

**City of Key West**  
**Building Permit Allocation System**  
**(also known as Rate of Growth Ordinance - ROGO)**

**Background Documents for April 24, 2008 Workshop**

- A. Excerpts from the City of Key West Adopted Comprehensive Plan
  - Future Land Use Element Objectives and Policies Relative to the Building Permit Allocation System
  - Coastal Management Element Objectives and Policies Relative to Hurricane Evacuation
  
- B. Chapter 108, Article X, Building Permit Allocation and Vested Rights Ordinance (Existing Land Development Regulation to be Replaced)
  
- C. Statutory Basis for Comprehensive Plan and Implementing LDRs
  - Narrative with attachments

**Attachment A**

**Policy 1-3.11.2: Schedule, Budget and Implement Programmed Activities.** The timely scheduling, programming, budgeting and implementation of programmed land use activities identified in this Element shall be evidence of the City's effectiveness in carrying out a systematic program for implementing adopted land use goals, objectives and policies.

**Policy 1-3.11.3: Coordinate with Public and Private Sectors.** While continually implementing and evaluating the Land Use Element, the City shall maintain a process of intergovernmental coordination as well as coordination with private sector groups interested in land use policy and programs. The effectiveness of this approach shall be evaluated by the success of coordination mechanisms in resolving land use problems and issues.

**Policy 1-3.11.4: Achieve Effective Resolution of Land Use Goals, Objectives, and Policies.** The effectiveness of the Land Use Element shall be measured by the City's success in achieving land use goals, objectives, and policies. The Land Use Element incorporates a systematic planning process for identifying land use problems and issues and implementing corrective actions.

**OBJECTIVE 1-3.12: MANAGING BUILDING PERMIT ALLOCATION.** (Cross reference Policy 5-1.6.4: Building Permit Allocation and Hurricane Evacuation, herein Section XII). The State of Florida, Monroe County and its municipalities have concluded that: 1) the present hurricane evacuation clearance time in the Florida Keys is unacceptably high; and 2) based on a continuation of historic rates of growth within the County incorporated and unincorporated areas; clearance time will continue to increase.

In order to protect the health and safety of the residents in the Florida Keys, the City of Key West shall regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to prevent further unacceptable increases in hurricane evacuation clearance time. Regulation of the rate of growth will also assist in preventing further deterioration of public facility service levels. Therefore, in concert with Monroe County and the Cities of Key Colony Beach and Layton, upon plan adoption, the City shall manage the rate of growth in order to reduce the 1990 hurricane evacuation clearance times of 35 hours to 30 hours by the year 2002 and to 24 hours by the year 2010. The Florida Keys hurricane evacuation studies (Post, Buckley, Schuh & Jernigan, 1991) and the "Lower Southeast Florida Hurricane Evacuation Study Update" (US Army Corps of Engineers, June 1991) provided the basis for the 1990 hurricane evacuation clearance time and also provide the basis for projecting the targeted evacuation clearance times.

**Policy 1-3.12.1: Establishing a Building Permit Allocation Ordinance.** Upon plan adoption, the City of Key West shall adopt a building permit allocation ordinance. The building permit allocation ordinance shall establish a permit allocation system for managing new permanent and transient residential development. The permit allocation system shall limit the number of permits issued for new permanent and transient development to 5,786 units during the period from April 1, 1990 (i.e., the starting date used in the 1991 Florida Keys hurricane evacuation study) to September 2002, including those permitted in Monroe County and in the Cities of Key Colony Beach and Layton. The City of Key West will permit an estimated total of 1,093 new permanent and transient units during the period April 1, 1990 to the April 2002. The annual allocation will be ninety-one units (91) single-family units or an equivalent combination of residential and transient types based on the equivalency factors established in Policy 1-3.12.3.

However, the above figures for new permanent and transient units and annual allocation may change should the final methodology used by the local governments involved or the final figures derived there from differ from those currently employed. By August 1, 1993, the City shall adopt a building permit allocation ordinance designed to implement the Building permit allocation system presented in the City of Key West Comprehensive Plan. Similarly, by August 1, 1993, the City shall adopt an ordinance which shall provide a regulatory system for administering "vested rights" issues. The regulations shall provide a procedure for vested rights determinations, through hearing or other procedure containing due process safeguards, and shall address the continuing effect of existing judicial, administrative, and executive determinations granting development rights to particular property owners, as well as (where applicable) the expiration of such rights. The City shall continue to consider, through periodic amendment of its regulations and

procedures, new developments in the law of "vested rights" and "takings." When the vested rights of developments have expired, such developments shall, thereafter, comply with the building permit allocation ordinance.

The building permit allocation ordinance shall contain, inter alia, the following general criteria:

1. Any developments of whatever use classification (residential, transient, commercial, or other) contained in an approved DRI, approval for which has not expired, shall be considered vested at the time of remedial plan amendment adoption.
2. Any developments of whatever use classification which have been through all preliminary City approval procedures and reviews and have obtained all necessary City development orders, the time for appeal from which by the state land planning agency has expired, and which have substantially relied upon and acted in furtherance thereof, and which have commenced construction and are proceeding in good faith and in a timely manner toward completion, shall be considered vested at the time of remedial plan amendment adoption.
3. Developments which have obtained a final judicial order or decree at the time of the remedial plan adoption and have complied with all applicable laws and ordinances shall be considered vested as of said date. The City shall comply with the terms of all judicial orders concerning vested rights in particular cases.
4. The City may by ordinance institute a hearing procedure for determining the vested rights of properties not falling under the above provisions. The City may retain an independent hearing examiner to conduct hearings and make determinations regarding vested rights. There shall be the right of an appeal to the Circuit Court from the final determination of the City Commission as provided below.

The Building Permit Allocation Ordinance shall include the following concepts in its procedural provisions governing determination of vested rights and beneficial use and the effect of such determinations:

1. A determination of vested rights and beneficial use shall require:
  - a. An application to be submitted by the applicant to the City Planner within one (1) year after the effective date of the Comprehensive Plan;
  - b. The City may appoint a hearing officer or other qualified person or entity who shall give notice, schedule, and conduct a public hearing on the application;
  - c. The preparation of a proposed determination including findings of fact and conclusions of law which shall be submitted to the City Commissioners; and
  - d. A final determination that shall specify the development rights that are vested or the beneficial use to which the landowner is entitled, including:
    - i. The geographic scope of the determination in relation to the total area of the development site;
    - ii. The duration of the determination and an expiration date;
    - iii. The substantive scope of the determination;
    - iv. The applicability of existing and future City land development regulations;
    - v. verification that construction has commenced and quarterly reporting requirements to ensure that the development is continuing in good faith; and
    - vi. Such other limitations and conditions necessary to assure compliance with the Comprehensive Plan.

2. A determination of vested rights shall be based upon one or more valid, unexpired permits or approvals issued by the City of Key West prior to the effective date of this Comprehensive Plan. The determination of vested rights shall be limited to the development expressly contemplated by said permits or approvals and to those aspects of development which meet the standards and criteria below cited.

The applicant for a vested rights determination shall have the burden of proving that:

- a. The applicant has reasonably relied upon an official act by the City. For the purpose of a vested rights determination pursuant to this Comprehensive Plan, any of the following may constitute an official act:
  - i. One or more valid, unexpired permits or approvals issued by the City, provided that the zoning or land use designation of property shall not be deemed to constitute a permit or approval for the purpose of a determination of vested rights; or
  - ii. A subdivision plat recorded in the records of the Monroe County Courthouse prior to June 8, 1993 which fulfills the criteria established in Section 380.05 (18), FS; or
  - iii. A valid, unexpired building permit issued prior to the effective date of the Comprehensive Plan; and
- b. The applicant, acting in good faith, has incurred such extensive obligations and expenses that it would be highly inequitable or unjust to affect such rights by requiring the applicant to now conform to current City Comprehensive Plan and land development regulations. Substantial changes of position or expenditures incurred prior to the official City act upon which the vested rights claim is based shall not be considered in making the vested rights determination; and
- c. That the development has commenced and has continued in good faith without substantial interruption.

Following the effective date of this Comprehensive Plan, landowners with a valid, unexpired Development of Regional Impact (DRI) approval granted by the City shall be vested, but only with respect to the portion of the DRI expressly covered by such approval.

3. A vested rights determination shall not preclude the City from subjecting the proposed development to City land development regulations in effect on the date of the vested rights determination or adopted subsequent to the vested rights determination unless the development is shown to be vested with regard to the subject matter addressed by prior development order and specific requirements pursuant to the procedures and criteria of stated above in sub-sections (1) and (2).
4. A vested rights determination shall specify an expiration date by which all building permits necessary for development shall have been issued. The expiration date shall be reasonable and in no event later than the date specified in the original development order.
5. It is the policy of the City of Key West that neither provisions of this Comprehensive Plan nor the land development regulations shall deprive a property owner of all reasonable economic use of a parcel of real property which is a lot or parcel of record as of the date of the adoption of the Comprehensive Plan. Accordingly, the City shall adopt a beneficial use procedure under which an owner of real property may apply for relief from the literal application of applicable land use regulations or of this plan when such application would have the effect of denying all economically reasonable or viable use of that property unless such deprivation is shown to be necessary to prevent a nuisance under Florida law or in the exercise of the City's police power to protect the health, safety, and welfare of its citizens. For the purpose of this policy, all reasonable economic use shall mean the minimum use of the property necessary to avoid a taking within a reasonable period of time as established by land use case law.
  - a. The relief to which an owner shall be entitled may be provided through the use of one or a combination of the following:

- i. Granting of a permit for development which shall be deducted from the permit allocation system;
- ii. Granting of use of transferable development rights (TDRs) consistent with the Comprehensive Plan;
- iii. City purchase of all or a portion of the lots or parcels upon which all beneficial use is prohibited;
- iv. Such other relief as the City may deem appropriate and adequate.

The relief granted shall be the minimum necessary to avoid a "taking" of the property under existing state and federal law.

- b. Development approved pursuant to a beneficial use determination shall be consistent with all other objectives and policies of the Comprehensive Plan and land development regulations unless specifically exempted for such requirements in the final beneficial use determination.

**Policy 1-3.12.2: Building Permit Allocation Ordinance and Affordable Housing.** The City permit allocation system shall require that thirty percent (30%) of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.3 (Cross reference Section XI herein).

**Policy 1-3.12.3: Permit Allocation System Ratios by Structure Type.** The permit allocation system shall be sensitive to differing trip generating characteristics of permanent and transient residential units as well as single-family units, accessory apartment units and multi-family residential units. The annual allocation shall be ninety-one units (91) single-family units based on the Monroe County Model. The permit allocation system shall incorporate a series of equivalent single-family unit (ESFU) values in applying the annual permit allocation threshold established in the building permit allocation ordinance as hereinafter explained.

The following table illustrating the allocation of building permits by structure type shall be subject to evaluation by the City Commission every six (6) months and the allocation by structure type may be adjusted. However, these adjustments shall not cause the transient unit allocation to exceed a maximum of twenty-five (25) percent of total equivalent single family units. Similarly, adjustments shall not cause the total base allocation to become inconsistent with the Monroe County hurricane evacuation model.

Residential Structure Type	Column A	Column B	Column C
	Equivalent Single-Family Unit Value (ESFU) <sup>(1)</sup>	Maximum Annual Allocation By Structure Type <sup>(2)</sup>	Maximum ESFU (Column B/Column A)
Single-Family	1.00 (a)	32	32
Accessory Apt./SRO	.55 (b)	17	30
Multi-Family	1.00 (c)	32	32
Transient Unit	.58 (d)	10	17
Total	NA	91	111

(1) The equivalent single family unit values are predicted on the ratio of the average number of vehicles per unit based on the 1990 US Census for the respective residential structure types divided by the vehicles per single family units (i.e., 1.08 vehicles per unit). The computations are as follows:

- (a) Single family:  $1.8/1.8 = 1.00$
- (b) Accessory Apt. or Single Room Occupancy (SRO):  $1.00/1.80 = .55$ . The Fl. Department of Community Affairs approved the estimated average vehicles per accessory unit or single room occupancy (SRO) as one (1) vehicle per accessory unit or SRO. Cross reference Comprehensive Plan Policy 1-2.1.3.
- (c) Multi-family:  $1.8/1.8 = 1.00$
- (d) Transient Unit: Fl, Department of Community Affairs approved .58 as representing a factor consistent with the traffic generating assumptions of the Monroe County Hurricane Evacuation Model.

(2) The ninety-one (91) units represent the estimated annual City allocation for the period April 1990 to April 2002 or 1093 single family units allocated by County Model divided by 12 equals' 91 units. The City has assigned weighted factors to each structure type. The first priority was to ensure that at least thirty-five (35) percent of the total unweighted units are single family units. Based on past trends, future demands are not anticipated to exceed this estimate. Secondly, the methodology for projecting total need for accessory units and single room occupancies is presented in Policy 1-2.1.3 (Cross reference Policy 1-2.1.3 in Section XIII herein). The number of transient units reflect a preference for preserving housing opportunities for permanent residents as opposed to transient residents since historical trends indicate an erosion of the permanent housing stock which is largely attributed to conversion of permanent housing units to transient housing.

**Policy 1-3.12.4: Future Evaluation of Residential Permit System.** The City of Key West recognizes that uncertainty exists regarding the number of units potentially vested in the City and County. Therefore, the City shall coordinate with Monroe County and the Cities of Layton and Key Colony Beach in re-evaluating the hurricane model assumptions, its policy implications, and the allocation of permits between jurisdictions. By September 1993, the City shall enter into an interlocal agreement with these jurisdictions to address further refinements to the model and permit allocation methodology.

**Policy 1-3.12.5: Building Permit Allocation System.** The designation of Future Land Use Classifications which allow residential densities within the Truman Waterfront Parcel does not in itself provide any allocation of units through the Building Permit Allocation System for that area. In order to facilitate redevelopment of the Truman Waterfront Parcel, equivalent single-family unit values and associated development rights may be transferred from any where within the city to land use classifications within the Truman Waterfront Parcel which allow residential development. This is not a transfer of density; rather, it pertains to the transfer of units which are allocated or vested in accordance with the Building Permit Allocation Ordinance. Any density associated with the unit host site will remain on that site; however, once the unit is transferred, the density on the host site cannot be developed until units are allocated through the Building Permit Allocation Ordinance. The City Manager or his designee shall maintain records of the transfer of units under this provision.

impact of continuing development in the keys on evacuation clearance times. It is imperative not only that such coordination take place, but that the study be performed after the City and County have completed their capital improvements element during the plan update process. The result will be a clear assessment of clearance times in light of specific transportation-related improvements.

**Policy 5-1.6.3: Transportation Policies for Inclusion in Peacetime Emergency Plan.** The City shall direct the following transportation policies as part of the Peacetime Emergency Plan.

1. Designate North Roosevelt Boulevard as the primary evacuation route out of Key West. Orient three lanes northbound and one lane southbound from Eisenhower Drive (beginning of four lane section) to Stock Island. The southbound lane is necessary for emergency vehicle access.
2. Designate Flagler Avenue as the secondary evacuation route. Three lanes will carry traffic northbound and one lane for southbound emergency vehicle traffic.
3. Implement the following specific traffic circulation improvements within its five year planning horizon that will facilitate traffic flow out of the downtown employment and tourist areas. Improvements include:
  - o Adding lanes to White Street, First Street, and Palm Avenue;
  - o Designating South Street and United Streets, and Caroline and Eaton Streets as one-way pairs;
  - o Making geometric improvements at critical intersections to reduce congestion and delay along the North Roosevelt Boulevard corridor; and
  - o Upgrade North Roosevelt Boulevard to standards prescribed by the Florida Department of Transportation.

These improvements are designed to spread out traffic by giving motorists additional corridors as options to North Roosevelt Boulevard. A bridge linking Flagler Avenue with Stock Island has been identified as a long term improvement (2000). These improvements together with the reorientation of traffic on North Roosevelt and Flagler Avenue shall maintain existing clearance times until a more detailed countywide study of hurricane evacuation and peacetime emergency management of public facilities can be undertaken in concert with Monroe County.

**Policy 5-1.6.4: Rate of Growth and Hurricane Evacuation.** The City shall use the results of the Monroe County hurricane evacuation model prepared by Post, Buckley, Schuh and Jernigan, (1991) as the basis for predicting evacuating population and vehicles from the City of Key West during a hurricane condition. The summary results of the model are cited below:

**TABLE V - 1  
EVACUATING POPULATION AND VEHICLES**

<b>Evacuating Population</b>				<b>Evacuating Vehicles</b>			
<b>Key West Evacuating Population</b>	<b>Destination</b>			<b>Key West Evacuating Vehicles</b>	<b>Destination</b>		
	<b>Out of County</b>	<b>Refuge/ Shelter</b>	<b>Friends/ Relatives</b>		<b>Out of County</b>	<b>Refuge/ Shelter</b>	<b>Friends/ Relatives</b>
<b>27,035</b>	<b>25,015</b>	<b>1,010</b>	<b>1,010</b>	<b>11,974</b>	<b>10,946</b>	<b>514</b>	<b>514</b>

Source: Post Buckley Schuh & Jernigan, Inc., October 1991

The hurricane model was used to project the maximum residential units which may be accommodated by the roadway network during a hurricane evacuation. As summarized in Figure 2, "Estimated Carrying Capacity Based on Hurricane Clearance Times," the number of units which may be developed has been calculated using the year 2002 30 hours evacuation clearance standard as a constraint and assuming availability of two lanes outbound from Key Largo. In the short range these two outbound lanes are made available by the use of an improved and raised Card Sound Road plus the existing US 1. Over the long range time frame, outbound lanes will be provided by a widened US 1 along the 18 mile stretch.

**TABLE V - 2**  
**PROJECTED HURRICANE CLEARANCE TIMES AND ROAD IMPROVEMENTS**  
**Building Permit Allocation System**

Year	Units Permitted			Change in Clearance Time (hours)	Effect of Road Improvement (hours)	Resulting Clearance Time (hours)
	Unincorp Area (du)	Incorp Areas (du) <sup>(d)</sup>	Total (du)			
1990	*	*	*	*		35.00
1991						
1992	2,087	N/A	2,087 <sup>(a)</sup>	1.90		36.90
1993	255	114	369	0.34	-10.25 <sup>(b)</sup>	26.99
1994	255	114	369	0.34		27.33
1995	255	114	369	0.34		27.67
1996	255	114	369	0.34		28.01
1997	255	114	369	0.34		28.35
1998	255	114	369	0.34		28.69
1999	255	114	369	0.34		29.03
2000	255	114	369	0.34		29.37
2001	255	114	369	0.34		29.71
2002	255	114	369	0.34		30.05
2003	0	0	0	0.00		30.05
2004	0	0	0	0.00		30.05
2005	0	0	0	0.00		30.05
2006	0	0	0	0.00		30.05
2007	0	0	0	0.00		30.05
2008	0	0	0	0.00		30.05
2009	0	0	0	0.00		30.05
2010	0	0	0	0.00	-2.50 <sup>(c)</sup>	27.55

- (a) Estimated units permitted in unincorporated area from April 1, 1990 to the original plan adoption date (October 16, 1992). The corresponding data for Key West was not available.
- (b) Elevation and improvements to Card Sound Road.
- (c) Four-laning US-1 from MM 80 to MM 90 (Plantation, Windley, Islamorada).
- (d) The municipal allocation is based on percent population using the 1990 Census and represents approximately 20% of total gross allocable growth or 31% of net allocable growth. The calculations which are subject to interlocal agreements are presented in the following table.

**TABLE V - 3**  
**METHODOLOGY FOR DETERMINING FLORIDA KEYS MUNICIPALITIES PERMIT ALLOCATION**

City	1990 Population	% of Total Population	Total Units
			% Population x Total Units
Key West	24,832	95.5	1,093
Key Colony Beach	977	3.8	44
Layton	183	0.7	8
<b>Total</b>	<b>25,992</b>	<b>100.0</b>	<b>1,145</b>

These measures of carrying capacity do not reflect additional development potentials at plan adoption. Rather, they reflect the increase in population and development from April 1, 1990, the date of the 1990 Census, data for which formed the starting point for estimating the population to be evacuated. Thus, in order to determine the amount of development which the plan may allocate from the point of adoption, it is necessary to estimate the number of permits issued from April 1, 1990.

As part of the 5-year Comprehensive Plan Evaluation and Appraisal Report process, the City of Key West shall, in coordination with Monroe County, the South Florida Regional Planning Council and the municipalities of Layton and Key Colony Beach, re-run updated transportation models of the Southeast Florida Hurricane Evacuation Study in order to re-evaluate and adjust such factors as participation rates, visitor population levels, total growth allocations, allocations to sub-areas and municipal jurisdictions and estimates of the effectiveness of programs and policies to reduce the number of evacuating vehicles.

**OBJECTIVE 5-1.7: HAZARD MITIGATION AND COASTAL HIGH-HAZARD AREAS.** Upon plan adoption, the City shall adopt amended land development regulations which shall include performance standards regulating development activities in a manner which minimizes the danger to life and property occasioned by hurricane events.

**Policy 5-1.7.1: Coastal High-Hazard Area Defined.** As defined in Rule 9J-5.003(13), FAC, the coastal high-hazard area shall encompass areas which have historically experienced destruction or severe damage, or are scientifically predicted to experience destruction or severe damage, from storm surge, waves, erosion, or other manifestations of rapidly moving or storm driven water. These areas shall include all areas in the City of Key West where public facilities have been damaged or undermined by coastal storms, Federal Emergency Management Agency designated V zones, areas seaward of the coastal construction control line established by the Florida Department of Natural Resources pursuant to Chapter 161, Florida Statutes, and inlets which are not structurally controlled. The high hazard area shall include the Category I hurricane evacuation zone as delineated on Map V - 1.

The coastal high hazard area for the City of Key West is designated on Map V-1. This area includes all coastal high hazard areas as identified in the definition above which exist in the City of Key West. This City Planner has coordinated the delineation of coastal high hazard areas with the State Department of Natural Resources (DNR). Based on information obtained from DNR, the City's Map V-1 includes all known coastal high hazard areas pursuant to the above stated definition.

**Policy 5-1.7.2: Management Techniques for Hazard Mitigation and Coordinating Update of the Hazard Mitigation Plan.** Upon plan adoption the City shall participate in the County's technical coordinating committee in preparing the hazard mitigation component of the Local Peacetime Emergency Plan. Updates of the Plan shall identify specific actions that may be implemented to reduce exposure to natural hazards. The current Plan contains no inter-

**Attachment B**

## ARTICLE X. BUILDING PERMIT ALLOCATION AND VESTED RIGHTS

### DIVISION 1. GENERALLY

Sec. 108-986. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrative official* means the official appointed by the city manager to administer this article.

*Allocation application* means the permanent and/or transient residential building permit allocation application submitted by applicants seeking allocation awards.

*Allocation period* means a designated period of time within which applications for permanent and transient residential unit allocations will be accepted and processed.

*Annual allocation period* means the 12-month period from the effective date of the ordinance from which this section derives or to its one-year anniversary date, and subsequent one-year periods.

*Annual residential unit allocation* means the maximum number of permanent and transient residential units for which building permits may be issued in the first year of operation of the building permit allocation system and in succeeding years.

*Residential unit* means a permanent or transient unit, apartment, or dwelling unit as defined in the land development regulations, and expressly includes hotel and motel rooms, manufactured homes or mobile homes, transient quarters, accessory units, and single room occupancies.

*Residential unit allocation* means the maximum number of permanent and transient residential units for which building permits may be issued in a given time period.

*Residential unit building permit allocation award* and *allocation award* and *award* mean the approval to a permanent or transient residential unit allocation application and the issuance of a building permit pursuant thereto.

*Stipulated settlement agreement* means the agreement between the state department of community affairs and the city approved by the state on June 25, 1993, pursuant to F.S. § 163.3184(16), including the remedial comprehensive plan amendments stipulated therein.

(Code 1986, § 34.1374)

**Cross references:** Definitions generally, § 1-2.

Sec. 108-987. Findings.

The city commission makes the following findings:

- (1) The city, pursuant to F.S. ch. 163, part II, and F.A.C. ch. 9J-5, adopted a comprehensive plan as required by state law;
- (2) The city, pursuant to F.S. § 163.3202(1), is required to adopt land development regulations that are consistent with and implement the adopted comprehensive plan;
- (3) In addition to the mandates and authority under F.S. ch. 163, part II, and F.A.C. ch. 9J-5, the department of community affairs, the state land planning agency (referred to as the "DCA"), brought an action against the city in the state division of administrative hearings (DOAH), Case No. 92-0515GM, pursuant to F.S. § 163.3184(10);

(4) Pursuant to F.S. § 163.3184(16), the department of community affairs and the city entered into a stipulated settlement agreement which provides remedial action to bring the city comprehensive plan into compliance with F.S. ch. 163, part II;

(5) The stipulated settlement agreement and comprehensive plan objective 1-3.12 acknowledge, based on the county hurricane evacuation clearance time analysis, that:

a. The present hurricane evacuation clearance time in the Florida Keys is unacceptably high; and

b. Based on a continuation of historic rates of growth within the county's incorporated and unincorporated areas, clearance time will continue to increase;

(6) Furthermore, the stipulated settlement agreement mandates that:

a. The city shall adopt an annual building permit allocation system based on the Florida Keys permit allocations contained in the county building permit allocation ordinance; and

b. The city shall incorporate annual permit allocation thresholds by structure type based on county hurricane evacuation clearance time analysis and building permit allocation ordinance;

(7) To carry out the mandate in subsection (6) of this section, the stipulated settlement agreement and the comprehensive plan establish a rationale and directive pursuant to objective 1-3.12 which requires that:

"In order to protect the health and safety of the residents in the Florida Keys, the City of Key West shall regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to prevent further unacceptable increases in hurricane evacuation clearance time. Regulation of the rate of growth will also assist in preventing further deterioration of public facility service levels. Therefore, in concert with Monroe County and the Cities of Key Colony Beach and Layton, upon plan adoption, the city shall manage the rate of growth in order to reduce the 1990 hurricane evacuation clearance time of 35 hours to 30 hours by the year 2002 and to 24 hours by the year 2010. The Florida Keys hurricane evacuation studies (Post, Buckley, Schuh & Jernigan, 1991) and the 'Lower Southeast Florida Hurricane Evacuation Study Update' (U.S. Army Corps of Engineers, June 1991) provided the basis for the 1990 hurricane evacuation clearance time and also provides the basis for projecting the targeted evacuation clearance times";

(8) The stipulated settlement agreement and the comprehensive plan, pursuant to policy 1-3.12.1, establish that:

"Upon plan adoption, the City of Key West shall adopt a building permit allocation ordinance. The building permit allocation ordinance shall establish a permit allocation system for managing new permanent and transient residential development. The permit allocation system shall limit the number of permits issued for new permanent and transient development to 5,786 units during the period from April 1, 1990 (i.e., the starting date used in the 1991 Florida Keys hurricane evacuation study) to September 2002, including those permitted in Monroe County and in the Cities of Key Colony Beach and Layton. The City of Key West will permit an estimated total of 1,093 new permanent and transient units during the period April 1, 1990, to the April 2002. The annual allocation will be 91 single-family units or an equivalent combination of residential and transient types based on the equivalency factors established in Policy 1-3.12.3";

(9) The stipulated settlement agreement and the comprehensive plan, pursuant to policy 1-3.12.3, provide that:

"The permit allocation system shall be sensitive to differing trip generating characteristics of permanent and transient residential units as well as single-family units, accessory apartment units and multifamily residential units. The annual allocation shall be 91 single-family units based on the Monroe County Model. The permit allocation system shall incorporate a series of equivalent single-family unit (ESFU) values in applying the annual permit allocation threshold established in the building permit allocation ordinance as hereinafter explained.

"The following table illustrating the allocation of building permits by structure type shall be subject to evaluation by the city commission every six months and the allocation by structure type may be adjusted. However, these adjustments shall not cause the transient unit allocation to exceed a maximum of 25 percent of total equivalent single-family units. Similarly, adjustments shall not cause the total base allocation to become inconsistent with the Monroe County hurricane evacuation model."

TABLE INSET:

	Column A	Column B	Column C
Residential Structure Type	Equivalent Single-Family Unit Factor (1)	Maximum Annual Allocation By Structure Type (2)	Maximum ESFU (Column B/Column A)
Single-family	1.00(a)	32	32
Accessory Apt./SRO	0.55(b)	17	30
Multifamily	1.00(c)	32	32
Transient unit	0.58(d)	10	17
Total	NA	91	111

TABLE INSET:

Footnotes:	
(1)	The equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 1990 US Census for the respective residential structure types divided by the vehicles per single-family units (i.e., 1.08 vehicles per unit). The computations are as follows:
(a)	Single-family: $1.8/1.8 = 1.00$
(b)	Accessory apartment or single room occupancy (SRO): $1.00/1.80 = .55$ . The Florida Department of Community Affairs approved the estimated average vehicles per accessory unit or single room occupancy (SRO) as one vehicle per

		<p>accessory unit or SRO. Cross reference Comprehensive Plan Policy 1-2.1.3. Accessory units and single room occupancies (SROs) shall be affordable; restricted to occupancy by permanent residents; and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or SRO cannot take up more than 40 percent of the principal structure nor can it exceed 600 square feet and the minimum size shall be 300 square feet. The maximum threshold shall be an interim standard which may be increased, if prior to the remedial plan adoption date, an analysis of the city's apartments concludes that the typical one-bedroom apartment unit is more than 800 square feet and department of community affairs agrees that the 800 square feet threshold is not inconsistent with the Monroe County hurricane evacuation model. SROs by definition shall be restricted to one room efficiencies. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the board of adjustment. If such variance is approved, the total square footage shall not exceed 600 square feet. The permit allocation system shall be coordinated with the county's analysis of evacuation clearance times in order to maintain or decrease the standard time for such clearance. The city shall include the adjusted accessory unit and SRO impacts through 2010 in the annual allocation of units in order to reflect the impact of these units on public facilities.</p>
	(c)	Multifamily: $1.8/1.8 = 1.00$
	(d)	Transient unit: Florida Department of Community Affairs approved 0.58 as representing a factor consistent with the traffic generating assumptions of the Monroe County Hurricane Evacuation Model.
(2)		<p>The 91 units represent the estimated annual city allocation for the period April, 1990 to April, 2002 or 1,093 single-family units allocated by county model divided by 12 equals 91 units. The city has assigned weighted factors to each structure type. The first priority was to ensure that at least 35 percent of the total unweighted units are single-family units. Based on past trends, future demands are not anticipated to exceed this estimate. Secondly, the methodology for projecting total need for accessory units and single room occupancies is presented in comprehensive plan Policy 1-2.1.3. The number of transient units reflect a preference for preserving housing opportunities for permanent residents as opposed to transient residents since historical trends indicate an erosion of the permanent housing stock which is largely attributed to conversion of permanent housing units to transient housing."</p>

(10) The stipulated settlement agreement and the comprehensive plan recognize pursuant to comprehensive plan policy 1-3.12.1 that: "the above figures for new permanent and transient units and annual allocation (noted in comprehensive plan policy 1-3.12.3 and herein in section 108-987(9)) above may change should the final methodology used by the local governments involved or the final figures derived therefrom differ from those currently employed";

(11) The stipulated settlement agreement and the comprehensive plan acknowledge pursuant to policy 1-3.12.4 that "uncertainty exists regarding the number of units potentially vested in the city and county. Therefore, the city shall coordinate with Monroe County and the Cities of Layton and Key Colony Beach in re-evaluating the hurricane model assumptions, its policy implications, and the allocation of permits between jurisdictions. By September 1993, the city shall enter into an interlocal agreement with these jurisdictions to address further refinements to the model and permit allocation methodology";

(12) The stipulated settlement agreement and the comprehensive plan mandate pursuant to policy 1-3.12.1 that an ordinance shall be adopted including regulations which shall "provide a regulatory system for administering `vested rights' issues. The regulations shall provide a procedure for vested rights determinations, through hearing or other procedure containing due process safeguards, and shall address the continuing effect of existing judicial, administrative, and executive determinations granting development rights to particular property owners, as well as (where applicable) the expiration of such rights. The city shall continue to consider, through periodic amendment of its regulations and procedures, new developments in the law of `vested rights' and `takings.' When the vested rights of developments have expired, such developments shall, thereafter, comply with the building permit allocation ordinance." General criteria is established in the stipulated settlement agreement and in comprehensive plan policy 1-3.12.1 for determining and administering vested rights issues;

(13) In order to comply with the foregoing authorities, findings, and F.S. ch. 163, part II, the city is required to prepare and adopt a building permit allocation and vested rights determination ordinance consistent with the conditions of the stipulated settlement agreement and the comprehensive plan;

(14) The city finds that the building permit allocation ordinance and the vested rights determination ordinance is intended and necessary to satisfy the conditions of F.S. § 163.3184(16), the stipulated settlement agreement and implement the required remedial actions contained in the city's adopted comprehensive plan;

(15) It is the intent of the city commission to effectuate and directly advance these requirements, findings, purposes and intentions for the enhancement of the community character of the city, for the betterment of the general welfare, and for the reasons set forth in this section through the implementation of the building permit allocation and vested rights determination ordinance generally described in the city's comprehensive plan; and

(16) It is the intent of the city commission to implement the building permit allocation system and to determine and administer vested rights issues through the building permit allocation and vested rights determination ordinance in this article.

(Code 1986, § 34.1371)

Sec. 108-988. Short title.

This article shall be known and may be cited as the "building permit allocation and vested rights ordinance."

(Code 1986, § 34.1372(1))

Sec. 108-989. Authority.

The city commission has the authority to adopt this article pursuant to article VIII, section 2(b), Florida Constitution; F.S. § 166.021 et seq.; F.S. ch. 163, part II; F.A.C. 9J-5; the city comprehensive plan; the stipulated settlement agreement in the division of administrative hearings Case No. 92-0515GM; and each of the authorities, findings, and provisions set forth or referenced in section 108-987.  
(Code 1986, § 34.1372(2))

**Sec. 108-990. Applicability.**

This article shall apply to all property within the city except as expressly exempted in section 108-991. Nothing in this article shall relieve the owner of property from complying with other applicable sections of the city land development regulations for development on the property.  
(Code 1986, § 34.1372(3))

**Sec. 108-991. Development not affected by article.**

Development consistent with the following shall not be affected by the terms of this article, but such development shall comply with all applicable sections of the city's land development regulations:

- (1) Any use, development, project, structure, building, fence, sign or activity which does not result in a net addition to the number of equivalent single-family dwelling unit stock.
- (2) Redevelopment or rehabilitation which replaces but which does not increase the number of permanent or transient residential dwelling units above that existing on the site prior to redevelopment or rehabilitation.

(Code 1986, § 34.1372(4))

**Sec. 108-992. Exemptions.**

Development consistent with the following shall be exempt from the terms of this article, but such development shall be subject to the terms and limitations of applicable exemption sections and shall comply with all applicable sections of the city's land development regulations:

- (1) The holder of an unexpired vested rights order approved by the city pursuant to terms of this article.
- (2) A landowner with a valid, unexpired development of regional impact (DRI) approval granted by the city and only if the proposed development is consistent with the terms of the final order approving the development of regional impact.

(Code 1986, § 34.1372(5))

**Sec. 108-993. Purpose and intent of building permit allocation system.**

The purpose and intent of the building permit allocation system is to implement policies of the stipulated settlement agreement between the state department of community affairs and the city (June 25, 1993) and the city comprehensive plan by adopting a residential building permit allocation system limiting annual permanent and transient residential development in the city to:

- (1) Reduce hurricane evacuation clearance times pursuant to the Florida Keys hurricane evacuation model prepared by the U.S. Army Corps of Engineers and Post, Buckley,

Schuh, and Jernigan (1991) and the county building permit allocation system's projected hurricane clearance times and road improvements.

(2) Limit the annual amount of residential development commensurate with the city's ability to maintain a reasonable and safe hurricane evacuation clearance time.

(3) Regulate the amount of permanent and transient residential building permits consistent with the stipulated settlement agreement in order to prevent further deterioration of public facility service levels, especially the traffic circulation level of service.

(4) Allocate the limited number of permanent and transient residential units available annually under this article, based upon the goals, objectives and policies set forth in the city comprehensive plan.

(Code 1986, § 34.1373)

Sec. 108-994. Construction of article.

This article shall be liberally construed to effectively carry out the intent and purpose in the interest of the public health, safety and welfare.

(Code 1986, § 34.1378)

Secs. 108-995--108-1025. Reserved.

## DIVISION 2. HEARING OFFICER\*

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\***Cross references:** Officers and employees, § 2-116 et seq.

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Sec. 108-1026. Appointment; general duties; compensation; limitations.

(a) The city commission shall appoint one or more hearing officers to hear and consider such matters as may be required under any section of this article or as may be determined to be appropriate by the city commission from time to time. Such hearing officer shall serve at the pleasure of the city commission for such a period as is determined by the city commission.

(b) The hearing officer shall be compensated at a rate to be determined by the city commission, which amount shall be reimbursed to the city by the applicant.

(c) Any person who shall accept an appointment as a hearing officer shall, for a period of one year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application or other matter before any decision-making body of the city in any matter involving property that was the subject of a proceeding which was pending during the time the person served as a hearing officer. Such person shall not, for a period of one year from the date of termination as holder of such office, act as agent or attorney in any proceeding, application or other matter before any decision-making body of the city in any matter involving building permit allocations, exemptions, determinations of vested rights, or any other matters which are the subject of this article.

(Code 1986, § 34.1376(1))

Sec. 108-1027. Minimum qualifications.

A hearing officer shall have the following minimum qualifications:

- (1) To hear issues involving vested rights or estoppel and other issues directed by the city commission, the hearing officer must be an attorney admitted to practice law in the state;
- (2) The person shall have demonstrated knowledge of administrative, environmental and land use law and procedure within the state; and
- (3) The person shall hold no other appointed or elected city public office or position during the period of appointment.

(Code 1986, § 34.1376(2))

Sec. 108-1028. Duties.

A hearing officer shall have the following duties:

- (1) Conduct hearings on such matters as required under this article;
- (2) Conduct hearings on such matters as may be requested by the city commission;
- (3) Render and issue vested rights determinations applicable to a particular development or property;
- (4) Submit to the city commission a written report containing a summary of the testimony and evidence given and findings based on pertinent criteria, and a copy of the vested rights determination issued for the particular development or property;
- (5) Issue subpoenas to compel the attendance of witnesses and production of documents, and to administer oaths to witnesses appearing at the hearing; and
- (6) Perform other tasks and duties pursuant to the terms of this article as the city commission may assign.

(Code 1986, § 34.1376(3))

Secs. 108-1029--108-1055. Reserved.

### DIVISION 3. BUILDING PERMIT ALLOCATION SYSTEM

Sec. 108-1056. Established.

The city establishes a building permit allocation system in order to limit the number of permits issued for permanent and transient units to 1,093 new permanent and transient units during the period from April 1, 1990 (i.e., the starting date used in the 1991 Florida Keys hurricane evacuation study) to April 1, 2002. The annual allocation will be 91 single-family units or an equivalent combination of residential and transient unit types based on the equivalency factors established in comprehensive plan policy 1-3.12.3.

(Code 1986, § 34.1375(1))

Sec. 108-1057. Annual residential unit building permit allocation.

The following table describes the annual allocation of permanent and transient residential building permits:

TABLE INSET:

	Column A		Column B		Column C	
Residential	Equivalent	Single-	Maximum	Annual	Maximum	ESFU

Structure Type	Family Unit Factor (1)	Allocation By Structure Type (2)	(Column B/Column A)
Single-family	1.00(a)	32	32
Accessory apt./SRO	0.55(b)	17	30
Multifamily	1.00(c)	32	32
Transient unit	0.58(d)	10	17
Total	NA	91	111

TABLE INSET:

(1)	Pursuant to comprehensive plan policy 1-12.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 1990 U.S. Census for the respective residential structure types divided by the vehicles per single-family units (i.e., 1.08 vehicles per unit). The computations are as follows:	
	(a)	Single-family: $1.8/1.8 = 1.00$
	(b)	Accessory apartment or single room occupancy (SRO): $1.00/1.80 = 0.55$
	(c)	Multifamily: $1.8/1.8 = 1.00$
	(d)	Transient unit: 0.58 is consistent with the traffic generating assumptions of the county hurricane evacuation model.
(2)	The 91 units represent the estimated annual city allocation for the period April 1990 to April 2002 (1093 single-family units allocated by county model divided by 12 equals 91 units). Reference comprehensive plan policies 1-3.12.3 and 1-2.1.3.	

(Code 1986, § 34.1375(2))

**Sec. 108-1058. Adjustments in residential allocation schedule.**

The table in section 108-1057 illustrating the allocation of building permits by structure type shall be subject to evaluation by the city commission every six months, and the allocation by structure type may be adjusted to accommodate shifts in supply and demand factors. The city commission shall establish the schedule for such adjustments after considering recommendations by the administrative official. In addition, pursuant to the stipulated settlement agreement and comprehensive plan policy 1-3.12.4, the city shall coordinate with the county and the cities of Layton and Key Colony Beach in reevaluating the hurricane model assumptions, its policy implications, and the allocation of permits between jurisdictions. By September 1993, the city shall enter into an interlocal agreement with these jurisdictions to address further refinements to the model and permit allocation methodology. The city may amend the amount of building permits to be annually allocated based on the subject interlocal agreement.

(Code 1986, § 34.1375(3))

Sec. 108-1059. Adjustments in transient unit allocation.

Adjustments in the schedule for allocating permanent and transient units shall not cause the allocation of transient units to exceed a maximum of 25 percent of total equivalent single-family units permitted in any 12-month period.

(Code 1986, § 34.1375(4))

Sec. 108-1060. Mandated affordable housing allocation.

Based on the terms of the stipulated settlement agreement and comprehensive plan policy 1-3.12.2, 30 percent of all new permanent residential units shall be affordable units.

(Code 1986, § 34.1375(5))

Sec. 108-1061. Accessory units and single room occupancies.

Accessory units and single room occupancies (SROs) pursuant to the terms of the stipulated settlement agreement and comprehensive plan policy 1-2.1.3 shall be affordable, restricted to occupancy by permanent residents, and cannot be sold separately as a condominium. When an accessory unit occupancy permit is originally initiated, the principal unit must be owned and occupied by a permanent resident. An accessory unit or single room occupancy cannot take up more than 40 percent of the principal structure nor can it exceed 600 square feet, and the minimum size shall be 300 square feet. The maximum threshold shall be an interim standard which may be increased if, prior to the remedial plan adoption date, an analysis of the city's apartments concludes that the typical one-bedroom apartment unit is more than 800 square feet and the state department of community affairs agrees that the 800-square-foot threshold is not inconsistent with the county hurricane evacuation model. Single room occupancies by definition shall be restricted to one-room efficiencies. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the board of adjustment. If such variance is approved, the total square footage shall not exceed 600 square feet. The permit allocation system shall be coordinated with the county's analysis of evacuation clearance times in order to maintain or decrease the standard time for such clearance. The city shall include the adjusted accessory unit and single room occupancy impacts through 2010 in the annual allocation of units in order to reflect the impact of these units on public facilities.

(Code 1986, § 34.1375(6))

Sec. 108-1062. Tracking and monitoring system.

(a) The administrative official shall develop and maintain a ledger tracking the number of permanent and transient units constructed since April 1, 1990. In addition, the city shall enter the number of permanent and transient units which receive an approved vested rights order. The units receiving an approved vested rights order shall be monitored in order to determine whether all limitations of the vested rights order are met during the active life of the vested rights order.

(b) The residential building permit tracking ledger shall be designed to account for the status of all permanent and transient units which have been vested or may be constructed within the city, including but not limited to the following:

(1) All permanent and transient units which have received a certificate of occupancy since April 1, 1990.

(2) All permanent and transient units not included in subsection (b)(1) of this section which are contained in an approved development of regional impact, the approval for which has not expired.

(3) All permanent and transient units not included in subsections (b)(1) and (2) of this section which have been through all preliminary city approval procedures and reviews and have obtained all necessary city development orders, the time for appeal from which by the state land planning agency has expired, and which have substantially relied upon and acted in furtherance thereof, and which have commenced construction and are proceeding in good faith and in a timely manner toward completion.

(4) Any permanent and transient units not included in subsections (b)(1) through (3) of this section which have obtained a final judicial order or decree at the time of the remedial plan adoption and have complied with all applicable laws and ordinances.

(Code 1986, § 34.1375(7))

Secs. 108-1063--108-1090. Reserved.

#### DIVISION 4. VESTED RIGHTS

Sec. 108-1091. Criteria for determining.

This division is intended to implement, supplement and be consistent with state statutory and case law as they relate to the doctrine of vested rights as applied to a local government exercising its authority and powers in zoning and related matters. The criteria provided in this section are intended to set forth factors that shall be considered in rendering a vested rights determination under this article. It is intended that each case be decided on its own merits, not based upon previous cases. A positive determination of vested rights is granted only if the property owner or applicant demonstrates by substantial competent evidence all three of the three-part test listed in this section. In determining whether the property is entitled to vested rights under the three-part test, the following shall be considered for each part:

(1) *Upon some act or omission of city.* The following shall be considered as acts of the city for the purpose of part one of the three-part test:

a. A valid, unexpired building permit issued prior to the effective date of comprehensive plan from the city which authorizes the specific development for which a determination is sought.

b. A subdivision plat recorded in the records of the county courthouse prior to June 8, 1993, which fulfills the criteria established in F.S. § 380.05(18).

c. Specific, authorized written statements or representations including agreements and formal actions of the city commonly relied upon and on which the property owner is reasonably justified in relying upon for the specific written statement or representation. Verbal statements, without written verification, by city personnel shall not be acceptable for meeting this part of the three-part test.

d. Negligent or culpable omissions in which the city failed to act and was under a legal duty to do so.

(2) *A property owner relying on good faith.* In determining whether reliance was in good faith, the following shall be considered for the purpose of part two of the three-part test:

- a. Whether the expenditures or obligations were clearly and directly connected to the authorizing act or omission of the city relied upon.
- b. Whether the expenditures or obligations were made or incurred subsequent to the act or omission of the city relied upon.
- c. Whether the expenditures or obligations were made/incurred in a timely fashion, that is, within a reasonable time period after the act or omission of the city relied upon.
- d. That the development has commenced and has continued in good faith without substantial interruption.
- e. For the purpose of part two of the three-part test, expenditures or obligations shall be presumed not to have been made or incurred in good faith, unless rebutted by substantial competent evidence, if they were made or incurred:
  1. When a person misled the city.
  2. When the act of the city on which a person is relying has been invalidated or has expired and the person knew or should have known of such invalidity or expiration.
  3. While the act of the city upon which a person is relying was being contested in the courts, or this hearing process, or any other mediation or hearing process, except any mediation or hearing process prior to the adoption of Ordinance No. 93-37.

(3) *Has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights acquired.* For the purpose of part three of the three-part test, the following shall be considered in determining whether a substantial change in position has been made or extensive obligations and expenses have been incurred relating to the property such that it would be highly inequitable and unjust to destroy the rights acquired:

- a. The substantial change in position made or the extensive obligations and expenses incurred shall be clearly and directly connected to the authorizing act or omission of the city and shall be made or incurred subsequent to the act of the city relied upon.
- b. In balancing the competing interests, whether the demonstrated injuries, if any, suffered by the property owner in not allowing the development to proceed outweigh the public cost and public interest of allowing development to proceed.
- c. Whether the property owner has incurred extensive obligation and expenses for hard costs of development.
- d. Whether the property owner has made infrastructure improvements within or to the subject property pursuant to a written agreement or development order with the city.
- e. Whether the property owner has constructed oversized infrastructure improvements within or to the property to meet the needs of other properties.
- f. Whether the city has required the person to oversize infrastructure improvements within or to the property to meet the needs of other properties and the city is willing to release the person from that obligation.
- g. Whether a person has incurred extensive obligations and expenses for the following development related matters that are made or incurred subsequent to the final act or omission relied upon:
  1. Architectural, attorney, engineering, or planning fees.
  2. Local, regional, state, and/or federal permit fees.

3. Scientific, biological or environmental studies, tests, or reports.
- h. For the purpose of part three of the three-part test, all facts and circumstances of each case, on a case-by-case basis, shall be considered in determining whether a change in position is substantial or whether obligations and expenses incurred are extensive.
- i. For the purpose of the three-part test, all substantial changes of position or expenditures incurred prior to act of the city upon which a person relied upon shall not be considered in making the vested rights determination.
- j. If the record indicates that the applicant failed to demonstrate by substantial competent evidence any one of the required parts of the three-part test set forth in this section, it shall not be inequitable to deny the applicant vested rights, in whole or in part.  
(Code 1986, § 34.1377(2))

Sec. 108-1092. General requirements for determination.

Any owner of undeveloped property believing that he is entitled to a positive determination of vested rights shall submit to the administrative official a written application for determination of vested rights with a fee to be determined by resolution of the city commission no later than nine months from the effective date of Ordinance No. 93-37. Failure of the owner to submit such application within the time provided shall be deemed a waiver of his rights to obtain a determination of vested rights and shall constitute an abandonment of any claim to vested rights for that property. Judicial relief shall not be available unless all administrative remedies are exhausted, including appeal to the city commission.

(Code 1986, § 34.1377(1)(a))

Sec. 108-1093. Pending applications and development orders.

No person may claim vested rights arising from any of the following which is inconsistent with the comprehensive plan and which has not resulted in a building permit with commencement of construction continuing in good faith:

- (1) Application for a development order processed on or after the effective date of Ordinance No. 93-37;
- (2) A development order rendered or issued on or after the effective date of Ordinance No. 93-37; and
- (3) Any expenditures or actions taken in reliance on any events stated in this section.

(Code 1986, § 34.1377(1)(b))

Sec. 108-1094. Application.

An application for determination of vested rights shall be submitted in the form established by the administrative official. An application fee in an amount to be determined by resolution of the city commission shall accompany and be part of the application. The fee shall be sufficient to defray the city's cost to administer the vested rights determination including fees for the hearing officer assigned to the case. The applicant shall submit at a minimum the following information:

- (1) The name, address and telephone number of the property owner and applicant;
- (2) The street address, legal description and acreage of the property;
- (3) The type of development for which vesting is being sought; and

(4) An explanation of how the criteria identified in section 108-1091(1) through (3) is met.

(Code 1986, § 34.1377(1)(c))

Sec. 108-1095. Review of application.

(a) *Generally*. After receipt of an application for determination of vested rights, the administrative official shall review the application for completeness.

(b) *Incomplete applications*. If the application is incomplete, the administrative official shall notify the applicant in writing of the deficiencies.

(c) *Complete applications*. If the application is complete, the administrative official shall coordinate with appropriate city officials in evaluating the application for compliance with the criteria established in section 108-1091(1) through (3). The administrative official, after coordinating with appropriate city staff, shall be empowered to approve the vested rights determination in the specific cases cited in subsections (d)(1) through (3) of this section, if the administrative official finds that the application [clearly] complies with all criteria established in section 108-1091(1) through (3). The administrative official shall not render an affirmative vested rights determination when the administrative official has any doubt regarding the applicant's compliance with section 108-1091(1) through (3).

(d) *Administrative review*. The following items shall require the submission of an application; however, no hearing shall be necessary, as the determination of vested rights shall be made by the administrative official pursuant to the stipulated settlement agreement:

(1) All permanent or transient residential units contained in an approved development of regional impact, approval for which has not expired, and which is proceeding in good faith and in a timely manner towards completion shall be considered vested as of the date of Ordinance No. 93-37. Any substantial deviation in the approved development of regional impact may cause the property to lose any vested rights achieved through the original development of regional impact approval process.

(2) All permanent or transient residential units which have been through all preliminary city approval procedures and reviews and which have obtained all necessary city development orders, for which the time for appeal by the state land planning agency has expired, and which have commenced construction and are proceeding in good faith and in a timely manner toward completion shall be considered vested as of the date of Ordinance No. 93-37.

(3) Developments which have obtained a final judicial order or decree at the time of the remedial plan adoption and which have complied with all applicable laws and ordinances shall be considered vested as of the date of building permit issuance. The city shall comply with the terms of all judicial orders concerning vested rights in particular cases.

(e) *Notification of applicant*. Within 60 days after receipt of a fully completed application with appropriate supporting material, the administrative official shall notify the applicant regarding the vested rights determination. When the administrative official does not clearly find that an affirmative administrative decision is appropriate pursuant to subsection (d) of this section, the administrative official shall notify the applicant that a hearing before a city-appointed hearing officer must be requested by the applicant. The administrative official's notification shall include application requirements for the hearing

and shall also include notice of the appropriate fee which shall be determined by resolution of the city commission.

(Code 1986, § 34.1377(1)(d))

Sec. 108-1096. Hearing on application by hearing officer.

(a) Upon receipt of a completed application for a vested rights determination and fee, the administrative official shall schedule a vested rights determination hearing before a city-appointed hearing officer. Each vested rights determination case convened before a hearing officer shall include a hearing.

(b) At the hearing, the hearing officer shall take evidence and sworn testimony. The parties before the hearing officer shall include the city and the owner or applicant. Testimony shall be limited to matters directly relating to the criteria set forth in section 108-1091. The city shall have representation at the hearing and may offer such evidence as is relevant to the proceedings. The applicant may offer such evidence as is relevant to the proceedings. The order of presentation before the hearing officer at the hearing shall be as follows:

- (1) The city's summary of the application, written recommendation, witnesses and other evidence;
- (2) The owner's or applicant's witnesses and evidence;
- (3) The city's rebuttal, if any; and
- (4) The owner's or applicant's rebuttal, if any.

(Code 1986, § 34.1377(1)(e))

Sec. 108-1097. Determination by hearing officer.

Within 15 working days after the completion of the hearing as provided in this division, the hearing officer shall determine whether to grant, grant with conditions or deny the application for determination of vested rights and shall notify the applicant of the determination. The hearing officer's determination shall be based upon the evidence and testimony presented at the hearing and the recommendation of the administrative official, in light of the criteria set forth in section 108-1091. The determination shall be in writing and shall include findings of fact for each of the criteria and a determination granting, granting with conditions or denying, in part or in whole, the vested rights of development on the property. The written determination shall specify the development rights that are vested or the beneficial use to which the landowner is entitled, including the following:

- (1) The geographic scope of the determination in relation to the total area of the property;
- (2) The duration of the determination and an expiration date;
- (3) The substantive scope of the determination;
- (4) The applicability of existing and future city land development regulations;
- (5) Verification that construction has commenced and quarterly reports ensuring that the development is continuing in good faith; and
- (6) Such other limitations and conditions necessary to ensure compliance with the comprehensive plan.

(Code 1986, § 34.1377(1)(f))

Sec. 108-1098. Appeal of determination.

Within 30 days after issuance of the hearing officer's determination made pursuant to this division, the administrative official, on behalf of the city, or the owner or applicant may appeal the determination of the hearing officer to the city commission by filing an application with the city clerk. The city commission shall either uphold, uphold with modifications or reject the hearing officer's determination of vested rights. The city commission shall be authorized to modify or reject the hearing officer's determination only when the determination is not supported by substantial competent evidence presented during the hearing or the determination is contrary to the criteria established in section 108-1091. The property owner or the applicant may appeal the decision of the city commission to the circuit court.

(Code 1986, § 34.1377(1)(g))

**Sec. 108-1099. Limitation on determination.**

(a) A determination of vested rights which grants an application for determination of vested rights shall confirm such vested rights only to the extent expressly contained in such determination. Except as expressly stated, nothing in this division shall relieve the property owner from complying with the city's land development regulations and building codes in developing the property.

(b) A determination of vested rights which grants an application for determination of vested rights shall expire and be null and void any time after six months from the date of issuance unless the following conditions are met:

(1) Construction has commenced pursuant to a building permit; and

(2) Substantial permanent buildings have been or are being constructed pursuant to a building permit and construction is continuing in good faith. Good faith shall mean construction which is receiving inspections in a timely manner and which can show tangible improvements to the property and which shall be consistent with criteria cited in section 108-1091.

(c) A determination of vested rights shall apply to the land and is, therefore, transferrable from owner to owner of the land subject to the determination.

(d) Anything in this article to the contrary notwithstanding, a determination of vested rights may be revoked upon a showing by the city of a danger to public health, safety and welfare of the residents of the city unknown at the time of approval.

(Code 1986, § 34.1377(3))

**Sec. 108-1100. Procedures for ensuring beneficial use of private property.**

(a) It is the policy of the city that neither provisions of the comprehensive plan nor the land development regulations shall deprive a property owner of all reasonable economic use of a parcel of real property which is a lot or parcel of record as of the date of adoption of the comprehensive plan. An owner of real property may apply for relief from the literal application of applicable land use regulations or of this plan when such application would have the effect of denying all economically reasonable or viable use of that property unless such deprivation is known to be necessary to prevent a nuisance under state law or in the exercise of the city's police power to protect the health, safety, and welfare of its citizens. All reasonable economic use shall mean the minimum use of the property necessary to avoid a taking within a reasonable period of time as established by land use case law.

(b) The relief to which an owner shall be entitled may be provided through the use of one or a combination of the following:

(1) Granting of a permit for development which shall be deducted from the permit allocation system.

(2) Granting the use of transfer of development rights (TDRs) consistent with the comprehensive plan.

(3) Purchasing by the city of all or a portion of the lots or parcels upon which all beneficial use is prohibited.

(4) Such other relief as the city may deem appropriate and adequate.

The relief granted shall be the minimum necessary to avoid a taking of the property under existing state and federal law.

(c) Development approved pursuant to a beneficial use determination shall be consistent with all other objectives and policies of the comprehensive plan and land development regulations unless specifically exempted from such requirements in the final beneficial use determination.

(Code 1986, § 34.1377(4))

Secs. 108-1101--108-1125. Reserved.

**Attachment C**

## STATUTORY BASIS OF GROWTH MANAGEMENT IN KEY WEST

Growth management in the City of Key West is controlled by a series of laws which generate at the state level but manifest themselves at the local level in the City's Comprehensive Plan and Land Development Regulations. Key state statutes and implementing rules are listed below:

- Chapter 163, Part II, Florida Statutes: Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida's Growth Management Act; and,
- Chapter 380, 05, Florida Statutes: Establishes the Area of Critical State Concern program which protects resources and public facilities of major statewide significance. Key West is an Area of Critical State Concern per Rule 28-36, Florida Administrative Code, and the Comprehensive Plan and Land Development Regulations are established under Rule 28-37, Florida Administrative Code.

Florida law establishes the role of the Comprehensive Plan in local growth management control, both as an outcome of state-wide growth management requirements in Chapter 163 as well as mandates in Chapter 380 specific to the Area of Critical State Concern. Specifically relevant references are provided below:

- Chapter 163.3194 (1)(a), F.S., establishes the legal status of comprehensive plan and requires that "after a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted." 163.3194(1)(b) further states that "all land development regulations enacted or amended shall be consistent with the adopted comprehensive plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent" and 163.3194(3) states that (a) "a development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government" and that (b) "a development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of the development are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government."

- Chapter 380.05, F.S. establishes areas of critical state concern, as follows: (1)(a) The state land planning agency may from time to time recommend to the Administration Commission specific areas of critical state concern. In its recommendation, the agency shall include recommendations with respect to the purchase of lands situated within the boundaries of the proposed area as environmentally endangered lands and outdoor recreation lands under the Land Conservation Act of 1972. The agency also shall include any report or recommendation of a resource planning and management committee appointed pursuant to s. 380.045; the dangers that would result from uncontrolled or inadequate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner; a detailed boundary description of the proposed area; specific principles for guiding development within the area; an inventory of lands owned by the state, federal, county, and municipal governments within the proposed area; and a list of the state agencies with programs that affect the purpose of the designation. The agency shall recommend actions which the local government and state and regional agencies must accomplish in order to implement the principles for guiding development. These actions may include, but shall not be limited to, revisions of the local comprehensive plan and adoption of land development regulations, density requirements, and special permitting requirements.
- Rule 28-37.001, FAC, establishes the land development regulations and a local comprehensive plan applicable within the City of Key West Area of Critical State Concern, pursuant to Section 380.05(8), F.S. The rules states: (3) "In the event of any inconsistency between the comprehensive plan and a land development regulation or graphic rendering, including but not limited to the zoning and land use maps, the text of the comprehensive plan shall control."

The Building Permit Allocation System is an integral component of the City of Key West adopted Comprehensive Plan and implementing Land Development Regulations. Objective 1-3.12. establishes the public, health, safety and welfare issues underlying the need to manage growth in the City, as follows: "The State of Florida, Monroe County and its municipalities have concluded that: 1) the present hurricane evacuation clearance time in the Florida Keys is unacceptably high; and 2) based on a continuation of historic rates of growth within the County incorporated and unincorporated areas, clearance time will continue to increase. In order to protect the health and safety of the residents in the Florida Keys, the City of Key West shall regulate the rate of population growth commensurate with planned increases in evacuation capacity in order to prevent further unacceptable increases in hurricane evacuation clearance time. Regulation of the rate of growth will also assist in preventing further deterioration of public facility service levels. Therefore, in concert with Monroe County and the Cities of Key Colony Beach and Layton, upon plan adoption, the City shall manage the rate of growth in order to reduce the 1990 hurricane evacuation clearance times of 35 hours to 30 hours by the year 2002 and to 24 hours by the year 2010. The Florida Keys hurricane evacuation studies (Post, Buckley, Schuh & Jernigan, 1991) and the "Lower Southeast Florida Hurricane Evacuation Study Update" (US Army Corps of Engineers, June 1991)

provided the basis for the 1990 hurricane evacuation clearance time and also provides the basis for projecting the targeted evacuation clearance times.”

This Objective establishes a public purpose to reduce hurricane evacuation times through regulation of growth. Implementing policies in the City’s Comprehensive Plan further define how growth will be regulated through the establishment of a Building Permit Allocation Ordinance.

## City of Key West Area of Critical State Concern

### 28-36.001 Purpose.

(1) Pursuant to Section VII, Article II, of the Florida Constitution, and Section 380.05, Florida Statutes, it is the purpose of these rules to define the boundary of the City of Key West Area of Critical State Concern and to provide principles for guiding development within the critical area in order to conserve and protect the natural, environmental, historical and economic resources, the scenic beauty, and the public facilities within the Area of Critical State Concern.

(2) The 1979 legislation designating the Florida Keys Area of Critical State Concern contained a special provision, Section 380.0552(3), Florida Statutes, that required the removal of the City of Key West upon approval by the State Land Planning Agency of the Land Use Element of the Local Government Comprehensive Plan. This was accomplished on June 26, 1981.

(3) Based on the recommendation of the Keys Resource Planning and Management Committee and the State Land Planning Agency, the Administration Commission determined to again designate the City of Key West as an Area of Critical State Concern. These principles are the basis for the City of Key West to prepare the Comprehensive Plan and Land Development Regulations for the designated Area of Critical State Concern. When the principles are properly implemented by the adoption and enforcement of the Comprehensive Plan and Development Regulations, then the advantages of coordinating development in the Area of Critical State Concern should be achieved.

*Specific Authority 380.05(1) FS. Law Implemented 380.05 FS. History—New 2-28-84, Formerly 27F-15.01, 27F-15.001.*

### 28-36.002 Boundary.

The area designated as an Area of Critical State Concern encompasses the territorial boundaries of the City of Key West, Florida, including the entire Island of Key West, Monroe County, Florida, and all territories whether natural or filled, separated from the Island of Key West by artificial canals or natural channels or waterways, and all territories that have been filled in, built up and developed and areas not contiguous, adjacent to, or abutting on said Island of Key West and served by bridges or other direct connections therewith including bay bottoms owned by the City of Key West, Florida, also including all that part of Stock Island and bay bottoms lying northerly of United States Highway No. 1 which is now owned by the existing municipality of the City of Key West, Florida, the Florida Keys Junior College, and privately owned property and islands including natural or filled or submerged lands lying contiguous to or separated from Stock Island by artificial canals, natural channels, or waterways, particularly described as follows:

A tract of submerged land in the Bay of Florida in Section 27, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, being more particularly described as follows:

Commence at the point of intersection of U. S. Highway No. 1 with the center line of "Old Country Club Road;" thence northwesterly along said center line of "Old Country Club Road" a distance of 1400 feet; thence North 60°00" West a distance of 200 feet to the P. O. B.; thence continue North 60°00" West distance of 1548 feet to a point; thence continue North 30°00" East a distance of 1100 feet to a point; thence continue South 60°00" East a distance of 1548 feet to a point; thence continue South 30°00" West a distance of 1100 feet to the P. O. B. containing 39.06 acres, more or less.

A tract of submerged land in Section 27, Township 67 South, Range 25 East, offshore from the northwesterly shoreline of Stock Island in Monroe County, Florida, more particularly described as follows:

Commence at the intersection of the center line of U. S. Highway No. 1 and "Old Country Club Road;" thence northwesterly along the center line of said "Old Country Club Road" for a distance of 1400 feet; thence North 60° West, 200 feet; thence at right angles to the last named course, North 30° East, 1100 feet to the point of beginning of the property herein after described; from said point of beginning, thence at right angles to the last named course North 60° West, 1548 feet; thence North 76° East, 900 feet; thence South 34° East, 1040 feet; thence South 30° West, 160 feet, more or less, back to the point of beginning. Containing 13.05 acres, more or less. Lying and being in Section 27, Township 67 South, Range 25 East, Monroe County, Florida; provided, that no island lying between Roosevelt Boulevard on the easterly shore of the Island of Key West and Cow Key Channel shall be included in the territorial boundaries of the City of Key West, Florida, nor shall the property commonly known as Key Haven be included in the territorial boundaries of the City of Key West, Florida, nor shall the property known as Wisteria Island and/or any other islands situated and lying west of the Island of Key West be included in the territorial boundaries of the City of Key

West, Florida (Sp. Acts, 70-762, Section 1).

*Specific Authority 380.05(1) FS. Law Implemented 380.05 FS. History—New 2-28-84, Formerly 27F-15.02, 27F-15.002.*

**28-36.003 Principles for Guiding Development.**

(1) Objectives to Be Achieved.

(a) Strengthen local government capabilities for managing land use and development;

(b) Protection of tidal mangroves and associated shoreline and marine resources and wildlife;

(c) Minimize the adverse impacts of development of the quality of water in and around the City of Key West and throughout the Florida Keys;

(d) Protection of scenic resources of the City of Key West and promotion of the management of unique, tropical vegetation;

(e) Protection of the historical heritage of Key West and the Key West Historical Preservation District;

(f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including:

1. The Florida Keys Aqueduct and water supply facilities,

2. Sewage collection and disposal facilities,

3. Solid waste collection and disposal facilities,

4. Key West Naval Air Station,

5. The maintenance and expansion of transportation facilities, and

6. Other utilities, as appropriate;

(g) Minimize the adverse impacts of proposed public investments on the natural and environmental resources of the City of Key West; and

(h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

(2) Elements Requiring Regulation.

(a) Planning and Administration.

1. The City of Key West shall modify the Comprehensive Plan which guides development within its boundaries to be consistent with these principles. The Comprehensive Plan shall be implemented through development regulations, including zoning ordinances and maps, which are kept current and made available for reasonable public distribution and inspection. Development orders shall be issued only in conformance with the policies and standards of the Comprehensive Plan, development regulations and maps.

2. The City of Key West shall prepare and implement Capital Improvement Plans based on viable funding sources to provide adequate infrastructure for existing and future development.

3. Issuance of development orders shall be coordinated with and contingent upon provisions contained within the Capital Improvement Plan. Development shall not be approved which is inconsistent with or exceeds the services specified in the Plan.

4. Special planning and zoning districts shall be created for:

a. Environmentally sensitive areas including, without limitation, mangrove communities. Such areas shall be zoned with a maximum use density of one dwelling unit per acre. Site alteration in these areas shall be limited to 10% of the total site size. Density credit should be considered by local governments as an incentive for the preservation of environmentally sensitive areas.

b. Noise and hazard zones of the Key West Naval Air Station as delineated by the U. S. Navy Office of the Chief of Naval Operations. Development within such zones should be limited to that compatible with air operations. Implementation of this section should be closely coordinated with the Office of the Chief of Naval Operations. Similar districts should be created around civilian airfields in cooperation with the Florida Department of Transportation and the Federal Aviation Administration. Codes for airfield districts should clearly specify height limits for structures and other appropriate restrictions on development necessary to protect air operations and public health and safety.

5. A community impact statement shall be designed to enable local governmental officials to determine the proposed development's favorable or unfavorable impact on the environment, natural resources, economy and the

potential of the project to meet local or regional housing needs. The statement shall also require information relative to the project's potential impact on public facilities, including without limitation, water, sewer, solid waste disposal and transportation facilities. A community impact assessment statement shall be submitted and approved prior to the issuance of development orders or site plan approval for the following developments:

- a. Any development which includes building(s) in excess of 45 feet in height;
- b. Any intensive land uses including: residential uses of 10 or more dwelling units per acre or 50 or more total dwelling units; and
- c. Intensive business, commercial, or industrial uses.

6. Developments shall be encouraged in the Comprehensive Plan and development regulations to use clustering and other design techniques which would reduce public facilities costs, produce energy savings, and improve the scenic quality of the development. In addition, they shall conform to appropriate setback and open space requirements, stringent landscaping and land use compatibility requirements. Building and siting requirements shall reduce hurricane and fire damage potential and control access to City thoroughfares.

7. An evacuation plan consistent with regional and County plans shall be prepared and adopted which provides an opportunity for residents and visitors to evacuate to a place of safety during a natural disaster.

(b) Site Alteration Regulations.

Site alteration and landscaping regulations shall provide for:

1. A land clearing permit of limited duration issued upon approval of a site plan which includes a natural vegetation map, excepting minimal clearing required for survey.

2. Limitation of the size and species of trees allowed to be removed in clearing, including reasonable exceptions for structure sites and public safety. The ordinance shall provide protection for native tropical vegetation and tree species characteristic of West Indian tropical hardwood hammocks.

3. Revegetation and landscaping of cleared sites after construction.

(c) Waste Control and Water Quality Protection.

1. The City of Key West, in cooperation with the Monroe County Waste Collection and Disposal District, shall establish criteria and regulations for the methods and location of the disposal of all solid waste and waste-water effluents and residuals.

2. Site alteration and subdivision regulations shall provide for:

a. Retention of runoff or discharge of such runoff into adequately sized natural vegetative filtration areas in a manner approximating the natural runoff regime.

b. Permanent drainage systems which make maximum use of natural drainage patterns, vegetative retention and filtration.

c. Maintenance of habitat for wildlife species, prevent the introduction of noxious vegetation, and minimize the alteration of transitional wetlands.

(d) Protection of Public Facilities and Investments.

1. The City of Key West, in cooperation with the Florida Keys Aqueduct Authority, shall amend all applicable plumbing codes to provide for the mandatory installation of water conserving fixtures in all new development and redevelopment.

2. Business, commercial and industrial development shall provide off street parking and limited controlled access points to City thoroughfares.

3. Existing and future waste treatment and disposal sites shall be protected from encroachment by land uses which would endanger their functions or existence.

(e) Historical Resource Protection.

1. A management and enforcement plan and ordinance shall be adopted by the City of Key West providing that designs and uses of development reconstruction within the Key West Historical Preservation District shall be compatible with the existing unique architectural styles and shall protect the historical values of the District.

2. The City of Key West shall maintain an architectural review board established pursuant to Section 266.207(2), Florida Statutes. Furthermore, the architectural review board shall receive notice of all applications for development within the City of Key West and participate in hearings as appropriate.

*Specific Authority 380.05(1) FS. Law Implemented 380.05 FS. History–New 2-28-84, Formerly 27F-15.03, Transferred from 27F-15.003.*

**28-36.004 Administration.**

(1) The above guidelines are oriented towards protection of natural and historical resources and public investments of regional and State importance.

(2) The Comprehensive Plan and development regulations developed pursuant to these principles shall be:

(a) Performance oriented to maximize design flexibility.

(b) Administered by the municipal government in the same manner as local comprehensive plans, ordinances, and codes.

*Specific Authority 380.05(1) FS. Law Implemented 380.05 FS. History–New 2-28-84, Formerly 27F-15.04, Transferred from 27F-15.004.*

**28-37.001 Purpose and Effect.**

(1) The purpose of this Chapter is to establish land development regulations and a local comprehensive plan applicable within the City of Key West Area of Critical State Concern, pursuant to Section 380.05(8), F.S. It is the intent of the Administration Commission that this rule shall supplement those land development regulations approved by the Department of Community Affairs in Chapter 9B-30, F.A.C. This Chapter and Chapter 9B-30, F.A.C., comprise the comprehensive plan and land development regulations for the City of Key West Area of Critical State Concern. To the extent that existing ordinances are not adopted in this rule or approved in Chapter 9B-30, F.A.C., such ordinances are not deemed to be “land development regulations” within the definition of Section 380.031(8), F.S.

(2) As provided in Section 380.05(10), F.S., the comprehensive plan and land development regulations adopted herein shall be superseded by regulations or amendments which are proposed by the City of Key West and approved by the Department of Community Affairs under the procedures found in Section 380.05(6), F.S.

(3) In the event of any inconsistency between the comprehensive plan and a land development regulation or graphic rendering, including but not limited to the zoning and land use maps, the text of the comprehensive plan shall control.

*Specific Authority 380.05(8) FS. Law Implemented 380.05(8) FS. History—New 1-17-85, Formerly 27F-16.01, Transferred from 27F-16.001.*