




## MEMORANDUM

---

Date: April 11, 2024

To: Honorable Mayor and Commissioners

Via: Albert P. Childress  
City Manager 

From: Katie P. Halloran  
Planning Director

Subject: **24-5322 - Text Amendment of the Land Development Regulations** - An Ordinance of the City of Key West, Florida, to amend Chapter 86 of the Land Development Regulations entitled "General Provisions", Section 86-9 entitled "Definition of terms." in order to amend the definition of the terms "Accessory structure", "Building coverage", "Open space (green area)", and "Principal structure"; to rename and amend Chapter 122 entitled "Zoning", Article V. entitled "Supplementary District Regulations", Division 4 entitled "Accessory Uses and Structures" to be titled "Accessory Uses, Accessory Structures, and Other Structures", Section 122-1181 entitled "Permitted and restricted uses" to maintain the required 5' setback for decking 30" or greater in height; and to add Section 122-1187 entitled "Covered patios, gazebos, and other roofed structures." to maintain rear and side yard setback requirements for the construction of non-principal roofed structures; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

---

### Introduction

This item is a request to amend the Land Development Regulations (the "LDRs") of the City of Key West, Florida. This amendment was proposed by the Building Department with the support of Commissioner Carey. It would redefine regulations regarding *building coverage*, and create a new framework for regulating non-principal structures, which are currently known as *accessory structures*. This amendment was approved by the Planning Board at the March 12, 2024 meeting, however Planning Department staff recommend denial.

## **Background**

The amendment makes substantive changes to the Code’s definitions of “building coverage” and “accessory structure.” Building coverage regulations control the intensity of development by stipulating the maximum percent lot that can be covered in buildings and structures. Building coverage regulations are a foundational tool in urban planning, and are used to:

- Minimize the impact of development on the environment, stormwater, and ecological services.
- Preserve neighborhood character and property values, particularly in low- and medium-density
- Ensure sufficient supply of open, green space, which helps maintain ecological services, including natural floodplain functions and enhancing air and water quality.

<b>Proposed Changes</b>	
<b>Existing Definition</b>	<b>Proposed Definition</b>
Building coverage: includes all buildings, and all structures that are 30” or higher above grade.	Building coverage: includes all buildings <u>with fully- secured nonpermeable roofs</u> , and all structures that are 30” or higher above grade,
Accessory structures: structures that are subordinate and incidental to the principal use	Accessory structures: Structures <u>with two rigid walls and a fully secured nonpermeable roof</u> , that are subordinate and incidental to the principal use.

This ordinance was proposed to reduce lot coverage restraints to enable property owners to construct accessory units, accessory structures, or additions to residences. However, this amendment would not increase the area of a lot that may be covered in accessory units, accessory structures, or additions to residences because it does not apply to structures with fully-secured roofs. This amendment would increase the area of lots that may be covered in structures like elevated patios, decks, and pergolas. This would apply to both residential and commercial properties.

This proposed amendment would also revise the definition of *accessory structure*. Accessory structures are currently limited to 30% rear yard coverage. As a result of the proposed amendment, accessory structures without two rigid walls and a fully secured roof would no longer be subject to the 30% rear yard coverage limit. However, there are also a number of exceptions and permissions that are afforded to accessory structures in the Code; it’s unclear how this ordinance would affect structures that would be excluded from the definitions of “accessory structure” and “principal structure.”

The overall result of these two revised definitions would be an increase in the area of the City that can be covered in structures. This proposal should be considered with regard to several recent ordinances that also loosened lot coverage controls on building coverage and impervious surface coverage.

Ord. 22-25:

- Structures do not contribute to impervious surface if they are elevated above grade and area below is pervious. However, there is no minimum elevation requirement, and no requirement that grade is sloped such that rainfall percolates underneath the structure.
- Gutters, eaves, and overhangs are excluded from building coverage calculations.

Ordinance 24-10:

- ADUs are excluded from building coverage and impervious surface calculations.

Increasing building coverage and reducing open space conflicts with the Comprehensive Plan and Area of Critical State Concern Principles for Guiding Development, both of which call on the City to preserve open space and minimize the impact of development on stormwater and the environment. Surveys that informed the City's Strategic Plan and a recent bond survey also show that most residents want the City to prioritize the reduction of roadway flooding. This amendment would chip away at long-standing regulations that mitigate stormwater volume and roadway flooding.

In addition to potential impacts on physical development patterns and infrastructure, this amendment would hamper the City's ability to measure and evaluate important development characteristics, especially those which are crucial to adaptation and resilience planning; if the definition of "building coverage" does not reflect the area of a lot that is covered in buildings, then it loses its value as a zoning tool.

