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April 18, 2013

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Ms. Liz Cloud, Program Administrator
Administrative Code & Weekly
R.A. Gray Building
500 S Bronough Street
Tallahassee FL 32399-0250

Via Certified Mail 7012 1010 0003 4990 5170

Dear Ms. Cloud,

Enclosed please find certified copies:

Ordinance No. 019-2013 to amend regulations within MCC Chapter 138, Article III, which concern the Nonresidential Rate of Growth Ordinance (NROGO) to simplify the NROGO permit allocation system process; allow applicants to acquire NROGO awards in less time (up to 4 x a year vs. up to 2 x a year); increase the maximum amount of de minimis expansion from 100 sq. ft. to 1,000 sq. ft. for new and existing nonresidential developments with an allocation awarded by building permit (no competition); and increase the maximum amount of a NROGO allocation from 2,500 sq. ft. to 10,000 sq. ft. per allocation quarter.

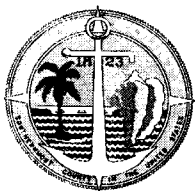
Ordinance No. 020-2013 to amend regulations within MCC Chapter 138, Article III, which concern the Nonresidential Rate of Growth Ordinance (NROGO). The main intent of the ordinance is to establish a codified mechanism to allocate nonresidential floor area that went unallocated in previous years or has been reclaimed.

These Ordinances were adopted by the Monroe County Board of County Commissioners at a Regular Meeting, held in formal session, on April 17, 2013. Please file for the record. Should you have any questions please feel free to contact me at (305) 295-3130.

Respectfully submitted,

Amy Heavilin, CPA,
Clerk of the Circuit Court
and ex officio Clerk of the
Board of County Commissioners
by: *Pamela G. Hancock, D.C.*

cc: County Attorney via e-mail
Growth Management via e-mail & courier
File



MONROE COUNTY, FLORIDA
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. 020 - 2013

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS REVISING PROVISIONS OF THE MONROE COUNTY CODE CONCERNING THE NON-RESIDENTIAL RATE OF GROWTH ORDINANCE (NROGO); AMENDING THE FOLLOWING MONROE COUNTY CODE SECTIONS: SECTION 138-47, NONRESIDENTIAL RATE OF GROWTH ORDINANCE; SECTION 138-52, APPLICATION PROCEDURES FOR NROGO; SECTION 138-53, EVALUATION PROCEDURES FOR NONRESIDENTIAL FLOOR AREA ALLOCATIONS; ESTABLISHING NEW DEFINITIONS; ESTABLISHING A MECHANISM TO ALLOCATE NONRESIDENTIAL FLOOR AREA UNALLOCATED IN PREVIOUS YEARS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, since the implementation of the Nonresidential Rate of Growth Ordinance (NROGO) permit allocation system, applications for square footage have not exceeded the amount available. Historically, the County has utilized only a small percentage of the total amount of square footage made available to the County in a given year. As of July 12, 2012, for the Upper/Lower Keys areas (excluding Big Pine/No Name Keys), 389,991 square feet (and growing) had not been utilized for development. In addition, as of July 12, 2012, 4,339 square feet of the square footage had not been awarded to Big Pine/No Name areas since the inception of the Big Pine CommuniKeys Plan and a separate allocation process in 2006; and

WHEREAS, this amendment establishes an application process for the NROGO bank, a codified mechanism to allocate nonresidential floor area that went unallocated in previous years; and

WHEREAS, in order to have proportional nonresidential growth, as part of a concurrent text amendment, the Land Development Code is being amended so that the annual NROGO allocation is proportionately divided into the three ROGO subareas (Upper Keys, Lower Keys and Big Pine/No Name Keys). Currently, the annual allocation is divided between the two

Upper/Lower Keys subareas and the Big Pine/No Name Keys subarea as required by the Big Pine and No Name Keys CommuniKeys Plan. As such, the NROGO bank shall be distributed proportionately; and

WHEREAS, for the opening balances of the Upper and Lower Keys ROGO subarea accounts (as of the beginning date of NROGO Year 22- July 13, 2013), 50% of the banked amount shall be distributed to the Upper Keys and the remaining 50% of the banked amount shall be distributed to Lower Keys; and

WHEREAS, in each the Upper and Lower Keys ROGO subarea account, there shall be a reserve balance of 20,000 square feet; and

WHEREAS, based upon the information and documentation submitted, the Commission makes the following Conclusions of Law: 1) the text amendment is consistent with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern; 2) the text amendment is consistent with the provisions and intent of the Monroe County Comprehensive Plan; and 3) the text amendment is consistent with the provisions and intent of the Monroe County Code; and

WHEREAS, during regularly scheduled meetings held on June 26, 2012 and August 28, 2012, the Monroe County Development Review Committee reviewed the ordinance and recommended approval to the Board of County Commissioners; and

WHEREAS, during regularly scheduled public hearings held on January 30, 2013, February 27, 2013 and March 27, 2013, the Monroe County Planning Commission reviewed the ordinance and recommended approval to the Board of County Commissioners;

NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Section 138-47 of the Monroe County Code shall be amended as follows:

Sec. 138-47. Nonresidential rate of growth ordinance (NROGO).

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Annual allocation period means the 12-month period beginning on July 14, 2001, and subsequent one-year periods that is used to determine the amount of nonresidential floor area to be allocated based on the number of ROGO allocations to be issued in the upcoming ROGO year.

Annual nonresidential ROGO allocation, also referred to as an annual NROGO allocation, means the maximum floor area that may be allocated during an annual allocation period.

Buildable lot or parcel, for the purposes of this article, means a lot or parcel which must contain a minimum of 2,000 square feet of uplands, including any disturbed wetlands that can be filled.

Canopy, also referred to as a sunshade, in reference to a structure, means an unenclosed, covered area. A canopy may be a free-standing structure or may project from the wall of a building.

Community master plan means a plan adopted by the board of county commissioners as part of the Monroe County Livable CommuniKeys Program.

Controlling date means the same as defined in section 138-19(a), except it shall apply to NROGO applications under this article.

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 county register of designated historic properties.

Lawfully established ROGO/NROGO exemption means a residential dwelling unit or nonresidential floor area that has received a permit or other official approval from the division of growth management for the units unit and/or nonresidential floor area.

Nonresidential floor area means the sum of the total *floor area* for a nonresidential building or structure, as defined in section 101-1. Additionally, covered and unenclosed boat racks with three or fewer sides not associated with retail sales of boats are not considered nonresidential floor area. Further, the term "*nonresidential floor area*" does not include space occupied by residential uses, including spaces occupied by a *transient residential unit* and an *institutional-residential use* as defined in section 101-1.

Nonresidential ROGO allocation, also referred to as NROGO allocation, means the maximum amount of nonresidential floor area which may be allocated in a given time period.

Nonresidential ROGO allocation award, also referred to as NROGO allocation award, means the approval of a nonresidential ROGO application prior to the application and subsequent issuance of a building permit to authorize construction of new nonresidential floor area.

Nonresidential ROGO bank, also referred to as NROGO bank, means the cumulative total of a) NROGO allocations that were not awarded and thereby not allocated due to a lack of demand, b) nonresidential floor area not made available for the annual NROGO

allocation by the board of county commissioners; and c) allocated nonresidential floor area reclaimed due to the abandonment or expiration of approved development that received a NROGO allocation award.

Nonresidential ROGO account, also referred to as NROGO account, means one of the four accounts that cumulatively establish the NROGO bank. There are four accounts within the NROGO bank, with each carrying an independent balance of nonresidential floor area: 1) the Upper Keys ROGO subarea account; 2) the Big Pine/No Name ROGO subarea account; 3) the Lower Keys ROGO subarea account; and 4) the Upper and Lower Keys general (joint) account.

Quarterly nonresidential ROGO allocation period means any one of the four periods within an annual allocation period.

Quarterly nonresidential ROGO allocation means the maximum number of amount of nonresidential floor area square footage which may be allocated in a quarterly allocation period.

Site means the parcels of land required to be aggregated to be developed or from which existing nonresidential floor area is to be transferred or received.

