

**Sponsored by: DR. DAN ZIEG**  
**Introduction Date: June 9, 2015**  
**Public Hearing Dates: June 9, 2015**  
**Adoption date: June 9, 2015**

**CITY OF MARATHON, FLORIDA**

**RESOLUTION 2015-59**

**A RESOLUTION OF THE CITY OF MARATHON, FLORIDA, EXTENDING THE TIME FRAME OF RESOLUTION 2014-143 WHICH DECLARED THE INTENTION OF THE CITY TO CONSIDER ADOPTION OF AN ORDINANCE AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS RELATING TO AFFORDABLE HOUSING; PROVIDING THAT FROM THE DATE OF ADOPTION OF THIS RESOLUTION AND DURING THE PENDENCY OF CONSIDERATION OF SUCH ORDINANCE BY THE CITY, THE CITY WILL NOT PROCESS OR APPROVE DEVELOPMENT APPLICATIONS THAT WOULD NOT CONFORM WITH THE PROPOSED AMENDMENTS; DIRECTING THE CITY CLERK TO PUBLISH A NOTICE OF INTENT TO ADOPT SUCH ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Objective 2-1.1 of the City of Marathon's 2005 Comprehensive Plan directs the City to provide a framework for a housing program that encourages the creation and preservation of affordable housing for all current and anticipated future residents of the City (the "Objective"); and

**WHEREAS**, Florida Statute Sec. 380.0552(7) requires the City to conduct programs and regulatory activities to "(j) make available adequate affordable housing for all sectors of the population of the Florida Keys" (the "Guiding Principle"); and

**WHEREAS**, in light of a recent increase in development activity in the City, at its August 26, 2014 meeting, the City Council directed staff to develop proposed revisions to the City's Land Development Regulations ("LDRs"), with associated supporting studies, to further implement the Objective and Guiding Principle;

**WHEREAS**, in order to provide for the orderly allocation of building permits in accordance with the Objective and the Guiding Principle, it is necessary to temporarily halt the processing of development applications and the issuance of development approvals for all proposed new development as follows: commercial development in excess of 2,500 square feet; hotel/motel developments in excess of 10 units; industrial developments in excess of 2,500 square feet; and residential multi-family development in excess of ten (10) units, pending the passage of revisions to the LDRs regarding affordable housing; and

**WHEREAS**, the City Council wishes to definitively place all parties on notice that it is considering amending the LDRs and that all parties who are considering new or redevelopment

in the City will be reviewed for compliance with such changes as of the adoption date of this resolution.

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

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

**Section 2. Declaration of Intent.** The City Council of the City of Marathon hereby extends its declaration to consider adoption of an ordinance amending the City's Land Development regulations relating to affordable housing requirements.

**Section 3. Notice.** Pursuant to the pending legislation doctrine set forth in Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2d DCA 1980), all persons and entities that plan to develop property within the City of Marathon shall be deemed to be on notice that:

- a) The City is considering the adoptions of regulations relating to affordable housing;
- b) The regulations are considered pending or "zoning in progress"; and
- c) Any reliance upon current regulations or expenditure of funds or efforts in reliance on current regulations, until the regulations are considered by the Planning Commission and the City Council and adopted and effective, or determined that they will not be adopted, is not reasonable and is at the risk of the applicant.

**Section 4. Processing of Development Applications.**

a) City staff shall defer the processing of development applications and the issuance of development approvals for all proposed new development as follows: commercial development in excess of 10,000 square feet; hotel/motel developments in excess of twenty-five (25) units; industrial developments in excess of 10,000 square feet; and residential multi-family development in excess of two (10) units, pending the passage of revisions to the LDRs regarding affordable housing, except as follows:

1) Development applications submitted to the City after the effective date of this resolution may continue to be processed provided that the applicant agrees to:

- a) voluntarily provide affordable housing as follows: 1) 20% of the units contained in the project for new multi-family developments; or 2) three (3) workforce housing units per 25 hotel/motel rooms constructed or 3) workforce housing units sufficient to accommodate 20% of total estimated employees required for the operation of the proposed industrial or commercial business, as certified and attested to by the applicant at the time of application. Project proposals suggesting fewer units or less commercial square footage than identified immediately above shall be considered on a pro rata basis. Affordable units owing and resulting from the approval of a project shall be rounded down to a full integer value.

b) Such deferral in processing development applications is temporary and shall automatically dissolve upon the passage of one hundred eighty (180) days from the effective date of this Resolution or until new LDRs or amended LDRs are adopted by the City Council, whichever occurs first.

**Section 5. Publication.** The City Clerk is hereby directed to publish a Notice of Intention to consider adoption of an ordinance in a newspaper of general circulation in the City

**Section 6. Severability.** The provisions of this resolution are declared to be severable, and if any sentence, section, clause or phrase of this resolution shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the resolution , but they shall remain in effect it being the legislative intent that this resolution shall stand notwithstanding the invalidity of any part.

**Section 7. Effective and Sunset Date.** This resolution shall take effect immediately upon adoption and shall expire one hundred eighty (180) after adoption of this Resolution.

**PASSED AND ADOPTED THIS 9<sup>th</sup> DAY OF JUNE, 2015.**

**THE CITY OF MARATHON, FLORIDA**

  
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**Chris Bull, Mayor**

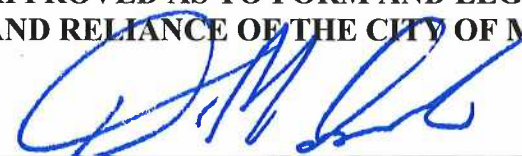
AYES: Zieg, Kelly, Keating, Senmartin, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
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Dirk M. Smits, City Attorney

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: LAND DEVELOPMENT REGULATIONS  
ADOPTED BY CITY OF MARATHON  
ORDINANCE NOS. 2014-143 and 2015-59

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**FINAL ORDER APPROVING  
CITY OF MARATHON ORDINANCE NO. 2014-143 and 2015-59**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and 380.0552(9), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance Nos. 2014-143 and 2015-59 (collectively, the “Ordinances.”)

**FINDINGS OF FACT**

1. The Florida Keys Area is designated by § 380.0552, Florida Statutes, as an area of critical state concern. The City of Marathon, is a local government within the Florida Keys Area.
2. The City of Marathon adopted Ordinance No. 2014-143 on November 12, 2014 Ordinance No. 2015-59 on June 9, 2015. The Ordinances were rendered to the Department on April 17, 2015.
3. Ordinance No. 2014-143 declared “zoning in progress” to defer processing of development applications for new developments that meet certain size criteria established in the Ordinance. The “zoning in progress” will allow the City to amend its affordable housing requirements, including issuing an RFP to gather information, while also examining current and developing additional land development regulations concerning real estate development.
4. Ordinance No. 2015-59 extended the “zoning in progress” declaration for an additional 180 days, up to December 6, 2015.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. § 380.05(6) and § 380.0552(9), Florida Statutes.

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, Florida Statutes, and Florida Administrative Code Chapter 28-26.

7. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

8. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and 380.0552(9), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Florida Statutes.

9. The Ordinance is consistent with the City of Marathon Comprehensive Plan generally, and specifically Policy 1-3.5.13 (Inventory Affordable/Workforce Housing) and Policy 2-1.1.5 (Develop Affordable Housing Criteria).

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

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

(l) Making available adequate affordable housing for all sectors of the population of the Florida Keys.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance Nos. 2014-143 and 2015-59 are consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



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William B. Killingsworth, Director  
Division of Community Development  
Department of Economic Opportunity

**NOTICE OF ADMINISTRATIVE RIGHTS**

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

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

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

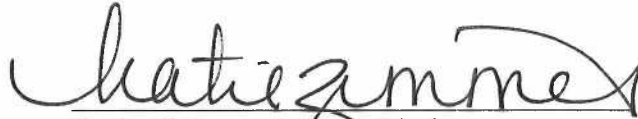
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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

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

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 14<sup>th</sup> day of August, 2015.



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

By Certified U.S. Mail:

The Honorable Chris Bull, Mayor  
City of Marathon, City Council  
9805 Overseas Highway  
Marathon, FL 33050

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

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