

Sponsored by: Cinque
Planning Commission Public Hearing Date: February 17, 2009
City Council Public Hearing Dates: March 10, 2009 and March 31, 2009
Enactment date: March 31, 2009

CITY OF MARATHON, FLORIDA
ORDINANCE 2009-13

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 104.25 OF THE LAND DEVELOPMENT REGULATIONS, HOTELS OR MOTELS; ADJUSTING THE AFFORDABLE HOUSING REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (THE “DEPARTMENT”); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW.

WHEREAS, Chapter 104, Article 1 of the City of Marathon Land Development Regulations (the “LDRs”) provides Specific Use Regulations for certain land uses within the City; and

WHEREAS, Chapter 104.25, Hotels and Motels, of the LDRs provides Specific Use Regulations for the development or redevelopment of hotel and motel facilities **located** within the City; and

WHEREAS, Section 104.25 A. 4. of the LDRs states that “All hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent of the approved floor area in guest units...”; and

WHEREAS, Section 104.25 A. 4. of the LDRs contemplates that the City Council may from time to time adjust the percentage of required employee housing living space based upon relevant economic conditions; and

WHEREAS, on July 22, 2008 the City Council reviewed the existing requirements for affordable housing in the redevelopment of hotels and motels within the City; and

WHEREAS, based on their review, the City Council has made it clear determined that in general a requirement that hotel or motel projects provide an employee housing living space component is critical and must remain in place in accordance with Section 104.25 A. 4. of the LDRs; and

WHEREAS, further based on their review, it is the direction of the City Council that in cases when proposed renovation or re-development of existing hotels or motels provides for a simple replacement of existing facilities, then no affordable housing component is required; and

WHEREAS, it is the City Council’s direction that this determination will be considered an adjustment in the policy regarding employee housing living space as contemplated in Section 104.25 A. 4. of the LDRs; and

WHEREAS, it is also the direction of the City Council that there be a clear concise set of criteria that staff will use to determine the applicability of this adjustment to Section 104.25 A. 4. of the LDRs;

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

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

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

Section 2. Section 105.25, “Hotels or Motels,” is hereby amended as follows:

A. *General Provisions:*

1. Until such time as Council approves the use of residential dwelling unit allocations for hotel or motel units, no new hotel or motel units shall be allowed in the City of Marathon. Approval shall be limited to the redevelopment of existing hotels and motels, subject to the criteria established in Subsection B., below.

2. Each hotel or motel shall comply with all mandatory hurricane evacuation requirements set forth by the City for hotel, motel, and other transient uses.

3. Each hotel or motel shall establish and maintain shuttle transport services to airports and tourist attraction individually or in conjunction with other hotel or motel operators.

4. Except as provided in sub-section (a), ~~A~~**all** hotel or motels shall provide on- or off-site employee housing living space in an amount equal to a minimum of 20 percent (as may be adjusted from time to time by Council policy to reflect economic conditions) of the approved floor area in guest units; and such housing shall be of any of the following types **as outlined in (b) below.:**

(a) _____

An exception to the requirement for on- or off-site employee housing living space for hotel/motel redevelopment may be recommended by the Planning Director, the Planning Commission, and approved by the City Council as part of a Conditional Use and/or Development Agreement when the following criteria are met:

1. **No increase in the number of hotel / motel transient units (unit as described in Section 104.25 A. 5. of the LDRs) if existing hotel / motel unit density is non-conforming as defined in Chapter 108 Article 3 of the LDRs and as specifically outlined in Section 108.12 of the LDRs; and**

2. No use of transferable building rights (TBRs) (as described specifically in-Section 107.14 B. of the LDRs;
 3. No significant change (+ or – 10 %) in the current project floor area (Floor area as defined in Chapter 110, Article 3. of the LDRs);
 4. No significant difference between the current and proposed uses of floor area;
 5. No effort to move units off-site through TBRs as part of the proposed project, though they may be documented and preserved for future use; and
 6. No significant change or increase in the size or type of project site amenities.
 - ~~(a) Dormitory;~~
 - ~~(b) Studio; or~~
 - ~~(c) One (1) or two (2) bedroom units.~~
- (b) Housing types:
1. Dormitory;
 2. Studio; or
 3. One (1) or two (2) bedroom units.

Section 3. The Provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

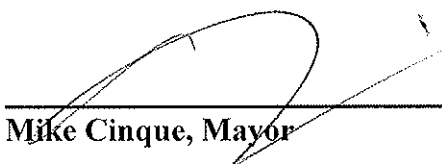
Section 4. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. 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 6. This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, this 31st day of March, 2009.

THE CITY OF MARATHON, FLORIDA



 Mike Cinque, Mayor

AYES: Snead, Ramsay, Cinque
NOES: Vasil, Worthington
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

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



City Attorney

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2009-13

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2008), 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 ("City") is a local government within the Florida Keys Area.
2. On May 4, 2009, the Department received for review City of Marathon Ordinance No. 2009-13 that was adopted by the City of Marathon Board of City Commissioners on March 31, 2009 ("Ord. 2009-13"). The purpose of Ord. 2009-13 is to amend Section 104.25 of the Land Development Regulations to provide the City the option to allow an exception to the affordable housing requirement for hotel and motel renovation or redevelopment that is a replacement of existing facilities to include the same number of units and within ten-percent of the existing floor area.
3. Ord. 2009-13 is consistent with the City's 2010 Comprehensive Plan: Objective 1-3.3 Encourage Redevelopment; Policy 1-3.3.1 General Redevelopment Criteria; Policy 1-3.3.5 Encourage Redevelopment of Tourist/Resort/Campground Facilities; and Chapter Two-Housing Element.

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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2008).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2008) and Rule 31-31.002 (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.* (2008). The regulations adopted by Ord. 2009-13 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. 2009-13 is consistent with 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.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (j) To make available adequate affordable housing for all sectors of the population of the Florida Keys.

9. Ord. 2009-13 is neutral with respect to the remaining Principles. Ord. 2009-13 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2009-13 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, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL

ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 31-106.201(2), FLORIDA ADMINISTRATIVE CODE.

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

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 1st day of ~~June~~ July, 2009.

Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Mike Cinque, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Diane Clavier, City Clerk
City of Marathon
10045-55 Overseas Highway
Marathon, Florida 33050

Mike Puto
City Manager
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Jimmy Morales, Esq.
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Suite 2200 Museum Tower
150 West Flagler Street
Miami, Florida 33130

By Hand Delivery or Interagency Mail:

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