

**Sponsored by:** Janke  
**Introduction Date:** Septmeber 9, 2003  
**Public Hearing Dates:** September 9, 2003  
September 23, 2003  
**Enactment date:** September 23, 2003

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2003-16**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA,  
PROVIDING FOR A MORATORIUM ON THE ACCEPTANCE OF  
RESIDENTIAL RATE OF GROWTH ORDINANCE ALLOCATION  
APPLICATIONS WITHIN THE CORPORATE LIMITS OF THE CITY**

**WHEREAS**, pursuant to Section 9(6)(a) of the Special Act authorizing the incorporation of the City of Marathon, Florida (the "City"), there is presently in effect within the City the Comprehensive Plan and Land Development Regulations of Monroe County (the "County Code"); and

**WHEREAS**, residential development is currently regulated pursuant to the County Code; and

**WHEREAS**, the City Council desires to implement comprehensive regulations for residential development that are tailored to the needs of the community, so that the health, public safety and welfare of the City is protected from impairment; and

**WHEREAS**, the comprehensive plan adoption and amendment process stimulates an accelerated amount of development permit requests; and

**WHEREAS**, the adoption of an ordinance placing a moratorium on the acceptance of all residential dwelling unit allocation applications ("ROGO Applications") will limit the number of allocations issued under the criteria contained in the County Code during the adoption process of new residential development regulations. It will also provide the City Council with an opportunity to study the residential needs of the community; to implement more comprehensive regulations of new residential development; and thus ensuring that the regulations produced by the City's study activity will be fair, reasonable and fully effective; and

**WHEREAS**, the acceptance of additional ROGO Applications during the formulation and implementation of more comprehensive regulations of new residential development will impair the City's ability to effectively implement new regulations.

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

**Section 1.** During the time that this Ordinance is in effect as specified in Section five (5) below, there shall be a moratorium on the acceptance of ROGO Applications. The last day for acceptance of ROGO Applications is July 8, 2003. For the purposes of this Ordinance the term “ROGO Applications” includes, but is not limited to a completed building permit application as referenced in Section 9.5-124 of the County Code.

**Section 2.** Nothing in this Ordinance shall be construed or applied to abrogate the right of a property owner seeking to submit a ROGO Application to the City to have it accepted and processed by the City where the property owner can demonstrate each of the following:

- (1) Relying in good faith;
- (2) Upon some act or omission of the City;
- (3) That the property owner made a substantial change in position or incurred such extensive obligations that it would be highly inequitable to deny the property owner the right to have his/her ROGO Application considered under the applicable City Code provisions.

Any property owner claiming an exemption under this Section 2 must file an application with the City Planning and Zoning Department within forty-five (45) days of the effective date of this Ordinance for an exemption determination. The application shall be accompanied by a sworn statement as to the basis upon which the exemption is asserted, and any other documentary evidence supporting the claim. The City Planning Department shall evaluate the application and make a determination to grant, grant with conditions or deny the application. The applicant may appeal a denial to the City Planning Commission in the same manner as an administrative appeal as set forth in Section 9.5-521 of the County Code, as amended. The City Planning Commission shall hold a quasi-judicial public hearing to review staff’s determination and based upon the evidence submitted shall make a determination as to whether the property owner has met the standards set forth in this Section two (2).

**Section 3.** Appeals from final decision by the City Planning Commission under Section two (2) of this Ordinance shall be by the filing of a notice of appeal with the Florida Law and Water Adjudicatory Commission pursuant to Section 380.07, Florida Statutes.

**Section 4.** No property owner claiming that this Ordinance as applied constitutes or would constitute a temporary or permanent taking of private property, or an abrogation of property rights may pursue such claim unless he or she has first exhausted the administrative remedies provided in this Ordinance.

**Section 5.** The top nineteen (19) completed and qualified applications as of July 8, 2003 shall be ranked and retain this ranking. All other applications submitted on or before July 8, 2003, or as provided in Section two (2) of this Ordinance, or upon the dissolution of this moratorium, shall be ranked separately and receive allocations only after the top nineteen (19) have been issued allocations.

The remaining applicants may withdraw their applications and resubmit them upon the adoption of new residential development regulations by the City (the "New ROGO"), but in no event shall the applicants receive less points than if they had not resubmitted their application. All applications not withdrawn shall retain their Controlling Date as defined in the County Code.

**Section 6.** The moratorium imposed by this Ordinance is temporary and, unless dissolved earlier by the City Council, shall automatically dissolve upon the adoption of New ROGO regulations, the formulation of which shall be expeditiously pursued. In no event, however, shall the moratorium imposed by this Ordinance extend beyond June 30, 2004, unless extended by the City Council in accordance with applicable State law.

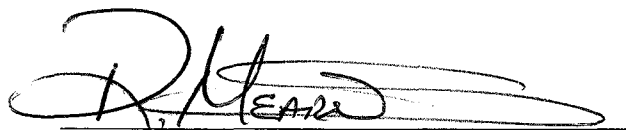
**Section 7.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and 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 8.** 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 DCA for approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

**Section 9** 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 23<sup>rd</sup> day of September, 2003.**

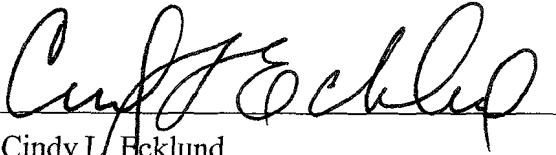
**THE CITY OF MARATHON, FLORIDA**

A handwritten signature in black ink, appearing to read "R. Mearns", is written over a horizontal line.

**Randy Mearns, Mayor**

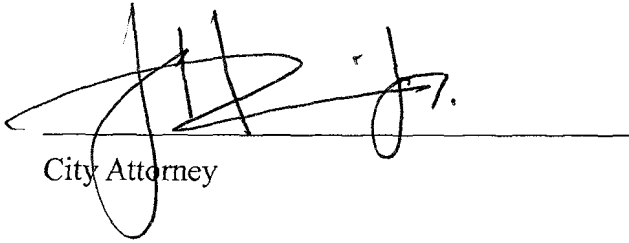
AYES:           Worthington, Bartus, Pinkus, Repetto, Mearns  
NOES:           None  
ABSENT:       None  
ABSTAIN:       None

**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

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2003-16

Received

OCT 10 2003

City 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.* (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 September 29, 2003, the Department received for review City of Marathon Ordinance No. 2003-16 which was adopted by the City of Marathon Board of City Commissioners on September 23, 2003 ("Ord. 2003-16"). Ord. 2003-16 implements a temporary moratorium on accepting new residential Rate of Growth Ordinance (ROGO) applications. This moratorium will further the City's ability to review, revise, adopt and implement new comprehensive regulations for residential development.
3. Ord. 2003-16 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), *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. 2003-16 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. 2003-16 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.

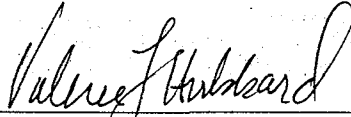
(l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

9. Ord. 2003-16 is not inconsistent with the remaining Principles. Ord. 2003-16 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2003-16 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.



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VALERIE J. HUBBARD, 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.

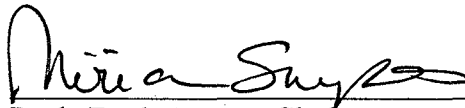
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 8th day of October, 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, State Planning Administrator  
Rebecca Jetton, ACSC Administrator  
Timothy E. Dennis, Assistant General Counsel