

ORDINANCE NO. 12-16

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTIONS 122-1016, 122-1017, 122-1018, AND 122-1020 TO PROVIDE FOR CLARIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria; and

WHEREAS, the Planning Department initiated the proposed amendments to the ordinance more clearly defines language related to the PS zoning district regulations; and

WHEREAS, the Planning Board held a noticed public hearing on March 15, 2012, where based on the consideration of recommendations by the City planner, City attorney, and public testimony and input, and recommendation of the Planning Department, recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on June 5, 2012 and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

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 ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 122 of the Code of Ordinances is hereby amended as follows\*:

**Sec. 122-1016. Intent.**

- (a) The purpose and intent of the public and semipublic services district (PS) is to provide a management framework for implementing comprehensive plan policies for areas located outside of Old Town which are designated "PS" or "M" on the future land use map. All public and semipublic services developed shall comply with the Comprehensive Plan, performance criteria in Chapter 102; Articles III, IV, V and VII of Chapter 108; Section 108-956; and Article II of Chapter 110, as well as other applicable land development regulations.
- ~~(b) The PS district shall accommodate existing public and semipublic services including the following:~~

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\* (Coding: Added language is underlined; deleted language is ~~struck through~~.)

- ~~(1) Governmental administration buildings;~~
- ~~(2) Public schools and not for profit educational institutions;~~
- ~~(3) Hospital facilities and supportive health care units;~~
- ~~(4) Arts and cultural or civic facilities;~~
- ~~(5) Essential public services and facilities;~~
- ~~(6) Military uses within the city's cemeteries;~~
- ~~(7) The city landfill;~~
- ~~(8) Fire and emergency operation facilities;~~
- ~~(9) Public and private parks and recreation areas;~~
- ~~(10) Utilities;~~
- ~~(11) Extensive open areas comprising major committed public and semipublic open spaces; and~~
- ~~(12) Other similar activities.~~

~~(c) The PS district shall also accommodate places of worship, cultural or civic centers, and other similar public or private not for profit uses if the respective use satisfies the substantive and procedural conditions of the land development regulations.~~

(b) Development plans for sites within the PS district shall provide sufficient acreage and open space and shall be properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses. The maximum intensity of public and semi-public institutional structures and buildings activity on lands designated "PS," measured in terms

of floor area ratio (FAR), shall not exceed eight-tenths (0.8), including floor area allocated to all uses. The maximum floor area ratio for structures and buildings accessory to principal uses recreation and open space both active and passive parks and recreation shall be two-tenths (0.2).

(Ord. No. 97-10, § 1(2-5.6(A)), 7-3-1997)

**Sec. 122-1017. Uses Permitted.**

Uses permitted in the public and semipublic services district (PS) are as follows:

- (1) Community centers, clubs and lodges.
- (2) Educational institutions and day care.
- (3) Golf course facilities.
- (4) Hospitals and supportive care facilities.
- (5) Nursing homes, rest homes and convalescent homes.
- (6) Parks and recreation, active and passive.
- ~~(7) Places of worship.~~
- (7) Business and professional offices.
- (8) Medical services.
- (9) Parking lots and vehicular storage facilities.
- (10) Veterinary medical services with or without outside kennels.
- (11) Government operated transit facilities.
- (12) Governmental administration buildings;
- (13) Essential public services and facilities inclusive of but not limited to; drainage facilities, and emergency services; i.e. staging areas responsive to declared emergency, with the exception

of shelters for the homeless, which are regulated as a conditional use;

(14) Non-recreational open spaces;

(15) Temporary storage, for less than six (6) months, of construction materials and debris generated by storms or other natural disasters;

(16) Other similar activities such as uses critical to government function, uses for essential public services, uses to serve social and cultural needs not otherwise listed;

(17) Government maintenance facilities and garages.

(Ord. No. 97-10, § 1(2-5.6(B)), 7-3-1997; Ord. No. 00-04, § 12, 2-1-2000; Ord. No 07-18, § 1, 12-4-2007)

**Sec. 122-1018. - Conditional Uses.**

Conditional uses in the public and semipublic services district (PS) are as follows:

(1) Emergency shelters for the homeless, and shelters for temporarily housing the homeless which meet the following minimum standards for development review, site development and operation:

a. Fencing - the entire site shall have a six foot opaque fence on all sides.

b. Landscape Buffer - A minimum of a five foot wide "D" buffer as specified in section 108-347(c).

c. Security lighting on the perimeter of the site and upon the interior of the fenced premises which shall be

designed to "Dark Sky" lighting standards to protect adjacent residential uses.

- d. Onsite security personnel licensed by the state of Florida for such role and activity provided by the operator of the facility during the hours of operation inclusive of nighttime or any time when clients of the facility are present.
- e. An outdoor day-time congregation area inside the grounds of the site large enough to accommodate the maximum client population of the facility to prevent waiting and congregating off site.
- f. On site facilities:
  - i. Sleeping facilities for 100% of the maximum client population;
  - ii. Dining facilities for at least 50% of the maximum client population;
  - iii. Shower and toilet facilities in a quantity necessary to serve the maximum client population;
  - iv. Intake and counseling offices;
  - v. Storage for client personal effects, food, sleeping linens, miscellaneous support materials;
  - vi. A loading zone and bus parking area.
- g. All shelters for the homeless or for temporary housing the homeless shall undergo review as a major development plan and meet the requirements of Section 108-92 et. sq

- (2) Cemeteries.
  - (3) Cultural and civic activities, inclusive of museums, theatres and stadiums.
  - (4) Protective services.
  - (5) Public and private utilities.
  - (6) Funeral homes and crematoriums.
  - (7) Marinas.
  - (8) Restaurants and food service facilities associated with recreational activities.
  - (9) Solid waste and recycling transfer and storage facilities.
- (Ord. No. 97-10, § 1(2-5.6(C)), 7-3-1997)

**Sec. 122-1020. - Dimensional requirements.**

The dimensional requirements in the public and semipublic services district (PS) are as follows:

- (1) Maximum density: not applicable; except where the capacity of transitional housing with supportive services shall be evaluated in terms of Floor Area Ratio, only.
- (2) Maximum floor area ratio: Outside the historic districts, as designated on the future land use map, the maximum floor area ratio for all public and semi-public institutional structures and buildings services shall be not exceed eight-tenths (0.8), except for structures and buildings accessory to principal uses and both active and passive parks and recreation and open space, which shall have a maximum floor area ratio of two-tenths (0.2).

- (3) Maximum height: 25 feet.
- (4) Maximum lot coverage:
  - a. Maximum building coverage: 40 percent.
  - b. Impervious surface ratio: ~~50 percent.~~ 60 percent
- (5) Minimum lot size: 5,000 square feet:
  - a. Minimum width: 50 feet.
  - b. Minimum depth: 100 feet.
- (6) Minimum setbacks for principal structures:
  - a. Front: 20 feet.
  - b. Side: 15 feet.
  - c. Rear: 20 feet or 15 feet when abutting an alley.
  - d. Street side: 15 feet.
- (7) Minimum Setbacks for active and passive recreational uses:
  - a. Front: 10 feet.
  - b. Side: 10 feet.
  - c. Rear: 10 feet.
  - d. street Side: 10 feet.

(8) Additional regulations: Required street landscape buffers may be reduced to the setbacks enumerated in subsection (7) above when the principal and only use is passive and active recreation defined in chapter 86, Section 86-9, Definitions.

(Ord. No. 97-10, § 1(2-5.6(E)), 7-3-1997)

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 State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 15th day of May, 2012.

Read and passed on final reading at a regular meeting held this 5th day of June, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 5th day of June, 2012.

Filed with the Clerk June 6, 2012.

ATTEST:

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

  
\_\_\_\_\_  
CRAIG CAPES, MAYOR

**STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY**

2012 AUG -6 PM 3:33  
KEY WEST, FLORIDA

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY THE CITY OF KEY WEST,  
FLORIDA, ORDINANCE NO. 12-16

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FINAL ORDER

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat. (2012), approving land development regulations adopted by the City of Key West, Florida, Ordinance No. 12-16 (the “Ordinance”).

FINDINGS OF FACT

1. The City of Key West is designated pursuant to § 380.05(1), Fla. Stat. (2012), and Chapter 28-36, Florida Administrative Code, as an area of critical state concern. Land development regulations adopted by the City of Key West do not become effective until approved by the Department by final order. §§ 380.05(6) and (11), Fla. Stat. (2012).
2. The Ordinance was adopted by the City of Key West on June 5, 2012, and rendered to the Department on July 5, 2012.
3. The Ordinance amends Sections 122-1016, 122-1017, 122-1018, and 122-1020 of the City Code related to the public and semipublic services land use district (PS) to add guidelines, including a floor area ratio; amend the list of services allowed in the PS district; allow additional conditional uses including emergency shelters for the homeless, theatres and stadiums, crematoriums, restaurants and food service facilities associated with recreational activities, and solid waste and recycling transfer and storage facilities; and add dimensional requirements for buildings in the PS district.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. §§ 380.05(6) and (11), Fla. Stat. (2012).

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2012). The regulations adopted by the Ordinance are land development regulations.

6. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and (11), Fla. Stat. (2012). The Principles for Guiding Development for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), Florida Administrative Code.

7. The Ordinance is consistent with the Principles for Guiding Development as a whole, and specifically furthers the following Principles:

(a) To strengthen local government capabilities for managing land use and development.

(h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

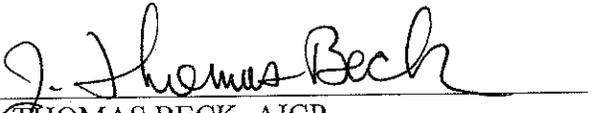
8. The Ordinance is consistent with Objective 1-1.4 and Policies 1-1.4.1 and 1-1.4.2 of the City of Key West Comprehensive Plan.

WHEREFORE, IT IS ORDERED that City of Key West Ordinance No. 12-16 is found to be consistent with the Principles for Guiding Development for the City of Key West Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative

Weekly unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.

  
\_\_\_\_\_  
J. THOMAS BECK, AICP  
Director, Division of Community Development  
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, CONDUCT CROSS-EXAMINATION AND SUBMIT

REBUTTAL EVIDENCE, SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS **RECEIVED** BY:

AGENCY CLERK  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
OFFICE OF GENERAL COUNSEL  
107 EAST MADISON STREET, MSC 110  
TALLAHASSEE, FLORIDA 32399-4128.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 3<sup>rd</sup> day of August, 2012.



Miriam Snipes, Agency Clerk  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Craig Cates  
Mayor, City of Key West  
3216 Flagler Avenue  
Key West, FL 33040

Cheryl Smith, City Clerk  
3216 Flagler Avenue  
Key West, FL 33040

Donald Leland Craig, AICP  
City Planner  
3140 Flagler Avenue  
Key West, FL 33040

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DEO Tallahassee  
Sherry A. Spiers, Assistant General Counsel, DEO Tallahassee

## EXECUTIVE SUMMARY



**To:** Jim Scholl, City Manager

**From:** Nicole Malo, Planner II

**Through:** Donald Leland Craig, AICP, Planning Director

**Date:** May 15, 2012

**RE:** **PS Zoning District Ordinance** - An ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled "Zoning" of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

### ACTION STATEMENT

**Request:** To consider the proposed amendments to the Land Development Regulations for the Public and Semi-public zoning district

**Location:** For properties located within the existing Public and Semi-public (PS) zoning districts throughout the city (see attached maps)

### BACKGROUND

The purpose of the proposed text amendments is to clarify the uses currently allowed in the PS zoning district, by more clearly defining the language for permitted and conditional land uses within the Land Development Regulations. Further, additional restrictions for development of *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* are proposed, and clarification and modifications are proposed to the existing dimensional requirements allowed in the district. The proposed amendments serve to improve the city's efficiency by resolving the following:

1. Standardize formatting of Section 122-1016(b) and (c), Intent;
2. Modify Section 122-1017, Permitted Uses and 122-1018, Conditional Uses to comport with Comprehensive Plan Policy 1-2.6.1;
3. Better define uses associated with *Essential Public Services and Facilities*;
4. Standardize dimensional requirements inconsistent with standards in other non-historical, residential, mixed-use and commercial districts; and
5. Isolate the use *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless*, from the overarching definition of *Essential Public Services and Facilities* (Permitted Use), in order to provide that *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* undergo Conditional Use review with stringent development and operational criteria.

On March 15, 2012 the Planning Board reviewed and approved the proposed amendments to the Land Development Regulations for the PS zoning district through Resolution 2012-09 (see attached Resolution) based on staff recommendations and concerns raised by neighboring property owners. The proposed text amendments were heard by the Planning Board twice before on January 18, 2012 and on November 17, 2011. After members of the public continued to raise concerns regarding the proposed amendments, primarily regarding the potential development of homeless facilities the Planning Board recommended that the specific use of *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* (defined as an *Essential Public Service and Facility*) be listed separately as a conditional use with specific operational and development criteria.

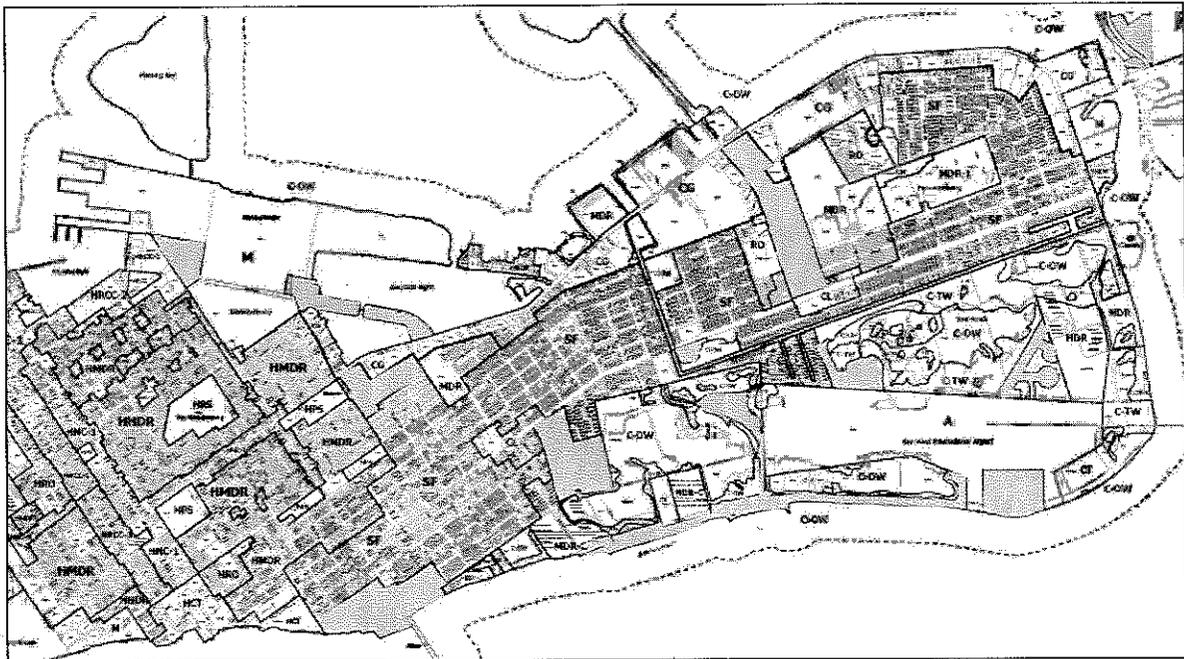
Regulating *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* to be reviewed as a conditional use, instead of a permitted use, creates an additional layer of analysis for land use compatibility. In order to further mitigate neighborhood impacts additional regulations for this type of development are proposed to increase development review oversight, elevate development standards and provide operational controls. These standards are as follows:

- (1) Emergency shelters for the homeless, and shelters for temporarily housing the homeless which meet the following minimum standards for development review, site development and operation:
  - a. Fencing – the entire site shall have a six foot opaque fence on all sides.
  - b. Landscape Buffer – A minimum of a five foot wide “D” buffer as specified in section 108-347(c).
  - c. Security lighting on the perimeter of the site and upon the interior of the fenced premises which shall be designed to “Dark Sky” lighting standards to protect adjacent residential uses.
  - d. Onsite security personnel licensed by the state of Florida for such role and activity provided by the operator of the facility during the hours of operation inclusive of nighttime or any time when clients of the facility are present.
  - e. An outdoor day-time congregation area inside the grounds of the site large enough to accommodate the maximum client population of the facility to prevent waiting and congregating off site.
  - f. On site facilities:
    - i. Sleeping facilities for 100% of the maximum client population;
    - ii. Dining facilities for at least 50% of the maximum client population;
    - iii. Shower and toilet facilities in a quantity necessary to serve the maximum client population;
    - iv. Intake and counseling offices;
    - v. Storage for client personal effects, food, sleeping linens, miscellaneous support materials;
    - vi. A loading zone and bus parking area.

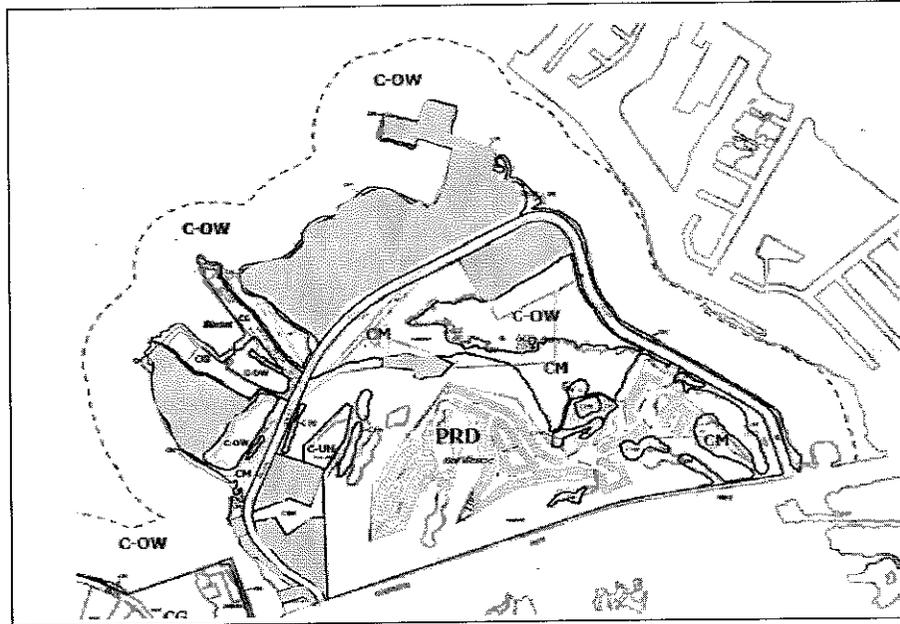
- g. All shelters for the homeless or for temporary housing the homeless shall undergo review as a major development plan and meet the requirements of Section 108-92 et.sq

Staff and the Planning Board recommend that regulating *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* as a conditional use with specific criteria for development and operational limitations shall best resolve the community's concerns regarding a potential lack of restrictions for any future development. Further, the proposed ordinance should result in the ability of the municipal government to more effectively utilize city property in order to provide essential public services to the Key West community.

Additionally, the proposed amendments help to clarify the intent of the uses allowed in the PS district and standardize the formatting of the Section by relocating the list of existing uses currently under 122-1016(b) and additional uses described under Section 122-1016(c) into the Permitted Uses (Section 122-1017) and Conditional Uses (Section 122-1018). Additionally, in order to clarify what types of uses are considered essential public services and other similar activities the department is recommending amendments that include examples of essential public service uses.



Key West



Stock Island

The highlighted sections of the zoning maps above (also the Future Land Use Map) show all of the PS zoning districts throughout the city. An analysis of properties within the PS zoning districts attached herein shows that these lands are mostly owned by governmental entities and utilities including the County (BOCC), the Mosquito Control Board, Keys Energy, and the Florida Keys Aqueduct Authority; although, the majority of the PS lands are owned by the City of Key West. There is one exception for property on Flagler Avenue owned by the Catholic Church. Although the City also owns parcels of property within the Historic Public Service District (HPS) the city's undeveloped lands are located within the PS zoning district and these lands are intended by the Comprehensive Plan to be utilized as public service purposes. Further, Comprehensive Plan Policy 1-1.4 states that the city's FLUM shall include appropriate allocations of land for public services. Therefore because lands within the PS zoning district are owned by the city and other public and governmental entities and because the Comprehensive Plan contemplates that the city allocate and utilize these lands for public service uses it is critical that these uses are clearly identified within the LDR's.

The uses proposed to be relocated from Section 122-1016 Intent to within Section 122-1017 Permitted Use are typically found or currently existing within public service zoning districts such as hospitals, parks and recreation and government administration buildings. The clarification of these permitted uses will improve the city's ability to consistently interpret the intended use of our limited public and semipublic lands while facilitating their usage. The uses that have been relocated or newly proposed as conditional uses, such as marinas and restaurants associated with recreational activities are higher impact uses that therefore require an additional layer of Planning Board approval to determine land use compatibility. Most of the uses currently exist within the PS districts today; however, the existing de-commissioned land fill will only be allowed to continue as a legal non-conforming use.

**Previous City Actions**  
**Planning Board Meetings**

March 15, 2012  
January 18, 2012  
November 17, 2011  
October 20, 2011

**Review Criteria**

Section 90-523 of the Code outlines key City Commission review procedures for any changes to the Land Development Regulations. In accordance with the Code the City Commission shall consider the criteria in Section 90-521 together with the findings and recommendations of the Planning Board. As described in this report the Planning Board has recommended the proposed ordinance changes. A review of the proposed ordinance relative to the criteria is provided below.

**Sec. 90-521. Criteria for approving amendments to official zoning map. In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:**

**(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

The City's Comprehensive Plan includes an Objective to Allocate Land for Public Service (1-2.6) and to Accommodate Institutional Facilities and Public Services as part of the Future Land Use Element. Goals, Objectives and Policies within the sub-element support the allocation of lands for public services within the City. The Comprehensive Plan Policy 1-2.6.1 for the PS Land Use Designation requires that the City accommodate existing public and semi-public services as described and to identify them in the LDR's. The proposed ordinances are consistent with these and related Goals, Objectives and Policies in the Comprehensive Plan.

Because the proposed ordinances do not impact density or intensity, they will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan.

**(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed ordinances are in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this report.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing**

regulations, and whether such changes support or work against the proposed rezoning.

There are no changed conditions or regulations associated with these ordinances.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.**

The proposed clarifications reconstitute uses that currently exist within the Land Development Regulations for the PS district, uses that currently exist within the PS district, and uses that are typically found within public service zoning districts, and will improve the viability of our limited public and semipublic lands. The proposed conditional uses have been determined to be higher impact uses and must obtain Planning Board approval to determine land use compatibility. In response to public concerns and the Planning Board request all development for *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* will undergo additional review as a conditional use with added development standards such as development plan approval. The existing de-commissioned land fill will only be allowed to continue as a legal non-conforming use.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.**

The proposed ordinances are intended to clarify language for the use of lands that can support public facilities. The proposed amendments will not result in excessive demands on public facilities. All applications for future development will have to comply with concurrency standards.

**(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

The proposed ordinance is intended to clarify uses that are currently allowed or currently exist in the district and will have no impact on the natural environment. Any future construction for development that may be proposed within these districts that border conservation districts will be required to attain relevant environmental permitting and comply with mitigation requirements.

**(7) Economic effects.** Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

The proposed ordinance promotes the most effective and efficient operation of government owned lands by clarifying the allowed uses necessary to accommodate services for the public on these lands. This proposal is not expected to have an adverse effect on the property values in the area or the general welfare because the uses already exist in the area.

**(8) Orderly development.** Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

The proposed modifications will support an orderly and compatible land use pattern with that which are currently existing, further the LDR modifications reflect municipal policy direction and provide consistency throughout the Code and the Comprehensive Plan. These modifications will also protect the ability of the government to provide critical public services.

**(9) Public interest; enabling act.** Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

Although, there has been neighborhood concern regarding the use of some PS zoned land for *Public Service Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* the proposed ordinances do not appear to be in conflict with the overall public interest. They are expected to help protect the government's continued use of the lands, and provide as needed services to the community, which is in the greater public interest and will further the intent of the Comprehensive Plan and Land Development Regulations.

**(10) Other matters.** Other matters which the Planning Board and the City Commission may deem appropriate.

Other matters have not been identified at this time.

## **RECOMMENDATIONS**

### **Options / Advantages / Disadvantages:**

**Option 1.** Approve the resolution.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would provide enhanced services and government efficiency consistent with the mission and vision of the city.

2. **Financial Impact:** There is no direct financial impact to the city itself; although, the amendments facilitate efficient use of city property and staff time.

**Option 2.** Do not approve the resolution.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would not provide enhanced services and is not consistent with the mission and vision of the city.
2. **Financial Impact:** There is no direct financial impact to the city itself; although, city efficiency may be sacrificed.

**STAFF RECOMMENDATION**

Option 1. **Approval of the Ordinance** amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 of the Land Development Regulations.

**PLANNING BOARD RESOLUTION  
NO- 2012-09**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD  
RECOMMENDING APPROVAL OF AN ORDINANCE OF  
THE CITY OF KEY WEST, FLORIDA, AMENDING  
CHAPTER 122 OF THE CODE OF ORDINANCES  
ENTITLED "ZONING" BY AMENDING SECTION 122-  
1016, 122-1017, 122-1018 AND 122-1020 TO PROVIDE  
AMENDMENTS TO THE PUBLIC AND SEMI PUBLIC  
SERVICES ZONING DISTRICT; PROVIDING FOR  
SEVERABILITY; PROVIDING FOR REPEAL OF  
INCONSISTENT PROVISIONS; PROVIDING FOR AN  
EFFECTIVE DATE**

**WHEREAS**, the Planning Department initiated the proposed amendments to the ordinance as a result of changes requested by the City Manager; and

**WHEREAS**, the Planning Board held a noticed public hearing on November 17, 2011, where based on comments made by the public at the meeting, the Planning Board recommended postponement of the item until the January 19, 2012 Planning Board Meeting to allow staff to address the concerns of the proposed amendments; and

**WHEREAS**, the Planning Board held a noticed public hearing on January 19, 2012, where based on comments made by the public at the meeting, the Planning Board recommended postponement of the item until the March 15, 2012 Planning Board Meeting to allow staff to amend the ordinance to require that the specific Essential Public Service use of Shelters for the Homeless be a conditional use and that greater restrictions on development and operation of shelters for the homeless be added; and

iwk Vice Chairman

dc Planning Director

**WHEREAS**, the Planning Board held a noticed public hearing on March 15, 2012, where based on the consideration of recommendations by the City Planner and City Attorney, the Planning Board recommended approval of the proposed amendments; and

**WHEREAS**, the Planning Board 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 public demand on public facilities; will have no impact on the built 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 Planning Board of the City of Key West, Florida:

**Section 1.** That the above recitals are incorporated by reference as if fully set forth herein.

**Section 2.** Amending Chapter 122 of the Code of Ordinances entitled "Zoning" by amending Section 122-1016, Section 122-1017, Section 122-1018 and Section 122-1020 to provide amendments to the Public and Semi-public Services Zoning District is hereby recommended for approval; a copy of the recommended modifications to the Code is attached.

**Section 3.** This resolution shall go into effect immediately upon its passage and adoption

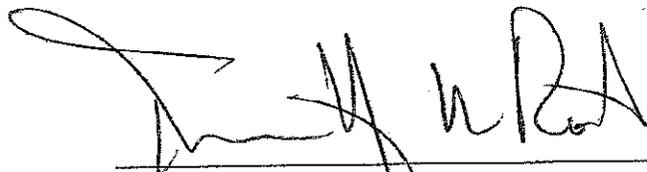
 Vice Chairman

 Planning Director

and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 15<sup>th</sup> day of March, 2012.

Authenticated by the Vice Chairman of the Planning Board and the Planning Director.

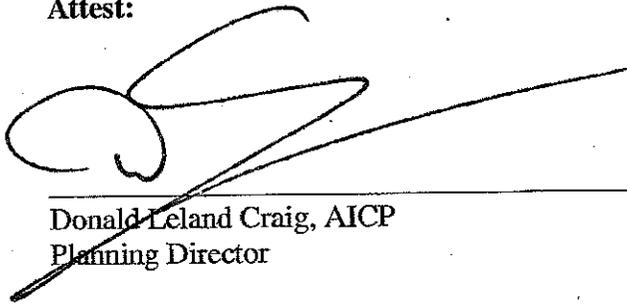


3/27/12

Vice Chairman Timothy Root  
Key West Planning Board

Date

Attest:



3.27.12

Donald Leland Craig, AICP  
Planning Director

Date

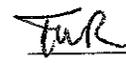
Filed with the Clerk:



3-27-12

Cheryl Smith, City Clerk

Date

 Vice Chairman  
 Planning Director

ORDINANCE NO. 2012-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,  
AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES  
ENTITLED "ZONING" BY AMENDING SECTIONS 122-  
1016, 122-1017, 122-1018, AND 122-1020 TO  
PROVIDE FOR CLERIFICATION; PROVIDING FOR  
SEVERABILITY; PROVIDING FOR REPEAL OF  
INCONSISTENT PROVISIONS; PROVIDING FOR AN  
EFFECTIVE DATE

**WHEREAS**, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria; and

**WHEREAS**, the Planning Department initiated the proposed amendments to the ordinance more clearly defines language related to the PS zoning district regulations; and

**WHEREAS**, the Planning Board held a noticed public hearing on March 15, 2012, where based on the consideration of recommendations by the City planner, City attorney, and public testimony and input, and recommendation of the Planning Department, recommended approval of the proposed amendments;

**WHEREAS**, the City Commission held a noticed public hearing on \_\_\_\_\_ and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

**WHEREAS**, the City determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all

*TWR* *OC*

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 ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Chapter 122 of the Code of Ordinances is hereby amended as follows\*:

Sec. 122-1016. Intent.

- (a) The purpose and intent of the public and semipublic services district (PS) is to provide a management framework for implementing comprehensive plan policies for areas located outside of Old Town which are designated "PS" or "M" on the future land use map. All public and semipublic services developed shall comply with the Comprehensive Plan, performance criteria in Chapter 102; Articles III, IV, V and

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\* (Coding: Added language is underlined; deleted language is ~~struck through~~.)

VII of Chapter 108; Section 108-956; and Article II of Chapter 110, as well as other applicable land development regulations.

~~(b) The PS district shall accommodate existing public and semipublic services including the following:~~

- ~~(1) Governmental administration buildings;~~
- ~~(2) Public schools and not for profit educational institutions;~~
- ~~(3) Hospital facilities and supportive health care units;~~
- ~~(4) Arts and cultural or civic facilities;~~
- ~~(5) Essential public services and facilities;~~
- ~~(6) Military uses within the city's cemeteries;~~
- ~~(7) The city landfill;~~
- ~~(8) Fire and emergency operation facilities;~~
- ~~(9) Public and private parks and recreation areas;~~
- ~~(10) Utilities;~~
- ~~(11) Extensive open areas comprising major committed public and semipublic open spaces; and~~
- ~~(12) Other similar activities.~~

~~(c) The PS district shall also accommodate places of worship, cultural or civic centers, and other similar public or private not for profit uses if the respective use satisfies the substantive and procedural conditions of the land development regulations.~~

(b) Development plans for sites within the PS district shall provide sufficient acreage and open space and shall be

properly screened and buffered in order to minimize potential adverse impacts on adjacent land uses. The maximum intensity of public and semi-public institutional structures and buildings activity on lands designated "PS," measured in terms of floor area ratio (FAR), shall not exceed eight-tenths (0.8), including floor area allocated to all uses. The maximum floor area ratio for structures and buildings accessory to principal uses recreation and open space both active and passive parks and recreation shall be two-tenths (0.2).

(Ord. No. 97-10, § 1(2-5.6(A)), 7-3-1997)

**Sec. 122-1017. Uses Permitted.**

Uses permitted in the public and semipublic services district (PS) are as follows:

- (1) Community centers, clubs and lodges.
- (2) Educational institutions and day care.
- (3) Golf course facilities.
- (4) Hospitals and supportive care facilities.
- (5) Nursing homes, rest homes and convalescent homes.
- (6) Parks and recreation, active and passive.
- ~~(7) Places of worship.~~
- (7) Business and professional offices.
- (8) Medical services.
- (9) Parking lots and vehicular storage facilities.
- (10) Veterinary medical services with or without outside kennels.
- (11) Government operated transit facilities.

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(12) Governmental administration buildings;

(13) Essential public services and facilities inclusive of but not limited to; drainage facilities, and emergency services; i.e. staging areas responsive to declared emergency, with the exception of shelters for the homeless, which are regulated as a conditional use;

(14) Non-recreational open spaces;

(15) Temporary storage, for less than six (6) months, of construction materials and debris generated by storms or other natural disasters;

(16) Other similar activities such as uses critical to government function, uses for essential public services, uses to serve social and cultural needs not otherwise listed;

(17) Government maintenance facilities and garages.

(Ord. No. 97-10, § 1(2-5.6(B)), 7-3-1997; Ord. No. 00-04, § 12, 2-1-2000; Ord. No. 07-18, § 1, 12-4-2007)

**Sec. 122-1018. - Conditional Uses.**

Conditional uses in the public and semipublic services district (PS) are as follows:

(1) Emergency shelters for the homeless, and shelters for temporarily housing the homeless which meet the following minimum standards for development review, site development and operation:

a. Fencing - the entire site shall have a six foot opaque fence on all sides.

- b. Landscape Buffer - A minimum of a five foot wide "D" buffer as specified in section 108-347(c).
- c. Security lighting on the perimeter of the site and upon the interior of the fenced premises which shall be designed to "Dark Sky" lighting standards to protect adjacent residential uses.
- d. Onsite security personnel licensed by the state of Florida for such role and activity provided by the operator of the facility during the hours of operation inclusive of nighttime or any time when clients of the facility are present.
- e. An outdoor day-time congregation area inside the grounds of the site large enough to accommodate the maximum client population of the facility to prevent waiting and congregating off site.
- f. On-site facilities:
- i. Sleeping facilities for 100% of the maximum client population;
  - ii. Dining facilities for at least 50% of the maximum client population;
  - iii. Shower and toilet facilities in a quantity necessary to serve the maximum client population;
  - iv. Intake and counseling offices;
  - v. Storage for client personal effects, food, sleeping linens, miscellaneous support materials;

- vi. A loading zone and bus parking area.
- g. All shelters for the homeless or for temporary housing the homeless shall undergo review as a major development plan and meet the requirements of Section 108-92 et.sq
- (2) Cemeteries.
- (3) Cultural and civic activities, inclusive of museums, theatres and stadiums.
- (4) Protective services.
- (5) Public and private utilities.
- (6) Funeral homes and crematoriums.
- (7) Marinas.
- (8) Restaurants and food service facilities associated with recreational activities.
- (9) Solid waste and recycling transfer and storage facilities.
- (Ord. No. 97-10, § 1(2-5.6(C)), 7-3-1997)

**Sec. 122-1020 Dimensional requirements.**

The dimensional requirements in the public and semipublic services district (PS) are as follows:

- (1) Maximum density: not applicable; except where the capacity of transitional housing with supportive services shall be evaluated in terms of Floor Area Ratio, only.
- (2) Maximum floor area ratio: Outside the historic districts, as designated on the future land use map, the maximum floor area ratio for all public and semi-public institutional structures

and buildings services shall be not exceed eight-tenths (0.8), except for structures and buildings accessory to principal uses and both active and passive parks and recreation and open space, which shall have a maximum floor area ratio of two-tenths (0.2).

(3) Maximum height: 25 feet.

(4) Maximum lot coverage:

a. Maximum building coverage: 40 percent.

b. Impervious surface ratio: ~~50 percent.~~ 60 percent

(5) Minimum lot size: 5,000 square feet.

a. Minimum width: 50 feet.

b. Minimum depth: 100 feet.

(6) Minimum setbacks for principal structures:

a. Front: 20 feet.

b. Side: 15 feet.

c. Rear: 20 feet or 15 feet when abutting an alley.

d. Street side: 15 feet.

(7) Minimum Setbacks for active and passive recreational uses:

a. Front: 10 feet.

b. Side: 10 feet.

c. Rear: 10 feet.

d. street Side: 10 feet.

(8) Additional regulations: Required street landscape buffers may be reduced to the setbacks enumerated in subsection (7) above when the principal and only use is passive and active recreation defined

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in chapter 86, Section 86-9, Definitions.

(Ord. No. 97-10, § 1(2-5.6(E)), 7-3-1997)

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 State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Authenticated by the presiding officer and Clerk of the

Tuk<sup>sc</sup>

Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Filed with the Clerk \_\_\_\_\_, 2012.

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

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

DRAFT

*For*

# Minutes of the Key West Planning Board

October 20, 2011

Approved November 16, 2011

Ms. Tennyson returned to the dias.

- 4 PS Zoning District Ordinance - An ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled "Zoning" of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

This item has been postponed to the November 17, 2011 meeting.

- 5 Zoning in Progress - A resolution of the City of Key West Planning Board recommending to the City Commission the invoking of Zoning in Progress for the property known as Peary Court (RE# 00006730-000000); directing Planning staff to consider appropriate amendments to the Future Land Use Element of the Comprehensive Plan and Land Development Regulations in response to the proposed sale of the military property to a non-governmental entity, and assigning an interim zoning designation to the property; providing for an effective date.**

Mr. Klitenick disclosed that he has a conflict on this matter. He has not been formally retained, but has provided some advice and attended a meeting on behalf of one of the groups that is putting forward a proposal on this project. Mr. Klitenick left the dias during the discussion.

Ms. Monnier gave members an overview of the zoning in progress (ZIP). She informed members that in April of this year, the City was put on notice that the United States Navy and its housing partner Southeast Housing, LLC would be selling the property commonly known as Peary Court and all of the structures on it to a private entity. Since that time, planning staff has been coordinating with the Navy and Southeast Housing, and officials from its subsidiary company, Balfour Beatty Communities to understand the unique characteristics of the military property; as the sale would require changes to the City's Comprehensive Plan and Land Development Regulations. The Land Use Element in the City's Comprehensive Plan currently recognizes the property as having a Military (M) Future Land Use Designation, which operates without any land use controls.

