

Sponsored by: Dr. Dan Zieg
Introduction Date: December 15, 2014
Public Hearing Dates: December 15, 2014
December 16, 2014 & January 13, 2015
Enactment Date: January 13, 2015

**CITY OF MARATHON, FLORIDA
ORDINANCE 2014-23**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING CHAPTER 104, ARTICLE 1, "GENERAL PROVISIONS," SECTION 104.05. G. 1, " ENTITLED "ALCOHOLIC BEVERAGE," OF THE CITY OF MARATHON LAND DEVELOPMENT REGULATIONS; REPEALING CHAPTER 104, ARTICLE 1, SECTION 104.05 G. 1. CONCERNING DISTANCE REQUIREMENTS FOR PACKAGE SALES ESTABLISHMENTS AND AMENDING G. 2., TO REFLECT SPECIFIC STATUTORY CONSTRAINTS CONCERNING THE DISTANCE BETWEEN 'PACKAGE SALES ESTABLISHMENTS' AND SCHOOLS; PROVIDING FOR THE REPEAL OF ALL OTHER CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT OF ECONOMIC OPPORTUNITY IN ACCORDANCE WITH STATE LAW.

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, provides for comprehensive plan implementation through the enactment of certain ordinances; and

WHEREAS, the City Council has directed City staff to amend the provisions of the Alcohol Beverage code, Chapter 104, Article 1, Section 104.05, "Alcohol Beverage" to repeal sections concerning distance requirements between package sale license facilities; and

WHEREAS, the proposed changes to the current Land Development Regulations (LDRs) are consistent with the goals, objectives, and policies set forth in the Comprehensive Plan; and

WHEREAS, pursuant to Section 163.3174 and 166.041, *Florida Statutes*, and Section 102, Article 7 of the Marathon Code, the City's Planning Commission sitting as the Local Planning Agency on June 16, 2014 publicly considered the amendments to Land Development Regulations set forth in this Ordinance (the "Amendment") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendment; and

WHEREAS, the City Council publicly considered the amendments to Land Development Regulations set forth in this Ordinance (the “Amendment”) at a properly noticed public hearing and finds the adoption of the Amendment, in substantially the form attached hereto, is in the best interest of the City and complies with applicable State laws and rules; and

WHEREAS, the proposed changes to the current landscape regulations are consistent with the goals, objectives, and policies set forth in the Comprehensive Plan and its LDRs; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. Chapter 104, Article 1, “General Provisions,” Section 104.05 G. 1., “Distance Requirements,” “Generally” of the LDRs is hereby repealed and all subsequent subsections are renumbered:

[Section 104.05.] - Alcohol Beverage.

This section in conjunction with allowed uses in Table 103.15.1 is designed and intended to provide for reasonable regulation and control over the sale of alcoholic beverages within the City of Marathon by establishing an alcoholic beverage use permit procedure and providing criteria to be utilized to assure that all future proliferation of alcoholic beverage use enterprises within the City limits are compatible with the City's Comprehensive Plan and LDRs, and that alcoholic beverage use permits not be granted where such uses will have an adverse impact upon the health, safety and welfare of the citizens and residents of the city. All persons, firms, partnerships, or corporations who have received approval from the PC under the former provisions of Section 19-218 of the Monroe County Code, as same heretofore existed, shall retain all rights and privileges heretofore granted under said section.

G. *Distance requirement:*

~~1. — Generally.~~

~~(a) — Definition. In this section, unless the context requires otherwise, "package sale vendor" means a person licensed pursuant to Fla. Stat. chs. 561—568, to sell liquor (as defined in Fla. Stat. § 565-01, as a package sale; however, a package sale vendor does not include: (i) a business operation, in regards to beer and malt beverages (as defined by Fla. Stat. § 563.01, and wine (as defined by Fla. Stat. § 564.01, for consumption off premises; or (ii) any bona fide hotel, motel or motor court in possession of a special license issued in accordance with Fla. Stat. § 561.20(2)(a)1.~~

- (b) ~~City package sale vendor distance requirements established.~~ For all of those certain areas of land in the City which lie within 1,500 feet of a package sale vendor's place of business as established, located and licensed, no other new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within that distance.
- (c) ~~Package sales within distance requirements restricted.~~ The purpose of creating the distance requirements mentioned in Subsection 1.(b) of this section is to provide and require that no package sale vendor which is located or proposes to locate in the City of Marathon shall be permitted to operate at a new location within a distance of 1,500 feet of the location of any package sale vendor which is both preexisting at the time of the package sale vendor's application to operate at the new location and is located within the City of Marathon.
- (d) ~~Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses.~~ The distance requirements set forth above in Subsections 1.(b) and 1.(c) shall not be applied to the location of an existing package sale vendor when there is:
- i. ~~A renewal of an existing license;~~
 - ii. ~~A transfer in ownership;~~
 - iii. ~~A change in business name; or~~
 - iv. ~~A decrease in the numerical designation of a state issued license that is of the same series (type).~~

Such exemption is allowed provided that the physical location of the package sale vendor establishment does not change. No increase in the numerical designation of a series (type) of state issued license that is of the same series (type) shall be permitted at or for a location (new or existing) except in compliance with the provision hereof.

- (e) ~~Measurement of distances.~~ The distances provided in this Section shall be measured by following a straight line from the proposed main entrance of a package sale vendor who proposes to operate his place of business and is licensed under Fla. Stat. chs. 561—568, to the main entrance of any other package sale vendor who is operating such a business. The package sale vendor seeking a new location must submit a sealed survey drawn by a registered land surveyor attesting to the separation of the uses in question. This requirement may be waived upon the written certification

~~by the Director of Planning that the minimum distance separation has been met.~~

~~(f) — *Exemption for on-premises consumption only.*~~

- ~~i. — In those situations in which the holder of an alcoholic beverage license pursuant to Fla. Stat. chs. 561—568, has the ability to use such license for both on-premises and off-premises consumption sales, such licensee may at his option choose to forego off-premises consumption sales under his license for the location of business requested; thus such licensee would be deemed not to be a package sale vendor under this section for such a location and would not be subject to the distance requirements cited in Subsections (b) and (c) above. To ensure that the public, safety and welfare are preserved, any licensee choosing to forego package sales for off-premises consumption, and thereupon being deemed not to be a package sale vendor, shall agree as a condition of obtaining his zoning use permit to prominently display at all times within his establishment in the vicinity of the main cash register a sign with letters no smaller than three (3) inches and printed in a legible style which states "No Package Sales."~~
- ~~ii. — Upon any future relocation of such licensee's business in which the distance requirements of Subsection (b) above are met, such licensee may resume package sales for off-premises consumption and would not be required to display the aforementioned sign.~~

Section 3. Chapter 104, Article 1, "General Provisions," Section 104.05 G. 2., "Distance Requirements," "Schools" of the LDRs is hereby renumbered and amended to reflect specific statutory limitations as follows:

12. *Schools.*

- (a) No new or relocated package sale vendor shall be permitted to open and/or start the business of package sales within 500 ~~1,500~~ feet of an established school.
- (b) Distance from a school shall be measured by following a straight line from the main entrance of the place of business to the nearest point of the school grounds in use as part of the school facilities. The package sale vendor seeking a new location must submit a scaled survey drawn by a registered land surveyor attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the Director that the minimum distance separation has been met.

(c) The location of all existing places of business subject to this section shall not in any manner be impaired by this section, and the distance limitation provided in this section shall not impair any existing licensed location heretofore issued to and held by any such vendor nor shall such vendor's right of renewal be impaired by this section; provided, however, that the location of any such existing license shall not be transferred to a new location in violation of this section.

(d) Distance requirements not applied to renewal, change in name or ownership, or change in certain licenses. The distance requirement set forth above in Subsection 2.(a) shall not be applied to the location of an existing vendor when there is:

- i. A renewal of an existing license;
- ii. A transfer in ownership;
- iii. A change in business name; or
- iv. Any decrease in the numerical designation of a state issued license which is of the same series (type);

Such exemption is allowed provided that the physical location of the vendor establishment does not change. No increase in the series (type) of state issued license shall be permitted at or for a location (new or existing) except in compliance with the provisions hereof.

Section 3. The Provisions of the Code of Ordinances, City of Marathon, Florida 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 Community Affairs pursuant to Chapter 380, Florida Statutes.

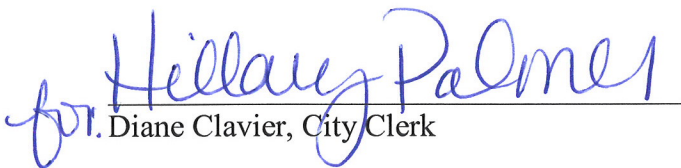
PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13th DAY OF JANUARY, 2015.

THE CITY OF MARATHON, FLORIDA


Chris Bull, Mayor

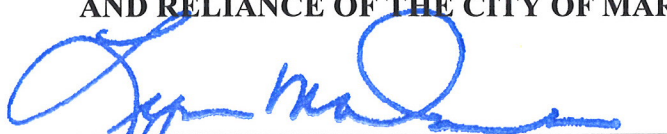
AYES: Zieg, Kelly, Senmartin, Bull
NOES: Keating
ABSENT: None
ABSTAIN: None

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:**


Lynn M. Dannheisser, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2014-23

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2014-23**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and 380.0552(9), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2014-23 (the “Ordinance.”)

FINDINGS OF FACT

1. The Florida Keys Area is designated by § 380.0552, Florida Statutes, 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 of Marathon on January 13, 2015, and rendered to the Department on January 15, 2015.
3. The Ordinance amends the City of Marathon Code of Ordinances, Appendix A (Land Development Regulations) to repeal and modify language in Chapter 104, Article 1, Section 104.05(G)(1-2) (Alcoholic Beverage). The Ordinance repeals language specifying minimum distances between package sale liquor establishments and other establishments. It also modifies language by creating a 500 foot minimum distance between package sale liquor establishments and schools, making it consistent with Florida Statutes.

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) Florida Statutes.

5. The City of Marathon is a local government within the Florida Keys Area of Critical State Concern. §380.0552, Florida Statutes and Florida Administrative Code Chapter 28-26.

6. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

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. §§ 380.05(6) and 380.0552(9), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in § 380.0552(7), Florida Statutes.

8. The Ordinance is consistent with the City of Marathon Comprehensive Plan generally, and specifically with Policy 1-1.1.2 (Adopt Compatibility for Residential and Non-Residential Review Criteria).

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:

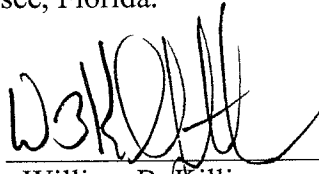
(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(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. 2014-23 is consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 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.

A handwritten signature in black ink, appearing to read 'W B Killingsworth', written over a horizontal line.

William B. Killingsworth, Director
Division of Community Development
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.

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.

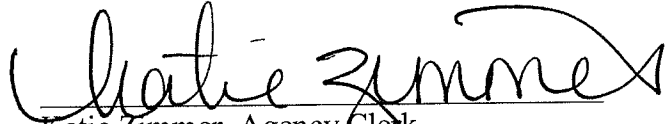
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

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 29th day of January, 2015.



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

By Certified U.S. Mail:

The Honorable Chris Bull, Mayor
City of Marathon, City Council
9805 Overseas Highway
Marathon, FL 33050

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

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