

**Sponsored By:** Burnett  
**Planning Commission Public Hearing Date:** July 21, 2008  
**City Council Public Hearing Dates:** August 26, 2008 and September 23, 2008  
**Enactment Date:** September 23, 2008

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2008-26**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA,  
AMENDING CHAPTER 106 AND CHAPTER 110 OF THE LAND  
DEVELOPMENT REGULATIONS ALLOWING FOR THE  
DISTINCTION BETWEEN RIPARIAN MANGROVE FRINGES  
AND ISOLATED MANGROVE COMMUNITIES; PROVIDING  
FOR THE REPEAL OF ALL CODE PROVISIONS AND  
ORDINANCES INCONSISTENT WITH THIS ORDINANCE;  
PROVIDING FOR SEVERABILITY; PROVIDING FOR THE  
TRANSMITTAL OF THIS ORDINANCE TO THE STATE  
DEPARTMENT OF COMMUNITY AFFAIRS (THE  
“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”) has adopted Land Development Regulations (LDR’s) which have been found to be in compliance by the State Department of Community Affairs (“DCA”), pursuant to Chapter 163, Florida Statutes; and

**WHEREAS**, the City is located within the Florida Keys Area of Critical State Concern (the “FKACSC”), as established pursuant to Chapter 380, Florida Statutes; and

**WHEREAS**, Section 380.552, Florida Statutes, establishes Principles for Guiding Development in the FKACSC; and

**WHEREAS**, the City finds it appropriate to amend Chapters 106 and 110 of the LDR’s in order to further protect the health, safety, and welfare of the City of Marathon; and

**WHEREAS**, the City Council finds the amendment of Chapters 106 and 110 of the LDRs 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 FKACSC.

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

**Section 1.** Chapter 106, Section 106.35 of the Land Development Regulations of the City of Marathon is hereby amended to read as follows:

All shoreline development shall preserve native upland, wetland, Riparian Mangrove Fringes, and aquatic vegetation and communities to the maximum extent possible and must offer protection from erosion, contribute to the natural soil building process, provide habitat for a diverse community of endangered, threatened or species of special concern and be aesthetically pleasing and can be reasonably incorporated as a landscaping asset for waterfront development.

**Section 2.** Chapter 106, Section 106.38(O) of the Land Development Regulations of the City of Marathon is hereby amended to read as follows:

**O. Fill:** No fill shall be permitted in any mangroves, wetlands or submerged lands except as follows:

1. In conjunction with the construction of bulkheads, seawalls, riprap and boat ramps and elevated, pile designed water access structures that meet all other standards of these regulations;
2. To fill a manmade, excavated water body such as a canal, boat ramp, boat slip, boat basin or swimming pool, providing that the City Biologist determines there will be no significant impact upon marine or wetland communities;
3. As needed for shoreline stabilization or beach renourishment projects with a valid public purpose that further the goals of the Plan as determined by the City Biologist;
4. As approved for Disturbed Saltmarsh and Buttonwood Association Wetlands with appropriate mitigation, as established in this chapter.
5. Fill placed in Isolated Mangrove Communities, as defined in Chapter 110.
6. All such projects shall require approval by the FDEP and ACOE prior to submission to the City.

**Section 3.** Chapter 110, Article 1, Section 110.00 “Definitions” is hereby amended by adding the following new definitions thereto:

**ISOLATED MANGROVE COMMUNITIES:** MEANS THOSE MANGROVES GROWING IN ISOLATED COMMUNITIES ON INFILL, LANDLOCKED LOTS WHERE SURFACE WATER RUN-OFF FROM SURROUNDING DEVELOPMENT HAS CREATED THE WET CONDITION WHICH FACILITATED THE ESTABLISHMENT OF THE ISOLATED COMMUNITY OF MANGROVES. ISOLATED MANGROVE COMMUNITIES DO NOT PERFORM THE FUNCTIONS OF RIPARIAN MANGROVE FRINGES, I.E. RESISTING AND PREVENTING SHORELINE EROSION, PROVIDING FOOD AND HABITAT FOR THE MARINE FOOD CHAIN, MAINTAINING AND IMPROVING THE QUALITY OF COASTAL WATERS.

ISOLATED MANGROVE COMMUNITIES DO NOT INCLUDE MANGROVES ON UNINHABITED ISLANDS, OR PUBLIC LANDS THAT HAVE BEEN SET ASIDE FOR CONSERVATION OR PRESERVATION, OR MANGROVES ON LANDS THAT HAVE BEEN SET ASIDE AS MITIGATION, OR LANDS WHICH ARE HISTORICALLY, NATURALLY VEGETATED WITH MANGROVES SUCH AS ARE FOUND ON GRASSY KEY.

**RIPARIAN MANGROVE FRINGE:** MEANS MANGROVES GROWING ALONG THE SHORELINE ON PRIVATE PROPERTY, PROPERTY OWNED BY A GOVERNMENTAL ENTITY, OR SOVEREIGN SUBMERGED LAND, THE DEPTH OF WHICH DOES NOT EXCEED 50 FEET AS MEASURED WATERWARD FROM THE TRUNK OF THE MOST LANDWARD MANGROVE TREE IN A DIRECTION PERPENDICULAR TO THE SHORELINE TO THE TRUNK OF THE MOST WATERWARD MANGROVE TREE. THE RIPARIAN MANGROVE FRINGE PERFORMS THE FOLLOWING FUNCTIONS: RESIST AND PREVENT SHORELINE EROSION, PROVIDE FOOD AND HABITAT FOR THE MARINE FOOD CHAIN, MAINTAIN AND IMPROVE THE QUALITY OF COASTAL WATERS.

RIPARIAN MANGROVE FRINGE DOES NOT INCLUDE MANGROVES ON UNINHABITED ISLANDS, OR PUBLIC LANDS THAT HAVE BEEN SET ASIDE FOR CONSERVATION OR PRESERVATION, OR MANGROVES ON LANDS THAT HAVE BEEN SET ASIDE AS MITIGATION, OR LANDS WHICH ARE HISTORICALLY, NATURALLY VEGETATED WITH MANGROVES.

**Section 4.** 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 5.** 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 6.** The provisions of this Ordinance are declared to be severable, and if any sentence, section, 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 sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 7.** 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 8.** 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 23<sup>rd</sup> day of September, 2008.**

**THE CITY OF MARATHON, FLORIDA**

  
Edward P. Worthington, Mayor

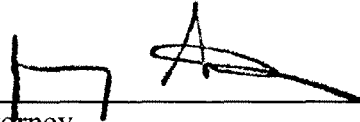
AYES: Tempest, Cinque, Bull, Vasil, Worthington  
NOES: None  
ABSENT: None  
ABSTAIN: None

**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. 2008-26

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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.* (2007), 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 October 30, 2008, the Department received for review City of Marathon Ordinance No. 2008-26 that was adopted by the City of Marathon Board of City Commissioners on September 23, 2008 ("Ord. 2008-26"). The purpose of Ord. 2008-26 is to amend Chapter 106 and Chapter 110 of the Land Development Regulations allowing for the distinction between riparian mangrove fringes and isolated mangrove communities on infill, landlocked lots; to allow the placement of fill into isolated mangrove communities and for shoreline development to preserve, to the maximum extent possible, riparian mangrove fringes.
3. Ord. 2008-26 is inconsistent with the City's 2010 Comprehensive Plan: Policy 4-1.3.1 Protect, Conserve and Enhance Coastal Resources, Wetlands, Water Resources, Living Marine Resources, Wildlife Habitats and Other Natural Resources and the Environmental Health of Florida Bay, the Atlantic Ocean and All Surface and Ground Waters; Policy 4-1.2.11 Limit Development Impacts on Wetlands; Policy 4-1.2.10 Regulate Development in Wetlands through KEYWEP; Policy 4-1.3.4 Restrict Development in Wetlands; Policy 4-1.4.6 Shoreline Vegetation Trimming or Removal; and Policy 4-1.5.3 Provide for Open Space.

4. Ord. 2008-26 is inconsistent with the City's Land Development Regulations: Table 106.16.1 Open Space Requirements by Habitat Type; Section 106.27 Jurisdiction and Delineation; and Section 106.29 General Approval Criteria.

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.* (2007).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2007) and Rule 31-31.002 (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.* (2007). The regulations adopted by Ord. 2008-26 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. 2008-26 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.
- (b) 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.
- (c) To limit adverse impacts of development on the quality of water throughout the Florida Keys.


(e) To limit the adverse impacts of development on the quality of water throughout the Florida Keys.

10. Ord. 2008-26 is neutral with respect to the remaining Principles. Ord. 2008-26 is inconsistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2008-26 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.

 12.23.08  
CHARLES GAUTHIER, AICP  
Director, 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.

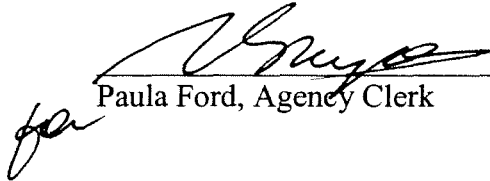
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 31-106.201(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 24<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Edward P. Worthington, 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

Jimmy 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:

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