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Text amendment to the City of Key West Code of Ordinance Land Development Regulations. Additions are underlined and deletions are ~~struck through~~.

## ***DIVISION 10. WORK FORCE HOUSING<sup>1</sup>***

### **Sec. 122-1465. Intent.**

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

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

### **Sec. 122-1466. Definitions.**

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

*Annual gross income* means annual income as defined under the Section 8 housing assistance payments programs in 24 C.F.R. part 5.

*Adjusted for family size* means adjusted in a manner which results in an income eligibility level which is lower for households with fewer than four people, or higher for households with more than four people, than the base income eligibility determined as provided in subsection (2), subsection (3), subsection (4), subsection (5), subsection (6), subsection (7), based upon a formula as established by the United States Department of Housing and Urban Development.

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

(1) “Affordable” means that monthly rents or monthly mortgage payments do not exceed 30 percent of that amount which represents the percentage of the median annual gross income for the households as indicated in subsection (2), subsection (3), subsection (4), subsection (5), subsection (6), subsection (7).

(2) “Extremely-low-income persons” means one or more natural persons or a family whose total annual gross household income does not exceed 30 percent of the median annual adjusted gross income within Monroe County.

(3) “Low-income persons” means one or more natural persons or a family, the total annual gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households Monroe County.

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(4) “Median-income persons” means one or more natural persons or a family, the total annual gross household income of which does not exceed 100 percent of the median annual adjusted gross income for households within Monroe County.

(5) “Middle income persons” means one or more natural persons or a family, the total annual gross household income of which does not exceed 140 percent of the median annual adjusted gross income for households within Monroe County.

(6) “Moderate-income persons” means one or more natural persons or a family, the total annual gross household income of which is less than 120 percent of the median annual adjusted gross income for households within Monroe county.

(7) “Very-low-income persons” means one or more natural persons or a family, not including students, the total annual gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within Monroe county.

*Affordable work force housing* shall include extremely low income, very low income, low income, median income, moderate income, and middle income housing or any mix thereof.

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

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

*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 owner (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.

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

Cross reference(s)—Definitions generally, § 1-2.

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

### **(1) (a) *Affordable Housing dwelling units.***

1. *Market Rate Developments.* New market rate residential or mixed-use developments of 10 units or more, shall be required to develop a number of affordable units, equivalent to at least 10% of the total number of new market-rate units, designated for “low-income persons” as defined herein and contain at least 400 sq. ft., and a number of affordable units, equivalent to at least 20% of the total number of new market-rate units, designated for “median-income persons” of at least 400 square feet each, as defined herein.
2. New market rate residential or mixed-use developments of at least three residential dwelling units and less than ten residential dwelling units shall be required to develop a number of affordable units, equivalent to at least 30% of the total number of market-rate units, designated

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for “median-income persons” as defined herein and contain at least 400 sq. ft.3.

Redevelopment projects increasing the number of market rate dwelling units at the development shall be required to develop a number of affordable units, equivalent to at least 30% of the total number of increased market-rate units, designated for “median-income persons” as defined herein and contain at least 400 sq. ft. Redevelopment projects increasing the square footage of transient units shall comply with Section 122-1475. The 30 percent affordability requirement shall be determined on a project by project basis and not on a city-wide basis.

3. Notwithstanding subsections (1)(a)1.-3. above, a developer may contribute a fee in lieu for each affordable housing unit required to the affordable work force housing trust fund, if approved by the city commission. The per unit fee shall be \$400,000.00 (representing construction cost, less land cost, of a 400 square foot unit). The fee shall be paid prior to issuance of the building permit associated with the market rate or mixed use project.
  4. The 30 percent affordability requirement shall be determined on a project by project basis and not on a city-wide basis.
  5. For every required affordable housing unit designated for “median-income persons”, a developer may increase rental rates to an affordable housing unit designated for “middle-income persons” so long as another unit's rental rate is decreased to an affordable housing unit designated for “low-income persons.”
- (b) *Linkage of projects.* Two development or redevelopment projects may link to allow the affordable housing requirement of one development or redevelopment project to be built at the site of another project, so long as the affordable housing requirement of the latter development or redevelopment is fulfilled as well. Written proof of the project linkage shall be supplied by the developer to the City Manager or their designee and shall be approved by the City Commission.. The project containing the affordable units must be built or rebuilt either before or simultaneously with the project without, or with fewer than, the required affordable units. The affordable units proposed to satisfy the inclusionary housing requirement may not have received certificates of occupancy three (3) years prior to the project approval for the development triggering the inclusionary housing requirement. In addition, if a developer voluntarily builds or rebuilds more than the required number of affordable units at a development site, this development or redevelopment project may be linked with a subsequent development or redevelopment project to allow compliance with the subsequent development's affordable unit requirement but in no instances shall preexisting deed restricted affordable units be credited retrospectively. Written proof of the linkage must be supplied by the developer to the city commission at the time of the subsequent development's site plan approval. Linkage shall not be available if either development is entirely or in part to be constructed by public funds. All linkages under this subsection may occur within the city or on a site within the unincorporated part of the county west of Big Pine Key. Dormitory housing shall be eligible for linkage to satisfy affordable housing requirements under this subsection
- (c) *Affordable work force housing dwelling units.* For a project or development that consists solely of Affordable Work Force Housing dwelling units or for those remaining units that are in a Market Rate Development as set forth in subsection (a) of this section after the requirement for ten percent low income persons and 20 percent for median income persons , the maximum total rental and/or sales price for all affordable work force housing dwelling units in a single development shall be based on each dwelling unit being affordable housing (moderate income). The rental and/or sales price may be mixed among affordable housing (low income), (median income), (middle income) and (moderate income) in order that the total value of rental and/or sales does not exceed ten percent of the rental and/or sales of all the units at affordable housing (moderate income).
- (d) *Demonstration of continuing affordability.* Demonstration of continuing affordability shall be by deed restriction or any other mutually acceptable method that effectively runs with the land and is binding on

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owners, successors in ownership, or assigns. The deed restriction shall be in a form provided by the city and shall be for a period of 99 years. It shall be recorded in the county records.

- (e) *Reporting requirements.* Owners of affordable work force housing projects or units shall furnish the city manager or their designee with annual information necessary to ensure continued compliance with affordability criteria, beginning one year after the date of building permit issuance and on each anniversary date thereafter. Reporting requirements shall include sworn tenant household verification information.
- (f) *Compliance with antidiscrimination policy.* All property owners offering housing under this division shall comply with the antidiscrimination policy of article II of chapter 38.

(2) *Exemptions and waivers.*

- (a) The following uses shall be exempt from the inclusionary housing requirements set forth in subsection (1)(a) of this section: affordable workforce housing, nursing homes, or assisted care living facilities.
- (b) The city commission may reduce, adjust, or waive the requirements set forth in this subsection where, based on specific findings of fact, the commission concludes, with respect to any developer or property owner, that:
  - 1. Strict application of the requirements would produce a result inconsistent with the comprehensive plan or the purpose and intent of this subsection;
  - 2. Due to the nature of the proposed development, the development furthers comprehensive plan policies and the purpose and intent of this subsection through means other than strict compliance with the requirements set forth herein;
  - 3. The developer or property owner demonstrates an absence of any reasonable relationship between the impact of the proposed development and requirements of this subsection (b); or
  - 4. The strict application with the requirements set forth herein would improperly deprive or deny the developer or property owner of constitutional or statutory rights.
- (c) Any developer or property owner who believes that he may be eligible for relief from the strict application of this section may petition the city commission for relief under this subsection (b)(3) of this section. Any petitioner for relief hereunder shall provide evidentiary and legal justification for any reduction, adjustment, or waiver of any requirements under this section.

(3) *Sales Price of Owner-occupied affordable housing units.*

- (a) Owner-occupied affordable housing units designated for “median-income persons” shall have a maximum sales price of 3.75 times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.
- (b) Owner-occupied affordable housing units designated for “moderate-income persons” shall have a maximum sales price of 4 times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.
- (c) Owner-occupied affordable housing units designated for “middle-income persons” shall have a maximum sales price of 4.5 times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

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

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

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

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

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

### **Sec. 122-1469. Applicant eligibility requirements.**

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

- (1) The household or person shall derive at least 70 percent of its or his/her total income from gainful employment in the county. This section shall not disqualify an individual previously and continuously qualified who reaches the age of retirement, or becomes disabled, and is otherwise income qualified.
- (2) At the time of sale or lease of an affordable housing (extremely low income) unit, the total income of eligible household or persons shall not exceed 30 percent of the median household income for the county (adjusted for family size).
- (3) During occupancy of any affordable housing (extremely low income) rental unit, a household's income may increase to an amount not to exceed 70 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 (very low income) unit, the total income of eligible household or persons shall not exceed 50 percent of the median household income for the county (adjusted for family size).
- (5) During occupancy of any affordable housing (very low income) rental unit, a household's income may increase to an amount not to exceed 90 percent of the median household income for the county

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- (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 (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).
  - (7) During occupancy of any 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.
  - (8) 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).
  - (9) 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.
  - (10) 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).
  - (11) During occupancy of any 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.
  - (12) 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).
  - (13) During occupancy of any 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.
  - (14) 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.
  - (15) Priority shall be given to families of four or more members for larger sized affordable work force housing units.
  - (16) The applicant shall execute a sworn affidavit stating the applicant's intention to occupy the dwelling unit.
  - (17) 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.

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This subsection shall control over any other provision of the Code regarding qualifications of Unrelated adults.

- (18) 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.
- (19) The planning board may review a household's income and unique circumstances to determine eligibility and conformance with the intent of this ordinance to assure that people in need are not excluded and people without need are not included.

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

### **Sec. 122-1470. Accessory unit infill.**

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

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

### **Sec. 122-1471. Reserved.**

### **Sec. 122-1472. Family size.**

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

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

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

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## **Sec. 122-1473. Affordable workforce liveboard vessels.**

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

(Ord. No. 18-26, § 1, 10-16-2018)

## **Secs. 122-1474. Live Local Act Implementation.**

Notwithstanding any other chapter of the Land Development Regulations and to implement the State of Florida's Live Local Act, any existing or new developments or redevelopments that provide a minimum of 40% of the residential units as affordable housing and in the General Commercial, High Density Residential, Medium Density Residential, Medium Density Residential-1, Historic Residential Commercial Core-2, zoning districts shall be entitled to the following applicable density, height, setbacks, parking, landscaping and other development standard requirements for development or redevelopment within the City:

- (1) Density. Density for affordable housing shall be forty (40) units per acre.
- (2) Height. Building height shall be measured from base flood elevation or existing pre-fill grade or the crown of the nearest adjacent street, whichever is higher, to the highest point of habitable space of the proposed building and shall not include mechanical equipment including mechanical equipment and elevator shafts or roof lines or parapets utilized to hide mechanical equipment and elevator shafts. A building level dedicated to ground level parking that does not contain habitable space shall not be considered a building "story."
- (3) Setbacks. All setbacks may be reduced to the greatest extent practicable to develop the maximum number of affordable dwelling units, including ancillary or accessory uses (roadways, sidewalks, pools, showers, storage, office space for renting units, amenities for apartments, etc.), but excluding non-residential uses, butbut shall not be less than the following minimum setbacks without variance approval:
  - a. Front: 5 feet.
  - b. Side: 5 feet.
  - c. Rear: 5 feet.
  - d. Street side: 5 feet. Notwithstanding subsection (3)(b) or (c), a development that utilizes this Section, may not reduce setbacks below the current code's setbacks for side or rear yards when the property's setback requested to be reduced is contiguous to a platted single family lot or a zoning district that is not identified in this Section.
- (4) Parking.
  - a. In the Historic District, parking shall be one (1) parking space per two (2) dwelling units and two (2) bicycle racks per dwelling unit.
  - b. Outside the Historic District, parking shall be one (1) parking space per one (1) dwelling unit and two bicycle racks per dwelling unit.
  - c. If the reduced parking requirement of this subsection is utilized, the property owner shall be required to restrict leases to limit total tenant vehicles to only the number of vehicles of on-site parking provided. The leases shall make tenants that violate the restriction subject to eviction.



- (5) Landscaping.
  - a. Landscaping requirements shall be waived to the greatest extent practicable to develop the maximum number of dwelling units.
- (6) Reducing impervious surface, lot coverage, and building coverage shall be permitted to the greatest extent practicable and shall not require a hardship variance but may be waived or altered by the planning board to the greatest extent practicable.
- (7) Art in Public Places and Cisterns are not required for developments developed pursuant to this section.
- (8) This Section shall expire October 1, 2033. Any development developed pursuant to this subsection shall be deemed legal and conforming to the Code upon completion

**Sec. 122-1475. -Nonresidential Inclusionary housing requirements.**

- (1) Purpose. Consistent with the Comprehensive Plan, the purpose of this subsection is to ensure that the need for affordable housing is not exacerbated by nonresidential and transient development, as follows:
  - a. Promote the health, safety, and general welfare of the citizens of the City through the implementation of the goals, objectives, and policies of the City of Key West Comprehensive Plan; and
  - b. To ensure that affordable housing opportunities are available throughout the entire community and to maintain a balanced and sustainable local economy and the provision of essential services; and
  - c. To increase the supply of housing affordable to targeted income groups within the community; and
  - d. To provide a range of housing opportunities for those who work in the City of Key West but may be unable to pay market rents or market housing prices in the community; and
  - e. To increase the percentage of the workforce living locally and to provide housing opportunities for lower income groups in order to meet the existing and anticipated housing needs of such persons and to maintain a socio-economic mix in the community; and
  - f. To address the affordable workforce housing needs generated by the construction and expansion of nonresidential/transient development, and the employment that occurs at the nonresidential/transient development after the construction or expansion is completed; and
  - g. To ensure that affordable workforce housing is provided to the local workforce by the employee generating development proportionate with the demand for affordable workforce housing the development creates; and
  - h. To address market demands that show that the workforce in the City of Key West continues to require moderately priced housing units, particularly those whose earnings range from 50 percent up to 120 percent of the County's median income (the target income groups); and
  - i. To stimulate the private sector production of affordable workforce housing and encourage the widespread distribution of affordable workforce housing opportunities throughout all portions of the community, including within new and expanding developments.
- (2) Intent. Nonresidential and transient use development or redevelopment generates a direct impact on housing for the workforce. The intent of this section is to ensure that there is an affordable supply of housing for the local workforce. This will be accomplished by requiring workforce housing be provided for all new development and redevelopment in an amount proportionate to the need for affordable workforce housing that the nonresidential and transient use development or redevelopment creates. The intent of this subsection is to permit nonresidential and transient use owners to continue to establish uses consistent with the current building and safety standards and to ensure that as development and redevelopment occurs, comprehensive plan policies regarding affordable housing are implemented. The technical support and analysis upon which the nonresidential inclusionary housing requirements are established are based upon the 'Affordable Workforce Housing Support Study for Non-Residential Development,' prepared by Clarion Associates, LLC, prepared in June 2017.

- (3) **Applicability.** Except as provided in subsection (4) of this section, the nonresidential inclusionary housing requirements set forth below shall apply. This will be accomplished by requiring workforce housing be provided for all new development and expansions in an amount proportionate to the need for affordable workforce housing that the nonresidential and transient uses create. Expansion as used in this section means extending a use or structure to occupy a greater amount of floor area or square footage beyond that which it occupied. Determinations regarding the applicability of this subsection shall be made by the Planning Director. The applicant shall provide the necessary information to determine compliance with the nonresidential inclusionary housing requirements on the forms prescribed by the Planning Director. For purposes of calculating the number of affordable workforce housing units required by this subsection, density bonuses shall not be counted, and only fractional requirements equal to or greater than 0.5 shall be rounded up to the nearest whole number.
- a. **New Development.** Each new development project not exempted by subsection (4), shall mitigate 50% of the workforce housing demand created by the proposed development by one or a combination of the methods identified in subsection (5).
  - b. **Redevelopment with an Expansion.** Each redevelopment project not exempted by subsection (4), shall mitigate 50% of the workforce housing demand created by the proposed redevelopment by one or a combination of the methods identified in subsection (5). The workforce housing required for nonresidential development when an existing use is expanded shall be calculated based on the incremental increase in size of the existing use (net additional square footage).
  - c. **Redevelopment with a Change in Use Increasing Housing Demand.** Each redevelopment project with a change of use increasing housing demand, not exempted by subsection (4), shall mitigate 50% of the workforce housing demand created by the proposed redevelopment by one or a combination of the methods identified in subsection (5). The workforce housing required for nonresidential development when a new use replaces an existing use and increasing housing demand (*for example from an industrial use to an office use*) shall be calculated based on the square footage proposed for conversion and/or based on the incremental increase in size of the new uses (if any).
  - d. **Unspecified Use.** If a proposed development project does not fall within one of the specific use categories in the table within subsection (5), then the Planning Director shall determine whether the use is comparable to a use category listed and assign a category or may allow the applicant to conduct an independent calculation to determine the appropriate affordable workforce housing inclusionary requirement. If the applicant chooses to propose an independent calculation, the following applies:
    1. An independent calculation shall require a public meeting with the City Commission to determine if there is a mutually agreeable approach to the calculation prior to the application proceeding to the Development Review Committee for review. The review of the independent calculation will not be scheduled as a public hearing, but as a public meeting during which the City Commission may offer their input and direction and the public may have input on the proposed methodology and calculation.
    2. The applicant shall use generally accepted principles and methods and verifiable local information and data, and other appropriate materials to support the employee generation data and housing demand calculated.
    3. The City Commission may agree or disagree with the independent calculation for mitigation based on generally recognized principles and methodologies of impact analysis and the accuracy of the data, information, and assumptions used to prepare the independent calculation.
    4. Each development project subject to an independent calculation and not exempted by subsection (4), shall mitigate 50% of the demand for workforce housing created by the development.

(4) **Exemptions and waivers.**

- a. The following uses shall be exempt from the nonresidential inclusionary housing requirements set forth in subsections (f)(3) and (5) of this section:
  1. Affordable housing developments: and
  2. Residential developments: and
  3. Nursing homes, assisted care living facilities, and retirement homes: and
  4. Public facilities and public buildings and uses limited to parks, public infrastructure and utilities, and wireless communication facilities: and
  5. The redevelopment, remodeling, repair, or cumulative expansion of a lawfully established nonresidential use that does not increase the area of the nonresidential use by more than 1,000 square feet of gross floor area and the use is not changed to a different use category.
- b. The City Commission may reduce, adjust, or waive the requirements set forth in this subsection (f), based on specific findings of fact, where the City Commission concludes, with respect to any applicant, 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 nonresidential 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 applicant demonstrates an absence of any reasonable relationship between the impact of the proposed nonresidential development and requirements of this subsection (f);
  4. The strict application with the requirements set forth herein would improperly deprive or deny the applicant of constitutional or statutory rights; or

Any applicant who believes that he/she may be eligible for relief from the strict application of this section may petition the City Commission for relief under this subsection (f)( 4). Any petitioner for relief hereunder shall provide evidentiary and legal justification for any reduction, adjustment, or waiver of any requirements under this section. The petitioner shall use generally accepted principles and methods and verifiable local information and data, and other appropriate materials to support the requested relief.

(5) Compliance Requirements. Nonresidential development or redevelopment projects shall provide affordable workforce inclusionary housing as provided in subsection (3) of the workforce housing demand created by the new or expanded development or redevelopment in accordance with the standards in the table below.

- a. The table indicates the number of workforce housing units or in-lieu fee needed for every square foot (and per 1,000 sf) of new development or redevelopment (expanded or converted square footage) for each category of non-residential land use.

TOTAL NEED CREATED BY NONRESIDENTIAL DEVELOPMENT (for construction and post-construction employees).				
Land Use Category	Total Housing Need per 1,000 sf (units/1000sf)	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)

<b>Commercial Retail</b> (Retail stores, supermarkets, shopping centers, restaurants, etc.)	0.416	0.000416	\$66,722	\$66.72
<b>Office</b> (Professional and non-professional office buildings, etc.)	0.704	0.000704	\$78,492	\$78.49
<b>Industrial</b> (Light manufacturing, lumber yards, warehousing, storage facilities, etc.)	0.226	0.000226	\$24,397	\$24.39
<b>Institutional</b> (Religious facilities, private schools, colleges, daycares, etc.)	0.337	0.000337	\$36,284	\$36.28
<b>Tourist/recreational</b> (Theatres, auditoriums, nightclubs, tourist attractions, etc.)	0.614	0.000614	\$104,691	\$104.69
<b>Hotel &amp; Motel</b> (Transient uses)	0.295	0.000295	\$49,947	\$49.94
<b>Governmental</b> (Governmental office buildings, public schools, etc.)	0.427	0.000427	\$38,285	\$38.28
<b>Other</b> (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.

- b. The inclusionary housing unit requirement (or required number of workforce housing dwelling units) for the nonresidential development or redevelopment shall be calculated by multiplying the per square foot requirement for the appropriate type of land use category by the proposed square footage of the nonresidential development and/or the incremental increase in size of the nonresidential use (net additional square footage) and applying the appropriate mitigation standard.
- c. The inclusionary in-lieu fee requirement (or required amount of monetary fee) for the nonresidential development or redevelopment shall be calculated by multiplying the per square foot requirement for the appropriate type of land use category by the proposed square footage of the nonresidential development and/or the incremental increase in size of the nonresidential use (net additional square footage) and applying the appropriate mitigation standard.
- d. Expansions to nonresidential and transient uses shall be tracked for cumulative changes and compliance with subsection (f). In phased projects, the inclusionary requirements shall be

proportionally allocated among the phases. ~~If a subsequent development or redevelopment is proposed following a prior development approved on the same property, after the effective date of this ordinance, the requirements in this section shall be met as part of the subsequent development or redevelopment.~~

- e. The following table provides EXAMPLE calculations of the nonresidential inclusionary requirements:

	Total Housing Need per sf (units/sf)	Total In- Lieu Fee per sf (monetary fee /sf)		100% Mitigation		50% Mitigation		30% Mitigation	
				Units	In-lieu fees	Units	In-lieu fees	Units	In-lieu fees
<b>Commercial Retail</b> (Retail stores, supermarkets, shopping centers, restaurants, etc.)	0.000416	\$66.72	<u>5,000 SF</u>	2.08	\$333,610	<b>1.04</b>	<b>\$166,805</b>	0.62	\$100,083.00
			<u>10,000 SF</u>	4.16	\$667,220	<b>2.08</b>	<b>\$333,610</b>	1.25	\$200,166
			<u>20,000 SF</u>	8.32	\$1,334,440	<b>4.16</b>	<b>\$667,220</b>	2.50	\$400,332
<b>Office</b> (Professional and non-professional office buildings, etc.)	0.000704	\$78.49	<u>5,000 SF</u>	3.52	\$392,460	<b>1.76</b>	<b>\$196,230</b>	1.06	\$117,738
			<u>10,000 SF</u>	7.04	\$784,920	<b>3.52</b>	<b>\$392,460</b>	2.11	\$235,476
			<u>20,000 SF</u>	14.09	\$1,569,840	<b>7.04</b>	<b>\$784,920</b>	4.23	\$470,952
<b>Industrial</b> (Light manufacturing , lumber yards, warehousing,s storage facilities, etc.)	0.000226	\$24.39	<u>5,000 SF</u>	1.13	\$121,985	<b>0.56</b>	<b>\$60,993</b>	0.34	\$36,596
			<u>10,000 SF</u>	2.26	\$243,970	<b>1.13</b>	<b>\$121,985</b>	0.68	\$73,191
			<u>20,000 SF</u>	4.51	\$487,940	<b>2.26</b>	<b>\$243,970</b>	1.35	\$146,382
<b>Institutional</b> (Religious facilities, private schools, colleges, daycares, etc.)	0.000337	\$36.28	<u>5,000 SF</u>	1.69	\$181,420	<b>0.84</b>	<b>\$90,710</b>	0.51	\$54,426
			<u>10,000 SF</u>	3.37	\$362,840	<b>1.69</b>	<b>\$181,420</b>	1.01	\$108,852
			<u>20,000 SF</u>	6.74	\$725,680	<b>3.37</b>	<b>\$362,840</b>	2.02	\$217,704

<b>Hotel &amp; Motel<sup>2</sup></b> <b>(Transient Uses)</b>	0.000614	\$49.94	<u>5,000 SF</u>	3.07	\$249,700	<b>1.54</b>	<b>\$124,850</b>	0.92	\$74,910
			<u>10,000 SF</u>	6.14	\$499,400	<b>3.07</b>	<b>\$249,700</b>	1.84	\$149,820
			<u>20,000 SF</u>	12.28	\$998,800	<b>6.14</b>	<b>\$499,400</b>	3.68	\$299,640
<b>Tourist/recreational</b> (Theatres, auditoriums, nightclubs, tourist attractions, etc.)	0.000614	\$104.69	<u>5,000 SF</u>	3.07	\$523,455	<b>1.54</b>	<b>\$261,728</b>	0.92	\$157,037
			<u>10,000 SF</u>	6.14	\$1,046,910	<b>3.07</b>	<b>\$523,455</b>	1.84	\$314,073
			<u>20,000 SF</u>	12.28	\$2,093,820	<b>6.14</b>	<b>\$1,046,910</b>	3.69	\$628,146

- f. All nonresidential uses not exempted by subsection (4) shall mitigate the demand for workforce housing created by the proposed development or redevelopment by one or a combination of the methods identified below.
1. The construction of workforce housing dwelling units on the site of the development project. The workforce housing dwelling units shall meet the City's affordable housing restrictions as specified herein, for a period not less than 99 years;
  2. The construction of workforce housing dwelling units off-site of the development project but within a 30 mile radius of the nonresidential/transient development/ redevelopment. The workforce housing dwelling units shall meet the City's affordable housing restrictions as specified herein, for a period not less than 99 years;
  3. The deed-restriction of existing dwelling units within a 30 mile radius of the nonresidential/transient development/redevelopment. The workforce housing dwelling units meet the City's affordable housing restrictions as specified herein, for a period not less than 99 years;
  4. The payment of a fee in-lieu for the inclusionary housing requirement for all or a percentage of the workforce housing units required. The in-lieu fee shall be paid prior to issuance of a building permit for the nonresidential/transient development or redevelopment. All in-lieu fees shall be deposited into the affordable housing trust fund and spent solely for the purposes allowed for that fund.
  5. Credit for Employer-provided housing. Employers may offset a portion or all of their obligation under the non-residential inclusionary housing ordinance by directly providing housing opportunities to their full-time employees. Employers may receive credit for each employee housing unit that they provide directly to an employee. Each of said units shall be registered with the City of Key West in a manner prescribed by the Director of Housing and Community Development. Employers shall provide confirmation of

<sup>2</sup> Does not apply where increase in square footage does not increase occupancy.

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continuing compliance with this provision annually pursuant to the direction of the Housing and Community Development Director.

- g. If the workforce housing requirement results in less than one (1) affordable dwelling unit, then the applicant may choose to build one (1) affordable dwelling unit or pay the fee in-lieu amount.

(6) Applicable Standards.

- a. All affordable housing units shall comply with the standards contained within Sec. 122-1467. - Residential Requirements of Affordable and Work Force Housing.

(7) Monitoring and review. The requirements of this subsection (f) shall be monitored to ensure effective and equitable application. Every two years, following the effective date of the ordinance from which this section is derived, the City Commission may request the Planning Director provide to the City Commission a report describing the impact of this subsection on the provision of affordable, workforce, and employee housing and other market or socioeconomic conditions influencing or being influenced by these requirements. Issues such as affordability thresholds, inclusionary requirements, and the impacts of these provisions on the affordable housing inventory and housing needs in the City shall be addressed, in addition to other matters deemed relevant by the director.

(8) **Linkage of projects.**

- a. Two development or redevelopment projects may link to allow the affordable housing requirement of one development or redevelopment project to be built at the site of another project. A minimum of fifty percent (50%) of the total number of housing units proposed, including both market rate and affordable units, must be set aside as affordable units pursuant to Section 122-1467 above. Building permits for the proposed market rate units shall not be issued until all permits required in connection with the affordable, workforce, employee housing units or dormitory units associated with the project have been issued. A Certificate of Occupancy for any of the proposed market rate units shall not be issued until all Certificates of Occupancy have been issued for any of the proposed affordable, workforce, or employee housing units. In the event, a payment-in-lieu of fee is provided as an alternative to the construction of affordable, workforce, or employee housing units, said fee shall be submitted to the City prior to the issuance of any permits associated with the proposed market rate housing units.
- b. Linkage shall not be available if either development is entirely or in part to be constructed by public funds. Finally, all linkages under this subsection may occur within the city or on a site within the city and on a site on Stock Island in the unincorporated part of the county.
- c. All linkages must be approved via a covenant running in favor of the City, and if the linkage project lies within the jurisdiction of another municipality, also in favor of that municipality. The covenant shall be placed upon two or more projects linked, stating how the requirements for affordable housing are met for each project. The covenant shall be approved by the City Commission and, if applicable, the participating municipality.

(9) **Affordable housing trust fund.** The affordable housing trust fund (referred to as the "trust fund") is established. The trust fund shall be maintained with funds earmarked for the purposes of furthering affordable housing initiatives in municipalities and unincorporated areas of the county. 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:

- a. Financial aid to eligible homebuyers of affordable, workforce, and employee housing as mortgage assistance;
- b. Financial incentive for the conversion of transient or market rate units to affordable housing, workforce, and employee residential units;

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- c. Direct investment in or leverage to housing affordability through site acquisition, housing development and housing conservation; or
  - d. Other affordable, workforce, or employee housing purposes from time to time established by resolution of the city commission.
  - e. The purchase of deed restrictions for the creation of employee housing units pursuant to this Chapter.
- (10) **Community housing development organization.** The City Commission may establish a nonprofit Community Housing Development Organization (CHDO), pursuant to federal regulations governing such organizations, to serve as developer of affordable housing units on City-owned property, including or located in the municipalities of the county, upon interlocal agreement. In such event, the City may delegate to the community housing development organization all or partial administration of the affordable housing trust fund.



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## ***DIVISION 15. TRANSFER OF BPAS-EXEMPT UNITS***

### **Section 122-1554 – Transfers of Units**

Residential dwelling unit rights determined to be exempt from the Building Permit Allocation system pursuant to Section 108-991 may be transferred to another site in the City pursuant to this Article if the following requirements are met:

- (1) 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.
- (2) Residential use must be allowed at the receiver site.
- (3) The transfers to the receiving site shall not operate to increase density of the receiver site above the maximum allowed density.
- (4) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.
- (5) The sending site must not have any open permits or active code violations at the time of application.
- (6)

### **Section 122-1555 – Application**

The applicants for a transfer of exempt unit rights shall submit to the planning department the following information and data on an application form to be established by the planning department:

- (1) A transfer of exempt unit rights application which includes the written authorization, name and address of the owner of the property of the sender site and the written authorization, name and address of the owner of the property of the receiver site.
- (2) Legal description and survey of the parcel in the sender site from which the transfer of unit rights will be severed.
- (3) Legal description and survey of the parcel in the receiving area which will acquire the transferred unit rights.
- (4) Data supporting the existence of exempt unit rights at the sending site.
- (5) Data supporting the ability of the proposed receiver site to accommodate the density of the proposed transfer of unit rights.
- (6) Draft deed of transfer in recordable form to evidence the transfer of unit rights which shall include the name of the owners, parcel numbers and legal descriptions of the sender site and receiver site.

### **Section 122-1556 – Review of Application**

The City planner or other city administrative official designated by the city manager shall review the application and supporting documentation for compliance with this Article and the Comprehensive Plan and LDRs.

Upon a determination of compliance with Section 122-1555, the City planner or other city administrative official designated by the city manager the application shall be approved and a deed of transfer containing a covenant prohibiting the further use of the residential dwelling unit rights at the sending site and evidencing the transfer of the residential unit rights shall be signed by a City official and the owner of the sender site. The fully executed deed of transfer shall be recorded in the Official Records of Monroe County by the owner of the receiver site before the owner of the receiver site can pull building permits or utilize the unit rights on the receiver site.