

Sponsored by: Janke
Introduction Date: September 9, 2003
Public Hearing Dates: September 9, 2003
September 23, 2003
Enactment Date: September 23, 2003

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**CITY OF MARATHON, FLORIDA
ORDINANCE 2003-20**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING
SECTION 9.5-22 OF THE MARATHON CITY CODE TO ESTABLISH AN
ADVISORY PLANNING COMMISSION**

WHEREAS, pursuant to Section 9(6)(A) of the City of Marathon City Charter (the "Charter"), the Monroe County Land Development Regulations (the "LDRs") in effect upon the date of the City's incorporation are the City's LDRs until such time as they are amended or replaced; and

WHEREAS, pursuant to Section 9(6)(B) of the Charter, the City Council serves as the Planning Commission until such time as the City Council delegates all or portion of the powers and duties of the Planning Commission to another entity; and

WHEREAS, Section 9.5-22 of the LDRs provides for the appointment, removal, terms, and vacancies of the Planning Commission.

WHEREAS, the City Council desires to establish a separate advisory Planning Commission with members appointed by the City Council.

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

Section 1. Section 9.5-22 of the City Code is hereby amended to read as follows¹:

Sec. 9.5-22. Planning commission.

- (a) *Creation:* There is hereby established a an advisory planning commission.
- (b) *Powers and Duties:* The planning commission shall have the following powers and duties:
 - (1) To serve as the local planning agency (LPA), required by section 163.3174, Florida Statutes;
 - (2) ~~To prepare or cause to be prepared a comprehensive plan or element thereof and to submit to the board of county commissioners an annual report recommending~~

^{1/} Provisions added to existing text are shown by underline; provisions deleted from existing text are shown by ~~strikethrough~~.

amendments to such plan;

(32) To review and make recommendations to the ~~board of county commissioners~~ city council in regard to amendment of the official land use district map;

(43) To hear, review ~~and approve or disapprove~~ and make recommendations to the city council in regard to applications for minor or major conditional use permits;

(54) To initiate, hear, review and make recommendations to the ~~board of county commissioners~~ city council on applications for amendment to the text of this chapter;

(65) To hear, review and recommend approval or disapproval of all plats in accordance with the rules and regulations established by the ~~board of county commissioners~~ city council;

(76) To hear, ~~consider and act on~~ review and recommend approval or disapproval to the city council of appeals of administrative actions;

~~(8) To act to ensure compliance with conditional use permits, as approved and issued;~~

(97) To make its special knowledge and expertise available upon reasonably written request and authorization of the ~~board of county commissioners~~ city council to any official, department, board, commission or agency of the county, state or federal government; and

~~(108)~~ To adopt such rules of procedure necessary for the administration of their responsibilities not inconsistent with this article to govern the commission's proceedings.

(c) *Qualifications for Membership:* Members of the planning commission shall be qualified electors in ~~Monroe County~~ the City of Marathon. In the event that any member is no longer a qualified elector or is convicted of a felony or an offense involving moral turpitude while in office, the ~~board of county commissioners~~ city council shall terminate the appointment of such person as a member of the commission.

(d) *Membership: Appointment, Removal, Terms, and Vacancies:*

(1) The planning commission shall be composed of five (5) members to be appointed by the ~~mayor with the advice and consent of the board of county commissioners~~ city council. The City Clerk will advertise for candidates to fill vacancies. All applications will be submitted to the Council, who will appoint members by a vote of the majority. Each member of the board of county commissioners city council shall submit a name of a candidate to the mayor. The areas of planning, environmental science, and the development industry together with the geographical representation of the ~~Keys~~ City shall be considered.

(2) Members may be removed for cause prior to the expiration of their appointment by the majority vote of the ~~board of county commissioners~~ city council

and shall be compensated as determined by the ~~board of county commissioners~~ city council.

(3) All members shall serve a term of ~~two (2)~~ three (3) years except that two (2) members shall be appointed for an initial term of ~~one (1)-year~~ two (2) years. No member shall serve more than three (3) consecutive terms.

(4) At an annual organizational meeting, the members of the planning commission shall elect one (1) of their members as chairman and one (1) as vice-chairman. In the absence of the chairman, the vice-chairman shall act as chairman and shall have all powers of the chairman. The chairman shall serve a term of one (1) year. No member shall serve as chairman for more than two (2) consecutive terms.

(5) The presiding officer of any meeting of the commission shall administer oaths, shall be in charge of all proceedings before the commission, and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the commission.

(6) If any member of the commission shall fail to attend three (3) regular meetings of the commission within any three-month period, such failure shall constitute sufficient grounds for termination of the member's appointment. The chairman or the vice-chairman, as the case may be, shall immediately file a notification of such nonattendance with the ~~county administrator~~ city manager for placement on the agenda of the ~~board of county commissioners~~ city council; and the ~~board~~ city council shall, by appropriate action, terminate the appointment of such person and fill the vacancy thereby created as soon as practicable.

