

ORDINANCE NO. 13-19

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 86, SECTION 86-9 ENTITLED "DEFINITION OF TERMS"; AMENDING CHAPTER 108 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, ENTITLED PLANNING AND DEVELOPMENT SPECIFICALLY ARTICLE X ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM," BY AMENDING SECTION 108-986 "DEFINITIONS;" ADDING DEFINITIONS TO SECTION 86-9 ENTITLED "DEFINITION OF TERMS"; AMENDING SECTION 108-987 ENTITLED "PURPOSE AND INTENT"; AMENDING SECTION 108-989 ENTITLED "AUTHORITY"; AMENDING SECTION 108-991 "DEVELOPMENT NOT AFFECTED BY ARTICLE"; AMENDING SECTION 108-994 ENTITLED "ESTABLISHED"; AMENDING SECTION 108-995 ENTITLED "REPORTING REQUIREMENTS AND ADJUSTMENTS IN RESIDENTIAL ALLOCATION SCHEDULE"; REPEALING SECTION 108-996 ENTITLED "PERIOD OF ALLOCATION"; ADDING A NEW SECTION 108-996 ENTITLED "INTENT"; REPEALING SECTION 108-997 ENTITLED "TRACKING AND MONITORING SYSTEM"; ADDING A NEW SECTION 108-997 ENTITLED "PERIOD OF ALLOCATION AND RANKING/REVIEW OF ALLOCATIONS; ADDING A NEW SECTION 108-998 ENTITLED "COMPACT INFILL DEVELOPMENT AND MIXED USE DEVELOPMENT INCENTIVES; AMENDING AND RENUMBERING SECTION 108-998 TO 108-999 ENTITLED "PROCEDURES FOR ENSURING BENEFICIAL USE OF PRIVATE PROPERTY"; REPEALING SECTION 108-999 ENTITLED "ZONING IN PROGRESS"; ADDING SECTION 108-1000 ENTITLED "ALLOCATION OF RESIDENTIAL PERMITS IN THE TRUMAN WATERFRONT REDEVELOPMENT AREA"; AND AMENDING CHAPTER 122 ENTITLED "ZONING", BY AMENDING SECTION 122-1470 ENTITLED "ACCESSORY UNIT INFILL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR 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 Sections 90-486 through 90-524.

WHEREAS, in September of 2012 the Hurricane Evacuation Memorandum of Understanding (HEM MOU) was signed by the State of Florida Department of Economic Opportunity, the Department of Emergency Management, Monroe County and its municipalities including Key West. The HEM MOU involved updating the modeling used to determine the City's ability to evacuate in the event of a hurricane, based on the 2010 US Census population count. As a result of the modeling, it was determined that Monroe County and its municipalities have the capacity to add limited residential units and meet the 24 hour permanent resident evacuation mandate. Key West was given 91 new units for allocation of residential development beginning in 2013 and distributed annually for the next ten years; and

WHEREAS, on May 2, 2013 the City's new Comprehensive Plan became effective, establishing procedures for the allocation of the 91 annual residential units pursuant to the Building Permit Allocation System; and

WHEREAS, public policy that promotes healthy, resilient, high-performing building design and practices complements existing policies relating to development and environmental stewardship;

including the Climate Action Plan, the Comprehensive Plan, the Strategic Plan and the Solid Waste Master Plan; and

WHEREAS, the City Commission has the ability to encourage better building practices that can reduce energy and water waste, encourage superior indoor air quality and incentivize low-impact construction through the Building Permit Allocation System for new residential development in the City; and

WHEREAS, the Key West City Commission desires to grow the twenty-first century economy by encouraging the expansion of healthy, resilient, high-performing building design and practice; and

WHEREAS, the Key West City Commission believes that access to healthy, efficient, affordable and high quality homes should be the goal of any affordable housing program; and

WHEREAS, the majority of third-party verified green homes certified under the U.S. Green Building Council's LEED for Homes program are affordable housing developments, and the City's BPAS is designed with a focus on affordable housing development; and

WHEREAS, by listing more comprehensive green building criteria within the BPAS Ordinance the City can directly improve the supply of healthy, efficient, affordable and high quality homes that can contribute to the health of residents, drive down

costs through building energy and water efficiency, and reduce strain on Key West infrastructure through buildings with a lower environmental impact;

WHEREAS, green homes and buildings can contribute to the health of building occupants and also drive down costs through efficiency measures, making affordable homes even more affordable to maintain and operate; and

WHEREAS, pursuant to Section 90-522, the Planning Board held a noticed public hearing on August 15, 2013, and, based on the consideration of recommendations of the City Planner, City Attorney, Building Official, and public testimony and input, and recommendation of the Planning Department, recommended approval of the proposed amendments; and

WHEREAS, the City Commission held a noticed public hearing on October 2, 2013 and a second public hearing on November 6, 2013 and in its deliberations considered the criteria identified in Section 90-521 of the Code of Ordinances; and

WHEREAS, the City Commission 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 negative 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 ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 86-9 of the Land Development Regulations, Subpart B, of the Code of Ordinances is hereby amended as follows*:

SUBPART B - LAND DEVELOPMENT REGULATIONS

Section 86-9. - Definition of Terms

Terms not otherwise defined in this section shall be interpreted first by reference to the comprehensive plan and this subpart B; secondly, by reference to generally accepted engineering, planning, or other professional terminology if technical; and otherwise according to common usage, unless the context clearly indicates otherwise. For the purpose of enforcing

*(Coding: Added language is underlined; deleted language is struck through.)

and administering this subpart B, the following words shall have the definition and meanings ascribed:

Abandon means to discontinue a land use for a period of 24 months without demonstrating an intent to continue the use as indicated by the following:

- (1) Allowing licenses to lapse;
- (2) Removing meters;
- (3) Not maintaining a structure in a habitable condition;
- (4) Not making a unit available for occupation (i.e., advertising or marketing through a Realtor or other agent); and/or
- (5) Failure to perform pursuant to the terms of an active building permit.

Abutting. See *Adjoining.*

Access, point of, means a driveway or other opening for vehicles, bicyclists, and pedestrians onto a public street or right-of-way.

Accessory ~~apartment~~ Unit means a ~~second attached or detached dwelling unit contained within a single family detached dwelling or an accessory building (structure) on the same lot as a single family detached dwelling~~ for dwelling unit, limited in size, with a separate entrance, for use as a complete, independent living

quarters, with provisions for living, sleeping, bathing, and cooking which meet the following criteria:

- (1) Deed-restricted as affordable;
- (2) Restricted to occupancy by permanent residents;
- (3) Occupied by a person or household for whom the unit is a primary residence;
- (4) May not be rented transiently nor can it be granted a business tax receipt for transient use and cannot be sold separately as a condominium;
- (5) Shall not exceed 600 square feet and the minimum size shall be 300 square feet;
- (6) Subject to BPAS availability and allocation at 0.78 ESFU; and
- (7) Adequate public utilities and public facilities shall be available concurrent with the permitting of such unit.

For properties located within the Single Family (SF) zoning district containing a single-family detached dwelling unit or principal unit, one (1) accessory dwelling unit is allowed as of right, and performance criteria, as provided for in Chapter 122. Subdivision II. Single Family Residential Zoning District regulations.

~~(1) The principal single family dwelling shall:~~

- ~~a. Contain no more than one accessory apartment;~~
- ~~b. Be owner occupied when the original accessory unit occupancy permit is initiated; and~~
- ~~c. Not be used or licensed for transient rental housing.~~

~~(2) The accessory apartment unit shall:~~

- ~~a. Contain no more than 600 square feet of gross floor area;~~
- ~~b. Be occupied by a person or household for whom the unit is a primary residence;~~
- ~~c. Accessory units shall be used only by permanent residents;~~
- ~~d. Accessory units may not be rented transiently nor can they be granted a business tax receipt for transient use; and~~
- ~~e. Adequate public utilities and public facilities shall be available concurrent with the permitting of such unit.~~

Accessory Structure means a subordinate structure that is detached from the principal structure and located on the same parcel or property, the use of which is incidental to that of the principal structure.

Accessory Use means a use that is clearly incidental to the principal use, that is subordinate in area extent or purpose to the principal use, and that is supportive of the principal use. An accessory use and that contributes to the comfort, convenience or necessity of the principal use, and/or provides support services to the principal use, and that is located on the same lot with such principal building or use. In a residential district, the accessory use shall not be nonresidential in character.

Accessory Unit Infill means the development of new residential accessory units associated with commercial development within the HDR, CL, CG, CT, RO, HRCC-1-3, HNC-1-3, HCT, and HRO zoning districts in order to encourage the addition of affordable work force housing within mixed use districts, that are close to jobs and transportation routes. Accessory unit infill development is subject to performance criteria as provided for in Section 122-1470 of the Work Force Housing Ordinance.

Accommodations, Overnight: Any hotel, motel, bed and breakfast, rooming-house, RV park or campground that is intended to be used for overnight lodging, rented for a period of less than 28 days. See also Transient Living Accommodations or Transient Lodging.

Addition means a structural extension, or expansion, or increase in floor area or height of a building or structure. Types of additions are defined as follows:

- a. Addition (Type A) means habitable space, attached to the principal structure, which includes a separate entrance, lockable internal connection and a full and/or half bathroom only. No BPAS allocation is required.
- b. Addition (Type B) means habitable space which is attached to the principal structure, includes a separate entrance, unlockable internal connection of at least fifty (50) inches in width, and a kitchen and/or wet bar, full and/or half bathroom. No BPAS allocation is required.
- c. Addition (Type C) means habitable space which is attached to the principal structure with no internal connection, includes a separate entrance, kitchen and/or wetbar and a full bathroom. BPAS allocation is required.

Adjoining or Adjacent lot or land means a lot or parcel of land that shares all or part of a common lot line including a common right-of-way with another lot or parcel of land.

Administrative official and city official mean the official appointed by the city manager to administer and enforce the land development regulations.

Advanced Award means the borrowing ahead or reservation of future year Building Permit Allocation System (BPAS) residential units for the development of multi-unit, affordable housing projects only. Units may only be reserved one year in advance through the BPAS application process, and may be awarded. However, such Awards shall not be Allocated for building permit until July of the Award Year for which they were borrowed. An advanced award must be granted by the Planning Board in response to a recommendation by the Planning Department for a specific project which requires more than the available number of Building Permit Allocations in a single year, or if not enough units remain in the Award Year to complete the project. In order to consider an award for Advanced Award, the project must meet the prerequisites and have obtained at least 10 points through the competitive application process.

Advertising structure means a structure of any kind or character, including any sign, billboard, or other object or structure erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed.

Affordable Housing means a dwelling unit in which a household spends no more than 30 percent of its gross income on housing costs. Eligibility income levels are very low, low, median,

middle and moderate as defined herein. Rental housing costs include contract rent and utilities. Owner occupied housing costs include mortgage principal and interest, property taxes, insurance, and where applicable, homeowner's association fees. Permanent deed restrictions are required to maintain affordability and must be executed prior to certificate of occupancy.

Affordable housing (low income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 80 percent of the monthly median household income (adjusted for family size). For an owner occupied dwelling unit, affordable housing (low income) shall mean a dwelling unit whose sales price shall not exceed two and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with Section 122-1472.

Affordable housing (median income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 100 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (median income) shall

mean a dwelling unit whose sales price shall not exceed three and family size) for Monroe County, in accordance with Section 122-1472. The definition of "affordable housing median income" shall be applied to all required deed restrictions for units constructed or built prior to July 1, 2005.

Affordable housing (middle income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 140 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (middle income) shall mean a dwelling unit whose sales price shall not exceed six and one-half times the annual median household income (adjusted for family size) for Monroe County, in accordance with Section 122-1472.

Affordable housing (moderate income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 120 percent of the monthly median household income (adjusted for family size) for Monroe County. For an owner-occupied dwelling unit, affordable housing (moderate income) shall mean a dwelling unit whose sales price shall not exceed five times

the annual median household income (adjusted for family size) for Monroe County, in accordance with section 122-1472.

Affordable housing (very low income) for a rental dwelling unit shall mean a dwelling unit whose monthly rent, not including utilities, does not exceed 30 percent of that amount which represents 60 percent of the monthly median income (adjusted for family size).

Affordable Work Force Housing Trust Fund shall mean the trust fund established and maintained by the City for revenues from fees in lieu of constructing affordable work force housing, and Revenues from any other source earmarked for the trust fund by land development regulation, ordinance or donation.

Affordable Work Force Housing means affordable deed restricted housing required to be 30% of the aggregate total of all market rate units proposed on any one site subject to specific eligibility requirements and performance criteria as contained in Division 10. Work Force Housing, Chapter 122. Affordable work force housing shall include low income, median income, moderate income and middle income housing.

Alley means any public or private right-of-way set aside for secondary public travel and servicing which is less than 30 feet in width.

Allocation Award, BPAS Allocation, and Residential Unit Building Permit Allocation mean the issuance of a residential unit allocation by the Planning Department, documented in the City's BPAS records, in accordance with a Planning Board Final Determination of Award.

Allocation Application means the permanent and/or transient residential building permit allocation application submitted by a property owner seeking a unit allocation award.

Allocation Award Year or Award Year means the calendar year in which a Final Determination of Allocation Award is made, and is the year immediately following the Application Year. The first award year is 2014, and shall continue until 2024 unless amended or extended by an appropriate action of the City Commission.

Alteration means any change in the arrangement of a building, including work affecting the structural parts of a building or any change in occupancy, or change in wiring, plumbing, or heating systems.

Apartment means a room or a suite of rooms within an apartment building arranged, intended or designed to be used as a home or residence of one family and with full bathing and kitchen facilities for the exclusive use of the one family.

Apartment building means a building which is used or intended to be used as a home or residence for three or more families living in separate apartments.

Appeal means a request for a review of a decision, finding, order, interpretation or other action concerning the land development regulations.

Application Year means the calendar year in which allocation applications are received by the City Planning Department. The first application year is 2013, and shall continue until 2023 unless amended or extended by an appropriate action of the City Commission.

Assisted living facility (ALF) means community housing facilities for people with disabilities and/or suffering from the effects of advanced aging. These facilities provide supervision or assistance with activities of daily living; ALF's are an eldercare alternative on the continuum of care for people, for whom independent living is not appropriate but who do not need the 24-hour medical care provided by a nursing home. Assisted living is a philosophy of care and services promoting independence and dignity as licensed by the State of Florida.

Automotive vehicle means any self-propelled vehicle or conveyance designed and used for the purpose of transporting or moving persons, animals, freight, merchandise or any substance. The phrase shall include passenger cars, trucks, buses, motorcycles, scooters and station wagons, but shall not include tractors, construction equipment or machinery or any device used for performing a job except as stated in this definition.

Awning means a light, protective appurtenance to a building.

Baseline Green Building Certification means the Florida Green Building Coalition (FGBC) Bronze level certification or Leadership in Energy and Environmental Design (LEED) Certified.

Bathroom or Full Bath means a group of fixtures consisting of a sink, a toilet and a bath or shower. A half bath contains a toilet and a sink, but can be used in conjunction with an outdoor shower to be considered a full bath.

Beneficial Use or Pre-existing Reserve Units/Permits means the remaining BPAS allocations associated with the 1993 allocation period that the City has reserved to address property rights associated with existing vacant lots of record as of January 1, 1994, and which as of the effective date of the 2013 Comprehensive Plan have not been allocated to a particular address, building or development.

Boat means every description of watercraft, barge and airboat other than a seaplane, used or capable of being used as a means of transportation on or under the water.

BRAC means the Federal Base Realignment and Closure Commission pursuant to the Defense Closure and Realignment Act of 1990, Public Law 101-510, as amended.

Buffer strip means a parcel or tract of land, plant material, or other landscaping that is used to separate one use from another and to shield or block noise, light or other nuisances, and or provide stormwater retention areas and beautification.

Buildable area means the portion of a lot remaining after required dimensional requirements for building setbacks, yards, and required open space and landscaped areas have been provided.

Builder means any person, firm, association, syndicate, partnership, corporation, Realtor or corporation who constructs ~~model homes and other residential dwellings~~ and commercial properties for sale or rental to the public.

Building means any structure used or intended for supporting or sheltering any use or occupancy ~~having a roof and which is entirely separated from any other structure by space or by walls in which there are no communicating doors or windows or any similar opening.~~

Building coverage means the percentage of lot area covered by buildings and including roofed porches, eaves, decks and similar structures as well as all structures, including structural elements such as raised decks, ground cover above 30 inches or more above grade.

Building height means the vertical distance measured from the crown of the road to the highest point of the roof.

Building, principal, means a building in which the principal use of the lot in which it is located is conducted.

Building site means a defined parcel of land which is or may be constructed upon occupied by a building, and including any structures and the open spaces (yard setbacks) required; see the definition of *Lot*.

Building, principal, means a building in which the principal use of the lot in which it is located is conducted.

Building Permit Allocation System or *BPAS* means the City's policies and procedures for limiting residential development, through the allocation of residential building permit units, pursuant to provisions found in Chapter 108. Division X. Building Permit Allocation System and the Principles for Guiding Development F.A.C 28-36.003 and F.S 380.

Certificate of appropriateness means a document issued by the historic architectural review commission as provided by this subpart B.

City Green Building Standard or City Green Building Rating System means the Florida Green Building Council (FGBC) or Leadership in Energy and Education Design (LEED) green building rating system.

Compact Infill Development means mixed commercial and Residential use development within the General Commercial and Limited Commercial zoning districts where density bonuses are allowed pursuant to regulations found within Chapter 108. Division X. Building Permit Allocation System. Compact Infill Development.

Comprehensive plan means the city comprehensive plan, as may be amended, and which was prepared and adopted pursuant to the "County and Municipal Planning and Land Development Regulation Act," F.S. Ch. 163, part II.

Conditional use means a use permitted in a particular zoning district only upon successful demonstration that the use as proposed on a specific site will comply with all the conditions and standards for the location, design, and/or operation of such use as specified in the land development regulations and as authorized by the city.

Conditional use permit means any administrative permit issued pursuant to article III of chapter 122.

Contiguous means next to, abutting, or touching and having a boundary, or portion thereof, which is coterminous.

Continuum of care means a comprehensive homeless assistance system that includes: a system of outreach and assessment (to determine the needs and conditions of the homeless); emergency shelters and transitional housing with appropriate supportive services; housing with, or without supportive services that has no established limitation on the amount of time in residence; and any other activity that clearly meets an identified need of the homeless and fills a gap in services.

Courtyard means an open, unobstructed, unoccupied space, other than a yard, ~~on the same premises on which the building is located.~~ An unoccupied open space on the same lot with the principal building and fully enclosed on at least three adjacent sides by walls of the principal building.

Density means the maximum number of units divided by the gross land area. It is typically expressed in units per acre.

Density, maximum gross residential, means the density which shall be determined by dividing the maximum allowable units by the gross acres of land (i.e., dwelling units/gross land acres). All

residential densities denoted on the future land use map and the official zoning map stipulate the maximum gross densities permitted for development on the land. Gross land area shall be defined as those contiguous land areas under common ownership proposed for residential development.

Detached Habitable Space means an enclosed accessory structure, unattached to the principal structure with a separate entrance, that may contain a full or half bathroom, but does not contain a kitchen. The unit cannot be rented out separately from the principle structure. Detached Habitable Space may only be allowed by a variance granted by the Planning Board based upon Section 122-1078. Detached habitable space does not constitute a dwelling unit. No BPAS allocation is required.

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity commencing proceedings under this subpart B to effect the subdivision and/or development of land in the city and includes the term "subdivider," including model homes.

Development means the carrying out of any building activity or excavation, including the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels. The following activities or uses

shall be taken for the purposes of these land development regulations to involve development:

- (1) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land.
- (2) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.
- (3) Alteration of a shore, stream, lake, pond, or canal, including any coastal construction as defined in F.S. § 161.021.
- (4) Commencement of drilling, except to obtain soil samples or excavation on a parcel of land.
- (5) Demolition of a structure.
- (6) Clearing of land as an adjunct of construction.
- (7) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

District means any section area of the city to which these land development regulations apply, within which the zoning requirements are uniform.

Drive-through establishment, including drive-in and drive-up, means an establishment which, by design, physical facilities, service or by packaging procedures, encourages or permits customers to receive services, obtain goods or be entertained while remaining in a motor vehicle.

Dwelling ~~See *Dwelling unit* and *living unit*.~~ means a building that is used intended, or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling, attached, means a one-family dwelling attached to one or more one-family dwellings by a common wall.

Dwelling, detached, means a dwelling which is not attached to any other dwelling by any structural means.

Dwelling, duplex or two-family, means a detached residential building containing two dwelling units, designed for occupancy by not more than two families.

Dwelling, multiple-family, means a residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, one-family or single-family, means a dwelling unit containing only one dwelling unit and occupied exclusively by one family as a single housekeeping unit.

Dwelling, transient living accommodation includes a mobile

home or recreational vehicle as defined in F.S. § 513.01 that forms a single habitable unit with facilities that are used or intended to be occupied for living, sleeping, and sanitation by one family at a time.

