



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Patrick Wright, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: June 4, 2019 (first reading)
July 16, 2019 (second reading) (postponed)
August 6, 2019 (second reading)

RE: **Text Amendment of the Land Development Regulations** – An ordinance of the City of Key West, Florida, 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.

ACTION STATEMENT:

The purpose of this ordinance is to amend Chapter 86 - Section 86-9 and Chapter 108 - Section 108-997 of the City’s Land Development Regulations (the “LDRs”). The proposed amendment reduces the prerequisite cistern’s minimum number of gallons from 1000 gallons to 300 gallons and provides for exemptions from the prerequisite requirement if the applicant proposes additional voluntary deed-restricted affordable housing or makes a payment to the City’s stormwater fund.

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.

(3) All new buildings shall be constructed with a rainwater catchment system that will hold a minimum 300 gallons of water or an amount equivalent to 100% of the new roof area in gallons whichever is greater. However, the use of the water from rainwater catchments shall be limited to irrigation of plants and the flushing of toilets and be strictly prohibited from any potable use including drinking, food preparation, or any other internal use. If the cistern will be used for drinking water, appropriate precautions must be taken.

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.~~

c. All new buildings shall be constructed with a rainwater catchment system that will hold a minimum 300 gallons of water or an amount equivalent to 100% of the new roof area in gallons whichever is greater. However, the use of the water from rainwater catchments shall be limited to irrigation of plants and the flushing of toilets and be strictly prohibited from any potable use including drinking, food preparation, or any other internal use. If the cistern will be used for drinking water, appropriate precautions must be taken.

d. An applicant may request to be exempted from the rainwater catchment requirement, if:

(i) the applicant is voluntarily providing affordable housing at median or low-income classification which exceeds the requirements of section 122-1467 by at least twenty percent.

(ii) the applicant seeks to create an accessory unit(s) but the impervious surface and/or building coverage ratio maximums for the parcel have been met or exceeded, and the applicant contributes a fee of \$2 per required gallon in mitigation to the City's stormwater fund.

- (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.
- (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. Added language is double underlined; deleted language is ~~double struck~~ through at second reading.

City Actions:

Planning Board:	March 21, 2019 (<i>recommendation of approval</i>)
<i>If denied, then appeal may be filed within 10 calendar days.</i>	
City Commission (first reading):	May 7, 2019 (postponed)
City Commission (first reading):	June 4, 2019
City Commission (second reading):	July 16, 2019 (postponed)
City Commission (second reading):	August 6, 2019
Local Appeal Period:	30 days
Render to DEO:	10 working days
DEO Notice of Intent (NOI)	
Effective when NOI posted to DEO website	

Planning Staff 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.

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 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. The text amendment will remove a prerequisite construction component that can be quite costly for large-scale affordable housing projects that require BPAS allocations.

Options / Advantages / Disadvantages:

Option 1: **Approve** the text amendment to the City’s Land Development Regulations to amend 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.

a. Consistency with the City’s Strategic Plan, Vision, and Mission:
The Strategic Plan is silent on this issue.

b. Financial Impact:
There will be no cost to the City if this request is approved.

Option 2: **Deny** the text amendment to the City’s Land Development Regulations to amend 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.

a. Consistency with the City’s Strategic Plan, Vision, and Mission:
The Strategic Plan is silent on this issue.

b. Financial Impact:
There will be no cost to the City if this request is denied.