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Public Hearing Dates: August 12, 2014
August 26, 2014
Enactment date: August 26, 2014

CITY OF MARATHON, FLORIDA
ORDINANCE 2014-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA REPEALING ARTICLE III, “UNSAFE BUILDING ABATEMENT CODE,” OF CHAPTER 6, “BUILDINGS AND BUILDING REGULATIONS” AND CREATING ARTICLE III, “UNSAFE STRUCTURES AND EQUIPMENT,” OF CHAPTER 6, “BUILDINGS AND BUILDING REGULATIONS” OF THE CITY OF MARATHON, FLORIDA, CODE OF ORDINANCES; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES OTHERWISE INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council has reviewed Article III of the Marathon Code concerning the unsafe building abatement code; and

WHEREAS, the City Council has determined that these Sections of the Marathon Code are no longer applicable; and

WHEREAS, the City Council has determined there is a need for the proposed Sections of the Marathon Code.

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 and correct and incorporated herein.

Section 2. Chapter 6, Article III, “Unsafe Building Abatement Code,” of the Code of Ordinances, City of Marathon, Florida is hereby repealed in its entirety as follows:

~~Sec. 6-91. Standard Unsafe Building Abatement Code adopted.~~

~~The Standard Unsafe Building Abatement Code, 1985 edition, developed and promulgated by the Southern Building Code Congress International, Inc., is hereby adopted by reference as if fully set forth herein, subject to the amendments set forth herein.~~

Sec. 6-92. Standard Unsafe Building Abatement Code amended.

Any reference in the Standard Unsafe Building Abatement Code to the "Board of Adjustments and Appeals" shall be read to refer to the Unsafe Structures Board. Any reference in the Standard Unsafe Building Abatement Code to the "Standard Building Code" shall be read to refer to the Florida Building Code or the applicable building code.

Sec. 6-93. Unsafe Structures Board created and Sections 105.1 and 105.2 of the Standard Building Abatement Code amended.

(a) The Unsafe Structures Board is hereby created as provided in Section 105 of the Standard Unsafe Building Abatement Code.

(b) The City Council shall appoint the members of the Unsafe Structures Board by resolution.

(c) Section 105.1 of the Standard Building Abatement Code is amended to read as follows:

"Appointment. Each member of the City Council, at his or her discretion, shall appoint one member of the Unsafe Structures Board. Appointees to the Unsafe Structures Board may, but are not required to be, members at large from the construction industry, engineers, or architects."

Section 105.2 of the Standard Building Abatement Code is amended to read as follows:

"Term of office. Each member of the Unsafe Structures Board shall serve a term concurrently with the appointing City Council member's term. Vacancies shall be filled for an unexpired term in the manner in which the original appointments are required to be made."

Sec. 6-94. Secretary of the Board.

Notwithstanding Section 105.4 of the Standard Unsafe Building Abatement Code, the City Manager, or designee shall serve as the Secretary to the Unsafe Structures Board.

Sec. 6-95. Building Official.

Notwithstanding Section 105.4 of the Standard Unsafe Building Abatement Code, the Building Official shall present the cases before the Unsafe Structures Board and shall not be an ex officio member of the Unsafe Structures Board.

Sec. 6-96. Legal counsel.

The City Attorney shall be counsel to the Unsafe Structures Board.

Sec. 6-97. Meetings.

Section 105.5 of the Standard Unsafe Building Abatement Code is amended to read as follows:

"The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet at regular intervals, to be determined by the chairman or in any event, the board shall meet as soon as practicable after the notice of appeal has been received."

~~Sec. 6-98. Section 504 of the Standard Unsafe Building Abatement Code deleted.~~

~~Section 504 of the Standard Unsafe Building Abatement Code and any other references to the hearing examiner in the Standard Unsafe Building Abatement Code are hereby deleted.~~

~~Sec. 6-99. Time for filing appeal.~~

~~Section 505 of the Standard Unsafe Building Abatement Code is amended to read as follows:~~

~~"If a party is aggrieved by the decision of the Unsafe Structures Board, nothing in this code shall be construed to deprive the party of seeking redress in the appropriate court. Said appeal must be filed within 30 days from the date of rendition of the board's final decision by filing a petition for writ of certiorari in the Circuit Court in and for Monroe County, Florida, in accordance with the procedure provided by the Florida Rules of Civil Procedure and the Florida Rules of Appellate Procedure. The review on appeal shall be limited to: (1) whether procedural due process was accorded; (2) whether the decision departs from the essential requirements of law; and (3) whether there is competent substantial evidence in the record to support the administrative findings and judgment."~~

