



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board Members

From: Donald Leland Craig, AICP, Planning Director

Meeting Date: April 19, 2012

Agenda Item: Zoning in Progress – A resolution amending Planning Board Resolution 2012-04, and recommending amendment to Chapter 108 of the Code of Ordinances entitled “Planning and Development” to include Section 108-999 to provide for the retroactive invoking of the Zoning in Progress Doctrine; declaring that the City is considering amendments to its Land Development Regulations and Building Permit Allocation System; directing Building and Planning Department staff to continue the policy of deferring the acceptance and processing of development applications requiring the issuance of building permit allocations; continuing this policy until new building permit allocation regulations or amended Land Development Regulations are adopted by the City Commission; providing for retroactive effect, directing staff to continue preparations of new Building Permit Allocation Regulations; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Background: In accordance with the requirements of Section 108-995 of the Land Development Regulations, Planning Department staff has been tracking and monitoring the Building Permit Allocation System (BPAS). The Department recently finalized the BPAS 2010-2011 Annual Report, providing for recommendations with respect to adjustments in the building permit allocation schedule. As a result of the findings of the report, the Planning Department, upon coordination with the City’s Legal Department, recommends the invoking of Zoning in Progress while City staff updates the BPAS ordinance.

The BPAS report identified a limited number of allocations available, and the fact that the 2011 BPAS Annual Report identified a situation wherein existing BPAS allocations are subject to requests for any market rate purpose. This situation in light of the renewed demand for new residential development, when not described by a pause in allocation of units, would allow the capture of all available BPAS allocations by a single person or entity, not in conformance with other parts of the Comprehensive Plan.

The Planning Board recently approved a resolution recommending to the City Commission the invoking of Zoning in Progress (Resolution 2012-04). However, it is staff's recommendation to amend the resolution and propose the invoking of Zoning in Progress doctrine by means of ordinance to comport with the necessary specifics of law, which requires resolutions affecting the land use, timing, development, or location of development be adopted by ordinance only.

Review Criteria:

Section 90-522 of the Code of Ordinances outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning Board review of proposed changes in Land Development Regulations.

(a) The Planning Board, regardless of the source of the proposed change in the Land Development Regulations, shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in section 90-521.

Sec. 90-521. Criteria for approving amendments to official zoning map.

In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure, minimum levels of service standards and the concurrency management program.

The proposed change does not impact the official zoning map or underlying future land use map designations. It does provide for the invoking of Zoning in Progress as a measure to plan for future modifications to the existing Building Permit Allocation System ordinance, which itself exists to implement specific policies in the Comprehensive Plan.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed modifications appear consistent with all applicable requirements of the Code.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing

regulations, and whether such changes support or work against the proposed rezoning.

The underlying need for a Building Permit Allocation System remains the same as it did when the Comprehensive Plan was originally adopted. However, clarifications and modifications to the implementing ordinance are required due to changed conditions over time.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

This proposal does not impact land use classifications; therefore, this provision is not applicable.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

The proposed ordinance modifications affect the allocation of residential units and do not impact concurrency determinations or other public facility determinations in the Comprehensive Plan and Land Development Regulations. All development and redevelopment must comply with those regulations.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

The proposed ordinance modification relates to the allocation of residential units and does not impact existing natural resource protection regulations.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

The invoking of Zoning in Progress is not anticipated to adversely affect property values in the area or the general welfare.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

This modification is not expected to have any new impact on existing land use patterns.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The proposal is not in conflict with the public interest, and is in harmony with the purpose and interest of the land development regulations.

(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.

Modifications to the Building Permit Allocation System are necessary to clarify provisions of the system. Further changes are also expected as part of updates to the Comprehensive Plan.

PROCESS

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the state land planning agency, which will have 60 days to issue an order of consistency.

RECOMMENDATION

The Planning Department recommends the amending of Planning Board Resolution 2012-04, and the recommendation of the attached ordinance invoking of the Zoning in Progress Doctrine to the City Commission.

