

**City of Key West Planning Department
P. O. Box 1409, Key West, FL 33041-1409
(305) 809-3720**

Application for Transfer of Transient Units and / or Licenses

Please complete this application in its entirety accompanied by a check for **\$2,000.00** made out to the City of Key West. There are also **separate fees of \$50.00** for Fire Department Review and Advertising and Noticing fee of **\$100.00**. **Deliver the original and 2 signed & sealed surveys and site plans** to the Planning Department at 1300 White Street, Key West. It is suggested that a pre-application discussion be scheduled as well as an appointment to deliver the application. Due to the complexity and individuality of each transaction, the Planning Department may need additional information prior to processing.

This application is for a transaction involving a transfer from one location (sender site) to another (receiver site). If there is an additional site at either end of the transfer process, this requires another application.

The owner(s) of both the sender site and receiver site are the applicants and must sign the application. Corporations and partnerships must sign as legally required. If another person is acting as the agent or authorized representative of the owner, supporting documentation must be provided as indicated.

The application process for a Transient Transfer is:
Development Review Committee (DRC)
Planning Board

A. Fill in the following information.

Sender Site

Receiver Site

Address of Site

Address of Site

RE# _____

RE# _____

Name(s) of Owner(s):

Name(s) of Owner(s):

Name of Agent or Person to Contact:

Name of Agent or Person to Contact:

Address: _____

Address: _____

Telephone _____

Telephone _____

Email _____

Email _____

For Sender Site:

“Local name” of property _____ Zoning district _____

Legal description _____

Current use: _____

Number of existing transient units: _____

Size of site _____ Number of existing city transient rental licenses: _____

What is being removed from the sender site? _____

What are your plans for the sender site? _____

For Receiver Site:

“Local name” of property _____ Zoning district _____

Legal description _____

Current use _____

Size of site: _____ Number of existing city transient rental licenses: _____

Number of existing transient and/or residential units: _____

Existing non-residential floor area _____

What will be transferred to the receiver site? _____

What are your plans for the receiver site? _____

Sender Site: Current Owner Information

FOR INDIVIDUALS

1. NAME _____ 2. NAME _____
ADDRESS _____ ADDRESS _____
TELEPHONE(1) _____ TELEPHONE(1) _____
(2) _____ (2) _____
FAX _____ FAX _____

FOR CORPORATIONS

A. CORPORATE NAME _____
B. STATE/COUNTRY OF INCORPORATION _____
C. REGISTERED TO DO BUSINESS IN THE STATE OF FLORIDA __ YES __ NO
D. NAMES OF OFFICERS AND DESIGNATIONS

FOR PARTNERSHIPS

A. NAME OF PARTNERSHIP: _____
B. STATE OF REGISTRATION: _____
C. GENERAL PARTNER WITH AUTHORITY TO BIND PARTNERSHIP:

FOR CORPORATIONS AND PARTNERSHIPS

NAME AND ADDRESS OF PERSON "IN HOUSE" TO CONTACT:

TELEPHONE(S) _____ FAX _____

Receiver Site: Current Owner Information

FOR INDIVIDUALS

1. NAME _____ 2. NAME _____
ADDRESS _____ ADDRESS _____
TELEPHONE(1) _____ TELEPHONE(1) _____
(2) _____ (2) _____
FAX _____ FAX _____

FOR CORPORATIONS

A. CORPORATE NAME _____
B. STATE/COUNTRY OF INCORPORATION _____
C. REGISTERED TO DO BUSINESS IN THE STATE OF FLORIDA __YES __NO
D. NAMES OF OFFICERS AND DESIGNATIONS

FOR PARTNERSHIPS

A. NAME OF PARTNERSHIP: _____
B. STATE OF REGISTRATION: _____
C. GENERAL PARTNER WITH AUTHORITY TO BIND PARTNERSHIP:

FOR CORPORATIONS AND PARTNERSHIPS

NAME AND ADDRESS OF PERSON "IN HOUSE" TO CONTACT:

TELEPHONE(S) _____ FAX _____

REQUIRED ATTACHMENTS

Sender Site

1. Current survey
2. Current floor plans
3. Copies of current occupational license(s) for transient rental use
OR Letter from City Licensing Official verifying number of licenses and date
4. Copy of last recorded deed to show ownership as listed on application
5. If property is mortgaged, a letter from the mortgagee consenting to the transfer of the transient licenses and the proposed disposition of the property
6. Proposed site plan if changed for future use
7. Proposed floor plans if changed for future use
8. Detailed description of how use of transient rental units will be extinguished.
9. Other _____

Receiver Site

1. Current survey
 2. Current floor plans
 3. Copies of current occupational license(s).
 4. Copy of last recorded deed to show ownership as listed on application
 5. If there is a homeowner's or condominium association, provide proof of the association's approval of the transfer. (This approval must be by a majority vote as defined by the governing documents of the association.)
 6. Proposed site plan if changed for future use
 7. Proposed floor plans if changed for future use
 8. Other _____
- ~ NOTE: The above items constitute one complete application package. Two signed & sealed surveys and site plans are required ~***

SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD & STERLING, PLLC

ATTORNEYS AND COUNSELORS AT LAW

500 FLEMING STREET

KEY WEST, FLORIDA 33040

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ROBERT A. SPOTTSWOOD of Counsel
WILLIAM B. SPOTTSWOOD of Counsel
WILLIAM B. SPOTTSWOOD, JR. of Counsel

September 24, 2020

VIA ELECTRONIC MAIL AND
HAND DELIVERY:

Katie Halloran, Planning Director
City of Key West Planning Department
1300 White Street
Key West, Florida 33040

Re: Amended Transient Unit Transfer Application – Unassigned Transient License
Number 33847 to 536 Fleming Street, Key West, Florida 33040

Mrs. Halloran:

Please allow this letter to act as a formal request to amend the previously submitted application for the above-referenced property. The Applicant would like to revise the sender site information and licenses by deleting what was initially provided and substituting in one (1) transient license with Business Tax Receipt #33847 that was previously associated with the property located at 1213 Georgia Street #2, Key West, Florida 33040 (the “Sender Site”). The enclosed application reflects all up to date information pertaining to both the Sender Site and Receiver Site.

This revision now makes this application pursuant to City of Key West Code Section (“Code”) 122-1339 and 122-1342. The transfer of the transient license will be used for the development of one transient residential unit at the Receiver Site. By way of background, the Receiver Site consists of a three-story brick contributing structure, which has historically been referred to as 500 Simonton Street, Key West, Florida 33040, along with a non-contributing commercial addition attached to the rear which has historically been referred to as 536 Fleming Street, Key West, Florida 33040. The contributing structure currently contains one commercial unit on the first floor and two market rate residential units on the second and third floors, respectively.

The sender site has previously been cleared of its transient use and is being converted to a single-family residential unit.

The transfer proposed in this application satisfies the purpose outlined in Section 122-1336 of the Code. Specifically, this transfer proposes to reduce legally non-compliant density at the Sender Site; allows for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; its protective of environmentally sensitive lands; and the redevelopment is compatible with the existing rate of growth ordinance limits on the allowable number of residential and transient units.

If you have any additional information or have any questions regarding either the Sender Site or Receiver Site information, please do not hesitate to contact me.

Sincerely,



Richard McChesney

Cc:

Daniel Sobczak (via email)

Enc:

Amended Transient Transfer Application

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WILLIAM B. SPOTTSWOOD (of Counsel)

Memorandum

To: William B. Spottswood, Jr.
From: Richard J. McChesney

Subject: Transient Transfer into HNC-1 Zoning District

A. Purpose and Scope

The purpose of this memorandum is to examine the history of the City of Key West Code of Ordinances and Land Development Regulations (collectively the “Code”) to provide clarification on the intent of the Code as it relates to the ability to transfer a transient unit and license from an approved sender site into the HNC-1 zoning district. As it stands, the City of Key West (“City”) has taken the position that a transfer of a transient unit into the HNC-1 zoning District is only permitted where there is no displacement of onsite housing for permanent residents. This means that a proposed transfer of a transient unit to a receiver site that has a market rate residential structure will receive a recommendation of denial from the planning department.

B. Background

Section 122-807, which outlines the intent of the HNC-1 Zoning District, states:

“Within the historic neighborhood commercial (HNC) districts, redevelopment or conversion of permanent housing structures to transient residential, office, or other allowable commercial uses shall be permitted only if no on-site reduction in housing units for permanent residents occurs.”

The issue at hand is derived from a conflict in definitions contained in section 86-9 that changes the interpretation of the above-referenced Code section. Section 86-9 defines “**Permanent Housing**” as “affordable and/or assisted housing that is expected to be available to low/moderate income and/or homeless persons, for an indefinite period of time.” Section 86-9 also contains a definition for “**Market Rate Housing or Permanent Housing**” which is defined as “housing occupied on a full-time basis or seasonally and is not intended for rent for less than 28 days.” However, in analyzing the Code, it is clear that the second definition does not apply to the

transfer of transient units and that transfers to properties within the HNC district with market rate residential units are permitted.

In October of 2013, the City Commission approved ordinance 13-19 (the “Ordinance”) which amended the Code to provide a mechanism to allocate new ROGO units that were granted by the State. This Ordinance became effective in the Code as part of the July 21, 2014 supplement. The April 18, 2014 supplement was the last supplement in existence prior to the approval of the Ordinance. There are three pertinent sections that require review in the April 18, 2014 supplement and they are: Section 86-9 Definition of Terms; Section 122-807 Permitted Uses in the HNC-1 Zoning District; and Section 108 Article X. The relevant sections from the April 18, 2014 Code supplement are below:

Section 86-9 - Definitions

Housing Unit means an occupied or vacant house, apartment, or a single room occupied by one individual, known as a single-room occupancy (SRO), that is intended as separate living quarters.

Permanent Housing means affordable and/or assisted housing that is expected to be available to low/moderate income and/or homeless persons, for an indefinite period of time.

Structure means anything built, constructed or assembled with a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, signs and poster panels, driveways, pools, and ponds.

Section 122-807 – Uses Permitted (HNC-1 Zoning District)

Within the historic neighborhood commercial (HNC) districts, redevelopment or conversion of permanent housing structures to transient residential, office, or other allowable commercial uses shall be permitted only if no on-site reduction in housing units for permanent residents occurs. Uses permitted include the following:

(7) Hotels, motels and transient lodging

Section 108 Article X – Building Permit Allocation System

Please refer to Exhibit A

Section 122-1339 – Transfer of Transient Business Tax Receipt

(a) A business tax receipt for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. *A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site. (emphasis added).*

As outlined above, the City approved the Ordinance which took effect in the Code upon the inclusion of the July 21, 2014 supplement. The relevant sections from the July 21, 2014 Code supplement are below:

Section 86-9 – Definitions

Housing Unit means an occupied or vacant house, apartment, or a single room occupied by one individual, known as a single-room occupancy (SRO), that is intended as separate living quarters.

Market Rate Housing or Permanent Housing means housing occupied on a full time basis or seasonally and is not intended for rent for less than 28 days.

Permanent Housing means affordable and/or assisted housing that is expected to be available to low/moderate income and/or homeless persons, for an indefinite period of time.

Structure means anything built, constructed or assembled with a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, signs and poster panels, driveways, pools, and ponds.

Section 122-807 – Uses Permitted (HNC-1 Zoning District)

Within the historic neighborhood commercial (HNC) districts, redevelopment or conversion of permanent housing structures to transient residential, office, or other allowable commercial uses shall be permitted only if no on-site reduction in housing units for permanent residents occurs. Uses permitted include the following:

(7) Hotels, motels and transient lodging

Section 108 Article X – Building Permit Allocation System

Please refer to Exhibit B

Section 122-1339 – Transfer of Transient Business Tax Receipt

(b) A business tax receipt for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. *A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site. (emphasis added).*

C. Analysis

In reviewing the relevant sections of the April 18, 2014 supplement, noticeably absent is the definition of “Market Rate Housing or Permanent Housing” from Section 86-9. This definition appears for the first time in the July 21, 2014 supplement which created the BPAS allocation procedures for the newly received ROGO units that were approved in the Ordinance. This is important because it clearly establishes that prior to July 21, 2014, the only definition for “Permanent Housing” in the Code would be contrary to the interpretation and application currently in practice by the City.

Also relevant is the continued listing of the definition of “Permanent Housing” in the July 21, 2014 supplement. If the intent of the July 21, 2014 supplement was to affect the transient transfer section of the Code, the definition of “Permanent Housing” would have been deleted.

Section 122-1339 provides context to this analysis as well. The inclusion of the language “A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site” indicates that transfers resulting in the loss of regular housing is possible. If it was contemplated or universally understood that displacement of permanent residents was not ever allowed, this sentence would not need to exist in this section.

In addition to the above-referenced changes in the Code, changes to Florida’s home rule power also provide guidance on how the Code should be interpreted. In 1973 the Florida Legislature passed the Home Rule Powers Act granting local governments the power to pass laws controlling their respective jurisdiction. In 2011, the legislature prohibited cities from regulating short-term vacation rentals. However, the 2011 legislation contained a provision that grandfathered in any ordinance that regulates short-term rentals so long as the ordinance was in place prior to June 1, 2011. Any changes to existing ordinances would invalidate the grandfather status and the State would preempt local law for control over the short-term rentals.

On July 1, 2014, the legislature passed a bill which allows local governments to adopt ordinances specific to short term rentals so long as the changes are not more restrictive on the short-term rentals.

D. Conclusion

Based on the background information and legislative history, the definition of “Permanent Housing” controls in interpreting the viability of transient unit transfers to receiver sites in the HNC-1 zoning district.

Because the “Permanent Housing” definition controls, transfers of transient units into the HNC-1 zoning district could only be denied if the transfer proposed to redevelop or convert a structure on the receiver site that contained affordable and/or assisted housing that is expected to be available to low/moderate income and/or homeless persons, for an indefinite period of time.

The current interpretation by the City that the definition of “Market Rate or Permanent Housing” controls over the “Permanent Housing” definition, means that the Ordinance intended to further restrict the transfer of transient units which would be in violation of the 2011 and 2014

legislation. This interpretation invalidates the grandfathering in of the City transient rental ordinance.

Additionally, the approval and implementation of the Ordinance occurred after both the 2011 and 2014 changes to Florida's Home Rule. Knowing the potential consequences of changing the Code in a way that could revoke the grandfather status of our short-term rental ordinance further confirms that the Ordinance definition of "Market Rate and Permanent Housing" does apply to the transient transfer section of the Code.

*** End ***

Attachments:

Exhibit A – Section 108 - April 18, 2014 Supplement

Exhibit B – Section 108 – July 21, 2014 Supplement

EXHIBIT A – APRIL 18, 2014 SUPPLEMENT

- **ARTICLE X. - BUILDING PERMIT ALLOCATION SYSTEM**

FOOTNOTE(S):

--- (11) ---

Editor's note— Section 1 of Ord. No. 09-07, adopted May 5, 2009, amended the title of Art. X, Building Permit Allocation and Vested Rights, to read as herein set out.

- **DIVISION 1. - GENERALLY**

- **Sec. 108-986. - Definitions.**

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

Accessory units and single room occupancies (SROs) means units that must be deed-restricted as affordable: restricted to occupancy by permanent residents; and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or SRO cannot take up more than 40 percent of the principal structure nor can it exceed 600 square feet and the minimum size shall be 300 square feet. SROs by definition shall be restricted to one-room efficiencies. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the planning board. If such variance is approved, the total square footage shall not exceed 600 square feet.

Administrative official means the official appointed by the city manager to administer this article.

Allocation application means the permanent and/or transient residential building permit allocation application submitted by applicants seeking allocation awards.

Residential unit means a permanent or transient unit, apartment, or dwelling unit as defined in the land development regulations, and expressly includes hotel and motel rooms, manufactured homes or mobile homes, transient quarters, accessory units, and single room occupancies.

Residential unit building permit allocation award and allocation award and award mean the approval to a permanent or transient residential unit allocation application and the issuance of a building permit pursuant thereto.

(Code 1986, § 34.1374; Ord. No. 09-07, § 2, 5-5-2009)

Cross reference— Definitions generally, § 1-2.

- **Sec. 108-987. - Purpose and intent.**

The purpose and intent of the building permit allocation system is to implement the city's comprehensive plan by adopting a residential building permit allocation system limiting annual permanent and transient residential development in the city to:

(1) Reduce hurricane evacuation clearance times pursuant to the Florida Keys hurricane evacuation model known as the Miller Model.

(2) Limit the amount of residential development commensurate with the city's ability to maintain a reasonable and safe hurricane evacuation clearance time of no more than 24 hours.

(3) Regulate the amount of permanent and transient residential building permits in order to prevent further deterioration of public facility service levels, especially the traffic circulation level of service.

(4) Allocate the limited number of permanent and transient residential units available under this article, based upon the goals, objectives and policies set forth in the city comprehensive plan.

(5) Limit units allocated to those which generate from the following sources: City of Key West Comprehensive Plan Policy 1.3.12.1; Memorandums of Agreement between the Department of Community Affairs and the City of Key West; Development Agreements; Settlement Agreements; Consent Final Judgments; units recovered by the city which were previously allocated and unused and subsequently returned to the city; units deriving from decreases in existing residential density and changes in residential uses and subsequently returned to the city.

(Code 1986, § 34.1371; Ord. No. 08-04, § 19, 5-20-2008; Ord. No. 09-07, § 3, 5-5-2009)

- **Sec. 108-988. - Short title.**

This article shall be known and may be cited as the "building permit allocation system ordinance."

(Code 1986, § 34.1372(1); Ord. No. 09-07, § 4, 5-5-2009)

- **Sec. 108-989. - Authority.**

(1) The city, pursuant to F.S. ch. 163, part II, and F.A.C. ch. 9J-5, adopted a comprehensive plan as required by state law; and,

(2) The city, pursuant to F.S. § 163.3202(1), is required to adopt land development regulations that are consistent with and implement the adopted comprehensive plan.

(Code 1986, § 34.1372(2); Ord. No. 09-07, § 5, 5-5-2009)

- **Sec. 108-990. - Applicability.**

This article shall apply to all property within the city except as expressly exempted in section 108-991. Nothing in this article shall relieve the owner of property from complying with other applicable sections of the city land development regulations for development on the property.

(Code 1986, § 34.1372(3))

- **Sec. 108-991. - Development not affected by article.**

Development consistent with the following shall not be affected by the terms of this article, but such development shall comply with all applicable sections of the city's land development regulations:

(1) Any use, development, project, structure, building, fence, sign or activity which does not result in a net addition to the number of equivalent single-family dwelling unit stock.

(2) Redevelopment or rehabilitation which replaces but which does not increase the number of permanent or transient residential dwelling units above that existing on the site prior to redevelopment or rehabilitation.

(3) Units in existence at the time the April 1, 1990 census was prepared are presumed not to be affected by BPAS. The administrative official shall review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, 1990. Units existing in 1990 will be documented through a mandatory site visit by city staff and at least two of the following records:

- a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 1990;
- b. Building permits issued prior to April 1, 1990;
- c. Copies of city directory entries on or about April 1, 1990;
- d. Site visits which indicate that the age of the structure and associated improvements likely pre-date 1990;
- e. Rental, occupancy or lease records from before and including April 1, 1990, indicating the number, type and term of the rental or occupancy;
- f. Copies of state, county, and city licenses on and about April 1, 1990, indicating the number and types of rental units;
- g. Documentation for Keys Energy Service and Florida Keys Aqueduct Authority indicating the type of service (residential or commercial) provided and the number of meters on or about April 1, 1990;
- h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 1990 (Green Card); and
- i. Similar documentation as listed above.

Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based. Provision of documents is the responsibility of the applicant. The administrative official's decision shall be rendered to the department of community affairs for a determination of consistency with the principals for guiding development.

Units which are determined not to be affected by the building permit allocation system per this subsection but which have not been previously acknowledged by the administrative official are presumed to be lawfully established per chapter 122, article II, nonconformities, if the additional following requirements are met:

- a. The applicant satisfies the building department that the unit meets the Florida Building Code, through as-built certifications or other means acceptable to the building official; and
- b. All back fee payments, including impact fee payments, from 1990 onward, as determined by the building department, are made in full.

Transient units which meet the criteria in this subsection will be licensed by the city.

(Code 1986, § 34.1372(4); Ord. No. 09-07, § 6, 5-5-2009)

- **Sec. 108-992. - Exemptions.**

Development consistent with the following shall be exempt from the terms of this article, but such development shall be subject to the terms and limitations of applicable exemption sections and shall comply with all applicable sections of the city's land development regulations:

(1) The holder of an unexpired vested rights order approved by the city.

(Code 1986, § 34.1372(5); Ord. No. 09-07, § 7, 5-5-2009)

- **Sec. 108-993. - Construction of article.**

This article shall be liberally construed to effectively carry out the intent and purpose in the interest of the public health, safety and welfare.

(Code 1986, § 34.1378; Ord. No. 09-07, § 9, 5-5-2009)

- **DIVISION 2. - BUILDING PERMIT ALLOCATION SYSTEM**

FOOTNOTE(S):

--- (12) ---

Editor's note— Sections 10—13 of Ord. No. 09-07, adopted May 5, 2009, deleted Div. 2, §§ 108-1026—108-1028, which pertained to the hearing officer, and derived from the 1986 Code, § 34.1376. Section 14 of Ord. No. 09-07 renumbered Div. 3 as Div. 2; and sections 16, 18, 19, and 22—31 deleted §§ 108-1057, 108-1059, 108-1060, Div. 4, and §§ 108-1091—108-1099, respectively. The former sections and division pertained to various provisions pertaining to allocations, adjustments, and vested rights, and derived from the 1986 Code, §§ 34.1375 and 34.1377.

- **Sec. 108-994. - Established.**

The city establishes a building permit allocation system in order to limit the number of permits issued for permanent and transient units by structure type and affordability level (as shown on the following table) to those available through the following means:

(1) Units generating from policy 1-3.12.1 of the comprehensive plan that have not been allocated.

(2) Legal mechanisms including memorandums of agreement between the department of community affairs and the City of Key West, development agreements, settlement agreements and consent final judgments.

(3) Units as recovered by the city which were either previously allocated and unused or which derive from units which are determined not be affected by this article per section 108-991.

Residential Structure Type	Equivalent Single-Family Unit Factor ⁽¹⁾
Single-family	1.00 ^(a)
Accessory apt./SRO	0.55 ^(b)
Multifamily	1.00 ^(c)
Transient unit	0.58 ^(d)
Total	NA

⁽¹⁾ Pursuant to comprehensive plan policy 1-12.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 1990 U.S. Census for the respective residential structure types divided by the vehicles per single-family units (i.e., 1.08 vehicles per unit). The computations are as follows:

^(a) Single-family: $1.8/1.8 = 1.00$

^(b) Accessory apartment or single room occupancy (SRO): $1.00/1.80 = 0.55$

^(c) Multifamily: $1.8/1.8 = 1.00$

^(d) Transient unit: 0.58 is consistent with the traffic generating assumptions of the county hurricane evacuation model.

(Ord. No. 09-07, § 15, 5-5-2009)

Editor's note—

Section 15 of Ord. No. 09-07, renumbered § 108-1056 as § 108-994, to read as herein set out. Former § 108-1056 derived from § 34.1375 of the 1986 Code.

- **Sec. 108-995. - Reporting requirements and adjustments in residential allocation schedule.**

The administrative official will provide an annual report to the planning board and city commission providing the results of tracking and monitoring requirements and recommendations for any changes in the allocation by structure type or intended use. The annual report shall track all inputs to the system, per section 108-994, as well as allocations to the system by structure and use type.

The table in section 108-994 illustrating the allocation of building permits by structure type shall be subject to evaluation by the city commission annually and the allocation by structure type may be adjusted to accommodate shifts in supply and demand factors; however, under no circumstances will the allocations for affordable housing constitute less than 30 percent of the total ESFU available for allocation since 1990, nor shall the transient unit allocation exceed 25 percent of the ESFU available for allocation since 1990. Because transient allocations have exceeded 25 percent of the total ESFU, no further new transient allocations will be made under this system. Provided, however, that the city shall reserve a minimum number of units for beneficial use claims. A determination of the minimum number of units shall be based upon available data illustrating parcels potentially subject to relief pursuant to section 108-998. Remaining units shall be allocated in accordance with the Comprehensive Plan and Land Development Regulations.