~~Sec. 6-100. Section 701 of the Standard Unsafe Building Abatement Code amended.~~

~~Section 701 of the Standard Unsafe Building Abatement Code is amended to read as follows:~~

~~"Whenever a building or structure is repaired or demolished in accordance with the provisions of this code and the cost of such repair or demolition is borne by the City, the City Manager or designee shall notify the Building Official of the name of the owner of said property, the legal description of the property, and of the City's costs of repairing or demolishing said building or structure. The City shall assess the costs of such repair or demolition as a lien against the property and a notice of lien shall be filed in the official record books of Monroe County and a copy mailed by regular U.S. mail to the owner at the address listed in the property tax records for Monroe County. Notice to the tenant shall be sent to the property address. Mailing of the notice as provided herein is sufficient to establish a presumption that notice was received by the owner and tenant. A certified copy of a notice of lien may be recorded in the public records and thereafter constitutes a lien on the property repaired or demolished by the City. Upon petition to the Circuit Court, such notice of lien may be enforced in the same manner as a court judgment by the sheriffs of this State, including levy against any other real property and the personal property of the owner and tenant, but such order shall not be deemed to be a court judgment except for enforcement purposes. The City may foreclose or otherwise execute on the lien. Alternatively, the City may sue to recover a money judgment for the amount of the lien plus accrued interest. Such liens shall be superior and paramount to the interest in such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of State, County and City taxes and shall be on parity with the lien of such State, County and City taxes."~~

Section 3. Chapter 6, Article III, "Unsafe Structures and Equipment," of the Code of Ordinances, City of Marathon, Florida is hereby created in its entirety as follows:

Sec. 6-91. Unsafe buildings or systems.

- A. All buildings, structures, electrical, gas, mechanical or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and shall be ordered by the building official to be abated by the owner, through repair and rehabilitation or by demolition in accordance with the this Code. The extent of repairs shall be determined by the building official.
- B. Physical criteria for unsafe structure:
- A structure shall be considered unsafe if it meets any of the following criteria:
- (1) The structure or its electrical, gas, mechanical, or plumbing system is unsafe; dangerous; unsanitary; does not provide adequate egress; constitutes a fire or windstorm hazard; is otherwise dangerous to human life; by reason of illegal or improper use, occupancy or maintenance, constitutes a hazard to safety or health; or has been substantially damaged by the elements, fire, explosion, or otherwise.
 - (2) The structure constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.
 - (3) The structure is not completed in substantial conformity with the plans and specifications upon which the building permit for construction was issued and 120 days or more have lapsed since the expiration, revocation, or cancellation of the building permit.
 - (4) The structure has been determined to be unsafe for entry or a hazard to fire or law enforcement officials by evidence of a report stating so.
 - (5) The structure has been boarded with materials previously approved by the building official and the boarding has been breached without repair.
 - (6) The structure has been used to conduct criminal activity on more than two occasions within a six-month period, and such criminal activity was facilitated by the existence of one or more of the conditions enumerated in this section.

- (7) The structure is occupied and its storm shutters have not been removed from all of the means of escape required by the Florida Fire Prevention Code after a hurricane watch or warning has expired.
- (8) The structure is a swimming pool or spa that contains stagnant water or does not conform to Section 424.2.17 of the Florida Building Code.
- (9) There is an accumulation of debris or other combustible material in the structure that creates a hazard of combustion or the condition of the structure creates a hazard with respect to the means of egress and fire protection.

C. A structure shall be presumed to be unsafe if:

- (1) There is falling-away, hanging, or loose siding, blocks, bricks, or other building material;
- (2) The structure or its structural parts are deteriorated;
- (3) The structure is partially destroyed;
- (4) There is an unusual sagging or leaning out of plumb or square of the structure and such effect is caused by deterioration or over-stressing;
- (5) The electrical, plumbing, or mechanical installations or systems create a hazardous condition contrary to the standards of the Florida Building Code and the National Electric Code;
- (6) An unsanitary condition exists by reason of inadequate or malfunctioning sanitary facilities or waste disposal systems;
- (7) The structure is occupied and there is no potable water service or electrical service;
- (8) The construction of the structure or the construction or installation of systems or components within the structure has been commenced or completed without a permit or where the permit has expired prior to appropriate inspections and completion and the issuance of a certificate of occupancy or certificate of completion;
- (9) The structure is vacant and abandoned and is not covered at the doors or windows or is covered with materials not previously approved by the building official;
- (10) By reason of illegal or improper use, the occupancy or maintenance does not comply with the Florida Building Code or the Florida Fire Prevention Code; or

- (11) The structure or part thereof meets any of the physical criteria of an unsafe structure set forth above and has not been repaired and brought into compliance with the applicable codes following the expiration of a reasonable notice period.

Sec. 6-91.1.

When the building official determines a building, structure, electrical, gas, mechanical or plumbing system or portion thereof is unsafe, as set forth in this Code he/she shall provide the owner, agent or person in control of such building, structure, electrical, gas, mechanical or plumbing system written notice of violation stating the defects thereof. This notice shall require the owner within a stated time either to complete specified repairs or improvements, or to demolish and remove the building, structure, electrical, gas, mechanical or plumbing system or portion thereof. At the option of the local government, the processes and procedures for code enforcement under Florida Statute 162 may be utilized to abate violation under this section. If this statutory method of enforcement is invoked, the Code Compliance Board established in Chapter 10 of the City of Marathon's Code of Ordinances will initiate enforcement proceedings, and notice shall be in accordance with the provisions of the Statute.

Sec. 6-91.2.

If necessary, the notice shall also require the building, structure, electrical, gas, mechanical, plumbing systems or portion thereof to be vacated and/or disconnected, and not reoccupied and/or reconnected until the specified repairs and improvements are completed, inspected and approved by the building official. The building official shall post at each entrance to the building a placard stating:

THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL.

This placard shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person, firm or corporation or its officers, agents, or other servants, to remove the posting without written permission of the building official, or for any person to enter the building, or use the building or system(s) except for the purpose of making the required repairs or of demolishing same.

- A. All administrative costs and costs of corrective action incurred by the City in enforcing this Chapter shall be promptly paid by the owner or interested party or they shall become an assessment and lien on the property where the unsafe structure is located. The City may record an affidavit setting forth its costs and may foreclose on any unpaid liens. The City may sell as salvage or require the demolition contractor to dispose of the contents of the structure demolished. The City's assessment lien for the costs of repair shall have equal dignity with a lien for taxes.

Sec. 6-91.3.

In case the owner, agent, or person in control cannot be found within the stated time limit, or, if such owner, agent, or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish, and remove said building, structure, electrical, gas, mechanical or plumbing system or portion thereof, the building official, shall notify the Code Compliance Board and request a hearing. In the case of the violation posing a serious threat, and after having ascertained the cost, the building official may take action to cause such building, structure, electrical, gas; mechanical or plumbing system or portion thereof, to be demolished, secured, repaired, or required to remain vacant or unused. Taking such action does not create a continuing obligation on the part of the building official to continue with maintaining such building, structure, or system; or create liability for any damage to the property.

Sec. 6-91.4.

The decision of the building official shall be final in cases of emergency, which, in the opinion of the building official, involve imminent danger to human life or health, or the property of others. He/she shall promptly cause such building, structure, electrical, gas, mechanical or plumbing system or portion thereof to be made safe or cause its removal. For this purpose he/she may at once enter such structure or land on which it stands, or abutting land or structures, with such assistance and at such cost as he may deem necessary. He/she may order the vacating of adjacent structures and may require the protection of the public by appropriate fence or such other means as maybe necessary, and for this purpose may close a public or private way. The costs incurred in the performance of this emergency work shall be paid by the City, and upon recording in the public records of Monroe County an affidavit of the Building Official or fire official the amount so expended, these costs shall become an assessment and lien against the property as provided in this Chapter.

Sec. 6-92. Enforcement proceedings; hearings.

The City may enforce this Chapter by any other lawful means and these procedures are supplemental to all others and shall not be deemed prerequisites to filing a suit for the enforcement of any section of the code. One of these means is through code enforcement. A property owner must have exhausted the administrative remedies prior to filing any action in court.

