

Sponsored by: Mearns
Planning Commission Public Hearing Dates: April 17, 2006
City Council Public Hearing Dates: May 9, 2006
May 23, 2006
Enactment Date: May 23, 2006

**CITY OF MARATHON, FLORIDA
ORDINANCE 2006-07**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING SECTION 9.5-4(R-17) (DEFINITION OF “ROOM, HOTEL OR MOTEL”) OF THE CODE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Marathon desires to encourage development and redevelopment of hotels and motels in the City to attract tourism and enhance the economy of the City for the benefit of its residents; and

WHEREAS, the trend in the leisure and hospitality industry is for larger hotel and motel rooms or suites to accommodate families for longer stays; and

WHEREAS, the City Council concludes that the best direction for redevelopment and enhancement of the City’s tourist base is as a family attraction area; and

WHEREAS, to attract family visitors, accommodations must be available that meet the special needs of families and offer affordable vacation options; and

WHEREAS, the current definition of hotel and motel room in the City Code is too restrictive to allow renovations of hotels and motels that would meet the current trends in the leisure and hospitality industry and provide suitable accommodations to attract families to the City for longer stays; and

WHEREAS, providing such flexibility in the City’s regulations for hotel and motel owners and developers will attract families for longer stays, will provide an economic boost to other businesses in the City that are dependent, in whole or in part, on the tourist trade, including retail shops, specialty and souvenir shops, restaurants, charter and dive boats, bait and tackle shops, and the many other businesses in the City that serve the needs of visitors, and will enhance the City’s tourist industry and economy; and

WHEREAS, the City Planning Commission, sitting in its capacity as the Local Planning Agency, has reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes, and Chapter 9.5 of the City Code; and

WHEREAS, the City Council finds that enactment of this Ordinance will protect the public health, safety and welfare of the residents of the City of Marathon, and further 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.

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

Section 1. The foregoing recitals are true and are incorporated herein.

Section 2. Section 9.5-4-(17) of the Land Development Regulations is amended to read as follows:

Sec. 9.5-4. Definitions.

(R-17) *Room, hotel or motel*, 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. For the purposes of density restriction under this chapter:

(f) Notwithstanding the foregoing, Section 9.5-4 (R-17) (d and (e) shall not apply to the conversion of existing, lawfully established accessory floor area into an additional second or third bedroom, as the case maybe, to an existing adjacent hotel or motel unit without triggering the requirements of this Section 9.5-4(R-17)(d) and (e).

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 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. 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 23rd day of May, 2006.


THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor


AYES: Pinkus, Worthington, Mearns, Tempest, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Jacquelyn L. Walters
Acting City Clerk

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



City Attorney

RECEIVED
AUG 28 2006

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2006-07

BY: DR
cc: council
MIKE
CLERK

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.* (2005), 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 27, 2006, the Department received for review City of Marathon Ordinance No. 2006-07 ("Ord. 2006-07").
3. The purpose of Ord. 2006-07 is render inapplicable the requirements of Section 9.5-4, (R-17), (d) (e), regulating hotel redevelopment in order to allow a hotel owner the ability to redevelop or renovate existing square footage of unused, or underused space within the hotel for expansion to a second or third bedroom.
4. Ord. 2006-07 is inconsistent with the City's 2010 Comprehensive Plan, Objective 1-2.1, Policy 1-2.1.1; Objective 1-2.2, Policy 1-2.2.1; and Objective 1-3.2, Policy 1-3.2.6 of the City of Marathon Comprehensive Plan. These objectives and Policies relate to the required 24 hour hurricane evacuation time, level of service, and capping the number of transient units at current levels.

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), *Fla. Stat.*, 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. 2006-07 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. 2006-07 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 post disaster 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.

10. Ord. 2006-07 is neutral in effect on the remaining Principles.

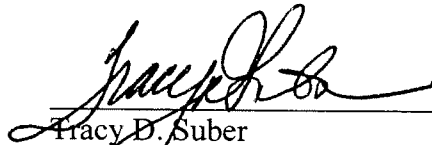
11. Ord. 2006-07 is inconsistent with the City’s Comprehensive Plan.

WHEREFORE, IT IS ORDERED that Ord. 2006-07 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.



Tracy D. Suber
State Planning Administrator
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.

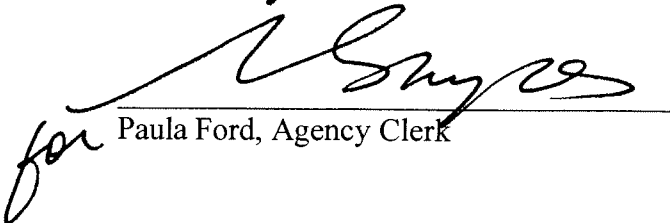
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 25th day of August, 2006.


for 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:

Clark Turner, ACSC Administrator
Richard E. Shine, Assistant General Counsel