

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,  
ADOPTING THE ATTACHED LAND DEVELOPMENT  
REGULATIONS OF THE CITY OF KEY WEST; PROVIDING  
FOR SEVERABILITY; PROVIDING FOR REPEAL OF  
INCONSISTENT PROVISIONS; PROVIDING FOR AN  
EFFECTIVE DATE

WHEREAS, the City has developed Land Development Regulations  
(LDRs) consistent with Section 163.3202, Florida Statutes; and

WHEREAS, the City Commission finds that these LDRs are  
consistent with the City's Comprehensive Plan; and

WHEREAS, the City Commission finds that the LDRs will 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 the attached Land Development Regulations of  
the City of Key West are hereby adopted; except for Article 21  
(definition of Transient Living Accommodations); and including the  
attached Planning Department recommendations 2-5, as amended, and  
the Planning Department's 0' setback recommendation.

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 All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

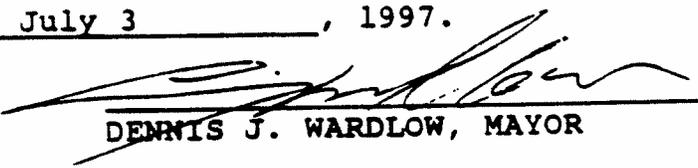
Section 4. This Ordinance shall go into effect upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission; and upon rulemaking approval by the State of Florida Department of Community Affairs.

Read and passed on first reading at a regular meeting held this 5 day of June, 1997.

Read and passed on final reading at a regular meeting held this 3rd day of July, 1997. (continuation of regular recessed meeting of July 1, 1997)

Authenticated by the presiding officer and Clerk of the Commission on 3rd day of July, 1997.

Filed with the Clerk July 3, 1997.

  
DENNIS J. WARDLOW, MAYOR

ATTEST:

  
JOSEPHINE PARKER, CITY CLERK



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Helping Floridians create safe, vibrant, sustainable communities"

LAWTON CHILES  
Governor

JAMES F. MURLEY  
Secretary

November 26, 1997

RECEIVED

Mr. Ted Strader  
City Planner, City of Key West  
P.O. Box 1409  
Key West, Florida 33040

CITY OF KEY WEST  
PLANNING DEPARTMENT

Dear Mr. Strader:

The Department of Community Affairs has completed its review of the Land Development Regulations (Ordinances 97-10 and 97-20) adopted by the City of Key West and transmitted to the Department on October 1, 1997. Pursuant to Section 380.05(6), Florida Statutes, the Department has prepared two final orders, one for each ordinance. The final orders are attached for your review. The Final Orders will also be published in the Florida Administrative Weekly (FAW) no later than December 5, 1997.

The Department has determined that Ordinance 97-20 is consistent with the Principles for Guiding Development as set forth in Rule 28-36, F.A.C. Thus, the Final Order approves Ordinance 97-20 and constitutes final agency action unless a timely appeal is filed within 21 days of FAW publication. Please see notice of rights provisions of the Final Order for further information.

The Department has determined that portions of Ordinance 97-10 are consistent with the Principles for Guiding Development and that other portions are not consistent. Again, this Final Order shall constitute final agency action unless a timely appeal is filed. The rejected portions of the Ordinance shall not become effective, subject to a successful appeal of the Final Order.

The Department rejected a total of eight provisions in Ordinance 97-10. Many of these deal with technical provisions such as effective date language and vesting language which the Department believes can be easily resolved through a revised ordinance. Our primary concern relates to the nonconforming density provisions set forth in Article VIII, Sections 2-8.1, 2-8.2.B. and 2-8.7, which allow for the reconstruction or redevelopment of nonconforming transient density and other nonconforming density that are more permissive than allowed by the adopted Comprehensive Plan. Additionally, these provisions are internally inconsistent with other sections of the ordinance that address nonconforming densities. The Department determined that the rejected nonconforming provisions are inconsistent with the Principles due to the inconsistencies just mentioned and due to the potential adverse impact on affordable housing.

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FLORIDA KEYS  
Area of Critical State Concern Field Office  
2796 Overseas Highway, Suite 212  
Marathon, Florida 33050-2227

GREEN SWAMP  
Area of Critical State Concern Field Office  
155 East Summerlin  
Bartow, Florida 33830-4641

SOUTH FLORIDA RECOVERY OFFICE  
P.O. Box 4022  
8600 N.W. 36th Street  
Miami, Florida 33159-4022

Mr. Ted Strader  
November 26, 1997  
Page Two

We have consistently raised concerns regarding the need to adequately address the deficit of affordable housing since our review of the proposed Plan in 1991. Although the City has adopted plan provisions that require 30% of all units to be affordable, the City has yet to adopt any implementing regulations to achieve this objective. Further, the City has exceeded the limit on transient units established by the Plan, thus adding to the affordable housing problem. The proposal to rebuild nonconforming transient density without any accompanying provisions to address affordable housing does not respond to the critical deficit in affordable housing as documented by the City's adopted Plan.

At this point, the required implementing regulations for affordable housing are nearly three years overdue. We are aware that the City has considered various draft affordable housing ordinances; however, the City has not adopted a final version. Accordingly, unless the City can commit to a specific timetable to remedy this non-compliance situation within the next 60 days, the Department will move to promulgate a proposed rule to adopt affordable housing provisions for insertion in the City's land development regulations in order to implement the adopted Comprehensive Plan. Pursuant to Section 380.05(11), Florida Statutes, the Administration Commission may amend the City's land development regulations, as necessary, to implement the Principles. Additionally, the rule will include requirements for a Community Impact Assessment Statement which the Principles specifically require and which were not included in the adopted ordinances.

We would prefer that the City adopt the required ordinance rather than the Administration Commission acting to implement the City Plan. The Department will consider discontinuing our process if the City moves forward to immediately adopt the affordable housing requirements as required by law. We also intend to develop a financial assistance plan for focusing state affordable housing resources in coordination with other public and private funding.

If you have any questions or require clarification concerning our Final Order or rulemaking process, please contact Ken Metcalf, Community Program Administrator, at (850) 487-4545.

Sincerely,

  
Charles G. Pattison, Director  
Division of Resource Planning  
and Management

CGP/km/m

cc: Sheila Mullins, Mayor

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY OF AFFAIRS

IN RE: CITY OF KEY WEST  
LAND DEVELOPMENT  
REGULATIONS ADOPTED  
BY ORDINANCE NO.  
97-10

Docket No. DCA97-286-FOI-OR

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DEPARTMENT OF STATE  
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FINAL ORDER

The Department of Community Affairs (Department) hereby issues its Final Order pursuant to Section 380.05(6), Florida Statutes, F.S. (Supp. 1996) and Chapter 97-253, Laws of Florida. Section 380.05(6), F.S., requires the Department to enter a final order approving or rejecting the City of Key West's (the City) ordinances adopting land development regulations.

FINDINGS OF FACT

Background

1. The City of Key West is designated as part of the Florida Keys Area of Critical State Concern. Rule 28-36.002, Florida Administrative Code (F.A.C.).
2. On October 1, 1997, the City transmitted to the Department City of Key West Ordinance 97-10.

City of Key West Ordinance 97-10

3. On October 1, 1997, the City, by US Mail, sent to the Department for review City Ordinance 97-10 which was adopted by the City on July 3, 1997. The ordinance consists of numerous changes to the City's land development regulations in an attempt to fulfill the City's obligation as an Area of Critical State Concern.
4. Chapter I, Article I addresses the general administration of the land development regulations and includes the Legislative Authority, Purpose, Intent, and Scope of said

regulations.

5. Chapter I, Article II addresses the actual administration and enforcement of these regulations by the City of Key West and City officials by describing procedures for quasi-judicial proceedings, variance proceedings and procedures for amending the land development regulations, zoning maps and the comprehensive plan.

6. Chapter I, Article III addresses and describes the local development agreement process for the City of Key West per Section 163.3227 F.S., identifying the City Commission as the only entity authorized to enter such agreements.

7. Chapter II, Article IV establishes the official zoning map and district boundaries for the City of Key West identifying 25 Future Land Use Map and Zoning District designations.

8. Chapter II, Article V addresses and describes the purpose and intent of each zoning district and the permitted uses and densities for each district.

9. Chapter II Article VI provides that conditional uses be permitted only in instances where the proposed use may be accommodated where the use is compatible with land uses nearby.

10. Chapter II, Article VII addresses restrictions on buildings, lots of record less than minimum size, street setbacks, erection of structures on principal lots, accessory uses, land division and the like.

11. Chapter II, Article VIII establishes local procedures, standards and criteria for addressing nonconforming land uses, residential density, and commercial intensity.

12. Chapter III, Article IX establishes procedures, standards and criteria for addressing infrastructure and utility concurrency for development and re-development activities.

13. Chapter III, Article X addresses community character and compatibility of development with an emphasis on historic preservation.
14. Chapter III, Article XI establishes procedures, standards and criteria for the protection of natural resources.
15. Chapter III, Article XII addresses the protection and enhancement of water quality and the protection of land, buildings, structures, and people from impacts caused by flooding.
16. Chapter III, Article XIII addresses local standards for vegetation planting related to development and re-development activities.
17. Chapter III, Article XIV addresses local procedures, standards and criteria for the maintenance, removal, relocation, and planting of unique native and exotic vegetation.
18. Chapter III, Article XV establishes local standards for the location, number, and type of parking spaces for motor vehicles, motor bikes, and bicycles associated with new development and redevelopment activities of a residential, commercial, or institutional classification.
19. Chapter III, Article XVI addresses the standards and criteria for the location and size of signs on commercial buildings, institutions and homes with special regulations for uses within the Historic District.
20. Chapter III, Article XVII addresses the standards and criteria to protect the health, safety and welfare of residents from the impacts generated by industrial and commercial uses.
21. Chapter IV, Article XVIII addresses the procedures for the processing, review and approval or denial of development and re-development proposals.
22. Chapter IV, Article XIX establishes the standards, procedures and criteria for the

subdivision of land.

23. Chapter IV, Article XX addresses the procedures, standards and criteria for planned residential and commercial developments under unified control.

24. Chapter V, Article XXI addresses the specific interpretation and determination of the terminology used throughout the subject land development regulations.

### CONCLUSIONS OF LAW

25. Section 163.3164(23), F.S., defines "land development regulation" as an ordinance enacted by a governing body for the regulation of any aspect of development including zoning regulations. Ordinance No. 97-10 is a land development regulation.

26. Section 380.05(6), Fla. Stat., as amended by Chapter 97-253, Laws of Florida, requires the Department to approve or reject land development regulations adopted in Areas of Critical State Concern in a final order based upon whether the regulations are consistent with the principles for guiding development for that area. Chapter 97-253, Laws of Florida.

27. Chapter I, Article I, Section 1-1.9 is not consistent with other portions of the submitted land development regulations, and is therefore not consistent with the Principles for Guiding Development found at Rule 28-36, F.A.C., ("the Principles").

28. Chapter I, Article I, Section 1-1.13 is inconsistent with Ordinance 97-10, Paragraph 4, which contains the correct effective date for the land development regulations and is therefore inconsistent with the Principles.

29. Chapter I, Article II, Section 1-2.12 is not consistent with applicable state law concerning plan amendments and is therefore inconsistent with the Principles.

30. Chapter I, Article II, Section 1-2.3.A and H. are inconsistent with the Principles

because they fail to require permits for a change in land use which by definition is development.

31. Chapter II, Article VIII, Sections 2-8.1, 2-8.2.B. and 2-8.7 allow for the reconstruction of nonconforming densities citywide for all types of residential and transient development which is inconsistent with the City's comprehensive plan. As such, this section is inconsistent with the Principles. This Section is also inconsistent with the Principles due to the potential adverse impacts on affordable housing.

VIII-1

32. Chapter III, Article IX, Section 3-9.4.A.1, is not consistent with the Principles because it is inconsistent with state guidelines concerning concurrency exceptions for de minimis development.

33. Chapter III, Article XI, Section 3-11.4.F.2 is not consistent with the comprehensive plan and Principles because it provides for an exception to the dredge and fill prohibition, without sufficient guidelines.

34. Chapter III, Article XII, Section 3-11.11.4 is not consistent with the comprehensive plan and Principles because it allows for well construction and water withdrawal prior to completion of a study to determine impact to the freshwater lens which is mandated by the City's comprehensive plan.

35. The Department has reviewed all of the provisions of Ordinance No. 97-10 for consistency with the Principles for Guiding Development set forth in Rule 28-36.003(1)(a) - (h), F.A.C. Any provision not found to be inconsistent in the preceding paragraphs are determined to be consistent.

WHEREFORE, IT IS ORDERED the following portions of City of Key West Ordinance No. 97-10 are found to be not consistent with the Principles for Guiding Development found at

Rule 28-36, F.A.C., and the City of Key West Comprehensive Plan and hereby rejected: Chapter I, Article I, Section 1-1.9; Chapter I, Article I, Section 1-1.13; Chapter I, Article II, Section 1-2.12; Chapter I, Article II, Section 1-2.3.A and H.; Chapter II, Article VIII, Sections 2-8.1, 2-8.2.B. and 2-8.7; Chapter III, Article IX, Section 3-9.4.A.1; Chapter III, Article XI, Section 3-11.4.F.2; and Chapter III, Article XII, Section 3-11.11.4. All other portions of City of Key West Ordinance No. 97-10 are found to be consistent with the Principles for Guiding Development found at Rule 28-36, F.A.C., and the City of Key West Comprehensive Plan and are hereby approved.

### NOTICE OF RIGHTS

A PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER MAY PETITION FOR AN ADMINISTRATIVE PROCEEDING (HEARING) IN ACCORDANCE WITH SECTION 120.57, F.S. THE PETITION MUST CONTAIN THE INFORMATION REQUIRED BY RULE 28-106.201, FLORIDA ADMINISTRATIVE CODE, AND MUST BE FILED (RECEIVED) IN THE OFFICE OF GENERAL COUNSEL, ATTENTION: AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100. PETITIONS MUST BE FILED WITHIN 21 DAYS OF PUBLICATION OF NOTICE OF THIS FINAL ORDER. FAILURE TO FILE A PETITION WITHIN THIS TIME PERIOD SHALL CONSTITUTE A WAIVER OF ANY RIGHT SUCH PERSON MAY HAVE TO REQUEST AN ADMINISTRATIVE DETERMINATION (HEARING) UNDER SECTION 120.57, F.S.

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNLESS A TIMELY PETITION IS FILED IN ACCORDANCE WITH THIS NOTICE, AND SHALL BECOME EFFECTIVE WITHIN 21 DAYS OF PUBLICATION OF THIS NOTICE. UPON TIMELY FILING OF A PETITION, THIS FINAL ORDER WILL NOT BE EFFECTIVE UNTIL FURTHER ORDER OF THE DEPARTMENT.

WHEN THE ORDER IS FINAL, ANY PARTY TO THE ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW OF THE ORDER PURSUANT TO SECTION 120.68, F.S., BY THE FILING OF A NOTICE OF APPEAL PURSUANT TO RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE OFFICE OF GENERAL COUNSEL, ATTENTION: AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100; AND BY FILING A COPY WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS FROM THE DATE THE ORDER IS FILED WITH THE CLERK OF THE DEPARTMENT.

DONE AND ORDERED this \_\_\_\_ day of November 1997, in Tallahassee, Florida.

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James F. Murley, Secretary  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100