

EXECUTIVE SUMMARY



To: Patti McLauchlin, City Manager
From: Jordan Mannix-Lachner, Planner I
Through: Katie P. Halloran, Planning Director
Meeting Date: October 19, 2022

Agenda Item: **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”, 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.

Action Statement: 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.

Background:

City of Key West Land Development Regulations (LDRs) provide a ten-year allocation schedule for the Building Permit Allocation System (BPAS). Code states that BPAS will conclude by “2023, or when all BPAS units have been allocated, whichever comes last.” (Sec. 108-1001). The last day of the Year 10 application period is June 30, 2023.

The proposed amendments would allow the City to administer subsequent BPAS allocation cycles if any units remain or become available after June 30, 2023. This is important because it’s possible, if unlikely, that the City will not receive applications for all available units in Year 10. More likely is that units will become available after reverting to the City due to failure to obtain building permits within two years of the award, or if units are voluntarily relinquished post-award.

Under this proposal, BPAS would continue to be administered in accordance with the existing application, review, ranking, and reporting requirements defined by Code. This includes a BPAS allocation year starting on July 1 and concluding on June 30.

If BPAS units are available in a given year, BPAS applications will open on July 1. If no BPAS

units are available, there will be no BPAS cycle for that year.

Planning staff proposed that any BPAS allocations awarded after Year 10 be deed-restricted affordable to help address the City's extreme shortage of housing available for the workforce and local families.

Planning Board Resolution 2022-047 approved the proposal to extend the BPAS with slightly modified language to instead require that 75 percent of units be deed-restricted affordable, with a continuing allowance that 25 percent of units could be market-rate. Planning Board members stated that this condition would create financial incentives for developers, who may desire market-rate units to subsidize the cost of constructing affordable units.

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), 75 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 only 25% of units allocated during any one BPAS cycle year can be market rate. Deed restricted affordable allocations shall not have maximum annual allocation limits.

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 (Planning Board Res. 2022-047)
City Commission (1st Reading):	October 19, 2022
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.

Options / Advantages / Disadvantages:

Option 1: Approve the proposed text amendments to the LDRs with the conditions proposed in Planning Board Res. 2022-047, requiring 75 percent of units to be deed-restricted affordable, and 25 percent of units to be market-rate.

Advantages:

- The City would have an avenue to allocate unallocated BPAS units after 2023, which would help alleviate the current housing shortage and allow the City to utilize all available BPAS units.
- Developers and property owners would have flexibility to construct 25 percent of the units that are set aside as market-rate.

Disadvantages:

- None identified.

Option 2: Deny the proposed text amendments to the LDRs.

Advantages:

- None identified.

Disadvantages:

- The City would not be able to utilize all available BPAS units, which would not support City Comprehensive and Strategic Plan goals to increase the stock of affordable housing.

Recommendation:

Staff recommends approval of these amendments as stated in OPTION 1.