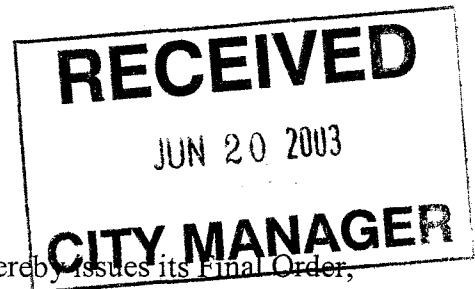


STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF MARATHON ORDINANCE NO. 2003-05

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. (2002), 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 April 4, 2003, the Department received for review City of Marathon Ordinance No. 2003-05, which was adopted by the City of Marathon City Council on March 11, 2003 ("Ord. 2003-05").
3. Ord. 2003-05 amends Section 9.5-11 (R-17) Definitions, of the Land Development Regulations by changing the definition of a "hotel room" for density restriction purposes to allow either a single room or a suite of rooms with a maximum of three (3) bedrooms and three (3) bathrooms, a dining area, and one other living area. Two bedroom suites are limited to 1090 square feet and three bedroom suites are limited to 1560 square feet.
4. Ord. 2003-05 is not consistent with the City's 2010 Comprehensive Plan.

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 The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern.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) and (11), Fla. Stat., and § 380.0552(9), Fla. Stat. (2002).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, Fla. Stat. (2002) 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. (2002). The regulations adopted by Ord. 2003-05 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 All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the “Principles”) set forth in § 380.0552(7), Fla.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. 2003-05 does not promote and further the following Principle:

(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.

Hotel redevelopment as two and three bedroom suites with increased occupancy rates will have negative impacts on infrastructure capabilities, hurricane evacuation, and water consumption. The proposed ordinance is inconsistent with the Monroe County Comprehensive Plan. If the Department approves the City of Marathon’s proposed Comprehensive Plan, this ordinance could provide for the rebuilding at the higher occupancy rate almost all of the 1135 available units in Marathon.

10. Ord. 2003-05 does not promote and further the following Principle:

(j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.

The increased occupant loads at redeveloped hotels and motels will require additional staff. The proposed ordinance will increase the demand for affordable housing, exacerbating the current shortage of affordable housing for service workers.

11. Ord. 2003-05 does not promote and further the following Principle:

(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 postdisaster reconstruction plan.

Traffic impacts from redeveloped two or three bedroom suites as opposed to single room hotel rooms will include higher gross vehicle utilization as a result of additional staff and unrelated occupants sharing suites. The current hurricane model utilized for evacuation analysis indicates that the evacuation plan timeframe of 24 hours for the Keys has been exceeded.

12. Ord. 2003-05 does not promote and further the following Principle:

(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.

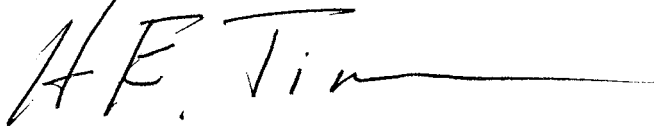
Ord. 2003-05 will exacerbate existing storm evacuation shortfalls, affordable housing shortages, and impact available water supplies and transportation facilities.

13. Ord. 2003-05 is inconsistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2003-05 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.



H.E. "SONNY" TIMMERMAN, 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.

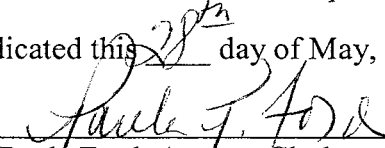
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 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 28th day of May, 2003.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable John Bartus, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

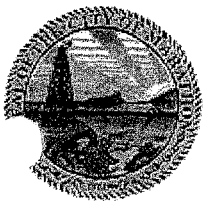
Katherine V. Selchan, City Clerk
City of Marathon
210 University Drive
Coral Springs, Florida 33071

Scott Janke
City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

John R. Herin, Jr.
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.
City Attorney
City of Marathon
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133

By Hand Delivery or Interagency Mail:

Jim Quinn, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
David L. Jordan, Deputy General Counsel, DCA Tallahassee
Timothy E. Dennis, Assistant General Counsel, DCA Tallahassee



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

May 16, 2003

Rebecca Jetton, Planning Manager
Department of Community Affairs
Marathon Office
2796 Overseas Highway
Marathon, FL 33050

RE: Ordinances 2003-05, 08 & 09

Dear Rebecca;

Attached are the Ordinances recently enacted by the City Council of the City of Marathon. Thank you in advance for your quick attention to these Ordinances.

I had previously sent Ordinance 2003-05 to the Department of Community Affairs in Tallahassee, see attached. I had called the Clerk's office in Key West and asked for their procedure and they send theirs right to Tallahassee. Although I asked Tallahassee for directions if that was the wrong procedure I have not received any communication back.

For further assurance to you, I have added your email address to the agenda mailing list that is transmitted to the public around noon on the Wednesday prior to our council meetings.

Please contact me if you have any further directions on this procedure or any questions regarding the upcoming agenda.

Best Regards,

Andy L. Ecklund, PHR
City Clerk/HR Officer
City of Marathon
10045-55 Overseas Hwy.
Marathon, FL 33050
(305) 289-4101
(305) 289-4131 fax
a.lundc@ci.marathon.fl.us

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PS Form 3800, June 2002	
See Reverse for Instructions	



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

April 2, 2003

Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Dear Department of Community Affairs,

Attached is the City of Marathon Ordinance 2003-05, "Amending Section 9.5-11(R-17) (Definition Of "Room, Hotel Or Motel") Of The City's Land Development Regulations To Provide That A Hotel Or Motel Room May Include A Room Or Suite Of Rooms With A Maximum Of Three (3) Bedrooms And Bathrooms, A Kitchen/Dining Area, And One (1) Other Living Area, Limiting The Size Of A Hotel Or Motel Room, And Prohibiting The Use Of A Hotel Or Motel Room As A Permanent Residence; Providing That A Person Is Not Entitled To Claim A Homestead Exemption For A Hotel Or Motel Room; Providing For Repeal Of Conflicting Ordinances; Providing For Severability; Providing For Inclusion In The City Code; Providing For Transmittal Of This Ordinance To The State Department Of Community Affairs; Providing An Effective Date." Please notify us when a Final Order is issued regarding the provisions of this Ordinance that constitute a "land development regulation" as state law defines that term. Accordingly, I am authorized and directed to forward a copy of this Ordinance to your office for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Please contact me if you have any questions regarding this letter or Ordinance 2003-05. If this procedure for submittal is incorrect or you have a procedure outlined on the State web site I would appreciate the directions to find it. Thank you.

Sincerely,

Cindy L. Ecklund, PHR
City Clerk/ HR Officer
10045-55 Overseas Hwy.
Marathon, FL 33050
305-289-4101
305-743-3667 fax
ecklundc@ci.marathon.fl.us

Sponsored by: Janke
Introduction Date: February 25, 2003
Public Hearing Date: March 11, 2003
Enactment date: March 11, 2003

**CITY OF MARATHON, FLORIDA
ORDINANCE 2003-05**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-11(R-17) (DEFINITION OF "ROOM, HOTEL OR MOTEL") OF THE CITY'S LAND DEVELOPMENT REGULATIONS TO PROVIDE THAT A HOTEL OR MOTEL ROOM MAY INCLUDE A ROOM OR SUITE OF ROOMS WITH A MAXIMUM OF THREE (3) BEDROOMS AND BATHROOMS, A KITCHEN/DINING AREA, AND ONE (1) OTHER LIVING AREA, LIMITING THE SIZE OF A HOTEL OR MOTEL ROOM, AND PROHIBITING THE USE OF A HOTEL OR MOTEL ROOM AS A PERMANENT RESIDENCE; PROVIDING THAT A PERSON IS NOT ENTITLED TO CLAIM A HOMESTEAD EXEMPTION FOR A HOTEL OR MOTEL ROOM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the economy of the City of Marathon and the Florida Keys is heavily dependent upon, and is enhanced by, the tourist industry; and

WHEREAS, the City of Marathon desires to encourage development and redevelopment of hotels and motels in the City to attract tourism, enhance the economy of the City for the benefit of its residents, improve the good appearance of the City, and encourage other redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon; and

WHEREAS, in the past number of years, the City of Marathon has not benefited from the economic success of other locales in the Lower and Upper Keys, and is in need of redevelopment and enhancement of its tourist economic base to assist in the City's economic recovery, growth, and continued vitality; and

WHEREAS, the City of Marathon has an abundance of coastline, with beautiful blue

water on both the Atlantic Ocean and the Gulf of Mexico, that offers the attractions of swimming, boating, and fishing that families enjoy; and

WHEREAS, the trend in the leisure and hospitality industry is for larger hotel and motel rooms or suites to accommodate families for longer stays; and

WHEREAS, the City Council concludes that the best direction for redevelopment and enhancement of the City's tourist base is as a family attraction area; and

WHEREAS, to attract family visitors, accommodations must be available that meet the special needs of families and offer affordable vacation options; and

WHEREAS, the special needs of families that would provide for their comfort and encourage longer visits include separate sleeping areas for children and adults, living space for games and other family pursuits, and the ability to prepare meals and dine in, to enable families to vacation for long periods of time; and

WHEREAS, the current definition of hotel and motel room in the City Code is too restrictive to allow renovations of hotels and motels that would meet the current trends in the leisure and hospitality industry and provide suitable accommodations to attract families to the City for longer stays; and

WHEREAS, it is in the City's best interests to create flexible regulations and a business environment that allow hotel and motel owners and developers to meet current trends in the leisure and hospitality industry when developing or redeveloping hotel and motel properties in the City while, at the same time, limiting the size of hotel and motel rooms to discourage their conversion to permanent residences, and including in the City Code a prohibition against their use as permanent residences; and

WHEREAS, providing such flexibility in the City's regulations for hotel and motel owners and developers will attract families for longer stays, will provide an economic boost to other businesses in the City that are dependent, in whole or in part, on the tourist trade, including retail shops, specialty and souvenir shops, restaurants, charter and dive boats, bait and tackle shops, and the many other businesses in the City that serve the needs of visitors, and will enhance the City's tourist industry and economy; and

WHEREAS, the City Council finds that enactment of this Ordinance will protect the public health, safety and welfare of the residents of the City of Marathon, and further the purposes, goals, objectives and policies of the City's Transitional Comprehensive Plan and the Principles for Guiding Development for 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:

Section 1. That the foregoing recitals are true and are incorporated herein.

Section 2. That Section 9.5-11(R-17) of the Land Development Regulations is amended to read as follows:¹

(R-17) *Room, hotel or motel*, means a unit in a public lodging establishment as defined by Florida Statutes section 509.013(4)(a) intended for transient ~~lodging~~ occupancy only for periods not exceeding thirty (30) days. Transient occupancy shall conform to the definition contained in Florida Statutes section 509.013(8 11) as to transient occupancy. This definition shall not apply to

¹ Provisions added to existing text are shown by underline; provisions deleted from existing text are shown by

recreational vehicles, mobile homes or manufactured homes. For the purposes of density restriction under this chapter:

- (a) Hotel or motel room may be a single room or a suite of rooms with a maximum of three (3) bedrooms and three (3) full bathrooms, and may include a kitchenette/dining area ~~but no more than one and one-half (1-1/2) bedrooms and one (1) bedroom and one (1) other living area;~~
- (b) A 2-bedroom hotel or motel room shall be limited to a maximum of one thousand ninety (1,090) square feet of interior heated and cooled space; and a 3-bedroom hotel or motel room shall be limited to a maximum of one thousand five hundred sixty (1,560) square feet of interior heated and cooled space;
- ~~(c)(b)~~ All entrances to a hotel or motel room shall share the same ~~key or~~ means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units; and
- ~~(d)(e)~~ The owner of a hotel or motel room is prohibited from using the room as a permanent residence or

~~allowing it to be used as a permanent residence. No person is authorized to claim a homestead exemption where such person declares a hotel or motel room as the person's primary residence. Suites containing more than one (1) bedroom and one and one-half (1-1/2) baths may be constructed; however, each bedroom/bath combination shall be considered a hotel/motel unit.~~

Section 3. Severability. The provisions of this Ordinance are declared to be severable. If any section, subsection, sentence, clause, or phrase of this Ordinance shall be for any reason held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, or phrases of this Ordinance, but they shall remain in effect, being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. 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 be made part of the City of Marathon Code of Ordinances; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" may be changed to "section" or such other appropriate word.

Section 5. Conflict. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

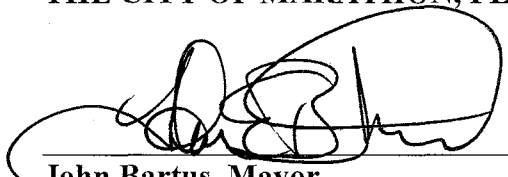
Section 6. Approval by the State Department of Community Affairs. The

provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 7. Effective Date. This Ordinance shall become 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 11 day of March, 2003.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

AYES: Pinkus, Repetto, Worthington, Mearns, Bartus

NOES:

ABSENT:

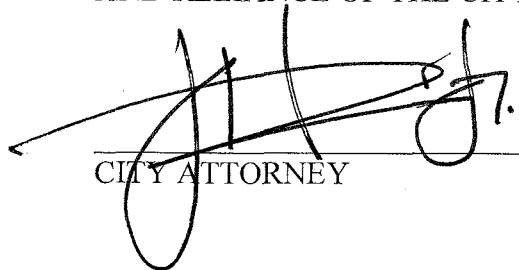
ABSTAIN:

ATTEST:



Cindy L. Ecklund
City Clerk

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



CITY ATTORNEY

600-0002