

**PLANNING BOARD  
RESOLUTION NO. 2023-032**

**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, 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 City of Key West allows a legally established conditional use to continue until such use or property has been determined abandoned; and

**WHEREAS**, Section 122-63 outlines the criteria for reviewing a conditional use application by the planning board; and

**WHEREAS**, during a noticed public hearing of the Planning Board on October 19<sup>th</sup>, 2023 the Planning Board passed Resolution No. 2023-022; and

**WHEREAS**, Resolution No. 2023-022 allowed an applicant to dissolve their conditional use permit previously passed by the Planning Board; and

**WHEREAS**, The City of Key West Legal Department has advised moving forward conditional use dissolutions should require administrative action only; and

**WHEREAS**, this proposed code amendment would grant the Planning Department Director and the Chief Licensing Official of the City of Key West the ability to dissolve a conditional use permit after the applicant has submitted a signed and notarized affidavit surrendering the conditional 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 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 90-522; and

**WHEREAS**, the Planning Board recommended approval of this proposed ordinance revision at their meeting on December 12, 2023, and recommends approval by the City Commission; and

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the City of Key West, Florida:

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

**Section 2.** That an ordinance amending Chapter 122 of the Land Development Regulations, entitled “Zoning”, Article III entitled “Conditional Uses” Section 122-63 entitled, “Review; enforcement.”; is hereby recommended for approval. The changes are 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.

(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 and the Chief Licensing Official. 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.** 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 it 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 12<sup>th</sup> day of December, 2023.

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

*Sam Holland*

Sam Holland, Planning Board Chair

*1/3/24*

Date

**Attest:**

*Katie P. Halloran*

Katie P. Halloran, Planning Director

*1/2/2024*

Date

**Filed with the Clerk:**

*Keri O'Brien*

Keri O'Brien, City Clerk

*1.2.2024*

Date