(Ord. No. 09-07, § 17, 5-5-2009; Ord. No. 10-10, § 1, 5-18-2010)

Editor's note—

Section 17 of Ord. No. 09-07, renumbered § 108-1058 as § 108-995, to read as herein set out. Former § 108-1058 derived from § 34.1375 of the 1986 Code.

- **Sec. 108-996. - Period of allocation.**

Allocations other than those granted for beneficial use pursuant to section 108-998 shall be for a one-year period during which time a building permit must be obtained, unless a longer period is approved by resolution as part of a development plan, conditional use or development agreement approval. A single one-year renewal of an allocation shall be granted by the administrative official prior to the expiration of the allocation. One extension for a period of 12 months shall be granted by the planning board provided that the applicant makes application prior to the expiration of the allocation and demonstrates reasonable cause for the extension. No further extensions can be granted. Allocation for beneficial use pursuant to section 108-998 shall be for a period of two years during which time a building permit must be obtained. A single two-year extension of a beneficial use allocation shall be granted by the administrative official prior to the expiration of the allocation. Unused units will be returned to the system for reallocation.

(Ord. No. 09-07, § 20, 5-5-2009; Ord. No. 10-10, § 2, 5-18-2010)

Editor's note—

Section 20 of Ord. No. 09-07, renumbered § 108-1061 as § 108-996, to read as herein set out. Former § 108-1061 derived from § 34.1375 of the 1986 Code; and Ord. No. 08-04, adopted May 20, 2008.

- **Sec. 108-997. - Tracking and monitoring system.**

(a) The administrative official shall develop and maintain a tracking system which indicates the number of single-family equivalent units by structure type and by affordability level allocated since April 1, 1990.

(Ord. No. 09-07, § 21, 5-5-2009)

Editor's note—

Section 21 of Ord. No. 09-07, renumbered § 108-1062 as § 108-997, to read as herein set out. Former § 108-1062 derived from § 34.1375 of the 1986 Code.

- **Sec. 108-998. - Procedures for ensuring beneficial use of private property.**

(a) It is the policy of the city that neither provisions of the comprehensive plan nor the land development regulations shall deprive a property owner of all reasonable economic use of a parcel of real property which is a lot or parcel of record as of the date of adoption of the comprehensive plan. An owner of real property may apply for relief from the literal application of applicable land use regulations or of this plan when such application would have the effect of denying all economically reasonable or viable use of that property unless such deprivation is known to be necessary to prevent a nuisance under state law or in the exercise of the city's police power to protect the health, safety, and welfare of its citizens. All reasonable economic use shall mean the minimum use of the property necessary to avoid a taking within a reasonable period of time as established by land use case law.

(b) The relief to which an owner shall be entitled may be provided through the use of one or a combination of the following:

- (1) Granting of a permit for development which shall be deducted from the permit allocation system.
- (2) Granting the use of transfer of development rights (TDRs) consistent with the comprehensive plan.
- (3) Purchasing by the city of all or a portion of the lots or parcels upon which all beneficial use is prohibited.
- (4) Such other relief as the city may deem appropriate and adequate.

The relief granted shall be the minimum necessary to avoid a taking of the property under existing state and federal law.

(c) Development approved pursuant to a beneficial use determination shall be consistent with all other objectives and policies of the comprehensive plan and land development regulations unless specifically exempted from such requirements in the final beneficial use determination.

(Code 1986, § 34.1377(4); Ord. No. 09-07, § 32, 5-5-2009)

Editor's note—

Section 32 of Ord. No. 09-07, renumbered § 108-1100 as § 108-998.

- **Sec. 108-999. - Zoning in progress.**

City staff shall defer the acceptance and processing of applications dated after November 16, 2011 for building permit allocations with exception of requests for beneficial use allocations until new land development regulations are adopted, or until the passage of 365 days, whichever occurs first. This deferment shall be extended retroactively from November 16, 2012, for an additional 365 days or until new land development regulations are adopted, whichever occurs first.

(a) This deferment may be extended by resolution of the city commission for an additional period of 180 days in order to complete the tasks outlined herein.

EXHIBIT B – JULY 21, 2014 SUPPLEMENT

- **ARTICLE X. - BUILDING PERMIT ALLOCATION SYSTEM**

FOOTNOTE(S):

--- (11) ---

Editor's note— Section 1 of Ord. No. 09-07, adopted May 5, 2009, amended the title of Art. X, Building Permit Allocation and Vested Rights, to read as herein set out.

- **DIVISION 1. - GENERALLY**
- **Sec. 108-986. - Definitions.**

The definitions for terms identified in this chapter are found in chapter [section] 86-9, definition of terms, and are applicable throughout the land development regulations.

Accessory units and single room occupancies (SROs) means units that must be deed-restricted as affordable: restricted to occupancy by permanent residents, and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or SRO cannot take up more than 40 percent of the principal structure nor can it exceed 600 square feet and the minimum size shall be 300 square feet. SROs by definition shall be restricted to one-room efficiencies. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the planning board. If such variance is approved, the total square footage shall not exceed 600 square feet.

(Code 1986, § 34.1374; Ord. No. 09-07, § 2, 5-5-2009; Ord. No. 13-19, § 2, 11-6-2013)

Cross reference— Definitions generally, § 1-2.

- **Sec. 108-987. - Purpose and intent.**

The intent of the building permit allocation system is to implement the city's comprehensive plan by updating the city's residential building permit allocation system limiting annual permanent and transient residential development in the city in order to:

- (1) Reduce or maintain hurricane evacuation clearance times measured by the Transportation Interface for Modeling Evacuations (TIME) Model for the Florida Keys.
- (2) Limit the amount of residential development commensurate with the city's ability to maintain a reasonable and safe hurricane evacuation clearance time of no more than 24 hours for permanent residents.
- (3) Regulate the amount of permanent and transient residential building permits in order to maintain and improve public facility service levels.
- (4) Allocate the limited number of permanent and transient residential units available under this article, based upon the goals, objectives and policies set forth in the city comprehensive plan.
- (5) Limit units allocated from the BPAS by using those units which are identified and derive from the following sources: City of Key West Comprehensive Plan Policy 1.1.1.1; units recovered by the city which

were previously allocated and unused and subsequently returned to the city; units recaptured by the city which are derived from decreases in existing residential density and changes in residential uses and subsequently returned to the city through the waiver and release of building permit allocation process and any pre-existing reserve units.

(Code 1986, § 34.1371; Ord. No. 08-04, § 19, 5-20-2008; Ord. No. 09-07, § 3, 5-5-2009; Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-988. - Short title.**

This article shall be known and may be cited as the "building permit allocation system ordinance."

(Code 1986, § 34.1372(1); Ord. No. 09-07, § 4, 5-5-2009)

- **Sec. 108-989. - Authority.**

(1) The city, pursuant to F.S. Ch. 163, part II, adopted a comprehensive plan as required by state law; and

(2) The city, pursuant to F.S. § 163.3202(1), is required to adopt land development regulations that are consistent with and implement the adopted comprehensive plan.

(Code 1986, § 34.1372 (2); Ord. No. 09-07, § 5, 5-5-2009; Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-990. - Applicability.**

This article shall apply to the development of all new permanent and transient residential units within the city that shall be allocated as provided for herein except as expressly exempted in section 108-991. Nothing in this article shall relieve the owner of property from complying with other applicable sections of the city land development regulations for development on the property.

(Code 1986, § 34.1372(3); Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-991. - Development not affected by article.**

Development consistent with the following shall not be affected by the terms of this article, but such development shall comply with all applicable sections of the city's land development regulations:

(1) Any use, development, project, structure, building, fence, sign or activity which does not result in a net addition to the number of residential dwelling unit stock.

(2) Redevelopment or rehabilitation which replaces but which does not increase the number of dwelling units above that existing on the site prior to redevelopment or rehabilitation.

(3) Units determined to have been in existence at the time the April 1, 2010, census was prepared are presumed not to be affected by BPAS. The city planner shall review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, 2010. Units existing in 2010 will be documented through a mandatory site visit by city staff and at least two of the following records:

a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 2010;

- b. Building permits issued prior to April 1, 2010;
- c. Copies of city directory entries on or about April 1, 2010;
- d. Site visits which indicate that the age of the structure and associated improvements likely pre-date 2010;
- e. Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;
- f. Copies of state, county, and city licenses on and about April 1, 2010, indicating the number and types of rental units;
- g. Documentation for Keys Energy Service, Florida Keys Aqueduct Authority and other available utilities indicating the type of service (residential or commercial) provided and the number of meters on or about April 1, 2010;
- h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010, (Green Card); and
- i. Similar documentation as listed above.

Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based. Provision of documents is the responsibility of the applicant. The city planner's decision shall be rendered to the department of economic opportunity for a determination of consistency with the principals for guiding development.

Units which are determined not to be affected by the building permit allocation system per this subsection but which have not been previously acknowledged by the city planner are presumed to be lawfully established per chapter 122, article II, nonconformities, if the additional following requirements are met:

- a. The applicant satisfies the building department that the unit meets the Florida Building Code, through as-built certifications or other means acceptable to the building official; and
- b. Fees: All back fee payments shall be paid current and in full, from the date determined to be the established date of the unit. All impact fees shall be paid in full for units determined to have been established after the implementation of the Impact Fee Ordinance (January 1, 1985).
- c. Occupational license with the city is updated, and street addresses are assigned commensurate with the updated unit count.

Transient units which meet the criteria in this subsection will be licensed by the city.

(Code 1986, § 34.1372(4); Ord. No. 09-07, § 6, 5-5-2009; Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-992. - Exemptions.**

Development consistent with the following shall be exempt from the terms of this article, but such development shall be subject to the terms and limitations of applicable exemption sections and shall comply with all applicable sections of the city's land development regulations:

(1)The holder of an unexpired vested rights order approved by the city.

(Code 1986, § 34.1372(5); Ord. No. 09-07, § 7, 5-5-2009)

- **Sec. 108-993. - Construction of article.**

This article shall be liberally construed to effectively carry out the intent and purpose in the interest of the public health, safety and welfare.

(code 1986, § 34.1378; Ord. No. 09-07, § 9, 5-5-2009)

- **DIVISION 2. - BUILDING PERMIT ALLOCATION SYSTEM**

FOOTNOTE(S):

--- (12) ---

Editor's note— Sec. 2 of Ord. No. 13-19, adopted Nov. 6, 2013, amended division 2 in its entirety to read as herein set out. Former div. 2 consisted of §§ 108-994—108-999, pertained to the same subject matter and derived from Ord. No. 09-07, adopted May 5, 2009; Ord. No. 10-10, adopted May 18, 2010; Ord. No. 12-15, adopted June 5, 2012; and Ord. No. 13-01, adopted Jan. 8, 2013.

- **Sec. 108-994. - Established.**

The city establishes a building permit allocation system in order to limit the number of permits issued for permanent and transient units by structure type and affordability level (as shown on Table 1.0 below) to those available through the following means:

(1) Units generating from policy 1-1.1.1 of the comprehensive plan that have not been allocated.

(2) Legal mechanisms including memorandums of agreement between the Florida Department of Economic Opportunity and the City of Key West, development agreements, settlement agreements and consent final judgments.

(3) Units as recovered by the city which were either previously allocated and unused or which derive from units which are determined not be affected by this article per section 108-991

Table 1.0 >	
Residential Structure Type	Equivalent Single-Family Unit Factor ⁽¹⁾
Single-family	1.00 ^(a)

Table 1.0 >	
Residential Structure Type	Equivalent Single-Family Unit Factor ⁽¹⁾
Accessory apt./SRO	0.78 ^(b)
Multifamily	1.00 ^(c)
Transient unit	0.86 ^(d)
Nursing home, rest home, assisted living facility and convalescent home	0.10 ^(e)

⁽¹⁾ Pursuant to comprehensive plan policy 1-1.16.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 2010 U.S. Census for the respective residential structure types divided by the vehicles per single-family units (i.e., 1.28 vehicles per unit). The computations are as follows:

^(a) Single-family: $1.28/1.28 = 1.00$

^(b) Accessory unit, single room occupancy (SRO): $1.00/1.28 = 0.78$

^(c) Multifamily: $1.28/1.28 = 1.00$

^(d) Transient unit: $1.10/1.28 = 0.86$ based on the Transportation Interface for Modeling Evacuations (TIME) Model for the Florida Keys (1.10 vehicles per transient unit in Monroe County).

^(e) Nursing home, rest home, assisted living facility and convalescent home: $1.0/10 = 0.10$ based on provisions set forth in chapter [section] 86-9, definition of terms.

(Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-995. - Reporting requirements and residential allocation schedule.**

The City of Key West building permit allocation system shall limit the number of permits issued for new permanent and transient development, to 910 units during the period from July 2013 to July 2023, with the exception of the beneficial use permit allocations that have been reserved separately to address property rights claims. The annual allocation will be ninety-one (91) single-family units or an equivalent combination of residential and transient types based on the equivalency factors established in policy 1-1.15.3 of the comprehensive plan.

In order to address the ongoing affordable housing shortage and affordable housing deed restrictions expected to expire, during the first three years (July 2013—July 2016) 60 percent of the units allocated shall be affordable. Between years four (4) and ten (10) (2016—2023), 50 percent shall be affordable. Between years four (4) and ten (10), 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. During year one (1) (July 2013—2014), 48 of the affordable units to be allocated will be dedicated for use at the Peary Court Housing complex property, being transferred from military to private sector housing, and shall meet the prerequisite standards for obtaining BPAS awards. Table 2.0 below identifies the number of units that may be allocated at a rate of 1.0 ESFU's by housing type and by year for the period from July 2013 to July 2023.

	July 1, 2013 - June 30, 2014	July 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016	July 1, 2016 - June 30, 2017	July 1, 2017 - June 30, 2018	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022	July 1, 2022 - June 30, 2023
48 affordable units to be allocated for Peary Court development. Minimum of 7 affordable units. Maximum of 36 market rate units.	Minimum of 55 affordable units. Maximum of 36 market rate units.	Minimum of 55 affordable units. Maximum of 36 market rate units.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, which a maximum of ten (10) units may be transient.

The city planner will provide an annual report to the planning board and the state land planning agency identifying any remaining or unused allocations, and the number of permits by building type by

September 1 of each year as stipulated in the 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding. The first report will be published in 2014.

(Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-996. - Intent.**

It is the intent of the City of Key West to create and manage a building permit allocation system that:

- (a) Is open to all property owners who wish to participate;
- (b) Establishes a minimum baseline standard for all new units and buildings that assures sustainability, environmental responsibility, human health and safety; and
- (c) Is cost effective and easily administered by city staff.

(Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-997. - Period of allocation and ranking/review of applications.**

(a) *Application and allocation period.* The annual building permit allocation period will begin in July of each year. Applications will be accepted between the first of July and mid-September. Applications will be reviewed and ranked by city staff and the final determination of award will be made by the planning board no later than March 1. Based on the level of proposed development, development plan approvals will be reviewed by the relevant boards and commissions by May of each year.

(b) *Prerequisites.*

(1) *Prerequisite major construction/renovation* means the minimum standards for new development, including additions to existing structures, or redevelopment constituting more than 50% of the value of the building, required in order to be eligible to receive an allocation award from the BPAS system as follows:

a. All new units shall be constructed in compliance with and obtain a baseline green building certification.

b. All new buildings shall be constructed so as to have the first habitable floor 1.5 feet above the required base flood elevation, with the exception of properties located within the historic zoning districts, where the applicant must first demonstrate that such elevation does not interfere with the essential form and integrity of properties in the neighborhood by obtaining a certificate of appropriateness.

c. All new buildings shall be constructed with a rainwater catchment system that will hold a minimum of 1,000 gallons of water or an amount equivalent to 100% of the new roof area in gallons whichever is greater.

(2) *Prerequisite, minor renovation* means the minimum standards for redevelopment constituting less than 50% of the value of the building, required. In order to be eligible to receive an allocation award from the BPAS system applicants must demonstrate water and energy use 15% below the Florida Building Code using recognized energy and water rating standards.

(c) *Point system.* The city building permit allocation system application review and ranking process shall be administered by staff and shall be based on the point system established in the criteria listed below. The criteria shall apply to both affordable and non-affordable units proposed for construction. However, applicants for affordable unit awards shall compete only for other affordable housing unit allocations, and not for the market rate unit allocations.

(1) The following criteria and point system shall be utilized in the ranking of applications for development of three or more non-transient units as follows:

- a. Building more than 1.5' higher than the base flood elevation: 5 points.
- b. Exceeding the minimum required percentage of affordable housing: 5 points.
- c. Achieving Green Building Certification Upgrade 1: 30 points.
- d. Achieving Green Building Certification Upgrade 2: 40 points.
- e. Achieving Green Building Certification Upgrade 3: 60 points.
- f. Voluntary contribution to the arts in public places fund or tree fund in the amount of \$5,000.00 or more: 10 points.
- g. Design by a LEED accredited architect: 10 points.
- h. Providing electrical high voltage sized conduit for future electric car charging station near parking area: 5 points.
- i. Using light colored, high reflectivity materials for all non-roof/areas with a solar reflectance index (SRI) of at least 29: 10 points.
- j. Providing additional on-site open space or on-site recreational facilities: 10 points.
- k. Designing the buildings with a vegetated roof of at least 50% of the roof area: 15 points.

(2) The following criteria and point system shall be utilized in the ranking of applications for development of one or two non-transient units as follows:

- a. Building more than 1.5' higher than the base flood elevation: 5 points.
- b. Voluntarily providing affordable housing units: 10 points.
- c. Achieving Green Building Certification Upgrade 1: 30 points.
- d. Achieving Green Building Certification Upgrade 2: 40 points.
- e. Achieving Green Building Certification Upgrade 3: 60 points.
- f. Voluntary contributions to the arts in public places fund or tree fund in the amount of \$1,000.00 or more: 10 points.
- g. Design by a LEED accredited architect: 10 points.
- h. Providing electrical high voltage sized conduit for future electric car charging station near parking area: 5 points.

i. Using light colored, high reflectivity materials for all non-roof/areas with a solar reflectance index (SRI) of at least 29: 10 points.

j. Using light colored, high reflectivity roofing materials with a solar reflectance index (SRI) of at least 29: 5 points.

k. Designing the buildings with a vegetated roof of at least 50% of the roof area: 15 points.

(d) Application review process - review, ranking, initial announcement and final determination of award. Applications received by the application closing date (mid-September) of each year will be evaluated by staff for completeness and applicants will be notified of any deficiencies in the application and be provided a timeframe within which deficiencies can be resolved. In the event that all market rate units are not claimed or applied for, after initial staff evaluation of the applications, any remaining market rate units may be awarded for affordable housing purposes.

Upon ranking, in the event that two applications are determined to have the same numerical ranking score, and units are not available to provide awards to both projects, a drawing of lots will determine the awardee. Additionally, official ranking and initial announcement of award information shall be published by the planning department by December 15 of the application year. Based on staff recommendation the planning board shall make the final determination of award by March 1 of the award year.

Applications that receive final determination of award by the planning board and that require development review shall be heard by the development review committee no later than March of the award year. Applicants will be given a limited period of time to amend their applications and will subsequently be scheduled for review by the planning board no later than May of the award year. If required, city commission review will be scheduled no later than June, so that the allocation can be made no later than one year from the receipt of the application or July 13 of the award year.

(e) Recovered units. Building permits shall be obtained within two years of the final award date. If a building permit is not issued within that timeframe the allocated units will revert back to the city as a recovered unit for allocation during the following sequential award year. If the recovered units are not allocated within the next sequential award year such units will be returned to the department of economic opportunity for redistribution pursuant to provisions in the 2012 Hurricane Evacuation Modeling Memorandum of Understanding.

(f) Affordable unit allocations.

1. All units allocated as affordable are subject to subsections 122-1467(c), (d), (e), and (f) of the workforce housing ordinance.

2. Applicant eligibility requirements are subject to subsections 122-1469(2) through (15) of the workforce housing ordinance.

3. Affordable housing projects enabled by federal tax credit housing are not subject to [subsection] 122-1467(c).

(g) Transient unit allocation process. Regulations for the allocation of transient units shall be established by April 1, 2016.

(h) *Penalty.* For projects that fail to achieve the green building standard certification, as purported in the application for which the award was granted, final certificate of occupancy will not be awarded until such time that the applicant is able to establish that the green building standard has been achieved.

(Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-998. - Compact infill development and mixed use development incentives.**

The city recognizes the need to encourage the redevelopment of aging commercial properties located within the city in order to promote housing opportunities in proximity to existing employment centers, and alternative transportation routes. Such development shall be known as compact infill development.

In order to encourage urban infill projects that meet design principles and standards contained in Comprehensive Plan Policy 1-1.1.4 residential density bonuses shall be allowed as follows:

Existing or Proposed Commerical Development	Additional Density Allowed - Market Rate (MR) and Affordable Housing (AH)	
2,500 s.f of floor area	0 MR	1 AH
5,000 s.f of floor area	0 MR	2 AH
10,000 s.f of floor area	0 MR	3 AH
12,500 s.f of floor area	1 MR	3 AH
15,000 s.f of floor area	2 MR	4 AH
20,000 s.f of floor area	3 MR	5 AH
25,000 s.f of floor area	4 MR	6 AH
30,000 s.f of floor area	5 MR	6 AH

For redevelopment and/or development projects that meet the criteria for density bonuses the following design principals are required:

a. *Housing types:* Provide for a range of housing types, inclusive of apartments, townhouses, efficiencies, accessory units and single room occupancies.

b. *Pedestrian and bicycle linkage*: Provide safe on-site bicycle and pedestrian circulation with connectivity to the city's existing bicycle and pedestrian pathway network. Provide enclosed bicycle storage area for residents.

c. *Mixed use redevelopment*: For development including commercial floor area, provide enclosed bicycle storage area together with shower facilities for the bicycle user employees.

d. *Open space and recreation*: Provide a minimum of 5% more than the open space requirement, of which a minimum of 35% shall be designed as collective community gathering/recreation space.

(Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-999. - Procedures for ensuring beneficial use of private property.**

(a) It is the policy of the city that neither provisions of the comprehensive plan nor the land development regulations shall deprive a property owner of all reasonable economic use of a parcel of real property which is a lot or parcel of record as of the date of adoption of the comprehensive plan (August 10, 1993) or lots of record which have been reconfigured such that the number of minimum sized lots are not increased. An owner of real property may apply for relief from the literal application of applicable land use regulations or of this plan when such application would have the effect of denying all economically reasonable or viable use of that property unless such deprivation is known to be necessary to prevent a nuisance under state law or in the exercise of the city's police power to protect the health, safety, and welfare of its citizens. All reasonable economic use shall mean the minimum use of the property necessary to avoid a taking within a reasonable period of time as established by land use case law.

(b) The relief to which an owner shall be entitled may be provided through the use of one or a combination of the following:

(1) Granting of a permit for development which shall be deducted from the pre-existing reserve units/beneficial use pool reserved to address outstanding beneficial use claims. All units that are recaptured by the city through a waiver and release of building permit allocation for residential units lawfully existing prior to May 2, 2013 shall be recorded and dedicated for beneficial use only. Beneficial use allocations shall be valid until such time that the owner chooses to obtain building permits, so long that no changes are made to the configuration or size of the lot or parcel that affect the conditions in which the beneficial use allocation is granted as described in subsection (a) above.

(2) Granting the use of transfer of development rights (TDRs) consistent with the comprehensive plan.

(3) Purchasing by the city of all or a portion of the lots or parcels upon which all beneficial use is prohibited.

(4) Such other relief as the city may deem appropriate and adequate.

The relief granted shall be the minimum necessary to avoid a taking of the property under existing state and federal law.

(c) Development approved pursuant to a beneficial use determination shall be consistent with all other objectives and policies of the comprehensive plan and land development regulations unless specifically exempted from such requirements in the final beneficial use determination.

(Ord. No. 13-19, § 2, 11-6-2013)

- **Sec. 108-1000. - Allocation of residential permits in the Truman Waterfront Redevelopment Area.**

In order to facilitate redevelopment of the Truman Waterfront Parcel, equivalent single-family unit values and associated development rights may be transferred from anywhere within the city to land use classifications within the Truman Waterfront Parcel which allow residential development. This is not a transfer of density; rather, it pertains to the transfer of units which are recognized or vested in accordance with the building permit allocation ordinance. Any density associated with the unit host site will remain on that site; however, once the unit is transferred, the density on the host site cannot be developed until units are allocated through the building permit allocation ordinance. The planning department shall maintain records of the transfer of units under this provision.

(Ord. No. 13-11, § 2, 11-6-2013)

- **Secs. 108-1001—108-1125. - Reserved.**