

TAB 3

**Point Paper
Farm Worker Housing
Palmetto, Florida**

Background:

An application was recently made by the C&D Fruit and Vegetable Company to renovate and expand their farm worker housing facility at 713 17th Street West. This application prompted inquiries relating to the validity of this and other existing farm worker housing facilities in Palmetto. In researching these matters, staff has learned more about State and Federal regulations and how they differ from the City's Land Development Code.

Attached is a list of the facilities licensed through the Health Department that are located within the Palmetto city limits. Although these units are licensed, many of these locations have tenants that do not serve in the agricultural industry. In most cases, residents have family members that work at businesses outside of the agricultural industry and send children to public schools in Manatee County. None of the sites listed have a conditional use permit from the City of Palmetto.

The Health Department criteria, along with Florida statutory and federal regulatory requirements are also attached for your reference.

Budget Impact:

None

Staff Recommendation:

Staff recommends discussion of the land use regulations pertaining to these uses and seeks input for future revisions to the Land Development Code.

Action Required:

None

**Health Department Licensed Farm Worker Housing Facilities
Located Within Palmetto's City Limits**

Name	Address	Zoning	FLUC
Carriage Court Motel	1911 8 th Ave W	CG	GCOM
Harlee Duplexes	525 - 535 10 th St W	CHI	HCOMIND
Grainger Duplexes	600 block of 11 th St W	RM6	GCOM
	1000 block of 7 th Ave W	CG/RM6	GCOM
Oakridge Apartments	500 - 700 13 th St W	RM6	RES 10
	500 - 700 14 th St W	RM6	RES 10
Pacific Tomato Growers (Overpass)	1000 1 st Ave Ct W, # 1 - 37	CG	GCOM
Still Motel	1419 10 th St E	CG/PDMU	GCOM/PPD
Sunrise Motel	713 17 th St W	RM6	GCOM
Taylor Duplexes	415 9 th St W	RS4	GCOM/RES 10
	800 block of 5 th St W	CC	COMC
Louis P. Thomas III	605 7 th Ave W	CC	COMC
	400 - 412 11 th St W	RM6	RES 10
	400 - 412 11 th St Dr W	RM6	RES 10
	1004 4 th Ave W, A - C	RM6	GCOM
Keith Thomas	614 12 th St W	RM6	RES 10
	1006 4 th Ave W	RM6	GCOM
Doctor's Camp	400 6 th St W	CG	GCOM
Foy - Taylor, Inc.	701 11 th St W	RM6	RES 10
Palmetto Land Company Apts	501 11 th St W	RM6	RES 10
	2005 Bayshore Rd	RM6	RES 10
Taylor - Fulton 8 th St W Apts	804 5 th Ave W	CN	GCOM
Peerless 5 th Ave W Apts	710 5 th Ave W	CG	GCOM

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381.008 Definitions of terms used in ss. 381.008-381.00897.--As used in ss. 381.008-381.00897, the following words and phrases mean:

- (1) "Common areas"--That portion of a migrant labor camp or residential migrant housing not included within private living quarters and where migrant labor camp or residential migrant housing residents generally congregate.
- (2) "Department"--The Department of Health and its representative county health departments.
- (3) "Invited guest"--Any person who is invited by a resident to a migrant labor camp or residential migrant housing to visit that resident.
- (4) "Migrant farmworker"--A person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who has changed residence for purposes of employment in agriculture within the last 12 months.
- (5) "Migrant labor camp"--One or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family.
- (6) "Other authorized visitors"--Any person, other than an invited guest, who is:
 - (a) A federal, state, or county government official;
 - (b) A physician or other health care provider whose sole purpose is to provide medical care or medical information;
 - (c) A representative of a bona fide religious organization who, during the visit, is engaged in the vocation or occupation of a religious professional or worker such as a minister, priest, or nun;
 - (d) A representative of a nonprofit legal services organization, who must comply with the Code of Professional Conduct of The Florida Bar; or
 - (e) Any other person who provides services for farmworkers which are funded in whole or in part by local, state, or federal funds but who does not conduct or attempt to conduct solicitations.
- (7) "Private living quarters"--A building or portion of a building, dormitory, or barracks, including its bathroom facilities, or a similar type of sleeping and bathroom area, which is a home, residence, or sleeping place for a resident of a migrant labor camp. The term includes residential migrant housing.
- (8) "Residential migrant housing"--A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(a) Housing furnished as an incident of employment.

(b) A single-family residence or mobile home dwelling unit that is occupied only by a single family and that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.

