

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 74 OF THE CODE OF ORDINANCES ENTITLED "UTILITIES" BY AMENDING ARTICLE V. "STORMWATER SYSTEM" TO PROVIDE FOR THE HEALTH, SAFETY, AND GENERAL WELFARE OF THE CITIZENS OF THE CITY OF KEY WEST, FLORIDA THROUGH THE REGULATION OF NON-STORM WATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; AMENDING SECTION 74-361 TO PROVIDE ADDITIONAL DEFINITIONS; ADDING SECTION 74-388 TO CREATE A "NATIONAL POLLUTANT DISCHARGE ELIMINATION" SYSTEM, BY PROVIDING FOR PURPOSE, INTENT AND PROHIBITIONS; ADDING SECTION 74-389 TITLED "SUSPENSION OF MS4 ACCESS"; ADDING SECTION 74-390 TITLED "INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES"; ADDING SECTION 74-391 TITLED "MONITORING OF DISCHARGES"; ADDING SECTION 74-392 TO REQUIRE THE USE OF BEST MANAGEMENT PRACTICES; ADDING SECTION 74-393 TITLED "NOTIFICATION OF SPILLS"; ADDING SECTION 74-394 PROVIDING FOR ENFORCEMENT; ADDING SECTION 74-395 PROVIDING FOR APPEAL OF NOTICE OF VIOLATION; ADDING SECTION 74-396 PROVIDING FOR ENFORCEMENT MEASURES AFTER APPEAL; ADDING SECTION 74-397 PROVIDING FOR COST OF ABATEMENT OF THE VIOLATION; ADDING SECTION 74-398 PROVIDING FOR INJUNCTIVE RELIEF; ADDING SECTION 74-399 PROVIDING FOR VIOLATIONS DEEMED A PUBLIC NUISANCE; ADDING SECTION 74-400 PROVIDING FOR CRIMINAL PROSECUTION; ADDING SECTION 74-401 PROVIDING THAT REMEDIES ARE NOT EXCLUSIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Key West, Florida, (hereinafter referred to as the "City") owns and maintains a stormwater conveyance system otherwise known as a municipal separate stormwater system (MS4); and

WHEREAS, the Florida Department of Environmental Protection (FDEP) previously issued a Generic Permit for Stormwater Discharge from a Phase II MS4 ("Generic Permit") to the City to operate and discharge stormwater runoff beyond the limits of the City MS4 as part of National Pollution Discharge Elimination System (NPDES) program; and

WHEREAS, the Generic Permit authorization issued by the FDEP requires the City to implement and manage a Stormwater Management Program (SWMP) that meets the requirements established by the Generic Permit; and

WHEREAS, the Generic Permit issued by the FDEP requires the City to develop, implement, and enforce a program to detect, address, and eliminate non-stormwater discharges into the stormwater system; and

WHEREAS, the City Commission of Key West, Florida (herein referred to as the "Commission") finds it in the best interest of the health and safety of the citizens of the City to regulate non-stormwater discharges into the stormwater management system in accordance with FDEP and NPDES requirements; and

WHEREAS, the City Commission desires to amend the Code of Ordinances to establish methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

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

Section 1: That Section 74-361 of the Code of Ordinances is hereby amended as follows*:

Sec. 74-361.-Definitions.

For the purpose of this article, the following definitions shall apply. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

* * * * *

Authorized Enforcement Agency means employees or designees of the City Manager designated to enforce this ordinance.

*(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.)

Best Management Practices (BMPs) means methods that are the most effective means of preventing or reducing pollution from non-point sources, such as pollutants carried by runoff. BMPs can be structural (e.g., baffle boxes, oil and water separator, silt fences, hay-bales) or non-structural (education, maintenance).

Bonds means revenue bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction.

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction activity means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, clearing, filling, grading, paving, excavation or operations altering natural or historic drainage, and other site preparation on a parcel of land.

* * * * *

Fiscal year means a 12-month period commencing on October 1 of any year, or such other 12-month period adopted as the fiscal year of the city.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quality, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a

substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal discharge means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Sec. 74-32, discharges to natural outlets; or any discharge that causes or tends to cause water pollution.

Illicit connection means either of the following:

(1) Any surface, or subsurface, drain or conveyance which allows an illegal discharge to enter the storm drain system, including but not limited to, any conveyances which allow any non-stormwater discharge including sewage, wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, notwithstanding whether said drain or connection has been previously allowed, permitted, or approved by an authorized agency; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized agency.

Impervious area means the number of square feet of surface area that either prevents or retards the entry of water into soil as water would otherwise enter it under natural conditions if the

surface were undisturbed property; and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions on undisturbed property. Impervious area includes, but is not limited to, structures, roofs, roof extensions, patios, porches, driveways, parking areas, sidewalks, pavement and athletic courts.

Industrial activity means activities subject to NPDES Industrial Permits, as defined in 40 CFR, Section 122.26(b)(14).

Initial assessment resolution means the resolution which shall be the initial proceeding for the imposition of the stormwater assessment.

