

PLANNING BOARD  
RESOLUTION NO. 2020-\_\_\_\_\_

A RESOLUTION OF THE CITY OF KEY WEST  
PLANNING BOARD RECOMMENDING APPROVAL OF  
AN ORDINANCE TO THE CITY COMMISSION  
AMENDING CHAPTER 106 OF THE LAND  
DEVELOPMENT REGULATIONS, ENTITLED  
"PERFORMANCE STANDARDS", SECTIONS 106-  
51, 106-52, 106-53, AND 106-55 OF  
DIVISION 2, ENTITLED "OUTDOOR DISPLAYS";  
AND AMMENDING CHAPTER 90 OF THE LAND  
DEVELOPMENT REGULATIONS ENTITLED  
"ADMINISTRATION", SECTION 90-428  
ENTITLED "FINAL DECISIONS OF HISTORIC  
ARCHITECTURAL REVIEW COMMISSION",  
PURSUANT TO CHAPTER 90, ARTICLE VI,  
DIVISION 2; PROVIDING FOR SEVERABILITY;  
PROVIDING FOR REPEAL OF INCONSISTENT  
PROVISIONS; PROVIDING FOR AN EFFECTIVE  
DATE.

**WHEREAS**, pursuant to the provisions of Chapters 163,  
166, and 380 of the Florida State Statutes, the City of Key  
West, Florida (the "City") proposes to amend Chapters 106 and  
90 of the Land Development Regulations (the "LDRs"); and

**WHEREAS**, Division 2 of Article II of the Land Development  
Regulations entitled "Outdoor Displays" was amended under  
Ordinance 08-04 to transfer the administrative outdoor  
displays exceptions procedure from the Board of Adjustment to  
the Planning Board; and

**WHEREAS**, the regulations for outdoor display exceptions

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\_\_\_\_Planning Director

are specific to the historic zoning districts and may have a visual impact on the buildings and streetscapes that pertain to the City of Key West historic district; and

**WHEREAS**, the Planning Board has recommended that the administration of outdoor display exceptions be transferred to the Historic Architectural Review Commission as this is the agency chartered with the preservation of the character and appearance of the historic preservation districts of the city; and

**WHEREAS**, the Historic Architectural Review Commission's appeal process differs from the Planning Board process and the transfer of administration requires an amendment to Section 90-428 of the Land Development Regulations, which codifies the Historic Architectural Review Commission's decisions appeal process; and

**WHEREAS**, the Historic Architectural Review Commission held a virtual regular public meeting on June 23, 2020 and approved the recommendations to transfer the administrative outdoor display exception procedures; and

**WHEREAS**, the proposed amendments to the Land Development Regulations were presented to the Planning Board with a

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recommendation of approval at its regularly scheduled meeting on July 16, 2020; and

**WHEREAS**, the Planning Board finds that it is in the public's interest to amend the City's Land Development Regulations to transfer the administration of outdoor display exceptions to the Historic Architectural Review Commission.

**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.** That the proposed amendments to Chapters 106 and Chapter 90 of the Land Development Regulations are recommended for approval hereby as follows\*:

Sec. 106-51. Prohibited.

The outdoor display of merchandise in the historic zoning districts of the city is prohibited unless an exception is granted by the ~~planning board~~ historic architectural review commission, as provided in section 106-52. Merchandise shall

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\*(Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading. Added language is double underlined and ~~double struck through~~ at second reading.)

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mean any good, food, or beverages, or product or sample or likeness of any good, food, or beverages, or product offered for sale by a business. Outdoor display shall mean the placement of merchandise on the exterior of a ~~business building or structure,~~ including, but not limited to a wall, roof, overhang, entranceway, porch, or window, or within a required setback area. For a cart, booth, kiosk, or arcade, outdoor display shall mean the placement of merchandise, either freestanding or by draping it, on the exterior or beyond the vertical plane of the cart, booth, kiosk, or arcade. In no event shall outdoor display be permitted in the public right-of-way. The prohibitions of this section shall not apply to the display of automotive vehicles, bicycles, and/or mopeds where these vehicles are offered for rentals and or sales and or for plant sales. and This division shall not apply to art festivals or other special events duly permitted by the city commission.

Sec. 106-52. Exceptions.

Exceptions to section 106-51 may be granted by the ~~planning board~~ historic architectural review commission as follow. The

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criteria to consider an application shall be:

- (1) Factors favoring the exception are as follows:
  - a. The location of the proposed exception, while outdoors, is an interior courtyard of a building or buildings, or is a space or area specifically designed and permitted for use by outdoor merchants.
  - b. The exception (for either the type of merchandise or the type of display) is compatible or in visual harmony with the character of the neighborhood.
  - c. The exception's visual incongruity with the historic character of the neighborhood is reduced by substantial setback from public places and rights-of-way.
- (2) Factors disfavoring the exception are as follows:
  - a. Architecture that ~~contributing~~ contributes to the historical fabric or visual character of the neighborhood is obscured by the exception.
  - b. The location of the proposed exception abuts, with minimal setback, a street of the historic district,

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thus the exception is visible from heavily used public places and rights-of-way.

c. The exception presents a hazard to public safety.

(3) Exceptions to section 106-51 granted by the ~~planning board~~ historic architectural review commission shall be for a term of no more than 60 consecutive months and may be granted subject to terms and conditions specified by the ~~board~~ commission in order to protect the architectural heritage and visual character of the historic district. Applications for exceptions and revisions shall be accompanied by a nonrefundable fee of as determined by city commission resolution, \$100.00 to cover the costs to the city of processing the application ~~and investigating the applicant,~~ the pre application meeting with staff, staff report and yearly inspections of the site by the HARC inspector. Renewal or extensions of an outdoor display exception may be approved by the historic preservation planner, if there are no material changes to the outdoor display previously approved by the historic architectural review commission.

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- (4) Exceptions to section 106-51 may be revoked by the ~~planning board~~ historic architectural review commission after notice and hearing on grounds that:
- a. The applicant has failed to comply with terms and conditions specified pursuant to the grant of an exception in this section; or
  - b. The exception was granted pursuant to mistaken or misleading information; or
  - c. The exception is not compatible, or in visual harmony, with development of the neighborhood occurring subsequent to grant of the exception; or
  - d. The exception was relocated to another site without approval from the historic architectural review commission.
- (5) The city manager or the ~~planning board~~ historic architectural review commission, upon written petition by any city resident, may cause issuance of a notice of hearing on revocation of an exception, which notice shall be issued by the city clerk.

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**Sec. 106-53. Mobile vendors excepted.**

Sections 106-51 through 106-53 shall have no application to businesses duly licensed and operating pursuant to article VI of chapter 18 pertaining to mobile vendors or to persons granted exemptions pursuant to section 18-319(b).

**Sec. 106-54. Enforcement.**

Sections 106-51 through 106-53 shall be enforced by the code enforcement provisions of article VI of chapter 2.

**Sec. 106-55. Appeals.**

A final decision from the historic architectural review commission for an outdoor display exception may be appealed to the special magister, as stipulated under Sec. 90-428.

**Sec. 106-~~55~~ 56. Advertising causing obstruction of streets or sidewalks.**

It shall be unlawful for any person to conduct any advertising or publicity business or activities pertaining thereto in a manner so as to produce an assemblage of spectators and listeners and thereby obstruct or cause the

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obstruction of any city street or sidewalk. This restriction shall not apply to parades or advertising under the authority of a duly issued permit.

**Sec. 106-56 57. Use of streets and sidewalks for advertising or display purposes.**

It shall be unlawful for any person to use any portion of a street or sidewalk in the city for advertising or display purposes except as may otherwise be provided for by this subpart B.

**Secs. 106-57 58-106-85. Reserve**

**Sec. 90-428. Final decisions of historic architectural review commission.**

- (a) The historic architectural review commission decisions shall be considered final in actions regarding certificates of appropriateness, certificates of no contributing value and denials of nominations to the local register of historic places as described in chapter 102. The historic architectural review commission decisions

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regarding outdoor display exceptions under chapter 106 are also considered final in action. These final decisions of the historic architectural review commission may be appealed to a special ~~master~~ magistrate. The historic architectural review commission decisions approving nominations to the local register of historic places shall be advisory to the city commission. The historic architectural review commission decisions regarding nominations to the National Register of Historic Places may be appealed to the state historic preservation officer.

(b) An appeal of a decision of historic architectural review commission regarding a certificate of appropriateness may be taken:

(1) By the applicant; or

(2) When the ~~certification~~ certificate of appropriateness is granted:

a. By any person with a legal interest in real property located within 200 feet of the boundary of the lot or parcel on which the work is to be done; or

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b. By the city manager.

**Section 3.** This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the city clerk.

**Section 4.** This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this ordinance will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C-44, F.A.C., ordinance is not effective for forty-five (45) days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference; that within the forty-five (45) day review period the DEO can appeal ordinance to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the ordinance until the appeal is resolved by agreement or order.

Read and passed on first reading at a regular meeting held this \_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_Chairman

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Authenticated by the Chair of the Planning Board and the Planning Director.

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Sam Holland, Planning Board Chair Date

**Attest:**

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Katie P. Halloran, Planning Director Date

**Filed with the Clerk:**

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Cheryl Smith, City Clerk Date

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\_\_\_\_\_Chairman

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