



THE CITY OF KEY WEST PLANNING BOARD Staff Report

To: Chairman and Planning Board Members

From: Donald Leland Craig, AICP City Planner

Meeting Date: October 16, 2014

Agenda Item: **Food Truck Ordinance** – Modifications to Chapter 122, adding Division 15, Sections 1554 to 1560 to the Land Development Regulations, Code of Ordinances, City of Key West, Florida for the purpose of regulating the sale of food in a ready to eat state from mobile food truck, carts and pushcarts on private property within the City.

Background: The city presently and strenuously regulates the vending of edibles and other items sold at retail when such are provided to the public from mobile vendors using the public right of way. That is not the case with vendors selling food in a ready to eat state on private property when the establishment is a mobile device such as truck, cart or pushcart.

Also recently the City has had difficulty regulating restaurants which claimed immunity from regulation because of having their food preparation areas located in or on trailers licensed by the state as vehicles. Also the city has had a problem with carts expanding pre-existing area or use and functioning as a restaurant without the appropriate review and setting of conditions for operation.

Food trucks are a common sight in many urban areas all around the country. In response to the emerging trend in dining, cities have had to adopt new regulations, both health and land use to assure the safety of the consuming public. A survey of the regulations in place in Florida cities and elsewhere revealed a wide variety of ordinances and approaches to food truck regulations. However, there are some common elements or themes throughout the dozen cities staff surveyed. The common themes are:

1. Food trucks of whatever type and size are required to be truly mobile. No fixed bases of operation are labeled or considered food trucks.
2. Food trucks are required to have a licensed base of operations in a permanent location which serves as a "Commissary" where trash and other wastes are deposited, supplies replenished and at which some food stuffs are prepared either in their final ready to consume state or created to be the component parts of meals to be served from the truck.

3. Careful inspection and regulation by the local Fire Marshall is required to insure that cooking devices on the food trucks are safe both to the operators and the public using and adjacent to the trucks.
4. Operating hours are strictly enforced and the locations of the city in which they are allowed are highly specified.
5. Competition with standalone restaurants is regulated.
6. Connection to City utilities is not allowed.

Based on these common themes and interviews with city Legal, Licensing and Code Compliance staff created a food truck ordinance that addresses these issues as well as those that are unique to the City of Key West. Its entire focus is on the regulation of food trucks on private property to assure the public health safety and welfare while providing for compatibility of use of food trucks with surrounding commercial properties. The proposed ordinance prohibits the operation or parking of food trucks within pure residential land use districts.

Review Criteria: Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning Board review of proposed changes in Land Development Regulations.

(a) The Planning Board, regardless of the source of the proposed change in the Land Development Regulations, 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 of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in section 90-521.

The Planning Board held an advertised public hearing on October 16, 2014 to consider the proposed ordinance and transmitted its findings to the City Commission.

Sec. 90-521. Criteria for approving amendments to official zoning map. In evaluating proposed changes to the official zoning map, the City shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Concurrency Management Program.

Two elements of the Comprehensive Plan provide the direction for the creation of the proposed ordinance – Land Use and Transportation. The primary focus of the following policies of these elements is to assure that commercial land uses, even those located within mobile vehicles, such as food trucks, are compatible with already established commercial activity and adjacent residential uses. Further, the relevant policies provide

the basis for the performance standards for this unusual, temporary and intermittent land use.

The policies that staff has analyzed and found the proposed ordinance to be consistent with are the following:

Policy 1-1.1.3: Intensity Defined. *Floor Area Ratio (FAR) refers to the total floor area of a building(s) on any lot, parcel, or site. Floor areas do not apply to residential developments. For purposes of calculating floor area, parking area located beneath the building shall not be counted. FAR computations shall include all uses on the lot, parcel or site, including both institutional and non-residential floor area. The term "building height" as used in the Land Development Regulations shall mean the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building. The maximum FARs are further restricted by quantitative and qualitative criteria included in the Land Development Regulations, including but not limited to, such factors as minimum open space; concurrency management and level of service standards for traffic circulation; storm water management and other public facilities and services; off-street parking and internal circulation; height restrictions; landscaping; other required on-site improvements and design amenities required to achieve land use compatibility.*

Analysis: While Food Trucks per se do not represent floor area because the operation is not carried on in a building the activity is clearly commercial in nature and provides the goods and services normally associated with a restaurant or café. Because of this activity which can provided to dozens of customers in a few short hours. Hence the proposed ordinance's limitations on the number of food trucks on a single parcel and the hours of operation to limit the intensity of commercial use on parcels where there is existing floor area. If there were no limitations on the number of trucks allowed on a fully developed site, these areas of the City could experience excessive activity and parking demand.

