



THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Daniel Sobczak, Planner I, AICP-C

Meeting Date: March 18<sup>th</sup>, 2021

Agenda Item: **Text Amendment of the Land Development Regulations**– A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission amending Chapter 108 of the Land Development Regulations, entitled “Planning and Development”, Article X entitled “Building Permit Allocation System”, Division 2 entitled “Building Permit Allocation System”, to create Section 108-1001. – Density Limited to Building Permit Allocation System; pursuant to Chapter 90, Article VI, Division 2; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: To amend the City’s Land Development Regulations to add a code section to clarify that residential and mixed-use density associated with all real property within the city limits is limited by the BPAS.

Applicant: City of Key West

**Background:**

The proposed ordinance to amend the City’s Land Development Regulations is an effort to more effectively implement Comprehensive Plan Goals, Objectives, and Policies of the City of Key West. The City recognizes the finite nature of the Building Permit Allocation System, and that in 2023, or when all BPAS units have been allocated, whichever comes last, the City may no longer be authorized to issue permits for new residential units. The proposed text amendment is designed to clarify that the City’s ability to allocate new residential units, either affordable or market rate, is limited by the State of Florida, the Department of Economic Opportunity, and by the BPAS program. The Land Development Regulations allow a certain number of residential units per acre, these allowances and the existing density recorded through zoning shall not constitute rights to construct new units.

**Request / Proposed Amendment:**

**Sec. 108-1001. – Density limited to Building Permit Allocation System.** The City of Key West recognizes the finite nature of the Building Permit Allocation System, which establishes that in 2023, or when all BPAS units have been allocated, whichever comes last, the City may no longer be authorized to issue permits for new residential units. Residential density associated with all real property within the city limits is

recognized to be limited by the BPAS; existing density recorded through zoning shall not constitute rights to construct new units.

*\*Coding: Added language is **underlined**; deleted language is ~~struck through~~ at first reading.*

**Land Development Regulations Text Amendment Process:**

Planning Board Meeting:	March 18th, 2020
City Commission (1st Reading):	April 6th, 2020
DEO Review:	Up to 45 days
City Commission (2nd Reading / Adoption):	May 4th, 2020
Local Appeal Period:	30 days
Render to DEO:	10 working days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

**Analysis:**

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider, , the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552 the Planning Board, , 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 in the LDRs to the City Commission for official action. In its deliberations, the Planning Board shall consider the criteria in Code Section 90-521.

90-520 (6) Justification. The need and justification for the proposed change. The evaluation shall address but shall not be limited to the following issues:

- a. **Comprehensive Plan consistency.** Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning should be consistent with the Comprehensive Plan.

“OBJECTIVE 1-1.16: - MANAGING BUILDING PERMIT ALLOCATION.” The comprehensive Plan currently requires the City to manage a Building Permit Allocation System in order to protect the health and safety of the residents in the City of Key West. The City shall regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to maintain and improve hurricane evacuation clearance times. The City shall manage the rate of growth in order to maintain an evacuation clearance time of 24 hours for permanent residents.

“Policy 1-1.16.1: - Maintain a Building Permit Allocation Ordinance.” The Comprehensive Plan states that the City of Key West shall maintain and enforce its building permit

allocation ordinance. The 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. The annual allocation will not exceed 91 single-family units, or an equivalent combination of residential and transient types based on the equivalency factors established in Policy 1-1.16.3. The annual allocation limitation shall not apply to affordable housing allocations.

“Goal 3-1: - Housing: Allocate land area for accommodating a supply of housing responsive to the diverse housing needs of the existing and projected future population and served by adequate public facilities; assist the private sector in: providing affordable quality housing in neighborhoods protected from incompatible uses; promote best practices of land use planning, urban design, and landscaping.”

The City’s Chapter 3: - Housing Element of the Comprehensive Plan addresses the City’s goal to allocate land area to accommodate a supply of housing that is responsive to the diverse housing needs of the existing and projected future populations.

The proposed Land Development Regulations amendment will clarify that the City’s ability to allocate new residential units, either affordable or market rate, is limited by the State of Florida, the Department of Economic Opportunity, and by the BPAS program. The Land Development Regulations allow a certain number of residential units per acre, these allowances and the existing density recorded through zoning shall not constitute rights to construct new units.

- b. **Impact on surrounding properties and infrastructure.** The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.

The City does not currently anticipate any impact to surrounding properties or infrastructure at this time. The proposed amendment will add language defining the City’s limitation in the allocation of new residential units after 2023, or when all BPAS units have been allocated, whichever comes last.

- c. **Avoidance of special treatment.** The proposed change shall not constitute a spot zone change. Spot zoning occurs when:

1. A small parcel of land is singled out for special and privileged treatment:  
The proposed amendment to the LDRs will be effective for all development within City boundaries.
2. The singling out is not in the public interest but only for the benefit of the landowner.  
The proposed amendment to the LDRs will be in the public interest to clarify the City’s role in allocating units beyond 2023 or when all BPAS units have been allocated, whichever comes last.
3. The action is not consistent with the adopted comprehensive plan.  
The proposed amendment would be consistent with the adopted Comprehensive Plan, particularly with Objective 1-1.16, Policy 1-1.16.1, and Goal 3-1.

**d. Undeveloped land with similar comprehensive plan future land use map designation.** The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested shall be stated.

The proposed amendment to add a Section of code to clarify future residential unit allocation is not projected to have any effect on undeveloped land. Undeveloped land and vacant properties are subject to unit allocations from the Beneficial Use pool.

**Criteria for Approving Amendments to the LDRs pursuant to Code Section 90-521 and 90-**

**522 (a).** In evaluating proposed changes to the LDRs, 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.**

Consistency with the Comprehensive Plan

The City's Comprehensive Plan was developed in response to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes). The Plan and its updates are consistent with the State, Regional and County plans; and serves as the basis for all land development decisions within the City of Key West. In addition to fulfilling legislative requirements, the City's Plan:

Protects and maintains its natural, historic and cultural resources;

preserves its community character and quality of life;

ensures public safety, and;

directs development and redevelopment in an appropriate manner.

The proposed amendment would be consistent with the overall purpose of the Comprehensive Plan, particularly Objective 1-1.16, Policy 1-1.16.1, and Goal 3-1.

Consistent with the adopted infrastructure minimum level of service standards and the concurrency management program

The proposed amendment would be consistent with the adopted infrastructure minimum level of service (LOS) standards and the concurrency management program.

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

The proposal is in conformance with all applicable requirements of the Code of Ordinances.

- (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 conditions support or work against the proposed rezoning.

The existing LDRs were adopted on July 3, 1997 through Ordinance No. 97-10 following adoption of the 1994 Comprehensive Plan. Over the years, the Comprehensive Plan and LDRs have been amended from time-to-time. A new Comprehensive Plan was adopted on March 5, 2013 and became effective on May 2, 2013.

The proposed text amendment is an effort to more effectively implement Comprehensive Plan Policies of the City of Key West. The proposed text amendment is designed to clarify the City's ability to allocate new residential units, either affordable or market rate, is limited by the State of Florida, the Department of Economic Opportunity, and by the BPAS program. The Land Development Regulations allow a certain number of residential units per acre, these allowances and the existing density recorded through zoning shall not constitute rights to construct new units.

- (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.

Land use incompatibilities are not anticipated with the proposed text amendment.

- (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 extent to which the proposal would have on demand on public facilities and services cannot be determined at this time as no development plans are a part of this proposal. All applications for development will be required to complete a concurrency determination pursuant to chapter 94 of the Land Development 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 text amendment will not result in adverse impacts on the natural environment.

- (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 proposal would not adversely affect the 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.

The proposed amendment to create Section 108-1001 should not have any impact on orderly and compatible land use patterns across the City.

- (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 proposed amendment to the Land Development Regulations would not be in conflict with the public interest and it 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.

**RECOMMENDATION:**

The Planning Department, based on the criteria established by the Land Development Regulations and the Land Development Regulations, recommends to the Planning Board that the request to amend the Land Development Regulations be **APPROVED**.