

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2017-41**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AMENDING THE CONDITIONAL USE PERMIT FOR PARADISE PRODUCE LLC, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF AN OPEN AIR PRODUCE MARKET, SUBJECT TO CONDITIONS IMPOSED, FOR PROPERTY LOCATED AT 4540 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2 AKA PART OF OLD STATE ROAD 4A AND LOT 1 BLOCK 2 OF MEAD SUBDIVISION, KEY VACCAS, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00327760-000000 AND 00103120-000100.**

**WHEREAS**, Paradise Produce LLC, (The “Applicant”) filed an Application on March 24, 2017 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop an 800 square foot tiki hut under which they propose to sell produce and related goods; and

**WHEREAS**, City staff reviewed the Applicant’s request for a Conditional Use Permit and Development Agreement determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 15<sup>th</sup> day of May, 2017, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of May, 2017 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the redevelopment of commercial properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

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

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

**Section 2.** The City Council hereby approves Development Order 2017-06, a copy of which is attached hereto as Exhibit "A", granting a Conditional Use Permit to Fresh From the Farm Produce Inc. subject to the Conditions imposed. The Director of Planning is authorized to sign the development order on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 23<sup>RD</sup> DAY OF MAY, 2017.**

**THE CITY OF MARATHON, FLORIDA**

  
**Dr. Daniel Zieg, Mayor**

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

**ATTEST:**

  
Diane Clavier, City Clerk

(City Seal)

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

  
David Migut, City Attorney



**CITY OF MARATHON, FLORIDA  
CONDITIONAL USE  
DEVELOPMENT ORDER # 2017-06**

**A DEVELOPMENT ORDER APPROVING THE REQUEST TO AMEND THE CONDITIONAL USE PERMIT FOR PARADISE PRODUCE LLC, PURSUANT TO CHAPTER 102, ARTICLE 13 OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS (CODE) ENTITLED “CONDITIONAL USE PERMITS”, AUTHORIZING THE DEVELOPMENT OF AN OPEN AIR PRODUCE MARKET, SUBJECT TO CONDITIONS IMPOSED, FOR PROPERTY LOCATED AT 4540 OVERSEAS HIGHWAY, WHICH IS LEGALLY DESCRIBED AS PART OF GOVERNMENT LOT 2 AKA PART OF OLD STATE ROAD 4A AND LOT 1 BLOCK 2 OF MEAD SUBDIVISION, KEY VACCAS, MARATHON, FLORIDA, HAVING REAL ESTATE NUMBERS 00327760-000000 AND 00103120-000100.**

**WHEREAS**, Paradise Produce LLC, (The “Applicant”) filed an Application on March 24, 2017 for a Conditional Use Permit pursuant to Chapter 102, Articles 13 of the City of Marathon Land Development Regulations (LDRs); and

**WHEREAS**; the Applicant proposes to develop an 800 square foot tiki hut under which they propose to sell produce and related goods; and

**WHEREAS**, City staff reviewed the Applicant’s request for a Conditional Use Permit and Development Agreement determining that the Applicant’s project proposal was in compliance with the City’s Comprehensive Plan and Land Development Regulations (LDRs) and further that there was no substantial impact on the City’s Level of Service (LOS); and

**WHEREAS**, on the 15<sup>th</sup> day of May, 2017, the City of Marathon Planning Commission (the “Commission”) conducted a properly advertised public hearing (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**, and on the 23<sup>rd</sup> day of May, 2017 the City Council (the “Council”) conducted properly advertised public hearings (the “Public Hearings”) regarding the request submitted by the Applicant, for a Conditional Use Permit pursuant to Chapter 102, Article 13 of the LDRs; and

**WHEREAS**; the City Council made a determination that the Applicant’s request for a Conditional Use Permit, subject to the terms of the LDRs and with Conditions imposed, was in Compliance with the City’s Comprehensive Plan and LDRs, is consistent with its policy to encourage the redevelopment of commercial properties in Marathon, and will further the health, safety and welfare of the residents of Marathon; and

**WHEREAS**, the Council has duly considered the recommendation of the Commission, and the information and documentary evidence submitted by Fresh From the Farm Produce Inc. and does hereby find and determine as provided below.

**FINDINGS OF FACT:**

1. The applicant will develop the property with a 800 square foot tiki.
2. In accordance with Section 102.77 of the Code, the Commission and Council considered and determined the Applicant met the following criteria:
  - a. The proposed use is consistent with the Comprehensive Plan and LDRs;
  - b. The proposed use is compatible with the existing land use pattern and future uses designated by the Comprehensive Plan;
  - c. The proposed use shall not adversely affect the health, safety, and welfare of the public; and
  - d. The proposed conditional use minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment; and
  - e. Satisfactory provisions and arrangements have been made concerning the following matters, where applicable:
    1. Ingress and egress to the property and proposed structures thereon with particular reference to automotive, bicycle, and pedestrian safety and convenience, traffic flow and control and access in case of fire or catastrophe;
    2. Off-street parking and loading areas where required, with particular attention to item 1 above;
    3. The noise, glare or odor effects of the conditional use on surrounding properties;
    4. Refuse and service areas, with particular reference to location, screening and Items 1 and 2 above;
    5. Utilities, with reference to location and availability;
    6. Screening and buffering with reference to type, dimensions and character;
    7. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety and compatibility with surrounding properties;
    8. Required yards and other open space;
    9. General compatibility with surrounding properties; and

## CONDITIONS IMPOSED:

Granting approval of the Application is subject to the following conditions:

