

**Sponsored By:** Garrett

**City Council Public Hearing Date:** July 11, 2023

August 8, 2023

**Enactment Date:** August 8, 2023

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2023-13**

**AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 108, ARTICLE 2 (“NONCONFORMING STRUCTURES”) BY DELETING A PORTION OF SECTION 108.15 TITLED “ADDITIONAL STANDARDS FOR NONCONFORMING SEXUALLY ORIENTED BUSINESSES.”; SPECIFICALLY, SUBSECTION B PART 2 TO COMPORT WITH MODERN CONSTITUTIONAL CONSTRAINTS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS THEREOF FOUND TO BE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY AFTER FINAL ADOPTION BY THE CITY COUNCIL; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, *Florida Statutes*, provides for comprehensive plan implementation through the enactment of certain ordinances; and

**WHEREAS**, the City of Marathon is located within an Area of Critical State Concern, pursuant to Sections 380.05 and 380.0552, *Florida Statutes*; and

**WHEREAS**, Florida Keys’ Local Governments have adopted state-mandated Comprehensive Plans and Land Development Regulations pursuant to both Chapters 163 and 380.055, *Florida Statutes*, which have been approved by the State, as required by law; and

**WHEREAS**, the City of Marathon (“City”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, *Florida Statutes*, and

**WHEREAS**, on June 15, 2015, the Supreme Court decided the case of *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), which set a new constitutional standard for which a municipal sign ordinance could and could not regulate; and

**WHEREAS**, because of the regulations imposed by the Supreme Court, the current iteration of the City of Marathon’s Code of Ordinance Chapter 108, Section 108.15(B)(2) has become outdated and in need of being updated.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT**

~~Strikethrough~~ = deletion

**Bold underline** = addition

**SECTION 1.** The above recitals are true, correct, and incorporated herein by this reference.

**SECTION 2.** “Additional Standards for Nonconforming Sexually Oriented Businesses.” is hereby amended to read as follows:

Section 108.15. – Additional Standards for Nonconforming Sexually Oriented Businesses.

A. *Purpose and Intent:* On the date of adoption of new standards for the location of sexually oriented businesses, there are sexually oriented businesses that already exist but that fail to conform to the location requirements imposed in the new standards. In each case, the nonconformity involves proximity to residential neighborhoods or other sensitive uses. To balance the interests of these established businesses with the interests of the affected neighborhoods and other sensitive uses, the City Council has determined that such uses should be allowed to continue to operate but should be subject to additional standards to mitigate the impacts of their proximity to these sensitive uses.

B. *Standards:* Any sexually oriented business that is a lawful nonconforming use because it is located in a zoning district that does not permit such use or because it does not conform to the separation requirements of Chapter 104 "Use Regulations" shall be subject to the following additional standards:

1. *Operating Hours:* Each such business that offers on-premises entertainment (including live entertainment, motion pictures, videos, arcade booths, modeling or any other form of on-premises entertainment) shall be closed from 2:00 a.m. to 9:00 a.m. each day. This restriction on operating hours shall not apply to a nonconforming business that simply offers retail goods for sale or rental.
2. ~~*Restrictions on Signage:* Any sign on such a business, including both those that have on-premises entertainment and those that do not, shall be oriented so that it is not legible from any lot occupied by a single family residence, a school or a house of worship. If it is impracticable to reorient the sign to preclude its legibility from such locations, the affected sexually oriented business may either install a landscaped or other screening device to accomplish the same purpose or remove the sign.~~

**SECTION 3.** Any provisions of the Code of Ordinances of the City of Marathon, Florida or Ordinances or parts of Ordinances that are in conflict with the provisions of this Ordinance are hereby repealed.

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

**SECTION 6.** This Ordinance shall become effective immediately upon approval.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>th</sup> DAY OF AUGUST, 2023.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Luis Gonzalez, Mayor**

AYES: Smith, Still, Matlock, Landry, Gonzalez  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

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

  
\_\_\_\_\_  
Steven Williams, City Attorney

**STATE OF FLORIDA  
DEPARTMENT OF COMMERCE**

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON,  
ORDINANCE NO. 2023-13

**FINAL ORDER APPROVING CITY OF MARATHON ORDINANCE NO. 2023-13**

The Department of Commerce (the “Department”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon (the “City”), Ordinance No. 2023-13 (the “Ordinance”).

**FINDINGS OF FACT**

1. The Florida Keys Area is designated by Section 380.0552, Florida Statutes, as an area of critical state concern. The City is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on August 8, 2023 and rendered to the Department on August 15, 2023.
3. The Ordinance amends Section 108.15 of the City’s Land Development Code (“Code”) to remove outdated provisions relating to the signage restrictions for certain nonconforming businesses and to ensure consistency with other signage provisions throughout the Code.

**CONCLUSIONS OF LAW**

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Section 380.05(6), Florida Statutes.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is consistent with the City’s Comprehensive Plan as required by Section 163.3177(1), Florida Statutes, generally, and is specifically consistent with Goal 1-1, Objective 1-1.1, Policy 1-1.1.2., Goal 9-1, and Objective 9-1.1.

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 for that area. *See* Section 380.05(6), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in Section 380.0552(7), Florida Statutes.


8. The Ordinance is consistent with the Principles for Guiding Development in Section 380.0552(7), Florida Statutes and is specifically consistent with the following Principles:

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (f) Enhancing natural scenic resources, promoting the aesthetic benefits of the natural environment, and ensuring that development is compatible with the unique historic character of the Florida Keys.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2023-13 is consistent with the City of Marathon’s Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Final Order becomes final 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



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Meredith Ivey, Deputy Secretary  
Division of Community Development  
Department of Commerce

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, BY FILING A PETITION.

A PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMERCE WITHIN 21 CALENDAR DAYS OF BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK  
DEPARTMENT OF COMMERCE  
OFFICE OF THE GENERAL COUNSEL  
107 EAST MADISON ST., MSC 110  
TALLAHASSEE, FLORIDA 32399-4128  
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

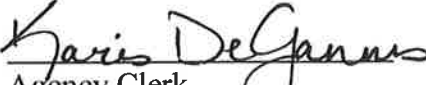
FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

PURSUANT TO SECTION 120.573, FLORIDA STATUTES, AND CHAPTER 28, PART IV, FLORIDA ADMINISTRATIVE CODE, YOU ARE NOTIFIED THAT MEDIATION IS NOT AVAILABLE.

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 following persons by the methods indicated this 13<sup>th</sup> day of October 2023.

  
Agency Clerk  
Department of Commerce  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Luis Gonzalez, Mayor  
City of Marathon, City Council  
9805 Overseas Highway  
Marathon, FL 33050

Diane Clavier, City Clerk  
City of Marathon, City Clerk  
9805 Overseas Highway  
Marathon, FL 33050

Brian Shea, Planning Director  
City of Marathon, Planning Department  
9805 Overseas Highway  
Marathon, FL 33050