



**City of Marathon Planning Commission**  
**Tuesday January 19, 2021**  
**9805 Overseas Hwy**  
**City Hall Council Chambers**  
**5:30 PM**

1. **Call To Order**
  2. **Pledge Of Allegiance**
  3. **Roll Call**
  4. **Minutes**
  5. **Items For Public Hearing**
  6. **Adjournment**
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**5. Items For Public Hearing**

**Item 1.** An Ordinance Of The City Of Marathon, Florida; Amending Chapter 5 Section 5-23 Entitled Dog-Friendly Restaurants, Repealing The Automatic Yearly Expiration Of Licenses; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; Providing For Inclusion In The Code; And Providing For An Effective Date.

**Item 2.** An Ordinance Of The City Of Marathon, Florida; Amending Chapter 107 Article 12 Entitled Floodplain Management; Providing Criteria For Accessory Structures In Flood Hazard Areas And To Specify Elevations Of Manufactured Homes In Flood Hazard Areas; Amending Chapter 110 Definitions; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; Providing For Inclusion In The Code; And Providing For An Effective Date.

**Item 3.** An Ordinance Of The City Of Marathon, Florida; Amending Chapter Fourteen Article IV Entitled Water Conservation, Providing For Local Implementation Of The Mandatory Year-Round Landscape Irrigation Conservation Measures Rule Of The South Florida Water Management District (40e-24, F.A.C.); Providing Definitions; Providing For The Applicability Of The Ordinance; Providing The Landscape Irrigation Schedule; Providing Exceptions To The Landscape Irrigation Schedule; Providing For A Requirement To Operate Technology That Inhibits Or Interrupts An Irrigation System During Periods Of Sufficient Moisture; Providing For Variances From The Specific Day Of The Week Limitations; Providing For Enforcement Of The Ordinance; Providing For Penalties For Violation Of The Ordinance; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; Providing For Inclusion In The Code; And Providing For An Effective Date.



**City of Marathon Planning Commission  
Monday December 14, 2020  
9805 Overseas Hwy  
City Hall Council Chambers**

**MINUTES**

Lynn Landry called the meeting of the Planning Commission to order on Monday December 14, 2020 at 5:30 pm.

In attendance: Attorney Steve Williams, Admin Assistant Lorie Mullins, Planning Director Brian Shea, City Manager George Garrett and members of the public.

The Pledge of Allegiance was recited.

The roll was called. Mike Cinque-absent; Matt Sexton-present; Eugene Gilson-present; Mike Leonard-present; Lynn Landry-present.

Landry asked for approval of the last meeting minutes.

Gilson moved to approve. Leonard seconded. The roll was called. The minutes were approved 4-0.

**Item 1** was read into the record. Consideration Of A Request By Brian Thorton Of Racetrac Petroleum, Inc. For A Conditional Use Permit Pursuant To Chapter 102 Article 13 Of The City Of Marathon Land Development Regulations (LDRs) Entitled "Conditional Use Permits" For The Development Of A 5,411 Sq. Ft. Convenience Store With 16 Self-Service Fuel Positions And 3 High Capacity Diesel Delivery Positions On Property Located At 3896 Overseas Highway, Which Is Legally Described As Lot 1, The South 200 Feet Of Lot 2, The South 200 Feet Of Lot 3, Square 3 And Pt Of Govt Lot 3 Marathon Beach Subdivision PB 2-16, Marathon, Florida; Having Real Estate Number 00336770-000000.

Attorney Williams asked for any ex-parte communications on the item. Gilson stated that he had received notice of the meeting and spoke with Attorney Williams but it would not affect his decision.

Brian Shea presented the item with visual aids.

Steve Hurley presented the item for the applicant.

There were no public speakers.

Leonard made a motion to approve the item to include feedback on electrical car charging stations, EPA reports, additional landscaping on US 1 and 39<sup>th</sup> Streets, and turn radius for larger vehicles using 39<sup>th</sup> Street prior to presenting to Council in January.

Gilson seconded.

The roll was called. The item was approved 4-0.

**Item 2** and 3 were read into the record. An Ordinance Of The City Of Marathon, Florida Amending The Zoning Designation From Residential High (RH) To Mixed Use (MU) For The Property Described As Block C Lots 6 and 7, Sheryl Subdivision #2, Key Vaca , Marathon, Monroe County, Florida, Having Real Estate Numbers 00340010-000000 and 00340020-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; 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 State Department Of Economic Opportunity.

**Item 3** An Ordinance Of The City Of Marathon, Florida Amending The Future Land Use Map (FLUM) From Residential High (RH) To Mixed Use-Commercial (MU-C) For The Property Described As Block C, Lots 6 and 7, Sheryl Subdivision #2, Key Vaca, Marathon, Monroe County, Florida, Having Real Estate Numbers 00340010-000000 and 00340020-000000; Providing For Severability; Providing For The Repeal Of Conflicting Provisions; 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 State Department Of Economic Opportunity.

Brian Shea presented the items.

There were no ex-parte communications.

There were no public speakers.

Landry asked the reason for the amendment. Shea stated the property is currently being used as commercial.

Landry made a motion to approve item 2. Gilson seconded.

The roll was called. The item was approved 4-0.

Gilson made a motion to approve item 3. Sexton seconded.

The roll was called. The item was approved 4-0.

Motion to adjourn.

Landry adjourned the meeting at 6:25 p.m.

ATTEST:

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Lynn Landry – Planning Commission Chairman

ATTEST:

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Lorie Mullins-Administrative Assistant  
City of Marathon Planning Department

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes the testimony and evidence upon which the appeal is to be based.

ADA Assistance: Anyone needing special assistance at the Planning Commission Meeting due to disability should contact the City of Marathon at (305-) 743-0033 at least two days prior thereto.

**(Please note that one or more Marathon City Council members may participate in the meeting.)**



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: January 19, 2021  
To: Planning Commission  
From: Brian Shea, Planning Director

Agenda Item: An Ordinance Of The City Of Marathon, Florida; Amending Chapter Five Section 5-23 Entitled Dog-Friendly Restaurants, Repealing The Automatic Yearly Expiration Of Licenses; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; And Providing For Inclusion In The Code; And Providing For An Effective Date.

**BACKGROUND:**

The attached amended Ordinance will remove the yearly renewal and fee for the Dog Friendly Restaurant Permit.

City staff looked at the existing Statutes, and nothing in the statutes requires annual renewals of the permit. The statute states that the local government shall require from the applicant such information as the local government deems reasonably necessary to enforce the ordinance. Renewals and associated fees are not reasonably necessary to enforce the ordinance, as the expirations are set by statute and violations and enforcement are specifically set in the ordinance.

**CONSISTENCY CHECKLIST:**

	Yes	No
1. Comprehensive Plan	_____	_____ <u>No</u>
2. Other –Sewer Mandate	_____	_____ <u>No</u>

**FISCAL NOTE:**

NA

**APPROVED BY FINANCE DIRECTOR:**

\_\_\_\_\_

**RECOMMENDATION:**

Approval of Ordinance 2021-XX to be brought forward for a second public hearing.

**Sponsored by:** Garrett  
**Introduction Date:** XXX  
**Public Hearing Dates:** XXX  
**Enactment Date:** XXX

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2021-XXX**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA; AMENDING CHAPTER FIVE SECTION 5-23 ENTITLED DOG-FRIENDLY RESTAURANTS, REPEALING THE AUTOMATIC YEARLY EXPIRATION OF LICENSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT; AND PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 509.233, *Florida Statutes*, the “Dixie Cup Clary Local Control Act,” grants municipalities the authority to provide exemptions from Section 6-501.115 of the *U.S. Food and Drug Administration Food Code*, as adopted and incorporated by the State of Florida Division of Hotels and Restaurants in Chapter 61C-4.010 (6), *Florida Administrative Code*; and

**WHEREAS**, the City Council of the City of Marathon (the “City”) recognizes a long standing practice of various restaurants throughout the City of allowing City residents and visitors alike to bring their dogs to outdoor areas; and

**WHEREAS**, the purpose of this Ordinance is to recognize this unique and historic practice and to create regulations to legally allow dogs in outdoor areas of restaurants while providing for guidelines that help protect the public health, safety, and welfare in accordance with State law.

**WHEREAS**, the City does not want to put undue burdens on restaurants by having them reapply every year for a new dog friendly restaurant license.

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

**Section 1.** The above recitals are hereby confirmed and adopted.

**Section 2.** Section 5-23 of the Code of Ordinances, City of Marathon, Florida is hereby amended to read as follows:  
Sec. 5-23. Dog-Friendly Restaurants.

- (a) *Purpose.* Section 509.233, *Florida Statutes*, the “Dixie Cup Clary Local Control Act,” grants the City the authority to provide exemptions from Section 6-501.115, *U.S. Food and Drug Administration Food Code* (“FDA Food Code”), as adopted and incorporated by the State of Florida Division of Hotels and Restaurants (“Division”) in Chapter 61C-4.010(6), *Florida Administrative Code*. The purpose of this section is to allow dogs in public food service establishments in a manner consistent with the three-year pilot program approved by the State of Florida. The procedure adopted pursuant to this section provides an exemption for those public food service establishments which have received a permit, to the sections of the FDA Food Code that prohibit live animals in public food service establishments.
- (b) No dog shall be in a public food service establishment unless allowed by State law and the public food service establishment has received and maintains an unexpired permit pursuant to this section allowing dogs in designated outdoor areas of the establishment.
- (c) *Definitions.* Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. Words of one (1) gender include the correlative words of the other gender, unless the sense indicates otherwise. Additionally, the terms set forth below have the following meaning except where the context clearly otherwise requires:
- “Public food service establishments” shall mean any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.
- “Employee” or “employees” shall include, but is not limited to, the owner or owners of the public food service establishment.
- (d) *Application Requirements.* Public food service establishments must apply for and receive a permit from the Planning Department before patrons’ dogs are allowed on the premises. The City Council shall by resolution establish a reasonable fee to cover the cost of processing the initial application and renewals. The application for a permit shall require such information from the applicant as is deemed reasonably necessary to enforce the provisions of this section, but shall require, at a minimum, the following information:
- (1) Name, location, mailing address and Division issued license number of the public food service establishment.

- (2) Name, mailing address, and telephone contact information of the permit applicant. The name, mailing address, and telephone contact information of the owner of the public food service establishment shall be provided if the owner is not the permit applicant.
  - (3) A diagram and description of the outdoor area which is requested to be designated as available to patrons' dogs, including dimensions of the designated area; a depiction of the number and placement of tables, chairs, and restaurant equipment, if any; the entryways and exits to the designated outdoor area; the boundaries of the designated area and of the other outdoor dining areas not available for patrons' dogs; any fences or other barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information as is deemed necessary by the City.
  - (4) The diagram shall be accurate and to scale but need not be prepared by a licensed design professional. A copy of the approved diagram shall be attached to the permit and posted at the entrance.
  - (5) A description of the days of the week and hours of operation when patrons' dogs will be permitted in the designated outdoor area.
- (e) *Regulations.* Public food service establishments that receive a permit for a designated outdoor area pursuant to this section shall require that:
- (1) Employees shall wash their hands promptly after touching, petting, or otherwise handling any dog(s) and shall wash their hands before entering other parts of the public food service establishment from the designated outdoor area.
  - (2) Employees are prohibited from touching, petting or otherwise handling any dog while serving or carrying food or beverages or while handling or carrying tableware.
  - (3) Patrons in a designated outdoor area shall be advised by appropriate signage, at conspicuous locations, that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.
  - (4) Patrons shall keep their dogs on a leash at all times and shall keep their dogs under their control.

- (5) Employees and patrons shall not allow dogs to come into contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved with food service operations.
- (6) Employees and patrons shall not allow any part of a dog to be on chairs, tables, or other furnishings.
- (7) Employees shall clean and sanitize all table and chair surfaces with an approved product between seating of patrons.
- (8) Employees shall remove all dropped food and spilled drink from the floor or ground as soon as possible but in no event less frequently than between seating of patrons at the nearest table.
- (9) Employees and patrons shall remove all dog waste immediately and the floor or ground shall be immediately cleaned and sanitized with an approved product. Employees shall keep a disposal and wash down kit with other appropriate materials for this purpose near the designated outdoor area.
- (10) Employees and patrons shall not permit dogs to be in, or to travel through, indoor or nondesignated outdoor portions of the public food service establishment.
- (11) A sign or signs notifying the public that the designated outdoor area is available for the use of patrons and patrons' dogs shall be posted in a conspicuous manner that places the public on notice.
- (12) A sign or signs informing patrons of these laws shall be posted on premises in a conspicuous manner and place as determined by the City.
- (13) A sign or signs informing employees of these laws shall be posted on the premises in a conspicuous manner and place as determined by the City.
- (14) Ingress and egress to the designated outdoor area shall not require entrance into or passage through any indoor area or nondesignated outdoor portions of the public food service establishment.
- (15) The public food service establishment and designated outdoor area shall comply with all permit conditions and the approved diagram.
- (16) Employees and patrons shall not allow any dog to be in the designated outdoor areas of the public food service establishment if the public food service establishment is in violation of any of the requirements of this section.

- (17) Permits shall be conspicuously displayed in the designated outdoor area.
- (18) It shall be unlawful to fail to comply with any of the requirements of this section. Each instance of a dog on the premises of a public food service establishment without a permit is a separate violation.

(f) *Permit Expiration and Revocation.*

- (1) A permit issued pursuant to this section shall expire automatically upon the sale of the public food service establishment and cannot be transferred to a subsequent owner. The subsequent owner may apply for a permit pursuant to this section if the subsequent owner wishes to continue to allow patrons' dogs in a designated outdoor area of the public food service establishment.
- ~~(2) Permits shall expire on September thirtieth of each year, unless renewed by paying an annual renewal fee as provided herein.~~
- (2) A permit may be revoked by the City Manager if the public food service establishment fails to comply with any condition of this ordinance. If the ground for revocation is a failure to maintain any required state or local license, the revocation may take effect immediately upon giving notice of revocation to the permit holder.
- (3) If a public food service establishment's permit is revoked, no new permit may be approved for the establishment for a period of no less than 180 days following the date of revocation.

(g) *Complaints and Reporting.*

- (1) Complaints shall be made to the City documenting the name of the complainant and the nature of the complaint. The City shall accept, document, and respond to all complaints and shall timely report to the Division all complaints and the response to such complaints.
- (2) The City shall provide the Division with a copy of all approved applications and permits issued.
- (3) All applications, permits, and other related materials shall contain the Division-issued license number for the public food service establishment.

(h) *Permit ~~Renewal~~ Procedure and Fee.* The City Council shall by resolution establish a reasonable permit ~~renewal~~ fee, ~~and the permit holder shall renew the~~

~~permit by paying the applicable permit renewal fee on or before September thirtieth of each year. The fee shall be a onetime fee unless the subject permit has been revoked or expired as provided herein.~~

- (i) *Violations.* Violations of this section of the Marathon Code may be enforced and are punishable in accordance with Section 1-7 and Chapter 10 of the Marathon Code, or as may otherwise be provided for by State law.

**Section 3.** The Provisions of the Marathon Code 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 section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this 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.** This Ordinance shall become effective immediately upon adoption on second reading.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

**THE CITY OF MARATHON, FLORIDA**

\_\_\_\_\_  
**Luis Gonzalez, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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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:**

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City Attorney  
Steven T. Williams

Planning Commission Staff Report



**Meeting Date:** January 19, 2021  
**To:** Planning Commission  
**From:** Brian Shea, Planning Director

**Agenda Items:**

**Item 4:** An Ordinance Of The City Of Marathon, Florida; Amending Chapter 107 Article 12 Entitled Floodplain Management; Providing Criteria For Accessory Structures In Flood Hazard Areas And To Specify Elevations Of Manufactured Homes In Flood Hazard Areas; Amending Chapter 110 Definitions; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; And Providing For Inclusion In The Code; And Providing For An Effective Date.

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**RECOMMENDATION:**

Staff recommends APPROVAL

**REQUEST:**

The draft Ordinance seeks to update the floodplain management code sections pertaining to manufactured homes, accessory structures, and associated definitions.

**AUTHORITY**

**Section 102.26. Planning Commission Recommendation.**

- A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.
- B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:
1. The need and justification for the change;
  2. The consistency of the proposed amendment with the Comprehensive Plan; and
  3. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
1. Approved as proposed;
  2. Approved with amendments proposed by the PC; or
  3. Denied

**Section 102.27. - Hearing(s) by Council.**

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. ch. 166, before taking action on the amendment.

**Section 102.28. - Action by Council.**

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

**ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:**

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criteria and explanation of relevance to this proposed amendment are listed below:

**A. The need and justification for the change;**

As a participating CRS community, we need to maintain our floodplain management regulations. The CRS program has adopted minimum requirements regarding Freeboard. These requirements are now a prerequisite to be a Class 8. The City of Marathon is currently a Class 6 and will have to amend our regulations to include the requirements to maintain that Class status.

**B. The consistency of the proposed amendment with the Comprehensive Plan; and**  
This Ordinance furthers goals, objectives or policies identified in:

Goal 4-1 Conserve, Manage, Use and Protect the Natural and Environmental Resources

- |                  |  |
|------------------|--|
| Objectives 4-1.2 | Conserve, Protect and Enhance Natural Systems    |
| Objective 4-1.3  | Conserve, Protect, and Enhance Coastal Resources |
| Objective 4-1.4  | Protect and Preserve Wetlands                    |

Objective 4-1.5	Protect and Retain Environmentally Sensitive Lands
Objective 4-1.6	Restoration
Objective 4-1.7	Protect and Enhance Fisheries, Wildlife, and Wildlife Habitat
Objective 4-1.19	Limit Public Expenditures in Coastal High Hazard Area (CHHA)
Objective 4-1.20	Direct Population Away From High Velocity Areas

- C. Whether the proposed change shall further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan.**  
The proposed changes further the goals of the Comprehensive Plan, LDRs, and support the intent of other Components of the City’s Code of Ordinances.

**CONCLUSION:**

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City’s Comprehensive Plan adopted under the requirements of these statutes and rules.

**RECOMMENDATION:**

Staff recommends APPROVAL.

**Sponsored by: Garrett**  
**Introduction Date: XXX**  
**Public Hearing Dates: XXX**  
**Enactment Date: XXX**

**CITY OF MARATHON, FLORIDA**  
**ORDINANCE 2021-XXX**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MARATHON AMENDING THE LAND DEVELOPMENT CODE TO AMEND CHAPTER 107 GENERAL DEVELOPMENT STANDARDS, ARTICLE 12 FLOODPLAIN MANAGEMENT TO PROVIDE CRITERIA FOR ACCESSORY STRUCTURES IN FLOOD HAZARD AREAS AND TO SPECIFY ELEVATION OF MANUFACTURED HOMES IN FLOOD HAZARD AREAS; AMENDING CHAPTER 110 DEFINITIONS; AND PROVIDING FOR APPLICABILITY AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida in Chapter 166 – Municipalities, Florida Statutes, confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the Federal Emergency Management Agency released FEMA Policy #104-008-03 Floodplain Management Requirements Accessory Structures; and

**WHEREAS**, the City Council body has determined it appropriate to adopt regulations that are consistent with the FEMA Policy to allow issuance of permits for wet floodproofed accessory structures that are not larger than the sizes specified in the FEMA Policy.

**WHEREAS**, the City of Marathon participates in the National Flood Insurance Program and participates in the NFIP's Community Rating System, a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements, achieving a CRS rating of Class 6; and

**WHEREAS**, in 2020 the NFIP Community Rating System established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better and to satisfy the prerequisite and for the City of Marathon Key to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated such that the lowest floors are at or above at least the base flood elevation plus 1 foot, which necessitates modification of the existing requirements; and

**WHEREAS**, the City Council determined that it is in the public interest to amend the floodplain management regulations to better protect owners and occupants of manufactured homes and to continue participating in the Community Rating System at the current class rating.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE**

**CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are hereby confirmed and adopted.

**Section 2.** Land Development Code Chapter 107 General Development Standards, Article 12 Floodplain Management is hereby amended by the following amendments:

**CHAPTER 107 GENERAL DEVELOPMENT STANDARDS**

**ARTICLE 12. - FLOODPLAIN MANAGEMENT**

**Section 107.98. - General.**

- A. *Title.* These regulations shall be known as the Floodplain Management Ordinance of the City of Marathon, hereinafter referred to as "this ordinance."
- B. *Scope.* The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.
- C. *Intent.* The purposes of this ordinance and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:
- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
  - (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
  - (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
  - (4) Manage the alteration of flood hazard areas and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
  - (5) Minimize damage to public and private facilities and utilities;
  - (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
  - (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
  - (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in Title 44 Code of Federal Regulations, Section 59.22.
- D. *Coordination with the Florida Building Code.* This ordinance is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.
- E. *Warning.* The degree of flood protection required by this ordinance and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is

based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

- F. *Disclaimer of Liability.* This ordinance shall not create liability on the part of the City Council of the City of Marathon or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

Section 107.99. - Applicability.

- A. *General.* Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
- B. *Areas to which this ordinance applies.* This ordinance shall apply to all flood hazard areas within the City of Marathon, as established in Section [107.31.C](#) of this chapter.
- C. *Basis for establishing flood hazard areas and Species Focus Areas and Real Estate Numbers.*
- (1) The Flood Insurance Study for Monroe County, Florida and Incorporated Areas dated February 18, 2005, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at City Hall, 9805 Overseas Highway, Marathon, FL 33050.
  - (2) The Species Focus Area Maps (SFAMs) and the real estate numbers of parcels (RE List) that are within the SFAMs identified by the U.S. Fish and Wildlife Service in accordance with the Biological Opinion, dated April 30, 2010, as amended, for the City of Marathon, and any subsequent revisions there to, are hereby declared to be a part of this ordinance. The SFAMs and RE list are on file at the city hall.
- D. *Submission of additional data to establish flood hazard areas.* To establish flood hazard areas and base flood elevations, pursuant to Section [107.35](#) of this chapter the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:
- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the Florida Building Code.
  - (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
- E. *Other laws.* The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

- F. *Abrogation and greater restrictions.* This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.
- G. *Interpretation.* In the interpretation and application of this ordinance, all provisions shall be:
- (1) Considered as minimum requirements;
  - (2) Liberally construed in favor of the governing body; and
  - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

Section 107.100. - Duties and Powers of the Floodplain Administrator.

- A. *Designation.* The City Manager is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees, particularly the Building Official and the Certified Floodplain Manager.
- B. *General.* The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this ordinance. The Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section [107.105 107.102.3](#) of this ordinance.
- C. *Applications and permits.* The Floodplain Administrator, in coordination with other pertinent offices of the community, shall:
- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
  - (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;
  - (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
  - (4) Provide available flood elevation and flood hazard information;
  - (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
  - (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
  - (7) Issue development permits for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and

- (8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.
- D. *Substantial improvement and substantial damage determinations.* For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:
- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
  - (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
  - (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement"; and
  - (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this ordinance is required.
- E. *Modifications of the strict application of the requirements of the Florida Building Code.* The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to Section 107.37 of this ordinance.
- F. *Notices and orders.* The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.
- G. *Inspections.* The Floodplain Administrator shall make the required inspections as specified in Section 107.36 of this chapter for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.
- H. *Other duties of the Floodplain Administrator.* The Floodplain Administrator shall have other duties, including but not limited to:
- (1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 107.32.D of this chapter;
  - (2) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations or flood hazard area boundaries; such submissions shall be made within six (6) months of such data becoming available;

- (3) Review required design certifications and documentation of elevations specified by this ordinance and the Florida Building Code to determine that such certifications and documentations are complete;
  - (4) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Marathon are modified; and
  - (5) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."
- I. *Floodplain management records.* Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this ordinance; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the Florida Building Code. These records shall be available for public inspection at City Hall, 9805 Overseas Highway, Marathon, FL 33050.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

Section 107.101. - Permits.

- A. *Permits required.* Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.
- B. *Development permits.* Development permits shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a development permit is required in addition to a building permit.
- C. *Buildings, structures and facilities exempt from the Florida Building Code.* Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), development permits shall be required for the following buildings, structures and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this ordinance:
  - (1) Railroads and ancillary facilities associated with the railroad.
  - (2) Nonresidential farm buildings on farms, as provided in Fla. Stat. § 604.50.
  - (3) Temporary buildings or sheds used exclusively for construction purposes.

- (4) Mobile or modular structures used as temporary offices.
  - (5) Those structures or facilities of electric utilities, as defined in Fla. Stat. § 366.02, which are directly involved in the generation, transmission, or distribution of electricity.
  - (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
  - (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
  - (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
  - (9) Structures identified in Fla. Stat. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.
- D. *Application for a permit or approval.* To obtain a development permit the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:
- (1) Identify and describe the development to be covered by the permit or approval.
  - (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
  - (3) Indicate the use and occupancy for which the proposed development is intended.
  - (4) Be accompanied by a site plan or construction documents as specified in Section 107.35 of this chapter.
  - (5) State the valuation of the proposed work.
  - (6) Be signed by the applicant or the applicant's authorized agent.
  - (7) Give such other data and information as required by the Floodplain Administrator.
  - (8) For projects proposing to enclose areas under elevated buildings, include signed Declaration of Land Restriction (Non-conversion Agreement); the agreement shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.
- E. *Validity of permit or approval.* The issuance of a development permit pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the Florida Building Codes, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.
- F. *Expiration.* A development permit shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.
- G. *Suspension or revocation.* The Floodplain Administrator is authorized to suspend or revoke a development permit if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.

- H. *Other permits required.* Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:
- (1) The South Florida Water Management District; Fla. Stat. § 373.036.
  - (2) Florida Department of Economic Opportunity, Fla. Stat. § 380.05, Areas of Critical State Concern, and Fla. Stat. Ch. 553, Part IV, Florida Building Code.
  - (3) Florida Department of Health for onsite sewage treatment and disposal systems; Fla. Stat. § 381.0065 and Chapter 64E-6, F.A.C.
  - (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; Fla. Stat. § 161.055.
  - (5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
  - (6) Federal permits and approvals.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102. - Protection of Endangered Species.

A. *Applications with Determination of Unsuitable Habitat.* Upon receipt of a floodplain development permit application for a property that is determined to be on the SFAMs and the RE list as containing unsuitable habitat, the Floodplain Administrator shall place a letter in the floodplain development permit file that indicates:

- (1) The name of the city official that made the determination;
- (2) The date of the determination; and
- (3) The date of the SFAM and RE list used to make the determination.

Once the determination has been made, the City of Marathon may take action on the floodplain development permit application without further concern for Federally threatened and endangered species and their habitat.

B. *Species Assessment Guides and Acceptance Form.* The Species Assessment Guide for the City of Marathon provided by the U.S. Fish and Service (Service), dated December 23, 2011, and any subsequent revisions there to, is hereby declared to be a part of this ordinance. The Species Assessment Guide is on file at the city hall.

- (1) The City of Marathon shall use the Species Assessment Guide to determine whether the applicant for a floodplain development permit application must seek technical assistance by the Service. For applications that require such assistance, the City of Marathon shall provide copies of the applications to the Service for review on a weekly basis.
- (2) Based on the Service's technical assistance, the City of Marathon shall condition the floodplain development permit to incorporate the Service's recommendations to avoid and/or to minimize possible impacts on Federally listed threatened and endangered species and their habitat.
- (3) The City shall maintain an Acceptance Form of the Service's recommendations in the permit file. The Acceptance Form shall be signed by the permit applicant and the building official.
- (4) The City shall use the Species Assessment Guides (SAGs) for properties that exist within the boundaries of a completed Habitat Conservation Plan and which are subject to the SFAMs. The Real Estate folio number list which accompanies the SFAMs will be utilized in combination to

determine if a development permit application must be provided to the Service for technical assistance in order to meet the full requirements of the FEMA-FWS Settlement.

- C. *Avoiding Impacts on Federally Listed Species.* All proposed development shall meet the conditions attached to floodplain development permits in accordance with Section 105.2(2) to avoid possible impacts to Federally threatened and endangered species and their habitat.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.1. - Site Plans and Construction Documents.

- A. *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
- (2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide.
- (3) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (5) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
- (6) Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

- B. *Additional analyses and certifications.* For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis signed and sealed by a Florida licensed engineer that demonstrates that the proposed alteration will not increase the potential for flood damage shall be submitted with the site plan and construction documents.
- C. *Submission of additional data.* When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.2. - Inspections.

- A. *General.* Development for which a development permit is required shall be subject to inspection.
- B. *Development other than buildings and structures.* The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued development permits.

- C. *Buildings, structures and facilities exempt from the Florida Building Code.* The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this ordinance and the conditions of issued development permits.
- D. *Buildings, structures and facilities exempt from the Florida Building Code, lowest floor inspection.* Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, shall submit to the Floodplain Administrator the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.
- E. *Buildings, structures and facilities exempt from the Florida Building Code, final inspection.* As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in Section 107.37.D of this chapter.
- F. *Manufactured homes.* The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this ordinance and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Floodplain Administrator.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.3. - Variances and Appeals.

- A. *General.* The Planning Commission shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to Fla. Stat. § 553.73(5), the Planning Commission shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.
- B. *Appeals.* The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision may appeal such decision to the Circuit Court, as provided by Florida Statutes.
- C. *Limitations on authority to grant variances.* The Planning Commission shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 107.105.F of this ordinance, the conditions of issuance set forth in Section 107.105.G of this ordinance, and the comments and recommendations of the Floodplain Administrator and the Building Official. The Planning Commission has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.
- D. *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.
- E. *Functionally dependent uses.* A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance,

provided the variance meets the requirements of Section 107.4, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

F. *Considerations for issuance of variances.* In reviewing requests for variances, the Planning Commission shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this ordinance, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

G. *Conditions for issuance of variances.* Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
- (2) Determination by the Planning Commission that:
  - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
  - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
  - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor,

stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.4. - Violations.

- A. *Violations.* Any development that is not within the scope of the Florida Building Code but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance or the conditions established by grants of variance, shall be deemed a violation of this ordinance and punishable as a non-criminal violation. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.
- B. *Authority.* For development that is not within the scope of the Florida Building Code but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as are necessary to prevent or remedy any violation.
- C. *Unlawful continuance; fine.* Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be fined not more than \$500.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.5. - Buildings and Structures.

Design and construction of buildings, structures and facilities exempt from the Florida Building Code. Pursuant to Section 107.101.C of this ordinance, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings shall comply with the requirements of Section [107.113](#) of this ordinance.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.6. - Subdivisions.

- A. *Minimum requirements.* Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:
  - (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
  - (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.
- B. *Subdivision plats.* Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:
- (1) Delineation of flood hazard areas and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats; and
  - (2) Compliance with the site improvement and utilities requirements of Section 107.43 of this chapter.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.7. - Site Improvements, Utilities and Limitations.

- A. *Minimum requirements.* All proposed new development shall be reviewed to determine that:
- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
  - (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
  - (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwaters around and away from proposed structures.
- B. *Sanitary sewage facilities.* All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.
- C. *Water supply facilities.* All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.
- D. *Limitations on placement of fill.* Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the Florida Building Code.
- E. *Limitations on sites in coastal high hazard areas (Zone V).* In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 107.35.B of this chapter demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section 107.47.F(3) of this chapter.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

#### Section 107.102.8. - Manufactured Homes.

- A. *General; limitation.* All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to Fla. Stat. § 320.8249, and shall comply with the requirements of

Chapter 15C-1, F.A.C. and the requirements of this ordinance. Unless located in a manufactured home park or subdivision, new installations of manufactured homes are not permitted. New installations are not permitted in coastal high hazard areas (Zone V) under any circumstance.

- B. *Foundations.* All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:
- (1) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and this ordinance. ~~Foundations for manufactured homes subject to Section 107.44.F of this chapter are permitted to be reinforced piers or other foundation elements of at least equivalent strength.~~
  - (2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and this ordinance.
- C. *Anchoring.* All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.
- D. *Elevation.* All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or R322.3 (Zone V and Coastal A Zone). Manufactured homes that are placed, replaced, or substantially improved shall comply with Section 107.44.E or 107.44.F of this chapter, as applicable.
- ~~E. *General elevation requirement.* Unless subject to the requirements of Section 107.44.F of this chapter, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V);~~
- ~~F. *Elevation requirement for certain existing manufactured home parks and subdivisions.* Manufactured homes that are not subject to Section 107.110.E of this ordinance, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:~~
- ~~(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~
  - ~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.~~
- ~~E. G. *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the Florida Building Code, Residential Section R322.2 or R322.3 for such enclosed areas, as applicable to the flood hazard area.~~
- ~~F. H. *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with~~

the requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard area.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

Section 107.102.9. - Recreational Vehicles and Park Trailers.

- A. *Temporary placement.* Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:
- (1) Be on the site for fewer than 180 consecutive days; and
  - (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.
- B. *Permanent placement.* Recreational vehicles and park trailers that do not meet the limitations in Section [107.111.A](#) of this ordinance for temporary placement shall meet the requirements of Section [107.110](#) of this ordinance for manufactured homes.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

Section 107.102.10. - Tanks.

- A. *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.
- B. *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of Section [107.46.C](#) of this chapter shall:
- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
  - (2) Not be permitted in coastal high hazard areas (Zone V).
- C. *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be elevated to or above the design flood elevation and attached to a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.
- D. *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:
- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
  - (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

Section 107.102.11. - Other Development.

- A. *General requirements for other development.* All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the Florida Building Code, shall:
- (1) Be located and constructed to minimize flood damage;
  - (2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
  - (3) Be constructed of flood damage-resistant materials; and
  - (4) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.
- B. *Detached accessory structures in coastal high hazard areas (Zone V).* In coastal high hazard areas, detached garages are not permitted. Detached accessory structures used only for storage that are 100 square feet or less in area are permitted below the base flood elevation provided the structures comply with Section 107.47. A. of this chapter.
- C. *Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).* In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:
- (1) Structurally independent of the foundation system of the building or structure;
  - (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
  - (3) Have a maximum slab thickness of not more than four (4) inches.
- D. *Decks and patios in coastal high hazard areas (Zone V).* In addition to the requirements of the Florida Building Code, in coastal high hazard areas decks and patios shall be located, designed, and constructed in compliance with the following:
- (1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.
  - (2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
  - (3) A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful

diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.

- (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

E. *Other development in coastal high hazard areas (Zone V)*. In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

F. *Nonstructural fill in coastal high hazard areas (Zone V)*. In coastal high hazard areas:

- (1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one (1) unit vertical to five (5) units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
- (3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

(Ord. No. [2018-05](#), § 2, 8-14-2018)

**Section 3.** The Land Development Code, Chapter 110 Definitions, is hereby amended by the following amendments:

Chapter 110 - DEFINITIONS

ARTICLE 1. - GENERAL Section 110.00. - Construction of Words and Phrases.

ARTICLE 3. - DEFINED TERMS

\*\*\* \*\*

*100-Year Floodplain:* Areas subject to inundation by a flood having a one (1%) percent probability of occurrence in any given year. The 100-year flood elevation is the highest elevation of floodwaters during the 100-year storm event and is calculated or estimated from the best available information.

\*\*\* \*\*

*Accessory structure (Appurtenant structure):* A structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, and storage sheds.

\*\*\* \*\*

*ASCE 24:* A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

\*\*\* \*\*

*Base Flood:* means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

*Base Flood Elevation:* The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

*Basement:* means any area of the building having its floor subgrade (below ground level) on all sides.

\*\*\* \*\*

*Building, Accessory:* A subordinate building, the use of which is incidental to that of the principal building on the same lot. Accessory screened enclosure structures, whether or not attached to the principal building, shall be considered an accessory building if the roof and all sides of the enclosure not attached to the principal building are made of the screening material. In such cases the accessory building setback for the respective zoning district shall apply.

\*\*\* \*\*

*Coastal High Hazard Area:* An area of the special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast or any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-30 or VE.

\*\*\* \*\*

*Design flood:* The flood associated with the greater of the following two (2) areas: [Also defined in FBC, B, Section 202.]

- (1) Area with a floodplain subject to a one-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

*Design flood elevation:* The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone

AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to two (2) feet. [Also defined in FBC, B, Section 202.]

\*\*\* \*\*

*Development* (as related to Chapter 107, Article 12): Any man-made change to improved or unimproved real estate, including, but not limited to; buildings or other structures, tanks, temporary structures, mining, dredging, filling, grading, paving, excavating, drilling operations, temporary or permanent storage of materials or equipment or any other land disturbing activities.

*Development Activity*: Any dredging, filling, excavation, construction of new structures, expansion of existing structures, installation of utilities, roads, personal wireless service facilities, stormwater management systems, waste treatment systems, bulkheading, land clearing, tree cutting, mechanized vegetation removal and the disposal of solid or liquid waste.

\*\*\* \*\*

*Existing Building and Existing Structure*: Buildings and structures for which the "start of construction" commenced on or after October 16, 2000.

*Existing Construction*: For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

\*\*\* \*\*

~~*Existing Manufactured Home Park (Floodplain)*: A manufactured home park for which the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before October 16, 2000.~~

\*\*\* \*\*

~~*Expansion to an Existing Manufactured Home Park (Floodplain)*: The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

\*\*\* \*\*

*Flood or Flooding*: A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) The overflow of inland or tidal waters; (2) The unusual and rapid accumulation or runoff of surface waters from any source.

*Flood damage-resistant materials*: Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

*Flood hazard area*: The greater of the following two (2) areas: [Also defined in FBC, B, Section 202.]

- (1) The area within a floodplain subject to a one-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

*Flood Insurance Rate Map (FIRM):* The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

*Flood Insurance Study (FIS):* The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

*Floodplain:* Any land area susceptible to being inundated by water from any source.

*Floodplain Administrator:* The office or position designated and charged with the administration and enforcement of this appendix (may be referred to as the Floodplain Manager).

*Floor:* The top surface of an enclosed area in a building (including basements) i.e., the top of the slab in concrete slab construction or the top of the wood flooring in wood frame construction. The term does not include the floor of an area used exclusively for parking of vehicles (i.e., garage), limited to storage, or building access (i.e., stairs, elevator shafts, maintenance crawl space).

\*\*\* \*\*

*Functionally dependent use* **(as related to Chapter 107, Article 12):** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

\*\*\* \*\*

~~*Functionally Water Dependent Facility:* A facility, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking, or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long term storage, manufacture, sales, or service facilities.~~

\*\*\* \*\*

*Hardship* (as related to Chapter 107, Article 12): The exceptional difficulty associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

\*\*\* \*\*

*Highest Adjacent Grade:* The highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

\*\*\* \*\*

*Historic Structure* (as related to Chapter 107, Article 12): Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter 12 Historic Buildings.

\*\*\* \*\*

*Letter of Map Change (LOMC):* An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

*Letter of Map Amendment (LOMA):* An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

*Letter of Map Revision (LOMR):* A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

*Letter of Map Revision Based on Fill (LOMR-F):* A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

*Conditional Letter of Map Revision (CLOMR):* A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

\*\*\* \*\*

*Lowest Floor:* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of the Florida Building Code or ASCE 24.

