

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

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED “ZONING”, DIVISION 10, ENTITLED “WORK FORCE HOUSING”; PURSUANT TO CHAPTER 90, ARTICLE VI, DIVISION 2; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the provisions of Chapters 163, 166, and 380 of the Florida State Statutes, the City of Key West, Florida (the “City”) proposes to amend Chapter 122 of the Land Development Regulations (the “LDRs”); and

**WHEREAS**, amending Chapter 122, Division 10, entitled “Work Force Housing”, will enable the City to require that redevelopment include affordable housing; and

**WHEREAS**, this proposed amendment to the Land Development Regulations was presented to the Planning Board with a recommendation of approval at its regularly scheduled meeting on February 21, 2019; and

**WHEREAS**, the Planning Board found that it is in the public interest to amend Chapter 122, Division 10, and made a recommendation of approval to the City Commission through Resolution no. 2019-15.

**NOW, THEREFORE, BE IT ORDAINED BY 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 Chapter 122 of the Land Development Regulations is hereby amended as follows:\*

---

## DIVISION 10. WORK FORCE HOUSING

### **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)

### **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:

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

*Affordable housing (low income) for a rental dwelling unit* shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 80 percent of the monthly median household income (adjusted for family size). For an owner-occupied dwelling unit, affordable housing (low income) shall mean a dwelling unit whose sales price shall not exceed two and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

*Affordable housing (median income) for a rental dwelling unit* shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (median income) shall mean a dwelling unit whose sales price shall not exceed three and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472. The definition of "affordable housing (median income)" applies to and encompasses all affordable housing under construction or built pursuant to this ordinance prior to July 1, 2005, for which deed restrictions are required.

*Affordable housing (middle income) for a rental dwelling unit* shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 140 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (middle income) shall mean a dwelling unit whose sales price shall not exceed six and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

*Affordable housing (moderate income) for a rental dwelling unit* shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 25 percent of that amount which represents 120 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (moderate income) shall mean a dwelling unit whose sales price shall not exceed five times the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

*Affordable work force housing* shall include low income, median income, moderate income and middle income housing.

*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.

*Annual Household Income* means all amounts, monetary or not, which are received by any family member of the household, except income from employment of children (including foster children) under the age of 18 years. Family shall include the traditional family, (married or not) as well as domestic partnerships.

*Development or redevelopment, for purposes of this section, shall mean any development or redevelopment that increases the size of a unit(s), the number of units, or the need for additional affordable workforce housing as evidenced by additional services or intensity.*

*Median household 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.

(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)

**Cross reference**— Definitions generally, § 1-2.

**Sec. 122-1467. Requirements of affordable work force housing; ~~ratio of new construction.~~**

(1)

- (a) ~~*New market rate multifamily residential h*~~*Housing units.* At least ten percent of all ~~new multifamily residential units constructed~~ developed or redeveloped each year

shall be low income affordable housing of at least 400 square feet each, as defined herein and 20 percent shall be affordable housing (median income) housing of at least 400 square feet each, as defined herein. Residential or mixed use projects of less than ten residential or mixed use units shall be required to develop or redevelop at least 30 percent of units of at least 400 square feet each as affordable (median income), but may contribute a fee in lieu for each unit to the affordable work force housing trust fund, if approved by the city commission. The per unit fee shall be \$200,000.00 (representing construction cost, less land cost, of a 400 square foot unit). The 30 percent affordability requirement shall be determined on a project by project basis and not on a city-wide basis. Vested units shall be subject to this subsection if not otherwise governed by law or agreement. For every required affordable housing (median income) unit, a developer may increase the sales or rental rates to affordable housing (middle income) so long as another unit's sales or rental rate is decreased to affordable housing (low income).

- (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 commission at the time of the first site plan approval. 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. In addition, if a developer 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. 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. 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) ~~New~~ *Affordable work force housing.* The maximum total rental and/or sales price for all ~~new~~-affordable work force housing units in a single development 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 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 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 at least 50 years. It shall be recorded in the county records. During the final year of the deed restriction, the city commission may act by Resolution to renew the affordability restriction for an additional 50-year term.

- (e) *Reporting requirements.* Owners of affordable work force housing projects or units shall furnish the city manager or his 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. Property owners subject to this subsection may contract with the Key West Housing Authority to perform annual tenant eligibility verification.
- (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.

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

**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 (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).
- (3) During occupancy of any an 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.

- (4) 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).
- (5) 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.
- (6) 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).
- (7) 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.
- (8) 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).
- (9) During occupancy of an 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.
- (10) 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.
- (11) Priority shall be given to families of four or more members for larger sized affordable work force housing units.
- (12) The applicant shall execute a sworn affidavit stating the applicant's intention to occupy the dwelling unit.
- (13) 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.
- (14) 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.

- (15) 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. 13-11, § 3, 11-6-2013)

**Sec. 122-1471. Community housing development organization.**

The city commission may promote the establishment of a nonprofit community housing development organization (CHDO), pursuant to federal regulations governing such organizations, to serve as developer of affordable workforce housing units on city-owned property located in both the city and in the community redevelopment areas, including excessed U.S. Navy property, or located in Key Haven and Stock Island in the unincorporated part 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.

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



**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)

**Sec. 122-1473. Reserved.**

**Editor's note**— Section 12 of Ord. No. 05-27, adopted Oct. 18, 2005, repealed § 144-1473, which pertained to sunset provisions, and derived from Ord. No. 98-18, adopted June 3, 1998; and Ord. No. 02-08, adopted Feb. 20, 2002.

**Secs. 122-1474—122-1500. Reserved.**

---

---

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

**Section 3.** If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provision of this Ordinance shall be deemed severable therefrom and shall be constructed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

**Section 4.** All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

**Section 5.** This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the

Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed by the City Commission at a regular meeting held this \_\_\_\_ day of \_\_\_\_\_, 2019.

Read and passed on final reading at a regular meeting held this \_\_\_\_ day of \_\_\_\_\_, 2019.

Authenticated by the presiding officer and Clerk of the Commission on the \_\_\_\_ day of \_\_\_\_\_, 2019.

Filed with the Clerk \_\_\_\_\_, 2019.

Mayor Teri Johnston	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Vice Mayor Sam Kaufman	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK