

Sponsored by: Puto
Introduction Date: June 16, 2014
Public Hearing Dates: June 16, 2014
June 24, 2014
Enactment Date: July 8, 2014

CITY OF MARATHON, FLORIDA
ORDINANCE 2014-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 102 “DEVELOPMENT APPLICATION REVIEW PROCEDURES” AND SPECIFICALLY AMENDING SECTION 102.92 “APPLICABILITY” AND SECTION 102.97 “ACTION BY THE PLANNING COMMISSION OR COUNCIL” TO PROVIDE THAT A DE NOVO HEARING SHALL BE CONDUCTED UPON APPEAL OF A DECISION BY THE PLANNING COMMISSION, OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; 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 Council (the “Council”) enacted its Comprehensive Plan on July 5, 2005 and its Land Development Regulations (LDRs) on November 7, 2007; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, it is the desire of the City of Marathon City Council to amend its current landscape regulations; and

WHEREAS, pursuant to Section 163.3174 and 166.041, *Florida Statutes*, and Section 102, Article 7 of the Marathon Code, the City’s Planning Commission sitting as the Local Planning Agency on June 16, 2014 publicly considered the amendments to Land Development Regulations 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 publicly considered the amendments to Land Development Regulations set forth in this Ordinance (the “Amendment”) at a properly noticed public hearing and 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

~~Strikethrough~~ = deletion underline = addition

WHEREAS, the proposed changes to the current landscape regulations are consistent with the goals, objectives, and policies set forth in the Comprehensive Plan,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA:

Section 1. Recitals. The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

Section 2. Code Amendment. The Code of the City of Marathon, Florida is hereby amended as follows:

Section 102.92. Appeal Period.

An appeal of the decision of the administrative official or body may be made within 30 working days from the date of such decision. If filed, an appeal stays any further action on the permit until final resolution of the appeal, unless the administrative official or body, whose action is the subject of the appeal, certifies in writing that the stay poses an imminent peril to life or property.

Section 102.93. Applicability.

Any appealable decision may be appealed by an applicant, the City, if affected, or any aggrieved party, including neighborhood, community and civic associations, whose name appears in the record of the appropriate person or body from which the appeal is made by filing with the Department a petition in a form prescribed by the Director and a written statement specifying in brief, concise language the grounds and reasons for requesting a reversal of the ruling made by the lower person or body together with a fee for the processing of the appeal, as provided by the Director as amended from time to time, within the 30 working days set forth in Section 102.92 above.

~~Appeals may be filed only by the following:~~

~~A.~~

~~The applicant or the authorized agent; or~~

~~B.~~

~~A person who may be adversely affected by the decision, as defined by Fla. Stat. § 163.3215(2).~~

Section 102.95. Time Period for Hearing.

Within 45 working days of receipt of a complete appeal application, the Director shall schedule a public hearing before the PC or Council on the appeal.

Section 102.96. Notice of Hearing.

The public hearing on the appeal shall be noticed as required by Article 4 "Notice of Public Meetings and Hearings", of this chapter. The notice shall state that an appeal has been filed; describe the request being appealed; describe the lot, parcel, property or areas that are the subject of the administrative permit; describe the final decision on the request; and note other pertinent information.

~~Strikethrough~~ = deletion underline = addition

Section 102.97. Action by the Planning Commission or Council.

~~The Council and PC shall consider only those items cited in the appeal. In its deliberation, it may use the record and any additional evidence relative to the application and may confirm, reverse, or modify the appealed action based upon its interpretation of the findings required and the evidence submitted.~~

~~A. — *Planning Commission:* The PC shall hear and make decisions on appeals of an action by any administrative official or the TRC made pursuant to the provisions of the LDRs.~~

~~B. — *Council:* The Council shall hear and make decisions on appeals of an action taken by the PC made pursuant to the provisions of the LDRs. The action of the Council shall be final.~~

- A. Upon the taking of an appeal, the ruling body shall conduct a de novo hearing and shall consider the rationale for the decision of the administrative official or the Planning Commission. It may confirm, reverse, or modify the appealed action based upon its interpretation of the findings required and the evidence submitted. Any action by the Council shall be deemed final.
- B. Upon the timely filing of an application for appeal, the Director shall transmit to the Planning Commission or the City Council, as the case may be, the petition for appeal, any associated documents which may be submitted on appeal, the application and Director's recommendation, and the decision and record of the lower body or official.
- C. Upon the taking of an appeal, the City Council shall conduct a de novo hearing and shall consider whether the decision of the administrative official or the Planning Commission, as the case may be, should or should not be sustained or modified. By resolution, the appellate body shall either affirm, modify or reverse the lower decision and such action shall be by a majority vote of all members present.

Section 3. Conflict. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. 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. Inclusion in the Code of Ordinances. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the City of Marathon Code of Ordinances, that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “Section” or other appropriate word.

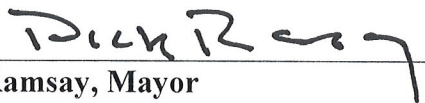
Strikethrough = deletion underline = addition

Section 6. Land Development Regulations. 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 7. Effective Date. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF JULY, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

AYES: Bartus, Keating, Bull, Senmartin, Ramsay
NOES: None
ABSENT: None
ABSTAIN: None

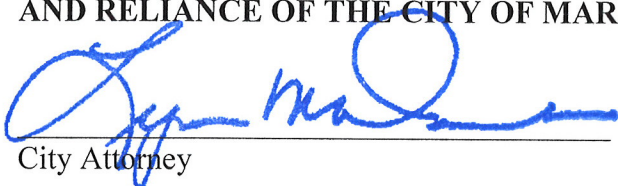
ATTEST:



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

~~Strikethrough~~ = deletion underline = addition

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2014-09

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2014-09**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2014-09 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by § 380.0552, Florida Statutes, 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 July 8, 2014, and rendered to the Department on July 17, 2014.
3. The Ordinance amends the City of Marathon Code of Ordinance Appendix, Chapter 102, Article 17, “Appeals.” These amendments concerns the creation of a de novo review of appeals of Planning Commission decisions through a more definitive process.

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), Florida Statutes.
5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. §380.0552, Florida Statutes and Florida Administrative Code Chapter 28-26.

6. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Florida Statutes. The regulations adopted by the Ordinance 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 for that area. §§ 380.05(6) and 380.0552(9), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Florida Statutes.

8. The Ordinance is consistent with the City of Marathon Comprehensive Plan generally, and specifically Chapter 9, Goal 9.1.1 (Monitoring, Updating and Evaluating the Plan).

9. The Ordinance is consistent with the Principles for Guiding Development in section 380.0552(7), Florida Statutes, as a whole, and is specifically consistent with the following Principles:

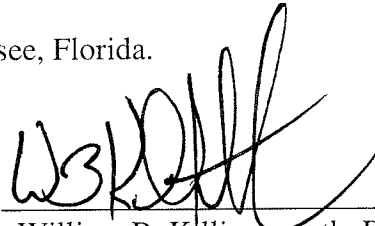
(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2014-09 is consistent with the Principles for Guiding Development for 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 RECEIPT OF THIS NOTICE. A PETITION IS FILED WHEN IT IS **RECEIVED** BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON STREET, MSC 110
TALLAHASSEE, FLORIDA 32399-4128
TELEPHONE: (850) 245-7150
FAX (850) 921-3230
Email: Katie.Zimmer@deo.myflorida.com

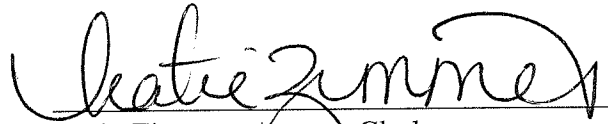
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 following persons by the methods indicated this 12th day of September, 2014.



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

By U.S. Mail:

The Honorable Dick Ramsay, Mayor
City of Marathon, City Council
9805 Overseas Highway
Marathon, FL 33050

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

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