(c) A hotel, motel, or resort condominium, as defined in chapter 509, that is furnished for transient occupancy.

(d) Any housing owned or operated by a public housing authority except for housing which is specifically provided for persons whose principal income is derived from agriculture.

(9) "Personal hygiene facilities"--Adequate facilities for providing hot water at a minimum of 110 degrees Fahrenheit for bathing and dishwashing purposes, and an adequate and convenient approved supply of potable water available at all times in each migrant labor camp and residential migrant housing for drinking, culinary, bathing, dishwashing, and laundry purposes.

(10) "Lighting"--At least one ceiling-type light fixture capable of providing 20 foot-candles of light at a point 30 inches from the floor, and at least one separate double electric wall outlet in each habitable room in a migrant labor camp or residential migrant housing.

(11) "Sewage disposal"--Approved facilities for satisfactory disposal and treatment of human excreta and liquid waste.

(12) "Garbage disposal"--Watertight receptacles of impervious material which are provided with tight-fitting covers suitable to protect the contents from flies, insects, rodents, and other animals.

History.--s. 1, ch. 59-476; ss. 19, 35, ch. 69-106; s. 144, ch. 71-377; s. 1, ch. 72-176; s. 3, ch. 76-168; s. 84, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 1, 9, 10, ch. 83-249; s. 32, ch. 91-297; ss. 1, 15, ch. 93-133; s. 40, ch. 97-101; s. 9, ch. 98-151; s. 2, ch. 2004-64.

Note.--Former s. 381.422.

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381.0081 Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds.--

(1) **MIGRANT LABOR CAMP; PERMIT REQUIREMENT.**--A person who establishes, maintains, or operates a migrant labor camp in this state without first having obtained a permit from the department and who fails to post such permit and keep such permit posted in the camp to which it applies at all times during maintenance or operation of the camp commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(2) **RESIDENTIAL MIGRANT HOUSING; PERMIT REQUIREMENT.**--A person who establishes, maintains, or operates any residential migrant housing in this state without first having obtained a permit from the department commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(3) **RESIDENTIAL MIGRANT HOUSING; HEALTH AND SANITATION.**--A person who establishes, maintains, or operates any residential migrant housing or migrant labor camp in this state without providing adequate personal hygiene facilities, lighting, sewage disposal, and garbage disposal, and without first having obtained the required permit from the department, commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) **FINE.**--The department may impose a fine of up to \$1,000 for each violation of this section. If the owner of land on which a violation of this section occurs is other than the person committing the violation and the owner knew or should have known upon reasonable inquiry that this section was being violated on the land, the fine may be applied against such owner. In determining the amount of the fine to be imposed, the department shall consider any corrective actions taken by the violator and any previous violations.

(5) **SEIZURE.**--

(a) In addition to other penalties provided by this section, the buildings, personal property, and land used in connection with a felony violation of this section may be seized and forfeited pursuant to the Contraband Forfeiture Act.

(b) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated as follows if the department participated in the inspection or investigation leading to seizure and forfeiture under this section:

1. One-third of the proceeds shall be allocated to the law enforcement agency involved in the seizure, to be used as provided in s. [932.7055](#).

2. One-third of the proceeds shall be allocated to the department, to be used for purposes of enforcing the provisions of this section.

3. One-third of the proceeds shall be deposited in the State Apartment Incentive Loan Fund, to be used for the purpose of providing funds to sponsors who provide housing for farmworkers.

(c) After satisfying any liens on the property, the remaining proceeds from the sale of the property

seized under this section shall be allocated equally between the law enforcement agency involved in the seizure and the State Apartment Incentive Loan Fund if the department did not participate in the inspection or investigation leading to seizure and forfeiture.

History.--s. 2, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 85, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 2, 9, 10, ch. 83-249; s. 33, ch. 91-297; ss. 2, 15, ch. 93-133; s. 44, ch. 97-167.

Note.--Former s. 381.432.

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381.0082 Application for permit to operate migrant labor camp or residential migrant housing.--Application for a permit to establish, operate, or maintain a migrant labor camp or residential migrant housing must be made to the department in writing on a form and under rules prescribed by the department. The application must state the location of the existing or proposed migrant labor camp or residential migrant housing; the approximate number of persons to be accommodated; the probable duration of use, and any other information the department requires.

History.--s. 3, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 86, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 3, 9, 10, ch. 83-249; s. 34, ch. 91-297; ss. 4, 15, ch. 93-133.

Note.--Former s. 381.442.

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381.0083 Permit for migrant labor camp or residential migrant housing.--Any person who is planning to construct, enlarge, remodel, use, or occupy a migrant labor camp or residential migrant housing or convert property for use as a migrant labor camp or residential migrant housing must give written notice to the department of the intent to do so at least 45 days before beginning such construction, enlargement, or renovation. If the department is satisfied, after causing an inspection to be made, that the camp or the residential migrant housing meets the minimum standards of construction, sanitation, equipment, and operation required by rules issued under s. [381.0086](#) and that the applicant has paid the application fees required by s. [381.0084](#), it shall issue in the name of the department the necessary permit in writing on a form to be prescribed by the department. The permit, unless sooner revoked, shall expire on September 30 next after the date of issuance, and it shall not be transferable. An application for a permit shall be filed with the department 30 days prior to operation. When there is a change in ownership of a currently permitted migrant labor camp or residential migrant housing, the new owner must file an application with the department at least 15 days before the change. In the case of a facility owned or operated by a public housing authority, an annual satisfactory sanitation inspection of the living units by the Farmers Home Administration or the Department of Housing and Urban Development shall substitute for the pre-permitting inspection required by the department.

History.--s. 4, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 87, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 5, 9, 10, ch. 83-249; s. 35, ch. 91-297; ss. 5, 15, ch. 93-133; s. 10, ch. 98-151.

Note.--Former s. 381.452.

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381.0084 Application fees for migrant labor camps and residential migrant housing.--

(1) Each migrant labor camp operator or owner of residential migrant housing who is subject to s. [381.0081](#) shall pay to the department the following annual application fees:

- (a) Camps or residential migrant housing that have capacity for 5 to 50 occupants: \$125.
- (b) Camps or residential migrant housing that have capacity for 51 to 100 occupants: \$225.
- (c) Camps or residential migrant housing that have capacity for 101 or more occupants: \$500.

(2) The department shall deposit fees collected under this section in the County Health Department Trust Fund for use in the migrant labor camp program and shall use those fees solely for actual costs incurred in enforcing ss. [381.008-381.00895](#).

(3) Any existing migrant labor camp or residential migrant housing that is substantially renovated or newly constructed is exempt from the annual application fee described in this section for the next annual permit after the renovations or construction occurred.

(4) Any existing migrant labor camp or residential migrant housing that, during any permit year, has no major deficiencies cited by the department, no uncorrected deficiencies, and no administrative action taken against it is exempt from the annual application fee described in this section for the next annual permit period.

History.--ss. 4, 10, ch. 83-249; s. 36, ch. 91-297; ss. 6, 15, ch. 93-133; s. 41, ch. 97-101.

Note.--Former s. 381.455.

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381.0085 Revocation of permit to operate migrant labor camp or residential migrant housing.-The department may revoke a permit authorizing the operation of a migrant labor camp or residential migrant housing if it finds the holder has failed to comply with any provision of this law or any rule adopted hereunder. To reinstate a permit for migrant labor camp or residential migrant housing from which a permit has been revoked, the operator shall submit another application with the appropriate fee and satisfy the department that he or she is in compliance with all applicable rules.

History.--s. 5, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 88, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 6, 9, 10, ch. 83-249; s. 37, ch. 91-297; s. 15, ch. 93-133; s. 652, ch. 95-148.

Note.--Former s. 381.462.

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381.0086 Rules; variances; penalties.--

(1) The department shall adopt rules necessary to protect the health and safety of migrant farmworkers and other migrant labor camp or residential migrant housing occupants, including rules governing field sanitation facilities. These rules must include definitions of terms, provisions relating to plan review of the construction of new, expanded, or remodeled camps or residential migrant housing, sites, buildings and structures, personal hygiene facilities, lighting, sewage disposal, safety, minimum living space per occupant, bedding, food equipment, food storage and preparation, insect and rodent control, garbage, heating equipment, water supply, maintenance and operation of the camp, housing, or roads, and such other matters as the department finds to be appropriate or necessary to protect the life and health of the occupants. Housing operated by a public housing authority is exempt from the provisions of any administrative rule that conflicts with or is more stringent than the federal standards applicable to the housing.

(2) Except when prohibited as specified in subsection (6), an owner or operator may apply for a permanent structural variance from the department's rules by filing a written application and paying a fee set by the department, not to exceed \$100. This application must:

(a) Clearly specify the standard from which the variance is desired.

(b) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility and to prevent a practical difficulty or unnecessary hardship.

(c) Clearly set forth the specific alternative measures that the owner or operator has taken to protect the health and safety of occupants and adequately show that the alternative measures have achieved the same result as the standard from which the variance is sought.

(3) Any variance granted by the department must be in writing, must state the standard involved, and must state as conditions of the variance the specific alternative measures taken to protect the health and safety of the occupants. In denying the request, the department must provide written notice under ss. [120.569](#) and [120.57](#) of the applicant's right to an administrative hearing to contest the denial within 21 days after the date of receipt of the notice.

(4) A person who violates any provision of ss. [381.008](#)-[381.00895](#) or rules adopted under such sections is subject either to the penalties provided in ss. [381.0012](#), [381.0025](#), and [381.0061](#) or to the penalties provided in s. [381.0087](#).

(5) Notwithstanding any other provision of this chapter, any housing that is furnished as a condition of employment so as to subject it to the requirements of the Occupational Health and Safety Act of 1970, 29 U.S.C. s. 655, shall only be inspected under the temporary labor camp standards at 42 C.F.R. s. 1910.142.

(6) For the purposes of filing an interstate clearance order with the Agency for Workforce Innovation, if the housing is covered by 20 C.F.R. part 654, subpart E, no permanent structural variance referred to in subsection (2) is allowed.

History.--s. 6, ch. 59-476; ss. 19, 35, ch. 69-106; s. 2, ch. 72-176; s. 3, ch. 76-168; s. 1, ch. 76-252; s. 89, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 7, 9, 10, ch. 83-249; s. 41, ch. 85-81; s.

19, ch. 87-287; s. 38, ch. 91-297; ss. 7, 15, ch. 93-133; s. 117, ch. 96-410; s. 11, ch. 98-151; s. 12, ch. 2000-242; s. 3, ch. 2004-64.

Note.--Former s. 381.472.

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381.0087 Enforcement; citations.--

(1) Department personnel may issue citations that contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.008-381.00895 or the field sanitation facility rules adopted by the department when a violation of those sections or rules is enforceable by an administrative or civil remedy, or when a violation of those sections or rules is a misdemeanor of the second degree. A citation issued under this section constitutes a notice of proposed agency action. The recipient of a citation for a major deficiency, as defined by rule of the department, will be given a maximum of 48 hours to make satisfactory correction or demonstrate that provisions for correction are satisfactory.

(2) Citations must be in writing and must describe the particular nature of the violation, including specific reference to the provision of statute or rule allegedly violated. Continual or repeat violations of the same requirement will result in the issuance of a citation.

(3) The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

(4) The citing official shall inform the recipient, by written notice pursuant to ss. 120.569 and 120.57, of the right to an administrative hearing to contest the citation of the agency within 21 days after the date of receipt of the citation. The citation must contain a conspicuous statement that if the citation recipient fails to pay the fine within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient is deemed to have waived the right to contest the citation and must pay an amount up to the maximum fine or penalty.

(5) The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must give due consideration to such factors as the gravity of the violation, the good faith of the person who has allegedly committed the violation, and the person's history of previous violations, including violations for which enforcement actions were taken under this section or other provisions of state law.

(6) Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The department shall deposit all fines collected under ss. 381.008-381.00895 in the County Health Department Trust Fund for use of the migrant labor camp inspection program and shall use such fines to improve migrant labor camp and residential migrant housing as described in s. 381.0086.

(8) The provisions of this section are an alternative means of enforcing ss. 381.008-381.00895 and the field sanitation facility rules. This section does not prohibit the department from enforcing those sections or rules by any other means. However, the agency shall elect to use only the procedure for enforcement under this section or another method of civil or administrative enforcement for a single violation.

(9) When the department suspects that a law has been violated, it shall notify the entity that enforces the law.

History.--s. 39, ch. 91-297; s. 8, ch. 93-133; s. 118, ch. 96-410; s. 183, ch. 97-101; s. 12, ch. 98-151; s. 4, ch. 2004-64.

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381.0088 Right of entry.--The department or its inspectors may enter and inspect migrant labor camps or residential migrant housing at reasonable hours and investigate such facts, conditions, and practices or matters, as are necessary or appropriate to determine whether any person has violated any provisions of applicable statutes or rules adopted pursuant thereto by the department. The right of entry extends to any premises that the department has reason to believe is being established, maintained, or operated as a migrant labor camp or residential migrant housing without a permit, but such entry may not be made without the permission of the owner, person in charge, or resident thereof, unless an inspection warrant is first obtained from the circuit court authorizing the entry. Any application for a permit made under s. [381.0082](#) constitutes permission for, and complete acquiescence in, any entry or inspection of the premises for which the permit is sought, to verify the information submitted on or in connection with the application; to discover, investigate, and determine the existence of any violation of ss. [381.008](#)-[381.00895](#) or rules adopted thereunder; or to elicit, receive, respond to, and resolve complaints. Any current valid permit constitutes unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The department may from time to time publish the reports of such inspections.

