

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: CITY OF MARATHON LAND
DEVELOPMENT REGULATIONS
ADOPTED BY ORDINANCE NO. 2004-12

Received
AUG 25 2004
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.* (2003), 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 June 25, 2004, the Department received for review City of Marathon Ordinance No. 2004-12 that was adopted by the City of Marathon Board of City Commissioners on June 22, 2004 ("Ord. 2004-12"). Ord. 2004-12 amends the City of Marathon Code, establishing a Non-Residential Permit Allocation System.
3. Ord. 2004-12 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 The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern.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.* (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. 2004-12 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 All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the “Principles”) as set forth in § 380.0552(7), *Fla.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. 2004-12 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. 2004-12 is not inconsistent with the remaining Principles. Ord. 2004-12 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2004-12 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.



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 23rd 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

Sponsored by: Janke
Planning Commission Public Hearing: May 17, 2004
City Council Public Hearing Dates: June 8, 2004
June 22, 2004
Enactment: June 22, 2004

**CITY OF MARATHON, FLORIDA
ORDINANCE 2004-012**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, ESTABLISHING DEFINITIONS AND A NON-RESIDENTIAL PERMIT ALLOCATION SYSTEM (NROGO); PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CITY CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS

WHEREAS, the City of Marathon, Florida (the "City") is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, *Florida Statutes*; and

WHEREAS, Section 380.0552, *Florida Statutes*, establishes Principles for Guiding Development in the FKACSC; and

WHEREAS, Policy 101.3 of the Monroe County Year 2010 Comprehensive Plan (2010 Plan) as adopted by City requires the City to regulate non-residential development to maintain a balance of land uses; and

WHEREAS, Policy 101.3.1 specifies that a permit allocation system, comprised of a residential permit allocation system and a non-residential permit allocation system be adopted; and

WHEREAS, Policy 101.3.3 requires the City to maintain a ratio of approximately 239 square feet of non-residential development for each new residential unit permitted through the permit allocation system or the City completes an economic base analysis in order to determine the demand for future non-residential development; and

WHEREAS, non-residential development does not include the development or redevelopment of mobile homes or recreational vehicles; and

WHEREAS, in accordance with Section 166.041, *Florida Statutes*, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the LDRs; and

WHEREAS, on May 17th, 2004, the City's Local Planning Agency considered the

amendments to the LDRs set forth in this Ordinance at a properly noticed public hearing, found that the proposed Ordinance are consistent with the comprehensive plan and recommended approval of the Ordinance; and

WHEREAS, the City Council finds the adoption of this Ordinance is in the best interest of the City and complies with applicable State laws and rules; and

WHEREAS, the City Council finds that enactment of this Ordinance furthers the objectives, goals and policies of the City's Comprehensive Plan and the Principles for Guiding Development of the FKACSC.

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

Section 1. The City Code is amended to add Sections 9.5-___ et. seq. to state as follows:

Sec. 9.5-___. Non-residential rate of growth ordinance (NROGO).

(a) *Purpose and intent.* The purposes and intent of the non-residential rate of growth ordinance are:

(1) To facilitate the implementation of goals, objectives and policies set forth in the comprehensive plan relating to maintaining a balance between residential and non-residential growth.

(2) To maintain a ratio of approximately 239 square feet of non-residential floor area for each new residential permit issued through the residential rate of growth ordinance (ROGO).

(3) To promote the upgrading and expansion of existing small-size businesses and to retain the predominately small scale character of non-residential development in the City.

(4) To regulate the rate and location of non-residential development in order to further discourage deterioration of public facility service levels, environmental degradation and potential land use conflicts.

(5) To allocate the non-residential floor area annually hereunder, based on the goals, objectives and policies of the comprehensive plan.

(b) *Definitions:* The words and phrases used in this section shall have the meanings prescribed in this chapter, except as otherwise

indicated as follows:

Annual allocation period means the twelve-month period beginning on July 14, 2004 and subsequent one-year periods which are used to determine the amount of non-residential floor area to be allocated based on the number of ROGO allocations to be issued in the upcoming ROGO year.

Allocation application deadline date means the specific date and time by which applications for the NROGO allocation applications will be accepted and processed.

Annual non-residential ROGO allocation means the maximum floor area for which building permits may be issued during an annual allocation period.

Controlling date has the same meaning as the definition section 9.5-122, except it shall apply to NROGO applications under this section.

Historic resources means a building, structure, site, or object listed or eligible for listing individually or as a contributing resource in a district in the National Register of Historic Places, the State Inventory of Historic Resources or the Monroe County Register of Designated Historic Properties.

Infill means development or redevelopment of land that has been bypassed, remained vacant, or underused in otherwise built up areas, which are serviced by existing infrastructure.

Infill site means any parcel or parcels of land that has existing non-residential uses with more than five hundred (500) square feet of lawfully established non-residential floor area.

Non-residential floor area means the sum of the gross floor area for a non-residential structure as defined in section 9.5-4, any areas used for the provision of food and beverage services and seating whether covered or uncovered, and all covered, unenclosed areas except for walkways, stairways, entryways, parking and loading. Non-residential floor area is not space occupied by mobile homes, transient residential uses, recreational vehicles, and institutional residential principal uses.

Non-residential ROGO allocation means the maximum amount of non-residential floor area for which building permits may be issued in a given time period.

Non-residential ROGO allocation award means the approval of a non-residential ROGO application for the issuance of a building permit to authorize construction of new non-residential floor area.

Site means the parcel(s) of land or parcels required to be aggregated under section 9.5-256 to be developed or from which existing non-residential floor area is to be transferred or received.

Storage area means the outdoor storage of boats, campers, equipment, and materials for more than twenty-four (24) hours. This is considered a light industrial use and does not include waste transfer stations, junkyards or other heavy industrial uses.

Sec. 9.5-_____ General provisions.

(a) *Non-residential ROGO allocation award required:* No building permit shall be issued after the effective date of this Ordinance that results in additional non-residential floor area on a site unless that non-residential development has received a non-residential allocation award, or is determined to be exempt as provided below.

(b) *Applicable geographic area:* The NROGO allocation system shall apply within the entire City.

Sec. 9.5-_____. Type of development affected.

(a) The NROGO shall apply to the development of non-residential floor area including, but not limited to, outdoor storage and outdoor retail sales areas for which a building permit or development approval is required by this chapter and for which building permits have not been issued prior to the effective date of the non-residential permit allocation system.

(b) New or expanded outdoor storage, or outdoor retail sales associated with a lawfully established structure, existing on the effective date of this article, of at least five hundred (500) square feet of floor area may be permitted with a minimum of a minor conditional use approval.

Sec. 9.5-_____. NROGO allocations.

(a) *Maximum amount of available floor area for the annual non-residential ROGO allocations:* The maximum amount of floor area available for allocation under NROGO shall be determined by multiplying the number of residential permits available for the annual residential allocation period year by two hundred thirty-nine (239) square feet and rounding the product to the nearest one hundred (100) square feet. This maximum total may be adjusted as provided for herein. For the first annual allocation period, the maximum amount of floor area that may be made available for allocation is fifty seven thousand, three hundred sixty (57,360) square feet. There currently is accrued fifty seven thousand, three hundred sixty (57,360) square feet of non-residential development available for allocation. Any unused allocations shall roll over to the next year's allocation period.

(b) *Maximum allocation of non-residential floor area by site:* The amount of non-residential floor area to be allocated shall be limited to a maximum of six thousand (6,000) square feet for any one site.

(c) *Allocations for existing and new development:* A minimum of twenty eight thousand six hundred eighty (28,680) square feet shall be allocated for the expansion of existing non-residential development, structures and uses. The remaining non-residential square footage shall be allocated for new and existing non-residential development structures and uses.

(d) *Annual allocation and semiannual allocation periods:* The maximum annual amount of non-residential floor area which may be made available for allocation and the distribution shall be established by the city council upon the recommendation of the planning commission and planning manager. The amount of non-residential floor area which, may be made available for each allocation period as determined in subsection 9.5-_____(f), may be available for allocation awards after the first allocation application deadline date of that year. Any floor area not allocated in this first allocation or floor area that becomes available later in the current allocation period under provisions of subsection 9.5-_____(a) may be made available for allocation awards after a second allocation application deadline date.

