

**Sponsored by:** Zieg  
**Introduction Date:** December 15, 2014  
**Public Hearing Dates:** December 15, 2014  
December 16, 2014 & January 13, 2015  
**Enactment Date:** January 13, 2015

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2014-21**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 100, ARTICLE 1, SECTION 100.04 TO CREATE AND ADOPT SECTION 100.04 A.3 TO LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MARATHON TO ADOPT A ZONING IN PROGRESS PROVISION; PROVIDING FOR THE REPEAL OF ALL OTHER 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**, it is the desire of the City Council to adopt new land development regulations to address the specific and changing needs of our unique community; and

**WHEREAS**, in order for the City to implement future new regulations as and when they are adopted, the City wishes to adopt a Zoning in Progress provision that will so allow; and

**WHEREAS**, the City Council hereby determines that this Ordinance will promote the health, safety, and welfare of the City.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MARATHON HEREBY ORDAINS:**

**Section 1. Recital.** The above Recitals are true and correct and are incorporated herein by this reference.

**Section 2. Creation of Section “Zoning in Progress”.** Chapter 100 General Provisions of the Land development regulations, Article 1. “General”, to add Section 100.04 A. 3. “Zoning in Progress” is hereby created to read as follows:

**Section 100.04**

**A. *Exceptions***

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**3. Zoning in progress, applicability, temporary hold on permits and licenses.**

**(a) Purpose. The zoning in progress doctrine (“zoning in progress”) generally allows the City to apply, on a retroactive basis, if necessary, changes to zoning regulations or to the zoning district status of property, to previously approved but not yet constructed or currently in process development applications. Additionally, the zoning in progress allows a temporary hold on permits and licenses if there is a change in zoning, which is already in progress, that would affect the permit or license.**

**(b) Initial adoption of Land Development Regulations. Zoning in progress shall be applied to the initial adoption of this section in the following manner:**

**1. Zoning in progress shall not be applied to the extent that vested rights are established.**

**2. Except with respect to impact fees or other exactions, i.e., affordable housing requirements, that may be imposed and for which building permits have not yet issued, zoning in progress shall not be applied to complete and pending applications for development permits which have been filed with the City before the adoption of the Ordinances.**

**3. Zoning in progress shall apply to applications for development approvals, which were filed with City after the cut-off date established in b. above. Upon the adoption of any impact fees or exactions, all applicants will be responsible for the remittance and/ or provision or construction of same to the City, irrespective of time of filing of the application, up to and including to the time of issuance of a building permit.**

**4. Zoning in progress shall not apply to the grant of any moratorium waiver specifically granted by the City Council.**

**(c) Future amendments to Land Development Regulations. When an amendment to the Land Development Regulations or in the application of any particular zoning district classification to land is being considered, the City may impose a temporary hold on any development applications pending before the City with respect to the area or the zoning regulatory text which is the subject of the amendment. The hold shall commence upon the date that notice of zoning in progress is published in a newspaper of general circulation in the City and shall continue in effect for a period from the date of notice until the subject change, with or without amendments, shall have been approved or disapproved by the City Council or for a period of three months, whichever is sooner, unless such development application would be in conformity with the more restrictive of the existing zoning district status or the zoning district regulations as compared to the proposed zoning district status or zoning district regulations. An affected person may appeal the City staffs**

**application of this provision to the City Council for review by the City Council by filing a notice of appeal with the City Manager.**

**Section 3. Severability.** If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**Section 3. Inclusion in the Code.** It is the intention of the Mayor and City Council of the City of Marathon, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the CITY OF MARATHON, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 4. Conflicts.** Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

**Section 5. Effective Date.** This ordinance shall become effective as of approval by the Department of Economic Development after second reading.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF JANUARY, 2015.**

**THE CITY OF MARATHON, FLORIDA**

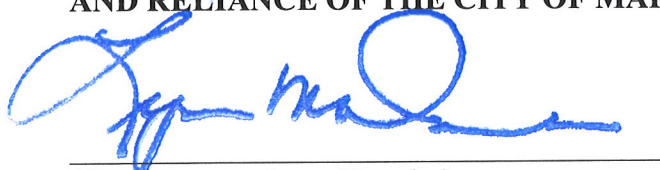
  
\_\_\_\_\_  
**Chris Bull, Mayor**

AYES: Kelly, Zieg, Keating, Senmartin, Bull  
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, Lynn Dannheisser

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON  
ORDINANCE NO. 2014-21

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**FINAL ORDER  
APPROVING CITY OF MARATHON ORDINANCE NO. 2014-21**

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. 2014-21 (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 January 13, 2015, and rendered to the Department on January 15, 2015.
3. The Ordinance amends the City of Marathon Code of Ordinances, Appendix A (Land Development Regulations) to amend Chapter 100, Article 1, by creating Section 100.04 A.3 which would allow the imposition of Zoning in Progress when deemed necessary by the City.

**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 with Policy 1-1.1.2 (Adopt Compatibility for Residential and Non-Residential Review Criteria) and Policy 1-3.1.4 (Future Land Use Categories).

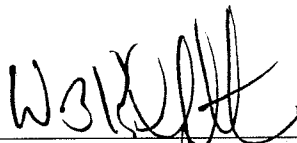
9. The Ordinance is consistent with the Principles for Guiding Development in section 380.0552(7), Florida Statutes, as a whole, and is specifically consistent with the following Principles:

- (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.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2014-21 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.



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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.

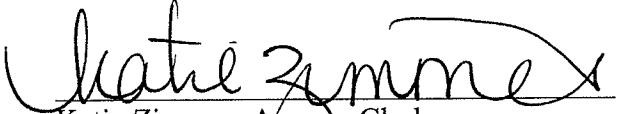
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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 29<sup>th</sup> day of January, 2015.



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

By Certified U.S. Mail:

The Honorable Chris Bull, 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