

Sponsored by: Burnett
Planning Commission Public Hearing Date: March 16, 2009
City Council Public Hearing Dates: March 31, 2009 and April 14, 2009
Enactment date: April 14, 2009

**CITY OF MARATHON, FLORIDA
ORDINANCE 2009-15**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING TABLE 103.00.1, TABLE 103.15.1, AND TABLE 103.15.2 OF THE LAND DEVELOPMENT REGULATIONS; AMENDING THE NAME OF THE PUBLIC FACILITY FUTURE LAND USE DESIGNATION TO PUBLIC USES AND PROVIDING FOR AFFORDABLE DENSITY IN CERTAIN ZONING DISTRICTS; AND TO CORRECT ERRORS IN DENSITY CALCULATIONS; 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 2008-07) in compliance with Chapter 163 and 380 to revise Policy 1-3.2.1 “Allocated Density Defined” to permit Affordable Residential Density in the Conservation (C), Industrial (I), Public Uses (PU), Recreation (R), and Residential Low (RL) FLUM categories, as shown in Table 1-1 “Future Land Use Densities and Intensities”; and

WHEREAS, the Department of Community Affairs raised no “Objections, Recommendations, and Comments” concerning Ordinance 2008-07 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 1-3.2.1 and Table 1-1 Future Land Use Densities and Intensities;

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. Table 103.00.1, Table 103.15.1 in part and Table 103.15.2 in part of the Land Development Regulations are hereby amended to read as follows:

**Table 103.00.1
Future Land Use Designation and Associated Zoning District**

Future Land Use Designation	Zoning District
Airport	Airport (A)
Conservation	Native Area (C-NA) Offshore Island (C-OI) Residential Low – Conservation (RL-C)
Industrial	Industrial-General (I-G) Industrial-Maritime (I-M)
Mixed Use Commercial	Mixed Use (MU) Mixed Use – Maritime (MU-M)
Public Facility <u>Uses</u>	Public (P)
Recreation	Park and Recreation (PR)
Residential High	Residential-MH (R-MH) Residential High (RH)
Residential Medium	Residential Medium (RM) Residential Medium – 1 (RM-1)* Residential Medium - 2 (RM-2)*
Residential Low	Residential Low (RL)

* Coco Plum subdivision only

**Table 103.15.1
Uses by Zoning District**

Uses in bold have specific conditions listed in Chapter 104

ZONING DISTRICT	C-NA	C-OI	RL-C	RL	RM	RM-1	RM-2	R-MH	RH	MU	MU-M*	I-G	I-M*	A	P	PR
Accessory buildings and accessory uses			P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory Business /Professional Office											A	A	A			
Adult day care			C	C	C	C	C	C	C	C						
Adult uses including product sales and entertainment												C				
Affordable Housing Unit	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P
Airport public uses <5,000 square feet														P		
Airport public uses >5,000 square feet														C		
Alcohol Beverage										L	L	L	L			
Amusement or Sea life parks										C	C		C		C	
Artisan and photography studios and galleries										P	P					
Auto, RV, and truck storage										C		C				
Bars and taverns										C	C					
Beekeeping	P	P	P	P												
Boardwalk/Observation Platform	A	A	A	A	A	A	A	A	A	A	A		A		P	P
Boat Ramp					C			C		C	C	C	C		C	C
Boat storage +10 units, Dry											C	P	P		P	
Boat storage +10 units, wet											C	P	P		P	
Boat storage <10 units, dry										C	P	P	P		P	

Table 103.15.2

DENSITY, INTENSITY AND DIMENSIONS FOR ZONING DISTRICTS TABLE INSET:

	A	C-NA	C-OI	I-G	I-M	MU	MU-M	P	PR	RH	R-MH	RM	RM-1	RM-2	RL	RL-C
Density Range (units per acre)		<u>.25</u>	<u>0.1</u>	<u>5-10</u>	<u>5-10</u>	6-15	6-15	<u>10-25</u>	1/ 4ac	8-25	8-25	5-10	4	5	± <u>0.5</u>	<u>.25</u>
Market Rate (maximum)		.25	0.1			6	6		<u>.25</u>	8	8	5	4	5	0.5	0.25
Affordable (maximum) 3		N/A <u>.25</u>	N/A <u>0.1</u>	5-10	5-10	15	15	10-25	<u>.25</u>	15-25	25	10	4	5	N/A <u>0.5</u>	N/A <u>.25</u>
Transient						5-25		3- 25	10	0	0	0	0	0	0	0
Min lot area per unit (square feet)																
Market Rate		4 acres	10 acres			7,260	7,260		10,890 <u>4 acres</u>	5,445	5,445	8,712	10,000	8,712	2 acre	4 acres
Affordable		4 acres	10 acres	2000 <u>4,356</u>	2000 <u>4,356</u>	2,904	2,904	<u>1,742</u>	<u>4 acres</u>	1,742	1,742	4,356	10,000	8,712	2 acre	4 acres

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.

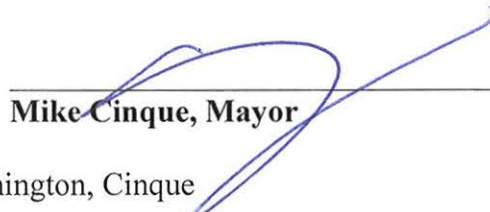
Section 4. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases 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 14th day of April, 2009.


THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Vasil, Snead, Ramsay, Worthington, 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. 2009-15

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 15, 2009, the Department received for review City of Marathon Ordinance No. 2009-15 that was adopted by the City of Marathon Board of City Commissioners on April 14, 2009 ("Ord. 2009-15"). The purpose of Ord. 2009-15 is to amend Table 103.00.1, Table 103.15.1, and Table 103.15.2 of the Land Development Regulations, amend the Name of the Public Facility Future Land Use Designation to Public Uses and providing for Affordable Density in certain zoning districts, and to correct errors in Density Calculations.

3. Ord. 2009-15 is consistent with the City's 2010 Comprehensive Plan: Policy 1-3.2.1 Allocated Density Defined; Policy 1-3.1.4 Future Land Use Categories; and Policy 1-3.2.7 Restrict Density and Intensity of Development.

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. 2009-15 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. 2009-15 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.
- (j) To make available adequate affordable housing for all sectors of the population 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.

9. Ord. 2009-15 is neutral with respect to the remaining Principles. Ord. 2009-15 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2009-15 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.

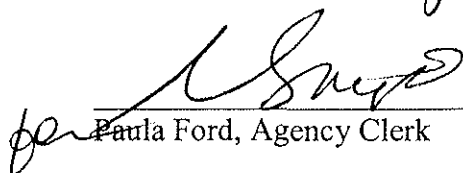
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 18th day of ~~June~~ ^{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