

Sponsored by: Janke
Planning Commission Date: August 26, 2003
Public Hearing Date: August 26, 2003

Enactment date:

**CITY OF MARATHON, FLORIDA
ORDINANCE 2003-12**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING COMPREHENSIVE PLAN POLICY 101.4.23 TO PROVIDE DENSITY PROTECTION TO ALL LEGALLY ESTABLISHED DWELLING UNITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN; 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 the maximum well being of its residents through sound economic development; and

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

WHEREAS, Policy 101.4.23 of the City of Marathon *Transitional Comprehensive Plan* currently allows residential dwelling units that are non-conforming as to density to be rebuilt or substantially improved only if they are legally-established principal residences; and

WHEREAS, a significant percentage of the existing structures within the City were developed prior to effective date of the Plan, and are therefore, non-conforming as to the density provisions currently set forth in the Plan; and

WHEREAS, the City of Marathon is subject to tropical storms of great intensity which may cause a large amount of property damage, including the destruction of residential dwelling units, and

WHEREAS, currently Policy 101.4.23 incorrectly cites Policy 101.4.22 as the density limitations set forth in the Plan; and

WHEREAS, City Planning staff recommends amending Policy 101.4.23 to extend the density entitlement to all lawfully established residential dwelling units; and

WHEREAS, based on the Plan, the proposed changes to Policy 101.4.23 are consistent with the other goals, objectives, and policies set forth in the Plan; and

WHEREAS, City Planning staff recommends amending Policy 101.4.23 to extend the density entitlement to all lawfully established residential dwelling units; and

WHEREAS, based on the Plan, the proposed changes to Policy 101.4.23 are consistent with the other goals, objectives, and policies set forth in the Plan; 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 Plan set forth in this Ordinance (the "Amendment") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendment; 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 Amendment; and

WHEREAS, the City Council finds the adoption of the Amendment, in substantially the form attached hereto, is in the best interest of the City and complies with applicable State laws and rules.

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

Section 1. Policy 101.4.23 of the Plan is hereby amended to read as follows:

Policy 101.4.23: Notwithstanding the density limitations set forth in Policy 101.4.22 21, land upon which a legally-established residential dwelling unit ~~is in existence and used as a principal residence on the effective date of this plan~~ exists shall ~~continue to~~ be entitled to a density of one dwelling unit per each such unit. ~~In existence on the effective date of the Plan~~ Such legally-established dwelling unit shall not be considered as non-conforming as to the density provisions of Policy 101.4.21 and the City Code.

Section 2. Adoption of the Amendments. Policies 101.8.3, 101.8.4, 101.8.5, and 101.8.6 are hereby amended to read as follows:

~~**Policy 101.8.4:** With the exception of non-conforming uses located in the Mixed Use/Commercial Fishing Future Land Use category, if a structure in which a non-conforming use is located is damaged or destroyed so as to require substantial improvement, then the structure may be repaired or restored only for uses which conform to the provisions of the Future Land Use category and zoning district in which it is located. [9J-5.006(c)2]~~ **Legal Non-Conformities:** All lawfully established non-conforming structures, uses, intensities, and densities in existence on or before November 30, 1999, shall be deemed legal, non-conforming upon the adoption of the comprehensive plan.

Policy 101.8.5: **Protect Established Intensities.** Notwithstanding the intensity limitations set forth in this Element, land upon which lawfully established non-residential intensity exists shall be entitled to be replaced at the same level of intensity, provided, to the maximum extent practicable, the site provides the open space requirement, and landscaping. Such legally established intensity shall not be considered as non-conforming as to the intensity provisions of this Element.

Policy 101.8.6: **Protect Established Uses.** Notwithstanding the type and extent of land use allowable in the Future Land Use Categories of this Element, land upon which legally established uses exist shall be entitled to replace the same use, provided, to the maximum extent practicable, the site provides the required open space and landscaping. Such legally established use shall not be considered as non-conforming as to the land use category provisions of this Element.

Policy 101.8.57: Substantial improvement is defined as any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the pre-destruction market value of the structure. Improvements to historic sites, and improvements to meet health, sanitary or safety code specifications are not considered substantial improvements. [9J-5.006(3)(c)2]

~~**Policy 101.8.6:** Non-conforming uses existing as of September 15, 1986 and located within the Mixed Use/Commercial Fishing category, as indicated on the Future Land Use Map, may be rebuilt if damaged or destroyed, provided that they are rebuilt to the preexisting use, building footprint and configuration without increase in density or intensity of use.~~

Section 3. The City Clerk shall transmit the Amendment to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the "Department") as required by Chapters 163 and 380, *Florida Statutes*.

Section 4. Upon the effective date, the Amendment shall replace the City of Marathon *Transitional Comprehensive Plan*, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, Rule 28-19.200, *Florida Administrative Code*, and Section 9(6)(A) of the City Charter to the fullest extent allowed by law.

Section 5. This Ordinance shall be effective upon approval by the State Department of Community Affairs, pursuant to Chapter 380, *Florida Statutes*.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA,** this ** day of **, 2003.

THE CITY OF MARATHON, FLORIDA

Randy Mearns, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Cindy L. Ecklund
City Clerk

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

CITY ATTORNEY