Dwelling unit and living unit is a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. mean either:

- ~~(1) A single family dwelling;~~
- ~~(2) A mobile home or recreational vehicle dwelling; or~~
- ~~(3) Any room or group of rooms located within a two family or multiple family dwelling, or transient living accommodations including a recreational vehicle as defined in F.S. § 513.01, and forming a single habitable unit with facilities that are used or intended to be occupied for living, sleeping, and sanitation by one family at a time.~~

Easement means a grant to another party by a property owner of the right to use land for a specific purpose, such as but not limited to drainage or placement of utility lines.

Emergency housing generally refers to housing used to alleviate an immediate housing crisis, where the individual or family resides for 30 days or less.

Emergency shelter means any facility with sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general, or for specific populations of the homeless e.g. persons with alcohol and other substance abuse problems and/or mental illness.

Equivalent Single Family Unit means the fractionalized unit allocation based on the ratio of the average number of vehicles per unit derived from the 2010 U.S. Census for the respective residential structure types (1.0 for single family) divided by the vehicles per single-family unit (i.e. 1.28 vehicles per unit).

Excavation means removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged.

Extended care facility means a longterm care facility or a distinct part of a facility licensed or approved as a nursing home, infirmary unit of a home for the aged or a governmental medical institution.

Family means:

- (1) One person or a group of two or more persons related by blood, marriage, adoption, or foster care occupying a dwelling unit as a separate, independent, not-for-profit

housekeeping unit with a single kitchen and set of culinary facilities. Such family may also include up to two unrelated persons who serve as servants or caretakers for the housekeeping unit; or

- (2) Up to four unrelated persons occupying a dwelling unit as a separate, independent, not-for-profit housekeeping unit with a single kitchen and set of culinary facilities.

Fence and wall mean a structure intended to separate or enclose or define space, basically freestanding; constructed of one or more of materials such as wire, wood, stone, cement or brick; designed to be decorative or ornamental or to serve utilitarian purposes as to control ingress or egress of persons or animals. A hedge, wall, or landscaped berm may constitute a fence.

Final Determination of Award means a project that has been reviewed and approved for BPAS unit award by the Planning Board. For projects that do not require further approvals, an Allocation Award will subsequently be distributed to the applicant from the Planning Department in order that building permits may be pursued.

Flag lot means a lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way.

Floodplain means an area likely to flood based on the

officially adopted flood issuance rate map (FIRM).

Floodplain, tidal, means an area likely to flood or become inundated from water which is subject to tidal action.

Floor area ratio means the total floor area of the buildings on any lot, parcel or site divided by the area of the lot, parcel or site.

Florida Green Building Coalition or FGBC is the organization responsible for creating, and rating the FGBC Green Certification Program. FGBC is a nonprofit Florida corporation dedicated to providing a statewide green building program that defines, promotes, and encourages sustainable efforts particular to the Florida climate with environmental and economic benefits.

Foster care facility means a residential facility which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall not be more than three residents. Reference Section 122-1246.

Front lot line means the dividing line between the lot and the street.

Frontage means all the property abutting measured along the street line.

Governmental facility means any office, facility, building or

property owned, leased, or used by the federal government, the state, or any unit of local government, except such uses as are specifically listed elsewhere in the land development regulations as specific uses, and except housing projects sponsored by government agencies.

Grade, established, means the elevation at the street line, as established by the city.

Green area. See *Open space.*

Green Building Certification means building(s) constructed, rated and certified to prove they comply with a recognized third party green building rating system. The third party rating systems recognized by the Building Permit Allocation System Prerequisite criteria are the Florida Green Building Coalition (FGBC) and the Leadership in Education and Environmental Design (LEED) green building standards.

Green Building Certification Upgrade means a rating level of green building certification above the Baseline Green Building Certification standard as follows:

Certification Upgrade 1 - FGBC Silver or LEED Silver

Certification Upgrade 2 - FGBC Gold or LEED Gold

Certification Upgrade 3 - FGBC Platinum or LEED Platinum

Group home facility means a residential facility which

provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least four residents but not more than 15 residents. For the purposes of this section, group home facilities shall not be considered commercial enterprises. Reference Section 122-1246.

Habitable Space is a room or space in a building designed for human occupancy that may be used for living, sleeping, eating or food preparation, or in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities meeting the requirements of this code and is subject to additional Florida Building Code provisions. Storage or utility spaces and similar areas are not considered habitable space. All habitable space shall be accessible from the interior of exterior walls.

Habitable Space, - Non, means spaces and structures used for non-habitable purposes, including, but not limited to, radio towers, antennae, spires, storage or utility spaces and similar areas.

Home occupation means any money-raising occupation or activity carried on within a residential property, where the activity is conducted only by members of the family living within

the residence; where products are not offered for sale from the premises; where no evidence of the occupation is visible or audible from the exterior of the residential property, except for allowable signage; where traffic is not generated in excess of that customary of a residence; and where no commercial vehicles are kept on the premises or parked overnight on the premises unless otherwise permitted by the land development regulations. The occupation must be clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change residential character thereof. Reference sections 122-1306 and 122-1307.

Homeless means an individual or family who lacks a fixed and regular nighttime place of rest or has a primary nighttime residence shelter that is a homeless facility: ~~(1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for persons with mental illness); (2) an institution that provides a temporary residence for individuals intended to be institutionalized; or (3) a public or private place not designed for, or ordinarily used as, regular sleeping accommodations for human beings.~~ The term does not include any individual imprisoned or otherwise detained.

Homeless assistance conveyance means that method of conveying

military property at no cost, to local redevelopment authorities (LRA's) or homeless providers, in order to address the needs of homeless individuals as identified in a continuum of care program.

Homeless persons with special needs means a homeless person that has special physical, mental, or other social needs such as: (but not limited to) persons with alcohol and/or drug addiction, mental illness, single women with children, abused individuals, etc.

Homeless shelters or Shelters for the Homeless means a public or private institutional facility designed to provide a continuum of care that is considered an essential public service for the homeless. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for persons with mental illness).

~~Hotel means a building with dwelling units for accommodation of transient guests or tenants and providing services common to hotels, including but not limited to a central office or lobby, room service, food service and daily maid service, and otherwise complying with requirements of the state hotel and restaurant commission. For the purpose of this definition, the term "dwelling unit" shall be defined as a sleeping room with bath, flush toilet,~~

~~lavatory and storage closet.~~

Houseboat means a watercraft used as a dwelling and moored in the same general area at least eight hours a day for ten days in any month.

Housing unit means an occupied or vacant house, apartment, or ~~a single room occupied by one individual, known as~~ single-room occupancy (SRO) that is intended as separate living quarters.

Hurricane Evacuation Clearance Time Memorandum of Understanding or HEM MOU means the signed Hurricane Evacuation Memorandum of Understanding between the Cities of Key West, Layton, Marathon, the Village of Islamorada, and Key Colony Beach, and the County, and the State Department of Economic Opportunity and Emergency Management, dated August 2, 2012.

Initial Announcement of Award means the Planning Department publication of the administrative BPAS application ranking.

Intensity means the floor area ratio as defined in this section.

Kitchen means any food preparation facility larger than a wetbar. Plumbing stub outs for more than a wetbar shall be considered a kitchen.

Land use classifications. The purpose of the land development regulations is to classify uses into specially defined types on the basis of common functional characteristics and land use

compatibility. These provisions apply throughout the zoning regulations. All land use activities are classified into the following activity types:

(1) *Residential activities:*

- a. Single-family/two-family dwellings and accessory residential units. Reference sections 122-231 through 122-234
- b. Multifamily dwellings.
- c. Manufactured housing. Reference section 122-1276
- d. Group homes.
- e. Approved home occupations.

(2) *Community facilities:*

- a. *Airport facilities* means activities which are customarily incidental to airport operations and maintenance including airport terminal; heliport; fixed base operators; airport hangars; runways, taxiways, ramps and aprons for the landing, takeoff, or surface maneuvering of aircraft; and communicative and visual guidance systems. The Federal Aviation Administration (FAA) regulations shall govern placement and specifications of structures within the airport operations area.
- b. *Cemetery* means property used for the interring of

the dead.

- c. *Community centers, clubs, and lodges* mean not-for-profit activities typically operated by a government or by a group of persons for social or recreational purposes and primarily including services which are not customarily carried on as a business for profit.
- d. *Cultural and civic activities* means activities typically performed by public or private not-for-profit private entities for the promotion of a common cultural or civic objective such as historical, literary, scientific, musical, dramatic, artistic or similar objectives.
- e. *Educational institutions and day care.*
 - (1) *Educational institutions* includes a place for systematic instruction with a curriculum the same as customarily provided in a public school or college. These activities include nursery school and kindergarten facilities designed to provide a systematic program to meet organized training requirements.
 - (2) *Day care* includes activities typically performed by an agency, organization or

individual, any of which must be duly licensed by the state, providing day care without living accommodations for persons not related by blood or marriage to, and not the legal wards or foster children of, the attendant adult.

- f. *Golf course and support facilities* means large unobstructed acreage with enough room over which to walk or ride a prescribed course, and to stroke one ball long distances. Commercial miniature golf courses and driving ranges and similar facilities are excluded from this activity as defined.
- g. *Hospitals and extensive care facilities* means institutions providing health services, primarily for inpatients, and medical or surgical care; including, as an integral part of the institution, related facilities, central service facilities, and staff offices.
- h. *Nursing homes, rest homes, assisted living facilities and convalescent homes* mean activities customarily performed at a home for the elderly or infirm in which three or more persons not of the immediate family are received, kept or provided

with food, shelter and care for compensation. ~~This definition shall also apply to assisted living facilities as licensed by the State of Florida.~~ This activity shall not include duly state-licensed volunteer adult foster care homes in which three or fewer foster adults are placed. Neither does the principal activity include hospitals, clinics or similar institutions that diagnose and treat the sick or injured.

For purposes of permitted density and intensity, the floor area ratio shall govern, not units per acre. Individual living units or resident nursing beds shall be treated as 0.1 equivalent unit under the city's building permit allocation ordinance, ~~Section 108-1056 et seq.~~108-994. If a facility is developed to remain operational during and after a category 5 hurricane, and therefore does not contribute to the evacuation of vehicles, the city commission may exempt this facility from the requirements of the building permit allocation ordinance or may authorize an alternate equivalency factor.

- i. *Place of worship* means activities customarily performed in a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, is maintained and controlled by a religious body organized to sustain public worship.
- j. *Protective services* means fire, law enforcement and emergency medical related facilities planned and operated for the general welfare of the public.
- k. *Public parks and recreation areas* means public parks and recreation land and facilities developed for use by the general public.
 - (1) *Active parks and recreation* means leisuretime activities, usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed is not limited to swimming, tennis and other court games, baseball and other field sports, and playground activities.
 - (2) *Passive parks and recreation* means leisuretime activities not considered active. This may include water-related activities such as boardwalks and interpretive trails, fishing

piers as well as boating. Passive recreation may also include non-water-related activities such as hiking, golfing, observation towers, and picnicking.

