



## THE CITY OF KEY WEST PLANNING BOARD Staff Report

**To:** Chairman and Planning Board Members

**From:** Amy Kimball-Murley, AICP

**Meeting Date:** February 26, 2009

**Agenda Item:** **Building Permit Allocation System Ordinance** – Modifications to Chapter 108, Article X, Building Permit Allocation and Vested Rights, Code of Ordinances, pursuant to Chapter 90, Article VI, Division 2, Land Development Regulations, Code of Ordinances, City of Key West, Florida

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### Background

The Building Permit Allocation System (BPAS), commonly known as the Rate of Growth Ordinance, or “ROGO”, was originally adopted in response to the City’s 1993 Comprehensive Plan and required by a subsequent stipulated settlement agreement between the City and the Florida Department of Community Affairs in 1996. The purpose of the BPAS is to ensure that residential growth, including transient growth, does not exceed the hurricane evacuation capacity of the roadways in the Florida Keys.

In response to a Writ of Mandamus pertaining to the Southernmost House, the City began revisions to the Building Permit Allocation System ordinance as part of Zoning in Progress efforts. A public workshop was held in late April to obtain public input on the direction of the new ordinance; a second, City Commission, workshop was held in late October to present analysis and outline specific issues and approaches to the ordinance, including discussion of public comments gathered at the first workshop. The City Commission directed staff to minimize changes to the existing ordinance and reserve more complex changes for discussion during the Comprehensive Plan updates expected over the next year. As such, the revisions would not change the basic system as it has existed since adoption of the Comprehensive Plan and stipulated agreement. Specific areas for immediate revision included the following:

- Eliminate confusing language regarding the period of allocation and time frame addressed by the ordinance;
- Include a system for determining whether existing development is effected by the Building Permit Allocation System (i.e., acknowledging existing units);
- Include clear provisions for new inputs into the system;
- Eliminate obsolete provisions on vesting processes;
- Ensure that newly allocated units are completed within a specific timeframe; and,

- Provide for an annual City Commission review of allocated units by structure type.
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The following draft ordinance follows the Commission's direction, and also eliminates obsolete references to the original stipulated settlement agreement. Several sections have been combined in order to eliminate redundancies in the ordinance and clarify language when appropriate. Importantly, the revisions do not attempt to make substantive changes to the system as it has existed since the ordinance was put in place. Almost any truly substantive change will require revisions to the underlying policies of the Comprehensive Plan; these revisions are certain to occur in the future as part of the City's first major plan.

A first draft of the ordinance was reviewed by the Planning Board in December; at that time, Board members commented on the draft and asked staff to ensure that the DCA conduct a courtesy review of the document. Discussions with the DCA have been ongoing and this draft of the ordinance reflects verbal comments relayed by DCA as of February 24, 2009. Written comments from the DCA have not been transmitted to the City to date.

**Review Criteria:** Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

**Sec. 90-522. Planning board review of proposed changes in land development regulations.**

**(a) The planning board, regardless of the source of the proposed change in the land development regulations, shall hold a public hearing thereon with due public notice. The planning board shall consider recommendations of the city planner, city attorney, building official and other information submitted at the scheduled public hearing. The planning board shall transmit a written report and recommendation concerning the proposed change of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.**

The Planning Board reviewed a draft of the ordinance on December 18, 2008, and requested an additional hearing. This document constitutes the summary of relevant criteria reviewed by the Planning Board.

**Sec. 90-521. Criteria for approving amendments to official zoning map. In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:**

**(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

The proposed change does not impact the official zoning map or underlying future land use map designations. It does provide for modifications to the existing Building Permit

Allocation System ordinance, which itself exists to implement specific policies in the Comprehensive Plan, as follows:

**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.

**(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed modifications appear consistent with all applicable requirements of the Code.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.**

The underlying need for a Building Permit Allocation System remains the same as it did when the Comprehensive Plan was originally adopted. However, clarifications and modifications to the implementing ordinance are required to address concerns raised by Judge Wayne Miller, the public, and the City Commission.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.**

This proposal does not impact land use classifications; therefore, this provision is not applicable.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.**

The proposed ordinance modifications affect the allocation of residential units and do not impact concurrency determinations or other public facility determinations in the Comprehensive Plan and Land Development Regulations. All development and redevelopment must comply with those regulations.

**(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

The proposed ordinance modifications relate to the allocation of residential units and do not impact existing natural resource protection regulations.

**(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.**

Any economic impacts associated with the management of building permit allocations occurred relative to the 1993 Comprehensive Plan and stipulated settlement agreement, and implementing regulations which were initially approved by the City Commission. Limited revisions to the ordinance are not expected to have any impact on property values or the general welfare of the City.

**(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.**

This modification is not expected to have any new impact on existing land use patterns.

**(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.**

The Building Permit Allocation System is integral to the City's existing Comprehensive Plan and growth management approach and will continue to be so.

**(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.**

Modifications to the Building Permit Allocation System are necessary to clarify provisions of the system. Further changes are also expected as part of long overdue updates to the Comprehensive Plan.

## **PROCESS**

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the DCA , who will have 60 days to issue an order of consistency.

## **RECOMMENDATION**

The Planning Department recommends consideration and approval of the draft Building Permit Allocation ordinance modifications.

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ARTICLE X. BUILDING PERMIT ALLOCATION AND VESTED RIGHTS SYSTEM  
ORDINANCE

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:

Accessory units and single room occupancies (SROs) means units that must be deed-restricted as 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. 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 planning board. If such variance is approved, the total square footage shall not exceed 600 square feet.

