

ORDINANCE 2023-12

AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, AMENDING SECTION 82-2 (DEFINITIONS) OF CHAPTER 82 (GENERAL PROVISIONS) OF THE CITY'S LAND DEVELOPMENT CODE TO REVISE THE DEFINITION OF PORTABLE SIGN; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

WHEREAS, the City last amended its current sign code on December 11, 2018 via Ordinance 2018-14; and

WHEREAS, the sign code defines "portable sign" as any sign not permanently attached to the ground or other permanent structure, designed to be transported including, but not limited to, signs designed to be transported by means of wheels, balloons used as signs, umbrellas used for advertising, and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless such vehicle is used in the normal day-to-day operations of the business; and

WHEREAS, the City has become aware of the case of *LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941 (11th Cir. 2022), wherein the federal appeals court determined that a similarly-worded provision had the effect of preventing citizens from carrying signs on their persons in traditional public areas such as sidewalks and parks to engage in their First Amendment rights; and

WHEREAS, in adopting similar model code language, the Board of Commiositioners did not, and does not intend to impinge on such rights; and

WHEREAS, since adopting its sign code the City has never cited any person for carrying a sign as a means of engaging in First Amendment rights, and the City is committed to never do so; and

WHEREAS, the Board of Commissioners has asked the City Attorney to revise the definition of "portable sign" to ensure it cannot be interpreted or applied in the manner described in the *LaCroix* case, and to ensure instead that it will affirm a citizen's right to carry a sign expressing any non-commercial speech the citizen desires to express; and

WHEREAS, the Board of Commissioners finds that it is in the interest of the City and its citizens to adopt the code amendment set forth in this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:

Section 1. The definition of Portable Sign, as found under Sign Types within the definition of Sign, in Section 82-2 of the Land Development Code of the City of Madeira Beach is hereby amended to read as follows:

Portable sign means any sign not permanently attached to the ground or other permanent structure, designed to be transported including, but not limited to, signs designed to be transported by means of wheels, balloons used as signs, umbrellas used for advertising, and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless such vehicle is used in the normal day-to-day operations of the business. For purposes of this chapter, a sign not bearing a commercial message which is carried by a person (whether worn or held by hand) shall not be considered a portable sign, and such signs shall be permitted to be carried in any location such person is otherwise lawfully allowed to be present, including on the City's sidewalks and parks.

Section 2. For purposes of codification of any existing section of the Madeira Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Land Development Code of the City of Madeira Beach contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes §166.041(4), this Ordinance shall take effect immediately upon adoption.

**PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE
CITY OF MADEIRA BEACH, FLORIDA, THIS _____ day of _____, 2023.**

James Rostek, Mayor

ATTEST:

Clara VanBlargan, MMC, MSM, City Clerk

APPROVED AS TO FORM:

Thomas J. Trask, City Attorney

PASSED ON FIRST READING: _____

PUBLISHED: _____

PASSED ON SECOND READING: _____