(e) *Allocation application deadline dates:* To be considered for an allocation award, all NROGO applications must be submitted to the planning department and deemed complete by the planning manager by no later than 4:00 p.m. on the specified allocation application deadline date. The first allocation application deadline date of a NROGO annual allocation period shall be the last day of the fourth quarter ROGO allocation period, except that for the first NROGO annual allocation period, the allocation application deadline date shall be September 1, 2004. The second allocation application deadline date for the current NROGO annual allocation period, if necessary, shall be March 1, 2004.

(f) *City council action required:* The city council shall adopt by resolution the total amount of non-residential floor area, which may be made available for the annual allocations.

Sec. 9.5. _____ . Application procedures for NROGO.

(a) *Application for allocation:* The planning department shall accept applications to enter the NROGO system on forms provided by the planning manager. The NROGO application form must be accompanied by a detailed site plan with conceptual elevations and such other information as may be specified in the application form in order to be considered in the current annual allocation period. The planning manager shall review the NROGO application for completeness. If the application is determined to be incomplete, the planning manager shall reject the NROGO application and notify the applicant of such rejection, and the reasons therefore, within fifteen (15) working days. If determined to be complete, the application shall be assigned a controlling date.

(b) *Fee for review of application:* Each NROGO application shall be accompanied by a nonrefundable processing fee as may be established by resolution of the city council.

(c) *Compliance with other requirements:* The NROGO applications shall indicate whether the applicant for the non-residential floor area allocation has satisfied and complied with all city, county, state, and federal requirements otherwise imposed regarding conditions precedent to issuance of a building permit and shall require that the applicant certify to such compliance including appropriate non-residential zoning of the subject property.

(d) *Time of review:* Notwithstanding the time periods set forth in section 9.5-____, the planning manager may retain the allocation

application and its associated building permit application for review pursuant to the evaluation procedures and criteria set forth in section 9.5-_____ and section 9.5-_____.

(e) *Non-city time periods:* The city council shall develop necessary administrative procedures and, if necessary, enter into agreements with other jurisdictional entities which impose requirements as a condition precedent to development in the city, to ensure that such non-city approvals, certifications or permits are not lost due to the increased time requirements necessary for the city to process and evaluate NROGO applications and issue allocation awards. The city may permit evidence of compliance with the requirements of other jurisdictional entities to be demonstrated by "coordination letters" in lieu of approvals or permits.

(f) *Limitation on number of applications:*

(1) An individual entity or organization may have only two (2) active NROGO application(s) per site in the annual allocation period.

(2) There shall be no limit on the number of separate projects for which NROGO applications may be submitted by an individual, entity or organization.

(g) *Expiration of allocation award:* An allocation award shall expire when its corresponding building permit is deemed to expire pursuant to the applicable sections of the city code or upon the expiration of any conditional use approval pursuant to the applicable sections of the city code and any expired allocations shall roll over to the next year's allocation period.

(h) *Withdrawal of NROGO application:* An applicant may elect to withdraw a NROGO application without prejudice at any time up to finalization of the evaluation rankings by the planning commission. Revision and resubmission of the withdrawn application must be in accordance with subsection (i) below.

(i) *Revisions to applications and awards:*

(1) Upon submission of NROGO application, an applicant may revise the application if it is withdrawn and resubmitted prior to the allocation application deadline date for the allocation period in which the applicant wishes to compete. Resubmitted applications shall be considered

"new", requiring payment of appropriate fees and receiving a new controlling date.

(2) After receipt of an allocation award, and either before or after receipt of a building permit being obtained, but prior to receipt of a certificate of occupancy or final inspection, no revisions shall be made to any aspect of the proposed non-residential development which formed the basis for the evaluation review, determination of points and allocation rankings, unless such revision would have the effect of increasing the points awarded.

(3) After the receipt of an allocation award, a building permit and a certificate of occupancy or final inspection, no revision shall be made to any aspect of the completed non-residential development which formed the basis for the evaluation, review, determination of points and allocation rankings, unless such revisions are accomplished pursuant to a new building permit and unless such revisions would have the net effect of either maintaining or increasing the number of points originally awarded.

(j) *Clarification of application data:*

(1) At any time during the NROGO allocation review and approval process, the applicant may be requested by the planning commission or the planning manager to submit additional information to clarify the relationship of the allocation application, or any elements thereof, to the evaluation criteria. If such a request is made, the planning manager shall identify the specific evaluation criterion at issue and the specific information needed and shall communicate such request to the applicant.

(2) Upon receiving a request from the planning manager for such additional information, the applicant may provide such information; or the applicant may decline to provide such information and allow the allocation application to be evaluated as submitted.

Sec. 9.5-____. Evaluation procedures for non-residential floor area allocation.

(a) *Adjustment of non-residential floor area allocations:* At the start of each annual allocation period and prior to the second allocation application deadline date, the planning manager shall

recommend to the city council additions or subtractions to the basic allocation, based upon any of the following, as appropriate:

- (1) The amount of floor area allocation awards that expired during the current annual allocation period.
- (2) The amount of floor area allocation awards available which were not allocated at the first allocation of the current annual allocation period;
- (3) A portion or all of the remaining maximum floor area not made available in the current or previous annual allocation period; and
- (4) Any other modifications required or provided for by the comprehensive plan.

(b) *Initial evaluation of allocation applications:* Upon receipt of completed NROGO allocation applications, the planning manager shall evaluate the allocation applications pursuant to the evaluation criteria set forth in section 9.5-_____.

(1) Within thirty (30) days of an allocation application deadline date, unless otherwise extended by the city council, the planning manager shall:

- a. Complete the evaluation of all allocation applications submitted during the relevant allocation period; and
- b. Total the amount of square footage for which allocation applications have been received; and
- c. Rank the floor area allocation applications in descending order from the highest evaluation point total to the lowest for each size classification.

(2) If the amount of floor area represented in the allocation applications is equal to or less than the available allocation, the planning manager may make a recommendation to the city council that all of the allocation applications be granted allocation awards.

(3) If the total amount of floor area represented in the allocation applications is greater than the available floor area, the planning manager shall submit an evaluation report to the city council indicating the evaluation rankings

and identifying those applications whose ranking puts them within the allocation, and those applications whose ranking puts them outside of the allocation.

(c) *Public hearings and allocation awards:* Upon completion of the evaluation ranking report and recommendation, the planning manager shall schedule and notice a public hearing by the planning commission pursuant to otherwise applicable regulations. The planning commission shall make a recommendation to the city council as to the planning manager evaluation worksheets and recommendations. Thereafter, the planning manager shall schedule and notice a public hearing by the city council pursuant to otherwise applicable regulations.

(1) At or prior to the public hearing, the planning manager shall supply, copies of the allocation applications and the planning manager evaluation worksheets to the planning commission and city council.

(2) Upon review of the allocation applications and evaluation worksheets, the city council may adjust the points awarded for meeting particular criteria, adjust the rankings as a result of changes in points awarded, or make such other changes as may be appropriate and justified.

(3) The basis for the city council changes shall be specified in the form of a motion to adopt the allocation rankings and may include the following:

- a. An error in the designation of the application's size classification.
- b. A mistake in the application of one (1) or more of the evaluation criteria.
- c. A misinterpretation of the applicability of an evaluation criterion.

(4) The public, including, but not limited to, applicants for allocation awards, shall be permitted to testify at the public hearing. Applicants may offer testimony about their applications or other applications; however, in no event may an applicant offer modifications to an application that could change the points awarded or the ranking of the application.

(5) At the conclusion of the public hearing, the city council may:

- a. Move to accept the evaluation rankings as submitted by the planning manager.
- b. Move to accept the evaluation rankings as may be modified as a result of the public hearing.
- c. Move to continue the public hearing to take additional public testimony.
- d. Move to close the public hearing but to defer action on the evaluation rankings pending receipt of additional information.
- e. Move to reject the evaluation rankings.

(6) The city council shall finalize the evaluation rankings within sixty (60) days following initial receipt of the planning manager's evaluation ranking, report and recommendation.

(d) *Notification to applicants:* Upon finalization of the evaluation rankings by the city council, notice of the rankings, shall be posted at the planning department offices and at such other places as may be designated by the city council.

(1) Applicants who receive allocation awards shall be further notified by certified mail, return receipt requested. Upon receipt of notification of an allocation award, the applicant may request issuance of a building permit for the applicable development of the allocated non-residential floor area. If a conditional use approval is required, the issuance of a building permit for the applicable development of the allocated non-residential floor area shall be concurrent with the conditional use approval pursuant to otherwise applicable regulations.

(2) Applicants who fail to receive allocation awards shall be further notified by certified mail, return receipt requested; without further action by neither such applicants nor the payment of any additional fee, such applications shall remain in the NROGO system for reconsideration at the next allocation in the current or following annual allocation period.

(e) *Identical rankings*: If two (2) or more allocation applications receive an identical evaluation ranking and both (or all) cannot be granted allocation awards within the allocation period, the city council shall award the allocation to the completed application first submitted, based on the controlling date of the application. If two (2) or more such completed applications were submitted with the same controlling date, the available allocation shall be awarded to the application with the fewest number of negative points.

Sec. 9.5-_____ . Administrative relief.

(a) *Eligibility*: An applicant is eligible for administrative relief under the provisions of this section if all the following criteria are met:

- (1) The applicant has complied with all requirements of the non-residential permit allocation system.
- (2) The subject application has not been withdrawn; and
- (3) The subject application has been considered in at least four (4) consecutive annual allocation periods and has failed to receive an allocation award.

(b) *Application*: An application for administrative relief shall be made on a form prescribed by the planning manager and may be filed with the planning department no later than ninety (90) days following the close of the fourth annual allocation period.

(c) *Waiver of rights*: Failure to file an application shall constitute a waiver of any rights under this section to assert that the subject property has been taken by the city without payment of just compensation as a result of the non-residential floor area allocation system.

(d) *Processing and review by planning manager*: Upon the filing of an application for administrative relief, the planning manager shall prepare a written report with recommendation and forward the report to the city council along with all relevant files and records relating to the subject application. The planning manager shall advertise and schedule a public hearing for consideration of the application by the city council.

(e) *Public hearing*: At a public hearing, the city council shall review the relevant application and applicable evaluation ranking, taking testimony from staff and others as may be necessary and

hear testimony and review documentary evidence submitted by the applicant. At the conclusion of the public hearing, the city council may take any or a combination of the following actions:

- (1) Grant the applicant an allocation award for all or a part of the non-residential floor area requested in the next allocation awards.
- (2) Offer to purchase the property at its fair market value.
- (3) Suggest such other relief as may be necessary and appropriate.

Sec. 9.5-____. Evaluation criteria.

(a) *Evaluation point values:* The following point values established are to be applied cumulatively except where otherwise specified:

- (1) *Infill:* The following points are intended to encourage the infill of areas served by existing infrastructure:

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|-------------------|---|
| Point assignment: | Criteria: |
| + 10 | An application which proposes non-residential development on an infill site served by existing infrastructure, including at a minimum, potable water, electricity, and roadways, which the city engineer determines is paved. |
| | <i>Additional requirements:</i> |
| | In order to be considered "served," the necessary infrastructure must be both: 1. Located along the same street as the lot or parcel proposed for development; and 2. In place since July 13, 1992. |

- (2) *Intensity reduction:* The following points are intended to encourage the voluntary reduction of intensity:

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|-------------------|--|
| Point assignment: | Criteria: |
| + 4 | An application proposes development that reduces the permitted floor area ratio (FAR) to |

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| | twenty three percent (23%) or less. |
| | <i>Additional requirements:</i> |
| | A legally binding restrictive covenant running in favor of the city that limits the floor area ratio of the property to a maximum of twenty three percent (23%) for a period of <u>twenty (20)</u> years shall be approved by the city council and recorded prior to the issuance of any building permit pursuant to an allocation award. |

