

Sponsored By: Council
Public Hearing Date: September 19, 2022
October 11, 2022
November 15, 2022
Enactment Date: November 15, 2022

**CITY OF MARATHON, FLORIDA
ORDINANCE 2022-24**

AMENDING CHAPTER 107, ARTICLE 7 (“SIGNS”) BY DELETING SECTION 107.621(F)(3)G WHICH PREVIOUSLY REQUIRED A PHOTOMETRIC STUDY TO BE CONDUCTED FOR EVERY DIGITAL SIGN; 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; PROVIDING FOR AN EFFECTIVE DATE UPON THE FINAL APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND 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 18, 2015, the Supreme Court decided the case of Reed v. Town of Gilbert, which set a new constitutional standard for what a municipal sign ordinance could and could not regulate; and

WHEREAS, because of the new regulations imposed by the Supreme Court, the previous iteration of the City of Marathon’s sign ordinance had become outdated; and

WHEREAS, in order to maintain an ordinance which regulates signs throughout the City of Marathon, the current sign code was re-written in line with Reed ruling.

WHEREAS, now that the sign code is conforming, minor amendments are being proposed that Council previously suggested.

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

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

SECTION 2. Chapter 107, Article 7 is amended.

SECTION 3. Section 107.621(F)(3)G will be stricken as denoted in Exhibit "A," attached hereto, and Section H shall be re-lettered accordingly.

SECTION 4. 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 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, 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 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 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 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 Economic Opportunity for approval pursuant to Section 380.05(6) and (11), Florida Statutes.

SECTION 8. This Ordinance shall become effective immediately upon approval.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 15TH DAY OF NOVEMBER 2022.

THE CITY OF MARATHON, FLORIDA



Mayor Gonzalez

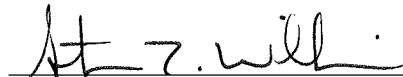
AYES: Gonzalez, Still, Landry, Smith, Matlock
NOES: None
ABSENT: None
ABSTAIN: None

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

EXHIBIT "A"

Sec. 107.621 – General provisions for signs.

The requirements of this section shall apply to all signs whether or not a permit is required, unless otherwise noted below:

(f) Electric signs, digital signs and illuminated signs.

(3) Electronic message centers and digital signs shall comply with the following:

- a. Electronic message centers and digital signs shall contain static, motionless messages only;
- b. Displaying any form of motion, or the optical illusion of movement, video or varying light intensity is prohibited;
- c. Each message on a digital sign must be individually complete and shall not continue on a subsequently displayed message;
- d. Audio mechanisms, producing sounds, messages or music are prohibited.
- e. Brightness. Digital signs shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance. This requirement is based on levels established by the Illuminating Engineering Society of North America (IESNA) for Light Emitting Diode (LED) signage as amended from time to time.
- f. Each digital sign must have a light sensing device that will adjust the display brightness in real-time as ambient light conditions change so that at no time a sign shall exceed a brightness level of three-tenths (0.3) footcandles above ambient light.
- ~~g. Photometric plan. Each building permit application for a digital sign shall be accompanied by a photometric plan. The photometric plan shall demonstrate the digital sign's maximum light intensity, in foot candles above ambient light, shall not impact neighboring properties, maximum illumination measured in footcandles at the property line shall not exceed 0.3 footcandles.~~
- hg. Malfunction. Digital signage shall have a default mechanism installed to either turn the display off or only show black on the display in the event of a malfunction.

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON,
ORDINANCE NO. 2022-24

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2022-24**

The Department of Economic Opportunity (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. 2022-24 (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 November 15, 2022 and rendered to the Department on December 2, 2022.
3. The Ordinance amends Section 107.621(f)(3)g by removing the requirement for a photometric plan to be included with a building permit application for a digital sign.

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 9-1, Objective 9-1.1, and Policy 9-1.3.7.

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:

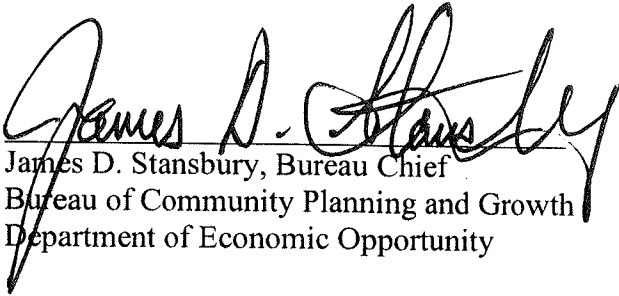
(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2022-24 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.



James D. Stansbury, Bureau Chief
Bureau of Community Planning and Growth
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

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.

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

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
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 THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

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 18th day of January 2023.



Agency Clerk
Department of Economic Opportunity
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