

Sponsored by: Hernstadt  
Introduction Date: March 21, 2011  
Public Hearing Dates: March 29, 2011  
April 12, 2011  
Enactment date: April 12, 2011

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2011-04**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 106.28, TABLE 106.28.1 'WATER RESOURCE AND WETLAND BUFFERS;' 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**, it is the goal of the City of Marathon to make its regulations clear, concise, readable, and understandable; and

**WHEREAS**, the purpose of the proposed Ordinance is to further consolidate Table 106.28.1 of the Land Development Regulations and to clarify sections of the LDRs concerning shoreline setbacks as set out in Table 106.28.1; 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,

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

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

**Section 2.** Revise the following sections of the City of Marathon Land Development Regulations as prescribed:

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 ~~struckthrough~~.

**Section 2.** 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Marathon Code and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed for the term of this Ordinance.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 3.** 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.

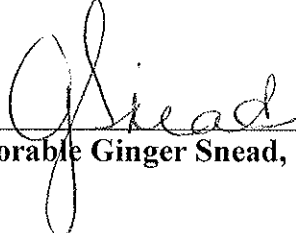
**Section 4.** The provisions of this Ordinance constitute a “land development regulation” as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK**

**Section 5.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

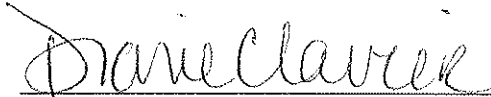
**PASSED AND ADOPTED ON SECOND READING** this 12<sup>th</sup> day of April, 2011.

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Honorable 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:**

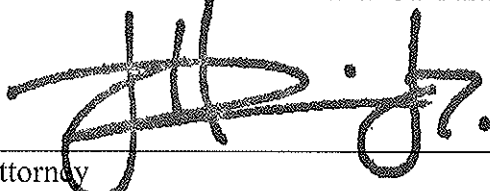
  
\_\_\_\_\_  
City Attorney

Table 106.28.1

Water Resource and Wetland Buffers

Type of Development/Protected	Resource Buffer Distance (ft)	Buffer Standards
Principal structure on manmade canals, channels, basins and lawfully altered shorelines.	20	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
<b><u>Small lots less than 4500 square feet principal structure on manmade canals, channels, basins and lawfully altered shorelines</u></b>	<b>10</b>	<b><u>Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.</u></b>
Principal structure on open water for all unaltered or unlawfully altered shorelines.	50	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Principal structure on open water where original slope landward of the water has been significantly altered by filling, where no bulkhead, significant armoring or mangrove fringe exists.	30 minimum	Measured from the MHWL. Minimum buffer criteria: native vegetation exists or is planted and maintained in at least ten (10) feet width across the entire shoreline, otherwise the setback shall be fifty (50') feet. <b>Shall not be available for recognized Marine Turtle nesting habitats.</b>
<b><u>Principal structure on open water where original slope landward has been significantly altered by filling but a mangrove fringe exists that is contiguous from side lot line to side lot line and is at least ten (10) feet wide at the root zone.</u></b>	<b>30 minimum</b>	<b><u>Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.</u></b>
Principal structures on in-fill lots, along open water shorelines not adjacent to manmade canals, channels or basins, and which have been altered by the legal placement of fill, which are surrounded by significant development where principal structures are set back less than fifty (50) feet from the MHWL	20 minimum	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward; City Planning Director may evaluate community character, environmental features and setbacks on adjacent developed properties within two parcels on either side of the proposed development and may allow buffer as far back as practicable or in line with adjacent principal structures. If existing pattern of setback is greater than thirty (30) feet, a buffer of fifty (50) feet is required. <b>Shall not be available for recognized Marine Turtle nesting habitats.</b>
Marine Turtle Nesting habitat	<b>50-100 minimum</b>	Measured from the MHWL or the landward extent of the beach berm. No development other than pile-supported docks and walkways within 50 feet of any portion of the beach berm. All other development: 100 feet <b><u>Setback measured from the nesting area which is the first fifty (50) feet from MHWL for a total one hundred (100) feet from MHWL or the landward toe of the most landward beach berm not to exceed one hundred (100) feet from MHWL.</u></b>
Accessory structure <sup>1</sup> on all manmade canals, channels, basins and lawfully altered shorelines.	10 minimum**	Measured from MHWL.
Accessory structure on all unaltered shore- lines.	25 minimum**	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Accessory structure <sup>1</sup> ***on all significantly filled shorelines on open water with a contiguous mangrove fringe.	15 minimum**	Measured from the MHWL or the landward extent of the root system of the mangroves, whichever is further landward.
Accessory structure <sup>1</sup> ***on significantly filled open water shorelines where there is no significant armoring, continuous mangrove fringe or bulkhead.	15 minimum**	Provided that native vegetation exists or is planted and maintained in at least a ten (10) foot wide buffer across the entire shoreline or must maintain setbacks for an unaltered shoreline. Measured from the landward edge of the shoreline buffer
Wetlands, except for tidally inundated mangrove fringes, on properties classified as disturbed or scarified	25 minimum* <b>50</b>	May be reduced to a minimum <b><u>of twenty five (25) feet to allow for 2,000 sq ft of principal structure regardless of buildable area if the entire buffer area is planted and maintained in native vegetation with a site-suitable management plan and placed under conservation easement. if fifty (50) foot setback results in less than 2,000 sq ft of principal structure of reasonable configuration.</u></b>