(3) *Land dedication:* The following points are intended to encourage the voluntary dedication of vacant, buildable land within those areas within the City proposed for acquisition by governmental agencies for the purposes of conservation or resource protection:

| Point assignment: | Criteria: |
|-------------------|--|
| + 1 | An application which includes the dedication to the city of one (1) vacant, legally platted buildable lot or at least one (1) acre of unplatted buildable land located within a Conservation Land Protection Area or areas proposed for acquisition by governmental agencies for the purposes of conservation and resource protection. |
| + 1 | An application which includes the dedication to the city of either an additional legally platted, buildable lot, or an additional one (1) acre of unplatted buildable land located in areas proposed for acquisition by governmental agencies for the purposes of conservation or resource protection. |
| | <i>Additional requirements:</i> |
| | <ol style="list-style-type: none"> 1. "Buildable" shall mean construction of a dwelling unit or non-residential development, as determined by the planning director. 2. The application shall include but not be limited to the following: 3. The property shall be located within the City. <ul style="list-style-type: none"> * An affidavit of ownership of all affected lots, parcels, acreage or land; * A statutory warranty deed, subject to the approval of the city council prior to filing in the |

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| | office of the clerk of the court, which conveys the dedicated property to the city. Such deed must be approved by the city council before any development approval may be issued pursuant to an award. |
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(4) *Habitat protection*: The following points are intended to discourage the clearing of significant habitat and are based on the type and quality of the existing vegetation located within an area approved for clearing or development as shown on the approved site plan:

| Point assignment: | Criteria: |
|-------------------|---|
| - 10 | An application which proposes to clear an area of habitat type and quality from Group 4 which includes the following: * High hammock (high quality) * Low hammock (high quality) * Pineland * Undisturbed beach/berm * Saltmarsh and buttonwood wetlands * Palm hammock * Cactus hammock |
| - 5 | An application which proposes to clear an area of habitat type and quality from Group 3 which includes the following: * High hammock (moderate quality) * Low hammock (moderate quality) |
| - 2 | An application which proposes to clear an area of habitat type and quality from Group 2 which includes the following: * High hammock (low quality) * Low hammock (low quality) * Disturbed land with saltmarsh and buttonwood * Disturbed land with beach/berm (design standards). |
| +5 | An application which proposes to develop in an area of habitat type and quality from Group 1 which includes the following: * Disturbed/scarified * Disturbed with exotics |
| | <i>Additional requirements:</i> 1. If the approved clearing area includes more than one (1) habitat type/habitat quality group, |

| | |
|--|---|
| | <p>points shall be assigned to the application for development on the basis of the following formula: (Area of clearing in Group 1/area in parcel of land to be cleared) X (+ 1) + (area of clearing in Group 2/area in parcel of land to be cleared) X (- 2) + (area of clearing in Group 3/area in parcel of land to be cleared) X (- 5) + (area of clearing in Group 4/area in a parcel of land to be cleared) X (- 10).</p> <p>2. A determination of the quality of an undisturbed high hammock, low hammock or pinelands shall be made through the utilization of the habitat analysis indices and scores (HEI), applied pursuant to article VII, (environmental design standards), of this chapter.</p> |
|--|---|

- *Threatened or endangered animal species:* The following points are intended to discourage development due to the probable adverse impacts of a proposed development on the successful protection and recovery of a threatened or endangered animal species in its natural habitat.

| Point assignment: | Criteria: |
|-------------------|--|
| - 10 | An application which proposes non-residential development within a known habitat of a documented threatened/endangered species as defined in Sec. 9.5-122. |
| - 10 | An application which proposes non-residential development within one hundred (100) feet of any known nesting area for marine turtles, as described in Sec. 9.5-286 (Shoreline Setbacks). |
| - 10 | An application which proposes non-residential development within five hundred (500) feet of any known nesting or resting area of the piping plover. |
| - 5 | An application proposes non-residential development within a probable or potential habitat of a threatened/endangered species as defined in Sec. 9.5-122. |
| - 2 | An application which proposes non-residential development within the habitat of a wide ranging threatened/endangered species or a species of special concern as defined in Sec. 9.5-122. |

- *Critical habitat areas:* The following points are intended to discourage development in critical habitat areas of the Florida Keys:

| Point assignment: | Criteria: |
|-------------------|--|
| - 10 | An application which proposes non-residential development within the C.A.R.L. acquisition areas. |
| - 10 | An application which proposes non-residential development within the "secondary zone" defined by the U.S. Fish and Wildlife Service in the Habitat Management Guidelines for the Bald Eagle in the Southeast Region, 1987, incorporated herein by reference. |

- *Perseverance points:* The following points are intended reward an application based upon the number of years spent in the NROGO system without receiving an allocation award:

| Point assignment: | Criteria: |
|-------------------|---|
| + 1 | A point shall be awarded on the anniversary of the controlling date for each year that the application remains in the NROGO system. |

- *Coastal high hazard area:* The following points are intended to discourage development in a coastal high hazard area (CHHA):

| Point assignment: | Criteria: |
|-------------------|---|
| - 1 | An application which proposes non-residential development within an "A" zone on the FEMA flood insurance rate map. |
| -6 | An application which proposes non-residential development within a "V" zone on the FEMA flood insurance rate map. |
| | <i>Additional requirements:</i> |
| | 1. The term coastal high hazard area (CHHA) is defined in Sec. 9.5-4 and the applicable areas are shown on the most recent Federal Emergency Management Agency (FEMA) flood insurance rate map. |

(9) *Coastal barrier resources area (COBRA)*: The following points are intended to discourage development of the COBRA:

| <i>Point assignment:</i> | <i>Criteria:</i> |
|--------------------------|--|
| - 10 | Application proposes development within units of the coastal barrier resources area (COBRA). |
| | <i>Additional requirements:</i> |
| | 1. The term coastal barrier resources area (COBRA) is defined in Sec. 9.5-4 and the applicable areas are shown on the most recent FEMA flood insurance rate map. |

(10) *Conservation land protection areas*: The following points are intended to discourage development, which impacts conservation land protection areas:

| <i>Point assignment:</i> | <i>Criteria:</i> |
|--------------------------|---|
| - 2 | An application, which proposes a development located within a Conservation Land Protection Area as defined in Sec. 9.5-4. |

(11) *Historic resources*: The following points are intended to encourage protection of historic and archaeological resources:

| <i>Point assignment:</i> | <i>Criteria:</i> |
|--------------------------|---|
| - 10 | An application which proposes an undertaking adversely impacting, removing, or destroying historic resources. |
| + 10 | An application which proposes an undertaking preserving, rehabilitating, restoring, or reconstructing historic resources. |
| | <i>Additional requirements:</i> |
| | The Secretary of the Interior's Standards for the Treatment of Historic Properties shall be used in making the determinations, and the Historic Preservation Commission shall make the determination. |

(12) *Highway access*: The following points are intended to encourage connections between commercial uses and reduction of the need for trips and access onto US Highway 1:

| <i>Point assignment:</i> | <i>Criteria:</i> |
|--------------------------|--|
| +5 | The development's parking lot is connected to an adjacent non-residential parking lot; or the applicant records a driveway easement in favor of the public to connect the applicant's parking lot to an adjacent, non-residential parking lot; or the development does not propose an additional driveway onto US Highway 1. |
| | <i>Additional Requirements:</i> |
| | Properties with no access to U.S. Highway 1 are only eligible to receive these points if direct access is to a State Road or city collector road as designated in the comprehensive plan. |

(13) *Landscaping and water conservation:* The following points are intended to encourage the planting of native vegetation and promote water conservation:

| <i>Point assignment:</i> | <i>Criteria:</i> |
|--------------------------|--|
| +3 | The project provides a total of twice (2x) the number of native landscape plants on its property than the number of native landscape plants required by this chapter within landscaped bufferyards and parking areas. |
| +1 | For each additional twenty-five percent (25%) of the native plants provided to achieve the three (3) points award above or provided to meet the landscaped bufferyard and parking area requirements of this chapter are listed as threatened or endangered plants native to the Florida Keys. |
| +2 | Project landscaping is designed for water conservation including use of xeriscape principles such as vegetation is one hundred (100%) native plants and rainfall is collected and directed to landscaped areas, or reused wastewater or treated seawater is used for watering landscaped plants. |
| | <i>Additional requirements:</i> |
| | Prior to the issuance of a building permit authorized by an allocation award, the applicant shall: 1. Post a two-year performance bond in |

| | |
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| | accordance with this chapter to ensure maintenance of the native plants; and, 2. Shall sign an affidavit acknowledging that he is subject to code enforcement action should the native plants not be maintained. |
|--|---|

