

Sponsored by: Janke  
Planning Commission Date: April 22, 2003  
Public Hearing Date: April 22, 2003  
May 13, 2003  
Enactment date: May 13, 2003

CITY OF MARATHON, FLORIDA  
ORDINANCE 2003-09

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING SECTION 9.5-534 OF CHAPTER 9.5 OF THE CITY OF MARATHON CODE CONCERNING THE REGULATION OF VACATION RENTAL USES TO REQUIRE THAT ALL ADVERTISEMENTS OF VACATION RENTALS IN ANY MEDIUM CONTAIN THE VACATION RENTAL PERMIT NUMBER ISSUED BY THE CITY, 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 Council of the City of Marathon (the "City") 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, the City adopted regulations establishing minimum requirements governing the use and occupancy of vacation rentals within the City's jurisdiction for the protection, and enhancement of the vacation experience, of tourists visiting the; and

WHEREAS, the City desires to increase the number of vacation rental uses that operate in accordance with the provisions contained herein; and

WHEREAS, the provisions of this Ordinance are consistent with the City Comprehensive Plan and the Principles for Guiding Development of the Florida Keys Area of Critical State Concern.

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

**Section 1.** That Section 9.5-534(c) of Chapter 9.5 of the City Code is hereby amended to read as follows:

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<sup>1/</sup> Provisions added to existing text are shown by underline; provisions deleted from existing text are shown by ~~striketrough~~.

(c) *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:

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(11) No owner or property manager of a vacation rental use shall advertise any vacation rental unit in a newspaper, handbill, the internet, radio broadcast, telephone directory, television commercial or other advertising medium, unless the advertisement contains the vacation rental license number issued by the City under the provisions of this section.

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**Section 2.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Clerk is authorized 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 3.** 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 13th day of May, 2003.**

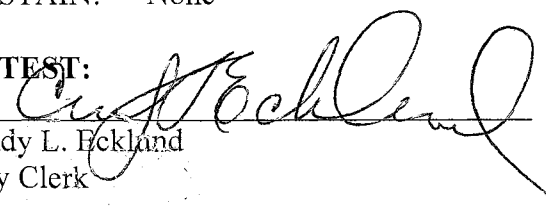
**THE CITY OF MARATHON, FLORIDA**



**Randy Mearns, Mayor**

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

**ATTEST:**

  
Cindy L. Eckland  
City Clerk

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

Received

MAY 10 2003

City Clerk

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2003-09

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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. 2003-09 which was adopted by the City of Marathon Board of City Commissioners on December 18, 2002 ("Ord. 2003-09"). Ord. 2003-09 amends Section 9.5-534(c) of Chapter 9.5: Tourist Housing and Vacation Rental Uses, of the City of Marathon Code, by adding another subsection that requires all advertisements for vacation rentals in any medium contain the vacation rental permit number issued by the City.
3. Ord. 2003-09 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. 2003-09 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. 2003-09 promotes and furthers the following Principles:

(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.

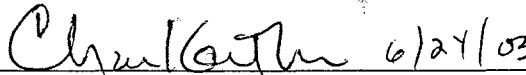
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

9. Ord. 2003-09 is not inconsistent with the remaining Principles. Ord. 2003-09 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2003-09 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.

 6/27/03  
\_\_\_\_\_  
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.

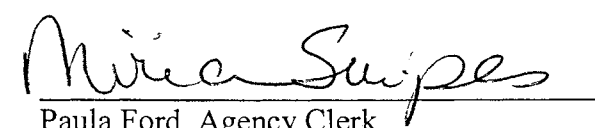
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 24<sup>th</sup> day of June, 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 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  
Timothy E. Dennis, Assistant General Counsel, DCA Tallahassee