History.--s. 7, ch. 59-476; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 90, ch. 77-147; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 8, 9, 10, ch. 83-249; s. 40, ch. 91-297; ss. 9, 15, ch. 93-133.

Note.--Former s. 381.482.

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381.00893 Complaints by aggrieved parties.--Any person who believes that the housing violates any provision of ss. [381.008](#)-[381.00895](#) or rules adopted thereunder may file a complaint with the department. Upon receipt of the complaint, if the department finds there are reasonable grounds to believe that a violation exists and that the nature of the alleged violation could pose a serious and immediate threat to public health, the department shall conduct an inspection as soon as practicable. In all other cases where the department finds there are reasonable grounds to believe that a violation exists, the department shall notify the owner and the operator of the housing that a complaint has been received and the nature of the complaint. The department shall also advise the owner and the operator that the alleged violation must be remedied within 3 business days. The department shall conduct an inspection as soon as practicable following such 3-day period. The department shall notify the owner or the operator of the housing and the complainant in writing of the results of the inspection and the action taken. Upon request of the complainant, the department shall conduct the inspection so as to protect the confidentiality of the complainant. The department shall adopt rules by January 1, 1994, to implement this section.

History.--s. 11, ch. 93-133.

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381.00895 Prohibited acts; application.--

(1) An owner or operator of housing subject to the provisions of ss. [381.008](#)-[381.00897](#) may not, for the purpose of retaliating against a resident of that housing, discriminatorily terminate or discriminatorily modify a tenancy by increasing the resident's rent; decreasing services to the resident; bringing or threatening to bring against the resident an action for eviction or possession or another civil action; refusing to renew the resident's tenancy; or intimidating, threatening, restraining, coercing, blacklisting, or discharging the resident. Examples of conduct for which the owner or operator may not retaliate include, but are not limited to, situations in which:

(a) The resident has complained in good faith, orally or in writing, to the owner or operator of the housing, the employer, or any government agency charged with the responsibility of enforcing the provisions of ss. [381.008](#)-[381.00897](#).

(b) The resident has exercised any legal right provided in this chapter with respect to the housing.

(2) A resident who brings an action for or raises a defense of retaliatory conduct must have acted in good faith.

(3) This section does not apply if the owner or operator of housing proves that the eviction or other action is for good cause, including, without limitation, a good faith action for nonpayment of rent, a violation of the resident's rental or employment agreement, a violation of reasonable rules of the owner or operator of the housing or of the employer, or a violation of this chapter or the Florida Residential Landlord and Tenant Act.

History.--s. 12, ch. 93-133; s. 653, ch. 95-148.

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381.00896 Nondiscrimination.--

- (1) The Legislature declares that it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs. The Legislature further finds that discriminatory practices that inhibit the development of farmworker housing are a matter of state concern.
- (2) Any owner or developer of farmworker housing which has qualified for a permit to operate, or who would qualify for a permit based upon plans submitted to the department, or the residents or intended residents of such housing may invoke the provisions of this section.
- (3) A municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.
- (4) This section does not prohibit the imposition of local property taxes, water service and garbage collection fees, normal inspection fees, local bond assessments, or other fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.
- (5) This section does not prohibit a municipality or county from extending preferential treatment to farmworker housing, including, without limitation, fee reductions or waivers or changes in architectural requirements, site development or property line requirements, or vehicle parking requirements that reduce the development costs of farmworker housing.

History.--s. 13, ch. 93-133.

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[Title 20, Volume 3]
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CHAPTER V--EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

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Subpart B--Labor Certification Process for Temporary Agricultural
Employment in the United States (H-2A Workers)

Sec. 655.102 Contents of job offers.

(a) Preferential treatment of aliens prohibited. The employer's job offer to U.S. workers shall offer the U.S. workers no less than the same benefits, wages, and working conditions which the employer is offering, intends to offer, or will provide to H-2A workers. Conversely, no job offer may impose on U.S. workers any restrictions or obligations which will not be imposed on the employer's H-2A workers. This does not relieve the employer from providing to H-2A workers at least the same level of minimum benefits, wages, and working conditions which must be offered to U.S. workers consistent with this section.