(14) *Affordable/Employee Housing*: The following points are intended to encourage the creation of affordable/employee housing:

| <i>Point assignment:</i> | <i>Criteria:</i> |
|--------------------------|--|
| +5 | For each affordable/employee residential dwelling unit included in the non-residential development application. |
| | <i>Additional Requirements:</i> |
| | A legally binding restrictive covenant running in favor of the city restricting the use of the units in accordance with the city's affordable/employee housing regulations for a period of no less than fifty (50) years shall be approved by the city council and recorded prior to issuance of any building permit for the affordable/employee housing unit. |

Sec. 9.5-_____. Employee housing fair share impact fee.

(a) *Purpose*: All new non-residential floor area, including commercial/business, institutional, and industrial development, creates a direct or indirect requirement for employee housing. The availability and stability of employee housing stock is essential for the economic health of the city. Therefore all applicants for new or transferred non-residential floor area shall be assessed a fee to be used by the city to address employee housing issues.

(b) *Type of development affected*:

(1) All new non-residential floor area under subsection 9.5-____ (a).

(2) The following development activities exempted under section 9.5-_____ are subject to the employee housing fair share impact fee:

a. Development activity for certain not-for-profit organizations. (Subsection 9.5-_____ (a) (4)).

- b. Vested rights. (Subsection 9.5-_____ (a) (5)).
- c. De minimis expansion of non-residential floor area. (Subsection 9.5-_____ (a) (6)).
- d. Industrial uses. (Subsection 9.5-_____ (a) (7)).
- e. Transfer and redevelopment off-site of lawfully established non-residential floor area, which has not operated commercially for three (3) years or more. (Subsection 9.5-_____ (a) (10)).

(c) *Establishment of fee schedule:* An applicant for any new non-residential floor area, identified in subsection (b) above, shall pay, prior to the issuance of a building permit, a fair share employee housing fee as established by the following schedule:

| | |
|--|-------------------------|
| Structures for non-residential uses of one (1) to 2,000 square feet | \$1.00 per square foot |
| Structures for non-residential uses containing more than 2,000 square feet | \$2.00 per square foot* |

*The fee is calculated on the total new or transferred non-residential floor area subject to (e) above, not just on that portion above two thousand (2,000) square feet.

(d) Proceeds from the impact fees collected shall be deposited in the employee housing fair share impact fee account and used exclusively to offset the cost of required permitting and connection fees related to the development of new employee housing, in accordance with a schedule and procedures approved by the city council.

Section 2. Any Code or Ordinance provision inconsistent or in conflict with this Ordinance is hereby repealed.

Section 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall 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. 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 this Ordinance may be renumbered or re-lettered to accomplish 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 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:

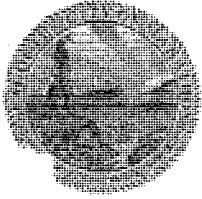


Cindy L. Ecklund
City Clerk

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



City Attorney



CITY OF MARATHON, FLORIDA

10045-55 Overseas Highway, Marathon, Florida 33050
Phone: (305) 743-0033 Fax: (305) 743-3667

June 24, 2004

Mr. Ray Eubanks, Community Program Administrator
Division of Community Planning
Department of Community Planning
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

RE: Ordinances 2004-06, 11, 12 & 13

Dear Mr. Eubanks;

Attached are the Ordinances and back up materials recently enacted by the City Council of the City of Marathon. Thank you in advance for your quick attention to these Ordinances.

Please contact me if you have any questions regarding this letter or Ordinances 2004-06, 11, 12 & 13.

Best Regards,

Cindy I. Ecklund, PHR
City Clerk/HR Officer
City of Marathon
10045-55 Overseas Hwy.
Marathon, FL 33050
305-289-4101
305-289-4131 fax
ecklundc@ci.marathon.fl.us

cc: Rebecca Jetton
Scott Janke
Gail Kenson

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Ray Eubanks, Community Program
Administrator
Division of Community Planning
Department of Community Planning
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

2.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

Received

Delivery address different from item 1? Yes
If YES, enter delivery address below: No

JUL 1 2004

City Clerk

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

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