

**Sponsored by:** City Council  
**Introduction Date:** January 23, 2007  
**Public Hearing Dates:** January 23 and February 13, 2007  
**Enactment date:** February 13, 2007

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2007-03**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING AND RESTATING CHAPTER 9.5 (THE LAND DEVELOPMENT REGULATIONS) OF THE CITY OF MARATHON CITY CODE; DELETING CHAPTER 19 (MISCELLANEOUS LAND DEVELOPMENT REGULATIONS) OF THE CITY OF MARATHON CITY CODE; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (“DEPARTMENT”) 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”), shortly after its incorporation, adopted by reference all codes and regulations of Monroe County, with the intent to revise them over time to reflect the actual needs of the City;

**WHEREAS**, pursuant to the foregoing action, the City adopted the County’s land development regulations (“LDRs”) set forth in Chapters 9.5 and 19 of the Code; and

**WHEREAS**, the City of Marathon now wishes to adopt its own LDRs; 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 proposed LDRs at a properly noticed public hearing and recommended to the City Council the adoption of the proposed LDRs; 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 Areas of Critical State Concern.

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

**Section 1.** Chapter 9.5 of the Code of the City of Marathon, Florida is hereby amended and restated in its entirety to read as set forth in Exhibit A attached hereto.

**Section 2.** Chapter 19 of the Code of the City of Marathon is hereby deleted in its entirety.

**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 13th day of February 2007.**

**THE CITY OF MARATHON, FLORIDA**

  
Christopher M. Bull, Mayor

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

**ATTEST:**

*Diane Clavier*

\_\_\_\_\_  
Diane Clavier  
City Clerk

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

*[Handwritten Signature]*

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2007-03

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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), partially approving and partially rejecting 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 March 2, 2007, the Department received for review City of Marathon ("City") Ordinance No. 2007-03 ("Ord. 2007-03").

3. The purpose of Ord. 2007-03 is to amend the City's previously existing Land Development Regulations ("LDR") applicable to the Interim Comprehensive Plan with revised LDRs specific to the City's revised Comprehensive Plan as required by § 163.3202, *Fla. Stat.* (2006). Ord. 2007-03 amends and restates Chapter 9.5 (The Land Development Regulations) of the City of Marathon City Code; deletes Chapter 19 (Miscellaneous Land Development Regulations) and provides for the repeal of all Code provisions and Ordinances inconsistent with Ord. 2007-03.

5. The Ordinance amends Chapters 100 – General Provisions; Chapter 101 – Administrative Mechanisms; Chapter 102 – Development Application Review Procedures; Chapter 103 – Zoning Districts; Chapter 104 – Specific Use Regulations; Chapter 105 – Design District Guidelines; Chapter 106 – Natural and Historic Resources Protection; Chapter 107 – General Development Standards; Chapter 108 – Nonconformities; Chapter 109 – Violations,

Penalties and Enforcement; Chapter 110 – Definitions; and Chapter 111 – Fees; of the City’s LDRs. With the exception of the specifically identified portions of Sections 104.01, 106.27 and 106.38, the remaining Chapters are Consistent with the City’s Comprehensive Plan.

6. Section 104.01 Level of Review for Use applicable to (1) an Assisted Living Facility, (2) a Group Home, and (3) Hotels or Motels are inconsistent with the City’s Comprehensive Plan, Objective 1-3.5 Manage Growth Rate within the City, and Policy 1-3.5.4 Residential Building Permit Allocation System. Data and analysis accompanying the above referenced Section 104.01 Level of Review for Use provisions was found insufficient.

7. Section 106.27 Jurisdiction and Delineation includes a Keys Wetland Evaluation Procedure (KWEP) score of 7.0 to identify “Red-flag” high functional capacity wetland areas is contrary to existing data and analysis identifying a score of 5.5 in the KEYWEP Technical Summary Document for purposes of distinguishing between moderate and high functioning wetlands.

8. Section 106.38 Exemptions related to activities allowed on submerged lands, mangroves, regulated surface waters, wetlands and wetland buffers is inconsistent with the City’s Comprehensive Plan and should further clarify what specific exemption is applicable with regard to the City’s permit application process, approval from the Department of Environmental Protection, or the South Florida Water Management District.

#### CONCLUSIONS OF LAW

6. 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).

7. 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.*

8. “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. 2007-03 are land development regulations.

9. 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.

10. Ord. 2007-03 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.

11. Ord. 2007-03 limited to the specifically identified portions of Sections 104.01, 106.27 and 106.38 is inconsistent with the City’s Comprehensive Plan and inconsistent with the following Principles:

- (b) To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife and their habitat.
- (k) To provide adequate alternatives for the protection of public safety and welfare in the event of a natural disaster or manmade disaster and for a post disaster 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.



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.

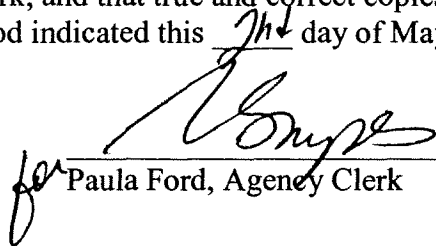
A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

**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 7th day of May, 2007.

  
for Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, 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

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

Jimmy L. Morales, 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  
Mate Santa Maria, Biologist  
Richard E. Shine, Assistant General Counsel