

ORDINANCE NO. _____

AN ORDINANCE OF 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

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 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 ORDAINED BY 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 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

*(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.)

~~and or sales and or for plant sales.~~ 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 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, 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.

(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.

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~~ magistrate, 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 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 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
- b. By the city manager.

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

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

Read and passed on final reading at a regular meeting held this _____ day of _____, 2020.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2020.

Filed with the Clerk _____, 2020.

Mayor Teri Johnston	_____
Vice Mayor Sam Kaufman	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

TERI JOHNSTON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK