

ORDINANCE NO. 18-11

AN ORDINANCE TO THE CITY COMMISSION AMENDING CHAPTER 108 ENTITLED "PLANNING AND ZONING", ARTICLE X ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM", DIVISION 1 ENTITLED "GENERALLY", SECTION 108-987 ENTITLED "PURPOSE AND INTENT"; AND DIVISION 2 ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM", SECTION 108-994 ENTITLED "ESTABLISHED", SECTION 108-995 ENTITLED "REPORTING REQUIRMENTS AND RESIDENTIAL ALLOCATION SCHEDULE"; SECTION 108-997 ENTITLED "PERIOD OF ALLOCATION AND RANKING /REVIEW OF APPLICATIONS" AND SECTION 108-998 ENTITLED "COMPACT INFILL DEVELOPMENT AND MIXED USE OF PRIVATE PROPERTY" OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AND EFFECTIVE DATE.

WHEREAS, a revision to Sections 108-987, 108-994, 108-995, 108-997, and 108-998 pertaining to the Building Permit Allocation System (BPAS), and presented to the Planning Board for approval at its regular meeting held on February 15, 2018; and

WHEREAS, the Planning Board Resolution was passed as amended striking through the ranking of the electric car receptacle for 5 (five) points; and

WHEREAS, the City Commission finds that it is in the public interest to amend Sections 108-987, 108-994, 108-995, 108-997, and 108-998;

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- *Coding: (Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

NOW, THEREFORE BE IT RESOLVED by the City Commission of the City of

Key West, Florida:

Section 1. That the proposed amendment to Section 108-987 is as follows*:

DIVISION 1. GENERALLY

Sec. 108-987. - Purpose and intent. The intent of the building permit allocation system is to implement the city's comprehensive plan by 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 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 maintain and improve public facility service levels.
- (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.

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- (5) Limit units allocated from the BPAS by using those units which are identified and derive from the following sources: City of Key West Comprehensive Plan Policy 1.1.1.1; units recovered by the city which were previously allocated and unused and subsequently returned to the city; units 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 2. That the proposed amendment to Section 108-994 is as follows:

DIVISION 2. - BUILDING PERMIT ALLOCATION SYSTEM

Sec. 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 Table 1.0 below) to those available through the following means:

- (1) Units generating from policy 1-1.1.1 of the comprehensive plan that have not been allocated.

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- (2) Legal mechanisms including memorandums of agreement between the Florida Department of Economic Opportunity and the City of Key West, development agreements, settlement agreements and consent final judgments.
- (3) Units as recovered by the city which were either previously allocated and unused or which derive from units which are determined not be affected by this article per section 108-991.

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

(1) Pursuant to comprehensive plan policy 1-1.16.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on

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the 2010 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): $1.00/1.28 = 0.78$
- (c) Multifamily: $1.28/1.28 = 1.00$
- (d) Transient unit: $1.10/1.28 = 0.86$ 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 [section] 86-9, definition of terms.

Section 3. That the proposed amendment to Sections 108-995 is as follows:

~~Sec. 108-995. — Reporting requirements and residential allocation schedule.~~

Section 4. That the proposed amendment to Section 108-995 is as follows:

Sec. 108-995. - Reporting requirements and 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

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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~~ not exceed ninety-one (91) single-family units or ~~an equivalent combination of residential and transient~~ types of units based on the equivalency factors established in policy ~~1-1.15.3~~ 1-1.16.3 of the comprehensive plan. The annual allocation limitation shall not apply to affordable housing allocations. No transient allocations will be made subsequent to the closure of the 2017-2018 allocation period.

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), a minimum of 50 percent of the total allocations shall be affordable. Between years four (4) and five (5), 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. Between years six (6) and ten (10) 100 percent of the units shall be permanent. 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.

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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									
July 1, 2013 - June 30, 2014	July 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016	July 1, 2016 - June 30, 2017	July 1, 2017 - June 30, 2018	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022	July 1, 2022 - June 30, 2023
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 46 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.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.

