



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

**To:** Chairman and Planning Board Members

**Through:** Thaddeus Cohen, Planning Director

**From:** Patrick Wright, Senior Planner II

**Meeting Date:** December 15, 2016

**Agenda Item:** A resolution of the City of Key West recommending an ordinance to the City Commission amending Chapter 108 of the Code of Ordinances, entitled Planning and Development by amending existing Section 108-995 and 108-997; providing for severability; providing for repeal of inconsistent provisions, providing for an effective date.

**Action Item / Background**

The purpose of this Ordinance is to amend the City's Land Development Regulations in response to a Final Order issued by the State Department of Economic Opportunity (DEO) rejecting City Commission Ordinance 16-16. The intent of Ordinance 16-16 was to establish that the 91 new residential units to be allocated in year four (4) from July 1, 2016 to June 30, 2017 shall be deemed affordable units. In order to clear the objection issued by the DEO through a Final Order, further changes to language in the City's Land Development Regulations were requested.

Additionally the Planning Department has suggested the removal of limiting language that references the ability of the city to only allocate 91 units in a given allocation cycle, as well as added language to allow the City to allocate affordable units to itself.

The proposed amendments are as follows:

**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), a minimum of 50 percent shall be affordable. ~~Between years four (4) five (5) and ten (10), 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. Between years four (4) and ten (10), no more than 10 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.

Table 2.0									
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 91 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.

At the City’s discretion, the City can allocate to itself, at any time during the planning horizon ending in June 2023, on a noncompetitive basis, any number of the allocations for its affordable housing projects. During the planning horizon ending in June 2023, at the City’s discretion, the city will decide whether transient allocations will be made available.

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. 108-997. - 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.~~ The prior application review process shall not apply to year 4 (July 2016 – June 2017) where the allocation determination timeframe may be adjusted provided that a final determination of award is made by the planning board no later than June 30, 2017.

(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. The prior application review process shall not apply to year 4 (July 2016 – June 2017) where the allocation determination timeframe may be adjusted provided that a final determination of award is made by the planning board no later than June 30, 2017.~~

(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.~~

(g) *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

(Ord. No. 13-19, § 2, 11-6-2013)

## **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 DEO, who will have 60 days to issue an order which determines consistency with Florida Statutes 380.0552 and the City's Comprehensive Plan.

## **RECOMMENDATION**

The Planning Department recommends that the Planning Board recommends **approval** of the draft amendments to the Building Permit Allocation Ordinance.

# **Draft Ordinance**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,  
AMENDING CHAPTER 108 OF THE CODE OF  
ORDINANCES, ENTITLED PLANNING AND  
DEVELOPMENT BY AMENDING EXISTING SECTION  
108-995 AND 108-997; PROVIDING FOR SEVERABILITY;  
PROVIDING FOR REPEAL OF INCONSISTENT  
PROVISIONS, PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City Commission has passed numerous resolutions aimed at increasing the availability of affordable and workforce housing in the City of Key West; and

WHEREAS, development of any housing is strictly controlled by virtue of the fact that the State of Florida has designated the City of Key West as a State area of Critical Concern; and

WHEREAS, this state regulation has resulted in a specified number of new building permits that may be granted each year under what is known as the Building Permit Allocation System (BPAS); and

WHEREAS, On April 5, 2016 the City Commission passed Resolution 2016-116 setting aside all building permit allocations during the next application period exclusively for affordable housing; and

WHEREAS, On August 16, 2016 the City Commission adopted Ordinance 16-16 amending Chapter 108 of the Code of Ordinances, entitled Planning and Development by amending existing Section 108-995 to set aside all available Building Permit Allocations during the July 1, 2016 – June 30, 2017 period exclusively for affordable housing; and



WHEREAS, On November 4, 2016 the Department of Economic Opportunity (DEO) issued a Final Order rejecting City Commission Ordinance 16-16 ; and

WHEREAS, Based on recommendations by the Department of Economic Opportunity further changes to the City's Land Development Regulations were requested; and

WHEREAS, Chapter 108 of the Code of Ordinances, entitled Planning and Development specifically existing Section 108-995 and 108-997 are to be amended through ordinance in response to the Department of Economic Opportunity; and

WHEREAS, the planning board held a noticed public hearing on December 15, 2016, where based on the consideration of recommendations by the city planner, city attorney, building official and other information, the board recommended approval of the proposed amendments through Planning Board **Resolution 16-\_\_\_\_\_**; and

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

**Chapter 108: Planning and Development:** That Chapter 108 of the Land Development regulations is hereby amended as follows:

**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), a minimum of 50 percent shall be affordable. ~~Between years four (4) five (5) and ten (10), 80 percent~~

of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. Between years four (4) and ten (10), no more than 10 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.

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- 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:

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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. The prior application review process shall not apply to year 4 (July 2016 – June 2017) where the allocation determination timeframe may be adjusted provided that a final determination of award is made by the planning board no later than June 30, 2017.~~

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(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.~~

(g) *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

(Ord. No. 13-19, § 2, 11-6-2013)

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**Section** [redacted]: If any section, provision, clause, phase, 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** [redacted]: All Ordinances or parts of Ordinances of said City in conflict with the provisions of the Ordinance are hereby superseded to the extent of such conflict.

**Section** [redacted]: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and Clerk of the Commission.

Read and passed on first reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Filed with the Clerk \_\_\_\_\_, 2016.

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Craig Cates, MAYOR

ATTEST:

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CHERYL SMITH, CITY CLERK

# **Draft Resolution**



**PLANNING BOARD  
RESOLUTION NO. 2016-**

**A RESOLUTION OF THE CITY OF KEY WEST  
RECOMMENDING AN ORDINANCE TO THE CITY  
COMMISSION AMENDING CHAPTER 108 OF THE  
CODE OF ORDINANCES, ENTITLED PLANNING  
AND DEVELOPMENT BY AMENDING EXISTING  
SECTION 108-995 AND 108-997; PROVIDING  
FOR SEVERABILITY; PROVIDING FOR REPEAL  
OF INCONSISTENT PROVISIONS, PROVIDING  
FOR AN EFFECTIVE DATE.**

**WHEREAS**, development of any housing is strictly controlled by virtue of the fact that the State of Florida has designated the City of Key West as a State area of Critical Concern; and

**WHEREAS**, this state regulation has resulted in a specified number of new building permits that may be granted each year under what is known as the Building Permit Allocation System (BPAS); and

**WHEREAS**, On April 5, 2016 the City Commission passed Resolution 2016-116 setting aside all building permit allocations during the next application period exclusively for affordable housing; and

**WHEREAS**, On August 16, 2016 the City Commission adopted Ordinance 16-16 amending Chapter 108 of the Code of Ordinances, entitled Planning and Development by amending existing Section 108-995 to set aside all available Building Permit Allocations during the July 1, 2016 - June 30, 2017 period exclusively for affordable housing; and

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director

**WHEREAS**, On November 4, 2016 the Department of Economic Opportunity (DEO) issued a Final Order rejecting City Commission Ordinance 16-16 ; and

**WHEREAS**, Based on recommendations by the Department of Economic Opportunity further changes to the City's Land Development Regulations were requested; and

**WHEREAS**, Chapter 108 of the Code of Ordinances, entitled Planning and Development specifically existing Section 108-995 and 108-997 are to be amended through ordinance in response to the Department of Economic Opportunity; and

**WHEREAS**, the planning board held a noticed public hearing on December 15, 2016, where based on the consideration of recommendations by the city planner, city attorney, building official and other information, the board recommended approval of the proposed amendments; and

**WHEREAS**, the planning board 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

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director

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 RESOLVED, BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA:**

**Section 1.** That the above recitals are incorporated by reference as if fully set forth herein.

**Section 2.** That **AN ORDINANCE TO THE CITY COMMISSION AMENDING CHAPTER 108 OF THE CODE OF ORDINANCES, ENTITLED PLANNING AND DEVELOPMENT BY AMENDING EXISTING SECTION 108-995 AND 108-997; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS, PROVIDING FOR AN EFFECTIVE DATE.**

is hereby recommended for approval; a copy of the draft ordinance is attached.

**Section 3.** This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the city clerk.

\_\_\_\_\_ Chairman

\_\_\_\_\_ Planning Director

Read and passed on first reading at a regular meeting held this  
15th day of December 2016.

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

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Sam Holland Jr., Planning Board Chairman Date

**Attest:**

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Thaddeus Cohen, Planning Director Date

**Filed with the Clerk:**

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Cheryl Smith, City Clerk Date

\_\_\_\_\_ Chairman  
\_\_\_\_\_ Planning Director