

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

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES ENTITLED "RESOURCE PROTECTION", ARTICLE III ENTITLED "ENVIRONMENTAL RESOURCES", ESTABLISHING DIVISION 5, ENTITLED "GREEN BUILDING"; ESTABLISHING REQUIREMENTS FOR GREEN BUILDING CERTIFICATION AS A REQUIREMENT; ESTABLISHING AN GREEN BUILDING FEE FOR PROJECTS THAT DO NOT ACHIEVE THE REQUIRED GREEN BUILDING CERTIFICATION LEVEL, AUTHORIZING PROPERTY OWNERS AND DEVELOPERS TO PAY A GREEN BUILDING FEE, OR IN THE ALTERNATIVE, POST A BOND FOR THE PROJECT INTO THE CITY'S ADAPTATION AND SUSTAINABILITY FUND, WHICH BOND OR FUNDS ARE REIMBURSABLE TO THE PROPERTY OWNER OR DEVELOPER PURSUANT TO THE LEVEL OF GREEN BUILDING COMPLIANCE ACHIEVED BY THE PROJECT; DESIGNATING THE ADAPTATION AND SUSTAINABILITY FUND (FUND 108) FOR THE DEPOSIT OF THE GREEN BUILDING FEES GENERATED THROUGH THE GREEN BUILDING PROGRAM, AND PROVIDING THE USES FOR WHICH THE FEES CAN BE USED; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Key West Strategic Plan survey revealed the importance of Climate Change Adaptation to our residents, ranking it their second highest priority; and

WHEREAS, the City of Key West Strategic Plan survey revealed the importance of Environmental Protection to our residents, ranking it their fourth highest priority; and

WHEREAS, the City's 2025 Comprehensive Plan requires the City to consider proactive programs to adapt for sea level rise and storm surges, and to utilize best management practices in efficiencies and conservation as a mandatory step in meeting projected demands for resources; and

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WHEREAS, the City of Key West has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, greenhouse gas emissions are a contributor to sea level rise, which is a threat to public health, safety, and general welfare of the citizens of Key West; and

WHEREAS, it is in the best interest of the City to promote the economic and environmental health in the City through sustainable and environmentally friendly design and construction which reduces demand for energy and reduces greenhouse gas emissions; and

WHEREAS, the Florida Green Building Coalition (FGBC) has developed a statewide green building program that defines efficient and resilient building actions particular to the Florida climate with environmental and economic benefits.

WHEREAS, the FBGC certification program recognizes best-in-class building practices and provides high performance buildings as a means of balancing economic development with the preservation of quality of life; and

WHEREAS, studies have indicated that green buildings have lower maintenance costs associated with lower energy consumption, which will improve the City's long-term economic well-being; and

WHEREAS, studies by the Federal Emergency Management Agency have shown that for every dollar spent on mitigation, an average of six dollars of future disaster costs is saved; and

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WHEREAS, it is in the interest of the health, safety and welfare of the residents of the City to ensure efficient and resilient construction and to ensure that the City safeguard natural resources, and ensure that efficient and strong buildings are constructed; and

WHEREAS, Chapter 163. 04, Florida Statutes is intended to encourage the development and use of renewable resources in order to conserve and protect the value of land, buildings, and resources, which is further encouraged by the use of green building standards; and

WHEREAS, the City desires to require FGBC Gold certification standards on construction within the City, or require the payment of a Green Building Fee, for failing to meet those minimum standards of sustainability; and

WHEREAS, the value of the Green Building Fee is based on estimated costs of achieving FGBC Silver standards for a construction project; and

WHEREAS, the Green Building Fee is not an impact fee, but rather a mechanism to ensure compliance with the green building standards; and

WHEREAS, it is the City's expectation that development will comply with the green building standards and that the Green Building Fee be refunded to the participants; and

WHEREAS, should a development not comply with the green building standards the City will utilize the Green Building Fee revenue to provide public improvements that increase the efficiency and resiliency of the City; and

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WHEREAS, other Florida cities have successfully created similar Green Building Programs for energy efficiency, water efficiency, renewable energy, waste diversion, green infrastructure, alternative transportation and resilience in the public and private sectors; and

WHEREAS, the adoption of the provisions set forth below are necessary to accomplish the above objectives.

WHEREAS, the most equitable application of the Green Building Fee includes tiers and waivers; and

WHEREAS, creating the Green Building Program will strengthen the City's commitment to the Strategic Plan and increase the long-term adaptation and overall sustainability of the neighborhoods and business districts prospective building permit holders seek to invest in.

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

Section 1: That Chapter 110 entitled "RESOURCE PROTECTION", Article 3 entitled "ENVIRONMENTAL RESOURCES" of the City of Key West Code of Ordinances is hereby amended as follows\*:

( . . . )

**Secs. 110-152—110-160-180. - Reserved.**

## **DIVISION 5. – GREEN BUILDINGS**

### **Sec. 110-161 – Definitions**

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The following words, terms and phrases, when used in this Division, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning, or as may be amended from time to time.

*Construction* means any project associated with the creation, development, or erection of any structure required to comply with this Chapter.

*Environmental restoration* means the return of an ecosystem to a close approximation of its condition prior to disturbance.

*Green infrastructure* means both the natural environment and engineered systems to provide clean water, conserve ecosystem values and functions, and provide a wide array of benefits to people and wildlife. Green infrastructure uses vegetation, soils, and natural processes to manage natural resources and create healthier urban environments. Examples of green infrastructure practices include but are not limited to: right- of-way bio-swales, green roofs, blue roofs, rain gardens, permeable pavements, infiltration planters, trees and tree boxes, rainwater harvesting systems.

*FGBC* means Florida Green Building Coalition

*Flood mitigation* means actions that reduce flooding damage, including but not limited to elevation, dry flood proofing, or wet floodproofing.

*Green building* means generally the resource efficient design, construction, and operation of buildings by employing environmentally sensible construction practices, systems and materials.

*Project* means any construction associated with the repair, renovation, creation, development or erection of any building required to comply with this chapter.

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Scorecard means a guide provided by a sustainable building certification agency to assist in determining the total project score and achievable credits and level of certification at the inception of a green building, as provided under this chapter.

Storm water quality and quantity improvements means projects that augment water quality and quantity.

Examples include, but are not limited to by: reducing polluted runoff; advancing groundwater recharge, soil infiltration and erosion control; and restoring habitat.

Wind mitigation means actions which reduce wind damage, including but not limited to replacing, hardening or upgrading elements that can withstand greater wind speeds.

**Sec. 110-162. — Intent and Purpose.**

The purpose of this division shall be to promote sustainable development within the City of Key West by supporting efficient and resilient design and construction practices. The City's intent is to:

- (a) Establish a green building certification compliance schedule that incentivizes all qualifying projects to attain FGBC Gold Certification.
- (b) Provide a means for ensuring resilient developments that will better withstand adverse weather.
- (c) Comply with the following Comprehensive Plan policies:
  - a. “Enact Resilient Standards” [that] “incentivize property owners to elevate structures, select materials, and adopt techniques in order to minimize risk to wind, flood, and storm surge damages. (Policy 1-11.1.16)
  - b. “consider proactive steps and pilot programs to adapt for sea level rise and storm surges” (Policy 1-11.1.14), and
  - c. “utilize best management practices in efficiencies and conservation as a mandatory step in meeting projected demands” (Obj 4-2.6)
- (d) Comply with the following Florida Keys Area of State Concern principles:
  - a. Protecting Natural Environments
  - b. Promoting Orderly and Balanced Growth
  - c. Ensuring a Sound Economic Base
  - d. Providing adequate alternatives for the protection of public safety and welfare

Sustainable building practices will promote the economic and environmental health of the city and ensure that the City continues to become environmentally resilient to combat sea level rise and help curb climate change. This division is designed to achieve the following objectives:

- (a) increase energy efficiency in buildings;
- (b) encourage water and resource conservation;
- (c) reduce waste generated by construction projects;

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- (d) reduce long-term building operating and maintenance costs;
- (e) improve indoor air quality and occupant health;
- (f) contribute to meeting state and local commitments to reduce greenhouse gas production and emissions;
- (g) encourage sound urban planning principles.

#### **Sec. 110-163. – Efficiency and Resiliency Requirements.**

- (a) Mandatory compliance with the requirements of this chapter shall be required for all projects or construction issued building permit applications (hereinafter “eligible participants”).

#### **Sec. 110-164. - Standards.**

This chapter shall be administered using standards developed for and standards developed by the Florida Green Building Coalition (FGBC). All eligible participants who are certified as having satisfied all of the requirements of the green building certification agency, including but not limited to any monetary or certification requirements, are eligible for a partial or full refund of the Green Building Fee identified in Section 110-6(b) herein based upon the level of compliance with the regulations in this division.

#### **Section 110-165. – Green Building Fee**

A Green Building fee will be assessed for all eligible participants. Exemptions, fee calculation, provisions for refunding all or portions of the fee, its purpose, and eligible uses are detailed within this article.

#### **Sec. 110-166. – Green Building Fee Exceptions**

- (a) Mandatory compliance with the fee requirements of this chapter shall be required for all projects or construction issued building permit applications (hereinafter “eligible participants”), with the exception of the following:
  - (1) One hundred percent (100%) affordable housing units (as defined by either the US Housing and Urban Development office or State of Florida)
  - (2) One hundred percent (100%) Workforce Housing units (as defined by the City of Key West), or
  - (3) Projects on Homesteaded properties (as defined by the State of Florida)

#### **Sec. 110-167 - Green Building Fee Calculation.**

- (a) The eligible participant must issue full payment of the Green Building Fee to the City or post a fee payment bond at the time of permitting.
- (b) All county, municipal, school district, water management district, state university, Florida College System institution, and state court buildings already mandated by Florida Statute 255.2575 to meet Bronze level Green Building Certification may opt to pay upon final inspection, and will provide instead payment for the difference between the Fee Calculation and the Certification achieved.

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- (c) The methodology to calculate the Green Building fee is below:
- For building permits of which the total construction value is \$24,999.99 or less, the Green Building Fee shall be a half percent (0.005) of the total construction valuation.
  - For building permits of which the total construction value is 5,000.00 or more: Green Building Fee shall be two percent (0.02) of the total construction valuation.

## **Sec. 110-168. Refunds**

- (a) The project may be entitled to a refund or partial refund, of the bond, or payment of the Green Building Fee, based upon achieving the program certification levels in the compliance schedule below:

Certification Compliance Schedule

<u>Level of Certification Achieved</u>	<u>Green Building Fee Reimbursement to Participant for Meeting Certain Green Building Certification Levels</u>
<u>Failure to obtain Certification</u>	<u>0% refund of bond or payment</u>
<u>FGBC Bronze</u>	<u>50% refund of bond or payment</u>
<u>FGBC Silver</u>	<u>75% refund of bond or payment</u>
<u>FGBC Gold</u>	<u>100% refund of bond or payment</u>
<u>FGBC Platinum</u>	<u>100% refund of bond or payment</u>

- (b) Within six months from any final inspection, the owner may submit proof of green building certification for the building from FGBC.
- The bond or payment provided, or percentage thereof, shall be refunded to program participants that have achieved a level of green building certification identified in the certification compliance schedule.
  - The planning director or designee may approve, upon the request of the eligible participant, a one-time six-month extension, provided proof that the green building certification agency's review remains pending to determine final certification.
- (c) Refund of the Green Building Fee or bond to the eligible participant may occur as provided for in subsection (a), above, provided the eligible participant obtains the certification compliance schedule within the timeframe identified in in subsection (b), above.
- (d) In the event of a property having multiple permits for a large project, all Green Building Fees within the last 365 days of the Certification date shall be eligible for the refund.
- The entirety of the Green Building Fee as calculated by Section 110-6(b) shall be forfeited to the city based upon participant's failure achieve the applicable green building certification levels identified in subsection (a), above, within the timeframe identified in subsection (b), above.

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**Sec. 110-169. Deposit of funds; account.**

- (a) The city has established an Adaptation and Sustainability fund. The revenue generated through the Green Building fee shall be deposited in the Adaptation and Sustainability fund.
- (1) Interest earned under the account shall be used solely for the purposes specified for funds of such account.
- (2) Green Building fees deposited and credited to the Adaptation and Sustainability fund account and credited to the eligible participant pursuant to Section 110-7 shall be identified within the city's Adaptation and Sustainability fund.
- (3) Appropriation of deposited funds in the Adaptation and Sustainability fund shall not be permitted until the applicable refund period, established in Section 110-7(b) for those funds has lapsed.
- (4) If an eligible participant provides a bond in lieu of paying the Green Building Fee, the city shall safeguard the bond to ensure compliance with this chapter. The city shall return the bond or make a claim for a portion of the bond, depending on the eligible participant's compliance with Section 110-7(a) and 110-7(b).
- (b) Earned fees in the Adaptation and Sustainability fund shall be utilized to provide improvements that increase the adaptation and sustainability of the city. Expenditures of these funds shall follow City procurement rules (City Ordinances, Chapter 2, Article VII).
- (c) Such improvements that increase the Adaptation and Sustainability of the city may include:
- (1) Energy and water efficiency projects
- (2) Wind mitigation projects
- (3) Flood mitigation projects
- (4) Environmental restoration projects
- (5) Green infrastructure projects
- (6) Stormwater quality and quantity improvements
- (7) Adaptation and sustainability planning and policy efforts
- (8) Staff to support the above

**Secs. 110.170—110-80. Reserved.**

( . . . . )

Section 2: That revenues generated by the Green Building Fee shall be set aside and allocated to Fund 108, the Adaptation and Sustainability Fund.

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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.

Read and passed on first reading at a regular meeting held  
this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Read and passed on final reading at a regular meeting held  
this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Authenticated by the presiding officer and Clerk of the  
Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Filed with the Clerk \_\_\_\_\_, 2025.

Mayor Danise Henriquez	_____
Vice Mayor Donald "Donie" Lee	_____
Commissioner Aaron Castillo	_____
Commissioner Monica Haskell	_____
Commissioner Mary Lou Hoover	_____

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Commissioner Sam Kaufman

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Commissioner Lissette Carey

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DANISE HENRIQUEZ, MAYOR

ATTEST:

\_\_\_\_\_  
KERI O'BRIEN, CITY CLERK

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