

Sponsored By: Council
Introduction Date: January 11, 2007
Public Hearing Date: January 23 and February 15, 2007
Enactment Date: February 15, 2007

ORDINANCE 2007-04

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING THE ENTIRE LAND USE DISTRICT (ZONING) MAP OF THE CITY OF MARATHON; PROVIDING FOR A REVISED CITY LAND USE DISTRICT (ZONING) MAP; 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 entire City Land Use District Map (the "Map") to reflect the new zoning district designations established by the City's Land Development Regulations (the "LDRs") and, where applicable, to provide consistency with the Future Land Use Map of the City; and

WHEREAS, adopting the proposed Map furthers the goals, objectives and policies of the City's Comprehensive Plan (the "Plan"), and will allow for development to occur in the City in accordance with the Plan and the LDRs; and

WHEREAS, pursuant to Sections 9.5-24, 9.5-226 and 9.5-511 of the City Code (the "Code"), the City's Development Review Committee has reviewed the proposed Map to determine its compliance and consistency with the goals, objectives, and policies of the Plan and the LDRs; 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 has publicly considered the proposed Map at a duly noticed public hearing, and has recommended approval of the proposed Map to the City Council; and

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

WHEREAS, the City Council finds that approval of the proposed Map 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, the LDRs 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 in accordance with State law.

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

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 City Council hereby adopts the revised Map, a copy of which is attached hereto as Exhibit A.

Section 3. The City shall timely transmit the revised Map, and all data and analysis supporting the revised Map, 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 of Community Affairs 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 State Department of Community Affairs pursuant to Chapter 380, *Florida Statutes*.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, this 15 day of February 2007.**


THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

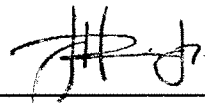
AYES: Mearns, Pinkus, Bull
NOES: Tempest, Worthington
ABSENT: None
ABSTAIN: None

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. 2007-04

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), 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. 2007-04 ("Ord. 2007-04").
3. The purpose of Ord. 2007-04 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. 2007-04 amends the entire City Land Use District Map to provide consistency with the Future Land Use Map, and to reflect the zoning designations established by the City's revised Land Development Regulations.
4. Ord. 2007-04 is inconsistent with the City's 2010 Comprehensive Plan, and the following Future Land Use Map ("FLUM") designations as noted below:

Proposed Land Use District Map

Panel 1: Ord. 2007-04 is inconsistent with the Comprehensive Plan or FLUM.

1. Land Use District ("LUD"): Residential Mobile Home/Mixed Use Maritime

- FLUM: Conservation (water/submerged lands)
- 2. LUD: Mixed Use
FLUM: N/A (water/submerged lands)
- 3. LUD: Residential Medium
FLUM: Conservation
- 4. LUD: Public
FLUM: Mixed Use Commercial
- 5. LUD: Mixed Use
FLUM: Residential Medium
- 6. LUD: Residential Conservation
FLUM: Recreation

- Multiple locations of submerged lands are included in the zoning designations

Panel 2: Ord. 2007-04 is inconsistent with the Comprehensive Plan or FLUM.

- 6. LUD: Residential Conservation (*also identified in Panel 1*)
FLUM: Recreation

- Multiple locations of submerged lands are included in the zoning designations

Panel 3: There are no inconsistencies with the Comprehensive Plan or FLUM.

Panel 4: Ord. 2007-04 is inconsistent with the Comprehensive Plan or FLUM.

- 7. LUD: Residential Conservation
FLUM: Conservation

Panel 5: Ord. 2007-04 is inconsistent with the Comprehensive Plan and/or FLUM.

- 7. LUD: Residential Conservation (*also identified in Panel 4*)
FLUM: Conservation

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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2006).

6. 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*.

7. "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. 2007-04 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. 2007-04 is inconsistent with 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.

(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 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.


10. Ord. 2007-04 is neutral in effect on the remaining Principles.

11. Ord. 2007-04 is inconsistent with the City's Comprehensive Plan.

WHEREFORE, IT IS ORDERED that Ord. 2007-04 is found to be inconsistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby REJECTED.

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.



MAY 1, 2007

CHARLES GAUTHIER, AICP
Director, Division of Community Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL 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.

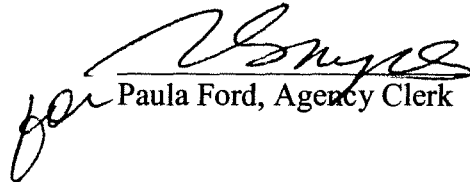
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE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


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
Richard E. Shine, Assistant General Counsel