

**Sponsored by:** Puto  
**Introduction Date:** September 18, 2006  
**Public Hearing Dates:** October 10, 2006  
October 24, 2006  
**Enactment date:** October 24, 2006

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2006-25**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, CREATING SECTION 19-219 PROHIBITED AREAS FOR SALES OF ALCOHOLIC BEVERAGES, PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR SEVERABILITY; PROVIDING FOR THE INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW**

**WHEREAS**, the City of Marathon (the “City”) has the authority to enact ordinances that promote the health, safety and welfare of the citizens and residents of the City; and

**WHEREAS**, pursuant to Section 19-218 of the City Code, the City currently regulates the sale of alcoholic beverages in the City by requiring an alcoholic beverage use permit for any person or entity wishing to sell alcoholic beverages in the City; and

**WHEREAS**, the City Council is concerned with the effect that a proliferation of package liquor stores would have on the health, safety and welfare of the community and on the character of the neighborhoods in which such stores would be located; 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.

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

**Section 1.** The foregoing recitals are incorporated herein by reference.

**Section 2.** Section 19-219 of the City Code is hereby created to read as follows:

**Sec. 19-219. Prohibited areas for sale of alcoholic beverages**

**(1) Generally.**

(a) *Definition.* In this Section, unless the context requires otherwise, "package sale vendor" means a person licensed pursuant to Chapters 561 through 568, *Florida Statutes*, to sell liquor (as defined in Section 565-01, *Florida Statutes*) as a package sale; however, a package sale vendor does not include: (i) a business operation, in regards to beer and malt beverages (as defined by Section 563.01, *Florida Statutes*) and wine (as defined by Section 564.01, *Florida Statutes*) for consumption off premises; or (ii) any bona fide hotel, motel or motor court in possession of a special license issued in accordance with Section 561.20(2)(a)1, *Florida Statutes*.

(b) *City package sale vendor distance requirements established.* For all of those certain areas of land in the City which lie within one thousand five hundred (1,500) feet of a package sale vendor's place of business as established, located and licensed, no other new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance.

(c) *Package sales within distance requirements restricted.* The purpose of creating the distance requirements mentioned in subsection (1)(b) of this Section is to provide and require that no package sale vendor which is located or proposes to locate in the City of Marathon shall be permitted to operate at a new location within a distance of one thousand five hundred (1,500) feet of the location of any package sale vendor which is both preexisting at the time of the package sale vendor's application to operate at the new location and is located within the City of Marathon.

(d) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirements set forth above in subsections (1)(b) and (1)(c) shall not be applied to the location of an existing package sale vendor when there is:

- (i) A renewal of an existing license;
- (ii) A transfer in ownership;
- (iii) A change in business name; or
- (iv) A decrease in the numerical designation of a state issued license that is of the same series (type);

provided that the physical location of the package sale vendor establishment does not change. No increase in the numerical designation of a series (type) of state issued license that is of the same series (type) shall be permitted at or for a location (new or existing) except in compliance with the provision hereof.

(e) *Measurement of distances.* The distances provided in this Section shall be measured by following a straight line from the proposed main entrance of a package sale vendor who proposes to operate his place of business and is licensed under Chapters 561 through 568, *Florida Statutes*, to the main entrance of any other package sale vendor who is operating such a business. The package sale vendor seeking a new location must submit a scaled survey drawn by a registered land surveyor attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the Director of Planning that the minimum distance separation has been met.

(f) *Exemption for on-premises consumption only.*

(1) In those situations in which the holder of an alcoholic beverage license pursuant to Chapters 561 through 568, *Florida Statutes*, has the ability to use such license for both on- premises and off-premises consumption sales, such licensee may at his option choose to forego off-premises consumption sales under his license for the location of business requested; thus such licensee would be deemed not to be a package sale vendor under this section for such a location and would not be subject to the distance requirements cited in subsections (b) and (c) above. To ensure that the public, safety and welfare are preserved, any licensee choosing to forego package sales for off-premises consumption, and thereupon being deemed not to be a package sale vendor, shall agree as a condition of obtaining his zoning use permit to prominently display at all times within his establishment in the vicinity of the main cash register a sign with letters no smaller than three (3) inches and printed in a legible style which states "No Package Sales."

(2) Upon any future relocation of such licensee's business in which the distance requirements of subsection (b) above are met, such licensee may resume package sales for off-premises consumption and would not be required to display the aforementioned sign.

**(2) Schools.**

(a) No new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within one thousand five hundred (1,500) feet of an established school.

(b) Distance from a school shall be measured by following a straight line from the main entrance of the place of business to the nearest point of the school grounds in use as part of the school facilities. The package sale vendor seeking a new location must submit a scaled survey drawn by a registered land surveyor attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the Director of Planning that the minimum distance separation has been met.

(c) The location of all existing places of business subject to this section shall not in any manner be impaired by this Section, and the distance limitation provided in this Section shall not impair any existing licensed location heretofore issued to and held by any such vendor nor shall such vendor's right of renewal be impaired by this Section; provided, however, that the location of any such existing license shall not be transferred to a new location in violation of this Section.

(d) *Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.* The distance requirement set forth above in subsections (2)(a) shall not be applied to the location of an existing vendor when there is:

- (i) A renewal of an existing license;
- (ii) A transfer in ownership;
- (iii) A change in business name; or
- (iv) A any decrease in the numerical designation of a state issued license which is of the same series (type);

provided that the physical location of the vendor establishment does not change. No increase in the series (type) of state issued license shall be permitted at or for a location (new or existing) except in compliance with the provisions hereof.

**(3) Variances.**

The Planning Commission is authorized to grant variances to the distance requirements as established by subsections (1) and (2) above where the Commission finds that such variance will not be contrary to the public interests. The application for a variance and the processing and hearing upon the application shall be in accordance with Section 9.5-523 of the City Code. The decision of the Planning Commission may be appealed to the City Council.

**Section 3.** 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 4.** 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 5.** 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 6.** 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 7.** 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 24<sup>th</sup> day of October, 2006.

THE CITY OF MARATHON, FLORIDA

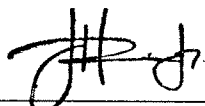
  
\_\_\_\_\_  
Christopher M. Bull, Mayor

AYES: Pinkus, Mearns, Tempest, Worthington, Bull  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

  
\_\_\_\_\_  
Diane Clavier  
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**

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2006-25

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**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.* (2006), 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 November 13, 2006, the Department received for review City of Marathon Ordinance No. 2006-25 that was adopted by the City of Marathon Board of City Commissioners on October 24, 2006 ("Ord. 2006-25"). Ord. 2006-25 creates Section 19-219, Prohibited Areas for Sales of Alcoholic Beverages, in order to regulate the amount and location of package liquor stores in a manner that preserves and maintains existing community character of the neighborhoods in which such stores would be located, and to benefit the health, safety and welfare of the community.

3. Ord. 2006-25 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.* (2006).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2006) 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.* (2006). The regulations adopted by Ord. 2006-25 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. 2006-25 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 resource.

9. Ord. 2006-25 is not inconsistent with the remaining Principles. Ord. 2006-25 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2006-25 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.



THOMAS G. PELHAM

Secretary

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.

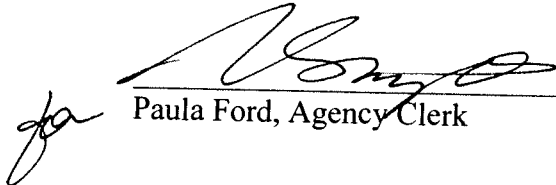
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 17th day of January, 2007.

  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Christopher M. Bull, Mayor  
City of Marathon  
10054-55 Overseas Highway  
Marathon, Florida 33050

Diane Clavier, City Clerk  
City of Marathon  
10045-55 Overseas Highway  
Marathon, Florida 33050

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:

Clark Turner, ACSC Administrator  
Richard E. Shine, Assistant General Counsel