



MONROE COUNTY LAND AUTHORITY

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MEMORANDUM

TO: Patti McLauchlin, City Manager
Katie Halloran, Planning Director

FROM: Christine Hurley, Executive Director

RE: Land Authority Statute related to Peary Court Development/Deed Restriction – Revised after updated Housing Authority Peary Court Apartments – Work force Housing Tenant Compliance Summary as of 9/30/21

DATE: June 3, 2022

CC: Monroe County Land Authority Governing Board Members,
Counsel Greg Oropeza, Land Authority

This memorandum is a follow up to my June 3, 2022 memorandum.

On 7/14/22, we received the updated Housing Authority Peary Court Apartments – Work force Housing Tenant Compliance Summary as of 9/30/21. It's my understanding the compliance report was updated as of 6/6/22 to correctly utilize the land development code that is an exhibit to the Deed Restriction as the method of calculating income. The deed restriction requires this method to be used.

The Compliance Summary demonstrates there are four remaining units that are non-compliant. It appears the original calculations were not based on this method. Therefore, utilizing Division 101 – Workforce Housing Ordinance, Section 122-1469 – Applicant eligibility requirements (13) (attached) on page 11 of the Recorded Deed Restriction, requires: *“The income of eligible households shall be determined by counting only the first and highest paid 40 hours of employment per week of each unrelated adult. For a household containing adults related by marriage or domestic partnership registered with the city, only the highest 60 hours of the combined employment shall be counted. The income of dependents regardless of age shall not be counted in calculating a household’s income.”*

¹ Division 10 applicable to the Deed Restriction

I have asked the Housing Authority and Key West for information related to when the four units' leases expire, since the Key West code provides the following:

“During occupancy of an affordable housing (moderate income) rental unit, a household’s annual income may increase to an amount not to exceed 160 percent of median household income for the county (adjusted for family size). In such event, the tenant’s occupancy shall terminate at the end of the existing lease term.”

The 6/6/22 Compliance Report indicates two [REDACTED] of the four leases have already expired. The remaining two [REDACTED] could stay until 8/31/22.

Unit	Unit Type	Occupant 1	Occupant 2	Total Occupants	Total Household Income as Shown in 9/30/2021	Recalculated Household Income as per Declaration of Affordable	Occupation Type	Market Rent	Actual Rent	AMI Rent Category (Based on Rent)	Move-In	Lease Start	Lease Expiration
[REDACTED]	2-1.5pc	[REDACTED]	[REDACTED]	2	145,600.00	NQ	Entertainer / Entertainer	3,200.00	2,800.00	140%	02/01/20	02/01/21	01/31/22
[REDACTED]	2-1.5pc	[REDACTED]	[REDACTED]	2	151,960.00	NQ	Bartender / Bartender and Server	3,200.00	2,765.00	140%	05/15/18	05/01/21	04/30/22
[REDACTED]	2-1pc	[REDACTED]	[REDACTED]	2	148,880.00	NQ	Bartender / Bartender	3,200.00	2,825.00	140%	09/17/18	09/01/21	08/31/22
[REDACTED]	2-1.5pc	[REDACTED]	[REDACTED]	2	146,276.00	NQ	Server / Server	3,200.00	2,825.00	140%	09/20/21	09/20/21	08/31/22

The Housing Authority Executive Director has indicated the owner renewed the two expired leases because the compliance evaluation had not been settled.

It is my perspective that the four non-compliant units could stay through the end of their lease and then the property owner can bring those units into income compliance. *The Land Authority will be sending the property owner a letter indicating the four units are not in compliance and that they need to be brought into compliance as their current leases expire.*

Further, while the Land Authority is not a party to the Development Agreement; MCLA relies on the 2016 deed restriction executed in favor of MCLA and the Housing Authority which cannot be amended or altered by the Development Agreement. The Land Authority statute, Section 380.0666 Florida Statutes Powers of land authority (attached) (3)(a) allow the Monroe County Land Authority (MCLA) “to acquire and dispose of real and personal property or any interest therein when such acquisition is necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area”. The definition of “family” under the City code includes up to four unrelated individuals living in a single household. It is our understanding the

definition of "family" has not changed under the City code from 2016 to present.

By way of example, if the income calculation was amended to allow calculating maximum income to a more current version of the City code, Section 122-1469 (attached), which reads:

"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."

The change would allow the Housing Authority to qualify each individual roommate on an individualized basis opposed to a cumulative basis. For example, using a 3-bedroom unit, if each roommate, individually, did not exceed the income qualification limit, then the occupants would qualify under the current code. Each individual could earn up to \$113,950 for a maximum "family" or household income of \$341,850 vs. utilizing the current deed restriction which allows a family of three to earn up to \$146,450. The maximum rental rate for a 3-bedroom unit is currently \$3,560. All numbers are based on the income tables used by the Housing Authority in the most recent compliance report.

Therefore, the deed restriction (attached) has two limitations that would preclude use of the current Key West code, Section 122-1469, for income qualification.

1. First, the deed restriction requires the developer to comply with the regulations as they existed at the time of execution of the deed restriction. This provision can be amended to allow the use of the current City code with approval of the Land Authority Governing Board if that was the pleasure of the Board but the amendment would have to comply with Florida Statutes Section 380.0666 (3)(a). However, in doing so would violate Florida law, Section 380.0666, (3)(a).
2. Second, the existing deed restriction provides that the combined income for the occupants of the unit cannot exceed 160% of AMI. This provision cannot be amended because it is required by Florida Statutes Section 380.0666 (3)(a). The definition of "family" under the City code includes up to four unrelated individuals living in a single household. It is our understanding the definition of "family" has not changed under

the City code from 2016 to present.

In conclusion, while MCLA has the authority to amend the deed restriction to remove the requirement of using the 2016 City code, Florida Statutes Section 380.0666 (3)(a) would still limit the total income of the occupants in each dwelling unit to 160% AMI, which MCLA does not have the authority to amend.