

**Sponsored By:** Council  
**City Council Public Hearing Date:** September 14, 2021  
October 12, 2021  
**Enactment Date:** October 12, 2021

**CITY OF MARATHON, FLORIDA  
ORDINANCE 2021-21**

**AN ORDINANCE BY THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 104, ARTICLE I (“GENERAL PROVISIONS”) BY AMENDING SECTION 104.62 TO LIMIT ACCESS OF MOBILE VENDORS ON SOMBRERO BEACH ROAD IMMEDIATELY ADJACENT TO SOMBRERO BEACH; 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**, there have been numerous problems with mobile vendor food units (MVFUs) on the right-of-way immediately adjacent to Sombrero Beach, leading to frustrated visitors and citizens, increased congestion, and frequent noise concerns for the nearby residential neighborhood; and

**WHEREAS**, the area around to Sombrero Beach is a residential neighborhood, and the inclusion of businesses such as MVFUs does not conform with the community character of the surrounding neighborhood; and

**WHEREAS**, in order to maintain the character of the residential neighborhood around Sombrero Beach as well as reduce the traffic and congestion for those visiting the beach, it is in the best interest of the visitors and citizens of the City of Marathon to limit access of MVFUs to the area immediately in front of Sombrero Beach.

**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.** Chapter 104, Article 1, Section 104.62 “Mobile Vendor Food Units” is hereby amended to read as follows:

Section 104.62. – Mobile Vendor Food Units.

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.

**2. No MVFUs may operate at Sombrero Beach or the right-of-way immediately adjacent to Sombrero Beach, more particularly described as the southbound end of Sombrero Beach Road including and between the intersection of Avenida Primiceria and the roundabout, as well as the connected roads Corte Del Brisas, Corte Del Sol, Corte Chica, and Corte De Luna.**

**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.** 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 7.** This Ordinance shall become effective immediately upon approval.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,  
FLORIDA, THIS 12<sup>th</sup> DAY OF OCTOBER, 2021.

THE CITY OF MARATHON, FLORIDA



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Luis Gonzalez, Mayor

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

ATTEST:



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Diane Clavier, City Clerk  
(City Seal)

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



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Steven Williams, City Attorney

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY CITY OF MARATHON,  
ORDINANCE NO. 2021-21

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**FINAL ORDER  
APPROVING CITY OF MARATHON ORDINANCE NO. 2021-21**

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. 2021-21 (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 October 12, 2021 and rendered to the Department on October 18, 2021.
3. The Ordinance amends Chapter 104, Article 1, Section 104.62 of the City’s Code of Ordinances by prohibiting Mobile Vender Food Units (“MVFUs”) from operating at Sombrero Beach or the right-of-way immediately adjacent to Sombrero Beach.

**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 Objective 1-1.1 Protect Community Character and Policy 1-1.1 Enhance and Preserve Existing Community Character.

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:

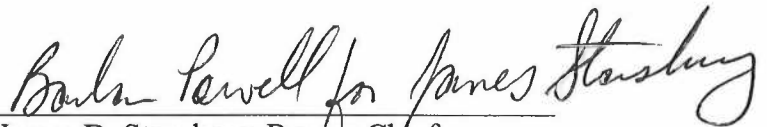
- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (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.
- (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. 2021-21 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.

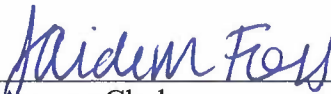
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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 27<sup>th</sup> day of December 2021.

  
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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