**Draft
Resolution**

**PLANNING BOARD
RESOLUTION NO. 2012-____**

A RESOLUTION AMENDING PLANNING BOARD RESOLUTION 2012-04, AND RECOMMENDING AMENDMENT TO CHAPTER 108 OF THE CODE OF ORDINANCES ENTITLED “PLANNING AND DEVELOPMENT,” TO INCLUDE SECTION 108-999 TO PROVIDE FOR THE RETROACTIVE INVOKING OF THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS AND BUILDING PERMIT ALLOCATION SYSTEM; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO CONTINUE THE POLICY OF DEFERRING THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS REQUIRING THE ISSUANCE OF BUILDING PERMIT ALLOCATIONS; CONTINUING THIS POLICY UNTIL NEW BUILDING PERMIT ALLOCATION REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION; PROVIDING FOR RETROACTIVE EFFECT, DIRECTING STAFF TO CONTINUE PREPARATIONS OF NEW BUILDING PERMIT ALLOCATION REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 108-995 of the Land Development Regulations requires the City’s Administrative Official to 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 of the City’s Building Permit Allocation; and

WHEREAS, the 2010-2011 Building Permit Allocation Annual Report provides

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

_____ Chairman

_____ Planning Director

recommendations based on the implementation of the Building Permit Allocation System; and

WHEREAS, the Planning Department began documented efforts concerning the subject on at least November 16, 2011; and

WHEREAS, in order to provide for the orderly allocation of a very limited number of existing building permit allocations, the City of Key West Planning Department proposes the invoking of the Zoning in Progress Doctrine to the City of Key West Planning Board for consideration of recommendation to the City Commission to temporarily halt the issuance of building permits pending the passage of a Building Permit Allocation System; and

WHEREAS, the Planning Board approved a resolution invoking the Zoning in Progress Doctrine on January 19, 2012 through Resolution 2012-04; and

WHEREAS, an amendment to Chapter 108 of the Code of Ordinances is necessary to provide for the retroactive invoking of the zoning in progress doctrine; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That Section 1 of Planning Board Resolution 2012-04 is supplemented as follows:

That pursuant to the pending legislation doctrine set forth in Smith v. City of Clearwater, 383

Page 2 of 4
Resolution Number ____

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

_____ Chairman

_____ Planning Director

So. 2d 681 (Fla. 2nd DCA 1980), with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations. Chapter 108, Article X, of the Code of Ordinances is hereby amended as follows*:

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 to requests for beneficial use allocations until new land development regulations are adopted, or until the passage of 365 days, whichever occurs first.

108-999~~1000~~-108-1125- Reserved

Section 2. That Section 2 is amended as follows:

That this policy shall be in effect until new Land Development Regulations or amended Land Development Regulations are adopted by the City Commission or until the passage of ~~365~~ 180 days, whichever occurs first.

Section 3. That Section 5 is amended as follows:

Should the City Commission recommend approval of Zoning in Progress, the adoption of the City Commission resolution shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this resolution. A copy of this resolution shall also be posted at City Hall for the next ~~365~~ 180 days.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

_____ Chairman

_____ Planning Director

Section 3. All other provisions of Planning Board Resolution 2012-04 remain in full force and effect.

Section 4. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting held this ____ day of ____, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director.

Richard Klitenick, Chairman
Key West Planning Board

Date

Attest:

Donald Leland Craig, AICP
Planning Director

Date

Filed with the Clerk:

Cheryl Smith, City Clerk

Date

Page 4 of 4
Resolution Number ____

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Chairman

Planning Director

**Draft
Ordinance**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST AMENDING CHAPTER 108 OF THE CODE OF ORDINANCES ENTITLED "PLANNING AND DEVELOPMENT" TO INCLUDE SECTION 108-999 TO PROVIDE FOR THE RETROACTIVE INVOKING OF THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS AND BUILDING PERMIT ALLOCATION SYSTEM; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO CONTINUE THE POLICY OF DEFERRING THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS REQUIRING THE ISSUANCE OF BUILDING PERMIT ALLOCATIONS; CONTINUING THIS POLICY UNTIL NEW BUILDING PERMIT ALLOCATION REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION; PROVIDING FOR RETROACTIVE EFFECT, DIRECTING STAFF TO CONTINUE PREPARATIONS OF NEW BUILDING PERMIT ALLOCATION REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the Land Development Regulations in accordance with certain procedures and criteria;

WHEREAS, pursuant to Section 90-522, the Planning Board held a noticed public hearing on _____; where based on the consideration of recommendations of the City Planner, City Attorney, Building

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Official and other information recommended approval of the proposed amendments with modifications; and

WHEREAS, the City Commission held a noticed public hearing on _____ and a second public hearing on _____ and in its deliberations considered the criteria identified in Section 90-521 of the Code of Ordinances; and

WHEREAS, the City determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 108, Article X, of the Code of

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Ordinances is hereby amended as follows*:

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 to requests for beneficial use allocations until new land development regulations are adopted, or until the passage of 365 days, whichever occurs first.

108-~~999~~1000-108-1125- Reserved

Section 2: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature

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of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2012.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2012.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2012.

Filed with the Clerk _____, 2012.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK



**PB Resolution
2012-04**

**PLANNING BOARD
RESOLUTION NO. 2012-04**

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD RECOMMENDING TO THE CITY COMMISSION THE INVOKING OF THE ZONING IN PROGRESS DOCTRINE; DECLARING THAT THE CITY IS CONSIDERING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS TO ADOPT A BUILDING PERMIT ALLOCATION SYSTEM; DIRECTING BUILDING AND PLANNING DEPARTMENT STAFF TO CONTINUE THE POLICY OF DEFERRING THE ACCEPTANCE AND PROCESSING OF DEVELOPMENT APPLICATIONS REQUIRING THE ISSUANCE OF BUILDING PERMIT ALLOCATIONS; CONTINUING THIS POLICY UNTIL NEW BUILDING PERMIT ALLOCATION REGULATIONS OR AMENDED LAND DEVELOPMENT REGULATIONS ARE ADOPTED BY THE CITY COMMISSION ; PROVIDING FOR RETROACTIVE EFFECT, DIRECTING STAFF TO CONTINUE PREPARATIONS OF NEW BUILDING PERMIT ALLOCATION REGULATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 108-995 of the Land Development Regulations requires the City's Administrative Official to 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 of the City's Building Permit Allocation System; and

WHEREAS, the 2010-2011 Building Permit Allocation System Annual Report provides

 Chairman
 Planning Director

recommendations based on the implementation of the Building Permit Allocation System; and

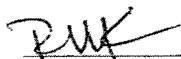
WHEREAS, the Planning Department began documented efforts concerning the subject on at least November 16, 2011; and


WHEREAS, in order to provide for the orderly allocation of a very limited number of existing building permit allocations, the City of Key West Planning Department proposes the invoking of the Zoning in Progress Doctrine to the City of Key West Planning Board for consideration of recommendation to the City Commission to temporarily halt the issuance of building permits pending the passage of a Building Permit Allocation System; and

WHEREAS, this Planning Board agenda item was advertised in the “Key West Citizen” on January 8, 2012; and

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That pursuant to the pending legislation doctrine set forth in Smith v. City of Clearwater, 383 So. 2d 681 (Fla. 2nd DCA 1980), with the exception of requests involving beneficial use allocations, City staff shall defer the acceptance and processing of applications requiring building permit allocations.

 Chairman

 Planning Director

Section 2. That this policy shall be in effect until new Land Development Regulations or amended Land Development Regulations are adopted by the City Commission or until the passage of 365 days, whichever occurs first.

Section 3. That until such time that the new Land Development Regulations become effective, no building permit allocations shall be granted pursuant to a request filed with a submittal date of November 16, 2011, or later.

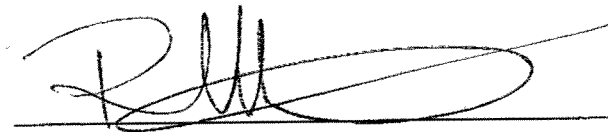
Section 4. That City Planning and Legal staff are directed to continue the preparation and processing of ordinances (the "Pending Ordinances") that would adopt the Building Permit Allocation System. The Pending Ordinances, if adopted, will amend the City's Land Development Regulations. All affected property and business owners are placed on notice with respect to the Pending Ordinances and the action being taken by the appropriate departments within the City.

Section 5. Public Notice. Should the City Commission recommend approval of Zoning in Progress, the adoption of the City Commission resolution shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this resolution. A copy of this resolution shall also be posted at City Hall for the next 365 days.

DWK Chairman
DC Planning Director

Read and passed at a regular meeting held this 19th day of January, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director.



Richard Klitenick, Chairman
Key West Planning Board

2/2/2012

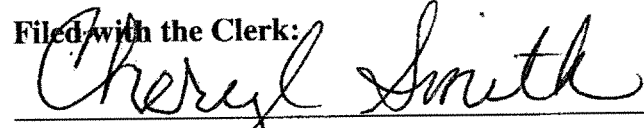
Date

Attest: 

Donald Leland Craig, AICP
Planning Director

2.1.12,

Date


Filed with the Clerk: 

Cheryl Smith, City Clerk

2-2-12

Date

_____ Chairman

 _____ Planning Director