

ORDINANCE NO. 00-04

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, REVISING THE LAND DEVELOPMENT REGULATIONS BY AMENDING SECTION 1-2.2 TO DEFINE CITY PLANNER RESPONSIBILITY; BY AMENDING SECTIONS 1-2.5 AND 1-2.6 TO CONFORM BOARD OF ADJUSTMENT NOTICE PROCEDURES; BY AMENDING SECTION 1-2.7 TO CONFORM HARC PROCEDURES; BY AMENDING SECTION 1-2.7.1 TO CONFORM TREE COMMISSION PROCEDURES; BY AMENDING SECTION 1-2.8 REGARDING APPEALS; BY AMENDING SECTIONS 1-2.10 AND 1-2.12 TO CONFORM PLANNING BOARD NOTICE PROCEDURES; BY AMENDING SECTION 1-2.13 TO CONFORM VACATION NOTICE PROCEDURES; BY AMENDING SECTION 1-2.14 TO ESTABLISH UNIFORM NOTICE REQUIREMENTS UNDER THE LAND DEVELOPMENT REGULATIONS; BY AMENDING SECTION 2-5.5 REGARDING HISTORIC DISTRICTS; BY AMENDING SECTION 2-5.6 REGARDING THE PUBLIC SERVICE DISTRICT; BY AMENDING SECTION 2-5.9 TO CLARIFY INTENSITY; BY AMENDING SECTION 2-6.4 TO CONFORM ADDITIONAL PLANNING BOARD NOTICE PROCEDURES; BY AMENDING SECTION 3-10.3 TO CLARIFY HARC PROCEDURES; BY AMENDING SECTION 3-15.2 TO CLARIFY OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL PEDESTRIAN AREA; BY AMENDING SECTION 3-15.4 REGARDING LANDSCAPE PLANS FOR PARKING AREAS; BY AMENDING SECTION 3-15.5 TO CLARIFY CERTAIN PARKING AREA DESIGN SPECIFICATIONS; BY REPEALING SECTION 3-17.4 REGARDING NUISANCE ABATEMENT; BY AMENDING SECTION 4-18.3 TO CLARIFY MINOR DEVELOPMENT PLAN REVIEW; BY AMENDING SECTION 4-18.4 TO CONFORM NOTICE PROCEDURES FOR DEVELOPMENT PLAN REVIEW; BY AMENDING SECTION 4-19.4 TO ESTABLISH ADDITIONAL NOTICE PROCEDURES; BY AMENDING SECTIONS 4-20.2 AND 4-20.3 REGARDING PRD ZONING; BY AMENDING SECTION 4-20.4 TO CONFORM PLAT REVIEW NOTICE PROCEDURES; BY AMENDING SECTION 5-21.2 REGARDING DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Key West Land Development Regulations ("LDRs") became effective on January 23, 1998; and

WHEREAS, approximately one year after the LDRs went into effect, the City Commission authorized the City Planner to examine the LDRs and prepare a revision, if necessary; and

WHEREAS, the City Planner's revisions were reviewed and approved by the Key West Planning Board at its meeting of November 18, 1999; and

WHEREAS, the City Commission finds that a revision to certain regulations within the LDRs 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 1-2.2 of the Land Development regulations is hereby amended as follows\*:

**SEC. 1-2.2 ENFORCEMENT BY ADMINISTRATIVE OFFICIAL.**

The Chief Building Official, under the supervision of the City Manager, shall administer and enforce the land development regulations. The Chief Building Official may be provided with the assistance of such other officers and employees of the City

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

as the City Manager may direct. The City Planner shall have the administrative responsibility to interpret the land development regulations. Such interpretations shall be in writing and accompanied by review and written consent by the City attorney.

Section 2: That Section 1-2.5 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.5 BOARD OF ADJUSTMENT.**

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C. **Rules for Procedure.** The Board of Adjustment shall elect a Chairperson and a Vice-Chairperson from among its regular members. The Administrative Official shall appoint a Secretary to serve the Board of Adjustment. The Board of Adjustment shall adopt rules for transaction of its business and shall keep a record of its resolutions, transactions, findings and determinations, which shall be a public record and shall be maintained in the Office of the Administrative Official. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such times as the Board of Adjustment may determine. All meetings shall be open to the public. The Chairperson, or in his absence, the Acting Chairperson, may administer oaths. The Board of Adjustment shall carry out and comply with procedures and public hearing notice requirements cited in §1-2.14 and §1-2.6B together with all other applicable laws and ordinances.

Section 3: That Section 1-2.6 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.6 VARIANCES.**

\* \* \* \*

B. ~~Notice and Hearing Procedure for Variances.~~ In considering and acting upon applications for a variance, the following procedures shall be observed:

1. **Date of Hearing.** The hearing shall be held by the Board of Adjustment at a date and time fixed by the Chairperson of the Board of Adjustment.

2. **Notice.** The City Clerk shall provide notice as provided in §1-2.14. ~~Upon notification by the Chairperson of the Board of Adjustment of the date fixed for hearing on any matter subject to the provisions of this Section, the City Clerk shall cause a notice of the time, place and purpose of such hearing to be posted on the property for which the variance is sought and published in a newspaper of general circulation in the City of Key West at least fifteen (15) days prior to the date of the hearing.~~

a. ~~Mailing of Notice.~~ The City Clerk shall also mail similar notices at least ten (10) days prior to the scheduled hearing setting forth the time, place and purpose of the hearing to (a) the applicant; (b) the owner of the property described in the application, if other than the applicant; and (c) to all owners of real property within 50 feet of the

~~boundaries of the land upon which the variance is requested, except that where the property for which the request has been made is located in a mixed use or non residential zoning district, notice shall be mailed to all owners of real property within 100 feet of the boundaries of the property. For the purpose of notice requirements to nearby owners of real property, the names and addresses of the owners shall be deemed to be those on the current tax records of the county. The failure of any owner required by this section to be notified by mail to receive such notice shall not invalidate or otherwise have any effect on the action of the Board of Adjustment on any application.~~

~~b. **Applicant to Pay Costs.** All costs of notification shall be paid by the applicant, to be covered by an application fee which shall be set by resolution by the City Commission.~~

Section 4: That Section 1-2.7 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.7 HISTORIC ARCHITECTURAL REVIEW COMMISSION (HARC).**

\* \* \* \*

**A. Establishment of the Historic Architectural Review Commission (HARC).** The City Commission hereby finds that the preservation of the character and appearance of the historic preservation zoning districts of the City, as well buildings, structures, and properties listed in the local and national registers of historic places, and buildings, structures,

archaeological sites, or districts classified as "contributing" or "contributing but altered" on the City Historic Preservation Survey is a public purpose benefiting the educational, cultural, and economic welfare of the citizens of Key West, and further finds that this public purpose can be best achieved through a City agency having the authority and responsibility to review and regulate certain changes in said areas. The City Commission hereby creates the Historic Architectural Review Commission (HARC), which shall use the power and authority conferred upon it by the Code of Ordinances to further said public purpose.

