

Sponsored by: Puto
Introduction Date: October 8, 2015
Public Hearing Dates: October 13, 2015 and October 27, 2015
Enactment Date: October 27, 2015

**CITY OF MARATHON, FLORIDA
ORDINANCE 2015-10**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 102, ARTICLE 21, “QUASI-JUDICIAL HEARINGS;” AMENDING THE GENERAL PROCEDURES FOR QUASI-JUDICIAL HEARINGS; 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 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, the City has expressed a concern that the certain elements of the General Procedures Section, 102-130 are not currently reasonable and in line with adopted empirical procedure; and

WHEREAS, the proposed Ordinance provides an immediate modification to bring the Code into line with the empirical procedure normally carried out to provide a staff report and record documents to the Planning Commission, City Council, applicant, and the Public; and

WHEREAS, the proposed changes to the current Land Development Regulations (LDRs) are consistent with Chapters 163 and 380, F.S., the goals, objectives, and policies set forth in the Comprehensive Plan and the City’s Land Development Regulations,

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

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Chapter 102, Article 21, “Quasi-Judicial Hearings,” Section 102.130, “General Procedures” of the LDRs of the City of Marathon, Florida is hereby amended as follows:

- **Section 102.130. - General Procedures.**

- A. *Witnesses and Evidence:* Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence.
- B. *Duties of City Staff:* **Staff shall have the responsibility of providing a staff report to the Planning Commission, City Council, applicant and the public based on its expert analysis of all competent and substantial evidence provided in the application file weighed against the Principles for Guiding Development in the Florida Keys Area of Critical State Concern, Chapters 163 and 380, F.S., the goals, objections, and policies of the City Comprehensive Plan and its Land Development Regulations. Staff will then have the responsibility of presenting the case on behalf of the City.** ~~The staff report on the application and a copy of the official file shall be made available to the applicant and the Council or PC at least ten (10) working days prior to the quasi-judicial hearing on the application.~~
- C. *Official File:* All written communication received by Council or PC members or staff concerning an application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The Plan and the City LDRs shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.
- D. *Agenda:* The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall briefly explain the procedures and nature of the quasi-judicial hearing and shall contain an easily recognizable address or cross street of the property.

Section 3. 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. 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.

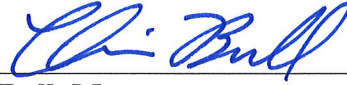
Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 27th DAY OF OCTOBER, 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:



David Migut, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2015-10

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2015-10**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to sections 380.05(6) and 380.0552(9), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2015-10 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by section 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 October 13, 2015, and rendered to the Department on October 23, 2015.
3. The Ordinance amends the City of Marathon Code of Ordinances, Appendix A (Land Development Regulations) Chapter 102, Article 21 (Quasi-Judicial Hearings), Section 102.130, changing the procedure required in the land development regulations to reflect the actual procedures carried out by staff.

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), Fla. Stat.

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, Fla. Stat.; Ch. 28-18, F.A.C.

6. The Ordinance is consistent with the City of Marathon Comprehensive Plan generally, and specifically Goal 1-1 (Manage Growth) and Policies 9-1.1 (Role of the Local Planning Agency in Plan Evaluation and Updates), and 9-1.3.1 (Review the Impacts of Changing Conditions), as required by section 163.3177(1), Florida Statutes.

7. “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.

8. 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 section 380.0552(7), Florida Statutes.

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 Principle:

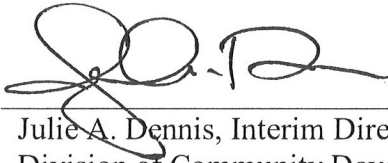
- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2015-10 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.



Julie A. Dennis, Interim 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.

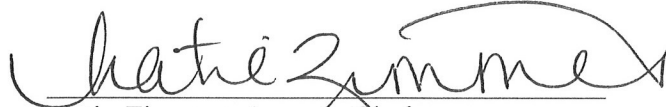
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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 20th day of January, 2016.



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 Mark Senmartin, 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