1. *Public and private utilities* means use of land which is customary and necessary to the maintenance and operation of essential public services, such as electricity and gas transmission systems; water distribution, collection and disposal; communication; and similar services and facilities.

(3) *Commercial activities.*

- a. *Amusement* means active or passive recreation facilities by profit oriented firms.
- b. *Bar and lounge* mean a commercial establishment selling and dispensing for the drinking on the premises of liquor, malt, wine or other alcoholic beverages. This shall not include the sale of alcoholic beverages accessory to and within a restaurant use.
- c. *Boat sales and service* means a commercial establishment where boat sales and rentals may occur together with minor servicing and sale of marine supplies but excluding boatbuilding or

shipbuilding.

d. *Business and professional offices* means government offices, not-for-profit administrative services, and private for-profit offices extending advice, information or consultation of a professional nature; insurance, real estate, and financial services; banking services; and executive management and administrative activities. Offices exclude commercial storage of goods and chattels for the purpose of sale or resale as a principal use.

e. *Commercial retail use* means a use that sells goods or services at retail which is subdivided into the following three classifications in which total area includes both sales area under roof and any outside sales area:

(1) *Commercial retail low intensity* means commercial retail uses that generate less than 50 average daily trips per 1,000 square feet.

(2) *Commercial retail medium intensity* means commercial retail uses that generate between 50 and 100 average daily trips per 1,000 square feet.

(3) *Commercial retail high intensity* means commercial retail uses that generate above 100 average daily trips per 1,000 square feet.

f. *Funeral home* means undertaking and funeral services involving care and preparation of human deceased prior to burial, excluding crematories, crematory operations and columbariums. Such a premises, structure or site shall not be used for the burial, prolonged storage or permanent disposition of deceased human remains.

g. *Gasoline station* means a structure or place where gasoline, oil and greases, and incidental accessory sales and services are supplied and dispensed to the motor vehicle trade. Uses permissible at a gasoline station do not include major mechanical and body work; straightening of body parts; painting; welding; storage of automobiles not in operating condition; or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations. A gasoline station is neither a repair garage nor a body shop.

- h. *Hotel, motel and transient lodging* mean any unit, group of units, ~~dwelling,~~ building, or group of buildings within a single complex ~~of buildings,~~ which is:
- (1) ~~Rented more than three times in a calendar year for periods of less than 2830 days or one calendar month, whichever is less;~~
 - (2) Advertised or held out to the public as a place regularly rented to transients.
- i. *Marina* means a commercial establishment providing for the docking, storage, and servicing of watercraft, including dispensing of motor fuel.
- j. *Medical services* means the provision of therapeutic, preventive or other corrective personal treatment services by physicians, dentists and other licensed medical practitioners, as well as the provision of medical testing and analysis services. These services are provided to patients who are admitted for examination and treatment by a physician and with no overnight lodging.
- k. *Parking lot and facilities* means a governmental or private commercial building or structure solely for the off-street parking of operable motor vehicles.

- l. *Restaurant, excluding drive-through,* means any establishment, which is not a drive-through service establishment, where the principal business is the sale of food, desserts and beverages to the customer in a ready-to-consume state. This includes service within the building as well as takeout or carryout service. For the purpose of this subpart B and impact fee assessments, a takeout or carryout restaurant shall be limited to no more than five chairs or bench seats without tables or counter tops.
- m. *Restaurant, drive-through,* means any establishment where the principal business is the sale of foods, desserts and beverages generally contained in a ready-to-consume state and the service and/or consumption of foods, desserts, or beverages may by design occur within a motor vehicle parked upon the premises.
- n. *Small recreation power-driven equipment rental* means rental of low-speed vehicles, jet skis, mopeds, scooters and/or other similar nonautomotive, two- or three-wheeled, power-driven vehicles, excluding the rental of automobiles,

trucks, tractors, or other vehicles.

- o. *Vehicular sales* means the sale or rental of motor vehicles and related equipment, with incidental accessory service activities.
- p. *Veterinary medical services* means the provision of animal medical care and treatment by a state-licensed veterinarian.

(4) *Light industrial*. The following compatible land uses shall be considered light industry:

- a. Warehousing, miniwarehousing, and wholesaling within enclosed buildings.
- b. Mechanical repair and service, including but not limited to machine shops and vehicular repair, service and maintenance.
- c. Light manufacturing including skilled trades and services, light processing and metal fabrication, assembly and distribution functions, electronics, research and development, and similar uses.
- d. Building materials supply and storage, and contractor's storage.
- e. Vocational trade schools.
- f. Accessory uses to those described in this subsection.

Leadership in Energy and Education Design or LEED means the green building rating system developed and managed by the U.S. Green Building Council, Inc. The Green Building Certification Institute (GBCI) is responsible for processing and validating the applications for LEED rating. Several green building rating systems exist within LEED depending on the size and scope of the project. The available rating systems include: LEED for Neighborhood Development (LEED ND); LEED for Homes; LEED for Green Building Design and Construction (LEED BD&C); LEED for New Construction and Major Renovations (LEED NC); LEED for Core and Shell; LEED for Schools; LEED for Existing Buildings Operations and Maintenance (LEED EBOM); LEED for Commercial Interiors; LEED for Retail; and LEED for Healthcare.

Living area means the minimum floor area of a dwelling as measured by its outside dimensions exclusive of carports, porches, sheds, and attached garages.

Loading dock means a platform used for the loading and unloading of freight.

Loading space means space logically and conveniently located for bulk pickups and delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required

off-street parking space.

Lock-Out Unit means any room or group of rooms which is part of a single family or multi-family dwelling or a transient room, or transient suite of rooms which can be accessed and locked or keyed separately from the principal entry to the dwelling, unit or suite. The access to the Lock-out may be by separate door, from a common hallway, foyer or other common area of the units. Lock-outs create a separate habitable space, and shall be considered a unit which requires an additional Building Permit Allocation System (BPAS) unit, when such Lock-outs are held out for rent barter or lease for either transient or non-transient purposes separately from the principal dwelling, transient room or suite.

Lot means a parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are required in the land development regulations. A lot shall be comprised of contiguous land. In no case shall land be divided or combined in a manner which creates a residential lot or parcel which does not meet the requirements of this subpart B. All lots shall have frontage on an improved public street, or on an approved private street, and may consist of the following:

- (1) A single lot of record;
- (2) A portion of a lot of record;

- (3) A combination of complete lots of record, and portions of lots of record; and
- (4) A parcel of land described by metes and bounds.

Lot, buildable, and buildable site mean a site of at least sufficient size to meet minimum zoning requirements for use, coverage and area, including the open spaces mandated. Such buildable site may be a single lot or, for common ownership of two or more adjacent lots, parcels, or fractions thereof which have common street frontage, the entire area under common ownership shall be deemed the buildable lot or buildable site.

Lot, building, means a building site area which shall be at least the minimum area required for the zone in which the area is located, and such building lot shall be consistent with all lot requirements within the respective zoning district. The term "building lot" is not necessarily synonymous with the term "lot" as defined in this section. A building lot is always at least one lot or one lot plus a part of another lot or a combination of two or more lots or fractions thereof.

Lot, corner, means a building site abutting on two or more streets at their intersection. The second or other abutting street is described as the "intersecting" or "secondary" street; other lots often front to that second, or even third, street. A lot

abutting on curbed streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

Lot depth means the mean horizontal distance between the front lot line and the rear lot line measured at right angles to the width.

Lot dimensions mean as follows:

- (1) *Depth*. Depth of a lot shall be considered to be the distance between the midpoints of the straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
- (2) *Width*. Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard; provided, however, that width between side lot lines at their foremost points, where they intersect with the street lines, shall not be less than 80 percent of the required lot width except for lots on the turning circle of a cul-de-sac, where the 80-percent requirement shall not apply.

Lot, double frontage, and through lot mean a lot having a frontage on two nonintersecting streets, as distinguished from a corner lot.

Lot frontage means the portion of the lot nearest the street. Lots are normally platted within blocks to uniformly front along a street which is the frontage or primary street. On corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under the definition of "yard" in this section.

Lot, illegal nonconforming, means a lot which was never duly approved by the city and fails to conform to the present land development regulations.

Lot, interior, means a lot other than a corner lot with only one frontage on a street.

Lot, legal nonconforming, means a lot, the area, dimensions or location of which was lawful prior to the adoption, revision or amendment of the land development regulations, but which fails because of such adoption, revision or amendment to conform to the present land development regulations.

Lot lines means the lines bounding a lot or buildable site as defined in this section.

Lot of record means a lot which is a part of a subdivision, the map of which has been duly approved by the city and recorded in the office of the clerk of the circuit court of the county or a lot described by metes and bounds, the description of which has been thus recorded.

Lot, reversed frontage, means a lot on which the frontage is at right angles or approximately right angles (interior angle less than 135 degrees) to the general pattern in the area. A reversed frontage lot may also be a corner lot, an interior lot or a through lot.

Lot, through, means a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as a double frontage lot.

Lot, zoning, means a tract of land consisting of one or more lots of record, or parts thereof, under single ownership located entirely within a block and occupied by or designated by its owner or developer at the time of filing for any zoning approval or building permit as a tract to be developed for a principal building and its accessory buildings, or a principal use, together with such open spaces and yards as are designated and arranged, or required under the zoning ordinance, to be used with such building or use.

Low-speed vehicle means any four-wheeled electric vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including neighborhood electric vehicles.

Manufactured building means a closed structure, building assembly, or system of subassemblies, which may include structural, electrical, plumbing, heating, ventilating or other service systems manufactured in manufacturing facilities, for installation or erection, with or without other specified components, as a finished building or as part of a finished building which shall include but not be limited to residential, commercial, institutional, storage and industrial structure (F.S. § 553.36). The building plans for such structures must be sealed by the state department of community affairs.

Market Rate Housing or Permanent Housing means housing occupied on a full time basis or seasonally and is not intended for rent for less than 28 days.

Median household income shall mean the median household income published for Monroe County on an annual basis by the U.S. Department of Housing and Urban Development.

Mining means the removal, either in or upon the soil of the earth or beneath the soil, of any valuable inert or lifeless substance formed or deposited in its present position through natural agencies alone, as a commercial business.

Noncomplying building or structure means any building or other structure, for which the use is a lawful (permitted or nonconforming), but the building or other structure does not comply with all applicable sections of the land development regulations, including but not limited to size and dimension regulations, off-street parking requirements, landscape requirements, nuisance abatement standards, or height requirements, either on the effective date of the ordinance from which this section derives or as a result of any subsequent amendment.

Nonconforming density means the number of dwelling or living units per acre greater than the number allowed by the land development regulations, which were legally established or licensed prior to the effective date of the ordinance from which this section derives.

Nonconforming use means a use of a building or structure or of a tract of land which does not, on the effective date of the ordinance from which this section derives, or amendment thereto, conform to any one of the current permitted uses of the zoning district in ~~which~~ which it is located, but which was legally established in accordance with the zoning in effect at the time of its inception or which use predates all zoning codes and which use has not changed or been abandoned. This definition shall not

operate to make legal an unlicensed transient rental accommodation located in a residential structure.

Occupied means the use of a structure or land for any purpose, including occupancy for residential, business, industrial, manufacturing, storage, and public use.

Open space (green area) includes the gross area of the site less building coverage, parking surface, internal traffic circulation system, and other impervious surfaces, all of which should be open from the ground to the sky. Open space areas shall remain open and unobstructed to the sky that can be used for active or passive recreation purposes. Parking and loading areas of any type shall not be allowed in any required open space.

Parking lot means an area or plot of ground, used for the storage or parking of motor vehicles either for compensation or to provide an accessory service to a business, industrial or residential use.

Parking space, off-street, means a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three or more automobiles shall have individual spaces marked and shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public street,

walk or alley and so that any automobile may be parked and unparked without moving another. For purposes of rough computation, an off-street parking space and necessary access and maneuvering room may be estimated at 300 square feet, but off-street parking requirements will be considered to be met only when actual spaces meeting the requirements of this definition are provided and maintained, improved in a manner appropriate to the circumstances of the case, and in accordance with all city ordinances and regulations.

Patio means an open unoccupied space on the same lot fully enclosed on all four sides by the principal building.

Permanent housing means affordable and/or assisted housing that is expected to be available to low/moderate income and/or homeless persons, for an indefinite period of time.

Permeable surface means any surface permitting full or partial absorption of stormwater into previously unimproved land.

Pitched roof means a roof with a pitch of no less than 4/12 (a four-inch rise in a 12-inch horizontal run).

Planned development or redevelopment means land under unified control, planned and developed as a whole in a single operation or approved programmed series of operations for dwellings, for dwelling units and related uses and facilities; includes principal and accessory uses and structures substantially related to the

character of the development and the surrounding area of which it is part; and is developed according to the comprehensive and detailed plans which include but are not limited to streets, utilities, lots or building sites and the like but also site plans and detailed plans for other uses and improvements, facilities and services as will be for common use by some or all of the occupants of the planned unit development but will not be provided, operated or maintained at public expense.

Port expansion at the Truman Waterfront Parcel means the following activities at the Truman Waterfront parcel which shall constitute port expansion:

- (1) Any increase in cruise ship berthing capacity (other than the one existing cruise ship berth on the Outer Mole Pier, which shall be appropriately permitted by the State of Florida).
- (2) Development of new port facilities designed to accommodate ferry service, or use of the existing cruise ship berth at Outer Mole Pier to provide ferry service.
- (3) Development of new port facilities that require either new maritime related infrastructure or channel dredging.

The replacement or repair of existing infrastructure, so long as that activity is in the same location and does not increase

capacity, as well as maintenance dredging shall not be considered expansion.

Premises means any land together with any structures occupying it.

Prerequisite, major construction/renovation means the minimum standards for new development, including additions to existing structures, or redevelopment constituting more than 50% of the value of the building, required in order to be eligible to receive an allocation award from the BPAS system as follows:

- (1) All new units shall be constructed in compliance with and obtain a Baseline Green Building Certification.
- (2) All new buildings shall be constructed so as to have the first habitable floor 1.5 feet above the required base flood elevation, with the exception of properties located within the historic zoning districts, where the applicant must first demonstrate that such elevation does not interfere with the essential form and integrity of properties in the neighborhood by obtaining a certificate of appropriateness.
- (3) All new buildings shall be constructed with a rainwater catchment system that will hold a minimum 1,000 gallons of water or an amount equivalent to 100% of the new roof area in gallons whichever is greater.

Prerequisite, minor renovation means the minimum standards for redevelopment constituting less than 50% of the value of the building, required. In order to be eligible to receive an allocation award from the BPAS system applicants must demonstrate water and energy use 15% below the Florida Building Code using recognized energy and water rating standards.

Principal structure means a building occupied by the principal use of the premises or lot. In a residential district any dwelling shall be deemed to be the principal building on the lot where it is located. An attached carport, shed, garage, or any other structure with one or more walls or a part of one wall being a part of the principal building and structurally dependent, totally or in part, on the principal building shall comprise a part of the principal building and be subject to all regulations applied to the principal building. A detached and structurally independent carport, garage, or other structure shall conform to the requirements of an accessory building. A detached and structurally independent garage, carport, or other structure conforming as an accessory building may be attached to the principal building by an open breezeway not to exceed six feet in width. A connecting breezeway in excess of six feet and enclosed on one or both sides, including louvers, lattice or screening,

shall cause the entire structure to be construed as the principal building and shall be subject to the regulations applicable to the principal building.

Project area. For the purpose of computing density, lot coverage, and floor area ratio for any project site, the project area shall not include public rights-of-way, or land lying below the mean high water line.

Public Rental Housing means government owned affordable and/or assisted rental housing that is expected to be available to low/moderate income and/or homeless persons at rents that do not exceed the established fair market rent (FMR) as determined by the U.S. Department of Housing and Urban Development (HUD).

Public use means any use of land or structures owned and operated by a municipality, county, state or the federal government or any agency thereof and for a public service or purpose.

Public water and sewer service means water and sewer systems, including pipes, rights-of-way and treatment plants, owned and operated by the city or operated under a franchise granted by the city.

Rainwater Catchment System means an on-site rain water harvesting system including an associated reuse/redistribution system/plan, designed and built to American Rainwater Catchment

System Association (ARCSA) standards.

Recovered Unit means a Final BPAS Allocation Award which has not been implemented by the awardee, and has been recaptured by the City, due to the failure of the awardee to obtain a valid building permit for the principal structure for the project enabled by the BPAS award within the two year timeframe from the date of the Final Announcement and Determination of Award.

Recreational and landscaped open space means unroofed or screen roofed ornamental landscaped areas and recreational areas which are easily accessible and regularly available to occupants of all dwelling units on the lot wherein the open space is located. Rooftops, porches, raised decks, parking spaces, driveways, utility and service areas are not calculated as open space.

Recaptured Unit means an existing or recognized residential unit recaptured by the City from the owner through the Waiver and Release of Building Permit Allocation process due to the voluntary reduction of onsite residential density and/or change in residential use. Recaptured units shall be reserved for beneficial use allocations only.

Redevelopment constitutes "development" and shall be subject to the land development regulations.

~~Rental Housing means affordable and/or assisted rental housing that is expected to be available to low/moderate income and/or homeless persons at rents that do not exceed the established fair market rent (FMR) as determined by the U.S. Department of Housing and Urban Development (HUD).~~

Residential Building Permit Allocation System Unit is for all residential dwellings including single family and multiple family dwellings, all units defined as transient living accommodations or transient lodging, manufactured homes or mobile homes, accessory units, and single room occupancies.

Semipublic use means any use of land or buildings owned and operated by an individual, firm, corporation, lodge or club, either as a profit or nonprofit activity, for a public service or purpose. This shall include privately owned utilities, transportation, recreation, education, and cultural activities and services.

Separate entrance means any exterior building entrance that can be accessed independently from a right-of-way and can be locked and keyed from the exterior area. For purposes of BPAS management an exception to the definition may be made if the entrance is onto an enclosed courtyard or pool area. Care should be applied to ensure that a secondary residential dwelling unit is

not created by a separate entrance.

Setback means the required open spaces of a lot where buildings are not permitted.

- (1) Setbacks are required for the purpose of providing and ensuring open space and become part of the yard but not necessarily the total yard.
- (2) Setbacks shall be measured from the lot, building site, boundary lines and will be designated as "front yard setback," "rear yard setback," "side yard setbacks," combining to surround and define the remaining buildable area.
- (3) Setbacks go with the land and are not intended to control or direct the actual placement or orientation of buildings.
- (4) Buildings may be designed and constructed to fit on any part of the buildable area and are not required to front on the platted front of the lot or building site.

Sheltered means families and persons whose primary nighttime residence is a supervised publicly or privately operated shelter, including emergency shelters, transitional housing for the homeless, domestic violence shelters, residential shelters for runaway and homeless youth, and any hotel/motel/apartment voucher arrangements made because the person is homeless. The term does

not include persons living doubled-up or in overcrowded or substandard conventional housing.

Shoreline means the mean high water line for tidal water bodies and ordinary high water line for nontidal waters for inland water bodies.

Short-term housing generally refers to housing that accommodates the immediate needs of individual (up to six months), and provides both housing and supportive services to homeless persons to facilitate movement to transitional or permanent housing.

Sign means any device designed to inform or attract the attention of persons not on the premises on which the sign is located; provided, however, that the following shall not be included in the application of the regulations in this subpart B:

- (1) *Number and surface area.* In determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements or where reasonable doubt exists about the relationship of elements, each element shall be considered to be a single sign.
- (2) *Off-site sign* means a sign other than on-site sign.

(3) *On-site sign* means a sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services, or activities on the premises. On-site signs do not include signs erected by the outdoor advertising industry in the conduct of the outdoor advertising business.

Single Room Occupancy (SRO) means an affordable housing unit which is a multi-room and/or multi-floor facility that offers single rooms-for-lease. An SRO normally provides shared kitchen facilities, but may have a microwave and mini refrigerator but may not have a wet bar or stove, and must have one bathroom facility per unit, and must be no larger than 600 square feet in size and the minimum size shall be 300 square feet.

Sleeping Unit means a sleeping room with bath, flush toilet, lavatory and storage closet.

Social services special needs housing means short-term housing units which provide continuum of care services to a capacity of not more than 36 homeless persons with special needs.

Solar Reflectance Index or SRI is a measure of a materials ability to reject solar heat. Standard black is 0 and standard white is 100.

Story means that portion of a building included between the upper surface of any floor and the upper surface of the floor next

above, or any portion of a building used for human occupancy between the topmost floor and the roof. A basement or cellar not used for human occupancy shall not be counted as a story.

Street means, in addition to the definition contained in Section 1-2, a public or private right-of-way set aside for public travel which is 30 feet or more in width. A street affords principal means of access to abutting property. Street classifications include the following:

- (1) *Arterial streets.* Arterial streets serve as principal routes through the city. The purpose of these facilities is to move large volumes of traffic from one part of the region or county to another. Arterial roads also provide connections between major activity centers of the county or city.
- (2) *Major collector streets.* Major collector streets collect and distribute traffic from residential access streets to arterial streets or other collector streets.
- (3) *Minor collector streets.* Minor collector streets collect traffic from local streets and feed traffic to major collectors and arterials.
- (4) *Residential access streets and local streets.*

Residential access streets and local streets are streets which directly serve abutting properties and residences. These streets

should be relatively safe and quiet and should be completely free of any through traffic.