Policy 1-1.1.6: Historic Preservation Areas: *Areas delineated on the Future Land Use Map for historic preservation shall be planned and managed using a regulatory framework designed to preserve the form, function, image, and ambiance of the Historic Preservation Districts. Dependent upon the size and scope of development proposals, either the City's Historic Architectural Review Commission (HARC) and/or Historic Preservation Planner, in addition to the Planning Board and/or staff, shall review all development proposals within the City's designated historic districts. Any development plans for these areas shall be subject to site plan review and shall be designed in a manner compatible with historic structures within the vicinity.*

Analysis: Food trucks are not historic buildings and most do not qualify as historic or antique motor vehicles, and the daily introduction of these sometimes large vehicles onto sites within the historic district can disrupt the setting and character of historic buildings and sites. In the past the historic districts have had to deal with food carts that transformed themselves into more permanent structures without benefit of HARC review because of their status of wheeled vehicle eluded any review at all. The history of Key West clearly shows that there were few, if any, carts or pushcarts in the streets or private property selling foods in a ready to eat form. The proposed ordinance closes the gap in the regulations to clearly define and classify all the allowed establishments that can be licensed to sell food in a ready to eat state. If it is not one of those defined by Section 122-1554, then it is not allowed in the City. This section states: If a food service establishment is not one of the these four classifications or a Mobile Vendor authorized

by Chapter 18, Article VI, for the purposes of the Land Development Regulations it shall be considered a Restaurant. If a food service establishment preparing and serving food in a ready to consume state on premises, with single serve or re-useable service utensil items, with or without seats, is not a Restaurant, nor a Mobile Vendor, nor a Food Truck vendor, nor an affixed structure selling food in a ready to consume state with a certificate of occupancy, it is not permitted in the City of Key West.

The proposed ordinance also requires HARC to approve the locations, design and signage associated with food trucks in order to diminish the potential negative effects on historic resources.

Policy 1-1.1.8: Allowed Uses in the Historic Residential Commercial Core: *The Historic Residential Commercial Core (HRCC) zoning district located within the Historic Commercial Future Land Use District is designed to accommodate the Historic Preservation District residential commercial core mixed use center. The HRCC zoning district is intended to provide a management framework for preserving the nature, character and historic quality of the Historic Preservation District commercial core, including related residential development.*

The HRCC-1 zoning sub-district encompasses the Duval Street Gulf side tourist commercial core, which provides an intensely vibrant tourist commercial entertainment center characterized by specialty shops, sidewalk-oriented restaurants, lounges and bars with inviting live entertainment; and transient residential accommodations. The commercial entertainment center spans Duval Street generally from the Pier House Hotel south to Petronia Street, and is the most intense activity center in the historic commercial core.

Policy 1-1.1.9: Allowed Uses in Historic Neighborhood Commercial: *Areas zoned Historic Neighborhood Commercial within the Historic Commercial Future Land Use District are intended to accommodate both residential and neighborhood commercial uses typically located along major thoroughfares which lead into or are adjacent to the central core commercial area of the City of Key West. Residential activities within this designated area include single family and duplex structures and multiple-family structures. Commercial uses generally permitted in the area include:*

- 1. Professional offices;*
- 2. Restaurants;*
- 3. Banking and financial institutions;*
- 4. Personal service shops;*
- 5. Specialty shops;*
- 6. Retail sales and services, excluding automotive sales and services as well as drive-in or drive-through restaurants, theaters or other drive-in facilities which potentially generate similar traffic flow problems;*
- 7. Transient living accommodations and guest cottages; and*
- 8. Other similar uses which shall be identified in the Land Development Regulations.*

or other **Analysis:** The proposed ordinance limits the location of food trucks to the HRCC-1 and HNC-1 land use districts where the restaurants are generally found and are permitted. Also, these two districts have the highest allowed floor area ratios and are the districts where in the most recent five years, food carts, which will now be subject to the ordinance have been found or expressed an interest in locating. The ordinance excludes locating food trucks in the other HRCC and HNC areas because these districts have not traditionally seen the introduction of carts or other wheeled vehicles selling

goods or food. In addition some of these districts are completely surrounded by residential neighborhoods where the daily introduction of food trucks coming and going, and setting up could be considered intrusive. Again by limiting the number of food trucks that can be on one parcel, their hours of operation, and their adjacency to existing restaurants impacts on historic resources within these commercial districts will be lessened.

OBJECTIVE 1-1.3: ALLOCATING COMMERCIAL DEVELOPMENT. *Land area shall be designated to accommodate a variety of commercial uses. The City shall promote the image, function, architecture, and ambiance of the Historic Preservation Commercial Core District as the City's center for commerce as well as civic and cultural enrichment. In this pursuit the City shall preserve and enhance the identity, design, and vitality of the District.*

The management of development and redevelopment activities shall promote preservation of the historic resources of the Historic Preservation Commercial Core District and ensure that new structures are compatible with the built environment. Along the North Roosevelt commercial corridor, the City shall promote redevelopment of mixed use and general commercial activities which fulfill market demands of the City's residents for affordable housing proximate to retail sales and services. The existing limited commercial area shall also be maintained for neighborhood commercial activities to meet consumer demands of residents within the areas.

Analysis: This objective and its accompanying policies direct the maintenance of sufficient amounts of commercial activity to serve the residents of and the visitors to the city both in the historic and non-historic districts, subject to appropriate design and siting standards are achieved. The proposed ordinance allows the introduction of new commercial activity via the food trucks that can add vitality and variety to the city's commercial strip and the downtown core.

The policy that provides this direction, with standards is:

Policy 1-1.3.2: Designate Various Types of Mixed Use Commercial Nodes to Accommodate Diverse Commercial Uses. *A variety of commercial development designations shall be provided in order to adequately ensure availability of sites that accommodate the varied site and spatial requirements for such activities as: professional and business offices, limited commercial activities, and general retail sales and services.*

The allocation of commercial uses shall recognize that respective commercial activities frequently have different site, spatial, and market area characteristics and generate significantly different impacts. Similarly, the commercial development designations on the Land Use Map shall be complemented by performance standards and site plan review requirements which shall provide a framework for managing and accessing impacts of development. These regulations shall ensure that proposed development of commercially City of Key West Comprehensive Plan 1-14 Adopted March 5, 2013, Ordinance No. 13-04 Land Use Element

Policy 1.1.9.5: Land Use Consistency and Compatibility. *The City of Key West shall continue to enforce Land Development Regulations which ensure that future land uses shall be compatible with the Future Land Use Map, hurricane evacuation plans, and other applicable laws, ordinances, and administrative rules regulating land and water resource management.*

Analysis: This critical policy requires the City to assure that all Land Development Regulations are consistent across the Board with all other development controls and other applicable laws to assure that equity and thoroughness are achieved. The proposed ordinance achieves this policy directive by being narrowly crafted to address

one element of the commercial food service industry which is at present not regulated in a way that promotes the use, while carefully controlling negative aspects. For instance, the proposed ordinance requires food trucks to be located no closer than 100 feet from a “brick and mortar” restaurant/café in order to promote fair competition and overcrowding of food establishments in one location. More importantly the ordinance prohibits the placement of food trucks in residential district or parcels where the introduction of commercial activities is otherwise prohibited to uses in structures, rather than motor vehicles. The new ordinance promotes the use of food trucks by allowing them in a large number of commercial areas, where restaurants are commonly found and whose impacts are acceptable at a level through land use regulation. Such limitations on hours of operation, method of operation, generation and disposal of waste, noise generation and appropriate signage are also part of the proposed ordinance such that all food purveying operations are treated in proportion to the expected impacts.

Policy 1-1.9.3: Performance Standards. *The following performance standards shall be maintained and enforced in the Land Development Regulations and shall reflect best management principles and practices. Plan review functions shall be carried out by the Planning Department, the City Engineer, and other designated City officials.*

1. *Provide criteria for protecting wetlands;*
2. *Establish open space requirements;*
3. *Provide criteria for drainage and stormwater management;*
4. *Provide criteria for off-street parking and internal traffic circulation as well as access to and egress from the street system;*
5. *Mandate availability of requisite services and infrastructure;*
6. *Stipulate criteria for perimeter screening and buffering land uses and facilities which may adversely impact adjacent development;*
7. *Establish standards for erosion and sedimentation control;*
8. *Provide a regulatory framework for Historic Architectural Review Commission (HARC) review of historically significant properties;*
9. *Stipulate criteria for siting locally unpopular land uses;*
10. *Require environmental impact assessment of development during site plan review or during the platting process if site plan review is not applicable. Stipulate appropriate performance criteria in the Land Development Regulations;*
11. *Balance and protect private property rights and the public interest by incorporating legally defensible land use controls; and*
12. *Require efficiencies in resource use to ensure long-term sustainability and availability of those resources.*

Analysis: The proposed ordinance provides standards specific to food trucks based upon their operational needs and were developed with reference to both the intricacies of Key West commercial areas and standards to the industry in the State of Florida and elsewhere.

(2) Conformance with requirements. Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The ordinance has been reviewed by a number of Departments, and the City Attorney's office to determine if the ordinance is internally consistent with the existing code, as well as the procedural and noticing requirements. The determination is that such consistency has been achieved.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

At the adoption of the Land Development Regulation in 1995 food trucks were not an active commercial enterprise in American cities to the extent that has developed over the last five years. Many cities throughout the state have had to accommodate a large number of food trucks both on city streets and private property, with no experience with such uses and gaps in their regulatory framework to guide the most appropriate location. That same situation occurred in the City of Key West to the extent that several food trucks were able to elude all but the most rudimentary of regulations, with the result being inadequate controls over intensity of use, hours of operation, fire protections, waste disposal and hours of operation. Therefore, these changed conditions support the creation of the ordinance implementing a regulatory framework.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The proposal specifically provides for land use compatibility by limiting the operational hours and location. The required performance standards for method of operation also assure compatibility.. The entire ordinance is proposed to achieve land use compatibility by keeping such uses out of residential land use districts and limiting the number of trucks that can occur on any one parcel.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

Normally, the operation of a motor vehicle or cart would not require proof of adequate facilities and concurrency because they are not connected to public facilities, with the exception of traveling across city streets, and capacity of streets and their usage is measured from the generating site, not on the vehicle per se. With food trucks the situation is different because of the foods prepared on or in them and the waste generated. Also, because food trucks are required to be self-contained as to potable water and sewage waste with the disposal of these wastes only at a licensed support commissary required by the ordinance. The capability of the commissary to demonstrate

compliance with all elements of concurrency is done at the time of the permitting and licensing of that facility.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

The ordinance allows the operation or storage of food trucks only on commercially zoned property and on previously developed site. Therefore, no negative impacts are anticipated on natural areas and habitats.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

The proposed ordinance limits the number of trucks on any one property and allows them only on commercially zoned properties for limited amounts of time during the day. Thus the expected impacts are not permanent in nature, but transient as the use must be removed by the end of the days' operations. The increase in economic activity created by the food trucks is expected to be positive, but at worst a displaced or substitute/transferred effect because meals not taken at brick and mortar eatery are taken at the food trucks. There is no expected increase in the number or persons travelling to the City because food trucks are allowed in the City. As an economic activity they will operate as an alternative to the standard restaurant or café.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

The exact location of food trucks is not yet known and because the locations can change fairly rapidly, subject to the proof of landowner permission for the parking of the food truck on private property, a pattern of where the trucks will be situated is not known at this time. Therefore, the proposed ordinance limits the number that can be located on any one parcel or parking lot. Given the small number of vacant adjacent parcels in the historic commercial land use districts, the concentration of trucks in large numbers is not expected. The occasional location of food trucks with controlled signage and the requirements that they be moved from the site after cessation of operations will ensure that there will be no permanent land use pattern change.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Land Development Regulations in this subpart B and the enabling legislation.

The proposed ordinance was written to respond to the public interest by providing reasonable regulations to allow a use requested by members of the public. The ordinance also responds to others who were concerned about the impact of food trucks on commercial activity in the same areas, impacts on historic resources, and possible noise and waste impacts. The Land Development Regulations are directed towards

resolving potential; land use impacts and serve as the City regulatory vehicle for doing so as determined by the City Charter and Florida statutes.

(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.

Not applicable.

PROCESS

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the Florida Department of Economic Opportunity (DEO), who will have 60 days to issue an order of consistency.

<u>Reviewing Body</u>	<u>Date</u>
Planning Board	October 16, 2014
City Commission	TBD

RECOMMENDATION

The Planning Department recommends consideration and approval of the draft Chapter 122 ordinance modifications.