

THE CITY OF KEY WEST PLANNING
BOARD

Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Dan Gulizio, Senior Planner

Meeting Date: November 21, 2024

Agenda Item: **Land Development Regulations Amendment** – Barton W. Smith, Attorney, on behalf of Stockrock SI LLC, Island-West Investment Corp., Poinciana - Venture II LLC, and Meisel Holdings FL - 1321 Simonton Street, seeks to amend the Land Development Regulations Chapter 122 (Zoning) Article V, Division 10 (Work Force Housing) pursuant to Section 90-518 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

Request: A request to amend the Land Development Regulations to modify the requirements for Work Force Housing.

Property Owner: N/A

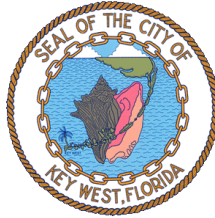
Applicant: Barton W. Smith, Attorney, on behalf of Stockrock SI LLC, Island-West Investment Corp., Poinciana - Venture II LLC, and Meisel Holdings FL - 1321 Simonton Street Peter Janker

Location: City-Wide

Zoning: All Districts

Update

The proposed text amendment to the Land Development Regulations (LDRs) was originally considered by the Planning Board at a meeting on September 19, 2024. At that time, the Board postponed decision on the matter until the November meeting. Since the time of the original submission, planning staff, the City Manager's Office, the Housing and Community Development Director, and the City Attorney's Office have worked with the applicants to review the proposal. Over the course of these discussions, the proposal has been modified and now includes a Transfer of Development Rights (TDR) component in addition to changes to the existing Work Force Housing Ordinance, the addition of Live Local Act (LLA) benefits, and



the creation of a Commercial (Non-Residential) Work Force Housing ordinance. The applicants are also proposing changes to a series of definitions including a new definition for “dormitory housing” and a modified definition for height.

The Planning Department supports the incorporation of Work Force Housing standards for Commercial (Non-Residential) development. The proposed ordinance is consistent with the current approach for Monroe County. We also support the inclusion of Live Local Act (LLA) standards which are consistent with existing state law provisions. However, we remain concerned that the Ordinance as proposed goes well beyond the benefits provided under existing state law. The reduction of all setback requirements to five (5) feet as proposed along with the elimination of performance standards without the need for a hardship variance is not warranted.

The proposed changes to the existing Work Force Housing Ordinance associated with residential development also raise several concerns. One primary concern is the elimination of the application of the ordinance to any redevelopment applications. This measure alone will reduce, not increase the development of Work Force Housing Units.

Finally, the establishment of a Transfer of Development Rights (TDR) Ordinance represents an opportunity to achieve multiple benefits across the City’s development landscape. However, the ordinance as proposed lacks the principles needed to guide development in order to protect existing community character and promote the types of benefits that TDR ordinances can provide.

Background

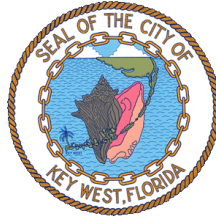
The applicant is seeking to amend the Land Development Regulations (LDRs) pursuant to Section 90-518 of the Administrative Code. This provision of the City Code allows the City Commission, Planning Board, City Manager, or “*any property owner or his authorized agent*” to initiate an amendment of the LDRs. The applicant is seeking to modify existing provisions under the Work Force Housing Ordinance and to establish an inclusionary housing ordinance for non-residential or commercial properties as well.

At the direction of the City Commission, Planning staff recently proposed a similar amendment of the existing Work Force Housing Ordinance. The amendment of the Work Force Housing Ordinance proposed by staff was considered by the Planning Board at a Special Call meeting on July 23, 2024. After deliberation, the Planning Board tabled the amendment to November 21, 2024.

To date, the City has attempted to address the need for affordable housing through the Work Force Housing Ordinance contained in Article V, Division 10 of the Land Development Regulations. Section 122-1465 establishes the purpose of the ordinance. It states:

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.



