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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,
AMENDING CHAPTER 54 OF THE CODE OF
ORDINANCES ENTITLED “PLANNING AND
DEVELOPMENT” BY AMENDING SECTION 54-26 TO
REQUIRE 100 PERCENT OF ALL RESIDENTIAL UNITS
BE ALLOCATED AS AFFORDABLE WHILE
MAINTAINING SUFFICIENT ALLOCATIONS FOR ANY
VALID BENEFICIAL USE CLAIMS AND VACANT LOTS;
AMENDING CHAPTER 86 OF THE CODE OF
ORDINANCES ENTITLED DEFINITIONS BY AMENDING
SECTION 86-9; AMENDING CHAPTER 108 OF THE CODE
OF ORDINANCES ENTITLED “PLANNING AND
DEVELOPMENT” BY AMENDING SECTIONS 108-994,
108-995, AND 108-997 TO REVISE BPAS; AMENDING
CHAPTER 122 OF THE CODE OF ORDINANCES
ENTITLED “ZONING” BY AMENDING SECTION 122-1142
TO REMOVE $\frac{1}{2}$ ACRE DENSITY/INTENSITY PENALTY
FOR AFFORDABLE HOUSING PROJECTS; BY
AMENDING SECTION 1467 TO ELIMINATE
REFERENCES TO MARKET-RATE MULTIFAMILY
DEVELOPMENTS, CREATE INCENTIVES FOR
AFFORDABLE HOUSING DEVELOPMENT, AND LOWER
AVERAGE RENT ROLL OF AFFORDABLE HOUSING
PROJECTS FROM MODERATE TO MEDIAN INCOME;
BY AMENDING SECTION 122-1336 TO ALLOW THE

1 **TRANSFER OF EXCESS RESIDENTIAL UNITS;**
2 **AMENDING SECTION 122-1341 ESTABLISHING CRITERIA**
3 **GOVERNING THE TRANSFER OF EXCESS UNITS;**
4 **RENUMBERING EXISTING SECTIONS 122-1340, 1341,**
5 **1342, 1242, 1344, AND 1345; AMENDING SECTION 122-**
6 **1344 TO ALLOW TRANSFER OF EXCESS UNITS;**
7 **AMENDING SECTION 122-1469 TO REVISE PROOF OF**
8 **ELIGIBILITY; AMENDING SECTION 122-1470 TO**
9 **REVISE AND CLARIFY ACCESSORY UNIT INFILL;**
10 **PROVIDING FOR SEVERABILITY; PROVIDING FOR**
11 **REPEAL OF INCONSISTENT PROVISIONS; PROVIDING**
12 **FOR AN EFFECTIVE DATE**

13
14 WHEREAS, the City of Key West has adopted a process to limit future development
15 based on the ability to evacuate the Florida Keys; and

16 WHEREAS, the potential of new units is significantly reduced based on hurricane
17 evacuation; and

18 WHEREAS, the community of Key West continues to face an affordable housing crisis
19 resulting from numerous factors including:

- 20 • Geographical restrictions on residential growth,
21 • Regulatory restrictions on residential growth, and
22 • Second home market pressures; and

1 WHEREAS, the geographic and governmental restrictions on residential growth prevent
2 the creation of additional market-rate units, which in turn causes the second home market
3 pressure to redevelop existing homes; and

4 WHEREAS, the City recognizes that increasing pressure to redevelop existing homes for
5 the second home market leads to the elimination of non-restricted affordable housing (de facto
6 affordable) that currently rents or previously sold for more affordable rates; and

7 WHEREAS, the City recognizes that most housing that rents for affordable rates are not
8 restricted in any way to remain affordable, and thus is at risk for upscale redevelopment for the
9 second home market; and

10 WHEREAS, the City recognizes that the high cost of land acquisition and construction
11 costs in the Keys deters the building of new affordable dwellings under current rental and sales
12 limitations; and

13 WHEREAS, the City recognizes this high cost of construction has caused very few new
14 affordable units to be built in the City without subsidy in recent years, resulting in the City
15 having a substantial number of unused affordable ROGO units, and

16 WHEREAS, the City recognizes the existing un-restricted affordable dwellings continue
17 to be redeveloped as upscale primary and secondary homes at an ever increasing rate; and

18 WHEREAS, the City recognizes that the redevelopment of the existing de facto
19 affordable housing is the right of the property owner, but leads to the elimination of significant
20 numbers of affordable dwellings; and

21 WHEREAS, the City recognizes that the preservation of these de facto affordable units
22 are in the public’s interest and further the goals of the Principles for Guiding Development; and

1 (10) Provided updated affordable housing analysis, and included more restricted
2 affordable housing criteria including a requirement that ~~30~~100 percent of all residential units
3 added to the housing stock be allocated as affordable units, while maintaining sufficient
4 allocations for any valid beneficial use claims, vacant lots, and mandated that a housing trust
5 fund be established;

6 ***

7 Section : That Section 86-9 of the Code of Ordinances is hereby amended as follows:

8 **Sec. 86-9. Definitions.**

9 Affordable housing reassignment means a recognized non-transient residential dwelling
10 that has been assigned an affordable BPAS unit pursuant to Chapter 108, is deed-restricted
11 pursuant to Chapter 122 and complies with hurricane standards established by the Florida
12 Building Code, and habitability standards established under the Florida Landlord and Tenant
13 Act.

14 Affordable work force housing means affordable deed restricted housing ~~required to be~~
15 ~~30% of the aggregate total of all market rate units proposed on any one site~~ subject to specific
16 eligibility requirements and performance criteria as contained in division 10, work force housing,
17 chapter 122. Affordable work force housing shall include low income, median income, moderate
18 income and middle income housing.

19 Affordable unit density means the maximum number of affordable deed restricted units
20 divided by the gross land area. It is typically expressed in units per acre.

21 Density means the maximum number of units divided by the gross land area. It is
22 typically expressed in units per acre. If there is a fractional affordable unit of density, it shall be
23 converted upward to the next whole number if one-half or more, and converted downward to the

1 nearest whole number if less than one-half. If there is a fractional non-affordable unit of density,
2 it shall be converted downward to the nearest whole number.

3 *Excess residential unit* means existing or recognized non-transient residential unit that no
4 longer physically exists on a property or has been replaced by a deed restricted affordable BPAS
5 unit as part of an affordable housing reassignment.

6 *Market rate housing, affordable housing, workforce housing or permanent housing*
7 means housing occupied on a full time basis or seasonally and is not intended for rent for less
8 than 28 days.

9 *Micro Unit* means a deed-restricted affordable unit, pursuant to Chapter 122, located
10 outside the LDR-C, SF, MDR-C, HMDR, HNC-2 and HHDR zoning districts; restricted to
11 occupancy by permanent residents, and cannot be sold separately as a condominium nor can it
12 exceed 400 square feet and the minimum size shall be 220 square feet. Micro Units shall have no
13 more than one bedroom unless an additional bedroom is approved as a variance by the planning
14 board. If such variance is approved, the total square footage shall not exceed 600 square feet. For
15 purposes of permitted density and intensity, the floor area ratio shall govern, not units per acre.
16 Individual micro units shall be treated as 0.1 equivalent unit under the city's building permit
17 allocation ordinance, section 108-994, provided the facility has an approved evacuation plan
18 consistent with Sec. 108-241(d). Micro units may provide two bicycle or scooter parking spaces
19 per unit as an alternative to applying to the planning board for parking variances.

20 *Non-affordable unit density* means the maximum number of all other types of non-
21 affordable deed restricted units divided by the gross land area. It is typically expressed in units
22 per acre.

23 *Residential unit* means an existing or recognized non-transient residential unit.

1 Lot, Vacant, means a buildable lot which is neither occupied nor used or is in a non-
2 operative state.

3 **Section** : That Section 108-994 of the Code of Ordinances is hereby amended as
4 follows:

5 **Sec. 108-994. - Established.**

6 The city establishes a building permit allocation system in order to limit the number of
7 permits issued for permanent and transient units by structure type and affordability level (as
8 shown on Table 1.0 below) to those available through the following means:

9 ***

Table 1.0 >	
Residential Structure Type	Equivalent Single-Family Unit Factor ⁽¹⁾
Single-family	1.00 ^(a)
Accessory apt./SRO	0.78 ^(b)
Multifamily	1.00 ^(c)
Transient unit	0.86 ^(d)
Nursing home, rest home, assisted living facility and convalescent home	0.10 ^(e)
<u>Micro unit</u>	<u>0.10^(f)</u>

10 (1) Pursuant to comprehensive plan policy 1-1.16.3, the equivalent single-family unit
11 factors are based on the ratio of the average number of vehicles per unit based on the 2010 U.S.
12 Census for the respective residential structure types divided by the vehicles per single-family
13 units (i.e., 1.28 vehicles per unit). The computations are as follows:

14 (a) Single-family: $1.28/1.28 = 1.00$

15 (b) Accessory unit, single room occupancy (SRO): $1.00/1.28 = 0.78$

16 (c) Multifamily: $1.28/1.28 = 1.00$

1 (d) Transient unit: $1.10/1.28 = 0.86$ based on the Transportation Interface for
2 Modeling Evacuations (TIME) Model for the Florida Keys (1.10 vehicles per transient unit in
3 Monroe County).

