

**Sponsored by:** Bartus  
**Planning Commission Public Hearing Date:** December 13, 2003  
**City Council Public Hearing Dates:** January 11, 2005  
January 25, 2005  
**Enactment date:** January 25, 2005

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2005-01**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA  
AMENDING THE RESIDENTIAL RATE OF GROWTH REGULATIONS  
SET FORTH AT SECTION 9.5-122, SECTION 9.5-123, SECTION 9.5-124,  
AND SECTION 9.5-125 OF THE CITY CODE**

**WHEREAS,** the existing land development regulations implementing the various policies in the City's transitional comprehensive plan concerning the provision of affordable and middle income housing have proven inadequate; and

**WHEREAS,** the City Council of the City of Marathon, Florida (the "City") desires to amend the existing provisions of the Marathon City Code (the "Code") regarding the residential permit allocation rate of growth ordinance to facilitate and encourage affordable and middle income housing in the City; and

**WHEREAS,** pursuant to Section 163.3174, Florida Statutes, and Section 9.5-22 of the Code, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the Code set forth in this Ordinance (the "Amendments") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendments; and

**WHEREAS,** in accordance with Sections 163.3184 and 166.041, Florida Statutes, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the Code; 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 Florida Keys Area of Critical State Concern.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AS FOLLOWS:<sup>1</sup>**

**Section 1.** Amendment to Section 9.5-122 of the Code of the City of Marathon, Florida is hereby amended to read as follows:

**Sec. 9-5.122. Definitions.**

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~~Quarterly~~ Thrice-annual allocation period means the ~~34~~-month period beginning on July 13, 1992 or such other date as the board may specify, and successive ~~34~~-month periods.

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**Section 2.** Amendment to Section 9.5-123 of the Code of the City of Marathon, Florida is hereby amended to read as follows:

**Sec. 9.5-123. General provisions; Applicability.**

~~(d) Affected area: The Dwelling Unit Allocation system shall apply within the unincorporated area of Monroe County, Florida, which, for purposes hereof, has been divided into subareas as follows:~~

~~———— (1) Upper Keys: The unincorporated area of Monroe County north of Fiesta Key (approximately mile marker 71).~~

~~———— (2) Middle Keys: Unincorporated area of Monroe County from Fiesta Key to the Seven Mile Bridge (approximately mile markers 71 to 40).~~

~~———— (3) Lower Keys: The unincorporated area of Monroe County south of the Seven Mile Bridge, (approximately mile markers 40 to 4).~~

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**Section 3.** Amendment to Section 9.5-124 of the Code of the City of Marathon, Florida is hereby amended to read as follows:

**Section 9.5-124. Residential dwelling unit allocation application procedures.**

(a) *Application for Allocation:* In each ~~quarterly~~ of the three allocation periods, the planning department shall accept applications to enter the dwelling unit allocation system on forms provided by the planning director. The allocation application must be accompanied by an approved building permit application in order to be considered in the current allocation period.

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<sup>1</sup> Additions to existing text are shown by underline deletions are shown as strikethrough.

The planning director shall review the allocation application for completeness. If determined to be incomplete, the planning director shall reject the allocation application and notify the applicant of such rejection and the reasons therefore within ten (10) working days. If determined to be complete, the application shall be assigned a controlling date.

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**Section 4.** Amendment to Section 9.5-125 of the Code of the City of Marathon, Florida is hereby amended to read as follows:

**Section 9.5-125. Residential dwelling unit allocations.**

(a) ~~Annual residential dwelling unit allocation:~~ The County has set the following basic annual residential dwelling unit allocation by subarea, to be adjusted as proved under Section 9.5 126, "Evaluation Procedures", below. ~~The Big Pine and No Name Key allocation is a subarea of the Lower Keys allocation~~

		Number of Dwelling Units	
		Market Rate Residential	Affordable Residential
Subarea	Total	(80%)	(20%)
Upper Keys	99	79	20
Middle Keys	41 <u>24</u>	33 <u>19</u>	8
Lower Keys	115	92	23
Total	255	204	51

(b) ~~Quarterly Thrice--annual residential dwelling unit allocation:~~ The annual residential dwelling unit allocation, ~~by subarea,~~ shall be further divided into ~~quarterly three~~ allocation periods as follows:

		Number of Dwelling Units	
		Market Rate Residential	Affordable Residential
	Total	(80%)	(20%)
First Allocation Period	<u>8</u>	<u>6</u>	<u>2</u>
Second Allocation Period	<u>8</u>	<u>6</u>	<u>2</u>
Third Allocation Period	<u>8</u>	<u>7</u>	<u>1</u>
TOTALS	<u>24</u>	<u>19</u>	<u>5</u>

*First quarter through third quarter:*

		Number of Dwelling Units	
		Market Rate Residential	Affordable Residential
Subarea	Total	(80%)	(20%)
Upper Keys	25	20	5
Middle Keys	10	8	2

Lower Keys	29	23	6
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*Fourth quarter:*

		Number of Dwelling Units	
		Market Rate Residential	Affordable Residential
Subarea	Total	(80%)	(20%)
Upper Keys	24	19	5
Middle Keys	11	9	2
Lower Keys	28	22	6

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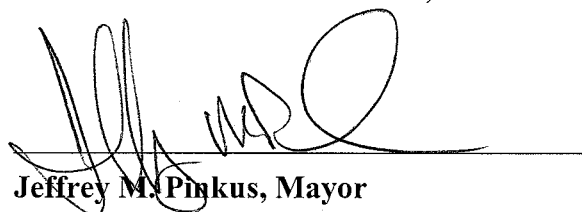
**Section 5.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and 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 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 DCA 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 25<sup>th</sup> day of January, 2005.

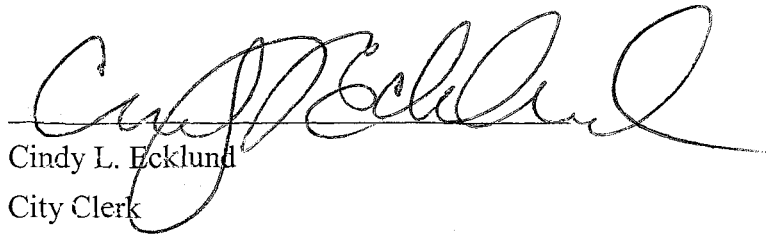
**THE CITY OF MARATHON, FLORIDA**



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



STATE OF FLORIDA  
**DEPARTMENT OF COMMUNITY  
AFFAIRS**

*"Dedicated to making Florida a better place to call home"*

JEB BUSH  
Governor

THADDEUS L. COHEN, AIA  
Secretary

**Fax Cover Sheet**

To: **Rebecca Jetton,  
Richard Shine (under separate cover)**

Company: **DCA – Tallahassee Office, Room 370-C**

Fax Number: **SC 8-278-3309**

Date: **1-26-05**

From: **Connie Robertson, Admin. Asst.**  
Florida Keys Field Office SC: 464-2402  
Phone: 305-289-2402 Fax: 305-289-2442

No. of Pages : 5 + 5, respectively, not including cover.

**MEMO:** City of Marathon, Ordinance #2005-01, and Ordinance #2005-03 was rendered on January 26, 2005 via personal delivery by Wendy Dyer. I've given both of them to Peter and the additional "Map Amendment Application" booklet (too big to fax) is in the folder for #03.

The tracking is as follows:

<b>Ordinance Tracking</b>	<b>Dates:</b>	<b>Ordinance Tracking</b>	<b>Dates:</b>
<b>Date Mth #2005-01 Rendered</b>	<b>01/26/05</b>	<b>Date Mth #2005-03 Render</b>	<b>01/26/05</b>
<b>45 Day Review Date</b>	<b>03/11/05</b>	<b>45 Day Review Date</b>	<b>03/11/05</b>
<b>60 Day Adoption Date</b>	<b>03/25/05</b>	<b>60 Day Adoption Date</b>	<b>03/25/05</b>
<b>Date faxed to Legal &amp; RJ</b>	<b>01/26/05</b>	<b>Date faxed to Legal &amp; RJ</b>	<b>01/26/05</b>
<b>Receipt by FAW Date</b>	<b>03/16/05</b>	<b>Receipt by FAW Date</b>	<b>03/16/05</b>
<b>FAW Publish Date</b>	<b>03/25/05</b>	<b>FAW Publish Date</b>	<b>03/25/05</b>
<b>21-day Challenge Date</b>	<b>04/15/05</b>	<b>21-day Challenge Date</b>	<b>04/15/05</b>

**2555 SHUMARD OAK BOULEVARD \$ TALLAHASSEE, FLORIDA 32399-2100**

Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781  
Internet address: <http://www.dca.state.fl.us>

**CRITICAL STATE CONCERN FIELD OFFICE**  
2796 Overseas Highway, Suite 212  
Marathon, FL 33050-2227  
(305) 289-2402

**COMMUNITY PLANNING**  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 488-2356

**EMERGENCY MANAGEMENT**  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 413-9969

**HOUSING & COMMUNITY DEVELOPMENT**  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100  
(850) 488-7956

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

Received

FEB 25 2005

City Clerk

In re: CITY OF MARATHON LAND  
DEVELOPMENT REGULATIONS  
ADOPTED BY ORDINANCE NO. 2005-01

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**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.* (2004), 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 January 26, 2005, the Department received for review City of Marathon Ordinance No. 2004-15 that was adopted by the City of Marathon Board of City Commissioners on January 25, 2005 ("Ord. 2005-01"). Ord. 2005-01 amends the Residential Rate of Growth Regulations set forth at Section 9.5-122, Section 9.5-123, Section 9.5-124, and Section 9.5-125 of the City of Marathon Code.

3. The purpose of Ord. 2005-01 is to change the Residential Rate of Growth Ordinance (ROGO) regulations allocation period from a quarterly period to a thrice-annual period of four months.

4. Ord. 2005-01 is consistent with the City's 2010 Comprehensive Plan.

**CONCLUSIONS OF LAW**

5. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in the Florida Keys Area of Critical State Concern. §§ 380.05(6), *Fla. Stat.*, and § 380.0552(9), *Fla. Stat.* (2004).

6. The City of Marathon is a local government within the Florida Keys Area of Critical

State Concern. § 380.0552, *Fla. Stat.* (2004) 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.* (2004). The regulations adopted by Ord. 2005-01 are land development regulations.

8. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the Principles for Guiding Development (the “Principles”) as set forth in § 380.0552(7), *Fla. Stat.* See *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles are construed as a whole and no specific provision is construed or applied in isolation from the other provisions.

9. Ord. 2005-01 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.

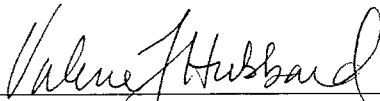
10. Ord. 2005-01 is not inconsistent with the remaining Principles. Ord. 2005-01 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 2005-01 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.

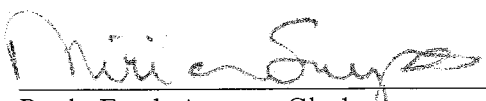
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 23<sup>rd</sup> day of February, 2005.

  
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:

Rebecca Jetton, ACSC Administrator  
Richard E. Shine, Assistant General Counsel