



THE CITY OF KEY WEST
1300 White Street – Key West, Florida 33040

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Ben Gagnon, Planner I

Meeting Date: December 12th, 2023

Application: **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, 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.

Request: The text amendment seeks to reduce barriers for property owners who wish to dissolve a conditional use permit.

Background:

At the October 19, 2023 Planning Board hearing, the Planning Board unanimously passed a resolution accepting the voluntary dissolution of a Conditional Use Permit (Planning Board Resolution No. 2023-22). The property owner sought to abandon/forfeit their Conditional Use Permit for a bar/lounge in order to allow for the operation of a restaurant with accessory and incidental sale of alcoholic beverages.

The City Attorney’s Office has requested that the Planning Department draft an amendment to the City Land Development Regulations to simplify and streamline the process to voluntarily abandon/forfeit a Conditional Use Permit. Specifically, the City Attorney has directed the Planning Department to draft an amendment to the City Code to allow a property owner to administratively forfeit/abandon a Conditional Use Permit by application to the Director of Planning and the Chief Licensing Official. This process includes the provision of a signed and notarized affidavit to the Director of Planning and Chief Licensing Official along with any additional accompanying information.



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Request / Proposed Amendment:

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



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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 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.

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	December 12 th , 2023
City Commission (1st Reading):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (1st Reading):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD, 2024



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Local Appeal Period:	30 days
DEO Review (2nd Reading):	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO 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. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552, the Planning Board 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 in the LDRs to the City Commission for official action.

Code Section 90-520 (6) provides criteria by which LDR amendments must be evaluated:

Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. 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 must be consistent with the Comprehensive Plan.**

Not applicable



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- 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.**

Not applicable

- c. Avoidance of special treatment. The proposed change shall not constitute a spot zone change. Spot zoning occurs when:**

Not applicable

- 1. A small parcel of land is singled out for special and privileged treatment:**

Not applicable

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

Not applicable

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

Not applicable

- d. Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the City having the same zoning classification as that requested shall be stated.**

This proposed amendment is not associated with a particular Comprehensive Plan Future Land Use designation or specific zoning district.



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RECOMMENDATION:

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