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March 5, 2019

Teri Johnston, Mayor, City of Key West  
Commissioners Jimmy Weekley, Samuel Kaufman, Billy Wardlow, Gregory Davila, and Mary Lou Hoover

Via email to Clerk, City of Key West, sharrison@cityofkeywest-fl.gov

Dear Mayor and Commissioners:

Please consider this comment and objections letter regarding the proposed “Workforce-Affordable Housing Initiative” comprehensive plan amendment [Ordinances 2018-3150 and 18-3149] which the City Council will consider March 5, 2019 (the Proposed Amendment). These objections and comments are submitted on behalf of Naja Girard.

We believe that the proposed changes to the City’s Comprehensive Plan are ill-advised and inconsistent with the Florida laws that govern comprehensive planning in the Florida Keys. Specifically, they would be inconsistent with the the Florida Keys Critical Area Act, the Community Planning Act, and the existing provisions of the Key West Comprehensive Plan for the reasons explained below.

**1. The Failure by the City to Provide Data and Analysis of the Effects of the Proposed Amendment on Public Safety, Public Facilities and Services, Environmental Resources, etc. Violates State Statute and Key West’s Comprehensive Plan**

The City has failed to provide data and analysis demonstrating that the additional permanent population resulting from the Proposed Amendment will not adversely affect the hurricane evacuation clearance time for the Keys. Additionally, there has been no professionally accepted analysis of the impact of the proposed amount of additional development on the other elements of the carrying capacity limits to development in the Keys.

The total and annual development allocations for the Keys have been painstakingly determined by past studies and various updated review and models. The amount of growth has been limited over the decades in order to address what substantial study and litigation findings determined to be alarming levels of ecological degradation and hurricane evacuation problems. The intervening years and newly documented sea-level rise have only increased the reality of the limited capacity of the Keys to handle new development. Since the 2002 Florida Keys Carrying Capacity Study found that development in the Keys had already “surpassed the carrying capacity

of upland habitats to maintain their ecological integrity” and that further impacts to terrestrial habitats and species “would only exacerbate an already untenable condition”, there have been additional habitat losses and impacts.

The Proposed Amendment under consideration is not supported by professionally accepted data or analysis to support a conclusion that the carrying capacity of the Florida Keys has not only recovered from past degradation, but expanded to accept significant new development.

There is no professionally accepted data and analysis concerning the impact of the Proposed Amendment on the environment.

For these reasons, the Proposed Amendment violates the Community Planning Act, which requires that all plan amendments be based on relevant and appropriate data and analysis by the City. §163.3177(1)(f), (2), Fla. Stat.

The Proposed Amendment also violates §§163.3177 (1) f, and (6) (a) (2) and (8), Florida Statutes because it is not based upon surveys, studies, and data regarding the character of undeveloped land and the availability of public facilities and services or any other issues the law requires to be analyzed as part of an amendment to a comprehensive plan’s Future Land Use Element.

The Proposed Amendment is also inconsistent with §163.3177 (6) (a) 3, Florida Statutes, because it does not coordinate future land uses with the availability of facilities and services, or ensure the protection of natural resources. The Proposed Amendment is also inconsistent with §163.3177 (6)(a) 8, Florida Statutes because it is not based upon an analysis of the availability of facilities and services or the suitability of the Proposed Amendment for its proposed use considering the character of the undeveloped land, soils, topography, and natural resources.

The Proposed Amendment is not in compliance, pursuant to Section 163.3184 (1) (b), Florida Statutes, and violates Section 380.0552, Florida Statutes, because it is not consistent with the following applicable “Principles for Guiding Development” in Section 380.0552 (7), Florida Statutes:

- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation. ...
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys. ...
- (l) Making available adequate affordable housing for all sectors of the population of the Florida Keys. ...
- (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

The Proposed Amendment is also inconsistent with the **Guiding Principles of the Key West Area of Concern**, specifically:

**28-36.003 (1) (h):** *Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.*

**28-36.003 (2) (a) 7:** *An evacuation plan consistent with regional and County plans shall be prepared and adopted which provides an opportunity for residents and visitors to evacuate to a place of safety during a natural disaster.*

The Proposed Amendment is inconsistent with § 163.3177(1) and (2), Florida Statutes, because it is internally inconsistent with the following provisions of the City's Comprehensive Plan.

**OBJECTIVE 1-1.9: MANAGE AND COORDINATE FUTURE LAND USE DECISIONS.** *The City of Key West shall continue to update and enforce Land Development Regulations which ensure that land development activities, resource conservation, and infrastructure issues are managed in a manner that includes timely coordination with County, regional, and State agencies having jurisdictional authority.*

**Policy 1.1.9.5: Land Use Consistency and Compatibility.** *The City of Key West shall continue to enforce Land Development Regulations which ensure that future land uses shall be compatible with the Future Land Use Map, hurricane evacuation plans, and other applicable laws, ordinances, and administrative rules regulating land and water resource management.*

**OBJECTIVE 1-1.12: CONSIDER APPLICATION OF INNOVATIVE LAND AND WATER RESOURCE MANAGEMENT, CLIMATE ADAPTATION, AND ENERGY CONSERVATION CONCEPTS.** *The City of Key West shall maintain Land Development Regulations which incorporate concepts for managing land, water, and energy resources which are responsive to unique development and conservation issues identified in the City's Comprehensive Plan. The City of Key West shall adopt Land Development Regulations which incorporate concepts for managing land, water, and the built environment which are responsive to climate change issues including but not limited to sea level rise and increased frequency of intense rainfall events.*

**OBJECTIVE 1-1.16: MANAGING BUILDING PERMIT ALLOCATION.** *In order to protect the health and safety of the residents in the Florida Keys, the City of Key West shall continue to regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to maintain and improve hurricane evacuation clearance times. Regulation of the rate of growth also prevents further deterioration of public facility service levels. Therefore, in concert with Monroe County, its municipalities, and the State of Florida, the City shall manage the rate of growth in order to maintain an evacuation clearance time of 24 hours for permanent residents.*

**GOAL 5-1: COASTAL MANAGEMENT.** *Restrict development activities that would damage or destroy coastal resources. Protect human life and limit public expenditures in areas subject to destruction by natural disasters, but encourage policies which attract pedestrians, increase waterfront access, and reinforce the ambiance of the waterfront.*

**OBJECTIVE 5-1.5: AVOID POPULATION CONCENTRATIONS IN COASTAL HIGHHAZARD AREAS.** *The City shall continue policies to direct population concentrations away from coastal high hazard areas by regulating the density of residential development and redevelopment within the coastal high hazard area.*

**Policy 5-1.5.1: Restrict Development in Coastal High-Hazard Areas.** *The City shall incorporate appropriate policies in the Land Development Regulations in order to direct population concentrations away from known or predicted coastal high-hazard areas.*

**OBJECTIVE 5-1.6: HURRICANE EVACUATION.** *The City shall continue to coordinate with the State, South Florida Regional Planning Council, County, and other local governments in order to regulate population growth and stage evacuations in a manner that maintains hurricane evacuation clearance times in accordance with the executed Memorandum of Understanding and other implementation mechanisms. Monitoring Measure: Hurricane evacuation clearance time.*

**Policy 8-1.1.3: Principles and Guidelines to be used in Coordination of Development and Growth Management Issues.**

*Considering the growth and development limitations in Monroe County as a whole resulting from hurricane evacuation requirements, level of service standards, and environmental constraints, and considering the impact that growth and development in the City of Key West will have on the rest of Monroe County, the City shall coordinate with Monroe County and the Cities of Key Colony Beach, Village of Islamorada, City of Marathon, and Layton regarding the allocation of additional development. \*\*\**

*The City shall pursue resolution of development and growth management issues with impacts transcending the City's political jurisdiction. Issues of regional and state significance shall be coordinated with the South Florida Regional Planning Council, the South Florida Water Management District, and/or State agencies having jurisdictional authority. Issues to be pursued include but are not limited to the following:*

*1. Impacts of development proposed in the Comprehensive Plan on Monroe County, the region or the State. \*\*\**

*16. Coordination of hurricane evacuation plans, shelter space allocations, and post disaster recovery management plans with Monroe County. The City shall implement the hurricane and transportation conclusions and policies relative to residential units' allocation which are adopted*

by Monroe County and all municipalities as described in the Memorandum of Understanding dated July 2012.

***Policy 8-1.3.2: Cooperation with the South Florida Regional Planning Council (SFRPC).*** *The City shall cooperate with the South Florida Regional Planning Council in the review of regional policies and standards which require coordination with local governments. The City of Key West shall coordinate with the SFRPC in all matters of regional significance in which the SFRPC desires City input, including but not limited to, development of regional impact (DRI's), comprehensive plan review, intergovernmental coordination and review of projects of regional significance (ICR projects).*

**Failure by the City to Coordinate with Monroe County and Other Keys Jurisdictions in Evaluating the Impact of the Proposed Amendment Violates State Statutes and Key West's Comprehensive Plan**

In recognition of the impact of one jurisdiction's land use on the Florida Keys as a whole, the Florida Keys Critical Area Act requires coordination and efficiency among Monroe County and the Keys municipalities in establishing policy on development issues. Section 380.0552(2) (g), Florida Statutes. Section 163.3177(4), Florida Statutes also calls for coordination of comprehensive plans with adjacent communities.

Moreover, Key West's Comprehensive Plan requires the City to coordinate with Monroe County and the municipalities regarding the allocation of additional development, taking into account the growth and development limitations in the County as a whole resulting from hurricane evacuation requirements and environmental constraints and the impact that growth and development in the City would have on the rest of the County. In effecting such coordination, the issues to be pursued include the impact of any proposed development on the County and coordination of hurricane evacuation plans with the County.

Adding 300 permanent residential units in Key West would not be happening in isolation, but potentially as part of an overall increase in residential units Keys-wide of 1,300 new dwellings. Not only have the impacts of 300 ROGOs for Key West not been analyzed, no analysis has been presented regarding the carrying capacity of the Florida Keys to accept 1,300 more residences for permanent employees, in addition to those already planned through 2023.

If one assumes three persons per household, 1,300 ROGOs would mean 3,900 persons on top of the 6,000 persons who could come with the approximately 2,000 ROGOs remaining to be allocated. We can think of no issue that would require more intergovernmental coordination than the issuance of 1,300 new ROGOs to the various governmental bodies in the Keys.

**The Proposed Amendment is Inconsistent with Section 163.3177, Florida Statutes, because it impermissibly interferes with and undermines the ROGO system**

As described above, the total and annual development allocations for the Keys have been painstakingly determined by past studies and various updated reviews and models. It is these studies, reviews and modeling efforts that have provided a very clear and strong rational basis for

the limitations on the number of building permits in the Florida Keys pursuant to the ROGO system. The Proposed Amendment threatens to undermine the legal protections the ROGO system provides to the City and the County and the other municipalities from challenges to the application of the ROGO system

There is no data or analysis which supports the position that ROGO constraints are no longer needed to serve the evacuation, ecological, and other compelling governmental purposes currently served by the ROGO limitation.

### **Additional Comments on the Language of the Proposal**

Beyond the foregoing reasons why the Proposed Amendment should not be adopted, we raise the following objections and comments about certain details of the proposal.

1. The Proposed Amendment does not effectively limit the housing to rental housing for persons employed in Key West or Monroe County. The Governor's initiative expressly stated that the additional units were to be for workforce rental housing. The Proposed Amendment does not appear to limit the new units in that way. Although the Proposed Amendment requires a deed restriction providing that the property be for "workforce-affordable housing", it neither provides a definition of the term "workforce housing" nor does it restrict the building to use as rental apartments in perpetuity. The failure to impose any meaningful "workforce" requirements on the housing covered by the Proposed Amendment is particularly egregious in light of the fact that the City's Land Development Regulations already provide for a category of housing, called "affordable work force housing", which requires that at least 70% of the total income of the occupants be from employment in Monroe County.
2. Only the deed restrictions for affordable-workforce housing are required to be in perpetuity. The other required deed restrictions have no specified minimum duration which is a glaring omission.
3. The Proposed Amendment requires that the housing have on-site property management and that the managers must be formally trained in evacuation procedures. None of these terms or requirements is defined. The requirement of on-site property management should specify that adequately trained property-management personnel must be working on the premises in that capacity on a full-time basis.
4. The requirement that the housing "incorporate sustainable and resilient design principles into the overall site design" is vague.

In general, the Proposed Amendment fails to establish meaningful and predictable standards for the use and development of land, and thus is inconsistent with Section 163.3177(1), Fla, Stat.

### **In Conclusion**

We urge the City to reconsider the Proposed Amendment in view of the inconsistency with current law, public safety and the City's need to be able to properly manage the demands of new

development, including unfortunately those related to post-disaster management, and not increase the overall development capacity in Key West. Instead of adding to the overall growth caps in a way that is inconsistent with the legally-mandated carrying capacity planning in the Keys, Key West and the other Keys' jurisdictions should take action to require that all or at least most of the ROGO-exempt units that have been lost due to hurricanes are re-built as workforce housing, and not simply allow them to be used for market rate housing, including second and vacation homes.

We urge you to reconsider and reject the Proposed Amendment in light of the considerable negative financial, safety and quality of life implications for the residents of Key West and all of the Florida Keys.

Sincerely,

/s/Richard Grosso/s/

cc:

City Manager James Scholl  
City Attorney Shawn Smith  
City Clerk Cheryl Smith  
Sylvia Murphy, Mayor, Monroe County  
Chris Bull, Mayor, City of Marathon  
Chris Sante, Mayor, Islamorada, Village of Islands  
John Deneale, Mayor, Key Colony Beach  
Norman S. Anderson, Mayor, City of Layton  
Barbara Powell, DEO