

Introduction Date: April 10, 2006
Public Hearing Dates: April 10, 2006
April 18, 2006
Enactment date: April 18, 2006

CITY OF MARATHON, FLORIDA
ORDINANCE 2006-04

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, CREATING SECTION 9.5-XXX TRANSFER OF BUILDING RIGHT (“TBR”) TO ESTABLISH A PROCEDURE FOR THE OFF-SITE REDEVELOPMENT OF EXISTING TRANSIENT UNITS, RESIDENTIAL DWELLING UNITS, AND COMMERCIAL FLOOR AREA, AMENDING SECTION 9.5-4 OF THE CODE, PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, PROVIDING FOR SEVERABILITY; PROVIDING FOR THE INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS (the “DEPARTMENT”); AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT IN ACCORDANCE WITH STATE LAW

WHEREAS, Section 9.5-121(e) exempts from the residential dwelling unit allocation system (“ROGO”) the redevelopment or rehabilitation of residential units which replace, but which do not increase the number of residential dwelling units above that existing on a parcel of property prior to redevelopment or rehabilitation; and

WHEREAS, the City desires to establish a procedure for the off-site redevelopment of existing transient units, residential dwelling units and commercial floor area within 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 amendment 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, 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 Areas of Critical State Concern.

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

Section 1. Amendment to Section 9.5-4 of the Code of the City of Marathon, Florida is hereby amended to read as follows:

Sec. 9.5-4. Definitions.

"Building right" means a dwelling unit, transient unit, or commercial floor area that was in lawful existence in accordance with the Comprehensive Plan as of the date of this Ordinance.

"Commercial floor area" means the two-dimensional measurement of all climate-controlled areas, including common, private areas; and non climate-controlled covered and uncovered areas for commercial uses, unless otherwise excluded.

Floor area excludes the following:

- a. Where the floor areas are uncovered and do not generate activities that will intensify the development except for open areas that are used for commercial purposes such as eating areas, gas station islands, or drive-ins.
- b. Where the floor areas are required by the LDR, i.e., covered pedestrian walkway or civic areas.
- c. Where the floor areas have a limited height clearance (6 feet or less).
- d. Covered or uncovered area used for vehicular circulation and car parking. This includes the area for car park ticketing machine placed at the gantry of car park.
- e. Covered main entrance canopy or main entrance.
- f. Loading docks.
- g. Elevators or their shafts.
- h. Stairways or their landings.
- i. Areas reserved for mechanical and electrical building-related machinery.

"Concept meeting" means a preliminary meeting with the Director for the purpose of discussing the condition and development or redevelopment of a proposed site (s).

"Dwelling unit" means a single unit providing complete and independent living facilities for one or more persons including permanent provisions for living, sleeping, cooking (meaning a food

preparation area larger than a one bin wet bar, that was intended or designed to be used for cooking or the preparation of food and a range, oven or utility connections for such) and sanitation.

"Inchoate right" means, as it relates to the transfer of density or building rights, an unused interest assigned to a particular parcel of real estate.

"Lawfully established," means a dwelling unit, transient unit or commercial floor area that meet the criteria of the Plan for recognition of a building right and approved by the Director.

"Receiver site" means a parcel located in the City to which a building right or density right may be transferred.

"Sender site" means a parcel located in the City from which a building right or density right may be transferred.

"Permanent RV" means a recreational vehicle that, as of *July 7, 2005*, meets all of the following criteria:

- a. has been tied down or otherwise affixed to the property on which it is located, and
- b. has permanent attachments such as carports, porches, screened rooms, or similar improvements, and
- c. is continuously occupied for more than six months and being used as a permanent dwelling unit, and
- d. is no longer capable of traveling on the public roadways of the state.

"Transfer of building right or TBR" means the conveyance of a building right from a sender site to a receiver site.

"Transfer of density right or TDR" means the conveyance of a density right from a sender site to a receiver site.

"Transient unit" means a unit in a public lodging establishment as defined by Florida Statutes section 509.013(4)(a) intended for transient lodging only for periods not exceeding thirty (30) days. Transient occupancy shall conform to the definition contained in Florida Statutes section 509.013(8) as to transient occupancy.

Section 2. Article XXX of the City Code is hereby created to read as follows:

ARTICLE XXX – Transfer of Building Rights (TBR)

9.5-XXX. Purpose and intent.

The purpose of this Article is to provide for the transfer of existing lawfully established dwelling units, transient units, and commercial floor area from their existing locations to other locations in the City. Through the transfer of building rights, it is the intent of this Article to reduce and reallocate excess densities; provide alternatives to ROGO through the use of existing building rights; eliminate

uses which are inconsistent with these regulations and the Comprehensive Plan; encourage the redevelopment and revitalization of the City's existing commercial centers; to preserve and protect environmentally sensitive lands; protect existing affordable housing; provide incentives for the creation of additional affordable housing and recognition of private property rights.

9.5-XXX. Types of transfers.

Transfer of building rights is limited to the following activities:

1. Transferring lawfully established commercial floor area from one site to another site.
2. Transferring a lawfully established transient unit from one site to another site.
3. Transferring a lawfully established dwelling unit from one site to another, more specifically:
 - a. Removing a market rate dwelling unit from one site and rebuilding on another site as a market rate or deed-restricted affordable dwelling unit.
 - b. Removing a deed-restricted affordable dwelling unit; a dwelling unit that is subsidized by or constructed with public money (including, but not limited to the Monroe County Land Authority, SHIP, HOME, CDBG, etc.); or a permanent RV from one site and rebuilding as a deed-restricted affordable dwelling unit on another site.

9.5-XXX. Verification and documentation of building right.

- a. The owner of a sender site must apply to the City for a determination of building rights. This application will provide, at a minimum, the following documentation, to support the existence of each right:
 - i. Proof of ownership of the property.
 - ii. A building permit from the City or Monroe County approving the construction of each unit; or
 - iii. Some other approval from the City or Monroe County
 - iv. For transient units, a Florida Department of Business and Professional Regulation (DBPR) license number and Monroe County Occupational License; or.
 - v. Other documentation as approved by the Director in order to verify each building right.
- b. Upon determination of the building right(s), a unique identifier number shall be assigned for the sender site for tracking and monitoring and the City shall issue the owner a "Determination of Building Right" stating the type and amount of approved building rights available for transfer off site.

- c. Notwithstanding the foregoing, as a condition of transfer, building rights for residential dwelling units for which the applicant cannot provide proof of lawful establishment, shall revert to the City of Marathon for use as affordable housing.
- d. The issuance of "Determination of Building Right" by the City shall be recorded in the chain of title as an inchoate right upon the sender site. The right to use a recognized building right on the sender site or transfer from the sender site shall exist in perpetuity; however this right is extinguished upon transfer to a receiver site.
- e. No application for determination of building right shall be accepted if the sender site has any open permits or active code violations; all bonds, assessments, back city taxes, fees and liens (other than mortgages) affecting the parcel shall be paid in full prior to recordation of the warranty deed for the transfer of the building right.

9.5-XXX. Transfer of building rights.

1. Sender Site Criteria: The parcel must have a documented building right.

2. Receiver Site Criteria: The parcel:

- a. Shall not receive any negative environmental points as scored using the existing ROGO scoring criteria;
- b. Must be zoned to allow the requested use; and
- c. Must meet all provisions of the LDR and Plan relating to the type and magnitude of the proposed development.

3. Transfer procedure:

a. The developer of a receiver site is encouraged to schedule a concept meeting with staff prior to submission of an application for transfer. The purpose of the meeting is to discuss the development and/or redevelopment of the sender and receiver sites and to understand any limitations that may be imposed upon the sender and receiver sites.

b. The developer of a receiver site shall make application for the approval of the transfer of the building right(s) on a form provided by the City, and provide such information requested by the City to approve the transfer. At a minimum, the information shall include the following:

- i. Identification of the sender and receiver sites; and
- ii. Proof of ownership of the receiver site and the building right(s) from the sender site.
- iii. A description of the proposed development or redevelopment of the sender and receiver sites.

c. The City will review the application to determine:

- i. Compliance with the receiver site criteria;
- ii. If the proposed use of the receiver site can be permitted as of right or requires conditional use approval. Development plans and approvals for the receiver site shall be subsequently processed as provided in the Plan and the LDR according to the magnitude and type of the development proposed for the site; and
- iii. The validity of the sender site building right(s) (e.g. has not been transferred).

d. Any proposal to transfer any non-transient dwelling unit building right must include one of the following:

- i. Affordable housing replacement plan: For every non-transient dwelling unit building right transferred as market rate, thirty percent (30%) of an affordable deed restricted dwelling unit must be reconstructed or rehabilitated on the sender site, the receiver site or some other acceptable site in the City (the "Affordable Housing Site"). In the event of reconstruction, this shall include, but is not limited to, bringing the sender site or the Affordable Housing Site, as the case may be, into compliance with all setbacks, storm water, flood elevation, landscaping, buffer-yards, open space, building code, and fire code requirements. In the event of rehabilitation, this shall include, but is not limited to, bringing the sender site and any of its remaining structures into compliance with all storm water, landscaping, building code (but only as to roof, electric, plumbing and storm shutters), and fire code requirements.; or
- ii. Affordable housing cash in lieu: For every dwelling unit building right transferred as market rate, a cash-in-lieu payment of thirty percent (30%) of the payment per building right, as amended from time to time by Resolution of the City Council, must be made to the City for affordable housing purposes; or
- iii. Donation of a buildable parcel suitable for the development of affordable housing with a value that meets the minimum requirements of Subsections i and ii above; or
- iv. Some combination of the above.

In addition to Subsections i through iv above, the City Council may approve alternative plans that meet the intent of the affordable housing provisions of this Division.

e. Upon approval, the City will issue the receiver site a TBR permit using a unique identifier number for tracking and monitoring by the City. This permit may include conditions of approval.

f. Prior to issuance of a building permit authorizing the development of the TBR on the receiver site:

- i. a deed of transfer shall be recorded in the chain of title of the sender site containing a covenant prohibiting the further use of the building right(s) utilized; and
- ii. a warranty deed shall be recorded in the chain of title of the receiver site evidencing the transfer of the building right.

g. Prior to issuance of a Certificate of Occupancy on the receiver site, the sender site and, if applicable, the Affordable Housing Site, must be brought into compliance with the requirements of the Code and any conditions of approval required by the TBR permit must be met. These conditions may include but are not limited to:

- i. Bringing the sender site and, if applicable, the Affordable Housing Site, into compliance with landscaping, buffer-yards, waste treatment, storm water, and access requirements; and
- ii. In the case of a non-transient dwelling unit, the structure containing the building right to be transferred may be demolished (and a cash-in-lieu payment pursuant to Subsection d(ii) hereof shall be made to the City), or must obtain a ROGO allocation to either continue use of the existing structure on the sender site or, if demolished, to rebuild the structure on the sender site or, if applicable, the Affordable Housing Site. This will require the owner of such structure(s) to upgrade the roof, electric and plumbing of any structure to meet the most recent requirements of the Florida Building Code, and to provide storm shutters that comply with the Florida Building Code. If the structure is rebuilt, the Certificate of Occupancy for such structure must be obtained prior to issuance of the Certificate of Occupancy on the receiver site.

h. For parcels which contain tropical hardwood hammocks, palm hammocks or high quality wetlands, as determined by the City Biologist, from which less than all building rights have been transferred, the following will be required:

- i. a restrictive covenant shall be recorded with the Monroe County Clerk of the Court, at the applicant's expense, restricting transfer of building rights back to the parcel; and
- ii. The sender site shall be restored pursuant to a restoration plan approved by the City Biologist. The restoration shall be certified as completed by the City Biologist within six (6) months from the approval of the transfer.

i. For parcels which contain tropical hardwood hammocks, palm hammocks or high quality wetlands, as determined by the City Biologist, from which all building rights have been transferred, the following will be required:

- i. a Grant of Conservation Easement shall be recorded with the Monroe County Clerk of the Court, at the applicant's expense, permanently restricting the sender site as open space; and
- ii. The sender site shall be restored pursuant to a restoration plan approved by the City Biologist. The restoration shall be certified as completed by the City Biologist within six (6) months from the approval of the transfer.

j. After its transfer, the right to use the TBR would extend only for the period in which the owner of the receiver site must complete the conditions of development.

Section XXX Affordable housing preservation incentives.

a. The City will endeavour to make available to applicants hereunder affordable housing ROGO allocations for purposes of meeting the affordable housing requirements of this Article. The City, however, shall have no obligation to make such allocations available to any particular application hereunder, and shall have no liability to any applicant hereunder or any third party if additional affordable housing ROGO allocations have not been authorized by the State Department of Community Affairs or are otherwise not available.

b. Redevelopment density bonus: For every five (5) non-restricted residential dwelling units transferred, redeveloped or maintained on the receiver or sender site as income-deed restricted affordable housing, in excess of those required by this section, the sender or receiver site (other than those zoned IS or ISD) shall be eligible for a density bonus of one (1) dwelling unit for market rate development.

c. Waiver of fees: Development review, permitting and impact fees due for affordable housing dwelling units created, redeveloped or rehabilitated under this section may be eligible for waiver, abatement or refund by the City Council.

Section 3. The City Council shall review this Ordinance and its impact on development in the City of Marathon on each of the six-month anniversary, the one-year anniversary and each annual anniversary thereafter of the date of this Ordinance. The City Council may solicit input from the public as part of that review.

Section 4. 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 5. The provisions of the City Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

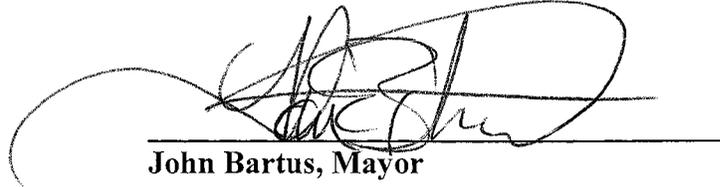
Section 6. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida, that the sections of the Ordinance may be renumbered or re-lettered to accomplish to such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. The provisions of this Ordinance constitute a "land development regulation" as state law defines that term. Accordingly, the City Clerk is authorized and directed 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 8. 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 18th day of April, 2006.

THE CITY OF MARATHON, FLORIDA



John Bartus, Mayor

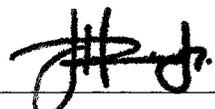
AYES: Mearns, Worthington, Bartus
NOES: None
ABSENT: Bull, Pinkus
ABSTAIN: None

ATTEST:



Cindy L. Ecklund
City Clerk

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



City Attorney