

ORDINANCE NO. 02-08

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER II, ARTICLE VII OF THE KEY WEST LAND DEVELOPMENT REGULATIONS (LDRS) BY AMENDING SECTION 2-7.24, AFFORDABLE HOUSING REGULATIONS; TO PROVIDE A REVISED DEFINITION OF AFFORDABLE HOUSING; TO AMEND APPLICANT ELIGIBILITY REQUIREMENTS; TO PROVIDE A FAMILY SIZE CALCULATION FOR RENTAL UNITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds that the City's affordable housing ordinance is too restrictive in its eligibility standards thereby depriving a large number of Key West's working citizens from taking advantage of its provisions; and

WHEREAS, the Key West Planning Board recommended approval of the enclosed amendments at its meetings of July 12, 2001 and January 17, 2002; and

WHEREAS, the City Commission finds that a revision of these affordable housing regulations would promote the health, safety and welfare of the citizens of Key West;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 2-7.24 of the Land Development Regulations is hereby amended as follows\*:

**Sec. 2-7.24 Affordable Housing Regulations.**

**A. Definitions.**

1. "Affordable housing" for a rental dwelling unit shall mean a dwelling unit ~~of at least 400 square feet in size~~ whose monthly rent, ~~or monthly mortgage payment (including taxes and insurance, but not including utilities)~~, does not exceed thirty percent (30%) of that amount which represents ~~eighty~~ one-hundred percent (100%) ~~(80%)~~ of the monthly median household income (adjusted for family size) ~~per the State of Florida "SHIP" program~~ for Monroe County. ~~The City shall determine a maximum sales price under this definition to be established by Resolution and attached to this ordinance as an Exhibit.~~

For an owner-occupied dwelling unit, "affordable housing" shall mean a dwelling unit whose monthly mortgage payment (including taxes and insurance, but not including utilities) does not exceed forty percent (40%) of that amount that represents one-hundred percent (100%) of the monthly median household income (adjusted for family size) for Monroe County. However, in any case, the sales price shall not exceed three and one-half times (3.5) times the annual median household income (adjusted for family size) for Monroe County.

\*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

2. "Affordable housing, low income" shall be a rental dwelling unit whose monthly rent, not including utilities, does not exceed thirty percent (30%) of that amount which represents eighty percent (80%) of the monthly median household income (adjusted for family size).

2.3. "Affordable Housing Trust Fund" shall mean the trust fund established and maintained by the City for revenues from fees in lieu of constructing affordable housing, and revenues from any other source earmarked for the trust fund by land development regulation, ordinance or donation.

3.4. "Median household income" shall mean the ~~medium~~ median household income published for Monroe County on an annual basis by the U.S. Department of Housing and Urban Development.

**B. Requirements of Affordable Housing - Ratio of New Construction**

1. At least ~~thirty three percent (33%)~~ ten percent (10%) of all new multi-family residential units constructed each year shall be low-income affordable housing of at least 400 square feet each, as defined herein and twenty percent (20%) shall be affordable housing of at least 400 square feet each, as defined herein. Residential or mixed use projects of less than ten (10) residential units shall be required to develop at least ~~thirty three percent (33%)~~ (30%) units of at least 400 square feet each as affordable, but may contribute a fee in lieu for each unit to the Affordable

Housing Trust Fund, if approved by the City Commission. The per unit fee shall be \$40,000 (representing construction cost, less land cost, of a 400 square foot unit). The thirty~~-three~~ percent ~~(33%)~~ (30%) affordability requirement shall be determined on a project by project basis and not on a city-wide basis. Vested units shall be subject to this subsection if not otherwise governed by law or agreement.

2. Linkage of projects. Two development projects may link to allow the affordable housing requirement of one development project to be built at the site of another project, so long as the affordable housing requirement of the latter development is fulfilled as well. Written proof of the project linkage shall be supplied by the developer(s) to the City Commission at the time of the first site plan approval. The project containing the affordable units must be built either before or simultaneously with the project without (or with fewer than) the required affordable units. In addition, if a developer builds more than the required number of affordable units at a development site; this development project may be linked with a subsequent development project to allow compliance with the subsequent development's affordable unit requirement. Written proof of the linkage must be supplied by the developer(s) to the City Commission at the time of the subsequent development's site plan approval. Linkage shall not be available if either development is entirely or in part to be constructed by public funds. Finally, all linkages under this subsection B.2. may

occur within Key West, or on a site within the City and on a site on Stock Island in unincorporated Monroe County.

3. Demonstration of continuing affordability. Demonstration of continuing affordability shall be by deed restriction or any other mutually acceptable method that effectively runs with the land and is binding on owners, successors in ownership, or assigns. The deed restriction shall be in a form provided by the City, and shall be for a period of at least twenty-five (25) years. It shall be recorded in the Monroe County records.

4. Reporting requirements. Owners of affordable housing projects or units shall furnish the City Manager, or his designee, with annual information necessary to assure continued compliance with affordability criteria, beginning one year after the date of building permit issuance and on each anniversary date thereafter. Reporting requirements shall include sworn tenant household verification information. Property owners subject to this subsection 4. may contract with the Key West Housing Authority to perform annual tenant eligibility verification.

5. All property owners offering affordable housing under these regulations shall comply with the anti-discrimination provisions of Chapter 72, Key West Code of Ordinances.

**C. Affordable Housing Trust Fund.**

The Affordable Housing Trust Fund (the "Trust Fund") is hereby established. The Trust Fund shall be maintained with funds

earmarked for the Trust Fund for the purpose of promoting affordable housing in the City of Key West and its immediate environs. Monies received by the Trust Fund shall not be commingled with general operating funds of the city. The Trust Fund shall be used for:

1. Financial aid to developers as project grants for affordable housing construction; or

2. Financial aid to eligible home buyers as mortgage assistance; or

3. Financial incentive for the conversion of transient units to affordable residential units; or

4. Direct investment in or leverage to housing affordability through site acquisition, housing development and housing conservation; or

5. Other affordable housing purposes from time to time established by Resolution of the City Commission.

Except as provided in subsection F., the City Commission shall determine all expenditures from the Trust Fund upon the advice of the City Manager.

**D. Applicant Eligibility Requirements for Affordable Housing.**

The following eligibility requirements shall be required of households or persons to qualify for affordable housing units to the extent lawful.

1. The household or person shall derive at least seventy percent (70%) of its or his/her total income from gainful employment in Monroe County ~~the City of Key West~~; provided, however, ~~that county residents may qualify as eligible if such is provided for in an interlocal agreement with Monroe County.~~

2. At the time of sale or lease of low income affordable housing unit, the total income of eligible household or persons shall not exceed eighty percent (80%) of the median household income for Monroe County (adjusted for family size).

3. During occupancy of any low income affordable housing, a household's income may increase to an amount not to exceed one hundred twenty percent (120%) of the median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.

2.4. At the time of sale or lease of an affordable unit, the total income of eligible households or persons shall not exceed one hundred twenty ~~eighty~~ percent (120%) ~~(80%)~~ of the median household income for Monroe County (adjusted for family size).

3.5. During occupancy of any affordable housing rental unit, a household's annual income may increase to an amount not to exceed one hundred ~~sixty forty~~ percent (160%) ~~(140%)~~ of median household income for Monroe County (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.

~~4-6.~~ Eligibility is based on proof of legal residence in ~~the City of Key West Monroe County~~ for at least one consecutive year.

~~5-7.~~ Priority shall be given to families of four or more members for larger sized affordable housing units.

~~6-8.~~ The applicant shall execute a sworn affidavit stating the applicant's intention to occupy the dwelling unit.

~~7-9.~~ The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or a domestic partnership registered with the City, only the highest 60 hours of the combined employment shall be counted. The income of dependents regardless of age shall not be counted in calculating a household's income.

10. The Board of Adjustment may review a household's income and unique circumstances to determine eligibility and conformance with the intent of this ordinance to assure that people in need are not excluded and people without need are not included.

**E. Accessory Unit Infill.**

In all zoning districts of the City, except Conservation districts (C), ~~Airport Institutional~~ districts (~~PS, HPS, A~~) and the HPRD, PRD, HHDR, HMDR, MDR, MDR-C, LDR-C and SF districts, the City Commission desires to encourage the addition of affordable housing on the second story of commercial properties and in association with institutions to promote employee housing. Such development shall be known as accessory unit infill. ~~Such units shall be efficiencies or one bedroom units of between 400 and 600 square~~



~~feet, and shall include kitchen and bathroom facilities.~~ Tenants shall be eligible persons under Subsection D., hereof. Applicants under this Section E. ~~are encouraged to~~ may provide two bicycle or scooter parking spaces per unit as an alternatives, rather than to applying to the Board of Adjustment for parking variances. Provided that units of 600 square feet or less are treated as an 0.55 equivalent unit and all units provided are available under the City's Building Permit Allocation ordinance, section 34.1375 of the code of ordinances, the City shall process applications under this section in the same manner as multifamily units or as a conditional use if multifamily is not allowed.

**F. Community Housing Development Organization.**

The City Commission may establish a non-profit Community Housing Development Organization (CHDO), pursuant to federal regulations governing such organizations, to serve as developer of affordable housing units on city-owned property located in both the City and in the community redevelopment areas (including excessed U.S. Navy property); or located in Key Haven and Stock Island in unincorporated Monroe County, upon interlocal agreement. In such event, the City may delegate to the CHDO all or partial administration of the Affordable Housing Trust Fund.

