

Sponsored by: Hernstadt
Introduction Date: June 21, 2010
Public Hearing Dates: July 13, 2010
July 27, 2010
Enactment date: July 27, 2010

**CITY OF MARATHON, FLORIDA
ORDINANCE 2010-007**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTIONS 6-52(a) AND 6-52(b) OF THE CODE OF ORDINANCES OF THE CITY OF MARATHON, FLORIDA, AUTHORIZING A FILL PERMIT ON PROPERTY WHICH DOES NOT HAVE A PERMIT FOR A PRINCIPLE STRUCTURE OR USE IF SPECIFIED REVIEW CRITERIA ARE MET; ESTABLISHING SPECIFIED REVIEW CRITERIA, 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, Florida (the “City”) is in the process of constructing a City-wide wastewater collection, treatment and disposal system pursuant to Chapter 99-395 *Laws of Florida* (the “Project”); and

WHEREAS, the Project has generated a substantial amount of inorganic soil material suitable for use as fill; and

WHEREAS, Section 6-52(a) of the Code of Ordinances of the City of Marathon, Florida (the “Marathon Code”) prohibits the placement of fill on any property in the City without a City building permit; which must be in conjunction with the establishment of a use or structure allowed in the zoning district where the property is located; and

WHEREAS, the City desires to amend the Marathon Code to authorize the placement of fill on property in the City without a building permit or the establishment of a use or structure allowed in the zoning district where the property is located if specified review criteria is met.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS: ¹

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

Section 2. Section 6-52(a) of the Marathon Code is hereby amended to read as follows:

Sec. 6-52. Building or site preparation permits required; exceptions.

(a) A building or site preparation permit shall be required for the following type of work:

(1) Site preparation involving land clearing (including invasive plant species), the placement of fill, commercial demolition, blasting, excavation, or the storage of materials.

a. A site preparation permit for the placement of fill on a parcel without a principal use or structure shall only be issued if the site meets the following criteria as determined by the City Biologist, Planning Director and Public Works Director:

i. The property owner provides a boundary survey showing existing elevations, proposed elevations, flood zone boundaries, the site to be filled, and a stormwater management plan which provides that all stormwater is retained on site in accordance with Article 11 of Chapter 107 of the Marathon Code of Ordinances; and

ii. The site in question is not zoned either Conservation Native Area (C-NA), Conservation – Offshore Island (C-OI), or Residential Low – Conservation) (RL-C); and

iii. The site contains only Class III habitat types as defined in Section 106.16 and Table 106.16.1 of the City Land Development Regulations and would not require a habitat analysis as described in Section 106.18 or KEYWEP Score as is described in Sections 106.27. Thus, the site could have no wetlands. Properties on manmade canals which have a narrow band of shoreline mangroves may be permitted for the placement of fill so long as the fill is placed no closer than twenty (20) feet from landward edge of those mangroves and otherwise meets all other sections of the Code and Land Development Regulations; and

iii. The placement of fill on the site does not require a federal or state dredge and fill permit; and

iv. No fill may be placed in a “VE” flood zone as described in Article 12 of Chapter 107 of the Marathon Code of Ordinances; and

v. The placement of fill on the site does not affect existing or proposed stormwater structures or functions within the City’s right-of-way; and

iv. All other Sections of the City Land Development Regulations are met.

Section 3. Section 6-52(b) of the Marathon Code is hereby amended to read as follows:

(b) A building or site preparation permit shall not be required for the following type of work:

Section 4. The provisions Section 6-52 (a) (1) a. shall be reviewed by the Marathon City Council within two years of the effective date of this ordinance for potential sunset of its provisions.

Section 5. The provisions of the Marathon Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed for the term of this Ordinance.

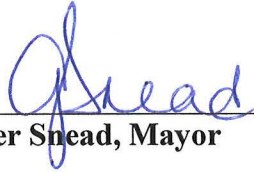
Section 6. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases 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 7. 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 8. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

PASSED AND ADOPTED ON SECOND READING this 27th day of July, 2010.


THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

AYES: Ramsay, Keating, Worthington, Cinque, Snead
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. 2010-07

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. (2009), 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 August 27, 2010, the Department received for review City of Marathon Ordinance No. 2010-07 (“Ord. 2010-07”) that was adopted by the City of Marathon Board of City Commissioners on July 27, 2010. The purpose of Ord. 2010-07 is to amend Sections 6-52(a) and 6-52(b) of the Code of Ordinances of the City of Marathon, Florida. The amendment proposes to allow fill on property including fill on a narrow band of shoreline fringe mangroves along man made water bodies and canals that does not have a building permit or a principle structure if specific review criteria are met and a boundary survey with existing and proposed elevations, flood zones, the area to be filled and a stormwater management plan is submitted.
3. Ord. 2010-07 is consistent with the City’s 2010 Comprehensive Plan including Policy 4-1.2.1 Establish Regulations to Protect and Manage Conservation Lands and Natural Resource Systems; Policy 4-1.2.2 Protect Plant and Animal Species; Policy 4-1.3.1 Protect, Conserve and Enhance Coastal Resources, Wetlands, Water Resources, Living Marine Resources, Wildlife Habitats and Other Natural Resources and the Environmental Health of Florida Bay, the Atlantic Ocean and All Surface and Ground Waters; Policy 4-1.5.2 Require Removal of Invasive Exotic

Vegetation; Policy 4-1.5.4 Limit Clearing of Native Vegetation; and Policy 4-1.5.13 Protect Natural Resources through Development Review.

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. (2009).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, Fla. Stat. (2009) 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. (2009). The regulations adopted by Ord. 2010-07 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. 2010-07 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.
- (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 (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (e) To limit the adverse impacts of development on the quality of water throughout the Florida Keys
- (f) To enhance natural scenic resources, promote the aesthetic benefits of the natural environment, and ensure that development is compatible with the

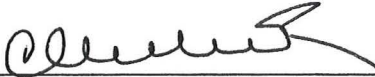
unique historic character of the Florida Keys.

9. Ord. 2010-07 is neutral with respect to the remaining Principles. Ord. 2010-07 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2010-07 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.

 10/11/10

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.

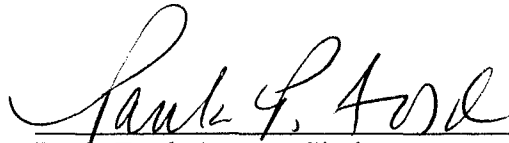
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 12th day of October, 2010.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Ginger Snead, 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

John R. Herin, 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