

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Court, the current iteration of the City of Marathon’s Code of Ordinance Chapter 104, Section 104.66(G)(4) has become outdated and in need of being updated.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

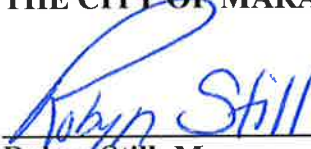
SECTION 4. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases 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



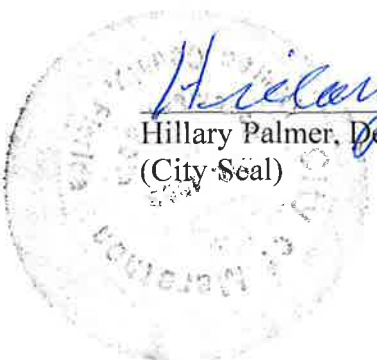
Robyn Still, Mayor

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

ATTEST:



Hillary Palmer, Deputy 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

STATE OF FLORIDA
DEPARTMENT OF COMMERCE

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON,
ORDINANCE NO. 2024-07

FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2024-07

The Florida Department of Commerce (“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. 2024-07 (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 April 9, 2024, and rendered to the Department on April 22, 2024.
3. The Ordinance amends Section 104.66 titled *Wireless Services Facilities* to remove signage as an approved criterion for all Wireless Communication Facilities.

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 1-3, Objective 1-3.1, and Policy 7-1.4.2.

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.

8. 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 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.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2024-07 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.



Kate Doyle, Assistant Deputy Secretary
Division of Community Development
Florida Department of Commerce

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 FLORIDA DEPARTMENT OF COMMERCE 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
FLORIDA DEPARTMENT OF COMMERCE
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230
AGENCY.CLERK@COMMERCE.FL.GOV

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 20th day of June 2024.


Agency Clerk, Karis De Gannes
Florida Department of Commerce
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Robyn Still, 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