*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, Purpose and Intent

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;~~

The purpose and intent of the building permit allocation system is to implement the city's 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 known as the Miller Model.

(2) Limit the amount of residential development commensurate with the city's ability to maintain a reasonable and safe hurricane evacuation clearance time of no more than 24-hours.

(3) Regulate the amount of permanent and transient residential building permits 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 under this article, based upon the goals, objectives and policies set forth in the city comprehensive plan.

(5) Limit units allocated to those which generate from the the following sources: City of Key West Comprehensive Plan Policy 1.3.12.1; Memorandums of Agreement between the Department of Community Affairs and the City of Key West; Development Agreements; Settlement Agreements; Consent Final Judgments; units recovered by the City which were previously allocated and unused and subsequently returned to the City; and, units deriving from decreases in existing residential density and changes in residential uses and subsequently returned to the City.

~~(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 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

		<p>efficiencies. No accessory unit shall have more than one bedroom unless an additional bedroom is approved as a variance by the planning board. 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 SRQ impacts through 2010 in the annual allocation of units in order to reflect the impact of these units on public facilities.—</p>
—	(c)—	<p>Multifamily: <math>1.8/1.8 = 1.00</math>—</p>
—	(d)—	<p>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.—</p>
(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; Ord. No. 08-04, § 19, 5-20-2008)~~

Sec. 108-988. Short title.

This article shall be known and may be cited as the "building permit allocation and vested rights system 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))~~

~~(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; and,~~

~~(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.~~

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.

(3) Units in existence at the time the April 1, 1990, Census was prepared are presumed not to be affected by BPAS. The Administrative Official shall review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, 1990. Units existing in 1990 will be documented through a mandatory site visit by City Staff and at least two of the following records:

- a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 1990;
- b. Building permits issued prior to April 1, 1990;
- c. Copies of City Directory entries on or about April 1, 1990;
- d. Site visits which indicate that the age of the structure and associated improvements likely pre-date 1990;
- e. Rental, occupancy or lease records from before and including April 1, 1990, indicating the number, type and term of the rental or occupancy;
- f. Copies of state, county, and city licenses on and about April 1, 1990, indicating the number and types of rental units;
- g. Documentation for Keys Energy Service and Florida Keys Aqueduct Authority indicating the type of service (residential or commercial) provided and the number of meters on or about April 1, 1990;
- h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 1990 (Green Card); and
- i. Similar documentation as listed above.

Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based. Provision of documents is the responsibility of the applicant. The Administrative Official's decision shall be rendered to the Department of Community Affairs for a determination of consistency with the Principals for Guiding Development.

Units which are determined not to be affected by the Building Permit Allocation System per this subsection but which have not been previously acknowledged by the

Administrative Official are presumed to be lawfully established per Chapter 122, Article II, Nonconformities, if the additional following requirements are met:

- a. The applicant satisfies the Building Department that the unit is meets the Florida Building Code, through as built certifications or other means acceptable to the Building Official; and
- b. All back fee payments, including impact fee payments, from 1990 onward, as determined by the Building Department, are made in full.

Transient units which meet the criteria in this subsection will be licensed by the City.

~~(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. 108-994993. 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\*~~

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

~~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 32. BUILDING PERMIT ALLOCATION SYSTEM

~~Sec. 108-1056~~994. Established.

The city establishes a building permit allocation system in order to limit the number of permits issued for permanent and transient units by structure type and affordability level 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.~~those available through the following means:

1. Units generating from Policy 1-3.12.1 of the Comprehensive Plan that have not been allocated, subject to the table below;
2. Legal mechanisms including Memorandums of Agreement between the Department of Community Affairs and the City of Key West, Development Agreements, Settlement Agreements and Consent Final Judgments.
3. Units as recovered by the City which were either previously allocated and unused or which derive from units which are determined not be affected by this article per Section 108-991.

~~(Code 1986, § 34.1375(1))~~

~~Sec. 108-1057.~~ Annual residential unit Bbuilding 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 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:

(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. 108-4058995. Reporting Requirements and Adjustments in residential allocation schedule.~~

~~The Administrative Official will provide an annual report to the Planning Board and City Commission providing the results of tracking and monitoring requirements and recommendations for any changes in the allocation by structure type. The annual report shall track all inputs to the system, per Section 108.994, as well as allocations to the system by structure type.~~

~~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 annually; and the allocation by structure type may be adjusted to accommodate shifts in supply and demand factors. However, under no circumstances will the allocations for affordable housing constitute less than 30% of the total ESFU available for allocation since 1990, nor shall the transient unit allocation exceed 25% of the ESFU available for allocation since 1990. Because transient allocations have exceeded 25% of the total ESFU, no further new transient allocations will be made under this system. 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))<sub>2</sub>~~

~~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 planning board. 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); Ord. No. 08-04, § 20, 5-20-2008)~~

108-996 Period of Allocation

Allocations shall be for a one year period during which time a building permit must be obtained, unless a longer period is approved by resolution as part of a development plan, conditional use or development agreement approval. A single one year renewal of an

allocation may be granted by the Administrative Official upon a timely request made within one year of the unit issuance. No further extensions can be granted. Unused units will be returned to the system for reallocation.

~~Sec. 108-1062997.- Tracking and monitoring system.~~

~~(a) The administrative official shall develop and maintain a ledger-tracking system which indicates the number of permanent and transient single family equivalent units by structure type and by affordability level constructed-allocated 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. 108-1100998. 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.~~

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