Storage area means the outside storage of vehicles, recreational vehicles, boats, campers, equipment, goods and materials for more than 24 hours. The term "storage area" includes a contractor's equipment storage, but does not include *outdoor retail sales*, which is defined in section 101-1. This is considered a light industrial use and does not include waste transfer stations, junkyards, or other heavy industrial uses.

- (b) *Purpose and intent*. The purposes and intent of the nonresidential rate of growth ordinance (NROGO) are:
- (1) To facilitate implementation of goals, objectives and policies set forth in the comprehensive plan relating to maintaining a balance between residential and nonresidential growth.
 - (2) To maintain a ratio of approximately 239 square feet of nonresidential floor area for each new residential permit issued through the residential rate of growth ordinance (ROGO) by ROGO subarea.
 - (3) To promote the upgrading and expansion of existing small-size businesses and to retain the predominately small scale character of nonresidential development in the Florida Keys.
 - (4) To regulate the rate and location of nonresidential development in order to eliminate potential land use conflicts.
 - (5) To allocate the nonresidential floor area annually hereunder, based on the goals, objectives and policies of the comprehensive plan and the community master plans.

* * * * *

Section 2. Section 138-52 of the Monroe County Code shall be amended as follows:

Sec. 138-52. - Application procedures for NROGO.

- (a) *Application for allocation by way of the NROGO allocation system.* The planning and environmental resources department shall accept applications to enter the NROGO system. The NROGO application must be accompanied by an approved building permit application in order to be considered. The planning director, or his or her designee, shall review the NROGO application for completeness. If the application is determined to be incomplete, the planning director, or his or her designee, shall reject the NROGO application and notify the applicant of such rejection, and the reasons therefor, within ten working days. If determined to be complete, the application shall be assigned a controlling date. The NROGO application shall be submitted in a form provided by the planning and environmental resources department and meet the following requirements:
- (1) The application shall include a) the name and address of the property owner(s) of record, b) the property record card(s) from the Monroe County Property Appraiser, c) a written legal description of the property proposed for development, d) a boundary survey of the property proposed for development, prepared by a surveyor registered in the State of Florida, showing the boundaries of the site, elevations, bodies of water and wetlands on the site and adjacent to the site, existing structures including all impervious areas, existing easements, total acreage and total acreage by habitat and e) a site plan. The boundary survey and site plan may be filed with the corresponding building permit application. Additional copies of the boundary survey and site plan are not required to be filed with the NROGO application.
 - (2) If a conditional use permit is required in accordance with this Land Development Code for the development applied for, the conditional use permit shall be obtained and effective prior to submittal of any NROGO application. A copy of the recorded development order shall be submitted with the NROGO application.
 - (3) The site plan shall be prepared and sealed by a professional architect, engineer, or any other professional licensed to prepare a site plan. The site plan shall be drawn to a scale of one inch equals ten feet or one inch equals twenty feet. At a minimum, the site plan shall depict the following features and information:
 - a. Date, north point and graphic scale;
 - b. Boundary lines of site, including all property lines and mean high-water lines shown in accordance with Florida Statutes;
 - c. All attributes from the boundary survey;
 - d. Future Land Use Map (FLUM) designation(s) of the site;
 - e. Land Use (Zoning) District designation(s) of site;
 - f. Tier designation(s) of the site;
 - g. Flood zones pursuant to the Flood Insurance Rate Map;
 - h. Setback lines as required by this Land Development Code;
 - i. Locations and dimensions of all existing and proposed structures, including all paved areas and clear site triangles;
 - j. Size and type of buffer yards and parking lot landscaping areas, including the species and number of plants;
 - k. Extent and area of wetlands, open space preservation areas and conservation easements;

- l. Delineation of habitat types to demonstrate buildable area on the site, including any heritage trees identified and any potential species that may use the site (certified by an approved biologist and based on the most current professionally-recognized mapping by the U.S. Fish and Wildlife Service);
 - m. Drainage plan including existing and proposed topography, all drainage structures, retention areas, drainage swales and existing and proposed permeable and impermeable areas;
 - n. Location of fire hydrants or fire wells;
 - o. The location of public utilities, including location of the closest available water supply system or collection lines and the closest available wastewater collection system or collection lines (with wastewater system provider) or on-site system proposed to meet required County and State of Florida wastewater treatment standards; and
 - p. A table providing the total land area of the site, the total buildable area of the site, the type and square footage of all nonresidential land uses, the type and number of all residential dwelling units, the amounts of impervious and pervious areas, and calculations for land use intensity, open space ratio, and off-street parking.
- (b) *Fee for review of application.* Each NROGO application shall be accompanied by a nonrefundable processing fee established by resolution of the board of county commissioners. Additional fees are not required for successive review of the same NROGO application unless the application is withdrawn and resubmitted.
- (c) *Compliance with other requirements.* The NROGO application shall not constitute an indication of whether or not the applicant for the nonresidential floor area allocation has satisfied and complied with all county, state, and federal requirements otherwise imposed by the county regarding conditions precedent to issuance of a building permit.
- (d) *Time of review.* The planning director may retain the allocation application and its associated building permit application for review pursuant to the evaluation procedures and criteria set forth in section 138-53 and section 138-55.
- (e) *Non-county time periods.* The county 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 county, to ensure that such non-county approvals, certifications and/or permits are not lost due to the increased time requirements necessary for the county to process and evaluate NROGO applications and issue allocation awards. The county 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 one active NROGO application per site in the 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 chapter 102, article VII, after 60 days of mailing of notification for the award of the allocation of nonresidential floor area or after failure of the applicant to submit required plan revisions by the required date set forth in subsection (k).
- (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) of this section.
- (i) *Revisions to applications and awards.*
- (1) Upon submission of a NROGO application, an applicant may revise the application if it is withdrawn and resubmitted prior to the allocation 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 nonresidential 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 nonresidential 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 director or the planning commission, 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 director 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 director 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.
- (k) *Revisions of building permit applications requiring the NROGO allocation(s).* A building permit application for a proposed nonresidential floor area requiring a NROGO allocation must be approved prior to submitting a NROGO application. In the event that the Florida Building Code is amended between the date in which a NROGO application is submitted

and the date in which a building permit requiring the NROGO allocation(s) applied for is issued (which follows the date in which the required allocation(s) is awarded), if necessary, the applicant shall submit plan revisions to the building permit application demonstrating full compliance with the current Florida Building Code in effect. These plan revisions shall be submitted within 180 days of the NROGO allocation award date or the applicant shall forfeit the NROGO allocation award. Following receipt of the plan revisions, the building department shall review the revisions as if the application is new (however retaining the same building permit number for administrative purposes), based on the building code, for compliance prior to issuance of the building permit requiring the NROGO allocation(s) by the building official. Such mandatory revisions and review are limited to the modifications necessary to demonstrate compliance with the Florida Building Code in effect at the time of building permit issuance. This is not applicable to the Land Development Code.

- (l) *Application for allocation by way of the NROGO bank.* The planning and environmental resources department (department) shall maintain a record of NROGO allocations that were not awarded in annual NROGO allocation periods. This shall be known as the NROGO bank. As of July 12, 2012 (NROGO Year 20), the NROGO bank for each ROGO subarea was as follows:

Big Pine Key and No Name Key ROGO subarea	4,339 square feet
Upper Keys & Lower Keys ROGO subareas	389,991 square feet

Prior to the opening date of NROGO Year 22 (July 13, 2013), the department shall determine the precise balance of the NROGO bank. Commencing NROGO Year 22 (July 13, 2013 through July 12, 2014), the NROGO bank shall be proportionally distributed between the three ROGO subareas: 1) Upper Keys, 2) Lower Keys and 3) Big Pine/No Name Keys. The NROGO bank shall be maintained by an account per each ROGO subarea and a general account for the Upper and Lower Keys ROGO subarea.

Upon availability of nonresidential floor area in a given and applicable ROGO account within the NROGO bank, the department shall accept applications from applicants requesting the banked nonresidential floor area. The NROGO application must be accompanied by an approved building permit application in order to be considered. The planning director, or his or her designee, shall review the application for completeness. If the application is determined to be incomplete, the planning director shall reject the application and notify the applicant of such rejection, and the reasons therefor, within 30 days. The application shall be submitted in a form provided by the department and meet the same requirements for a standard NROGO application as set forth in subsection 138-52(a). Each application shall be accompanied by a nonrefundable processing fee as established by resolution of the board of county commissioners.

* * * * *

Section 3. Section 138-53 of the Monroe County Code shall be amended as follows:

Sec. 138-53. Evaluation procedures for nonresidential floor area allocation.

- (a) *Initial evaluation of allocation applications.* Upon receipt of completed NROGO allocation applications, the planning director or his or her designee shall evaluate the allocation applications pursuant to the evaluation criteria set forth in section 138-55.
- (1) Within 30 days of an allocation date, unless otherwise extended by the planning commission, the planning director shall:
- a. Complete the evaluation of all allocation applications submitted during the relevant allocation period;
 - b. Total the amount of square footage for which allocation applications have been received for each ROGO subarea (Upper Keys; Lower Keys; and Big Pine Key/No Name Key); and
 - c. Rank the allocation applications, in descending order from the highest evaluation point total to the lowest for each ROGO subarea.
- (b) *Public hearings and allocation awards.* Upon completion of the evaluation ranking report and/or recommendation, the planning director shall schedule and notice a public hearing by the planning commission pursuant to otherwise applicable regulations.
- (1) At or prior to the public hearing, the planning commission may request, and the planning director shall supply, copies of the allocation applications and the evaluation worksheets.
- (2) Upon review of the allocation applications and evaluation worksheets, the planning commission may adjust the points awarded for meeting a particular criterion, 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 planning commission changes shall be specified in the form of a motion to adopt the allocation rankings and may include the following:
- a. A mistake in the application of one or more of the evaluation criteria; and
 - b. 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 planning commission may:
- a. Move to accept the evaluation rankings as submitted by the planning director;
 - 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; and
 - e. Move to reject the evaluation rankings.

- (6) The planning commission shall finalize the evaluation rankings within 60 days following initial receipt of the planning director evaluation ranking, report and recommendation.
- (c) *Notification to applicants.* Upon finalization of the evaluation rankings by the planning commission, notice of the rankings shall be posted at the planning department offices.
- (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 nonresidential floor area.
- (2) Applicants who fail to receive allocation awards shall be further notified by certified mail, return receipt requested; without further action by 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.
- (d) *Identical rankings.* If two or more allocation applications in a given size classification receive an identical evaluation ranking and both (or all) cannot be granted allocation awards within the allocation period, the planning commission shall award the allocation to the completed application first submitted, based on the controlling date of the application. If two 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.
- (e) *Allocation by way of the NROGO bank.* Concerning applications submitted pursuant to section 138-52(l), if nonresidential floor area is available in a NROGO subarea account within the NROGO bank, upon receipt of completed application, the planning director shall evaluate the application pursuant to the evaluation criteria set forth in section 138-55.
- (1) *Public hearing.* Excluding reservations granted by the board of county commissioners, the planning director shall schedule and notice the application for review and decision by the planning commission at a public hearing.
- a. *Allocation by planning commission.* Allocations by way of the NROGO bank shall only be awarded four times per NROGO year, on the same public hearing dates in which annual NROGO allocations are awarded per section 138-53(b). Such allocations shall be awarded pursuant to subsections (e)(2) through (e)(12).
- b. *Reservation of allocation by the board of county commissioners.* Notwithstanding provisions of subsections (e)(2) through (e)(12), the board of county commissioners may, for projects in excess of 10,000 square feet of nonresidential floor area, reserve by resolution, for up to eighteen (18) months, some or all of the available nonresidential floor area within an applicable account within the NROGO bank for a specified development. Prior to the public hearing in which the reservation is to be considered, the applicant shall a) if necessary, have entered into a development agreement with Monroe County for the development requiring the nonresidential floor area and b) if required, have been issued a conditional use permit for the development requiring the nonresidential floor area.

