

Sponsored by: Hernstadt
Planning Commission Date: September 17, 2012
Public Hearing Dates: September 25, 2012
January 8, 2013
Enactment Date: January 8, 2013

CITY OF MARATHON, FLORIDA
ORDINANCE 2012-12

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CITY'S COMPREHENSIVE PLAN BY AMENDING CHAPTER 1, POLICY 1-3.2.4, "DENSITY INCREASE PROVISIONS;" CHAPTER 1, TABLE 1-1 "FUTURE LAND USE DENSITIES AND INTENSITIES;" POLICY 1-3.5.16, "INSTITUTE A PROGRAM FOR TRANSFER OF DENSITY AND BUILDING RIGHTS (TDR'S AND TBR'S);" AND POLICY 4-1.5.4, LIMIT CLEARING OF NATIVE VEGETATION;" PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THE 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 protect the maximum well being of its residents through sound economic development, while protecting the natural environment of the Florida Keys; and

WHEREAS, the Plan was adopted and became effective on July 7th, 2005; and

WHEREAS, the City desires to limit potential increases in the overall residential density, strengthen its program for the transfer of density and building rights, and strengthen its limitation on the clearing of native vegetation thereby protecting the natural habitat and resources of the City; and

WHEREAS, pursuant to Section 163.3174, *Florida Statutes*, and Section 102, Article 6

of the LDRs, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the Plan 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, in accordance with Sections 163.3184 and 166.041, *Florida Statutes*, public notice has been given of the public hearings for the proposed adoption of this 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. Policy 1-3.2.4 of the Marathon Comprehensive Plan is hereby amended to read as follows:

Policy 1-3.2.4 Density Increase Provisions

~~Within one year of the effective date of the Plan, S~~special provisions and criteria have been ~~shall be~~ established in the Land Development Regulations to provide incentives to increase the supply of affordable housing by allowing for high density for affordable units. This high density shall only be available for Residential Medium, Residential High and Mixed Use Commercial categories. The transfer of development rights (TDR's) is not required for affordable units under these provisions. Assigned density under these provisions cannot exceed a maximum of 25 units per acre, as provided for in Table 1-1 and this density can only be applied to the following environmental habitats:

- Disturbed with Hammock
- Disturbed
- Disturbed with exotics
- Scarified

Property owners may seek a FLUM change to a FLUM category which would allow a greater residential density. However, there shall be no presumption in any request that the request must be or will be granted by the City. If the FLUM change is granted, then the difference in residential density between the two FLUM categories shall be achieved through a transfer of TDRs which shall not exceed the density allowed in Table 1-1 for the new FLUM category. The Transfer of Development Rights shall be accomplished in accordance with the provision of Policy 1-3.5.16.

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~~.

Section 3. Table 1-1 of the Marathon Comprehensive Plan is amended to read as follows:

TABLE 1-1 Future Land Use Densities and Intensities*						
Future Land Use Category	Permitted Residential Density (Units per acre)			Hotel/Motel/RV Spaces (Units per acre)	Maximum Intensity (floor area ratio)	Minimum Open Space Ratio
	Market Rate	Affordable	Licensed Mobile Home or RV Parks			
Airport (AD)	0		0	N/A	0.15 - 0.50	
Conservation (C)	0.1- 0.25		0	N/A	0.05 - 0.10	
Industrial (I)	0		0	N/A	0.85	
Mixed Use Commercial (MUC)	2 – 6	10 – 15	10-25	5 - 25	0.15 - 0.60 ⁴	
Public Facilities (PF)	0		0	3 – 25	0.15 - 0.75	
Recreation (R)	0.25		0	5 – 15	0.15 - 0.50	
Residential High (RH)	8	15 - 25	15-25	0	0	
Residential Medium (RM)	5	10	0	0	0	
Residential Low (RL)	0.5		0	0	0	

Note:

1. See Objective 1-3.9 and subsequent policies.
2. The allocated and maximum net densities for submerged lands shall be 0.
3. For properties consisting of hammocks, pinelands, or disturbed wetlands within the Mixed Use Commercial future land categories, the floor area ratio shall be 0.10 and the maximum net residential density shall be 0.
4. Open space shall be increased based upon the requirement for a habitat evaluation and shall conform to Table 4-1 of Coastal and Conservation Element.
5. The FAR in Mixed Use developments may be increased to .75 if mitigated by the development of affordable/workforce housing is provided.
6. Residential Densities found in this Table are subject to the provisions of Policy 1-3.5.16.

*All development and redevelopment shall comply with this Plan and the Land Development regulations.

Section 4. Policy 1-3.5.16 of the Marathon Comprehensive Plan is hereby amended to read as follows:

Policy 1-3.5.16 ~~Institute a Program for Transfer of Density and Building Rights (TDR's and TBR's)~~

~~a. Within one year of the effective date of the Plan, the City shall, through Land Development Regulations, institute a program to facilitate the transfer of density and building rights within the City's boundaries; shall attempt to achieve the following:~~

- a- 1. Protect environmental resources in balance with the protection of property rights;
- b- 2. Encourage the replacement of substandard structures, non-conforming structures, structures within environmentally sensitive habitat; structures subject to repetitive flood damage, and units or non-residential square footage which exceeds density limitations;
- e- 3. Facilitate redevelopment and revitalize the commercial centers by concentrating mixed use activities;
- d- 4. Facilitate the redevelopment and revitalization of hotels and motels in the City;
- e- 5. Protect housing affordability and facilitate the provision of new affordable housing units throughout the City;
- f- 6. Redistribute existing residential units or densities from more environmentally sensitive properties to less environmentally sensitive properties to encourage infill development and achieve planned densities without increasing the overall density;
- g- 7. Protect environmentally sensitive sites through the removal of existing dwelling units or allocated development rights;
- h- 8. Encourage the placement of conservation easements on environmentally sensitive or flood prone parcels of land;
- i- 9. Further the public good and the goals, objectives and policies of the Plan;
- j- 10. ~~Within one year of the effective date of the Plan, the City may, through public workshops and a Plan amendment and the adoption of the Land Development Regulations, institute a program to facilitate the transfer of existing transient, non-transient residential dwelling units or the transfer of a residential allocation for a building permit within the City's boundaries;~~ k- Protect housing affordability and facilitate the provision of new affordable housing units throughout the City.

b. Transfer of Residential Density (TDRs)

1. Residential density (TDRs) shall only be transferable from a FLUM category of lower density to one of higher density as defined in Table 1-1 of the Comprehensive Plan. Properties with a FLUM category of Conservation shall not be eligible as TDR receiver sites. TDRs are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.7.

2. Increases in Residential Density which are greater than those allowed for a given FLUM category in Table 1-1 may occur, but shall only occur as a result of a TDR transfer. Such TDR transfers shall not exceed 20 percent of the Future Land Use Densities allowed by FLUM category in Table 1-1.

3. If a property owner intends to achieve a residential density higher than a 20 percent increase over that allowed in Table 1-1, then the owner must seek a FLUM

change to a FLUM category which would allow a greater residential density. However, there shall be no presumption in any request that the request must be or will be granted by the City. If the FLUM change is granted, then the difference in residential density between the two FLUM categories must be achieved through a transfer of TDRs which shall not exceed the density allowed in Table 1-1 for the new FLUM category.

4. The transfer of TDRs is subject to approval by the City based on the criteria established in b.1. and b.2. above. All transfers of TDRs must identify the removal of the TDRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.

5. Lands for which all residential density has been entirely removed must have a maintenance program to continuously remove exotic invasive vegetation or be transferred to an appropriate land management entity, such as the State of Florida or the City of Marathon.

c. Transfer of Building Rights (TBRs)

1. Transferable Building Rights (TBRs) shall only be transferable from a FLUM category of lower density to one of equal or higher density as defined in Table 1-1 of the Comprehensive Plan. Properties with a FLUM category of Conservation shall not be eligible as TBR receiver sites. Transferable Building Rights (TBRs) are only transferable to receiver site properties whose habitats are deemed by the City Biologist to be less sensitive than the sender site properties as defined in policy 4-1.5.7

2. The transfer of TBRs is subject to approval by the City based on the criteria established in c.1. and c.2. above. All transfers of TBRs must identify the removal of the TBRs from the sender site and their transfer to the receiving site and be recorded in the chain of title for both properties.

3. Alternatively, TBRs may be "banked" with the City for a period not to exceed two (2) years. TBRs so banked must identify the removal of the TBRs from the sender site and that they have been banked with the City pursuant to a specific agreement with the City, which shall be recorded in the chain of title of the sending site.

Section 5. Policy 4-1.5.4 of the Marathon Comprehensive Plan is hereby amended to read as follows:

Policy 4-1.5.4 Limit Clearing of Native Vegetation (Hardwood Hammock)

The clearing of high quality hammock is hereby limited to a 7,500 square foot footprint for the principle structure. Additionally, one driveway no wider than 18 feet per parcel is allowed in high quality hammock that is exempt from clearing requirements; however, in no case shall clearing exceed 10 percent of the entire site. The clearing of moderate quality hammock is hereby limited to 7,500 square feet or 30 percent, whichever is less. For all categories of hammock, a minimum clearing area of 3,000 square feet shall be allowed to provide reasonable use of property.

~~Within one year of the effective date of the Plan, the City shall adopt Land Development Regulations which shall limit~~ The clearing of native vegetation is hereby limited to the immediate development area. The immediate development area shall include the area of approved clearing shown on the approved site plan. The immediate development area shall be fenced throughout the duration of construction. During construction, there shall be no disturbances of the ground surface and vegetation within required open space areas.

Section 6. The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 7. 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.

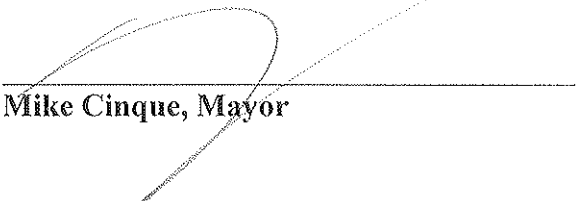
Section 8. The City Clerk shall transmit the Amendment to the State of Florida Department of Economic Opportunity, in its capacity as the State Land Planning Agency (the "Department") as required by Chapters 163 and 380, *Florida Statutes*.

Section 9. Upon the effective date, the Amendment shall replace the City of Marathon *Comprehensive Plan*, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, Rule 28-19.200, *Florida Administrative Code*, and Section 9(6)(A) of the City Charter to the fullest extent allowed by law.

Section 10. 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 8th DAY OF JANUARY, 2013.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

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

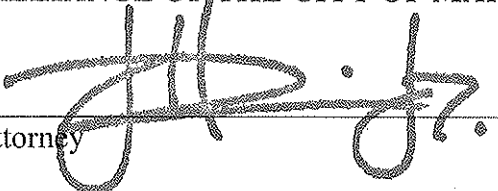
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



City Attorney

Rick Scott
GOVERNOR



Jesse Panuccio
EXECUTIVE DIRECTOR

May 2, 2013

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

Dear Mayor Cinque:

The Department of Economic Opportunity has completed its review of the comprehensive plan amendment for the City of Marathon adopted by Ordinance 2012-12 on January 8, 2013 (Amendment No13-3ACSC previously 12-2ACSC), which was received and determined complete on March 22, 2013. We have reviewed the amendment in accordance with the state coordinated review process set forth in Sections 163.3184(2) and (4) Florida Statutes (F.S.) and have determined that the adopted amendment meets the requirements of Chapter 163, Part II, F.S., for compliance, as defined in Section 163.3184(1)(b), F.S. The Department of Economic Opportunity is therefore issuing a Notice of Intent to find the comprehensive plan amendment "In Compliance." A copy of the Notice of Intent has been posted on the Department of Economic Opportunity's Internet website. You may access the Notice of Intent at <http://dca.deo.myflorida.com/finddocumentsonline/>.

The Department of Economic Opportunity's Notice of Intent to find a plan amendment "In Compliance" shall be deemed to be a final order if no timely petition challenging the amendment has been filed. If this plan amendment is challenged by an affected person, the amendment will not become effective until the Department of Economic Opportunity or the Administration Commission enters a final order determining the amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commenced before it has become effective.

If you have any questions related to this review, please contact Barbara Powell, at (850 717-8504), or by email at barbara.powell@deo.myflorida.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'WBK', is written over a faint, larger signature that appears to be 'William B. Killingsworth'.

William B. Killingsworth
Director, Division of Community Development

WBK/bep

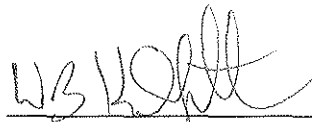
Enclosure: Notice of Intent

cc: George Garrett, Director, Planning Department, City of Marathon
James F. Murley, Executive Director, South Florida Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY, THE STATE LAND PLANNING
AGENCY
NOTICE OF INTENT TO FIND THE
CITY OF MARATHON
COMPREHENSIVE PLAN AMENDMENTS
IN COMPLIANCE
DOCKET NO. 13-3ACSC-NOI-4406-(A)-(I)

The Department gives notice of its intent to find the Amendments to the Comprehensive Plan for the City of Marathon, adopted by Ordinance No. 2012-12 on January 8, 2013, IN COMPLIANCE, pursuant to Section 163.3184(4), F.S.

If a timely petition challenging the Amendments was not filed within thirty (30) days after the local government adopted the Amendments, the Amendments become effective upon the posting of this Notice of Intent on the Department's Internet Website. If a timely petition was filed, the Amendments do not become effective until the Department or the Administration Commission enters a final order determining that the Amendments are in compliance.



William B. Killingsworth
Director, Division of Community Development
Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399