

Sponsored by: The Singh Company
Introduction Date: April 22, 2003
Public Hearing Dates: April 22, 2003
May 13, 2003
Enactment date: May 13, 2003

**CITY OF MARATHON, FLORIDA
ORDINANCE 2003-08**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-243 OF THE LAND DEVELOPMENT REGULATIONS, "DESTINATION RESORT DISTRICT" REGULATIONS; ADDING A DEFINITION OF DESTINATION RESORT HOTEL ROOMS; ESTABLISHING MAXIMUM ALLOWED SQUARE FOOTAGE OF ROOMS; PROVIDING THAT EMPLOYEE HOUSING MAY BE ON SITE OR OFF SITE; PROVIDING A DEFINITION OF EMPLOYEE HOUSING "DORMITORY"; ESTABLISHING THE ROGO ALLOCATION REQUIRED FOR AN EMPLOYEE HOUSING DORMITORY; CORRECTING A SCRIVENER'S ERROR IN THE REQUIREMENT RELATED TO DESTINATION RESORT HOTEL OR MOTEL SHUTTLE TRANSPORT SERVICES; PROVIDING FOR TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS

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 desires to encourage development and redevelopment of destination resort 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 development and redevelopment efforts for the economic growth, prosperity and welfare of the residents of the City of Marathon; and

WHEREAS, the City also desires to insure the provision of adequate employee housing, as required under the Destination Resort District regulations, and to increase the flexibility, both to the City and to landowners and developers of destination resort hotels and motels, in determining how to provide such employee housing; and

WHEREAS, the City Council finds that it is necessary and desirable to clarify and strengthen the criteria for development or redevelopment of destination resort hotels and motels

in the Destination Resort District by establishing a definition of destination resort hotel or motel rooms, including establishment of maximum square footages for destination resort hotel and motel rooms; and

WHEREAS, one of the existing requirements for destination resort hotels and motels is that the owners and developers provide on-site employee housing in any of the following housing types: dormitory, studio, one (1) bedroom, or two (2) bedrooms; and

WHEREAS, the City Council finds that the requirement for destination resort hotel and motel owners and developers to provide on-site employee housing is unnecessarily restrictive and deprives both the City and destination resort hotel owners and developers of other equally acceptable and innovative opportunities for providing employee housing, including, but not necessarily limited to, off-site employee housing, pooling resources with the City or with other hotel owners or developers, or working with or providing funding to the Community Land Trust for the provision of such employee housing; and

WHEREAS, the City Council finds that the requirement that destination resort hotel and motel owners and developers provide on-site employee housing can be a strong disincentive for development or redevelopment because it requires such owners and developers to reduce the limited space available to them for destination resort hotel and motel accommodations in order to provide on-site employee housing; and

WHEREAS, the City Council finds that providing flexibility in the provision of employee housing and removing the disincentive for development or redevelopment of destination resort hotels and motels in the City is in the best interests of the residents of the City, protects the public health, safety and welfare of the residents of the City, and furthers 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; and

WHEREAS, while the Destination Resort District regulations allow employee housing to be provided in dormitories, the City's regulations do not contain a definition of such housing or a clear understanding of the ROGO allocations required for such housing; and

WHEREAS, it is necessary, in order to avoid uncertainty regarding development of employee housing dormitories, to establish a definition of such housing and specify the ROGO allocation required for such housing under the Destination Resort District regulations; and

WHEREAS, the City Council further finds that there is a scrivener's error in the existing codified text of the Destination Resort District regulations related to destination resort hotel and motel shuttle transport services, in that the codified text contains provisions related to employee housing that are not intended to be included as requirements for the provision of destination

resort hotel and motel shuttle transport services; and

WHEREAS, the City Council finds that it is in the best interests of the City to correct such scrivener's errors whenever they are brought to the attention of the Council.

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

Section 1. That Section 9.5-243 of the City's Land Development Regulations is amended to read as follows:¹

Sec. 9.5-243. Destination Resort District.

* * *

(b) The following uses are permitted as minor conditional uses in the Destination Resort District, subject to the standards and procedures set forth in article III, division 3:

(1) One (1) or more destination resort hotels or motels provided that:

a. For the purpose of this section, a "destination resort hotel or motel room" means a unit in a public lodging establishment as defined by Florida Statutes section 509.013(4)(a) intended for transient lodging only for periods not exceeding thirty (30) days. Transient occupancy shall conform to the definition contained in Florida Statutes Section 509.013(8) as to transient occupancy.

b. A destination resort 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 kitchen/dining area and one (1) other living area;

c. A 2-bedroom destination resort hotel or motel room shall be limited to a maximum of nine hundred fifty (950) square feet of interior heated and cooled space; and a 3-bedroom destination resort hotel or motel room shall be limited to a maximum of one thousand four

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

hundred twenty (1,420) square feet of interior heated and cooled space;

d. No more than sixty percent (60%) of the rooms at a destination resort hotel or motel may be 3-bedroom rooms;

e. All entrances to a destination resort hotel or motel room shall share the same means of controlling access so that the room as defined herein is not divisible into separately rentable units;

f. The owner of a destination resort hotel or motel is prohibited from using a room or rooms as a permanent residence or allowing a room or rooms to be used as a permanent residence. No person is authorized to claim a homestead exemption where such person declares a destination resort hotel or motel room or rooms as the person's primary residence;

