

ORDINANCE NO. 10-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO CHAPTER 18, "BUSINESSES," OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST BY ADDING ARTICLE XII. CONDITIONAL APPROVAL PERMIT, DIVISION 1., SECTIONS 18-610 THROUGH 18-615 TO PROVIDE FOR A CONDITIONAL APPROVAL PERMIT APPLICATION AND ENFORCEMENT PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the City of Key West Land Development Regulations allow approving bodies to place conditions upon Conditional Use approvals pursuant to Section 122-62. Transient Unit or Transient Business Tax Receipt Transfers, pursuant to Section 122-1340, and Minor and Major Development Plan approvals, pursuant to Section 108-196 and 108-198; and

**WHEREAS**, some conditions of approval survive the issuance of a certificate of occupancy and remain integral to the operation of the use as expressed in approvals; and

**WHEREAS**, the proposed amendment was initiated by the Planning Board to encourage better monitoring and enforcement of site specific conditions associated with approvals granted pursuant to the Land Development Regulations; and

**WHEREAS**, the Planning Board held a noticed public hearing on June 10, 2010 and recommended approval of the proposed amendments.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:**

Section 1. That Chapter 18, Article XII, Division 1, sections 18-610 through 18-615 is hereby added to the Code of Ordinances as follows:

Article XII. CONDITIONAL APPROVAL PERMIT

DIVISION 1. Permit

**Sec. 18-610. Required**

Any development approved after [effective date of this ordinance] operating pursuant to a Conditional Use approval pursuant to Section 122-62, Transient Unit or Transient Business Tax Receipt Transfer pursuant to Section 122-1340, and Minor and Major Development Plan approval pursuant to Section 108-196 and 108-198, when such approvals contain conditions of approval, shall obtain and maintain a Conditional Approval Permit from the city prior to issuance of a certificate of occupancy. No facility required to obtain such permit will operate without a permit and failure to obtain a permit or renew a permit shall be

subject to procedures outlined in section 18-615. A ninety-day delinquency period for renewal of permits is hereby established.

**Sec. 18-611. Application and Permit Fee**

An application for the Conditional Use Permit shall be made to the city manager in the name of the property owner. A single annual fee of \$150.00 is established for the application which includes an annual inspection. A delinquency fee is established at \$50.00. The annual application fee shall be pro-rated for new permits. Future modification to these fees shall be as established by resolution of the City Commission.

**Sec. 18-612. Term**

This permit is renewable on an annual basis on or before each June 1. A delinquency fee shall be assessed for a permit payment made after June 1.

**Sec. 18-613. Incorporation of Conditions of Approval**

The permit will include all conditions of approval, including, but not limited to, the associated development plan or site plan which survive the issuance of a certificate of occupancy.

**Sec. 18-614. Annual Inspection**

The code compliance department will inspect each facility on an annual basis upon reasonable notice to determine compliance with conditions.

**Sec. 18-615. Revocation or suspension.**

(a) Failure to adhere to the provisions herein shall constitute a violation of this article. At the City's option it may enforce an alleged violation of a conditional approval use permit 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.

(b) If a permit holder is found in violation of permit conditions or enters an admission to a violation as established by a Findings and Order pursuant to Section 2-641, the city manager may determine whether to revoke or suspend for a period of time the permit. Before reaching a decision, the city manager shall:

(1) Afford the permit holder notice of the hearing and a reasonable opportunity to be heard;

(2) Consider the permit holder's record of violations;

(3) Consider the seriousness and recurrence of the violation;

(4) Consider the degree of disturbance on persons or

neighboring property owners; and

(5) Consider the impact to public health, safety and welfare.

(c) The city manager's decision to revoke or suspend a permit shall be issued in writing and shall inform the permit holder of the right to appeal the decision to the planning board. A written appeal must be accompanied by a fee as established by the city commission and filed with the city clerk within ten days of the receipt of the decision. An appeal shall not stay the city manager's decision unless the city manager's decision calls for a stay upon appeal. If a permit is revoked or suspended and the establishment continues to operate without a permit, the city attorney is authorized to apply for an injunction from the circuit court.

