

Sponsored by: Zieg
Introduction Date: September 13, 2016
Public Hearing Dates: November 15, 2016
December 13, 2016
Enactment date: December 13, 2016

**CITY OF MARATHON, FLORIDA
ORDINANCE 2016-10**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA, AMENDING TIMELINES FOUND IN CHAPTER 6, ARTICLE II, DIVISION 2, SECTION 6-54 OF THE CITY CODE REGARDING THE APPLICATION PROCEDURE FOR PERMITS UNDER THE ALLOCATION SYSTEM; AMENDING CHAPTER 6, ARTICLE II, DIVISION 2, SECTION 6-58 OF THE CITY CODE REGARDING THE EXPIRATION OF BUILDING PERMITS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, unfinished structures that are not being actively worked on can become abandoned and cause neighborhood blight as a result of a lack of adequate monitoring, maintenance, and security; and

WHEREAS, abandoned structures can deteriorate and affect the health, safety, and welfare of the City and its citizens; and

WHEREAS, addressing abandoned structures also helps to prevent potential public nuisances; and

WHEREAS, the City desires to amend its Building Code to ensure compliance with the Florida Building Code as it addresses unfinished and abandoned structures.

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

Section 1. The above recitals are hereby confirmed and adopted.

Section 2. Chapter 6, Article II, Division 2, Section 6-54 of the Code of Ordinances, City of Marathon, Florida, is hereby amended to read as follows:

* * *

Sec. 6-54. - Application procedure for permits under allocation system.

- (a) Permitted, but unpaid. If the permit is ready, but not paid for and not picked up and the applicant has a valid allocation award in accordance with the Dwelling Unit Allocation

Ordinance or other building permit allocation system adopted by the City in the future the procedure is as follows:

- (1) The Building Department office shall notify the permit applicant that the permit is ready to be issued (the "ready permit") and must be picked up within 60 days after notification.
 - (2) Notification shall be by certified mail to the name and address given by the applicant on the application. Proof of mailing to the correct name and address as listed on the application shall be considered correct and shall constitute adequate notice to the applicant that the applicant has not picked up the ready permit within 60 days from the date of mailing; then both the application and ready permit shall automatically expire. The application fee and total permit fee already paid shall not be refunded. Upon expiration, any further activity shall require a new application, along with all appropriate deposit fees and any other application review, as well as a valid allocation award in accordance with the Dwelling Unit Allocation Ordinance or other building permit allocation system adopted by the City in the future.
- (b) Paid permit; work not started. Once the permit is paid for and picked up but work has not started and the applicant has a valid allocation award in accordance with the Dwelling Unit Allocation Ordinance or other building permit allocation system adopted by the City in the future the procedure is as follows:
- (1) After the new permit has been paid for and picked up in a timely fashion (see Subsection (c) of this section), the permit holder must await approval to proceed from the Florida Department of Community Affairs (or reach the effective date of the permit) and then must commence the work, with approved inspections pursuant to the permit requirements, or by means of an approved temporary electrical inspection.
 - (2) In the event that the work outlined on in the permit has not begun within 180 days from the date the permit was issued, the permit shall automatically expire. The application fee and total permit fee already paid shall not be refunded. Upon expiration, any further activity shall require a new application along with all appropriate deposits and any other application review fees, as well as a valid allocation award in accordance with the Dwelling Unit Allocation Ordinance or other building permit allocation system adopted by the City in the future.
- (c) Permit paid for, picked up and work started.
- (1) Any valid permit, for which construction has commenced, must progress in a timely fashion. The only method by which timely valid progress of authorized work may be shown is through the Building Department's having performed and approved an inspection within 180 days measured from either of:

- a. As to the initial inspection, the date work was required to begin; or
- b. As to inspections subsequent to the initial inspection, from the date of the last approved inspection.

Those inspections, as amended from time to time, may include, but shall not be limited to, any auger/auger cap, piling/piling cap, grade beam/slab, columns/tie beams, slab/wood floor, roof trusses/sheathing, final roofing, A/C ductwork, total rough plumbing, total rough electrical, framing, insulation/drywall, final mechanical, final plumbing, final electrical and final building.

- (2) Any permit whose progress fails to meet the "required inspection within 180 days" requirement shall automatically expire, and any further activity shall require a new application, appropriate deposits and any other application review fees, and a valid allocation award in accordance with the Dwelling Unit Allocation Ordinance or other building permit allocation system adopted by the City in the future.

~~(3) Under no circumstances shall an inspection be performed or work progress on a building permit more than five (5) years from the date the permit issued. Building permits for a structure which has received an approved framing inspection shall authorize completion of only that principal structure which has received an approved framing inspection. All other development or structures shall obtain a new permit issued in compliance with the Dwelling Unit Allocation Ordinance or other building permit allocation system adopted by the City in the future. Within two (2) years of the approved framing inspection, or five (5) years from the date the building permit was issued, whichever is sooner, the work must receive either an approved final exterior inspection or a certificate of occupancy; otherwise, the structure may be declared a public nuisance, and the City Manager or designee may direct the Building Official to institute proceedings as provided by law to require completion, removal, or demolition of the structure in accordance with the Standard Unsafe Building Abatement Code.~~

(3) Any expired permit that is reinstated in accordance with the provisions of this Chapter will be subject to the edition of the Florida Building Code that is in effect at the time the reinstated permit is issued, and all work in place and all work required to complete the structure must meet all applicable regulations in effect at the time the expired permit is reinstated.

- (d) Commencement of work or development.

- (1) As used in this chapter, commencement of work or development shall entail:
 - a. Receipt of a building permit and first inspection approval; or

- b. The initiation of significant site improvements such that the improvements would only permit the development authorized by the building permit of the approved project, and any other pattern of development would require extensive changes to the installed improvement.
- (2) Commencement of work or development shall not consist of:
- a. The dividing of land into parcels;
 - b. Demolition of a structure;
 - c. Deposit of refuse, solid or liquid waste, or fill on the parcel, unless the building permit is exclusively and specifically for such; or
 - d. The clearing of land.
- (e) Final exterior inspection. As used in this section, the term "final exterior inspection" means completion of all work related to the exterior footprint of the structure, including, but not limited to, all exterior finishes, enclosures, porches, patios, screened areas, walkways, driveways, landscaping, or stormwater management. In order to obtain an approved final exterior inspection, every aspect of permitted exterior work shall be completed and approved in accordance with the permit drawings.
- ~~(f) Variances to time limitations. The Building Official may grant a one-time, 180-day administrative extension of any time limitations set forth in this section, provided that the permit holder has not previously deferred acceptance of the allocation award of the building permit subject to the extension under section 107.04 C.1. of the Marathon Land Development Regulations. In the event the permit holder requires an additional extension of time, the City Council may grant a variance to the time limitations set forth herein upon a demonstration and finding that the enforcement of this section would constitute a severe and undue hardship upon the permit holder. The applicant has the burden of demonstrating that the enforcement of this section would constitute a severe and undue hardship. Severe and undue hardship may include, but is not limited to the following:~~
- ~~(1) Death or incapacity of an owner or immediate family member of the owner;~~
 - ~~(2) Destruction of the permitted improvements, of no less than 50 percent of the value of the permitted improvements, by and act of God or hazard (e.g., fire, windstorm, flood); or~~
 - ~~(3) Work stoppage due to bankruptcy, or bona fide financial hardship as determined by the City Manager or his designee, of an owner or construction lender or due to an order issued by a government agency, when the order did not result from the owner or builder's violation of a law, code, regulations, or conditions set forth in the development order.~~

~~The relief granted by variance shall be limited to a time extension not to exceed one (1) year and shall be further limited to the minimum extension necessary to obviate the demonstrated hardship.~~

(f) Variances to time limitations.

~~(1) The Building Official may grant a one-time, 90-day administrative extension of any time limitations set forth in this section, provided that the permit holder has not previously deferred acceptance of the allocation award of the building permit subject to the extension under section 107.04 C.1. of the Marathon Land Development Regulations.~~

~~(2) In addition, the City Manager, or designee, may grant a variance to the time limitations set forth herein upon a demonstration and finding that the enforcement of this section would constitute a severe and undue hardship upon the permit holder. The applicant has the burden of demonstrating that the enforcement of this section would constitute a severe and undue hardship. Severe and undue hardship may include, but is not limited to the following:~~

- ~~a. Death or incapacity of an owner or immediate family member of the owner;~~
- ~~b. Destruction of the permitted improvements, of no less than 50 percent of the value of the permitted improvements, by an act of God or hazard (e.g., fire, windstorm, flood); or~~
- ~~c. Work stoppage due to bankruptcy, or bona fide financial hardship as determined by the City Manager or his designee, of an owner or construction lender or due to an order issued by a government agency, when the order did not result from the owner or builder's violation of a law, code, regulations, or conditions set forth in the development order.~~

~~The relief granted under this subsection shall be limited to a time extension not to exceed 90 days and shall be further limited to the minimum extension necessary to obviate the demonstrated hardship.~~

~~Any variance request made under this subsection shall be accompanied by a nonrefundable fee of \$250.~~

~~(3) If the City Manager, or designee, does not grant a variance, or if such a variance is granted, but the applicant seeks a further variance due to a severe and undue hardship, then the applicant may apply for a variance from City Council. The applicant has the burden of demonstrating that the enforcement of this section~~

would constitute a severe and undue hardship. Severe and undue hardship may include, but is not limited to the following:

- a. Death or incapacity of an owner or immediate family member of the owner;
- b. Destruction of the permitted improvements, of no less than 50 percent of the value of the permitted improvements, by an act of God or hazard (e.g., fire, windstorm, flood); or
- c. Work stoppage due to bankruptcy, or bona fide financial hardship as determined by the City Manager or his designee, of an owner or construction lender or due to an order issued by a government agency, when the order did not result from the owner or builder's violation of a law, code, regulations, or conditions set forth in the development order.

The relief granted under this subsection shall be limited to a time extension not to exceed 90 days and shall be further limited to the minimum extension necessary to obviate the demonstrated hardship. If City Council grants a variance, it may, in its sole discretion, require the permit holder to immediately pay a deposit to the City in the amount of 10% of the most recent Total Market Value of the parcel, as determined by data from the Monroe County Property Appraiser. The variance shall not be effective until the deposit has been paid. The variance shall be held in a non-interest-bearing escrow account. If a Certificate of Occupancy is not issued by the date the variance expires, then the deposit shall be forfeited to the City. The discretionary deposit requirement shall not apply to any permits that are issued under the Market Rate Owner-occupied Allocation Pool provided for in the City's Land Development Regulations.

Any variance request made under this subsection shall be accompanied by a nonrefundable fee of \$250. If a variance issued under this subsection includes the requirement of a 10% deposit, and such deposit is not paid within 15 days, then the variance shall become null and void.

Section 3. Chapter 6, Article II, Division 2, Section 6-58 of the Code of Ordinances, City of Marathon, Florida, is hereby amended to read as follows:

* * *

Sec. 6-58. - Expiration of building permit.

- (a) If work has commenced under a building permit ~~or~~ and the permit becomes null and void or expires because of lack of progress or abandonment, except as provided in Subsection (b) ~~or~~ (c), the contractor or owner builder who was issued the building permit shall be prohibited from obtaining any additional building permits.

- (b) The prohibitions in this section shall not apply, and the Building Official shall issue a new permit to a contractor, if:
- (1) The contractor and the property owner are involved in litigation concerning the work authorized by the expired permit; or
 - (2) The contractor has not received payment from the property owner for the work authorized by the expired permit; or
 - (3) The property that is subject to the expired permit is part of a probate proceeding, and the expiration of the subject permit is a result of such proceeding; or
 - (4) The property that is subject to the expired permit is part of a bankruptcy, foreclosure, or receivership proceeding, and the expiration of the subject permit is a result of such proceeding; or
 - (5) The expired permit is the subject of a stop work [order] issued as a result of actions by a party other than the contractor.

If a new building permit is not obtained within ~~90~~ 180 days from the date the initial permit became null and void or expires because of lack of progress or abandonment, the Building Official shall require that any work which has been commenced or completed be removed from the building site. If a new permit is issued, the Building Official shall require that the work in place and the work required to complete the structure meets all applicable regulations in effect at the time of the issuance of the new permit.

- (c) If the contractor or the "owner-builder" believes that there are extenuating circumstances that justify the issuance of a permit despite the existence of an expired permit, the contractor or "owner-builder" may appeal the denial of a building permit under this section to the City Council. The City Council shall have the sole discretion whether or not to waive the provisions of this section and authorize the Building Official to issue the building permit.

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. This Ordinance shall be effective immediately upon its adoption.

**ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON,
FLORIDA, THIS 13TH DAY OF DECEMBER, 2016.**

THE CITY OF MARATHON, FLORIDA


Dr. Daniel Zieg, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

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:**


David Migut, City Attorney

**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON
ORDINANCE NO. 2016-10

**FINAL ORDER
APPROVING CITY OF MARATHON ORDINANCE NO. 2016-10**

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to sections 380.05(6) and 380.0552(9), Florida Statutes, approving land development regulations adopted by the City of Marathon, Florida, Ordinance No. 2016-10 (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 of Marathon is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City of Marathon on December 13, 2016, and rendered to the Department on December 28, 2016.
3. The Ordinance amends the City of Marathon Code of Ordinances, Appendix A (Land Development Regulations) to ensure compliance with 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. Sections 380.05(6), and 380.0552(9), 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 of Marathon Comprehensive Plan generally, and specifically Objective 2-1.3, as required by section 163.3177(1), Florida Statutes.

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. Sections 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 section 380.0552(7), Florida Statutes.

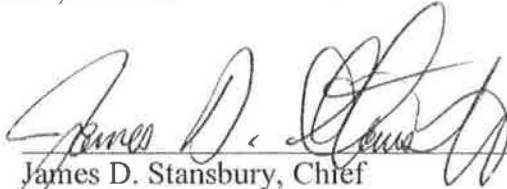
8. The Ordinance is consistent with the Principles for Guiding Development in section 380.0552(7), Florida Statutes, as a whole, and is specifically consistent with the following Principle:

(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.

WHEREFORE, IT IS ORDERED that the Department finds that the City of Marathon Ordinance No. 2016-10 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.



James D. Stansbury, Chief
Bureau 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.

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. MEDIATION IS NOT AVAILABLE.

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 10th day of February, 2017.



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

By Certified U.S. Mail:

The Honorable Dr. Dan Zieg, 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