

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To: Chairman and Planning Board Members

Through: Katie P. Halloran, Planning Director

From: Dan Gulizio, Senior Planner

Meeting Date: November 20, 2024

Application: ***Text Amendment of the Land Development Regulations** - 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.

Request: The text amendment would address the regulation of tattoo establishments consistent with recent case law.

Sponsor: City Manager

Background

The City of Key West has regulated tattoo establishments in a variety of means over the years with varying degrees of success. 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 most recent regulation of tattoo establishments failed to represent "a reasonable time, place, and manner restriction on protected

expression.” As a result, the current Ordinance contained in Chapter 122 (Zoning), Article V (Supplementary District Regulations), Division 13 – Tattoo Establishments is not valid.

The City Attorney requested that the Planning Department modify the Ordinance to address the concerns raised by the Court. The proposed Ordinance was drafted in coordination with the City Attorney, and the Code Compliance Department, and sponsored by the Interim City Manager pursuant to Sec. 90-518 of the Code of Ordinances.

Staff Analysis:

The proposed amendments to Division 13 – Tattoo Establishments may be grouped into two categories. First, the number of zoning categories in which tattoo establishments are permitted has been expanded to include General Commercial (CG), Limited Commercial (CL), and Historic Residential Commercial Core District -1, 2 and 3 (HRCC-1, HRCC-2, HRC-3). In addition, tattoo establishments have been designated as “permitted,” not “conditional” uses in these districts.

The second category of changes includes the elimination of some of the more onerous and legally problematic aspects of the regulatory process. This includes, but is not limited to the following:

- All tattooing shall be performed by a person licensed to practice medicine or dentistry under F.S. chs. 458 and 459 or 466, or by a person under his general supervision.
- The supervising physician, osteopathic physician, or dentist, initially upon assuming duties as the supervisor and semi-annually thereafter, shall review and inspect the techniques, procedures, and equipment utilized by the tattooist in the performance of tattooing.
- The supervising physician, osteopathic physician, or dentist shall provide semi-annual training for the tattooist in the areas of infection control, sterilization, and emergency procedures.
- A person certified in the use of a defibrillator, CPR, first aid, and blood borne pathogens shall be present 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.
- 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.
- The removal of tattoos shall be prohibited in any tattoo establishment.

The separation requirements associated with tattoo establishments have been retained based on the recommendation of the City Attorney and Code Compliance Department. The State Department of Health will also continue to license and regulate tattoo establishments.

Request / Proposed Amendment:

*Coding: Added language is underlined; deleted language is struck through at first reading.

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.

Tattooing means the creation of an indelible mark, figure, word, or graphic illustration upon a human body by the insertion of pigment under the skin or by the production of scars. This definition does not include the application of henna tattoos.

Tattoo establishment means any commercial activity, whether conducted intermittently or full-time, that involves the application of permanent tattoo material.

Tattoo artist means a person that applies an indelible mark, figure, work, or graphic by the insertion of pigment under the skin or by the production of scars. This term shall also apply to body illustrations.

Subdivision II. - Limited Commercial District (CL)[4]

Sec. 122-387. - Uses permitted.

Uses permitted in the limited commercial district (CL) are as follows:

- (1) Group homes with less than or equal to six residents as provided in [section 122-1246](#).
 - (2) Cultural and civic activities.
 - (3) Places of worship.
 - (4) Business and professional offices.
 - (5) Commercial retail low and medium intensity less than or equal to 5,000 square feet.
 - (6) Personal service establishments including barber shops, hair salons, and tattoo parlors.
- (Ord. No. 97-10, § 1(2-5.3.1(B)), 7-3-1997)

Subdivision III. - General Commercial District (CG)

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.

Conditional uses in the general commercial district (CG) are as follows:

- (1) Single-family/two-family residential dwellings.
- (2) Multiple-family residential dwellings.
- (3) Group homes with seven to 14 residents as provided in section 122-1246.
- (4) Community centers, clubs and lodges.
- (5) Educational institutions and day care.
- (6) Nursing homes, rest homes and convalescent homes.
- (7) Parks and recreation, active and passive.
- (8) Protective services.
- (9) Public and private utilities.
- (10) Bars and lounges.
- (11) Boat sales and service.
- (12) Commercial retail low and medium intensity greater than 10,000 square feet.
- (13) Commercial retail high intensity greater than 5,000 square feet.
- (14) Commercial amusement.
- (15) Funeral homes.
- (16) Gasoline stations.
- (17) Light industrial.
- (18) Marinas.
- (19) Small recreational power-driven equipment rentals (allowed only as an accessory use to a hotel/motel).
- (20) Vehicular sales and related services.
- ~~(21) Tattoo establishments (see division 13 of article V).~~
- (21)~~(22)~~ Pain management clinics (see division 14 of article V).

Subdivision II. - HRCC-1 Duval Street Gulfside District

Sec. 122-686. - Intent.

(a) The HRCC-1 Duval Street Gulfside District incorporates the city's intensely vibrant tourist commercial entertainment center which is characterized by specialty shops, sidewalk-oriented restaurants, lounges and bars with inviting live entertainment; and transient residential accommodations. The core of the commercial entertainment center spans generally from the Pier House south to Petronia Street as specifically referenced on the official zoning map. This segment of Duval Street is the most intense activity center in the historic commercial core. The following light manufacturing and warehousing uses are located within the eastern portion of the HRCC-1 district:

- (1) Strunk Lumber Yard.
- (2) Key West Aloe Processing Plant.
- (3) Key West Hand Print Fabric Shop.

(b) These light manufacturing and warehouse uses include real estate parcel numbers 24, 29, 36, 99, and 116, as delineated in the county property appraiser's city property location map dated January, 1991. In addition to uses generally allowed throughout the HRCC-1 area, the following light industrial and warehouse uses may locate exclusively within these areas (i.e., real estate parcels 24, 29, 36, 99, and 116) upon satisfying comprehensive performance criteria, including but not limited to nuisance abatement standards, screening and buffering, concurrency management, open space, and all such activities must be under roof with no open yard storage:

- (1) Warehousing and wholesaling within enclosed buildings;

- (2) Service and repair establishments, excluding vehicle and heavy machinery service and repair; business services; printing shops; and similar uses;
 - (3) Light manufacturing, excluding metal processing or fabrication, including light processing, assembly and distribution functions, electronics, research and development, and similar uses;
 - (4) Building materials supply and storage, and contractor's storage;
 - (5) Vocational trade schools;
 - (6) Enclosed parking facilities; and
 - (7) Accessory uses.
- (Ord. No. 97-10, § 1(2-5.5.3(1)(A)), 7-3-1997)

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)

Subdivision III. - HRCC-2 Key West Bight District

Sec. 122-717. - Uses permitted.

In the HRCC-2 Key West Bight district, only water-dependent uses shall be located within the first 30 feet landward of the mean high water (MHW) or the bulkhead. Similarly, only water-related uses shall be located between the 30-foot setback and the 100-foot setback from the mean high water or the bulkhead. No permanent residential use shall be located within 100 feet of the mean high water, and no transient residential uses shall be allowed within any portion of the HRCC-2 district. Permitted uses include the following:

- (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) Medical services.
- (8) Parking lots and facilities.
- (9) Personal service establishments including barber shops, hair salons, and tattoo parlors.

- (10) Restaurants, excluding drive-through.
- (11) Veterinary medical services without outside kennels.

Subdivision IV. - HRCC-3 Duval Street Oceanside District

Sec. 122-746. - Intent.

Consistent with the comprehensive plan future land use map, the HRCC-3 Duval Street Oceanside District includes the Duval Street Oceanside Corridor from Petronia Street south to United Street. Located toward the southern end of Duval Street, this corridor serves as a center for arts, crafts, gifts, designer goods, restaurants, and tourist accommodations. Structures within this corridor generally have retained a front facade which is much less commercialized relative to the entertainment center on the gulf side of Duval Street. The front facades generally have much smaller storefront windows and frequently incorporate a residential vernacular characterized by wood frame windows, equipped with mullions, and wood clapboard siding. This area shall be regulated by more restrictive performance standards than those applicable to the HRCC-1 district north of Petronia Street. The criteria for development within the HRCC-3 district shall require larger open space ratios, design standards which preserve and reinforce the physical characteristics of the area, and land use restrictions which exclude sidewalk bars and lounges which may produce excessive noise incompatible with surrounding activities.

(Ord. No. 97-10, § 1(2-5.5.3(3)(A)), 7-3-1997)

Sec. 122-747. - Uses permitted.

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. 122-1541. Tattoo establishments—Purpose.

The purpose of this division is to regulate tattoo establishments for the health, safety, and welfare of the residents and visitors of the City of Key West; and to establish reasonable regulations for tattoo establishments to be located in Key West, in order to eliminate or to reduce secondary effects of such establishments upon both residents and visitors. These regulations shall be construed consistently with F.S. chs. 458 and 459, or 466.

(Ord. No. 07-14, § 2, 9-18-2007)

Sec. 122-1542. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) Tattooing means the creation of an indelible mark, figure, word, or graphic illustration upon a human body by the insertion of pigment under the skin or by the production of scars. This definition does not include the application of henna tattoos.

(2) Tattoo establishment means any commercial activity, whether conducted intermittently or full-time, that involves the application of permanent tattoo material.

(3) Tattoo artist means a person that applies an indelible mark, figure, work, or graphic by the insertion of pigment under the skin or by the production of scars. This term shall also apply to body illustrations. (Ord. No. 07-14, § 2, 9-18-2007)

~~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 district; an increase in the incidence of disease; and land use incompatibilities.~~

~~(b) There are no tattoo establishments in the City of Key West; therefore, all tattoo establishments shall be established in compliance with all city regulations.~~

~~(c) All tattooing shall be performed inside the principal structure.~~

~~(d) All tattooing shall be performed by a person licensed to practice medicine or dentistry under F.S. chs. 458 and 459 or 466, or by a person under his general supervision. As used in this section, the term "general supervision" shall mean the supervision of the tattooist by a supervising physician, osteopathic physician, or dentist, which supervision shall not require the physical presence of the supervisor when procedures are performed, but shall require the following items:~~

~~(1) The supervising physician, osteopathic physician, or dentist, initially upon assuming duties as the supervisor and semi-annually thereafter, shall review and inspect the techniques, procedures, and equipment utilized by the tattooist in the performance of tattooing.~~

~~(2) The supervising physician, osteopathic physician, or dentist shall provide semi-annual training for the tattooist in the areas of infection control, sterilization, and emergency procedures.~~

~~(3) The supervising physician, osteopathic physician, or dentist and the tattooist shall develop jointly written procedures regarding the medical condition for individuals to receive tattoos, treatment of routine minor problems resulting during or from tattooing, and detailed procedures to be followed in the event of emergency situations developing during the performance of or as a result of tattooing. These written procedures will be maintained in a readily available location on the premises of the tattooist and a copy shall be maintained by the supervising physician, osteopathic physician, or dentist. Such written procedures will be readily available for inspection and review by agents of any or all of the following: the agency for health care administration, the board of medicine, the board of osteopathic medical examiners, the board of dentistry, and the city license officer.~~

~~(e) A person certified in the use of a defibrillator, CPR, first aid, and blood borne pathogens shall be present 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)~~

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.~~

~~(c) Any applicant aggrieved by a decision of the licensing official, either by the choice of tattoo classification(s) or by the refusal to license a business as a tattoo establishment, may appeal the decision to a special master (other than the code enforcement special master) appointed by the city commission. The appeal shall be made in writing not later than ten days from the date the decision of the licensing official is rendered to the applicant. The special master shall conduct a hearing at the earliest mutually convenient time, giving notice and opportunity to be heard to the applicant. The applicant may be represented by counsel. The special master shall issue a written decision within ten days of the hearing. The decision of the special master shall constitute final administrative agency action.~~

~~(Ord. No. 07-14, § 2, 9-18-2007)~~

~~Sec. 122-1545.~~ Sec. 122-1543. Separation requirements.

(a) The proposed site shall be at least 500 feet from any other such use.

(b) The proposed site shall be at least 500 feet from the nearest house of worship, school (public or private), child care center, library, or public park. The beach area adjacent to the Atlantic Ocean shall not be considered a public park for the spacing criteria.

(c) The separation requirements set forth above shall be measured by following the shortest route of ordinary fare from the nearest point of the parcel of the proposed tattoo establishment to the other parcel (as listed above) in subsections (a) and (b).

(Ord. No. 07-14, § 2, 9-18-2007)

~~Sec. 122-1546. Additional policies and procedures.~~

~~(a) Customer shall present identification.~~

~~(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)~~

Land Development Regulations Text Amendment Process:

Planning Board Meeting:	November 20, 2024
City Commission (1st Reading):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (1st Reading):	Up to 60 days
City Commission (2nd Reading / Adoption):	TBD, 2024
Local Appeal Period:	30 days
DEO Review (2nd Reading):	Up to 45 days
DEO Notice of Intent (NOI):	Effective when NOI posted to DEO site

Analysis:

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the "LDRs") of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") is to provide a means for

changing the text of the Land Development Regulations. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and the City Commission shall consider the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552, the Planning Board 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 in the LDRs to the City Commission for official action.

Code Section 90-520 (6) provides criteria by which LDR amendments must be evaluated:

Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:

Recent case law has invalidated the City's current regulatory scheme for tattoo establishments. The proposed changes address the concerns of the Court and place the regulation of tattoo businesses on a similar basis to other municipalities that typically consider such uses as personal service establishments.

a. Comprehensive Plan consistency. Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning must be consistent with the Comprehensive Plan.

The proposed modification of the Ordinance associated with Tattoo Establishments and contained within Chapter 122, Article IV, Divisions 4 and 7, Article V, Division 13 and Chapter 86 (General Provisions) is consistent with the Comprehensive Plan and recent case law associated with reasonable time, place and manner restrictions on protected expression.

b. Impact on surrounding properties and infrastructure. The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.

The proposed regulation associated with tattoo establishments strike the proper balance between freedom of expression associated with such businesses and the protection of surrounding properties. Potential land use incompatibilities will be addressed through the retention of existing separation requirements associated with tattoo establishments.

c. Avoidance of special treatment. The proposed change shall not constitute a spot zone change. Spot zoning occurs when:

1. A small parcel of land is singled out for special and privileged treatment:

The proposed amendment is not specific to a single parcel.

2. The singling out is not in the public interest but only for the benefit of the landowner.

The proposed amendment is not specific to a single parcel.

3. *The action is not consistent with the adopted comprehensive plan.*

The action is consistent with the adopted comprehensive plan and is carefully tailored to match guidance provided to the City from recent case law.

- d. *Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the City having the same zoning classification as that requested shall be stated.***

This proposed amendment is not associated with a particular Comprehensive Plan Future Land Use designation or specific zoning district.

CONCLUSION

The proposed Ordinance is a reasonable application of the city's police powers and properly mitigates potential impacts associated with such uses while protecting the constitutional rights of business owners consistent with reasonable time, place, and manner restrictions associated with freedom of expression.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the proposed Ordinance be recommended for APPROVAL to the City Commission. Respectfully submitted to the Board for use in making its determination.