

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

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES ENTITLED "HISTORIC PRESERVATION", ARTICLE IV ENTITLED "CERTIFICATE OF APPROPRIATENESS" BY AMENDING DIVISION 2, ENTITLED "ECONOMIC HARDSHIP" BY INCREASING THE MAXIMUM HOUSEHOLD INCOME FOR APPLICANTS SEEKING SUBSTITUTION OF ALTERNATIVE BUILDING MATERIALS FOR HISTORIC OR TRADITIONAL MATERIALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Section 102-2 of the Land Development Regulations requires applicants for building permits within any historic preservation district or other designated historic site or resource to comply with the city's Historic Architectural Review Commission's (HARC) Historic Architectural Guidelines; and

**WHEREAS**, Division 2 of Article 4 of Chapter 102, Historic Preservation, provides for substitution of alternative building materials for historic or traditional materials in case of to economic hardship; and

**WHEREAS**, Section 102-186 (2) (a) of the Code of Ordinances establishes that the applicant's total income must be below 80 percent of the median income for the city, as part of the requirements; and

**WHEREAS**, the HARC finds that many owners of buildings under their jurisdiction may qualify for economic hardship due to their financial situation but the current requirements are onerous to fulfill; and

**WHEREAS**, the City's 2021-2024 Strategic Plan *Key West Forward*, under Priority 1, Support Affordable Housing in Key West, establishes as goal 3 the preservation and renovation of existing housing, by repairing and improving housing for vulnerable groups; and

**WHEREAS**, it is the intent of the HARC to increase the maximum home ownership income from 80 percent below median income to median income to benefit qualifying citizens and families that cannot afford required construction materials while maintaining the essence of Key West's historic district; and

**WHEREAS**, the Planning Board held a noticed public hearing on February 17, 2022, where based on the consideration of recommendations by the HARC staff and Planning Director recommended approval of the proposed amendments;

**WHEREAS**, the City 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 CITY COMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:**

Section 1. Division 2, "Economic Hardship", of Article 4 "Certificate of Appropriateness", of Chapter 102 "Historic Preservation", of the Code of Ordinances, are amended as follows:

[\*Coding: Added language is underlined; deleted language is ~~struck through~~.]

*DIVISION 2. ECONOMIC HARDSHIP*

Sec. 102-186. Definitions.

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Undue economic hardship* means:

- (1) For applicants seeking approval of demolitions under division 3 of this article, an exceptional financial burden that would amount to the taking of property without

just compensation or, for properties producing income at the time of application for a certificate of appropriateness, failure to achieve a reasonable economic return as measured against commercial properties of similar nature and location and as expected by market conditions. The evidence and testimony needed to establish an undue economic hardship is specified in sections 102-187 through 102-189.

(2) For applicants seeking approval of substitution of alternative building materials for historic or traditional materials under section 102-190:

a. For an individual (s) or for a corporation that has current tax-exempt status as a nonprofit corporation under section 501 (c) (3) of the Internal Revenue Code, who owns the property under review, and either is the current ~~receipt~~ recipient of assistance through the mayor's revolving loan fund, rental rehabilitation program, or other program which is income-indexed and which provides for physical improvements to the subject property; ~~or the current receipt of fixed income benefits such as social security, AFDC, or private pension benefits, and the applicant's total income is below 80 percent of the median income for the city, or~~

has a maximum household income not exceeding the current City of Key West Qualifying Maximum Income Limits for Affordable Housing Units for a household with median income, all as evidenced by income tax return for the last two years or affidavit documentation showing applicant is in receipt of Supplemental Nutrition Assistance Program (SNAP).~~;~~ ~~or~~

~~b. For a corporation, current tax exempt status as a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code.~~

Sec. 102-187. Avoidance.

If ~~a decision of~~ the application of historic architectural review commission guidelines ~~shall~~ would result in undue economic hardship for the property owner, as provided in this article, the historic architectural review commission through staff shall have authority to determine the existence of such hardship in accordance with the definition of undue economic hardship found in section 102-186.

Sec. 102-188. Filing affidavit.

When there is a claim of undue economic hardship under this article, the owner shall submit an affidavit affirmed by a notary public to the historic architectural review commission at

least 15 days prior to the public hearing, or to their staff, which certifies that the applicant meets one of the following criteria for undue economic hardship:

- (1) Currently receives SNAP, fixed income benefits such as ~~social security,~~ aid to families with dependent children, or ~~private pension benefits~~ and that the total household income is below 80 percent of the median income for the city does not exceed current City of Key West Qualifying Maximum Limits for Affordable Housing Units for a household with median income;
- (2) Currently receives assistance through the mayor's revolving loan fund, rental rehabilitation program, or other program which is income-indexed and which provides for physical improvements to the subject property; or
- (3) The applicant corporation currently has tax-exempt status as a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code.

Sec. 102-189. Additional information.

The historic architectural review commission, or their staff, may require that an applicant furnish such additional information as the historic architectural review commission believes is relevant to its determination of undue economic

hardship and may provide, in appropriate instances, that such additional information be furnished under seal. If any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

Sec. 102-190. Use of substitute material.

In cases of undue economic hardship of the applicant, as defined in section 102-186, the historic architectural review commission, or their staff, may allow the substitution of alternative construction materials for historic or traditional materials where the substitute materials are sufficiently similar in character to such historic or traditional materials so as not to detract from the original character of the historic district.

Section 2: 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 3: 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 4: 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 \_\_\_\_\_, 2022.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Filed with the Clerk \_\_\_\_\_, 2022.

Mayor Teri Johnston \_\_\_\_\_

Vice Mayor Sam Kaufman \_\_\_\_\_



Commissioner Gregory Davila \_\_\_\_\_

Commissioner Mary Lou Hoover \_\_\_\_\_

Commissioner Clayton Lopez \_\_\_\_\_

Commissioner Billy Wardlow \_\_\_\_\_

Commissioner Jimmy Weekley \_\_\_\_\_

\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

DRAFT