

**Sponsored By:** Puto  
**Planning Commission Public Hearing Date:** September 18, 2006  
**City Council Public Hearing Date:** September 26, 2006  
October 10, 2006  
October 24, 2006  
**Enactment Date:** October 24, 2006

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2006-28**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE FUTURE LAND USE MAP (FLUM) FROM RESIDENTIAL LOW (RL) TO RESIDENTIAL HIGH (RH) FOR PROPERTY LEGALLY DESCRIBED AS A PART OF GOVERNMENT LOT 2, SECTION 6, TOWNSHIP 66 SOUTH, RANGE 33 EAST, ON KEY VACA, U.S. 1 AT 104TH STREET, MARATHON, MONROE COUNTY, FLORIDA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST LINE OF SECTION 6, T. 66 S., R. 33 E. AND THE SOUTHERLY RIGHT-OF-WAY LINE OF U. S. HIGHWAY NO. 1 FOR A DISTANCE OF 1709.80 FEET TO A POINT OF INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY OF U. S. HIGHWAY NO. 1, THENCE WITH A DEFLECTED ANGLE TO THE RIGHT OF 10 DEGREES AND 00 MINUTES AND NORTHEASTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF U. S. HIGHWAY NO. 1 FOR A DISTANCE OF 270.05 FEET TO THE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED, FROM SAID POINT OF BEGINNING CONTINUE NORTHEASTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF U. S. HIGHWAY NO. 1 FOR A DISTANCE OF 270.05 FEET TO A POINT; THENCE WITH A DEFLECTED ANGLE TO THE RIGHT OF 102 DEGREES AND 09 MINUTES AND SOUTH FOR A DISTANCE OF 450.00 FEET; THENCE WITH A DEFLECTED ANGLE TO THE RIGHT OF 77 DEGREES AND 51 MINUTES AND SOUTHWESTERLY FOR A DISTANCE OF 270.05 FEET; THENCE WITH A DEFLECTED ANGLE TO THE RIGHT OF 102 DEGREES AND 09 MINUTES AND NORTH FOR A DISTANCE OF 450.00 FEET TO THE POINT OF BEGINNING; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.**

**WHEREAS**, pursuant to the provisions of Chapters 163, 166 and 380 *Florida Statutes*, the City of Marathon, Florida (the "City") proposes to amend the City's Future Land Use Map (the "Map") to change the land use district designation of property owned by the City of Marathon, and legally described as A PART OF GOVERNMENT LOT 2, SECTION 6, TOWNSHIP 66 SOUTH, RANGE 33 EAST, ON KEY VACA, U.S. 1 AT 104TH STREET, MARATHON, MONROE COUNTY, FLORIDA, and more particularly described on Exhibit A attached hereto (the "Property");

**WHEREAS**, amending the Map designation of the Property furthers the goals, objectives and policies of the City Comprehensive Plan (the "Plan"), and will allow for the Map to be consistent with the intended use of the Property; and

**WHEREAS**, pursuant to Chapter 163, *Florida Statutes*, and Sections 9.5-22 and 9.5-511 of the Code, the Planning Commission sitting as the Local Planning Agency publicly considered the proposed Map amendment on September 18, 2006 at a duly noticed public hearing, and has recommended approval of the proposed Map amendment to the City Council; and

**WHEREAS**, in accordance with Section 166.041, *Florida Statutes*, notice of the public hearings concerning the proposed Map amendment has been provided to the general public; and

**WHEREAS**, the City Council finds that approval of the proposed Map amendment is in the best interest of the City and complies with applicable laws and is consistent with the South Florida Regional Plan, the State Plan, Chapter 163, *Florida Statutes*, the principles for guiding development in the Florida Keys Area of Critical State Concern, the goals, objectives, and policies of the Plan, Section 9.5-511 of the Code and promotes and protects the health, safety and welfare of the residents of the City; and

**WHEREAS**, the City Council desires to approve the proposed Map amendment, in accordance with State law.

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

**Section 1.** The above recitals are true, correct, and incorporated herein by this reference.

**Section 2.** In accordance with State law and the Code, the Map designation of the Property is amended from its current designation of Residential Low (RL) to Residential High (RH).

**Section 3.** The City shall timely transmit the revised Map reflecting the Map amendment, and all data and analysis supporting the Map amendment, to the State of Florida Department of Community Affairs, in its capacity as the State Land Planning Agency (the "Department"), as required by Chapters 163 and 380, *Florida Statutes*.

**Section 4.** That upon its effective date, the revised Map shall replace the Monroe County Land Use District Map, previously applicable to the City pursuant to Sections 163.3167(4), 380.05(10) and 380.0552(9), *Florida Statutes*, and Section 9(6) of the City Charter to the fullest extent allowed by law.

**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 Department for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 6.** That this Ordinance shall be effective immediately upon approval by the Department pursuant to Chapter 380, *Florida Statutes*.


**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 24th day of October, 2006.**

**THE CITY OF MARATHON, FLORIDA**

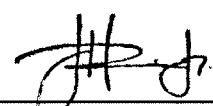
  
\_\_\_\_\_  
Christopher M. Bull, Mayor

AYES: Mearns, Tempest, Pinkus, 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

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

A PART OF GOVERNMENT LOT 2, SECTION 6, TOWNSHIP 66 SOUTH, RANGE 33 EAST, ON KEY VACA, U.S. 1 AT 104TH STREET, MARATHON, MONROE COUNTY, FLORIDA, and more particularly described as follows:

COMMENCING at the intersection of the West line of Section 6, T. 66 S., R. 33 E. and the Southerly right-of-way line of U. S. Highway No. 1 for a distance of 1709.80 feet to a point of intersection of the Southerly right-of-way of U. S. Highway No. 1, THENCE with a deflected angle to the right of 10 degrees and 00 minutes and Northeasterly along the Southerly right-of-way line of U. S. Highway No. 1 for a distance of 270.05 feet to the POINT OF BEGINNING of the property hereinafter described, from said POINT OF BEGINNING continue Northeasterly along the Southerly right-of-way line of U. S. Highway No. 1 for a distance of 270.05 feet to a point; THENCE with a deflected angle to the right of 102 degrees and 09 minutes and South for a distance of 450.00 feet; THENCE with a deflected angle to the right of 77 degrees and 51 minutes and Southwesterly for a distance of 270.05 feet; THENCE with a deflected angle to the right of 102 degrees and 09 minutes and north for a distance of 450.00 feet to the POINT OF BEGINNING

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2006-28

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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 comprehensive plan amendment and 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 21, 2006, the Department received for review City of Marathon Ordinance No. 2006-28 that was adopted by the City of Marathon Board of City Commissioners on October 24, 2006 ("Ord. 2006-28"). Ord. 2006-28 is a small scale project amending the future land use map from residential low to residential high for a 2.73-acre parcel of vacant land owned by the city for the purpose of providing affordable housing.

3. Ord. 2006-28 is consistent with the City's 2010 Comprehensive Plan.

**CONCLUSIONS OF LAW**

4. The Department is required to approve or reject small scale comprehensive plan amendments involving the construction of affordable housing units or 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 28-28.002 (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).

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).

8. Local government small scale comprehensive plan amendments directly related to the provision of affordable housing, as adopted by Ord. 2006-28, shall be reviewed for consistency with the Principles for Guiding Development applicable to the Florida Keys Area of Critical State Concern and shall not become effective until a final order is issued pursuant to § 163.3187(1)(c)1.e., *Fla. Stat.* The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 2006-28 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.
- (j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.
- (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. 2006-28 is not inconsistent with the remaining Principles. Ord. 2006-28 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2006-28 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.

  
for 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 22<sup>nd</sup> 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