

ORDINANCE NO. 10-05

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTIONS 122-968, 122-970 AND 122-1111, OF THE CODE OF ORDINANCES TO PERMIT NURSING HOMES, REST HOMES AND CONVALESCENT HOMES AS A CONDITIONAL USE IN THE HISTORIC PUBLIC AND SEMIPUBLIC SERVICES DISTRICT-1 (HPS-1); AND PROVIDING 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 Florida Keys Assisted Care Coalition, Inc., initiated the proposed amendment to allow nursing homes, rest homes and convalescent homes to be permitted conditionally in the Historic Public and Semi-Public Services District – 1 (HPS-1); and

WHEREAS, per Section 122-956 the Historic Public and Semipublic District is intended to accommodate existing public and semipublic services and per Section 122-957 (4) nursing homes, rest homes and convalescent homes are shown as permitted uses in the district overall; and

WHEREAS, per Section 122-1016 the Public and Semipublic District, which is the HPS counterpart in the non-historic portions of the city, also is intended to accommodate existing public and semipublic services and per Section 122-1017 (5) nursing homes, rest homes and convalescent homes are shown as permitted uses in the district overall; and

WHEREAS, per Section 122-966 the intent of the Historic Public and Semipublic Services District-1 is to implement comprehensive plan policies for areas designated HPS-1 on the future land use map; and

WHEREAS, comprehensive plan policy 1-2.6.1, Public Service and Semi-Public Land Use Designation (PS) and (HPS) states that “areas of the Truman Waterfront have been designated HPS-1. This designation is intended to limit development in those areas to the existing and proposed uses identified in the Military Base Reuse Plan.” and,

WHEREAS, proposed change is consistent with the Military Base Reuse Plan which describes uses including affordable housing, neighborhood retail, and social service uses as an extension of the neighborhood fabric of Bahama Village; and,

WHEREAS, due to the sensitivity of the Truman Waterfront Site the addition of nursing homes, rest homes and convalescent homes should be permitted conditionally, not as of right;

WHEREAS, the Planning Board held a noticed public hearing on November 10, 2009, where based on the consideration of recommendations by the City planner, city attorney, building official and other information recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on 1-5-2010 and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

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 RESOLVED BY THE CITY COMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. Chapter 122, Article IV. Districts, Division 11. Historic Public and

Semipublic Services Districts, Subdivision II. Historic Public and Semipublic Services District - 1 (HPS-1), Section 122-968. Conditional uses. is modified as follows:

Conditional uses in the historic public and semipublic services district-1 (HPS-1) district are as follows:

- (1) Cultural and civic activities.
- (2) Public and private utilities.
- (3) Protective services.
- (4) Business and professional offices limited to government agencies involved in maritime services or administration of the Truman Waterfront.
- (5) Marinas.
- (6) Nursing homes, rest homes and convalescent homes, so long as affordable housing is provided by the project as follows: one third of beds or units are affordable housing, or if the development or redevelopment is in more than one zoning district, one third of beds or units in the total project are affordable housing.

Section 2. Chapter 122, Article IV. Districts, Division 11. Historic Public and Semipublic Services Districts, Subdivision II. Historic Public and Semipublic Services District - 1 (HPS-1), Section 122-970 (2) dimensional regulations, is modified as follows:

- (2) Maximum FAR: ~~0.25~~ .80

Section 3. Chapter 122, Article V. Supplementary Regulations, Division 3. Area Requirements, Section 122-1111. Table of land use by districts, is modified to include Nursing homes, rest homes and convalescent homes as a “C” (conditional) use in the HPS-1 District;

Section 4. Effective Date. This Ordinance shall become effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a special meeting held this 15th day of December, 2009.

Read and passed on final reading at a regular meeting held this 5th day of January, 2010.

Authenticated by the presiding officer and Clerk of the Commission on 6th day of January, 2010.

Filed with the Clerk January 6, 2010. 
CRAIG GATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

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STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 10-05

2010 APR 12 AM 8:53
CITY OF KEY WEST
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 February 5, 2010 the Department received for review City of Key West Ordinance No. 10-05, which was adopted by the City of Key West City Commission on January 5, 2010, ("Ord. 10-05"). The purpose of Ord. 10-05 is to amend City of Key West Land Development Regulations, Part B Sections 122-968, 122-970 and 122-1111 of the Code of Ordinances to permit Nursing Homes, Rest Homes, and Convalescent Homes as a conditional use in the Historic Public and Semipublic Services District-1 so long as at least one third of the beds or units are affordable housing.
3. The construction and occupation of Nursing Homes, Rest Homes, and Convalescent Homes in the City of Key West increases the number of critical care patients in a hurricane exposure zone requiring a separate Hurricane Evacuation plan to accommodate the safe and timely evacuation of elderly and frail individuals.
4. Ord. 10-05 is consistent with the City's Comprehensive Plan: Policy1-1.6.1 Truman Waterfront Organizing Elements; Policy 1-2.6.1 Public Service and Semi-Public Land Use Designation; Policy 3-1.1.4 Selecting Sites for Affordable Housing for Low and Moderate Income Households; Objective 3-1.4 Provide Opportunities for Group Homes,

Housing for the Elderly and Foster Care Facilities; and Policy 3-1.4.3 Housing for the Elderly.

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. 10-05 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. 10-05, 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.

10. The above identified portions of Ord. 10-05 are inconsistent with the following Principle:

(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.

11. Ord. 10-05 is not inconsistent with the remaining Principles and is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 10-05 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 21st day of April, 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
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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