

ANDREW J. MAYTS
(813) 227-2248
amayts@shumaker.com

to:

City of Tampa
Attn: LaChone Dock
1400 North Boulevard
Tampa, FL 33607
LaChone.Dock@tampagov.net
Via electronic mail

July 15, 2021

Application for Amendment to Chapter 27, Tampa City Code

Ms. Dock,

Our firm has the pleasure of representing Mr. Kenneth Stoltenberg of K.D. Keller Development, LLC. Please find below and enclosed an application for amendment to Chapter 27, Tampa City Code pursuant to Sec. 27-148(a). Attached herewith, please find:

1. Affidavit Authorizing Agent
2. Microsoft Word document showing current text of Sec. 27-140, Tampa City Code
3. Microsoft Word document showing the proposed changes to Sec. 27-140, Tampa City Code
4. Florida Division of Corporations page identifying Mr. Stoltenberg as manager of K.D. Keller Development, LLC
5. This memorandum addressing the criteria detailed in Sec. 27-148(a)

Introduction

Mr. Stoltenberg has been intimately involved in the development patterns within the City of Tampa, and particularly the Channel District, for nearly 20 years. The Bonus Provision ordinance, Sec. 27-140, simply does not function as initially intended and a small adjustment to the formula entitling an applicant to increased density will benefit all parties. This memorandum will address each subsection of Sec. 27-148(a).

Sec. 27-148(a)(1): *The application shall be typewritten, signed and sworn to by the applicant or his authorized agent and shall include the post office address of the applicant*

Please find notarized signature at conclusion of this application. Post office address is:

Andrew J. Mayts, Esq. (authorized agent)
Shumaker, Loop & Kendrick, LLP

101 E. Kennedy Blvd., Suite 2800
Tampa, Florida 33602

Sec. 27-148(a)(2): *It shall state the reason why such regulations, restrictions or boundaries should be amended, supplemented, changed or repealed, and shall include the proposed text changes for review.*

Please find the attached proposed text changes. Sec. 27-140, Tampa City Code, permits applicants to seek bonus floor area by allowing intensity beyond the base Floor Area Ratio of the subject "future land use" category limits imposed by the Tampa Comprehensive Plan in certain districts within the City of Tampa, provided that applicant and the City reach a "bonus provision agreement." The bonus provision agreement involves a detailed calculation to determine the appropriate value for the requested density increase, along with a list of amenities or improvements that will be subject to the agreement.

In practice, the "Bonus Cost Ratio" within the CBD periphery of 10:1 amounts to a disproportionate cost to developers to pursue a meaningful increase in density, resulting in a chilling effect for the development community to pursue projects that can fulfil the potential and needs of both the market and the City. Compounding this inefficiency, Sec. 27.196, Tampa City Code (referencing the Channel District Community Redevelopment Area Strategic Action Plan) states

"...the district is evolving dramatically to also include increased tourism, higher density residential, and more intense mixed-use projects. This constant evolution of uses makes the Channel District a unique redevelopment opportunity in the eastern side of downtown peninsula, given its proximity and geographical connection to the Central Business District. The District is on a direct path to becoming a destination with an urban, mixed-use, transit-related neighborhood reflecting the smart-planning concept of locating residences near job centers. Creation of inviting urban spaces through innovative, superior design will add to the economic and social success of the neighborhood."

The Channel District is uniquely impacted by the current bonus cost ratio given the district's growth potential and connectivity to the Central Business District and Water Street. This application proposes to amend the ratio to 100:1, to be effective for future bonus provision calculations and for existing bonus provision agreements for developments that have not yet obtained a Certificate of Occupancy.

Sec. 27-148(a)(3): *It shall set out, if applicable, any alleged error in this chapter which would be corrected by the proposed amendment with a detailed explanation of such error in the ordinance and detailed reasons how the proposed amendment will correct such error.*

This application seeks to amend an ordinance that, in practice, has not manifested consistent with its original intent. The projects in the Channel District subject to bonus provision agreements have largely not resulted in significant funds going to the City, and the majority have not yet been

developed. This application does not set out to identify error in the code, only that an amendment would significantly benefit the City and applicants alike and align more appropriately with the City Code and Comprehensive Plan.

Sec. 27-148(a)(4): *It shall set out the changed or changing conditions, if any, in a particular area of the city generally which make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.*

The demand for housing and mixed use development, particularly in proximity to the urban core, has increased dramatically over the past several years. The Channel District is uniquely situated to meet these demands with development that offers a variety of housing, retail, commercial and public options for Tampa's growing and diversifying population. The functional cap on density at 3.5 FAR, given the onerous bonus cost ratio for the CBD Periphery, artificially constricts development and discourages the type of projects that can truly meet the community's needs. The amendment promotes the public health, safety and general welfare by increasing the viability of projects that can offer a greater number of current and future Tampa residents the opportunity to live, work and play in a walkable, safe and well-located setting. Potential residents would otherwise have to live further afield, likely commuting to the urban core and thereby adding cars to the road, contributing to sprawl, parking issues and diminished air quality.

Sec. 27-148(a)(5): *It shall set out the manner in which the proposed amendment will carry out the intent and purpose of and provide conformance with the Tampa Comprehensive Plan.*

The future land use designation in the Channel District is Regional Mixed Use 100, and within the Central Business District periphery. The RMU-100 district promotes "High intensity/density high-rise residential, major office, and regional serving commercial developments that because of their need for space, significant vehicular access, or intensity of use require locations related to major transportation facilities." See p. 128, Imagine 2040 Tampa Comprehensive Plan.

The CBD Periphery Bonus is available up to 100% of the maximum density/intensity permitted within the applicable land use plan category. See p. 199, Imagine 2040 Tampa Comprehensive Plan. The Comprehensive Plan is silent as to the bonus provision agreement as well as the bonus provision amount and the method of calculation – these requirements are governed solely by Sec. 27-140 of the Tampa City Code. Therefore, an amendment to the Tampa City Code that would make the stated 100% bonus increase more realistically accessible for development would bring the Code into greater harmony with the provisions of the Comprehensive Plan.

Sec. 27-148(a)(6): *It shall set out all other circumstances, factors and reasons which the applicant offers in support of the proposed amendment.*

If Sec. 27-140 remains unchanged, the Channel District is very unlikely to see future projects much exceeding the base FAR of 3.5. Additionally, to be eligible for bonus density, project must offer mixed use development – this requirement is not proposed to change. Thus,

projects afforded bonus density will still be required to provide amenities and mixed use developments, but the increased likelihood of projects pursuing a bonus could further increase the net benefit to the City.

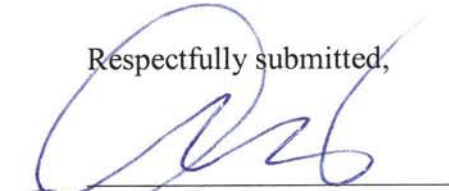
Sec. 27-148(a)(7): *The application shall be filed with the code administrator for presentation to the city council and referral to the appropriate city departments. Applications for all text amendments related to this chapter shall be processed on a semi-annual basis. The code administrator shall develop and maintain a schedule for processing said amendments (see section 27-151).*

This application and supporting documents have been provided to LaChone Dock via electronic mail.

Sec. 27-148(a)(8): *The applicant shall be responsible to pay a fee for the text amendment processing upon filing the application with the code administrator.*

A check for the application fee of \$666.50, as required pursuant to the Fee Schedule effective October 1, 2018, has been mailed to the City of Tampa.

Respectfully submitted,



Andrew J. Mayts, Esq.

STATE of FLORIDA
COUNTY OF HILLSBOROUGH

Sworn to (or affirmed) and subscribed before me by means of
 physical presence or ___ online notarization, this 15th
Day of July, 2021 by




Signature

Signature and Stamp of Notary Public

personally known; or ___ produced identification

Type of identification:

Sec. 27-140. Bonus provisions.

- (a) *Purpose.* The method and calculation ensures that new development will provide and/or contribute to those amenities that enhance the urban quality of life and that balance or compensate in the form of bonus floor area to achieve the desired density/intensity in this area. In order to receive consideration for granting of any bonus in floor area, a property owner and/or developer must demonstrate compliance with the bonus methodology and calculation, including the process and procedures, as set forth in this section. This section, however, does not mandate the award of the bonus to the applicant.
- (b) *Compliance.* All new development, requesting CD-2, PD, PD-A, YC-9, or SH-PD zoning, within the CBD Periphery, and/or within a future land use category that allows for potential bonus density and/or intensity ("FAR"), shall adhere to the regulations set forth in this section, in order to seek approval for such bonus. Developments that have been granted bonuses by city council, per the provisions of this section, shall not be granted any further administrative increase in floor area or unit count through section 27-138(7).
- (c) *Review procedure.* The developer/property owner(s) shall submit bonus cost incentive estimates to the zoning administrator for review and evaluation during the rezoning or applicable process. The zoning administrator shall determine compliance with the provisions set forth in this section and report findings to city council for consideration. Subsequent to a bonus density/FAR and rezoning approval and prior to the issuance of the first permit for vertical construction for the project, the developer/property owner(s) shall submit certified materials and construction cost estimates to the zoning administrator for review of compliance with the bonus-related rezoning conditions. If the zoning administrator finds that the approved bonus calculations have not been met (amenities and/or dollars are deficient), the developer/property owner shall disburse the remaining (deficient) dollar amount to an available city funding source for similar or related public infrastructure, affordable housing, and/or public parking improvements. The developer/property owner shall notify the zoning administrator of all disbursements made to the city. Any disbursements made to a city fund as stated herein, shall not be refundable or reimbursable.
- (d) *Bonus provision agreement.* The developer shall prepare a draft bonus provision agreement describing the nature and timing of the amenity or amenities proposed and penalty for noncompliance. The agreement shall be entered into between the developer and the city prior to, or concurrently with, the second reading public hearing of the related, proposed rezoning.
- (e) *Site plan zoning condition.* The developer shall include a zoning condition on the final site plan to be submitted to the zoning administrator for certification that states the following, "Development shall comply with the provisions set forth in section 27-140 regarding bonus density/FAR. Refer to the 'Bonus Provision Agreement' that demonstrates compliance with section 27-140, approved/adopted concurrent with this site plan zoning."
- (f) *List of improvements and amenities to achieve bonus density/FAR.* The City of Tampa recognizes the need for certain improvements and amenities that generally enhance the urban quality of life. The list below represents those bonus improvements/amenities, from which the developer/property owner may choose any combination thereof to provide, in order to achieve an equivalent amount of bonus density/FAR, as calculated pursuant to this section:
 - (1) Provision of ten (10) percent of the project's dwelling units as affordable housing. Those units shall be affordable to those buyers or renters who earn no more than eighty (80) to one hundred twenty (120) percent of the area median income (AMI) for the City of Tampa, for a minimum of thirty (30) calendar years from the date of the issuance of the certificate of occupancy for each individual unit deemed affordable. Financial parameters shall be set forth in the developer's agreement for this provision, as reviewed and agreed to by housing and community development, land development coordination and the city attorney for sufficiency.
 - (2) Use of unused developments rights, approved through the Transfer of Development Rights Program procedures, set forth in section 27-141.

- (3) Contribute to or provide an improvement for use by the general public, located within a public easement, public right-of-way, or on public property, within the same multi-modal transportation impact fee district as the proposed development project, and which meets at least one (1) of the following options (developments may use more than one (1) of the options below and achieve the related bonus density/FAR for any/all improvements that meet the applicable criteria below):

Option 1:

- a. Identified in/on an approved, adopted, or accepted city plan for sidewalk(s), pathway(s), trail(s), bike lane(s), and/or on-street parking space(s); and
- b. Identified on the city's current capital improvement plan;

Option 2:

- a. A physical connection to an improvement that meets the criteria of Option 1 above; and
- b. Such connection shall meet the minimum applicable standards set forth in the Florida Greenbook for Pedestrian and/or Bicycle Facilities (most current edition);

Option 3:

- a. A physical connection to an improvement that meets the criteria of Option 1.a. above; and
- b. That connects to an improvement that was constructed as a city capital improvement; and
- c. Such connection shall meet the minimum applicable standards set forth in the Florida Greenbook for Pedestrian and/or Bicycle Facilities (most current edition);

Option 4:

- a. A physical connection to an improvement that meets the criteria of Option 1.a. above; and
- b. That connects to an improvement that was constructed to achieve bonus density/FAR in accordance with option in this paragraph; and
- c. Such connection shall meet the minimum applicable standards set forth in the Florida Greenbook for Pedestrian and/or Bicycle Facilities (most current edition);

Option 5:

- a. Any proposed landscape and/or streetscape elements ("enhancements") associated with an improvement that meets the criteria of Option 1 and/or 2 above (bonus achieved only for that increment of value above the minimum city code standard(s) for such enhancements); and
- b. Such enhancements shall be of a compatible design to those enhancements to which the bonus enhancements are connecting ("compatible" includes enhancements of an approved design equivalent, subject to approval of the planning and urban design manager or designee).

- (4) Commitment to secure, and verification of award prior to certificate of occupancy, LEED Certification for applicable rating system category, at silver or higher rating.
 - (5) Provision of public parking (paid-parking is allowed), available and open to the general public, twenty-four (24) hours per day, year-round.
 - (6) Transit operational support subsidy, provided in accordance with (g)(1) of this section.
 - (7) Relocation and/or installation of all utilities (poles, wires, cables, conduit, and all related equipment) underground, on-site and within all immediately adjacent rights-of-way. For properties with multiple right-of-way frontages, bonus can be achieved equivalent to each right-of-way segment completed.
- (g) *Bonus FAR methodology and calculation.* The mathematical calculation, as described in subparagraph (3) below, hereby establishes the method by which the city and the developer shall determine the amount of bonus FAR to be considered for approval by city council. Generally, the formula provides a public subsidy to

offset the developer's added cost of including additional public enhancements, by allowing development intensity beyond the base FAR of the subject "future land use" category. To achieve a "standardized" means of calculation, the following components shall be used in the bonus FAR calculation:

- (1) The current "per square-foot sum" of the construction cost (see a. below) and the (average) market land value shall equal the "development cost."
 - a. Construction costs shall be based on a standard index and/or cost data. The city shall refer to the most current publication of the International Code Council (ICC) "Building Valuation Data" or similar, widely accepted, industry standard publication.
 - b. The zoning administrator shall use the most current, average market land value ["AMLV"] calculated for and within the applicable boundaries, as follows:
 1. The CBD Periphery, as adopted in the Tampa Comprehensive Plan;
 2. The applicable Urban Village boundary as identified in the Tampa Comprehensive Plan;
 3. The applicable special (zoning) district, overlay district, or CRA plan area.

If the subject property is not located within one of the boundaries described in 1.—3. above, the AMLV shall be calculated by using:

4. The most current market value, according to the Hillsborough County Property Appraiser's records; or
5. The most recent, recorded "sale(s) price" figure, according to the Hillsborough County Property Appraiser's and/or Clerk of the Circuit Court records.

The final figure to be used as the (average) market land value in calculating the "development cost" shall be the highest figure from the applicable options 1.—5. above.

- (2) In order to fine-tune the incentive, a cost factor is applied to either increase or decrease the impact. A "bonus cost ratio" of 100:1 is hereby established, representing for every one dollar (\$1.00) contribution to an approved improvement/amenity from the list set forth in (f) above, the developer/property owner is granted ~~ten dollars~~ one hundred (\$100.00) in equivalent development dollars, which then translates to bonus unit(s)/FAR, based on the proposed developments overall costs.

- (3) The following sample tables demonstrate the bonus density/FAR method and calculation:

Development Features:

Bonus Cost Ratio (within CBD Periphery)	100:1
Subject Site Land Area (in square feet (SF))	Amount of Land SF
Average Market Land Value (AMLV) or Recent Sales Price (RSP) per SF	\$ per SF
Construction Cost (CC) per SF	\$ per SF
Development Cost per SF: (DC = AMLV or RSP + CC)	\$ per SF
Base FAR #	Refer to Future Land Use Category
Potential Maximum FAR w/Bonus	Refer to Future Land Use Category

Bonus Incentive Calculation for Specific Development:

Subject Site Land Area (in square feet (SF))	Amount of Land SF
Base FAR # for Subject Site (Subject Site SF × Base FAR)	Amount of Gross Floor Area SF (per Base FAR)
Proposed FAR # (Subject Site SF × Proposed FAR)	Amount of GFA SF (per Proposed FAR)
Actual Bonus FAR in Gross Building Area (SF) (Proposed FAR — Allowable FAR)	Actual Bonus FAR SF

Bonus Cost Ratio per Bonus SF (Bonus Incentive \$) (Ratio = DC/10)	Bonus Incentive \$/SF
Development Incentive \$ for public improvement/amenity (Bonus Incentive \$ × Actual Bonus FAR SF)	Total Development Incentive \$

Bonus Amenities (\$) Proposed by Developer to be Applied to Bonus Incentive (\$):

Total Development Incentive \$ (public improvement) (Bonus Incentive \$ × Actual Bonus FAR SF)	Total Development Incentive \$
Improvement/Amenity (e.g. land area × AMLV or RSP + \$ expenditure)	(\$)
Improvement/Amenity (e.g. cost of feature + installation)	(\$)
Transit Support Subsidy (e.g. cost/year per rider for 20 yrs. × projected population for project based on COT P.P.H.)	(\$)
Public Art (Note: For only development outside of CBD & CD)	(\$)
Balance:	\$0

- (h) *Miscellaneous formulas.* Certain amenities may receive bonus credit for subsidies that the developer/property owner(s) provides for multiple years. These amenities are calculated based on the following methods:

Transit support subsidy. To provide transit support subsidy dollars as a bonus amenity, the developer/property owner(s) shall fund on either an annual basis or as a lump sum payment, the cost per rider based on the projected population, or fraction thereof, of the subject project. The subsidy shall be provided for a period of no less than twenty (20) years with the first annual payment made to Hillsborough Area Regional Transit Authority prior to the issuance of the first certificate of occupancy for the development. To calculate the "total bonus credit" for a transit support subsidy, follow Steps One (1) through Three (3) below:

Step One	Step Two	Step Three
Persons Per Household × # of Units in Project Projected Population	Projected Population × Current Cost per Rider Bonus Transit Subsidy	Bonus Transit Subsidy × 20 (years) Total Bonus Credit
Notes:		
1. Current cost per rider figure shall be provided by Hillsborough Area Regional Transit Authority.		
2. Projected population shall be derived from the City of Tampa's most current "persons per household" figure.		
3. If a transit subsidy is being requested in order to provide less than the required rate of parking for a development, then said subsidy shall be equal to the cost per rider for the projected population for those units that are not provided the required parking or increment thereof.		

- (i) *Maintenance.* Bonus credit shall be given for expenditures (both labor/operating and capital) related to maintenance of those amenities used in the bonus calculation. The developer/property owner shall provide an estimate for the total maintenance expenditures, subject to the following:
- (1) Credit may be given for areas designated for full public access and only for that portion of the feature that exceeds the minimum standards of city code.
 - (2) Said estimate shall be calculated for a period not to exceed twenty (20) years.

- (3) Said estimate shall include a separate calculation for the labor/operating maintenance expenditures. These expenditures shall not exceed fifty (50) percent of the total dollars for maintenance and shall be expressed in present dollars.
- (j) *Bonus provisions review.* The city may review the "bonus improvements/amenities" list and related requirements to determine any change in community needs/desires and general relevance to current market conditions. All proposed text amendments shall follow the process as defined in section 27-149. Said review may include amenity and bonus cost/benefit analyses that consider the following factors:
 - (1) Any changes to the bonus cost ratio (multiplier).
 - (2) Public benefit derived from bonus improvements/amenities.
 - (3) Developer benefits derived from bonus improvements/amenities vs. bonuses received.
 - (4) Negative impacts that result from bonus gain(s) (traffic congestion, air quality, visual impacts, etc.).
 - (5) Addition, elimination, and prioritization of the items on the bonus improvements/amenities list.

(Ord. No. 2016-58, § 2, 4-21-2016)