

Sponsored by: Garrett
Introduction Date: May 11, 2021
Public Hearing Dates: May 11, 2021
June 8, 2021
Enactment Date: June 8, 2021

**CITY OF MARATHON, FLORIDA
ORDINANCE 2021-13**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA;
AMENDING SECTION 104.62, “MOBILE VENDOR FOOD UNITS”;
PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND
ORDINANCES INCONSISTENT WITH THIS ORDINANCE;
PROVIDING FOR SEVERABILITY; PROVIDING FOR TRANSMITTAL
TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY;
PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR
AN EFFECTIVE DATE.**

WHEREAS, the Legislature of the State of Florida in Chapter 166 – Municipalities, Florida Statutes, confers upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, Florida Statute 509.102 Mobile food dispensing vehicles; preemption was adopted; and

WHEREAS, the City Council has determined it appropriate to adopt regulations that are consistent with the Florida Statute.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF MARATHON, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Land Development Code Chapter 104 Specific Use Regulations, Article 1. – General Provisions, is hereby amended by the following amendments:

Section 104.62. - Mobile Vendor Food Units.

The following regulations are established for non-motorized food vendor carts, which are small, lightweight, and often mounted on a single-axle (two-wheeled) chassis and mobile food units, which are vehicle mounted and are self-propelled, and designed to be movable from place to place. Sale of products other than food ~~under the license authorized in this section~~ is prohibited.

Mobile vendor food units (MVFU) are permitted pursuant to Table 103.15.1 as of right on developed private property in all commercial and industrial districts with the written consent of the property owner, subject to the following requirements:

~~A. Licenses for Mobile Vendor Food Units shall be issued by the City of Marathon Planning Department and generally be limited to a total of seven (7) licenses. An individual license shall not be utilized at two (2) locations (or vehicles) simultaneously. All licenses shall be subject to annual renewal and approval and shall not be transferable. The number of licenses and associated license fees may be modified by the City Council from time to time by affirmative Resolution of the City Council.~~

~~B.A.~~ *MVFUs Utilizing Fixed Locations.*

1. *Location:* Mobile vendor food units shall be placed only on properties with a legally operating permanent business during that business's normal hours of operation and shall comply with the following location criteria:

a. The mobile vendor food units shall not be located within any required front or street side yard setback; and

b. The mobile vendor food units shall not interfere with vehicular and pedestrian movement or visibility, block required sight distances, or damage landscaped areas.

c. Shall be able to provide adequate additional parking spaces so parking spaces required for the host business location are not impacted.

2. *Limited Hours of Operation:* ~~An~~ vendor licensed under 104.62 ~~B~~MVFU may only remain at an approved private property location (set out in Subsection 104.62BA.1.) for a period not to exceed eight (8) hours in a 24-hour period. ~~An~~ MVFU may be approved to operate at multiple locations during different time periods.

3. *Storage:* The food vendor shall remove the mobile vendor food unit from the point of sale or store the unit out of public view at the end of each business day.

4. *Trash Receptacles:* The food vendor shall provide receptacles for litter associated with the sales activity. The food vendor shall leave the site in a clean state at the end of each business day.

~~C.B.~~ *MVFUs Utilizing Public Rights-Of-Way.*

1. The mobile vendor food units may operate within the City of Marathon rights-of-way so long as their activity does not disrupt the normal flow of vehicular traffic.

2. An MVFU licensee shall not remain at an individual location on the City's rights-of-way for a period longer than 15 minutes.

3. MVFUs ~~licensed under 104.62~~ C. shall only be allowed to operate during daylight hours (dawn to dusk).

4. While stationary and conducting business, an MVFU shall turn off all music or other amplified noise.

~~D. Exceptions.~~

~~1. Hot Dog Carts may operate without a City license under this section as long as said unit is associated on the same property with a restaurant licensed by the State of Florida and is itself licensed by the State.~~

E. *Additional Permits and licenses.* All MVFUs licensed under this Section shall obtain all necessary permits, licenses, and inspections required by the Florida Department of Agriculture and Consumer Services, Florida Department of Health, and Florida Department of Business and Professional Regulation, prior to conducting any business approved under this Section.

Section 4. The Provisions of the Marathon Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

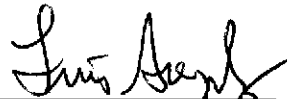
Section 5. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance 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 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 word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. This Ordinance shall become effective immediately upon adoption on second reading.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8TH DAY OF JUNE, 2021.

THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor

AYES: Zieg, Bartus, Cook, Senmartin, Gonzalez
NOES: None
ABSENT: None
ABSTAIN: None

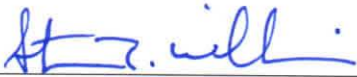
ATTEST:



Diane Clavier, City Clerk

(CITY SEAL)

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



City Attorney Steven T. Williams

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON,
ORDINANCE NO. 2021-13

**FINAL ORDER
APPROVING MARATHON ORDINANCE NO. 2021-13**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Marathon (“City”), Ordinance No. 2021-13 (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 June 8, 2021 and rendered to the Department on June 16, 2021.
3. The Ordinance revises Chapter 104, Article 1, Section 104.62 of the City’s Land Development Code to adopt regulations that are consistent with Florida Statutes governing the regulation of mobile food dispensing vehicles through licenses, registrations, permits, and fees.
4. Specifically, the Ordinance removes Section 104.62(A), eliminating both the authority of the City’s Planning Department to issue licenses to mobile vendor food units and the City Council’s power to modify the number of licenses. The Ordinance also removes the requirement for annual license renewal and approval by the City’s Planning Department. Finally, the Ordinance removes the requirement that an individual license shall not be used at two locations

simultaneously and removes former licensing exceptions for hot dog cart operations.

CONCLUSIONS OF LAW

5. 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.

6. “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.

7. 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 Future Land Use Element Objective 1-1.1 and Future Land Use Element Policy 1-1.1.1.

8. 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.

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

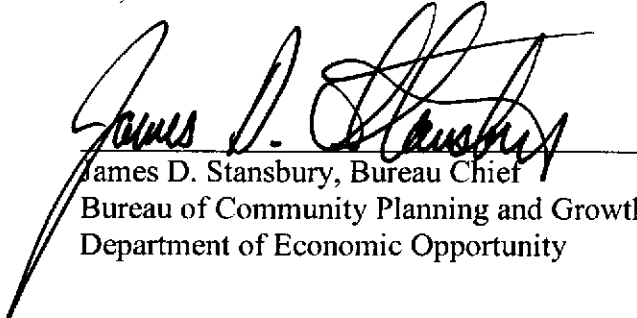
(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(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. 2021-13 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.



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.

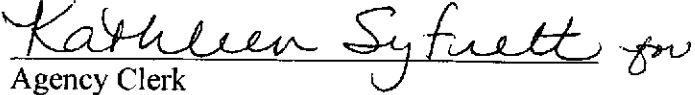
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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 13th day of July, 2021.


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

George Garrett, Planning Director
City of Marathon, Planning Department
9805 Overseas Highway
Marathon, FL 33050