

ORDINANCE NO. 02-01-07

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-4 OF THE CITY CODE TO ADD ADDITIONAL DEFINITIONS; REPEALING EXISTING SECTIONS 9.5-125 THROUGH 9.5-127, AND SECTIONS 9.5-315 THROUGH 9.5-324 OF THE CITY CODE PERTAINING TO FLOODPLAIN MANAGEMENT STANDARDS AND ADOPTING NEW FLOODPLAIN MANAGEMENT STANDARDS AS SET FORTH HEREIN; PROVIDING FOR APPROVAL BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR SEVERABILITY AND REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has in Chapter 166, Florida Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the flood hazard areas of the City of Marathon (the "City") are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, these flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

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, and correct and incorporated herein by this reference.

Section 2. Definitions. Section 9.5-4 of the City Code is hereby amended as follows:

"Area of shallow flooding" means a designated AO or VO Zone on the applicable Flood Insurance Rate Maps (FIRM) for the City with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Elevated building" means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

"Encroachment" means that portion of any structure or development which extends beyond that which can be permitted as-of-right.

"Existing ~~manufactured~~ mobile home park ~~or~~ subdivision" means a manufactured mobile home park ~~or~~ subdivision for which the construction of facilities for servicing the lots on which the manufactured 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 the effective date of this Ordinance.

"Expansion to an existing ~~manufactured~~ mobile home park ~~or~~ subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured 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).

¹ Additions to existing text are shown by underline; deletions are shown by ~~strikethrough~~.

~~"Floodway" means the channel of a river an inlet or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.~~

~~(H-1) "Habitable space or commercial floor area" means any floor residential living area equipped for uses including such as, but not limited to, office, workshop, kitchen, dining, living, laundry, bathroom, bedroom, den, family or recreational room, office, professional studio or commercial occupancy and all interior hallways, corridors, stairways and foyers connecting these areas. Garages, exterior stairs and open decks and patios are not considered habitable space.~~

~~"Manufactured Mobile home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used 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 for less than 180 consecutive days, or longer and intended to be improved property.~~

~~"Map" means the Flood Insurance Rate Map (FIRM) for the City, issued by the Federal Insurance Administration having an effective date of March 3, 1997 December 13, 1998, as may be amended.~~

~~"Mean Sea Level" means the average height of the sea for all states of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) -1929.~~

~~"New manufactured mobile home park or subdivision" means a manufactured mobile home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured 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, on or after the effective date of this Ordinance.~~

~~"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where~~

there is a distinct change from a relatively steep slope to a relatively mild slope.

~~"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high water line or the seaward line of permanent vegetation if a high water line cannot be identified.~~

~~"Start of construction" includes substantial improvements, and means the date the building permit was issued by the City, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured mobile home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. 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.~~

~~"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would either (i) equal or exceed 50 percent of the market value of the structure before the damage occurred (ii) or would equal or exceed 50 percent of the square footage of the structure before the damage occurred.~~

~~"Substantially improved existing manufactured home parks or subdivisions" is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.~~

~~"Substantial improvement" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds over a one (1) year period a cumulative total of either (i) fifty (50) percent of~~

the predestruction market value of the structure, as determined by a certified Florida Property Appraiser or the Office of the Monroe County Property Appraiser before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred ~~the Office of the Tax Assessor of Monroe County, either (1) or (ii) fifty (50) percent of the square footage of the structure before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred.~~

The total cost does not include nonstructural interior finishing, including, but not limited to, finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters, or roof coverings, except when determining whether the structure has been substantially improved as a result of a single improvement or repair, or substantially damaged as a result of a single event.

For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimension of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are necessary solely to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places, the state inventory of historic places.

~~"60-year setback" means a distance equal to 60 times the average annual long-term recession rate at a site, measured from the reference feature.~~

~~"30-year setback" means a distance equal to 30 times the average annual long-term recession rate at a site, measured from the reference feature.~~

Section 3. Floodplain Management Standards. Chapter 9.5 "Land Development Regulations," Section 9.5-316 "General Standards" is hereby amended to read as follows:

Sec. 9.5-316 General Provisions

* * * *

- (b) *Basis For Area Of Special Flood Hazard.* The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map, dated ~~March 3, 1997~~ December 13, 1998, with accompanying maps and other supporting data, and any revision thereto.

* * * *

Section 4. Floodplain Management Standards. Chapter 9.5 "Land Development Regulations," Section 9.5-317 "Administration" is hereby amended to read as follows:

Sec. 9.5-317 Administration

The city manager or his designee is appointed to administer and implement the provisions of this Ordinance.

The city manager or his designee shall:

* * * *

- (5) Verify and record the actual elevation, in relation to mean sea level, of the lowest habitable floor (~~including basement~~) of all new or substantially improved structures.

* * * *

Section 5. Floodplain Management Standards. Chapter 9.5 "Land Development Regulations," Section 9.5-318 "Standards For Flood Hazard Reductions" is hereby amended to read as follows:

Sec. 9.5-318 Standards For Flood Hazard Reduction.

- A. General Standards.

In all areas of special flood hazard the following standards shall apply:

- (1) New construction, ~~and~~ substantial improvements, or replacements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure and no fill shall be used for structural support;
- (2) ~~Manufactured~~ Mobile homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;

* * * *

- (10) Any alteration, repair, reconstruction or improvement to a structure that is not ~~compliant~~ in compliance with the provisions of this Ordinance, shall be undertaken only if the non-conformity is not furthered, extended or replaced.

B. Specific Standards.

In all areas of special flood hazard where base flood elevation data have been provided the following provisions are required:

- (1) *Residential Construction.* New construction, ~~or~~ substantial improvement, or replacements of any residential structure (or ~~manufactured~~ mobile home) shall have the lowest habitable floor; ~~including basement~~ elevated to at or above the base flood level. For structures located in AE flood zones should solid foundation perimeter walls shall be used between columns of an to elevated ~~a~~ structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided. A Florida registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting: the provisions above and shall provide such certification to the city manager or designee.
- (2) *Non-Residential Construction.* New construction or substantial

improvement of any commercial, industrial, or nonresidential structure (~~or manufactured home~~) shall have the lowest commercial floor area, including basement, elevated to or above the base flood level, unless floodproofed flood proofed. Structures located in AE-zones, together with attendant utility and sanitary facilities, may be flood-proofed in lieu of elevation provided that all areas of the structure below the base flood elevation are designed to be ~~water tight~~ watertight, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A Florida registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the city manager or his designee ~~or designee~~.

- (3) *Elevated Buildings.* In AE flood zones ~~N~~new construction or substantial improvements of existing elevated structures that include any fully enclosed area located below the base flood elevation and formed by foundation and other exterior walls shall be designed so as to be a flood resistant or unfinished enclosure and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- (a) Designs for complying with this requirement must either be certified by a Florida registered professional engineer or architect ~~or~~ and meet or exceed the following minimum criteria:
- (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above grade; and,
 - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions; and.

(iv) Interior walls, ceilings, and floors in enclosures 300 square feet or less used for entryways may be finished with an ACOE Regulations EP 1165-2-314 class 5 exterior finish in accordance with FEMA Technical Bulletin 2-93. Interior walls, ceilings and floors in all other enclosed areas may be finished with an ACOE Regulations EP 1165-2-314 class 5 exterior finish in accordance with FEMA Technical Bulletin 2-93 if a deed restriction running with the land is provided. The deed restriction shall provide notice of prohibition of habitational uses below base flood elevation.

~~(b) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).~~

(4) *Standards for ~~Manufactured~~ Mobile Homes and Recreational Vehicles.*

(a) Installation standards for inobile homes shall comply with the requirements of Title 15, Chapter 15C-1 of the Florida Administrative Code as it may be amended from time to time.

(b) All ~~manufactured~~ inobile homes placed, ~~or substantially improved,~~ on individual lots or parcels, in expansions to existing ~~manufactured~~ mobile home parks ~~or subdivisions,~~ or in new or substantially improved ~~manufactured~~ mobile home parks ~~or subdivisions,~~ must be so elevated so that the lowest floor of the ~~manufactured~~ inobile home is elevated to or above the base flood elevation.

(c) All ~~manufactured~~ inobile hoines placed ~~or substantially improved~~ in an existing ~~manufactured~~ mobile home park ~~or subdivision~~ must be elevated so that:

(i) The lowest floor of the ~~manufactured~~ mobile home is elevated to or above the base flood elevation, or

(ii) The ~~manufactured~~ mobile home chassis is supported by reinforced piers or other foundation

elements of at least an equivalent strength, and no less than 36 inches in height above grade.

(iii) The ~~manufactured~~ mobile home chassis must be securely anchored to the adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(iv) ~~In On a site in an existing manufactured inobile home park or subdivision on which a manufactured mobile home has incurred "substantial damage" as the result of a flood, any manufactured home replaced or substantially improved in that inobile home park or subdivision on that site meet the standards set forth in this Ordinance. must have the lowest floor of the mobile home elevated to or above base flood elevation.~~

(d) All recreational vehicles placed on sites must :

(i) Be on the site for fewer than 180 consecutive days, ~~or~~

(ii) Be fully licensed and ready for highway use, ~~or~~

(iii) ~~The recreational vehicle must meet all the requirements for "new construction," including anchoring and elevation requirements of this Ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached structures and has a suitable means to transport the RV.~~

(iv) Any travel trailer or recreational vehicle (including park models) which cannot be easily and quickly disconnected from utilities, which requires a special permit to be moved, requires a special escort, or

which requires larger than a light duty truck to tow it from the floodplain would not be considered a recreational vehicle and inust meet all requirements of this ordinance for mobile homes and all Code sections applicable to dwelling units.

~~(5) — *Floodways* — A floodway located in an area of special flood hazard may be an extremely hazardous area due to velocity floodwaters, debris and erosion potential. In addition, the area must remain free of encroachment in order to discharge the base flood without increased flood heights. Therefore, the following provisions shall apply:~~

~~(a) — Prohibit encroachments, including earthen fill, new construction, substantial improvements and other development within the regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels during occurrence of the base flood discharge;~~

~~(b) — Only if subsection (a) is satisfied, then all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of this Ordinance.~~

~~(c) — Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured mobile home may be placed on a lot in an existing manufactured mobile home park or subdivision provided the anchoring standards, the elevation standards, and the encroachment standards of this Ordinance are met.~~

(5) *Coastal High Hazard Areas (VE Zones).* These areas have special flood hazards associated with wave wash high velocity waters from surges, and therefore, the following provisions shall apply:

- (a) All new construction shall be located landward of the reach of the mean high tide;
- (b) All new construction and substantial improvements of habitable space in existing structures shall be elevated so that:
 - (i) ~~the~~ the bottom of the lowest horizontal structure member of the lowest floor (excluding pilings or columns) is elevated to or above the base flood level. All space below the lowest supporting member shall remain free of obstruction or constructed with non-supporting breakaway walls, open-wood lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with subsection ~~(fe)~~ below;
- ~~(e) All new construction and substantial improvements of existing structures shall be securely anchored on pilings or columns;~~
- ~~(d)~~ (ii) ~~All~~ All pile or column foundations and structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building code standards.
- (c) All new construction and substantial improvements of existing structures shall be securely anchored on pilings or auger holes;
- ~~(ed)~~ A Florida registered professional engineer or architect shall develop or review the structural design, specifications and plans for construction, and shall certify

that the design, specifications and plans for construction are in compliance with the provisions contained in subsections (b) and (c), ~~and~~ (d).

(fe) All space below the lowest horizontal supporting member must remain free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot may be permitted only if a registered professional engineer or architect certifies that the designs meet the following conditions:

- (i) breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,
- (ii) the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards.

Such enclosed space may only be used solely for parking of vehicles, building access, or storage.

(gf) There shall be no fill used as structural support;

(kg) There shall be no alteration of sand dunes or mangrove stands that would increase potential flood damage.

(h) Walls and partitions other than parallel shear walls shall be allowed below the base flood elevation provided they

are not part of the structural support of the building and are designed to break away under the impact of abnormally high tides or wind-driven water without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:

- (i) A design load limit of not less than ten (10) and no more than twenty (20) pounds per square foot shall be used as the safe load range for breakaway walls.

~~C. Standards For Areas Of Shallow Flooding (AO Zones).~~

~~These areas have flood hazards associated with base flood depths of one to three feet (1' 3'), where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:~~

- ~~(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet (2) above the highest adjacent grade.~~
- ~~(2) All new construction and substantial improvements of nonresidential structures shall:~~
 - ~~(a) have the lowest floor, including basement, ~~at~~ the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade, ~~2~~~~
 - ~~(b) together with attendant utility and sanitary facilities be completely flood proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of~~

buoyancy. Certification is required as stated in subsection (B)(2).

DC. Standards For Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development, including ~~manufactured~~ mobile home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is less.

Section 6. Floodplain Management Standards. Chapter 9.5 "Land Development

Regulations," Section 19.5-319 "Permit Procedures" is hereby amended to read as follows:

Section 9.5-319 Permit Procedures.

- (a) The city manager or his designee shall require building permits for all proposed construction or other improvements within areas of special flood hazard. In addition to the standard requirements for a building permit set forth in Chapter 6.5 of the City Code, an application for a building permit for construction or improvements within areas of special flood hazard shall contain the information and certifications set forth in this Ordinance.
- (b) The developer shall provide a floor elevation, and if below base flood elevation, or floodproofing flood proofing certification for non-residential structures after the lowest floor is completed or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor.
- (c) Within ~~fifteen (15)~~ ten (10) calendar days of establishment of the lowest floor elevation or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor,

whichever is applicable, it shall be the duty of the permit holder to submit to the city manager or his designee a certification of the elevation of the lowest floor or the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level.

- (d) Such certification shall be prepared by or under the direct supervision of a Florida registered land surveyor or professional engineer and certified by the same. When flood proofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same. Any work done within the ~~fifteen (15)~~ ten (10) day period and before submission of the certification shall be at the permit holder's risk. The city manager or his designee shall review the floor elevation survey data submitted.
- (e) Deficiencies detected by such review shall be corrected by the permit holder immediately and before further progressive work ~~being permitted~~ permitted, & can proceed. Failure to submit the survey or failure to make the corrections required hereby shall be causes to issue a stop-work order for the project.

Section 7. Floodplain Management Standards. Chapter 9.5 "Land

Development Regulations," Section 9.5-321 "Variances" is hereby amended to read as follows:

Sec. 9.5-321. Variances.

- (a) ~~Generally. Where, owing to special conditions, a literal enforcement of the floodplain management provisions contained herein would result in exceptional hardship unique to that property or proposed project, the City Planning Commission may grant variances from the terms of those provisions as will not be contrary to the public interest, will be in harmony with the general purpose and intent of this chapter, and will be the minimum variance that will allow reasonable use of the property.~~
- ~~(b) Procedures.~~
- ~~(1) An application for a variance from the provisions of this chapter for development in an area of special flood hazard shall be filed with the city manager or his designee in a form provided by the city manager or his designee at the~~

~~time of application for a building permit. (2) Within thirty (30) days of receipt of a complete application for a variance from the terms of the floodplain management provisions of this chapter, the city manager or his designee shall review the application, and submit a report and recommendation to the City Planning Commission.~~

~~(2) Within thirty (30) days of receipt of a complete application for a variance from the terms of the floodplain management provisions of this chapter, the city manager or his designee shall review the application, and submit a report and recommendation to the City Planning Commission.~~

~~(3) The City Planning Commission shall review the application and the reports and recommendations of the city manager or his designee and the Building Official and consider granting the variance in accordance with the conditions set forth in this section.~~

~~(c) Conditions:~~

~~(1) Variances shall be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and only upon d of the following conditions:~~

~~a. A showing of good and sufficient cause;~~

~~b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;~~

~~c. A determination that the granting of a variance will not result in increased flood heights; result in additional threats to public safety; result in extraordinary public expense; create nuisance; cause fraud on or victimization of the public; or conflict with other provisions of this chapter or the City Code; and~~

~~d. Specific written findings linked to the criteria below;~~

~~(2) The following factors shall be relevant in the granting of a variance;~~

- a. — Physical characteristics of construction;
- b. — Whether it is possible to use the property by a conforming method of construction;
- c. — The possibility that materials may be wept onto other lands to the injury of others;
- d. — The danger to life and property due to flooding or erosion damage;
- e. — The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- f. — The importance to the community of the services provided By the proposed facility;
- g. — The necessity to the facility of a water dependent location, where applicable;
- h. — The availability of alternative locations less subject to flooding;
- i. — The compatibility of the proposed use with existing and anticipated development;
- j. — The relationship of the proposed use to the comprehensive plan, land development regulations and the flood plain management program for that area;
- k. — The safety of access to the property for ordinary and emergency vehicles in times of floods;
- l. — The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- iii. — 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, and streets and bridges.

~~(3) When the City Planning Commission considers the propriety of granting a variance as permitted by this division, the following factors shall not be considered relevant:~~

~~a. The physical disabilities or handicaps and health of the applicant or members of his family;~~

~~b. The domestic difficulties of the applicant or members of his family;~~

~~c. The financial difficulties of the applicant in complying with the floodplain management provisions of this chapter; or~~

~~d. The elevation of surrounding structures;~~

~~(4) Any applicant to whom a variance is granted shall be given written notice by the City Planning Commission specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. The City manager or his designee shall maintain a copy of such notices.~~

~~(5) All variances issued shall require that an affidavit be prepared, and recorded with the clerk of the circuit court, which shows that the proposed construction will be located in a flood prone area, the number of feet that the lowest floor of the proposed structure will be below the base flood level, and that actuarial flood insurance rates increase as the floor elevation decreases.~~

~~(6) The city manager or his designee shall maintain records of all variance actions and annually report any variances to the Federal Emergency Management Agency.~~

A property owner may apply for a variance in accordance with the procedures set forth in Section 9.5-523 of the City's land development regulations.

Section 8. 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 Manager is authorized to forward a copy of this Ordinance to the DCA for approval pursuant to Sections 380.05(6) and (11) Florida Statutes.

Section 9. Severability. The provisions of this Ordinance are declared to be severable if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentence, 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 party. Any provision of the City Code that conflict with this Ordinance is hereby repealed.

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

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

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

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

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

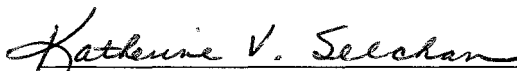
Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenmail	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Absent</u>

PASSED AND ADOPTED on second reading this 8th day of January, 2001. 02.



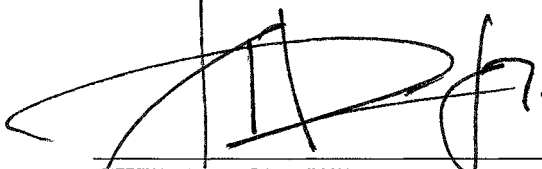
 ROBERT MILLER, MAYOR

ATTEST:



 CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



 CITY ATTORNEY

SCANNED

2/19/02 #5054 KSV

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 02-01-07

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 February 11, 2002, the Department received for review City of Marathon Ordinance No. 02-01-07 which was adopted by the City of Marathon City Council on January 8, 2002 ("Ord. 02-01-07").
3. Ord. 02-01-07 amends the City's Land Development Regulations to establish procedures and standards for regulating development within the floodplain.
4. Ord. 02-01-07 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. 02-01-07 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. 02-01-07 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.

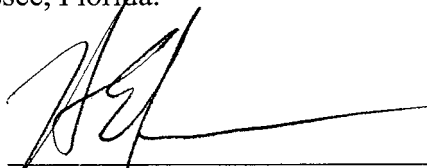
(1) To protect the public health; safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

10. Ord. 02-01-07 is not inconsistent with the remaining Principles. Ord. 02-01-07 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-01-07 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 II, 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 2nd day of ~~March~~, 2002.

for Miriam Snipes
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, Helfinan, 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



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
"Dedicated to making Florida a better place to call home"

JED BUSH
Governor

COLLEEN CASTILE
Secretary

May 7, 2002

Ms. Alison Bieler
Weiss, Serota and Helsman
2665 S. Bayshore Drive
Suite 240
Miami, FL 33133

Dear Ms. Bieler:

The Department has reviewed and approved the City of Marathon's 2nd Floodplain Management and Regulations Ordinance, No. 02-01-07. Our review and approval of this Ordinance, which amended the City's 1st Floodplain Ordinance, No. 00-09-07, was in its totality and it is not necessary to have another Final Order issued for the 1st Ordinance.

Sincerely yours,

Rebecca Jetton, Administrator
Florida Area of Critical State Concern

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32309-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
2785 Overseas Highway, Suite 212
Marathon, FL 33060-2217
Phone: 888-368-3688

COMMUNITY PLANNING
2555 Shumard Oak Boulevard
Tallahassee, FL 32309-2100
Phone: 904-498-2322

EMERGENCY MANAGEMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32309-2100
Phone: 904-498-2322

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32309-2100
Phone: 904-498-2322