

Key West Planning Board Meeting Agenda
February 18, 2010 – 6:00 p.m.
City Commission Chamber
Old City Hall, 510 Greene Street



Item 4.a.1.

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, Code of Ordinances, City of Key West, Florida.



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board Members

From: Amy Kimball-Murley, AICP, Planning Director

Meeting Date: February 18, 2010

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

Background

The purpose of this request is to modify two areas of the Building Permit Allocation System Ordinance: enabling the City Commission to allocate units by use and type, and addressing the period of beneficial use allocations.

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. For clarification purposes, Section 108-986 defines the term "administrative official", to mean the official appointed by the City Manager to administer Article X of Chapter 108. In this case, the City Manager has designated the City Planner as the administrative official.

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 new Building Permit Allocation System Ordinance has been adopted, and the Department of Community Affairs has issued an order approving the ordinance, with exception to certain provisions which were found to be inconsistent with the Comprehensive Plan. One issue, pertaining to the length of time of beneficial use allocations, requires resolution in order to ensure full implementation of the Building Permit Allocation System Ordinance. Further, the City has determined that a clearer process for allocation of units by use (in addition to structure type) should be addressed through Land Development Regulation revisions and such revisions were initiated on July 11, 2009.

In order to accomplish necessary revisions to the subject ordinance, the Department conducted additional research and analysis which will inform the revised ordinance.

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.

Collaboration amongst city staff has occurred to modify the Building Permit Allocation Ordinance. As required by the land development regulations, the planning board will consider the recommended changes at a scheduled public hearing and will transmit a written report and recommendation concerning the proposed change to the city commission for official action, upon reviewing the following criteria:

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 recently adopted Building Permit Allocation System ordinance, which implements 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) ⁽¹⁾	Maximum Annual Allocation By Structure Type ⁽²⁾	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 ordinance are required for full implementation.

(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 proposed revisions to the Building Permit Allocation System ordinance are integral to the City's existing Comprehensive Plan and growth management approach.

(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 amendments to the Building Permit Allocation ordinance modifications.

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Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AMENDMENTS TO PART B, LAND DEVELOPMENT REGULATIONS, CHAPTER 108, ARTICLE X, BUILDING PERMIT ALLOCATION AND VESTED RIGHTS, DIVISION 1, SECTIONS 108-995 AND 108-996 OF THE CODE OF ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria; and

WHEREAS, the Planning Department initiated proposed amendments to the ordinance to address concerns raised by the Department of Community Affairs and city staff; and

WHEREAS, pursuant to Section 90-522, the Planning Board held a noticed public hearing on February 26, 2009, where based on the consideration of recommendations by the City planner, city attorney, building official and other information recommended approval of the proposed amendments with modifications; and

WHEREAS, the City Commission held a noticed public hearing on _____ and a second meeting on _____ and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances; and

WHEREAS, the City determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the

existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF
KEY WEST, FLORIDA, AS FOLLOWS:**

**Section 1. That Section 108-995, Chapter 108, Article X, is hereby
amended as follows:**

Sec. 108-995. 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 or intended use. The annual report shall track all inputs to the system, per Section 108-994, as well as allocations to the system by structure and use type.

The table in section 108-1057-994 illustrating the allocation of building permits by structure type shall be subject to evaluation by the city commission 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. Provided, however, that the City shall reserve adequate units for beneficial use claims based on available vacant lot information compiled by the Planning Department as a first priority in unit reservation and allocation.

Section 2. That Section 108-996, Chapter 108, Article X, is hereby

amended as follows:

Sec. 108-996 Period of Allocation

Allocations other than those granted for beneficial use pursuant to Section 108-998 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~~shall be granted by the Administrative Official prior to the expiration of the allocation. One extension for a period of 12-months ~~may~~shall be granted by the Planning Board provided that the applicant makes application prior to the expiration of the allocation and demonstrates reasonable cause for the extension. No further extensions can be granted. Allocations for beneficial use pursuant to Section 108-998 shall be for a period of ~~five~~two years during which time a building permit must be obtained. A single two year extension of a beneficial use allocation ~~may~~shall be granted by the Administrative Official prior to the expiration of the allocation. Unused units will be returned to the system for reallocation.

Section 3: Severability. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4. Effective Date. This Ordinance shall become effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2010.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2010.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

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