



## MEMORANDUM

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Date: October 10, 2024

To: Honorable Mayor and Commissioners

Via: Todd Stoughton  
Interim City Manager

From: Katie P. Halloran  
Planning Department Director

Subject: **File 24-5319 - Text Amendment of the Land Development Regulations** – An Ordinance of the City of Key West, Florida, to amend Chapter 122 of the Land Development Regulations, entitled "Zoning", Article V entitled "Supplementary District Regulations, Division 3 entitled "Area Requirements", Section 122-1143 entitled, "Impervious Surface Requirements for all Uses" to allow seventy-five percent (75%) of the water surface area of an uncovered water-retaining feature on residential properties to be considered a pervious surface, subject to freeboard requirements; Providing for severability; Providing for repeal of inconsistent provisions; Providing for an effective date.

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### **Introduction**

The City of Key West Building Department, with support from Commissioner Carey, has proposed a text amendment to the Land Development Regulations (LDRs) to allow for a revised definition and limitations for the term “impervious surface”, consequently transforming how impervious surface ratio is calculated. To achieve this, Section 122-1143 of the Land Development Regulations must be amended. This text amendment is one of several text amendments the Building Department has brought forward with the intention of alleviating site data calculation issues at residential properties in order to enable construction of additions or accessory dwelling units.

This item was recommended for approval by the City of Key West Planning Board at their hearing on January 18, 2024, under Resolution No. 2024-006. The City Commission also recommended approval of the proposed amendments at First Reading on February 8, 2024. At Second Reading before the City Commission, this matter was adjourned to April 11, 2024 to provide additional time to resolve remaining concerns among the Utilities, Engineering, Building, and Planning Departments. Subsequently, the item

was postponed from the April 11, 2024 Commission meeting to the September 12, 2024 Commission hearing and postponed again from the September hearing to the October 10, 2024 City Commission hearing.

## **Background**

The City Commission recommended approval of the proposed amendment at First Reading, but directed City staff including Building, Planning, Legal, Utilities, and Engineering to work together to address any potential concerns associated with the amendment. Since First Reading, City staff have worked cooperatively to address potential concerns associated with the proposed changes to the definition of “impervious surface” contained in Section 122-1143 of the City Code.

As noted previously, “Impervious Surface” is defined, in part, as the portion of land covered by buildings, pavement, nonporous fill, and other cover through which water is unable to penetrate. Impervious surface ratio (ISR) is calculated by dividing the total area of impervious surface on a parcel by the gross parcel area. The purpose of calculating impervious surface ratio is to manage the intensity of development on any given parcel of land, as well as reducing stormwater runoff by ensuring water can penetrate the ground. Most residential zoning districts in the City include a maximum impervious surface ratio ranging from 50% to 70%. Pursuant to the specifications and limitations stated within the current Code for calculating ISR, waterbodies are considered impervious and must be included in ISR calculations.

Contrary to the Code, Building Department staff finds that natural and manmade waterbodies such as swimming pools, garden ponds, or other water filled enclosures retain water that would otherwise runoff hard surfaces or over-saturate vegetated ground, and therefore are easily penetrated and allow for ponding of stormwater. Building Department staff has indicated that the City of Key West had previously considered waterbodies pervious, as one definition of pervious is the acceptance of water, which swimming pools achieve. In 1997, the City Commission adopted Ordinance 97-10, enacting the Land Development Regulations currently in place. The classification of waterbodies as impermeable has remained unchanged since then.

The definition of permeability varies from municipality to municipality. Miami-Dade County defines permeability as “the ability of an aquifer, soil, rock or other geological formation to transmit water,” (Miami-Dade Code of Ordinances Sec. 24-5) which swimming pools do not achieve. However, the City of New Orleans Comprehensive Zoning Ordinance (Sec. 26.6 – Definitions: “Permeable Open Space”) and the City of Raleigh Unified Development Ordinance (Article 9.2 Stormwater Management, Sec. 9.2.1.F.1.d) both consider the water surfaces of swimming pools as permeable.

Following the First Reading before the City Commission, the Building Department, in consultation with the Engineering and Utilities Departments has proposed a number of modifications to the proposed amendment. Specifically, the Building Department has recommended the following:

- Excluding the proposed changes from commercial properties in order to preserve the existing stormwater impact fee assessment;
- Limiting the area of pool designated as pervious to 75% of the surface area of the pool;
- Limiting the application of the 75% credit to a pool with at least 6” of freeboard between the top of the skimmer and the top of the coping;

A copy of the latest version of the proposed amendment is attached.

The proposed amendments help to address some of the concerns expressed by staff over the original amendments. It is recommended that the Utilities and Engineering Departments provide comments that the proposed credit of 75% for the surface area of a pool is reasonable and will adequately mitigate any potential stormwater or environmental impacts associated with the increased lot coverage that this amendment will produce. It is noted that the intent of the zoning regulations is to properly balance the intensity of development of an individual lot with broader regional concerns related to stormwater management, community character, open space, habitat preservation, and land use compatibility – including the need to protect privacy among neighbors.

**Request/Proposed Text Amendment:**

\*(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.)

**Sec. 122-1143. – Impervious surface requirements for all uses.**

(a) *Definition; scope.* The term "impervious surface" is defined as that portion of the land which is covered by buildings, pavement, nonporous fill, or other cover through which water cannot penetrate. The impervious surface ratio requirement controls the intensity of development, by restricting the amount of the land covered by any type of impervious surface. The areas beneath elevated structures shall not be considered impervious, so long as those areas beneath the elevated structures are maintained fully permeable. Any skirting enclosing crawlspaces must be a fully permeable metal mesh or other material approved by the City Engineer. For the calculation of impervious surface, properties with structures that have overhangs and/or eaves may consider the areas beneath the overhangs and/or eaves, as pervious, so long as these areas remain otherwise free of buildings, pavement, nonporous fill, or other cover through which water cannot penetrate.

(b) *Calculation.* The impervious surface ratio (ISR) is calculated for the gross site by dividing the total impervious surface by the gross site area. ~~Waterbodies are impervious and shall be included as such in the ISR calculation.~~ On residential properties, the water surface area of an uncovered garden pond or a swimming pool with at least six (6) inches of freeboard from the top of the skimmer to the bottom of the coping shall be calculated as a pervious surface.

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(Ord. No. 97-10, § 1(2-5.9(C)), 7-3-1997; Ord. No. 22-25, § 2, 8-16-2022)

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**Procurement:**

Planning Department staff are currently coordinating with Building and Utilities Department staff to minimize or eliminate unanticipated impacts to commercial property stormwater assessments. A final revised draft ordinance is not yet ready for City Commission review at this time.

**Recommendation:**

The Planning Department recommends that the Utilities and Engineering Departments confirm that the proposed 75% credit for pool surface area is reasonable and will sufficiently mitigate potential stormwater related impacts associated with the proposed amendment. City Commission should also carefully consider the potential consequences associated with the increased development density that will occur as a result of this change. Increased development density will likely place additional strain on local resources including ground and surface water, open space, habitat, community character...etc.