

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, 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".

**WHEREAS**, the City of Key West allows a legally established nonconforming land use and/or property to continue until such use or property has been determined abandoned; and

**WHEREAS**, Section 86-9 *Definition of terms.* of the Land Development Regulations provides a definition for the term "abandon", which includes criteria as to whether a land use may fall under the definition of "abandon"; and

**WHEREAS**, Section 122-30 *Abandonment of nonconforming use.* of the Land Development Regulations provides criteria to determine whether a legal nonconforming use shall be considered abandoned; and

**WHEREAS**, the existing criteria within Section 86-9 and Section 122-30 allow for discrepancies; and

**WHEREAS**, is it in the best interest of the City to provide clear language and objective criteria to facilitate the determination of "abandon" and *abandonment of nonconforming use*; and

**WHEREAS**, Section 86-4 of the City Code requires that City Land Development Regulations be amended as necessary to ensure consistency with the City Comprehensive Plan; and

**WHEREAS**, the Planning Board held a noticed public hearing on March 16, 2023, where based on the consideration of recommendations by the city planner and other information, the Board recommended approval of the proposed amendments through Planning Board Resolution 2023-      ; and

**WHEREAS**, the City Commission has also determined, in accordance with the criteria of Code Section 90-520(6) that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in

the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 86 of the Land Development Regulations, entitled "General Provisions", Section 86-9 entitled, "Definition of terms." is hereby amended as follows:

**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 relevant to the alleged abandoned use; to lapse;

- (2) ~~Removing meters~~ Meter removal;
- (3) ~~Not maintaining a structure in a habitable~~ Lack of structural or site maintenance resulting in an unhabitable 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~~4) Failure to perform pursuant to the terms of an active building permit. and in violation of the FL Building Code;
- (5) Termination of nonconforming business operations; and/or
- (6) 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)

Section 2: That Chapter 122 of the Land Development Regulations, entitled "Zoning", Article II entitled "Nonconformities", Section 122-30 entitled, "Abandonment of nonconforming use." is hereby amended as follows:

**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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\*(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.)

Section 3: 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: 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: 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 Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Authenticated by the presiding officer and Clerk of the  
Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Filed with the Clerk \_\_\_\_\_, 2023.

Mayor Teri Johnston \_\_\_\_\_

Vice Mayor Sam Kaufman \_\_\_\_\_

Commissioner Lisette Carey \_\_\_\_\_

Commissioner Mary Lou Hoover \_\_\_\_\_

Commissioner Clayton Lopez \_\_\_\_\_

Commissioner Billy Wardlow \_\_\_\_\_

Commissioner Jimmy Weekly \_\_\_\_\_

TERI JOHNSTON, MAYOR

ATTEST:

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CHERYL SMITH, CITY CLERK