

Sponsored by: Lindsey  
Introduction Date: August 20, 2018  
Public Hearing Dates: September 11, 2018  
October 23, 2018  
Enactment date: October 23, 2018

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2018-10**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 107, ARTICLE 1 OF THE CITY CODE OF ORDINANCES, ENTITLED “BUILDING PERMIT ALLOCATION SYSTEM (BPAS),” TO INCLUDE PROVISIONS FOR NEW AFFORDABLE ALLOCATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT, AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE**

**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 of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

**WHEREAS**, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting regulations for the protection of the public; and

**WHEREAS**, in support the City of Marathon’s workforce by alleviating constraints on affordable housing the City shall participate in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Administration Commission; and

**WHEREAS**, the Workforce-Affordable Housing Initiative will require new and construction and repurposed buildings that participate to commit to evacuating renters in the 48 to 24-hour window of evacuation; and

**WHEREAS**, the Ordinance, thus introduced, provides criteria for the Early Evacuation affordable BPAS allocations; and

**WHEREAS**, the Ordinance further provides exemptions for individuals living in Early Evacuation residential units who are all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management,

**WHEREAS**, the Planning Commission reviewed this Ordinance on August 20, 2018 providing a unanimous recommendation of approval to the City Council with no proposed changes; and

**WHEREAS**, the City Council reviewed this Ordinance on September 11, 2018 and again on October 23, 2018 adopting the Ordinance in its second hearing and directing staff to transmit the Ordinance to the Florida Department of Economic Opportunity for final approval; and

**WHEREAS**, pursuant to the same legislative provision, the City Council accepted the ORC Report, considered the recommendation of the Planning Commission, accepted additional public input, and deliberated on the proposed amendment to the Land Development Regulations on October 23, 2018 at a duly noticed public hearing, and directed that the amendment be transmitted to the Florida Department of Economic Opportunity as formally adopted by the City; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

~~Strikethrough~~ = deletion      **bold underline** = addition

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** Amend Chapter 104, Article 1, “General Provisions,” to add a new specific use to be given special consideration under the Article:

**Affordable – Early Evacuation Residential Unit: Pursuant to the City’s provision of affordable allocations from the “Affordable – Early Evacuation Pool,” under Section 107.06 F. the following criteria shall apply to ALL Affordable – Early Evacuation residential units:**

**Affordable-Early Evacuation residential units under this program shall:**

- a. **be multifamily structures;**

- b. be rental units;
- c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;
- d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;
- e. require on-site property management;
- f. comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units;
- g. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);
- h. incorporate sustainable and resilient design principles into the overall site design;
- i. ensure accessibility to employment centers and amenities;
- j. require deed-restrictions ensuring:
  - (i) the property remains workforce-affordable housing in perpetuity;
  - (ii) tenants evacuate during the period in which transient units are required to evacuate;
  - (iii) rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;
  - (iv) onsite property managers are formally trained in evacuation procedures.

**Evacuation exemptions.**

**Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1.1.2.i(ii) include all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management.**

**SECTION 3.** Amend Chapter 107, Article 1, “Building Permit Allocation System (BPAS), Section 107.04, “Establishment of Allocation Pools,” A., “Dwelling Units,” 2., “Affordable,” to add the following:

**(d) *Early Evacuation Pool:* The City thereby, shall establish a new limited category to be known as the “Affordable - Early Evacuation Pool”**

which will provide 300 workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-18, Florida Administrative Code. The City shall be responsible for the management, distribution, and enforcement of requirements associated with the Early Evacuation Affordable allocations. At any time, through a public hearing process prescribed in Chapter 102, Article 2 of the Land Development Regulations, the City may allocate Early Evacuation Allocations to the cumulative limit of 300 affordable allocations. The City of Marathon shall ensure adherence to these requirements through implementation of the policies of this objective.

SECTION 4. Amend Chapter 107, Article 1, "Building Permit Allocation System (BPAS), Section 107.06, "Limitations," to add the following and renumber subsequent subsections:

**F. Affordable - Early Evacuation Pool:**

**Early Evacuation residential units built under this program shall:**

- a. **be multifamily structures;**
- b. **be rental units;**
- c. **require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;**
- d. **not be placed in the V-Zone or within the Coastal Barrier Resource Systems;**
- e. **require on-site property management;**
- f. **comply with habitat and other applicable locational criteria and densities for multifamily affordable housing units;**
- g. **shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);**
- h. **incorporate sustainable and resilient design principles into the overall site design;**
- i. **ensure accessibility to employment centers and amenities;**
- j. **require deed-restrictions ensuring:**
  - (i) **the property remains workforce-affordable housing in perpetuity;**
  - (ii) **tenants evacuate during the period in which transient units are required to evacuate;**
  - (iii) **rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere**

- to the evacuation requirement could result in severe penalties, including eviction, to the resident;
- (iv) onsite property managers are formally trained in evacuation procedures.

Evacuation exemptions.

Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1.1.2.i(ii) include all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management.

