



THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Zoe Porter, Planner I

Meeting Date: March 16, 2023

Agenda Item: **Text Amendment of the Land Development Regulations** – Text Amendment of the Land Development Regulations – A resolution of the City of Key West Planning Board recommending an ordinance to the City Commission to amend Chapter 122 of the Land Development Regulations, entitled “Zoning”, Article II entitled “Nonconformities”, Section 122-30 entitled, “Abandonment of nonconforming use.”; and Chapter 86 of the Land Development Regulations, entitled “General Provisions”, Section 86-9 entitled, “Definition of terms.” to provide for an amended definition of the term “Abandon”.

Request: The proposed text amendments to the City’s Code of Ordinances are intended to provide clarity and allow consistency between what constitutes a legal nonconforming use as “abandoned” and what components determine “abandonment”.

Applicant: City of Key West

BACKGROUND:

The City of Key West Land Development Regulations (LDRs) permit legally established nonconforming uses to continue to operate subject to certain conditions. If a legal nonconforming use is abandoned, as defined within Sections 86-9 and 122-30 of the LDRs, the use of the property must conform to the applicable zoning districts’ permitted uses going forward. The proposed ordinance to amend the LDRs allows for a modification to what constitutes abandonment of a legal nonconforming use. The suggested amendment allows the City to continue to promote permitted land use on properties that cease operations of legal nonconforming uses, providing for more consistent application of the Land Development Regulations.

REQUEST/PROPOSED AMENDMENT:

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

Sec. 86-9. – Definition of terms.

Terms not otherwise defined in this section shall be interpreted first by reference to the comprehensive plan and this subpart B; secondly, by reference to generally accepted engineering, planning, or other professional

terminology if technical; and otherwise according to common usage, unless the context clearly indicates otherwise. For the purpose of enforcing and administering this subpart B, the following words shall have the definition and meanings ascribed:

{...}

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

- (1) ~~Allowing~~ Expiration of local, state, or federal licenses to lapse; relevant to the alleged abandoned use;
- (2) ~~Removing meters~~ Meter removal;
- (3) ~~Not maintaining a structure in a habitable~~ Lack of structural or site maintenance resulting in an uninhabitable structure or noncompliant site condition as evidenced by a finding by a court, official, or magistrate of competent jurisdiction;
- (4) ~~Not making a unit available for occupation (i.e., advertising or marketing through a Realtor or other agent); and/or~~
- (5) Failure to perform pursuant to the terms of an active building permit; and in violation of the FL Building Code;
- (6) Termination of nonconforming business operations; and/or
- (7) Removal of associated equipment.

(Ord. No. 97-10, § 1(5-21.2), 7-3-1997; Ord. No. 97-20, § 1(ex. A, B), 9-16-1997; Ord. No. 98-16, § 1, 6-2-1998; Ord. No. 98-31, § 1, 11-10-1998; Ord. No. 98-32, § 1, 12-1-1998; Ord. No. 99-18, § 1(Exh. A), 9-8-1999; Ord. No. 00-04, § 27, 2-1-2000; Ord. No. 00-10, § 3, 6-7-2000; Ord. No. 00-14, § 1(Exh. A), 7-5-2000; Ord. No. 02-06, § 1, 2-20-2002; Ord. No. 04-07, § 1, 4-6-2004; Res. No. 06-292, § 1, 9-6-2006; Ord. No. 09-06, § 1, 4-7-2009; Ord. No. 10-04, § 1, 1-5-2010; Ord. No. 13-19, § 1, 11-6-2013; Ord. No. 18-13, § 1, 7-3-2018; Ord. No. 19-18, § 2, 8-6-2019; Ord. No. 21-02, § 1, 1-20-2021; Ord. No. 21-08, § 1, 3-2-2021; Ord. No. 22-25, § 1, 8-16-2022)

{...}

Sec. 122-30. – Abandonment of nonconforming use.

If a nonconforming use ceases, except when government action impedes access to the premises, any and every future use of the building or structure and/or premises shall be in conformity with the use section of the applicable zoning district stated within the land development regulations. All material and equipment associated with the abandoned nonconforming use shall be completely removed from the premises by its owner. No new structure or addition that does not conform to the requirements of this article shall be erected in connection with such nonconforming use. A nonconforming use shall be considered abandoned when such use has ceased given expiration of the local, state, or federal licenses relevant to the alleged abandoned use, and/or business operations having ceased as evidenced by one of the following: removal of utility meters; negligence to maintain the premises in a habitable condition as evidenced by a finding by a court, official, or magistrate of competent jurisdiction; failure to operate pursuant to the terms of an active building permit and in violation of the FL Building Code; or removal of equipment or inventory related to the nonconforming use for a period of 24 continuous months, whichever comes first. If a dispute occurs with the city about whether a use has been abandoned, the owner shall be entitled to a hearing before the planning board.

(Ord. No. 00-10, § 7, 6-6-2000; Ord. No. 08-04, § 25, 5-20-2008)

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LAND DEVELOPMENT REGULATIONS TEXT AMENDMENT PROCESS:

Planning Board Meeting:	March 16, 2023
City Commission (1st Reading):	TBD, 2023
Local Appeal Period:	30 days
DEO Review (1st Reading):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD, 2023
Local Appeal Period:	30 days
DEO Review (2nd Reading):	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

ANALYSIS:

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but rather to allow necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552, the Planning Board shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change in the LDRs to the City Commission for official action.

The Code provides the following criteria by which LDR amendments must be evaluated:

Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:

- a. Comprehensive Plan consistency. Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning must be consistent with the Comprehensive Plan.***

The proposed amendment is consistent with and further implements the Comprehensive Plan policies below:

Policy 1-1.9.5: - Land Use Consistency and Compatibility.

The City of Key West shall continue to enforce Land Development Regulations which ensure that future land uses shall be compatible with the Future Land Use Map, hurricane evacuation plans, and other applicable laws, ordinances, and administrative rules regulating land and water resource management.

Policy 1A-1.2.4: - Land Use Compatibility.

The City shall identify and through its Building Code and enforcement of amended Land Development Regulations and code enforcement program, shall pursue the reduction and incremental elimination of inconsistent land uses in the Historic District. Adjacent land uses in the Historic District shall be compatible.

The proposed text amendments provide more clear language to define the abandonment of legal

non-conforming uses to assist Staff and during an appeal, the Planning Board. Although some legal non-conforming uses may not result in notable negative impacts to a surrounding neighborhood, others may have caused problems related to incompatibility. The Planning Department supports proactive rezoning of properties based on data, analysis, and/changed conditions and acknowledges that the Comprehensive Plan policies listed above encourage the discontinuance of abandoned, incompatible uses.

b. *Impact on surrounding properties and infrastructure. The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.*

The proposed amendment does not apply to any particular property, but rather all properties within the City's jurisdiction. The amendment provides clarity to the terms "abandon" and "abandonment"; such terms provide criteria to establish that nonconforming uses which have ceased operations shall conform with permitted or conditional uses associated with the properties' applicable zoning district.

c. *Avoidance of special treatment. The proposed change shall not constitute a spot zone change. Spot zoning occurs when:*

1. *A small parcel of land is singled out for special and privileged treatment.*

The proposed amendment does not directly affect any single parcel, nor the zoning of any specified parcels within the City, but rather promotes legal nonconforming properties to operate as a permitted land use within their respective zoning district if certain conditions are met.

2. *The singling out is not in the public interest but only for the benefit of the landowner.*

The proposed amendment will provide consistency with respect to the City's definition and criteria associated with abandonment of legal nonconforming uses. The amendment will establish that legal nonconforming properties with lapsed Business Tax Receipts or legal nonconforming uses that have ceased to operate for a duration of 24 months must comply with their applicable zoning district going forward.

3. *The action is not consistent with the adopted comprehensive plan.*

The proposed amendment would be consistent with the Comprehensive Plan, particularly with Policy 1-1.9.5: - *Land Use Consistency and Compatibility* and Policy 1A-1.2.3: - *Land Use Compatibility*.

d. *Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested shall be stated.*

The proposed amendment does not apply to any specified future land use designation or zoning district, but rather applies to all future land use and zoning district designations within the City of Key West.

RECOMMENDATION:

Based upon the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends to the Planning Board the proposed amendment to the Land Development Regulations be **APPROVED**.