The proposed definitions would also create logical inconsistencies. For example, this amendment proposes to take FEMA's definition of the word "building" and apply it to the term "accessory structure." FEMA and the City already use the same definition for "accessory structure" so this would make the City's definitions less consistent with FEMA definitions, while also creating inconsistent, unpredictable applications of the Code that would be difficult to justify: The concept of "accessory" structures/uses describes primary versus secondary uses on a property. Whether a structure has two rigid walls is not relevant to that relationship. As a result, there would be different regulations for structures based on the number and rigidity of their walls, even though that doesn't factor into the intensity or impact of the

**Accessory Structure –**  
Subject to size limits



**Not an Accessory Structure**  
Not subject to size limits



development. For example, the structures pictured on the previous page would be regulated differently despite no material change in the use, intensity, or impact.

The proposed definitions will likely result in other ambiguities and inconsistencies within the Code, although these conflicts will emerge over time as an analysis was not completed as part of this proposal.

This amendment also excludes staircases from building coverage calculations, which would address one barrier to home elevation. However, a more comprehensive home elevation ordinance was recently approved by Planning Board through Resolution 2024-016 and is on this evening's City Commission agenda.

**Land Development Regulation Amendment Criteria – Section 90-520:**

***Justification. The need and justification for the proposed change shall be stated.***

The primary justification for the amendment is that it would “reduce potential hardships” for certain property owners by loosening restrictions to allow for the construction of additional living area. However, Code Section 90-516 states that LDR amendments are “not intended to relieve particular hardships.” Additionally, this amendment does not loosen restrictions on additional living area.

***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 change is inconsistent with the Comprehensive Plan, including but not limited to the following policies and objectives:

Policy 1-1.2.1: Update standards and/or review criteria for mandating retention of open space and for regulating building design, including setbacks, building placement on site, and building orientation. These provisions shall be directed toward protecting privacy, as well as access to light, air and open space.

- This amendment would remove long-standing policies that protect privacy, access to light, air and open space.

Objective 1-1.12: Incorporate concepts for managing land, water, and the built environment which are responsive to climate change issues including but not limited to sea level rise and increased frequency of intense rainfall events.

- This amendment would remove long-standing concepts that manage land, water and the built environment, including those that mitigate the flood impacts of more frequent intense rainfall events.

Objective 5-1.1: Maintaining or improving coastal environmental quality by improving stormwater management.

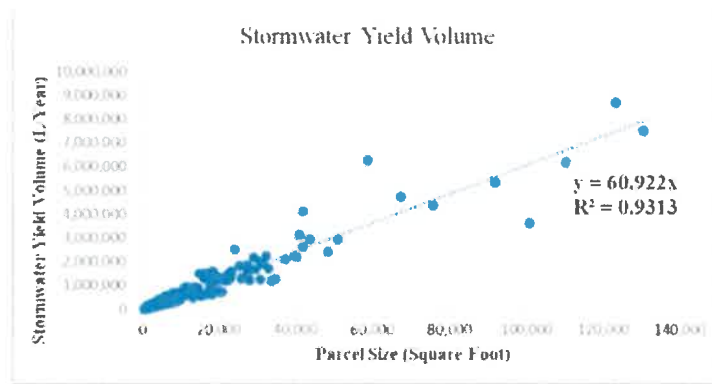
- This amendment would remove long-standing policies that mitigate harm to coastal environmental quality by permitting higher intensity development with no accompanying increase in stormwater infrastructure capacity, at a time when the City is looking into bond funding to mitigate existing levels of stormwater.

Policy 1-1.14.9: In order to maintain land use policies responsive to changing conditions, problems, and issues, the City shall undertake special studies as needed to develop specific local strategies for resolving unanticipated land use problems and issues.

- Code Section 90-516 provides that text amendments to the LDRs are intended “only to make necessary adjustments in light of changed conditions.” Policy 1-1.14.9 directs the City undertake special studies to develop policies that are responsive to changed conditions. However, no study was undertaken to support this amendment and no changed conditions have been identified.

**Procurement**

This amendment would allow for increased building coverage, which is correlated with higher stormwater yield volume. Maintaining stormwater infrastructure concurrency in response to higher stormwater volumes may present additional costs to the City and/or property owners in the form of impact fees.



*Studies show that higher building footprints are correlated with higher stormwater yield volume.*

*(Zhou, L. 2019. Correlations of Stormwater Runoff and Quality: Urban Pavement and Property Value by Land Use at the Parcel Level in a Small Sized American City. Water. 11:2369.)*

**Recommendation**

The amendment was approved by the Planning Board at the March 12, 2024 meeting. The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the City Commission that this request to amend the Land Development Regulations be denied.

Exhibits:  
Exhibit A – Proposed Ordinance