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**CITY OF MARATHON, FLORIDA  
ORDINANCE 2005-04**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING SECTION 9.5-4 OF THE CITY CODE TO ADD ADDITIONAL DEFINITIONS PERTAINING TO FLOODPLAIN MANAGEMENT STANDARDS; REPEALING EXISTING 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 SEVERABILITY, THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, FOR INCLUSION IN THE CODE, 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 IN ACCORDANCE WITH STATE LAW**

**WHEREAS**, the Legislatures 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; and

**WHEREAS**, the City is adopting this Ordinance to protect residents and property from 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; and

**WHEREAS**, pursuant to Section 163.3174, Florida Statutes, and Section 9.5-22 of the Code, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the Code 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 Code; 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 Florida Keys Area of Critical State Concern.

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

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

**Section 2.** That Section 9.5-4 of the City Code is hereby amended to read as follows:

**Sec. 9.5-4 Definitions**

Area of shallow flooding means a designated AO or AH zone on the community's Flood Insurance Rate Map (FIRM) with base flood average depths of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Basement means that portion of a building between floor and ceiling which may be partly below and partly above grade any area of the building having its floor subgrade (below ground level) on all sides.

Coastal high-hazard area means the area subject to storm surge as well as high velocity waters caused by, but not limited to hurricane wave wash or tsunamis an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the Flood Insurance Rate Map (FIRM) as zone V1-30 or VE.

Development means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land or water, or the subdividing of land into two (2) or more parcels.

(a) Except as provided in subsection (c) hereof, for the purposes of this chapter, the following activities or uses shall be taken to involve "development":

- (1) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land or water.
  - (2) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices or dwelling units in a structure or on land.
  - (3) Alteration of a shore or bank of a seacoast, lake, pond or canal, including any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.
  - (4) Commencement of drilling (except to obtain soil samples), mining or excavation on a parcel of land.
  - (5) Demolition of a structure.
  - (6) Clearing of land, including clearing or removal of vegetation and, including significant disturbance of vegetation or substrate (soil) manipulation, including the trimming of mangroves to the extent allowed by law. (Ord. No. 19-1989, § 1(PD11))
  - (7) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.
- (b) "Development" includes all other activity customarily associated with it. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this definition.
- (c) For the purpose of this chapter, the following operations or uses shall not be taken to involve "development:"
- (1) Work involving the maintenance, renewal, improvement or alteration of any structure, if the work affects only the color or decoration of the exterior of the structure or interior alterations that do not change the use for which the structure was constructed.
  - (2) Work involving the maintenance of existing landscaped areas and existing rights-of-way such as yards and other non-natural planting areas.
  - (3) A change in use of land or structure from a use within a specified category of use to another use in the same category unless the change involves a change from a use permitted as of right to one permitted as a minor or major conditional use or from a minor to a major conditional use.
  - (4) A change in the ownership or form of ownership of any parcel or structure.
  - (5) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land unless otherwise specifically required by law.
  - (6) The clearing of survey cuts or other paths of less than four (4) feet in width and the mowing of vacant lots in improved subdivisions and areas that have been continuously maintained in a mowed state prior to the effective date of the plan, the trimming of trees and shrubs and gardening in areas of developed parcels that are not required open space and the maintenance of public rights-of-way and private accessways existing on the effective date of this chapter or approved private rights-of-way.

- (d) Development also means the tourist housing use or vacation rental use of a dwelling unit, or a change to such a use (i.e., conversion of existing dwelling units to vacation rental use). Vacation rental use of a dwelling unit requires building permits, inspection(s) and a certificate of occupancy.
- (e) For floodplain management purposes, any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction means for the purposes of determining rates, any structures for which the "start of construction" commenced before the effective date of this ordinance the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Floodproofing means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce effects of water entry.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

*Historic structure* means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a register historic district;
- (c) Designated by the State of Florida as an archaeological, historical or cultural landmark Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Designated by either Monroe County or the City as an archeological, historical or cultural landmark Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) By an approved state program as determined by the Secretary of the Interior or
  - (2) Directly by the Secretary of the Interior in states without approved programs.

Human intervention means the required presence and active involvement of people to enact floodproofing or retrofitting measures prior to flooding.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this division.

New construction, for floodplain management purposes, means any structure for which the "start of construction" commenced on or after the effective date of this Ordinance June 15, 1973 and The term also includes any subsequent improvements to such structures. New construction is also known as Post-FIRM structures. For insurance purposes, Post-FIRM structures are those constructed on or after January 1, 1975.

Special Flood Hazard Area means an area having a special flood hazard and shown on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) as Zone A, AO, A1-A30, AE, A99, or AH.

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the ~~predestruction~~ market value of the structure, as ~~determined by the Office of the Tax Assessor of Monroe County~~, either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. 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. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

The term does not, however, include either:

- (a) Any project for improvement of a structure to ~~comply with~~ correct existing violations of state or local health, sanitary, or safety code specifications which are necessary solely have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (b) Any alteration of a ~~structure listed on the National Register of Historic Places, the state inventory of historic places, or any inventory of local historic places~~ "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure".

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 fifty (50) percent of the market value of the structure before the damage occurred (ii) ~~would equal or exceed 50 percent of the square footage of the structure before the damage occurred.~~ Damage of any origin includes but is not limited to demolition in preparation for improvements, deterioration due to lack of maintenance and repair and exposure to the elements and damage by acts of God.

Substantially damaged mobile home park or subdivision means damage of any origin sustained by a mobile home park whereby the cost of restoring the mobile home park, to the

before damaged condition would exceed 50 percent of the market value of the mobile home park before the damage occurred, including the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads.

Violation means the failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**Section 2.** That Section 9.5-315 of the City Code is hereby amended to read as follows:

**Sec. 9.5-315. Statement of Purpose**

It is the purpose of this Division to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in increases in erosion or in flood heights or velocities;
- (b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (c) Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of floodwaters;
- (d) Control filling, grading, dredging and other development which may increase flood damage or erosion;
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands;
- (f) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (g) Minimize prolonged business interruptions;
- (h) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (i) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (j) Ensure that potential homebuyers are notified that property is in a flood area;

(k) Protect human life and health; and

(l) Minimize expenditure of public money for costly flood control projects.

**Section 3.** That Section 9.5-316 of the City Code is hereby amended to read as follows:

**Sec. 9.5-316. General Provisions**

(a) *Lands to Which this Division Applies.* This Division shall apply to all areas within the boundaries of the City of Marathon, which is designated as a special flood hazard.

(b) *Adoption of Maps.* The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Insurance Rate Map, dated February 18, 2005, with accompanying maps and other supporting data, and any revisions thereto, are hereby adopted by reference and declared to be a part of this division, and shall be kept on file, available to the public, in the offices of the City Planning Department.

(c) *Establishment of a Development Permit.* A development permit shall be required in conformance with the provision of this division prior to the commencement of any development activity.

(d) *Compliance.* No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this Division.

(e) *Abrogation and Greater Restrictions.* This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f) *Warning and Disclaimer of Liability.* The degree of flood protection required by this Division is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Division does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Division shall not create liability on the part of the City or by any officer or employee thereof for any flood damages that result from reliance on this Division or any administrative decision lawfully made thereunder.

(g) *Penalties for Violation.* A violation of this Article or any resolution adopted pursuant to this Article may be enforced as provided in Chapter 162, Fla. Stat., and Chapter 6.3 of the City Code. The City may also enforce this Article by issuance of a citation, summons, or notice to appear in county court, or arrest as provided in Chapter 901, Fla. Stat., or by injunctive relief. Nothing contained in this Article shall prohibit the City from enforcing this Article by any other lawful means. All fines and fees may be set by Resolution.

**Section 4.** That Section 9.5-317 of the City Code is hereby amended to read as follows:

**Sec. 9.5-317. Administration.**

(a) The city manager or his designee is appointed to administer and implement the provisions of this Division. The city manager or his designee shall:

- (1) Review all development permits to assure that the permit requirements of this Division have been satisfied;
- (2) Review all development permits to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (3) Notify adjacent communities and the State of Florida Department of Community Affairs, Division of Emergency Management, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Verify and record the actual elevation, in relation to NGVD, of the lowest floor of all new or substantially improved structures.
- (6) Verify and record the actual elevation, in relation to NGVD, to which the new or substantially improved structures have been flood-proofed.
- (7) Verify that in Coastal High Hazard Areas applicants have provided certification from a registered professional engineer or architect that the structure is designed and securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- (8) In Coastal High Hazard Areas, review plans for adequacy of breakaway walls.
- (9) Verify that when flood proofing is utilized for a structure, the applicant has obtained certification for the flood proofing from a registered professional engineer or architect.
- (10) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the city manager or his designee shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the city manager or his designee's interpretation as provided for in Section 9.5-521.



