

**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**



To: Chairman and Planning Board Members

Through: Katie Halloran, Planning Director

From: Nicholas Perez-Alvarez, AICP, Stantec

Meeting Date: January 18, 2024

Agenda Item: **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 V Entitled “Supplementary district regulations”, Division 3 entitled “Area requirements”, Section 122-1143 entitled, “Impervious surface requirements for all uses” to allow waterbodies to be considered pervious; pursuant to Chapter 90, Article VI, Division 2 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: A text amendment to the Land Development Regulations to allow for a revised definition and limitations for the term “impervious surface”, consequently transforming how impervious surface ratio is calculated.

Applicant: City of Key West

Background and Summary:

The City of Key West Building Department 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 for residents to house family members.

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 note 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 have 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.

The Planning Department recommends approval of the proposed text amendment. However, Planning staff note that there are likely ecological impacts associated with incremental changes to the built environment that function to decrease freshwater recharge of the freshwater lens beneath Key West. It is unknown how these small gradual changes may affect nearshore water quality or marine species in nearshore waters over time.

Request / Proposed Land Development Regulations and Official Zoning Map Amendments:

The applicant is requesting an amendment to the Land Development Regulations that would apply City-wide to the following sections of the LDRs:

- 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”

The proposed amendment is depicted below.

**Coding: Added language is underlined; deleted language is ~~struck through~~ at first 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. The water surface area of any swimming pool, garden pond, or other water filled enclosure shall be considered a pervious surface.
- 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.~~

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Official Text Amendment Process:

Planning Board Meeting:	January 18, 2024
City Commission (1 st Reading / Transmittal):	TBD, 2024
Local Appeal Period:	30 days
DOC Review (1 st Reading):	Up to 60 days
City Commission (2 nd Reading / Adoption):	TBD, 2024
Local Appeal Period:	30 days
DOC Review (2 nd Reading):	Up to 45 days
DOC Notice of Intent (NOI):	Effective when NOI posted to DOC 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 or the boundaries of the official zoning map. It is not intended to relieve particular hardships nor to confer special privileges

or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this division, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-522 (a), the Planning Board, regardless of the source of the proposed change in the land development regulations, 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 of zoning to the City Commission for official action. In its deliberations, the Planning Board shall consider the criteria stated in section 90-521.

90-520 (6) Justification. The need and justification for the proposed change. 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 should be consistent with the Comprehensive Plan.

The proposed text amendment will not impact the Official Zoning Map nor the Future Land Use Map.

The proposed text amendment is consistent with the Comprehensive Plan’s adopted definition of “impervious surface” provided within the Glossary of Terms, which does not explicitly consider waterbodies an impervious surface:

Impervious Surface - Surface through which water cannot penetrate, such as a roof, road, sidewalk, and a parking lot. The amount of impervious surface increases with development and establishes the need for drainage facilities to carry the increased runoff.

- 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 text amendment applies City-wide and therefore does not impact surrounding property or infrastructure. The Building Department finds that bodies of water are porous and are able to capture and hold water that would otherwise saturate the ground or runoff hard surfaces.

- c. *Avoidance of spot zoning.*** *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 text amendment does not alter the zoning of nor apply to any specific parcel within the City.

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

The proposed text amendment does not pertain to a specific parcel of land.

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

The proposed text amendment is consistent with the adopted Comprehensive Plan; specifically, the definition for “impervious surface” indicated above.

- d. ***Undeveloped land with similar zoning.*** The amount of undeveloped land in the general area and in the city having the same zoning classification as that requested.

This proposed amendment is not associated with a particular Future Land Use designation nor a specific zoning district, but rather would be applied City-wide.

RECOMMENDATION:

Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends to the Planning Board that the request to amend the Land Development Regulations be **APPROVED**.