Violation proceedings and hearings for unsafe structures and equipment will be conducted before the Code Compliance Board or special magistrate in accordance with the provisions set forth in Florida Statute 162. The owner of property that is subject to an enforcement proceeding before an enforcement board, special magistrate, or court is required to make disclosures as outlined in Florida Statute 162 before a transfer of property, and failure to make the required disclosures creates a presumption of fraud.

Sec. 6-93. Administrative fines; costs to repair; liens.

All costs associated with taking a case before the enforcement board shall be recovered where the jurisdiction prevails. Whenever one of the orders of the enforcement board or the special magistrate has not been complied with by the time set for compliance, for each day thereafter during which each

violation continues past the date set for compliance, the enforcement board or the special magistrate may impose a fine. Section 10-6. "Fines and related terms construed." All costs incurred as a result of actions taken per Section 6-91.3 are charged to the violator. A certified copy of an order imposing a fine, or a fine plus repair, and the costs of prosecuting the case, may be recorded in the public records and shall thereafter constitute a lien against the land where the violation exists and upon any other real or personal property owned by the violator.

Sec. 6-94. Appeal.

An Order of the Code Compliance Board containing findings of fact and conclusions of law that a violation of the City Code has occurred shall be a final administrative Order of the Code Enforcement Board as provided in Fla. Stat. §162.1. Any appeal taken from this order must be filed within 30 days of the execution of the order as provided in Fla. Stat. §162.11. An order imposing fine, entered for failure to comply with an Order of the Code Enforcement Board, shall only be considered a final administrative Order of the Code Compliance Board for the purposes of an appeal to determine whether the violator complied with the order containing findings of fact and conclusions of law. Failure to file an appeal within the prescribed 30-day period shall render the Order of the Code Compliance Board conclusive, binding and final.

Section 4. 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.

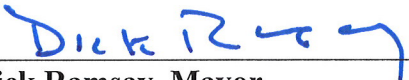
Section 5. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases 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 6. 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 7. This Ordinance shall be effective immediately upon enactment.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 26^h DAY OF AUGUST, 2014.

THE CITY OF MARATHON, FLORIDA



Dick Ramsay, Mayor

AYES: Bartus, Senmartin, Bull, Keating, Ramsay
NOES: None
ABSENT: None
ABSTAIN: None

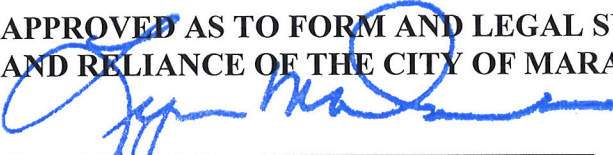
ATTEST:



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 Dannheisser, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2014-12

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2014-12**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and 380.0552, Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2014-12 (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 August 26, 2014, and rendered to the Department on December 8, 2014.
3. The Ordinance amends the City of Marathon Code of Ordinances to repeal Article III (Unsafe Building Abatement Code) of Chapter 6 (Buildings and building Regulations) and to create Article III (Unsafe Structures and Equipment). The Ordinance permits any structure deemed unsafe by the Building Official to be opened as a code case by the Code Department. All appeals, fees and assessment liens would be heard before the Code Compliance Board and be governed by the terms and Code Section under which the Code Board operates. The Ordinance does not supersede the authority of the building under the Florida Statutes or the Florida Building Code.

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 Chapter 1, Policy 1-1.1.1 (Removal of Hazard Structures), and Chapter 2, Policy 2-1.3.5 (Eliminate Unsafe Housing).

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:

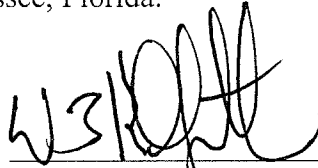
(a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.

(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. 2014-12 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 receipt of this Order unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



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 RECEIPT OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY:

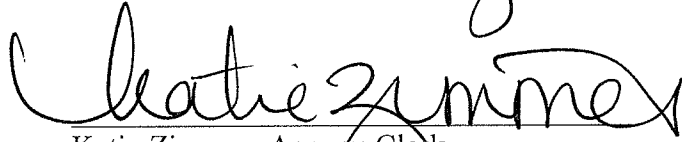
AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128

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 DAYS OF RECEIPT 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 following persons by the methods indicated this 22nd 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 Dick Ramsay, 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