- (11) When base flood elevation data or floodway data have not been provided by the Federal Emergency Management Agency in accordance with Section 9.5-316 of the City Code, then the city manager or his designee shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of this Division.
- b. All records pertaining to the provisions of this Division shall be maintained in the office of the city manager or his designee and shall be open for public inspection.

**Section 5.** That Section 9.5-318 of the City Code 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, substantial improvements, or replacements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) 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.
- (3) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage.
- (4) New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage.
- (5) All electrical, heating, and air conditioning equipment, ventilation, plumbing, and other service facilities shall be designed and located to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

- (8) Onsite waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure, shall meet the requirements for new construction as contained in this division.
- (10) Nonconforming uses and construction below elevated post-FIRM buildings may not be expanded or improved or repaired from damages of any origin and no building permit shall be issued for any improvements to below base flood enclosures, other than for demolition or a permit to remedy a life safety hazard, unless the structure is brought into compliance with this Division.
- (11) New construction and substantial improvements, when located in multiple flood zones or in flood zones with multiple base flood elevations, shall meet the requirements for the flood zone with the most stringent requirements.
- (12) No manmade alteration of sand dunes, dune ridge, mangrove stands or wetlands shall be allowed which would increase potential flood damage.

(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.*

- a. New construction or substantial improvement of any residential structure in the AE, A1-A30, and AH zones shall have the lowest floor (including basement) elevated to or above the base flood elevation. Should solid foundation perimeter walls be used between columns of an elevated structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.
- b. Elevators may be placed below the base flood elevation, if the mechanical and electrical equipment serving the elevator is designed, certified and located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(2) *Nonresidential construction.*

- a. New construction or substantial improvement of any commercial, industrial, or nonresidential structure in the AE, A1-A30, and AH zones shall have the lowest floor elevated to or above the base flood level.
- b. 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 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.
- c. A Florida registered professional engineer or architect shall develop and 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 designee.

(3) *Elevated buildings.*

- a. For all new construction or substantial improvements, fully enclosed areas below the lowest floor elevation shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation. These enclosed areas shall be designed and constructed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic and hydrodynamic flood forces on exterior walls.
- b. Designs for complying with this requirement must either be certified by a state registered professional engineer or architect, or 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.
  - iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic entry and exit of floodwaters.
- c. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door) or 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 Mobile Homes and Recreational Vehicles.*

- a. All mobile homes placed or substantially improved that are located in: expansions to existing mobile home parks, or on individual lots or parcels, or in a new or substantially improved mobile home parks, must meet all the requirements for new construction, including elevation and anchoring.
- b. All mobile homes placed or substantially improved in an existing mobile home park must be elevated so that:
  - i. The lowest floor of the mobile home is elevated to or above the base flood elevation, or
  - ii. The 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 mobile home chassis must be securely anchored to the adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- c. All recreational vehicles placed on a site must comply with the following:

- i. Be fully licensed and ready for highway use (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), or
- ii. Be on the site for fewer than 180 consecutive days

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 must meet all requirements of this division for mobile homes and all Code sections applicable to dwelling units.

(5) Coastal high hazard areas (VE Zones). These areas have special flood hazards associated with high velocity waters from surges, and therefore, in addition to meeting all the provisions of this division, the following provisions shall also apply:

- a. All new construction shall be located landward of the reach of the mean high tide.
- b. All new construction and substantial improvements in Zones V1-30 and VE shall be elevated on pilings and columns so that:
  - i. 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.
  - ii. The 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. 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 subsection (i) and (ii) above.
- d. All space below the lowest floor must remain free of obstruction or constructed with non-supporting breakaway walls, open 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.

e. The enclosed space below the lowest floor shall be used solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation.

f. There shall be no fill used as structural support. No development permit shall be issued for development involving fill in coastal high hazard area unless it has been demonstrated through appropriate engineering analyses that the subject fill does not cause any adverse impacts to the structure on site or adjacent structures. Placement of fill that would result in an increase in the base flood elevation may be permitted, provided that the permit applicant first applies for and receives a conditional FIRM revision, fulfilling the requirements for such revisions as established by FEMA.

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

h. All mobile homes to be placed or substantially improved with Zones V1-30, VE and V on the FIRM shall:

i. Meet the requirements of Section 9.5-318 (b)(5) (a) through (g) if they are located on sites (i) outside of an existing mobile home park or subdivision, (ii) in a new or substantially improved mobile home park or subdivision, or (iii) in an expansion to an existing mobile home park or subdivision, and

ii. Meet the requirements of Section 9.5-318 (b)(4)(b) if they are located in an existing mobile home park or subdivision.