Municipal Separate Storm Sewer (MS4) means a conveyance or system of conveyances like roads with stormwater systems, municipal streets, catch basins, curbs, gutters, constructed channels or storm drains, as defined in Rule 62-624.200, Florida Administrative Code.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit or authorization to use the State of Florida Generic Permit, issued by the Florida Department of Environmental Protection to allow discharge of stormwater from a Municipal Separate Stormwater System (MS4); or a permit or authorization to use the State of Florida Generic Permit, issued by the Florida Department of Environmental Protection that is applicable to an individual group.

Nonresidential developed property means developed property that is put to a commercial, governmental, philanthropic or other purpose that is not set forth under the definition of residential developed property.

Non-stormwater discharge means any discharge to the storm drain system that is not comprised entirely of storm water.

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Operations and maintenance means the current expenses, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practices.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pledged revenue means, as to any series of obligations:

(A) The proceeds of such obligations, including investment earnings,

(B) Proceeds of the stormwater improvement assessments pledged to secure the payment of such obligations, and

(C) Any other legally available non-ad valorem revenue pledged to secure the payment of such obligations, as specified by the resolution authorizing such obligations.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, and solvents; oil and other automotive fluids; grease, oils and fats; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage and other biological waste, dissolved and particulate metals; animal wastes; waste and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

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Runoff coefficients are those numbers approved by the city commission that are used to estimate the impervious area for each nonresidential developed property. A list of the coefficients used for Key West is attached hereto as Exhibit "A".

Editor's note - Exhibit "A" referenced above is not set out at length herein, but is on file in the office of the city clerk.

Storm Drainage System means publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water (also stormwater) means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

* * * * *

Stormwater management system and system shall mean and include all natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable receiving water body or location internal or external to the boundaries of the city. The stormwater management system includes all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities.

Stormwater Pollution Prevention Plan means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate

or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

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User fee means a user fee authorized by state law and this article which is established to pay operations and maintenance, extension and replacement and debt service.

Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 2: That Section 74-388 is hereby added to the Code of Ordinances as follows:

Sec. 74-388.-National Pollutant Discharge Elimination System.

The purpose and intent of this ordinance is to protect the health, safety, and general welfare of the citizens of Key West through the regulation of non-stormwater discharges entering the storm drain system generated from any developed or undeveloped lands unless explicitly exempted by law.

(A) This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by law.

(B) The City of Key West shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties impose upon the authorized enforcement agency to persons

or entities acting in the beneficial interest of or in the employ
of the agency.

(C) The provisions of this ordinance are hereby
declared to be severable. If any provision, clause, sentence, or
paragraph of this Ordinance or the application thereof to any
person, establishment, or circumstances shall be held invalid,
such invalidity shall not affect the other provisions or
application of this Ordinance.

(D) The standards set forth herein and promulgated
pursuant to this ordinance are minimum standards; therefore, this
ordinance does not intend nor imply that compliance by any person
will ensure that there will be no contamination, pollution, nor
unauthorized discharge of pollutants.

(1) Prohibition of Illegal Discharges

No person shall discharge or cause to be discharged
into the municipal storm drain system or water courses any
materials, including but not limited to pollutants or waters
containing any pollutants that cause or contribute to a
violation of applicable water quality standards, other than
storm water.

The commencement, conduct or continuance of any illegal
discharge to the storm drain system is prohibited except as
described as follows:

(a) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated, less than 1 ppm chlorine), fire fighting activities, and any other water source not containing pollutants.

(b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

(d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(2) Prohibition of Illicit Connections.

(a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Section 3: That Section 74-389 is hereby added to the Code of Ordinances as follows:

Sec. 74-389.-Suspension of MS4 Access.

The City of Key West may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Outstanding Florida Waters. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Outstanding Florida Waters, or minimize danger to persons.

Suspension due to the Detection of Illicit Discharge.

(a) Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

(b) A person commits an offense if the person reinstates the MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement agency.

Section 4: That Section 74-390 is hereby added to the Code of Ordinances as follows:

Sec. 74-390.-Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in form acceptable to the City of Key West, prior to the allowing of discharges to the MS4.

Section 5: That Section 74-391 is hereby added to the Code of Ordinances as follows:

Sec. 74-391.-Monitoring of discharges.

(A) Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(B) Access to Facilities.

(1) The City of Key West shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Facility operators shall allow the City of Key West ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The City of Key West shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The City of Key West has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City of Key West and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the City of Key West access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial or construction activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting and activity authorized or required by this ordinance.

(7) If the City of Key West has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

Section 6: That Section 74-392 is hereby added to the Code of Ordinances as follows:

Sec. 74-392.-Requirement to prevent, control, and reduce storm water pollutants by the use of Best Management Practices.

(A) The City of Key West will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or Outstanding Florida Waters. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or nearshore waters through the use of these structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with construction or industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP), as necessary for compliance with requirements of the NPDES permit.

(B) All sites, regardless of size where construction activity requires the issuance of a Florida Building Permit for any type of construction or where a permit for clearing or grading is issued, shall implement erosion and sediment controls to prevent the discharge of sediment laden runoff from the site. Those controls may be based on generally accepted sediment and erosion control methods adopted by any Department of the State of Florida as long as the controls are effective.

(C) All sites, regardless of size, where construction activity requires the issuance of a Florida Building Permit for any type of construction or where a permit for clearing or grading is issued, shall utilize BMPs practices, not limited to containment and removal, in order to manage waste, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that if un-controlled could become part of a non-stormwater discharge from the site.

Section 7: That Section 74-393 is hereby added to the Code of Ordinances as follows:

Sec. 74-393.-Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or Outstanding Florida Waters, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone no later than the next business day. Notifications in person or by phone shall be confirmed by written notice, addressed and mailed to The City of Key West, Utilities Department, within three business days of the phone notice. If the discharge of prohibited materials emanates from a construction site, commercial or industrial establishment, the superintendent, owner or operator shall retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 8: That Section 74-394 is hereby added to the Code of Ordinances as follows:

Sec. 74-394.-Enforcement.

(A) Notice of a Violation. Whenever the City of Key West finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.
- (7) Notification of the State FDEP or Water Management District to enable those agencies to also pursue remedies and corrective action as allowed by State Law.

(B) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a reasonable time within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(C) Should the violation continue beyond the time specified for correction, the authorized enforcement agency shall notify the special magistrate and request a hearing. The special magistrate, through clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in section 2-638 to the violator. At the option of the special magistrate, notice may additionally be served by publication or posting as provided in section 2-638. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the authorized enforcement agency, the case may be presented to the special magistrate, even if the violation has been corrected prior to the hearing and the notice shall so state.

(D) If a repeat violation is found, the authorized enforcement agency shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The authorized enforcement agency, upon notifying the violator of a repeat violation, shall notify the special magistrate and request a hearing. The special magistrate, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to section 2-638. The case may be presented to the special magistrate even if the repeat violation has been corrected prior to the special magistrate hearing, and the notice shall so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine the costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his rights to this hearing and pay the costs as determined by the special magistrate.

(E) If the authorized enforcement agency has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the authorized enforcement agency shall make a reasonable effort to notify the violator and may immediately notify the special magistrate and request a hearing.

(F) If the owner of the property which is subject to an enforcement proceeding before the special magistrate or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(1) Disclose in writing, the existence and nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code compliance proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code compliance hearing.

(4) File a notice with the code compliance official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

(G) A failure to make the disclosures described in subsections (F)(1), (2), and (3) of this section before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

Section 9: That Section 74-395 is hereby added to the Code of Ordinances as follows:

Sec. 74-395.-Appeal of notice of violation.

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency.

(A) Appeals process. Assessments of civil penalty(ies) and other enforcement decisions made under this ordinance may be appealed by filing a written notice of appeal with Key West Code Compliance. The notice of appeal must be received within ten days after the date of notification of the assessment of civil penalty(ies) or other enforcement decision. The failure to give notice of appeal within this time period shall constitute a waiver of the right to contest the assessment of penalty(ies) or other enforcement decision. Appeals shall be heard by the special magistrate or other individual ("hearing officer") hired by the City of Key West to rule upon code compliance citations. The hearing officer's decision is subject to review in the manner provided by law in the circuit court.

(B) Appeal Standard. The hearing officer shall review an appeal from the assessment of civil penalty(ies) or other enforcement decisions using a preponderance of the evidence standard. Notwithstanding a determination that the preponderance of the evidence supports the assessment of civil penalty(ies) or

other enforcement decision, the hearing officer shall have the discretion to dismiss or reduce civil penalty(ies) or reverse any other enforcement decision where warranted. Upon any appellate finding that a violation of this chapter has occurred, the hearing officer may also assess a reasonable administrative fee based upon the evidence produced.

Section 10: That Section 74-396 is hereby added to the Code of Ordinances as follows:

Sec. 74-396.-Enforcement measures after appeal.

If the violation has not been corrected, pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Section 11: That Section 74-397 is hereby added to the Code of Ordinances as follows:

Sec. 74-397.-Cost of abatement of the violation.

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 30 days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation.

Section 12: That Section 74-398 is hereby added to the Code of Ordinances as follows:

Sec. 74-398.-Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for

a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Section 13: That Section 74-399 is hereby added to the Code of Ordinances as follows:

Sec. 74-399.-Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 14: That Section 74-400 is hereby added to the Code of Ordinances as follows:

Sec. 74-400.-Criminal prosecution.

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty \$500.00 dollars per violation per day and/or imprisonment for a period of time not to exceed 60 days.

The authorized enforcement agency may recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 15: That Section 74-401 is hereby added to the Code of Ordinances as follows:

Sec. 74-401.-Remedies not exclusive.

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

Section 16: It is the intention of the city commission, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Key West, Florida, and the sections of this ordinance may be renumbered to accomplish such intention.

Section 17: 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 18: 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 19: 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 _____, 2020.

Read and passed on final reading at a regular meeting held this day of _____, 2020.

Authenticated by the presiding officer and Clerk of the Commission on day of _____, 2020.

Filed with the Clerk _____, 2020.

| | |
|------------------------------|-------|
| 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