

Sponsored by: Puto
Planning Commission Public Hearing Date: December 12, 2005
City Council Public Hearing Dates: December 13, 2005
December 27, 2005
January 3, 2006
Enactment date: January 3, 2006

**CITY OF MARATHON, FLORIDA
ORDINANCE 2005-24**

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF MARATHON ADOPTING AMENDMENTS TO CHAPTER 9.5, OF THE CITY OF MARATHON CODE [LAND DEVELOPMENT REGULATIONS], IN RESPONSE TO HURRICANE WILMA BY CREATING A NEW SECTION 9.5-227, "EMERGENCY TEMPORARY HOUSING;" AUTHORIZING THE TEMPORARY PLACEMENT OF RECREATION VEHICLES IN ALL LAND USE (ZONING) DISTRICTS; PROVIDING SPECIFIC STANDARDS AND PROCEDURES FOR APPROVAL OF RECREATIONAL VEHICLES AS TEMPORARY EMERGENCY HOUSING; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; REQUESTING THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS BY EMERGENCY FINAL ORDER; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Marathon has suffered significant property damage, particularly due to the storm surge from Hurricane Wilma; and

WHEREAS, pursuant to Section 252.36, *Florida Statutes*, the Governor executed Executive Order 05-219 declaring a state of emergency in Florida; and

WHEREAS, pursuant to Section 252.38, *Florida Statutes*, a state of local emergency was declared; and

WHEREAS, the eventual termination of the state of local emergency and the continued need for emergency temporary housing during disaster recovery periods requires the City Council to adopt development regulations authorizing the temporary placement of recreational vehicles in all land use (zoning) districts in the City.

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

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

Section 2. Section 9.5-227, of the Marathon City Code, is hereby created to read as follows:

Sec. 9.5-227. Temporary Emergency Housing

(a) *Purpose:* It is the purpose of this section to provide regulations that allow for the relaxation of the use prohibitions in article VII, division 2 of this chapter to allow temporary emergency housing during the recovery period from a hurricane, tropical cyclone, tornado, fire or other natural disaster that results in a declaration of emergency by a federal, state, or local government.

(b) *Definitions:* As used in this Ordinance, the following terms shall have the definitions provided, unless the context clearly provides otherwise:

(1) *Recreation vehicles or RV* shall be as defined in Section 320.01, *Florida Statutes*.

(2) *Temporary emergency housing* shall mean “recreational vehicles”, motor homes, and mobile homes used for temporary occupancy in response to a hurricane, tropical cyclone, tornado, fire or other natural disaster.

(c) *Placement of temporary emergency housing on residential lots:* Notwithstanding the provisions of this chapter, recreational vehicles may be placed on residential lots for temporary occupancy by owners or tenants of lawfully-established dwelling units displaced by damage caused by a hurricane, tropical cyclone, tornado, fire or other natural disaster units subject to the following conditions:

(1) The dwelling units have incurred sufficient damage to make them uninhabitable as determined by an inspection by the city building official; and

(2) A building permit shall be applied for within six (6) months of the declaration of a federal, state, or local emergency. If a building permit is not applied for within six (6) months of a declaration of a federal, state, or local emergency the City may revoke the temporary housing building permit; and

(3) Placement of the temporary housing shall require a no-fee building permit for placement, linked to the building permit issued for repair or replacement, that shall require prior to its issuance, approval by the City of its siting location on the lot and a State Department of Health or State Department of Environmental Protection permit authorizing the connection of the temporary housing to an on-site wastewater treatment

and disposal system or to an existing community wastewater treatment system; and

- (4) Placement of a mobile home on a site must meet all State requirements for tie-downs and shall be installed by a licensed mobile home contractor. All other temporary housing must meet all State requirements for tie-downs; and
- (5) The temporary housing may remain on the property for a period not to exceed 18 months from the date of the federal, state, or local declaration of emergency or until the final inspection or certificate of occupancy is issued on the repairs made to the dwelling unit, whichever comes first.
- (6) Occupants of the temporary housing must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the temporary housing building permit.

(d) *Placement of temporary emergency housing on non-residential properties:* Notwithstanding the provisions of this chapter, one or more recreational vehicles may be temporarily placed by permit on properties in non-residential land use districts and on publicly-own lands, excluding lands designated for conservation and resource protection, to house owners or tenants of lawfully-established dwelling units displaced by damage caused by a hurricane, tropical cyclone, tornado, fire or other natural disaster that has been declared an emergency by a federal, state, or local government.

- (1) A building permit shall be applied for within six (6) months of the declaration of a federal, state, or local emergency. If a building permit is not applied for within six (6) months of a declaration of a federal, state, or local emergency the City may revoke the temporary housing building permit; and
- (2) Placement of the temporary housing shall require a no-fee building permit for placement, linked to the building permit issued for repair or replacement, that shall require prior to its issuance, approval by the City of its siting location on the lot and a State Department of Health or State Department of Environmental Protection permit authorizing the connection of the temporary housing to an on-site wastewater treatment and disposal system or to an existing community wastewater treatment system; and
- (3) Placement of a mobile home on a site must meet all State requirements for tie-downs and shall be installed by a licensed mobile home contractor. All other types of temporary housing shall be tied downed.
- (4) The temporary housing may remain on the property for a period not to exceed 18 months from the date of the federal, state, or local declaration

of emergency or until the final inspection or certificate of occupancy is issued on the repairs made to the dwelling unit, whichever comes first.

- (5) Occupants of the temporary housing must comply with all mandatory hurricane evacuation requirements. Failure to do so may result in the revocation of the temporary housing building permit.

(e) *Administrative Relief.* If the applicant is unable to apply for a building permit for the repair or replacement of the dwelling unit within six (6) months of the declaration of emergency, the applicant may apply for administrative relief, at no cost, to request additional time, from the City Council, in which to apply for the building permit.

Section 3. 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 4. 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 5. 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.

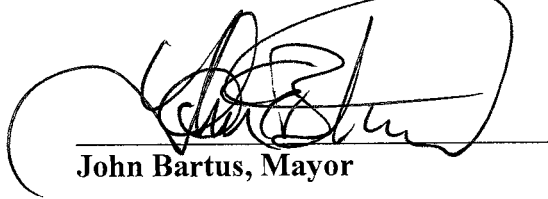
Section 6. The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed to forward a copy of this Ordinance to the State Department of Community Affairs for approval pursuant to Sections 380.05(6) and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

Section 7. Due to the sudden and significant damage caused by Hurricane Wilma, and the harm to the health, safety and welfare of the residents of the City resulting from such damage, the City requests that the State Department of Community Affairs approve this Ordinance immediately by Emergency Final Order as authorized by State law.

Section 8. 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 3rd day of January 2006.

THE CITY OF MARATHON, FLORIDA



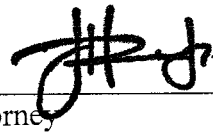
John Bartus, Mayor

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

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

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2005-24

Received
JAN 20 2006
City Clerk

IMMEDIATE FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues this Immediate Final Order, pursuant to §120.569(2)(n), §380.05(6), and §380.0552(9), *Fla. Stat.* (2005), 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 City of Marathon is a local government within the Florida Keys Area of Critical State Concern.
2. On January 11, 2006, the Department received for review City of Marathon Ordinance No. 2005-24, adopted by the City of Marathon Board of City Commissioners on January 3, 2006 ("Ord. 2005-24"). Ord. 2005-24 adopts amendments to Chapter 9.5 of the City of Marathon Code by creating a new Section 9.5-227, Emergency Temporary Housing; authorizing the temporary placement of Recreation Vehicles in all land use districts, and providing specific standards and procedures for approval of Recreational Vehicles as Emergency Temporary Housing for storm-displaced residents. Ord. 2005-24 is a permanent measure; Section 2 provides that the temporary housing may remain on the property for a period not to exceed 18 months from the date of the federal, state, or local declaration of emergency or until a final inspection or certificate of occupancy is issued on the repairs made to the dwelling unit, whichever comes first.
3. As a result of the devastating effects of Hurricane Wilma, certain residents of Monroe County have been forced to evacuate their homes and require temporary housing. Based upon the information contained in Ord. 2005-24, the Department finds that there is an immediate

danger to the public health, safety and welfare that requires the issuance of an Immediate Final Order.

4. Ord. 2005-24 is 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 §380.0552(9), *Fla. Stat.* (2005).

6. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. §380.0552, *Fla. Stat.* (2005) 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.* (2005). The regulations adopted by Ord. 2005-24 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") 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.

9. Ord. 2005-24 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.

- (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 post disaster reconstruction plan.

10. Ord. 2005-24 is not inconsistent with the remaining Principles. Ord. 2005-24 is consistent with the Principles for Guiding Development as a whole.

11. Because there is an immediate danger to the public health, safety and welfare, the approval of Ord. 2005-24 shall be effective immediately. §120.569(2)(n), *Fla. Stat.* (2005).

WHEREFORE, IT IS ORDERED that:

A. City of Marathon Ordinance 2005-24 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED; and

B. This Order and Marathon Ordinance 2005-24 shall become effective immediately upon filing with the Agency Clerk.

DONE AND ORDERED in Tallahassee, Florida.



THADDEUS L. COHEN, Secretary
Department of Community Affairs

NOTICE OF RIGHTS

I. Challenges to the Immediate Effective Date:

ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS IMMEDIATE FINAL ORDER AND WHO DISPUTES THE FINDING THAT THERE IS AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE THAT REQUIRES AN IMMEDIATE FINAL ORDER MAY APPEAL THIS IMMEDIATE FINAL ORDER ON THAT BASIS OR SEEK AN INJUNCTION TO SET ASIDE THE IMMEDIATE NATURE OF THIS ORDER PURSUANT TO SECTIONS 120.569(2)(n) AND 120.68(1), FLORIDA STATUTES.

A. TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS PUBLISHED IN THE

FLORIDA ADMINISTRATIVE WEEKLY. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

B. TO SEEK AN INJUNCTION, A COMPLAINT MUST BE FILED WITH THE APPROPRIATE CIRCUIT COURT PURSUANT TO THE FLORIDA RULES OF CIVIL PROCEDURE. THE COMPLAINT MUST BE ACCOMPANIED WITH THE FILING FEE REQUIRED BY THE CLERK OF THE CIRCUIT COURT.

II. Challenges to All Other Issues:

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.

A. 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.

B. 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.

C. 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.

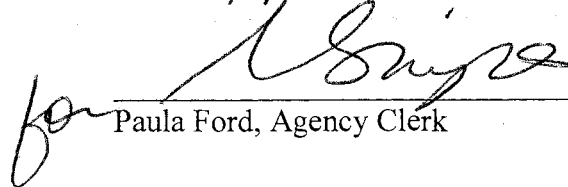
D. THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL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

E. 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 Immediate Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 17th day of January, 2006.


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, 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
Richard E. Shine, Assistant General Counsel