SECTION 5. Add a definition of Affordable – Early Evacuation residential allocation and unit to Chapter 110, Article 3 of the Land Development Regulations as follows:

*Affordable – Early Evacuation Residential Allocation: is an affordable BPAS allocation issued under the provisions of Chapter 107, Article 1, Sections 107.04 A. 2. (d), 107.06 F., and 107.09 of the City of Marathon Land Development Regulations.*

*Affordable – Early Evacuation Residential Unit: Pursuant to the City’s provision of affordable allocations from the “Affordable – Early Evacuation Pool,” under Sections 107.04 A. 2. (d), 107.06 F. and 107.09, the following criteria shall apply to ALL Affordable – Early Evacuation residential units:*

Affordable-Early Evacuation residential units built under this program shall:

- a. be multifamily structures;
- b. be rental units;
- c. require, at a minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission;
- d. not be placed in the V-Zone or within the Coastal Barrier Resource Systems;
- e. require on-site property management;
- f. comply with habitat and other applicable locational criteria and densities for multifamily affordable housing units;

- g. shall not be placed in any habitat defined as mangroves, saltmarsh & buttonwood, hardwood hammock, or fresh water wetlands (disturbed categories excepted);**
- h. incorporate sustainable and resilient design principles into the overall site design;**
- i. ensure accessibility to employment centers and amenities;**
- j. require deed-restrictions ensuring:**
  - (i) the property remains workforce-affordable housing in perpetuity;**
  - (ii) tenants evacuate during the period in which transient units are required to evacuate;**
  - (iii) rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident;**
  - (ii) onsite property managers are formally trained in evacuation procedures.**

**Evacuation exemptions.**

**Persons living in workforce-affordable housing who are exempt from evacuation requirements of Policy 1.1.2.i.(ii) include all first responders, correction officers, health care professionals, or other first-response workers required to remain during an emergency, provided the person claiming exemption under this policy has faithfully certified their status with property management.**

**SECTION 5.** All other existing provisions of Appendix A, “Land Development Regulations,” Chapter 102, of the Code of Ordinance of the City of Marathon, Florida shall be renumbered accordingly.

**SECTION 6.** 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 7.** 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 8.** 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 9.** 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 10.** This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

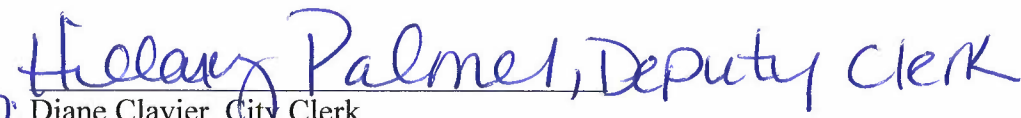
**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23<sup>rd</sup> DAY OF OCTOBER, 2018.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Michelle Coldiron, Mayor**

AYES: Bartus, Zieg, Senmartin, Cook, Coldiron  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
for: 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, David Migut

STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON  
ORDINANCE NO. 2018-10

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**FINAL ORDER**  
**APPROVING CITY OF MARATHON ORDINANCE NO. 2018-10**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to sections 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2018-10 (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 (“City”) is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on October 23, 2018, and rendered to the Department on February 22, 2021.
3. The Ordinance amends several sections of the Land Development Code to modify the City’s existing Building Permit Allocation System (BPAS) to provide for additional permit allocations made available under the Workforce Affordable Housing Initiative. The Ordinance amends Chapters 104 and 107 of the Code to establish eligibility criteria, exemptions, and definitions for the additional BPAS allocations.



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. *See* § 380.05(6), Fla. Stat.

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. The Ordinance is consistent with the City’s Comprehensive Plan as required by Section 163.3177(1), Florida Statutes, generally, and is specifically consistent with Policies 1-4.1.1, 1-4.1.2, 1-4.1.3, 1-4.1.4, and 1-4.1.5 of the Plan.

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. *See* § 380.05(6), 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.

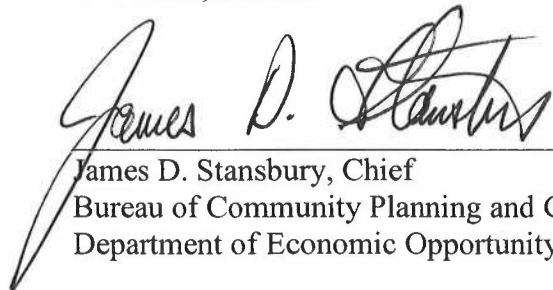
8. The Ordinance is consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern as a whole, and is specifically consistent with the following principles:

- (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;
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development;
- (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys; and
- (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. 2018-10 is consistent with the City of Marathon Comprehensive Plan and 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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James D. Stansbury, Chief  
Bureau of Community Planning and Growth  
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, BY FILING A PETITION.

A PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF 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  
AGENCY.CLERK@DEO.MYFLORIDA.COM

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


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.

PURSUANT TO SECTION 120.573, FLORIDA STATUTES, AND CHAPTER 28, PART IV, FLORIDA ADMINISTRATIVE CODE, YOU ARE NOTIFIED THAT MEDIATION IS NOT AVAILABLE.

**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 4th day of March, 2021.



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

By U.S. Mail:

Steve Cook, Mayor  
City of Marathon, City Council  
9805 Overseas Highway  
Marathon, FL 33050

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

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