(6) Standards for subdivision proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All subdivision proposals shall have public utilities and facilities such as

sewer, gas, electrical and water systems located and constructed to minimize flood damage.

- c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- d. Base flood elevation data shall be provided for subdivision proposals and other proposed development, including mobile home parks and subdivisions, greater than 50 lots or five acres, whichever is less.

**Section 6.** That Section 9.5-319 of the City Code is hereby amended to read as follows:

**Sec. 9.5-319. Permit Procedures.**

(a) A Development Permit Application shall be submitted, prior to undertaking any development activities, to the city manager or his designee on forms furnished by him, and must include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, locations, dimensions, and elevations of the area under consideration for development; existing structure(s) and other features; proposed structure(s), earthen fill, storage of materials or equipment, drainage facilities, perimeter setbacks, environmental features such as base floodplain areas, wetlands, and other protected areas; and the location of the foregoing. Specifically, the following information, certified by a professional who is authorized to certify such information in the State, is required:

(1) Application Stage:

- a. Survey of elevations of the area of development in relation to NGVD (such as a contour map) for both existing and proposed development;
- b. Pre-construction FEMA/NFIP Elevation Certificate for all residential or elevated non-residential structures prepared by or under the direct supervision of a registered land surveyor or professional engineer who is authorized to certify such information in the State, and certified by same;
- c. FEMA Floodproofing Certificate, meeting the floodproofing criteria;
- d. Total Net Venting Certificate, for elevated structures with enclosed areas below the lowest floor elevation, produced by the product manufacturer or a registered land surveyor or professional engineer;
- e. Annual Maintenance Plan, should human intervention occur, which will only apply to commercial properties;
- f. V-zone certification, if applicable; and
- g. Description of the extent to which any watercourse will be altered or relocated as result of proposed development.

(2) Construction Stage:

- a. Within ten (10) calendar days of establishment of the lowest floor elevation or upon placement of the lowest horizontal structure member of the lowest floor, or floodproofing by whatever construction means, it shall be the duty of the permit holder to submit to the city manager or his designee a FEMA/NFIP

Elevation Certificate. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer who is authorized to certify such information in the State, and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk.

- b. The city manager or his designee shall review the lowest floor elevation and floodproofing certificate. Should these documents be found not in conformance with the requirements of this division, the permit holder shall immediately cease further work, and shall correct any deficiencies. Failure of the permit holder to submit the surveyed lowest floor elevation and floodproofing certificate, and failure to correct said deficiencies required hereby, shall be the cause to issue a stop-work order for the project.

(3) Post-Construction Stage:

- a. Prior to receiving a Certificate of Occupancy, a final FEMA/NFIP Elevation Certificate or Floodproofing Certificate shall be submitted.
- b. Should an Annual Maintenance Plan be required, it shall be annually resubmitted to the City for review on the anniversary of receiving a Certificate of Occupancy.

**Section 7.** That Section 9.5-320 of the City Code is hereby amended to read as follows:

**Sec. 9.5-320. Variances.**

- (a) Where, owing to special conditions, a literal enforcement of the floodplain management provisions of the plan would result in exceptional hardship unique to that property or proposed project, the City Council 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) 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. In addition, the Planning Commission shall consider the following upon reviewing such applications for a variance and make a recommendation to the City Council:
  - (1) Physical characteristics of construction;
  - (2) Whether it is possible to use the property by a conforming method of construction;
  - (3) The danger that materials may be swept onto other lands to the injury of others;
  - (4) The danger of life and property due to flooding or erosion damage;
  - (5) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (6) The importance of the services provided by the proposed facility to the community;
  - (7) The necessity to the facility of a waterfront location, where applicable;
  - (8) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

- (9) The compatibility of the proposed use with existing and anticipated development;
  - (10) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (11) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (12) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - (13) 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.
  - (14) The request for variance is not an after-the-fact request.
- (c) When the Planning Commission and City Council shall consider the property of granting a variance as permitted by this division, the following factors shall not be considered relevant:
- (1) The physical disabilities or handicaps and health of the applicant or members of his family;
  - (2) The domestic difficulties of the applicant or members of his family;
  - (3) The financial difficulty of the applicant in complying with the floodplain management provisions of this chapter; or
  - (4) The elevation of surrounding structures.
- (d) *Historic Structures.* Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.
- (e) Notification. Any applicant to whom a variance is granted shall be notified in writing over the signature of the city manager or his designee that:
- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increase premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
  - (2) Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the city manager or his designee in the City and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
  - (3) The city manager or his designee shall maintain a record of all variance actions, including justification for their issuance or denial, and report such variances issued in its annual or biennial report submitted to FEMA.
- (f) Upon consideration of the factors listed in Section 9.5-318, and the purposes of these regulations, the City Council may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this section.

**Section 8.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of 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 9.** 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 10.** 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 11.** The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed 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 12.** 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 7<sup>th</sup> day of February, 2005.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
Jeffrey M. Pinkus, Mayor

AYES: Bull, Miller, Bartus, Mearns, Pinkus  
NOES: None  
ABSENT: None  
ABSTAIN: None

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



**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

JEB BUSH, GOVERNOR  
THADDEUS L. COHEN, AIA, SECRETARY

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**OFFICE OF THE GENERAL COUNSEL**  
Heidi Hughes  
General Counsel

2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
TELEPHONE: 850-488-0410  
FAX: 850-922-2679  
SUNCOM: 278-0410

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**FACSIMILE MESSAGE**

**DATE:** February 16, 2005  
**FROM:** Richard Shine, Assistant General Counsel  
**TO:** Gail Kenson Fax: 305-289-4123  
**RE:** Immediate Final Order; City of Marathon Ord. # 2005-04  
DCA05-OR-033

**COMMENTS:** Should you have any questions, please contact Richard Shine at 850-488-0410.

Pages including Cover: 11 pgs.

cc:

DCA Final Order No.: DCA05-OR-033

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2005-04

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**IMMEDIATE FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues this Immediate Final Order, pursuant to §120.569(2)(n), §380.05(6), and §380.0552(9), *Fla. Stat.* (2004), 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 City of Marathon is a local government within the Florida Keys Area of Critical State Concern.
2. On February 9, 2005, the Department received for review City of Marathon Ordinance No. 2005-04 that was adopted by the City of Marathon Board of City Commissioners on February 7, 2005 ("Ord. 2005-04"). Ord. 2005-04 revises the City's floodplain management regulations so as to ensure the City's continued participation in the National Flood Insurance Program.
3. Based upon the facts stated in the Affidavit of Mayor Jeffrey Pinkus, attached to this Immediate Final Order as Exhibit A and incorporated herein, the Department finds that there is an immediate danger to the public health, safety and welfare that requires the issuance of an Immediate Final Order.
4. Ord. 2005-04 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 §380.0552(9), *Fla. Stat.* (2004).

## DCA Final Order No.: DCA05-OR-033

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. §380.0552, *Fla. Stat.* (2004) 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.* (2004). The regulations adopted by Ord. 2005-04 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") 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.

9. Ord. 2005-04 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.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

(k) To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a postdisaster reconstruction plan.

(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. 2005-04 is not inconsistent with the remaining Principles. Ord. 2005-04 is consistent with the Principles for Guiding Development as a whole.

11. Since there is an immediate danger to the public health, safety and welfare, the approval of Ord. 2005-04 shall be effective immediately. §120.569(2)(n), *Fla. Stat.* (2004).


**DCA Final Order No.: DCA05-OR-033**

WHEREFORE, IT IS ORDERED that:

A. City of Marathon Ordinance 2005-04 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED; and

B. This Order and Marathon Ordinance 2005-04 shall become effective immediately upon filing with the Agency Clerk.

DONE AND ORDERED in Tallahassee, Florida.

  
\_\_\_\_\_  
THADDEUS L. COHEN, Secretary  
Department of Community Affairs

**NOTICE OF RIGHTS**

**I. Challenges to the Immediate Effective Date:**

ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS IMMEDIATE FINAL ORDER AND WHO DISPUTES THE FINDING THAT THERE IS AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE THAT REQUIRES AN IMMEDIATE FINAL ORDER MAY APPEAL THIS IMMEDIATE FINAL ORDER ON THAT BASIS OR SEEK AN INJUNCTION TO SET ASIDE THE IMMEDIATE NATURE OF THIS ORDER PURSUANT TO SECTIONS 120.569(2)(n) AND 120.68(1), FLORIDA STATUTES.

A. TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS PUBLISHED IN THE FLORIDA ADMINISTRATIVE WEEKLY. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

**DCA Final Order No.: DCA05-OR-033**

B. TO SEEK AN INJUNCTION, A COMPLAINT MUST BE FILED WITH THE APPROPRIATE CIRCUIT COURT PURSUANT TO THE FLORIDA RULES OF CIVIL PROCEDURE. THE COMPLAINT MUST BE ACCOMPANIED WITH THE FILING FEE REQUIRED BY THE CLERK OF THE CIRCUIT COURT.

**II. Challenges to All Other Issues:**

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.

A. 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.

B. 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.

C. 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,

## DCA Final Order No.: DCA05-OR-033

"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.

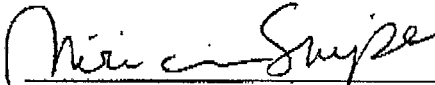
D. THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL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

E. 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 Immediate Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 16<sup>th</sup> day of February, 2005.

*for*   
\_\_\_\_\_  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Jeffrey Pinkus, Mayor  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Cindy Ecklund, City Clerk  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

DCA Final Order No.: DCA05-OR-033

Mike Puto, Acting City Manager  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

John Herin, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
Suite 2200 Museum Tower  
150 West Flagler Street  
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator  
Richard E. Shine, Assistant General Counsel



AFFIDAVIT OF THE CITY OF MARATHON

STATE OF FLORIDA            )  
  ) ss.  
LEON COUNTY                 )

BEFORE ME, the undersigned authority, personally appeared Jeff Pinkus, who, after being first duly sworn, upon oath, deposes and states:

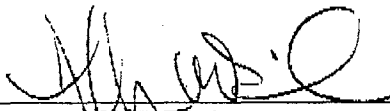
1. I am the Mayor of the City of Marathon, Florida (the "City").
2. The City is a municipality located in Monroe County, Florida, and is designated as an area of critical state concern.
3. The ability to insure property in the Florida Keys in the event of a flood event is critical to the public health, safety and welfare of the residents and business owners in the City of Marathon (the "City"), in order to protect persons and property within the City.
4. In order for residents and business owners in the City to have the ability to obtain flood insurance, the City must be a member of the National Flood Insurance Program (the "NFIP").
5. In order to comply with the requirements to become a part of the NFIP, the City adopted its floodplain management regulations (the "Floodplain Regulations") as Ordinance No. 00-09-07 on September 26, 2000.
6. The Florida Department of Community Affairs (the "Department") issued Final Order No. DCA01-OR-095 finding City Ordinance No. 00-09-07 consistent with the City Comprehensive Plan.



7. The City has been operating under the Floodplain Regulations and has been part of the NFIP since the adoption of Ordinance No. 00-09-07.
8. In order to continue its eligibility with the NFIP, the City must remain in compliance with 44 C.F.R. 60.3(e) (the "NFIP Rules") by amending and supplementing the existing floodplain management measures in force to reflect the data shown on the latest Flood Insurance Rate Maps ("FIRM").
9. City staff has been working diligently with FEMA over the last several months to craft amended Floodplain Regulations, including the modification of the FIRM.
10. On November 18, 2004, City Manager Michael Puto received a letter (attached as Exhibit "A") from David I. Maurstad, Acting Director, Mitigation Division of FEMA advising the City that it was required to adopt amended Floodplain Regulations to by February 18, 2005 to avoid the City's suspension from the NFIP.
11. If the City is suspended from the NFIP, flood insurance many not be sold or renewed within the City.
12. If the City is suspended from the NFIP, the provisions of Section 202(a) of Public Law 93-234 apply. This Section prohibits federal officers or agencies from approving any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, for acquisition or construction purposes within special flood hazard areas.

13. The City Council adopted Ordinance No. 2005-04 on February 7, 2005, amending the Floodplain Regulations so that they are in compliance with the NFIP Rules.
14. In order to avoid any suspension of the NFIP within the City, the Ordinance must be effective no later than February 18, 2005.
15. In order to meet the February 18, 2005 deadline, the City requests that the Department issue an Immediate Final Order pursuant to Section 120.569(2)(n), Florida Statutes.
16. If the Department issues the Immediate Final Order by February 18, 2005, the City will not face the immediate danger to the public health, safety, or welfare associated with a lack of protection from a potential flood event.

FURTHER AFFIANT SAYETH NAUGHT.

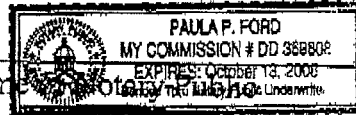
  
\_\_\_\_\_  
Jeffrey Pinkus  
Mayor

SWORN TO AND SUBSCRIBED before me this 11<sup>th</sup> day of February,  
2005 by Jeffrey Pinkus, who is personally known to me/presented  
identification.

*Paula P. Ford*

NOTARY PUBLIC, STATE OF FLORIDA

Print Name



Seal