

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES, TITLED "ADMINISTRATION", SECTION VIII TITLED "CITY PROPERTY" BY ADDING SECTION 2-942 TITLED "PURPOSE AND INTENT"; BY ADDING SECTION 2-943 TITLED "DEFINITIONS"; BY ADDING SECTION 2-944 TITLED "RESIDENTIAL RIGHT OF WAY HARDSCAPE AND PAVER EASEMENTS"; BY ADDING SECTION 2-945 TITLED "AMORTIZATION OF UNPERMITTED IMPROVEMENTS"; BY ADDING SECTION 2-946 TITLED "PENALTIES"; BY ADDING SECTION 2-947 TITLED "APPEAL"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission for the City of Key West finds that it is necessary to create a Residential Right Of Way Hardscape and Paver Easement program for owners of residential property in the City of Key West to make certain aesthetic improvements to the adjacent right of way between their private property and the public road or street such as hardscape features and/or brick pavers; and

WHEREAS, the City Commission for the City of Key West finds that requiring that the City of Key West be named as an additional insured, as well as requiring an indemnification and hold harmless agreements to be executed and recorded benefitting the City of Key West by individuals seeking an

easement, while ensuring adequate stormwater drainage serves the City's interests in promoting the health, safety and welfare of its residents and visitors alike.

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

Section 1: That Section 2-942 is hereby added to the Code of Ordinances as follows*:

Sec. 2-942 - Purpose and Intent.

The purpose and intent of this section is to create a revocable residential paver and hardscape easement available to residential property owners that are adjacent to a right of way owned by the City of Key West, that is not otherwise used by the City. The purpose of the easement is to facilitate the adjacent property owner to use such right of way to install aesthetic improvements such as brick pavers, hardscape elements, landscaping, and other improvements that do not violate line of sight, or other city concerns such as stormwater or permeability.

*(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 2: That Section 2-943 is hereby added to the Code of Ordinances as follows:

Sec. 2-943 - Definitions.

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

Non-structural beautification improvements mean those aesthetic improvements made on city-owned rights of way that do not involve the installation of retention walls, concrete walls, or any permanent, structural improvement that requires a building permit. Permitted non-structural improvements include landscaping that meets the line-of-sight requirements as prescribed in Sec. 108-452, hardscaping that includes landscape logs and edging, and brick pavers to the satisfaction of the engineering department for permeability calculations, which includes substrate.

Public right(s)-of-way means any dedicated public off-street area, street, or sidewalk, or area primarily used for off-street parking, that is immediately adjacent to private residential or commercial property located in the City of Key West, Florida.

Section 3: That Section 2-944 is hereby added to the Code of Ordinances as follows:

**Sec. 2-944 - Residential Right Of Way Hardscape
and Paver Easements; Fees**

(a) There shall be established a Revokable Easement for Residential Right of Way Hardscapes, Landscaping, and Pavers that permits residential property owners to make non-structural beautification improvements to adjacent city-owned right of way by using elements such as landscaping, planter borders and/or brick paving. Applicants shall submit an initial application to the Engineering Department, together with the application fee of \$150.00. Upon approval, subsequent renewal applications shall be submitted to the Licensing Department, together with a \$100.00 renewal fee. Re-inspections shall incur an additional \$50.00 re-inspection fee. The fees contained herein can be amended by Resolution of the City Commission. The easement instrument is incorporated herein by reference and approved by the City Commission. The City Manager is authorized to execute same with the advice and consent of the City Attorney. The initial application shall include:

1. A detailed description of the non-structural improvements that are being requested with photos of the area subject to the easement.
2. A valid specific purpose survey detailing the location of the non-structural improvements that is certified to the City.
3. A certificate of insurance listing the City of Key West as an additional insured for the specific non-structural improvements in an amount not less than \$300,000.00 per occurrence or the maximum exposure under F.S. 768.28, whichever is higher. Subsequent insurance renewal policies shall be submitted to the Licensing Department within 14 days of renewal.
4. The application shall contain a hold harmless/indemnification clause that inures to the benefit of the City of Key West regarding any injury or claim arising from the non-structural improvements, executed by the applicant/property owner in a form satisfactory to the City Attorney. Subsequent owners have the burden to revise the hold harmless and indemnification agreement in their name.

(b) Within 14 days of receiving the easement from the City, the applicant shall have the easement recorded with the Monroe County Recorder's Office. It is the expressed intent of the parties that the easement run with the applicant's property unless expressly and lawfully terminated by either party. A copy of the recorded easement shall be mailed to the Engineering Department of the City of Key West by the applicant within 14 days of receiving the recorded instrument from the Recorder's Office.

(c) Non-structural improvements shall not be used to create or further a commercial purpose nor to be used to create additional signage on public right of way, nor to be occupied to conduct, or further, commercial transactions.

(d) Any costs incurred in re-building or re-establishing the non-structural improvements after a natural disaster, any man-made actions, or municipal improvement work shall be borne by the owner/applicant. The owner/applicant shall either elect to re-establish the right of way to the condition it was prior to the improvement and surrender the easement forthwith or re-establish the improvement to the same condition or other city

approved condition it was before the event causing its damage or destruction. In the event of voluntary surrender of the easement by the property owner, the property owner at the time of surrender shall cause the right of way to be restored to its pre-easement condition within 45 days of surrender and shall bear all costs of restoration.

(e) Any lawful improvements created under this program shall not hinder or impede any established sidewalk or bicycle/pedestrian path.

Section 4: That Section 2-945 is hereby added to the Code of Ordinances as follows:

2-945 - Compliance of Unpermitted Improvements/Amnesty.

Those unpermitted improvements, as defined in this Article shall have nine months from the effective date of this ordinance to be brought into compliance as described herein without penalty under Sec. 2-946 or increased after the fact permit fees.

Section 5: That Section 2-946 is hereby added to the Code of Ordinances as follows:

2-946 - Penalties.

The penalties for not complying with this Article shall be according to the Code Compliance procedure as set forth in Ch. 2, Article VI.

Section 6: That Section 2-947 is hereby added to the Code of Ordinances as follows:

2-947 - Appeals.

A denial of an easement or renewal of an easement under Sec. 2-944 may be appealed to the city commission pursuant to Sec. 90-431(4).

Section 7: 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 8: 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 9: 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 _____, 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