

**PLANNING BOARD
RESOLUTION NO. 2023-006**

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 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”; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PRVODING FOR AN EFFECTIVE DATE.

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 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 objective criteria to facilitate the determination of “*abandon*” or “*abandonment of nonconforming use*”; and

WHEREAS, the existing language within Section 86-9 and Section 122-30 of the Land



Planning Board Chair



Planning Director

Development Regulations include inconsistencies; and

WHEREAS, it is in the best interest of the City provide concise and consistent criteria for the definition of “*abandon*” and whether a land use may be determined abandoned; 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 is required to review proposed changes to the Land Development Regulations at a noticed public hearing and provide written recommendations to the City Commission pursuant to City Code Section 90-520 and 90-522; and

WHEREAS, the Planning Board held a noticed public hearing on March 16th, 2023, where based on the consideration of recommendations by the city planner, and other information, the Board recommended approval of the proposed amendments to the Land Development Regulations; and

WHEREAS, the Planning Board determined 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 RESOLVED by the Planning Board of the City of Key West, Florida:

 Planning Board Chair

 Planning Director

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


Section 2. That an ordinance amending Chapter 86 of the Land Development Regulations, entitled “General Provisions”, Section 86-9 entitled, “Definition of terms.”; and Chapter 122 of the Land Development Regulations, entitled “Zoning”, Article II entitled “Nonconformities”, Section 122-30 entitled, “Abandonment of nonconforming use.”; is hereby recommended for approval. A copy of the draft ordinance is attached.

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 City Clerk.

Section 4. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty-five (45) days after is has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference to this approval; that within the forty-five (45) day review period the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement order.

Read and passed on first reading at a regular meeting held this 16th day of March, 2023.

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


Planning Board Chair


Planning Director

Sam Holland
Sam Holland, Planning Board Chair

4/12/23
Date

Attest:

KPH
Katie P. Halloran, Planning Director

4/6/2023
Date

Filed with the Clerk:

Cheryl Smith
Cheryl Smith, City Clerk

4-12-23
Date

CSH Planning Board Chair

KPH Planning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, TO AMEND CHAPTER 86 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED "GENERAL PROVISIONS", SECTION 86-9 ENTITLED, "DEFINITION OF TERMS."; AND CHAPTER 122 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED "ZONING", ARTICLE II ENTITLED "NONCONFORMITIES", SECTION 122-30 ENTITLED, "ABANDONMENT OF NONCONFORMING USE TO PROVIDE FOR AN AMENDED DEFINITION OF THE TERM "ABANDON"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

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

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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 2023-006; 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

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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

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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 uninhabitable 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) 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

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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

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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)

*(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

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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:

CHERYL SMITH, CITY CLERK

Handwritten signature
KPH

