

Sponsored by: Puto
Planning Commission Public Hearing Dates: September 18, 2006
City Council Public Hearing Dates: September 26, 2006
October 10, 2006
Enactment Date: October 10, 2006

**CITY OF MARATHON, FLORIDA
ORDINANCE 2006-29**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA
AMENDING ORDINANCE 2004-012 DEALING WITH A NON-
RESIDENTIAL PERMIT ALLOCATION SYSTEM (NROGO);
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, 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, the City’s Comprehensive Plan Policy 1-3.5.4 requires the City to regulate non-residential development to maintain a balance of uses; and

WHEREAS, on June 22, 2004, the City Council adopted Ordinance 2004-012 (the “Ordinance”), creating a non-residential permit allocation system (“NROGO”); and

WHEREAS, the Ordinance established a formula for determining the maximum amount of available floor area for NROGO allocations; and

WHEREAS, Policy 1-3.5.4 provides that the City shall limit the gross square footage of non-residential development to 250,000 square feet over the next ten years; and

WHEREAS, the Ordinance needs to be amended to reflect the permitted amount of NROGO square footage on an annual basis; and

WHEREAS, the City Planning Commission, on September 18, 2006, sitting in its capacity as the Local Planning Agency, 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 Planning Commission heard testimony from City Planning Staff and the public and voted 4 to 0 to recommend approval of the Ordinance to the City Council; and

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

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

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. Subsection (a)(2) of Sec. 9.5-___ Non-residential rate of growth ordinance (NROGO) of the Land Development Regulations is hereby deleted in its entirety.

Section 3. Subsections (a) and (b) of Section 9.5-_____. NROGO allocations of the Land Development Regulations are hereby amended to read as follows:

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 annually by the City Council, but in no event shall it exceed twenty-five thousand (25,000) square feet per year. There currently is accrued seventy three thousand two hundred (73,200) 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 twenty five thousand (25,000) square feet for any one site in any one year.

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 10th day of October 10, 2006.

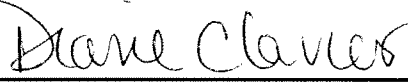
THE CITY OF MARATHON, FLORIDA



Christopher M. Bull, Mayor

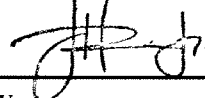
AYES: Mearns, Pinkus, Tempest, Worthington, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier
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. 2006-29

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.* (2006), 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 November 13, 2006, the Department received for review City of Marathon Ordinance No. 2006-29 that was adopted by the City of Marathon Board of City Commissioners on October 10, 2006 (“Ord. 2006-29”). Ord. 2006-29 amends Marathon Ordinance No. 2004-012 to be consistent with Policy 1-3.5.4 of the City of Marathon Comprehensive Plan. Ordinance No. 004-12 provided for annual allocation of non-residential rate of growth (NROGO) based on the number of residential units, at a ratio of 238 square feet of NROGO space per ROGO residential unit. Ord. 2006-29 replaces this allocation methodology with a maximum NROGO allocation of 25,000 square feet per year, deletes conflicting provisions, adjusts existing and proposed NROGO totals, and updates the annual allocation date to be consistent with the effective date of the Marathon Comprehensive Plan.

3. Ord. 2006-29 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.* (2006).

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. § 380.0552, *Fla. Stat.* (2006) 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.* (2006). The regulations adopted by Ord. 2006-29 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. 2006-29 promotes and furthers the following Principles:

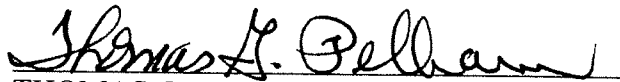
- (a) To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- (d) To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

9. Ord. 2006-29 is not inconsistent with the remaining Principles. Ord. 2006-29 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2006-29 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.



THOMAS G. PELHAM

Secretary

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.

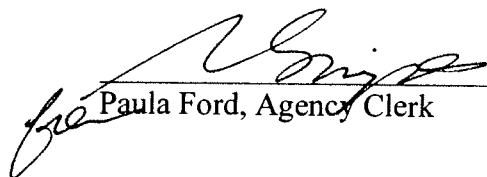
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 17th day of January, 2007.



Paula Ford, Agency Clerk

By U.S. Mail:

Honorable Christopher M. Bull, Mayor
City of Marathon
10054-55 Overseas Highway
Marathon, Florida 33050

Diane Clavier, 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