Ms. Monnier stated that at minimum, the process required to change the Future Land Use designation and supporting Land Development Regulations will take approximately 12 months from initiation. Consequently, City staff has proposed Zoning in Progress as an interim solution for the lack of regulatory land use controls governing the property as both a protection for the public, and to clearly identify for the seller and potential buyers the entitlements and development rights that run with the land in the event that the property is sold before the new land use designation is approved. Based on preliminary site analysis, a designation of Planned Redevelopment District (PRD) may be the most appropriate interim Future Land Use designation, as the existing site characteristics appear to be most consistent with the PRD district. However, there are aspects of the PRD regulations that would cause the site, as existing, to be inconsistent with some standards of the PRD zoning district. As an alternative, staff also reviewed the MDR district regulations, but identified similar issues. Staff has found that no one existing zoning designation is entirely appropriate as a final zoning designation, or Zoning in Progress designation. However, because of the temporary nature of Zoning in Progress as a regulatory tool, and the flexibility that the law allows in the application of interim designations to protect the public health, safety, and welfare, the PRD designation with some limitations on the types of development allowed in the interim is justified.

In summary, Ms. Monnier stated that the Planning Department recommends the invoking of Zoning in Progress to allow the PRD Land Use Designation and corresponding zoning designation to be used as an interim measure, should the property be sold by the U.S. Navy during the processing of the Future Land Use amendment change

# Minutes of the Key West Planning Board

November 17, 2011

Approved January 19, 2012

- Colette Wik, 810 Whitehead
- George Lennox, 817 Terry Lane
- Ken Sullivan, 1107 Whitehead

The property owner, Ed Swift, addressed public comments. He then stated that they proposed to open at 8am so that they would be able to serve breakfast.

Mr. Craig proposed amending condition six to include installation of programmable distributive sound system. Members agreed with Mr. Craig's proposal and amended condition six accordingly.

Board members reviewed and discussed the request with the applicant, staff and members of the public who spoke on the matter. Members addressed neighborhood impacts and concerns on the number of seats, parking on Terry Lane, hours of operation and noise.

**Based on the terms of the criteria in the staff report, Mr. Gilleran made a motion to approve the conditional use request to include Planning Department recommendations with the following amendments:**

- **Decrease seating from 165 to 150**
- **Change hours of operation to 9am-11pm**
- **Condition #11 - Employment opportunities – have language drafted that is in compliance with all applicable laws opined by the City Attorney**

The motion was seconded by Mr. Oropeza.

Motion carried by 5-1 voice vote (opposed by Chairman Klitenick).

**SO ORDERED.**

- 2 PS Zoning District Ordinance - An ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled "Zoning" of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Oropeza recused himself from this item since the outcome may inure to the special gain or loss of his business associate. Ms. Tennyson recused herself from this item since the outcome may inure to the gain or loss to Monroe County Board of County Commissioners, of which she is an employee. Mr. Oropeza and Ms. Tennyson left the dias during the discussion.

Ms. Malo gave members an overview of the proposed ordinance change to the PS Zoning District. She informed members that the purpose of this amendment is to clarify the uses currently allowed in the PS zoning district, by more clearly defining language regarding permitted and conditional land uses within the Public and Semi-Public (PS) zoning district. Additional clarification and modifications are proposed to the district's dimensional requirements. This request is to specifically allow for amendments to Sections 122-1016(a) and (b), 122-1017, 122-1018, and 122-1020 for clarification pursuant to Section 90-517 and 90-521. The proposed amendments serve to improve the city's efficiency by resolving the following:

1. Standardize formatting of Section 122-1016(b) and (c), Intent
2. Modify Section 122-1017, Permitted Uses and 122-1018, Conditional Uses to comport with Comprehensive Plan Policy 1-2.6.1
3. Better define uses associated with Essential Public Services and Facilities
4. Standardize dimensional requirements inconsistent with standards in other non-historical, residential, mixed-use and commercial districts

# Minutes of the Key West Planning Board

November 17, 2011

Approved January 19, 2012

The proposed modifications should result in the ability of the municipal government to more effectively utilize city property and provide essential public services to the citizens of Key West.

The following members of the public spoke on the matter:

- Margaret Romero, 1615 Washington
- Joy Brown Taylor, 5607 College #202
- Joanne Alexander, 5601 College
- Bart Smith, 624 Whitehead (on behalf of 52 residents)

Mr. Craig responded to public comments stating these amendments are necessary and provide clarification. He added that we believe there is no requirement for amending the Comprehensive Plan and that the existing PS District allows residential use such as nursing homes, rest homes and convalescent homes. Mr. Craig also stressed that "essential public services including but not limited to" means that it is not an exhausted list, which can include homeless shelters. He then stated that homeless shelters serve more than the continually homeless, it can also include all of us who can be homeless in an emergency situation if a hurricane destroyed our homes.

**Based on the findings made by the Planning Department, Mr. Gilleran made a motion to recommend to the City Commission the proposed ordinance for the PS Zoning District.**

Chairman Klitenick passed the gavel to Vice-Chairman Root.

**The motion was seconded by Chairman Klitenick.**

**Motion fails by 2-2 voice vote (opposed by Mr. Holland and Vice-Chairman Root).**

**A motion to postpone the proposed ordinance for the PS Zoning District to time certain was made by Mr. Holland and seconded by Vice-Chairman Root.**

**Motion carried by 3-1 voice vote (opposed by Mr. Gilleran).**

**SO ORDERED.**

Ms. Tennyson and Mr. Oropeza returned to the dias. Mr. Gilleran excused himself from the meeting.

## New Business

- 3 Variance - 1210 Washington Street (RE# 00041290-000000) - A request for an 8' fence in the rear and side yard of property located in the HMDR zoning district per Section 122-1183(d.)(1.)(c) of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Ms. Malo gave members an overview of the variance request. She informed members that the applicant is requesting variances to allow the installation of an 8' privacy fence in the side and rear yards of the property. The applicant has contacted the neighbors and received letters of support. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied. However, if the Planning Board chooses to approve the variance, the Department recommends the following condition:

1. That a Certificate of Appropriateness is obtained for the fence in accordance with Code Section 122-1183(b).

Chairman Klitenick disclosed that he is currently representing parties that are under contract to purchase an adjacent property and that his disclosure does not pose a conflict. Vice-Chairman Root disclosed that he owns property two doors down from 1210 Washington. Mr. Erskine agreed that both disclosures do not pose a conflict.

# Minutes of the Key West Planning Board

January 19, 2012

Approved February 16, 2012

SO ORDERED.

## RESOLUTIONS

### Old Business

- 4 **PS Zoning District Ordinance – Consideration of an ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled “Zoning” of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.**

Mr. Oropeza recused himself from this item since the outcome may inure to the special gain or loss of his business associate. Ms. Tennyson recused herself from this item since the outcome may inure to the gain or loss to Monroe County Board of County Commissioners, of which she is an employee. Mr. Oropeza and Ms. Tennyson left the dias during the discussion.

Ms. Malo gave members an overview of the proposed ordinance amendment. She informed members that the proposed text amendments were first heard by the Planning Board at a public meeting held November 17, 2011. Ms. Malo stated that based on the public comments given during that meeting; staff identified and analyzed four main arguments: (1) Residential Uses vs. Nonresidential Uses (2) Exclusivity (3) Definition of Essential Public Services and (4) Consistency with the Comprehensive Plan. Ms. Malo stated that in response to these issues, staffs recommendation to amend the LDR’s for the PS Zoning District Regulations remain the same.

The following members of the public spoke on the matter:

- Janice Whittemore, 235 Golf Club Drive
- John Isaksen, 323 Spoon Bill Way
- Audrey Thompson, 5603 College Rd #202
- Robert Munson, 20 Kingfisher
- Steve Black, 227 Golf Club Drive
- Ray Jensen, 57 Spoonbill Way
- Gary Mockus, 22 Kingfisher Lane
- Steve Datzman, 61 Spoonbill Way
- Suzanne Coleman, 233 Golf Club Drive
- Rigoberto Contreras, 23 Kingfisher Lane
- Marilyn Smith, 25 Allemande Terrace
- Jerry Smart, 12 Spoonbill Way
- Joan Baucon, 261 Golf Club Drive
- Joanne Alexander, 5601 College Rd #102
- James Spreitzer, 5601 College Rd #104
- Dennis Crippler, 75 Spoonbill Way
- Sue Brun, 18 Spoonbill Way
- Eilene Black, 227 Golf Club Drive
- Robin Rose, 117 Golf Club Drive
- Edgar Watson Jr, 30 Spoonbill Way #2
- Mark Gambuzza, 214 Golf Club Drive
- Margaret Romero, 1615 Washington
- Bart Smith, 624 Whitehead

Mr. Erskine addressed Mr. Bart Smith’s request that Mr. Browning recuse himself due to his position on the board of SHAL. Mr. Erskine stated that under the law, having a non-paid position on a non-profit board does not constitute a conflict since it does not constitute a gain. Chairman Klitenick stated that Mr. Smith’s objection is noted for the record.

Mr. Erskine then addressed Mr. Smith’s concern regarding the improper motion made after the motion failed at the November 17, 2011 meeting. Mr. Erskine stated that there was no motion that passed; therefore, an additional motion can be made to postpone. Chairman Klitenick stated that Mr. Smith’s objection is noted for the record.

# Minutes of the Key West Planning Board

January 19, 2012

Approved February 16, 2012

Mr. Erskine addressed Mr. Smith's concern that an application was not submitted by the applicant. Mr. Erskine stated that there is nothing in Section 90-518 stating that you cannot move forward without an application. Chairman Klitenick stated that Mr. Smith's objection is noted for the record.

Board members reviewed and discussed the request with the applicant, staff and members of the public who spoke on the matter. Members discussed moving "emergency shelters for the homeless and shelters for temporary housing" as item 1 under conditional use. Members then voiced their concern about the city not having submitted an application.

**A motion was made by Mr. Browning to recommend to the City Commission the proposed ordinance for the PS Zoning District to include amending Section 122-1017(13) by moving "emergency shelters to homeless" down to conditional use under Section 122-1018, under item 1. Motion was seconded by Mr. Holland.**

**Motion fails by 2-2 voice vote (opposed by Mr. Gilleran and Chairman Klitenick).**

**SO ORDERED.**

**A motion to postpone the proposed ordinance for the PS Zoning District until the next regularly scheduled meeting on March 15, 2012 to include staff direction was made by Mr. Gilleran and seconded by Mr. Holland.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

Ms. Tennyson and Mr. Oropeza returned to the dias.

- 5 Variance - 400 South Street (RE# 00036390-000000) - A request for a variance to the maximum allowed wall height of six feet to the requested eleven feet proposed within the coastal construction control line on a property located within the HCT zoning district per Section 122-1148 (2) and 122-1183 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Cunningham gave members an overview of the variance request. He informed members that the applicant is requesting variances to allow the wall to be increased from its current approximate non-conforming eight foot height to a total of eleven feet within the construction control line. The property is adjacent on two sides to the Atlantic Ocean. As such it is subject to periodic storm surges. The property experiences occasional damage due to its proximity to the water and subsequent storm activity.

Mr. Cunningham informed members that the applicant previously applied for a similar variance to increase the wall height. The variance was denied by the Board of Adjustment through Resolution 07-247 on July 5, 2007. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied. However, if the Planning Board chooses to approve the variance, the Department recommends the following condition:

- That a Certificate of Appropriateness is obtained for the wall in accordance with Code Sections 102-152 and 122-1183(a).

The applicant's legal representative, Wayne LaRue Smith, gave members an overview of the HARC process for this request.

There were no public comments.

# Minutes of the Key West Planning Board

March 15, 2012

Approved March 27, 2012

- 3 Variance - 1107 Grinnell Street (RE# 00031760-000100) - A variance for rear yard setback and building coverage in the HMDR zoning district per Section 90-391, Section 122-600(4)a and Section 122-600(6)c of the Land Development Regulations of the Code of Ordinances of the City of Key West.

This item was postponed to time certain (April 19, 2012).

- 4 PS Zoning District Ordinance – Consideration of an ordinance of the City of Key West amending Chapter 122 of the Code of Ordinances entitled “Zoning” of Article IV by amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Ms. Tennyson and Mr. Oropeza have a standing recusal. They both left the dias during the discussion.

Mr. Browning disclosed that he was contacted by several members of the public including Bart Smith. Vice-Chairman Root and Mr. Holland also disclosed they were contacted by Bart Smith. Members acknowledged that issues discussed did not prejudice their decision-making capacity.

Ms. Malo gave members an overview of the proposed ordinance amendment. She informed members that the proposed text amendments have been heard twice by the Planning Board at public meetings held November 17, 2011 and on January 18, 2012. After members of the public continued to raise concerns regarding the proposed amendments at the January 18, 2012 hearing, primarily regarding the potential development of Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless, the Planning Board recommended changes to the proposed ordinance that the specific use of Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless be defined as Essential Public Services and Facilities be listed as a conditional use with specific criteria for development and operational limitations. The use was previously considered a permitted use in the PS zoning district. No additional changes are proposed to the original amendment request. Planning Staff recommends the Planning Board forward a recommendation of approval of the ordinance amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 of the Land Development Regulations.

The following members of the public spoke on the matter:

- Vickie Datzman, 61 Spoonbill Way
- Dave Hubbert, 111 Golf Club Drive
- Bob Munson, 20 Kingfisher Lane
- Pete Fazio, 140 Golf Club Drive
- Mark Gambuzza, 214 Golf Club Drive
- Steve Black, 227 Golf Club Drive
- Bart Smith, 1111 Grinnell

Mr. Craig clarified for members of the public floor area ratio and gave an overview of the conditional use process.

Mr. Craig then addressed public comments made by Mr. Smith.

Mr. Erskine addressed Mr. Smith’s concern regarding the improper motion made after the motion failed at the November 17, 2011 meeting.

# Minutes of the Key West Planning Board

March 15, 2012

Approved March 27, 2012

Members reviewed the request with staff and members of the public who spoke on the matter. Members were in agreement that the proposed amendments protect the public interest by providing clarity, additional oversight and a set of guidelines for development criteria.

**A motion to recommend to the City Commission the proposed ordinance for the PS Zoning District was made by Mr. Browning and seconded by Mr. Holland.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

Ms. Tennyson and Mr. Oropeza returned to the dias.

## New Business

- 5 **Variance - 2718 Harris Street (RE# 00067640-000000) - A request for a rear yard setback and building coverage variances in the SF zoning district per Section 90-391, Section 122-238(4)a. and Section 122-238(6)a3. of the Land Development Regulations of the Code of Ordinances of the City of Key West.**

Mr. Craig gave members an overview of the variance request. He informed members that the request is for variances to building coverage and rear yard setback requirements to construct a roof addition over a portion of the existing patio. He stated that the applicant previously made a variance request to construct a roof over the entire patio area encroaching into the rear-yard setback up to five feet from the property line, which was denied last year by the Board. This application is substantially different to the extent that there is over a 50% reduction in the area requested for the variance. Further, the encroachment into the required rear-yard setback is no greater than what currently exists. Based on the criteria established by the Comprehensive Plan and the Land Development Regulations, the Planning Department recommends the request for variance be denied.

The owner, Mary Bentley, gave members an overview of the request. She stated that they have coordinated with neighbors.

The following member of the public spoke on the matter:

- Diana Jones, 2721 Harris

Mr. Craig confirmed for Ms. Jones that the variance request is limited to what is on the site plan.

Members reviewed the request with the applicant, staff and member of the public who spoke on the matter. Members acknowledged that the applicant addressed neighbor concerns and commended their efforts.

**A motion to approve the variance request was made by Mr. Oropeza and seconded by Mr. Holland.**

**Motion was carried by unanimous voice vote.**

**SO ORDERED.**

- 6 **Variance - 906 Johnson Street (RE# 00058740-000000) - A request for variances to building coverage and impervious surface ratio in the SF zoning district per Section 90-391, Section 122-238(4)a.2 and Section 122-238(4)b.1 of the Land Development Regulations of the Code of Ordinances of the City of Key West.**



**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**

**To:** Chairman and Planning Board Members

**From:** Nicole Malo, Planner

**Through:** Donald Leland Craig, AICP, Planning Director

**Meeting Date:** March 15, 2012  
January 18, 2012 - postponed  
November 17, 2011 - postponed  
October 20, 2011 - postponed

**Agenda Item:** An ordinance to amend Chapter 122, of Article IV, Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date

**Amending and supplementing staff report dated January 18, 2012**

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**Background**

The proposed text amendments have been heard twice by the Planning Board at public meetings held November 17, 2011 and on January 18, 2012. After members of the public continued to raise concerns regarding the proposed amendments at the January 18, 2012 hearing, primarily regarding the potential development of *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless*, the Planning Board recommended changes to the proposed ordinance that the specific use of *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* defined as *Essential Public Services and Facilities* be listed as a conditional use with specific criteria for development and operational limitations. The use was previously considered a permitted use in the PS zoning district. No additional changes are proposed to the original amendment request. Therefore, this report summarizes the need to amend the existing ordinance by resolving five major issues including the most recent change proposed at the January 18, 2012 Planning Board meeting, as described above, and provides an updated review of the criteria for Section 90-522 for making LDR amendments based on the entire proposed ordinance (see attached Amended Draft Ordinance).

The background information for the proposed amendments and staff analysis of the concerns raised by the public at the November 17, 2011 Planning Board meeting remain largely unchanged and can be found in the attached staff report provided to the Board at the January 18, 2012 meeting.

In summary, the purpose of the amendment is to clarify the uses currently allowed in the PS zoning district, by more clearly defining language regarding permitted and conditional land uses in the Land Development Regulations. Further, additional restrictions for development of Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless are proposed, and clarification and modifications are proposed to the district's dimensional requirements. The proposed amendments serve to improve the city's efficiency by resolving the following:

1. Standardize formatting of Section 122-1016(b) and (c), Intent;
2. Modify Section 122-1017, Permitted Uses and 122-1018, Conditional Uses to comport with Comprehensive Plan Policy 1-2.6.1;
3. Better define uses associated with *Essential Public Services and Facilities*;
4. Standardize dimensional requirements inconsistent with standards in other non-historical, residential, mixed-use and commercial districts; and
5. Isolate *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* from the permitted uses defined as *Essential Public Services and Facilities* to be required as a conditional use and add specific standards for better regulating its development and operations.

Numbers 1-4 identified above have been addressed in previous reports; the following information provides supplemental analysis regarding the newly proposed issue number five:

Due to public concern that *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* may not be compatible with adjacent land uses it is appropriate that the use be subject to conditional use analysis and Planning Board review for land use compatibility. In order to further mitigate neighborhood impacts additional regulations for this type of development are proposed to increase development review oversight, elevate development standards and provide operational controls. These standards are as follows:

- (1) Emergency shelters for the homeless, and shelters for temporarily housing the homeless which meet the following minimum standards for development review, site development and operation:
  - a. Fencing – the entire site shall have a six foot opaque fence on all sides.
  - b. Landscape Buffer – A minimum of a five foot wide “D” buffer as specified in section 108-347(c).
  - c. Security lighting on the perimeter of the site and upon the interior of the fenced premises which shall be designed to “Dark Sky” lighting standards to protect adjacent residential uses.
  - d. Onsite security personnel licensed by the state of Florida for such role and activity provided by the operator of the facility during the hours of operation inclusive of nighttime or any time when clients of the facility are present.
  - e. An outdoor day-time congregation area inside the grounds of the site large enough to accommodate the maximum client population of the facility to prevent waiting and congregating off site.

- f. On site facilities:
  - i. Sleeping facilities for 100% of the maximum client population;
  - ii. Dining facilities for at least 50% of the maximum client population;
  - iii. Shower and toilet facilities in a quantity necessary to serve the maximum client population;
  - iv. Intake and counseling offices;
  - v. Storage for client personal effects, food, sleeping linens, miscellaneous support materials;
  - vi. A loading zone and bus parking area.
- g. All shelters for the homeless or for temporary housing the homeless shall undergo review as a major development plan and meet the requirements of Section 108-92 et.sq

Staff believes that the modified requirement that *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* be regulated as a conditional use with specific criteria for development and operational limitations shall best resolve the community's concerns. Further, the proposed ordinance should result in the ability of the municipal government to more effectively utilize city property in order to provide essential public services to the Key West community.

#### **Review Criteria**

Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

**Sec. 90-522. Planning Board review of proposed changes in land development regulations.**  
**(a) The planning board, regardless of the source of the proposed change in the land development regulations, 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 of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.**

The City Attorney's Office and City Planner have worked together to review guideline modifications proposed and to recommend changes to improve clarity and consistency with the overall Land Development Regulations. The Planning Department Initiation Letter dated June 30, 2011 was prepared in support of procedural review criteria in the code and in support of Planning Board consideration.

**Sec. 90-521. Criteria for approving amendments to official zoning map.**  
**In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:**

**(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

The City's Comprehensive Plan includes an Objective to Allocate Land for Public Service (1-2.6) and to Accommodate Institutional Facilities and Public Services as part of the Future Land Use Element. Goals, Objectives and Policies within the sub-element support the allocation of lands for public services within the City. Comprehensive Plan Policy 1-2.6.1 for the PS Land Use Designation requires that the City accommodate existing public and semi-public services as described and to identify them in the LDR's. The proposed ordinances are consistent with these and related Goals, Objectives and Policies in the Comprehensive Plan.

Because the proposed ordinances do not impact density or intensity, they will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan.

**(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed ordinances are in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this report.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.**

There are no changed conditions or regulations associated with these ordinances.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.**

The proposed clarifications reconstitute uses that currently exist within the Land Development Regulations for the PS district, uses that currently exist within the PS district, and uses that are typically found within public service zoning districts, and will improve the viability of our limited public and semipublic lands. The proposed conditional uses have been determined to be higher impact uses and must obtain Planning Board approval to determine land use compatibility. In response to public concerns and the Planning Board request development for *Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* will undergo additional review as a conditional use with added development standards such as development plan approval. The existing de-commissioned land fill will only be allowed to continue as a legal non-conforming use.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services,**

**solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.**

The proposed ordinances are intended to clarify language for the use of lands that can support public facilities. The proposed amendments will not result in excessive demands on public facilities. All applications for future development will have to comply with concurrency standards.

**(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

The proposed ordinance is intended to clarify uses that are currently allowed or currently exist in the district and will have no impact on the natural environment. Any future construction for uses that may be proposed within these districts that border conservation districts will be required to attain relevant environmental permitting and comply with mitigation requirements.

**(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.**

The proposed ordinance promotes the most effective and economically efficient operation of government owned lands by clarifying the allowed uses necessary to accommodate services for the public on these lands. This proposal is not expected to have an adverse effect on the property values in the area or the general welfare because the uses already exist in the area.

**(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.**

The proposed modifications will support an orderly and compatible land use pattern with that which are currently existing, further the LDR modifications reflect municipal policy direction and provide consistency throughout the Code and the Comprehensive Plan. These modifications will also protect the ability of the government to provide critical public services.

**(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.**

Although, there has been neighborhood concern regarding the use of some PS zoned land for *Public Service Emergency Shelters for the Homeless, and Shelters for Temporarily Housing the Homeless* the proposed ordinances do not appear to be in conflict with the overall public interest. They are expected to help protect the government's continued use of the lands, and provide as

needed services to the community, which is in the greater public interest and will further the intent of the Comprehensive Plan and Land Development Regulations.

**(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.**

Other matters have not been identified at this time.

**Recommendation:** Planning Staff recommends the Planning Board forward a recommendation of approval of the ordinance amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 of the Land Development Regulations.



**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**

**To:** Chairman and Planning Board Members

**From:** Nicole Malo, Planner

**Through:** Donald Leland Craig, AICP, Planning Director

**Meeting Date:** January 19, 2012

**Agenda Item:** An ordinance to amend Chapter 122, of Article IV, Sections 122-1016, 122-1017, 122-1018, and 122-1020 for the Public and Semi-public (PS) zoning district, of the City of Key West Land Development Regulations, providing for severability; providing for repeal of inconsistent provisions; providing for an effective date

**Amending and supplementing staff report dated November 17, 2011**

**Background**

The proposed text amendments were first heard by the Planning Board at a public meeting held November 17, 2011. After members of the public raised concerns regarding the proposed changes, the Planning Board postponed the item for staff to clarify the concerns. Based on the oral public comment given, rather than a written explanation of a relevant argument, staff has identified and analyzed four main arguments as follows:

1. **Residential Uses vs. Nonresidential Uses** – Is an emergency shelter or a shelter for temporarily housing the homeless a residential use? Are residential uses allowed in the PS zoning district although density is not currently permitted?
2. **Exclusivity** – Because a use is specifically allowed in one zoning district, is it therefore prohibited within other zoning districts?
3. **Definition of Essential Public Services** – How can a specific use be categorized as an Essential Public and Semi-public Service when there is no actual definition of the term?
4. **Consistency with the Comprehensive Plan** – Is the proposed LDR text amendment consistent with policies for amending uses within a zoning district or is a Comprehensive Plan amendment required?

In response to these issues, staff's recommendation to amend the LDR's for the PS Zoning District Regulations remains the same. In order to clarify the four main concerns listed above, the following is provided:

**1. Residential Uses vs. Non-Residential Uses**

*Is an emergency shelter or a shelter for temporarily housing the homeless a residential use?*

Under the definition of Land Uses in the LDR's, Residential Activities are limited to single family dwelling units, multi-family dwellings, manufactured housing, group homes and approved home occupations (not subject to BPAS). Further, hospitals and extensive care facilities, nursing homes, rest homes and convalescent homes (subject to limited BPAS) that are similar in nature to emergency shelters and shelters for temporarily housing the homeless are classified land uses under Community Facilities. Although these types of facilities may provide overnight accommodations they typically share communal amenities; therefore, the intensity of the development is regulated by floor area ratio impacts and not density.

*Are Residential uses allowed in the PS zoning district although density is not specified? As stated above the impacts of land uses classified as Community Facilities are, as a measure of land development compatibility, measured in Floor Area Ratio, not density. The current PS district regulations identify the measurement of the intensity of institutional activity within the PS district in floor area ratio (Section 122-1016 (d)). This Land Development Regulation is mirrored in Comprehensive Plan Policy 1-2.6.1. Therefore there exists a unit of measurement for the intensity of uses such as emergency shelters and shelters for temporarily housing the homeless without further amending the Code or Comprehensive Plan.*

The City of Key West Code of Ordinances does not contain language that prohibits residential uses or any other type of general land use classification in any zoning district of the city. Throughout the code there are examples of mixed use districts. Community and commercial facilities are allowed within residential districts of the City, just as residential uses are allowed in commercial districts. For example, the MDR and SF zoning districts are residential in nature but allow community service uses conditionally, such as protective services and educational institutions. Even if a community facility such as a nursing home or emergency shelter that allows overnight stays were to be classified as residential the code does not prohibit residential use within the PS district. Further, the PS zoning district currently allows a variety of community and commercial uses which are residential in nature including nursing homes, rest homes and marinas.

## **2. Exclusivity**

*Because a use is specifically allowed in one zoning district, is it therefore prohibited within other zoning districts? There is nothing in the Comprehensive Plan or the Code of Ordinances that indicates that the inclusion of a use in one zoning district automatically excludes it from another. It is a common zoning practice that uses are regulated by density and intensity not by exclusion. A basic principal of zoning is the proposition that uses, such as residential, institutional and commercial are allowed in multiple zoning classifications and regulated as to size, density, intensity and specific type depending on the location and nature of the particular zoning district.*

## **3. Definition of Essential Public Services**

*How can a specific use be categorized as an Essential Public and Semi-public Service when there is no actual definition of the term? Staff has researched available documents and determined that the term Essential Public and Semi-public Services is not defined in the Comprehensive Plan or the Code of Ordinances as far back as the early 1980's. Since then terms for more specific public services and facilities uses have been codified such as: Continuum of Care, Assisted Living,*

Emergency Shelters, and Transit Facilities that were added to the Comprehensive Plan and the Code between 2000-2007, because as the population grows and changes essential public services also evolve. The definition of Public and Semi-Public Uses has been broadly but equally defined within the LDR's throughout time (see attached *Definitions*), to allow the governmental entity as the land owner to use the land for a public service or purpose. These definitions (Section 86-9) are as follows:

*Public Use means any use of land or structures owned and operated by a municipality, county, state or the federal government or any agency thereof and for a public service or purpose.*

*Semipublic Use means any use of land or buildings owned and operated by an individual, firm, corporation, lodge or club, either as a profit or nonprofit activity, for a public service or purpose. This shall include privately owned utilities, transportation, recreation, education, and cultural activities and services.*

The Comprehensive Plan defines *Services* to mean:

*The programs and employees determined necessary by local government to provide adequate operation and maintenance of public facilities and infrastructure as well as those educational, health care, social and other programs necessary to support the programs, public facilities, and infrastructure set out in the local plans or required by local, state, or federal law.*

The allocation of land to fulfill a public need is crucial to the function of the city and is spelled out within the Comprehensive Plan. The PS district Comprehensive Plan Policy 1-2.6.1 falls under Objective 1-2.1.6, Allocating Land for Public Services. The policy states that the "future Land Use Map shall allocate land resources for public service institutional facilities and services." The Comprehensive Plan provides a generalized policy direction standard for periods of five, ten and fifteen years or more and allows changes to the more specific Land Development Regulations on an as needed basis to respond to the Commissions policy direction and the day to day practical implementation of Comprehensive Plan policies.

Although, the term Essential Public and Semi-public Services is not defined in the LDR's nor the Comprehensive Plan, by using supportive definitions, terms and policies from these documents, uses allowed under this classification include uses, services, and facilities deemed critical to the public health, safety and welfare or as required by local plans or local, state or federal law.

