




MEMORANDUM

Date: April 11, 2024

To: Honorable Mayor and Commissioners

Via: Albert P. Childress
City Manager 

From: Katie P. Halloran
Planning Director

Subject: **File 24-5320 - Text Amendment of the Land Development Regulations** – An ordinance to the City Commission to amend Chapter 86 of the Land Development Regulations entitled “General Provisions”, Section 86-9 entitled “Definition of terms”; Chapter 122 entitled “Zoning”, Article V entitled “Supplementary district regulations”, Division 4 entitled “Accessory uses and structures”, Section 122-1183 entitled “Walls and fences,” and Historic Architectural Guidelines, Article VI, Section V, entitled “Fences and Walls”; to require the height of any structure to be measured from the crown of road; pursuant to Chapter 90, Article VI, Division 2 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Introduction

The City of Key West Building Department has proposed text amendments to the Land Development Regulations (LDRs) to adopt a consistent base point for measuring the height of all structures. To achieve this, Building Department staff propose text amendments to Section 86-9, and 122-1183. Building Department staff’s previous proposal to amend the following sections of Code have been withdrawn as of January 23, 2024: Section 114-136, Section 114-137, Section 122-452, Section 122-1183, and Section 122-1406. These amendments to the Land Development Regulations are proposed to adopt a consistent base point for the measurement of any building or structure’s height, including fences and walls.

This item was recommended for approval by the City of Key West Planning Board at their hearing on January 18, 2024, under Resolution No. 2024-007 and for approval by the City Commission at First Reading on February 8, 2024. However, the Commission also directed staff to work together to address potential concerns, particularly involving potential impacts within the Historic District.

Background

Pursuant to the Code, the term *building height* is defined as “...*the vertical distance measured from the crown of the road to the highest point of the roof*”. This definition excludes other structures such as fences and walls. The City regulates the height of such structures; however, the actual height of these structures may vary from property to property due to not having an established base point for measurement. Structures such as fences and walls are typically measured from existing grade, which is the point of elevation 5 feet from the principal structure on any given property. Measuring from existing grade allows for variability dependent on a property’s elevation or whether the proposed site work includes the addition of fill. To establish a consistent means of measuring the height of development, the Building Department has proposed a text amendment to require all structures to be measured from the crown of road of the nearest adjacent street. Building Department staff has further clarified that the burden of confirming compliance with maximum height from crown of road would not fall to property owners, as City inspectors would take measurements with the aide of a transit set up on the crown of the road in front of the subject property.

Planning staff has concerns with the proposed amendment’s inconsistencies with the City of Key West Historic Preservation Guidelines, which defines fence height as follows:

“Fence heights will be measured from the sidewalk or from the level of the natural grade, whichever is highest.”

The City’s Historic Preservation Guidelines are adopted by ordinance by the City Commission. If approved, the proposed text amendment will create inconsistencies with how different City departments measure height and will likely generate confusion for residents and developers in the Historic District throughout the permitting process. Additionally, the crown of road base point is likely to change over time as roadways are repaved and potentially elevated to mitigate sea level rise and compound flooding.

The Planning Department recommends that the City Commission consider further modification and clarification of these text amendments to specifically exclude all properties in the historic district, which should continue to utilize historic sidewalk elevations and natural grade to measure height of structures including fences and walls.

Request/Proposed Text Amendment:

Proposed new language is underlined below and deleted language is struck through at first reading.

Sec. 86-9. Definition of terms.

Terms not otherwise defined in this section shall be interpreted first by reference to the comprehensive plan and this subpart B; secondly, by reference to generally accepted engineering, planning, or other professional terminology if technical; and otherwise according to common usage, unless the context clearly indicates otherwise. For the purpose of enforcing and administering this subpart B, the following words shall have the definition and meanings ascribed:

{...}

Building height means the vertical distance measured from the nearest adjacent crown of the road to the highest point of the roof. Notwithstanding anything to the contrary, for the development of fences, walls, signage, and any other structure without a roof, the height of such structure shall be measured from a vertical distance commencing at the crown of road of the nearest adjacent street to the highest point of the proposed

structure. This definition shall not preclude clearance requirements for signage over City right-of-way.

{...}

Section 122-1183. – Walls and fences.

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(d) Standards for fences and hedges. In general, any fence or wall erected within the City shall be measured from a vertical distance commencing at the crown of road of the nearest adjacent street to the highest point of the proposed structure. Fences shall be erected on the lot of the applicant and shall not extend into a public right-of-way. The fence may abut but shall not be located on any property line. It shall be unlawful for any person to erect a fence within the city except in accordance with the following:

- (1) In the city's residential areas the following restrictions as to fence height and construction shall apply:
 - a. Solid or open fences not exceeding four feet in height constructed of wood, rock, concrete block, chain link or wrought iron may be permitted on the front, rear and side yard property lines of any parcel of land.
 - b. If there are located utility electrical transformer banks, water towers or other facilities owned or leased by a public utility in residential zones which require the fencing of such for safety precautions, the fence around such facilities shall be at least six feet in height, and barbed wire may be used on the top of such six-foot fence.
 - c. Fences up to six feet in height may be constructed on the front, rear and side yard property lines of any parcel of land, provided that the upper two feet of such six-foot fence has openings of at least 50 percent or more in the construction of the fence. Solid fences up to six feet in height may be constructed on rear and side yard property lines of any parcel of land provided such solid six-foot fence is not constructed on property lines intersecting at street corners and that the adjoining property owners file their written consent with the building department consenting to the construction of such six-foot solid fence.
 - d. Solid fences up to six feet in height may be constructed on the front property line of a residential property in the single family residential (SF) and medium density residential (MDR) zoning districts, provided:
 1. All adjoining property owners file their written consent; and
 2. First Floor Property owners whose properties face the proposed fence file their written consent; and
 3. The Chief Building Official determines that the proposed solid six-foot fence is in harmony with the surrounding properties and otherwise satisfies Florida's building code.
 4. Any interested party may appeal the Chief Building Official's decision in favor of or against a proposed six-foot solid front fence directly to the Board of Adjustment, as provided in Section 90-430 and 90-431.
 - e. All fences in residential areas shall be located so as to avoid interference with traffic visibility pursuant to section 122-1406.

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HARC Guidelines currently measure fence height from the sidewalk or from the level of the natural grade, whichever is highest. The City Attorney has proposed the following language in order to address concerns between HARC and the Building Department:

9. Fence heights will be measured from the ~~sidewalk~~ crown of the road closest to the front elevation. In no circumstance shall any proposed fence deviate more than 2 inches in height from an adjacent lawful or legally non-conforming fence. In such an instance, the height of the proposed fence shall equal the height of the adjacent lawful or legally non-conforming fence. ~~or from the level of the natural grade, whichever is highest.~~

Planning staff and Enid Torregrossa, Historic Preservation Planner, have proposed a simpler approach in which the Historic District is simply exempt from the newly proposed definition for height. The current approach within the Historic District has been in place for decades and has been administered without any concerns. A survey of more than sixty (60) Historic Districts across the country also revealed the consistent application of the current HARC standard for measuring height of a fence from the sidewalk or existing grade, whichever is higher.

Procurement

The proposed text amendment will require the purchase of transits to accurately measure height in relation to the crown of the road.

Recommendation:

As per Planning Board Resolution No. 2024-007, the Planning Board recommended that the City Commission approve the text amendments to the Land Development Regulations; Building Department staff have withdrawn some components of the original request. Planning Department staff recommend that the proposed text amendments be modified to specifically exclude all properties within the historic district.