

Sponsored by: Hernstadt
Introduction Date: November 21, 2011
Public Hearing Dates: November 21, 2011
January 10, 2012
January 24, 2012
Enactment date: January 24, 2012

**CITY OF MARATHON, FLORIDA
ORDINANCE 2012-01**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA;
AMENDING SECTION 104.62, "VENDOR CARTS AND MOBILE FOOD
UNITS" ESTABLISHING A LIMIT ON TIMES OF OPERATION;
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, it is the desire of the City of Marathon to modify Section 104.62 of the existing land development regulations regarding licensing of Mobile Vendor Food Units to provide a criterion of hours of operation; and

WHEREAS, the City Council has indicated that said changes will be in the best interest of the citizens of Marathon in order to better protect the health, safety, and welfare of those individuals; and

WHEREAS, after due consideration of the Planning Commission and the approval of the City Council, the proposed changes to this ordinance are deemed to be in compliance with the City's Comprehensive Plan and Land Development Regulations.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF MARATHON, FLORIDA, AS FOLLOWS:¹**

Section 1. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. Section 104.62 of the City of Marathon Land Development Regulations is hereby amended to read as follows:

¹ / Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 104.62 – Mobile Vendor Carts and Mobile Food Units

The following regulations are established for non-motorized food vendor carts, which are small, light-weight, 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 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. **Size:** ~~No vendor cart shall exceed forty eight (48'') inches in width (excluding wheels or wheel wells), six (6') feet in length (excluding push handles or trailer tongue), and seven (7') feet in height. The Director is authorized to grant minor deviations from these size requirements if the deviation is consistent with the overall intent of this section.~~

Location: ~~Vendor carts and Mmobile vendor~~ food units shall be placed only on properties with a legally operating permanent retail business and shall comply with the following location criteria:

- ~~1. The cart shall be located near the principal entrance of the building or business, and the cart or mobile food unit mobile vendor food units shall not be located within any required front or street side yard setback; and~~
- ~~2. The cart or mobile food unit shall not block or displace any required parking for permanent on-site businesses; and~~

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

- ~~3. Vendor carts and Mmobile vendor food units may operate within the City of Marathon rights-of-way subject to conditions set out in Section 104.62 B. so long as their activity does not disrupt the normal flow of vehicular traffic.~~

- B. **Limited Hours of Operation:** A mobile vendor licensed under this ordinance may only remain at the approved private property location (set out in Section 104.62 A. for a period not to exceed two (2) consecutive hours in a 24 hour period. A vendor cart mobile vendor food unit licensee may not remain at an individual location on the City's rights-

of-way for a period longer than ten (10) minutes. The City Council may grant a temporary permit to extend the maximum stop duration in order to meet a defined community need.

C. **Storage:** The food vendor shall remove ~~the cart~~ or mobile vendor food unit from the site, or store the ~~cart~~ unit indoors and out of public view at the end of each business day.

D. **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.

E. **Additional Permits:** The food vendor shall obtain all necessary permits, licenses, and inspections prior to conducting any business as may be required by the City, County, or State pursuant to Chapter 5K-4.002, Florida Administrative Code (F.A.C.)

Section 3. The Provisions of the Marathon Code, Land Development Regulations and all Ordinances or parts of Ordinances 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 sentence, section, 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 sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

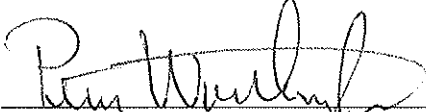
Section 5. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 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 Sections 380.05(6) and (11), Florida Statutes.

Section 7. This Ordinance shall be effective immediately upon approval by the State Department of Economic Opportunity pursuant to Chapter 380, Florida Statutes.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 24th DAY OF JANUARY, 2012.

THE CITY OF MARATHON, FLORIDA



Pete Worthington, Mayor

AYES: Ramsay, Cinque, Keating, Worthington
NOES: Snead
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

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: CITY OF MARATHON LAND DEVELOPMENT
REGULATIONS ADOPTED BY
MARATHON ORDINANCE NO. 2012-01

FINAL ORDER

The Department of Economic Opportunity (the “Department”) hereby issues its Final Order, pursuant to § 380.05(6) and § 380.0552(9), Fla. Stat. (2011), approving land development regulations adopted by City of Marathon Ordinance No. 2012-01 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by § 380.0552, Fla. Stat., as an area of critical state concern. The City of Marathon is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on January 24, 2012. The Department received the Ordinance for review on March 22, 2012.
3. The Ordinance amends Section 104.62 of the City’s land development regulations to provide guidance for the operation of mobile food vendors.

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. § 380.05(6) and (11) and § 380.0552(9), Fla. Stat.
5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. The regulations adopted by the Ordinance are land development regulations.

6. 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 the particular area (the "Principles"). § 380.05(6) and § 380.0552(9), Fla. Stat. The Principles for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Fla. Stat.

7. The Ordinance is consistent with the following Principles for Guiding Development:

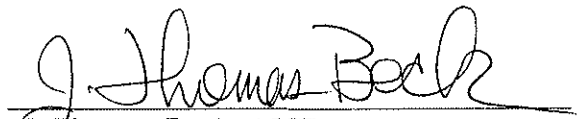
(d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.

8. The Ordinance is consistent with Objective 7-16 of the City of Marathon Comprehensive Plan.

WHEREFORE, IT IS ORDERED that City of Marathon Ordinance No. 2012-01 is found to be consistent with the Principles for Guiding Development of the Florida Keys Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.


J. Thomas Beck, AICP
Director, Division of Community Planning
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF

MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 107 EAST MADISON STREET, MSC 110, TALLAHASSEE, FLORIDA 32399-4128.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.


A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY

RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

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 persons listed below by the method indicated this 7th day of May, 2012.



Miriam Snipes, Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Pete Worthington
Mayor, City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

Diane Clavier, City Clerk
City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

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

John Herin, Esq., City Attorney
Stearns, Weaver
150 West Flagler Street, Suite 2200
Miami, FL 33130-1536

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
David L. Jordan, Assistant General Counsel, DCA Tallahassee