



CITY COUNCIL AGENDA STATEMENT

Meeting Date: April 9, 2024
To: City Council
From: Brian Shea, Planning Director

Agenda Item: **Ordinance 2024-07**, Amending Chapter 104, Article 1 (“General Provisions”) By Deleting A Portion Of Section 104.66 Titled “Wireless Services Facilities (“WSFs”)”; Specifically, Subsection G Part 4 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 Commerce After Final Adoption By The City Council; Providing For Inclusion In The Code Of Ordinances And Providing For An Effective Date.

RECOMMENDATION:

Staff recommends APPROVAL

BACKGROUND:

APPLICANT: City of Marathon

REQUEST:

The draft ordinance has been proposed to modify language in Chapter 104, Article 1, of the City of Marathon Land Development Regulations, as it pertains to signage.

Purpose of Proposed Amendment:

The purpose of the amendment is to strike the language that is outdated and rely on the constitutionally complaint sign language that has already been amended.

AUTHORITY

Section 102.26. Planning Commission Recommendation.

A. *Authority:* The PC shall consider a proposed text amendment at the request of the Council.

B. *Review Criteria:* The PC shall review such proposed amendment, based upon the criteria listed below:

1. The need and justification for the change;
2. The consistency of the proposed amendment with the Comprehensive Plan; and

3. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.
- C. *Findings:* The PC shall make a finding of whether the proposed amendment is consistent with the Comprehensive Plan and a recommendation shall be prepared and forwarded to the Council, indicating if the proposed amendment should be:
1. Approved as proposed;
 2. Approved with amendments proposed by the PC; or
 3. Denied

Section 102.27. - Hearing(s) by Council.

- A. The decision to process a text amendment is within the sole discretion of the Council.
- B. For any proposed text amendment, the Council shall hold a minimum of two (2) public hearings, conforming to the requirements of Fla. Stat. Ch. 166, before taking action on the amendment.

Section 102.28. - Action by Council.

Following the public hearings, the Council shall make a finding of whether the proposed text amendment is consistent with the Comprehensive Plan and may approve, approve with changes, or deny the proposed amendment.

As noted, review of proposed LDR text amendments is to be made based on three basic criteria: need and justification for change, consistency with the adopted Comprehensive Plan, and whether the proposed amendment will further the purposes of the LDRs, other ordinances, and actions taken to further the implementation of the Comprehensive Plan. The Planning Commission, in reviewing the proposed amendment, may recommend approval as is, approval with changes, or denial to the City Council.

ANALYSIS OF LAND DEVELOPMENT REGULATION TEXT AMENDMENTS:

Section 102.26(B) of the Land Development Regulations requires that the following standards and criteria be considered for any proposed text amendment. Each criterion and explanation of relevance to this proposed amendment are listed below:

A. The need and justification for the change;

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. Because of the regulations imposed by the Supreme Court, the current iteration of the City of Marathon's Code of Ordinance Chapter 104, Section 104.66(G)(4) has become outdated and in need of being updated.

B. The consistency of the proposed amendment with the Comprehensive Plan; and

Policy 7-1.4.2 states that the City shall continue to maintain Land Development Regulations, which include provisions to minimize the impacts of signs on the scenic beauty of the City. This amendment ensures the LDRs are maintained and constitutionally valid.

C. Whether the proposed change shall further the purposes of the LDRs, and other City Codes, regulations and actions designed to implement the Comprehensive Plan.

The proposed text amendments further the purposes of the LDRs and other City Codes, regulations and actions designed to implement the Comprehensive Plan by ensuring constitutional validity.

CONCLUSION:

Staff indicates that the proposed text amendments are consistent with the standards and tenants of Chapter 163 and 380 F.S., and the City's Comprehensive Plan adopted under the requirements of these statutes and rules.

RECOMMENDATION:

Staff recommends APPROVAL

Sponsored By: Garrett

Planning Commission Public Hearing Date: February 26, 2024

City Council Public Hearing Date: March 12, 2024

April 9, 2024

Enactment Date: April 9, 2024

**CITY OF MARATHON, FLORIDA
ORDINANCE 2024-07**

AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 104, ARTICLE 1 (“GENERAL PROVISIONS”) BY DELETING A PORTION OF SECTION 104.66 TITLED “WIRELESS SERVICES FACILITIES (“WSFs”)”; SPECIFICALLY, SUBSECTION G PART 4 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 COMMERCE 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 104, Section 104.66(G)(4) 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. “Wireless Services Facilities (“WSFs”)” is hereby amended to read as follows:

[Sec 104.66] Wireless Services Facilities ("WSFs")

G. Approval Criteria. The following approval criteria apply to all Wireless Communications Facilities:

1. *Radio Frequency Emissions.* The Radio Frequency Emissions shall comply with FCC standards for such emissions.
2. *Open Space.* Pursuant to City LDRs, the development proposal shall be required to meet the open space ratio required for the land use district or the habitat where they are located. For the purposes of this Chapter the following shall be used to calculate open space:
 - a. The area beneath all Equipment Enclosures; plus
 - b. The area of the Wireless Communications Facility foundation at or above grade; plus
 - c. The area beneath Ancillary Structures excluding that area which is beneath guy wires (if applicable); plus
 - d. The area inside a lattice type structure framework.
3. *Security.* Fencing, in accordance with Chapter 107, Article 10 of the LDRs, and Anti-climbing Devices shall be required to preserve security on Wireless Communications Facilities.
- ~~4. *Signage.* The only signage that is permitted upon a Tower, Equipment Enclosures, or fence shall be for security or safety, such as a property management sign which may include the address and telephone numbers; or shall be informational for the purpose of identifying the Tower as well as the party responsible for the operation and maintenance of the facility. Any such sign must comply with the size limitations established in City LDRs.~~
- 4.** ~~5.~~ *Structural Integrity.* The entire Wireless Communications Facility and all appurtenances shall be designed pursuant to the most current wind speed design requirements as set forth in the applicable building code. Any Collocation of an antenna on an existing tower shall not impair the tower's ability to maintain the most current wind speed design requirements as set forth in the applicable building code.
- 5.** ~~6.~~ *Landscaping.* Landscaping and or screening in the form of at least a medium bufferyard pursuant to Chapter 107, Article 8 of the City LDRs shall be required around the Development Area for all new towers and Earth Satellite Stations. Landscaping and or

screening in the form of at least medium buffer yard pursuant to the City LDRs shall be installed around the development area to the maximum extent practicable for any Replacement Tower. Landscaping or screening requirements for a Stealth Tower shall be at the discretion of the City Manager or for a Stealth Tower.

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 9TH DAY OF APRIL, 2024.**

THE CITY OF MARATHON, FLORIDA

Robyn Still, 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