

**Planning Board Resolution
2010-022**

RESOLUTION NUMBER 2010-022

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
RECOMMENDING APPROVAL OF AN AMENDMENT TO
CHAPTER 18, BUSINESSES, OF THE CODE OF
ORDINANCES OF THE CITY OF KEY WEST TO INCLUDE
A CONDITIONAL APPROVAL PERMIT; AND PROVIDING
FOR AN EFFECTIVE DATE**

WHEREAS, the Planning Board requested that city staff develop a regulatory mechanism to encourage better monitoring and enforcement of conditions associated with conditional use approvals, variances, transient unit or transient business tax receipt transfers and minor and major development plan approvals; and

WHEREAS, city staff, in conjunction with a Planning Board member representative, prepared a draft ordinance to accomplish monitoring and enforcement goals; and

WHEREAS, the Planning Board held a public hearing on October 15, 2009, to discuss a draft ordinance and receive public comment; and

WHEREAS, the Planning Board held a public meeting on November 19, 2009, to make a recommendation regarding the proposed ordinance to the City Commission; and,

WHEREAS, city staff prepared additional changes to the draft ordinance to address legal and administrative issues that arose after the November 19, 2009, Planning Board meeting; and

WHEREAS, the Planning Board reviewed the revised draft at a meeting on June 10, 2010, and recommended a modification to the draft.


Chairman

Planning Director

Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the Planning Board unanimously supports the proposed ordinance and recommends that the City Commission adopt the ordinance.

Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 10th day of June, 2010.


Authenticated by the Chairman of the Planning Board and the Planning Director.



Richard Klitenick, Chairman
Key West Planning Board

JUNE 14, 2010
Date

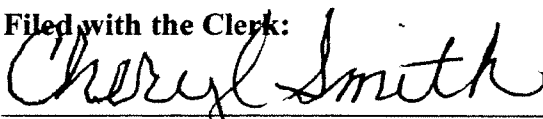
Attest:



Amy Kimball-Murley, AICP
Planning Director

JUNE 14, 2010
Date

Filed with the Clerk:



Cheryl Smith, City Clerk

6-15-10

Date



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO CHAPTER 18, BUSINESSES, OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST TO INCLUDE A CONDITIONAL APPROVAL PERMIT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Key West Land Development Regulations allow approving bodies to place conditions upon Conditional Use approvals pursuant to Section 122-62, Transient Unit or Transient Business Tax Receipt Transfers pursuant to Section 122-1340, and Minor and Major Development Plan approvals pursuant to Section 108-196 and 108-198; and

WHEREAS, some conditions of approval survive the issuance of a certificate of occupancy and remain integral to the operation of the use as expressed in approvals; and

WHEREAS, the proposed amendment was initiated by the Planning Board to encourage better monitoring and enforcement of site specific conditions associated with approvals granted pursuant to the Land Development Regulations; and

WHEREAS, the Planning Board held a noticed public hearing on June 10, 2010 and recommended approval of the proposed amendments with one modification.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. **Amendment**. Chapter 18. Businesses, is amended as follows:

Article XII. CONDITIONAL APPROVAL PERMIT

DIVISION 1. PERMIT

Section 18-610 Required

Any development approved after XXX {the effective date of this ordinance} operating pursuant

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to a Conditional Use approval pursuant to Section 122-62, Transient Unit or Transient Business Tax Receipt Transfer pursuant to Section 122-1340, and Minor and Major Development Plan approval pursuant to Section 108-196 and 108-198, when such approvals contain conditions of approval, shall obtain and maintain a Conditional Approval Permit from the city prior to issuance by the city of a certificate of occupancy. No facility required to obtain such permit will operate without a permit.

Section 18-611 Application and Permit Fee

An application for the Conditional Use Permit shall be made to the city manager in the name of the property owner. The annual application fee, annual inspection fee, and late penalty fee shall be as established by resolution of the City Commission.

Section 18-612 Term

This permit is renewable on an annual basis on or before each June 1. A late penalty shall be assessed for a permit payment made after June 1.

Sec. 18-613 Incorporation of Conditions of Approval

The permit will include all conditions of approval, including but not limited to the associated development plan or site plan which survive the issuance of a certificate of occupancy.

Section 18-614 Annual Inspection

The code compliance department will inspect each facility on an annual basis upon reasonable notice to determine compliance with conditions.

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Sec. 18-615 Revocation or suspension.

(a) Failure to adhere to the provisions herein shall constitute a violation of this article. At the City's option it may enforce an alleged violation of a conditional of approval either in a court of law or in the proceedings of the code enforcement special magistrate pursuant to the procedures set forth in chapter 2, article VI of the Code of Ordinances.

(b) If a permit holder is found in violation of permit conditions or enters an admission to a violation as established by a Findings and Order pursuant to Section 2-641, the city manager may determine whether to revoke or suspend for a period of time the permit. Before reaching a decision, the city manager shall:

(1) Afford the permit holder notice of the hearing and a reasonable opportunity to be heard;

(2) Consider the permit holder's record of violations;

(3) Consider the seriousness and recurrence of the violation;

(4) Consider the degree of disturbance on persons or neighboring property owners; and

(5) Consider the impact to public health, safety and welfare.

(c) The city manager's decision to revoke or suspend a permit shall be issued in writing and shall inform the permit holder of the right to appeal the decision to the planning board. A written appeal must be accompanied by a fee as established by the city commission and filed with the city clerk within ten days of the receipt of the decision. An appeal shall not stay the city manager's decision unless the city manager's decision calls for a stay upon appeal. If a permit is revoked or suspended and the establishment continues to operate without a permit, the city attorney is authorized to apply for an injunction from the circuit court.

(d) The final revocation will serve to automatically revoke the underlying land use regulatory approval associated with the violation. The property owner must apply for and obtain the underlying land development approval in order to restore the use.

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Section 2: **Severability.** 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 4: **Conflict.** 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 5. **Effective Date.** This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2010.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2010.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

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