Under the current approach, an applicant may also contribute a payment in lieu fee of \$200,000 per affordable housing unit. An applicant may construct the required number of affordable housing units on-site or off-site through a linkage project. The linkage project allows an applicant to construct the required number of affordable housing units on an alternative or secondary site provided such units are constructed either before or simultaneously with the proposed market rate units. Under the Work Force Housing ordinance, all affordable units must be deed restricted for a period of at least 50 years and the City Commission is empowered to renew the affordable restriction for an additional 50 year period during the final year of the restriction.

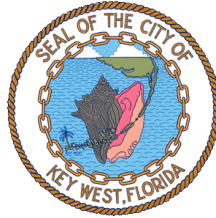
Owners of affordable work force housing projects are also required to furnish the city with annual information necessary to ensure continued compliance with affordability criteria, beginning one year after the date of building permit issuance and on each anniversary date thereafter. Reporting requirements 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.

The current Work Force Housing ordinance also provides for both exemptions and waivers. Affordable work force housing, nursing homes, and assisted care facilities are exempt from the ordinance. The City may also “reduce, adjust or waive” the requirements of the ordinance where, *“based on the 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.”*

The current ordinance also establishes an “Affordable Work Force Housing Trust Fund” which is *“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:*

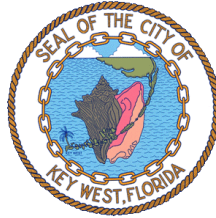
- (1) Financial aid to developers as project grants for affordable housing (low income) to (moderate income) construction;*



- (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.”*

The Work Force Housing Ordinance also establishes fifteen (15) eligibility requirements for potential occupants including:

- (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.

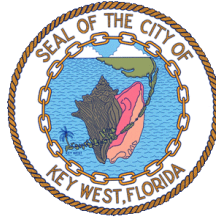
(12) The applicant shall execute a sworn affidavit stating the applicant's intention to occupy the dwelling unit.

(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.

Finally, the ordinance includes a provision entitled "Accessory Unit Infill." This provision encourages the development of affordable work force housing units in mixed use zoning districts to promote employee housing. It permits the development of units that are 600 square feet or less to be treated as an 0.78



equivalent unit, provided all units are made available through the Building Permit Allocation System (BPAS). Applicants under this section may also substitute two bicycle or scooter parking spaces per unit as an alternative to a parking variance.

Process:

Planning Board Meeting: September 19, 2024

HARC Meeting: TBD

Local Appeal Period: 10 Days

Staff Analysis:

For discussion purposes, the amendments proposed by the applicant can be divided into (1) Amendments to the existing Work Force Housing Ordinance applicable to residential development, (2) The incorporation and expansion of Live Local Act (LLA) benefits, (3) New standards proposed for non-residential or commercial development, and (4) The establishment of a Transfer of Development Rights (TDR) ordinance. The following is a summary of these changes.

(1) Changes to Existing Residential Inclusionary Housing Standards. Existing requirements for inclusionary affordable or Work Force Housing are contained within Chapter 122 (Zoning), Article V – Division 10 entitled “Work Force Housing. The applicant has proposed several changes to the existing requirements associated with residential development. A summary of these changes can be found below:

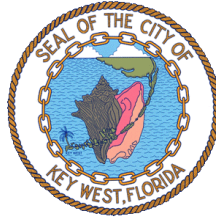
Definitions (Section 122-1466)

The applicant has added definitions for *Adjusted Gross Income*, *Adjusted for family size*, *Affordable*, *Extremely-low income persons*, *Low-income persons*, *Median-income persons*, *Middle-income persons*, *Moderate-income persons* and *Very-low income persons*. These definitions seem to originate from the Monroe County Code. The applicant also proposes to delete all of the existing definitions contained within the City Work Force Housing Code.

The applicant has also added a definition for “dormitory housing.” It is defined as:

Dormitory Housing shall mean housing with three or more bedrooms with shared kitchen and living facilities rented to unrelated individuals in each room that are required to be employed by the owner or a related party of the property (related party defined as having at least 50% of the underlying ownership of the property being the same as the business the individual tenants work for). Individuals occupying dormitory housing shall income and rent qualify individually for each bedroom. Each kitchen facility will define one dwelling unit with a maximum of six bedrooms per unit.

This definition increases the family size for a unit by fifty percent (50%) and represents potential concern over population growth beyond that anticipated under the Area of Critical State Concern (ACSC). The inclusion of this housing style without sufficient guidelines could potentially result in the development of dormitory style housing to the exclusion of other work force and affordable housing types. It is also not a housing type that is particularly well-suited to families and couples. Dormitory style housing can play an



important role in meeting the City’s housing needs, but it should be carefully considered in light of its potential to dominate the work force housing landscape.

Requirements of affordable work force housing (Section 122-1467)

The applicant is proposing to make a number of substantive changes to the existing standards associated with the City’s Work Force Housing ordinance. This includes the following:

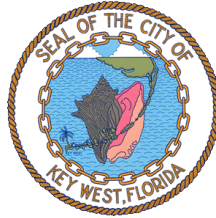
- Eliminate the application of the ordinance to “*all units developed or redeveloped each year.*” Instead, the proposed ordinance would only apply to *new units*. In addition, while the current code stipulates that 10% of all units developed or redeveloped shall be low income affordable housing and 20% of all units shall be affordable housing (median income), the proposed amendments would only trigger a requirement for low income units if ten or more new units are proposed and the requirement for affordable housing (median income) would only be triggered with developments involving three or more units.
- Increase the payment-in-lieu fee from \$200,000.00 per unit to \$400,000.00 per unit.
- Add a provision eliminating the application of Work Force Housing requirements from “vested units.”
- Expand the availability of off-site construction of Work Force Housing units to any location west of Big Pine Key.
- Eliminate the ability of the City Commission to renew affordability restrictions after fifty (50) years.
- Establish sales price standards for affordable/work force housing units with a range between 3.75 to 4.5 times the annual income of occupants.

Applicant eligibility requirements (Section 122-1469)

The applicant is proposing to add four (4) additional provisions to the eligibility requirements under the current code. This includes establishing maximum income limits for prospective occupants and limits on the maximum permitted income of occupants after taking occupancy for “*extremely low*” and “*very low*” income categories. These income limits don’t currently exist in the Code.

(2) The Incorporation and Expansion of Live Local Act (LLA) Benefits

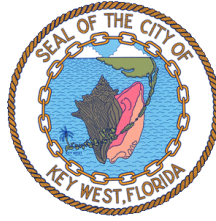
The State has recently established new affordable/work force housing requirements for local municipalities under the Live Local Act (LLA). The LLA stipulates that a municipality must authorize multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development are, for a period of at least 30 years, affordable as defined in s. 420.0004. Additional provisions of the LLA include:



- A municipality may not restrict the density of a proposed development authorized under this subsection below the highest allowed density on any land in the municipality where residential development is allowed.
- A municipality may not restrict the height of a proposed development authorized under this subsection below the highest currently allowed height for a commercial or residential development located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher.
- A proposed development authorized under this subsection must be administratively approved and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.
- A municipality must consider reducing parking requirements for a proposed development authorized under this subsection if the development is located within one-half mile of a major transit stop, as defined in the municipality's land development code, and the major transit stop is accessible from the development.
- A municipality that designates less than 20 percent of the land area within its jurisdiction for commercial or industrial use must authorize a proposed multifamily development as provided in this subsection in areas zoned for commercial or industrial use only if the proposed multifamily development is mixed-use residential.

The applicant is proposing to amend the City's Code to incorporate *and* expand LLA provisions as noted below:

- Expand LLA to include, in addition to mixed-use and commercial districts, High Density Residential, Medium Density Residential, Medium Density Residential-1, Historic Residential Commercial Core, Historic Residential Commercial Core-1, Historic Residential Commercial Core-2, Historic Residential Commercial Core-3, Historic Commercial Tourist or Historic High Density Residential zoning districts.
- Reduce all setbacks requirements to five (5) feet.
- Modify the definition of height to allow for an increase in the overall height of a structure by exempting parking structures and measuring from base flood elevation to the *highest point of habitable space*, not including "*mechanical equipment and elevator shafts or roof lines or parapets utilized to hide mechanical equipment and elevator shafts...*"



- Reduce parking requirements to one space per two units within the Historic District and one space per unit outside the Historic District.
- Waive all landscaping requirements to the greatest extent practicable to develop the maximum number of units.
- Eliminate the requirement to seek variance relief for all other development standards not identified above.

(3) Non-Residential (Commercial) Inclusionary Housing requirements.

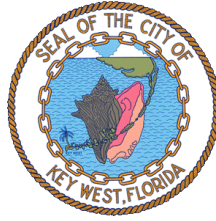
The applicant is proposing to copy in large part the “*Draft*” Non-Residential (Commercial) Inclusionary Housing Ordinance previously proposed by planning staff. Both versions of the draft ordinance are based upon the existing Monroe County Non-Residential (Commercial) Inclusionary Housing Ordinance.

The Ordinance applies to all new development and redevelopment within any non-residential zoning category. As proposed, each new development or redevelopment that increases the demand for housing, not otherwise exempted, is required to mitigate fifty percent (50%) of the Work Force Housing demand created by the proposed development/redevelopment.

The ordinance as proposed includes exemptions and waivers for (1) Affordable Housing Projects, (2) Residential Developments, (3) Public Facilities, (4) Nursing Homes, Assisted Care Living Facilities, and Retirement Homes, and (5) New development/redevelopment less than 1,000 square feet in gross floor area.

Land use categories are defined under the code and a ratio is applied to each category which, when multiplied by the total square footage proposed, determines the “Total Housing Need” associated with the development. A payment in lieu of fee is calculated in the same manner. Please see chart below.

TOTAL NEED CREATED BY NONRESIDENTIAL DEVELOPMENT (for construction and post-construction employees).				
Land Use Category	Total Housing Need per 1,000 sf (units/1000 sf)	Total Housing Need per sf (units/sf)	Total In-Lieu Fee per 1,000 sf (monetary fee/1000 sf)	Total In-Lieu Fee per sf (monetary fee/sf)
Commercial Retail (Retail stores, supermarkets, shopping centers, restaurants, etc.)	0.416	0.000416	\$66,722	\$66.72
Office (Professional and non-professional office buildings, etc.)	0.704	0.000704	\$78,492	\$78.49
Industrial (Light manufacturing, lumber yards, warehousing, storage facilities, etc.)	0.226	0.000226	\$24,397	\$24.39



Institutional (Religious facilities, private schools, colleges, daycares, etc.)	0.337	0.000337	\$36,284	\$36.28
Tourist/recreational (Theatres, auditoriums, nightclubs, tourist attractions, etc.)	0.614	0.000614	\$104,691	\$104.69
Hotel & Motel (Transient uses)	0.295	0.000295	\$49,947	\$49.94
Governmental (Governmental office buildings, public schools, etc.)	0.427	0.000427	\$38,285	\$38.28
Other (Utility, gas, and electric uses, mining, and sewage disposal facilities)	0.644	0.000644	\$99,838	\$99.83

Data for the mitigation requirement is from the 'Affordable Workforce Housing Support Study for Non-Residential Development,' prepared by Clarion Associates, LLC, for Monroe County in June 2017.

The draft ordinance provides several methods to secure compliance with the identified Work Force Housing obligation. This includes:

- (1) Construction of Work Force Housing units on site
- (2) Construction of Work Force Housing units off-site
- (3) The deed restriction of an existing market rate housing unit
- (4) Payment in-lieu fee

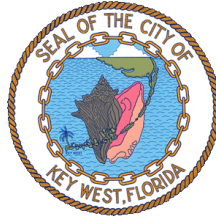
A credit is also proposed to be provided on a one-for-one basis for those employers that directly provide workforce housing units to their employees.

Eligibility requirements for occupants of Work Force Housing Units mirror the standards already provided in the Residential Work Force Housing Ordinance. In addition, monitoring, linkage projects, and the use of the Affordable Housing Trust Fund elements from the Residential Work Force Housing ordinance are also included.

(4) The Establishment of a Transfer of Development Rights (TDR) Ordinance.

The original LDR text amendment considered by the Planning Board in September did not include a TDR Ordinance. The proposed TDR Ordinance would allow for the transfer of residential development rights from one property to another subject to the following limitations:

- (A) The exempt unit rights 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 the applicable regulations, including building permits, or have been otherwise validly obtained if unbuilt at the time of transfer.
- (B) Residential use must be allowed at the receiver site.



- (C) The transfers to the receiving site shall not operate to increase density of the receiver site above the maximum allowed density.
- (D) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.
- (E) The sending site must not have any open permits or active code violations at the time of application.

The TDR process would be administered by the City Planner or other city administrative official designated by the City Manager.

Recommendation:

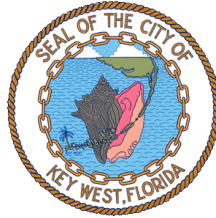
The Planning Department supports the incorporation of Work Force Housing standards for Commercial (Non-Residential) development. The proposed ordinance is consistent with the current approach for Monroe County. We also support the inclusion of Live Local Act (LLA) standards which are consistent with existing state law provisions. However, we remain concerned that the Ordinance as proposed goes well beyond the benefits provided under existing state law. The reduction of all setback requirements to five (5) feet, the increase in overall height for individual projects, and the elimination of performance standards without the need for a hardship variance is not warranted.

It is noted that the LLA also permits up to forty units/acre. The combination of increased building height, project density of 40 units/acre, a maximum of five (5) foot setbacks from all property lines, the waiver of landscaping and performance standards, and the expansion of LLA developments into existing residential zoning districts has the potential to impact community character inconsistent with the City's Code and Comprehensive Plan.

These changes, as proposed, are also inconsistent with State standards incorporated within the Area of Critical State Concern (ACSC). The purpose of the Act is to "*conserve and protect the natural, environmental, historical and economic resources, the scenic beauty, and the public facilities within the Area of Critical State Concern.*" Section 29-36.003 includes nine (9) "Principles for Guiding Development." The first principle is to "***Strengthen local government capabilities for managing land use and development.***" The proposed amendments would seem to weaken government's ability to manage land use and development.

The proposed changes to the existing Work Force Housing Ordinance associated with residential development also raise several concerns. The elimination of the application of the ordinance to any redevelopment will have a negative effect on the production of Work Force Housing within the City of Key West. In simple terms, it will reduce, not increase the development of Work Force Housing units.

Finally, the establishment of a Transfer of Development Rights (TDR) Ordinance represents an opportunity to achieve multiple benefits across the City's development landscape. However, the ordinance as proposed



lacks the principles needed to guide development in order to protect existing community character and promote the types of benefits that TDR ordinances can provide.

Staff respectfully recommends the adoption of the Commercial (Non-Residential) Work Force Housing Ordinance as currently structured by the County. Consideration of the remaining amendments should be paused to allow for additional public input along with careful consideration of potential implications for existing development patterns and consistency with the Principles for Guiding Development contained within the Area of Critical State Concern.

Respectfully submitted to the Board for use in making its determination.