

ORDINANCE NO. 10-08

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING", ARTICLE V, SECTION SIX ENTITLED "TRANSIENT UNITS" BY AMENDING SECTION 122-1346 TO EXTEND THE SUNSET OF THE DIVISION FOR A PERIOD OF ~~SIX~~ TWELVE MONTHS UNTIL ~~NOVEMBER~~ MAY 15, ~~2010~~ 2011; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the transient transfer ordinance contained in the Code of Ordinances at sections 122-1336 through 122-1346 is set to expire on May 15, 2010; and

WHEREAS, the City Commission desires to extend the sunset date for a period of ~~six~~ twelve months to allow the City Manager and his staff to present options regarding transient units and license transfers to the Commission;

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

Section 1: That section 122-1346 of the Code of Ordinances is hereby amended as follows*:

Sec. 122-1346. Sunset.

This division shall expire on May ~~November~~ May 15, ~~2010~~ 2011.

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

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 All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.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, adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and is subject to all applicable time periods upon being rendered to the Florida Department of Community Affairs.

Read and passed on first reading at a regular meeting held this 16th day of March, 2010.

Read and passed on final reading at a regular meeting held this 6th day of April, 2010.

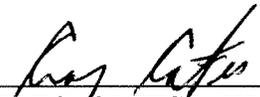
Authenticated by the presiding officer and Clerk of the Commission on 7th day of April, 2010.

Filed with the Clerk April 7, 2010.

ATTEST:



CHERYL SMITH, CITY CLERK



CRAIG CATES, MAYOR

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 10-08

2010 MAY 17 AM 10:06
OFFICE OF THE ATTORNEY GENERAL
KEY WEST, FLORIDA

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 April 7, 2010 the Department received for review City of Key West Ordinance No. 10-08, which was adopted by the City of Key West City Commission on April 7, 2010, ("Ord. 10-08").
3. The purpose of Ord. 10-08 is to amend Chapter 122 of the City of Key West Land Development Regulations and Section 122-1346 to extend the sunset of the Transient Unit Ordinance and its functions from May 15, 2010, to May 15, 2011.
4. Ord. 10-08 is consistent with the City's Comprehensive Plan: Objective 1-3.2: Manage and Coordinate Future Land Use Decisions; Policy 1-3.2.4: Non – Residential Development Standards; and Objective 1-3.4: Prevent Land Use Inconsistent with City's Character and Coordinate Coastal Area Population Densities with Hurricane Evacuation Plans.

CONCLUSIONS OF LAW

5. 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).

6. 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.

7. “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. 10-08 are land development regulations.

8. 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.

9. The above identified portions of Ord. 10-08, are consistent the following Principles:

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

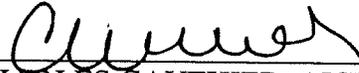
(e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.

(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.

10. WHEREFORE, IT IS ORDERED that Ord. 10-08 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.



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.

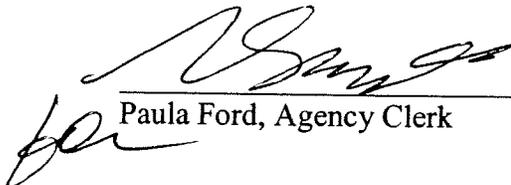
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 been furnished to the persons listed below by the method indicated this 12th day of May, 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