(b) Minimum benefits, wages, and working conditions. Except when higher benefits, wages or working conditions are required by the provisions of paragraph (a) of this section, DOL has determined that in order to protect similarly employed U.S. workers from adverse effect with respect to benefits, wages, and working conditions, every job offer which must accompany an H-2A application always shall include each of the following minimum benefit, wage, and working condition provisions:

(1) Housing. The employer shall provide to those workers who are not reasonably able to return to their residence within the same day housing, without charge to the worker, which may be, at the employer's option, rental or public accommodation type housing.

(i) Standards for employer-provided housing. Housing provided by the employer shall meet the full set of DOL Occupational Safety and Health Administration standards set forth at 29 CFR 1910.142, or the full set of standards at Secs. 654.404-654.417 of this chapter, whichever are applicable, except as provided for under paragraph (b)(1)(iii) of this section. Requests by employers, whose housing does not meet the applicable standards, for conditional access to the intrastate or interstate clearance system, shall be processed under the procedures set forth at Sec. 654.403 of this chapter.

(ii) Standards for range housing. Housing for workers principally engaged in the range production of livestock shall meet standards of the DOL Occupational Safety and Health Administration for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock shall meet guidelines issued by ETA.

(iii) Standards for other habitation. Rental, public accommodation, or other substantially similar class of habitation must meet local standards for such housing. In the absence of applicable local standards, State standards shall apply. In the absence of applicable local or State standards, Occupational Safety and Health Administration

standards at 29 CFR 1910.142 shall apply. Any charges for rental housing shall be paid directly by the employer to the owner or operator of the housing. When such housing is to be supplied by an employer, the employer shall document to the satisfaction of the RA that the housing complies with the local, State, or federal housing standards applicable under this paragraph (b)(1)(iii).

(iv) Charges for public housing. If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

(v) Deposit charges. Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. However, employers may require workers to reimburse them for damage caused to housing by the individual workers found to have

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been responsible for damage which is not the result of normal wear and tear related to habitation.

(vi) Family housing. When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, family housing shall be provided to workers with families who request it.

(2) Workers' compensation. The employer shall provide, at no cost to the worker, insurance, under a State workers' compensation law or otherwise, covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law, if any, for comparable employment. The employer shall furnish the name of the insurance carrier and the insurance policy number, or, if appropriate, proof of State law coverage, to the RA prior to the issuance of a labor certification.

(3) Employer-provided items. Except as provided below, the employer shall provide, without charge including deposit charge, to the worker all tools, supplies, and equipment required to perform the duties assigned; the employer may charge the worker for reasonable costs related to the worker's refusal or negligent failure to return any property furnished by the employer or due to such worker's willful damage or destruction of such property. Where it is a common practice in the particular area, crop activity and occupation for workers to provide tools and equipment, with or without the employer reimbursing the workers for the cost of providing them, such an arrangement is permissible if approved in advance by the RA.

(4) Meals. Where the employer has centralized cooking and eating facilities designed to feed workers, the employer shall provide each worker with three meals a day. When such facilities are not available, the employer either shall provide each worker with three meals a day or shall furnish free and convenient cooking and kitchen facilities to the workers which will enable the workers to prepare their own meals. Where the employer provides the meals, the job offer shall state the charge, if any, to the worker for such meals. Until a new amount is set pursuant to this paragraph (b)(4), the charge shall not be more than \$5.26 per day unless the RA has approved a higher charge pursuant to Sec. 655.111 of this part. Each year the charge allowed by this paragraph (b)(4) will be changed by the same percentage as the 12-month percent change in the Consumer Price Index for All Urban Consumers for Food between December of the year just concluded and December of the year prior to that. The

annual adjustments shall be effective on the date of their publication by the Director as a notice in the Federal Register.

(5) Transportation; daily subsistence--(i) Transportation to place of employment. The employer shall advance transportation and subsistence costs (or otherwise provide them) to workers when it is the prevailing practice of non-H-2A agricultural employers in the occupation in the area to do so, or when such benefits are extended to H-2A workers. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved. If the employer has not previously advanced such transportation and subsistence costs to the worker or otherwise provided such transportation or subsistence directly to the worker by other means and if the worker completes 50 percent of the work contract period, the employer shall pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer to the place of employment. The amount of the daily subsistence payment shall be at least as much as the employer will charge the worker for providing the worker with three meals a day during employment. If no charges will be made for meals and free and convenient cooking and kitchen facilities will be provided, the amount of the subsistence payment shall be no less than the amount permitted under paragraph (b)(4) of this section.

(ii) Transportation from place of employment. If the worker completes the work contract period, the employer shall provide or pay for the worker's

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transportation and daily subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or, if the worker has contracted with a subsequent employer who has not agreed in that contract to provide or pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer shall provide or pay for such expenses; except that, if the worker has contracted for employment with a subsequent employer who, in that contract, has agreed to pay for the worker's transportation and daily subsistence expenses from the employer's worksite to such subsequent employer's worksite, the employer is not required to provide or pay for such expenses.

(iii) Transportation between living quarters and worksite. The employer shall provide transportation between the worker's living quarters (i.e., housing provided by the employer pursuant to paragraph (b)(1) of this section) and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations. This paragraph (b)(5)(iii) is applicable to the transportation of workers eligible for housing, pursuant to paragraph (b)(1) of this section.

(6) Three-fourths guarantee--(i) Offer to worker. The employer shall guarantee to offer the worker employment for at least three-fourths of the workdays of the total periods during which the work contract and all extensions thereof are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the expiration date specified in the work contract or in its extensions, if any. If the employer affords the U.S. or H-2A worker during the total work contract period less employment than that required under this paragraph (b)(6), the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of days. For purposes of this paragraph (b)(6), a

workday shall mean the number of hours in a workday as stated in the job order and shall exclude the worker's Sabbath and federal holidays. An employer shall not be considered to have met the work guarantee if the employer has merely offered work on three-fourths of the workdays if each workday did not consist of a full number of hours of work time specified in the job order. The work shall be offered for at least three-fourths of the workdays (that is, $3/4 \times$ (number of days) \times (specified hours)). Therefore, if, for example, the contract contains 20 eight-hour workdays, the worker shall be offered employment for 120 hours during the 20 workdays. A worker may be offered more than the specified hours of work on a single workday. For purposes of meeting the guarantee, however, the worker shall not be required to work for more than the number hours specified in the job order for a workday, or on the worker's Sabbath or Federal holidays.

(ii) Guarantee for piece-rate-paid worker. If the worker will be paid on a piece rate basis, the employer shall use the worker's average hourly piece rate earnings or the AEW, whichever is higher, to calculate the amount due under the guarantee.

(iii) Failure to work. Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job order for a workday, when the worker has been offered an opportunity to do so pursuant to paragraph (b)(6)(i) of this section and all hours of work actually performed (including voluntary work over 8 hours in a workday or on the worker's Sabbath or federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

(iv) Displaced H-2A worker. The employer shall not be liable for payment under this paragraph (b)(6) with respect to an H-2A worker whom the RA certifies is displaced because of the employer's compliance with Sec. 655.103(e) of this part.

(7) Records. (i) The employer shall keep accurate and adequate records with respect to the workers' earnings including field tally records, supporting summary payroll records and records showing the nature and amount of the work performed; the number of hours of work offered each

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day by the employer (broken out by hours offered both in accordance with and over and above the three-fourths guarantee at paragraph (b)(6) of this section); the hours actually worked each day by the worker; the time the worker began and ended each workday; the rate of pay (both piece rate and hourly, if applicable); the worker's earnings per pay period; the worker's home address; and the amount of and reasons for any and all deductions made from the worker's wages;

(ii) If the number of hours worked by the worker is less than the number offered in accordance with the three-fourths guarantee at paragraph (b)(6) of this section, the records shall state the reason or reasons therefore.

(iii) Upon reasonable notice, the employer shall make available the records, including field tally records and supporting summary payroll records for inspection and copying by representatives of the Secretary of Labor, and by the worker and representatives designated by the worker; and

(iv) The employer shall retain the records for not less than three years after the completion of the work contract.

(8) Hours and earnings statements. The employer shall furnish to the worker on or before each payday in one or more written statements the following information:

(i) The worker's total earnings for the pay period;

(ii) The worker's hourly rate and/or piece rate of pay;
(iii) The hours of employment which have been offered to the worker (broken out by offers in accordance with and over and above the guarantee);

(iv) The hours actually worked by the worker;

(v) An itemization of all deductions made from the worker's wages;
and

(vi) If piece rates are used, the units produced daily.