\*\*\* \*\*

*Manufactured home:* A structure, transportable in one (1) or more sections, which is eight (8) feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

*Manufactured home park or subdivision:* A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

\*\*\* \*\*

*Market Value:* The building value, which is the property value, excluding the land value and that of the detached accessory structures and other improvements on-site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on a income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

\*\*\* \*\*

*Mobile Home:* Is a structure, eight (8) body feet or more in width and over 35 feet in length, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used as single-family dwelling, with or without a permanent foundation when connected to the required utilities. The term also includes park model trailers but does not include recreational vehicles, travel trailers, and similar transportable structures placed on a site less than 180 consecutive days.

*Mobile Home Park:* A lot or parcel of land under single ownership or management upon which is operated a business engaged in providing for the parking of six (6) or more mobile homes to be used for both living and storage purposes, and including the customary accessory uses such as owners' and managers' living quarters, restrooms, laundry facilities, utility areas, and facilities for parks and recreation.

\*\*\* \*\*

*New Construction:* For floodplain management purposes, any structure for which the "start of construction: commenced on or after October 16, 2000 and includes any subsequent improvements to such structures.

~~*New manufactured home park or subdivision:* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after.~~

*New Mobile Home Park:* A mobile home park for which the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed after July 7, 2005.

\*\*\* \*\*

*Park trailer:* A transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in Fla. Stat. § 320.01]

\*\*\* \*\*

*Recreational Vehicle:* Any vehicle, not exceeding 40 feet in overall length or eight and one-half (8½) feet in width, designed and intended for recreational purposes, including trailers, travel trailers, boats, campers, pickup campers, buses, tent trailers, motor homes, and other similar vehicles with or without motive power, designed and constructed to travel on public thoroughfares. Same definition as set forth in 2001, Fla. Stat. §§ 320.01(1)(b) and 513.01(9).

*Recreational vehicle (Floodplain):* A vehicle, including a park trailer, which is: [See Fla. Stat. § 320.01)

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

\*\*\* \*\*

*Special Flood Hazard Area:* An area in the floodplain subject to a one (1) percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

\*\*\* \*\*

*Start of Construction:* The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, or the construction of columns. Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

\*\*\* \*\*

*Substantial Damage:* Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred.

*Substantial Improvement:* Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a three-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure, either; (1) before the improvement or repair is started; or (2) if the structure has been damaged and is being restored, before the damage occurred. The period of accumulation begins when the first improvement or repair of each building is permitted subsequent to June 1, 2012. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed.

The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

\*\*\* \*\*

*Variance (Floodplain):* A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this appendix or the Florida Building Code.

\*\*\* \*\*

**Section 4.** The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**Section 5.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6.** 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 7.** This Ordinance shall become effective immediately upon adoption on second reading.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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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:**

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City Attorney  
Steven T. Williams

DRAFT



PLANNING COMMISSION AGENDA STATEMENT

Meeting Date: January 19, 2021  
To: Planning Commission  
From: Brian Shea, Planning Director

Agenda Item: An Ordinance Of The City Of Marathon, Florida; Amending Chapter Fourteen Article Iv Entitled Water Conservation, Providing For Local Implementation Of The Mandatory Year-Round Landscape Irrigation Conservation Measures Rule Of The South Florida Water Management District (40e-24, F.A.C.); Providing Definitions; Providing For The Applicability Of The Ordinance; Providing The Landscape Irrigation Schedule; Providing Exceptions To The Landscape Irrigation Schedule; Providing For A Requirement To Operate Technology That Inhibits Or Interrupts An Irrigation System During Periods Of Sufficient Moisture; Providing For Variances From The Specific Day Of The Week Limitations; Providing For Enforcement Of The Ordinance; Providing For Penalties For Violation Of The Ordinance; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict; And Providing For Inclusion In The Code; And Providing For An Effective Date.

**BACKGROUND:**

The attached amended Ordinance will comport with the South Florida Water Management District’s Mandatory Year-Round Landscape Irrigation Conservation Measures Rule [Chapter 40E-24, Florida Administrative Code (FAC)]. Applications for funding under the District’s **Cooperative Funding Program for FY2022** will be evaluated based on several factors including the adoption of an ordinance which fully comports with Chapter 40E-24 F.A.C. This consideration may be extended to other cooperative funding programs in the future as well.

Provisions are still consistent with Policy 3-5.5.4 Comply With SFWMD Water Use Restrictions & Policy 3-5.5.5 Encourage Use of Rainwater

**CONSISTENCY CHECKLIST:**

	Yes	No
1. Comprehensive Plan	<u>  X  </u>	<u>      </u>
2. Other –Sewer Mandate	<u>      </u>	<u>  X  </u>

**FISCAL NOTE:**

NA

**APPROVED BY FINANCE DIRECTOR:**

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**RECOMMENDATION:**

Approval of Ordinance 2021-XX to be brought forward for a second public hearing.

**Sponsored by:** Garrett  
**Introduction Date:** XXX  
**Public Hearing Dates:** XXX  
**Enactment Date:** XXX

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2021-XXX**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA; AMENDING CHAPTER FOURTEEN ARTICLE IV ENTITLED WATER CONSERVATION, PROVIDING FOR LOCAL IMPLEMENTATION OF THE MANDATORY YEAR-ROUND LANDSCAPE IRRIGATION CONSERVATION MEASURES RULE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT (40E-24, F.A.C.); PROVIDING DEFINITIONS; PROVIDING FOR THE APPLICABILITY OF THE ORDINANCE; PROVIDING THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULE; PROVIDING FOR A REQUIREMENT TO OPERATE TECHNOLOGY THAT INHIBITS OR INTERRUPTS AN IRRIGATION SYSTEM DURING PERIODS OF SUFFICIENT MOISTURE; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT; AND PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the South Florida Water Management District (District) has the responsibility and exclusive authority under Chapter 373, Florida Statutes (F.S.), for regulating the consumptive use of water; and

**WHEREAS**, the District has promulgated Chapter 40E-2, Florida Administrative Code (F.A.C), for the consumptive use of water which includes Rule 40E-2.061, F.A.C., General Consumptive Use Permits by Rule, regulating landscape irrigation at a single-family dwelling or duplex, and Rule 40E-2.071, F.A.C., Noticed General and Individual Permits, regulating larger landscape irrigation users; and

**WHEREAS**, the District promulgated and amended Chapter 40E-24, F.A.C., requiring year-round irrigation conservation measures; and

**WHEREAS**, Chapter 40E-24, F.A.C., applies to all users as defined in subsection 40E-24.101(14), F.A.C., including permitted and exempt users under Chapter 40E-2, F.A.C.; and

**WHEREAS**, Chapter 40E-24, F.A.C., calls for year-round and permanent landscape irrigation restrictions, separate and independent from water shortage declarations, in accordance with Chapter 40E-21, F.A.C.; and

**WHEREAS**, Chapter 40E-24, F.A.C., applies to all landscape irrigation regardless of whether the water comes from ground or surface water, from a private well or pump, or from a public or private utility; and

**WHEREAS**, Rule 40E-24.301, F.A.C., provides that local governments may adopt a landscape irrigation ordinance that achieves water conservation consistent with Rule 40E-24.201, F.A.C., including variance and enforcement procedures; and

**WHEREAS**, the District strongly encourages local governments to adopt an ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

**WHEREAS**, it is the desire of the City Council of the City of Marathon to adopt such an Ordinance in accordance with Rules 40E-24.201 and 40E-24.301, F.A.C.; and

**WHEREAS**, the City Council of the City of Marathon finds and declares that the adoption of this Ordinance is appropriate, and in the public interest of this community.

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

**Section 1.** The above recitals are hereby confirmed and adopted.

**Section 2.** Code of Ordinance Chapter 14 Environmental and Natural Resources, Article IV Water Conservation is hereby amended by the following amendments:

**ARTICLE IV. - WATER CONSERVATION**

Sec. 14-93. – Intent And Purpose.

The intent and purpose of this article is to establish a regulatory framework to ensure that water and landscape irrigation conservation will be efficient and consistent throughout the City.

(Ord. No. 03-01-04, § 1-1, 1-7-2003)

Sec. 14-94. - Applicability.

(a) This article shall be effective within the City, and shall set restrictions, constraints and prohibitions to enhance the City's water resources and provide water conservation measures.

~~(b) The provisions of this article shall apply to all persons using the water resource within the geographical areas subject to a "water shortage" or "water shortage emergency," as determined by the District, whether from public or privately owned water utility systems, private wells, or private connections with surface water bodies.~~

(b) The provisions of this Article shall apply to each user, as defined in Section 14-95, providing landscape irrigation from all water resources within the boundaries of the City of Marathon with the following exceptions:

(1) The use of reclaimed water, which may or may not be supplemented from another source;

(2) Irrigation at agricultural and nursery operations; and

(3) Irrigation of athletic play areas.

- (c) Unless otherwise provided, nothing in this article shall be construed to relieve any ~~person~~ user from compliance with any ordinance.

(Ord. No. 03-01-04, § 1-2, 1-7-2003; Ord. No. 2007-12, § 2, 5-22-2007)

Sec. 14-95. - Definitions.

For the purpose of this article the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

Address means the "house number" (a numeric or alphanumeric designation) that, together with the street name, describes the physical location of a specific property. This includes "rural route" numbers but excludes post office box numbers. If a lot number in a mobile home park or similar community is used by the U.S. Postal Service to determine a delivery location, the lot number shall be the property's address. If a lot number in a mobile home park or similar residential community is not used by the U.S. Postal Service (e.g., the park manager sorts incoming mail delivered to the community's address), then the community's main address shall be the property's address. If a property has no address, it shall be considered "even-numbered."

*Agriculture* means the growing of farm products including, but not limited to, vegetables, citrus and other fruits, sod or nursery stock including, ornamental foliage and greenhouse plants.

*Athletic Play Area* means all golf course fairways, tees, roughs, greens, and other athletic play surfaces, including, football, baseball, soccer, polo, tennis, and lawn bowling fields, and rodeo, equestrian, and livestock arenas

*Automatic irrigation system* means a landscape irrigation unit that runs mechanically without the need for manual operation.

*Consumptive Use Permit (CUP)* means a permit issued pursuant to Chapter 40E-2, F.A.C., authorizing the consumptive use of water.

*District* means the South Florida Water Management District.

*Even Numbered Address* means an address ending in the numbers 0, 2, 4, 6, 8, or rights-of-way or other locations with no address, or the letters A-M.

*Existing landscaping* means any landscaping which has been planted and in the ground for more than ninety (90) days.

*Impervious* means land surfaces which do not allow the penetration of water, including paved roads, sidewalks, driveways, parking lots and highly compacted areas including shell or clay.

*Irrigation* means the direct application of water to any landscaped surface by means other than precipitation.

*Irrigation systems* means equipment and devices which deliver water to plants being irrigated including, but not limited to, pipelines, control structures, pipes and ditches, pumping stations, emitters, valves and fittings, excluding the transfer of water through water management systems from one location to another.

Landscaping means shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora not intended for resale, which are situated in such diverse locations as residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way, except athletic play areas, as defined in this section.

Landscape Irrigation means the outside watering of shrubbery, trees, lawns, sod, grass, ground covers, plants, vines, ornamental gardens, and such other flora not intended for resale, which are planted and situated in such diverse locations as residential landscapes, recreation areas, cemeteries, public, commercial, and industrial establishments, public medians, and rights-of-way, except athletic play areas.

Law Enforcement Officials means any authorized agent or employee of the City whose duty it is to ensure compliance with the Code, or any local government employee who may be responsible for enforcing this Article.

Low Volume Hand Watering means the watering of landscape by one (1) person, with one (1) hose, fitted with a self-canceling or automatic shutoff nozzle.

Low Volume Irrigation means the use of equipment and devices specifically designed to allow the volume of water delivered to be limited to a level consistent with the water requirement of the plant being irrigated, and to allow that water to be placed with a high degree of efficiency in the root zone of the plant. The term also includes water used in mist houses and similar establishments for plant propagation. Overhead irrigation and flood irrigation are not included.

Micro-irrigation means the application of small quantities of water on or below the soil surface as drops or tiny streams of spray through emitter or applicators placed along a water delivery line. Micro-irrigation includes a number of methods or concepts, such as bubbler, drip, trickle, mist or microspray, and subsurface irrigation.

New landscaping means any landscaping which has been planted in the ground for ninety (90) days or less.

Odd Numbered Address means an address ending in the numbers 1, 3, 5, 7, 9, or the letters N-Z.

~~Person means any person, firm, partnership, association, corporation, company, or organization of any kind.~~

Potable water means water that is suitable for drinking.

Property means and includes any land within the boundaries of the incorporated area of the City of Marathon.

Reclaimed Water means wastewater that has received at least secondary treatment and basic disinfection, and is reused after flowing out of a wastewater treatment facility as defined by Rule 62-40.210, F.A.C.

User means any person, individual, firm, association, organization, partnership, business trust, corporation, company, agent, employee, or other legal entity whether natural or artificial, the United States of America, and the State and all political subdivisions, regions, districts, municipalities, and public agencies thereof, which directly or indirectly takes water from the water resource, including uses from private or public utility systems, uses under water use permits issued pursuant to Chapter 40E-2, F.A.C., or uses from individual wells or pumps.

Wasteful and Unnecessary means allowing water to be dispersed without any practical purpose to the water use; for example, excessive landscape irrigation, leaving an unattended hose on a driveway with water flowing, allowing water to be dispersed in a grossly inefficient manner regardless of the type of water use; for example, allowing landscape irrigation water to unnecessarily fall onto pavement,

sidewalks, and other impervious surfaces; or allowing water flow through a broken or malfunctioning water delivery or landscape irrigation system.

*Water resource* means any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water, and water percolating, standing, or flowing beneath the surface of the ground.

*Water shortage condition* means when sufficient water is not available to meet present or anticipated needs of persons using the water resource, or when conditions are such as to require temporary reduction in total water usage within a particular area to protect the water resource from serious harm. A water shortage usually occurs due to drought.

*Water shortage emergency* means that situation when the powers which can be exercised under Part II of Chapter 40E-21, Florida Administrative Code, are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish or aquatic life, or a public water supply, or commercial, industrial, agricultural, recreational or other reasonable-beneficial uses.

(Ord. No. 03-01-04, § 1-3, 1-7-2003; Ord. No. 2007-12, § 3, 5-22-2007)

Sec. 14-96. - Hours of irrigation and automatic irrigation systems Year-Round Landscape Irrigation Conservation Measures.

- ~~(a) A person may irrigate with potable water on any property within the City between the hours of 5:00 p.m. and 9:00 a.m. only.~~
- ~~(b) All automatic irrigation systems installed after the effective date of the ordinance from which this article is derived shall include a water sensing device which shall automatically discontinue irrigation during periods of rainfall.~~
- ~~(c) In the event of a declaration of a water shortage or water shortage emergency by the governing board or the executive director of the District, all water use restrictions or other measures adopted by the District applicable to the City, or any portion thereof, shall be subject to enforcement action pursuant to this chapter.~~

The City adopts the rules of the South Florida Water Management District, listed in Subsection 40E-24.201 (1)-(6), F.A.C., including subsequent additions or corrections which are set out as follows:

- (1) The year-round landscape irrigation conservation measures contained in this Article are applicable to all users including permitted and exempt users under Chapter 40E-2, F.A.C., unless otherwise indicated. These conservation measures apply to all water resources, unless otherwise indicated. In addition to the requirements of this Section, all permitted users under Chapter 40E-2, F.A.C., are required to maintain compliance with all CUP conditions and terms, including requirements to implement water conservation practices.
- (2) It shall be the duty of each user to keep informed as to the landscape irrigation conservation measures within this Article which affect each particular water use.
- (3) In addition to the specific conservation measures, all wasteful and unnecessary water use, as defined in Section 14-95, is prohibited.
- (4) The following requirements shall apply to all users, unless specified in Section 14-94 or Section 14-98.
  - (a) Landscape irrigation shall be prohibited between the hours of 10:00 a.m. and 4:00 p.m., except as otherwise provided.
  - (b) Irrigation of existing landscaping shall comply with the following provisions:

i. Even addresses, as defined in Section 14-95, installations with irrigation systems that irrigate both even and odd addresses within the same zones, such as multi-family units and homeowners' associations, and rights-of-way or other locations with no address shall have the opportunity to accomplish necessary landscape irrigation two (2) days a week, only on Thursday and/or Sunday.

ii. Odd addresses, as defined in Section 14-95, shall have the opportunity to accomplish necessary landscape irrigation two (2) days a week, only on Wednesday and/or Saturday.

(c) Irrigation of new landscaping shall comply with the following provisions:

i. New landscaping may be irrigated once on the day it is installed without regard to the listed watering days and times. Irrigation of the soil immediately prior to the installation of the new landscaping is allowed without regard to the normal watering days and times.

ii. A ninety (90) day establishment period begins on the day the new landscaping is installed. The new landscaping shall be installed within a reasonable time from the date of purchase, which may be demonstrated with a dated receipt or invoice.

iii. Irrigation of new landscaping which has been in place for thirty (30) days or less may be accomplished on Monday, Tuesday, Wednesday, Thursday, Saturday, and/or Sunday.

iv. Irrigation of new landscaping which has been in place for thirty-one (31) to ninety (90) days may be accomplished on Monday, Wednesday, Thursday, and/or Saturday.

v. Irrigation of new landscaping is limited to areas only containing the new landscaping. An entire zone of an irrigation system shall only be utilized for landscape irrigation under this Subsection if the zone contains at least 50% new landscaping. If a zone contains less than 50% new landscaping, or if the new landscaping is in an area that will not typically be irrigated by an irrigation system, only the individual new plantings are eligible for additional irrigation. Targeted watering may be accomplished by low volume hand watering, as defined in Section 14-95, or any appropriate method which isolates and waters only the new landscaping.

(5) Any water shortage, as defined in Section 14-95, restrictions or other measures declared pursuant to Chapter 40E-21, F.A.C., or related District Governing Board or Executive Director orders which are more restrictive than a measure contained within this Article, shall supersede this Article for the duration of the applicable water shortage declaration.

(Ord. No. 03-01-04, § 1-4, 1-7-2003; Ord. No. 2007-12, § 4, 5-22-2007)

Sec. 14-97. - Prohibition.

- (a) It shall be unlawful for any person to irrigate with potable water on any property, except during the hours specified in Section 14-96.
- (b) It shall be unlawful to remove, from an automatic irrigation system, any hardware that would trigger automatic shutoff during rainfall.
- (c) It shall be unlawful to allow an automatic irrigation system installed after the effective date of the ordinance from which this article is derived to remain in active irrigation during periods of rainfall.

(Ord. No. 03-01-04, § 1-5, 1-7-2003)

Sec. 14-98. - Exemptions.

- (a) The following activities shall be exempt from the provisions of this article:
  - (1) Landscape irrigation by hand watering using a self-canceling nozzle;

- (2) Landscape irrigation by systems from which the sole source is treated wastewater effluent;
  - (3) ~~The operation of irrigation systems for system repair and maintenance~~ Landscape irrigation systems may be operated during restricted days and/or times for cleaning, maintenance, and repair purposes with an attendant on site in the area being tested. Landscape irrigation systems may routinely be operated for such purposes no more than once per week, and the run time for any one (1) test should not exceed ten (10) minutes per zone;
  - (4) Flushing of water mains required for normal water main clearance and maintenance and for maintenance of water quality; provided that, where practical, flushed water shall be directed into pervious areas, and flushed at the minimum rate necessary for cleaning and dispersing the water in such a manner as to benefit local vegetation;
  - (5) ~~Landscape irrigation, by a licensed pest control operator, for purposes of watering in fungicides, insecticides and herbicides as required by the manufacturer or by Federal or State laws~~ Landscape irrigation for the purpose of watering-in fertilizers, insecticides, pesticides, fungicides and herbicides, where such watering-in is recommended by the manufacturer, or by federal, state or local law, or best management practices, shall be allowed under the following conditions:
    - (a) Such watering-in shall be limited to one (1) application, unless the need for more than one (1) application is stated in the directions for application specified by the manufacturer; and
    - (b) Such watering-in shall be accomplished during normally allowable watering days and times set forth in Section 14-96(4)(a) and (b), unless a professional licensed applicator has posted a temporary sign containing the date of application and the date(s) of needed watering-in activity;
  - (6) Landscape irrigation for the purpose of watering in newly planted grass and foliage for the first 45 days after initial installation;
  - (7) Irrigation activity for dust emissions required by court order or administrative action;
  - (8) Agricultural irrigation where the use of water is permitted by a consumptive or water use permit issued by the District;
  - (9) Landscape irrigation from which the sole source is a cistern;
  - (10) Slow drip irrigation systems; and
  - (11) Any irrigation approved by the City Manager or his designee under Section 14-99.
- (b) In the event that any regulations promulgated by the District conflict with these exemptions, the District's restrictions shall supersede these exemptions.

(Ord. No. 03-01-04, § 1-6, 1-7-2003; Ord. No. 2007-12, § 6[5], 5-22-2007)

Sec. 14-99. - Waiver.

The City Manager may issue a written waiver to the provisions of this article if strict application of the restrictions would lead to unreasonable or unfair result; provided the applicant demonstrates with particularity that compliance with the schedule will result in substantial economic, health, or other hardship on the applicant or those served by the applicant. provided that the following conditions are satisfied:

- (1) A written request containing reasons for the waiver is submitted to the City Manager;
- (2) Upon the City Manager's evaluation, it is in the best interest of the City to approve the request in order to preserve landscaping, relief may be granted only upon a demonstration that such hardship exists, is peculiar to the person or the affected property, is not self-imposed, and

further demonstrates that granting the variance would be consistent with the general intent and purpose of this division.;

- (3) The waiver is limited to 14 consecutive days; and
- (4) If granted, the applicant shall be required to post a notice at each parcel to which the variance pertains.
- (5) The waiver is not inconsistent with any regulations promulgated by the District.
- (6) The City recognizes all irrigation variances or waivers issued by the District under Rule 40E-24.501, F.A.C.

(Ord. No. 03-01-04, § 1-8, 1-7-2003; Ord. No. 2007-12, § 6, 5-22-2007)

Sec. 14-100. - Enforcement.

The enforcement of this chapter shall be governed by the provisions in ~~Sections 1-7 and 10-9~~ Chapter 10 of the Marathon Code and Chapter 109 of the Land Development Regulations (LDRs).

(1) In the absence of a declaration of water shortage or water shortage emergency within all or any part of the City by the District's Governing Board or Executive Director, the listed landscape irrigation restrictions shall be subject to enforcement action. Any violation of the provisions of this article shall be a violation.

(2) The City authorizes law enforcement officials, as defined in Section 14-95, having jurisdiction in the area governed by this Article, to enforce the provisions of this Article. In addition, the City Manager may delegate this Article's enforcement responsibility to agencies and departments within the City government.

(Ord. No. 2007-12, § 7, 5-22-2007)

Sec. 14-101. - Declaration Of Water Shortage Or Water Shortage Emergency.

Declaration of a water shortage condition and/or water shortage emergency, as defined in Section 14-94, within all or parts of the City by the District's Governing Board or Executive Director shall supersede this Article for the duration of the applicable water shortage declaration. A water shortage usually occurs due to drought.

Sec. 14-102. - Penalties.

Violations of any provision of this Article may be punished pursuant to Section 162.21, F.S., as amended, as a civil infraction as set forth in Chapter 10 - Code Compliance, as may be amended from time to time.

Sec. ~~14-100~~ 14-103—14-104. - Reserved.

**Section 3.** The Provisions of the Marathon Code 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 section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this 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.** This Ordinance shall become effective immediately upon adoption on second reading.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

**THE CITY OF MARATHON, FLORIDA**

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**Luis Gonzalez, Mayor**

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

**ATTEST:**

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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:**

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City Attorney  
Steven T. Williams

DRAFT