

Sponsored by: Hernstadt
Planning Commission Date: July 16, 2012
Public Hearing Date: July 24 & August 14, 2012
Enactment date: August 14, 2012

CITY OF MARATHON, FLORIDA
ORDINANCE 2012-07

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 104.25, "HOTELS AND MOTELS," AND CHAPTER 107, ARTICLE 1. "BUILDING PERMIT ALLOCATION SYSTEM" OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.

WHEREAS, the City of Marathon, Florida (the "City") is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, *Florida Statutes*; and

WHEREAS, Section 380.552, *Florida Statutes*, establishes Principles for Guiding Development in the FKACSC; and

WHEREAS, the Principles for Guiding Development provide that the Comprehensive Plan (the "Plan") and Land Development Regulations (the "LDRs") of the City shall establish a land use management system that protects the natural environment, that conserves and promotes the community character, and that promotes orderly and balanced growth of the City; and

WHEREAS, the LDRs became effective November 6, 2007; and

WHEREAS, the City has been issued 100 transient units for allocation at their discretion; and

WHEREAS, the LDRs currently have no mechanism to manage and allocate transient units; and

WHEREAS, the purpose of this Ordinance is to establish a system through which new transient units may be allocated; and

WHEREAS, the proposed changes to the LDRs are consistent with the goals, objectives, and policies set forth in the Plan and LDRs; and

WHEREAS, pursuant to Section 163.3174 and 166.041, *Florida Statutes*, and Section 102, Article 7 of the LDRs, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the LDRs set forth in this Ordinance (the "Amendment") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendment; and

WHEREAS, the City Council finds the adoption of the Amendment, in substantially the form attached hereto, is in the best interest of the City and complies with applicable State laws and rules.

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 104.25 of the LDRs is hereby amended to read as follows:

Section 104.25 - Hotels and Motels

A. General Provisions

~~1. Until such time as Council approves the use of residential dwelling unit allocations for hotel or motel units, no new hotel or motel units shall be allowed in the City of Marathon. Approval shall be limited to the redevelopment of existing hotels and motels, subject to the criteria established in Subsection B., below.~~

Section 3. Chapter 107, Article 1 of the LDRs is hereby amended to read as follows:

Section 107.00 - Purpose and Intent.

The purpose and intent of this chapter is to manage the rate of new development to protect the quality of life for residents and retain the predominately small scale character of development in the City by: enhancing and protecting natural resources; assuring that such growth proceeds in an orderly manner and does not exceed the availability of public facilities and services; by establishing a building permit allocation system that encourages the development of affordable workforce housing; by ~~directs~~ directing the rate and location of new growth to further discourage deterioration of public facility service levels, by limiting environmental degradation and potential land use

¹ / Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

conflicts; ~~by~~ encourages encouraging appropriate in-fill development; ~~by~~ promotes promoting the upgrading upgrade, ~~and expansion, or redevelopment~~ of existing small-size businesses hotel/motel establishments, ~~regulates~~; and supports supporting long term owner occupancy of Market Rate dwelling units to stabilize residential neighborhoods.

Section 107.01. - Administration.

The administration of the building permit allocation program is the responsibility of the Planning Director or his or her designee. Council shall evaluate the program on an as needed basis, but no less frequently than ~~bi-annual basis commencing one (1) year from the effective date of this Ordinance and continuing every two (2) years thereafter.~~ This evaluation shall include an assessment of the need for specific annual allocations and all other aspects of the program. The program shall run on a semi-annual basis except for the allocation of Transient Residential Units (TRUs), which may take place every two (2) months [e.g., six (6) times a year]. The existence of any particular allocation pool herein does not confer the right to develop a parcel of land for any purpose, nor create a vested property right.

Section 107.02. - Numerical Limits of Allocation.

