



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: Dan Gulizio, Senior Planner

Meeting Date: March 12th, 2024

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 invoke the Zoning in Progress Doctrine declaring that the City is considering amendments to the Land Development Regulations to adopt inclusionary affordable and workforce housing standards for commercial properties along with additional measures to promote housing opportunities for local workers and those in need of affordable and workforce housing opportunities; Directing Building and Planning Department staff to defer the acceptance and processing of applications associated with the Limited Commercial (CL) and/or General Commercial (CG) Districts whose construction costs meet or exceed \$500,000.00 in value as determined by the Chief Building Official; continuing this policy until new permit requirements and/or amended Land Development Regulations are adopted by the City Commission or until after the passage of 180 days from the date of this ordinance, whichever occurs first; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Request: The Resolution recommends that the City Commission invoke the Zoning in Progress doctrine declaring that the City is considering amendments to the Land Development Regulations to adopt inclusionary affordable and workforce housing standards for commercial properties along with additional measures to promote housing opportunities for local workers and those in need of affordable and workforce housing opportunities.

Background:

The text amendment would authorize the invoking of the Zoning in Progress Doctrine and permit the City Commission to consider amendments to the Land Development Regulations to better address the City's affordable and workforce housing needs.



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The proposed Ordinance amendment was originally considered by the Planning Board at its February 15, 2024 meeting. At that time, the Board recommended that the staff consider additional amendments to the proposed ordinance in order to ensure that its scope was not overly broad. Since that time, Planning staff have worked with the Legal Department to better tailor the scope and potential impact associated with the invoking of the Zoning in Progress Doctrine. The amended Ordinance is now limited to those properties that are zoned Limited Commercial (CL) and/or General Commercial (CG) whose construction costs meet or exceed \$500,000.00.

The Zoning in Progress Doctrine has been used in the past by the City Commission to address ongoing development trends. Most recently, the Doctrine was invoked in order to address the development of pain clinics and their associated impacts throughout the region.

Under the Zoning in Progress Doctrine, the City is provided a period of time to develop regulatory controls to better meet ongoing challenges. In this instance, the development of affordable and workforce housing represents the single biggest challenge facing the City and Keys region as a whole. It is anticipated that Planning staff, working in cooperation with the City Attorney's Office, the Building Department, and other departments will develop additional strategies to address ongoing housing shortfalls. Under particular consideration is the development of inclusionary non-residential (commercial) affordable and workforce housing policies. Similar inclusionary non-residential or commercial programs already exist in Monroe County and the Village of Islamorada.

Staff Analysis:

The City of Key West is uniquely limited in its efforts to meet local housing needs. Like other coastal communities, the City of Key West is geographically limited in its ability to grow. In addition, the City has a finite capacity for growth based upon a series of environmental constraints including groundwater capacity, wastewater capacity, threatened and endangered habitat types, traffic capacity associated with hurricane evacuation...etc. Most importantly, the State has designated the City of Key West and the entire Florida Keys as an "Area of Critical State Concern."

The designation of the City of Key West as an Area of Critical State Concern has included limitations on the number of new market rate and affordable housing units that can be constructed within the City. The most recent allocation of development permits included 921 market rate and affordable housing units in 2003 with 91 units in each of the following ten years. It is expected that the City will issue its last allocations in the 2024 allocation cycle.

Finally, the City of Key West is home to the largest Historic Preservation District in the State of Florida. Development within the City's Historic District is further limited by design guidelines that have been



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adopted by the City and approved by the State Historic Preservation Office – commonly referred to as the Florida Division of Historic Resources.

Taken together, these limitations make the development of affordable and workforce housing particularly challenging in the City of Key West. Growth restrictions tied to the Area of Critical State Concern prevent the City from promoting the development of higher density housing patterns through incentive-based zoning strategies. At the same time, environmental and geographic constraints have historically limited both the location and density of housing.

It is anticipated that the initial period under consideration will be six (6) months. The intent is to move quickly in order to minimize the impact on individual property owners to the greatest extent possible.

Request/Proposed Text Amendment:

Below are excerpts from the attached ordinance which communicate the substantive components of the zoning in progress doctrine for your consideration. The ordinance is attached in full.

- A “Whereas” clause established that the City Planner began documented efforts concerning the subject on or before February 15, 2024, which is the date on which the Planning Board first took action on this doctrine.
- Section 2: Zoning in Progress. The city hereby recognizes that City planning and legal staff are preparing and processing ordinances (the “Pending Ordinances”) that would adopt the Criteria. The Pending Ordinances, if adopted, will amend the City’s LDR’s. All affected property and business owners are hereby placed on notice with respect to the Pending Ordinances and the action being taken by the appropriate departments within the City.
- Section 3: That this policy shall be in effect until new land development regulations or amended land development regulations are adopted by the city commission or until the passage of 180 days, whichever occurs first. This policy may be extended by Resolution of the City commission for additional 180 day periods to complete the tasks outlined herein.
- Section 4: That Building and Planning Staff are hereby directed to defer the acceptance and processing of applications received on or after February 15, 2024, associated with the Limited



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Commercial (CL) and/or General Commercial (CG) Districts which involve projects whose construction costs meet or exceed \$500,000.00 in value as determined by the Chief Building Official until such time as new permit regulations or amended LDR's are adopted by the City Commission or until the passage of 180 from the effective date of this resolution, whichever occurs first.

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	February 15, 2024
City Commission (1st Reading):	April 11, 2024
Dept. of Commerce (1st Review):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD
Local Appeal Period:	30 days
Dept. of Commerce Review (2nd Reading):	Up to 45 days
Dept. of Commerce Notice of Intent (NOI):	Effective when NOI posted to DOC 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.



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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.**

The proposed Ordinance is consistent with the policies within the Comprehensive Plan and advance the goals, policies, and objectives contained in Chapter 3 – Housing.

- 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.***

The proposed Zoning in Progress doctrine is limited in scope and duration and will not adversely impact any individual property.

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

The proposed Zoning in Progress Doctrine does not single out an individual property but, instead, seeks to analyze a class of properties in order to better address the City's ongoing affordable and workforce housing crisis.

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

The proposed Ordinance does not single out an individual property for special treatment. It addresses a class of properties and is limited in both scope and duration.

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



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The proposed Ordinance does not single out an individual property and does not, as a result, provide any benefits to an individual owner.

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

The proposed Ordinance is consistent with Chapter 3 – Housing of the Comprehensive Plan.

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.*

The proposed Ordinance addresses all properties located within the Limited Commercial (LC) and General Commercial (LG) District which involve projects whose construction costs meet or exceed \$500,000.00.

Recommendation:

The development of affordable and workforce housing opportunities is the single biggest challenge facing the City. In addition to meeting the needs of local residents, the provision of affordable and workforce housing is critical to the health of the local tourist economy. Absent the ability to attract and retain high-skilled local workers, the resort industry, restaurant, and retail sectors of the economy will suffer. In addition, the region's multi-billion-dollar marine economy is dependent on its ability to both attract and retain workers.

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 invoke the Zoning in Progress Doctrine be recommended for **APPROVAL** to the City Commission. Respectfully submitted to the Board for use in making its determination.