\* \* \* \*

E. **Powers and Functions.** The HARC shall have the power to carry out the duties and responsibility conferred upon it by the Code of Ordinances and land development regulations of the City of Key West. ~~The HARC shall perform delegated duties in order to augment and preserve the character and distinctive appearance of the following historic resources:~~

- ~~— Historic zoning districts within the City;~~
- ~~— Buildings, structures, and properties listed in the local and national registers of historic places; and~~
- ~~— Buildings, structures, archaeological sites, interiors, and districts classified as "contributing" on the City Historic Preservation Survey.~~

~~In addition, the HARC shall review nominations of properties, structures, sites, or buildings, or groups of~~

~~buildings to the local and national registers of historic places, wherever such resources are located within the jurisdictional boundaries of the City of Key West.~~

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F. **Rules of Procedure.** The HARC shall establish and adopt Rules of Procedure, which shall include, but not limited to, election and duties of officers; meeting schedule, time, and place; establishing order of business and method of transaction; procedure for action and voting by members; conduct of public hearings; rules of conduct; parliamentary procedure; maintenance of records; and method of amending same.

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2. **Regular Meetings.** The HARC shall attempt to convene on a regularly scheduled basis at least once each month, ~~and n~~. Notice of such all meetings including the agenda with the address and description of each project shall be published in a newspaper of general circulation in the City at least five (5) days in advance thereof. At any special or regular meeting the HARC may set a future meeting date.

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5. **Preparation of Agenda and Minutes.** Minutes shall be kept of all meetings of the HARC or committees thereof. All meetings shall be open to the public and, except for emergencies so designated by a majority of the full membership, notice of all meetings shall be published as for a regular

meeting, and an agenda for each meeting shall be available to the public at City Hall ~~forty eight (48) hours~~ five (5) days in advance thereof.

Section 5: That Section 1-2.7.1 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.7.1 TREE COMMISSION.**

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**C.3. Schedule of Meetings.** The Tree Commission shall attempt to convene on a regularly scheduled basis at least once each month, ~~and n .~~ Notice of such all meetings including the agenda with the address and description of each project shall be published in a newspaper of general circulation in the City at least five (5) days in advance thereof. At any special or regular meeting the Tree Commission may set a future meeting date.

Section 6: That Section 1-2.8 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.8. APPEALS OF FINAL DECISIONS DETERMINED BY THE CITY COMMISSION OR THE BOARD OF ADJUSTMENT.**

The final decisions of the Planning Board ~~and the Historic Architectural Review Commission~~ may be appealed to the City Commission. Final decisions of the Historic Architectural Review Commission may be appealed as provided by the Key West Charter. Final orders and administrative and enforcement decisions by the City Planner and Chief Building Official may

be appealed to City Commission pursuant to procedures stated in §1-2.5. Appeals of permit decisions of the Tree Commission may only be addressed by the Board of Adjustment.

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D. **Final Orders and Administrative Decisions of the City Planner and Chief Building Official.** The intent of the land development regulations is that all questions of interpretation and enforcement shall first be presented to the City Planner ~~Chief Building Official~~. Such questions shall be presented to the Board of Adjustment only on appeal from the decision of the City Planner ~~Chief Building Official~~. Similarly, appeals to final orders of the Chief Building Official shall be to the Board of Adjustment.

E. **Procedures for Rendering Decisions on Appeal.** In considering and acting upon appeals of final decisions of the Planning Board, the Historic Architectural Review Commission, or the Tree Commission as well as final orders and questions of interpretation and enforcement of the land development regulations and the building codes by the City Planner and Chief Building Official, the following procedures shall be observed.

3. **Notice.** Upon notification by the City Manager of the date fixed for hearing on any matter subject to the provisions of this section, the City Clerk shall cause notice pursuant to §1-2.14 ~~a notice of the time, place and purpose of such hearing to be published at least once in a newspaper of general~~

~~circulation in the City of Key West with the first such publication to be at least ten (10) calendar days prior to the date of the hearing.~~ The City Clerk shall also forward by certified mail return receipt requested similar notices setting forth the time, place and purpose of the hearing to:

- a. the appellant;
- b. the Administrative Official;
- c. the owner of the property described in the application, if other than the appellant; and
- d. ~~in cases where development is proposed, all~~

~~owners of real property within:~~

~~i. fifty (50) feet of the boundaries of the subject property if the proposed use is residential; or~~

~~ii. one hundred (100) feet of the boundaries of the subject property if the proposed use contains any commercial or other non-residential uses.~~

Section 7: That Section 1-2.10 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.10 AMENDMENTS TO LAND DEVELOPMENT REGULATIONS.**

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G. **Planning Board Review of Proposed Changes in the Land Development Regulations.** The Planning Board, regardless of the source of the proposed change in the regulations, shall hold a public hearing thereon with due public notice ~~as described~~

herein. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in §1-2.10 F.

Whenever the Secretary to the Planning Board has received a written request for a continuance, delay, or postponement of a public hearing from an applicant after the public hearing has been duly advertised, the Planning Board may grant the applicant's request for continuance, delay, or postponement. However, as a condition to granting the applicant's request, the Planning Board shall require a fee as may be established by the City Commission for purposes of covering all expenses resulting from the continuance, delay, or postponement. The Planning Board shall reschedule the hearing as soon as practicable, but in any event within the following 180 days. Further request for continuance, delay, or postponement shall result in denial of the application, and the application shall be subject to the provisions of the last paragraph of subsection 1-2.10D2 below.

\* \* \* \*

**I. Public Hearings on Land Development Regulations Amendments and Official Zoning Map Amendments.** Ordinances which rezone specific parcels of land or which substantially

change permitted use categories in zoning districts shall be enacted, scheduled and noticed according to §1-2.14 unless otherwise specified in Florida Statutes. pursuant to the following procedures.

~~1. Procedures Where Less Than 5% of the City's Land Area is Affected.~~ In cases where the proposed rezoning or change in use involves less than five (5) percent of the total land area of the City, the Planning Board shall hold one (1) public hearing and recommend action to the City Commission. Upon receipt of the Planning Board recommendations the City Commission shall hold one (1) public hearing.

~~a. Notice Requirements.~~ For each required public hearing the City shall notify by certified mail, return receipt requested, each real property owner whose land is included in the rezoning or whose land will be affected by the change in permitted uses by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. In addition, notice shall be forwarded by certified mail, return receipt requested, to all property owners of land located within two hundred (200) feet of the outer boundaries of the land included any proposed ordinance amending the City's Official Zoning Map.

~~b. Content of Notice.~~ The notice shall state the substance of the proposed ordinance as it affects the property owner and shall set a time and place for one or more public hearings on such ordinance.

~~c. **Timing of Notice.** The notice shall be given at least thirty (30) days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the City Clerk.~~

~~d. **City Commission Action.** The City Commission may, upon conclusion of the public hearing, immediately adopt the ordinance.~~

~~2. **Procedures Where More Than 5% of the City's Land Area is Affected.** In cases where the proposed rezoning or change in use involves more than five (5) percent of the total land area of the City, the Planning Board shall hold one (1) public hearing and recommend action to the City Commission. Upon receipt of the Planning Board recommendations the City Commission shall hold two (2) public hearings.~~

~~a. **Schedule and Timing of City Commission Public Hearings.** In cases where the proposed rezoning or change in use involves more than five (5) percent of the total land area of the City, the required public hearings shall be held after 5 PM on a weekday, and the first shall be held approximately 7 days after the day that the first advertisement is published. The second hearing shall be held approximately 2 weeks after the first hearing and shall be advertised approximately 5 days prior to the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.~~

b. ~~Notice Requirements for Planning Board and City Commission.~~ For each required public hearing the City shall select one of the following two optional notification procedures:

i. ~~One Quarter Page Advertisement.~~ The required advertisement for each public hearing shall be no less than one quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the City of Key West and of general interest and readership in the City, not one of limited subject matter. The newspaper should be published at least 5 days a week. The advertisement shall be in the following form:

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~~NOTICE OF ZONING (PERMITTED USE) CHANGE~~

The City of Key West proposed to rezone (change the permitted use of) the land within the area shown in the map in the this advertisement.

The public hearing on the rezoning will be held on \_\_\_\_\_ (date and time) at \_\_\_\_\_ (meeting place).

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~~The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the area.~~

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~~ii. In lieu of One Quarter Page Advertisement.~~

~~In lieu of publishing the above described advertisement, the City may forward by certified mail, return receipt requested, a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of the scheduled public hearings on the proposed ordinance.~~

~~e. Optional Notice In Addition to Required Notice Cited Above. At its discretion the City Planning Board and/or the City Commission may direct that in addition to the notice requirement cited in §1 2.9 )I) (b) (i) and (ii) above, the City shall notify by certified mail, return receipt requested, each real property owner whose land is included in the rezoning or whose land will be affected by the change in permitted uses by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. In addition, notice shall be forwarded by certified mail, return receipt requested, to all property owners of land located within two~~

~~hundred (200) feet of the outer boundaries of the land included any proposed ordinance amending the City's Official Zoning Map.~~

~~i. **Content of Notice.** The notice shall state the substance of the proposed ordinance as it affects the property owner and shall set a time and place for one or more public hearings on such ordinance.~~

~~ii. **Timing of Notice.** The notice shall be given at least thirty (30) days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the City Clerk.~~

~~d. **City Commission Action.** The City Commission may, upon conclusion of the public hearing, immediately adopt the ordinance.~~

Section 8: That Section 1-2.12 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.12 SITE SPECIFIC COMPREHENSIVE PLAN AMENDMENTS.**

\* \* \* \*

**I. Public Hearings on Amendments to the Comprehensive Plan Future Land Use Map.** Ordinances which amend land use classification on specific parcels of land on the Comprehensive Plan Future Land Use Map shall be enacted, scheduled and noticed according to §1-2.14 unless specified in Florida Statutes. ~~pursuant to the following procedures.~~

1. ~~Small Scale Land Use Plan Amendments.~~ In cases where the proposed land use plan amendment involves a parcel or parcels of land less than ten (10) acres in size, t The Planning Board shall hold one (1) public hearing and recommend action to the City Commission. Upon receipt of the Planning Board recommendations the City Commission shall hold two (2) public hearings.

a. ~~Notice Requirements.~~ For each required public hearing the City shall publish an advertisement of the public hearing in a newspaper of general paid circulation in the City of Key West and of general interest and readership in the City, not one of limited subject matter. The notice shall not be located in the legal advertisement section of the newspaper. The newspaper should be published at least 5 days a week.

b. ~~Content of Notice.~~ The notice does not have to include a map; however, it must be at least one standard column wide and six inches long, contain an 18 point bold headline stating "NOTICE OF LAND USE CHANGE." The notice shall clearly describe the location and size of the parcel subject to the amendment, and the current and proposed land use designations. Finally, the notice shall contain the date, time and location of the public hearing as well as the name, address and phone number where further information may be obtained.

c. ~~Timing of Notice.~~

i. ~~Planning Board.~~ The notice shall be published twice, once not less than 14 or more than 20 days

~~prior to the public hearing, and again not less than 5 or more than 10 days prior to the public hearing.~~

~~ii. City Commission. The first public hearing shall be held on a weekday approximately 7 days after the public hearing notice appears in the newspaper. The second public hearing shall be held on a weekday approximately 5 days after the second public hearing notice appears in the newspaper.~~

~~d. City Commission Action. The City Commission may, upon conclusion of the public hearing, immediately adopt the small scale land use plan amendment. The Mayor or designee shall then transmit five (5) copies of the adopted small scale land use plan amendment to the Florida Department of Community Affairs, and a copy to the South Florida Regional Planning Council.~~

~~e. Submittal to Department of Community Affairs. The transmittal letter shall indicate that the submittal is in compliance with Chapter 163., 3187 (1) (c) (4), F.S. and the include the following information:~~

~~i. Cumulative total number of acres for small scale land use plan amendments approved for that calendar year;~~

~~ii. A copy of ordinance adopting the small scale land use plan amendment;~~

~~iii. The adopted future land use designation as well as the boundaries and location of the subject property in relation to the surrounding street and thoroughfare network;~~

~~iv. The present land use designations of the subject property and abutting properties shown on a map;~~

~~v. The size of the subject property in acreage;~~

~~vi. A description of the availability of and the demand on the following public facilities: sanitary sewer, solid waste, drainage, potable water, traffic circulation and recreation, as appropriate;~~

~~vii. Information regarding the compatibility of the adopted land use amendments with the land use element objectives and policies, and those of other affected elements;~~

~~viii. Copies of recommendations and support documents or summaries of support documents used by staff, the Planning Board and City Commission to make their decisions; and~~

~~ix. A general description of the location and the current and newly adopted land use designations for the each property included in the small scale land use plan amendment.~~

~~f. Department of Community Affairs Review. The Department of Community Affairs shall process the amendment for review and publish the notice of intent to the find the amendment in compliance or not in compliance within 90 days of receipt.~~

~~2. Large Scale Land Use Plan Amendments. In cases where the proposed land use plan amendment is larger than 10 acres, the Planning Board shall hold one (1) public hearing and~~

~~recommend action to the City Commission. Upon receipt of the Planning Board's recommendation, the City Commission shall hold two (2) public hearings.~~

~~a. **Notice Requirements.** For each required public hearing the City shall publish an advertisement of the public hearing in a newspaper of general paid circulation in the City of Key West and of general interest and readership in the City, not one of limited subject matter. The notice shall not be located in the legal advertisement section of the newspaper. The newspaper should be published at least 5 days a week.~~

~~b. **Notice Requirements for Planning Board and City Commission.** For each required public hearing the City shall publish a one quarter page advertisement in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 10 point. The advertisement shall be in the following form:~~

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~~NOTICE OF CHANGE OF LAND USE~~

~~The City of Key West proposed to change the use of land within the area shown in the map in the this advertisement.~~

~~The public hearing on the rezoning will be held on \_\_\_\_\_ (date and time) \_\_\_\_\_ at meeting place.~~

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~~The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed~~

~~ordinance. The map shall include major street names as a means of identification of the area.~~

~~c. Timing of Notice.~~

~~i. Planning Board. The notice shall be published twice, once not less than 14 or more than 20 days prior to the public hearing, and again not less than 5 or more than 10 days prior to the public hearing.~~

~~ii. First Public Hearing at City Commission. The first public hearing shall be at the transmittal stage and shall be held on a weekday approximately 7 days after the public hearing notice appears in the newspaper.~~

~~iii. Second Public Hearing at City Commission. The second public hearing shall be at the adoption stage and shall be held on a weekday approximately 5 days after the second public hearing notice appears in the newspaper.~~

~~d. Transmittal to Department of Community Affairs. The City Clerk upon completion of the first public hearing by the City Commission transmit six (6) copies of the proposed land use plan amendment to the Department of Community Affairs. The City Clerk shall also send one copy each to the South Florida Regional Planning Council, the South Florida Water Management District, the Florida Department of Environmental Protection, and the Florida Department of Transportation. The City Clerk shall also send a copy to any other local government or governmental agency in the state that has filed a written~~

~~request for a copy with the City and paid a fee to defray the costs of mailing.~~

~~e. **Transmittal Package.** The following information shall be included in the transmittal letter and supporting documentation sent to the Department of Community Affairs:~~

~~i. The date(s) the Planning Board held the public hearing on the plan amendment;~~

~~ii. The date(s) the City Commission held the public hearing and approved transmittal to the Department of Community Affairs, South Florida Regional Planning Council, the South Florida Water Management District, the Florida Department of Environmental Protection, and the Florida Department of Transportation.~~

~~iii. A summary of the plan amendment content and effect and whether the local government requests that the Department review the proposed amendment;~~

~~iv. The proposed month of adoption of the proposed plan amendment;~~

~~v. Whether the proposed amendment is applicable to an area of critical state concern;~~

~~vi. Whether the proposed amendment is applicable to a Development of Regional Impact;~~

~~vii. A copy of the entire element being amended;~~

~~viii. Whether the amendment is proposed to be adopted under a joint planning agreement;~~

~~ix. The name, title, address, telephone and fax numbers for the contact person;~~

~~x. The adopted future land use designation as well as the boundaries and location of the subject property in relation to the surrounding street and thoroughfare network;~~

~~xi. The present land use designations of the subject property and abutting properties shown on a map;~~

~~xii. The size of the subject property in acreage;~~

~~xiii. A description of the availability of and the demand on the following public facilities: sanitary sewer, solid waste, drainage, potable water, traffic circulation and recreation, as appropriate;~~

~~xiv. Information regarding the compatibility of the adopted land use amendments with the land use element objectives and policies, and those of other affected elements, and~~

~~xv. Copies of recommendations and support documents or summaries of support documents used by staff, the Planning Board and City Commission to make their decisions.~~

~~f. Review by the Department of Community Affairs. The City shall indicate in the transmittal letter whether the Department of Community Affairs shall conduct a preliminary review or a full review of the proposed amendment.~~

~~i. Preliminary Review. The Department of Community Affairs shall conduct preliminary review of the~~

~~proposed amendment within 45 days of receipt of the proposed amendment. DCA shall indicate either the need for a full review is required. If a full review is not required the City can adopt the ordinance amending the Future Land Use Map immediately. If a full review is required than DCA shall issue an objections, recommendations, and comments report within 60 days of the decision.~~

~~ii. Full Review. The Department of Community Affairs shall conduct a full review of the proposed land use plan amendment and within 60 days issue an objections, recommendations, and comments report.~~