4 (e) Nursing home, rest home, assisted living facility and convalescent home:
5 $1.0/10 = 0.10$ based on provisions set forth in chapter [section] 86-9, definition of terms.

6 (f) Micro units: $1.0/10 = 0.10$ based on provisions set forth in chapter
7 [section] 86-9, definition of terms.

8
9 **Section** : That Section 108-995 of the Code of Ordinances is hereby amended as
10 follows:

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

12 The City of Key West building permit allocation system shall limit the number of permits
13 issued for new permanent ~~and transient~~ development, to 910 units during the period from July
14 2013 to July 2023, with the exception of the beneficial use permit allocations that have been
15 reserved separately to address property rights claims. The annual allocation will be ninety-one
16 (91) single-family units or an equivalent combination of residential ~~and transient~~ types based on
17 the equivalency factors established in policy 1-1.15.3 of the comprehensive plan.

18 In order to address the ongoing affordable housing shortage and affordable housing deed
19 restrictions expected to expire, during the first three years (July ~~2014~~ 2013—July ~~2015~~ 2016) 60
20 percent of the units allocated shall be affordable. Between years ~~three (3)~~ ~~four (4)~~ and ten (10)
21 (2016—~~2024~~ 2023), 100-50 percent shall be affordable; provided, however, that during year four
22 (4) any multi-family housing development for which a Major Development application was
23 submitted during year three (3) shall be eligible to receive an allocation of up to 28 market-rate
24 units. ~~Between years four (4) and ten (10), 80 percent of remaining (non-affordability restricted)~~
25 units shall be permanent, and 20 percent may be transient. During year one (1) (July 2013—

1 2014), 48 of the affordable units to be allocated will be dedicated for use at the Peary Court
 2 Housing complex property, being transferred from military to private sector housing, and shall
 3 meet the prerequisite standards for obtaining BPAS awards. Table 2.0 below identifies the
 4 number of units that may be allocated at a rate of 1.0 ESFU's by housing type and by year for the
 5 period from July ~~2014~~ 2013 to July ~~2024~~ 2023.

Table 2.0										
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	July 1, 2023 - June 30, 2024
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 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 100% 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.

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7

8 **Section** : That Section 108-997 of the Code of Ordinances is hereby amended as
 9 follows:

10 **Sec. 108-997.** - Period of allocation and ranking/review of applications.

11 ***

12 (c) Point system. The city building permit allocation system application review and
 13 ranking process shall be administered by staff and shall be based on the point system established

1 in the criteria listed below. ~~The criteria shall apply to both affordable and non-affordable units~~
2 ~~proposed for construction. However, applicants for affordable unit awards shall compete only for~~
3 ~~other affordable housing unit allocations, and not for the market rate unit allocations.~~

4 (1) The following criteria and point system shall be utilized in the ranking of
5 applications for development of three or more non-transient units as follows:

6 ***

7 ~~b. Exceeding the minimum required percentage of affordable~~
8 ~~housing: 5 points.~~

9 ***

10 (2) The following criteria and point system shall be utilized in the ranking of
11 applications for development of one or two non-transient units as follows:

12 ***

13 ~~b. Voluntarily providing affordable housing units: 10 points.~~

14 ***

15 (d) Application review process - review, ranking, initial announcement and final
16 determination of award. Applications received by the application closing date (mid-September)
17 of each year will be evaluated by staff for completeness and applicants will be notified of any
18 deficiencies in the application and be provided a timeframe within which deficiencies can be
19 resolved. ~~In the event that all market rate units are not claimed or applied for, after initial staff~~

1 ~~evaluation of the applications, any remaining market rate units may be awarded for affordable~~
2 ~~housing purposes.~~

3 ***

4 (f) Affordable unit allocations.

5 1. All units allocated ~~as affordable~~ are subject to subsections 122-1467(c),
6 (d), (e), and (f) of the workforce housing ordinance.

7 ***

8 ~~(g) Transient unit allocation process. Regulations for the allocation of transient units shall~~
9 ~~be established by April 1, 2016.~~

10 ***

11

12 **Section** : That Section 122-1142 of the Code of Ordinances is hereby amended as
13 follows:

14 **Sec. 122-1142. - Density and intensity of land use.**

15 ***

16 (h) Furthermore, the calculations of floor area ratios for determining allowable
17 intensity in mixed use developments that are not deed restricted as affordable on sites greater
18 than one-half acre at the time of adoption of the comprehensive plan (January 1994) shall apply

1 the following specific procedures to avoid excessive intensity. Upon adoption of the
2 comprehensive plan, where common ownership exists on contiguous parcels, applicants for
3 development must aggregate the land under common ownership into a single site plan.

4 **Section** : That Section 122-1467 of the Code of Ordinances is hereby amended as
5 follows:

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

8 (a) New ~~market rate~~ multifamily residential housing. At least ten percent of all new
9 multifamily residential units constructed each year shall be low income affordable housing of at
10 least ~~250~~ 400 square feet each, as defined herein and 20 percent shall be affordable housing
11 (median income) housing of at least ~~250~~ 400 square feet each, as defined herein. ~~Residential or~~
12 ~~mixed use projects of less than ten residential or mixed use units shall be required to develop at~~
13 ~~least 30 percent of units of at least 400 square feet each as affordable (median income), but may~~
14 contribute a fee in lieu for each unit to the affordable work force housing trust fund, if approved
15 by the city commission. The per unit fee shall be \$~~300,00.00~~ and shall increase or decrease
16 yearly consistent with the Consumer Price Index 200,000.00 (representing construction cost, less
17 land cost, of a 400 square foot unit). ~~The 30 percent affordability requirement shall be~~
18 ~~determined on a project by project basis and not on a city wide basis.~~ Vested units shall be
19 subject to this subsection if not otherwise governed by law or agreement. For every required
20 affordable housing (median income) unit, a developer may increase the sales or rental rates to
21 affordable housing (middle income) so long as another unit's sales or rental rate is decreased to
22 affordable housing (low income).

23 (b) ~~Linkage of projects. Two development projects may link to allow the affordable~~
24 ~~housing requirement of one development project to be built at the site of another project, so long~~
25 ~~as the affordable housing requirement of the latter development is fulfilled as well. Written proof~~
26 ~~of the project linkage shall be supplied by the developer to the city commission at the time of the~~

1 first site plan approval. The project containing the affordable units must be built either before or
2 simultaneously with the project without, or with fewer than, the required affordable units. In
3 addition, if a developer builds more than the required number of affordable units at a
4 development site, this development project may be linked with a subsequent development project
5 to allow compliance with the subsequent development's affordable unit requirement. Written
6 proof of the linkage must be supplied by the developer to the city commission at the time of the
7 subsequent development's site plan approval. Linkage shall not be available if either
8 development is entirely or in part to be constructed by public funds. Finally, all linkages under
9 this subsection may occur within the city or on a site within the city and on a site on Stock Island
10 in the unincorporated part of the county.

11 (b) If an affordable housing project contains at least ten dwelling units, a maximum
12 of 20 percent of these units may be developed as market rate housing dwelling units.

13 (c) New affordable work force housing. The maximum total rental and/or sales price
14 for all new affordable work force housing units in a single development shall be based on each
15 unit being affordable housing (median moderate income). The rental and/or sales price may be
16 mixed among affordable housing (low income), (median income), (middle income) and
17 (moderate income) in order that the total value of rental and/or sales does not exceed ten percent
18 of the rental and/or sales of all the units at affordable housing (median moderate income).

19 (d) Demonstration of continuing affordability. Demonstration of continuing
20 affordability shall be by deed restriction or any other mutually acceptable method that effectively
21 runs with the land and is binding on owners, successors in ownership, or assigns. The deed
22 restriction shall be in a form provided by the city and shall be for a period of at least 5099 years.
23 It shall be recorded in the county records. During the final year of the deed restriction, the city
24 commission may act by Resolution to renew the affordability restriction for an additional 5099-
25 year term.

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Section [redacted]: That Chapter 122, Article V, Division 6 of the Code of Ordinances is hereby amended as follows:

DIVISION 6. - TRANSIENT UNITS AND EXCESS UNITS.

Section [redacted]: That Section 122-1336 of the Code of Ordinances is hereby amended as follows:

Sec. 122-1336. Purpose.

The purpose of this division is to provide for the transfer of existing ~~transient~~ units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal nonconforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; ~~and~~ encourage redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units; and allow the transfer of excess residential units that are not needed by property owners to fulfill their mission on site. This division is only for the purpose of the transfer of transient units and excess residential units and shall not be construed to create new residential or transient units.

Section [redacted]: Existing Sections 122-1340, 1341, 1342, 1343, 1344, and 1345 are hereby renumbered to 122-1341, 122-1342, 1343, 1344, 1345, and 1346 respectively.

1 **Section** : That a new Section 122-1340 is hereby added to the Code of Ordinances as
2 follows:

3 **Sec. 122-1340. Transfer of excess residential units.**

4 (1) The unit being transferred must currently be counted as a unit for purposes of
5 calculating evacuation time under the hurricane model set forth in the comprehensive plan, and
6 must have been obtained in accordance with all applicable regulations at the time of approval or
7 have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this
8 division shall not cause a net increase of units in the city.

9 (2) Residential use must be an allowed zoning use on the receiver site.

10 (3) The transferred units shall not operate to increase density of the receiver site above
11 the maximum allowed density.

12 (4) There shall be no transfer of units into a "V" zone as depicted on the most current
13 flood insurance rate map, if the transfer would produce new construction.

14 (5) Existing nonconforming buildings may receive units providing their nonconforming
15 aspects are not increased.

16 (6) Development plans for both sites shall be processed as provided in the LDRs,
17 according to the magnitude and type of development.

18 (7) No building permit shall be granted for the receiver site until the city has verified that
19 the sender site unit(s) has been extinguished, or properly deed-restricted in the case of affordable
20 housing reassignments. A property owner that has lawfully terminated or extinguished residential
21 units existing as of January 1, 1990, may transfer such units pursuant to this section.

1 Furthermore, the City shall conduct on-site inspections at both the sender site and receiver site to
2 verify that the terms of this ordinance are being met in the proposed transfer application.

3

4 **Section** [redacted]: That section 122-1344 of the Code of Ordinances is hereby amended as
5 follows:

6 **Sec. 122-1344~~5~~. Application, notice and fees.**

7 Applications for excess unit transfer, transient unit transfer and transient license transfer
8 may be obtained from the planning department and must be completed in the form and manner
9 required by the department. Notice of any such transfer shall be given for the planning board
10 meeting at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices
11 shall be sent to the property owners at both the sender and receiver sites. An appropriate fee
12 schedule shall be established by resolution. The amount of the fee shall take into consideration,
13 among other things, the cost of the tracking system and the cost of enforcement of this ordinance.
14 The transfer must occur within 18 months of planning board approval, although the applicant
15 may apply to the planning board for an extension(s).

16

17 **Section** [redacted]: That Section 122-1469 of the Code of Ordinances is hereby amended as
18 follows:

19 **Sec. 122-1469. - Applicant eligibility requirements.**

20 The following eligibility requirements shall be required of households or persons to
21 qualify for affordable work force housing units to the extent lawful:

1 ***

2 (10) Eligibility is based on proof of legal residence in the county as evidenced by the
3 applicant's driver's license, state ID, or voter registration. ~~for at least one consecutive year.~~

4
5 **Section** [redacted]: That Section 122-1470 of the Code of Ordinances is hereby amended as
6 follows:

7 **Sec. 122-1470. - Accessory unit infill.**

8 (a) In all mixed use zoning districts of the city, the city shall encourage the addition
9 of affordable work force housing on the same site as commercial properties and institutions to
10 promote employee housing. Such development shall be known as accessory unit infill. Tenants
11 shall be eligible persons under section 122-1469. Applicants under this section may provide two
12 bicycle or scooter parking spaces per unit as an alternative to applying to the planning board for
13 parking variances. Provided that units of 600 square feet or less are treated as an 0.78 equivalent
14 unit for the purposes of BPAS and 0.5 unit for the purposes of density and all units provided
15 must be made available through the city's building permit allocation system.

16 ***

17
18 **Section** [redacted]: If any section, provision, clause, phase, or application of this Ordinance is
19 held invalid or unconstitutional for any reason by any court of competent jurisdiction, the
20 remaining provisions of this Ordinance shall deemed severable therefrom and shall be construed
21 as reasonable and necessary to achieve the lawful purposes of this Ordinance.

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Section [redacted]: All Ordinances or parts of Ordinances of said City in conflict with the provisions of the Ordinance are hereby superseded to the extent of such conflict.

Section [redacted]: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2016.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2016.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2016.

Filed with the Clerk _____, 2016.

Craig Cates, MAYOR

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ATTEST:

CHERYL SMITH, CITY CLERK