A. Residential Dwelling Units and Transient Residential Units:

1. The annual issuance of Market Rate and Affordable BPAS allocations shall be limited to 30 dwelling units to be distributed as follows: Eighty 80 percent Market and 20 percent Affordable. The annual market to Affordable ratio may vary, but it shall not exceed the annual unit restriction for any continuous, sequential five-year period, i.e. no more than 150 allocations may be issued for any given five-year period.
2. The number of TRU allocations that may be issued shall be limited to 200 [100 TRUs authorized by the Governor and Cabinet on January 18, 2012 sitting as the Administration Commission, and 100 TRUs the City may choose to allocate at its discretion from the Administrative Relief and/or Residential BPAS pools].
23. If any part of the 30-unit annual Market Rate and Affordable BPAS allocations remains unused, then such excess allocations ~~may be reallocated in subsequent periods, providing that the five-year maximum is not exceeded~~ shall be transferred to the

Administrative Relief or Affordable pools in accordance with Section 107.06 E.

34. For the purpose of administration of this article, the Council shall, by resolution, establish an annual allocation quantity for each category of dwelling unit (including TRUs) allocations and may make certain numerical adjustments among the categories from time to time.
45. Except as provided for in Section 107.02 A. 2., No dwelling unit allocations shall be available for the development of new hotel or motel units.

Section 4. Section 107.04 of the LDRs is hereby amended to read as follows:

Section 107.04 - Establishment of Allocation Pools

A. Dwelling Units

3. Transient Residential Units.

- (a) For each respective allocation period in the transient residential unit pool, allocations will be issued to each applicant in order of their ranking and controlling date and time, if sufficient allocations are available. If the City chooses to allocate at TRUs from the Administrative Relief and/or Residential BPAS pools, such allocations may be awarded subject to compliance with the applicable provisions of Sections 107.06, 107.07, and 107.10.

Section 5. Section 107.06 of the LDRs is hereby amended to read as follows:

Section 107.06 - Conditions and Limitations

B. General Market Rate Pool

3. ~~No residential dwelling unit allocations shall be made available for the development of new hotel or motel rooms.~~

G. Transient Unit Pool:

1. City allocated TRUs provided by the state to the City may only be used for the development of single room hotel/motel units only. TRUs which the City is able to borrow forward may be allocated for any type of transient residential unit allowed under the LDRs. No TRU allocated by the City may be converted from a transient use to a non-transient use.
2. TRUs may not be allocated to property on offshore islands, designated on the COBRA (Coastal Barrier Resources System) maps, or that lie exclusively (100%) in a Coastal High Hazard Area.
3. The property proposed for development/redevelopment using TRUs must be developed or scarified, and development of the TRUs shall not result in the elimination of environmentally sensitive habitats described in the LDRs (Table 106.16.1, Classes I or II).
4. The property proposed for development/redevelopment using TRUs must provide workforce housing in accordance with Section 104.25 of the LDRs for all TRUs awarded by the City.
5. The property proposed for development/redevelopment using TRUs shall not have outstanding code compliance cases, open fines, or liens at the time of application.
6. The property subject to development/redevelopment must have existing TRUs – existing, purchased, or vested on or before December 31, 2012 - at a ratio of four (4) TRUs (existing, purchased, or vested) for every one (1) TRUs allocated by the City. After January 1, 2013, if the 100 TRUs granted by the State are not allocated, the City may by Resolution issue up to one (1) City TRU to three (3) private TRUs in possession to provide greater stimulus for the development or redevelopment of hotel/motel projects.
7. The property proposed for development/redevelopment using TRUs must obtain Conditional Use approval or enter into a Development Agreement with the City for the proposed project prior to December 31, 2012 comply with Section 107.05 of the

LDRs, and commence construction of the project in accordance with Section 107.07. I. of the LDRs.

8. Only one (1) allocation application per Person per annual allocation period may be submitted.
9. No more than twenty-five (25) TRUs, or twenty-five percent (25%) of the total proposed project TRUs, whichever is less, shall be allocated to any person.
10. The recipient of a TRU allocation shall spend a minimum of \$40,000 in construction costs on the development/redevelopment of the project per TRU awarded, and shall provide the City with and irrevocable bond or letter of credit in the amount of \$10,000 for each TRU allocated by the City. After January 1, 2013, if all of the TRUs granted by the state are not allocated, the City may by Resolution adjust these values within a range of \$25,000 to \$40,000 by a Resolution of the City Council in order to provide greater stimulus for the for the development or redevelopment of hotel/motel projects. The bond shall be released by the City upon completion of the project, the return of unused TRUs upon the completion of the project, or the loss of all allocations for failure to comply with the applicable provisions of Chapter 107 of the LDRs. The bond or letter of credit shall automatically be forfeited to the City upon the allocation recipient's failure to adhere to the construction and inspection timelines in Section 107,07.I. of the LDRs (Section 6-54 of the Code).
11. An applicant seeking an award of TRU allocations must demonstrate the financial capability to undertake and complete the development/redevelopment project using TRUs prior to issuance of a building permit. Such evidence may be in the form of an executed construction loan, construction contract, letter of credit, etc.
12. TRUs may not be used for any other purpose than the development/redevelopment of hotel or motel rooms.
13. Upon allocation TRUs may not be redistributed, sold or transferred from the approved project location, or converted into a permanent residential dwelling unit.
14. Any person developing/redeveloping property using TRUs shall first use non-City allocated TRUs towards completion of the approved project. Once a TRU has been assigned (if privately held) or allocated by the City to a particular project it may not be

conveyed, sold, re-distributed, or transferred to another property.

15. All projects using City issued TRUs shall commence construction within ninety (90) days of receipt of a building permit for the project, and be completed within 18 months of commencement of construction.

15. Failure to comply with any of the requirements of this Section or applicable provisions of Chapter 107 of the LDRs, or failure to use any City allocated TRU, shall result in the loss of the allocation and it shall revert automatically to the City without any further notice or hearing. Thereafter, the City may elect to re-allocate the TRU in its sole discretion in accordance with this Chapter.

Section 6. Section 107.07 of the LDRs is hereby amended to read as follows:

Section 107.07. – Applications.

A. Applications for allocations shall be on a form provided by the City. Complete applications must be submitted to the City no later than the allocation process deadline as periodically established by the Department. No allocation application shall be awarded an allocation by the City that does not comply with all applicable provisions of this Chapter and the LDRs.

C. Each dwelling unit, ~~or~~ commercial floor area, or transient unit request must obtain an allocation; however, allocation requests within a development under common ownership shall be combined and treated as a single application. Each separate lot shall be treated as separate applications.

F. The Director or his or her designee, if applicable, shall assign each application a score in accordance with the criteria established in Section 107.09 "Scoring System."

G. The Council shall hold a public hearing and, if applicable, 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.

Section 7. Section 107.09 of the LDRs is hereby amended to read as follows:

Section 107.09. - BPAS Scoring System.

- A. Purpose: This Section establishes the BPAS scoring system and related procedures for all allocation pools excluding TRUs, which shall be allocated by the City Council in accordance with the applicable provisions of this Chapter.

Section 8. Section 107.10 of the LDRs is hereby amended to read as follows:

Section 107.10. - Banking and Borrowing of Dwelling Unit Allocations

- A. Applicability

2. Borrowing Allocations: For applications for multi-unit or transient unit development projects which require allocations in excess of those available in a given allocation period, the process of issuing future allocations shall be referenced as “Borrowing of Allocations.”

- B. Eligibility

4. The Council may approve a request for borrowing of Transient Residential Unit allocations following an application process and a determination by Council that borrowing allocations is necessary to the viability of the project in question. In no case shall the Council allocate more than one half of the market rate administrative relief allocations available in a given BPAS allocation period, borrow forward more than four (4) periods (two years), or borrow more than 25 TRUs for any single project.

- D. Borrowing and Banking Criteria

1. All borrowed allocations are subject to and shall comply with all of the criteria and limitation in Section 107.06 of the LDRs.

Section 9. 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 10. The provisions of this Ordinance are declared to be severable, and if any sentence, 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 11. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the City of Marathon Land Development Regulations; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 12. The provisions of this Ordinance constitute a "land development regulation" as defined by State law. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State of Florida Department of Economic Opportunity, in its capacity as the State Land Planning Agency (the "Department") as required by Chapters 163 and 380, *Florida Statutes*.

Section 13. This Ordinance shall be effective upon approval by the State Department of Economic Opportunity, pursuant to Chapter 380, *Florida Statutes*.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 14 DAY OF AUGUST, 2012.

THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

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

ATTEST:



Diane Clavier, City Clerk

(CITY SEAL)

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY THE CITY OF MARATHON,
FLORIDA, ORDINANCE NO. 2012-07

FINAL ORDER

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and 380.0552(9), Fla. Stat., approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2012-07 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by § 380.0552, Fla. Stat., as an area of critical state concern. The City of Marathon is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City of Marathon on August 14, 2012, and rendered to the Department on November 26, 2012.
3. The Ordinance amends Section 104.25 and Chapter 107, Article I, of the City of Marathon Land Development Regulations to establish a Building Permit Allocation System (BPAS) for Transient Residential Units (TRUs). Section 104.25 is amended to delete the prohibition on development of new hotel or motel units in the City. Section 107.01 provides that the City Council will evaluate the BPAS on an as-needed basis or no less frequently than at two year intervals. Section 107.01 is further amended to provide that the allocation for TRUs may take place every (2) months. The Ordinance amends Section 107.02 to provide up to 200 TRUs (100 authorized by the Administration Commission on January 18, 2012, and up to 100 that can be borrowed forward at the City Council’s discretion). Finally, the Ordinance amends Sections 107.04 and 107.06 to create an allocation pool for TRUs limited to the 200 TRUs identified and

to establish conditions; Section 107.07 to provide that no BPAS application that does not comply with all applicable provisions of the land development regulations shall receive an allocation; and Sections 107.09 and 107.10 to address scoring and banking of allocations for TRUs.

CONCLUSIONS OF LAW

1. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. §§ 380.05(6) and (11) and § 380.0552(9), Fla. Stat. The City of Marathon is a local government in the Florida Keys Area of Critical State Concern.

2. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. The regulations adopted by the Ordinance are land development regulations.

3. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and 380.0552(9), Fla. Stat. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Fla. Stat.

4. The Ordinance is consistent with the Principles for Guiding Development as a whole and is not inconsistent with any provision.

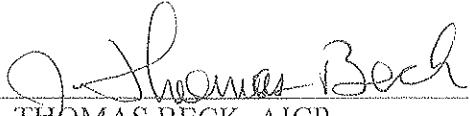
5. The Ordinance is consistent with Policy 1-3.2.6 of the City of Marathon Comprehensive Plan.

WHEREFORE, IT IS ORDERED that City of Marathon Ordinance No. 2012-07 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

Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



J. THOMAS BECK, AICP
Director, Division of Community Development
Department of Economic Opportunity

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, CONDUCT CROSS-EXAMINATION AND SUBMIT

REBUTTAL EVIDENCE, SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND 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 FINAL ORDER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF GENERAL COUNSEL
107 EAST MADISON STREET, MSC 110
TALLAHASSEE, FLORIDA 32399-4128


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 28-106.201(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 December, 2012.



Miriam Snipes, Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

Honorable Mike Cinque
Mayor, City of Marathon
9805 Overseas Highway
Marathon Florida 33050

George Garrett, Planning Director
City of Marathon
9805 Overseas Highway
Marathon Florida 33050

John R. Herin, Jr., Esq.
Marathon City Attorney
Gray-Robinson, P.A.
401 E. Las Olas Blvd., Suite 1850
Fort Lauderdale, FL 33301

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DEO Tallahassee
Sherry A. Spiers, Assistant General Counsel, DEO Tallahassee