<u>Properties classified as scarified adjacent to wetlands</u>	25 minimum* <b>50</b>	Buffer may be reduced to allow for up to 2,000 square feet of principal structure footprint of reasonable configuration. <b><u>May be reduced to minimum of twenty five (25) feet without regard to buildable area if entire setback is planted and maintained in native vegetation with a site suitable stormwater management plan and placed under conservation easement.</u></b>
Wetlands that include listed habitat or animal species	25 minimum*	Buffer may be reduced to allow for up to 2,000 square feet of principal structure footprint of reasonable configuration.

*Footnotes for Table 106.28.1*

\* If the buffer precludes all economically viable use of a particular property, development as defined in the F.S. 380.05, may be allowed within the buffer in accordance with Plan policy 4-1.4.2.

\*\* Exception: docks, docking facilities, utility pilings, fences, boat ramps, slips and basins; seawalls, retaining walls, riprap, bulkheads, walkways, water observation platforms and walkways.

\*\*\* ~~A minimum five (5) foot side yard setback shall be maintained for all structures within the shoreline setback area except for docks, seawalls, bulkheads, retaining walls, riprap, fences, boat ramps, boat shelters or fish cleaning tables.~~

<sup>1</sup> *Limited to utility pilings, fences, docks, boat ramps, boat slips, boat shelters, seawalls, retaining walls, riprap, bulkheads, walkways and outdoor sport and recreational accessory structures such as, but not limited to, non-enclosed decks, gazebos, pools, spas, permanent barbecues, or fish cleaning tables.*

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2011-04

---

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. (2010), 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 June 3, 2011, the Department received for review City of Marathon Ordinance No. 2011-04 (“Ord. 2011-04”) that was adopted by the City of Marathon Board of City Commissioners on April 12, 2011. The purpose of Ord. 2011-04 is to amend Section 106.28, Table 106.28.1 Water Resource and Wetland Buffers to consolidate and clarify regulations regarding shoreline setbacks by incorporating changes to setback requirements that have been adopted into the Marathon Comprehensive Plan.
3. Ord. 2011-04 is consistent with the City’s 2010 Comprehensive Plan including Goal 1-3 Manage Growth and Objective 4-1.4 Protect and Preserve Wetlands; Policy 4-1.4.2 Maintain a 50 Foot Buffer Adjacent to Wetlands; Policy 4-1.4.9 Principal Structure Shoreline Setbacks; and Policy 4-1.4.10 Accessory Structure Shoreline Setbacks.

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. (2010).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, Fla. Stat. (2010) 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. (2010). The regulations adopted by Ord. 2011-04 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. 2011-04 is consistent with the following Principle:

(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, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.

9. Ord. 2011-04 is neutral with respect to the remaining Principles. Ord. 2011-04 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2011-04 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.



J. Thomas Beck, 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.

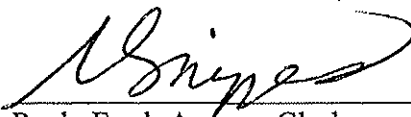
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 July, 2011.

*for*   
\_\_\_\_\_  
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