

MEMORANDUM

RE: Supplemental Memorandum Regarding Request for Minor Development Plan Approval for 1125 Duval Street, Key West, Florida 33040

Please allow this correspondence to serve as the undersigned's memorandum in opposition to the application of the affordability requirement set forth in Section 122-1467 as relates the request for minor development plan approval submitted for 1125 Duval Street, Key West, Florida (the "Property") otherwise known as La Te Da.

As submitted, the plan calls for the redistribution of guest rooms throughout the existing property envelope, including the conversion of 877 square feet of existing guest rooms in to non-residential floor area long Duval Street, and the reallocation of those existing guest rooms to the rear of the Property. The Property currently consists of sixteen Transient Tourist Accommodation Units (hotel guest rooms) and one (1) non-transient unit. As part of the minor development plan, the Applicant will be reverting the non-transient unit to no-use status, thus the total number of units will drop from seventeen (17) to sixteen (16) units. Significantly, the overall intensity is decreased through the site improvements as proposed in the minor development plan, as the existing square footage of hotel use is significantly decreased from 8,498 square feet to 7,621 square feet.

Based upon a review of the applicable ordinance and the criteria set forth in the request for minor development plan, Section 122-1467 of the Land Development Regulations does not apply to this minor redevelopment for the reasons set forth below:

The intensity of the Property is decreased as a result of the site improvements set forth in the request for minor development plan.

The Property's existing total floor area for use as hotel units equates to 8,498 total square feet. Under the proposed plan, the Property's proposed total floor area for use as hotel units equates to 7,621 total square feet, which is a reduction of 877 total square feet of hotel use floor area. Section 122-1466 defines "Development or redevelopment" as "for purposes of this section, shall mean any development or redevelopment **that increases the size of unit(s), the number of units,** or the need for additional affordable workforce housing as evidenced by additional services or intensity." See *Section 122-1466, city of Key West Land Development Regulations*, attached hereto.

As stated, neither the overall intensity of the Property nor the total number of units is increasing. Intensity is defined by the Land Development Regulations as "the floor area ratio." *Section 89-9, City of Key West Land Development Regulations*. For purposes of Development, a change in intensity equates to "an increase in the number of dwelling units in a structure or on land or a material increase the intensity in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land." See *Section 86 -9, City of Key West Land Development Regulations*, attached hereto. The proposed plan does not increase the floor area ratio, nor does it increase the intensity of the Property as it does not increase the number of dwelling units, does not increase the number of businesses on the Property, and does not add manufacturing establishments or offices.

In fact, both the intensity and the total number of units decreases as the total floor area of hotel use decreases by 877 square feet and the total number of units decreases for 16 transient hotel units and 1 non-transient unit down to 16 transient hotel units. Moreover, there is no increase in the services provided for at the Property, as no new businesses will be added. This is merely a redistribution of the existing Property uses throughout the existing Property envelope. In other words, there are no new rooms or units being added,

the Applicant is simply moving hotel units from the front of the Property to the rear of the Property and, in doing so, is able to decrease the total intensity as to the floor area of hotel use, decrease the total number of units at the Property down to 16 total transient hotel units, and is further able to decrease existing legal nonconformance with the Property related to building coverage, impervious surface, landscaping and life safety.

Additionally, during the May 7, 2019 Planning Commission meeting, it was stated by the then Planning Director, Patrick Wright, during the discussion on the amendment to Ordinance Number 19-11, §5-7-2019 which called for the amendment to the language set forth in Section 122-1465 – Section 122-1500, that the decrease of the size of one unit within the property and an increase of another unit within the property which effectively redistributed the existing floor area ratio, there would be no net increase in the square footage. In this regard, a proposition had been made by a local attorney that the word aggregate be added to the definition such that the terminology was to state that this ordinance would apply to any development or redevelopment which increased the aggregate size of the units. The addition of the word “aggregate” was supported by Patrick Wright as it mirrored the intent of the ordinance amendment. He further stated that the intent of the use of the word “services” was to capture those redevelopments which did not increase the number of rooms but adds additional business uses, which is not contemplated in this proposed plan.

During that meeting, it was also stated that the intention of the amendment to the ordinance was for it to apply to developments and redevelopments which involve an increase in the size of the units, an increase in the number of units, or the need for additional workforce housing triggered by an increase in intensity or services at the Property. None of which applies to this proposed plan. The intent, and was described by Patrick Wright at that meeting, was to limit the types of developments and redevelopments which are subject to this ordinance to those which involve an increase in the number or size of units, or which call for an increase in workforce house, so that this ordinance would not be applied to all development and redevelopment in the City of Key West.

It is clear based upon the definitions in the current code as well as the comments made by Patrick Wright at the May 7, 2019 City Commission meeting that the ordinance requiring the application of the thirty percent (30%) affordability requirement does not apply to the requested minor redevelopment for the Property, as it does not involve an increase in the size, or the aggregate size, of the hotel units, nor does it call for the additional of the services provided for at the Property. Therefore, the mere fact that this is a proposed redevelopment does not automatically trigger the thirty percent (30%) affordability requirement, and the proposed plan is not one which falls within the intended types of development or redevelopment, and thus the Property is not subject to such affordability requirement.

