

ORDINANCE NO. 24-02

AN ORDINANCE OF THE CITY OF KEY WEST,  
FLORIDA, TO AMEND CHAPTER 122 OF THE  
LAND DEVELOPMENT REGULATIONS,  
ARTICLE III ENTITLED "CONDITIONAL  
USES", SECTION 122-63 "REVIEW;  
ENFORCEMENT" TO ALLOW  
ADMINISTRATIVE PROCEDURE OVER THE  
VOLUNTARY REVOCATION OF CONDITIONAL  
USE PERMITS; PROVIDING FOR  
SEVERABILITY; PROVIDING FOR REPEAL  
OF INCONSISTENT PROVISIONS;  
PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Land Development Regulatory process can be time consuming and expensive for individual property owners, and

**WHEREAS**, the current review process requires an individual property owner to make application to the City of Key West Planning Board in order to voluntarily abandon or forfeit a Conditional Use Permit, and

**WHEREAS**, it is in the best interest of the public to establish a mechanism for the administrative abandonment or forfeiture of a Conditional Use Permit, and

**WHEREAS**, such an amendment will streamline the regulatory process without any adverse impacts to public health, safety, and welfare, 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**, in accordance with Section 90-522, the Planning Board held a noticed public hearing on December 12<sup>th</sup>, 2023, where based on the consideration of recommendations by the City Attorney, the Planning Board recommended approval of the proposed amendments through Planning Board Resolution 2023-032; 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 122 of the Land Development Regulations, entitled "Zoning", Section 122-63 entitled, "Review; enforcement." is hereby amended as follows\*:

**Sec. 122-63. - Review; enforcement.**

(a) The application for a conditional use shall be on a form provided by the city planning office and shall be submitted to the city planning office. Required attachments, as stated on the application form, shall be submitted with the application. The development review committee shall perform a technical review of each proposed conditional use and provide comments to the planning department.

(b) Upon receipt of the comments of the development review committee, the planning department shall review the project and provide a report with recommendations to the planning board. The planning board shall consider applications for a conditional use at a regularly scheduled board meeting. The planning board shall approve, approve with conditions or deny a proposed conditional use.

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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.)

(c) On all development, except major developments as defined in sections 108-165 and 108-166, the planning board's decision shall be final unless that decision is appealed to the city commission within ten days following the planning board's action. Refer to section 122-65. Where a conditional use is proposed as part of a major development as defined in sections 108-165 and 108-166, the planning board's decision regarding the conditional use approval is advisory only, and the final decision shall be rendered by the city commission when the major development plan is considered by the city commission.

(d) A written record of findings by the planning board shall be maintained, including a written statement of all the following:

- (1) Conditions of approval; and
- (2) Findings supporting denial of a conditional use.

(e) Revisions or additions to a conditional use shall be reviewed based on the criteria of section 122-62(b) and (c). The procedures governing such reviews shall be identical to the procedures identified for the respective development plan which are presented in article II of chapter 108. A conditional use shall expire if construction has not commenced within 12 months of approval. A conditional use may be extended only one time for 12 months by a favorable vote of the planning board or city

commission, when the project is a major development, if the applicant submits a petition for such extension prior to the development plan's expiration and demonstrated reasonable cause for the extension. The burden of proof in justifying reasonable cause shall rest with the applicant.

(f) A conditional use approval shall run with the land and is transferable to successors in ownership. The use must remain compliant with all applicable rules and regulations, including any specific conditions duly mandated by the city as a condition of the original conditional use approval. At the city's option, it may enforce an alleged violation of a conditional use 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. For the purposes of this subsection, the terms "conditional use" and "special exception" are of equal meaning. Such a violation shall be enforceable under, and subject to the penalties provided in, chapter 86 and section 1-15 of the Code of Ordinances, or in accordance with any other applicable provision of the Code of Ordinances or of state law.

(g) Dissolution. A property owner may voluntarily abandon or forfeit a Conditional Use Permit. In order to effectuate the abandonment/forfeiture of the Conditional Use Permit, the property owner must submit a notarized statement confirming the abandonment/forfeiture of the Conditional Use to the Director of Planning. Thereafter, the use shall be considered abandoned by the City and there shall be no right to nonconformity. The property owner shall also be required to file a change of use application in conjunction with the request to abandon/forfeit the Conditional Use Permit in accordance with all applicable City standards.

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 11th day of January, 2024.

Read and passed on final reading at a regular meeting held this 8th day of February, 2024.

Authenticated by the presiding officer and Clerk of the Commission on 9th day of February, 2024.

Filed with the Clerk February 9, 2024.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Lissette Carey	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Absent</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Absent</u>

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TERI JOHNSTON, MAYOR

ATTEST:

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KERI O'BRIEN, CITY CLERK