

Sponsored by: Hernstadt
Introduction Date: October 18, 2010
Public Hearing Dates: November 9, 2010
November 23, 2010
Enactment date: November 23, 2010

CITY OF MARATHON, FLORIDA
ORDINANCE 2010-12

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 107.04 C, ADMINISTRATIVE RELIEF POOL, PROVIDING DETAILED PROCEDURES FOR THE CONSIDERATION AND DISPERSMENT OF ADMINISTRATIVE RELIEF DWELLING UNITS ALLOCATIONS; PROVIDING A PROCEDURE FOR REVIEW OF ENVIRONMENTALLY SENSITIVE PROPERTIES SUBJECT TO ADMINISTRATIVE RELIEF; 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 has adopted a Building Permit Allocation System (BPAS) which provides an allocation pool for "Administrative Relief" applicants; and

WHEREAS, the Florida Department of Community Affairs has requested through its Rule Making process that the City provide the list of properties which will become eligible for administrative relief and which are environmentally sensitive to the state and other acquisition entities for potential land purchase prior to any decision to authorize a BPAS allocation; and

WHEREAS, City has determined that this proposed Land Development Regulation (LDR) is consistent with the City's existing Comprehensive Plan, Goals, Objectives, and Policies, and

WHEREAS, the City has determined that the proposed ordinance provides additional procedural detail to the process in the LDRs for authorizing BPAS allocations for Administrative Relief applications;

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.

For the purpose of administration of this article, Council hereby creates the following described allocation pools:

Additions to existing text are shown by bold and underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. Amend Section 107.04 C. as follows:

Section 107.04 Establishment of Allocation Pools

C. Administrative Relief Pool:

~~C. — *Administrative Relief Pool:* BPAS administrative relief allocations are distributed by the Council at their discretion following request from an applicant, and subject to a finding through the administrative relief process that all of the following conditions exist:~~

- ~~1. — That the applicant has applied for an allocation, but has not received an allocation for residential development during four (4) consecutive years in the BPAS, during which the ownership has not changed and the application has not been withdrawn;~~
- ~~2. — The issuance of an allocation, pursuant to the recommendation of the Planning Director, will not adversely affect the public interest or the purposes of the Plan;~~
- ~~3. — Is the most appropriate option for the use of the property. Such options may include award an allocation, purchase of the property or other agreed option;~~
- ~~4. — Allocations are available in the BPAS administrative relief pool; and that the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Marathon, except the provisions of this Division.~~

1. The BPAS Administrative Relief Pool is hereby created. At the recommendation of the Planning Director and at the discretion of the City Council, a percentage not to exceed fifty percent (50%) of the annual dwelling unit allocations described in Section 107.02 above may be distributed to the Administrative Relief Pool based upon the potential number of applicants for administrative relief in any given year.

2. BPAS administrative relief allocations are distributed by the Council at their discretion following a request from an applicant, and subject to a finding through the administrative relief process that all of the following conditions for eligibility exist:

(a) Conditions for Eligibility:

- (i) That the applicant has applied for an allocation, but has not received an allocation for residential development during four (4) consecutive years in the BPAS, during which the ownership has not changed and the application has not been withdrawn. The start of the first year is the closing date of the BPAS allocation period during which the BPAS application first became eligible for a BPAS allocation award;**
- (ii) That conditions described in Section 107.04 C. 3. below have been met;**
- (iii) That the issuance of an allocation, pursuant to the recommendation of the Planning Director, is the most appropriate option for the use of the property and will not adversely affect the public interest or the purposes of the Plan;**
- (iv) That allocations are available in the BPAS administrative relief pool;**

and that the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Marathon.

3. Procedures for Provision of Administrative Relief Allocation

(a) On a semi-annual basis, at the closing of each BPAS bi-annual allocation period, and approximately one (1) year prior to the four (4) year anniversary of any uninterrupted BPAS application as described in Section 107.04 1. (a) above, City staff, in coordination with the City of Marathon Land Acquisition Advisory Committee, will make a determination for each application on the BPAS allocation waiting list as to whether:

- it will be eligible to apply for administrative relief within approximately one (1) year and
- the property in question is either environmentally sensitive, of interest to the City for some a other public purpose, such as workforce housing, or of no current public interest.

(b) City staff will confirm the environmental characteristics of all properties that will become eligible for administrative relief within one (1) year through a review of the BPAS application, available GIS aerial photography and map layers, and on-site visits.

(i) Any property that:

- has a KEPWEP score higher than 5.5
- is on the most current version of the USFWS Injunction list, and/or
- is on the Florida Forever Acquisition list, and/or
- exhibits habitats including mangroves, saltmarsh and buttonwood, or hardwood hammock

shall be put on a list of properties considered as environmentally sensitive and of potential interest for acquisition for conservation purposes.

a. The City shall provide the list of environmentally sensitive properties to the Florida Department of Environmental Protection, Division of State Lands (Florida Forever), the Monroe County Land Authority, and other land acquisition agencies deemed appropriate by the Planning Director, thereby giving those agencies an opportunity to initiate acquisition procedures if deemed appropriate; and

b. Any properties that another acquisition agency declines an interest to purchase, will be placed on a list for suggested acquisition at the time that the property actually becomes eligible for Administrative Relief.

(ii) Any properties that are considered of potential value for another public purpose will be placed on a list for suggested acquisition at the time that it actually becomes eligible for administrative relief.

(iii) Any properties that are not deemed environmentally sensitive and which would not be recommended for purchase for some other public purpose will be put on a list of properties that would be recommended

to receive a BPAS allocation from the Administrative Relief Pool at the time that the property actually becomes eligible for Administrative Relief.

(4) Notification of eligibility.

(a) Within 30 days of the finalization of evaluation rankings by the City Council, any applicant determined to be eligible for administrative relief pursuant to subsection (3) (a) of this section shall be notified of the applicant's eligibility for administrative relief by certified mail, return receipt requested.

(5) Application.

(a) An application for administrative relief shall be made on a form prescribed by the Planning Director no earlier than the conclusion of the fourth year in BPAS allocation process and no later than 180 days following the close of the allocation period when deemed eligible.

(6) Public Hearing

(a) Upon receipt of an application for administrative relief, the City shall notice and hold a public hearing at which the applicant will be given an opportunity to be heard. The City Council may review the relevant application material, applicable evaluation ranking, hear testimony from the applicant, city staff and others as may be necessary in its deliberations.

(7) Actions by City Council – In making a determination in review of an application for administrative relief, the City Council may:

(a) offer to purchase the property at its fair market value as its preferred action if the property is considered environmentally sensitive; or

(b) grant the applicant an allocation award for all or a number of dwelling units requested in the next succeeding allocation period or extended pro rata over several succeeding quarterly allocation periods as the preferred action for buildable properties not meeting any of the criteria in subsection (f)(1) of this section; or

(c) Suggest or provide such other relief as may be necessary and appropriate.

(8) Limit of Allocation under Administrative Relief

(a) The number of allocations that may be awarded under administrative relief in any allocation period shall be no more than the number available in the Administrative Relief Pool at the close of the BPAS allocation period.

Section 3. 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 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.

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Section 6. 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 23RD DAY OF NOVEMBER , 2010.

THE CITY OF MARATHON, FLORIDA



Ginger Snead, Mayor

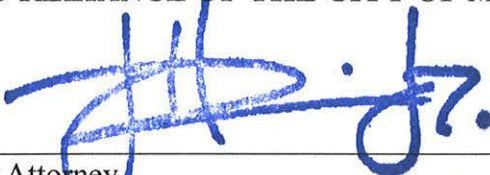
AYES: Cinque, Keating, Worthington, Ramsay, Snead
NOES: None
ABSENT: None
ABSTAIN: None

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