Street centerline means the midpoint between the street right-of-way or the surveyed centerline of the street.

Street right-of-way line means the property line which bounds the right-of-way set aside for use as a street. Where sidewalks exist and the exact location of the right-of-way is unknown, the side of the sidewalk farthest from the centerline of the traveled street shall be considered as the right-of-way line.

Structural alteration means any change, except for repair or replacement in the supporting members of a building, such as bearing walls, columns, beams, or girders.

Structure means anything built, constructed or assembled with a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, signs and poster panels, driveways, pools, and ponds.

Subdivision means the division and recording in accordance with the city's land development regulations of a parcel of land into two or more lots or blocks for the purpose of transfer of ownership or development for development, sale or lease.

Supportive housing means housing which includes housing units and group quarters, that have a supportive environment and include a planned supportive service component.

Supportive services means services that include (but are not limited to): case management, housing counseling, job training and placement, primary health care, mental health services, alcohol/drug abuse treatment, emergency food, domestic violence and family services, child care, veterans services, etc.

Swimming pool means a water-filled enclosure, permanently constructed or portable, having a depth of more than 18 inches below the level of the surrounding land, or an above-surface pool, having a depth of more than 30 inches, designed, used and maintained for swimming and bathing.

Terrace means an unoccupied open space adjacent to the principal building on one or two sides, prepared with a hard, semihard, or improved surface, and uncovered, for the purpose of outdoor living.

Total floor area and *gross floor area* mean the areas of all floors of a building, including finished basements and all covered areas, including porches, sheds, carports, and garages. If the first finished floor level of an elevated building or structure is elevated to a height greater than seven feet above the finished grade, the area below such first floor shall be included in calculating gross floor areas of the building or structure.

Townhouse means a one-family dwelling in a group of at least three and no more than ten such units in which each unit has its

own front and rear access to the outside, and the units are designed with distinctive facades or varied setbacks. No unit is located over another unit, and each unit is separated from any other unit by one or more common fire resistant walls.

Transient living accommodations or Transient Lodging. Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is 1) rented for a period or periods of less than 28 ~~30~~ days ~~or one calendar month, whichever is less~~; or which is 2) advertised or held out to the public as a place rented to transients, regardless of the occurrence of an actual rental. All entrances to a single transient living accommodation or transient lodging unit shall share the same key or means of controlling access so that the hotel or motel room as defined herein is not divisible into separately rentable units. Such a short-term rental use of or within a single-family dwelling, a two-family dwelling or a multifamily dwelling (each also known as a "residential dwelling") shall be deemed a transient living accommodation. See also *Accommodations, Overnight.*

- (1) *Campground* means a place set aside and offered by a person, for either direct or indirect remuneration of the owner, lessor, or operator of such place, for the

parking, accommodation, or rental of five or more recreational vehicles or tents, and the term also includes buildings and sites set aside for group camping and similar recreational facilities; and the rental of cottages and apartments.

- (2) *Guesthouse* and *roominghouse* mean any place wherein tourists, transients, travelers or persons desiring temporary residence are provided with sleeping and sanitary facilities. Cooking facilities may or may not be provided in a guesthouse. The number of rooms in a guesthouse shall not exceed 25. The minimum room sizes for a guesthouse shall be as follows:
- a. Single room, 80 square feet.
 - b. Double room, 100 square feet.
 - c. Multiple occupancy room, 100 square feet; in addition, 50 square feet for each occupant over two.
- (3) *Hotel* means a structure ~~primarily for transient guests, including rooms with or without cooking and complete apartment facilities, but~~ typically confined to one principal building with sleeping units for accommodation of transient guests or tenants and providing services common to hotels, including but not limited to a central

office or lobby, room service, food service and daily maid service, that may be found within other ~~except for~~ necessary accessory buildings, and otherwise complying with requirements of the state hotel and restaurant commission.

- (4) *Motel* means a group of transient accommodation units under one ownership or on one tract of land and designed primarily for access by automobile. Overnight guests may stay for longer periods than overnight.
- (5) *Tourist court* means a group of tourist accommodation units under one ownership or on one tract of land providing facilities for longer periods of time, and with cooking facilities within the individual units.
- (6) *Transient apartment* means any apartment building or condominium apartment building, in which three or more units are advertised or held out to the public as available for transient occupancy.
- (7) *Transient unit or room* means any room accommodating beds, including conventional beds as well as sofa-beds, Murphy beds, or other types of beds with unique multipurpose or space-saving designs, which can be locked and keyed from the exterior of the premises or

from a common hallway, foyer, or other common area and can be held out to the public as distinct sleeping quarters for overnight lodging or for a longer period of time.

Transitional housing generally refers to housing that accommodates the needs of individuals coming out of emergency shelter situations or short-term housing, and transitioning into permanent housing. Transitional housing provides both housing and supportive services to homeless persons to facilitate movement to independent living within 24 months.

Truman Waterfront Port means one of the city's deep water port facilities.

Unlockable internal connection occurs when one occupant cannot exclude the other party from another portion of a room or building. An open wall is an unlockable internal connection. A doorway is not an unlockable internal connection. To be an unlockable internal connection, the cased opening must be 50 inches or more in width.

Unsheltered means families and individuals whose primary nighttime residence is a public or private place that is not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Unused Allocation means a residential BPAS Unit that was never assigned to a project address or did not receive a building permit for a principal structure within two years of the Final Determination of Award.

Use means the purpose or activity for which the land or building thereon is designed, arranged or intended or for which it is occupied or maintained, and shall include any manner of performance of such activity with reference to the specifications of the zoning ordinance.

US Green Building Council or USGBC is a non-profit organization whose mission is to transform the way buildings and communities are designed, built and operated, enabling an environmentally and socially responsible, healthy and prosperous environment that improves the quality of life.

Vacant means a building or parcel of land which is neither occupied nor used or is in a non-operative state.

Vacation of easement or right-of-way means the abandonment of a public easement or right-of-way which results in the removal of the easement or right-of-way, reuse of the property, and/or a change in the ownership of the property.

Variance means a relaxation of the terms of the land development regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to

the property and not the result of the actions of the applicant, a literal enforcement of the land development regulations would result in unnecessary and undue hardship. As used in the land development regulations a variance is authorized only for height, area, size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Water-dependent uses means activities which can be carried out only on, in or immediately adjacent to water areas because the use requires access to the water body for: waterborne transportation, including ports or marinas; recreation; electrical generating facilities; or water supply.

Water-related uses means activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses and/or provide supportive services to persons using a duly permitted marina.

Watercourse means any natural or artificial channel, ditch, canal, stream, river, creek, waterway or wetland which flows either continuously or intermittently, and which has a definite channel, bed, banks or other discernible boundary.

Wetland shall be defined based on hydrology as well as hydric soil and wetland vegetation. Wetlands shall include transitional wetlands and shall include those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal circumstances do or would support a prevalence of vegetation typically adapted for life in saturated soil conditions. The following vegetative species are wetland species commonly found in the city, although the applicable state and federal list of jurisdictional wetland vegetation shall apply:

| Common Name of Wetland Species | Scientific Name |
|--------------------------------|-----------------------|
| Black mangrove | Avicennia germinas |
| White mangrove | Laguncularia racemosa |
| Red mangrove | Rhizophora mangle |

| | |
|-----------------|-----------------------------|
| Buttonwood | Conocarpus erectus |
| Saltwort | Batis maritima |
| Glasswort | Salicornia spp. |
| Sea purslane | Sesuvium protul acastrum |
| Sea blite | Suada linearis |
| Sea oxeye daisy | Borrichia spp. |
| Salt grass | Distichlis spicata |
| Dropseed | Sporobilus virginicus |
| Key grass | Monanthochloe |
| Fringe-rushes | Fimbristylis spp. |
| Cordgrass | Spartina spartinae |
| Sawgrass | Cladium jamaicewiss |
| Spike rush | Eleocharis celluosa |
| Cattail | Typha spp. |

Wetland jurisdictional determinations shall be consistent with those of the state department of environmental protection, the South Florida Water Management District, and the U.S. Army Corps of Engineers.

Wet Bar means a food or drink preparation area limited to a total counter surface area of 16 square feet (including sink with design limitations of one bin and limited to (1) one square foot in size) with electricity limited to 110 volt services.

Yard means an open space at grade between a building and the adjoining lot lines, unoccupied, open to the sky and unobstructed by any portion of a structure from the ground upward, except as otherwise provided. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the structure shall be used (a driveway or off-street parking area may be a portion of a yard).

Exception of corner lots. On corner lots abutting two intersecting streets, the front, side and rear lot lines shall be determined as follows:

- (1) One street frontage shall be declared a front yard; and
- (2) The other street frontage shall be a street side yard.
- (3) The rear yard shall be the yard opposite the declared front yard.
- (4) The remaining yard shall be the interior side yard.

Yard, front, means the yard abutting a street (i.e., street frontage lot). The depth of required front yards shall be measured in such a manner that the yard established is a strip of at least

the minimum width required by district regulations with its inner edge parallel with the front lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the front (street frontage) property line. The front yard regulations shall apply to all lots fronting on a street.

Yard, rear, means a yard extending across the rear of a lot between the side lot lines and which is the minimum horizontal distance between the rear of the main building or any projections thereof other than projections or encroachments specifically provided for in this subpart B. For all corner lots, the rear yard shall be as indicated in the definition of the term "yard" under "exception of corner lots." The depth of required rear yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the rear lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the rear property line.

Yard, side, means a yard between the main building and the sideline of the lot and extending from the front lot line to the rear yard, which is the minimum horizontal distance between a side lot line and the side of the main building or any projections thereof. For all corner lots, the side yard shall be as indicated in the definition of the term "yard" under "exception of corner

lots." The width of required side yards shall be measured in such a manner that the yard established is a strip of at least the minimum width required by district regulations with its inner edge parallel with the side lot line. Such yard shall be measured from the nearest point of the building, including the roof, to the side property line.

Section 2: That Chapter 108, Article X, of the Land Development Regulations, Subpart B, of the Code of Ordinances is hereby amended as follows:

SUBPART B - LAND DEVELOPMENT REGULATIONS

Division 1. Generally.

Section 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:~~

The definitions for terms identified in this chapter are found in section 86-9 of the code of ordinances, Definition of Terms, and are applicable throughout the Land Development Regulations.

~~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.~~

~~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 building permit allocation award and~~

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

Section 108-987. - Purpose and Intent.

