

ORDINANCE NO. 10-10

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, AMENDING CHAPTER 108 OF THE CODE OF ORDINANCES ENTITLED "PLANNING AND DEVELOPMENT" BY AMENDING ARTICLE X PART B, LAND DEVELOPMENT REGULATIONS, BUILDING PERMIT ALLOCATION AND VESTED RIGHTS, DIVISION 1; AMENDING SECTION 108-995 PERTAINING TO RENEWAL OF ALLOCATIONS; AMENDING 108-996 PERTAINING TO BENEFICIAL USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria; and

WHEREAS, the Planning Department initiated proposed amendments to the ordinance to address concerns raised by the Department of Community Affairs and city staff; and

WHEREAS, pursuant to Section 90-522, the Planning Board held a noticed public hearing on February 18, 2010, where, based on the consideration of recommendations by the

city planner, city attorney, building official and other information, recommended approval of the proposed amendments with modifications; and

WHEREAS, the City Commission held a noticed public meeting on ~~April 6, 2010~~ May 4, 2010, and a second meeting on May 18, 2010, and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances; and

WHEREAS, the City determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMISSION
OF KEY WEST, FLORIDA, AS FOLLOWS:**

Section 1. That section 108-995 of the Code of Ordinances is hereby amended as follows*:

Sec. 108-995. Reporting Requirements and Adjustments in residential allocation schedule.

The Administrative Official will provide an annual report to the Planning Board and City Commission providing the results of tracking and monitoring requirements and recommendations for any changes in the allocation by structure type or intended use. The annual report shall track all inputs to the system, per Section 108-994, as well as allocations to the system by structure and use type.

The table in section 108-994 illustrating the allocation of building permits by structure type shall be subject to evaluation by the city commission annually and the allocation by structure type may be adjusted to accommodate shifts in supply and demand factors. However, under no circumstances will the allocations for affordable housing constitute less than 30% of the total ESFU available for allocation since 1990, nor shall the transient unit allocation exceed 25% of the ESFU available

[*(Coding: Added language for first reading is underlined; deleted language is ~~struck through~~. Added language for second reading is double underlined; deleted language is ~~double struck through~~.

for allocation since 1990. Because transient allocations have exceeded 25% of the total ESFU, no further new transient allocations will be made under this system. ~~Provided, however, that the City shall reserve a minimum number of units for beneficial use claims as a first priority in unit reservation and allocation of remaining allocations shall be in accordance with dictates as specified in the Comprehensive Plan.~~ Provided, however, that the City shall reserve a minimum number of units for beneficial use claims. A determination of the minimum number of units shall be based upon available data illustrating parcels potentially subject to relief pursuant to section 108-998. Remaining units shall be allocated in accordance with the Comprehensive Plan and land development regulations.

Section 2. That section 108-996 of the Code of Ordinances is hereby amended as follows:

Sec. 108-996 Period of Allocation

Allocations other than those granted for beneficial use pursuant to Section 108-998 shall be for a one year period during which time a building permit must be obtained, unless a longer period is approved by resolution as part of a development plan, conditional use or development agreement approval. A single one year renewal

of an allocation ~~may~~ shall be granted by the Administrative Official prior to the expiration of the allocation. One extension for a period of 12-months ~~may~~ shall be granted by the Planning Board provided that the applicant makes application prior to the expiration of the allocation and demonstrates reasonable cause for the extension. No further extensions can be granted. ~~Allocations for beneficial use pursuant to Section 108-998 shall be for a period of five years during which time a building permit must be obtained. A single two year extension of a beneficial use allocation may be granted by the Administrative Official prior to the expiration of the allocation. Unused units will be returned to the system for reallocation.~~¹ Allocations for beneficial use pursuant to Section 108-998 shall be for a period of two years during which time a building permit must be obtained. A single two year extension of a beneficial use allocation shall be granted by the Administrative Official prior to the expiration of the allocation. Unused units will be returned to the system for reallocation.

Section 3: Severability. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any

¹ Language deleted per DCA Final Order No. DCA09-OR-251

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 4: 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 5. Effective Date. 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 and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 4th day of May, 2010.


Read and passed on final reading at a regular meeting held this 18th day of May, 2010.

Authenticated by the presiding officer and Clerk of the Commission on 4th day of August, 2010.

Filed with the Clerk on August 4, 2010.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 10-10

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat., (2009), approving a land development regulation adopted by a local government within the City of Key West 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 August 4, 2010 the Department received for review City of Key West Ordinance No. 10-10, which was adopted by the City of Key West City Commission on May 18, 2010, ("Ord. 10-10").
3. The purpose of Ord. 10-10 is to amend Chapter 108 of the City of Key West Land Development Regulations entitled Planning and Development by amending Article X Part B, Land Development Regulations, Building Permit Allocation and Vested Rights, Division 1; amending Section 108-995 pertaining to Renewal of Allocations; and amending 108-996 pertaining to Beneficial Use.
4. Ord. 10-10 amends Section 108-995 Reporting Requirements and Adjustments in residential allocation schedule to reserve a minimum number of the City's existing unallocated units for beneficial use claims and the remaining existing unallocated units shall be allocated in accordance with the Comprehensive Plan and land development regulations. Ord. 10-10 amends Section 108-996 Period of Allocation to indicate that a single one year renewal of an allocation shall be granted provided the applicant applies prior to expiration of the allocation and demonstrates reasonable cause for the extension.



Allocations for beneficial use shall be for a period of two years during which time a building permit must be obtained, a single two year extension of a beneficial use allocation shall be granted prior to expiration, and unallocated units will be returned to the system for reallocation.

5. Ord. 10-10 is consistent with the City's Comprehensive Plan: Objective 1-3.12: Managing Building Permit Allocation.

CONCLUSIONS OF LAW

6. 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 based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), Fla. Stat., (2009).

7. The City of Key West is an Area of Critical State Concern. § 380.05, Fla. Stat. (2009) and Rule 28-36.001, Fla. Admin. Code.

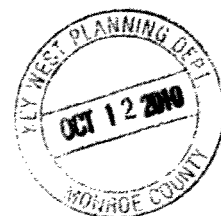
8. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2009). The regulations adopted by Ord. 10-10 are land development regulations.

9. 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(1), Fla. Admin. Code.

10. The above identified portions of Ord. 10-10, are consistent the following Principles:

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

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

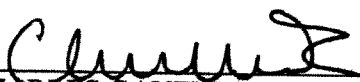


resource.

11. WHEREFORE, IT IS ORDERED that Ord. 10-10 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.

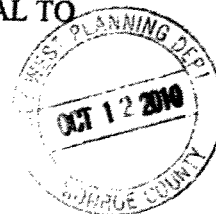


CHARLES GAUTHIER, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

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.

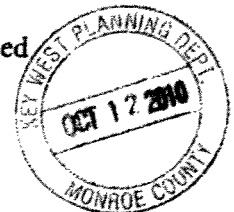
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE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

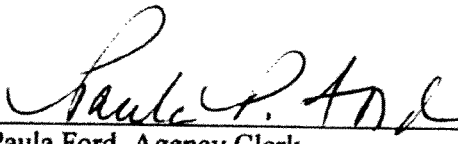
CERTIFICATE OF FILING AND SERVICE

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



DCA Final Order No.: DCA10-OR-189

been furnished to the persons listed below by the method indicated this 1st day of
October, 2010.


Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Craig Cates
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Amy Kimball-Murley, AICP
Planning Director
City of Key West
P.O. Box 1409
Key West, Florida 33041

Larry Erskine
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee

