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Introduction Date: August 18, 2014
Public Hearing Dates: August 26, 2014
September 9, 2014
Enactment Date: September 9, 2014

CITY OF MARATHON, FLORIDA
ORDINANCE 2014-014

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 107, ARTICLE 10, SECTION 107.83, REGULATIONS BY LAND USE TO PROVIDE FOR REGULATION BY ZONING TYPE; 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; AND PROVIDING FOR AN EFFECTIVE DATE.

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 Land Development Regulations (LDRs) concerning the fence regulations to clarify the regulations and provided consistency across all zoning districts; and

WHEREAS, pursuant to Section 163.3174 and 166.041, *Florida Statutes*, and Section 102, Article 7 of the Marathon LDRs, the City’s Planning Commission sitting as the Local Planning Agency on August 18, 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 CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

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 Land Development Regulations (LDRs) of the City of Marathon, Florida are hereby amended as follows:

Section 107.83. Regulations by Land-Use Zoning District.

The following regulations shall apply on developed lots:

A. ~~Single-family and Duplex Residential Zoning Districts Uses:~~ Fences, walls, or hedges on a property with a single-family home, or duplex residential zoning, including Conservation–Native Area (C-NA), Conservation-Offshore Island (C-OI), Residentail Low-Conservation (RL-C), Residentail Low (RL), Residential Medium (RM), Residentail Medium-1 (RM-1), Residentail Medium-2 (RM-2), Residential-Mobile Home (R-MH), or Residentail High (RH), shall be limited to a height of 48 inches within 15 feet of the street frontage property line, and to six (6) feet in height beyond 15 feet from the front property line for parcels in excess of 4,500 square feet. For parcels 4,500 square feet or less the fence limitations shall be subject to a setback reduction to ten (10) feet from the street frontage property line.

~~B. — Multi-family Residential Uses and Churches: An open decorative fence may be installed on a multi-family property to a maximum height of six (6) feet in height along any property line. The fence may be built to the edge of sidewalk with an encroachment permit issued by the City. The maximum height may be increased to eight (8) feet for an open decorative fence that is set back at least ten (10) feet from the property line. Any solid decorative fence or hedge may be installed to a maximum height of six (6) feet at the required building setback line.~~

~~C. — Nonresidential Land Uses in Residential Zoning Districts: Fences for nonresidential uses in any residential zoning district shall meet the same design and setback standards as fences for residential land uses as outlined in Subsections A. and B. above.~~

~~DB.~~ Commercial, Public, Parks and Recreation Zoning: Fencing on any property with a commercial (MU or MU-M), Public (P), or Parks and Recreation (PR) zoning designation shall comply with the following regulations:

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1. Any open or solid decorative fence, wall, or hedge eight (8) feet or less in height may be installed in any location up to the required street frontage landscape setback identified in Table 103.15.2, subject to the appropriate clear sight triangle. Any fence, wall, or hedge greater than eight (8) feet in height shall comply with all required building setbacks.

2. Vinyl-clad, chain-link fencing may be installed at the rear of buildings if not visible from public areas on- or off-site, or any public right-of-way (e.g., vinyl-clad chain-link shall not be used along a street-side property line). If chain-link fencing is used, a five-foot wide area outside the fence shall be landscaped, subject to the appropriate site triangle, with at least three (3) shade trees, two (2) understory trees, and 13 shrubs for every 100 feet or part thereof of fencing. A minimum of 80 percent of the vegetation shall be native.

3. Screening for outdoor storage shall be installed in compliance with Article 1, Chapter 104, "Outdoor Storage".

EC. *Industrial Zoning:* Fencing for any property with an industrial **(I-G or I-M)** zoning designation shall comply with the following requirements:

1. Any open or solid decorative fence, or hedge 12 feet or less in height may be installed in any location up to the required front building setback line identified in Table 103.15.2. Any fence, wall, or hedge eight (8) feet or less in height may be installed in any location up to the required street frontage landscape setback line. Any fence, wall, or hedge exceeding 12 feet in height shall comply with all required building setbacks.

2. Vinyl-clad chain-link fencing may be installed along any interior side property line.

3. In the Industrial zoning districts, galvanized chain-link fencing shall be permitted along any interior side or rear property line only where no landscape buffer is required.

4. Screening for outdoor storage shall be installed in compliance with Article 1, Chapter 104 "Outdoor Storage".

D. **Airport Zoning: Fencing for any property with an Airport (A), zoning designation shall comply with the following requirements.**

1. Any open or solid decorative fence, solid fence, wall, or hedge twelve (12) feet or less in height may be installed in any location on the property. Any fence, wall, or hedge exceeding 12 feet in height shall comply with all required building setbacks.

2. Vinyl-clad chain-link fencing may be installed along any interior side property line.

3. Nothing in these regulations regarding fences shall limit any requirement of the state or federal government regarding the necessary security of an airport facility.

4. Screening for outdoor storage shall be installed in compliance with Article 1, Chapter 104 "Outdoor Storage"..

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 the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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 9th DAY OF SEPTEMBER, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

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

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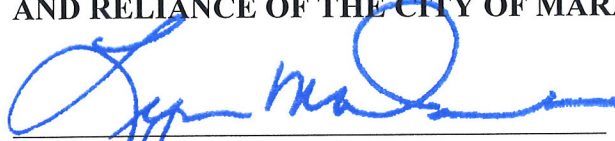
ATTEST:



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

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**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2014-14

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2014-14**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and 380.0552(9), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2014-14 (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 August 26, 2014, and rendered to the Department on September 24, 2014.
3. The Ordinance amends the City of Marathon Code Of Ordinances Appendix, Chapter 107 (General Development Standards), Article 10 (Fences, Walls, Hedges and Screening), Section 107.83 (Regulations by Land Use) to provide for an option to seek an administrative variance for fence height of street-facing property lines and limits such a variance to a maximum total height of six feet.

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 § 380.0552(9), 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 28-29.

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 1, Goal 1-1 (Manage Growth), Policy 1-1.1.2 (Adopt Compatibility for Residential and Non-Residential Review Criteria).

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.

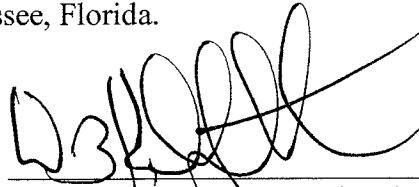
(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2014-14 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.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

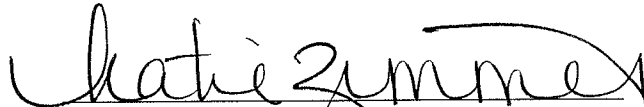
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

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 2nd day of October, 2014.



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

By Certified 011-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