~~g. City Commission Action. After receipt of the objections, recommendations and comments report from DCA, the City Commission shall have 120 days to adopt, adopt with changes, or not adopt the proposed amendment. This action shall occur at the second public hearing, held pursuant to the noticed requirement described above. Within ten (10) working days after adoption, the City Clerk shall submit a transmittal letter signed by the Mayor and five (5) copies of the adopted amendment to DCA. The City Clerk shall also send a copy to any other local government or governmental agency in the state that has filed a written request for a copy with the City and paid a fee to defray the costs of mailing. If the amendment is not adopted than within five (5) working days of the decision, the City Clerk shall send a letter to DCA informing them of this decision.~~

~~h. **Determination of Compliance.** DCA shall have forty five (45) days from receipt of the adopted amendment to determine compliance and issue a notice of intent to find the amendment in compliance or not in compliance. The notice of intent to find not in compliance shall contain a statement describing how each portion of the amendment alleged to be not in compliance is not consistent with one or more provision of Section 163.3177, 163.3178, 163.3191, FS, the State Comprehensive Plan, the South Florida Regional Policy Plan, or Chapter 9J 5, FAC, and a statement of remedial actions the City must complete in order to bring the amendment into compliance.~~

~~i. **Notice of Intent: Compliance.** If a notice of intent is issued to find the amendment in compliance, any affected person, within twenty one (21) days after publication of the notice of intent may file a petition with DCA challenging the notice of intent. If no petition is filed within twenty one (21) days, then the notice of intent shall considered final agency action.~~

~~ii. **Notice of Intent: Non-compliance.** If a notice of intent is issued to find the adopted amendment not in compliance, DCA will forward a copy of the notice of intent to the Division of Administrative Hearings, Department of Management Services, requesting a hearing.~~

~~iii. Affected person shall include the affected local government, persons owning property, residing or owning or operating a business within the boundaries of the local~~

~~government whose plan is the subject of the review; and adjoining local governments that can demonstrate that adoption of the plan as proposed would produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction each person, other than an adjoining local government, in order to qualify under this definition shall also have submitted oral or written objections during the local government review and adoption proceedings.~~

Section 9: That Section 1-2.13 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.13 VACATION OF PUBLIC EASEMENTS OR RIGHTS-OF-WAY.**

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D. **Public Hearing, Notice and Final Determination by City Commission.** The City Commission shall render the final determination regarding a vacation of a public easement or right-of-way after convening a public hearing with due notice and considering the DRC's findings.

1. **Notice.** Upon notification by the City Manager of the date fixed for a public hearing on any matter subject to the provisions of this Section, the City Clerk shall cause notice pursuant to §1-2.14 ~~a notice of the time, place, and purpose of such hearing to be published at least once in a newspaper of general circulation in the City of Key West with first such publication to be at least ten (10) calendar days prior to the~~

~~date of the hearing.~~ The City Clerk shall also forward by certified mail return receipt requested similar notice setting forth the time, place and purpose of the hearing to:

- a. The applicant and/or property owner;
- b. ~~All property owners within 100' feet of the public easement or right of way; and~~
- e. All providers of public or semi-public services such as those identified in §1-2.13(C).

Section 10: That Section 1-2.14 of the Land Development regulations is hereby amended as follows:

**SEC. 1-2.14 PUBLIC HEARING NOTICE REQUIREMENTS.**

Except as required by Sections 163.3181(3)(a), 163.3225(2), and 166.041(3)(a) & (c) Florida Statutes, the City shall provide notice for public hearings on variances, Board of Adjustment actions, appeals, vacation of public easements or rights-of-way, conditional uses, development plans, subdivision plans, planned redevelopment and development plans, as follows:

A. Newspaper Notice. In accordance with the requirements of sub-sections D and E below, the City shall be required to publish an advertisement in a newspaper of general paid circulation in the City of Key West and of general interest and readership in the City, not one of limited subject matter.

B. Mail Notice. In accordance with the requirements of sub-sections D and E below, the City shall mail a notice to each property owner located within three hundred (300) feet of the outer boundaries of the land which is the subject of the

request (based upon the list of property owners maintained by the Planning Department and periodically updated with ad valorem tax records).

C. Posted Notice. In accordance with the requirements of sub-sections D and E below, the City shall post a notice on the subject property that is legible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "Public Notice" in letters three (3) inches or more in height.

D. Content of Notice. The notice shall contain the date, time and place of the public hearing and a common description of the location of the subject site and the nature of the project.

E. Timing of Notice. The notice shall be given at least ten (10) days prior to the date set for each public hearing at which the application is considered. A copy of the notice shall be available for public inspection during regular business hours of the City Clerk.

Section 11: That Section 2-5.5 of the Land Development regulations is hereby amended as follows:

**SEC. 2-5.5 HISTORIC PRESERVATION DISTRICTS (Subsections 2-5.5.1 Through 2-5.5.8).**

The purpose and intent of the Historic Preservation Districts is to provide a management framework for implementing Comprehensive Plan Historic Preservation objectives and

policies. Development within the below identified districts shall be planned and developed in a manner to preserve the form, function, image, and ambiance of the historic district. ~~The City's Historic Architectural Review Commission (HARC), in addition to the Planning Board, shall review all development proposals within the historic area designated by the National Register of Historic Places~~

~~Development in the historic district within and outside the HARC review area may impact the historic significance of the district. Any development plans for these areas shall be subject to development plan review and shall be designed in a manner compatible with historic structures within the vicinity. All development within the historic districts shall comply with the Comprehensive Plan, performance criteria in Chapter III, and other applicable land development regulations. Following is a description of the purpose of each historic preservation zoning district herein established, including reference to the Comprehensive Plan Future Land Use Map designation which shall be implemented through the land development regulations.~~

Section 12: That Section 2-5.6 of the Land Development regulations is hereby amended as follows:

**SEC. 2-5.6 PUBLIC AND SEMI-PUBLIC SERVICES DISTRICT (PS).**

\* \* \* \*

**B. USES PERMITTED**

Community Centers, Clubs and lodges

Educational Institutions and Day Care

Golf Course Facilities

Hospitals and Extensive Care

Nursing Homes, Rest Homes & Convalescent Homes

Parks and Recreation, Active and Passive

Places of Worship

Business and Professional Offices

Medical Services

Parking Lots and Facilities

Veterinary Medical Services With or Without Outside Kennels

\* \* \* \*

Section 13: That Section 2-5.9 of the Land Development regulations is hereby amended as follows:

**SEC. 2-5.9 SIZE AND DIMENSION CRITERIA.**

\* \* \* \*

**B. Density and Intensity of Land Use.**

\* \* \* \*

The maximum intensity stipulated for non-residential activities is stated in terms of floor area ratio. [Reference Section 5-21.2 [Definition of Terms]. ~~Floor area ratio (FAR) refers to the total floor areas of building(s), on any lot, parcel, or site divided by the area of the lot, parcel, or site. For purposes of calculating floor area parking area located beneath the building(s) shall be counted only if that first story is over seven (7) feet above finished grade. FAR computations shall include all uses on the lot, parcel or site, including both residential and non residential floor area.~~

\* \* \* \*

Section 14: That Section 2-6.4 of the Land Development regulations is hereby amended as follows:

**SEC. 2-6.4 NOTIFICATION PROCEDURES.**

Prior to taking any action under Section 2-6.3 regarding conditional use approval, the Planning Board shall be required to notify the public in accordance with Section 1-2.14. ~~adjacent property owners. Notice shall be mailed by certified mail (return receipt requested) to all property owners within fifty (50) feet of the property boundaries of the subject site under consideration for conditional use approval. The notice shall include the time, date, place, and location of the meeting at which the conditional use approval will be considered together with the location of subject site and the nature of the intended conditional use. The notice shall be advertised in a local paper with daily circulation and shall be published at least five (5) days prior to the scheduled meeting.~~ Such notice shall also be published before any action is taken on appeals to the City Commission pursuant to Section 2-6.5.

Section 15: That Section 3-10.3 of the Land Development regulations is hereby amended as follows:

**SEC. 3-10.3 PROTECTION OF HISTORIC RESOURCES.**

**E. Certificate of Appropriateness.**

1. **General Requirements.** A Certificate of Appropriateness shall be required as below stipulated:

a. ~~Requirements for Permits in Historic Zoning Districts.~~ No person shall cause any of the following to occur without first obtaining a "Certificate of Appropriateness" for such work, and all other permits required by the Code of Ordinances, including the land development regulations:

The erection of any new structure, building, fence, deck or sign, or cause painting, repainting, repair, alteration, remodeling, landscaping or demolition of the exterior of any existing building, structure, fence, deck, sign, landscape, or lot located in any of the following areas:

- Located in the historic preservation districts of the City; or
- Located in tidal waters contiguous to and within six hundred (600) feet of the historic preservation districts; or
- Located so as to directly affect any building, structure or property listed in the City of Key West, Florida Historic Sites Survey as may be amended from time to time ~~Local~~ and National Registers of Historic Places; or
- Located within a building, structure, archaeological site or district classified as "contributing" on the City Historic Preservation Survey.

A Certificate of Appropriateness may only be granted by a vote of the HARC, attested by signature of its presiding member, ~~and only after the City Manager or his designee finds~~

~~that the building or work permit conforms to all laws and regulations of the City.~~

Section 16: That Section 3-15.2 of the Land Development regulations is hereby amended as follows:

**SEC. 3-15.2 PARKING SPACES REQUIRED BY USE.**

\* \* \* \*

**B. Special Provisions Within the Historic Commercial Pedestrian Oriented Area.**

\* \* \* \*

**3. Change of Existing Commercial Pedestrian Oriented Uses.**

No additional off-street parking shall be required within the above historic commercial pedestrian oriented area if a commercial structure is the subject of a change from one type of commercial use to another type of commercial use, so long as no additional or expanded floor area is created. However, ~~if additional floor area is created~~ the off-street parking regulations in Article XV shall apply to:

a. additional floor area, or

b. any non-residential floor area created after January 1, 2000, and converted to another use requiring more parking.

Any pre-existing off-street parking serving the structure must be maintained to service the new use. Similarly, pre-existing parking shall not be used as a site for additional floor area unless the total off-street parking required pursuant to this Article is made available to accommodate the existing and new proposed floor area.

Section 17: That Section 3-15.4 of the Land Development regulations is hereby amended as follows:

**SEC. 3-15.4 GENERAL REGULATIONS IMPACTING PARKING AREAS.**

\* \* \* \*

**E. Landscaping Required.** For parking areas containing more than five (5) spaces, at least ten percent (10%) of the total area shall be landscaped and shall comply with Article XVI. ~~Landscaping plans must be approved by the City Commission before any construction is begun on any parking lot of more than five (5) spaces~~

Section 18: That Section 3-15.5 of the Land Development regulations is hereby amended as follows:

**SEC. 3-15.5 DESIGN AND SPECIFICATIONS FOR PARKING AND LOADING AREAS.**

**A. Driveways, Aisles, and Stalls.**

\* \* \* \*

**4. Wheel Stops.** All paved parking spaces shall have lines between spaces to indicate individual stalls, and each stall ~~may~~ shall ~~be required to~~ be equipped with wheel stops or similar devices ~~if deemed appropriate by the City Commission based on recommendations of the City Staff.~~ unless a waiver is granted by the City Engineer.

Wheel stops for stalls adjacent to landscaped strips shall be located ~~two and a half (2½)~~ three (3) feet from the front end of the stall to prevent encroachment into required landscaped areas. The front ~~two (2)~~ two and one-half (2 1/2)

feet of the stall may be kept as a maintained vegetative ground cover area although no credit will be extended toward open space requirements of this Code.

Section 20: That Section 3-17.4 of the Land Development regulations, entitled "Specific Standards for Nuisance Abatement," is hereby repealed in its entirety.

Section 21: That Section 4-18.3 of the Land Development regulations is hereby amended as follows:

**SEC.4-18.3 DEVELOPMENT PLAN REVIEW CRITERIA/PROCEDURES.**

A development plan review process shall be required for Minor Development and Major Development as defined below:

**. Minor Development**

1. **Minor Residential Developments.** Outside the historic district, Development Plan Review for projects ~~outside the historic district~~ shall be required for minor residential development defined as follows:

a. Residential developments resulting in a net increase of five (5) units or greater, which are not major developments [Cross reference §4-18.3(B)].

b. Transient development resulting in a net increase of five (5) units or greater, which are not major developments. [Cross reference §4-18.3(B)]

2. **Minor Non-Residential Developments.** Outside the historic district, Development Plan Review shall be required for minor non-residential developments ~~outside the historic district~~ comprising one-thousand (1,000) square feet gross

floor area or more, and which are not major developments as defined in the following subsection [*Cross reference §4-18.3(B)*].

