

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: November 16, 2011

Division: Growth Management

Bulk Item: Yes  No

Department: Building

Staff Contact Person/Phone #: Lisa Granger  
305-292-3470

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**AGENDA ITEM WORDING:** Approval to advertise a public hearing to consider adoption of an Ordinance amending the Monroe County Code related to the definition of unsafe physical criteria of structures, buildings, sites or use according to the Building Code; notification to occur prior to enforcement; and eliminating the four (4) year bar of prosecution for unsafe structures, buildings or sites, as newly defined.

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**ITEM BACKGROUND:** Members of the public and County staff have made several recommendations, based on prior enforcement efforts and the need for better communication with property owners, for changes in the code related to the unsafe physical criteria definition of a structure, building, site or use contained in Sections 6-27(b) (2) h and j of the Monroe County Code. Once the code is changed to better define the definition of the criteria that makes a structure or the use of a structure unsafe, staff recommends elimination of the 4 year bar of prosecution for unsafe structures, buildings, sites or use contained in Section 8-37; and have asked that various sections of the code be revised to reflect those changes and to make the code easier for the public to understand. The definitions of unsafe criteria are being amended to eliminate the perception that a structure, building, site or use can be deemed unsafe simply for the lack of any permit and the amended ordinance will require the unsafe conditions to be documented in writing and provided to the property owner by the Building Official.

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**PREVIOUS RELEVANT BOCC ACTION:** None

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**CONTRACT/AGREEMENT CHANGES:** n/a

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**STAFF RECOMMENDATIONS:** Approval

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**TOTAL COST:** n/a **INDIRECT COST:** \_\_\_\_\_ **BUDGETED:** Yes  No

**DIFFERENTIAL OF LOCAL PREFERENCE:** \_\_\_\_\_

**COST TO COUNTY:** n/a **SOURCE OF FUNDS:** \_\_\_\_\_

**REVENUE PRODUCING:** Yes  No  **AMOUNT PER MONTH** \_\_\_\_\_ **Year** \_\_\_\_\_

**APPROVED BY:** County Atty  OMB/Purchasing  Risk Management

**DOCUMENTATION:** Included  Not Required

**DISPOSITION:** \_\_\_\_\_  
Revised 7/09

**AGENDA ITEM #** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_-2011**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA AMENDING CHAPTER 6, SECTIONS 6-27 (b) (2) h, 6-27 (b) (2) j AND CHAPTER 8, SECTION 8-37 OF THE MONROE COUNTY CODE; CLARIFYING THE DEFINITION OF UNSAFE BUILDINGS, THE DEFINITION OF PHYSICAL CRITERIA OF UNSAFE BUILDINGS AND AMENDING THE FOUR YEAR BAR TO PROSECUTION TO INCLUDE AN EXEMPTION FOR UNSAFE BUILDINGS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the definition of unsafe buildings is found in Chapter Six, Section 6-27 of the Monroe County Code of Ordinances, and

**WHEREAS**, the definition currently directs staff to make a determination that an unsafe building is any building or structure that has not obtained a building permit or permit required by the land development code, even though an unsafe condition may not be present, and

**WHEREAS**, the presumption of unsafe conditions as found in Chapter Six, Section (b)(2)h created when the construction of a building or the construction or the installation of systems or components within the building have been commenced or completed without the required permit(s), approval(s) and inspection(s) or a building or structure or part thereof is occupied prior to the issuance of a certificate of occupancy, should be further refined to assure that the specific unsafe conditions are clear when presented to the property owner, and

**WHEREAS**, the presumption of unsafe conditions as found in Chapter Six, Section (b)(2)j created when by reason of illegal or improper use, the occupancy or maintenance does not comply with the building code, or the code in effect at the time of construction, should be further refined to assure that the specific unsafe conditions are clear when presented to the property owner, and

**WHEREAS**, an amendment is necessary to clarify the definitions of unsafe physical criteria of buildings, structures and/or use, and

**WHEREAS**, an amendment is necessary to clarify that unsafe conditions as deemed by the Building Official and communicated to the property owner are exempt from Chapter 8, Section 8-37, the four year bar to code compliance prosecution;

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:**

**Section 1 .** The language in Section 6-27 (b)(2)h and j of the Monroe County Code are hereby amended as follows:

**Sec. 6-27 (b) Physical criteria.**

(2) A building or part thereof, shall be presumed to be unsafe if:

\* \* \* \* \*

h. The construction, enlargement, alteration, repair or demolition of the building or part thereof or the impact resistant coverings of the building, or occupancy of a building or structure or part thereof or the change of occupancy of a building or structure or part thereof or construction or the installation of systems or components within the building or structure has:

(a) been commenced or completed without the required a permit as per the Florida Building Code having been obtained or

(b) where the permit has expired prior to appropriate inspections and completion and ; or

(c) where a building or structure is occupied prior to the issuance of a certificate of occupancy or certificate of completion.

The building official or a duly authorized designee shall determine, in writing, whether the work being performed is contrary to the provisions of the Florida Building Code and shall evaluate the work performed and deem the condition unsafe and shall indicate same in writing, providing copy to the property owner via first class mail to the property owners legal address of record prior to initiating enforcement. For the purpose of this section, the term “initiated” means the mailing of a Notice of Violation/Notice of Hearing or, issuance of a Notice to Appear by the Code Compliance Department.

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j. By reason of illegal or improper use or change in the existing use without proper permits, inspections and/or approvals, the occupancy classification of a building or structure or portion thereof or maintenance of the existing occupancy classification of a building or structure or

portion thereof does not comply with the Florida building code, or the code in effect at the time of construction.

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**Section 2.** The language in Section 8-37(a) of the Monroe County Code is hereby amended as follows:

**Sec. 8-37 Passage of four years a bar to prosecutions.**

(a) All prosecutions before the code compliance special magistrate shall be initiated within four years of the occurrence of the event complained of or be forever barred. For the purpose of this section, the term “initiated” means the filing of a notice of violation, issuance of a notice to appear, or issuance of a civil citation by the code compliance department. 1. Except, however, that this section shall not bar the initiation of a prosecution before the code compliance special magistrate based on the following:

(a). The unlawful construction of a structure below the base flood elevation level or the minimum standards of use of a below base flood elevation structure as outlined in 44 CFR.

(b) Determination by the Building Official or a duly authorized designee of an unsafe building or structure as provided I Chapter 6, Section 6-27 of the code.

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**Section 3. Severability.**

If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

**Section 4. Conflicting Provisions.**

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state, or County law, rule code or regulation, the more restrictive shall apply.

**Section 5. Inclusion in the Monroe County Code.**

The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an amendment thereto.

**Section 6. Effective Date.**

This ordinance shall be filed with the Department of State as provided in §125.66(2), Florida Statutes and shall be effective as provided by law.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2011.

Mayor Heather Carruthers	_____
Mayor <i>pro tem</i> David Rice	_____
Commissioner Kim Wigington	_____
Commissioner George Neugent	_____
Commissioner Sylvia Murphy	_____

**MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**

By \_\_\_\_\_  
Mayor Heather Carruthers

Attest: DANNY L. KOLHAGE, CLERK

By \_\_\_\_\_  
Deputy Clerk

<p>MONROE COUNTY ATTORNEY APPROVED AS TO FORM</p> <p><i>[Signature]</i></p> <p>Date: <u>11/11</u></p>
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