

ORDINANCE NO. 00-10-13

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA (THE "CITY"), AMENDING THE PROVISIONS OF CHAPTER 9.5 OF THE CITY OF MARATHON CODE (the "CODE") CONCERNING THE REGULATION OF VACATION RENTAL USES; AMENDING SECTION 9.5-4 OF THE CODE, DELETING THE DEFINITION OF "TOURIST HOUSING" AND REVISING THE DEFINITION OF "VACATION RENTAL USE OR UNIT;" AMENDING SECTIONS 9.5-143, 9.5-234, 9.5-235.1, 9.5-238, 9.5-239, 9.5-240, 9.5-241, 9.5-242, AND 9.5-248 OF THE CODE, REGARDING TOURIST HOUSING AND VACATION RENTAL USES; REPEALING SECTION 9.5-240 OF THE CODE, REGARDING THE "MAINLAND NATIVE AREA DISTRICT"; REPEALING SECTION 9.5-242.5 OF THE CODE, REGARDING VACATION RENTAL USES IN THE "IMPROVED SUBDIVISION TOURIST HOUSING DISTRICT;" AMENDING SECTION 9.5-534 OF THE CODE, TO REQUIRE AN ANNUAL SPECIAL VACATION RENTAL PERMIT FOR VACATION RENTAL USES AND THE PAYMENT OF AN ANNUAL PERMIT FEE; REQUIRING AN INSPECTION REPORT FROM THE STATE DEPARTMENT OF HEALTH OR DEPARTMENT OF ENVIRONMENTAL PROTECTION VERIFYING COMPLIANCE OF THE EXISTING ON SITE SEWAGE TREATMENT AND DISPOSAL SYSTEM OR EXISTING PACKAGE PLANT WITH STATE REGULATIONS BEFORE A VACATION RENTAL PERMIT CAN BE ISSUED, REQUIRING AN ANNUAL INSPECTION REPORT FROM THE FIRE MARSHAL VERIFYING COMPLIANCE WITH THE NFPA LIFE SAFETY CODE 101; ESTABLISHING REGULATIONS FOR VACATION RENTAL USES, INCLUDING BUT NOT LIMITED TO, MAXIMUM NUMBER OF OCCUPANTS, MAXIMUM NUMBER OF WATERCRAFT, MAXIMUM NUMBER OF VEHICLES, TRASH PICKUP AND RECYCLING REQUIREMENTS, PROHIBITED ACTIVITIES, REQUIRING A LOCAL VACATION RENTAL MANAGER OR CONTACT PERSON, ESTABLISHING MINIMUM CRITERIA FOR ALL VACATION RENTAL USES, PROVIDING FOR THE REPEAL OF SPECIAL VACATION RENTAL USE PERMITS UPON THE OCCURRENCE OF SPECIFIED PROHIBITED ACTIVITIES, PROVIDING FOR PENALTIES, AND PROVIDING FOR CUMULATIVE ENFORCEMENT REMEDIES; REQUIRING MANDATORY HURRICANE EVACUATIONS; PROVIDING FOR THE

REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, INCLUDING BUT NOT LIMITED TO, MONROE COUNTY ORDINANCE NO. 004-1997 (AS THE SAME IS APPLICABLE TO THE CITY); PROVIDING FOR AN ANNUAL REVIEW OF 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 (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 has the status of a popular tourist destination and has made use of residential dwelling units for vacation rental purposes an increasingly common practice within the City; and

WHEREAS, the City Council has determined that preservation of the character of residential neighborhoods is a legitimate and beneficial goal; and

WHEREAS, the City Council also recognizes the residential nature of vacation rental uses, and the importance to the economic well being of the City and its residents of the continued use of residential dwelling units as vacation rentals; and

WHEREAS, it is the intent and policy of the City Council that the use of residential dwelling units as vacation rentals within the City be conducted in accordance with the provisions contained herein; 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 Area of Critical State Concern.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:¹

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

Section 2. Definitions. Section 9.5-4 (T-3) "Tourist Housing Use or Unit" and Section 9.5-4 (V-5) "Vacation Rental Use or Unit" of the Code are hereby amended to read as follows:

~~(T-3) Tourist housing use or unit means a dwelling unit used as a transient housing for tenancies of less than twenty eight (28) days duration, such as a hotel or motel, public lodging establishment, rooming house, vacation rental, room, or space for parking a recreational vehicle or travel trailer or units that are advertised and held out to the public for such use. Tourist housing use shall include the rental, lease, sublease or assignment of existing dwelling units for tenancies of less than twenty eight (28) days duration.~~

~~(V-5) Vacation rental use or unit means an attached or detached dwelling unit that is rented leased or assigned for tenancies of less than twenty eight (28) days duration and it is~~

¹/ Additions to existing text are shown by underline; deletions are shown by ~~strikethrough~~.

~~not within a multi-family building with twenty-four (24) hour onsite management supervision. Vacation rental use does not include hotel, motels, and RV spaces which are specifically addressed in each district. the rental, lease or exchange of any residential dwelling unit for a period of less than twenty-eight (28) days, but greater than six (6) days. For the purposes of this Chapter, the rental of a residential dwelling unit as a vacation rental unit or use is deemed to be a residential use as that term may be used or defined in the City Comprehensive Plan or City Code.~~

Section 3. Vacation Rental Uses. Sections 9.5-143 "Nonconforming Uses," 9.5-234 "Urban Residential-Mobile Home District," 9.5-235.1 "Urban Residential Mobile Home-Limited," 9.5-238 "Sparsely Settled Residential District," 9.5-239 "Native Area District," 9.5-241 "Offshore Island District," 9.5-242 "Improved Subdivision District" and 9.5-248 "Mixed Use District" of the Code are hereby amended to read as follows:

Sec. 9.5-143. Nonconforming Uses.

(a) *Authority to continue:* Nonconforming uses of land or structures may continue in accordance with the provisions of this section. ~~Notwithstanding any provision of this section 9.5-143 or of Chapter 9.5 of this Code:~~

- (1) ~~Leases, subleases, assignments or other occupancy agreements for compensation for less than twenty-eight (28) days in duration shall be not be renewed, extended or entered into, in any district that prohibits vacation rental uses after the effective date of this section unless a vacation rental use~~

~~was established and obtained all required state and local permit and licenses prior to September 15, 1986 under previous Code provisions expressly allowing vacation rental uses; and~~

- (2) ~~Leases, subleases, assignments or other occupancy agreements for compensation of RV spaces for six (6) months or more within a particular RV park, other than in a designated storage area shall be discontinued and shall not be renewed, extended or entered into, after the effective date of this section.~~

~~***~~

- (f) *Termination:*

~~***~~

- (4) *Nonconforming vacation rental uses.* All vacation rental uses which do not comply with the requirements of Section 9.5-534 of the Code, shall be terminated or brought into compliance within two (2) years of the effective date of the regulations set forth in Section 9.5-534 of the Code.

Sec. 9.5 234. Urban Residential - Mobile Home District.

- (a) The following uses are permitted, as of right in the Urban Residential Mobile Home District:

~~***~~

- (5) Accessory uses; and
- (6) ~~Tourist housing uses, including vacation rental uses, are prohibited except in gated communities which have (a) controlled access and (b) a homeowner's or~~

~~property owner's association that expressly regulates or manages vacation rental uses.~~

Sec. 9.5-235.1. URM-L District.

(a) The following uses are permitted as of right in the URM-L district:

(4) Accessory uses; and

~~(5) Tourist housing uses, including vacation rental uses, are prohibited except in gated communities which have (a) controlled access and (b) a homeowner's or property owner's association that expressly regulates or manages vacation rental uses.~~

Sec. 9.5-238. Sparsely Settled Residential District.

(a) The following uses are permitted as of right in the Sparsely Settled Residential District:

~~(5) Tourist housing uses, including v~~Vacation rental uses are prohibited.

Section 9.5-239. Native Area District.

(a) The following uses are permitted as of right in the Native Area District:

- (5) ~~Tourist housing uses, including v~~vacation rental uses are prohibited.

~~Sec. 9.5-240. Mainland Native Area District.~~

~~All development permitted in the Mainland Native Area District shall comply with applicable rules and regulations of the Big Cypress National Preserve.~~

- (a) ~~The following uses are permitted as of right in the Mainland Native Area District:~~

- ~~(1) Detached ~~_____~~ ,~~
- ~~(2) Beekeeping;~~
- ~~(3) Accessory uses;~~
- ~~(4) Home occupations—Special use permit requiring a public hearing; and~~
- ~~(5) Tourist housing uses, including vacation rental uses are prohibited.~~

(b) ~~The following use is permitted as a minor conditional use subject to the standards and procedures set forth in article III, division 3:~~

- ~~(1) Educational and research centers, including campground spaces, provided that:
 - a. ~~No more than two (2) camping spaces are provided per acre;~~
 - b. ~~No development of any kind is permitted in wetlands, except unenclosed, elevated structures on pilings or poles;~~
 - c. ~~No buildings are permitted, enclosed or otherwise except for buildings devoted to educational, research or sanitary purposes no more than~~~~

~~thousand (1,000) square feet per acre and not more than ten thousand (10,000) square feet in any single campground; and~~

~~d. The site proposed for the center is at least five (5) acres-~~

Sec. 9.5-241. Offshore Island District.

The following uses are permitted as of right in the Offshore Island District:

~~(6) Tourist housing uses, including v~~Vacation rental uses, which were established (and held valid state public lodging establishment licenses) prior to January 1, 1996 the effective date of these regulations.

Sec. 9.5-242. Improved Subdivision District.

(a) The following uses are permitted as of right in the Improved Subdivision District:

~~(6)~~ Vacation rental use is permitted if a special vacation rental permit is obtained under the regulations established in Code Section 9.5-534.

~~Vacations rental use is prohibited in all IS Districts and Subdistricts, except in (i) IS T districts (as set forth in Code section 9.5-242.5), and (ii) in gated communities which have (a) controlled access and (b) a homeowner's or property owner's association that expressly regulates or manages vacation rental uses if a special vacation rental permit is obtained under the regulations established in Code Section 9.5-534~~

Sec. 9.5-248. Mixed Use District.

(a) The following uses are permitted as of right in the Mixed Use District:

(4) Commercial apartments involving less than six (6) dwelling units, ~~but tourist housing use, including vacation rental use of commercial apartments is prohibited.~~ The use of commercial apartments for vacation rental purposes is prohibited.

(13) Vacation rental use ~~of detached dwelling units~~ is permitted if a special vacation rental permit is obtained under the regulations established in Code Section 9.5-534.

Section 4. Repeal of Section 9.5-242.5. Section 9.5-242.5 of the Code is hereby repealed as follows:

~~**Section 9.5-242.5. Improved Subdivision District-Tourist Housing District.**~~

~~In addition to the as of right and conditional uses listed above in 9.5-242, vacation rental uses are allowed as of right (subject to the regulations established in Code section 9.5-534) in those Improved Subdivision Tourist Housing Districts with the subindicator T (Tourist Housing).~~

~~A map amendment designating a contiguous parcel as IS-T may be approved, provided that the map amendment application (and subsequent building permit applications and special vacation rental permit applications) meet the following standards, criteria and conditions:~~

(a) ~~The IS T designation is consistent with the Year 2010 Comprehensive Plan and there is no legitimate public purpose for maintaining the existing designation;~~

(b) ~~The IS T designation allowing vacation rental use does not create additional trips or other adverse traffic impacts within the remainder of the subdivision or within any adjacent IS district;~~

(c) ~~The parcel to be designated IS T must contain sufficient area to prevent spot zoning of individual parcels (i.e., rezonings should not result in spot-zoned IS T districts or results in spot-zoned IS districts that are surrounded by IS T districts). Unless the parcel to be rezoned contains the entire subdivision, there will be a rebuttable presumption that spot-zoning exists, but the board of county commissioners may rebut this presumption by findings supported by competent, substantial evidence that:~~

(i) ~~The designation preserves, promotes and maintains the integrity of surrounding residential districts and overall zoning scheme or comprehensive plan for the future use of surrounding lands;~~

(ii) ~~Does not result in a small area of IS T within a district that prohibits vacation rentals;~~

(iii) ~~The lots or parcels to be designated IS T are all physically contiguous and adjacent to one another and do not result in a narrow strip or isolate pockets or spots of land that are not designated IS T, or which prohibit vacation rentals;~~
and

~~(2) The annual fee for the special vacation rental permit shall be established by resolution of the board of county commissioners.~~

~~(3) A decision to approve or deny a special vacation rental permit can be appealed to the planning commission within thirty (30) days pursuant to Code section 9.5-52.1~~

~~(c) Regulations. All special vacation rental permit applications and all vacation rental units must comply with the following regulations at all times:~~

~~(1) A class C buffer yard must separate any vacation rental use from any established residential district that does not allow vacation rental uses.~~

~~(2) No more than one motorized watercraft, including a jet ski or wave runner, shall be allowed at each vacation rental unit. The watercraft may be moored at either an existing on site docking facility or stored on a trailer in an approved parking space.~~

~~(3) Vehicles, watercraft and trailers must not be placed on the street or in yards. All vehicles, watercraft and boat trailers must be parked or stored off street in parking spaces specifically designated and approved in the special vacation rental permit, and may not exceed a maximum of one vehicle per bedroom or efficiency unit and one boat trailer per vacation rental unit.~~

~~(4) The owner or agent must maintain a guest and vehicle register listing all vacation rental occupants' names, home addresses, phone numbers, vehicle license plate and watercraft registration numbers.~~

- (5) ~~Vacation rental units must be registered, licensed and meet all applicable state requirements contained in F.S. ch. 313 (Florida Tax and Revenue Act) and 509 (Public Lodging Establishments) as implemented by the Florida Administrative Code, as may be amended.~~
- (6) ~~For any special vacation rental use permit, or conversion of existing dwelling units to vacation rental use, an applicant must demonstrate compliance with all applicable and relevant state and local regulations, as may be amended and submit an inspection report from the:~~
- ~~(i) State of Florida, department of health (DOH) verifying compliance of the existing septic tank or onsite sewage disposal system with DOH regulations, as may be amended from time to time and which are hereby incorporated by reference; and~~
 - ~~(ii) State of Florida, department of environmental protection (DEP) verifying compliance of the existing package plant or advanced wastewater system with DEP regulations, as may be amended from time to time and which are hereby incorporated by reference; and~~
- (7) ~~The applicant must submit an approved inspection report from the fire marshal verifying compliance with NFPA Life Safety Code 101, as may be amended, which is hereby incorporated by reference.~~
- (8) ~~No special vacation rental permit may be transferred from one owner or manager to another, or one residential dwelling unit to another. In the event~~

~~ownership or management of a licensed residential unit is changed, the previous vacation rental license holder must notify the county of such change, and the new owner or manager must obtain a new vacation rental license for the residential dwelling unit.~~

- ~~(9) No boat docked at a vacation rental property shall be chartered to person other than registered guests of the vacation rental unit or used for live-aboards, sleeping or overnight accommodation. In addition, recreational vehicles shall not be used for sleeping or overnight accommodations at the vacation rental unit.~~
- ~~(10) Amplified sound which is audible on private property beyond the real property boundaries of the vacation rental property is prohibited.~~
- ~~(11) All trash and debris on vacation rental property must be kept in covered trash containers. Each vacation rental unit must be equipped with at least four (4) covered trash containers for such purpose. Owners must post, and occupants must comply with, all trash and recycling schedules and requirements applicable to the vacation rental unit. Trash containers must not be placed by the street for pick-up until 6:00 p.m. the night before pick up and must be removed from the area, by the street by 6:00 p.m. the next day.~~
- ~~(12) The applicant shall provide the name, address, and telephone number of a contact person who resides in that section of the county (upper, middle or lower keys) who must be available twenty-four (24) hours per day, seven days a week~~

~~for the purpose of promptly responding to complaints regarding the conduct or behavior of vacation rental occupants or alleged violations of this section.~~

- ~~(13) The applicant must grant authorization to Monroe County Code Enforcement to inspect the premises of the vacation rental unit prior to the issuance of the special vacation rental permit and at any other time after issuance of such permit, concerning compliance with Monroe County Code Chapter 9.5 (i.e., the Land Development Regulations).~~
- ~~(14) Occupancy of vacation rental unit(s) shall be limited to no more than two (2) individuals per bedroom, or no more than two (2) individuals per efficiency unit, when rented as a vacation rental unit subject to the provisions of this section.~~
- ~~(15) Tenant(s)'s agreement to the foregoing rules and regulations must be made a part of each and every lease under F.S. § 509.01, for any vacation rental unit subject to the provisions of this section. These vacation rental regulations must be prominently posted within each dwelling unit subject to the provisions of this section along with the warning that violations of any of the vacation rental regulations constitutes a violation of Monroe County Code punishable as a second degree misdemeanor and is also grounds for immediate termination of the lease and eviction from the leased premises and criminal penalties under F.S. § 509.151 ("Defrauding an Innkeeper"), F.S. § 509.141 ("Ejection of Undesirable Guests"), F.S. § 509.142 ("Conduct on Premises) or F.S. §~~

~~509.143 (Disorderly Conduct on Premises, *Ax rest*)~~.

- ~~(16) The vacation rental use must be compatible with land uses established in the immediate vicinity of the parcel proposed for development.~~
- ~~(d) A complete special vacation rental permit application must include the following information;~~
 - ~~(1) The complete legal description, street address, RE number and location of the vacation rental unit.~~
 - ~~(2) Proof of ownership and the name, address and telephone number of each and every person or entity with an ownership interest in the dwelling unit.~~
 - ~~(3) An approved DOH or DEP inspection or certification of the adequacy of the sewage disposal system for use as a vacation rental unit. The applicant must submit an approved inspection report from the fire marshal verifying compliance with NFPA Life Safety Code 101, as may be amended, . . . incorporated herein by reference.~~
 - ~~(4) The gross square footage of the dwelling unit, location and number of rooms, bedrooms, bathrooms, kitchens, apartments, parking spaces and any other information required to determine compliance with vacation rental requirements.~~
 - ~~(5) Proof that a "Notice of Vacation Rental Use Application" was sent by certified return mail to all property owners located within three hundred (300) feet of the dwelling unit which is the subject of the special vacation rental permit~~

~~application not less than thirty (30) days prior to the date of approval of the application. The notice of application shall be in a form prescribed by the county administrator or his designee and shall clearly state the name, address and day/evening telephone numbers of each and every manager, agent, caretaker and owner of the dwelling unit. Notice to the adjacent property owners must include the following statement:~~

~~“You have the right to appeal a decision to approve or deny this special vacation rental permit to the planning commission within thirty (30) days under Code section 9.5-521. You may have other rights that Monroe County cannot enforce. Review of a special vacation rental permit application by Monroe County will not consider the existence of valid private deed restrictions, restrictive covenants or other restrictions of record, which may prohibit the use of the dwelling unit for vacation rental purposes. You may wish to consult an attorney concerning these private rights.”~~

- ~~(6) A valid and current federal employer tax identification number (or social security number) for the owners of the vacation rental property to be licensed under the provisions of this section.~~
- ~~(7) A valid and current Florida Department of Revenue sales tax identification number under F.S. ch. 212 (Florida Tax and Revenue Act), Florida Department of Banking and Finance license number and a valid and current permit, license or approval under F.S. ch. 509 (Public~~

Lodging Establishments).

(8) ~~The application shall bear the signature of all owner(s), all authorized agent(s) and authorized manager(s) of the owner(s).~~

(9) ~~Any additional information required to determine compliance with the provisions of this section.~~

(e) ~~Upon approval and issuance, the special vacation rental permit, and 24-hour contact person's name and phone number, must be mailed by certified return mail to all surrounding property owners within three hundred (300) feet.~~

(f) ~~A special vacation rental permit shall be revoked by the planning commission, code enforcement special master or a court of competent jurisdiction after a finding of two or more violations of this section, the special vacation rental permit or permit conditions or any material misrepresentation on the permit application, after the owner(s) is given notice and a hearing is held by the planning commission, code enforcement special master or a court of competent jurisdiction.~~

(g) ~~It shall be unlawful for any landowner, tenant, realtor, agent or other representative of a landowner to rent, lease, advertise or hold out for rent any dwelling unit for tourist housing use or vacation rental use in any district where tourist housing use or vacation rental use is prohibited.~~

(h) ~~After the effective date of this section, leases, subleases, assignments or any other occupancy agreement for compensation for less than twenty eight (28) days in duration:~~

(1) ~~Shall not be entered into or renewed once expired or terminated in any district~~

~~in which tourist housing use is prohibited or in any district in which vacation rental use is allowed unless a special vacation rental permit, building permit, inspection and certificate of occupancy for the vacation rental use (or conversion of an existing dwelling unit to a vacation rental use) are first obtained; and~~

- (2) ~~Pre-existing vacation rental uses shall not be considered a nonconforming use under section 9.5 143 and must be discontinued in districts that prohibit vacation rental uses no later than thirty (30) days after the effective date of this section. Except that a vacation rental use that was established, and obtained all required state and local permits and licenses, (a) prior to September 15, 1986~~

~~under Code provisions that expressly allowed vacation rental uses remain in accordance with Code section 9.5 143.~~

- (i) ~~Monroe County Code section 6.3 13 shall not bar code enforcement for new vacation rental violations occurring after the effective date of this section.~~

(j) ~~Prima facie evidence of tourist housing or vacation rental use of a dwelling unit shall include~~

- (i) ~~registration or licensing for short term or transient rental use by the state under F.S. chs. 212 (Florida Tax and Revenue Act) and 509 (Public Lodging Establishments),~~

- (ii) ~~advertising or holding out a dwelling unit for tourist housing or vacation rental use,~~
- (iii) ~~reservations, booking arrangements or more than one signed lease, sublease, assignment, or any other occupancy agreement for compensation, trade, or other legal consideration addressing or overlapping any period of 25 days or less, or~~
- (iv) ~~use of an agent or other third person to make reservations or booking arrangements.~~

(k) ~~A violation of section 9 5 534 shall be punishable as a second degree misdemeanor and by a fine of up to five hundred dollars (\$500.00) per day, per unit, per violation. Code enforcement may also enforce the terms of this section by bringing the case to a special master pursuant to Code section 5.3 14 or by citation under Code section 6.3 11. F.S. § 162.21 (as may be amended), and 76 435 Laws of Florida (as may be amended). If a code enforcement citation is issued, the fine shall be two hundred **fifty** dollars (\$250.00) for a first offense and five hundred dollars (\$500.00) for a second offense. In- . . . , the special vacation rental permit shall be revoked by the planning commission. Code enforcement special master or court of competent jurisdiction upon a finding of two (2) or more violations of the vacation rental ordinance, vacation rental regulations or special vacation rental permit or permit conditions.~~

- (1) ~~In addition to any other remedy available to Monroe County (including code enforcement pursuant to F.S. ch. 162). Monroe County or any or other~~

~~adversely affected party may enforce the terms of this section in law or equity. Any citizen of Monroe County may seek injunctive relief in a court of competent jurisdiction to prevent a violation of section 95-534 or revoke a special vacation rental permit, as set forth above. Attorneys fees and costs incurred in an action to enforce these regulations concerning vacation rental use(s) may be awarded to a substantially prevailing party in the discretion of the court.~~

The words and phrases used herein shall have the meanings prescribed in the City of Marathon Land Development Regulations, except as otherwise indicated herein.

Definitions.

Chapter 509 means Chapter 509, Florida Statutes, as amended from time to time, or any successor statute thereto.

Occupant means any lessee, tenant or other person who, for consideration, occupies a residential dwelling unit pursuant to a vacation rental agreement.

Owner means the fee simple owner of any residential dwelling unit as reflected by the public records of Monroe County, Florida.

Property Manager means any person or entity other than an owner who is responsible for the day-to-day maintenance and operation of residential dwelling unit used as a vacation rental accommodation.

Vacation Rental Unit is a residential dwelling unit that contains no more than four (4) bedrooms, is equipped with no more than one (1) full kitchen facility, at least

one (1) working telephone, and otherwise complies with the requirements of this ordinance. For the purposes of these regulations, the rental of a vacation rental unit is deemed a residential use as that term may be used or defined in the City Comprehensive Plan or City Code.

Vessel means any boat or watercraft, including personal watercraft, as defined in Chapter 327, Florida Statutes, as amended from time to time, or any successor statute thereto.

(b) *Permit required, terms, renewal.*

No residential dwelling unit shall be used for vacation rental purposes unless a special vacation rental permit has first been applied for and procured from the City for each vacation rental unit pursuant to these regulations. Such application shall be in the form required by the City and must contain an acknowledgment that the property owner has read and fully understands the City's vacation rental use regulations, as may be amended from time to time. No special vacation rental use permit shall be issued by the City unless the applicant has complied with all of the provisions of this Ordinance.

(1) Each special vacation rental permit application shall be accompanied by:

A copy of all necessary County occupational licenses.

(b) A copy of all necessary State licenses, including but not limited to, all licenses from the Division of Hotel and Restaurants, Florida Department of Business & Professional Regulation as required by Chapter 509, Florida Statutes, for a public lodging facility.

The appropriate application fee, as may be established by separate Resolution.

(d) An inspection report from the City Building Official and the City Fire Marshal that the proposed vacation rental unit meets the applicable provision of the City's Building Code and the NFPA Life Safety Code 101, respectively.

(e) A copy of any deed, subdivision, or condominium restriction applicable to the proposed vacation rental unit.

(2) Each vacation rental unit requires a City Occupational License in the name of the owner and a separate City Occupational License for the property manager if different from the owner.

(3) Each special vacation rental unit permit shall have a term of one year, and must be renewed by the owner or property manager prior to expiration in order to avoid interruption of permitted vacation rental activity. The renewal application shall be accompanied by an inspection report by the City Fire Marshal that the proposed vacation rental unit meets the applicable provisions of the NFPA Life Safety Code 101. Those permits not renewed when due and payable are delinquent and subject to a delinquency penalty of ten per cent (10%) for the first month of delinquency, plus a five per cent (5%) penalty for each subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed twenty-five per cent (25%) of the permit fee for the

permitee. The renewal of any permit shall require a new permit fee. During the period of delinquency, the special vacation rental unit permit is deemed inactive and no rental activity may occur.

(4) Special vacation rental unit permits may be transferred from one owner or property manager to another, but not from one vacation rental unit to another. In the event ownership or management of a permitted unit is changed, the new owner or property manager shall be required to pay the City a permit transfer fee of \$25.00.

(5) No vacation rental use shall be allowed in any subdivision or condominium that prohibits vacation rental uses by deed restriction.

Vacation rental use and occupancy restrictions.

All use and occupancy of residential dwelling units for vacation rental purposes shall be in accordance with the following:

(1) No vacation rental use in a residential subdivision shall be for less than seven (7) days.

Motor vehicles and vessel trailers shall only be parked in driveways or other areas designed and designated for parking on the vacation rental unit property, and not on the street or extending over the right-of-way or sidewalk. The number of motor vehicles and vessel trailers parked at a vacation rental use shall not exceed the maximum number of permitted parking spaces. Only motor vehicles of registered occupants may be parked overnight.

- (3) For vacation rental units that contain dock areas, occupants may dock no more than two (2) vessels per property. The total length of docked vessels shall not exceed the length of the dock area, or create any hazard to navigation. No vessel docked at a vacation rental unit shall be used for sleeping, live aboards or other overnight accommodations.
- (4) Occupants shall be prohibited from making excessive and unnecessary noise in or about any vacation rental unit at all times such as to cause a noise disturbance. "Noise disturbance" means any sound that is so excessive, loud or disturbing that it causes an adverse psychological or physiological effect on humans, or unnecessarily disturbs or interferes with enjoyment of life or property, including outdoor recreation.
- (5) No occupant of a vacation rental unit shall enter upon any neighboring property for unlawful purpose or after being provided notice not to come back on the property.
- All trash and debris shall be kept in covered trash containers. Each vacation rental unit shall be equipped with at least four covered trash containers for such purposes. Occupants shall comply with all trash provisions and recycling provisions that are applicable to the vacation rental unit. Schedules of garbage pick-up and recycling pickup shall be posted with the rental agreement.
- (7) The maximum occupancy load of any vacation rental unit used for vacation rental purposes shall not exceed two adults for each bedroom (children over 12

shall be considered adults for purposes of this section) or the lesser of such other maximum occupancy load as may be set by the office of the State Fire Marshal for the particular residential dwelling unit pursuant to its administrative rule making authority or the City Building Official. No motor home camper, sport utility vehicle or any other motor vehicle parked at the vacation rental unit property shall be used for sleeping or other overnight accommodations.

(8) All vacation rental units shall comply with all building and fire safety codes for Public Lodging Establishments as required by State law or the Code.

(9) Prior to occupancy of a vacation rental unit, the occupants of each unit shall be provided with a written copy of the use and occupancy restrictions contained herein in the form of a copy of these regulations and a written rental agreement. Each owner or property manager shall have a written agreement requiring each occupant to comply with such restrictions as a condition of the agreement, signed by each occupant (parents for children under 12), prior to occupancy. A copy of these use and occupancy restrictions shall also be prominently displayed in each vacation rental unit in no less than 16 point type, along with a warning; in **bold type**, that any violation thereof shall constitute grounds for immediate termination of the rental agreement, eviction from the vacation rental unit by the owner or property manager and appropriate fines levied.

(10) All rental agreements shall contain each occupant's (by family) home address and phone, property manager's address and phone number, owner's address and

phone number, the phone number at the vacation rental unit and must contain, in **bold** type, these restrictions. A copy of the rental agreement must be maintained on the property at all times and made available for review at the request of the City, Sheriff or Deputy Sheriff, municipal police officer, code compliance officer, or other designated City representative. Failure to maintain and make available upon request a copy of the rental agreement shall constitute a violation of these regulations.

(d) *Owner or property manager contact person.*

In connection with any application for a special vacation rental permit, the applicant shall provide the City with the name, address and telephone number of a designated contact person, along with a secondary contact person in case the first contact person is not available.

(e) *Compliance with other statutes, rules and ordinances*

In addition to complying with these regulations, the owner or property manager of a vacation rental unit used for vacation rental purposes shall comply with the provisions of all applicable Statutes, Administrative Rules and Ordinances, including but not limited to, Chapter 509 and Chapter 212, Florida Statutes and the Code. A violation of any such Statute, Rule, Ordinance or the Code shall also constitute a violation of these regulations. To the extent that a conflict exists between the provisions of these regulations and any Statute, Rule, Ordinance or the Code, the more restrictive regulations shall prevail.

(e) *Mandatory Evacuation.*

All hotels, motels, public lodging establishments, rooming house, vacation rental units, rooms or spaces for parking recreational vehicles or travel trailers or units that are advertised and held out to the public for such uses shall be immediately evacuated upon the posting of a hurricane warning by the National Weather Service or the National Hurricane Center for any portion of the Florida Keys or a non-resident evacuation order issued by the City, County or State.

(g) Violations.

(1) Operation of any vacation rental unit by either a property manager or owner, without a permit or in violation of these regulations, shall be punishable as to the occupant, owner or property manager in accordance with the Code, or as authorized by State law.

(2) An accumulation of a second violation of these regulations within any twelve-month period for the same property shall be punishable by a fine in accordance with the Code and the revocation of the special vacation rental permit for that property. The owner may apply for a new license after the one year of the date of revocation for the second offense. An accumulation of a third violation within an eighteen-month period shall result in permanent revocation of the special vacation rental permit for that property, plus a fine in accordance with the Code.

- (4) Occupant violations of these regulations may result in immediate eviction of the occupant by the owner or property manager pursuant to State law, in addition to any other remedies available at law.
- (5) An additional special vacation rental permit fee must be paid to reinstate any permit after any revocation.
- (6) Alleged violations of these regulations or the Code may be reported to the City of Marathon Code Compliance Department, the Monroe County Sheriff's Office, or other such provider of municipal law enforcement services, who shall issue an appropriate warning, notice of violation citation, summons or notice to appear for a violation of these regulations in conformance with the City's adopted Code Compliance procedures. Any person who reports an alleged violation of these regulations must identify the location of the violation, the property manager and owner, if known, the date and time of the incident, and the name and address and telephone number of the complainant.
- (7) Non-payment of any assessed fines may result in a lien being placed on the property that is the subject of the violation, and said lien may be foreclosed upon pursuant to the Code or State law.
- (8) Nothing contained in these regulations shall prohibit the City from enforcing these regulations or the Code by any other means including, but not limited to a summons, a notice to appear in the County Court, an arrest, a civil action for injunctive relief, a stop work order, or demolition. The enforcement

procedures outlined herein are cumulative to all others and shall not be deemed prerequisites to filing suit for the enforcement of these regulations or any section of the Code.

(h) *Annual Review.*

The City Council shall review these regulations on a yearly basis. The annual review may form the basis of City Council action to repeal, amend, or modify the regulation of vacation rental uses. This includes, but is not limited, to imposing a cap on the number of vacation rental use permits issued on an annual basis, or imposing a cap on the total number of authorized vacation rental uses in the City. The City Council, however, may rely upon such other information, reports, data, and documents as it deems appropriate in deciding to repeal, amend or modify the regulation of vacation rental uses. This ordinance does not confer vested rights nor in any way serve as the basis for asserting a claim of equitable estoppel or laches against the City.

Nonconforming Vacation Rental Uses.

Any vacation rental use lawfully in existence on the effective date of this ordinance, which shall be made nonconforming by the passage of this ordinance or any applicable amendment thereto, may be continued except as otherwise provided in Section 9.5-143 of the Code.

Section 6. Repeal of Conflicting Provisions. The provisions of Ordinance 004-1997 of Monroe County, Florida (as codified in Chapter 9.5 of the Code), as the same is made

applicable to the City pursuant to the City Charter, in conflict with this Ordinance are hereby repealed.

Section 7. Severability. The provisions of this Ordinance are declared to be severable 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 8. Inclusion in the Code. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the City of Marathon, Florida, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section") or other appropriate word.

Section 9. Approval by the State Department of Community Affairs. The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Manager or designee 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 10. Effective Date. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

The foregoing Ordinance was offered by Councilmember Greenman, who moved

for its adoption. The motion was seconded by ~~Councilmember~~ ^{MAYOR} Miller, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

PASSED on first reading September 13, _____, 2000.

The foregoing Ordinance was offered by ~~Councilmember~~ ^{VICE MAYOR} Bartus, who moved for its adoption. The motion was seconded by Councilmember Johnson, and

upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Absent</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>No</u>

PASSED AND ADOPTED on second reading October 10 _____, 2000.


ROBERT MILLER, MAYOR

ATTEST:

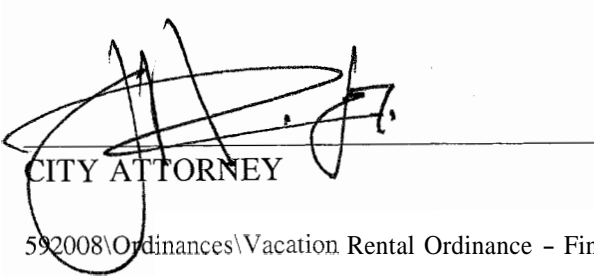


Carol N. Chamberlain
MY COMMISSION # CC682322 EXPIRES
September 22, 2001
BONDED THRU TROY FAIN INSURANCE, INC.

Carol N. Chamberlain

CITY CLERK

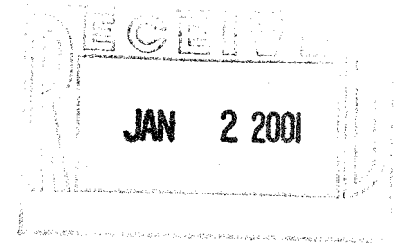
APPROVED AS TO LEGAL SUFFICIENCY


CITY ATTORNEY

592008\Ordinances\Vacation Rental Ordinance - Final Draft

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON, FLORIDA
LAND DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 00-10-13



FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2000), which require the Department to enter a final order approving or rejecting land development regulations adopted by the City of Marathon ("Marathon"). This Final Order approves Marathon Ordinance No. 00-10-13 as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Marathon is a unit of government within the Florida Keys Area of Critical State Concern.
2. On November 6, 2000, the Department received for review Marathon Ordinance No. 00-10-13 which was adopted by the Marathon City Council on October 10, 2000 ("Ord. 00-10-13"). Ord. 00-10-13 amended Marathon's regulations concerning vacation rentals.
3. Ord. 00-10-13 includes new and amended regulations regarding which land use districts vacation rentals are allowed in, city permit and occupational license requirements, renewal of permit and license provisions, use and occupancy restrictions, and building, safety and miscellaneous compliance provisions. Ord. 00-10-13 repeals several prior provisions of its Code regarding vacation rentals as those provisions were initially promulgated by Monroe County and

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made part of Marathon's land development regulations at time of its incorporation.

4. Ord. 00-10-13 is consistent with the statutory Principles for Guiding Development as a whole.

CONCLUSIONS OF LAW

1. The Department is required to approve or reject any and all land development regulations that are enacted, amended or rescinded by any unit of government in the Florida Keys Area of Critical State Concern within 60 days of receipt by the Department. §§ 380.05(6) and (11), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2000).

2. Marathon is a unit of government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.*; Rule 28-29.002 (superseding Chapter 27F-8, *Fla. Admin.*; and Ch. 99-427, Laws of Fla. (1999) .

3. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* The regulations adopted by Ord. 00-01-13 are land development regulations, as defined by statute.

4. All land development regulations enacted, amended or rescinded by Marathon must be consistent with the Principles for Guiding Development (the "Principles"). § 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). In reviewing the land development regulations for consistency, the Principles shall be construed as a whole and no specific provision shall be construed or applied in isolation from the other provisions. § 380.0552(7), *Fla. Stat.*

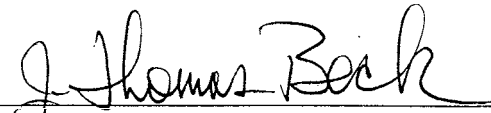
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5. The Department has reviewed all provisions of Ord. 00-01-13 for consistency with the Principles and has determined that Ord. 00-07 is consistent with the Principles as a whole. § 380.0552(7), *Fla. Stat.*

WHEREFORE, IT IS ORDERED that Ord. 00-10-13 is found to be consistent with the Principles found at § 380.0552(7), *Fla. Stat.*, as a whole, 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.



J. THOMAS BECK, 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

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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 BUTTAL 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.

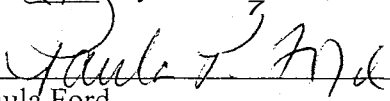
A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

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.

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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 29th day of December, 2000.



Paula Ford
Agency Clerk

By U.S. Mail:

Honorable Robert K. Miller
Mayor, Marathon
11090 Overseas Highway
Marathon, FL 33050

Dina Michael
Acting City Clerk, Marathon
210 N. University Drive, Suite 301
Coral Springs, FL 33071

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Geoffrey T. Kirk, Assistant General Counsel, DCA Tallahassee