Building permits for these reserved allocations shall be picked up within six months of the effective reservation date, unless otherwise authorized by the board of county commissioners in its resolution. The board of county commissioners may, at its discretion, place conditions on any reservation as it deems appropriate.

- (2) *NROGO accounts.* Beginning July 13, 2013, the NROGO bank shall consist of four accounts. The first three accounts shall each represent a ROGO subarea: 1) Upper Keys, 2) Lower Keys, and 3) Big Pine Key and No Name Key. The boundaries of the ROGO subareas are defined in section 138-20(c). The fourth account shall represent a general or joint account for the Upper Keys and Lower Keys ROGO subareas. An applicant may only request nonresidential floor area from the account associated with the ROGO subarea in which the subject property is located. As of July 13, 2013, pursuant to section 138-51(a), the distribution of the annual NROGO allocation shall be distributed to each of the ROGO subareas based on the number of residential dwelling unit permits made available for each of the ROGO subareas. The unused remainders of nonresidential floor area from the annual NROGO allocation for each of the ROGO subareas shall roll over into the applicable subarea NROGO accounts within the NROGO bank each year; however, not the general account for the Upper Keys and Lower Keys ROGO subareas. Nonresidential floor area within a given subarea NROGO account shall be available for eligible developments within the boundaries of that subarea. On the opening day of each subsequent NROGO year (July 13), excluding the reserves provided for in subsection (e)(4), the non-reserve balances of the Upper Keys ROGO subarea account and the Lower Keys ROGO subarea account shall be returned to the general account for the Upper Keys and Lower Keys ROGO subareas pursuant to subsection (e)(14). After the return to the general NROGO account, nonresidential floor area within the general NROGO account shall be available for eligible developments within the boundaries of either the Upper Keys or Lower Keys subareas.
- (3) *Eligibility per tier designation.* Only applications for developments within Tier III designated areas shall be eligible for allocation by way of the NROGO bank.
- (4) *NROGO subarea account reserves.* The Upper Keys and Lower Keys NROGO subarea accounts shall maintain reserves of 20,000 square feet each. The Big Pine/No Name Key subarea account is not required to maintain a reserve.
- (5) *Noncompetitive applications.* If the total amount of nonresidential floor area requested in a single application or cumulatively in multiple applications by separate applicants is equal to or less than the amount available in a NROGO subarea account within the NROGO bank (excluding reserved floor area), the planning commission may grant the total amount of nonresidential floor area requested in the application(s) to the applicant(s).
- (6) *Competitive applications.* If the total amount of nonresidential floor area requested in a single application or cumulatively in multiple applications by separate applicants is greater than that the total amount available in a NROGO subarea account within the

NROGO bank (excluding reserved floor area), the planning director shall submit an evaluation report to the planning commission indicating the evaluation rankings. The planning commission shall award available nonresidential floor area in a NROGO subarea account (excluding reserved floor area) to the applicant with most points pursuant to section 138-55. If the highest scoring applicant does not request the entire amount available in a NROGO subarea account within the NROGO bank, the planning commission shall award the remaining available nonresidential floor area in a NROGO subarea account within the NROGO bank (excluding reserved floor area) to the application with the second highest score and so on until a NROGO subarea account within the NROGO bank reaches its balance (excluding reserves)

- (7) *Single application requesting more than the balance in a NROGO subarea account.* If there are not any competing applications, the planning commission may grant the total amount of nonresidential floor area available in a NROGO subarea account (excluding reserved floor area) to the applicant and require the applicant to acquire the remaining nonresidential floor area through the NROGO permit allocation system.
- (8) *De minimis applications.* Square footage for de minimis applications may be deducted from the annual NROGO allocation or the NROGO bank. Nonresidential floor area permitted via de minimis shall be deducted from the NROGO subarea account in which the property is located.
- (9) *Testimony.* The public, including but not limited to applicants, 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.
- (10) *Decision by the planning commission.* At the conclusion of the public hearing, the planning commission may:
 - a. If applicable, move to accept the evaluation rankings as submitted by the planning director;
 - b. If applicable, 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; and
 - e. Move to reject the evaluation rankings.

Within 60 days of the public hearing, the planning commission shall render its final decision on an application for an allocation by way of the NROGO bank by resolution. If an approval, the resolution shall be issued and pass all relevant appeal periods prior to issuance of a building permit requiring the nonresidential floor area awarded by the resolution.

- (11) *Opening balances for the first three subarea NROGO accounts as of NROGO Year 22 (July 13, 2013).* The opening balances for each subarea NROGO account shall be determined and calculated by the planning department based on available and unused annual nonresidential floor area from NROGO Years 10 through 21.
- (12) *Opening balance for the fourth general NROGO account for the Upper Keys and Lower Keys ROGO subareas as of NROGO Year 22 (July 13, 2013).* The opening balance for the general NROGO account for the Upper Keys and Lower Keys ROGO subareas shall be zero (0) square feet of nonresidential floor area. The account may have nonresidential floor area distributed to it on the opening date of each subsequent NROGO Year thereafter pursuant to subsection (e)(15).
- (13) *Return to the general NROGO account for the Upper Keys and Lower Keys ROGO subareas.* Commencing NROGO Year 23 (July 13, 2014), on the opening date of each NROGO Year, excluding the reserves provided for in subsection (e)(4), the non-reserve balances of the Upper Keys ROGO subarea account and the Lower Keys ROGO subarea account shall be returned to the single, general or joint account for the Upper Keys and Lower Keys ROGO subareas.
- (14) *Notification to the general public of the availability of the NROGO account balances.* For each of the four planning commission public hearings in a given NROGO Year in which NROGO allocations may be awarded, the planning department shall provide a detailed report to the planning commission and general public providing the exact balances of nonresidential floor area that exist within each the four accounts of the NROGO bank. In addition, these balances shall be provided in the newspaper advertisements for the planning commission public hearings (as required by section 110-5) in which NROGO allocation awards may be awarded.

* * * * *

Section 4. Application.

This ordinance applies to applications submitted on or after the commencement of Period 1 of NROGO Year 22, which is July 15, 2013. In the event that the ordinance is not effective as provided in Section 8 and 10 below, this ordinance shall apply to applications submitted on or after the commencement of Period 2 of NROGO Year 22, which is January 14, 2014.

Section 5. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Conflicting Provisions.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Section 7. Transmittal.

This ordinance shall be transmitted to the Florida State Land Planning Agency as required by F.S. 380.05 (11) and F.S. 380.0552(9).

Section 8. Filing.

This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall not become effective pursuant to Section 10 until a final order is issued according to F.S. 380.05(6) by the Florida State Land Planning Agency or Administration Commission approving the ordinance, and if the final order is challenged, until the challenge to the order is resolved pursuant to F.S. Chapter 120.

Section 9. Inclusion in the Monroe County Code.

The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition to amendment thereto, and shall be appropriately renumbered to conform to the uniform marking system of the Code.

Section 10. Effective Date.

This ordinance shall become effective as provided by law and stated above.


PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 17th day of April, 2013.

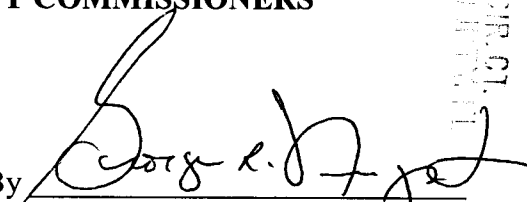
Mayor George Neugent
Mayor *Pro Tem* Heather Carruthers
Commissioner Danny Kolhage
Commissioner Sylvia Murphy
Commissioner David Rice

Yes
Yes
Yes
Yes
Yes

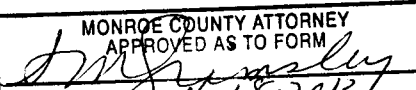
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

Attest: Amy Heavilin, Clerk

By 
Deputy Clerk

By 
Mayor George Neugent

FILED FOR RECORD
2013 APR 17 PM 4:45
CLERK CIR. CL.
MONROE COUNTY FLA.

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

Date: 4-18-2013