**3. Minor Developments in the Historic District.** Development Plan Review shall be required for all development, except single and two-family residential dwellings, within the Historic District from five hundred (500) to two thousand four hundred ninety-nine (2,499) square feet and which are not major developments as defined in the following sub-section [*Cross reference sub-section 4-18.3(B)*]. In addition all minor developments within the historic district approved by the Planning Board must be put on the City Commission's consent agenda for approval or denial.

\* \* \* \*

Section 22: That Section 4-18.4 of the Land Development regulations is hereby amended as follows:

**SEC. 4-18.4 DEVELOPMENT REVIEW PROCESS.**

\* \* \* \*

**D. Notification Procedures.** Prior to taking any action under sub-sections 4-18.4 A, B, or C regarding development plan review, the Planning Board and the City Commission, respectively, shall be required to notify the public in accordance with section 1-2.14. ~~adjacent property owners. Notice shall be mailed by certified mail (return receipt requested) to all property owners within fifty (50) feet of the property boundaries of the subject site under consideration for~~

~~residential development plan approval, and one hundred (100) feet of the property boundaries of the subject site under consideration for mixed use and non residential development plan approval. The notice shall include the time, date, place, and location of the public hearing together with the location of subject site and the nature of the intended use of the property. The notice shall be advertised in a local paper with daily circulation and shall be published at least five (5) days prior to the scheduled meeting to consider the subject development plan.~~ Such notice shall also be published before any action is taken on appeals to any prior decisions on which appeals are generated pursuant to Sub-section 4-18.4 (B).

Section 23: That Section 4-19.4 of the Land Development regulations is hereby amended as follows:

**SEC. 4-19.4 ADMINISTRATION.**

\* \* \* \*

F. Notification Procedures. Prior to taking any action the Planning Board and the City Commission, respectively, shall be required to notify the public in accordance with section 1-2.14.

Section 24: That Section 4-20.2 of the Land Development regulations is hereby amended as follows:

**SEC. 4-20.2 CONCEPTUAL DEVELOPMENT PLAN FOR PRD ZONING.**

\* \* \* \*

**5.c. Review by Planning Board and City Commission.** The procedures of the Planning Board and the City Commission in

amending the Land Development Regulations, including the official Zoning Map, and/or the Comprehensive Plan Future Land Use Map are stipulated in sections 1-2.10, ~~and~~ 1-2.12 and 1-2.14.

Section 25: That Section 4-20.3 of the Land Development regulations is hereby amended as follows:

**SEC. 4-20.3 PLANNED REDEVELOPMENT AND DEVELOPMENT (PRD) DEVELOPMENT PLAN AND PRELIMINARY PLAT REVIEW.**

**A. General Procedures for PRD Development Plan and Preliminary Plat Submittal and Approval.**

\* \* \* \*

**A.4. Review Procedures for Preliminary Development Plan.** Each applicant for a PRD shall submit a Preliminary Development Plan for review by City officials. The review process shall be carried out pursuant to this article. Public notice of Planning Board and City Commission meetings shall be provided as specified in §1-2.14. If the Preliminary Development Plan is approved, the applicant shall submit a final plat for review by City officials.

Section 26: That Section 4-20.4 of the Land Development regulations is hereby amended as follows:

**SEC. 4-20.4 GENERAL PROCEDURE FOR FINAL PLAT REVIEW.**

\* \* \* \*

**A.1. Review Final Development Plan.** The review procedures for the final development plan shall be the same as the review procedures established for a final plan in section

4-19.6(C-G). If the final site plan includes any proposed changes, the final site plan shall be reviewed pursuant to procedures established for site plan review in Article XVIII. Public notice of Planning Board and City Commission meetings shall be provided as specified in §1-2.14.

\* \* \* \*

Section 27: That Section 5-21.2 of the Land Development regulations is hereby amended as follows:

**SEC. 5-21.2 DEFINITION OF TERMS.**

\* \* \* \*

~~FLOOR AREA. The sum of the gross horizontal areas of the several floors of a building or buildings measured from exterior faces of exterior walls or from the center line of walls separating two (2) attached buildings. The required minimum floor area within each district shall not apply to accessory uses; however, the floor area of accessory uses may be computed as a part of the area of the principal use.~~

FLOOR AREA RATIO. The total floor area of the building or buildings on any lot, parcel, or site divided by the area of the lot, parcel, or site.

\* \* \* \*

~~GROSS FLOOR AREA. The area within the inside perimeter of the exterior walls with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of areas open and unobstructed to the sky.~~

\* \* \* \*

**LAND USE CLASSIFICATIONS**

**C. Commercial Activities**

16. **Small Recreation Power Driven Equipment Rental.** Rental of low speed vehicles, jet skis, mopeds, scooters and/or other similar non-automotive, two or three wheeled, power driven vehicles, excluding the rental of automobiles, trucks, tractors, or other vehicles.

\* \* \* \*

**LOW SPEED VEHICLE.** Any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles.

\* \* \* \*

**TOTAL FLOOR AREA OR GROSS FLOOR AREA.** The areas of all floors of a building, including finished basements and all covered areas, including porches, sheds, carports, and garages. If the first finished floor level of an elevated building or structure is elevated to a height greater than seven (7) feet above the ~~base flood elevation~~ finished grade, then the area below such first floor shall be included in calculating gross floor areas of the building or structure.

\* \* \* \*

Section 28: 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 29: 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.

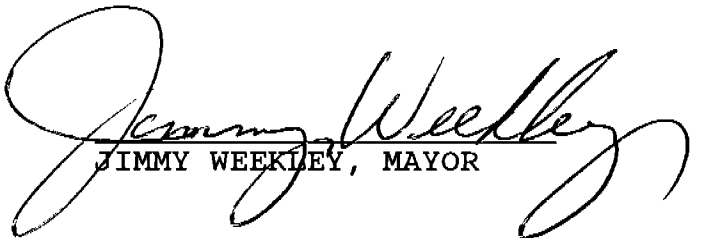
Section 30: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 19TH day of JANUARY, 2000.