The purpose and intent of the building permit allocation system is to implement the City's Comprehensive Plan by adopting updating the City's residential Building Permit Allocation System limiting annual permanent and transient residential development in the city in order to:

- (1) Reduce or maintain hurricane evacuation clearance times measured by pursuant to the Florida Keys hurricane evacuation model known as the Miller Model the Transportation Interface for Modeling Evacuations (TIME) Model for the Florida Keys.
- (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 for permanent residents.
- (3) Regulate the amount of permanent and transient residential building permits in order to prevent further deterioration of maintain and improve 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~~ from the BPAS by using those units which generate ~~are~~ identified and derive from the following sources: City of Key West Comprehensive Plan Policy 1.31.126.1; ~~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; units deriving recaptured by the city which are derived from decreases in existing residential density and changes in residential uses and subsequently returned to the city through the Waiver and Release of Building Permit Allocation process and any Pre-existing Reserve Units.

Section 108-988. - Short title.

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

Section 108-989. - Authority

- (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.

Section 108-990. - Applicability.

This article shall apply to the development of all new permanent and transient residential units property within the city that shall be allocated as provided for herein 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.

Section 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 residential equivalent single-family dwelling unit stock. Reference Definition of Terms Section 86-9, for types of residential construction determined to be affected and not affected by the BPAS.
- (2) Redevelopment or rehabilitation which replaces but which does not increase the number of dwelling units above that existing on the site prior to redevelopment or rehabilitation.
- (3) Public/governmental uses, facilities and services as defined in Section 86-9 shall be exempt from the City's BPAS system.
- (34) Units determined to have been in existence at the time the April 1, ~~1990~~2010 census was prepared are presumed not to be affected by BPAS. The ~~administrative official~~ City Planner shall review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, ~~1990~~ 2010. Units

existing in ~~1990~~2010 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~~2010;
- b. Building permits issued prior to April 1, ~~1990~~2010;
- c. Copies of city directory entries on or about April 1, ~~1990~~2010;
- d. Site visits which indicate that the age of the structure and associated improvements likely pre-date ~~1990~~2010;
- e. Rental, occupancy or lease records from before and including April 1, ~~1990~~2010, 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~~2010, indicating the number and types of rental units;
- g. Documentation for Keys Energy Service, and Florida Keys Aqueduct Authority and other available utilities indicating the type of service (residential or commercial) provided and the number of meters on or about April 1, ~~1990~~2010;

- h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, ~~1990~~2010 (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~~ City Planner's decision shall be rendered to the ~~d~~Department of Economic Opportunity ~~community affairs~~ for a determination of consistency with the principles 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~~ City Planner 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 meets the Florida Building Code, through as-built certifications or other means acceptable to the building official; and
- b. Fees: All back fee payments, ~~including impact fee~~

payments, shall be paid current and in full, from the date
determined to be the established date of the unit, 1990-
onward, or as determined by the building department, are
made in full. All impact fees shall be paid in full for
units determined to have been established after the
implementation of the Impact Fee Ordinance (January 1,
1985).

c. Occupational license with the city is updated, and
street addresses are assigned commensurate with the
updated unit count.

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

Section 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.

Section 108-993. - 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.

DIVISION 2. - BUILDING PERMIT ALLOCATION SYSTEM

Section 108-994. - 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 (as shown on ~~the following~~ Table 1.0 below) to those available through the following means:

- (1) Units generating from policy 1-31.126.1 of the comprehensive plan that have not been allocated.
- (2) Legal mechanisms including memorandums of agreement between the Florida Department of Economic Opportunity ~~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 to be affected by this article per section 108-991

| <u>Table 1.0</u> | |
|---|---|
| Residential Structure Type | Equivalent Single-Family Unit Factor ⁽¹⁾ |
| Single-family | 1.00 ^(a) |
| Accessory apt./SRO | 0.5578 ^(b) |
| Multifamily | 1.00 ^(c) |
| Transient unit | 0.5886 ^(d) |
| Nursing home, Rest Home, Assisted Living Facility and Convalescent Home | 0.10 ^(e) |
| Total | NA |

(1) Pursuant to comprehensive plan policy 1-1.126.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 1992010 U.S. Census for the respective residential structure

types divided by the vehicles per single-family units (i.e., 1.28 vehicles per unit). The computations are as follows:

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

(b) Accessory unit, single room occupancy (SRO):

$$1.00/1.280 = 0.5578$$

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

(d) Transient unit: $1.10/1.28 = 0.586$ ~~is consistent with the traffic generating assumptions of the county hurricane evacuation model based on the Transportation Interface for Modeling Evacuations (TIME) Model for the Florida Keys (1.10 vehicles per transient unit in Monroe County).~~

(e) Nursing home, rest home, assisted living facility and convalescent home: $1.0/10 = 0.10$ based on provisions set forth in Chapter 86-9. Definition of Terms.

Section 108-995. - Reporting requirements and adjustments in residential allocation schedule.

The City of Key West building permit allocation system shall limit

the number of permits issued for new permanent and transient development, to 910 units during the period from July 2013 to July 2023, with the exception of the Beneficial Use Permit allocations that have been reserved separately to address property rights claims. The annual allocation will be ninety-one (91) single-family units or an equivalent combination of residential and transient types based on the equivalency factors established in Policy 1-1.15.3 of the Comprehensive Plan.

In order to address the ongoing affordable housing shortage and affordable housing deed restrictions expected to expire, during the first three years (July 2013 - July 2016) 60 percent of the units allocated shall be affordable. Between years four (4) and ten (10) (2016 - 2023), 50 percent shall be affordable. Between years four (4) and ten (10), 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. During year one (1) (July 2013 - 2014), 48 of the affordable units to be allocated will be dedicated for use at the Peary Court Housing complex property, being transferred from military to private sector housing, and shall meet the prerequisite standards for obtaining BPAS Awards. Table 2.0 below identifies the number of units that may be allocated at a rate of 1.0 ESFU's by housing type and by year for the period from July 2013 to July 2023.

Table 2.0

| <u>July 1, 2013</u> <u>- June 30,</u> <u>2014</u> | <u>July 1,</u> <u>2014 - June</u> <u>30, 2015</u> | <u>July 1,</u> <u>2015 -</u> <u>June 30,</u> <u>2016</u> | <u>July 1,</u> <u>2016 -</u> <u>June 30,</u> <u>2017</u> | <u>July 1,</u> <u>2017 - June</u> <u>30, 2018</u> |
|--|--|---|--|---|
| 48 affordable units to be allocated for Peary Court development. Minimum of 7 affordable units. Maximum of 36 market rate units. | Minimum of 55 affordable units. Maximum of 36 market rate units. | Minimum of 55 affordable units. Maximum of 36 market rate units. | Minimum of 45 affordable units. Maximum of 36 market rate units, of which a maximum of ten (10) units may be transient. | Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) units may be transient. |

| <u>July 1, 2018</u> <u>- June 30, 2019</u> | <u>July 1, 2019 - June 30, 2020</u> | <u>July 1, 2020 - June 30, 2021</u> | <u>July 1, 2021 - June 30, 2022</u> | <u>July 1, 2022 - June 30, 2023</u> |
|---|---|---|---|---|
| Minimum of 45 affordable units. |
| Maximum of 46 market rate units, of which a maximum of ten (10) may be transient. | Maximum of 46 market rate units, of which a maximum of ten (10) may be transient. | Maximum of 46 market rate units, of which a maximum of ten (10) may be transient. | Maximum of 46 market rate units, of which a maximum of ten (10) may be transient. | Maximum of 46 market rate units, of which a maximum of ten (10) may be transient. |

The ~~administrative official~~ City Planner 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 and the state land planning agency identifying any remaining or unused allocations, and the number of permits by building type by September 1 of each year as stipulated in the 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding. The first report will be published in

~~2014. 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 108-994 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 percent of the total ESFU available for allocation since 1990, nor shall the transient unit allocation exceed 25 percent of the ESFU available for allocation since 1990. Because transient allocations have exceeded 25 percent of the total ESFU, no further new transient allocations will be made under this system. Provided, however, that the city shall reserve a minimum number of units for beneficial use claims. A determination of the minimum number of units shall be based upon available data illustrating parcels potentially subject to relief pursuant to section 108-998. Remaining units shall be allocated in accordance with the Comprehensive Plan and Land Development Regulations.~~

Section 108-996. - Intent.

It is the intent of the City of Key West to create and manage a Building Permit Allocation System that:

- a. Is open to all property owners who wish to participate;
- b. Establishes a minimum baseline standard for all new units and buildings that assures sustainability, environmental responsibility, human health and safety;
and
- c. Is cost effective and easily administered by City staff.

~~Section 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 shall be granted by the administrative official prior to the expiration of the allocation. One extension for a period of 12 months 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. Allocation for beneficial use pursuant to section 108-998 shall be for a period of two years during which time a building permit must be obtained. A single two-year extension of a beneficial use~~

~~allocation 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 108-997. - Period of allocation and Ranking/Review of Applications.

A. Application and Allocation Period. The annual building permit allocation period will begin in July of each year. Applications will be accepted between the first of July and mid-September. Applications will be reviewed and ranked by City staff and the Final Determination of Award will be made by the Planning Board no later than March 1. Based on the level of proposed development, development plan approvals will be reviewed by the relevant Boards and Commissions by May of each year.

B. Prerequisites

(1) Prerequisite major construction/renovation means the minimum standards for new development, including additions to existing structures, or redevelopment constituting more than 50% of the value of the building, required in order to be eligible to receive an allocation award from the BPAS system as follows:

- a. All new units shall be constructed in compliance with and obtain a Baseline Green Building Certification.
- b. All new buildings shall be constructed so as to have the first habitable floor 1.5 feet above the required base flood elevation, with the exception of properties located within the historic zoning districts, where the applicant must first demonstrate that such elevation does not interfere with the essential form and integrity of properties in the neighborhood by obtaining a certificate of appropriateness.
- c. All new buildings shall be constructed with a rainwater catchment system that will hold a minimum of 1,000 gallons of water or an amount equivalent to 100% of the new roof area in gallons, whichever is greater.

(2) Prerequisite, minor renovation means the minimum standards for redevelopment constituting less than 50% of the value of the building. In order to be eligible to receive an allocation award from the BPAS system applicants must demonstrate water and energy use 15% below the Florida Building Code using recognized

energy and water rating standards.

C. Point System. The City Building Permit Allocation System application review and ranking process shall be administered by staff and shall be based on the point system established in the criteria listed below. The criteria shall apply to both affordable and non-affordable units proposed for construction. However, applicants for affordable unit awards shall compete only for other affordable housing unit allocations, and not for the market rate unit allocations.

- (1) The following criteria and point system shall be utilized in the ranking of applications for development of three or more non-transient units as follows:
 - a. Building more than 1.5' higher than the base flood elevation - 5 points
 - b. Exceeding the minimum required percentage of affordable housing 5 - points
 - c. Achieving Green Building Certification Upgrade 1 - 30 points
 - d. Achieving Green Building Certification Upgrade 2 - 40 points
 - e. Achieving Green Building Certification Upgrade 3 - 60 points
 - f. Voluntary contribution to the Art In Public Places

Fund or Tree Fund in the amount of \$5,000 or more
- 10 points.

g. Design by a LEED accredited architect - 10 points.

h. Providing electrical high voltage sized conduit for
future electric car charging station near parking
area - 5 points.

i. Using light colored, high reflectivity materials
for all non-roof/ areas with a Solar Reflectance
Index (SRI) of at least 29 - 10 points.

j. Providing additional on-site open space or on-site
recreational facilities - 10 points.

k. Designing the buildings with a vegetated roof of at
least 50% of the roof area - 15 points.

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

a. Building more than 1.5' higher than the base flood
elevation - 5 points.

b. Voluntarily providing affordable housing units -
10 points.

c. Achieving Green Building Certification Upgrade 1 -
30 points.

d. Achieving Green Building Certification Upgrade 2 -

40 points.

e. Achieving Green Building Certification Upgrade 3 -

60 points.

f. Voluntary contributions to the Art In Public
Places Fund or Tree Fund in the amount of \$1,000 or

more - 10 points.

g. Design by a LEED accredited architect -

10 points.

h. Providing electrical high voltage sized conduit for
future electric car charging station near parking

area - 5 points.

i. Using light colored, high reflectivity materials
for all non-roof/ areas with a Solar Reflectance
Index (SRI) of at least 29 - 10 points.

j. Using light colored, high reflectivity roofing
materials with a Solar Reflectance Index (SRI) of at
least 29 - 5 points.

k. Designing the buildings with a vegetated roof of at
least 50% of the roof area - 15 points.

D. Application Review Process - Review, Ranking, Initial
Announcement and Final Determination of Award: Applications
received by the application closing date (mid-September) of each

year will be evaluated by staff for completeness and applicants will be notified of any deficiencies in the application and be provided a timeframe within which deficiencies can be resolved. In the event that all market rate units are not claimed or applied for, after initial staff evaluation of the applications, any remaining market rate units may be awarded for affordable housing purposes.

Upon ranking, in the event that two applications are determined to have the same numerical ranking score, and units are not available to provide awards to both projects, a drawing of lots will determine the awardee. Additionally, official ranking and Initial Announcement of Award information shall be published by the Planning Department by December 15th of the Application Year. Based on staff recommendation the Planning Board shall make the Final Determination of Award by March 1 of the Award Year.

Applications that receive Final Determination of Award by the Planning Board and that require development review shall be heard by the Development Review Committee no later than March of the Award Year. Applicants will be given a limited period of time to amend their applications and will subsequently be scheduled for review by the Planning Board no later than May of the Award Year. If required, City Commission review will be scheduled no later than June, so that the allocation can be made no later than one

year from the receipt of the application or July 13 of the Award Year.

E. Recovered Units. Building permits shall be obtained within two years of the Final Award date. If a building permit is not issued within that timeframe the allocated units will revert back to the City as a Recovered Unit for allocation during the following sequential Award Year. If the Recovered Units are not allocated within the next sequential Award Year such units will be returned to the Department of Economic Opportunity for redistribution pursuant to provisions in the 2012 Hurricane Evacuation Modeling Memorandum of Understanding.

F. Affordable Unit Allocations:

1. All units allocated as affordable are subject to Section 122-1467(c), (d), (e), and (f) of the Workforce Housing Ordinance.
2. Applicant Eligibility Requirements are subject to Section 122-1469 (2) through (15) of the Workforce Housing Ordinance.
3. Affordable housing projects enabled by federal tax credit housing are not subject to 122-1467(c).

G. Transient Unit Allocation Process: Regulations for the

allocation of Transient Units shall be established by April 1, 2016.

H. Penalty: For projects that fail to achieve the Green Building Standard Certification, as purported in the application for which the award was granted, final certificate of occupancy will not be awarded until such time that the applicant is able to establish that the Green Building Standard has been achieved.

~~Section 108-997. - Tracking and monitoring system~~

~~(a) The administrative official shall develop and maintain a tracking system which indicates the number of single-family equivalent units by structure type and by affordability level allocated since April 1, 1990.~~

Section 108-998. - Compact Infill

Development and Mixed Use Development Incentives

The city recognizes the need to encourage the redevelopment of aging commercial properties located within the city in order to promote housing opportunities in proximity to existing employment centers, and alternative transportation routes. Such development shall be known as compact infill development.

In order to encourage urban infill projects that meet design principles and standards contained in Comprehensive Plan Policy 1-1.1.4 residential density bonuses shall be allowed as follows:

| <u>Existing or Proposed</u> <u>Commercial</u> <u>Development</u> | <u>Additional Density</u> <u>Allowed- Market Rate</u> <u>(MR) and Affordable</u> <u>Housing (AH)</u> | |
|--|---|-------------|
| <u>2,500 s.f of Floor</u> <u>Area</u> | <u>0 MR</u> | <u>1 AH</u> |
| <u>5,000 s.f of Floor</u> <u>Area</u> | <u>0 MR</u> | <u>2 AH</u> |
| <u>10,000 s.f of Floor</u> <u>Area</u> | <u>0 MR</u> | <u>3 AH</u> |
| <u>12,500 s.f of Floor</u> <u>Area</u> | <u>1 MR</u> | <u>3 AH</u> |
| <u>15,000 s.f of Floor</u> <u>Area</u> | <u>2 MR</u> | <u>4 AH</u> |
| <u>20,000 s.f of Floor</u> <u>Area</u> | <u>3 MR</u> | <u>5 AH</u> |
| <u>25,000 s.f of Floor</u> <u>Area</u> | <u>4 MR</u> | <u>6 AH</u> |
| <u>30,000 s.f of Floor</u> <u>Area</u> | <u>5 MR</u> | <u>6 AH</u> |

For redevelopment and /or development projects that meet the criteria for density bonuses the following design principles are required:

- a. Housing types - Provide for a range of housing types, inclusive of apartments, townhouses, efficiencies, accessory units and single room occupancies.
- b. Pedestrian and Bicycle linkage - Provide safe onsite bicycle and pedestrian circulation with connectivity to the City's existing bicycle and pedestrian pathway network. Provide enclosed bicycle storage area for residents.
- c. Mixed use redevelopment - For development including commercial floor area, provide enclosed bicycle storage area together with shower facilities for the bicycle user employees.
- d. Open Space and Recreation - Provide a minimum of 5% more than the open space requirement, of which a minimum of 35% shall be designed as collective community gathering/recreation space.

Section 108-9989. - 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 (August 10, 1993) or lots of record which have been reconfigured such that the number of minimum sized lots are not increased. 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~~ Pre-existing

Reserve Units/Beneficial Use pool reserved to address outstanding beneficial use claims. All units that are recaptured by the City through a Waiver and Release of Building Permit Allocation for residential units lawfully existing prior to May 2, 2013 shall be recorded and dedicated for beneficial use only. Beneficial Use allocations shall be valid until such time that the owner choses to obtain building permits, so long that no changes are made to the configuration or size of the lot or parcel that affect the conditions in which the Beneficial Use allocation is granted as described in subsection (a) above.

- (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.

~~Section 108-999.- Zoning in progress~~

~~City staff shall defer the acceptance and processing of applications dated after November 16, 2011 for building permit allocations with exception of requests for beneficial use allocations until new land development regulations are adopted, or until the passage of 365 days, whichever occurs first.~~

Sec. 108-1000. - Allocation of residential permits in the Truman Waterfront Redevelopment Area

In order to facilitate redevelopment of the Truman Waterfront Parcel, equivalent single-family unit values and associated development rights may be transferred from anywhere 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-recognized 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 Planning Department shall maintain records of the transfer of units under this provision.

Section 3: That Chapter 122, Article V, Division 10, Work Force Housing, of the Code of Ordinances is hereby amended as follows:

Sec. 122-1470. - Accessory unit infill.

(a) In all mixed use zoning districts of the city, ~~except conservation districts (C), airport district (A) and the HPRD, PRD, HHDR, HMDR, MDR, MDR-C, LDR-C and SF districts,~~ the city shall ~~commission desires to~~ encourage the addition of affordable work force housing on the same site as commercial properties and institutions to promote employee housing. Such development shall be known as accessory unit infill. Tenants shall be eligible persons under Section 122-1469. Applicants under this section may provide two bicycle or scooter parking spaces per unit as an alternative to applying to the planning board for parking variances. Provided that units of 600 square feet or less are treated as an ~~0.55.78~~ equivalent unit and all units provided must be made ~~are~~ available through ~~under~~ the city's building permit allocation system. ~~ordinance, Section 108 1056 et seq. of the~~

~~Code of Ordinances. the city shall process applications under this section in the same manner as multifamily units or as a conditional use if multifamily is not allowed.~~

- (b) The maximum total rental and/or sales price for accessory unit infill in a single development shall be based on each unit being affordable housing (moderate income). The rental and/or sales price may be mixed among affordable housing (low income), (median income), (middle income) and (moderate income) in order that the total value in rental and/or sales does not exceed ten percent of the rental and/or sales of all the units at affordable housing (moderate income).

Section 4: 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 5: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 6: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and 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 2nd day of October, 2013.

Read and passed on final reading at a regular meeting held this 6th day of November, 2013.

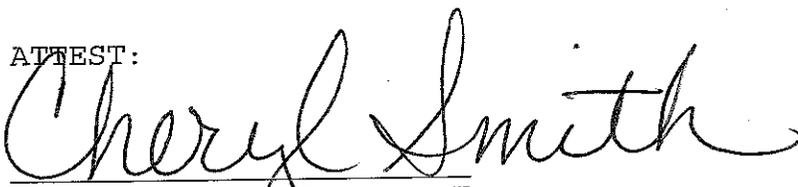
Authenticated by the presiding officer and Clerk of the Commission on 7th day of November, 2013.

Filed with the Clerk November 7, 2013.

| | |
|----------------------------|------------|
| Mayor Craig Cates | <u>Yes</u> |
| Vice Mayor Mark Rossi | <u>Yes</u> |
| Commissioner Teri Johnston | <u>Yes</u> |
| Commissioner Clayton Lopez | <u>Yes</u> |
| Commissioner Billy Wardlow | <u>Yes</u> |
| Commissioner Jimmy Weekley | <u>Yes</u> |
| Commissioner Tony Yaniz | <u>Yes</u> |


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK