

**Sponsored By:** Garrett  
**Planning Commission Public Hearing Date:** September 10, 2024  
**City Council Public Hearing Date:** October 08, 2024  
January 14, 2025  
February 25, 2025  
**Enactment Date:** February 25, 2025

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2024-12**

**AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 107, ARTICLE 1 “BUILDING PERMIT ALLOCATION SYSTEM” BY AMENDING SECTION 107.04 “ESTABLISHMENT OF ALLOCATION POOLS” TO REMOVE THE CUMULATIVE LIMIT; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO FLORIDA COMMERCE AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern (ACSC), pursuant to Sections 380.05 and 380.0552, Florida Statutes, hereinafter referred to the “Keys ACSCs”; and

**WHEREAS**, Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, Florida Statutes, which have been approved by the State, as required by law, and;

**WHEREAS**, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting regulations for the protection of the public; and

**WHEREAS**, in support the City of Marathon’s workforce by alleviating constraints on affordable housing the City participated in the Workforce-Affordable Housing Initiative, as approved during the June 13, 2018 meeting of the Administration Commission; and

**WHEREAS**, the Ordinance, thus introduced, provides for the allocation of the Early Evacuation affordable BPAS allocations that may be obtained from other jurisdictions; and

**WHEREAS**, the Planning Commission reviewed this Ordinance on September 16, 2024 providing a recommendation of approval to the City Council with no proposed changes; and

**WHEREAS**, the City Council reviewed this Ordinance on October 8, 2024 and again on January 14, 2025 and again on February 25, 2025 adopting the Ordinance in its second hearing and directing staff to transmit the Ordinance to the Florida Department of Commerce for final approval; and

**WHEREAS**, pursuant to the same legislative provision, the City Council accepted the ORC Report, considered the recommendation of the Planning Commission, accepted additional public input, and deliberated on the proposed amendment to the Land Development Regulations on January 14, 2025 and again on February 25, 2025 at a duly noticed public hearing, and directed that the amendment be transmitted to the Florida Department of Commerce as formally adopted by the City,

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

~~Strikethrough~~ = deletion      **bold underline** = addition

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

**SECTION 2.** Chapter 107, Article 1, Section 107.04 entitled “Establishment Of Allocation Pools” is hereby amended as attached in Exhibit A.


**SECTION 3.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause of 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 this Ordinance constitute an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**SECTION 5.** This Ordinance shall be effective immediately upon approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes.


**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**THE CITY OF MARATHON, FLORIDA**

  
Lynn Landry, Mayor

AYES: Smith, Still, Matlock, DelGaizo, Landry  
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:**

*St. Williams*  
\_\_\_\_\_  
Steven Williams, City Attorney

For the purpose of administration of this article, Council hereby creates the following described allocation pools:

1. *Dwelling Units.*

1. *Market Rate.*

1. *Owner-occupied Pool.* For each respective allocation period in the market pool, one (1) allocation will be issued to each owner-occupier applicant, in order of their ranking and controlling date and time, if sufficient allocations are available.
2. *General Market Pool.* For each respective allocation period in the general market pool, allocations will be issued to each applicant, in order of their ranking and controlling date and time, if sufficient allocations are available. One (1) application per allocation period will receive the application score; however, in the case of subsequent applications, filed by the same applicant during the same allocation period, five (5) points shall be deducted from the total application score.

2. *Affordable.*

1. *General Affordable Pool.* For each respective allocation period in the general affordable pool, allocations will be issued to each applicant, in order of their ranking and controlling date and time, if sufficient allocations are available.
2. *Community Workforce Pool.* For each respective allocation period in the community workforce pool, allocations will be issued in order of their controlling date and time, if sufficient allocations are available.
3. *TBR Affordable Pool.* For each respective allocation period in the TBR affordable pool, allocations will be issued in order of their controlling date and time, if sufficient allocations are available.
4. *Early Evacuation Pool.* The City thereby, shall establish a new limited category to be known as the "Affordable - Early Evacuation Pool" which will provide ~~300~~ workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative. These allocations are in addition to the maximum allocations identified in Rules 28-18, Florida Administrative Code. The City shall be responsible for the management, distribution, and enforcement of requirements associated with the early evacuation affordable allocations. At any time, through a public hearing process prescribed in Chapter 102, Article 2 of the Land Development Regulations, the City may allocate early evacuation allocations ~~to the cumulative limit of 300 affordable allocations~~. The City of Marathon shall ensure adherence to these requirements through implementation of the policies of this objective.

3. *Transient Residential Units.*

1. For each respective allocation period in the transient residential unit pool, allocations will be issued to each applicant in order of their ranking and controlling date and time, if sufficient allocations are available. If the City chooses to allocate at TRUs from the Administrative Relief and/or Residential BPAS pools, such allocations may be awarded subject to

compliance with the applicable provisions of Sections 107.06, 107.07, and 107.10.

2. *Commercial Floor Area.*

1. For each respective allocation period in the commercial floor area pool, allocations will be issued in order of their ranking and controlling date and time, if sufficient allocations are available.
2. If the amount of floor area represented in the allocation applications is equal to or less than the available allocation, the Director may recommend to Council that all of the allocation applications be granted allocation awards.
3. If the total amount of floor area represented in the allocation applications is greater than the available floor area, the Director shall submit an evaluation report to the Council indicating the evaluation rankings and identifying those applications whose ranking puts them within the allocation, and those applications whose ranking puts them outside of the allocation.

3. *Administrative Relief Pool.*

1. The BPAS Administrative Relief Pool is hereby created. At the recommendation of the Planning Director and at the discretion of the City Council, a percentage not to exceed fifty (50) percent of the annual dwelling unit allocations described in Section 107.02 above may be distributed to the Administrative Relief Pool based upon the potential number of applicants for administrative relief in any given year.
2. *[Distribution of allocations.]* BPAS administrative relief allocations are distributed by the Council at their discretion following a request from an applicant, and subject to a finding through the administrative relief process that all of the following conditions for eligibility exist:

1. *Conditions for Eligibility.*

1. That the applicant has applied for an allocation, but has not received an allocation for residential development during four (4) consecutive years in the BPAS, during which the ownership has not changed and the application has not been withdrawn. The start of the first year is the closing date of the BPAS allocation period during which the BPAS application first became eligible for a BPAS allocation award;
2. That conditions described in Section 107.04 C.3. below have been met;
3. That the issuance of an allocation, pursuant to the recommendation of the Planning Director, is the most appropriate option for the use of the property and will not adversely affect the public interest or the purposes of the Plan;
4. That allocations are available in the BPAS administrative relief pool; and that the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Marathon.

3. *Procedures for Provision of Administrative Relief Allocation.*

1. On a semi-annual basis, at the closing of each BPAS bi-annual allocation period, and approximately one (1) year prior to the four (4) year

anniversary of any uninterrupted BPAS application as described in Section 107.04 1.(a) above, City staff, in coordination with the City of Marathon Land Acquisition Advisory Committee, will make a determination for each application on the BPAS allocation waiting list as to whether:

1. It will be eligible to apply for administrative relief within approximately one (1) year, and
  2. The property in question is either environmentally sensitive, of interest to the City for some other public purpose, such as workforce housing, or of no current public interest.
2. City staff will confirm the environmental characteristics of all properties that will become eligible for administrative relief within one (1) year through a review of the BPAS application, available GIS aerial photography and map layers, and on-site visits.
1. Any property that:
    1. Has a KEPWEP score higher than 5.5;
    2. Is on the most current version of the USFWS Injunction list; and/or
    3. Is on the Florida Forever Acquisition list; and/or
    4. Exhibits habitats including mangroves, salt marsh and buttonwood, or hardwood hammock;

shall be put on a list of properties considered as environmentally sensitive and of potential interest for acquisition for conservation purposes.

1. The City shall provide the list of environmentally sensitive properties to the Florida Department of Environmental Protection, Division of State Lands (Florida Forever), the Monroe County Land Authority, and other land acquisition agencies deemed appropriate by the Planning Director, thereby giving those agencies an opportunity to initiate acquisition procedures if deemed appropriate; and
  2. Any properties that another acquisition agency declines an interest to purchase, will be placed on a list for suggested acquisition at the time that the property actually becomes eligible for Administrative Relief.
2. Any properties that are considered of potential value for another public purpose will be placed on a list for suggested acquisition at the time that it actually becomes eligible for administrative relief.
3. Any properties that are not deemed environmentally sensitive and which would not be recommended for purchase for some other public purpose will be put on a list of properties that would be recommended to receive a BPAS allocation from the

Administrative Relief Pool at the time that the property actually becomes eligible for Administrative Relief.

4. *Notification of eligibility.* Within 30 days of the finalization of evaluation rankings by the City Council, any applicant determined to be eligible for administrative relief pursuant to subsection (3)(a) of this section shall be notified of the applicant's eligibility for administrative relief by certified mail, return receipt requested.
5. *Application.* An application for administrative relief shall be made on a form prescribed by the Planning Director no earlier than the conclusion of the fourth year in BPAS allocation process and no later than 180 days following the close of the allocation period when deemed eligible.
6. *Public Hearing.* Upon receipt of an application for administrative relief, the City shall notice and hold a public hearing at which the applicant will be given an opportunity to be heard. The City Council may review the relevant application material, applicable evaluation ranking, hear testimony from the applicant, city staff and others as may be necessary in its deliberations.
7. *Actions by City Council.* In making a determination in review of an application for administrative relief, the City Council may:
  1. Offer to purchase the property at its fair market value as its preferred action if the property is considered environmentally sensitive; or
  2. Grant the applicant an allocation award for all or a number of dwelling units requested in the next succeeding allocation period or extended pro rata over several succeeding quarterly allocation periods as the preferred action for buildable properties not meeting any of the criteria in subsection (f)(1) of this section; or
  3. Suggest or provide such other relief as may be necessary and appropriate.
8. *Limit of Allocation under Administrative Relief.* The number of allocations that may be awarded under administrative relief in any allocation period shall be no more than the number available in the Administrative Relief Pool at the close of the BPAS allocation period.

STATE OF FLORIDA  
DEPARTMENT OF COMMERCE

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON,  
ORDINANCE NO. 2024-12

**FINAL ORDER**  
**APPROVING CITY OF MARATHON ORDINANCE NO. 2024-12**

The Florida Department of Commerce (“Department”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon (the “City”), Ordinance No. 2024-12 (the “Ordinance”).

**FINDINGS OF FACT**

1. The Florida Keys Area is designated by Section 380.0552, Florida Statutes, as an area of critical state concern. The City is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on February 25, 2025, and rendered to the Department on February 27, 2025.
3. The Ordinance amends Section 107.04 of the City’s Land Development Code to remove the cumulative limit of workforce-affordable building permit allocations for the Workforce-Affordable Housing Initiative, and recognize that the City may allow any of the 1,300 early evacuation affordable units to be used within the City, should any come available from other jurisdictions.

**CONCLUSIONS OF LAW**

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Section 380.05(6), Florida Statutes.
5. “Land development regulations” include local zoning, subdivision, building, and

other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is consistent with the City's Comprehensive Plan as required by Section 163.3177(1), Florida Statutes, generally, and is specifically consistent with Goal 1-3, Objective 1-3.1, Goal 2-1, Objective 2-1.1, and Policy 2-1.1.3.

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 for that area. *See* Section 380.05(6), Florida Statutes.

8. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in Section 380.0552(7), Florida Statutes.

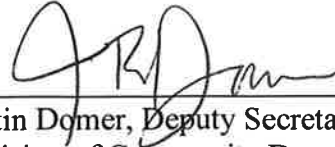
9. The Ordinance is consistent with the Principles for Guiding Development in Section 380.0552(7), Florida Statutes and is specifically consistent with the following Principles:

- (a) Strengthening local government capabilities for managing land use and development so that local government can achieve these objectives without continuing the area of critical state concern designation.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (k) Limiting the adverse impacts of public investments on the environmental resources of the Florida Keys.
- (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2024-12 is consistent with the City of Marathon's Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Final Order becomes final 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.

A handwritten signature in black ink, appearing to read "J. Dqmer", is written over a horizontal line.

Justin Dqmer, Deputy Secretary  
Division of Community Development  
Florida Department of Commerce

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.


ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE FLORIDA DEPARTMENT OF COMMERCE WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK  
FLORIDA DEPARTMENT OF COMMERCE  
OFFICE OF THE GENERAL COUNSEL  
107 EAST MADISON ST., MSC 110  
TALLAHASSEE, FLORIDA 32399-4128  
FAX 850-921-3230  
AGENCY.CLERK@COMMERCE.FL.GOV

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

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 following persons by the methods indicated this 21st day of April 2025.

  
Agency Clerk, Karis De Gannes  
Florida Department of Commerce  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

By U.S. Mail:

Lynn Landry, Mayor  
City of Marathon, City Council  
9805 Overseas Highway  
Marathon, FL 33050

Diane Clavier, City Clerk  
City of Marathon, City Clerk  
9805 Overseas Highway  
Marathon, FL 33050

Brian Shea, Planning Director  
City of Marathon, Planning Department  
9805 Overseas Highway  
Marathon, FL 33050