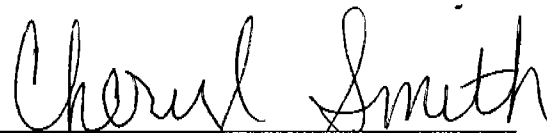
Read and passed on final reading at a regular meeting held this 1ST day of FEBRUARY, 2000.

Authenticated by the presiding officer and Clerk of the Commission on 3RD day of FEBRUARY, 2000.

Filed with the Clerk FEBRUARY 3, 2000.

  
JIMMY WEEKLEY, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK



Volume 26, Number 14, April 7, 2000

Miscellaneous

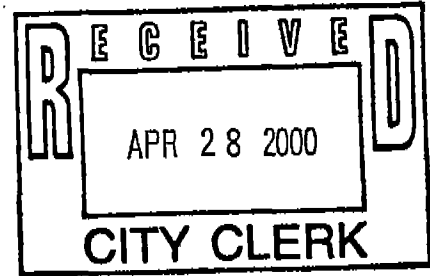
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## Department of Community Affairs

IN RE: CITY OF KEY WEST LAND DEVELOPMENT

REGULATIONS ADOPTED BY KEY WEST

ORDINANCE NO. 00-04



## FINAL ORDER

The State of Florida, Department of Community Affairs (Department), hereby issues this Final Order approving land development regulations pursuant to Sections 380.05(6) and (11), Florida Statutes. This Final Order approves the land development regulations adopted by the City of Key West (City) in Ordinance 00-04.

## FINDINGS OF FACT

1. The City adopted Ordinance No. 00-04 on February 3, 2000, and forwarded the Ordinance to the Department for review under Sections 380.05(6) and (11), Florida Statutes. The Department received Ordinance No. 00-04 on February 9, 2000.
2. Ordinance No. 00-04 contains revisions to numerous provisions of the City's Land Development Regulations (LDRs). These revisions include vesting the City Planner with authority to issue written interpretations of the LDRs, providing for uniform public hearing notice requirements, amending the duties of the Historic Architectural Review Commission, deleting unnecessary or repetitive phrases and altering other provisions within the LDRs addressing floor area ratios and the installation of wheel stops.
3. The Department has reviewed the land development regulations adopted by Ordinance No. 00-04 for consistency and compliance with the Principles for Guiding Development for the Key West Area of Critical State Concern.
4. The Department finds the land development regulations adopted by Ordinance No. 00-04 consistent with the Principles for Guiding Development for the Key West Area of Critical State Concern.

## CONCLUSIONS OF LAW

1. The City is a designated Area of Critical State Concern. See Fla. Admin. Code r. 28-36.001 and [http://cctweb1.dos.state.fl.us:9876/fo110.cgi/2614.nfo/query=\\*/doc/{2425,0,0,0}/hit.../hits\\_only](http://cctweb1.dos.state.fl.us:9876/fo110.cgi/2614.nfo/query=*/doc/{2425,0,0,0}/hit.../hits_only) 4/27/00

28-36.002.

2. The Department is required to issue a final order approving or rejecting land development regulations adopted by the City within sixty days of receiving the regulations. Fla. Stat. §§ 380.05(6) and (11). This Final Order is issued within this sixty-day time period.
3. Section 380.031(8), Florida Statutes, defines "land development regulation" as including local zoning, subdivision, building and other regulations controlling the development of land. The regulations adopted by Ordinance No. 00-04 are land development regulations.
4. The Department's approval or rejection of land development regulations adopted by the City is based upon whether the regulations are consistent and in compliance with the Principles for Guiding Development set forth in Rule 28-36, Florida Administrative Code.
5. The land development regulations adopted by Ordinance No. 00-04 are consistent and comply with the Principles for Guiding Development.

ACCORDINGLY, IT IS ORDERED that the land development regulations adopted by City Ordinance No. 00-04 are consistent and comply with the Principles for Guiding Development for the Key West Area of Critical State Concern and are therefore 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 this \_\_\_\_\_ day of March, 2000, in Tallahassee, Florida.

\_\_\_\_\_  
J. THOMAS BECK, DIRECTOR

Division of Community Planning

Department of Community Affairs

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100

FILING AND ACKNOWLEDGMENT:

FILED on this date with the

designated Agency Clerk,

receipt of which is hereby

acknowledged.

\_\_\_\_\_

Paula Ford Date

Agency Clerk

### **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 copies of the foregoing were furnished to the persons named below by U.S. Mail on this \_\_\_\_\_ day of February, 2000.

\_\_\_\_\_  
Paula Ford

The Honorable Jimmy Weekley, Mayor, City of Key West

Rebecca Jetton, DCA Keys Field Office

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### **Department of Highway Safety and Motor Vehicles**

#### **Notice of Publication for the Relocation of a**

#### **Franchise Motor Vehicle Dealer in a County of More than 300,000 Population**

Pursuant to Section 320.642, Florida Statutes, notice is given that Yamaha Motor Corporation, USA, intends to allow the relocation of Powersports of Hollywood d/b/a Powersports of N. Miami, Inc., as a dealership for the sale of Yamaha and Riva line makes, from its present location at 2240 N. W. 119th Street, Miami, FL 33167, to a proposed location at 17777 N. W. 2nd Avenue, North Miami Beach (Dade County), Florida 33169, on or after March 8, 2000.

The name and address of the dealer operator(s) and principal investor(s) of Powersports of Hollywood d/b/a Powersports of N. Miami, Inc. are: dealer operator: Linn D. Heaton, 2998 N. W. 41st Street, Boca Raton, FL 33434 and Lee W. Heaton, 400 N. Flager Drive, #2206, West Palm Beach, FL 33401; principal investor(s): Linn D. Heaton, 2998 N. W. 41st Street, Boca Raton, FL 33434, and Lee W. Heaton, 400 N. Flager Drive, #2206, West Palm Beach, FL 33401.

The notice indicates an intent to relocate the franchise in a county of more than 300,000 population, according to the latest population estimates of the University of Florida, Bureau of Economic and Business Research.

Certain dealerships of the same line-make may have standing, pursuant to Section 320.642, Florida