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The city planner will provide an annual report to the planning board 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.

Section 5. That the proposed amendment to Section 108-997 is as follows:

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

- (a) *Application and allocation period.* The annual building permit allocation period will begin ~~in~~ on July 1 of each year ~~– and shall end on the 30th of June of the following 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:

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- 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, 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. All buildings with new units must meet compliance with Florida Green Building Coalition's Level 3 Green Home Retrofit standards.

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- (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~~ 30 points.
 - c. Voluntarily providing affordable housing which exceeds the requirements of section 122-1467 at median income classification: 40 points.
 - d. Voluntarily providing affordable housing which exceeds the requirements of section 122-1467 at low income classification: 60 points
 - e. e. Achieving Green Building Certification Upgrade 1: ~~30~~ 10 20 points.
 - d. f. Achieving Green Building Certification Upgrade 2: ~~40~~ 20 27 points.

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- e. ~~g.~~ Achieving Green Building Certification Upgrade 3: ~~60~~ 30 40 points.
- f. ~~h.~~ Voluntary contribution to the arts in public places fund or tree fund in the amount of ~~\$5,000.00~~ \$2,500.00 or more: ~~40~~ 5 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: ~~40~~ 5 points.
- j. Providing ~~additional on-site open space or on-site recreational facilities amenities~~ or exceeding the open space requirements of section 108-346 (b) of article V of chapter 108: 10 points.
- ~~k.~~ ~~Designing the buildings with a vegetated roof of at least 50% of the roof area: 15 points.~~
- ~~k.~~ Constructing 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: 10 points.

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l. Using light colored, high reflectivity roofing materials with a solar reflectance index (SRI) of at least 29: 5 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.~~

~~e. 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 arts in public places fund or tree fund in the amount of \$1,000.00 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.~~

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~~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 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. Based on staff recommendation the planning board shall make the final determination of award.

Applications for affordable units as minor renovations or accessory units can be received at any time during the BPAS allocation year, as long as their application

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meets the average application score from the prior year. If the score does not meet the average score of the prior year, the application will be held and ranked as part of the annual application cycle.

(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 reallocation, ~~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 subsections 122-1467(c), (d), (e), and (f) of the workforce housing ordinance.
2. Applicant eligibility requirements are subject to subsections 122-1469(2) through (15) of the workforce housing ordinance.
3. Affordable housing projects enabled by federal tax credit housing are not subject to [subsection] 122-1467(c).

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

(h) (g) *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 6. That the proposed amendment to Section 108-998 is as follows*:

Sec. 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:

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

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

- ~~a. *Housing types:* Provide for a range of housing types, inclusive of apartments, townhouses, efficiencies, accessory units and single room occupancies.~~

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~~b. *Pedestrian and bicycle linkage:* Provide safe on site bicycle and pedestrian circulation with connectivity to the city's existing bicycle and pedestrian pathway network. Provide enclosed bicycle storage area for residents.~~

~~ea. *Mixed use redevelopment:* For development including commercial floor area, provide enclosed secure lockable bicycle storage area, ~~together with shower facilities for the bicycle user employees.~~ Provide a posted web address about transit options.~~

~~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 7. 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 provision of this Ordinance shall be deemed severable therefrom and shall be constructed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 8. 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.

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Section 9. 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 Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

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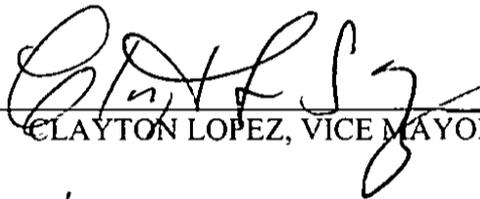
Read and passed by the City Commission at a regular meeting held this 3rd day of April, 2018.

Read and passed on final reading at a regular meeting held this 5th day of June, 2018

Authenticated by the presiding officer and Clerk of the Commission on 6th day of June, 2018.

Filed with the Clerk June 6, 2018.

Mayor Craig Cates	<u>Absent</u>
Commissioner Samuel Kaufman	<u>Absent</u>
Vice Mayor Clayton Lopez	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>No</u>
Commissioner Billy Wardlow	<u>No</u>
Commissioner Jimmy Weekley	<u>Yes</u>



CLAYTON LOPEZ, VICE MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF KEY WEST, FLORIDA,
ORDINANCE NO. 18-11

RECEIVED
CITY CLERK'S OFFICE
2018 ~~SEP-07~~ AM 8:05
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KEY WEST, FLORIDA
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FINAL ORDER
APPROVING CITY OF KEY WEST ORDINANCE NO. 18-11

The Department of Economic Opportunity ("Department") hereby issues its Final Order, pursuant to section 380.05(6), Florida Statutes, approving land development regulations adopted by the City of Key West, Florida ("the City"), Ordinance No. 18-11 (the "Ordinance").

FINDINGS OF FACT

1. The City is designated as an area of critical state concern by rule 28-36.002, Florida Administrative Code.
2. The Ordinance was adopted by the City on June 5, 2018, and rendered to the Department on July 5, 2018.
3. The Ordinance amends the City's Land Development Regulations ("LDRs") to amend sections 108-987, 108-994, 108-995, 108-997, and 108-998 of the City of Key West Code of Ordinances. The Ordinance modifies the City's Building Permit Allocation System (BPAS) point system and eliminates future transient allocations. The Ordinance requires that all future allocations be permanent and combines the City's two separate BPAS point systems into one system which applies to all applications for development of non-transient units. The Ordinance revises the BPAS point system to increase the number of points for affordable housing for projects exceeding the minimum required percentage of affordable housing units and for projects that provide extra affordable housing units at the low and median income classifications. The

Ordinance reduces the number of points awarded for certain sustainable building criteria. The Ordinance reduces the minimum square footage of floor area required for an existing or proposed commercial development to obtain a density bonus. The Ordinance also removes language that the City will return all recovered units that are not allocated within the sequential award year to the Department and will instead revert back to the City for reallocation.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Sections 380.05(6), (11), and 380.0552(9), Florida Statutes; *See also* Chapter 28-36, Florida Administrative Code.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is consistent with the City’s Comprehensive Plan generally, as required by section 163.3177(1), Florida Statutes, and specifically, Policies 1-1.16.1 and 3-1.1.4.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. *See* Sections 380.05(6) and 380.0552(9), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in rule 28-36.003(1), Florida Administrative Code.

8. The Ordinance is consistent with the Principles for Guiding Development as a whole, and specifically furthers the following:

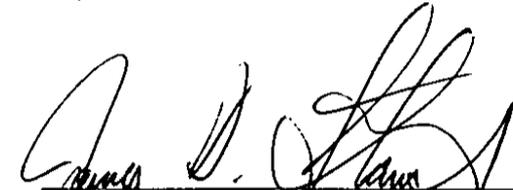
- (a) Strengthen local government capabilities for managing land use and development; and

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

WHEREFORE, IT IS ORDERED that the Department finds that City Ordinance No. 18-11 is consistent with the City's Comprehensive Plan and Principles for Guiding Development for the City of Key West Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



James D. Stansbury, Bureau Chief
Bureau of Community Planning and Growth
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

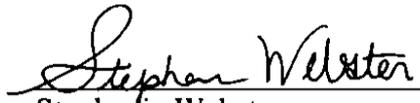
ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 30th day of August, 2018.


Stephanie Webster
Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Craig Cates
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041-1409

Cheri Smith, City Clerk
City of Key West
P.O. Box 1409
Key West, Florida 33041-1409

Patrick Wright, Director
Planning and Environmental Resources
City of Key West
P.O. Box 1409
Key West, Florida 33041-1409

**EXECUTIVE
SUMMARY**



To: Jim Scholl, City Manager
Through: Patrick Wright, Planning Director
From: Ginny Haller, Planner II
Meeting Date: June 5, 2018
Agenda Item: **Text Amendment of the Land Development Regulations**– An ordinance of the City Commission amending Chapter 108 entitled “Planning and Development”, Article X entitled “Building Permit Allocation System”, Division 1 entitled “Generally”, Section 108-987 entitled “Purpose and Intent”; and Division 2 entitled “Building Permit Allocation System”, Section 108-994 entitled “Established”, Section 108-995 entitled “Reporting Requirements and Residential Allocation Schedule”; Section 108-997 entitled “Period of Allocation and Ranking/Review of Applications” and Section 108-998 entitled “Compact Infill Development and Mixed Use of Private Property” of the Land Development Regulations; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Action Item/Background

The proposed ordinance to amend the City’s Land Development Regulations (LDRs) is part of a process to address the affordable housing shortage in the City. The City Commission is hearing this LDR text amendment and also a text amendment to the Comprehensive Plan which propose to eliminate future transient allocations and modify the point system of the Building Permit Allocation System (BPAS).

In an effort to have consistency between the Comprehensive Plan and the LDRs, this proposed ordinance eliminates transient allocations and modifies the BPAS point system in Sections 108-987, 108-994, 108-995, 108-997 and 108-998 of the LDRs. Given the will of the City Commission to not utilize future BPAS residential units for transient use in recognition of the critical need for workforce/affordable housing, planning staff recommends the attached text amendment to the LDRs.

Request

The proposed LDR text amendment ordinance is attached.

City Actions:

Planning Board:	February 15, 2018
City Commission	April 3, 2018 (first reading)
City Commission:	June 5, 2018 (second reading)
DEO review period	Up to 45 days, following local appeal

Planning Analysis:

The purpose of Chapter 90, Article VI, Division 1 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the land development regulations or the boundaries of the official zoning map. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the city commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the comprehensive plan.

Options/Advantages/Disadvantages:

Option 1. Approve the text amendment to the City’s LDRs as it is part of a process to address the affordable housing shortage in the City. The City Commission is hearing this LDR text amendment which proposes to eliminate future transient allocations and modifications to the point system of the Building Permit Allocation System (BPAS) as recommended by the Planning Board through Resolution 2018-08.

Consistency with the City’s Strategic Plan, Vision and Mission: This would not be inconsistent with the City’s Strategic Plan, Vision and Mission.

Financial Impact: There would be no direct financial impact to the City if the proposed change to the Comprehensive Plan.

Option 2. Deny the text amendment to the City’s LDRs which is part of a process to address the affordable housing shortage in the City. The City Commission is hearing this LDR text amendment which proposes to eliminate future transient allocations and modifications to the point system of the Building Permit Allocation System (BPAS) as recommended by the Planning Board through Resolution 2018-08.

Consistency with the City’s Strategic Plan, Vision and Mission: There would be no direct financial impact to the City by the proposed change to the Land Development Regulations.

Financial Impact: There would be no cost to the City for denying the request.

RECOMMENDATION:

As per Resolution 2018-08, the Planning Board recommends the **APPROVAL** of the text amendment to the Land Development Regulations.

**PLANNING BOARD
RESOLUTION NO. 2018-08**

A RESOLUTION OF THE CITY OF KEY WEST RECOMMENDING AN ORDINANCE TO THE CITY COMMISSION AMENDING CHAPTER 108 ENTITLED "PLANNING AND ZONING", ARTICLE X ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM", DIVISION 1 ENTITLED "GENERALLY", SECTION 108-987 ENTITLED "PURPOSE AND INTENT"; AND DIVISION 2 ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM", SECTION 108-994 ENTITLED "ESTABLISHED", SECTION 108-995 ENTITLED "REPORTING REQUIRMENTS AND RESIDENTIAL ALLOCATION SCHEDULE"; SECTION 108-997 ENTITLED "PERIOD OF ALLOCATION AND RANKING /REVIEW OF APPLICATIONS" AND SECTION 108-998 ENTITLED "COMPACT INFILL DEVELOPMENT AND MIXED USE OF PRIVATE PROPERTY" OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AND EFFECTIVE DATE.

WHEREAS, a revision to Sections 108-987, 108-994, 108-995, 108-997, and 108-998 pertaining to the Building Permit Allocation System (BPAS), and presented to the Planning Board for approval at its regular meeting held on February 15, 2018 ; and

WHEREAS, the Planning Board finds that it is in the public interest to amend Sections 108-987, 108-994, 108-995, 108-997, and 108-998; and

WHEREAS, the Planning Resolution was passed as amended striking through the ranking of the electric car receptacle for 5 (five) points.

NOW, THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth

Page 1 of 3

Planning Board Resolution No. 2018-08



Chair



Planning Director

herein.

Section 2. That the proposed amendment to Sections 108-987, 108-994, 108-995, 108-997, and 108-998 is recommended for approval; a copy of the ordinance is attached.

Section 3. That the proposed amendment be amended striking through the ranking of the electric car receptacle for 5 points.

Section 4. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the city clerk.



Chair



Planning Director

ORDINANCE NO. _____

AN ORDINANCE TO THE CITY COMMISSION AMENDING CHAPTER 108 ENTITLED "PLANNING AND ZONING", ARTICLE X ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM", DIVISION 1 ENTITLED "GENERALLY", SECTION 108-987 ENTITLED "PURPOSE AND INTENT"; AND DIVISION 2 ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM", SECTION 108-994 ENTITLED "ESTABLISHED", SECTION 108-995 ENTITLED "REPORTING REQUIRMENTS AND RESIDENTIAL ALLOCATION SCHEDULE"; SECTION 108-997 ENTITLED "PERIOD OF ALLOCATION AND RANKING /REVIEW OF APPLICATIONS" AND SECTION 108-998 ENTITLED "COMPACT INFILL DEVELOPMENT AND MIXED USE OF PRIVATE PROPERTY" OF THE LAND DEVELOPMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AND EFFECTIVE DATE.

WHEREAS, a revision to Sections 108-987, 108-994, 108-995, 108-997, and 108-998 pertaining to the Building Permit Allocation System (BPAS), and presented to the Planning Board for approval it its regular meeting held on February 15, 2018; and

WHEREAS, the Planning Board Resolution was passed as amended striking through the ranking of the electric car receptacle for 5 (five) points; and

WHEREAS, the City Commission finds that it is in the public interest to amend Sections 108-987, 108-994, 108-995, 108-997, and 108-998;

NOW, THEREFORE BE IT RESOLVED by the City Commission of the City of Key West, Florida:

3-14-18
3-12-18 PW

Section 1. That the proposed amendment to Section 108-987 is as follows*:

DIVISION 1. GENERALLY

Sec. 108-987. - Purpose and intent.

The intent of the building permit allocation system is to implement the city's comprehensive plan by 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 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 maintain and improve public facility service levels.
- (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.

*Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading.

- (5) Limit units allocated from the BPAS by using those units which are identified and derive from the following sources: City of Key West Comprehensive Plan Policy 1.1.1.1; units recovered by the city which were previously allocated and unused and subsequently returned to the city; units 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 2. That the proposed amendment to Section 108-994 is as follows:

DIVISION 2. - BUILDING PERMIT ALLOCATION SYSTEM

Sec. 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 Table 1.0 below) to those available through the following means:

- (1) Units generating from policy 1-1.1.1 of the comprehensive plan that have not been allocated.

- (2) Legal mechanisms including memorandums of agreement between the Florida Department of Economic Opportunity and the City of Key West, development agreements, settlement agreements and consent final judgments.
- (3) Units as recovered by the city which were either previously allocated and unused or which derive from units which are determined not be affected by this article per section 108-991.

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

- (1) Pursuant to comprehensive plan policy 1-1.16.3, the equivalent single-family unit factors are based on the ratio of the average number of vehicles per unit based on the 2010 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): $1.00/1.28 = 0.78$
- (c) Multifamily: $1.28/1.28 = 1.00$
- (d) Transient unit: $1.10/1.28 = 0.86$ 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 [section] 86-9, definition of terms.

Section 3. That the proposed amendment to Sections 108-995 is as follows:

~~Sec. 108-995. - Reporting requirements and residential allocation schedule.~~

Section 4. That the proposed amendment to Section 108-995 is as follows:

Sec. 108-995. - Reporting requirements and 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~~ not exceed ninety-one (91) single-family units or ~~an equivalent combination of residential and transient types of units~~ of units based

on the equivalency factors established in policy ~~4-1.15.3~~ 1-1.16.3 of the comprehensive plan. The annual allocation limitation shall not apply to affordable housing allocations. No transient allocations will be made subsequent to the closure of the 2017-2018 allocation period.

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), a minimum of 50 percent of the total allocations shall be affordable. Between years four (4) and five (5), 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient. Between years six (6) and ten (10) 100 percent of the units shall be permanent. 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									
July 1, 2013 - June 30, 2014	July 1, 2014 - June 30, 2015	July 1, 2015 - June 30, 2016	July 1, 2016 - June 30, 2017	July 1, 2017 - June 30, 2018	July 1, 2018 - June 30, 2019	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022	July 1, 2022 - June 30, 2023
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 46 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.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.	Minimum of 45 affordable units. Maximum of 46 market rate units, of which a maximum of ten (10) may be transient.

The city planner will provide an annual report to the planning board 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.

Section 5. That the proposed amendment to Section 108-997 is as follows:

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

- (a) *Application and allocation period.* The annual building permit allocation period will begin ~~in~~ on July 1 of each year ~~– and shall end on the 30th of June of the following 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.

~~e. 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, 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.

(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~~ 30 points.

c. Voluntarily providing affordable housing which exceeds the requirements of section 122-1467 at median income classification: 40 points.

- ~~d.~~ Voluntarily providing affordable housing which exceeds the requirements of section 122-1467 at low income classification: 60 points
- e. ~~e.~~ Achieving Green Building Certification Upgrade 1: ~~30~~ 10 points.
- ~~d.~~ ~~f.~~ Achieving Green Building Certification Upgrade 2: ~~40~~ 20 points.
- e. ~~g.~~ Achieving Green Building Certification Upgrade 3: ~~60~~ 30 points.
- f. ~~h.~~ Voluntary contribution to the arts in public places fund or tree fund in the amount of ~~\$5,000.00~~ \$2,500.00 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~~ 5 points.
- j. Providing ~~additional on-site open space or~~ on-site recreational ~~facilities~~ amenities ~~or exceeding the open space requirements of section 108-346 (b) of article V of chapter 108~~: 10 points.
- ~~k.~~ ~~Designing the buildings with a vegetated roof of at least 50% of the roof area: 15 points.~~

- k. Constructing 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: 10 points.
- l. Using light colored, high reflectivity roofing materials with a solar reflectance index (SRI) of at least 29: 5 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 arts in public places fund or tree fund in the amount of \$1,000.00 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 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. Based on staff recommendation the planning board shall make the final determination of award.

(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 reallocation, 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 subsections 122-1467(c), (d), (e), and (f) of the workforce housing ordinance.
2. Applicant eligibility requirements are subject to subsections 122-1469(2) through (15) of the workforce housing ordinance.
3. Affordable housing projects enabled by federal tax credit housing are not subject to [subsection] 122-1467(c).

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

~~(h)~~ (g) *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 6. That the proposed amendment to Section 108-998 is as follows*:

Sec. 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:

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

~~For redevelopment and/or development projects that meet the criteria for density bonuses the following design principals 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 on-site 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 7. 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 provision of this Ordinance shall be deemed severable therefrom and shall be constructed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 8. 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 9. 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 Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed by the City Commission at a regular meeting held this _____ day of _____, 2018.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2018

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2018.

Filed with the Clerk _____, 2018.

Mayor Craig Cates	_____
Commissioner Samuel Kaufman	_____
Vice Mayor Clayton Lopez	_____
Commissioner Richard Payne	_____
Commissioner Margaret Romero	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK