



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Sarah Hannah Spurlock, Assistant City Manager

From: Donald Leland Craig, Consulting Planner
Kevin Bond, Acting Planning Director / Senior Planner

Meeting Date: March 17, 2015

RE: **FEMA Flood Protection Building Height Referendum Implementation –**
An ordinance of the City of Key West, Florida, amending Chapter 122, Article V, Division 3 of the Code of Ordinances by amending Section 122-1149 entitled “Height” to provide for re-ordering existing provisions and adding a new subsection entitled “Flood Protection Building Height Exception;” providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

ACTION STATEMENT:

Request: That the City Commission pass on first reading an ordinance amending the City’s Land Development Regulations to create a flood protection building height exception.

Location: Citywide

BACKGROUND:

On August 19, 2014 the City Commission passed on second reading Ordinance No. 14-15, which was entitled, “proposing a referendum to permit an amendment to the land development regulations to provide an exception to building height regulations for the specific purpose(s) of protecting homes and possessions during flood events; to mitigate rising insurance rates; facilitate potential flood insurance rate discounts citywide by improving the city’s community rating system standing; and in response to comprehensive plan policies related to adaptation; setting the general election of November 4, 2014, as the date of referendum.” The ordinance authorized a vote on November 4, 2014 in which more than 80% of the voters of Key West approved the proposed referendum.

In order to implement the mandate of the referendum, the Planning Department must process, and the Planning Board and City Commission must approve an amendment to the City’s Land Development Regulations (LDR) using the specific language and intent of Ordinance No. 14-15. Once the process of the LDR amendment is completed, the exceptions to building height for flood protection will be available to citizens building new homes or substantially improved structures.

Ordinance No. 14-15 authorized the following language to be adopted into the Land Development Regulations if the referendum were to be passed. The sections that are proposed and new are underlined for clarity and are required for the consideration of ordinances changing the LDRs.

Section. 122-1149. Height

- (a) The term "building height" as used in the land development regulations shall mean the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building.
- (b) Height limitations contained in the schedule of district regulations located in Divisions 2 through 14 of Article IV of this chapter; in division 2 of this article and in this division shall apply to all construction unless otherwise stated herein below and/or in section 122-1151.
- (c) These height regulations may be waived subject to variance criteria found in in section 90-391 in order to accommodate non-habitable hardware and utility structures typically associated with the principal structure, including spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy or use.
- (d) Flood Protection Building Height Exception: An exception to the building height regulations as referenced in subsection (b) above may be permitted in cases where a building is raised above the ground to meet or exceed FEMA established base flood elevation levels under the following conditions:
1. Only the equivalent measure of distance from the existing ground level, prior to infill, to the required base flood elevation of the building, and up to a maximum of four (4) feet above the base flood elevation, may exceed the building height elevation.
 2. No exception shall result in a building height that would exceed forty (40) feet.

Staff has drafted a diagram (see attached) to help illustrate the above height exception language.

Review Process:

Planning Board	February 19, 2015
City Commission, 1st Reading	March 17, 2015
City Commission, 2nd Reading	April 7, 2015
DEO Review	Up to 60 days

Attachments:

- Exhibit 1 Ordinance No. 14-15, Referendum Language and supporting Staff Report
- Exhibit 2 FEMA NFIP Rate maps (x zone) and city BFE maps
- Exhibit 3 City zoning map
- Exhibit 4 2011 Key West Stormwater Master Plan map
- Exhibit 5 Key West Comprehensive Plan Coastal High Hazard map
- Exhibit 6 FEMA Repetitive Loss and Severe Repetitive Loss maps
- Exhibit 7 CRS points system and Insurance Rates Description
- Exhibit 8 Concentration of Flood Damage by Insurance Claim Value Map
- Exhibit 9 FIRM Insurance Rate Review
- Exhibit 10 Cost Estimates for Raising Structures

ANALYSIS:

Review Criteria: Section 90-522 of the Land Development Regulations (LDRs) of the City's Code of Ordinances (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 Planning Board held an advertised public hearing on February 19, 2015 at which public input was gathered and unanimously passed a resolution recommending approval of the proposed ordinance to the City Commission. At the meeting a presentation was made by the City Planner. The City Attorney reviewed the proposed ordinance prior to the hearing, and found it sufficient as to form and consistent with the direction provided by the referendum vote in November 2014.

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 following Goals, Objectives and Policies of the Comprehensive Plan support the adoption of the ordinance because when implemented the resulting development will allow the City and its residents to prepare for sea level rise and to maintain resilience to flood hazards, while also meeting the requirements of the City's floodplain management standards. The policies requiring close coordination between the LDRs and the Comprehensive Plan will assure that compliance with the HARC guidelines is maintained even though elevation of structures for flood protection is also allowed within the City's historic district.

Policy 1-1.1.14: Prepare for Future Sea Level Rise. The City, together with the private sector, shall consider proactive steps and pilot programs to adapt for sea level rise and storm surges, including but not limited to preserving transportation options, increasing residential building resiliency and indoor air quality, preserving landscaping and residential building aesthetics, and preserving water quality.

Policy 1-1.9.2: Comprehensive Plan Implementation and Land Development Regulations. The City shall continue to ensure that during the development review process the City shall enforce qualitative and quantitative performance criteria consistent with the Comprehensive Plan governing the preservation of environmentally sensitive lands, including wetlands; stormwater; convenient on-site traffic flow and vehicle parking; and all other requisite infrastructure both on- and off-site as stipulated within the Comprehensive Plan. Furthermore, the City shall require maintenance and continuing adherence to these standards. The City's existing Land Development Regulations governing zoning; subdivision; signage; landscaping and tree protection; sustainability; and surface water management shall be enforced and shall be revised as needed in order to: 1) effectively regulate future land use activities and natural resources identified on the Future Land Use Map; 2) adequately protect property rights; and 3) implement the goals, objectives, and policies stipulated in the Comprehensive Plan.

The Land Development Regulations shall continue to include a regulatory framework to:

1. Regulate the subdivision of land;
2. Regulate the use of land and water consistent with this Element, ensure the compatibility of adjacent land uses, and provide for open space;
3. Protect the environmentally sensitive lands as well as flora and fauna as stipulated in the Comprehensive Plan;
4. Regulate land use and minimum building elevations in areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
5. Regulate signage;
6. Ensure safe and convenient on-site and off-site traffic flow and vehicle parking need and prohibit development within future rights-of-way;
7. Provide that development orders and permits shall not be issued which result in a reduction of levels of services for impacted public facilities below the levels of service standards, which shall be adopted by the City Commission;
8. Ensure progress toward community greenhouse gas emissions reduction goals; and
9. Provide safe pedestrian and bicycle connectivity throughout the City and especially on transportation corridors.

Policy 1.1.9.5: Land Use Consistency and Compatibility. The City of Key West shall continue to enforce Land Development Regulations which ensure that future land uses shall be compatible with the Future Land Use Map, hurricane evacuation plans, and other applicable laws, ordinances, and administrative rules regulating land and water resource management.

OBJECTIVE 1A-1.5: HISTORIC PRESERVATION IN COASTAL HIGH-HAZARD AREA. To meet or exceed standard coastal management practices, policies, and FEMA standards with regard to historic resources in high-hazard areas and the HARC shall develop a hurricane strategy for the Historic District as specified in the following policies.

Policy 1A-1.5.1: Compliance with FEMA Standards. All development and redevelopment in the Historic District shall meet Federal Emergency Management Agency (FEMA) standards or other appropriate requirements in coastal high-hazard and flood-prone areas, except where Land Development Regulations provide for exemptions for contributing structures.

Policy 6-1.3.1: Enforce Policies to Maintain Floodplain. The City shall continue to maintain its surface water management and flood damage prevention regulations. New development encroaching into the floodplain shall incorporate sufficient flood protection measures. The City's Stormwater Management and Flood Protection Ordinance shall maintain consistency with program policies of the Federal Emergency Management Agency (FEMA). The City shall continue to monitor new cost effective programs for minimizing flood damage.

Finally, the most explicit directive of the Comprehensive plan is contained in Policy 1.1.12.5, which states "The City shall consider allowing increased heights for new construction or redevelopment if such additional height is justified based upon adopted Coastal High Hazard Maps and Storm Surge Flood Maps in order to promote safe new development and redevelopment based on sea level rise predictions. Such additional height must be compatible with surrounding development." The City has adopted the referenced maps in the 2012 Comprehensive plan, and based upon the Plan proposed the referendum, which resulted in the proposed ordinance.

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

The proposed ordinance has been reviewed by the City Attorney and the Chief Building Official for consistency with other parts of the Code of Ordinances, and been found to be in conformance with these documents.

(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.

In the period of 2001 to 2012 when the present Comprehensive Plan was being researched and written, the data and analysis revealed that 80% of the City lies in a regulated floodplain outside of the "X" zone. See Exhibits 6 and 8, which indicate that repetitive losses due to hurricane or tropical storm damage were increasing, along with sea level rise, which could exacerbate the total amount of stormwater across the island in a storm event.

Also prevalent in the ten-year period preceding the November referendum, the rates for federally-subsidized flood insurance available to the citizens of Key West have risen dramatically. See **Exhibit 9**, review of FIRM Insurance Rates. All of these events and changes led the City Commission to approve the ordinance setting the referendum for November 2014.

(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 issue of land use compatibility was addressed early in 2014 by the City Commission who directed the City staff to identify a diverse group of citizens to aid in the writing of the proposed referendum language and to vet the effects of changing the LDRs to allow the increased height change. This diverse group of Key West citizens that represented environmental and quality of life groups, historic preservationists, business owners and homeowners crafted the proposed language. As a group, consensus was reached on the proposal because raising homes above flood levels **1) helps people protect themselves and what is important to them from flooding; 2) is nondiscriminatory, fair and equitable; 3) respects existing building height protections; 4) respects existing Historic District protections; and 5) is the most proactive approach for the future of the Key West community.**

- 1. The Proposed Ordinance helps people protect themselves and what is important to them from flooding.** In 2005, as a direct result of hurricanes Dennis, Katrina, Rita and Wilma, some 3,000 of the City's permanent population never returned. Further, personal belongings were destroyed, several weeks of business lost, approximately 70% of vehicles were ruined, and homes and businesses were flooded, causing \$17 million in public property damage, and at least \$164 million in insured personal property, not including losses that were not covered by flood insurance.
- 2. The Proposed Ordinance is nondiscriminatory, fair and equitable.**
 - a. It provides flood relief to the most vulnerable existing structures, particularly in the most low-lying, flood prone areas of the City with the most stringent height limitations (25').
 - b. Due to the ordinance's flexibility, it does not subject the most at-risk property owners who wish to elevate their structures to seek a height variance process, which is costly

and is the only method presently available for flood mitigation.

3. **The Proposed Ordinance provides height protections.** It limits the overall height of the existing or new structures in several ways as follows:
 - a. Does **not change the height limitations** currently existing in the Comprehensive Plan and Land Development Regulations nor does it change the point from where height is measured (crown of the road).
 - b. Provides an **exception** to the height restriction that is tied to the elevation of the building to or above FEMA flood levels. Buildings that are not elevating to or above the base flood elevation would not be granted a height exception. The buildings sitting on the highest ground will be the most restricted and the lowest lying structures will be provided the most flexibility to raise the structure.
 - c. **Limits the exception to a maximum building height of 40 feet.** This does not change the existing building height limitations in the zoning code. Size of the building plus the feet elevated off the ground for flood protection cannot exceed 40 feet.
 - d. Allows a building to be elevated to a **maximum of four (4) feet above the base flood elevation.** The distance above the base flood elevation is defined as “freeboard.”

According to information obtained from the state representative of the National Flood Insurance Program, the cost of flood insurance drops significantly for every foot that a building is raised above the flood zone level with the maximum savings possible being achieved at three (3) feet about the base flood elevation.

In anticipation of the flood map changes expected within the next few years, flood levels are expected to increase one foot citywide, an additional foot of freeboard is planned to account for this loss. Further, four feet of freeboard is commensurate with sea level rise projections for the next 50 years.

4. **Protects the Historic District**

- a. **Does not change or supersede existing Historic Architectural Guidelines.** Existing Historic Architectural Guidelines will continue to regulate properties and protect the character of the Historic District for new development with the following existing provisions (pgs. 38-38a). The Historic Architectural Guidelines presently state the following:
 2. ***Elevation of finished floor above grade - Applications for buildings with the first finished floor above the minimum height necessary to comply with federal flood regulations will not be approved unless the applicant demonstrates that such elevation does not interfere with the essential form and integrity of properties in the neighborhood. In situations wherein parking is proposed below the first finished floor, HARC shall consider how visible the parking is from the public right-of-way; whether the parking area is enclosed or otherwise concealed by walls louvers, lattice, landscaping or other features; and whether fill and/or berms are used to minimize the gap between the first finished floor and the crown of the nearest road.***
 3. ***Height - must not exceed 2.5 stories. There must be a sympathetic relationship of height between new buildings and existing adjacent structures of the neighborhood. New buildings must be compatible with historic floor elevations. The height of all new***

construction shall be based upon the height of existing structures within the vicinity.

4. **Proportion, scale and mass** – *massing, scale and proportion should be similar to that of existing historical buildings in the historical zone. No new construction shall be enlarged so that its proportions are out of scale with its surroundings. No structure shall outsize the majority of structures in the streetscape or historic zone.*
 5. **Compatibility** - *Design must be compatible with Key West architectural characteristics in the historical zones. All new construction must be in keeping with the historic character in terms of size, scale, design, materials, color and texture.*
- b. FEMA exempts historically contributing structures from having to meet structural elevation requirements.
 - c. A significant portion of the Historic District is in the FEMA designated flood zone 'X' which is **above FEMA established flood levels** of type AE and V flood zones and are NOT subject to this height referendum.
 - d. Allows historic properties in lower lying areas (outside of the X zone) to elevate their structures to protect their historic building from flood damage subject to the architectural guidelines above.

5. Most Proactive Approach

- a. It helps improve the City's Community Rating System ranking with the National Flood Insurance Program, thereby providing flood insurance rate reductions citywide.
- b. It allows new development to be sustainably constructed with a view towards the future of the island in which more frequent flooding and water inundation will occur.
- c. In anticipation of the FEMA National Flood Insurance Program Map changes expected in the next few years, the proposed change to the LDRs will allow up to four (4) feet of freeboard which can achieve upwards of a 94% reduction in annual flood insurance premiums, and is a height commensurate with sea level rise expected.

(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 ordinance would, when implemented, help protect residential structures from future flood hazards lessening dependence on additional emergency services during and following flood and tropical storm events. The ordinance is neutral to all other public facility demands, as the assessment of new construction associated with the raising of existing structures will be assessed at the time of application for development review by those mechanisms in place in Chapter 94 of the Land Development Regulations.

(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 ordinance is neutral to the impacts on the natural environment because any reconstruction enabled by the ordinance still must meet the requirements of the Comprehensive Plan, which prevents the residential use of sensitive environments within the City.

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

It is anticipated that the new and reconstructed structures enabled by the proposed ordinance would have a positive effect on the City's economy in the following ways:

1. Reconstruction of older homes to modern standards will be encouraged because of flexibility in the building envelope established.
2. Flood insurance rates will diminish for those wishing to raise their homes, thus freeing cash to use for other purposes.
3. The ability to lower flood insurance rates to manageable levels will enable the real estate market to react positively to the reductions in flood insurance premiums and offer a wider variety and choice of home types and prices.

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

The existing land use pattern is well established in the City, and the proposed ordinance does not serve to rezone any land or allow any new uses within any zoning district.

(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 legislations.

The proposal is the result of a referendum in which 82% of those voting approved the question to allow the Land Development Regulations to be changed as described in the proposal. It can then be judged in the public interest by the result of the vote. Further, the ability to elevate existing buildings is entirely voluntary. It imposes no requirements on those of the public who do not wish to participate in the program of making their homes and businesses more resistant to flood damage. The proposed ordinance was carefully crafted to be specific to only that portion of the LDRs which addresses building height, while leaving in place all other performance standards in order to assure internal consistency.

(10) Other matters. Other matters which the planning board and city commission may deem appropriate.

Based on discussions with diverse groups and individuals throughout the community, the following concerns have been identified, and vetted by the Focus Group and State:

1. *The height ordinance will negatively affect the character of the city creating a stilt community.* The character of Key West is irrefutably changing, but not as a result of the height ordinance. The City faces outside pressures that cannot be negated on a local level such as:
 - a. Federal and State regulations requiring that all new or substantially improved structures be elevated.
 - b. The City is built on porous limestone rock and cannot be buffered against flooding (such as in Holland), and that in order to maintain life as we know it, both public and private buildings, services and transportation networks must be elevated.
 - c. Sea level rise: Currently, the City experiences flooding on high tides without rain, which

is dramatically aggravated during significant rain events. As sea levels continue to rise at their current rate, we can expect more frequent flooding events. Climate change will result in increased frequency and intensity of storms and may cause greater sea level rise.

2. *The height ordinance will negatively affect the Historic District.* The language proposed for the ordinance attempts to balance the impacts that will occur with the need to protect the historic buildings from rising and flood water damage and property owners from rising insurance rates. Properties that are listed as Historically Contributing, or are located within the X zone are exempt from meeting FEMA flood elevation requirements. However, Historically Contributing structures ARE NOT exempt from flood insurance rate hikes. Flood insurance rates are expected to be subject to major increases within four years. Presently, the Historic Guidelines include a policy that requires permit review, on a site-by-site basis, for properties that wish to elevate above the required FEMA Flood elevation as stated above.
3. *The proposed height ordinance will only benefit developers.* Careful consideration of the need to protect and adapt the existing housing stock has been used to craft the proposed ordinance language, including input from current homeowners. This ordinance does not change the existing height restrictions and provides a maximum height of 40 feet for property owners that wish to elevate their low-lying structures above flood prone levels.
4. *People will not be able to afford to elevate their homes.* Homeowners with mortgaged property are required to carry flood insurance. The cost of flood insurance is incurring historic increases and property owners may decide that elevating their structures out of a rising flood zone is safer and cost effective. Government regulations should not stand in the way of allowing people to protect their homes from flooding and lowering their flood insurance costs to acceptable levels. Staff has researched the cost of raising existing homes, which though not inconsequential, is reasonable in comparison to the very substantial increases in flood insurance over the past five years. See **Exhibit 10**, an estimate of the cost of raising existing residential structures.
5. *Will the program be mandatory?* No, the proposed ordinance language specifically states that the program is voluntary.
6. *A height exception ordinance will not solve the problems the City faces related to Climate Change.* True, but it will help to provide relief related to some of the problems identified in the recent Comprehensive Plan and the sea level rise discussions. Staff is addressing this vexing problem through a multifaceted approach most importantly beginning the long-range process of coordinating the raising of our transportation networks and critical services throughout the Keys. Staff is also working on a Climate Change element to the Comprehensive Plan.

Options/Advantages/Disadvantages:

Option 1: Pass the proposed ordinance on first reading.

1. Consistency with the City's Strategic Plan, Vision, and Mission:

The proposed ordinance is consistent with the intent of the Strategic Plan, Vision, and Mission to protect and respond to the Environment and the Climate Action Plan; to protect the Economy including our private assets and keep housing affordable; to create sustainable infrastructure that supports local needs, the economy, and green practices; to

implement the adopted long range plans of the City, such as the Comprehensive Plan and the Climate Action Plan; and protect and improve the Quality of Life.

2. **Financial Impact:** The new regulations would result in higher FEMA Community Rating System standing, which will help to lower flood insurance rates citywide. Additionally, if the proposed ordinance is adopted and property owners elevate their structures, it will result in lower insurance rates for the property owners and help the City to maintain a healthy tax base.

Option 2: Not pass the proposed ordinance on first reading.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** Not passing the proposed ordinance may be inconsistent with the intent of the Strategic Plan, Vision, and Mission.
2. **Financial Impact:** If the proposed ordinance is not adopted, the City would lose the opportunity to allow the proposed owners to decide whether to elevate their buildings to mitigate flooding. Preventing property owners this option would not help the City achieve higher FEMA Community Rating System standing that would help to lower flood insurance rates citywide; and may contribute to situations where homeowners are forced to pay high flood insurance premiums because they cannot elevate their structures without exceeding the height restrictions in the lowest lying areas of the City.

RECOMMENDATION:

Staff recommends that the City Commission pass on first reading the ordinance amending Chapter 122, Article V, Division 3 of the Code of Ordinances by amending Section 122-1149 to create a flood protection building height exception.