



Islamorada, Village of Islands

REGULAR VILLAGE COUNCIL MEETING

January 11, 2024 - 5:30 PM
Founders Park Community Center
87000 Overseas Highway
Islamorada, FL 33036

The Village Council has resumed the in-person regular meeting format. Virtual participation is still available to the public. Please see the last page of the agenda for participation details

AGENDA

I. CALL TO ORDER / ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. AGENDA: Requests for Deletion / Emergency Additions

IV. PUBLIC COMMENT

(This is general public comment. It provides an opportunity for the public to speak about matters not scheduled elsewhere on the agenda. The mayor opens public comment on agenda items throughout the meeting.)

V. ORDINANCES

- A.** Ordinance Amending Section 22-64 First Time Home Buyer Down Payment - **First Reading TAB A** (Jennifer DeBoisbriand , Planning Director, John Quick, Interim Village Attorney, Maria Bassett, Finance Director)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 22 "HOUSING", ARTICLE III "FIRST TIME HOME BUYER DOWN PAYMENT", AMENDING SECTION 22-64; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMERCE; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF COMMERCE

- B.** Ordinance Amending Administrative Procedures Platting - **Second Reading TAB B** (John Quick, Interim Village Attorney)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE IV "ADMINISTRATIVE PROCEDURES", DIVISION 10 "PLATTING", SECTION 30-431 OF THE VILLAGE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING

FOR AN EFFECTIVE DATE.

- C. Ordinance Amending Administrative Procedures Zoning in Progress - **Second Reading TAB C** (John Quick, Interim Village Attorney)
AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30 “LAND DEVELOPMENT REGULATIONS”, ARTICLE IV “ADMINISTRATIVE PROCEDURES”, DIVISION 2 “DEVELOPMENT REVIEW PROCESS”, SECTION 30-212 OF THE VILLAGE CODE TO CREATE A ZONING IN PROGRESS PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.
- D. Ordinance Amending Policy 1-3.1.1, Establish a Building Permit Allocation System - **Second Reading TAB D** (Jennifer DeBoisbriand , Planning Director, Rebecca Jetton, Village Consultant)

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING POLICY 1-3.1.1, ESTABLISH A BUILDING PERMIT ALLOCATION SYSTEM, OF THE VILLAGE COMPREHENSIVE PLAN RELATING TO ESTABLISHING ADDITIONAL NON-RESIDENTIAL BUILDING PERMIT ALLOCATIONS; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF ECONOMIC OPPORTUNITY.

VI. QUASI-JUDICIAL

- A. Administrative Relief - 122 Iroquois St **TAB E** (Jennifer DeBoisbriand , Planning Director)

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY CHRIS TRENTINE FOR ADMINISTRATIVE RELIEF FROM THE VILLAGE BUILDING PERMIT ALLOCATION SYSTEM (BPAS) FOR PROPERTY LOCATED AT 122 IROQUOIS, PLANTATION KEY, AS LEGALLY DESCRIBED IN EXHIBIT “A”; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMERCE; AND PROVIDING FOR AN EFFECTIVE DATE

VII. MAYOR / COUNCIL COMMUNICATIONS

- A. Discussion Regarding Village Council Reconsideration of an Ordinance to Allow for Accessory Dwelling Units (ADUs) (Council Member Gregg) **TAB F**
- B. Discussion Regarding a Previously Considered Ordinance Related to Variance to Permit a Minor Relaxation of Minimum Lot Area Requirements (Council Member Gregg) **TAB G**

VIII. VILLAGE ATTORNEY / VILLAGE MANAGER COMMUNICATIONS

IX. ADJOURNMENT

Options for Viewing the Village Council Meeting:

The public is encouraged to watch the meeting on Monroe County's MCTV Comcast Channel 77. Alternatively, the public may view the meeting streamed live on the Village website from their personal computer, tablet or phone via the following link:

https://www.islamorada.fl.us/departments/communications/live_village_broadcast_meeting.php

Option 1: Email your comments.

1. Public comment should be submitted via email to: public.comment@islamorada.fl.us
2. The email should contain "Public Comment" in the subject line.
3. The name and address of the submitter shall be included in the email.
4. Public comment should be submitted by 9 a.m. the day before the meeting. Public comment will be sent to the Village Councilmembers for consideration prior to the meeting. Public comments will not be read during the meeting.

Option 2: Call in During the Meeting.

1. If phoning in, dial 305-224-1968 and enter the webinar **ID: 911 0656 4166** followed by #. When the Mayor opens public comment pertaining to the agenda item you are interested in dial *9 to be recognized by the Zoom meeting monitor. The Monitor will call you by the last four digits of your phone number. **Please be sure to unmute your phone when you are called upon.**
2. If watching online via Zoom: Open the Zoom webinar link <https://zoom.us/j/91106564166> and follow the prompts to join the webinar. When the Mayor opens public comment use the "raise your hand" feature to be recognized by the meeting monitor. Public comments will be heard in the order in which they are received.

ADA Assistance:

These meetings are open to the public. In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the ADA Coordinator at (305) 664-6448 or by email at ADA@islamorada.fl.us at least 48 hours before the scheduled meeting



Council Communication

To: Mayor and Village Council
From: Jennifer DeBoisbriand , Planning Director, John Quick, Interim Village Attorney, Maria Bassett, Finance Director
Date: January 11, 2024
SUBJECT: **Ordinance Amending Section 22-64 First Time Home Buyer Down Payment - First Reading TAB A**

Background:

Ordinance 16-06 creating a First Time Homebuyer Down Payment Assistance Program was approved on second reading by the Village Council at its meeting on April 7, 2016. The Program provides assistance to individuals of very low, low, and moderate income levels by providing no-interest down payment loans in the amount of \$10,000.00. Ordinance 17-01 amended the First Time Homebuyer Down Payment Assistance Program by eliminating a requirement that all residential dwelling units purchased with funding from the Program shall pass a Housing Quality Standard inspection as published by the U. S. Department of Housing and Urban Development.

If a loan recipient sells their home before ten (10) years, then they are required to pay back to the Village a pro-rated amount of the loan based on the time the property was owned. For instance, if a recipient sells their home after owning it for five (5) years, then they must pay back \$5,000.00 to the Village. Additionally, recipients are currently required to pay 10% of the original loan amount (currently \$10,000.00) back to the Village upon sale of the home regardless of how long they own the home, even if ownership is for greater than ten (10) years. The intent of this requirement was that this was a way for the recipients to give back to the Program and assist future homebuyers.

Since the Program's inception, the Village has issued 19 First Time Homebuyer Down Payment Assistance Loans. Three of the loan recipients sold their homes before ten (10) years and repaid a pro-rated portion back to the Village.

Analysis:

The requirement that loan recipients pay 10% of the original loan amount back to the Village regardless of how long the home is owned, creates a second mortgage on the property. In some instances, prospective homebuyers have lost or had to turn down other lending offers because the Village's down payment assistance loan and/or the conditions resulted in an interest rate increase. The down payment assistance loan remains as a lien on the property even after ten (10) years of ownership.

The attached Ordinance presented for first reading would eliminate the requirement that 10% of the original loan amount be paid back to the Village after ten (10) years of ownership. The requirement would be eliminated retroactively for all recipients of the loans to date. At the ten-

year ownership mark, the Village would issue and record a release of lien so that the first time homebuyers loan no longer shows as a liability on the property. Eliminating the payback requirement after ten (10) years of ownership presents less of an administrative burden for the Village as well.

Budget Impact:

The Budget Impact would be minimal as the Village would not receive any funds back from loan recipients who sell their homes after ten (10) years.

Staff Impact:

There is no impact to staffing levels as a result of this Ordinance change.

Recommendation:

Staff recommends approval on first reading.

Attachments: 1. 47S8667-Ordinance Amending Down payment assistance (clean 12-3-23)

ORDINANCE NO. ____

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 22 "HOUSING", ARTICLE III "FIRST TIME HOME BUYER DOWN PAYMENT", AMENDING SECTION 22-64; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMERCE; AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF COMMERCE

WHEREAS, Chapter 166, Florida Statutes, authorizes municipalities to have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and; and

WHEREAS, the Village first time home buyer down payment loan was established by Ordinance 16-06 and amended by Ordinance 17-01; and

WHEREAS, the Village Council desires to amend existing provisions under Article III, "First Time Homebuyer Downpayment Assistance Program" of Chapter 22 of the Village Code relating to provisions governing the repayment of certain monies; and

WHEREAS, specifically, the Village Council desires to amend Section 22-64, "Down Payment Loans", of the Village Code to provide for more flexibility for borrowers in good standing after the passage of ten (10) years from the date of the loan; and

WHEREAS, amending the chapter to eliminate the need for loan repayment at or after the ten-year duration is in the best interest of the Village and program participants; and

WHEREAS, after due notice and hearing, the Village Council finds that this Ordinance is consistent with the Village Comprehensive Plan and the Principles for Guiding Development in the Florida Keys Area of Critical State Concern; and

WHEREAS, the Village Council finds that the provisions of this Ordinance are intended to advance the public health, safety, and welfare of the residents of the Village.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Amendments to the Code.

Sec 22-64 of the Village Code, titled "Down Payment Loans" is hereby *amended* as follows:

Chapter 22 – HOUSING.

Article III – First Time Homebuyer Downpayment Assistance Program.

Section 22-64 – Down Payment Loans.

- (a) The maximum down payment loan an applicant is eligible for under this program is \$10,000.00.
- (b) An applicant receiving assistance under this program shall occupy the property as their primary residence as evidenced by having filed and maintained a homestead exemption on the property with the Monroe County Property Appraiser's office.
- (c) The assistance provided under this program shall be evidenced by and secured in the form of a subordinate mortgage on the subject property, which at closing shall be recorded in the official records of Monroe County, Florida, at the expense of the applicant. The assistance provided is a deferred payment loan at zero percent interest. In the event of default of any of the provisions of this program, the loan shall be repaid in full to the village.
- (d) For each full year in the program during which the applicant continues to occupy the dwelling unit as their primary homesteaded residence, the balance of the loan shall be reduced in increments of ten percent per year for ten years. ~~a maximum reduction of up to 90 percent of the total loan amount.~~ After the ten-year duration of the loan, the subordinate mortgage shall be deemed satisfied and the village shall release the lien on the property. ~~remain on the property until such time that the property is sold. If the property is sold prior to completion of the ten-year duration, Upon the sale of the property, the applicant shall repay the village the sum of ten percent of the original loan amount multiplied by each year remaining of the ten-year duration. Upon payment of such amount, at which time the village shall deem the subordinate mortgage satisfied and the village shall release the lien on the property.~~

Section 3. Repeal of Conflicting Provisions. The Provisions of the Village of Islamorada Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any sentence, section, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance but they shall remain in effect it being

the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Village of Islamorada Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption.

[Remainder of this page intentionally left blank]

The foregoing Ordinance was offered by Councilmember _____, who moved for its adoption on first reading. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III ____
Vice Mayor Sharon Mahoney ____
Councilman Mark Gregg ____
Councilwoman Elizabeth Jolin ____
Councilman Henry Rosenthal ____

PASSED on the first reading this ____ day of _____, 2024.

The foregoing Ordinance was offered by Councilmember _____, who moved for its adoption on second reading. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III ____
Vice Mayor Sharon Mahoney ____
Councilman Mark Gregg ____
Councilwoman Elizabeth Jolin ____
Councilman Henry Rosenthal ____

PASSED AND ADOPTED on the second reading this ____ day of _____, 2024.

JOSEPH B. PINDER, III, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

JOHN J. QUICK, VILLAGE ATTORNEY



Council Communication

To: Mayor and Village Council
From: John Quick, Interim Village Attorney
Date: January 11, 2024
SUBJECT: **Ordinance Amending Administrative Procedures Platting - Second Reading TAB B**

Background:

Recently it has come to the Village's attention that some property lines have been modified with the Property Appraiser's Office without first being approved by the Village.

This Code amendment was recommended for approval by the Local Planning Agency at their November 13, 2023 meeting.

This passed on First Reading at the Council's Meeting on December 14, 2023.

Analysis:

The proposed code change makes expressly clear that no lot-line modifications shall be filed with the Property Appraiser's Office without first being approved by the Village. While Village approval is required for any lot-line adjustments, we believe that it would do not harm to expressly state in the code that any such modifications shall not be recorded without prior Village approval.

Budget Impact:

N/A

Staff Impact:

N/A

Recommendation:

Staff recommends approval.

Attachments: 1. Ordinance - Platting lot line adjustments

**VILLAGE OF ISLAMORADA
ORDINANCE 23-15**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,
AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE IV
"ADMINISTRATIVE PROCEDURES", DIVISION 10 "PLATTING", SECTION 30-
431 OF THE VILLAGE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, Islamorada, Village of Islands (the "Village") has established Land Development Regulations ("LDRs") to properly guide development and protect the health, safety, and welfare of the public; and

WHEREAS, The Village has recently become aware of some lot-line adjustments being recorded with the property appraiser's office which have not been approved by the Village; and

WHEREAS, the Village Council desires to amend existing provisions under Division 10, "Platting" of Article IV of the Village's LDRs relating to provisions generally governing platting approval; and

WHEREAS, specifically, the Village Council desires to amend Section 30-431, "Plat approval and recording required", of the Village Code to ensure that lot-line modifications are not recorded with the property appraiser until such modification has been approved by the Village; and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the Principles for Guiding Development within the Florida Keys Area of Critical State Concern; and

WHEREAS, the Village Council finds that the provisions of this Ordinance are intended to advance the public health, safety, and welfare of the citizens of the Village.

NOW THEREFORE, be it ordained by the Village Council of the Village of Islamorada, in the State of Florida, as follows:

SECTION 1: RECITALS. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2: AMENDMENT. "Sec 30-431 Plat Approval And

Recording Required" of the Islamorada Village Code is hereby *amended* as follows:

Additional text is shown as underlined;

deleted text is shown as ~~strikethrough~~

AMENDMENT

Sec 30-431 Plat Approval And Recording Required

- (a) Except as provided in subsections (b) and (c) of this section, plat approval shall be required for:
- (1) The division of land into three or more parcels; or
 - (2) The division of land into two or more parcels where the land involved in the division was previously divided without plat approval within the prior two years; or
 - (3) The division of land into two parcels where the disclosure statement required under subsection (f) of this section is not attached to the conveyance.
- (b) No building permit shall be issued for the construction of any building, structure or improvement unless a final plat has been approved in accordance with the provisions of this division and recorded for the lot on which the construction is proposed or unless the building, structure or improvement qualifies for an exemption pursuant to this division.
- (c) No plat approval is required if the subdivision involved consists only of:
- (1) A governmentally required dedication and the director of planning and development services finds that it is not necessary that a plat be recorded. In lieu of recording a plat, the dedication shall be required by deed and shall be subject to compliance with the submission of a grading, paving and drainage plan which will meet the requirements of this chapter and the posting of an improvement guarantee or bond as required under section 30-435 before the acceptance of the dedication by the village council.
 - (2) The proposed subdivision is for the purpose of conveying ownership of real property with a single-family unit in a townhouse-type development when such conveyance of real property is the space beneath the unit, plus an area surrounding the unit, which is no greater than the gross ground floor area of the unit. Prerequisites for exceptions to platting in this case are as follows:
 - a. The minimum overall development size shall be the same as

- required in the zoning district assigned to the property.
 - b. The average building length within the townhouse development shall not exceed 160 feet. However, no such building shall contain more than eight units.
 - c. The proposed subdivision is part of a development project for which the village has granted site plan approval, the proposed subdivision is less than five acres in size, and the lots or parcels from which the proposed subdivision is created have been specifically delineated in a recorded plat.
- (3) The combination of two or more previously platted lots to form a single unified building site. However, such combination must be accompanied by a unity of title, in a form approved by the village attorney and recorded in the public records of the clerk of the circuit court of the county.
 - (4) A subdivision of land legally recorded prior to September 15, 1986.
 - (5) A change in ownership which would result in the formation of a Condominium Association, pursuant to Florida Statute Chapter 718, however in such a case, review of the proposed condominium documents shall be required by the village at the sole cost of the applicant.
- (d) No plat of any subdivision shall be entitled to be recorded in the office of the clerk of the circuit court until it shall have been approved by the village council in the manner prescribed herein and certified by the village clerk.
 - (e) If a plat has been previously approved and recorded, technical or minor changes to the plat may be approved by the director of planning and development services. All other changes shall be considered in accordance with the provisions of this division.
 - (f) No division of land through a lot-line modification shall be recorded in the county property appraiser's office until after the village has approved the application.
- (g) The conveyance of land that involves the division of the land into two or more parcels may result in the creation of lots that do not meet the minimum building requirements of this chapter, and thus are not buildable lots. For example, the assignment of a tax parcel number by the county appraiser's office does not signify that a parcel is buildable under this chapter. Therefore, to ensure that the public is provided disclosure additional to that which is otherwise required by law of the possible creation of such unbuildable lots by conveyance of property without platting, whenever land is conveyed that involves the division of land into two or more parcels and where plat

approval is not obtained pursuant to this division, such conveyance shall include the following disclosure statement: "The parcel of land described in this instrument is located in incorporated Islamorada, Village of Islands. The use of the parcel of land is subject to and restricted by the goals, policies and objectives of the Islamorada, Village of Islands, Comprehensive Plan and Development Regulations adopted as a part of, and in conjunction with and as a means of implementing the Islamorada, Village of Islands Comprehensive Plan. The land development regulations provide that no building permit shall be issued for any development of any kind unless the proposed development complies with each and every requirement of the regulations, including minimum area requirements for residential development. You are hereby notified that under the Islamorada, Village of Islands land development regulations, the division of land into parcels of land that are not approved as platted lots under the regulations confers no right to develop a parcel of land for any purpose."

SECTION 3: REPEALER CLAUSE. The provisions of the Village of Islamorada Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4: SEVERABILITY CLAUSE. The provisions of this Ordinance are declared to be severable and if any sentence, section, clause or phrase of this Ordinance shall for any reason be held to invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses, or phrases of the Ordinance but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5: INCLUSION IN THE CODE. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Village of Islamorada Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

SECTION 6: TRANSMITTAL. The Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Commerce (the "DOC") for approval pursuant to section 380.05, Florida Statutes.

SECTION 7: EFFECTIVE DATE. This Ordinance shall not be effective immediately upon adoption. The Amendment shall not take effect until the date a final order is issued by the DOC. The DOC notice of intent to find this Ordinance in

compliance shall be deemed to be the final order if no timely petition challenging this Ordinance is filed.

The foregoing Ordinance was offered by Councilmember _____, who moved for its adoption on first reading. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III ___
Vice Mayor Sharon Mahoney ___
Councilman Mark Gregg ___
Councilwoman Elizabeth Jolin ___
Councilman Henry Rosenthal

PASSED on the first reading this ____ day of _____, 2023.

[Remainder of this page intentionally left blank]

The foregoing Ordinance was offered by Councilmember _____, who moved for its adoption on second reading. This motion was seconded by Councilmember, _____ and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III ___
Vice Mayor Sharon Mahoney ___
Councilman Mark Gregg ___
Councilwoman Elizabeth Jolin ___
Councilman Henry Rosenthal

PASSED AND ADOPTED on the second reading this ____ day of _____, 2024.

JOSEPH B. PINDER III, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

JOHN J. QUICK, VILLAGE ATTORNEY



Council Communication

To: Mayor and Village Council
From: John Quick, Interim Village Attorney
Date: January 11, 2024
SUBJECT: **Ordinance Amending Administrative Procedures Zoning in Progress - Second Reading TAB C**

Background:

During past Village Council meetings questions were raised about the possibility of enacting zoning in progress ("ZIP") for certain items. This item would address ZIP for future items.

This Code amendment was recommended for approval by the Local Planning Agency at their November 13, 2023 meeting.

This passed on First Reading at the Council's Meeting on December 14, 2023.

Analysis:

The proposed code change would automatically institute ZIP after any amendment to Chapter 30 or a rezoning of a parcel of land has been approved on first reading by the Village Council.

Under the proposed change, ZIP would be in place for a period of six months from the date of the approval on first reading by the Village Council. This period may be extended one time for an additional three months by resolution of the Village Council.

Budget Impact:

N/A

Staff Impact:

N/A

Recommendation:

Staff recommends approval of the Code amendment at the first reading.

Attachments: 1. Ordinance re zoning in progress provision

**VILLAGE OF ISLAMORADA
ORDINANCE 23-16**

**AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA,
AMENDING CHAPTER 30 "LAND DEVELOPMENT REGULATIONS", ARTICLE
IV "ADMINISTRATIVE PROCEDURES", DIVISION 2 "DEVELOPMENT REVIEW
PROCESS", SECTION 30-212 OF THE VILLAGE CODE TO CREATE A ZONING
IN PROGRESS PROVISION; PROVIDING FOR SEVERABILITY; PROVIDING FOR
INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, Islamorada, Village of Islands (the "Village") has established Land Development Regulations ("LDRs") to properly guide development and protect the health, safety, and welfare of the public; and

WHEREAS, the Village Council desires to amend existing provisions under Division 2, "Development Review Process" of Article IV of the Village's LDRs relating to provisions generally governing the development process; and

WHEREAS, specifically, the Village Council desires to amend Section 30-212, "Generally", of the Village Code to automatically implement zoning in progress upon the approval of a rezoning or amendment to Chapter 30 on first reading; and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the Principles for Guiding Development within the Florida Keys Area of Critical State Concern; and

WHEREAS, the Village Council finds that the provisions of this Ordinance are intended to advance the public health, safety, and welfare of the citizens of the Village.

NOW THEREFORE, be it ordained by the Village Council of the Village of Islamorada, in the State of Florida, as follows:

SECTION 1: **RECITALS.** The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2: **AMENDMENT TO THE CODE.** "Sec 30-212 Generally" of the Islamorada Village Code is hereby *amended* as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as strikethrough
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AMENDMENT

Sec 30-212 Generally

- (a) *Development permits required.* No development shall take place within the jurisdiction of the village except after issuance of all development permits required under any applicable section of this chapter, the Code or village ordinance, and other governmental agencies having jurisdiction to regulate the development of land within the village's jurisdiction.
- (b) *Development by governmental agencies.* Prior to undertaking development, any governmental agency shall apply for the appropriate permit under the applicable sections of this chapter, the Code or village ordinance. If any governmental agency seeking to undertake development has been specifically exempted by federal or state law from compliance with this chapter, the Code or village ordinance, the agency shall file with the village manager and director of planning and development services evidence of such exemption. In the absence of such an exemption, governmental agencies shall apply for permits in the same manner as other persons.
- (c) *Technical codes.* The building, plumbing, electrical and other technical codes adopted by the village are expressly recognized as essential to the implementation of the village comprehensive plan and this chapter.
- (d) *Application for development.*
 - (1) Every application for a development permit shall be in a form specified by the planning and development services department for reviewing the application, and shall be accompanied by a fee as is established from time to time by the village council to defray the actual cost of processing the application. After an application is submitted, the director of planning and development services shall determine if the application is complete and includes data necessary to evaluate the application. The village shall be entitled to rely upon the statements or representations made by the applicant on a development permit application. If it is determined that the application is incomplete, or based upon incomplete or inaccurate information or misstatements of fact, notice shall be delivered to the applicant specifying the deficiencies. The director shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within 20 working days, the application shall be considered withdrawn. If or when the application is determined complete, it shall be reviewed in accordance with the applicable provisions of this chapter. Notwithstanding anything in this chapter to the contrary, on a case-by-case basis, the director may make a written determination to waive some or all of the required submittals of a

development permit application. Annually, the director shall promulgate a calendar, as may be amended, showing application dates and deadlines consistent with the specifications of this chapter. This calendar shall govern all dates and the development review process.

- (2) All applications shall include proof of ownership and, if applicable, consent to be represented by an agent. All owners and any person having a contractual interest in the land shall give their permission for application. Unless otherwise specified in each section describing particular development review procedures, applications for development permits require a concurrency certification by the planning and development services department prior to being placed on the agenda for a public hearing or meeting or proceeding to the subsequent step in the development review process. Unless requested by the village, applications shall not be significantly altered after certifications. In no case shall any changes be made to a development application or development plans within ten working days of any required public hearing on the application, without a continuance of the hearing.
- (3) The director shall be entitled to a continuance, and an applicant shall be entitled to a continuance or withdrawal of an application for development permit if the request is made no later than five working days before final action on the application by the decision-making body or person. Requests for a continuance or withdrawal received later than five working days before the date the decision is to be made, or the public hearing is to take place, shall be granted only by the decision-making body or person with or without prejudice. Applicants in this case shall not be entitled to the return of application fees.
- (4) Whenever any application for a development permit is withdrawn or denied with prejudice, an application for development permit for all or part of the same land shall not be considered for a period of one year after the date of denial, unless the subsequent application involves a development proposal that is materially different from the prior proposal, or unless the person or a majority of the members of the decision-making body that made the final decision on the application determines that the prior denial was based on a material mistake of fact. For the purpose of this subsection, an application for development permit shall be considered materially different if it involves a change in use, or a change in intensity or density of use of 25 percent or more. The body or person charged with conducting the initial development application review or public hearing under such

successive application shall resolve any questions concerning the similarity of a second application.

- (5) To the extent practical, applications for development permits may be consolidated for review pursuant to an agreement between the applicant and the director as part of the pre-application conference. When applications for development permits are consolidated pursuant to this subsection, the time for review shall be no less than those established for the application for development permit with the longest review period.
- (6) The director and village council may impose such conditions on the granting of a development permit that are necessary to accomplish the purposes of the comprehensive plan and this chapter. Conditions shall be included if conventional standards are inadequate to protect the public interest and surrounding land uses or if additional improvements are needed to facilitate a more appropriate transition between different uses. Conditions are not intended to restate express provisions of this chapter. Such conditions may include the execution of unity of title and the location of uses on the site to minimize adverse off-site impacts and ensure on-site safety. Further, conditions may be imposed to provide road construction required for the project to meet village concurrency requirements and that allow the applicant to proceed to the subsequent stage of development review. Site-related conditions such as drainage improvements, turn lanes and signalization may be imposed. Conditions shall be reasonable, not be contrary to law and shall be limited to on-site impacts, except for off-site public road improvements or other conveyances reasonably related and proportionate to the project's impact. Conditions shall not amend village council imposed conditions or affect previously approved conditions. For modifications or additions to previously approved site plans, conditions shall only be imposed to address the specific impacts of the new use or development. Fixed times may be set for compliance with conditions and shall be governed by section 30-224.
- (7) Any application for development permit may be suspended during the pendency of a code enforcement proceeding or for any code violation involving all or a portion of the land proposed for development. Development permit applications for properties that have outstanding code violations, liens or fines owed to the village shall be restricted as follows:
 - a. The village shall not approve a final site plan or building permit until the code violation is remedied and payment of outstanding liens or fines is made to the village.
 - b. The village may approve a conditional use application;

however, it shall not do so unless, as a condition of approval, the code violation is remedied and the applicant agrees to the payment of all outstanding liens or fines by a date certain or prior to a specific event.

- c. In the event litigation contesting the code violation or the validity of the lien or fine is initiated before the application for the development permit, the time for compliance or payment shall be established only after the conclusion of litigation.
- (e) *Violation of permit condition or time limitation.* A violation of any condition or time limitation of any development permit shall be considered a violation of the Code. The violation shall be corrected prior to any public hearing or meeting on the issuance of any subsequent development permit for that project, unless a subsequent permit application seeks to amend the condition or time limitation that has been violated. Unless otherwise specified in the development permit, an approved use must comply with conditions and time limitations before implementing the approval, or before receipt of a certificate of occupancy or certificate of completion. The violation shall be subject to all enforcement procedures available as provided in the Code and by all applicable laws and ordinances.
- (f) *Fraud or omission in permit application.* If there is evidence that an application for development permit was considered wherein there was misrepresentation, fraud, deceit, or a deliberate error or omission, the village may initiate a rehearing to reconsider the development permit. The village may re-approve, approve with new conditions, deny, or take such other action on the development permit at the rehearing based on the standards in this chapter. If evidence of misrepresentation is discovered during the application review and approval process, the application shall be deemed incomplete and returned to the applicant.
- (g) *Development permits that are never implemented.* All development permits that are never implemented shall be either:
 - (1) Rescinded simultaneously with issuance of a subsequent development permit;
 - (2) Revoked after a public hearing; or
 - (3) Rescinded upon the expiration of the permit as set forth in table 30-225.

(h) Zoning in progress, hold on permits or certificate of uses. When an amendment to Chapter 30 or a rezoning of a parcel of land has been approved on first reading by the village council, no development application pending before the village with respect to the area or text which is the subject of the proposed amendment shall be approved unless the development application would be in conformity with both the existing legislation and the proposed legislation for a period of six months from the date of the approval on first reading by the village council. This period may be extended on time for an additional three months by resolution of the village council.

SECTION 3: REPEALER CLAUSE The Provisions of the Village of Islamorada Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 4: SEVERABILITY CLAUSE The provisions of this Ordinance are declared to be severable and if any sentence, section, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 5: INCLUSION IN THE CODE. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Village of Islamorada Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

SECTION 6: TRANSMITTAL. The Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Commerce (the "DOC") for approval pursuant to section 380.05, Florida Statutes.

SECTION 7: EFFECTIVE DATE This Ordinance shall not be effective immediately upon adoption. The Amendment shall not take effect until the date a final order is issued by the DOC. The DOC notice of intent to find this Ordinance in compliance shall be deemed to be the final order if no timely petition challenging this Ordinance is filed.

The foregoing Ordinance was offered by Councilmember _____, who moved for its adoption on first reading. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III
Vice Mayor Sharon Mahoney
Councilman Mark Gregg
Councilwoman Elizabeth Jolin
Councilman Henry Rosenthal

PASSED on the first reading this _day of _____, 2023.

The foregoing Ordinance was offered by Councilmember _____, who moved for its adoption on second reading. This motion was seconded by Councilmember _____, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III
Vice Mayor Sharon Mahoney
Councilman Mark Gregg
Councilwoman Elizabeth Jolin
Councilman Henry Rosenthal

PASSED AND ADOPTED on the second reading this _day of _____, 2024.

JOSEPH B. PINDER III, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

JOHN J. QUICK, VILLAGE ATTORNEY



Council Communication

To: Mayor and Village Council
From: Jennifer DeBoisbriand , Planning Director, Rebecca Jetton, Village Consultant
Date: January 11, 2024
SUBJECT: **Ordinance Amending Policy 1-3.1.1, Establish a Building Permit Allocation System - Second Reading TAB D**

Background:

This proposed plan amendment contemplates allocating up to 7,170 Square Feet of Non-residential Square Footage annually. Effective July 1, 2023, Florida House Bill 102 reinstated 300 Workforce Affordable dwelling unit allocations to the Village. Non-residential allocations are based upon the number of dwelling units allocated. Utilizing the formula of 239 square feet per unit, the Village is eligible for 71,700 square feet over the planned horizon of 2033. Unused nonresidential allocations will be available the following year. The City of Marathon, with a comparable population, allocates 25,000 square feet annually for non-residential development.

The non-residential square footage is based upon the allocation of the 300 Workforce-affordable units over a ten-year period. Should the Village transfer Workforce-affordable housing units across jurisdictional lines, the Village will be required to decrease the non-residential square footage in a comprehensive plan amendment. The following text has been added to Policy 1-3.1.1: “ In the event Workforce- Affordable units are transferred across jurisdictional lines, the transfer shall not become effective until the Village executes an interlocal agreement with the receiving local government and adopts a comprehensive plan amendment reducing the non-residential allocation by 239 square feet for each Workforce-affordable unit transferred across jurisdictional lines”.

Analysis:

Implementation of chapter 380.032 Agreement for 10.25 Market Rate Allocations

Village staff conducted an audit of allocations and located a resolution awarding the Village 10.25 market rate allocations which were never implemented through a comprehensive plan amendment. Each plan amendment since the adoption of the resolution was reviewed on the DEO website to ensure the units had not been recognized through a plan amendment. This proposed amendment recognizes the Chapter 380.032, Florida Statutes agreement executed in 2017 with the Department of Economic Opportunity, and the local governments of the Florida Keys. The allocations were awarded to the Village based upon the Hurricane Evacuation Memorandum of Understanding which provided for a transfer of unused allocations from Key West to the other local governments within the Keys for the period 2013-2017. A copy of Chapter 380.032. Florida Statutes agreement follows the data and analysis.

Approval of this amendment will enable the Council to award the top ranked 10 allocations under the Building Permit Allocation System once the amendment is adopted by the village and approved by the State Land Planning Agency. Based upon Council direction, the allocations will be awarded as follows to the top ranked applications:

2024 5 Market rate allocations with land dedication
2 Market rate allocations without land dedications
2025 2 Market rate allocations without land dedication
2026 1 Market rate allocations without land dedication

300 Workforce (Early out) Allocations

This amendment establishes an annual allocation of 30 deed restricted Workforce-affordable Housing allocations per year for ten years with the ability for the Council to approve a larger project or reserve an allocation during an advertised public hearing.

The Workforce-affordable units must be constructed as duplexes, triplexes, or larger multifamily rental units. Occupants must meet HUD income standards and must agree in a written lease to evacuate 48 hours prior to anticipated landfall of a category 5 hurricane. The units must have centralized management trained in hurricane evacuation procedures and the leases must disclose to the applicant that failure to evacuate during phase one when tourists are required to evacuate can result in termination of the lease. There are exemptions for first responders, correction officers, healthcare professionals, or other first response workers required to remain during an emergency, provided that the person claiming exemption under this policy has certified their status with property management.

The 300 Workforce-affordable units were approved in a Village comprehensive plan several years ago and challenged by local neighborhood organizations. Effective July 1, 2023, House Bill 102 enacted by the Florida legislature re-instated the 300 Workforce allocations

Budget Impact:

No additional budget impacts are anticipated with this amendment.

Staff Impact:

No additional staff time is anticipated to process the allocations. The Workforce-affordable allocations will replace market rate allocations and utilize the adopted building permit allocation system with certain locational criteria which does not allow location in a Tropical Hardwood Hammock, Mangroves, Saltmarsh and Buttonwood habitat.

Recommendation:

Staff respectfully recommends approval of the proposed Comprehensive Plan amendment.

Attachments:

1. ORDINANCE Comp Plan 300
2. Data and Analysis Dec 2023
3. 17-10-90_380 Agreement_for Distribution of BPAS Units from KW_A
4. 2022 Vacant Land Maps

ORDINANCE XX XX

AN ORDINANCE OF ISLAMORADA, FLORIDA, AMENDING POLICY 1-3.1.1: ESTABLISH A BUILDING PERMIT ALLOCATION SYSTEM; POLICY 3.2.11: DISTRIBUTION OF WORKFORCE-AFFORDABLE HOUSING ALLOCATION AND POLICY 3.2.1.2 SPECIFIC STANDARDS AND REQUIREMENTS FOR WORKFORCE-AFFORDABLE HOUSING, PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE DEPARTMENT OF FLORIDACOMMERCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE DEPARTMENT OF FLORIDACOMMERCE.

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, Islamorada, Village of Islands, Florida (the "Village") proposes to amend (the "Amendment") the Village Comprehensive Plan (the "Comprehensive Plan"); and

WHEREAS the Village's Comprehensive Plan became effective December 6, 2001; and

WHEREAS, Section 163.3191, Florida Statutes, directs local governments to periodically assess the status of the adopted comprehensive plan in adequately addressing changing conditions; and

WHEREAS, The Village has a need for additional market rate units to address pending applications for residential development.

WHEREAS, The Village has a need for additional Non-residential building allocations to implement Conditional

Use applications which have been approved by Council.

WHEREAS, The Village has access to 10.25 building permit allocations resulting from a 380.032 Florida statutes Agreement which must be documented within a comprehensive plan amendment.

WHEREAS, The Village has 300 Workforce=affordable Housing Units which need additional specificity regarding the distribution and requirements for award.

WHEREAS, the Village has conducted duly noticed public hearings for the Comprehensive Plan Amendment pursuant to Section 163.3184(11), Florida Statutes; and

WHEREAS, pursuant to Section 163.3174, Florida Statutes and Sections 30-101 of

the Village Code, the Local Planning Agency publicly considered this Ordinance during a duly noticed public

hearing; and

WHEREAS, the provisions of this Ordinance are consistent with the Village Comprehensive Plan and the principles for guiding development in the Florida Keys Area of Critical State Concern; and

WHEREAS, this Ordinance is enacted to implement the purpose and intent of, and exercise the authority set out in, the Community Planning Act; and

WHEREAS, the Village Council finds that the adoption of this Ordinance is in the best interest of the Village and

does comply with all applicable laws, as well as promotes the general health, safety, and welfare of the Village residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2 Transmittal. Pursuant to Sections 163.3184, Florida Statutes, the Village Clerk is authorized to forward a copy of this Comprehensive Plan Amendment to the State Department of FloridaCommerce.

GOALS, OBJECTIVES AND POLICIES

2033 PLAN

Future Land Use Element

(existing) Policy 1-3.1.1: Establish a Building Permit Allocation System (BPAS). The Village's Building Permit Allocation System shall award all building permits for new residential and non-residential construction unless otherwise exempted by ordinance or by provisions within this Plan. The annual allocation shall be approved if hurricane evacuation clearance time does not exceed 24 hours. The Village shall cease issuing permits under the annual allocation once the hurricane evacuation clearance time provided Monroe County, Key West and Marathon also cease issuing permits, except that the Village may voluntarily do so.

RESIDENTIAL AND NON-RESIDENTIAL SCHEDULE

	RESIDENTIAL DWELLING UNITS			NONRESIDENTIAL FLOOR AREA
YEAR	Maximum Market Rate	Early — Out Affordable Housing	Affordable	Square Feet
	22	300 Any number authorized in public hearing up to 300 units	8	2,500
		30 per year with borrow		
Annual Allocation	10 within first year of approval after adoption by DEO, then 0	forward approved by Council	3 within first year of approval after DEO adoption, then 0	7,170 Square Feet Annually through 2033

source: Planning and Development Services Department, Rule 28-19.300 FAC

(existing) Policy 1-3.1.1

RESIDENTIAL AND NON-RESIDENTIAL SCHEDULE

Market rate allocations available from Interlocal agreement: 10.25 dwelling units

Distribution schedule:

2024 5 Market rate allocations with land dedication

2 Market rate allocations without land dedications

2025 2 Market rate allocations without land dedication

2026 1 Market rate allocations without land dedication

Nonresidential building Permit Allocation:

71,700 square feet over the planned horizon of 2033.

2024-2033: 7,170 square Feet per year

Residential Building Permit Allocation System. The indicated allocations are the maximum ~~annual~~ allocations that shall be awarded by Islamorada, Village of Islands through the Building Permit Allocation System (BPAAS). Unused market rate allocations shall be available for Administrative Relief. Unused Workforce-affordable housing allocations shall be rolled over into the following year's Workforce-affordable housing allocation. Excluding those awarded through the beneficial use or administrative relief processes, no more than one development permit per Program Year may be allocated in a manner which would result in the clearing of high-quality hammock.

Pursuant to Rule 28-19 F.A.C., the Village shall allocate residential and non- residential allocations in a manner consistent with the requirement to maintain a 24-hour permanent population evacuation. Islamorada, Village of Islands reserves the right to accept its equitable share of the Keys-wide allocation to distribute consistent with the goals, objectives, and policies of this Plan. Detailed allocation procedures for distributing available awards shall be adopted through Land Development Regulations, including point criteria consistent with the goals, objectives, and policies of the revised Comprehensive Plan through 2033, the planning horizon. Any building allocation remaining from the original 380 awarded in 2013 will be distributed based upon current land development regulations. Should the Council determine that the quarterly allocations should be reduced per quarter, this will be adopted through a land development regulation approved by the State Land Planning Agency, Department of Florida ~~Commerce~~ Economic Opportunity.

Non-Residential Building Permit Allocation System.

Development Regulations shall include procedures for the distribution of the available non- residential floor area shown in the schedule. All applications for the issuance of non-residential square footage must demonstrate the ability to bring the site into compliance with all applicable Land Development Regulations, including environmental standards, to be further considered. In the event Workforce-

Affordable units are transferred across jurisdictional lines, the transfer shall not become effective until the Village executes an interlocal agreement with the receiving local government and adopts a comprehensive plan amendment reducing the non-Residential allocation by 239 square feet for each Workforce-Affordable unit transferred across jurisdictional lines. Thereafter, applications shall be evaluated and ranked based on project merit, including consideration of the following:

- A. Focus on redevelopment versus new development.
- B. The development potential of the site.
- C. Focus Provision of amenities associated with the proposed development.
- D. Provision of affordable housing in conjunction with the proposed project; and
- E. Policy 2-1.2.8: Address Long Term Strategies to Reduce Clearance Time.
 - 1. The Village shall address long term strategies to reduce clearance time and coordinate permit allocations by implementing the following program in coordination with FL Department of Transportation (FDOT), Department of FloridaCommerce Economic Opportunity and other local governments in the Keys and the Tourist Development Council to achieve consensus on long term strategies to further reduce clearance time and accommodate proposed allocations Keys-wide through the Year 2033 and revise any short term interagency/interlocal agreements to provide a schedule for implementing strategies, specify responsibilities for implementing the strategy, including shared funding, and determine the share of allocation available for each jurisdiction based on the ability to maintain clearance time at or below 24 hours. In any Keys-wide reduction in allocation, the Village asserts that the Administrative Commission should and will request it to consider and prorate any voluntary reduction in allocation adopted by the Village; and
 - 2. Amend data and analysis and plan to incorporate strategy; revise capital improvements schedule to incorporate necessary transportation projects adopted for Islamorada; and amend permit allocation system based on adopted strategy and ability to maintain clearance time at or below 24 hours.

Policy 3-2.1.1: Distribution of Workforce Affordable Housing Allocation

Workforce-Affordable housing allocations ~~shall~~ may be reserved and distributed at any time through adequate public notice and hearing procedures as set forth in Chapter 30 of the Village's land Development Regulations. ~~and in accordance with the~~ Notwithstanding the ability to reserve units through the Council, the Village shall allocate 30 Workforce-Affordable allocations per year and in accordance with the Building Permit Allocation System (BPAS) ranking procedures established in Chapter 30, Article 4, Division 11 "Building Permit Allocation System)".

3-2.1.2 – Specific Standards and Requirements for Workforce -Affordable Housing

Workforce housing units built under this program shall:

- a) Be duplex, triplex, or multifamily structures.
- b) Be rental units.
- c) Require, at minimum, adherence to the latest edition of the Florida Building Code as published by the Florida Building Commission.
- d) Not to be placed in v zones or within Coastal Barrier Resource Systems.

- e) Require onsite property management.
- f) Comply with applicable habitat and other locational criteria and densities for multifamily affordable housing units.
- g) Shall not be placed in habitat defined as Mangroves, saltmarsh and buttonwood, tropical hardwood hammock or freshwater wetlands (except for disturbed categories).
- h) Incorporate sustainable and resilient design principles into the overall site design.
- i) Ensure accessibility to employment centers and amenities.)
- j) Requires a minimum of two dwelling unit allocations per site.
- k) Require deed restrictions ensuring that:
 - i. The property remains workforce-affordable housing in perpetuity.
 - ii. Tenants evacuate during the period in which transient units are required to evacuate.
 - ii. Rental agreements contain a separate disclosure requiring renters to acknowledge that failure to adhere to the evacuation requirement could result in severe penalties, including eviction, to the resident.
 - iv. On-site property managers are formally trained in evacuation procedures.

2. Evacuation exemptions

Persons living in workforce-affordable housing who are exempt from evacuation requirements of the comprehensive plan policy 2-1.2.9 includes all first responders, correction officers, healthcare professionals, or other first response workers required to remain during an emergency, provided that the person claiming exemption under this policy has faithfully certified their status with property management.

Section 3. Severability. The provisions of this Ordinance are declared to be.

severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Effective Date. This Ordinance shall not become effective until a Notice of Intent has been issued by the Department of Commerce finding the Comprehensive Plan Amendment to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Comprehensive Plan Amendment shall not become effective until the Department of commerce enters a final order determining the adopted Comprehensive Plan Amendments to be in compliance.

Approved

The foregoing Ordinance was offered by Council _____ who moved for approval to adopt at second reading. The motion was seconded by Council _____ and upon being put to a vote, the vote was as follows:

Mayor Joseph Pinder: _____
Vice Mayor Sharon Mahoney: _____
Council Mark Gregg: _____
Council Elizabeth Jolin: _____
Council Henry Rosenthal: _____

DATA AND ANALYSIS

Status of Current Building Permit Allocation System

During the early years of the Area of Critical State Concern designation, it was determined that non-residential growth had exceeded that needed for non-residential development in the Florida Keys, and for several years, there was a commercial moratorium. Once the building permit allocation system was established, non-residential development was set at "239 square feet" per residential allocation. Over time, the Village decreased the non-residential allocation as follows:

Non-Residential Allocation History:

<u>Plan Amendments</u>	<u>Non-residential Square Feet</u>
Incorporation to 2003	1,334 Sq. Ft per year
2004:	1,434 Sq. Ft per year
2008 to 2011	6,692 Sq. Ft per year
2012: Recaptured: 600 16,486	16,486 Sq Ft. per year
2013 to 2015	15,000 Sq. Ft per year
2016 to 2023	2,500 Sq. Ft per year
<u>2023 to 2030</u>	<u>7,170 Sq. Ft per year</u>

Building Permit Allocations available after June 30, 2023:

Market Rate Allocations available:	0
Market Rate eligible for Administrative Relief	1
Affordable Building Permit Allocations available:	3
Non-Residential Square Feet available:	28,720 Sq. Ft.
Non-Residential conditional use approvals pending allocation	30,000 Sq. Ft.

While the Market- rate Building Permit Allocation System is paused to complete hurricane and traffic studies, it is important to maintain a vibrant economy with the ability to allocate Non-Residential Allocations. Effective July 1, 2023, House Bill 102 will take effect reinstating 300 Affordable allocations to the Village.

Utilizing the formula of "239 square feet" per unit, the Village is eligible and is **applying for 71,700 square feet over the planning horizon of 2033**. The City of Marathon, with a comparable population, allocates 25,000 square feet annually for non-residential development. This proposed amendment requests an annual allocation of 7,170 square feet per year with a roll-over of any unassigned allocation to the non-residential pool. There is sufficient vacant land to accommodate the non-residential development within the land use districts allowing non-residential development. Almost half of the requested

allocation has already been identified in previously approved conditional uses. The allocations would be directed to land use districts already approved in the Future Land Use Map as areas which do not contain sensitive environmental habitat. A vacant land map is attached to demonstrate there is sufficient land to accommodate the square footage.

Implementation of chapter 380.032 Agreement for Market Rate Allocation

This proposed amendment additionally recognizes 10.25 market rate allocations received through a Chapter 380.032 FI Statutes agreement executed in 2017 with the State Planning Agency, Department of Economic Opportunity, and the local governments of the Florida Keys. The allocations were awarded based upon the Hurricane Evacuation Memorandum of Understanding which provided for a transfer of unused allocations from Key West to the other local governments within the Keys for the period 2013-2017. The 10.25 residential allocations were accepted by the Village Council but have never been amended into the Comprehensive plan. A copy of the 380.032 agreement follows the data and analysis. The 10.25 allocations will be placed in the upcoming annual residential building permit allocation pool.

Workforce Early out Allocations Annual Allocation

300 workforce housing units (required to evacuate 48 hours prior to mandatory evacuation) were approved in a prior comprehensive plan amendment which did not become effective until July 1, 2023. The amendment did not establish an annual allocation, but instead allowed the allocation of any number of Workforce Units up to 300 units cumulatively, provided they were.

approved by the Village Council in a public hearing. This amendment only addresses the annual allocation, the ability to construct duplex and triplex units, a requirement for two units per site since the earlier amendment has already been approved by DEO. No data is provided for the impacts of the 300 units in this amendment. Concurrency will be evaluated as the site plans are approved.

Impact on Public Facilities for 10 units and 71,700 square feet of non-residential square footage

Population

Florida is the third most populous state (approximately 22 million, behind California and Texas. Between April 1, 2020, and July 1, 2021, the Census Bureau estimated that Florida added 242,941 residents. In the first year of the pandemic, Florida increased its population by 360,758 residents. Florida is forecast to grow by over 5.6 million people between 2010 and 2030 to reach 26 million. Source: University of Florida, Bureau of Business and Economic Research.

Florida Keys

Monroe County is estimated to have a current population of 83,411. The Village has an estimated population of 7,107 currently. The Bureau of Business and Economic Research does not routinely project city populations and they are currently not contracting to

complete projections. The following is a history of growth in the Keys.

Year	County	Village	Percent
1970	52,586	1,251	.0237
1980	63,188	1,441	.0228
1990	78,024	1220	.0156-
2000	79,589	6,898	.0866
2010	73,090	6,119	.0837
2020	82,874	7,109	.0857

Islamorada, Village of Islands, with a population of 7,107 (2020 U.S. Census), represents approximately 8.5% of the total population for Monroe County. Monroe County completed a population projection report on March 15, 2011, covering the period 2010-2030. It is estimated that in 2030 there will be a permanent population of 75,500, seasonal population of 86,855 and a total functional population of 162,355 residents.

Based upon the data from Monroe County, a reasonable estimate for the Village may be garnered. Extrapolating the Village's 8.5% of the overall county population, results in a total estimated population in 2030 of 6,417 permanent residents, 7,382 seasonal residents, and a total functional population of 13,800

Wastewater: The Level of Service Standard is 70 gallons per capita per day or 371.17 gpd per equivalent dwelling unit. Based on 10.25 Market Rate Units, the sewer and water demand will increase by 3,710 gallons per day for residential and by 25,095 gallons per day for the 71,700 square feet at build out. Sewer is connected to the Key Largo Plant providing advanced wastewater treatment. The plant has a capacity of 3 million gallons per day with a current demand of 2 million gallons per day.

Solid Waste: The Village has adopted a level of service standard for solid waste that estimates 12.2 pounds minimum disposal per day per equivalent residential unit. The Village has set a solid waste level of service standard which requires that *"sufficient capacity must be available at a solid waste disposal site to accommodate existing and approved development for a period of three years from the projected date of completion of the proposed development or use."* All solid waste generated from the Village is managed through a contract and transported outside the Keys in coordination with Monroe County and Miami-Dade County Solid Waste Facilities. The increase for residential

development is 122 pounds per day and 10.44 pounds for non-residential.

Comprehensive Plan Policies 4-1.1.43

Stormwater: The Village has adopted a level of service standard that requires that post development runoff shall not exceed the pre-development runoff rate for a 25- year storm event, up to and including an event with a 24- hour duration. Comprehensive Plan Policy 4-1.1.2

Recreation and Open Space: The Village has adopted a minimum LOS standard for recreation and open space of 3.79 acres per 1,000 population. The existing supply of recreation and open space area in the Village is 132.3 acres, which exceeds the adopted LOS standard and provides for 11.73 acres per 1,000 persons. Comprehensive Plan Policy 9-1.2.3

Schools: The Comprehensive Plan does not establish a LOS standard for schools, but Monroe County and state law require that school classroom capacity be available to accommodate all school-age children generated by proposed development or use. According to the most recent Monroe County Public Facilities Capacity Assessment Report, the overall utilization is approximately 77.58% of the school capacity through 2025 (Monroe County Biennial Public Facilities Capacity Assessment Report (Anticipated adoption date September 2021))

Roadways: The Village in coordination with the other local governments within the FI Keys has adopted the following: The level of service on U.S. 1 shall be maintained within 5% of LOS C as measured on an overall countywide basis not dependent on any single road segment, using the measured median travel speed from the annual report of public facilities capacity. For all other roadways for which the Village is responsible, the Village hereby adopts a minimum LOS standard of D as measured by peak hour traffic volumes at all intersections, including but not limited to all intersections of U.S. Highway One. Segments with reserve speeds of less than or equal to 3 mph should be given particular attention when approving development applications. The overall traffic capacity of US Highway One is 45.5 miles per hour. Should the overall US Highway One average speed drop below a Level of Service C (45 miles per hour), mitigation will be required for development other than single family dwelling units. Comprehensive Plan Policy 9-1.2.3.

The 2021 US Highway One Travel Delay Study provides the following current levels of service:

Lower Matecumbe	Mile marker 73-77	LoS C	149 reserve trips.
Tea Table	Mile marker 77.5 -79.5	LoS A	2,222 reserve trips
U. Matecumbe	Mile marker 79,5 -84	LoS E	(3,531) reserve trips- Deficit
Windley Key	Mile marker 84-86	LoS D	(378) reserve trips- Deficit
Plantation Key	Mile marker 86 -91.5	LoS C	1,921 reserve trips

Monroe County Board of County Commissioners made the decision not to accept the 2021 Travel Study and instead adopted the 2019 Travel Delay Study which had the following results:

Monroe County Board of County Commissioners made the decision not to accept the 2021 Travel Study and instead adopted the 2019 Travel Delay Study which had the following results:

Lower Matecumbe	Mile marker 73-77	LoS C
Tea Table	Mile marker 77.5 -79.5	LoS D
U. Matecumbe	Mile marker 79,5 -84	LoS E
Windley Key	Mile marker 84-86	LoS E
Plantation Key	Mile marker 86 -91.5	LoS D

Policies supporting the amendment:

Policy 1-2.1.9: Promote Low and Medium Intensity and Varied Commercial Designations. Islamorada, Village of Islands shall promote low and medium intensity professional and business offices, as well as general retail sales and services designed to meet the needs for goods and services of residents and Village visitors and shall limit the development of new high intensity uses. The Village shall not promote an increase in highway-oriented businesses that cater to a transient drive-through clientele.

GOAL 3-1: FACILITATE PROVISION OF QUALITY HOUSING. Islamorada, Village of Islands shall facilitate private sector provision of an adequate supply of quality housing that is responsive to the diverse housing needs of current and future residents.

OBJECTIVE 3-1.1: PROVIDE ADEQUATE AFFORDABLE HOUSING TO MEET CURRENT

AND FUTURE NEEDS. Islamorada, Village of Islands shall develop programs and strategies to achieve adequate, affordable and safe housing to meet current and future residents needs by implementing the following policies:

RESOLUTION 17-10-90

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA APPROVING AN AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, MONROE COUNTY, CITY OF KEY WEST, ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON AND THE CITY OF MARATHON, FOR THE TRANSFER AND DISTRIBUTION OF BPAS UNITS FROM THE CITY OF KEY WEST TO MONROE COUNTY AND THE TRANSFER AND DISTRIBUTION OF ROGO ALLOCATIONS FROM MONROE COUNTY TO ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON AND THE CITY OF MARATHON, PURSUANT TO SECTION 380.032(3), FLORIDA STATUTES; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT AND ANY OTHER REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, this agreement is entered into by and between the State of Florida's Department of Economic Opportunity (the "DEO"), Monroe County, the City of Key West, Islamorada, Village of Islands (the "Village"), the City of Layton and the City of Marathon (the "Local Governments") (all collectively known as the "Parties") for the purpose of Complying with Rules 28-18, 28-19, and 28-20, of the Florida Administrative Code, and as provided for in Section 380.032(3), Florida Statutes; and

WHEREAS, the Local Governments are designated as Areas of Critical State Concern (the Florida Keys ACSC and the City of Key West ACSC) pursuant to Sections 380.05 and 380.0552, Florida Statutes, and the Florida Administrative Code Chapter 28-36, hereinafter referred to as the "Keys ACSCs"; and

WHEREAS, the DEO is the state land planning agency having authority and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, the Environmental Land and Water Management Act (the “Act”), which includes provisions relating to areas of critical state concern; and

WHEREAS, the DEO is authorized by Section 380.032(3), Florida Statutes to contract with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, the City of Key West (“Key West”) adopted its Comprehensive Land Use Plan on March 5, 2013, which provides for the allocation of certain residential building rights known as Building Permit Allocation System units (“BPAS”), under which Key West awards 91 units on an annual basis over the current planning horizon consisting of the years 2013 through 2023 (the “Term”); and

WHEREAS, Key West has a certain number of unallocated BPAS units accumulated in years one (1) through four (4) of the Term which the City desires to allocate to an Affordable Housing/Workforce Housing project (“The Quarry”) located on Big Coppitt Key, which is beyond the jurisdictional boundary limits of Key West; and

WHEREAS, the development of affordable housing in the lower keys coupled with the distribution of ROGO units to the remaining municipalities will benefit all members of the ACSCs; and

WHEREAS, the Key West Comprehensive Land Use plan does not currently provide for an allocation beyond its jurisdictional boundary, nor provide for a distribution of its un-allocated units other than “Recovered Units” as defined in Section 108-997(e) of the Land Development Regulations of Key West; and

WHEREAS, Key West has approved a Comprehensive Land Use Plan Amendment which has been rendered to the DEO for review and comment pursuant to the State Coordinated Review Guidelines of Chapter 163, Florida Statutes, which would allow the transfer of 104 BPAS units to Monroe County for the Workforce Housing/Affordable Housing Project known as “The Quarry,” located on Big Coppitt Land Use Area 1 at approximate Mile Marker 9 (a copy of the proposed Comprehensive Land Use Plan Amendment is attached hereto and incorporated by reference, Attachment 1 to Exhibit “A”); and

WHEREAS, the Parties, have discussed the reallocation and a method of BPAS/ROGO re-distributions between Monroe County and the remaining municipalities located in the ACSCs in an effort to fulfill the Administration Commission’s actions, and have agreed to present this agreement to their respective Commission/Council for execution of this Agreement; and

WHEREAS, the Village Council of Islamorada, Village of Islands has determined that it in the best interest of the Village to approve the Agreement.

NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Chapter 380 Agreement. The Village Council hereby approves the Chapter 380 Agreement between the Parties, a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Village Manager and approved as to form and legality by the Village Attorney.

Section 3. Authorization of Village Officials. The Village Manager or his designee and the Village Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Execution of Documents. The Mayor is authorized to execute the Agreement.

Section 5. Effective Date. This resolution shall become effective immediately upon its adoption.

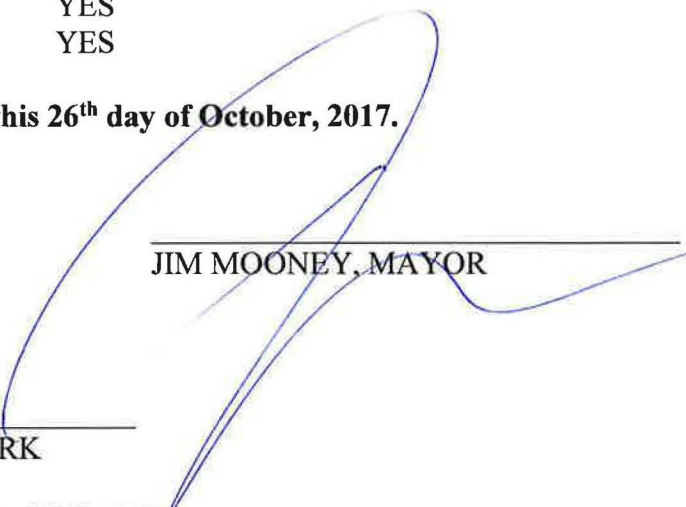
Motion to adopt by Councilwoman Deb Gillis, second by Councilwoman Cheryl Meads.

FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

Mayor Jim Mooney	YES
Vice Mayor Chris Sante	YES
Councilman Mike Forster	YES
Councilwoman Deb Gillis	YES
Councilwoman Cheryl Meads	YES

PASSED AND ADOPTED on this 26th day of October, 2017.

ATTEST:



JIM MOONEY, MAYOR



KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY



ROGET V. BRYAN, VILLAGE ATTORNEY

AGREEMENT

AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, THE COUNTY OF MONROE, CITY OF KEY WEST, ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON AND THE CITY OF MARATHON FOR THE TRANSFER AND DISTRIBUTION OF BPAS UNITS FROM THE CITY OF KEY WEST TO MONROE COUNTY AND THE TRANSFER AND DISTRIBUTION OF ROGO ALLOCATIONS FROM MONROE COUNTY TO ISLAMORADA, VILLAGE OF ISLANDS, CITY OF LAYTON AND THE CITY OF MARATHON, PURSUANT TO SECTION 380.032(3), FLORIDA STATUTES

THIS AGREEMENT is entered into by and between the State of Florida's Department of Economic Opportunity (the "DEO"), Monroe County, the City of Key West, Islamorada, Village of Islands, the City of Layton and the City of Marathon (the "Local Governments") (all collectively known as the "Parties") for the purpose of Complying with Rules 28-18, 28-19, and 28-20, of the Florida Administrative Code, and as provided for in Section 380.032(3), Florida Statutes.

RECITALS:

WHEREAS, the Local Governments are designated as Areas of Critical State Concern (the Florida Keys ACSC and the City of Key West ACSC) pursuant to Sections 380.05 and 380.0552, Florida Statutes, and the Florida Administrative Code Chapter 28-36, hereinafter referred to as the "Keys ACSCs", and

WHEREAS, the DEO is the state land planning agency having authority and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

WHEREAS, the DEO is authorized by Section 380.032(3), Florida Statutes to contract with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, the City of Key West ("Key West") adopted its Comprehensive Land Use Plan on March 5, 2013, which provides for the allocation of certain residential building rights known as Building Permit Allocation System units ("BPAS"), under which Key West awards 91 units on an annual basis over the current planning horizon consisting of the years 2013 through 2023, and

WHEREAS, Key West has a certain number of unallocated BPAS units accumulated in years one (1) through four (4) which the City desires to allocate to an Affordable Housing/Workforce Housing project (“The Quarry”) located on Big Coppitt Key, which is beyond the jurisdictional boundary limits of Key West, and

WHEREAS, the provision of affordable housing in the lower keys coupled with the distribution of ROGO units to the remaining municipalities will benefit all members of the ACSCs, and

WHEREAS, the Key West Comprehensive Land Use plan does not currently provide for an allocation beyond its jurisdictional boundary, nor provide for a distribution of its un-allocated units other than “Recovered Units” as defined in Section 108-997(e) of the Land Development Regulations of Key West, and

WHEREAS, Key West has approved a Comprehensive Land Use Plan Amendment which has been rendered to the DEO for review and comment pursuant to the State Coordinated Review Guidelines of Chapter 163, Florida Statutes, which would allow the transfer of 104 BPAS units to Monroe County for the Workforce Housing/Affordable Housing Project known as “The Quarry,” located on Big Coppitt Land Use Area 1 at approximate Mile Marker 9 (a copy of the proposed Comprehensive Land Use Plan Amendment is attached hereto and incorporated by reference, Attachment 1); and

WHEREAS, the Parties, have met to discuss the reallocation and a method of BPAS/ROGO re-distributions between Monroe County and the remaining municipalities located in the ACSCs in an effort to fulfill Administration Commission’s actions, and have agreed to present this agreement to their Commission/Council for execution of this Agreement.

NOW THEREFORE, the parties set forth the following terms and conditions of this Agreement.

1. In 2012, pursuant to Administration Commission action, 3550 building permit allocation units were awarded for a period of 10 years (355 per year) from the State to the local governments as follows:

Local Government (the Parties)	Annual Allocation
Monroe County	197 units
Marathon	30 units
Islamorada	28 units
Key Colony Beach	6 units
Layton	3 units
Key West	91 units

2. Upon the execution of this Agreement by all Parties, Key West shall approve and adopt the Comprehensive Land Use Plan of Key West amendment allowing the allocation of 104 previously unallocated BPAS units to Monroe County for the “The Quarry” project on Big Coppitt Key for the construction of workforce housing/affordable housing.

3. Upon effectiveness of the Comprehensive Land Use Plan of Key West and the execution of this Agreement by all Parties, the City of Key West shall transfer 104 previously unallocated BPAS units to Monroe County for "The Quarry" project on Big Coppitt Key for the construction of workforce housing/affordable housing.
4. Monroe County agrees to provide permanent ROGO units to the remaining municipalities, based upon their percentages of vacant land, as determined in the revocable 2012 Hurricane Evacuation Clearance Time Memorandum of Understanding, as follows:

Local Government (the Parties)	Number of ROGOs due to the Parties
Marathon	11.83 units
Islamorada	10.25 units
Layton	0.12 units
TOTAL	23.05 units

All ROGO units transferred pursuant to this section shall be restricted to non-transient use by the receiving municipality. The receiving municipality shall determine whether or not the units are to be issued for market rate or affordable housing.

5. Marathon, Islamorada and Layton shall determine if the ROGO units received shall be utilized as market rate dwelling units or affordable housing dwelling units and shall work with DEO to amend their comprehensive plan in order to utilize the transferred allocations.
6. In the event building permits are not issued for "the Quarry" project on or before June 30, 2019, the BPAS units awarded by Key West will remain with Monroe County as affordable ROGO units to be awarded by Monroe County for Affordable/Workforce Housing residential uses in Monroe County south of Mile Marker 26.
7. **Entirety of Agreement.** The parties agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing and duly signed by the DEO and the Parties (Local Governments).
8. **Duplicate Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.
9. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, DEO may enforce this Agreement pursuant to 380.11(2)(a) and (d), Florida Statutes, or as otherwise provided by law. In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the Local Governments may enforce this Agreement, as permitted by law, in the appropriate state court in and for Monroe County, Florida.

10. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the parties as provided herein. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in the issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as provided herein.
11. **Effective Date.** This Agreement is effective upon execution by all parties and ends upon the termination of the Keys ACSCs designation.
12. **Notification.** Notifications under this Agreement shall be made by hand delivery, U.S. certified mail, return receipt requested, or an express mail service that provides proof of delivery. Notification by a Party to the DEO shall be directed to the Areas of Critical State Concern Administrator, Department of Economic Opportunity, 107 East Madison Street, Tallahassee, FL 32399-4128. Notification to the other parties to this Agreement shall be directed as follows:
 1. **Monroe County.** Mayor, Monroe County,
2798 Overseas Highway, Marathon, FL 33050
with a copy to the Planning and Environmental Resources Director, 2798 Overseas Highway,
Marathon, FL 33050
 2. **City of Key West.** Mayor, City of Key West,
1300 White Street, PO Box 1409, Key West, FL 33041-1409,
with a copy to the Planning Director, 1300 White Street, PO Box 1409, Key West, FL 33041-1409
 3. **City of Marathon.** Mayor, City of Marathon,
9805 Overseas Highway, Marathon, FL 33050,
with a copy to the Planning Director, 9805 Overseas Highway, Marathon, FL 33050
 4. **City of Layton.** Mayor, City of Layton,
68260 Overseas Highway,
PO Box 778, Long Key, FL 33001-0141
 5. **Islamorada, City of Islands.** Mayor, Islamorada, Village of Islands,
86800 Overseas Highway, Islamorada, FL 33036,
with a copy to the Director of Planning and Development Services, 86800 Overseas Highway,
Islamorada, FL 33036

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

George Neugent
George Neugent, Mayor



September 27, 2017
Date

KEVIN MADOK, CLERK

Pamela Hancock
Pamela Hancock, for County Clerk
Deputy Clerk

Approved as to form and legal sufficiency:

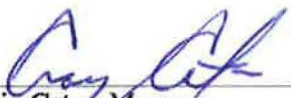
_____, for County Attorney

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
Steven T. Williams
STEVEN T. WILLIAMS
ASSISTANT COUNTY ATTORNEY
Date 10/2/17

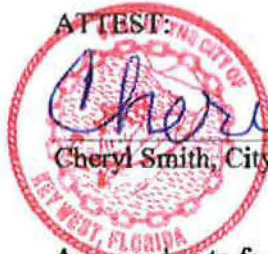
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

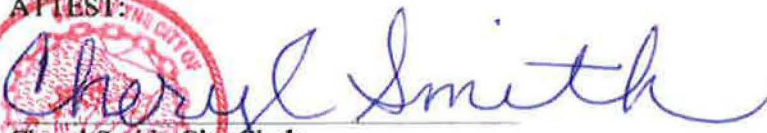
CITY OF KEY WEST, FLORIDA

October 18, 2017
Date

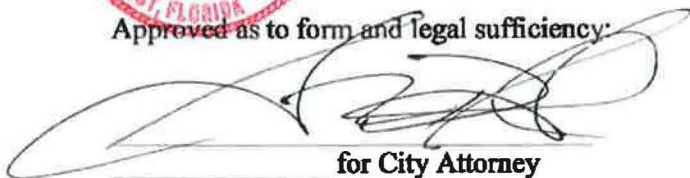

Craig Cates, Mayor

ATTEST:




Cheryl Smith, City Clerk

Approved as to form and legal sufficiency:


for City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

CITY OF MARATHON, FLORIDA

December 8, 2017
Date

Michelle Coldiron
Michelle Coldiron, Mayor

ATTEST:

Diane Clavier
Diane Clavier, City Clerk

Approved as to form and legal sufficiency:

David Mignot
David Mignot City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates
below written:

CITY OF DAYTON, FLORIDA

11-9-2017
Date


Norman S. Anderson, Mayor

ATTEST


Mimi M. Young, City Clerk

Approved as to form and legal sufficiency

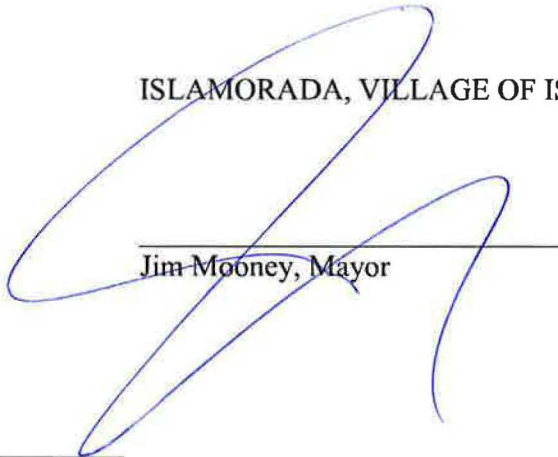

Dale S. Coburn for City Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

FLORIDA

ISLAMORADA, VILLAGE OF ISLANDS,

10/31/17
Date



Jim Mooney, Mayor

ATTEST:



Kelly Toth, Village Clerk

Approved as to form and legal sufficiency:

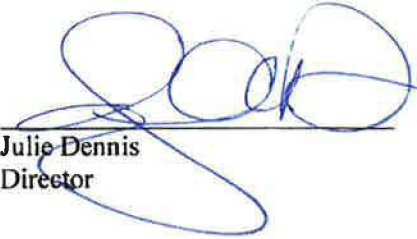


Roget V. Bryan, Village Attorney

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below written.

STATE OF FLORIDA, DEPARTMENT OF
ECONOMIC OPPORTUNITY,
DIVISION OF COMMUNITY DEVELOPMENT,

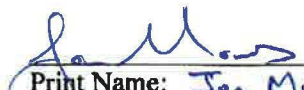
12/21/17
Date


Julie Dennis
Director

ATTEST:


Print Name: Miriam Shipas

Approved as to form and legal sufficiency:


Print Name: Jon Morris
Title: Assistant General Counsel
Date: 12/12/17

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 1 OF THE COMPREHENSIVE PLAN ENTITLED "FUTURE LAND USE ELEMENT" BY AMENDING POLICY 1-1.16.1, ENTITLED "MAINTAIN A BUILDING PERMIT ALLOCATION ORDINANCE," AMENDING POLICY 1-1.16.2, ENTITLED "BUILDING PERMIT ALLOCATION ORDINANCE AND AFFORDABLE HOUSING," AMENDING POLICY 1-1.16.3, ENTITLED "PERMIT ALLOCATION SYSTEM RATIO BY STRUCTURE TYPE," AND BY ADDING POLICY 1-1.16.5 ENTITLED "TRANSFER OF BUILDING PERMIT ALLOCATIONS;" BY AMENDING CHAPTER 2 ENTITLED "TRANSPORTATION ELEMENT," BY AMENDING POLICY 2.16.4 TO PROPERLY REFLECT AS POLICY 2-1.6.4, AND REVISING THE REFERENCE TO THE NUMBER OF ALLOCATED UNITS; AMENDING CHAPTER 3 OF THE COMPREHENSIVE PLAN ENTITLED "HOUSING," BY AMENDING POLICY 3-1.1.4, ENTITLED "BUILDING PERMIT ALLOCATION SYSTEM;" PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission has passed numerous resolutions aimed at increasing the availability of affordable and workforce housing in the City of Key West; and

WHEREAS, development of any housing is strictly controlled by the State of Florida, which has designated the City of Key West as a State Area of Critical Concern; and

WHEREAS, this state regulation has resulted in a specified number of new building permits that may be granted each year under what is known as the Building Permit Allocation System (BPAS); and

WHEREAS, based on recommendations by the Department of Economic Opportunity, changes to the City's Comprehensive Plan were requested; and

WHEREAS, the City Commission finds that it is in the best interest of the City that there exists a method to transfer Building Permit Allocations not utilized within the City to Lower Keys areas of Monroe County, for beneficial use purposes and/or affordable housing that will directly benefit the City of Key West as determined by the City Commission; and

WHEREAS, Chapter 1, entitled "Future Land Use Element" and Chapter 3, entitled "Housing" are to be amended through ordinance in response to the Department of Economic Opportunity; and

WHEREAS, the Planning Board ("Board") held a noticed public hearing on May 18, 2017, where based on the consideration of recommendations by the city planner, city attorney, building official and other information, the Board recommended approval of the proposed amendments set forth in Planning Board Resolution 2017-21; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA;

Section 1: That Chapter 1 of the Comprehensive Plan is hereby amended as follows*:

Policy 1-1.16.1: Maintain a Building Permit Allocation Ordinance.

The City of Key West shall maintain and enforce its building permit allocation ordinance as follows: Between 85 and 100 units will be reserved as beneficial use permits to address property rights associated with existing vacant lots of record. The 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. The annual allocation will not exceed be ninety-one units (91) single-family units or an equivalent combination of residential and transient types based on the equivalency factors established in Policy 1-1.16.3. The annual allocation limitation shall not apply to affordable housing allocations. 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

*(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.)

allocated shall be affordable. Between years four (4) and 10 (2016 - 2023), a minimum of 50% of the total allocations shall be affordable. ~~Between years four (4) and 10, 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient.~~ Between years four (4) and 10, no more than 10 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.

The annual building permit allocation period will begin on July 1 of each year and shall end on the 30th of June of the following year. ~~The Annual Building permit allocation period will begin on July 1 of each year. Applications will be accepted between July 1 and September 30. Applications will be reviewed and processed by City staff and the appropriate boards between October 1 and April 1. Applicants will be allowed to amend their application to address review comments during that timeframe. Final award will occur on or around July 1 or the year following receipt of the application.~~ Staff may consider the following criteria in ranking applications: 1) building one to two feet higher than the base flood elevation; 2) exceeding the minimum required percentage of affordable housing; 3) compliance with green building standards; 4) compliance with adopted urban design

standards, and; 5) a minimum contribution to a sustainability and open space recreation fund.

Building permits shall be obtained within two years of the development approval date. If a building permit is not obtained within that timeframe the allocated units will revert to the City for reallocation during the next allocation season. ~~If the recovered units are not allocated within one year they will revert to the County for beneficial use purposes and/or affordable housing.~~

Policy 1-1.16.2: Building Permit Allocation Ordinance and Affordable Housing.

The City permit allocation system shall require that sixty percent (60%) of all new permanent residential units be affordable units based on definitions and criteria contained in Policy 3-1.1.7 and 3-1.1.8 between July 1, 2013 and July 1, 2016, and that a minimum of fifty percent (50%) of the total allocations be affordable between July 1, 2016 and July 1, 2023.

Policy 1-1.16.3: Permit Allocation System Ratios by Structure Type.

The permit allocation system shall be sensitive to differing trip generating characteristics of permanent and transient residential units as well as single-family units, accessory

apartment units and multi-family residential units. ~~The annual allocation shall be ninety one units (91) single family units based on the Transportation Interface for Modeling Evacuations (TIME) Model.~~ The permit allocation system shall incorporate a series of equivalent single-family unit (ESFU) values in applying the ~~annual~~ permit allocation threshold established in the building permit allocation ordinance as hereinafter explained.

Table 1-1.16.3

Residential Structure Type	Equivalent Single-Family Unit Value (ESFU) ⁽¹⁾
Single Family	1.00 ^(a)
Accessory Apt./SRO	.78 ^(b)
Multi Family	1.00 ^(c)
Transient Unit	.86 ^(d)

(1) The equivalent single family unit values are predicated on the ratio of the average number of vehicles per unit based on the 2010 US 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 Apt. or Single Room Occupancy (SRO): $1.00/1.28 = .78$. The former Fl. Department of Community Affairs (now Department of Economic Opportunity) approved the

estimated average vehicles per accessory unit or single room occupancy (SRO) as one (1) vehicle per accessory unit or SRO.

(c) Multi-Family: $1.28/1.28 = 1.00$

(d) Transient Unit: $1.10/1.28 = .86$ (based on the Hurricane Evacuation Study 1.10 vehicles per transient unit in Monroe County)

* * * * *

Policy 1-1.16.5: Transfer of Building Permit Allocations

By resolution the City of Key West may transfer building permit allocations to areas beyond the City limits for the development of Affordable Workforce Housing in close proximity to the City of Key West such that the anticipated residents could reasonably be expected to contribute to the workforce of the City of Key West.

Upon adoption of this Comprehensive Plan Amendment the City of Key West shall transfer 104 previously unallocated units to the Affordable Housing Development described as "THE QUARRY" located in the Big Coppitt Mixed Use Area 1, at approximate mile marker 9, Monroe County Florida. This shall be done pursuant to an ~~Interlocal~~ Agreement between the City of Key West, The Department of Economic Opportunity, ~~and~~ Monroe County and appropriate local governments with the concurrence of Quarry Partners LLC, the owner of the property. The Agreement shall be prepared pursuant to Section 380 Florida Statutes. ~~shall require, and~~ Quarry Partners LLC shall

provide, recorded Declarations of Affordable Housing Restrictions for these units acceptable to the City of Key West and Monroe County prior to the issuance of certificates of occupancy by Monroe County. In the event building permits to construct "The Quarry" affordable housing project are not issued on or before June 30, 2019 these units shall be released to Monroe County and shall only be re-allocated for Affordable Housing purposes south of Mile Marker 26 on U.S. 1.

The units transferred under this policy shall be considered as contributing to the 50% minimum affordable housing allocation of Policy 1-1.16.1.

Section 2: That Chapter 2 of the Comprehensive Plan is hereby amended as follows

* * * * *

Policy ~~2-16.4~~ 2-1.6.4 Transportation Concurrency Exception Area.

~~As a result of the State mandated hurricane evacuation modeling workshops and amendments to the Comprehensive Plan, the City will be allocated 91 new PBAS units annually starting in 2013.~~

Between years 2013 and 2023 The City of Key West shall allocate a total of 910 BPAS units. Due to the City's exception from transportation concurrency, the development or redevelopment

of these units shall not be subject to roadway concurrency requirements.

* * * * *

Section 3: That Chapter 3 of the Comprehensive Plan is hereby amended as follows:

* * * * *

Policy 3-1.1.4: Building Permit Allocation System.

The City of Key West shall ~~annually~~ allocate ~~91 building permits per year between 2013 and 2023,~~ for a total of 910 permits between years 2013 and 2023. 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 10 (2016 - 2023), a minimum of 50% of the total allocations shall be affordable. ~~Between years four (4) and 10, 80 percent of remaining (non-affordability restricted) units shall be permanent, and 20 percent may be transient.~~ Between years four (4) and ten (10), no more than 10 percent may be transient. During Year One (1) (July 2013 - 2014), 48 of the affordable units to be allocated will be in the transfer of Peary Court from military to private sector housing, which leaves 43 units to be allocated from the first allocation pool.

* * * * *

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 Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2017.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2017.

Authenticated by the presiding officer and Clerk of the
Commission on _____ day of _____, 2017.

Filed with the Clerk _____, 2017.

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

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

VACANT LAND MAPS

2022 GIS Layer









Council Communication

To: Mayor and Village Council
From: Jennifer DeBoisbriand , Planning Director
Date: January 11, 2024
SUBJECT: **Administrative Relief - 122 Iroquois St TAB E**

Background:

Chris Trentine (the “Applicant”) has applied for Administrative Relief (the “Application”) pursuant to Section 30-477 of the Code of Ordinances (the “Code”) of Islamorada, Village of Islands, Florida (the “Village”). Village Code Section 30-477 requires that a public hearing be held, during which the Village Council of Islamorada, Village of Islands (the “Village Council”) shall consider all evidence presented regarding the Application, and shall follow the procedures, standards and criteria found within Code Sections 30-552 and 30-553, “Beneficial Use.” The burden of proof shall be on the Applicant.

The subject property (the “Property”) is located at 122 Iroquois St and legally described in Exhibit “A” of the proposed Resolution (Attachment A). The Application was entered into the Building Permit Allocation System (the “BPAS”) on April 11, 2019. The Application has been considered in four (4) consecutive annual allocation periods and has failed to receive an allocation award. At the close of Quarter 2 of 2023 the Application was ranked 15 with seventeen (17) points. Pursuant to the requirements set forth in Code Section 30-477(a), the Applicant was eligible to apply for Administrative Relief between 12:01 PM on June 30, 2023, and 12:00 PM on October 28, 2023. The Applicant submitted the Application for Administrative Relief on August 24, 2023.

This item was before the Council on November 9, 2023. The Council directed the Village Attorney to meet with the applicant to discuss purchase of the property or other options. Staff will present the discussions with Mr. Trentine for further review.

Analysis:

Pursuant to Code Section 30-553, when considering an application for relief, the Village Council shall consider the following factors, in addition to those guidelines within the comprehensive plan.

(1) Whether the comprehensive plan or land development regulations in effect at the time of the filing of the beneficial use application are rationally related to a legitimate government interest.

The Comprehensive Plan of Islamorada, Village of Islands (the “Village”) dictates through Comprehensive Plan Policy 1-2.3.3 Residential Medium (RM) that:

“Policy 1-2.3.3: Residential Medium (RM). This designation is intended to provide stable,

single-family neighborhoods and allow for uses which further the peaceful enjoyment and high-quality residential character valued by Village residents. Areas designated Residential Medium (RM) on the Future Land Use Map shall include one (1) single family unit on one lot of record, and duplexes. Duplexes shall only be permitted in Zoning Districts where legally permitted duplexes currently exist. Notwithstanding the density limitations, duplexes, triplexes and fourplexes shall be permitted on RM lots fronting U.S. 1, pursuant to the Building Permit Allocation System, if approved as affordable housing. The RM Future Land Use Map designation shall allow home occupations. Supportive community facilities ancillary to the residential uses may be located within areas designated RM. The Land Development Regulations shall provide regulatory procedures for considering the above-noted uses.”

Code Section 30-684 “Residential Single-Family (R1) Zoning District” dictates that the Land Development Regulations (LDRs) affecting the property, including the purpose and intent of the R1 Zoning District: “...is to accommodate homes, homeowners' parks, and open space in single-family residential neighborhoods located in subdivisions and on streets where the primary land use is single-family residential.”

The Applicant has not asserted that either the Comprehensive Plan or Land Development Regulations in effect at this time are not rationally related to a legitimate government interest. Both the Comprehensive Plan and Land Development Regulations in effect are rationally related to a number of legitimate government interests, as outlined in the Village’s Comprehensive Plan and Principles for Guiding Development within the Florida Keys Area of Critical State Concern [F.S. 380.0552(7)]. The State Land Planning Agency (the Florida Department of Economic Opportunity (“DEO”)) has confirmed this through the approval of the Village’s Comprehensive Plan and Land Development Regulations.

(2) Whether the comprehensive plan or land development regulations in effect at the time of the filing of the beneficial use application deny all reasonable economic use of the parcel of real property.

At the time of the filing, the Application currently had a score of seventeen (17) points. Staff estimates that if the Application were to remain in the BPAS, the Applicant may never receive an allocation based on the number of available allocations remaining within the Village.

(3) Relevant parcel.

a. Platted lots: If an applicant owns more than one platted lot, a question may exist as to whether more than one of the applicant's platted lots should be considered together as one parcel for the beneficial use determination. In determining the relevant parcel, the Village Council should focus on "the parcel as a whole" and not on particular segments or portions of the parcel. The village council shall consider three factors to determine whether individual platted lots should be combined and considered as one parcel for the purpose of the beneficial use determination:

1. The "physical contiguity" of the lots;
2. The "unity of ownership" of the lots (i.e., does the applicant own all of the lots in question);
3. The "unity of use" between the lots, i.e., platted urban lots should generally be considered as separate uses, but can be combined for purposes of a beneficial use determination if the lots are part of a larger property, based on an analysis of the following factors, which must be applied to the particular facts and circumstances on a case-by-case basis:

- i. Was it the intent of the landowner to use the lots for a single use?
- ii. What is the suitability of the lots for a single or separate use versus a combined use?
- iii. Are the lots dependent on each other for the ability to have a single use?
- iv. Is there a reasonable economic use of the lots if unified?
- v. What is the current zoning of each lot?
- vi. What is the physical size and appearance of the lots and how are adjacent properties used or developed?
- vii. What is the actual current use of the lots?
- viii. What is the possibility of the lots being used together in the next ten years?

Factor 3a. is not applicable to the Property.

b. The village council shall not consider anything less than a platted lot to be the parcel of real property.

The Property is a platted lot which meets density for the Residential Single Family (R1/R1M) Zoning District.

(4) Once the relevant parcel is determined, the village council must analyze the following factors for that parcel:

a. The economic impact of the regulation on the parcel; and

Due to the scoring and ranking system implemented in the BPAS, the Code has effectively rendered the construction of a single-family home on the Property not possible for the previous four (4) years.

b. The extent to which the regulation has interfered with the applicant's investment-backed expectations for the parcel, including any relevant factors such as:

1. The history of the parcel (i.e., When was it purchased? How much land was purchased? Where was the parcel located? What was the nature of title? What was the natural character of the land and how was it initially used?);

The property was purchased for \$430,000 via Warranty Deed on June 1, 2018 and is currently undeveloped. The Property is 5,500 square feet and has a habitat classification of "Hammock".

2. The history of the development of the parcel (i.e., What was built on the parcel and by whom? How was it subdivided and to whom, when and at what price was it sold? What plats were applied for or approved? What infrastructure is in place?);

The Property is in a legally platted subdivision recorded in Plat Book 3, Page 178 in January of 1957. The Property remains undeveloped and infrastructure is available to serve the Property; both electricity and potable water are available.

3. The history of zoning and regulation (i.e., How, and when was the parcel classified? How was the use proscribed? What changes in classifications occurred?);

Between 1963 and 1973, the Property was zoned BU-1 (Neighborhood Retail Business). Between 1973 and 1986, the Property was zoned BU-1 (Light Business). After the effective date of the 1986 Monroe County Comprehensive Plan, the Property was zoned "Improved Subdivision" (IS) which established areas of low to medium density residential uses

characterized principally by single-family detached dwellings.; the referenced zoning district permitted detached residential dwellings, along with accessory structures. Since 2002, the Property has been zoned Residential Single Family (R1), which permits the development of one (1) single-family dwelling unit.

4. How development changed when title was passed;

The Property has remained undeveloped since the Applicant purchased it.

5. What is the present nature and extent of the use of the parcel;

Presently, the Property is undeveloped and meets minimum lot size and density for the Residential Single Family (R1) zoning district in which it is located.

6. What were the reasonable expectations of the landowner under Florida common law;

The reasonable expectation of the landowner is based on the development of the land, as it was acquired, when it was acquired. The owner must show the elimination of all or substantially all economic use of the property. Whether an owner has been deprived of all or substantially all economic use of his property must be determined on an individual basis and includes consideration of factors which may include:

1. Whether there is a physical invasion of the property.
2. The degree to which there is a diminution in value of the property. Or stated another way, whether the regulation precludes all economically reasonable use of the property.
3. Whether the regulation confers a public benefit or prevents a public harm.
4. Whether the regulation promotes the health, safety, welfare, or morals of the public.
5. Whether the regulation is arbitrarily and capriciously applied.
6. The extent to which the regulation curtails investment-backed expectations.

There is no set value assigned to any individual factor. In the instant case, the Applicant originally purchased the Property, which has remained undeveloped. Under common law, evaluation of the factors should be made as they apply to the Property.

Here, there has been no physical invasion of the Property. The total value (per Monroe County Property Appraiser) of the Property is as follows:

Tax Year	Total Assessed Value (Before & After Date of Purchase)
2017 (Prior to Purchase)	\$46,736
2018 (Year Purchased)	\$46,736
2019 (After Purchase & Entered BPAS)	\$46,736
2020 (In BPAS)	\$100,554
2021 (In BPAS)	\$104,803
2022 (In BPAS)	\$147,290

The Comprehensive Plan regulations confer a public benefit by maintaining the character of the area and preserving the density of the area. The regulations promote the health, safety, and welfare of the public by providing stability and preserving the natural conditions found in these areas. The regulations have been uniformly applied and there has been no arbitrary or

capricious government action.

Given that the Property has been undeveloped since its purchase by the Applicant, there is nothing to indicate the owner had any investment-backed expectations when the Property was purchased other than the submission of an application into the BPAS.

7. What were the reasonable expectations of the neighboring landowners under Florida common law;

Neighboring landowners have the reasonable expectation that the land surrounding them will be developed in character with the existing development and land use and zoning regulations. The Property is currently undeveloped. It is reasonable to assume that the neighboring landowners could expect the development of a single-family dwelling unit but only after demonstration of compliance with the applicable regulations and the receipt of a required allocation through the BPAS.

8. What was the diminution in the investment-backed expectations of the landowner, if any, after passage of the regulation; and

The total assessed value of the Property in 2019 was \$46,736 and has increased in value steadily yearly and has a current assessed value of \$147,290.

The Village's BPAS regulations were in effect at the time the Applicant submitted the application into the BPAS and therefore do not result in a diminution in the investment-backed expectation of the Applicant. Furthermore, prior to the adoption of the BPAS regulation, the Property was within the jurisdictional boundaries of Monroe County and was subject to the County's Rate of Growth Ordinance (ROGO).

9. What was the appraised fair market value of the parcel immediately before and immediately after the effective date of the regulation?

The total assessed value of the Property in 1997 was \$11,000. In 2002, following the passage of the regulation, the Property value remained at \$11,000. The Property value has fluctuated up and down from 2003 through 2018. In 2022 the fair market value of the Property, according to the Monroe County Property Appraiser's Office, is \$147,290.

Additional Information provided by the Applicant:

- The Applicant has complied with all requirements of the Building Permit Allocation System (BPAS).
- The BPAS application has not been withdrawn at any time.
- The Applicant has not applied for a deferral.
- The Applicant, as stated, is seeking an allocation award.

Remedies offered under Code Section 30-477(f): At the conclusion of the public hearing, the Village Council may take any or a combination of the following actions:

- (1) Grant the applicant an allocation award for all or part of the allocation requested in the next succeeding allocation period or extended pro rata over several succeeding allocation periods.
- (2) Offer to purchase the property at its fair market value.
- (3) Suggest such other relief as may be necessary and appropriate.

The Village currently has twenty-three (23) allocations available for administrative relief.

Budget Impact:

The budget impact would be determined by the action of the Village Council.

Staff Impact:

The staff impact would be determined by the action of the Village Council.

Recommendation:

Attachments: 1. Attachment A

RESOLUTION NO. 23-

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, CONSIDERING THE REQUEST BY CHRIS TRENTINE FOR ADMINISTRATIVE RELIEF FROM THE VILLAGE BUILDING PERMIT ALLOCATION SYSTEM (BPAS) FOR PROPERTY LOCATED AT 122 IROQUOIS, PLANTATION KEY, AS LEGALLY DESCRIBED IN EXHIBIT "A"; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Chapter 30, Article IV, Division 11 "Building Permit Allocation System," Section 30-477 "Administrative Relief," of the Code of Ordinances (the "Code") of Islamorada, Village of Islands (the "Village"), Chris Trentine (the "Applicant") on behalf of CBT Construction and Development Inc (the "Property Owner") has applied to the Village Council of Islamorada, Village of Islands, Florida (the "Village Council") for administrative relief from the Village Building Permit Allocation System (the "BPAS") for property located at 122 Iroquois St, having parcel ID number 00421920-000000 located in the Indian Harbor subdivision on Plantation Key, as legally described in Exhibit "A", and

WHEREAS, on November 2, 2023, a duly noticed public hearing was held by the Village Council to consider the applications for administrative relief; and

WHEREAS, following the public hearing, upon review and examination of the record, the Village Council finds that pursuant to the requirements of the Village Code and existing case law, the Application demonstrates a beneficial use providing economic benefit to the Property Owner.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. **Findings.** The Village Council, having considered the testimony and evidence presented by all parties, including the Applicant, does hereby find and determine that:

- (1) The hearing was properly noticed, the Application and the supporting documents and

materials were properly before the Village Council for consideration, and all interested parties concerned in the matter were given the opportunity to be heard.

- (2) The Application, based on the evaluation meets the standards set forth in Sections 30-477 and 30-533 of the Village code to require remedial action to provide for administrative relief in the form of a building permit allocation.

Section 2. Conclusions of Law.

- (1) That granting of the Application is consistent with the Village Code and will not be detrimental to the community as a whole.
- (2) That in rendering its decision as reflected in this Resolution, the Village Council has:
 - a. Accorded procedural due process;
 - b. Observed the essential requirements of the law; and
 - c. Supported its decision by competent substantial evidence of record.
- (3) Approval of administrative relief is hereby granted.

Section 3. Effective Date. This Resolution shall not take effect until after both thirty (30) days following the date it is filed with the Village Clerk, during which time the Request herein shall be subject to appeal as provided in the Code; and following the thirty (30) days, this Resolution shall not be effective or acted upon by the Owner until forty-five (45) days following the rendition to the Florida Department of Economic Opportunity ("DEO"), pursuant to Chapter 73C-44.002 of the Florida Administrative Code. During those forty-five (45) days, the DEO may appeal this Ordinance to the Florida Land and Water Adjudicatory Commission, and that such an appeal stays the effectiveness of this Resolution until the appeal is resolved by agreement or order.

Motion to adopt by _____, seconded by _____.

FINAL VOTE AT ADOPTION

Mayor Joseph B. Pinder III _____

Vice Mayor Sharon Mahoney _____

Councilmember Mark Gregg _____

Councilmember Elizabeth Jolin _____

Councilmember Henry Rosenthal _____

PASSED AND ADOPTED THIS 2ND DAY OF NOVEMBER 2023.

JOSEPH B. PINDER III, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS:

JOHN QUICK, INTERIM VILLAGE ATTORNEY

This Resolution was filed in the Office of the Village Clerk of this ____ day of _____, 2023.

EXHIBIT "A"
(LEGAL DESCRIPTION)

Parcel ID: 00421920-000000

BLOCK 9 LOT 16 OF INDIAN HARBOR, PLAT BOOK 3, PAGE 178 OF THE PUBLIC RECORDS OF
MONROE COUNTY, FLORIDA.



Council Communication

To: Mayor and Village Council
From:
Date: January 11, 2024
SUBJECT: Discussion Regarding Village Council Reconsideration of an Ordinance
to Allow for Accessory Dwelling Units (ADUs) (Council Member
Gregg) TAB F

Background:

Analysis:

Budget Impact:

Staff Impact:

Recommendation:

Attachments: 1. ADU-Guidebook



Accessory Dwelling Unit **GUIDEBOOK**

SPONSORED BY:


Florida Housing
Finance Corporation
we make housing affordable

PRODUCED BY:





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Virtually every community in Florida is suffering from an affordable housing shortage. Of Florida’s three million low-income households, over 1.94 million, or 26% of all Florida households, are cost-burdened; they spend more than 30% of their income on housing. Another 1.1 million households, or 15% of all Florida households, are severely cost burdened, spending more than 50% of their income on housing. Low-income renters are hit the hardest by the lack of affordable housing. A staggering three-quarters of these households are cost-burdened.¹ When households spend this much of their income on housing, they have little left for life’s other necessities. They are typically unable to withstand a rent increase and may be one missed paycheck away from homelessness.

¹ Florida Housing Coalition, Home Matters for Florida Report 9 (2018).



Intended Audience

As communities and local governments consider meeting the demand for affordable housing by tapping into the vast single-family housing stock to create accessory dwelling units (ADUs), this document will be a reference guide. Elected and appointed officials, government employees and affordable housing advocates will quickly understand the pros and cons of allowing and encouraging ADUs. They will be able to sort through the potential regulatory changes and incentives to be implemented.

Local Government Planning Staff	AHAC Members	SHIP Administrators	Local Government Administrators and Elected Officials	Developers and Builders	Affordable Housing Stakeholders
------------------------------------	-----------------	---------------------	---	----------------------------	---------------------------------------



Introduction

Every county and entitlement community in Florida receives SHIP funds. Most of those communities are required to have an Affordable Housing Advisory Committee (AHAC) to make recommendations for regulatory reform at least once every three years. The Florida Housing Coalition provides training and technical assistance to counties and municipalities to help with the implementation of regulatory reform and land use planning tools to produce and preserve affordable housing.

Florida Housing Coalition also developed a guidebook, *Affordable Housing Incentive Strategies: A Guidebook for Affordable Housing Advisory Committee Members and Local Government Staff*, that provides information for each of the 11 affordable housing incentives that AHACs must consider. Permitting accessory residential units in residentially zoned areas has been on the list of statutorily enumerated items found in Section 420.9076 (4)(e), Florida Statutes, since the passage of the William E. Sadowski Act in 1992. And yet we find that, by and large, ADUs are not permitted in most residentially zoned areas. Encouragingly, what we have found, is that local government planners and affordable housing advocates would like to include ADUs in their affordable housing toolkit but could use more information about how to do it. This guidebook, produced by the Florida Housing Coalition, with funding from the Florida Housing Finance Corporation's Catalyst Program, provides local government planners and affordable housing advocates with the "How To".

Historically, ADUs were commonly used to mitigate the shortage of affordable housing, providing smaller rental dwelling units ancillary or secondary to the principal residence. In the 1950s and 1960s with the rise of suburbs catering to nuclear families, ADUs fell out of favor. However, changing demographic trends showing continuing increases in smaller households, one-person households, elderly households, and households with disabled members are creating a surging interest in ADUs.

ADUs can provide a stable affordable housing option for those in vulnerable housing situations. Persons living in ADUs benefit financially as the lower rents allow them an affordable option for decent, safe housing. Additionally, those renting out the ADUs also benefit financially from the rental income stream which often provides the additional income owners, particularly those on a fixed income, need to make ends meet.

This guidebook addresses the challenges and benefits a community might face as it considers allowing the implementation of ADUs; it presents a range of alternatives to consider and evaluate. There is a compilation of best practices and a model ordinance. A community considering implementation of regulations allowing ADUs can find suggestions for how to manage public participation. Additionally, there is a template local governments can use to help homeowners who want to create an ADU.

Section Overview

The remaining sections of the guidebook are described below.

I

What are ADUs? Florida Statutes (Section 163.31771(2)(a)) define ADUs as “an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or the same lot, as the primary dwelling unit.”

II

ADUs provide an affordable housing alternative by tapping into Florida’s large stock of single-family homes. Changing demographics make ADUs an attractive alternative to the elderly, persons with disabilities, families in transition, and to others needing safe, decent housing.

III

Most regulatory barriers to ADUs deal with local land use regulation. This section explores those barriers and provides practical solutions to get beyond them.

IV

Local governments have the tools to fund and incentivize ADU development. Waiving impact fees and providing financial assistance can be the key to establishing ADUs.

V

The increasing number of short-term vacation rentals through Airbnb and similar platforms can increase community concerns about the viability of long-term ADU rentals. While ADUs can be used as short-term rentals, through deed restrictions, local governments can require ADUs to be used as long-term rentals if the unit benefits from impact fee modifications or other financial assistance.

VI

Proposals to allow ADUs in single-family residential zoning districts may bring out neighborhood opposition. Local governments can ease community concerns through educational campaigns and by addressing legitimate objections.

VII

ADUs and Tiny Homes are alternative housing solutions. ADUs are always accessory to the primary unit. Tiny Homes can stand alone. As a result, different regulations apply.

VIII

This section provides a best practices chart for a successful ADU program.

IX

Local land use regulations must be devised to allow ADUs to flourish broadly as a smart growth tool. With the right local ADU ordinance, ADU construction may increase to the community's benefit. This section provides a Model Ordinance to encourage and facilitate ADU growth.

X

Several local governments in Florida have model ordinances for ADU development. This section highlights several local ordinances with an analysis of each.

XI

ADU development is of great interest to local governments, policymakers, and think-tanks across the country. Other works have been written highlighting best practices and describing the benefits of ADUs.

A

Allowing ADUs is only half the equation; this appendix provides a template for local governments to design an ADU Manual for homeowners. With this tool, local governments can help homeowners navigate the development, design, and operation of an ADU rental.



I. What are ADUs?

Accessory dwelling units (ADUs) are additional living quarters typically on single-family lots that are independent of the primary dwelling unit. An ADU can be an apartment within a primary residence or it can be an attached or freestanding home on the same lot as the primary residence.¹

Accessory dwelling units are commonly referred to as granny or mother-in law flats and are also sometimes referred to as accessory apartments, garage apartments, carriage houses, and backyard cottages. ADUs were a common feature of early 20th century development in America but their use dwindled with the onset of the single-family suburb. ADUs were rarely included as an eligible use in municipal codes regulating land use, zoning, and general land development standards.

Florida is one of only a few states to pass legislation that incentivizes local governments to create ADU permitting ordinances.² In 2004, the Florida Legislature passed Section 163.31771 of the Florida Statutes to “promote the use of accessory dwelling units as a tool to help local communities address deficits in the supply of affordable rental housing for very-low-, low-, and moderate-income residents.”³ In enacting this statute, the Legislature found that the median price of homes in Florida had increased steadily over the last decade at a greater rate of increase than the median income in many urban areas.⁴ The Legislature also found that the cost of rental housing had increased steadily to the point that there was a “critical shortage of affordable rentals in many urban areas in the state.”⁵ While the statute does not require local governments to adopt ADU ordinances, it does promote ADUs as a tool for affordable housing development for very-low, low, and moderate-income persons.

HIGHLIGHTS

Florida Statutes (Section 163.31771(2) (a)) define ADUs as “an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or the same lot, as the primary dwelling unit.”

In this section, you’ll learn about:

- Characteristics of ADUs
- ADU Regulations

1 Jaimie Ross, Accessory Dwelling Units: A Smart Growth Tool for Providing Affordable Housing, Housing News Network Journal Vol. 32, No. 2 (July 2016).

2 Sarah A. Gottlieb, Florida’s Accessory Dwelling Unit Laws: Mitigating Florida’s Housing Woes Through State-Encouraged Expansion of ADU Permitting, 46 Stetson L. Rev. 627, 630 (2017).

3 Fla. Department of Community Affairs, Accessory Dwelling Units: Report to the Florida Legislature 6 (2007).

4 Fla. Stat. § 163.31771(1) (2018).

5 Id.



Characteristics

ADUs are smaller in size than the primary residence and are generally located toward the rear of the parcel. Typically, the owner lives in the primary residence, but unless restricted by the local government, the owner may choose to live in the smaller unit and rent out the primary residence. The ADU is ancillary and accessory to the primary unit and is often similar in appearance to the primary. An ADU is typically for one or two persons but may house more depending on its size.

Under Section 163.31771(2)(a) of the Florida Statutes, ADUs are defined as “an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing either within the same structure, or on the same lot, as the primary dwelling unit.”⁶

⁶ Fla. Stat. § 163.31771(2)(a) (2018).

ADU Regulations

Regulation of ADUs is within the purview of zoning and land use planning. Local governments can allow ADUs while providing helpful regulations to ensure that ADUs enhance rather than detract from the character of a neighborhood. Some examples, described more in depth later, include the following:



Occupancy

An ADU is more useful to homeowners if occupancy is not restricted to family members or temporary, non-paying guests.



Construction

Allowing the construction of ADUs concurrently with new primary residences or as part of a subdivision or master planned community maximizes the efficient use of land without needing additional infrastructure.



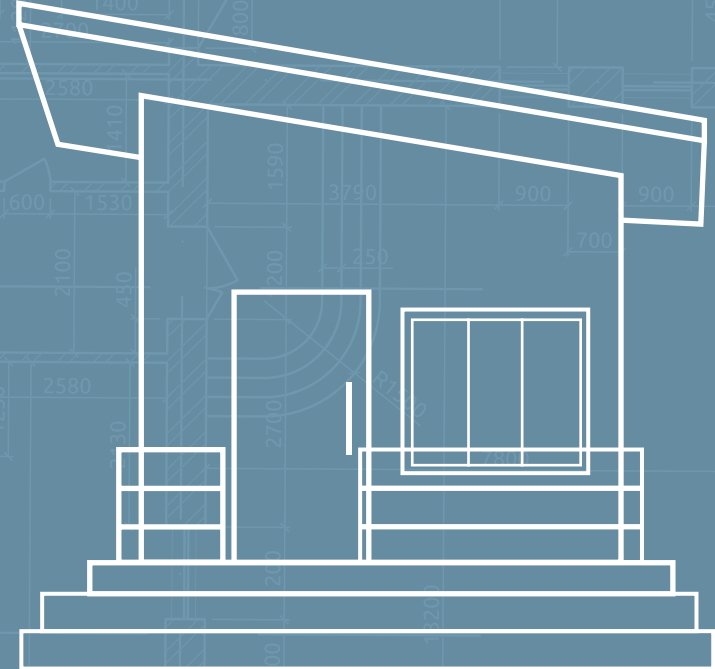
Parking Requirements

A successful ADU ordinance balances congestion concerns and the concern that parking may be too burdensome for a homeowner due to cost and lot configuration.



Size, Setback, Minimum Lot Size, and Other Structural Requirements

These regulations can bring desired community aesthetics while also allowing the greatest number of lots to contain lawfully permitted ADUs.





II. The Value of Accessory Dwelling Units

In a nation dominated by single-family units, many people struggle to find suitable living arrangements.⁷ As of 2015, 64% of occupied units in the state of Florida were single-family homes.⁸ ADUs capitalize on the prominence of the single-family home by allowing more residents to live on single-family lots at an affordable price. Additionally, the small size of the ADU reflects the changing demographics and needs of those looking for housing. The number of people per household in the United States continues to decrease.⁹ Between 1970 and 2012, the average number of people per household declined from 3.1 to 2.6. With smaller households, due to a variety of factors, smaller housing options are in higher demand. For those that are not looking for a large single-family home and yet want to live in a residential neighborhood, the ADU is a great option.

Accessory dwelling units are also beneficial for elderly and disabled populations that strive for continued independence. An elderly or disabled individual could remain in their home and use an ADU for their caregiver. ADUs can also provide for family flexibility. With an ADU, a young adult could continue to live with their parents, but in a separate unit, as he or she works towards economic independence. When developed close to employment centers, an ADU can reduce a person's reliance on transportation, providing additional benefits to society through environmental and energy cost savings. ADUs also promote mixed-income communities where lower-income households can find an affordable home in an area that may have greater employment and educational opportunities.

Affordability

Accessory dwelling units are a valuable affordable housing tool for low- and moderate-income individuals. Because they do not require additional land or major new infrastructure, ADUs are cheaper to build than the traditional single-family home. Further, the rental income from the ADU can subsidize the cost of the primary unit – making ADUs an affordable housing tool for both the renter and the homeowner. When both households are spending less of their income on housing, quality of life is improved, and more money is invested in the broader local economy.

HIGHLIGHTS

ADUs provide an affordable housing alternative by tapping into Florida's large stock of single-family homes. Changing demographics make ADUs an attractive alternative to the elderly, persons with disabilities, families in transition, and to others needing safe, decent housing.

In this section, you'll learn about:

- Affordability
- Care for the Elderly and Persons with Disabilities
- Family Flexibility
- Environment/Infill Development
- Integration of Income Levels
- Workforce Housing Development

⁷ See Gottlieb, *supra* note 2, at 628-29; U.S. Census Bureau, Historical Census of Housing Tables (2011), <https://www.census.gov/hhes/www/housing/census/historic/units.html>.

⁸ Shimberg Center for Housing Studies, Overview of Housing in Florida 4 (2015), <http://www.shimberg.ufl.edu/publications/tab2.pdf>.

⁹ U.S. Census Bureau, America's Families and Living Arrangements: 2012 (2013), <https://www.census.gov/prod/2013pubs/p20-570.pdf>.

Care for the Elderly and Persons with Disabilities

An ADU can be utilized so that an elderly or disabled individual who wishes to remain in their home can stay in their house and have their caregiver reside in the ADU, or vice versa. Elderly and disabled individuals often struggle to live comfortably due to the traditional ways in which communities are planned.¹⁰ For these folks, ADUs can provide an opportunity to live on the same lots as their parents or other caregivers.

ADUs can assist the elderly to “age in place.”¹¹ ADUs are particularly well suited for lower-income elderly persons because in addition to receiving a source of income they may not otherwise receive, the elderly homeowner may obtain companionship and needed services from the tenant in the ADU. As the state’s lower-income elderly population continues to increase, ADUs can be a vital tool for meeting the increased need for elderly care. Family members may also live in the ADU or primary unit to provide this care.

In 2000, AARP worked with the American Planning Association to develop a model state act and local ordinance as a resource for meeting the affordable needs of elder Americans. Both organizations have endorsed ADUs as a valuable tool for elderly Americans.¹²

Further, if an ADU is constructed for family members of at least 62 years of age, Section 193.703, Florida Statutes, provides that a county may provide for a reduction in the assessed value of homestead property after the new construction.¹³ This section of the Florida Statutes implements section 4(f) of Article VII of the Florida Constitution.¹⁴ This section was passed to encourage municipalities to provide tax incentives to homeowners who build living spaces for a parent or grandparent.¹⁵ Thus, the Florida Statutes encourages ADUs as a housing alternative for the elderly.

Family Flexibility

ADUs can also provide for family flexibility. If a young adult is not financially able to move out and wants to maintain a semblance of independence, he or she can live in an ADU on the same lot as their parents – coming and going as they please and entertaining their own guests, while remaining tightly bound to their family.¹⁶ Once the young adult moves out, the parents can then utilize the ADU as an affordable rental unit for other individuals. An ADU may also be used by older family members as a “granny flat.” In this arrangement, a family can care for their elderly parents or grandparents who are now in close proximity. ADUs allow for family flexibility in that multiple family members can live on the same lot in separate units. A family member living in an ADU also reduces the competition for the scarce inventory of affordable rental apartments in the community.

10 Gottlieb, *supra* note 2, at 627 (citing Robin Paul Malloy, *Land Use Law and Disability: Planning and Zoning for Accessible Communities* 3-5 (2015)).

11 AARP Livable Communities, *Making Big Sense of Small Homes* (Aug. 2015) <https://www.aarp.org/livable-communities/network-age-friendly-communities/info-2015/domain-3-accessory-dwelling-units-portland-oregon.html>.

12 AARP Livable Communities, *Creating Room for Accessory Dwelling Units* (Nov. 2017), <https://www.aarp.org/livable-communities/housing/info-2015/accessory-dwelling-units-model-ordinance.html>.

13 Fla. Stat. § 193.703 (2018).

14 *Id.*

15 Gottlieb, *supra* note 2, at 646.

16 Jonathan Coppage, *Accessory Dwelling Units: A Flexible Free-Market Housing Solution*, R Street Policy Study No. 89 (Mar. 2017), <http://www.rstreet.org/wp-content/uploads/2017/03/89.pdf>.

Environment/Infill Development

For many communities, undeveloped land close to the city center is hard to come by. ADUs are a smart growth tool because they are typically infill units built where there is existing infrastructure, making greater use of the already developed land. When ADUs are built near employment centers, more people will have the opportunity to live closer to where they work – reducing transportation costs and the associated environmental impacts.

Additionally, as ADUs are smaller than single-family or even some multi-family units, their overall impact on the environment is also lessened. It takes less building material to construct an ADU and costs less in utilities for daily operation.

Integration of Income Levels

As the former Florida Department of Community Affairs, now known as, Department of Economic Opportunity, noted in its 2007 report to the Florida Legislature, ADUs can be integrated into a community resulting in the development of “mixed-income neighborhoods rather than enclaves of affordable housing.”¹⁷ Integrating lower-income families within mixed-income areas can create positive benefits in terms of employment, mental health, and educational opportunities.¹⁸ With the creation of ADUs as infill development in single-family districts, lower-income households can enjoy a greater quality of life in areas of town which may have previously been closed off to them.

Workforce Housing Development

With ADUs, the lower paid workforce can live closer to their places of work. Rather than being forced to commute long distances for their jobs, people can live affordably within the community. Because ADUs do not require additional land, they can be incorporated into existing, built-out neighborhoods in parts of the community that are closer to employment centers. Proximity to employment can result in very substantial savings when it is possible for a two-person household to share one car and save the expense of owning a second car.

¹⁷ Fla. Department of Community Affairs, *supra* note 7, at 6.

¹⁸ Diane K. Levy et al., *Effects from Living in Mixed-Income Communities for Low-Income Families*, Urban Inst. (Nov. 2010), <https://www.urban.org/sites/default/files/publication/27116/412292-Effects-from-Living-in-Mixed-Income-Communities-for-Low-Income-Families.PDF>.

The Value of ADUs

ADUs provide an affordable housing alternative by tapping into Florida's large stock of single-family homes. Changing demographics make ADUs an attractive alternative to the elderly, persons with disabilities, families in transition, and to others needing safe, decent housing.



Affordability

Accessory dwelling units are a valuable affordable housing tool for low- and moderate-income individuals. Because they do not require additional land or major new infrastructure, ADUs are cheaper to build than the traditional single-family home. Further, the rental income from the ADU can subsidize the cost of the primary unit – making ADUs an affordable housing tool for both the renter and the homeowner. When both households are spending less of their income on housing, quality of life is improved, and more money is invested in the broader local economy.



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III. ADUs in Florida: Regulatory Barriers and Practical Solutions

This section describes some of the barriers to ADU development and offers solutions to overcome these barriers. Most of the barriers relate to local land development regulations. There may be aspects of a local government's land development regulations that are so restrictive that few permitted ADUs can be built.¹⁹

As of this writing, 16 of the 67 Florida counties did not address any accessory dwelling unit – a guest house, accessory apartment, ADU, cottage house, and other similar units – in their land development codes. For the remainder of counties that did address some type of ADU, most of them had onerous use restrictions. Of the counties that mentioned a type of ADU, at least 25 of them explicitly bar their use for long-term rental purposes or for use by persons that are not an immediate family member or worker. Only 20 counties speak of ADUs as a tool for long-term rental housing. Virtually all counties, except for a few, require the owner to occupy the principal dwelling if the ADU is used. One county requires lot sizes to be above 15,000 square feet before allowing an ADU. Further, at least 12 counties explicitly do not allow ADUs to be built in single-family zoning districts. Several jurisdictions allow ADUs only as a conditional use. These types of barriers have the effect of restricting the ADU as a tool for affordable housing development.

Florida cities tend to have more flexible ADU ordinances than counties. Of the 15 most populous cities in Florida, 11 of them explicitly allow ADUs in single-family districts (one of these cities only allows ADUs on a conditional use basis). Although Florida cities allow ADUs more broadly, issues exist regarding minimum lot size, ADU size, parking, owner-occupancy, and other standards. ADU regulations should be as flexible and open as possible to give landowners the freedom to utilize their property as a site for affordable housing development. If restrictions are too burdensome, landowners will be deterred from building ADUs to the community's detriment.

HIGHLIGHTS

Most regulatory barriers to ADUs deal with local land regulations. This section explores those barriers and provides practical solutions to get beyond them.

This section will discuss and offer recommendations for:

- Euclidean Zoning & the Single-Family District
- Owner-Occupancy Restrictions
- Long-Term Rental Use Restrictions
- As-of-Right versus Conditional Use
- Size, Density, & Other Structural Requirements
- Utility Hookup Requirements

¹⁹ Kol Peterson, Backdoor Revolution 135 (Accessory Dwelling Strategies, LLC 2018).

Regulatory Barriers

Barrier:

Euclidean Zoning: premise of separation of incompatible uses by zoning restriction

Solution:

F.S. 163.1777: ADUs are compatible with single family residential uses. Allow ADUs in all single-family districts.

Barrier:

ADUs permitted but overly restricted as to become impractical or impossible

Solution:

Reduce minimum lot size and amend setback and other structural requirements to allow the most possible lots to contain ADUs

Barrier:

ADUs not included as an allowable use in land development codes

Solution:

Incorporate ADUs into land use regulations by adoption of ADU specific ordinance

Barrier:

Requirement for property owner to occupy the principal residence

Solution:

Allow property owner to occupy the ADU by right

Barrier: Prohibition of ADU for long-term rental

Solution: Allow ADUs to be rented on the long-term market

Barrier: Excessive minimum lot size requirements

Solution: Lower minimum lot size requirements

Barrier:

Residential land uses are based on density (dwelling units/acre). When ADUs are counted as a dwelling unit the parcel might be over density and the ADU may be disallowed.

Solution:

Exempt ADUs from density calculations

Barrier:

Parking requirements that may render development impractical

Solution:

Require off-street parking only if on-street parking is not available within a certain number of feet from the parcel. If off-street parking is required, utilize stacked parking (one car in front of the other) or other design solutions to allow parking in areas other than designated driveways.

Barrier:

Prohibition of non-family members from occupancy

Solution:

Allow ADUs to be rented on the long-term market to any tenant

Barrier:

ADUs permitted only as conditional use

Solution:

Allow ADUs as a permitted use

Barrier:

New construction ADUs are assessed an impact fee comparable to a multi-family dwelling unit.

Solution:

Waive or modify impact fees for ADUs

Market Type Barriers

Barrier: Perception that ADUs decrease property values

Solution: Educate residents that ADUs do not decrease property values and may increase these values.

Barrier: Vacation Rental concerns

Solution: Enter into agreements with homeowners that receive governmental incentives to rent ADUs on the long-term market



Euclidean Zoning and the Single Family District

Certain zoning and land use regulations can be detrimental obstacles to ADU development. Traditional “Euclidean” zoning separates what are thought of as incompatible land uses from being on nearby or the same lots.²⁰ For example, a local government may not consider a smaller, second housing unit to be compatible with a traditional single-family land use designation. This type of policy is a barrier to ADU development. As evidenced by the Florida Legislature²¹, ADUs are compatible with single-family homes. Local governments should treat them as such.

A neighborhood zoned as Single Family Residential, for example, would generally allow only one single-family dwelling unit per lot. Historically, without explicit allowances for ADUs, if two or more residences are situated on a single lot, they would need to be in a more intensive residential zone, such as one that permits duplexes or multi-family housing. Today, some single-family zoning districts may permit an accessory dwelling unit but mandate that certain requirements are met or that special circumstances be shown to warrant the use.

Accessory dwelling units should be permitted in all single-family zone districts. As mentioned in the above section describing the need for ADUs, as of 2015, 64% of occupied units in the state of Florida were single-family homes. However, traditional single-family zoning procedures no longer fit the needs of the newer generations of our communities as more young people are looking for smaller, affordable places to live with access to opportunity.²² These same zoning procedures restrict the needs of Florida’s growing elderly population – a population that could use ADUs and other smaller units to help them age in place. ADUs capitalize on the dominance of the single-family home by providing an additional family or person’s access to an affordable dwelling unit on the same lot – typically in areas of our communities that are closer to centers of opportunity. A regulatory atmosphere that increases the number of ADUs will bring a positive impact to Florida’s housing stock and to our communities.²³

Barring ADUs from single-family districts severely curtails their prevalence from the outset. If local governments are concerned about ADUs changing the character of the single-family district, they should consider reasonable minimum lot size, setback requirements, or other reasonable structural regulations rather than an outright ban. Allowing ADUs in single-family districts is a necessity if the benefits of ADUs are to be realized. As already noted, many households believe they need ADUs for economic or family reasons. If ADUs are not permitted, some households may erect them without pulling building permits and create potentially serious life and safety hazards for themselves and their neighbors. A local government that provides sensible ADU regulations is likely to be protecting the welfare of the community.

Recommendation

- Allow ADUs as a permissible use in all single-family districts.

²⁰ Ross, *supra* note 1, at 2.

²¹ Fla. Stat. § 163.31771 (2018).

²² Gottlieb, *supra* note 2, at 633.

²³ See David Garcia, ADU Update: Early Lessons and Impacts of California’s State and Local Policy Changes, UC Berkeley Turner Ctr. for Hous. Innovation (Dec. 2017).

Owner-Occupancy Restrictions

Much has been written about the dangers of a strict owner-occupancy requirement for accessory dwelling units. A strict policy may dis-incentivize ADU development and foreclose many of the benefits they provide.²⁴ Many jurisdictions in Florida currently require that the owner occupy the primary unit if an ADU is used on the property. Others require that the ADU only be used by family members or non-paying guests. Some, however, are more flexible and allow the owner to occupy either the primary unit or the ADU.

By allowing homeowners to live in the ADU and rent out the primary dwelling, local governments grant them the option to earn more income on the primary unit and gain additional flexibility in their living arrangements.

Some cities do not require owner-occupancy at all. Portland, Oregon is one of those cities. Just as local governments do not mandate that all homeowners be on the property of single-family homes that they rent out, Portland and others take the position that local government should not mandate that owners live on the property of ADUs that they rent.

Local governments and communities may fear that a lack of restriction on owner-occupancy requirements may cause neighboring owners of single-family homes to object to having renters in their neighborhood. Communities may perceive a threat to their property values if some lots have two houses where only one is used by the homeowner. However, the addition of a lawfully permitted ADU may increase a property's value – as there is an additional unit for the homeowner to rent out for income. There are also reasonable concerns that without the homeowner present in the primary unit, ADU development may cause unwanted nuisances.

Requiring an owner to be on site may discourage ADU development by negatively impacting that homeowner's flexibility to rent their property and ultimately sell their property. If there are strict owner-occupancy requirements, a homeowner may be forced to sell their entire property instead of having the option to separately rent out the units. If a homeowner is unsure of the return on their investment before building an ADU because of the possible effect of owner-occupancy requirements, they might not build an ADU at all.

Recommendations

- An owner-occupancy requirement should be flexible enough to encourage ADU creation. At a minimum, the owner should be allowed to occupy the ADU.
- Resolve community concerns through other land use controls and code enforcement mechanisms that are less onerous than owner-occupancy restrictions. Minimum lot sizes, setback requirements, and other land use controls can work to ensure that areas with ADUs are in keeping with the character of the community.

²⁴ See, e.g., Peterson, *supra* note 19; Coppage, *supra* note 16, at 6.

Long Term Rental Use Restrictions

In our survey of Florida counties, of the counties that regulate accessory dwelling units in some fashion, at least 22 do not allow ADUs to be rented long-term. These counties only allow ADUs for temporary guests, family members, caretakers, laborers, and in conjunction with certain commercial, industrial, or agricultural uses. ADUs are explicitly allowed to be rented as long-term units in only 21 counties.

Recommendations:

- Allow accessory dwelling units to be rented to whomever the homeowner chooses to live in the ADU.
- Allow accessory dwelling units to be rented long-term.

As-of-Right vs. Conditional Use

Another barrier to ADU development occurs when ADUs are only allowed as a conditional use rather than “as-of-right.” If an ADU is a conditional use, a public hearing is required, and the local government undergoes a discretionary review to determine if the ADU can be constructed in a particular area. While a required public hearing may be good for educating the public on the impacts of ADU development and for providing a forum for neighborhood input, the onerous, unpredictable, and costly nature of the conditional use process may discourage homeowners from constructing ADUs. When allowed as a permitted use, the development review process is more predictable, as requirements are established up-front.

In a typical conditional use process, the homeowner may spend thousands of dollars on application fees, designs, and other requirements, and may still not be approved to add an ADU. As it is, when ADUs are rented at market-rate value, it may take years for the homeowner to break even on their investment. With the additional time and monetary burden of the conditional use process, homeowners may be dissuaded from constructing ADUs entirely or choose to construct illegal ADUs.

Recommendations

- Allow ADUs as a permitted use in all single-family residential land use classifications.
- To encourage ADUs as a tool to increase the housing stock, establish transparent and predictable requirements as opposed to a conditional use process that may be too unpredictable.

Size, Density, and Other Structural Requirements

Minimum lot size, setbacks, and other structural requirements can be used to achieve a compromise with neighborhood concerns about ADU development. Each area of the state is different and providing a one-size-fits-all policy in this area will not be feasible.

1. Minimum Lot Size

There is one county in Florida that requires a parcel of land to be a minimum of 15,000 square feet for a homeowner to lawfully construct an ADU. This effectively bars ADU development on many single-family lots. Austin, Texas, for example, changed its code in 2015 to reduce the minimum lot size requirements from 7,000 square feet to 5,750 square feet. This increased the number of lots that could have an ADU by 8,900.²⁵

Recommendations:

- Local governments should study the current single-family home lot sizes of their jurisdiction and taken with public input, reach a solution that satisfies residential concerns while also allowing ADUs to flourish broadly. Minimum lot size requirements should be constructed to allow the most possible lots to contain a lawful ADU.

2. Size

In determining the allowable size of an ADU, most local governments regulate by reference to the ADU being a set maximum percentage of square footage in comparison to the primary unit. Maxing the size limit of an ADU in relation to the primary unit may have the effect of restricting the use of ADUs on smaller single-family lots. For example, if a local government restricts the size of an ADU to no more than 25% of the principal and a principal unit is 1,750 square feet, the ADU could only be roughly 440 square feet in size. This would not be enough for a two-person household to occupy the ADU safely and comfortably.

From our study of ADU ordinances and of ADU advocates across the country, it is recommended that there be around 400 square feet of living space per person. Therefore, to target ADUs as a tool for long-term affordable rental housing, a maximum square footage requirement should be from 800-1200 square feet. For sizable lots that can contain a larger ADU, local governments should make allowances for a larger unit.

Recommendations:

- Use a set number of allowable square footage rather than a rule that mandates the ADU be a certain proportion of the primary unit.
- Allow ADUs up to 1,200 square feet with additional size allowances depending on lot size.

²⁵ Tyler Whitson, Council Loosens Rules on Accessory Dwelling Units, Austin Monitor (Nov. 20, 2015), <https://www.austinmonitor.com/stories/2015/11/council-loosens-rules-accessory-dwelling-units/>.

3. Density

Residential land uses are based on density. If ADUs are counted in the density calculation, this may push the parcel over the density restrictions for a particular zone and disallow an otherwise lawful ADU from being built.

Recommendations:

- Exempt ADUs from density calculations.

4. Setback Requirements

Any restriction on physical locational density should be dictated by setback and minimum lot size requirements. Setback requirements are a tool local governments can use to forge a compromise between neighboring landowners that may be concerned about ADU development. As with other structural regulations, setback requirements should not be designed in a manner that discourages ADU development. If a setback requirement is too stringent, the homeowner may be forced to build a smaller ADU and miss out on the opportunity to use it as a long-term rental for a two-person household. Most counties in Florida simply require the ADU to satisfy the setback requirements of the principal dwelling. Some local governments have different setback rules depending on if the door of a detached unit faces a side street or other properties. These are reasonable offerings.

Recommendations

- For maximum flexibility in setback standards, consider zero-lot line configurations in which an ADU would be allowed up to, or very near to, the edge of property lines.
- To ensure smaller lots are not inadequately burdened by setback requirements, utilize variance procedures to amend certain setback rules.

Utility Hookup Requirements

Requiring an ADU to hookup to its own water, sewer, or other utility may be overly burdensome and deter lawful ADU development. Local governments can facilitate an application to attach to the primary unit's utilities to save the homeowner thousands of dollars in costs.

Recommendations

- Allow the ADU to file an application to connect to the utilities of the primary residence.

Parking Requirements

Parking requirements can be particularly burdensome to ADU development and if too stringent, may serve to discourage the construction of ADUs. Parking spaces may be very costly for a homeowner and are a challenge from a planning perspective. For smaller lots, a requirement for additional parking could render an ADU impractical – as a lot may not have enough space for both an ADU and a parking spot. These spots can cost thousands of dollars to construct – pushing the costs on to the renter and lowering the prospects for an ADU to be used as an affordable unit.

One local government in Florida does not require a parking space for ADUs that are 500 square feet or less. One county reduces parking requirements for multifamily developments that have units of 900 square foot or less. These are good compromises if residents are concerned with on-street parking congestion. California has a law stating that local governments may not impose parking requirements for an ADU if the ADU is located “within one-half mile of public transit,” is “part of the existing primary residence or an existing accessory structure,” or when “on-street parking permits are required but not offered to the occupant of” the ADU or if “a car share vehicle [is] located within one block” of the ADU.²⁶ Most county ordinances in Florida that mention parking requirements have a “one spot per ADU” requirement.

In all likelihood, ADUs will be dispersed throughout neighborhoods – they will not be centered on one particular street. Therefore, it is likely that on-street parking could satisfy the parking needs of an ADU without overly congesting the neighborhood and without burdening the homeowner with the costs of an additional parking space. Alternatively, design solutions might be considered to provide additional parking. For instance, stacked parking spaces (one in front of the other) or allowing parking in other areas of the parcel (not just the driveways) can be considered. If parking is a genuine issue, the local government should still avoid a “one spot per ADU” rule and consider requiring parking for locations where it may be impractical to park on the street. It is important to strike a balance between the cost burden placed on homeowners and genuine street congestion concerns.

Recommendations

- When devising parking requirements, study the impact that permitted ADUs have on the parking supply. A blanket “one spot per ADU” rule without an impact study may hinder ADU development. For example, require one off-street parking spot only if there is no available on-street parking within a certain number of feet from the parcel.
- If one parking space is generally required, consider exempting ADUs 500 square feet or less.
- After successful implementation of an ADU ordinance, continually monitor parking impacts to assess congestion concerns.

²⁶ Cal. Gov’t Code §§ 65852.2(d)(1)-(5).



IV. Funding and Incentivizing ADU Development

Local governments have the tools to assist in funding and incentivizing ADU development. This section provides some ideas about how local governments can help homeowners create ADUs. As discussed throughout this Guidebook, ADUs are an excellent tool to expand and diversify a community's housing stock. To increase their prevalence, communities should consider ways to incentivize ADU development.

Impact & Applicant Review Fees

The current standard practice in Florida for assessing impact fees on an ADU is to charge the unit as a multi-family unit. If a homeowner is required to pay the same impact fee for their ADU as a developer would pay for a multi-family unit of any size, the homeowner may be discouraged from ADU development. Further, if a homeowner is required to pay the same impact fee for a 500 square foot as an 800 square foot ADU, a homeowner may be inclined to construct the larger unit instead – deterring a smaller, lower-priced ADU from being built.

A solution offered by Hillsborough County, provides for a fixed “de minimus” impact fee of \$100. If not used for long-term affordable housing and if the local government does not want to waive impact fees entirely, ADUs should be assessed by square-footage rather than by unit.²⁷ With an assessment by square-footage, a developer of a smaller ADU would pay less in impact fees than a developer of a larger ADU. Any waiver or reduction of impact fees can be paid for by the local government's affordable housing fund or other revenue sources.

Local governments can also streamline the review and permitting process to save itself administration costs and save the homeowner both time and money. By streamlining and removing certain development review processes, the cost of development should go down. For example, Leon County passed an ordinance in 2016 that eliminated several steps in the development review process which saved applicants a minimum of \$1,697 in permitting fees.²⁸ Additionally, this Ordinance had the planned effect of reducing ADU approval time by more than 45%. Similar expedited permitting processes should be considered in every local government.

HIGHLIGHTS

Local governments have the tools to fund and incentivize ADU development. Waiving impact fees and providing financial assistance can be the key to establishing ADUs.

This section will offer insight on:

- Impact & Applicant Review Fees
- Financial Assistance
- Marketing the ADU Option to Homeowners

²⁷ See Florida Housing Coalition, *Affordable Housing Incentive Strategies: A Guidebook for Affordable Housing Advisory Committee Members and Local Government Staff*, available at <http://www.flhousing.org/wp-content/uploads/2012/03/AHAC-Guidebook-2017.pdf>.

²⁸ Leon County, *Florida Board of County Commissions Regular Meeting Minutes 360* (May 10, 2016), available at http://cwebweb.clerk.leon.fl.us/finance/board_minutes/minutes/pdfs/20160510%20Official%20Minutes.pdf.

Recommendations

- Waive or otherwise modify impact fees for ADUs that are used for long-term affordable housing or charge a “de minimus” impact fee rate of \$100.
- If not used for long-term affordable housing, assess impact fees.
- Another possible, but less desirable alternative, is to charge an ADU in the same impact fee category as a mobile home.
- Streamline and create transparent ADU development processes to the greatest extent possible to lower administration and development costs.

Financial Assistance

Homeowners who want to create an ADU may not have all the funds they need to build the unit. Through the SHIP program, local governments could explore the possibility of establishing an affordable housing strategy to provide a subsidy for ADUs for very-low, low-, or moderate-income households. The subsidy would be secured with a recorded lien on the rental property to ensure that an affordable rent is charged for a period of at least 15 years. Residents of the ADUs would be income certified yearly. Local governments should be able to loan funds to homeowners for the construction of ADUs if the homeowner utilizes the ADU for long-term affordable housing. A loan program for creating ADUs that has a long history of implementation is found in Santa Cruz, California.

To assist homeowners develop rental ADUs for persons at 80% or below the City’s median household income, the City of Santa Cruz, California has an ADU loan program by which homeowners can receive loans of up to \$100,000 at a 4 ½% interest rate for ADU construction.²⁹ The County of Santa Cruz, California allows for forgivable loans of up to \$40,000 at a 3% interest rate.³⁰ To receive the financing at the City level, the homeowner must agree to keep the rental unit affordable to low-income tenants for a period of at least 15 years. At the County, the homeowner must enter into a deed restriction for a period of 20 years that keeps the ADU or main house at a cost affordable to low-income households. If the homeowner backs out, they must repay the full amount of the loan plus interest. With loan and deed restrictions and the threat of default, local governments can ensure that ADUs they assist financially are used for long-term affordable rental housing for low- to moderate-income persons.

Recommendations

- Develop a program which loans funds to homeowners who agree to keep their ADU affordable to lower-income tenants. These funds can be derived from the local government’s affordable housing funds. Upon repayment, these funds can be recycled for the ADU program or used for other affordable housing purposes. Local governments can be creative in how to raise additional revenue for their affordable housing funds to help finance ADU development.

29 City of Santa Cruz, CA, Accessory Dwelling Units: Loan Program, <http://www.cityofsantacruz.com/Home/ShowDocument?id=3700>.

30 County of Santa Cruz, CA, Accessory Dwelling Unit Forgivable Loan Program (Apr. 2018), available at <http://sccoplanning.com/Portals/2/County/adu/Forgivable%20Loan%20Program.pdf>.

Marketing the ADU Option to Homeowners

If a local government allows ADUs by right in all single-family zones or otherwise makes positive changes to facilitate the development of ADUs, the next critical step is to ensure that developers and homeowners are aware that they now have the option of building ADUs. An advertising campaign to educate the community about the benefits and the process for building ADUs is a key component for increasing the stock of ADUs.

Building an ADU may be one of the largest projects a homeowner undertakes on his or her property. Further, most homeowners may be unfamiliar with what it takes to build an ADU on their lot. Therefore, local governments could provide educational materials to ease the learning curve for homeowners interested in ADU development. This may include an easy-to-navigate checklist of the application development review process, development cost projections, zoning and land use regulations, and ADU design considerations.

The City of Santa Cruz, which proves to be a model for ADU regulation across the country, provides an ADU manual and a set of ADU design prototypes to encourage development.³¹ The manual connects homeowners to local architects with ADU construction experience. These materials make it easier for homeowners to construct ADUs. The current design prototypes manual offers seven working drawings by local architects to be used as templates by homeowners. The ADU manual contains a step-by-step guide on how to plan, design, and obtain permits for an ADU. Appendix A of this Guidebook contains a template Manual for local governments to use to educate homeowners.

Recommendations

- Provide user-friendly brochures and information to homeowners on the benefits of ADUs and the rules and regulations that apply to ADUs.
- Provide education on what financial resources are available to assist in developing an ADU.
- Connect homeowners to local architects with ADU expertise.
- Provide education on how to manage an ADU including landlord tenant laws, leasing, and maintenance.

31 City of Santa Cruz, CA, ADU Prototype Architects, <http://www.cityofsantacruz.com/government/city-departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program/adu-prototype-architects>.



V. Concerns Over ADUs as Short-Term Vacation Rentals & Student Housing

There are justifiable concerns about the use of ADUs as short-term vacation rentals. Some critics argue that the use of ADUs for Airbnb and other vacation rental platforms poses a serious threat to their beneficial use as long-term rental units, places for elderly housing, and family flexibility. The proliferation of short-term vacation rentals may negatively affect the supply of long-term affordable housing for residents of the community.

As of this writing in 2019, local governments may not create a new law, ordinance, or regulation prohibiting vacation rentals or regulating the duration or frequency thereof.³² This statutory provision, however, does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.³³ Thus, unless already placed in a local government's code before this grandfathered date, a local government may not prohibit ADUs as short-term vacation rentals through the zoning code. Local governments can, however, regulate short-term rentals through life safety and building codes.

For the past several Legislative sessions (including the 2019 Session), there have been bills to preempt local governments from regulating short-term rentals altogether.³⁴ Thus, local governments should be tuned in to how they may or may not regulate short-term vacation rentals.

Options for Local Governments to Regulate the Use of ADUs

One way to overcome the short-term vacation rental preemption, is by providing local government assistance that comes with a land use restriction agreement to ensure that ADUs are used for affordable housing. Land use restriction agreements, also known as deed restrictions, can be an important tool if the ADU is built using governmental assistance or through a modification of impact fees. For example, a local government could condition the reduction of impact fees on an ADU's use as a long-term affordable housing unit. In this scenario, if the ADU is used for short-term vacation rental, the homeowner will have violated the deed restriction and will have to repay the full cost of the impact fees, and perhaps suffer additional consequences imposed by the local government.

³² Fla. Stat. § 509.032(7)(b) (2018).

³³ Id.

³⁴ Fla. HB 987 (2018), available at <https://www.flsenate.gov/Session/Bill/2019/00987>; Fla. SB 1400 (2018), available at <https://www.flsenate.gov/Session/Bill/2018/01400>.

HIGHLIGHTS

The increasing number of short-term vacation rentals through Airbnb and similar platforms can increase community concerns about the viability of long-term ADU rentals. While ADUs can be used as short-term rentals, through deed restrictions, local governments can require an ADU to be used as a long-term rental if the unit benefits from impact fee modifications or other financial assistance.



If not done already, local governments should enter into tax agreements with Airbnb and other short-term vacation rental platforms to recover Tourist Development Tax revenue. Under current law, local governments can only use this tax revenue for authorized uses. Affordable housing is not an authorized use. If the Tourist Development Tax statute is amended to allow local governments to use this revenue for affordable housing, they can use the tax revenue from short-term vacation rentals towards affordable housing purposes.³⁵ These rentals are booming, and local governments should be allowed to use this new stream of revenue for affordable housing. For example, in 2017, Broward, Brevard, Hillsborough, and Polk County received \$1.87 million, \$419,000, \$562,000, and \$610,000 in tax revenue from Airbnb, respectively.³⁶ If local governments are concerned about the proliferation of ADUs as short-term vacation rentals (and in regards to affordable housing broadly), they should be able to use the tax revenue from vacation rentals for incentivizing affordable long-term ADUs in the form of loans, reduction of impact fees, and other costs associated with development. Legislation amending the Tourist Development Tax statute would allow local governments to address this issue.

Ultimately, although strict owner-occupancy requirements are not advisable if the ADU is used for affordable housing, strict requirements can be necessary if the ADU is used as a short-term vacation rental.

³⁵ See Fla. Stat. § 125.0104 (2018). The legislation would amend this statute to allow local governments to use revenue from a Tourist Development Tax for affordable housing purposes.

³⁶ Florida Trend, Airbnb Releases 2017 Florida Tax Report (Feb. 13, 2018), <http://www.floridatrend.com/article/23942/airbnb-releases-2017-florida-tax-report>.

VI. How to Combat Potential Neighborhood Opposition

The construction of new accessory dwelling units in single-family districts may bring neighborhood or community resistance. The owners of single-family homes may object to having renters in their neighborhood; they may fear increased traffic and parking, or perceive a threat to their property value.³⁷ The Not in My Backyard (NIMBY) syndrome connotes objections made to stop the development of affordable or otherwise new housing for reasons such as fear and prejudice.³⁸ NIMBYism presents an obstacle to a successful ADU regulatory structure and can result in fewer affordable housing options at a time when Florida is in desperate need of more rental housing.

Education Campaign

The first thing the local government should do to ease neighborhood opposition toward ADU development is to educate the community about the benefits of ADUs. The more informed the public, local government staff, and elected officials are about the need for affordable rental housing and how ADUs can ease that need, the more leverage advocates will have to advance the development of ADUs.

The local government should be equipped with current data about its specific needs for affordable housing and how ADUs can be used to help community members. Here are some of the questions the local government should consider:

- How many residents are cost-burdened?
- How many cost-burdened residents are forced to live far away from the places they work?
- How many of these cost-burdened residents are essential members of the lower-paid workforce, such as home health aides?
- How much of the community is zoned single-family?
- If ADUs were allowed in all single-family districts, how many new affordable rental units would be possible?

Anecdotal information about the successes of existing ADUs as sources of affordable rental housing, elderly and disabled care, and/or workforce housing can support this message.

In shaping the message, it is important to demonstrate that ADU development may not be best for everyone;

³⁷ Jaimie Ross, *Avoiding and Overcoming Neighborhood Opposition to Affordable Rental Housing*, Nat'l Low Income Hous. Coal. Advocates' Guide (2018), available at http://nlihc.org/sites/default/files/AG-2018/Ch02-S10_Avoiding-Opposition_2018.pdf.

³⁸ Id.

HIGHLIGHTS

Proposals to allow ADUs in single-family residential zoning districts may bring out neighborhood opposition. Local governments can ease community concerns through educational campaigns and by addressing legitimate objections.

This section will offer some solutions such as:

- Education Campaign
- Garner Support from a Broad Range of Interests
- Address All Legitimate Opposition

Shape the Message

It is important to make clear that thousands of ADUs will not sprout up overnight from the successful implementation of an ADU ordinance.

- ADUs will not dramatically alter the landscape of existing neighborhoods
- ADU development will be relatively slow and scattered throughout communities
- Assure constituents that studies to assess the strengths and weaknesses of ADU development will be used to inform the decision-making process.

some people do not want to utilize their backyards for affordable rental housing. Some folks may only want to utilize their ADUs for family members, guests, or elderly housing and not have their ADUs on the public marketplace. Sensible ADU regulations would go a long way to help households help themselves to solve their own affordable housing problems by providing additional living quarters to family members. It is important to make clear that thousands of ADUs will not sprout up overnight from the successful implementation of an ADU ordinance.

The local government should share these points with the community and help residents understand that ADUs will not dramatically alter the landscape of existing neighborhoods. ADU development will be relatively slow, scattered throughout communities, and if a successful ordinance is implemented, local governments can assure their constituents that they will undergo a study to assess the strengths and weaknesses of ADU development.

The City of Boston, Massachusetts provides a good method by which to study ADU impacts. Several years ago, Boston began allowing what are called “micro-units” – units with a minimum size of 350 square feet – in a limited area of the city. Simultaneously, the City teamed up with Harvard University’s Rappaport Institute to study the impacts of the first batch of units.³⁹ Local governments in Florida might consider a similar type of study with University partners in Florida to measure the results of an ADU program.

Garner Support from a Broad Range of Interests

Local governments should partner with local organizations that are interested in affordable housing development. They should look for members of the business community, clergy, social services agencies, and others who are outspoken about the need for affordable housing and form partnerships to support ADU development. The media can also be a crucial ally. Local governments should contact the media so the public can better understand ADUs and their development processes, their public purpose, and the population served.

With these allies, the local government will be in a better position to convince their community that ADUs are a beneficial housing tool. For instance, nurses and public safety workers can attest to the need for housing closer to the places in which they work – a need which ADUs in single-family districts can address. Elderly individuals can describe how an ADU may have helped them age in place. With allies from a broad range of interests, more connections between ADU development and community concerns can be voiced.

³⁹ Casey Ross, Housing-Starved Cities Seek Relief in Micro-Apartments, Boston Globe (Mar. 26, 2013), <https://www.bostonglobe.com/business/2013/03/25/micro-apartments-tight-squeeze-but-livable/vDRdMnChgdhCdFOrmupnyN/story.html>.

Address All Legitimate Opposition

The key to overcoming community opposition to establishing a regulatory structure for ADUs is to address the community's legitimate concerns. The local government should be prepared to describe the numerous community benefits of ADUs and willingness to address legitimate concerns. For example, ADUs architectural and design compatibility with the neighborhood may be an issue. Local governments could include a modest and simple set of design guidelines to assure compatibility with the surroundings. For instance, the guidelines could deal with mass, scale, height, and site position of the ADUs to gain community support. Guidelines would make the overall design of the ADU more predictable and compatible with the principal structure and neighborhood.

Parking

Parking may be an issue a local government will need to address. Some community members may oppose ADU development specifically in terms of parking. However, requiring new parking may be too costly to homeowners looking to build an ADU. It is unlikely that 1) dozens of ADUs will sprout up overnight after implementation of a flexible code; and 2) even if they did sprout up overnight, it is unlikely they would all be located on the same block or in the immediate vicinity. As mentioned previously, the parking problem for ADUs in single-family areas can be solved through innovative design solutions. Local governments should be prepared to advocate for their methods.

The City of Orlando provides a potential compromise in this area. Orlando requires parking for ADUs 500 square feet or more but does not require parking to be built for ADUs less than 500 square feet. This solution was designed to encourage smaller units and in recognition of the complexity of building a new parking space on a parcel while meeting setback, maximum lot coverage, and other structural requirements.

Garner Support

Partner with local organizations interested in affordable housing such as:

- Business community,
- Clergy, and
- Social services agencies.

Contact the media to inform the public so that they can learn more about:

- How ADUs are developed,
- Their public purpose, and
- Populations served



VII. ADUs and Tiny Homes

Tiny homes are increasing in popularity; local governments may be asked how tiny homes and ADUs differ. ADUs and tiny homes have many similarities. Both are relatively small in size compared to traditional dwelling units, are flexible in where and how they are built, and cause relatively little impact on the environment and existing infrastructure. However, there are differences in the two housing types which require different rules and regulations from a zoning and land use standpoint.

Simply put, ADUs can be tiny homes and tiny homes can be ADUs. Yet, this is not always the case. Here are some main distinctions between the two housing types:

1. By Definition

By definition, ADUs are accessory to a primary unit and under the same ownership. An ADU cannot exist on a lot by itself. This contrasts with a tiny home which can stand on a lot independently. Because of this, local governments regulate the location, size, and structural requirements of tiny homes differently from ADUs.

A tiny home can be an ADU if built in the backyard of a single-family home and under the same ownership. An ADU can be considered a tiny home based the size of the unit. If a tiny home is built as a backyard unit, it will need to follow ADU regulations. Otherwise, local governments tend to regulate tiny homes separately.

2. Size

Tiny homes are generally smaller in size than the typical ADU. A tiny home is usually defined as a habitable structure of less than 500 square feet. This square footage definition depends on the jurisdiction. ADUs, by contrast, are typically up to 1,000 square feet or larger in some circumstances.

Thus, when local governments regulate stand-alone tiny homes without reference to a primary unit, they tend to max the size requirement at 400 or 500 square feet. If it is considered an accessory dwelling unit, the tiny home can be larger in size.

3. Mobility

One main distinction between the two housing types is that tiny homes can be built on wheels. Tiny homes on wheels (THOW) are typically allowed in areas zoned for mobile homes. If a tiny home is on wheels, it likely cannot be an ADU as local governments generally require ADUs to be on a foundation. THOWs will need to be registered with the Florida Department of Highway Safety and Motor Vehicles.

HIGHLIGHTS

ADUs and Tiny Homes are alternative housing solutions. ADUs are always accessory to the primary unit. Tiny homes can stand alone. As a result, different regulations apply.

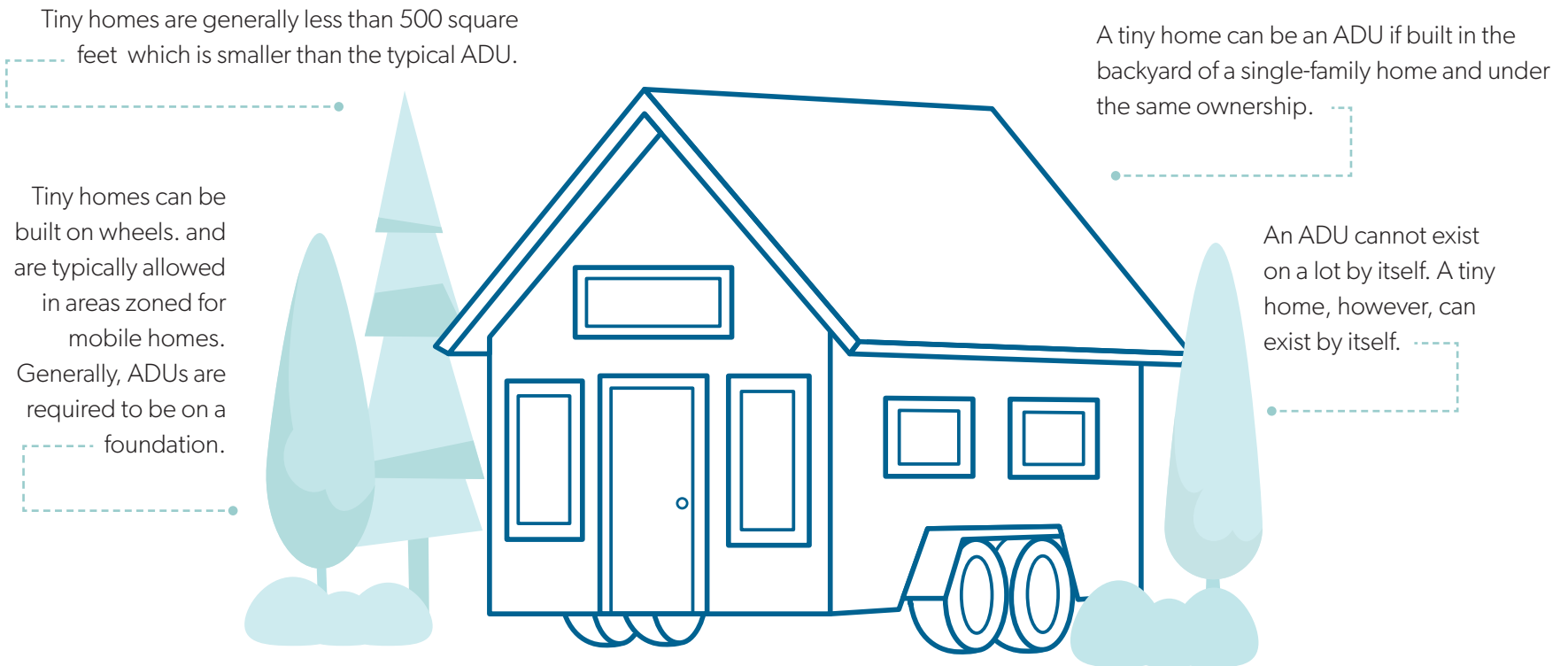
Tiny homes and ADUs differ by:

- Definition
- Size
- Mobility

If the tiny home is an on-site structure, it will be subject to the same zoning requirements as a single-family home, ADU, or clustered site, depending on the circumstances.

In sum, a tiny home can be an accessory dwelling unit and an ADU can be considered a tiny home. Different rules and regulations apply whether the tiny home is a backyard unit, whether it is a stand-alone unit, and whether it is on wheels. If a backyard unit, the tiny home will need to follow the relevant ADU regulations. If a tiny home is a stand-alone unit on a single-family site, multi-family cluster site, or on wheels within a mobile home park, different standards apply based on zoning districts and location.

A tiny home can be an accessory dwelling unit and an ADU can be considered a tiny home. However, different rules and regulations often apply.



VIII. Best Practices

Below you'll find best practices chart for a successful ADU program.

CATEGORY	BEST PRACTICES
Zoning	• Allow ADUs in all single-family districts as an accessory use • Owner must occupy either the primary or accessory dwelling unit • No rental restrictions • No parking requirement if there is on-street parking available • 375-1200 sq. feet with allowances for an increased maximum if lot a certain size • Must meet district setback requirements • Exempt from density calculations • Shall connect to existing utility connections
Development Review, Fees, & Incentives	• Waiver of impact fees if used as affordable rental; if not, "de minimis" impact fee of \$100 or by square footage • Streamlined and transparent permitting process • ADU Loan Program for affordable rental construction w/funds from local housing trust or other revenue pool
Administration	• Monitoring system to study local ADU impact on parking, nuisances, property values, etc. • Homeowner & Community Education program

HIGHLIGHTS

This section provides a best practices chart for a successful ADU program, including:

- Zoning
- Development Review, Fees, & Incentives
- Administration



IX. Model Ordinance

This Model Ordinance combines our findings with the recommendations as provided in Section 163.31771 of the Florida Statutes. Certain requirements will depend on the unique nature of each community. This Model Ordinance contains the baseline of requirements to ensure an ADU-friendly regulatory structure. Local ordinances may contain greater or fewer requirements than what is provided here. At minimum, local governments should allow ADUs in all single-family districts and adhere to owner-occupancy flexibility regulations.

After creating an ADU regulatory structure, it is essential for the local government to have a system in place to track the total number and location of each permitted ADU. For an ADU system to work, the local government ought to continuously monitor the progression of the program.

The numbers provided here, especially in reference to lot size and size of the ADU overall, are reflective of what are considered best practices. Fundamentally, when devising an ADU ordinance, it is essential that local government regulations do not hinder the potential of ADUs as a source of affordable housing.

Accessory Dwelling Units

(a) Purpose — The intent and purpose of this section is to allow accessory dwelling units to be permitted in all single-family districts and other zone districts as _____ (City/County) finds necessary. It is also the intent and purpose of this section to create a regulatory framework that encourages the development of accessory dwelling units that are rented on the local housing market to members of the community. _____ (City/County) adopts the view of the Florida Legislature as stated in Section 163.31771 of the Florida Statutes pertaining to the need to encourage the permitting of accessory dwelling units in single-family residential areas in order to increase the availability of affordable rentals for extremely-low-income, very-low-income, low-income, or moderate-income persons.

- (1) Accessory dwelling units are intended to provide additional housing that is incidental to a primary use. Accessory dwelling units are intended to be used as a necessary smart growth tool to increase the supply of affordable housing, elderly and disabled care units close to family members and caretakers, and/or workforce housing development. Accessory dwelling units are unique housing tools that provide for infill development with low environmental impacts that can connect to existing infrastructure.

HIGHLIGHTS

This section includes a Model Ordinance with baseline requirements to ensure an ADU-friendly regulatory structure.

- (2) With surging housing costs and lack of affordable housing stock, accessory dwelling units capitalize on the prominence of the single-family home by providing an additional family or persons access to an affordable dwelling unit on the same lot – typically in areas of our community that are closer to areas of greater opportunity. Creating a regulatory atmosphere that encourages increasing the number of accessory dwelling units will have a positive impact on our community’s housing shortage and on the property rights of homeowners.
- (3) These standards are devised to ensure that the development of accessory dwelling units do not cause negative impacts on the character or stability of single-family neighborhoods.

(b) Definitions

- (1) “Accessory dwelling unit” means an ancillary or secondary living unit that has a separate kitchen, bathroom, and sleeping area existing within the same structure, or on the same lot, as the primary dwelling unit. The accessory dwelling unit may be a separate and detached unit, an attached unit to the principal structure, a repurposed existing space within the principal structure, an apartment over a garage, or a similar structural form.
- (2) “Affordable rental” means that monthly rent and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for extremely-low-income, very-low-income, low-income, or moderate-income persons.
- (3) “Lot requirements” means restrictions on lot size, setbacks, building coverage, and similar zoning requirements.
- (4) “Short-term rental” means the rental of a primary or accessory unit for thirty days or less.

(c) Standards

- (1) Accessory dwelling units are to be permitted as accessory uses to single-family homes in all residential districts and all other districts as _____ (City/County) deems necessary.
- (2) Unless the accessory dwelling unit is used as a short-term rental, the owner must occupy either the principal or accessory dwelling unit.
 - (A) If used as a short-term rental, the owner must occupy the primary unit.
- (3) No more than one accessory dwelling unit shall be allowed on any residential lot or within any principal nonresidential structure.
- (4) An accessory dwelling unit may be constructed with or after the construction of the primary unit.
- (5) The establishment of a new accessory dwelling unit shall only be allowed if the lot area of the principal building is at least 5,000 square feet.
- (6) The accessory dwelling unit shall be subordinate to the principal building as to location, height, square footage, and building coverage. The design of the accessory dwelling unit shall be uniform, compatible, or complementary in appearance to the primary residence.
- (7) The floor area of the accessory dwelling unit shall be no less than 300 square feet and no greater than 1,200 square feet. A variance to increase this amount may be requested provided that the total building coverage does not exceed district standards.

- (8) All accessory dwelling units shall meet the applicable zoning district setbacks. Total building coverage on the lot shall not exceed district standards. The accessory dwelling unit shall comply with the requirements of all applicable housing or buildings codes.
- (9) No additional parking spaces are required if there is on-street parking available within _____ feet of the parcel. If there is no on-street parking available, one off-street space is required unless the ADU is 500 square feet or less.
- (10) Accessory dwelling units are exempt from zone district density calculations.
- (11) The accessory dwelling unit may connect to existing water, sewer, and other existing utility connections.

(d) Development Review Procedures

- (1) Applications for accessory dwelling unit development shall be streamlined to the greatest extent possible.
- (2) Applicants may seek a variance from all structural and lot requirements.

(e) Impact Fees

- (1) If used for affordable rental, impact fees shall be waived. An application for a building permit to construct an affordable rental must include an affidavit from the applicant which attests that the unit will be rented at an affordable rate to an extremely-low-income, very-low-income, low-income or moderate-income person or persons. _____ (City/County) will enter into deed restrictions or other agreements as necessary to ensure that the ADU is used for affordable housing purposes.
- (2) If not used for affordable rental or the application does not include an affidavit which attests to the accessory dwelling unit as an affordable rental, impact fees will be assessed at a "de minimis" impact fee of \$100.



X. Examples of ADU Policies in Florida

Orlando

The City of Orlando recently adopted an ADU ordinance with a clear intent to promote the use of ADUs. The ordinance allows ADUs in all single-family districts, does not require parking if the ADU is 500 square feet or less, and does not have a strict owner-occupancy requirement. The staff report presented in support of the ordinance demonstrates the local government's understanding of ADUs as a tool for affordable housing and the need to create a regulatory atmosphere that encourages their use.⁴⁰ The staff report includes an excellent description of the benefits ADUs provide, a survey of comparative local governments and their ADU policies, and a comprehensive analysis of how the new ADU ordinance lessens the land-use restrictions on local governments.

Elements of the Ordinance⁴¹:

- Type of Use: Accessory
- Zone Districts Allowed: All residential districts as well as mixed use and office districts.
- Size: Maximum of 50% of the size of the principal unit and can be no larger than 1,000 square feet.
- Minimum Lot Size: Correlated with the size of the ADU and depends on the zoning district. Residential districts require a lot size of a minimum of 5,500 square feet for an ADU of up to 500 square feet and 8,250 square feet minimum for an ADU of up to 1,000 square feet.
- Parking: No required parking for ADUs of 500 square feet or less. One additional off-street parking space is required for ADUs above 500 square feet.
- Owner-Occupancy: Not explicit in the ordinance.

Pinellas County

Pinellas County's ordinance has an important element that is worth showcasing: ADUs are exempt from density calculations. This is a best practice as it allows more single-family lots to construct lawful ADUs. Further, Pinellas County allows the owner of the property to occupy either the primary unit or ADU. This flexibility in owner-occupancy is essential to a successful ADU Ordinance.

HIGHLIGHTS

This section provides examples of ADU policies.

Examples are from the following jurisdictions:

- City of Orlando
- Pinellas County
- Alachua County

40 City of Orlando, Staff Report to the Municipal Planning Board, LDC Amendment – Accessory Dwelling Units (ADUs) (May 15, 2018), available at http://www.cityoforlando.net/city-planning/wp-content/uploads/sites/27/2018/05/MPBStaffReport2018-05_LDC2018-10004.pdf.

41 Orlando, Fla. Code of Ordinances CH 58, Part 3A (2018).

Elements of the Ordinance⁴²:

- Type of Use: Accessory
- Zone Districts Allowed: All single-family districts and multi-family residential
- Density: ADUs are exempt from density calculations
- Size: Shall not exceed 750 square feet or 50% of the living area of the primary, whichever is less
- Owner-Occupancy: Owner must occupy either the primary unit or ADU

Alachua County

As with Pinellas County, Alachua County does not include the size of an ADU in gross residential density calculations and allows the homeowner to live in either the primary unit or ADU. The Alachua County ordinance is similar to Pinellas' in many respects and is also a model for local governments around the state. A change a county like Alachua could make is to consider zero-lot line configurations when establishing setback requirements. A relaxed setback requirement can encourage healthy ADU development on lots that may be otherwise unable to build a lawful ADU.

Elements of the Ordinance⁴³:

- Type of Use: Accessory
- Zone Districts Allowed: Single-family districts and agricultural districts
- Density: ADUs are exempt from density calculations
- Size: Maximum of 50% of principal residence or 1,000 square feet, whichever is greater
- Setbacks: Must meet applicable zoning district setback requirements
- Owner-Occupancy: Owner must occupy either the primary unit or ADU

42 Pinellas County Land Development Code § 138-1 (2018).

43 Alachua County Code § 404.24 (2018).

EXAMPLES OF ADU POLICIES IN FLORIDA

Elements of the Ordinance	City of Orlando	Pinellas County	Alachua County
Type of Use	Accessory	Accessory	Accessory
Zone Districts	All residential districts as well as mixed use and office districts.	All single-family districts and multi-family residential	Single-family districts and agricultural districts
Density	-	ADUs are exempt from density calculations	ADUs are exempt from density calculations
Size	Maximum of 50% of the size of the principal unit and can be no larger than 1,000 square feet	Shall not exceed 750 square feet or 50% of the living area of the primary, whichever is less	Maximum of 50% of principal residence or 1,000 square feet, whichever is greater
Minimum Lot Size	Correlated with the size of the ADU and depends on the zoning district. Residential districts require a lot size of a minimum of 5,500 square feet for an ADU of up to 500 square feet and 8,250 square feet minimum for an ADU of up to 1,000 square feet.	-	-
Parking	No required parking for ADUs of 500 square feet or less. One additional off-street parking space is required for ADUs above 500 square feet.	-	-
Setbacks	-	-	Must meet applicable zoning district setback requirements
Owner-Occupancy	Not explicit in the ordinance	Owner must occupy either the primary unit or ADU	Owner must occupy either the primary unit or ADU



XI. Other Resources for ADU Models

Santa Cruz, California Accessory Dwelling Unit Program

- Santa Cruz offers its residents assistance through loans, an ADU Manual, and ADU design prototypes.
- <http://www.cityofsantacruz.com/government/city-departments/planning-and-community-development/accessory-dwelling-units-adus>

Family Housing Fund – Twin Cities ADU Guidebook for Homeowners

- Family Housing Fund is an affordable housing organization based in Minneapolis, Minnesota that has released ADU Guidebooks for Homeowners, ADU Developers, and Policy Leaders.
- <http://www.fhfund.org/adu/>

Decatur, Georgia

- Decatur allows ADUs on all single-family lots and recognizes the use of ADUs as a tool to supply the “missing middle” of the housing stock.
- <http://www.decaturga.com/city-government/city-departments/planning-and-zoning-redesign/permits-and-zoning/accessory-dwelling-units>

Urban Land Institute Study – Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver

- This study describes in detail how these three cities removed barriers to ADU development and the increase in construction that occurred.
- http://turnercenter.berkeley.edu/uploads/ADU_report_4.18.pdf

NYU Furman Center – Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units

- This work dives through several cities and their ADU regulations and discusses some barriers to ADU development.
- http://furmancenter.org/files/NYUFurmanCenter_RespondingtoChangingHouseholds_2014_1.pdf

R Street Policy Study No. 89

- This study provides an introductory overview to ADU development, discusses ADU benefits and their barriers to full implementation.
- <http://www.rstreet.org/wp-content/uploads/2017/03/89.pdf>

Department of Housing and Urban Development Accessory Dwelling Units: Case Study

- This 2008 study by HUD is outdated in some respects but does provide examples of how local governments have regulated ADUs around the country.
- <https://www.huduser.gov/portal/publications/adu.pdf>



Appendix: ADU Manual for Homeowners

This document is intended to be a template for local governments to assist homeowners who may want to create an ADU.

Table of Contents

- What are ADUs? Introduction to ADU development
- Zoning and Design Standards Land Use/Zoning Regulations and Local Assistance
- Designing your ADU Neighborhood compatibility, ADU planning, financing, and design
- Permitting and Building your ADU Navigating the Local Development Process
- Managing your ADU Landlord/Tenant laws, leasing, and maintenance
- More Resources

Chapter One: What are ADUs?

Introduction

Walking around your neighborhood, you may have seen windows and a door above a garage or a cottage sized home in the backyard of your neighbor's house. What you have seen is likely an accessory dwelling unit. Interested, you may be wondering how the unit was built, if it is lawful, and how you can build your own for your elderly relative, collegiate son or daughter, or as a rental unit.

Accessory dwelling units (ADUs) are additional living quarters typically on single-family lots that are independent of the primary dwelling unit. An ADU can be an apartment within a primary residence or it can be an attached or freestanding home on the same lot as the primary residence.

Accessory dwelling units were formerly referred to as granny or mother-in law flats and are also sometimes referred to as accessory apartments, garage apartments, carriage houses, and backyard cottages. ADUs were a common feature of early 20th century development in America but their use dwindled with the onset of single-family suburb. ADUs were rarely included as an eligible use in municipal codes regulating land use, zoning, and general land development regulations.

The tide is changing. Increasingly, local governments around the State of Florida see the benefits that ADUs provide and are changing their zoning codes to allow ADUs as a lawful use in single-family neighborhoods. CITY/COUNTY allows ADUs as-of-right in single-family neighborhoods. This Manual answers questions you may have about ADU development and how you can construct a lawful unit on your property.

What are the benefits of an ADU?

ADUs provide many benefits for the homeowner and the community. If rented on the long-term market (typically, with a minimum six-month lease), an ADU can provide a homeowner additional income to help pay down a mortgage, meet other expenses, or provide income for investment. Due to the relatively small size of the unit and because it does not require additional land or major new infrastructure, an ADU can be a valuable affordable housing tool for low-to moderate-income individuals. ADUs promote mixed-income communities where lower-income households can find an affordable home in an area that may have greater employment and educational opportunities.

If not rented, an ADU can provide numerous other benefits. ADUs can be used by elderly or disabled individuals that strive for continued indepen-

dence. An elderly or disabled individual could remain in their home and use an ADU for their caregiver. ADUs can also provide for family flexibility. The ADU can be used as a "granny flat" for elderly members of a family to help them age-in-place near the comfort of the family unit. With an ADU, a young adult could continue to live with their parents, but in a separate unit, as he or she works towards economic independence.

Further, when developed close to employment centers, an ADU can reduce a person's reliance on transportation, providing additional benefits to society through environmental and energy cost savings.

Who can build an ADU in (CITY/COUNTY)?

This Section should contain the basics of your ADU ordinance. Include basic details about minimum lot size, zoning, maximum lot coverage, owner-occupancy, and setback requirements. Below is an example.

Any homeowner within (CITY/COUNTY) who has a lot that is (DESCRIBE MINIMUM LOT SIZE REGULATION) or more in an area that is zoned for single-family dwellings may be able to build an ADU. An ADU must meet setback, lot coverage, and other land use regulations as described in Chapter Two of this Manual. The homeowner must live in either the main house or the ADU and only one ADU per single-family lot is allowed. The ADU may be detached from the main dwelling or attached.

What do I need to know to build an ADU?

Building an ADU may be one of the largest projects a homeowner undertakes on their property. First, decide whether you want to utilize the ADU as a long-term rental unit or for family members or other guests. If you choose the former, be aware of the landlord-tenant legal obligations and financial implications of leasing an ADU. Then, assess your finances and utilize this Manual to see if your lot is suitable for ADU development. Be sure that developing an ADU on your lot will meet zoning standards. If unsure that ADU development is right for you, (CITY/COUNTY) can assist in making this decision.

Chapter Two: Navigating ADU Development

This Chapter should describe the zoning and design standards as described in the local government's ADU Ordinance. It should provide easy-to-read charts on what properties are eligible to build a lawful ADU.

CITY/COUNTY has developed zoning standards for ADUs. These standards were established with community input to allow ADUs on the most possible lots. The table below provides a summary of CITY/COUNTY standards for an ADU located in a single-family zone.

The Table can contain more zoning standards as the local government finds necessary.

Zoning Standard	Requirement for ADUs	Other Comments
Minimum Lot Size		
Side-yard Setback		
Front-yard Setback		
Rear-yard Setback		
ADU Size		
Parking		
Owner-Occupancy		
Maximum Lot Coverage		
Impact Fees		
Density Calculations		
Maximum Height		
ADU Entrance		

It is important to make sure that your lot can contain a lawful ADU. CITY/COUNTY can provide this guidance. You can also contact a local engineer to inspect your property for compatibility with these regulations. If you have further questions, please contact the RELEVANT DEPARTMENT at PHONE NUMBER/OTHER CONTACT INFORMATION to schedule an appointment to discuss the possibility of including an ADU on your property.

Local Government Assistance

This section should describe, in detail, any assistance that the local government offers for ADU development. It can include items such as an ADU loan program, impact fee reduction for long-term affordable units, technical assistance, and other financial assistance.

Chapter Three: Designing your ADU

Once I figure out the zoning standards for ADU development, what should I do next?

For this portion of the Manual, the local government should consider partnering with local architects and provide information on who has expertise in ADU development.

As with any construction or remodeling in CITY/COUNTY, appropriate building permits are required to develop an ADU. Chapter Four of this Manual provides information on how to navigate the permitting requirements. The permitting process will require drawings and models of your ADU. This Chapter discusses how to design your ADU.

Once you are sure that you can build a lawful ADU on your property, contact a local architect to begin designing the ADU. It will be beneficial to work with a qualified designer, builder, or engineer to make sure your project meets your needs as well as CITY/COUNTY permitting requirements. It is important to select professionals that are familiar with local development processes to ensure maximum ease of development. Local professionals can better anticipate the types of technical and regulatory issues you will need to address.

How should I begin designing the ADU?

First, it is important for your ADU to be a good fit with your home and the surrounding neighborhood. Consider talking to your neighbors to see how your ADU can best fit on your site and into your neighborhood. You should walk around your neighborhood and gather as much information as you can to make sure the ADU is compatible with the surrounding environment. Here are some good questions to consider before designing your ADU:

- What is the predominant height of homes in the neighborhood?
- How much space is there between homes?

- How many neighboring properties have accessory units in their backyard?
- Do these accessory units blend in with the surrounding buildings? Are they attached or detached?
- Is there one material or color that is predominately used for the homes on your block?
- Where do most of the homes have their garages? Are they detached or attached?
- What do the backyards in your neighborhood typically contain?
- How private are the backyards in the neighborhood? Does vegetation exist on the sides or rear of homes?

Answering these questions will help you design an ADU that can blend in with the neighborhood. Understanding this fit will allow the ADU to exist within the fabric of the existing community.

Privacy of Adjoining Properties. It is also important to understand the privacy aspects of building an ADU. Your neighbors may not want a dwelling in the backyard next to theirs that can potentially see into their home. You can resolve privacy issues with additional vegetation, careful planning, and communication with your neighbors. The orientation of an ADU can solve privacy issues. You may think about which way your unit faces and where the windows and doors are located.

Privacy for ADU residents. When designing your ADU, there is the opportunity to plan for which parts of the parcel will be used exclusively for the homeowner, the tenant, and for shared use. You will need to consider how tenants can access the ADU to limit passing by private rooms on route to the ADU. The location of parking and the ADU can also have a noise and physical impact on the primary unit and surrounding properties. You may

want to be sure that tenants of the ADU need not walk near surrounding dwelling units on the way to the ADU.

Design Compatibility. You will also need to consider the architectural compatibility with your primary unit. The ADU should be similar in appearance to the primary unit to create an aesthetic and ownership connection between the main house and the ADU. You should also be careful in designing the ADU in a manner that restricts the view of the primary unit or neighboring units. A larger ADU, for example, may restrict visual and/or physical access to a lake or other natural spaces. At a fundamental level, it is important that the ADU blend into the surrounding neighborhood and not be cause for concern from a design and planning standpoint.

Fundamentally, you will need to decide:

- **Where** the ADU will be located your property
- The **size** of the ADU
- Which **direction** the ADU faces
- How to access the ADU with the **least impact** on surrounding properties
- How to minimize **privacy** concerns
- **Design compatibility** with the primary unit and surrounding neighborhood
- **When** you are going to schedule the work

All these decisions should be made with the underlying goal to design your ADU in a way that fits into the existing community. Work with your site engineer/architect or contact **CITY/COUNTY** for more information on designing your ADU.

How much will an ADU cost?

At this point in process, you will also need to figure out the financing and development costs for your ADU. If you plan to use the ADU as a long-term rental unit, you may want the rent to cover the cost of development while keeping the monthly rent low enough to be attractive to renters. If you are building the ADU for other reasons, such as to house a caregiver, you may weigh the costs and benefits of building the ADU in comparison to the costs and benefits of moving to an assisted living facility, for example.

First, you will need to consider the “**hard costs**” of ADU development. These costs are expenses directly related to the physical construction of the building. These costs cover the material and labor that will go into ADU development. The material hard costs include items such as cement, drywall, carpet, windows, and doors. Labor hard costs can include landscaping, site excavation, carpentry, and general building of the ADU.

To lower your hard costs, you have some control over your destiny. Rather than building a detached ADU, for example, you can save money converting your garage into an apartment or by building an attached ADU. You can also choose the materials that you use to build the ADU. If parking is not required and you are able to connect to existing utilities, you can save costs there as well. You can also decide to do part of the work yourself instead of hiring additional labor. Below is an example ADU budget provided by the City of Santa Cruz, California. This is only a sample of what tools you will be dealing with as the prices will likely be different based on material selection, your customization needs, and the current pricing of these supplies in Florida.

Topic		Total Dollars
Off Site Improvements	Water Service	\$3,500
Foundation	Grading/Excavating/Backfill/Compaction	\$2,500
	Concrete & Rebar, Anchoring	\$7,500
Framing	Studs, joists, rafters, sheathing, beams, headers, connectors	\$24,500
Plumbing	Rough	\$2,500
	Finish	\$900
Roofing	Asphalt shingle	\$3,500
Doors	Interior, exterior, shower encl.	\$3,500
Windows	Wood	\$4,500
Finishes	Drywall	\$3,250
	Carpeting	\$900
	Resilient Flooring	\$800
	Countertops (laminated)	\$750
	Cabinets	\$1,200
	Ceramic Tile	\$1,200
	Painting (interior and exterior)	\$5,000
Metalwork	Piperail Guardrails (Int.)	\$2,500
	Gutters, downspouts	\$1,000
Mechanical	Tankless Water Heater	\$750
	Gas Fired Wall Heaters	\$800
	Garbage Disposal	\$200
Landscaping	Allowance	\$500
Total Preliminary Estimation of Construction Cost		\$76,000

Next, you will need to consider the “soft costs” of ADU development. These costs are expenses indirectly related to the construction of the ADU. These include development fees, planning costs, utility hook-up fees, and professional design and engineering services. If you work with a local engineer with experience with the local development process, these costs may be easy to calculate.

Other soft costs include the maintenance of the ADU. Be sure to consider ongoing repairs as a part of your cost calculation and decide on materials up-front that may bring less maintenance costs down the road.

How can I finance my ADU?

If you do not have enough cash on hand, traditional mortgage products are regularly used to construct ADUs. First, you could seek a Home Equity Line of Credit (HELOC) or a Home Equity Loan. Both of these products are essentially second mortgages backed by the equity you own in your home. A Home Equity Loan provides a fixed amount of cash on a fixed repayment schedule backed by the equity in your home. A HELOC is similar but is structured as revolving lines of credit, like a credit card, that has shorter repayment terms and only charges interest on the balance you have drawn. You can typically borrow up to 85% of the value of your home minus the amount you owe. This product typically has a 10-year draw period followed by a 20-year repayment period.

Similarly, you can seek cash-out refinancing. This method is similar to home equity financing except that it replaces your current mortgage, has a fixed

interest rate over the life of the loan (instead of an adjustable interest rate) that is typically lower than a HELOC, has greater initial payments, and is typically more cumbersome to receive. This method allows you refinance your current mortgage for more than what you currently owe in order to receive a lump-sum of cash to build your ADU. An advantage to this option is you can set the loan term for thirty years, lowering the monthly payments by spreading the cost of the ADU over a longer period.

A construction loan can also be used. This loan can be utilized if you do not have sufficient equity based on your current home value. This type of loan looks at the improved value of the home rather than the current home value, allowing you to receive a greater loan if you lack necessary home equity. The closing costs and interest rates for a construction loan are typically higher than a standard refinance.

If the local government offers a loan program for ADUs used as long-term affordable housing units, include that information here. For instance, the local SHIP program could be used for a loan program for ADUs, and the additional benefit of using SHIP would be the assurance that the ADU would serve an income eligible renter (could not be used for tourist vacation rental) and would be monitored for compliance.

Contact your financial advisor, lender, or RELEVANT DEPARTMENT at PHONE NUMBER/OTHER CONTACT INFORMATION for more information on the best financing options for your ADU.

Chapter Four: Permitting and Building Your ADU

The Land Development Process

Once you have your ADU design and financing figured out as described in Chapter 3, you will need to begin navigating the local development process. Contact **RELEVANT DEPARTMENT** at **PHONE NUMBER/OTHER CONTACT INFORMATION** for more information on starting the development process for your ADU.

In this section, include information on the local land development process with in-depth information on how a homeowner can navigate relevant procedures.

Building Your ADU

Once your permits are finalized, you can begin building your ADU! First, you will want to hire a licensed and insured residential building contractor. You should ask two or three contractors to bid on your ADU. All bids should be based on the same set of plans and specifications and with the same materials, appliances, windows, and similar tools. Discuss the bids in detail with each contractor and gather as much as you can about the success and reputation of each. It is important to choose a contractor that is perfect for you. Ask the contractor for local references to see if former clients were satisfied with the work.

Construction Contract

Once you have a contractor in place, make sure you have a written contract in place and do not sign anything unless you completely understand what you are signing. Consult with an attorney if possible. Be as specific as possible and be sure the terms of the contract are clear. The contract should include the total price, when payments will be made, and whether there is a cancellation penalty. Include all aspects of the work that you consider important, including complete cleanup, removal of debris and materials, and when the work shall be done.

After the contract is signed, be aware that modifications can be made with mutual agreement. Always use a signed “change order” if you add or delete work, substitute materials or equipment, or change the completion date. It is very important to have all modifications signed by both parties.

Inspections

This section should contain information on the local inspection process.

Chapter Five: Managing Your ADU

Renting your ADU

This section applies if you decide to rent your ADU. If you intend to rent your ADU, you will be a landlord and there are many items you will need to consider.

Choosing a tenant for your ADU may be the most important thing you do as a landlord. You will be choosing a person or household that will be living on your property. To ensure the right tenant, you can first establish a screening process to attract responsible and honest applicants. Choose criteria by which to judge applicants and apply the criteria consistently for all applicants. Here are some potential screening points:

- Require contact information for most recent landlords
- Require submittal of a complete application
- Run a credit and criminal background check
- Personal references

It is important to use a written rental application when selecting tenants. A good application gives you access to verifiable information. Contact a local rental housing association or legal counsel for copies of sample rental applications. There are many resources at your disposal in this context. Before potential tenants submit their application, it is a good time to distribute your tenant selection criteria as well as specific information about security deposits, vehicles, pet policy, maximum occupancy, and other issues related to the rental of the ADU. If the applicant rides a bicycle, consider providing a secure location for the bike.

After receiving applications, request a credit check on each tenant who will be signing the lease. Credit checks reveal information about installment and revolving credit lines, court records, collection accounts, judgments, liens, and may be used to determine whether you think an applicant has the ability to pay rent. You can also check with the applicant's previous

landlords to determine whether the applicant will be a tenant who pays in a timely fashion and keeps the property in good order. If the applicant is local, you can also ask permission to visit their current residence to assess their housekeeping. In choosing your ADU tenant, be sure to use a process that is simple and fair. Follow all relevant civil rights laws which are designed to prevent discrimination based on issues that are unrelated to a person's qualifications to be a good tenant.

Once you have chosen the tenant, execute a written lease. First, decide how long the lease-term will be. If the lease term is for six months or less, you must remit Florida's 6% sales tax plus any applicable discretionary sales surtax. Lease terms of longer than six months are exempt from sales tax. The lease agreement is vital to forming the understanding between the two parties. Responsibilities should be comprehensive and as clear and concise as possible, and spell out all expectations and responsibilities of each party. Consult with an attorney when devising a lease agreement. Finally, consult with your insurance agent to make sure you have adequate coverage for your ADU.

Obligations as a Landlord

Being a landlord in Florida brings responsibilities. In exchange for receiving rent and the right to have the ADU returned to you undamaged at the end of the lease term, you must satisfy your duties as a landlord. If unsure of your obligations, consult with an attorney before renting your ADU.

As a landlord, you have the duty under Section 83.51 of the Florida Statutes to provide a home that is safe and meets applicable housing, building, and health codes. You must make reasonable repairs as necessary to make sure the structural components of the ADU are in good repair and capable of resisting normal forces and loads. This may include fixing broken pipes, windows, doors, and other items that impair the safety of the

home. You must make sure the plumbing is in reasonable working condition and provide for functioning facilities for heat during winter, running water, and hot water. Florida law also proscribes affirmative disclosures you must make to your tenant.

It is also your duty to respect the tenant's rights as defined in Chapter 83 of the Florida Statutes and pursuant to the Lease. One of the most important tenant rights is the right of peaceful possession. You must not interfere with the tenant's leasehold without first consulting the tenant and providing reasonably timed notice. You have the right to protect your ADU through inspection, but you must give a reasonable notice of at least 12 hours. You may not show prospective buyers or tenants the ADU without notice to and with the agreement of the existing tenants.

Further, it is unlawful to increase or decrease services in a discriminatory manner or threaten to bring an action for possession in retaliation. Retaliation may be presumed if it occurs after a tenant has complained about housing conditions. It is also unlawful to lock the tenant out, shut off utilities, or remove tenant's property from the ADU.

A landlord must follow all lease terms in accordance with the termination of the lease. If there is no written rental agreement or if the lease does not state otherwise and unit is rented on a month-to-month basis, you must give at least 15 days- notice in writing to end the tenancy. A week-to-week rental period requires seven days- notice. The notice may be posted on the door of the ADU if the tenant is absent from the premises.

If the lease agreement is violated by the tenant, certain circumstances must be met before the tenant can be evicted. Section 83.20 of the Florida Statutes lists the causes for removal of tenants. If the tenant fails to pay rent or refuses to move out, you may evict the tenant, but only after you have taken

the proper steps to commence an action for possession. These include notifying the tenant and if the tenant does not cure the violation within three days after receiving notice, the landlord may file for eviction. Other steps follow. Because these steps are so technical, you should consult with an attorney when engaging in the eviction process.

The purpose of this information is not to dissuade you from creating and renting an ADU, but rather to provide a full picture of the landlord obligations that come with renting any home or apartment.

Maintaining the ADU

The ADU must be maintained in accordance with housing, building, and health codes.

If your ADU is a rental unit, be sure to respond to any tenant complaints in a swift manner. Follow the lease terms as to maintenance of the ADU. Most leases will state a procedure for repairs and damages in the event of a breach of contract. Under Section 83.201 of the Florida Statutes, if the lease is silent on the procedure to be followed to effect repair or maintenance and the tenant places the obligation on the landlord, the tenant may withhold rent after notice to the landlord if the landlord fails to repair the unit. If the landlord does not fix the issue within 20 days, the tenant may withhold rent until the repair has been performed. Once the repair is completed, the tenant shall then pay the amounts of rent withheld. The lease may provide for a longer period of time for repair or maintenance.

Chapter Six: More Resources

In this section, include resources as the local government finds necessary to round out this educational material. This section should include a copy of the ADU ordinance and other applicable laws including, but not limited to, landlord-tenant laws and civil rights laws. This section may include local contractors, engineers, and architects that have expertise in ADU development as well as the contact information of all relevant departments of the local government. It may contain permit fees, a local ADU development checklist, other building codes, and other useful websites for homeowner education. If you would like assistance in developing your local government's Homeowner ADU Manual, please contact the Florida Housing Coalition.

Notes

This image shows a full page of blank, lined paper. It features approximately 20 evenly spaced, horizontal light blue lines running across the width of the page. The lines are thin and consistent in color and thickness. There is no handwriting, printed text, or other markings on the paper. The background is a uniform off-white or light gray.



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The Florida Housing Finance Corporation



ACCESS AN ELECTRONIC VERSION OF THE
Accessory Dwelling Unit
GUIDEBOOK

AND OTHER VALUABLE RESOURCES UNDER THE PUBLICATIONS TAB
ON THE FLORIDA HOUSING COALITION'S WEBSITE AT:

FLhousing.org





Council Communication

To: Mayor and Village Council
From:
Date: January 11, 2024
SUBJECT: Discussion Regarding a Previously Considered Ordinance Related to
Variance to Permit a Minor Relaxation of Minimum Lot Area
Requirements (Council Member Gregg) TAB G

Background:

Analysis:

Budget Impact:

Staff Impact:

Recommendation:

Attachments: 1. 23- First Reading - Minor Relaxation of Minimum Lot Area
Requirements

ORDINANCE NO. 23-

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 30, LAND DEVELOPMENT REGULATIONS RELATED TO VARIANCES TO PERMIT A MINOR RELAXATION OF MINIMUM LOT AREA REQUIREMENTS NOT TO EXCEED FIVE PERCENT (5%) OF THE MINIMUM REQUIRED LOT AREA OR 250 SQUARE FEET, WHICHEVER IS LESS; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY; AND PROVIDING FOR AN EFFECTIVE DATE UPON APPROVAL OF THIS ORDINANCE BY THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY.

WHEREAS, Islamorada, Village of Islands has established Land Development Regulations to properly guide development and protect public health, safety, and welfare; and

WHEREAS, Village Land Development Regulations include provisions for the obtaining of a variance in order to provide relief from strict application of the Land Development Regulations that would result in undue hardship; and

WHEREAS, the establishment of minor relief from the strict application of Village minimum lot area requirements would provide reasonable relief to property owners while protecting the health, safety, and welfare of the public.

NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and incorporated herein by this reference.

Section 2. Chapter 30, Article IV, Division 2 (Variances in general) is hereby modified as follows:

Additional text is shown as underlined;

deleted text is shown as ~~strikethrough~~

Sec. 30-221. - Variances in general.

(a) A variance is a relaxation of the terms of this chapter where such action will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship on the property. As used in this section, a variance is authorized only for height, setbacks, parking, ~~and~~ loading requirements, ~~and~~ landscaping, and lot area unless otherwise specified in this chapter. A lot area variance shall be limited to a maximum of five percent (5%) of the minimum required lot area or 250 square feet, whichever is less. Under no circumstances shall the director of planning and development services or the village council grant a Floor Area Ratio (FAR) variance ~~to permit a floor area ratio or authorize~~ a use not permitted under the terms of this chapter.

Section 3. Transmittal. The Village Clerk is authorized to forward a copy of this Ordinance to the State Department of Economic Opportunity (the "DEO") for approval pursuant to section 380.05, Florida Statutes.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Effective Date. This Ordinance shall not be effective immediately upon adoption. The Amendment shall not take effect until the date a final order is issued by the DEO.

The DEO notice of intent to find the Amendment in compliance shall be deemed to be the final order if no timely petition challenging the Amendment is filed.

The foregoing Ordinance was offered by Mark Gregg, who moved for its adoption on first reading. This motion was seconded by Sharon Mahoney, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III	<u>Yes</u>
Vice Mayor Sharon Mahoney	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilman Henry Rosenthal	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>No</u>

PASSED on the first reading this 18 day of May, 2023.

The foregoing Ordinance was offered by _____, who moved for its adoption on second reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III	_____
Vice Mayor Sharon Mahoney	_____
Councilman Mark Gregg	_____
Councilman Henry Rosenthal	_____
Councilwoman Elizabeth Jolin	_____

PASSED AND ADOPTED on the second reading this ____ day of _____, 2023.

JOSEPH B. PINDER, MAYOR

ATTEST:

MARNE MCGRATH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

JOHN J. QUICK, INTERIM VILLAGE ATTORNEY