[existing subsections a-g renumbered as subsections g-m]

~~h n. Each destination resort hotel or motel establishes and maintains shuttle transport services to airports and tourist attractions, individually or in conjunction with other hotel or motel operators, to accommodate ten (10) percent of the approved floor area in guest rooms; and such housing shall be of any of the following types: dormitory, studio, one (1) bedroom, two (2) bedrooms and shall be in addition to the approved hotel density and shall be used exclusively by employees qualifying under the employee housing provisions elsewhere in this chapter;~~

~~i o. On-site or off-site employee housing living space is provided in the City of Marathon in an amount equal to ten (10) percent of the approved floor area in guest rooms; and such housing shall be of any of the following types: **dormitory**, studio, one (1) bedroom, **or** two (2) bedrooms. ***In addition, a dormitory as described herein is allowed. Employee housing living space*** and shall be in addition to the approved hotel density and shall be used exclusively by employees qualifying under the employee housing provisions elsewhere in this chapter;~~

p. A "dormitory" for providing employee housing means a structure **or part of a structure** with multiple bedrooms, shared bathrooms in a number sufficient to serve the number of residents, and common

living area(s) (e.g., common living rooms, television rooms, or other similar rooms for social activities). Every 2,000 square feet of interior heated and cooled dormitory space shall be limited to no more than five (5) bedrooms, no more than two (2) common living areas, one (1) or more bathrooms, one (1) full kitchen and limit to two (2) persons per bedroom. One (1) ROGO allocation is required for every 2,000 square feet of interior heated and cooled dormitory space as described in this paragraph. A dormitory must be on site and shall only be used by employees of the destination resort hotel or motel;

[existing subsection j. renumbered as subsection q.; remaining text of Section 9.5-243 unchanged]

Section 2. 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.

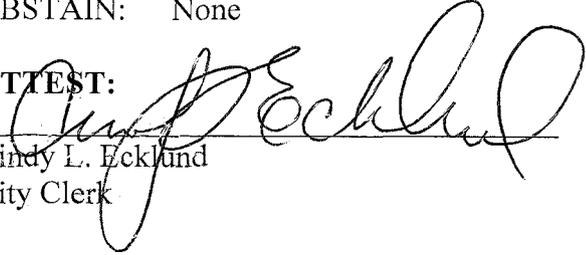
ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 13th day of May, 2003.

THE CITY OF MARATHON, FLORIDA


Randy Mearns, Mayor

AYES: Bartus, Repetto, Worthington. Repetto, Mearns
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:


Cindy L. Ecklund
City Clerk

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

Received

JUN 10 2003

City Clerk

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2003-08

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), approving 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 May 20, 2003, the Department received for review City of Marathon Ordinance No. 2003-08 which was adopted by the City of Marathon Board of City Commissioners on May 13, 2003 ("Ord. 2003-08"). Ord. 2003-08 amends Section 9.5-243 of Chapter 9.5: Tourist Housing and Vacation Rental Uses, of the City of Marathon Code, by adding a definition of destination resort hotel rooms, establishing maximum square footage of rooms, providing that employee housing may be on site or off site, providing a definition of employee housing "dormitory," establishing the ROGO allocation required for an employee housing dormitory, and correcting a scrivener's error in the requirement related to destination resort hotel or motel shuttle transport services.

3. Ord. 2003-08 is consistent with the City's 2010 Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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).

5. 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.*

6. “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. 2003-08 are land development regulations.

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 (the “Principles”) as set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

8. Ord. 2003-08 promotes and furthers the following Principles:

(b) To protect shoreline and marine resources including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

(c) To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.

(d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

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

(f) To enhance natural scenic resources, promote aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.

(j) To make available adequate affordable housing for all sectors of

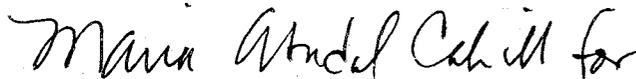
the population of the Florida Keys.

9. Ord. 2003-008 is inconsistent with Principle K; however, if the application of this concept is limited to the existing Destination Resort Districts in Marathon, then the increased impacts to hurricane evacuation will be negligible. Ord. 2003-08 is not inconsistent with the remaining Principles. Ord. 2003-08 is consistent with the Principles for Guiding Development construed as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2003-08 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, 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.



CHARLES GAUTHIER, ACTING 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.

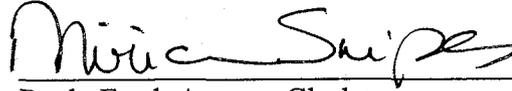
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 9th day of July, 2003.

for 
Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Randy Mearns, Mayor
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

Cindy Ecklund, City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

Scott Janke
City Manager
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

John R. Herin, Jr.
Weiss, Serota, Helfman, Pastoriza and Guedes, P.A.
City Attorneys
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
Craig Varn, Assistant General Counsel, DCA Tallahassee