(e) *Recording Secretary:* The ~~director of planning~~ city manager or designee shall appoint a recording secretary to serve the planning commission. The secretary shall keep minutes of all proceedings of the commission, which minutes shall be a summary of all proceedings before the commission, attested to by the secretary, and which shall include the vote of each member upon every question. The minutes shall be approved by a majority of the members of the commission voting. In addition, the secretary shall maintain all records of commission meetings, hearings and proceedings, and the correspondence of the commission, ~~and a mailing list of persons wishing to receive notices of meetings, agendas or minutes and who have paid an annual fee set by the board of county commissioners to cover copying and mailing costs.~~

(f) *Staff:* The department of planning shall be the professional staff of the planning commission.

(g) *Quorum and Necessary Vote:* No meeting of the planning commission may be called to order, nor may any business be transacted by the commission, without a quorum consisting of at least three (3) members of the commission being present. The chairman shall be considered and counted as a member. The concurring vote of at least three (3) members shall be necessary for the commission to take action on major or minor conditional use applications, final plat approvals, amendments to the text of this chapter or to the official land use district map. All other actions shall require the concurring vote of a simple majority of the members of the commission then present and voting.

(h) *Meetings, Hearings and Procedure:*

(1) Regular meetings of the planning commission shall be scheduled monthly beginning January 1 of every calendar year ~~for twice monthly and~~ or as required by a majority of the ~~board of county commissioners~~ city council, the chairman of the planning commission, or a majority of the members of the planning commission.

~~(2) The regularly scheduled (bi-monthly) meetings shall rotate between the middle Keys and upper Keys sub-areas. All items which relate to specific properties such as but not limited to minor and major conditional uses, variances and administrative appeals, shall be held at the regularly scheduled meeting closest to the subject property. The planning commission may, in its discretion, schedule special meetings in the lower Keys sub-area as required by the demand for such meetings. In cases where an item is postponed due to the lack of a quorum of the planning commission, the item shall be continued to a special meeting to be held in the same sub-area within seven (7) working days. In cases where an item is postponed for any other reason, the item shall be continued to the next regularly scheduled meeting closest to the subject property. Items which are not related to specific properties, such as but not limited to text amendments to this chapter and comprehensive plan amendments, may be heard in either the middle or upper Keys locations, or the planning commission may, in its discretion, schedule such items for the most appropriate area or for additional meetings in each sub-area, including the lower Keys.~~

(32) All meetings and hearings of the commission shall be open to the public

(43) Public hearings shall be set for a time certain.

Section 2. The provisions of this Ordinance are declared to be severable and 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, 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 3. The provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

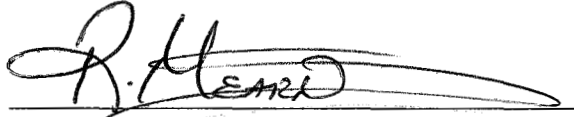
Section 4. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida, that the sections of the Ordinance may be renumbered or re-lettered to accomplish to such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. 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 State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 6. This Ordinance shall be effective immediately 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 23rd day of September, 2003.

THE CITY OF MARATHON, FLORIDA



Randy Mearns, Mayor

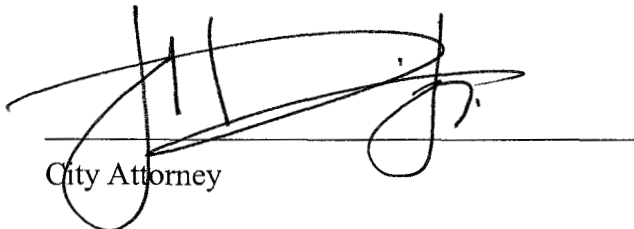
AYES: Worthington, Bartus, Pinkus, Repetto, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

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



City Attorney

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2003-20

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2002), 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 September 29, 2003, the Department received for review City of Marathon Ordinance No. 2003-20 which was adopted by the City of Marathon Board of City Commissioners on September 23, 2003 ("Ord. 2003-20"). Ord. 2003-20 amends Section 9.5-22 of the City of Marathon Code, by establishing an advisory planning commission, including its powers and duties, membership qualifications, member appointment and removal, and procedural guidelines for meetings, hearings, and voting.
3. Ord. 2003-20 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2002).
5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2002) and Rule 28-29.002 (superseding Chapter 27F-8),

Fla. Admin. Code.

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2002). The regulations adopted by Ord. 2003-20 are land development regulations.

7. 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") as 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.

8. Ord. 2003-20 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.

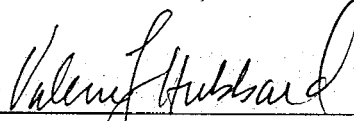
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

9. Ord. 2003-20 is not inconsistent with the remaining Principles. Ord. 2003-20 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2003-20 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.



VALERIE J. HUBBARD, 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

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.

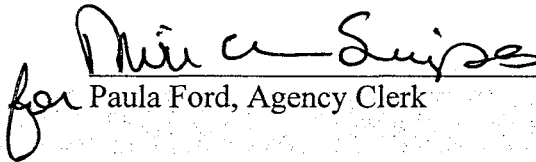
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 8th day of October, 2003.


for Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, 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

Scott Janke
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:

Jim Quinn, State Planning Administrator
Rebecca Jetton, ACSC Administrator
Timothy E. Dennis, Assistant General Counsel