#### **4. Consistency with the Comprehensive Plan**

The City's Comprehensive Plan and Land Development Regulations have been determined to be in compliance with the Principals for Guiding Development contained in Florida Statute 380.0552 by the Department of Economic Opportunity. The Department has found that the proposed amendments to clarify concerns with the formatting and existing uses within the LDR's for the PS district are in compliance with local policy and directives of state law. As previously

described the impacts of development for institutional activity within the PS district is currently measured in FAR (Section 122-1016(d)). Therefore, there exists a unit of measurement for the intensity of uses such as emergency shelters and shelters for temporarily housing the homeless without further amending the Code or Comprehensive Plan.

The Comprehensive Plan does not limit what can be considered essential public services. Policy 1-1.4.2 provides examples, but provides language that reads “involving..., but not limited to...,” and allows the City Commission to determine from time to time what is “essential” in order to protect the public health, safety and welfare.

**Based on the arguments presented by the public at the Planning Board Meeting held November 17, 2011 and the additional analysis conducted by staff the position of the City in amending the PS Zoning District remain the same. Below is the information provided in the previous staff report that supports the proposed changes:**

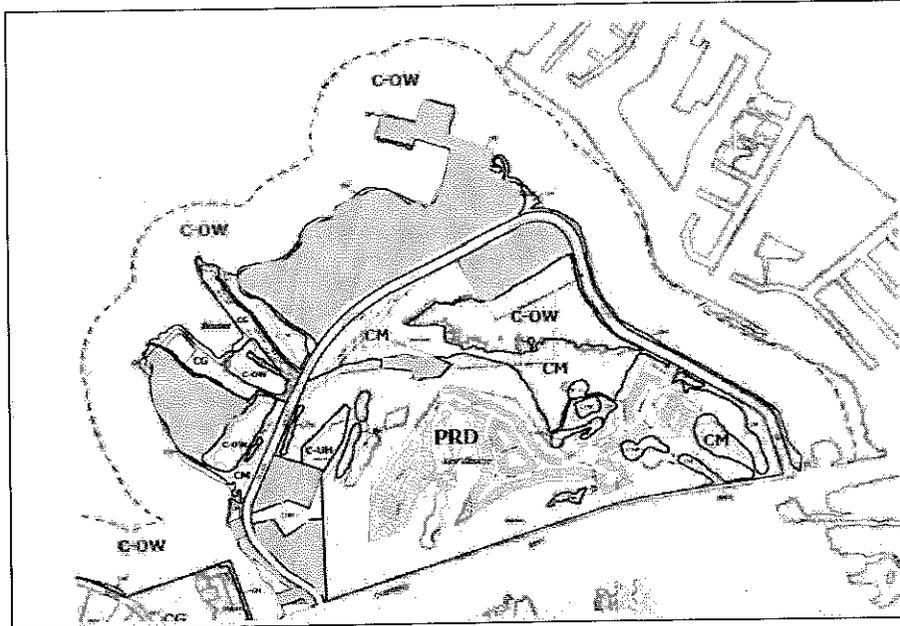
The purpose of this amendment is to clarify the uses currently allowed in the PS zoning district, by more clearly defining language regarding permitted and conditional land uses within the Public and Semi-Public (PS) zoning district of the City’s Land Development Regulations. Additional clarification and modifications are proposed to the district’s dimensional requirements. This request is for amendments to Sections 122-1016(a) and (b), 122-1017, 122-1018, and 122-1020 pursuant to Section 90-517 and 90-521. The proposed amendments serve to improve the city’s efficiency by resolving the following:

1. Standardize formatting of Section 122-1016(b) and (c) , Intent
2. Modify Section 122-1017, Permitted Uses and 122-1018, Conditional Uses to comport with Comprehensive Plan Policy 1-2.6.1
3. Better define uses associated with Essential Public Services and Facilities
4. Standardize dimensional requirements inconsistent with standards in other non-historical, residential, mixed-use and commercial districts

The proposed modifications should result in the ability of the municipal government to more effectively utilize city property and provide essential public services to the citizens of Key West.

The objective of the Intent Section of each zoning district is to build the foundation for the vision of the district. Section 122-1016(a) describes that the intent of the PS district is “to provide a management framework for implementing comprehensive plan policies for areas located outside of Old Town.” Comprehensive Plan Policy 1-2.6.1 for the PS Land Use Designation describes the district as intended to accommodate existing public services and semi-public services and specifically describes a variety of governmental services including “Essential Public Services and Facilities and Other Similar Activities as shall be identified in the LDR’s.” These uses are reconstituted within the Intent Section of the LDR’s for the PS zoning district. However, these uses are listed within the Intent Section 122-1016(b) and are not entirely reconstituted within the Permitted or Conditional Uses the intended uses for the PS Zoning District are difficult to interpret. Uses for any district are typically found within the Permitted or Conditional Use





Stock Island

The zoning map above and the future land use map for the city show that the PS zoning districts all located outside of the Historic District throughout Key West and Stock Island. An analysis of properties within the PS zoning districts prepared by Planning Staff shows that these lands are owned by governmental entities and the majority of the PS lands are owned by the City of Key West. Other governmental entities that own lands within the PS districts include the County, the Mosquito Control Board, Keys Energy, and the Florida Keys Aqueduct Authority. There is one exception for property on Flagler Avenue owned by the Catholic Church. Please see the attached analysis. Although the City also owns parcels of property within in the Historic Public Service District (HPS) the city's undeveloped lands are located within the PS zoning district and these lands are intended by the Comprehensive Plan to be utilized as public service uses. Further, Comprehensive Plan Policy 1-1.4 states that the city's FLUM shall include appropriate allocations of land for public services. Therefore because lands within the PS zoning district are owned by the city and other public and governmental entities and because the Comprehensive Plan contemplates that the city allocate and utilize these lands for public service uses it is critical that these uses are clearly identified within the LDR's.

The uses proposed to be relocated from Section 122-1016 Intent to within Section 122-1017 Permitted Use are typically found within public service zoning districts and will improve the city services and the viability of our limited public and semipublic lands. The relocated and newly proposed conditional uses are higher impact uses and must obtain Planning Board approval to determine land use compatibility. Many of the uses currently exist within the PS districts today; however, the existing de-commissioned land fill will only be allowed to continue as a legal non-conforming use.

In concurrence with the district land use clarifications, amendments to the standards for impervious surface ratio are proposed. The existing ratio is inconsistent with standards in other non-historical, residential, mixed-use and commercial districts such as the SF, HDR, MDR, RO, PRD, CG, CL, and CT zoning districts that allow for a higher percentage of impervious surface. This results in restrictive dimensional requirements for public uses that appear to be inconsistent with surrounding land uses. Therefore, the proposed amendment does not appear to create negative impacts on neighboring land uses.

### **Review Criteria**

Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

#### **Sec. 90-522. Planning board review of proposed changes in land development regulations.**

**(a) The planning board, regardless of the source of the proposed change in the land development regulations, 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 of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.**

The City Attorney's Office and City Planner have worked together to review guideline modifications proposed and to recommend changes to improve clarity and consistency with the overall Land Development Regulations. The Planning Board report dated June 30, 2011 was prepared in support of procedural review criteria in the code and in support of Planning Board consideration.

#### **Sec. 90-521. Criteria for approving amendments to official zoning map.**

**In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:**

**(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

The City's Comprehensive Plan includes an Objective to Allocate Land for Public Service (1-2.6) and to Accommodate Institutional Facilities and Public Services as part of the Future Land Use Element. Goals, Objectives and Policies within the sub-element support the allocation of lands for public services within the City. Comprehensive Plan Policy 1-2.6.1 for the PS Land Use Designation requires that the City accommodate existing public and semi-public services as described and to identify them in the LDR's. The proposed ordinances are consistent with these and related Goals, Objectives and Policies in the Comprehensive Plan.

Because the proposed ordinances do not impact density or intensity, they will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan.

**(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.**

The proposed ordinances are in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this report.

**(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.**

There are no changed conditions or regulations associated with these ordinances.

**(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.**

The proposed clarifications reconstitute uses that currently exist within the Land Development Regulations for the PS district and uses that currently exist within the PS district and uses that are typically found within public service zoning districts and will improve the viability of our limited public and semipublic lands. The proposed conditional uses are higher impact uses and must obtain Planning Board approval to determine land use compatibility. The existing decommissioned land fill will only be allowed to continue as a legal non-conforming use.

**(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.**

The proposed ordinances are intended to clarify language for the use of lands that can support public facilities. The proposed amendments will not result in excessive demands on public facilities. All applications for future development will have to comply with concurrency standards.

**(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.**

The proposed ordinance is intended to clarify uses that are currently allowed or currently exist in the district and will have no impact on the natural environment. Any future construction for uses that may be proposed within these districts that border conservation districts will be required to attain relevant environmental permitting and comply with mitigation requirements.

**(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.**

The proposed ordinance promotes the most effective and economically efficient operation of government owned lands by clarifying the allowed uses necessary to accommodate services for the public on these lands. This proposal is not expected to have an adverse effect on the property values in the area or the general welfare because the uses already exist in the area.

**(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.**

The proposed modifications will support an orderly and compatible land use pattern with that which are currently existing, further the LDR modifications reflect municipal policy direction and provide consistency throughout the code and the Comprehensive Plan. These modifications will also protect the ability of the government to provide critical public services.

**(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.**

The proposed ordinances do not appear to be in conflict with the public interest. They are expected to help protect the government's continued use of the lands, which is in the public interest and will further the intent of the Comprehensive Plan and Land Development Regulations.

**(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.**

Other matters have not been identified at this time.

**Recommendation:** Planning Staff recommends the Planning Board forward a recommendation of approval of the ordinance amending Sections 122-1016, 122-1017, 122-1018, and 122-1020 of the Land Development Regulations.