

Sponsored By: Hernstadt
Planning Commission Public Hearing Date: July 15, 2013
City Council Public Hearing Date: July 23, 2013 and August 13, 2013
Enactment Date: August 13, 2013

**CITY OF MARATHON, FLORIDA
ORDINANCE 2013-08**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA,
AMENDING SECTION 107.07 G. 1. OF THE CITY OF MARATHON
LAND DEVELOPMENT REGULATIONS; EXTENDING THE
SUNSET DATE OF THE TEMPORARY PROCEDURES FOR THE
AWARD OF BPAS ALLOCATIONS TO SEPTEMBER 1, 2015;
PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND
ORDINANCES INCONSISTENT WITH THIS ORDINANCE;
PROVIDING FOR SEVERABILITY; 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 DEPARTMENT OF ECONOMIC
OPPORTUNITY IN ACCORDANCE WITH STATE LAW.**

WHEREAS, the City of Marathon (the “City”) enacted the Building Permit Allocation System (“BPAS”) limiting the type and number of building permits allocated in the City; and

WHEREAS, the City has recognized that there are significant economic constraints moderating the financing and construction of new homes, and as such adopted a Temporary Procedure in 2009 which provides a mechanism in BPAS to ensure that as many new allocations as possible result in building activity; and

WHEREAS, the “Temporary Procedure” Ordinance contained a sunset date and at the same time a mechanism for the extension of the Ordinance beyond the sunset date based on a review of need by the City Planning Commission and Council; and

WHEREAS, the “Temporary Procedure” Ordinance has been extended once, to a date of September 1, 2013, by the passage of Ordinance 2011-08; and

WHEREAS, the Planning Commission has made a recommended to Council and the City Council has determined that the economic constraints and community need for the BPAS “Temporary Procedure” Ordinance continues to exist.

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 107.07 G. 1. of the Land Development Regulations is hereby amended to read as follows:

G. The Council shall hold a public hearing and 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.

1. Temporary Procedure: ~~This temporary procedure shall remain in effect for two (2) years from the effective date of the adoption ordinance, (22 June, 2009). This temporary procedure shall "sunset" at that time unless the Council elects to extend by Resolution the operational time period of the ordinance. This temporary procedure, having been duly extended by Ordinance for an additional two year period, shall sunset on September 1, 2015.~~

Section 3. 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 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 Economic Opportunity for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 6. This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

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~~.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 13th DAY OF AUGUST, 2013.


THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Ramsay, Snead, Bull, Keating, 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

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY THE CITY OF MARATHON,
FLORIDA, ORDINANCE NO. 2013-08

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. 2013-08 (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 13, 2013, and rendered to the Department on September 13, 2013.
3. The Ordinance amends Section 107.07 G. 1. of the City of Marathon Land Development Regulations to extend the sunset date of temporary procedures for the award of allocations under the City’s Building Permit Allocation System (BPAS) to September 1, 2015. The temporary procedures allow the City to issue allocations to those who are ready to build while maintaining the relative position in the BPAS of persons who are not yet ready to build and wish to defer their applications.

CONCLUSIONS OF LAW

4. 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.

5. “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.

6. 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.

7. The Ordinance is consistent with the Principles for Guiding Development in Section 380.0552(7), Fla. Stat., as a whole and in particular with the following principle:

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

8. The Ordinance is consistent with Policy 1-3.5.4 3, Residential Building Permit Allocation System (RBPAS), in the City of Marathon Comprehensive Plan.

WHEREFORE, IT IS ORDERED that City of Marathon Ordinance No. 2013-08 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.



WILLIAM B. KILLINGSWORTH
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 ECONOMIC OPPORTUNITY 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
FAX NUMBER 850-921-3230
AGENCY CLERK EMAIL: JAMES.BELLFLOWER@DEO.MYFLORIDA.COM


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 _____ day of October, 2013.



James W. Bellflower, 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, FL 33050

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

Diane Clavier, City Clerk
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

John R. Herin, Jr., Esq.
City Attorney, City of Marathon
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