



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

From: Katie P. Halloran, Planning Director

Meeting Date: September 15, 2022

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”, Article X entitled “Building Permit Allocation System”, Section 108-995 entitled “Reporting requirements and residential allocation schedule” to extend the BPAS allocation period past July, 2023.

Request: The proposed ordinance would amend the City’s Land Development Regulations to allow for the extension of the Building Permit Allocation System’s ten-year allocation schedule so that any units that remain unallocated after the conclusion of Year 10 may be allocated in subsequent years. The Planning Board is hearing this Land Development Regulation (the “LDRs”) text amendment and associated text amendments to the Comprehensive Plan to delineate a process for continued allocations after the conclusion of Year 10.

Applicant: City of Key West

Background:

The City of Key West’s current adopted Land Development Regulations provide a residential unit allocation schedule for the Building Permit Allocation System (BPAS). Sec. 108-995 delineates a ten-year allocation period divided into ‘application years’. In defining ‘application years’, Section 86-9 states that “The first application year is 2013, and shall continue until 2023 unless amended or extended by an appropriate action of the city commission.” Additionally, Sec. 108-1001 establishes that BPAS allocations will conclude by “2023, or when all BPAS units have been allocated, whichever comes last.”

The last day of the Year 10 application period is June 30, 2023. This amendment would delineate a process wherein BPAS unit allocations may extend beyond June 30, 2023, in the event that any units remain unallocated after the conclusion of Year 10, or in the event that additional units become available after Year 10.

This amendment proposes that the existing annual BPAS process shall continue in accordance with the existing application, review, ranking, and reporting requirements defined by Sections 108-986 through 108-

1001, in the event that units remain after Year 10.

Under this proposal, any units that remain unallocated after June 30, 2023, would be rolled over to a Year 11 cycle, and would be administered consistent with the practices for Years 1 through 10. Likewise, any units that remain unallocated after June 20, 2024, would roll over to Year 12, and so on. During year 10, the City may not receive requests (applications) for all remaining permits. The City desires to memorialize its intent to utilize every available remaining residential building permit even after 2023 to help address the City's extreme shortage of housing available for the workforce and local families. In addition, if building permits are not issued for allocated units with two years as specified in Section 108-997(e), they are recovered by the City; also for this reason, the BPAS should be extended to allow the City to re-allocate those units that may be recovered.

These proposed amendments would also provide the City with the capacity to continue the BPAS process should the City be awarded additional units from the State of Florida. For example, Monroe County has extended their Rate of Growth Ordinance (ROGO) allocation period in anticipation of updated hurricane evacuation models based on the 2020 Census. Hurricane evacuation models inform the State's determination of the Florida Keys' carrying capacity, so a change in the model may result in a change in the number of units authorized for Monroe County and Key West.

Request / Proposed Amendment:

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

[. . .]

Section 86-9. Definition of terms.

Allocation application means the permanent ~~and/or transient~~ residential building permit allocation application submitted by a property owner seeking a unit allocation award.

Allocation award year or *award year* means the calendar year in which a final determination of allocation award is made, and is the year immediately following the application year. The first award year is 2014, and shall continue until 2024 all residential building permit units have been allocated or until unless amended or extended by an appropriate action of the city commission.

[. . .]

Sec. 108-995. Reporting requirements and residential allocation schedule.

The City of Key West building permit allocation system shall limit the number of permits issued for new permanent development, to 910 units ~~during the period from July 2013 to July 2023~~, with the exception of the beneficial use permit allocations that have been reserved separately to address property rights claims. The Building Permit Allocation System shall operate on an annual basis in accordance with Section 108-997. The first allocation cycle is July 2013 through June 2014. Annual allocation cycles shall continue until all units have been allocated. Additionally, the Building Permit Allocation System shall be utilized in the event of an increase in available Building Permit Allocation System units.

The annual allocation will not exceed ninety-one (91) single-family units or equivalent types of units based on the equivalency factors established in policy 1-1.16.3 of the comprehensive plan. The annual allocation limitation shall not apply to affordable housing allocations. No transient allocations will be made subsequent to the closure of the 2017-2018 allocation period.

In order to address the ongoing affordable housing shortage and affordable housing deed restrictions expected to expire, during the first three years (July 2013—July 2016) 60 percent of the units allocated shall be affordable. Between years four (4) and ten (10) (2016—2023), a minimum of 50 percent of the total allocations shall be affordable.

Between years four (4) and ten (10), 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. Between years six (6) and ten (10), 100 percent of the units shall be permanent. After year ten (10), 100 percent of units shall be deed restricted affordable, including any units recovered by the City due to failure to obtain building permits within two years of a BPAS award, per Section 108-997(e), or otherwise voluntarily released to the City.

During year one (1) (July 2013—2014), 48 of the affordable units to be allocated will be dedicated for use at the Peary Court Housing complex property, being transferred from military to private sector housing, and shall meet the prerequisite standards for obtaining BPAS awards.

During year nine (9) (July 2021-2022), 128 of the units to be allocated will be dedicated for use at the property currently known as the 3.2 development located in Bahama Village and shall meet the prerequisite standards for obtaining BPAS awards.

Table 2.0 below identifies ~~the allocated units at a rate of 1.0 ESFU's for~~ the period from July 2013 to July ~~2023~~ number of by housing 2023. As noted above, allocations shall continue after July 2023 but shall be limited to deed restricted affordable units which shall not have annual allocation limitations.

July 1, 2013 - June 30, 2014	July 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016	July 1, 2016 - June 30, 2017	July 1, 2017 - June 30, 2018	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022	July 1, 2022 - June 30, 2023
48 affordable units to be allocated for Peary Court development. Minimum of 7 affordable units. Maximum of 36 market rate units.	Minimum of 55 affordable units. Maximum of 36 market rate units.	Minimum of 55 affordable units. Maximum of 36 market rate units.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units.	Minimum of 45 affordable units. Maximum of 46 market rate units.	Minimum of 45 affordable units. Maximum of 46 market rate units.	38.4 market rate units and 89.6 affordable units shall be allocated to the property currently known as the 3.2 development in Bahama Village. Maximum of 7.6 market rate units.	Minimum of 0.4 affordable units. Maximum of 46 market rate units.

The city planner will provide an annual report to the planning board and the state land planning agency identifying any remaining or unused allocations, and the number of permits by building type by September 1 of each year as stipulated in the 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding. The first report will be published in 2014.

(Ord. No. 13-19, § 2, 11-6-2013; Ord. No. 18-11, § 3, 4, 6-5-2018; Ord. No. 22-06, § 1, 2-15-2022)

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Land Development Regulations Text Amendment Process:

Planning Board Meeting:	September 15, 2022
City Commission (1st Reading):	TBD
Local Appeal Period:	30 days
DEO Review (1st Reading):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD
Local Appeal Period:	30 days
DEO Review (2nd Reading):	Up to 45 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.

The Code provides criteria by which LDR amendments must be evaluated:

Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. 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 must be consistent with the Comprehensive Plan.***

The proposed amendments are advancing with companion amendments to the Comprehensive Plan which are also drafted to establish an extension to the BPAS process. These amendments will support and further implement the Comprehensive Plan objectives and policies listed in Chapter 3 – Housing Element by assisting to develop additional deed restricted housing stock while ensuring growth is commensurate with hurricane evacuation clearance times and the City’s public service capacity.

- 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.***

There will be no impact on surrounding property or infrastructure, as the proposed amendment to the LDRs does not apply to any specific parcel of land.

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 does not apply to any specific parcel of land.

2. The singling out is not in the public interest but only for the benefit of the landowner.

The proposed amendment to the LDRs does not apply to any specific parcel of land.

3. The action is not consistent with the adopted comprehensive plan.

The proposed amendment is consistent with Comprehensive Plan goals, objectives and policies including but not limited to:

- Objective 2-1.7: - Transportation and hurricane evacuation.
- Objective 3-1.1: - Provide quality affordable housing and adequate sites for low and moderate income housing.
- Goal 4-1: Needed public facilities
- Objective 4-1.1: - Ensure that infrastructure improvement needs shall be met and that use of existing public facilities is maximized.
- Objective 5-1.6: - Hurricane Evacuation.

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.

This proposed amendment is not associated with a particular Comprehensive Plan Future Land Use designation or specific zoning district.

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**.