

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

**CITY OF MARATHON, FLORIDA
ORDINANCE 2009-09**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 107.07 G OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR TEMPORARY PROCEDURES FOR THE AWARD OF BPAS ALLOCATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; 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 (the "City") enacted the Building Permit Allocation System ("BPAS") limiting the type and number of building permits allocated in the City; and

WHEREAS, BPAS limits the number of building permits which may be issued by the City for the construction of new dwelling units; and

WHEREAS, the City recognizes that there are currently significant economic constraints moderating the financing and construction of new homes; and

WHEREAS, the City wants to help stimulate the local economy by providing a temporary mechanism in BPAS to ensure that all new allocations result in building activity; and

WHEREAS, the City wants to create such a temporary procedure without penalizing those in BPAS who wish to defer their applications.

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 107.07 G of the Land Development Regulations is hereby amended to read as follows:

G. The Council shall hold a public hearing and shall approve or amend the assigned score; and based upon the recommendation of the Director, Council shall establish a ranking for each development application based upon the application score and controlling date and time. The Council shall finalize the evaluation rankings within 60 days following initial receipt of the Director's evaluation ranking, report and recommendations.

1. Temporary Procedure: This temporary procedure shall remain in effect for two (2) years from the effective date of the adoption ordinance, (22 June, 2009). This temporary procedure shall "sunset" at that time unless after review by the Planning Commission, the Council elects to extend by Resolution the operational time period of the ordinance.
2. Upon establishment of a ranking for each BPAS applicant as defined in this Section, the Director or his designee shall contact BPAS applicants in sequence starting from the highest ranked applicant on the ranking list to determine readiness to build. Readiness to build shall only be determined as a written stated willingness by the applicant that they will accept the BPAS allocation and will pick up a building permit within the 90 days specified in this Section.
3. Applicants who indicate that they are willing to build shall be issued a notice of allocation as further defined in this Section. No more than 15 allocations shall be made in all categories per BPAS period, unless otherwise specified by the Council as provided for elsewhere in this Section.
4. BPAS applicants who elect to accept a BPAS allocation under this temporary procedure will be required to strictly adhere to the provisions of Section 6-54, Application procedure for permits under allocation system, City of Marathon, Code of Ordinances. Failure to comply with this section of the Code will result in the immediate and irreversible revocation of the building permit and the BPAS allocation will be offered to the next available BPAS applicant who is ready to build. No permit extensions will be allowed under the temporary procedures unless substantial construction with approved inspections has already occurred and the permit holder can demonstrate a hardship under the provisions of Section 6-54 f.
5. Applicants who indicate that they are not prepared to proceed shall retain their relative rank in the BPAS ranking after those applicants who have indicated that they are willing to build and are issued a notice of BPAS allocation award are removed from the list.

6. As in the normal BPAS ranking process, BPAS applicants will be re-ranked in future BPAS allocation periods based on existing criteria in this Section and the receipt of new or removal of old applicants. Otherwise, this temporary procedure shall apply for all BPAS allocation periods during which the procedure is in effect.
7. For any period in which an applicant chooses to defer his or her acceptance of an allocation, that length of time will be subtracted from the total time in the BPAS allocation system for purposes of determining Administrative Relief.

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.

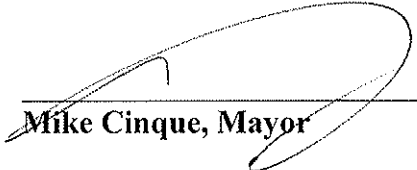
Section 4. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases 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, Vasil, Cinque
NOES: None
ABSENT: None
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. 2009-09

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. 2009-09 that was adopted by the City of Marathon Board of City Commissioners on March 31, 2009 ("Ord. 2009-09"). The purpose of Ord. 2009-09 is to amend Section 107.07 G of the Land Development Regulations to provide for temporary procedures to allow the City to contact each BPAS applicant during the allocation period to determine the applicant's ability to begin construction and automatically defer BPAS applicants that are not ready to build.
3. Ord. 2009-09 is consistent with the City's 2010 Comprehensive Plan: Objective 1-3.5 Manage Growth Rate within the City; Policy 1-3.5.2 Residential Allocation Rollover; Policy 1-3.5.4.3 Residential Building Permit Allocation System.

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. 2009-09 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. 2009-09 is consistent with the following Principle:

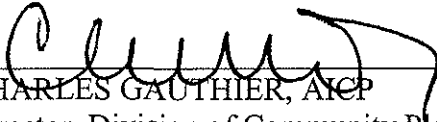
- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, dune ridges and beaches, wildlife, and their habitat.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

9. Ord. 2009-09 is neutral with respect to the remaining Principles. Ord. 2009-09 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2009-09 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.



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.

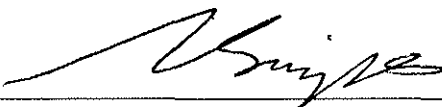
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 11th day of June, 2009.



for 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