Redevelopment of the Subject Transient Units does not trigger inclusionary housing.

While it is the undersigned’s opinion that the subject proposed plan does not trigger the thirty percent (30%) affordability requirement, the undersigned has reviewed the applicable code provisions and it is clear that even if the thirty percent (30%) affordability requirement were to be applied, the reconstruction of the transient hotel units would fall below the inclusionary housing threshold. Pursuant to Section 122-1338(3), transient units are equivalent to residential units at an exchange rate of one (1) transient unit transferred at its 0.58 ROGO/BPAS unit equivalency into a residential unit. With the applicable hotel rooms, the calculation would be: 4 transient hotel units x 0.58 ROGO/BPAS equivalency = 2.32 residential units. However, 2.32 residential units is less than the 3 units required to trigger the Workforce Housing requirements, thus the thirty percent (30%) affordability requirement is not triggered. Further, even if the Planning Department were to apply the thirty percent (30%) affordability requirement to the 2.32 residential equivalent units, the thirty percent (30%) does not yield one (1) unit, but rather calculates to 0.69, and therefore, even if the Planning Department were to overlook the fact that hotel units when analyzed as a

residential unit does not yield the requisite number of units to trigger the thirty percent (30%) affordable requirement, that requirement itself does not yield a singular unit and therefore the requirement does not apply under either calculation. See *Section 122-1338(3), City of Key West Land Development Regulations*, attached hereto.

The Subject Property does not consist of Housing Units as defined under the Land Development Regulations.

Significantly, the transient units which are the subject of the proposed plan are hotel accommodation units. Under the Land Development Regulations, a hotel is defined as “a building with dwelling units for accommodation of transient guests or tenants and providing services common to hotels, including, but not limited to, a central office or lobby, room service, food service and daily maid service, and otherwise complying with requirements of the state hotel and restaurant commission. For the purpose of this definition, the term "dwelling unit" shall be defined as a sleeping room with bath, flush toilet, lavatory and storage closet.” *Section 86-9, City of Key West, Land Development Regulations*.

Additional, Chapter 86 of the Land Development Regulations sets for the Land Use Classifications as four separate categories of (1) residential activities, (2) community facilities, (3) commercial activities, and (4) light industrial.

Residential activities are defined as:

- a. Single-family/two-family dwellings and accessory residential units,
- b. Multifamily dwellings,
- c. Manufactured housing,
- d. Group homes, and
- e. Approved home occupations.

Commercial Activities is defined in pertinent part as:

- h. *Hotel, motel and transient lodging* mean any unit, group of units, building, or group of buildings within a single complex which is:
 1. Rented for periods of less than 28 days;
 2. Advertised or held out to the public as a place regularly rented to transients.

Significantly, the proposed plan relates solely to the hotel, motel and transient lodging industry set forth within the general provisions of the Land Development Regulation as a commercial activity, and does not comport with the provided categories of residential activities.

Conversely, a Housing Unit is defined as “an occupied or vacant house, apartment, or single-room occupancy (SRO) that is intended as separate living quarters.” *Section 86-9, City of Key West, Land Development Regulations*. The thirty percent (30%) affordability requirement is specific to Housing Units. See *Section 122-1467(1)(a)*. Therefore, pursuant to the definitions of the terms “Hotel” and “Housing Units,” *Section 122-1467*’s affordability requirement does not apply to hotels and therefore is not applicable to the subject proposed plan under the terms set forth in the submitted request.

Conclusion:

As discussed in detail above, *Section 122-1467*’s thirty percent (30%) affordability requirement is not applicable to the proposed plan as it does not entail an increase in the number, or aggregate number, of

Katie Halloran, Director of Planning

April 29, 2024

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hotel units, does not increase the floor area ratio of the hotel units, and does not involve an increase in intensity or services offered at the Property.

Thank you for your consideration of this supplemental memorandum. We look forward to working with you and Planning staff on this project.

Very truly yours,

A handwritten signature in blue ink, appearing to read "G. Oropeza", with a horizontal line extending to the right.

Gregory S. Oropeza, Esq.

Enclosures

Section 122-1465 through Section 122-1500

DIVISION 10. - WORK FORCE HOUSING

Footnotes:

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Editor's note— Section 1 of Ord. No. 05-27, adopted Oct. 18, 2005, amended the title of Div. 10, Affordable Housing to read as herein set out.

Cross reference— Fair housing, § 38-26 et seq.

Sec. 122-1465. - Intent.

It is the intent of this division to create affordable housing categories to facilitate the development and redevelopment of housing designed and priced to meet the needs of people employed by the local economy in a manner that reflects the percentage of the workforce at each income level and mixes people of all incomes together and does not create high and low-income enclaves.

(Ord. No. 05-27, § 2, 10-18-2005; Ord. No. 19-11, § 2, 5-7-2019)

Sec. 122-1466. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affordable housing shall be defined as provided in the following classifications:

Affordable housing (very low income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 60 percent of the monthly median household income (adjusted for family size). For an owner-occupied dwelling unit, affordable housing (very low income) shall mean a dwelling unit whose sales price shall not exceed one and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable housing (low income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 80 percent of the monthly median household income (adjusted for family size). For an owner-occupied dwelling unit, affordable housing (low income) shall mean a dwelling unit whose sales price shall not exceed two and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable housing (median income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied

dwelling unit, affordable housing (median income) shall mean a dwelling unit whose sales price shall not exceed three and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472. The definition of "affordable housing (median income)" applies to and encompasses all affordable housing under construction or built pursuant to this ordinance prior to July 1, 2005, for which deed restrictions are required.

Affordable housing (middle income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 140 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (middle income) shall mean a dwelling unit whose sales price shall not exceed six and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable housing (moderate income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 120 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (moderate income) shall mean a dwelling unit whose sales price shall not exceed five times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable work force housing shall include very low income, low income, median income, moderate income and middle income housing.

Affordable work force housing trust fund shall mean the trust fund established and maintained by the city for revenues from fees in lieu of constructing affordable work force housing, and revenues from any other source earmarked for the trust fund by land development regulation, ordinance or donation.

Annual Household Income means all amounts, monetary or not, which are received by any family member of the household, except income from employment of children (including foster children) under the age of 18 years. Family shall include the traditional family, (married or not) as well as domestic partnerships.

Development or redevelopment, for purposes of this section, shall mean any development or redevelopment that increases the size of a unit(s), the number of units, or the need for additional affordable workforce housing as evidenced by additional services or intensity.

Median household income shall mean the median household income published for Monroe County on an annual basis by the U.S. Department of Housing and Urban Development.

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 3, 10-18-2005; Ord. No. 17-09, § 1, 8-16-2017; Ord. No. 18-13, § 2, 7-3-2018; Ord. No. 19-11, § 2, 5-7-2019; Ord. No. 21-09, § 1, 3-2-2021)

Cross reference— Definitions generally, § 1-2.

Sec. 122-1467. - Requirements of affordable work force housing.

- (1) (a) *Housing units.* At least ten percent of all units developed or redeveloped each year shall be low income affordable housing of at least 400 square feet each, as defined herein and 20 percent shall be affordable housing (median income) housing of at least 400 square feet each, as defined herein. Residential or mixed use projects of less than ten residential or mixed use units shall be required to develop or redevelop at least 30 percent of units of at least 400 square feet each as affordable (median income), but may contribute a fee in lieu for each unit to the affordable work force housing trust fund, if approved by the city commission. The per unit fee shall be \$200,000.00 (representing construction cost, less land cost, of a 400 square foot unit). The 30 percent affordability requirement shall be determined on a project by project basis and not on a city-wide basis. Vested units shall be subject to this subsection if not otherwise governed by law or agreement. For every required affordable housing (median income) unit, a developer may increase the sales or rental rates to affordable housing (middle income) so long as another unit's sales or rental rate is decreased to affordable housing (low income).
- (b) *Linkage of projects.* Two development or redevelopment projects may link to allow the affordable housing requirement of one development or redevelopment project to be built at the site of another project, so long as the affordable housing requirement of the latter development or redevelopment is fulfilled as well. Written proof of the project linkage shall be supplied by the developer to the city commission at the time of the first site plan approval. The project containing the affordable units must be built or rebuilt either before or simultaneously with the project without, or with fewer than, the required affordable units. In addition, if a developer builds or rebuilds more than the required number of affordable units at a development site, this development or redevelopment project may be linked with a subsequent development or redevelopment project to allow compliance with the subsequent development's affordable unit requirement. Written proof of the linkage must be supplied by the developer to the city commission at the time of the subsequent development's site plan approval. Linkage shall not be available if either development is entirely or in part to be constructed by public funds. Finally, all linkages under this subsection may occur within the city or on a site within the city and on a site on Stock Island in the unincorporated part of the county.
- (c) *Affordable work force housing.* The maximum total rental and/or sales price for all affordable work force housing units in a single development shall be based on each unit being affordable housing (moderate income). The rental and/or sales price may be mixed among affordable housing (low income), (median income), (middle income) and (moderate income) in order that the total value of rental and/or sales does not exceed ten percent of the rental and/or sales of all the units at affordable housing (moderate income).

- (d) *Demonstration of continuing affordability.* Demonstration of continuing affordability shall be by deed restriction or any other mutually acceptable method that effectively runs with the land and is binding on owners, successors in ownership, or assigns. The deed restriction shall be in a form provided by the city and shall be for a period of at least 50 years. It shall be recorded in the county records. During the final year of the deed restriction, the city commission may act by Resolution to renew the affordability restriction for an additional 50-year term.
 - (e) *Reporting requirements.* Owners of affordable work force housing projects or units shall furnish the city manager or his designee with annual information necessary to ensure continued compliance with affordability criteria, beginning one year after the date of building permit issuance and on each anniversary date thereafter. Reporting requirements shall include sworn tenant household verification information. Property owners subject to this subsection may contract with the Key West Housing Authority to perform annual tenant eligibility verification.
 - (f) *Compliance with antidiscrimination policy.* All property owners offering housing under this division shall comply with the antidiscrimination policy of article II of chapter 38.
- (2) *Exemptions and waivers.*
- (a) The following uses shall be exempt from the inclusionary housing requirements set forth in subsection (1)(a) of this section: affordable workforce housing, nursing homes, or assisted care living facilities.
 - (b) The city commission may reduce, adjust, or waive the requirements set forth in this subsection where, based on specific findings of fact, the commission concludes, with respect to any developer or property owner, that:
 1. Strict application of the requirements would produce a result inconsistent with the comprehensive plan or the purpose and intent of this subsection;
 2. Due to the nature of the proposed development, the development furthers comprehensive plan policies and the purpose and intent of this subsection through means other than strict compliance with the requirements set forth herein;
 3. The developer or property owner demonstrates an absence of any reasonable relationship between the impact of the proposed development and requirements of this subsection (b); or
 4. The strict application with the requirements set forth herein would improperly deprive or deny the developer or property owner of constitutional or statutory rights.
 - (c) Any developer or property owner who believes that he may be eligible for relief from the strict application of this section may petition the city commission for relief under this subsection (b) (3) of this section. Any petitioner for relief hereunder shall provide evidentiary and legal

justification for any reduction, adjustment or waiver of any requirements under this section.

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 4, 10-18-2005; Ord. No. 19-11, § 2, 5-7-2019)

Editor's note— Ord. No. 19-11, § 2, adopted May 7, 2019, amended § 122-1467 and in doing so changed the title of said section from "Requirements of affordable work force housing; ratio of new construction" to "Requirements of affordable work force housing," as set out herein.

Sec. 122-1468. - Affordable work force housing trust fund.

- (a) The affordable work force housing trust fund (referred to as the "trust fund") is established. The trust fund shall be maintained with funds earmarked for the trust fund for the purpose of promoting affordable work force housing in the city and its immediate environs. Monies received by the trust fund shall not be commingled with general operating funds of the city. The trust fund shall be in a separate dedicated fund used only for the following:
- (1) Financial aid to developers as project grants for affordable housing (low income) to (moderate income) construction;
 - (2) Financial aid to eligible homebuyers of affordable housing (low income) to (moderate income) as mortgage assistance;
 - (3) Financial incentive for the conversion of transient units to affordable housing (low income) to (moderate income) residential units;
 - (4) Direct investment in or leverage to housing affordability through site acquisition, housing development and housing conservation; or
 - (5) Other affordable work force housing purposes from time to time established by resolution of the city commission.
- (b) Except as provided in section 122-1471, the city commission shall determine all expenditures from the trust fund upon the advice of the city manager.

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 5, 10-18-2005)

Sec. 122-1469. - Applicant eligibility requirements.

The following eligibility requirements shall be required of households or persons to qualify for affordable work force housing units to the extent lawful:

- (1) The household or person shall derive at least 70 percent of its or his/her total income from gainful employment in the county. This section shall not disqualify an individual previously and continuously qualified who reaches the age of retirement, or becomes disabled, and is otherwise income qualified.
- (2)

At the time of sale or lease of an affordable housing (low income) unit, the total income of eligible household or persons shall not exceed 80 percent of the median household income for the county (adjusted for family size).

- (3) During occupancy of any an affordable housing (low income) rental unit, a household's income may increase to an amount not to exceed 120 percent of the median household income for the county (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.
- (4) At the time of sale or lease of an affordable housing (median income) unit, the total income of eligible households or persons shall not exceed 100 percent of the median household income for the county (adjusted for family size).
- (5) During occupancy of any affordable housing (median income) rental unit, a household's annual income may increase to an amount not to exceed 140 percent of median household income for the county (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.
- (6) At the time of sale or lease of an affordable housing (moderate income) unit, the total income of eligible households or persons shall not exceed 120 percent of the median household income for the county (adjusted for family size).
- (7) During occupancy of an affordable housing (moderate income) rental unit, a household's annual income may increase to an amount not to exceed 160 percent of median household income for the county (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.
- (8) At the time of sale or lease of an affordable housing (middle income) unit, the total income of eligible households or persons shall not exceed 140 percent of the median household income for the county (adjusted for family size).
- (9) During occupancy of an affordable housing (middle income) rental unit, a household's annual income may increase to an amount not to exceed 180 percent of median household income for the county (adjusted for family size). In such event, the tenant's occupancy shall terminate at the end of the existing lease term.
- (10) Eligibility is based on proof of legal residence in the county as demonstrated by a valid State of Florida driver license or identification card, voter registration card if eligible, and an employer verification form signed by the employer or sufficient evidence, satisfactory to the City or its designee, demonstrating income qualification through self-employment.
- (11) Priority shall be given to families of four or more members for larger sized affordable work force housing units.
- (12) The applicant shall execute a sworn affidavit stating the applicant's intention to occupy the dwelling unit.