(d) The final revocation will serve to automatically revoke the underlying land use regulatory approval associated with the violation. The property owner must apply for and obtain the underlying land development approval in order to restore the use.

Section 2:        **Severability**. 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:           **Conflict.** 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.

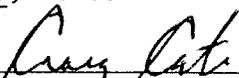
Section 4.           **Effective Date.** This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 21st day of September, 2010.

Read and passed on final reading at a regular meeting held this 5th day of October, 2010.

Authenticated by the presiding officer and Clerk of the Commission on 6th day of October, 2010.

Filed with the Clerk on October 6, 2010.

  
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CRAIG CATES, MAYOR

ATTEST:

  
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CHERYL SMITH, CITY CLERK



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager

**From:** Amy Kimball-Murley, AICP, Planning Director

**Meeting Date:** September 21, 2010

**RE:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO CHAPTER 18, BUSINESSES, OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST TO INCLUDE A CONDITIONAL APPROVAL PERMIT; AND PROVIDING AN EFFECTIVE DATE.

### **ACTION STATEMENT:**

Request: Approval of an amendment to the Code of Ordinances to create a "Conditional Approval Permit" to encourage better monitoring and enforcement of conditions associated with land use approvals.

Location: City-Wide

### **BACKGROUND:**

In November of last year the Planning Board recommended approval of a draft ordinance that encouraged better monitoring and enforcement of conditions associated with certain types of approvals regularly reviewed by the Board. The draft ordinance was initially scheduled for consideration by the City Commission in February 2010; however, the City Attorney requested additional time to review potential legal concerns associated with language in the ordinance. Several administrative issues also arose, and over the last month staff has worked with the City Manager's office and the Legal Department to resolve concerns and redraft sections of the ordinance. The Planning Board recommended changes to the draft ordinance on June 10, 2010 via Resolution Number 2010-022 (see attached).

The ordinance is intended to accomplish two important functions that can not occur today:

- Create an annual renewal and inspection process which will serve as a gentle reminder of conditions associated with the approval; and,
- Create an option for removal of the approval if an owner does not operate the facility in compliance with the conditions.

Because conditions often resolve important concerns which might otherwise prevent a recommendation of approval, they can represent important operational commitments. The Planning Board perceives these commitments as a kind of promise made to the community in each approval that they grant. However, because current code compliance approaches cannot affect the underlying approvals even in instances of chronic violators, and because with time even the most well-intentioned owners might forget obligations associated with the approvals, the Planning Board has a long standing concern that conditions alone are not enough to assure proper long term operation.

This ordinance anticipates that recipients of land use approvals with conditions (Conditional Use Approvals, Minor and Major Development Plans and Transient Units Transfers) will obtain an annual permit (much like an entertainment license or a mobile vender license). An inspection is also included. The ordinance includes an annual inspection and permitting fee of \$150. Any changes to the fee in the future will be approved by resolution.

The draft ordinance is not a Land Development Regulation modification; therefore procedural requirements in the code for changes to the Land Development Regulations are not applicable.

**Previous City Actions:**

- October 15, 2009: Planning Board discussion of draft ordinance
- November 19, 2009: Planning Board recommendation of approval
- June 10, 2010: Planning Board recommendation of approval of revised ordinance

**Options/Advantages/Disadvantages:**

**Option 1: Recommendation of Approval**

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The Strategic Plan is silent on issues associated with this ordinance.
2. **Financial Impact:** The ordinance would require the City Commission to establish a yearly fee which would offset staff time to implement the permitting and inspection associated with the ordinance.

**Option 2:**

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The Strategic Plan is silent on issues associated with this ordinance.

**2. Financial Impact:** There would be no financial impact to the City.

**Recommendation**

The Planning Department recommends **approval** of the proposed ordinance.

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