

Sponsored by: SH3
City Council Introduction Date: April 13, 2004
Planning Commission Introduction Date: April 19, 2004
Planning Commission Public Hearing Dates: April 19, 2004
May 17, 2004
City Council Public Hearing Dates: June 8, 2004
June 22, 2004
Enactment Date: June 22, 2004

**CITY OF MARATHON, FLORIDA
ORDINANCE 2004-006**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA,
AMENDING SECTIONS 9.5-4 AND 9.5-243 OF THE LAND
DEVELOPMENT REGULATIONS, ESTABLISHING A DEFINITION
FOR "DESTINATION RESORT LAND USE DISTRICT TRANSFERABLE
RATE OF GROWTH EXEMPTIONS" AND "RECOGNIZED OR
EXISTING UNIT;" REVISING THE DESTINATION RESORT
REGULATIONS TO ESTABLISH A MINIMUM LOT SIZE
REQUIREMENT FOR DESTINATION RESORT USES, MINIMUM
AMENITY REQUIREMENTS FOR DESTINATION RESORT USES, ON-
SITE OR OFF-SITE EMPLOYEE HOUSING REQUIREMENTS, AND
AUTHORIZING DESTINATION RESORT LAND USE DISTRICT
TRANSFERABLE RATE OF GROWTH EXEMPTIONS**

WHEREAS, pursuant to Section 9(6)(A) of the City of Marathon City Charter (the "Charter"), the Monroe County Land Development Regulations (the "LDR's") in effect upon the date of the City's incorporation are the City's LDR's until such time as they are amended or replaced; and

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 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; 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, 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 RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. Sections 9.5-214, 9.5-243, and 9.5-490.1 of the City Code is hereby amended to read as follows¹:

Sec. 9.5-214. Purpose of the Destination Resort District (DR).

The purpose of the DR district is to establish areas suitable for the development of planned tourist centers providing on-site residential, recreational, commercial and entertainment facilities of a magnitude sufficient to attract visitors and tourists for tenancies of three (3) or more days. Destination resorts are contemplated to contain (1) single-family homes as of right, or (2) one (1) or more resort hotels as the principal use, to utilize the water-related natural resources of the Keys, and to be located on sites ~~of at least ten (10) gross acres~~ where the location, parcel size, and character of the site and the development itself and amenities are such that off-site impacts will be reduced. ~~For the purposes of establishing the minimum site size, submerged contiguous lands under the same ownership as the upland parcel may be considered as making up the parcel proposed for development as defined in Section 9.5-4 (P-1). Not more than four (4) acres of submerged lands may be credited toward the minimum ten (10) acre parcel size. However, this limitation shall not prevent a landowner from proposing a total parcel size greater than (10) acres, even if the additional area is submerged lands.~~

Sec. 9.5-243. Destination Resort District.

- (a) The following uses are permitted as of right in the Destination Resort District:

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

(1) Single-family detached dwellings provided that:

_____ a. ~~T~~ the lot has sufficient land area and dimensions to meet the requirements of chapter 10D-6, Florida Administrative Code; and

(2) Vacation rental use if a special vacation rental permit is obtained under the regulations established in Code section 9.5-534.

(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 resort hotels 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 5.013(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 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;

g. The hotel has restaurant facilities on or adjacent to the premises that will accommodate no less than one-third of all hotel guests at maximum occupancy at a single serving; and

- h. There are at least two (2) satellite eating and drinking facilities, each accommodating at least twenty-five (25) persons; and
- i. A separate meeting/conference and entertainment area which can also function as a banquet facility; and
- j. A lobby which provides twenty-four-hour telephone and reservation service; and
- k. Active and passive recreation land-based activities are available, with a minimum of tennis courts or racquetball courts, or a spa/exercise room, or meeting room provided at the standards given below and at least two (2) additional active and one (1) additional passive recreational facility, including, but not limited to the following:

Active Recreational Facilities

- Tennis court, @ 1/25 units
- Racquetball court, @ 1/25 units
- Spa/exercise room, of no less than 500 square feet, @ 1/150 units
- Observation area, @ 1/hotel
- Dance floor, @ 1/hotel
- Playfield/playground, @ 1/150 units
- Miniature golf course, @ 1/hotel
- Golf course, @ 1/hotel
- Shuffleboard court, or other court games, @ 2/50 units
- Fitness course, @ 1/hotel

Passive Recreational Facilities

- Nature trail walk, @ 1/hotel
- Game room, @ 1/150 units
- Garden area, @ 1/hotel

Other uses may be substituted for these with the written approval of the director of planning stating the standards utilized and the manner in which guests will be served by such facilities. The director of planning shall base his decision on generally accepted industry standards for comparable destination resorts;

- l. ~~Active and passive water-oriented recreational facilities are available, a minimum of a swimming pool, or swimming areas, at the rate of seven (7) square feet of water surface (excluding hot tubs and Jacuzzi) per hotel room (this requirement may be converted to linear feet of shoreline swimming area at a ratio of one (1) linear foot of beach per seven (7) square feet of required water surface);~~
- m. Access to U.S. 1 is by way of:

- (i) An existing curb cut;
 - (ii) A signalized intersection; or
 - (iii) A curb cut that is separated from any other curb cut on the same side of U.S. 1 by at least four hundred (400) feet;
- n. Each hotel establishes and maintains shuttle transport services to airports and tourist attractions ~~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.~~
- o. On-site or off-site employee housing living space is provided in the City of Marathon in an amount equal to ~~ten (10)~~ fifteen (15) percent of the ~~approved floor area in guest rooms~~ on-site; and such housing shall be of any of the following types: studio, one (1) bedroom, or two (2) bedrooms. In addition, a dormitory as described herein is allowed. Employee housing living space 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. Such housing may be provided on- or off-site. In the case of a dormitory, a dormitory can only be situated on-site.
- p. Commercial retail is provided at a minimum of two hundred (200) square feet to include convenience retail, food sales and gifts in one (1) or more sites, excluding restaurants as required by section (1)b, ~~and in addition one and three tenths (1.3) square feet commercial retail per each guest room greater than one hundred fifty (150) rooms.~~ Additional commercial retail may be provided subject to the floor area ratio limitations of this chapter. Commercial retail may consist of dive shops, boat rentals, gift shops, barber/beauty services, travel agencies, provided that there is no extension signage advertising these amenities to the general public. Water-related services and activities shall be located immediately proximate to the water unless otherwise prohibited.

(c) The following uses are permitted as major conditional uses in the Destination Resort District when they are accessory to a destination resort, subject to the standards and procedures set forth in article III, division 3:

- (1) Marinas, provided that:
 - a. There are a minimum of seven (7) boat slips, but the total number of boats stored on-site or elsewhere for guests or employees shall be no greater than one (1) per hotel room;

- b. The parcel for development has access to water at least four (4) feet below mean sea level at mean low tide;
- c. The sale of goods and services is limited to fuel, food, boating, and sport fishing products;
- d. All boat storage shall be confined to wet slips or enclosed dry storage;
- e. All storage areas are screened from adjacent uses by a solid fence, wall, or hedge of at least six (6) feet in height; and elevated racks, frames, or structures shall be enclosed on at least three (3) sides from the ground to the highest point of the roof;
- f. The parcel proposed for development is separated from any established residential use by a class D buffer-yard;
- g. Live-aboard vessels are prohibited;

(2) Employee dwelling units provided that:

- a. They are built for and occupied by employees of the destination resort facilities; and
- b. ~~The total number of units is equivalent to fifteen (15) percent of the total number of guest rooms on site area is no less than ten (10) percent of the approved floor area in guest rooms of the resort/hotel(s) within the development;~~ and
- c. The structures are designed and located so that they are visually compatible with established residential development within two hundred fifty (250) feet of the parcel proposed for development; and
- d. The parcel proposed for development is separated from any established residential use by a class C buffer-yard.

(3) Attached residential dwelling units, provided that the lot has sufficient land area and dimensions to meet the requirements of chapter 10D-6, Florida Administrative Code, for the installation of on-site wastewater treatment systems.

- (d) Rate of Growth Exemptions transferable to Destination Resorts. Any parcel within the Destination Resort Land Use District may be the receiver site for Rate of Growth Exemptions allocable to Recognized or Existing Units, wherever situated, which are not recreational vehicle sites or mobile homes, at the time of transfer or at any time in the past, and which are transferred from a parcel or parcels under common ownership with the Destination Resort parcel. The transfer of such units may only be accomplished by the use of a development agreement as allowed by this chapter and shall be subject to all the requirements of this section. The transfer of hotel/motel units from an eligible sender site shall meet the following criteria:

1. Units may only be transferred from a parcel within a land use district classification that is the same classification as the receiver site, or from a land use district classification that has a lesser density allocation factor as to rooms per acre.
2. The sender site must have the same or greater environmental sensitivity as measured by the criteria established in Division 8 of this chapter.
3. Areas of the sender site containing impervious surfaces and/or buildings that are demolished in order to allow the transfer of hotel units shall be planted with appropriate ground cover vegetation approved by the City Biologist. The required ground cover vegetation shall be put in place within 30 days of the demolition and shall be maintained as per City Code for a period of three years or until such time new development is approved on the demolished area.

Sec. 9.5-490.1. Definitions.

The words or phrases used herein shall have the meaning prescribed in the City of Marathon Land Development Regulations, except as otherwise indicated herein:

Destination Resort Land Use District Transferable Rate of Growth Exemption means the ROGO exemption allocable to a Recognized or Existing Unit, which Exemption may be transferred to a receiver site located in the Destination Resort land use district from any sender site which is under the same ownership as the destination resort receiver site.

Section 2. The provisions of this Ordinance are declared to be severable and 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 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. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida, that the sections of the Ordinance may be renumbered or re-lettered to accomplish to such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

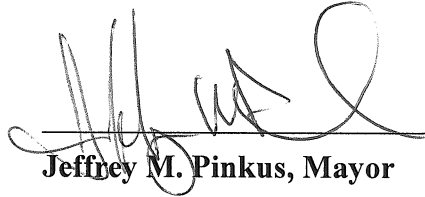
Section 5. The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

Section 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 22nd day of June, 2004.**

THE CITY OF MARATHON, FLORIDA



Jeffrey M. Pinkus, Mayor


AYES: Bartus, Bull, Mearns, Miller, Pinkus
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

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



City Attorney

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

Received
AUG 30 2004
City Clerk

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2004-06

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.* (2003), 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 June 30, 2004, the Department received for review City of Marathon Ordinance No. 2004-06 that was adopted by the City of Marathon Board of City Commissioners on June 22, 2004 ("Ord. 2004-06"). Ord. 2004-06 amends the City of Marathon Code, revising the definition and criteria for hotels located within Destination Resort Zoning Districts.
3. Ord. 2004-06 is inconsistent 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), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2003).
5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2003) 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.* (2003). The regulations adopted by Ord. 2004-06 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. 2004-06 is inconsistent with 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.

(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.

(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. 2004-06 is not inconsistent with the remaining Principles. Ord. 2004-06, however, is inconsistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2004-06 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.



VALERIE J. HUBBARD, 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.

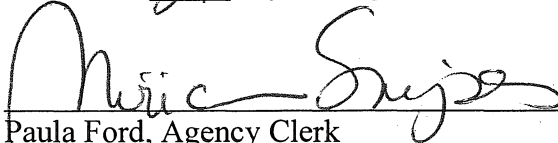
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 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 26th day of August, 2004.


Paula Ford, Agency Clerk

By U.S. Mail:

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

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

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

John Herin, 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
Timothy E. Dennis, Assistant General Counsel