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MEMORANDUM

TO: Chris Testerman, Assistant County Administrator
FROM: Whitney E. Evers, Assistant County Attorney 
DATE: January 24, 2019
SUBJ: Summary of available Executive Order extensions

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In 2011, the legislature enacted legislation that tolls permit expirations during, and extends them for six months following, a state of emergency declared by the Governor. This provision is codified at section 252.363, Florida Statutes.

Section 252.363(1)(a) provides, in pertinent part:

“The declaration of a state of emergency by the Governor tolls the period remaining to exercise the rights under a permit or other authorization for the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 6 months in addition to the tolled period....”

This tolling, or extension of permit expirations applies to development orders issued by a local government, building permits, certain permits issued by the Department of Environmental Protection or a water management district, and development of regional impact buildout dates. Section 163.3164, Florida Statutes, defines Development Order and Development Permit as follows:

(15) “Development order” means any order granting, denying, or granting with conditions an application for a development permit.

(16) "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

In the past, we have determined that both capacity encumbrance and capacity reservation certificates qualify as development permits.

On October 16, 2018, Governor Scott issued Executive Order 18-279, extending the state of emergency throughout the State of Florida for the ninth time in response to the opioid crisis (the "Ninth Opioid Extension"). Additionally, on December 5, 2018, Governor Scott issued Executive Order 18-362 extending the state of emergency throughout the State of Florida for the tenth time in response to the opioid crisis (the "Tenth Opioid Extension"). Unless extended further, the Ninth Opioid Extension will expire on December 15, 2018, and the Tenth Opioid Extension will expire on February 3, 2019, 60 days from the date of their issuance. A copy of Executive Orders 18-279 and 18-362 are attached.

On October 16, 2018, Governor Scott issued Executive Order 18-281, extending the state of emergency throughout the State of Florida for the seventh time in response to Hurricane Maria (the "Seventh Maria Extension"). Unless extended further, the Seventh Maria Extension will expire on December 15, 2018, 60 days from the date of issuance. A copy of Executive Order 18-281 is attached.

The above-mentioned extensions bring the total number of executive orders covering Orange County issued by Governor Scott since June of 2016 up to 44. Given this office's position that the length of time available for permit extensions must be reduced by the number of days that states of emergency overlap, we thought it would be helpful to provide you with a table of the executive orders issued in the last year and their relevant expiration dates as well as the time available under each for a permit extension. Please find that table attached as Exhibit "A," hereto, and note that Exhibit "A" assumes an applicant applies for an extension under every currently valid executive order issued in the last year. In the event an applicant applies for less than all of the available executive order extensions, please contact me to confirm the length of time available for extension.

In order to take advantage of any of the available permit extensions, the permit holder must notify the issuer of the permit of the intent to exercise the tolling and the extension within 90 days after the expiration of the order declaring the emergency. The notification must be in writing and must identify the specific permit or other authorization qualifying under the extension.

A form entitled: "Declaration of State of Emergency Written Permit/Development Order Extension Notification" is attached. If and when any of the divisions in your respective departments receives a request for tolling and extension of a permit expiration date based on a Governor's Declaration of a State of Emergency, the division should have the holder of the permit or other development order complete the Notification Form (and provide documentation where necessary). The division should then review the request (in conjunction with the County Attorney's office, if necessary) and, after determining that the project is eligible for an extension, extend the expiration date, as applicable. Please note that the Notification Form requests the number of the executive order as well as the relevant permit information including the current expiration date and any prior extensions granted.

Although a new executive order permit extension is typically for a period of eight months beyond the current expiration date (60 days plus 6 months – extensions of executive orders are typically just 60 days), given the volume of executive orders that the Governor has issued since last year and the overlapping nature of many of those executive orders, the length of time available under each state of emergency varies (please see the table found on Exhibit "A," hereto). The holder of the permit must submit the written notification within 90 days after the expiration of the declaration of emergency. Therefore, any written notification for a permit extension pursuant to the Ninth and Tenth Opioid Extensions must be submitted by close of business on May 4, 2019. Due to the overlapping nature of the Ninth Opioid Extension and the Seventh Maria Extension, no time is available for extensions under the Seventh Maria Extension.

These extensions are in addition to any extensions granted by HB 7023 (2014), HB 503 (2012), HB 7207 (2011), SB 1752 (2010), or SB 360 (2009), or any

DRI development order extensions granted pursuant to section 380.06(19)(c), Florida Statutes.

If you need any further clarification, or if you have any questions, please contact me.

Attachments

(all via electronic mail)

c: Jeffrey J. Newton, County Attorney
Ray Hanson, Director, Utilities Department
Mark Massaro, Director, Public Works Department
Jon Weiss, Director, Community, Environmental and Development Services
Department
Joel Prinsell, Deputy County Attorney
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EXHIBIT A

<u>Executive Order</u>	<u>Incident</u>	<u>Date Issued</u>	<u>Expiration Date</u>	<u>Apply by date</u>	<u>Total extension availableⁱ</u>
16-136	TS Colin	6/6/16	8/5/16	11/4/16	60 days + 6 mos
16-142	Pulse	6/12/16	7/11/16	N/A ⁱⁱ	None
16-149	Zika	6/23/16	8/22/16	3/2/18	60 days + 6 mos
16-193	Zika ext.	8/19/16	10/18/16	3/2/18	57 days
16-205	TD-9 (Hermine)	8/31/16	10/30/16	1/29/17	12 days + 6 mos
16-230	Matthew	10/3/16	12/2/16	6/25/17	45 days + 6 mos
16-233	Zika ext. 2	10/18/16	12/17/16	3/2/18	15 days
16-274	Matthew extension	12/1/16	1/30/17	6/25/17	44 days
16-288	Zika ext. 3	12/15/16	2/14/17	3/2/18	15 days
17-16	Matthew ext. 2	1/26/17	3/27/17	6/25/17	41 days
17-43	Zika ext. 4	2/10/17	4/11/17	3/2/18	15 days
17-67	Matthew ext. 3	3/24/17	5/23/17	8/21/17	41 days
17-115	Zika ext. 5	4/10/17	6/9/17	3/2/18	16 days
17-120	Wildfires	4/11/17	6/10/17	11/6/17	1 day + 6 months
17-146	Opioid	5/3/17	7/2/17	5/4/19	22 days + 6 months
17-166	Zika ext. 6	6/8/17	8/7/17	3/2/18	25 days
17-174	Wildfire ext.	6/9/17	8/8/17	11/6/17	1 day
17-177 (178)	Opioid ext.	6/29/17	8/28/17	5/4/19	20 days
17-204	TS Emily	7/31/17	8/15/17	N/A ⁱⁱⁱ	N/A
17-211	Zika ext. 7	8/4/17	10/3/17	3/2/18	36 days
17-230	Opioid ext. 2	8/28/17	10/27/17	5/4/19	23 days
17-235	Irma	9/4/17	11/3/17	5/28/18	6 days + 6 months
17-259	Maria	10/2/17	12/1/17	3/15/19	28 days + 6 months
17-260	Zika ext. 8	10/3/17	12/2/17	3/2/18	1 day
17-285	Opioid ext. 3	10/27/17	12/26/17	5/4/19	23 days
17-287	Irma ext.	11/2/17	1/1/18	5/28/18	30 days
17-304	Maria ext.	11/28/17	1/27/18	3/15/19	25 days
17-329	Opioid ext. 4	12/22/17	2/20/18	5/4/19	25 days
17-330	Irma ext. 2	12/29/17	2/27/18	5/28/18	7 days
18-17	Maria ext. 2	1/25/18	3/26/18	3/15/19	27 days
18-47	Opioid ext. 5	2/19/18	4/20/18	5/4/19	25 days

18-80	Maria ext. 3	3/23/18	5/22/18	3/15/19	32 days
18-110	Opioid ext. 6	4/19/18	6/18/18	5/4/19	27 days
18-135	Maria ext. 4	5/22/18	7/21/18	3/15/19	32 days
18-150	TS Alberto ^{iv}	5/26/18	N/A	N/A	<u>N/A</u>
18-177	Opioid ext. 7	6/20/18	8/19/18	5/4/19	30 days
18-214	Maria ext. 5	7/20/18	8/19/18	3/15/19	N/A
18-235	Opioid ext. 8	8/17/18	10/16/18	5/4/19	58
18-236	Maria ext. 6	8/17/18	10/16/18	3/15/19	N/A
18-253	Florence	9/14/18	11/13/18	2/11/19	28 days + 6 months
18-279	Opioid ext. 9	10/16/18	12/15/18	5/4/19	32 days
18-281	Maria ext. 7	10/16/18	12/15/18	3/15/19	N/A
18-362	Opioid ext. 10	12/5/18	2/3/19	5/4/19	<u>50 days</u>
					Total:^v 507 days + 18 months

ⁱ Each of these calculations has been reduced by the number of days the state of emergency overlaps with the prior state of emergency. If an executive order has been struck through, the time to apply for that executive order has expired. Note that only new executive orders qualify for the additional 6 month extension; extensions of existing executive orders do not.

ⁱⁱ In the case of the Pulse Executive Order (16-142), the entire state of emergency expired before both the previous and subsequent states of emergencies expired. Therefore, we are not recognizing any available extension under that executive order.

ⁱⁱⁱ After issuing executive order 17-204 for TS Emily, the governor terminated that EO via executive order 17-220, therefore, no extension of time will be recognized under this executive order.

^{iv} After issuing executive order 18-150 for TS Alberto, the governor terminated that EO via executive order 18-157; therefore, no extension of time will be recognized under this executive order

^v The total extensions available listed in the table assume an applicant is requesting to extend their permit under every active executive order issued since last summer. In the event an applicant requests an extension(s) under fewer than all of the existing executive orders, or if an applicant previously received extensions under some, but not all of, the executive orders, please contact the County Attorney's office to confirm the new permit expiration date.