



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

To: Chairman and Planning Board Members

Through: Patrick Wright, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: March 21, 2019

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 86 of the Land Development Regulations, entitled “General Provisions”, Section 86-9, entitled “Definition of terms” and Chapter 108, entitled “Planning and Development”, Section 108-997, entitled “Period of allocation and ranking/review of applications”; pursuant to Chapter 90, Article VI, Division 2; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

The proposed ordinance to amend the City’s Land Development Regulations (the “LDRs”) is an essential part of an extensive effort to promote the construction of affordable and permanent housing within the City of Key West.

Request:

The proposed text amendment to the LDRs is as follows*:

Section 86-9. – Definition of terms.

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:

- (1) All new units shall be constructed in compliance with and obtain a baseline green building certification.
- (2) 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.

~~(3) All new buildings shall be constructed with a rainwater catchment system that will hold a minimum 1,000 gallons of water or an amount equivalent to 100% of the new roof area in gallons whichever is greater.~~

Section 108-997. – Period of allocation and ranking/review of applications.

(a) *Application and allocation period.* The annual building permit allocation period will begin on July 1 of each year, and shall end on the 30th of June of the following year.

(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.

~~e. 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. All buildings with new units must meet compliance with Florida Green Building Coalition's Level 3 Green Home Retrofit 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 non-transient units as follows:

a. Building more than 1.5 feet higher than the base flood elevation: 5 points.

b. Exceeding the minimum required percentage of affordable housing: 30 points.

c. Voluntarily providing affordable housing which exceeds the requirements of section 122-1467 at median income classification: 40 points.

d. Voluntarily providing affordable housing which exceeds the requirements of section 122-1467 at low income classification: 60 points.

- e. Achieving Green Building Certification Upgrade 1: 20 points.
- f. Achieving Green Building Certification Upgrade 2: 27 points.
- g. Achieving Green Building Certification Upgrade 3: 40 points.
- h. Voluntary contribution to the arts in public places fund or tree fund in the amount of \$2,500.00 or more: 5 points.
- i. Providing electrical high voltage sized conduit for future electric car charging station near parking area: 5 points.
- j. Using light colored, high reflectivity materials for all non-roof/areas with a solar reflectance index (SRI) of at least 29: 5 points.
- k. Providing on-site recreational amenities or exceeding the open space requirements of section 108-346 (b) of article V of chapter 108: 10 points.
- l. Constructing 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: 10 points.

- (d) *Application review process—review, ranking, initial announcement and final determination of award.* Applications received by the application closing date 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. Based on staff recommendation the planning board shall make the final determination of award. Applications for affordable units as minor renovations or accessory units can be received at any time during the BPAS allocation year, as long as their application meets the average application score from the prior year. If the score does not meet the average score of the prior year, the application will be held and ranked as part of the annual application cycle.

- (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 to the city for reallocation.
- (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) *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 the applicant is able to establish that the green building standard has been achieved.

(Ord. No. 13-19, § 2, 11-6-2013; Ord. No. 18-01, § 1, 1-4-2018; Ord. No. 18-11, § 5, 6-5-2018)

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

Land Development Regulations Text Amendment Process:

Planning Board:	March 21, 2019
<i>If denied, then appeal may be filed within 10 calendar days.</i>	
City Commission (first reading):	TBA
City Commission (second reading):	TBA
Local Appeal Period:	30 days
Render to DEO:	10 working days
DEO Notice of Intent (NOI)	
Effective when NOI posted to DEO website	

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 particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552 the Planning Board, regardless of the source of the proposed change in the LDRs, 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.

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 Comprehensive Plan mentions the use of cisterns on four (4) occasions:

1. **Policy 4-2.1.2 (in part):** The City will monitor innovative concepts in wastewater collection and disposal, including wastewater reuse through such programs as use of "graywater" for spray irrigation and use of cisterns for collecting rainwater for use in spray irrigation or other related purposes.
2. **Policy 6-1.2.5 (in part):** The City will explore and pilot innovative concepts in reuse of water, including use of cisterns for collecting rainwater for use in spray irrigation.
3. **Policy 6-1.2.14 (in part):** The City will encourage the use of Florida Friendly Landscape guidelines and principals; gutter downspouts, roof runoff, and rain harvesting through the use of cisterns, rain barrels and directing runoff to landscaped areas.
4. **Policy 6-1.2.14** is repeated in the City of Key West Water Supply Facilities Work Plan Appendix C.

Although the Comprehensive Plan, with certainty, promotes the conservation of water, nowhere does it require a developer or homeowner to install a cistern.

The proposed text amendment would be consistent with the Comprehensive Plan.

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

The proposed text amendment would be consistent with the Comprehensive Plan and level of service (LOS) standards.

- (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 cost of land per square-foot and the costs of construction continue to rise. In addition, a recent hurricane has had lingering effects on the acute shortage of affordable housing in the city and the county. The proposed ordinance to amend the City's Land Development Regulations (the "LDRs") is an essential part of an extensive effort to promote, not discourage, the construction of affordable housing within the City of Key West.

- (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.**

The proposal would not result in any incompatible land uses.

- (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.**

No development plans are proposed with this application.

- (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.**

No development plans are proposed with this application. The proposal would not result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

- (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. It is staff's opinion that the proposal would have a positive effect on the general welfare because it would remove a prerequisite that could be a possible hinderance to the development of vacant lots and/or redevelopment of blighted or condemned residential structures.

- (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 proposal would not result in negative effects to the land use pattern.

- (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 text amendment 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.

New construction of housing can require some or all of the following actions:

- Lot clearing and grading
- Utilities hookup
- Foundation
- Framing
- Exterior Finishes
- Electrical, HVAC, and Plumbing
- Interior Finishing
- Landscaping

In addition to the actions listed above, the City's Building Permit Allocation System (BPAS) requires each of the following actions:

- All new units shall be constructed in compliance with and obtain a baseline green building certification.
- 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.
- 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.

New residential buildings can be anything from an affordable deed-restricted accessory unit with 300-square-feet of roof area in the Single-Family (SF) zoning district, a nursing home with 20,000-square-feet of roof area, or a multi-family development with 30,000-square-feet of roof area or more. In each of these cases, the rainwater catchment system purchase and installation requirement may cause unnecessary and undue substantial financial hardship on the project.

In conclusion, there is an affordable housing crisis of epic proportions in the City. The removal of the requirement that all new buildings be constructed with a rainwater catchment system is a crucial step towards encouraging the development of permanent and affordable housing.

RECOMMENDATION:

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