- (13) The income of eligible households shall be determined by counting the full amount, before any payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips, bonuses, Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, unemployment compensation, disability compensation, worker's compensation, severance pay and any net income from the operation of a business or profession of all household members. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income from operation of a business or profession. Unrelated adults may be qualified individually for rental purposes provided the total lease payment to the Owner does not exceed the rent limits established by the City.
- (14) In the event that a tenant's income shall exceed the maximum allowable income under this section and such shall occur for the first time during the last three months of a tenancy, then the landlord and tenant may extend a lease for a period of one year at the affordable rental rate.
- (15) The planning board may review a household's income and unique circumstances to determine eligibility and conformance with the intent of this ordinance to assure that people in need are not excluded and people without need are not included.

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 6, 10-18-2005; Ord. No. 08-04, § 29, 5-20-2008; Ord. No. 17-09, § 2, 8-16-2017)

Sec. 122-1470. - Accessory unit infill.

- (a) In all mixed use zoning districts of the city, the city shall encourage the addition of affordable work force housing on the same site as commercial properties and institutions to promote employee housing. Such development shall be known as accessory unit infill. Tenants shall be eligible persons under section 122-1469. Applicants under this section may provide two bicycle or scooter parking spaces per unit as an alternative to applying to the planning board for parking variances. Provided that units of 600 square feet or less are treated as an 0.78 equivalent unit and all units provided must be made available through the city's building permit allocation system.
- (b) The maximum total rental and/or sales price for accessory unit infill in a single development or redevelopment shall be based on each unit being affordable housing (moderate income). The rental and/or sales price may be mixed among affordable housing (low income), (median income), (middle income) and (moderate income) in order that the total value in rental and/or sales does not exceed ten percent of the rental and/or sales of all the units at affordable housing (moderate income).

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 9, 10-18-2005; Ord. No. 08-04, § 30, 5-20-2008; Ord. No. 13-19, § 3, 11-6-2013; Ord. No. 19-11, § 2, 5-7-2019)

Sec. 122-1471. - Community housing development organization.

The city commission may promote the establishment of a nonprofit community housing development organization (CHDO), pursuant to federal regulations governing such organizations, to serve as developer of affordable workforce housing units on city-owned property located in both the city and in the community redevelopment areas, including excessed U.S. Navy property, or located in Key Haven and Stock Island in the unincorporated part of the county, upon interlocal agreement. In such event, the city may delegate to the community housing development organization all or partial administration of the affordable housing trust fund.

(Ord. No. 98-18, § 1, 6-3-1998; Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 10, 10-18-2005)

Sec. 122-1472. - Family size.

When establishing a rental or sales amount, one shall assume family size as indicated in the table below. This section shall not be used to establish the maximum number of individuals who actually live in the unit.

Size of Unit	Assumed Family Size	Minimum Occupancy
Efficiency (no separate bedroom)	1	1
One bedroom	2	1
Two bedroom	3	2
Three bedroom	4	3
Four or more bedrooms	5	1 per bedroom

(Ord. No. 02-08, § 1, 2-20-2002; Ord. No. 05-27, § 11, 10-18-2005)

Sec. 122-1473. - Affordable workforce liveaboard vessels.

Notwithstanding the permitted and conditional uses of Chap. 122. Art. IV. Land Use Districts, liveaboard vessels within duly permitted marinas/docking facilities subject to the provisions of the affordable workforce housing requirements of sections 122-1465, 122-1466, 122-1467, and 122-1469 may be allowed as a conditional use. Schedule of off-street parking requirements by use generally per Sec. 108-572(6) Marinas and offshore activities is 1 space per liveaboard boat. Any owner or his authorized agent may submit an application for a variance to off-street parking requirements, upon which the planning board shall hold a public meeting in accordance with the procedures cited in section 90-393.

(Ord. No. 18-26, § 1, 10-16-2018)

Secs. 122-1474—122-1500. - Reserved.

Section 122-1338(3)

Sec. 122-1338. - Transfer of transient units.

- (1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this division shall not cause a net increase of units in the city.
- (2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes, regardless of whether it will be used transiently or non-transiently, unless accompanied by a business tax receipt duly issued pursuant to section 66-109(10). When units are transferred for non-transient use, the licenses will be extinguished.
- (3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.
- (4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.
- (5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.
- (6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.
- (7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.
- (8) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.
- (9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.
- (10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer the units and then transfer such units pursuant to this section, provided the

transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 3, 4-19-2005; Res. No. 06-292, § 1, 9-6-2006; Ord. No. 11-06, § 1, 3-15-2011)

Section 86-9, General Provisions

Comprehensive plan means the city comprehensive plan, as may be amended, and which was prepared and adopted pursuant to the "County and Municipal Planning and Land Development Regulation Act," F.S. Ch. 163, part II.

Conditional use means a use permitted in a particular zoning district only upon successful demonstration that the use as proposed on a specific site will comply with all the conditions and standards for the location, design, and/or operation of such use as specified in the land development regulations and as authorized by the city.

Conditional use permit means any administrative permit issued pursuant to article III of chapter 122.

Contiguous means next to, abutting, or touching and having a boundary, or portion thereof, which is coterminous.

Continuum of care means a comprehensive homeless assistance system that includes: a system of outreach and assessment (to determine the needs and conditions of the homeless); emergency shelters and transitional housing with appropriate supportive services; housing with, or without supportive services that has no established limitation on the amount of time in residence; and any other activity that clearly meets an identified need of the homeless and fills a gap in services.

Courtyard means an open, unobstructed, unoccupied space, other than a yard, on the same lot with the principal building and fully enclosed on at least three adjacent sides by walls of the principal building, or at least three or more exterior structural walls.

Density means the maximum number of units divided by the gross land area. It is typically expressed in units per acre.

Density, maximum gross residential, means the density which shall be determined by dividing the maximum allowable units by the gross acres of land (i.e., dwelling units/gross land acres). All residential densities denoted on the future land use map and the official zoning map stipulate the maximum gross densities permitted for development on the land. Gross land area shall be defined as those contiguous land areas under common ownership proposed for residential development.

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity commencing proceedings under this subpart B to effect the subdivision and/or development of land in the city and includes the term "subdivider," including model homes.

Development means the carrying out of any building activity or excavation, including the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels. The following activities or uses shall be taken for the purposes of these land development regulations to involve development:

- (1) A reconstruction, alteration of the size, or material change in the external appearance of a

structure on land.

- (2) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.
- (3) Alteration of a shore, stream, lake, pond, or canal, including any coastal construction as defined in F.S. § 161.021.
- (4) Commencement of drilling, except to obtain soil samples or excavation on a parcel of land.
- (5) Demolition of a structure.
- (6) Clearing of land as an adjunct of construction.
- (7) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

District means any section area of the city to which these land development regulations apply, within which the zoning requirements are uniform.

Drive-through establishment, including *drive-in* and *drive-up*, means an establishment which, by design, physical facilities, service or by packaging procedures, encourages or permits customers to receive services, obtain goods or be entertained while remaining in a motor vehicle.

Dwelling means a building that is used intended, or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling, attached, means a one-family dwelling attached to one or more one-family dwellings by a common wall.

Dwelling, detached, means a dwelling which is not attached to any other dwelling by any structural means.

Dwelling, duplex or two-family, means a detached residential building containing two dwelling units, designed for occupancy by not more than two families.

Dwelling, multiple-family, means a residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, one-family or single-family, means a dwelling unit containing only one dwelling unit and occupied exclusively by one family as a single housekeeping unit.

Dwelling, transient living accommodation includes a mobile home or recreational vehicle as defined in F.S. § 513.01 that forms a single habitable unit with facilities that are used or intended to be occupied for living, sleeping, and sanitation by one family at a time.

Dwelling unit and *living unit* means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement means a grant to another party by a property owner of the right to use land for a specific purpose, such as but not limited to drainage or placement of utility lines.

Emergency housing generally refers to housing used to alleviate an immediate housing crisis, where the individual or family resides for 30 days or less.

Emergency shelter means any facility with sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general, or for specific populations of the homeless e.g. persons with alcohol and other substance abuse problems and/or mental illness.

Equivalent single family unit means the fractionalized unit allocation based on the ratio of the average number of vehicles per unit derived from the 2010 U.S. Census for the respective residential structure types (1.0 for single family) divided by the vehicles per single-family unit (i.e. 1.28 vehicles per unit).

Excavation means removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

Extended care facility means a long-term care facility or a distinct part of a facility licensed or approved as a nursing home, infirmary unit of a home for the aged or a governmental medical institution.

Family means:

- (1) One person or a group of two or more persons related by blood, marriage, adoption, or foster care occupying a dwelling unit as a separate, independent, not-for-profit housekeeping unit with a single kitchen and set of culinary facilities. Such family may also include up to two unrelated persons who serve as servants or caretakers for the housekeeping unit; or
- (2) Up to four unrelated persons occupying a dwelling unit as a separate, independent, not-for-profit housekeeping unit with a single kitchen and set of culinary facilities.

Fence and *wall* mean a structure intended to separate or enclose or define space, basically freestanding; constructed of one or more of materials such as wire, wood, stone, cement or brick; designed to be decorative or ornamental or to serve utilitarian purposes as to control ingress or egress of persons or animals. A hedge, wall, or landscaped berm may constitute a fence.

Final determination of award means a project that has been reviewed and approved for BPAS unit award by the planning board. For projects that do not require further approvals, an allocation award will subsequently be distributed to the applicant from the planning department in order that building permits may be pursued.

Flag lot means a lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way.

Floodplain means an area likely to flood based on the officially adopted flood issuance rate map (FIRM).

Floodplain, tidal, means an area likely to flood or become inundated from water which is subject to tidal action.

Floor area ratio means the total floor area of the buildings on any lot, parcel or site divided by the area of the lot, parcel or site.

Florida Green Building Coalition or FGBC is the organization responsible for creating, and rating the FGBC Green Certification Program. FGBC is a nonprofit Florida corporation dedicated to providing a statewide green building program that defines, promotes, and encourages sustainable efforts particular to the Florida climate with environmental and economic benefits.

Foster care facility means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall not be more than three residents. Reference section 122-1246.

Front lot line means the dividing line between the lot and the street.

Frontage means all the property abutting measured along the street line.

Governmental facility means any office, facility, building or property owned, leased, or used by the federal government, the state, or any unit of local government, except such uses as are specifically listed elsewhere in the land development regulations as specific uses, and except housing projects sponsored by government agencies.

Green area. See "open space."

Green building certification means building(s) constructed, rated and certified to prove they comply with a recognized third party green building rating system. The third-party rating systems recognized by the building permit allocation system prerequisite criteria area the Florida Green Building Coalition (FGBC) and the leadership in education and environmental design (LEED) green building standards.

Green building certification upgrade means a rating level of green building certification above the baseline green building certification standard as follows:

Certification Upgrade 1 - FGBC Silver or LEED Silver

Certification Upgrade 2 - FGBC Gold or LEED Gold

Certification Upgrade 3 - FGBC Platinum or LEED Platinum

Group home facility means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least four residents but not more than 15 residents. For the purposes of this section, group home facilities shall not be considered commercial enterprises. Reference section 122-1246.

Habitable space is a room or space in a building designed for human occupancy that may be used for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities meeting the requirements of provisions. Storage or utility spaces and similar areas are not considered habitable space. All habitable space shall be accessible from the interior of exterior walls.

Habitable space, - non, means spaces and structures used for non-habitable purposes, including, but not limited to, radio towers, antennae, spires, storage or utility spaces and similar areas.

Home occupation means any money-raising occupation or activity carried on within a residential property, where the activity is conducted only by members of the family living within the residence; where products are not offered for sale from the premises; where no evidence of the occupation is visible or audible from the exterior of the residential property, except for allowable signage; where traffic is not generated in excess of that customary of a residence; and where no commercial vehicles are kept on the premises or parked overnight on the premises unless otherwise permitted by the land development regulations. The occupation must be clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change residential character thereof. Reference sections 122-1306 and 122-1307.

Homeless means an individual or family who lacks a fixed and regular nighttime place of rest or has a primary nighttime shelter that is a homeless facility. The term does not include any individual imprisoned or otherwise detained.

Homeless assistance conveyance means that method of conveying military property at no cost, to local redevelopment authorities (LRAs) or homeless providers, in order to address the needs of homeless individuals as identified in a continuum of care program.

Homeless persons with special needs means a homeless person that has special physical, mental, or other social needs such as, (but not limited to) persons with alcohol and/or drug addiction, mental illness, single women with children, abused individuals, etc.

Homeless shelters or shelters for the homeless means a public or private institutional facility designed to provide a continuum of care that is considered an essential public service for the homeless. A supervised publicly or privately operated shelter welfare hotels, congregate shelters, and transitional housing for persons with mental illness).

Hotel means a building with dwelling units for accommodation of transient guests or tenants and providing services common to hotels, including, but not limited to, a central office or lobby, room service, food service and daily maid service, and otherwise complying with requirements of the state hotel and restaurant commission. For the purpose of this definition, the term "dwelling unit" shall be defined as a sleeping room with bath, flush toilet, lavatory and storage closet.

Housing unit means an occupied or vacant house, apartment, or single-room occupancy (SRO) that is intended as separate living quarters.

Hurricane Evacuation Clearance Time Memorandum of Understanding or HEM MOU means the signed Hurricane Evacuation Memorandum of Understanding between the Cities of Key West, Layton, Marathon, the Village of Islamorada, and Key Colony Beach, and the county, and the State Department of Economic Opportunity and Emergency Management, dated August 2, 2012.

Initial announcement of award means the planning department publication of the administrative BPAS application ranking.

Intensity means the floor area ratio as defined in this section.

Kitchen means any food preparation facility larger than a wetbar. Plumbing stub outs for more than a wetbar shall be considered a kitchen.

Land use classifications. The purpose of the land development regulations is to classify uses into specially defined types on the basis of common functional characteristics and land use compatibility. These provisions apply throughout the zoning regulations. All land use activities are classified into the following activity types:

(1) *Residential activities:*

- a. Single-family/two-family dwellings and accessory residential units. Reference sections 122-231 through 122-234.
- b. Multifamily dwellings.
- c. Manufactured housing. Reference section 122-1276.
- d. Group homes.
- e. Approved home occupations.

(2) *Community facilities:*

- a. *Airport facilities* means activities which are customarily incidental to airport operations and maintenance including airport terminal; heliport; fixed base operators; airport hangars; runways, taxiways, ramps and aprons for the landing, takeoff, or surface maneuvering of aircraft; and communicative and visual guidance systems. The Federal Aviation Administration (FAA) regulations shall govern placement and specifications of structures within the airport operations area.
- b. *Cemetery* means property used for the interring of the dead.
- c. *Community centers, clubs, and lodges* mean not-for-profit activities typically operated by a government or by a group of persons for social or recreational purposes and primarily including services which are not customarily carried on as a business for profit.
- d.

Cultural and civic activities means activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as historical, literary, scientific, musical, dramatic, artistic or similar objectives,

e. *Educational institutions and day care.*

(1) Educational institutions includes a place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.

(2) Day care includes activities typically performed by an agency, organization or individual, any of which must be duly licensed by the state, providing day care without living accommodations for persons not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.

f. *Golf course and support facilities* means large unobstructed acreage with enough room over which to walk or ride a prescribed course, and to stroke one ball long distances. Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.

g. *Hospitals and extensive care facilities* means institutions providing health services, primarily for inpatients, and medical or surgical care; including, as an integral part of the institution, related facilities, central service facilities, and staff offices.

h. *Nursing homes, rest homes, assisted living facilities and convalescent homes* mean activities customarily performed at a home for the elderly or infirm in which three or more persons not of the immediate family are received, kept or provided with food, shelter and care for compensation. This activity shall not include duly state-licensed volunteer adult foster care homes in which three or fewer foster adults are placed. Neither does the principal activity include hospitals, clinics or similar institutions that diagnose and treat the sick or injured.

For purposes of permitted density and intensity, the floor area ratio shall govern, not units per acre. Individual living units or resident nursing beds shall be treated as 0.1 equivalent unit under the city's building permit allocation ordinance, section 108-994. If a facility is developed to remain operational during and after a category 5 hurricane, and therefore does not contribute to the evacuation of vehicles, the city commission may exempt this facility from the requirements of the building permit allocation ordinance or may authorize an alternate equivalency factor.

i. *Place of worship* means activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain

public worship.

- j. *Protective services* means fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.
 - k. *Public parks and recreation areas* means public parks and recreation land and facilities developed for use by the general public.
 - (1) *Active parks and recreation* means leisure-time activities, usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed places, sites or fields. This may include is not limited to swimming, tennis and other court games, baseball and other field sports, and playground activities.
 - (2) *Passive parks and recreation* means leisure-time activities not considered active. This may include water-related activities such as boardwalks and interpretive trails, fishing piers as well as boating. Passive recreation may also include non-water-related activities such as hiking, golfing, observation towers, and picnicking.
 - l. *Public and private utilities* means use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution, collection and disposal; communication; and similar services and facilities.
- (3) *Commercial activities.*
- a. *Amusement* means active or passive recreation facilities by profit oriented firms.
 - b. *Bar and lounge* mean a commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.
 - c. *Boat sales and service* means a commercial establishment were boat sales and rentals may occur together with minor servicing and sale of marine supplies but excluding boatbuilding or shipbuilding.
 - d. *Business and professional offices* means government offices, not-for-profit administrative services, and private for-profit offices extending advice, information or consultation of a professional nature; insurance, real estate, and financial services; banking services; and executive management and administrative activities. Offices exclude commercial storage of goods and chattels for the purpose of sale or resale as a principal use.
 - e. *Commercial retail use* means a use that sells goods or services at retail which is subdivided into the following three classifications in which total area includes both sales area under roof and any outside sales area:
 - (1) *Commercial retail low intensity* means commercial retail uses that generate less than 50 average daily trips per 1,000 square feet.

- (2) *Commercial retail medium intensity* means commercial retail uses that generate between 50 and 100 average daily trips per 1,000 square feet.
- (3) *Commercial retail high intensity* means commercial retail uses that generate above 100 average daily trips per 1,000 square feet.
- f. *Funeral home* means undertaking and funeral services involving care and preparation of human deceased prior to burial, excluding crematories, crematory operations and columbariums. Such a premises, structure or site shall not be used for the burial, prolonged storage or permanent disposition of deceased human remains.
- g. *Gasoline station* means a structure or place where gasoline, oil and greases, and incidental accessory sales and services are supplied and dispensed to the motor vehicle trade. Uses permissible at a gasoline station do not include major mechanical and body work; straightening of body parts; painting; welding; storage of automobiles not in operating condition; or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations. A gasoline station is neither a repair garage nor a body shop.
- h. *Hotel, motel and transient lodging* mean any unit, group of units, building, or group of buildings within a single complex which is:
- (1) Rented for periods of less than 28 days;
 - (2) Advertised or held out to the public as a place regularly rented to transients.
- i. *Marina* means a commercial establishment providing for the docking, storage, and servicing of watercraft, including dispensing of motor fuel.
- j. *Medical services* means the provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging.
- k. *Parking lot and facilities* means a governmental or private commercial building or structure solely for the off-street parking of operable motor vehicles.
- l. *Restaurant, excluding drive-through*, means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. For the purpose of this subpart B and impact fee assessments, a takeout or carryout restaurant shall be limited to no more than five chairs or bench seats without tables or counter tops.
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