(9) Rates of pay. (i) If the worker will be paid by the hour, the employer shall pay the worker at least the adverse effect wage rate in effect at the time the work is performed, the prevailing hourly wage rate, or the legal federal or State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period;
or

(ii) (A) If the worker will be paid on a piece rate basis and the piece rate does not result at the end of the pay period in average hourly piece rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the appropriate hourly rate, the worker's pay shall be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the appropriate hourly wage rate for each hour worked; and the piece rate shall be no less than the piece rate prevailing for the activity in the area of intended employment; and

(B) If the employer who pays by the piece rate requires one or more minimum productivity standards of workers as a condition of job retention,

(1) Such standards shall be specified in the job offer and be no more than those required by the employer in 1977, unless the RA approves a higher minimum; or

(2) If the employer first applied for H-2 agricultural or H-2A temporary alien agricultural labor certification after 1977, such standards shall be no more than those normally required (at the time of the first application) by other employers for the activity in the area of intended employment, unless the RA approves a higher minimum.

(10) Frequency of pay. The employer shall state the frequency with which the worker will be paid (in accordance with the prevailing practice in the area of intended employment, or at least twice monthly whichever is more frequent).

(11) Abandonment of employment; or termination for cause. If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, and the employer notifies the local office of such abandonment or termination, the employer will not be responsible for providing or paying for the subsequent transportation and subsistence expenses of any worker for whom the employer would have otherwise been required to pay such expenses under paragraph (b) (5) (ii) of this section, and that worker is not

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entitled to the "three-fourths guarantee" (see paragraph (b) (6) of this section).

(12) Contract impossibility. If, before the expiration date specified in the work contract, the services of the worker are no longer required for reasons beyond the control of the employer due to fire, hurricane, or other Act of God which makes the fulfillment of the contract impossible the employer may terminate the work contract. In the event of such termination of a contract, the employer shall fulfill the three-fourths guarantee at paragraph (b) (6) of this section for the time that has elapsed from the start of the work contract to its termination.

In such cases the employer will make efforts to transfer the worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall:

(i) Offer to return the worker, at the employer's expense, to the place from which the worker disregarding intervening employment came to work for the employer,

(ii) Reimburse the worker the full amount of any deductions made from the worker's pay by the employer for transportation and subsistence expenses to the place of employment, and

(iii) Notwithstanding whether the employment has been terminated prior to completion of 50 percent of the work contract period originally offered by the employer, pay the worker for costs incurred by the worker for transportation and daily subsistence from the place from which the worker, without intervening employment, has come to work for the employer to the place of employment. Daily subsistence shall be computed as set forth in paragraph (b)(5)(i) of this section. The amount of the transportation payment shall be no less (and shall not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved.

(13) Deductions. The employer shall make those deductions from the worker's paycheck which are required by law. The job offer shall specify all deductions not required by law which the employer will make from the worker's paycheck. All deductions shall be reasonable. The employer may deduct the cost of the worker's transportation and daily subsistence expenses to the place of employment which were borne directly by the employer. In such cases, the job offer shall state that the worker will be reimbursed the full amount of such deductions upon the worker's completion of 50 percent of the worker's contract period. However, an employer subject to the Fair Labor Standards Act (FLSA) may not make deductions which will result in payments to workers of less than the federal minimum wage permitted by the FLSA as determined by the Secretary at 29 CFR part 531.

(14) Copy of work contract. The employer shall provide to the worker, no later than on the day the work commences, a copy of the work contract between the employer and the worker. The work contract shall contain all of the provisions required by paragraphs (a) and (b) of this section. In the absence of a separate, written work contract entered into between the employer and the worker, the required terms of the job order and application for temporary alien agricultural labor certification shall be the work contract.

(c) Appropriateness of required qualifications. Bona fide occupational qualifications specified by an employer in a job offer shall be consistent with the normal and accepted qualifications required by non-H-2A employers in the same or comparable occupations and crops, and shall be reviewed by the RA for their appropriateness. The RA may require the employer to submit documentation to substantiate the appropriateness of the qualification specified in the job offer; and shall consider information offered by and may consult with representatives of the U.S. Department of Agriculture.

(d) Positive recruitment plan. The employer shall submit in writing, as a part of the application, the employer's plan for conducting independent, positive recruitment of U.S. workers as required by Secs. 655.103 and 655.105(a) of this part. Such a plan shall include a description of recruitment efforts (if any) made prior to the actual submittal of the application. The plan shall describe

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how the employer will engage in positive recruitment of U.S. workers to an extent (with respect to both effort and location(s)) no less than

that of non-H-2A agricultural employers of comparable or smaller size in the area of employment. When it is the prevailing practice in the area of employment and for the occupation for non-H-2A agricultural employers to secure U.S. workers through farm labor contractors and to compensate farm labor contractors with an override for their services, the employer shall describe how it will make the same level of effort as non-H-2A agricultural employers and provide an override which is no less than that being provided by non-H-2A agricultural employers.