### Conditions of Approval

The Planning Commission proffers a unanimous (4/0 – Stevens absent) recommendation of conditional approval of the Open Air Market to the City Council. The proposed conditions of approval are listed below, including both original and additional conditions suggested by both City Planning staff and the Planning Commission. Conditions that have been completed, are note as such (“completed”):

### Conditions of Approval

- 1) The Applicant shall obtain the 800 square feet of commercial space required for the tiki through the CBPAS process. (Complete)
- 2) The Applicant shall provide and complete installation of a final landscape plan to be submitted showing the required additional trees. (Partially complete & Current mitigation required for the removal of two Gumbo Limbo trees).
- 3) Any new impervious surface area is required to provide additional storm water runoff measures. (Complete)
- 4) Any spoiled products shall be properly disposed of each day. All other debris, including, but not limited to, fruit and produce boxes, pallets, etc. shall also properly disposed of each day and shall generally not be visible from any street. (Complete)
- 5) Additional curb stops should be placed to delineate the required number of parking spots.
- 6) A designated employee/delivery parking spot is required. (Complete)
- 7) Access path from ADA parking spot to the tiki is required. (Complete)
- 8) The Open Air Market is restricted to doing business during the hours of 8 am to 7 pm. (Complete)
- 9) This time will frame is reduced for those times of year where daylight hours end before 7pm; unless an approved lighting plan is submitted at a later date. (Complete)
- 10) Pending existing vegetation, four understory trees are required along 43rd Street. (Required & Additional mitigation for the removal of two Gumbo Limbo trees)
- 11) In addition to existing vegetation, one canopy and one understory tree are required along US1. (Partially Complete)
- 12) Planted trees must meet the requirements stated in the code of ordinances and will be approved by the city for species and size. (Complete)
- 13) Should any planted trees die, they must be replaced accordingly with a plant of similar species and size. (Complete)
- 14) The existing parking area should be screened from US1 with combination of hedge or berm totaling three feet in height. (Partially Complete)
- 15) All signs will be reviewed and approved for compliance with the City of Marathon LDR’s. (Complete)
- 16) Applicant must submit a detailed lighting plan including placement and brightness of all overhead lamps to be installed, if any. If provided, lighting shall provide adequate light for site security while being downcast so as to minimize light impact on neighboring residential structures. (Complete)
- ~~17) The Applicant can only sell produce at the open air market.~~

- 17) The Applicant may sell a variety of retail products at the fruit and produce stand, however, fruit and produce shall be the principal product available for sale at the Paradise Produce fruit and vegetable stand.
- 18) Applicant must obtain the appropriate DOH, Department of Agriculture, or other outside agency approvals or permits for processing food products on site.
- ~~18) The Applicant shall provide adequate security fencing in lieu of lighting requirements to secure property after hours.~~
- 19) The Open Air Market is limited to a single vendor, no increase in the number of vendors.
- 20) The applicant shall provide more parking spaces or produce a shared parking agreement with Barracuda Grill if parking is found to be an issue.
- 21) The Conditional Use Development Order will constitute the Certificate of Concurrency for the project. The determination will be valid for one year.

### **VIOLATION OF CONDITIONS:**

The applicant understands and acknowledges that it must comply with all of the terms and conditions herein, and all other applicable requirements of the City or other governmental agencies applicable to the use of the Property. In accordance with the Code, the Council may revoke this approval upon a determination that the Applicant or its successor or designee is in non-compliance with this Resolution or Code. Failure to adhere to the terms and conditions of approval contained herein is a violation of the Code and persons found violating the conditions shall be subject to the penalties prescribed therein.

### **CONCLUSIONS OF LAW:**

Based upon the above Findings of Fact, the Council does hereby make the following Conclusions of Law:

1. The Application has been processed in accordance with the applicable provisions of the City Code, and will not be detrimental to the community as a whole; and
2. In rendering its decision, as reflected in this Resolution, the Council has:
  - (a) Accorded procedural due process;
  - (b) Observed the essential requirements of the law;
  - (c) Supported its decision by substantial competent evidence of record; and
3. The Application for a conditional use is hereby GRANTED subject to the conditions specified herein.

**EFFECTIVE DATE:**

This development order shall not take effect for thirty (30) days following the date it is filed with the City Clerk, and during that time, the conditional use approval granted herein shall be subject to appeal as provided in the City Code. An appeal shall stay the effectiveness of this development order until said appeal is resolved.

5/30/17  
Date

George Garrett  
George Garrett  
Director of Planning

This Development Order was filed in the Office of the City Clerk of this 30 day of May, 2017.

Diane Clavier  
Diane Clavier, City Clerk

**NOTICE**

Under the authority of Section 102.79(c) of the City of Marathon Land Development Regulations, this development order shall become null and void with no further notice required by the City, unless a business license has been issued for the use or a complete building permit application for site preparation and building construction with revised plans as required herein is submitted to the City of Marathon Building Official within one (1) year from the date of conditional use approval, or the date when the Department of Economic Opportunity waives its appeal and all required certificates of occupancy are procured with three (3) years of the date of this development order is approved by the City Council.

In addition, please be advised that pursuant to Chapter 9J-1, Florida Administrative Code, this instrument shall not take effect for forty-five (45) days following the rendition to the Florida Department of Community Affairs. During that forty-five days, the Florida Department of Economic Opportunity may appeal this instrument to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this instrument until the appeal is resolved by agreement or order.

**CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing Resolution was furnished, via U.S. certified mail, return receipt requested, addressed to 237 24th St., Ocean Marathon, FL 33050 this 30 day of May, 2017.

Diane Clavier  
Diane Clavier City Clerk