**G. Family Size.**

When establishing a rental and sales amount, one shall assume family size as indicated in the table below. This ordinance shall not be used to establish the maximum number of individuals who actually live in the unit.

| <u>Size of Unit</u>              | <u>Assumed Family Size</u> | <u>Minimum Occupancy</u> |
|----------------------------------|----------------------------|--------------------------|
| Efficiency (no separate bedroom) | 1                          | 1                        |
| One bedroom                      | 2                          | 1                        |
| Two bedroom                      | 3                          | 2                        |
| Three bedroom                    | 4                          | 3                        |
| Four or more bedrooms            | 5                          | 1 per bedroom            |

**H.G. Sunset.**

Section B of tThis ordinance shall sunset and therefore expire on September 30, 2010; provided, however, that this sunset provision shall not be interpreted to terminate deed restrictions arising hereunder. ~~During the year prior thereto, the City shall undertake a study of its affordable housing needs to determining whether this ordinance, in whole or in part, should be re-created.~~ ~~In the alternative,~~ Section B of this ordinance may sunset prior to September 30, 2010, upon the City achieving a target of 1500 affordable housing units in accordance with these regulations, and including that number of affordable housing units under deed restriction and imposed by the City Commission on property owners between January 1, 1997, and the effective date of this ordinance.

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of February, 2002.

Read and passed on final reading at a regular meeting held this 20th day of February, 2002.

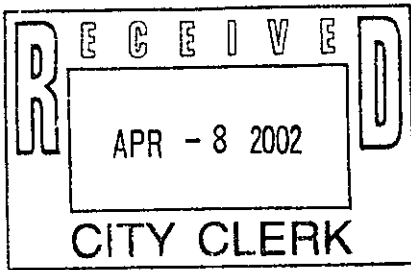
Authenticated by the presiding officer and Clerk of the Commission on 20th day of February, 2002.

Filed with the Clerk February 20th, 2002.

  
JIMMY WEEKLEY, MAYOR

ATTEST:

  
CHERI SMITH, CITY CLERK



DCA Final Order No.: DCA02-OR-086

**STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF KEY WEST LAND DEVELOPMENT  
REGULATIONS ADOPTED BY  
CITY OF KEY WEST ORDINANCE NO. 02-08

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**FINAL ORDER**

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2001), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

**FINDINGS OF FACT**

1. The City of Key West is a designated area of critical state concern.
2. On February 22, 2002, the Department received for review City of Key West Ordinance No. 02-08 which was adopted by the City of Key West City Commission on February 20, 2002 ("Ord. 02-08"). Ord. 02-08 amends Section 2-7.24 of the Land Development Regulations providing an amended definition of "affordable housing" and amending applicant eligibility requirements and family size requirements.

3. Ord. 02-08 is consistent with the City's Comprehensive Plan.

**CONCLUSIONS OF LAW**

4. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in an area of critical state concern. §§ 380.05(6) and (11), *Fla. Stat.*, (2001).

5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2001) and Rule 28-36.001, *Fla. Admin. Code.*

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2001). The regulations adopted by Ord. 02-08 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 the particular area (the "Principles"). § 380.05(6), *Fla. Stat.*; *see Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003, *Fla. Admin. Code.*

8. Ord. 02-08 promotes and furthers the following Principles in Rule 28-36.003(1):

(a) To strengthen local government capabilities for managing land use and development.

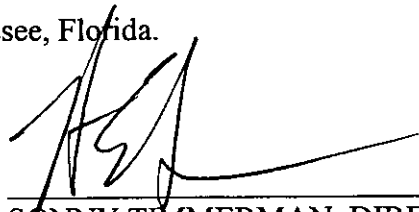
(h) Protection of the public health, safety, welfare and economy of the City of Key West and the maintenance of Key West as a unique Florida Resource.

10. Ord. 02-08 is not inconsistent with the remaining Principles. Ord. 02-08 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-08 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



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SONNY TIMMERMAN, DIRECTOR  
Division of Community Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**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, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND

YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

**YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION 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 persons listed below by the method indicated this 5<sup>th</sup> day of ~~March~~<sup>April</sup>, 2002.

*for* Miriam Swipes  
Paula Ford, Agency Clerk

By U.S. Mail:

Jimmy Weekly  
Mayor of the City of Key West  
P.O. Box 1409  
Key West, Florida 33041

Cheri Smith  
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Julio Avel  
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By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee  
Rebecca Jetton, DCA Florida Keys Field Office  
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee