* (2008). The regulations adopted by Ord. 2009-07 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”) as 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.

8. Ord. 2009-07 is consistent with the following Principle:

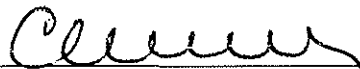
- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (h) To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments.
- (k) To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan.
- (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. 2009-07 is neutral with respect to the remaining Principles. Ord. 2009-07 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2009-07 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.



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CHARLES GAUTHIER, AICP  
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.

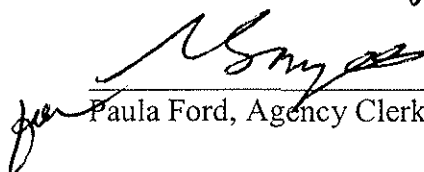
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 31-106.201(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 15<sup>th</sup> day of July, 2009.

  
\_\_\_\_\_  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Mike Cinque, Mayor  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Diane Clavier, City Clerk  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

Mike Puto  
City Manager  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Jimmy Morales, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
Suite 2200 Museum Tower  
150 West Flagler Street  
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator  
Richard E. Shine, Assistant General Counsel