

**ORDINANCE NO. 2007-3**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AMENDING CHAPTER 30 "ZONING AND LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE V "SCHEDULE OF DISTRICT, USE, AND SETBACK REGULATIONS", SECTION 30-101 "COMMERCIAL DISTRICTS" TO PROVIDE THAT PACKAGE STORE SHALL BE A CONDITIONAL USE IN THE C-1 LOW-INTENSITY COMMERCIAL DISTRICT; AMENDING ARTICLE II "DEFINITIONS", SECTION 30-11 "DEFINITIONS" OF THE CODE OF ORDINANCES TO PROVIDE A DEFINITION OF "PACKAGE STORE"; AMENDING ARTICLE IV "ADMINISTRATION OF THE ZONING ORDINANCE", SECTION 30-72 "CONDITIONAL USE PROCEDURES" TO AMEND THE CRITERIA AND REQUIREMENTS APPLICABLE TO CONDITIONAL USE APPROVALS; AMENDING SECTION 30-112 "SUPPLEMENTAL USE REGULATIONS" TO AMEND THE PROCEDURES FOR APPROVAL OF PACKAGE STORES WITHIN THE VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council has determined that there is a need to revise the procedures for the approval of package liquor stores within the Village, and to provide that a package store shall be a conditional use within the C-1 Low Intensity Commercial District; and

**WHEREAS**, in order to provide for greater clarity in the application of the Village's Land Development Regulations to conditional use applications, the Village Council desires to amend the criteria applicable to conditional use applications within the Village; and

**WHEREAS**, the Village Council finds that the proposed regulations will serve to promote the health, safety, and welfare of the citizens of the Village of Key Biscayne, as well as the aesthetics of the Village.

**NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above stated recitals are hereby adopted and confirmed.

**Section 2. Village Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 30 "Zoning and Land Development Regulations", Section 30-101 "Commercial districts" to read as follows:

**Sec. 30-101. Commercial districts.**

C-1 Low Intensity Commercial District.

(a) *Purpose and Uses.*

TABLE INSET:

District Purpose	Main Permitted Uses*	Conditional Uses	Accessory Uses	Prohibited Uses
<p>This district permits the Development of land in a low intensity manner and Uses that provide for the sale of goods and products that are needed throughout the entire Village.</p> <p>The permitted uses provide goods and services that primarily serve the residents of the Village.</p>	<p>Bar</p> <p>Commercial Uses</p> <p>1. Offices: No individual or multiple business entity(ies) that are affiliated can occupy more than 10,000 sq. ft. Medical offices shall not exceed 10,000 sq. ft.</p> <p>2. Retail Uses: No individual or multiple business entity(s) shall occupy more than 10,000 sq. ft.*. except for stores whose principal product is food for consumption off the premises.</p>	<p>Service Station where the primary use on the site;</p> <p><u>Package Store</u></p>	<p>Any Use that is customarily associated with the Main Permitted Uses (See Sec. 30-111)</p>	<p>Any Use not listed as a Main Permitted Use, Conditional Use, or Accessory Use. (See Sec. 30-113)</p>

	<p>Antiques furniture that is at least 50 years old and the resale of jewelry, art, and furs.*</p> <p>Personal Service Uses</p> <p>Restaurant (except on parcels that immediately abut a single Family district)</p>			
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\* If a Use is located immediately adjacent to a single Family district, then such Use shall be closed after 6:00 p.m. Monday through Saturday. On Sunday, the hours of business are limited to 9:00 a.m. through 1:00 p.m. These restrictions do not apply from Thanksgiving through December 31 where the hours of operation shall be the same as the majority of businesses in the Village.

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**Section 2. Village Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 30 "Zoning and Land Development Regulations", Section 30-11 "Definitions" to read as follows:

**Sec. 30-11. Definitions.**

Package store. A vendor licensed to sell all alcoholic beverages, in sealed containers only, for consumption off the premises.

**Section 3. Village Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 30 "Zoning and Land Development Regulations", by amending Section 30-72 "Conditional Use procedures" to read as follows:

**Sec. 30-72. Conditional Use procedures.**

(a) Certain Uses are listed as Conditional Uses and are permitted in zoning districts subject to the approval of the Village Council. These Uses are considered basically suitable for the districts in which listed, but the character and nature of the Uses are such that they may necessitate controls and safeguards on the manner of establishment and operation, which, by being determined by the Council

at public hearing, would better serve the interests of the community and the owners of the property in question.

(b) Public notice requirements shall be as set forth in section 30 -68.

(c) In order to approve a petition for a Conditional Use, the Village Council must find that the application is consistent with all of the below review criteria:

(1) The Use is consistent with the Comprehensive Plan.

(2) ~~That there will be~~ the configuration and design of the site will facilitate adequate provision for safe traffic movement, both of vehicular and pedestrian traffic, both internal to the Use and ~~in~~ upon the area adjacent roadways that will serve the Use.

(3) ~~That there are adequate Setbacks, buffering, and, general amenities in order to control any adverse effects of noise, light, dust or other potential nuisances.~~ Utilities, roadway capacity, drainage, and other necessary public facilities, including police, fire, emergency services, shall exist at the Village's adopted level of service, or will be available prior to issuance of any certificate of occupancy;

(4) ~~That the application of the Use at the subject location is consistent with the purpose of the underlying zoning district.~~ The proposed use shall be consistent with the existing natural environment and community character of the immediate neighborhood of the proposed use;

(5) Where the proposed conditional use is a package store, the Village Council shall consider the following additional criteria:

a. The adverse effects that the proposed package store will have upon neighboring properties, with particular attention to the effects of noise, traffic patterns, and glare from exterior lighting or headlights on nearby residential properties.

b. The amount and degree of law enforcement activities which could reasonably be anticipated to be generated by the proposed package store, both outside and inside, with particular emphasis upon noise, vehicular use by patrons, and vandalism.

c. Whether the proposed package store makes adequate provision for the elimination of the potential for adverse impact upon adjacent residential areas from hazardous or illegal overflow parking.

d. The proximity of the proposed package store to schools, parks and places of worship.

(d) ~~Conditions may be stipulated and made a requirement~~ In considering any application for conditional use approval, reasonable restrictions may be imposed by the Village Council in granting any application for a Conditional Use, when ~~it~~ such condition is found by the Village Council to be necessary to further the purpose of the zoning district or compatibility with other property within the vicinity.

(e) Resolution. The resolution which memorializes the approval of a Conditional Use shall be recorded in the public records of Miami -Dade County at the applicant's expense. A copy of the proof of recordation shall be submitted to the Building, Zoning, and Planning Department prior to the issuance of any building permits.

(f) Building, Zoning and Planning Director recommendation for applications which are

considered by the Village Council. The Director of the Building, Zoning and Planning Department shall provide the Village Council with a recommendation for each application that is considered by the Council.

(g) Time limit. The approval of any type of Conditional Use shall automatically become null and void unless the appropriate Development order as defined in F. S. § 163.3164, building permit, Occupational License, certificate of occupancy or certificate of completion has been issued within 12 months of the date the resolution granting the Conditional Use was executed by the Village Mayor. Requests for an extension of time for a maximum additional 12 months shall be considered by the Village Council. Notice requirements for such requests are the same as those that were used for the original application.

(h) Application forms. The Building, Zoning, and Planning Department shall provide the applicant with the application form.

(i) Pending notice of violation. When the Building, Zoning, and Planning Director determines that an application is complete, prosecution of any pending violation shall be stayed until the Village Council approves or denies an application which would remedy the violation. If the Building, Zoning and Planning Director determines that a stay would imperil the life or property or otherwise create substantial risk or injury or would amount to a public nuisance, a stay shall not be issued.

(j) Appeals. Judicial review of a decision made by the Village Council shall be to a court of competent jurisdiction by petition for certiorari, and within the time frames allowed by the rules and appellate procedures. For purposes of filing an appeal of a decision of the Council, any party who appeared In Writing, orally, or was represented by an attorney, or any party who received Written notice of the hearing from the Village Clerk or the Building, Zoning, and Planning Department, shall be considered as an aggrieved party, subject to judicial rules of standing.

(k) Consideration of petitions after denial or withdrawal. When an application is denied by the Village Council or withdrawn after public notice has been provided, no other application that is substantially the same as the original application shall be filed within one year from the date of denial or withdrawal. This prohibition may be waived by the Village Council by permitting the withdrawal or denial without prejudice.

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**Section 4. Village Code Amended.** That the Village Code of the Village of Key Biscayne, Florida, is hereby amended by amending Chapter 30 "Zoning and Land Development Regulations", Section 30-112 "Supplemental Use Regulations" to read as follows:

**Sec. 30-112. Supplemental Use Regulations.**

(a) *Alcoholic beverages.* The Village shall use the Miami -Dade County Ordinance for purposes of regulating the sale of alcoholic beverages, except that package stores shall be permitted as a conditional use in the C-1 Low Intensity Commercial district as set forth in Section 30 -101; however, in no instance shall alcoholic beverages be offered for sale for consumption on ~~or off~~ the Premises,

except in bars, as incidental to restaurants ~~and grocery stores (limited to the sale of beer and wine only for consumption off the premises)~~, within 500 feet of a place of worship, a school or from a parcel immediately adjacent to a single Family district. The distance measurement shall be a straight line measured from the property line where the establishment is located to the nearest point of the property line of the school or place of worship. Grocery stores shall be limited to the sale of beer and wine only for consumption off premises. No establishment, except for Hotel room service, shall offer alcoholic beverages for consumption on or off the Premises between 2:00 a.m. and 7:00 a.m. on any day of the week, except as permitted by an extended hours license granted pursuant to the Conditional Use procedures set forth in section 30-72. However, beer and wine may be sold, for off premises consumption only, 24 hours. The Village Council may grant an extended hours license, ~~pursuant to the Conditional Use procedures set forth in section 30-72,~~ to allow an establishment to offer alcoholic beverages for consumption on or off the Premises as late as 4:50 a.m. In evaluating such requests, the Village Council shall use the following criteria:

- (1) The number of off-street Parking spaces;
- (2) The amount and degree of law enforcement activities; and
- (3) The impact on Adjacent Properties in terms of noise and traffic.

The Village Council may require, as a condition of granting an extended hours license, conditions to mitigate the adverse impacts that such establishments have on Adjacent Properties. The extended hours license is personal to the applicant and shall not be transferred or assumed without the approval of the Village Council pursuant to the Conditional Use procedures set forth in section 30-72. An extended hours license is automatically renewed unless it is suspended by the Village Manager. Following the suspension, the Village Council shall hold a public hearing to determine it should be reinstated or revoked. The Village Manager's decision to suspend the extended hours license must be based on a determination that the Use is harmful to the health, safety, and welfare of the Village. The Council shall determine whether there is competent and substantial evidence to support the decision of the Village Manager using the process for an appeal of an administrative decision (See section 30-70). Prior to a decision to suspend an extended hours license, the Police Chief shall submit a report and recommendation to the Village Manager. The report shall address the criteria listed in subparagraphs (1)--(3) above [sic].

The granting of an extended hours license is a privilege subject to revocation by the Village Council at any time. As such, no Person may reasonably rely on a continuation of the privilege.

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**Section 5. Severability.** That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6.**     **Inclusion in Code.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 7.**     **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 10th day of April, 2007.

PASSED AND ADOPTED on second reading this 15th day of May, 2007.

MAYOR ROBERT L. VERNON

ATTEST:

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CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

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VILLAGE ATTORNEY