

ORDINANCE NO. 02-01-05

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING OR REPEALING PROVISIONS OF SECTION 9.5-345 "ENVIRONMENTAL DESIGN CRITERIA" OF THE CITY CODE, PERTAINING TO DEVELOPMENT STANDARDS FOR PINELANDS, MANGROVES, SUBMERGED LANDS, DISTURBED AND UNDISTURBED WETLANDS, AND DISTURBED LANDS WITH SLASH PINE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, the City of Marathon, Florida (the "City") is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, Florida Statutes; and

WHEREAS, Section 380.552, Florida Statutes, establishes Principles for Guiding Development in the FKACSC; and

WHEREAS, the Principles for Guiding Development provide that the Comprehensive Plan (the "Plan") and Land Development Regulations (the "LDRs") of the City shall protect its upland, shoreline and marine resources, its near shore waters, and the maximum well being of its residents through sound economic development; and

WHEREAS, the Plan went into effect in January, 1996; and

WHEREAS, pursuant to Policy 204.2.4 of the Plan, the City is required to amend its LDRs to adopt an ADID program to assess the functional value of disturbed wetlands in the City and develop an evaluation index to determine the appropriate level of development for disturbed wetlands; and

WHEREAS, pursuant to Section **163.3174**, Florida Statutes, and Section **9.5-22** of the LDRs, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the LDRs set forth in this Ordinance (the "Amendments") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendments; and

WHEREAS, in accordance with Sections **163.3184** and **166.041**, Florida Statutes, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the LDRs; and

WHEREAS, the City Council finds the adoption of this Ordinance is in the best interest of the City and complies with applicable State laws and rules; and

WHEREAS, the City Council finds that enactment of this Ordinance furthers the objectives, goals and policies of the City's Comprehensive Plan and the Principles for Guiding Development of the FKACSC.

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

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

Section 2. **Pinelands (High Quality).** Section 9.5-345(j) of the City Code is hereby repealed.

Section 3. **Pinelands (Low Quality).** Section 9.5-345(k) of the City Code is hereby repealed.

Section 4. **Mangroves and Submerged Lands.** Section 9.5-345(m) of the City Code is hereby repealed.

Section 5. Undisturbed Wetlands. Section 9.5-345(n) of the City Code is hereby re-lettered as 9.5-345(k), and amended to read as follows:

Sec. 9.5-345(nk) Freshwater, Undisturbed and High Quality Wetlands:

- (1) ~~Only utility pilings and elevated walkways shall be permitted in freshwater wetlands;~~
- (2) ~~All structures in freshwater wetlands shall be constructed on pilings or other supports; and~~
- (3) ~~No fill shall be permitted in any freshwater wetland.~~

In lands that meet the statutory definition of wetlands and that are classified as freshwater, undisturbed, or saltmarsh wetlands of high functional capacity, which are those wetlands that score 7.0 or higher as determined by a Keys Wetlands Evaluation Procedure (“KEYWEP”) analysis, no structures shall be permitted except elevated, pile supported walkways, docks piers and utility pilings. No fill or development shall be permitted except;

- (1) as specifically allowed by Section 9.5-289 Shoreline Environmental and Development Criteria;
- (2) to fill a manmade, excavated water body such as a canal or swimming pool if the City Manager or designee determines that such filling will not have a significant adverse impact on marine or wetland communities;
- (3) as needed for the siting of necessary public facilities when it can be demonstrated that the siting will serve a legitimate public purpose and an analysis had been undertaken prior to finalizing plans for the siting of any new or any significant expansion of existing public facilities. The analysis shall include an evaluation of need; evaluation of alternative sites and design

alternatives for the selected sites and an assessment of impacts on surrounding land uses and natural resources or as needed for shoreline stabilization or beach renourishment projects with a valid public purpose that furthers the goals of the City Comprehensive Plan, as determined by the City Manager or designee. All such projects shall require approval by the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers prior to issuance of the City building permit.

Section 6. Disturbed Wetlands. Section 9.5-345(o) of the City Code is hereby re-lettered as Section 9.5-345 (l), and Section 9.5-345(o)(4) is amended to read as follows:

Sec. 9.5-345(o)(4) ~~On land classified as disturbed With Salt Marsh and Buttonwood Association~~ Disturbed Saltmarsh Wetlands:

Lands that meet the statutory definition of wetlands and that are classified as disturbed saltmarsh wetlands of moderate or low functional capacity, which are those wetlands that score below 7.0 as determined by a Keys Wetlands Evaluation Procedure ("KEYWEP") analysis, may be filled for development. Any such fill and development shall be placed, located, designed, constructed, and mitigated in conformance with the applicable rules, regulations and Code provisions of the Army Corp of Engineers ("ACOE"), the Florida Department of Environmental Protection ("FDEP"), and the City. Approvals or exemption letters by the ACOE and FDEP shall accompany all City development applications for any proposed development in disturbed wetlands.

Section 7. Disturbed Lands with Slash Pine. Section 9.5-345(o)(5) of the City Code is hereby repealed.

Section 8. Repeal of Conflicting Provisions. Any Code or Ordinance provision inconsistent or in conflict with this Ordinance is hereby repealed.

Section 9. **Severability.** 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 10. **Inclusion in the Code.** It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 11. **Approval by the State Department of Community Affairs.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department of Community Affairs for approval pursuant to Sections 380.05(6) and (II), Florida *Statutes*.

Section 12. **Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida *Statutes*.

The foregoing Ordinance as offered by Councilman Bartus, who moved for its adoption. This motion was seconded by Councilman Johnson, and upon being put to a vote, the vote was as follows:

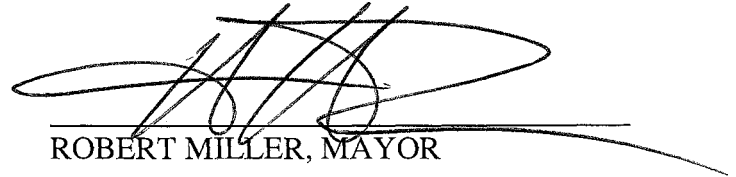
Mayor Robert Miller Yes
Vice Mayor John Bartus Yes
Councilman Frank Greenman Yes
Councilman Jon Johnson Yes
Councilman Randy Mearns Yes

PASSED on first reading this 18th day of December, 2001

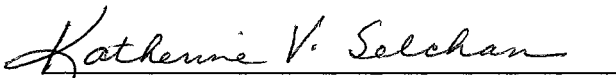
The foregoing Ordinance as offered by Councilman Johnson, who moved for its adoption. This motion was seconded by Councilman Greenman, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller Yes
Vice Mayor John Bartus Yes
Councilman Frank Greenman Yes
Councilman Jon Johnson Yes
Councilman Randy Mearns Absent

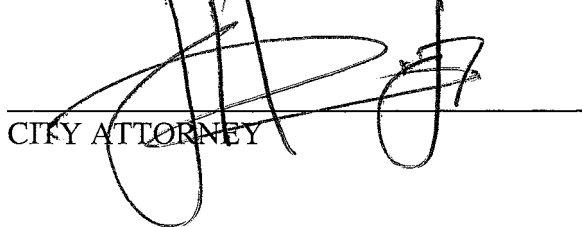
PASSED AND ADOPTED on second reading this 8 day of January, 2002.


ROBERT MILLER, MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:


CITY ATTORNEY

592004\Ordinances\Amending Section 9.5-345 Environmental Design Criteria Draft 4
#3215

SCANNED

1/17/02 #4866 KS

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 02-01-05

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Marathon is a local government within the Florida Keys Area.
2. On January 28, 2002, the Department received for review City of Marathon Ordinance No. 02-01-05 which was adopted by the City of Marathon City Council on January 8, 2002 ("Ord. 02-01-05").
3. Ord. 02-01-05 amends the City's Land Development Regulations to revise certain provisions that address the development that may be permitted in undisturbed and disturbed wetlands. It also repeals certain provisions that relate to development in pinelands and mangrove and submerged lands.
4. Ord. 02-01-05 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2001).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2001) and Rule 28-29.002 (superseding Chapter 27F-8), *Fla. Admin. Code*.

7. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2001). The regulations adopted by Ord. 02-01-05 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 (the "Principles") set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 02-01-05 promotes and furthers the following Principles:

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

(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

10. Ord. 02-01-05 is not inconsistent with the remaining Principles. Ord. 02-01-05 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-01-05 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



SONNY TIMMERMAN, DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

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, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND 11, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

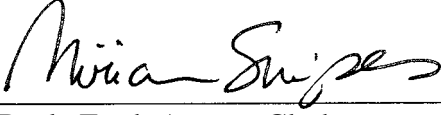
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

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 persons listed below by the method indicated this 10th day of April, 2002.

for 

Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Robert K. Miller
Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Katherine V. Selchan
City Clerk
City of Marathon
210 University Drive
Coral Springs, Florida 33071

Craig Wrathell
City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

John R. Herin, Jr.
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.
City Attorneys
City of Marathon
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee