

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Court, the current iteration of the City of Marathon’s Code of Ordinance Chapter 108, Section 108.15(B)(2) has become outdated and in need of being updated.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 8th DAY OF AUGUST, 2023.

THE CITY OF MARATHON, FLORIDA

Luis Gonzalez, Mayor

AYES:

NOES:

ABSENT:

ABSTAIN:

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