

RESOLUTION NO. 2024-039

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD RECOMMENDING AN ORDINANCE TO THE CITY COMMISSION TO AMEND THE LAND DEVELOPMENT REGULATIONS CHAPTER 122, ENTITLED “ZONING,” ARTICLE IV, ENTITLED “DISTRICTS,” SUBDIVISION II, ENTITLED “LIMITED COMMERCIAL DISTRICT (CL),” SUBDIVISION III, ENTITLED “GENERAL COMMERCIAL DISTRICT (CG),” DIVISION 7, ENTITLED “HISTORIC RESIDENTIAL COMMERCIAL CORE DISTRICTS (HRCC-1 TO 3),” SUBDIVISION II, ENTITLED HRCC-1 DUVAL STREET GULFSIDE DISTRICT,” SUBDIVISION III, ENTITLED “HRCC-2 KEY WEST BIGHT DISTRICT,” SUBDIVISION IV, ENTITLED “HRCC-3 DUVAL STREET OCEANSIDE DISTRICT, ARTICLE V, ENTITLED SUPPLEMENTARY DISTRICT REGULATIONS,” DIVISION 13, ENTITLED TATTOO ESTABLISHMENTS,” SECTION 122-1542, ENTITLED “DEFINITIONS,” SECTION 122-1543, ENTITLED “SEPARATION REQUIREMENTS,” CHAPTER 86, ENTITLED “GENERAL PROVISIONS,” AND SECTION 86-9, ENTITLED “DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City of Key West Land Development Regulations Chapter 122, entitled “Zoning”, Article V, entitled “Supplementary District Regulations”, Division 13, entitled “Tattoo Establishments” reflects an ordinance regulating tattoo establishments; and

WHEREAS, approximately, nine (9) years ago, the U.S. Court of Appeals for the Eleventh Circuit in the case of Brad Buehrle vs. City of Key West, found that the City’s regulation of tattoo establishments failed to represent “a reasonable time, place, and manner restriction on protected expression.”

WHEREAS, as a result, the current Ordinance contained in Chapter 122 (Zoning), Article V (Supplementary District Regulations), Division 13 – Tattoo Establishments is not



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Planning Director

Section 2: Chapter 86, entitled “General Provisions”, Section 86-9, entitled “Definitions”; Chapter 122, entitled “Zoning”, Article IV, entitled “Districts”; Sections 122-387, 122-417, 122-418, 122-686, 122-687, 122-717, 122-746, 122-747, and Chapter 122, entitled “Zoning”, Article V, entitled “Supplementary District Regulations, Division 13, entitled “Tattoo Establishments”, Section 122-1543 are hereby amended to read as follows; and Chapter 122, entitled “Zoning”, Article V, entitled “Supplementary District Regulations, Division 13, entitled “Tattoo Establishments”, Sections 122-1544, 122-1546, are hereby repealed as follows:

Chapter 86 - General Provisions.

Sec. 86-9. – Definitions

[...]

Personal Service Establishment - A business primarily engaged in providing services involving the care of a person or his/her personal goods or apparel, including but not limited to barber and beauty shops, body art, spas, dog grooming, tailor, dressmaker, shoe repair, photographer, psychic reader and the like. This definition shall not apply to those uses explicitly defined within this section or to laundromats, dry cleaners or medical offices.

(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.)

Sec. 122-417. - Uses permitted.

Uses permitted in the General Commercial (CG) Zoning District are as follows:

- (1) Single-family/two-family residential dwellings for workforce affordable housing in compliance with Article V, Division 10, Work Force Housing.
 - (2) Multiple-family residential dwellings for workforce affordable housing in compliance with Article V, Division 10, Work Force Housing.
 - (3) Group homes with less than or equal to six residents as provided in section 122-1246.
 - (4) Cultural and civic activities.
 - (5) Hospitals and extensive care.
 - (6) Places of worship.
 - (7) Business and professional offices.
 - (8) Commercial retail low and medium intensity less than or equal to 10,000 square feet.
 - (9) Commercial retail high intensity less than or equal to 5,000 square feet.
 - (10) Hotels, motels, and transient lodging.
 - (11) Medical services.
 - (12) Parking lots and facilities.
 - (13) Personal service establishments including barber shops, hair salons, and tattoo parlors.
 - (14) Restaurants, with or without drive-through.
 - (15) Veterinary medical services with or without outside kennels.
- (Ord. No. 97-10, § 1(2-5.3.2(B)), 7-3-1997; Ord. No. 19-39 , § 2, 12-3-2019)

[...]

Sec. 122-418. - Conditional uses.

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Subdivision II. - HRCC-1 Duval Street Gulfside District

[...]

Sec. 122-687. - Uses permitted.

Uses permitted in the HRCC-1 Duval Street Gulfside district are as follows:

- (1) Single-family and two-family residential dwellings.
- (2) Multiple-family residential dwellings.
- (3) Group homes with less than or equal to six residents as provided in section 122-1246.
- (4) Places of worship.
- (5) Business and professional offices.
- (6) Commercial retail low and medium intensity less than or equal to 5,000 square feet as provided in division 11 of article V of this chapter.
- (7) Commercial retail high intensity less than or equal to 2,500 square feet as provided in division 11 of article V of this chapter.
- (8) Hotels, motels, and transient lodging.
- (9) Medical services.
- (10) Parking lots and facilities.
- (11) Personal service establishments including barber shops, hair salons, and tattoo parlors.
- (12) Restaurants, excluding drive-through.
- (13) Veterinary medical services without outside kennels.
- (14) Adult entertainment establishments (see section 122-1533).

(Ord. No. 97-10, § 1(2-5.5.3(1)(B)), 7-3-1997; Ord. No. 04-14, § 1, 7-7-2004)

[...]

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Uses permitted in the HRCC-3 Duval Street Oceanside District are as follows:

- (1) Single-family and two-family residential dwellings.
 - (2) Multiple-family residential dwellings.
 - (3) Group homes with less than or equal to six residents as provided in section 122-1246.
 - (4) Places of worship.
 - (5) Business and professional offices.
 - (6) Commercial retail low and medium intensity less than or equal to 5,000 square feet as provided in division 11 of article V of this chapter.
 - (7) Hotels, motels and transient lodging.
 - (8) Medical services.
 - (9) Parking lots and facilities.
 - (10) Personal service establishments including barber shops, hair salons, and tattoo parlors.
 - (11) Restaurants, excluding drive-through.
 - (12) Veterinary medical services without outside kennels.
- (Ord. No. 97-10, § 1(2-5.5.3(3)(B)), 7-3-1997)

[...]

Article V – Supplementary District Regulations

DIVISION 13. TATTOO ESTABLISHMENTS

[...]

~~Sec. 122-1543. General regulations.~~

~~(a) The purpose of this section is to limit the number of tattoo establishments within the corporate boundaries of Key West in order to address their adverse secondary effects. The city commission finds the potential and actual adverse secondary effects to be: the potential deterioration of a preserved historic~~

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~~on site during the time tattooing is performed. All certificates must be prominently displayed in the establishment and copies of all certificates shall be submitted each year at the time of city licensing renewal.~~

~~(f) A Florida Department of Health (FDOH) biomedical waste permit shall be prominently displayed at all time.~~

~~(g) All biomedical waste shall be disposed of in compliance with the FDOH permit.~~

~~[(h) Reserved.]~~

~~(i) Smoking shall be prohibited in the tattoo establishment.~~

~~(j) Food or drink shall not be permitted in the work area.~~

~~(k) Autoclave equipment shall be spore tested monthly or every 40 hours of use, whichever occurs first. All testing and maintenance records shall be available for inspection.~~

~~[(l) Reserved.]~~

~~(m) There shall be a separate sink located away from restroom facilities for all tattoo establishment personnel for hygiene purposes.~~

~~(n) Floor area in the tattoo application work area shall be a sealed hard surface tile, concrete, etc.~~

~~(o) The removal of tattoos shall be prohibited in any tattoo establishment.~~

~~(Ord. No. 07-14, § 2, 9-18-2007)~~

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~~Sec. 122-1544. Licensing.~~

~~(a) All city licensing approvals shall be provided to an owner of a tattoo establishment not later than 45 days from the date of the submittal of a complete application for a business tax receipt and the applicant's compliance with all building codes.~~

~~(b) In addition to the business tax set forth in section 66-109(1), the owner of a tattoo establishment shall pay to the city, on or before each October 1, an annual fee of \$1,000.00 to defray the expense of regulation.~~

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~~(b) Customer shall sign a consent form.~~

~~(c) Customer shall not be visibly impaired by any substance, intoxicated or under the influence of any substance and shall sign a waiver attesting to such.~~

~~(d) Records for each customer shall be kept for five years.~~

~~(e) Customer shall receive oral and written instructions required for the receiving of and care of each tattoo.~~

~~(f) Tattoo artist shall use only single use disposable ink containers.~~

~~(g) Tattoo artist shall only use sterile disposable one time use needles.~~

~~(h) All artists shall wear medical grade gloves.~~

~~(Ord. No. 07-14, § 2, 9-18-2007)~~

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 Clerk of the Planning Board.

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 permit or development order will be rendered to the Florida Department of Commerce (DOC). Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for forty-five (45) days after it has been properly rendered to the DOC with all exhibits and applications attached to or incorporated by reference to this approval; that within the forty-five (45) day review period the DOC can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement order.

Read and passed on first reading at a duly noticed public meeting held this 20th day of

KPH
[Signature]