

**THE CITY OF KEY WEST
PLANNING DEPARTMENT**



EXECUTIVE SUMMARY

To: Greg Veliz, City Manager

Through: Katie P. Halloran
Planning Director

From: Enid Torregrosa-Silva, MSHP
Historic Preservation Planner

Meeting Date: September 1, 2020

Agenda Item: An Ordinance of the City of Key West 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 amending 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.

ACTION STATEMENT:

The purpose of this Ordinance is to amend current Sections 106 and 90 of the Land Development Regulations, specifically Outdoor Display Exception by transferring the administrative procedures from the Planning Board to HARC and amending the HARC appeal process by including Outdoor Display Exception under the Special Magistrate's jurisdiction.

BACKGROUND:

The Planning Board has recommended the transfer of the administrative review procedures of outdoor display regulations to the Historic Architectural Review Commission (HARC). Created by the City's Charter, HARC is the city's agency in charge of the preservation of the character and appearance of the historic preservation districts. The outdoor display regulations are specific to the historic zoning districts and proposals have a visual impact on the built environment. Regulations to outdoor display were enacted in 1997, but only one revision has been made since; in 2008 the administrative procedures were transferred from the Board of Adjustment to the Planning Board.

The proposed amendments to the current regulations are minimal and are mostly clarification of procedures, criteria, and definitions. Another proposed change is the introduction of renewal approvals, at staff level, for those expired exceptions when no material changes have occurred to previously approved applications by the Historic Architectural Review Commission. Currently all renewals are reviewed by the Planning Board, even if there are no changes to the display. This new amendment will ease the process for renewals.

Additional changes to the regulations include the replacement of language associated with specific fees from the LDR’s with the introduction of a standard phrase, “*as determined by city commission resolution*”. For the application fees staff will be recommending a resolution to City Commission to include an application fee of \$275 for Outdoor Display Exceptions and \$100 fee for extensions approved at staff level. Staff finds that these fees will cover all the costs involved in the application processing, review, and HARC inspections.

The proposed amendments also include an appeal section as the appeal process for Planning Board decisions is different from HARC’s appeal process. Amendments to Section 90-428, are also part of the document under review as HARC decisions are appealed to the Special Magistrate, as per Article 1.06 of the City’s Charter.

Two important aspects to consider in the proposed transfer of duties is the number of Outdoor Display Exceptions that have been processed yearly and the total number of approved and active exceptions. The maximum allowed time for an outdoor display exception is 60 months. Staff has reviewed all Planning Board agendas and minutes from January 2015 until June 2020 and found that **16** applications were received and reviewed. Among the 16 received applications **4** were denied and one of those denials was reversed by the City Commission, which is the current appellate body. As part of this report we are including a table with data of received applications and active Outdoor Display Exceptions.

Yearly Outdoor Display Exceptions Applications from Planning Board Minutes

Year	Number of Applications	Approved	Denied
2015	1	1	0
2016	3	3	0
2017	0	0	0
2018	4	3	1
2019	4	4	0
2020	4	2*	2
Totals	16	13	3

*City Commission reversed one denial from Planning Board.

PREVIOUS CITY ACCTIONS:

HARC Discussion Item:	February 25, 2020 – Postponed May 20, 2020 - Reviewed and Filed
HARC Action Item:	June 23, 2020 – Approved
Planning Board:	July 16, 2020 - Approved
City Commission:	August 19, 2020 – Approved with one correction

HARC STAFF ANALYSIS:

Amendments to the text of the Land Development Regulations may be proposed by the City Commission, Planning Board, the City Manager or any property owner. Amendments under review were proposed by the Planning Board and confirmed by HARC with one of its' members opposed on the June 23, 2020 regular virtual meeting. Section 90-520 of the Code outlines required information for a petition to amend the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below:

- (1) **Property Description** - Historic District, specifically commercial corridors HRCC1, HRCC2, HRCC3, HRCC4, HNC1, HNC2, HNC3, HCT and HCL.
- (2) **Current and proposed comprehensive plan land use designation** - No changes proposed in land use designation.
- (3) **Current and proposed zoning** - No changes proposed in zoning designation.
- (4) **Existing and proposed use** - Not applicable.
- (5) **Disclosure of ownership** - Not applicable.
- (6) **Justification** - The Planning Board has proposed the transfer of the administrative procedures of Outdoor Display Exceptions to the Historic Architectural Review Commission. Although the City of Key West Comprehensive Plan is not specific in outdoor display exceptions regulations, the Historic Preservation Element under Future Land Use states, under several objectives and policies, the importance of protective measures under the LDR's to guarantee the preservation of the visual quality and character of the historic district.

Goal 1A-A of the City's Comprehensive Plan states: "*To identify and protect resources of archaeological and architectural significance*". Under Policy 1A-1.2.8; "*Performance Standard*" states that the LDR's shall "*incorporate*

*safeguards to prevent the destruction or alteration of an historic site; the isolation from or alteration of surrounding environment, **the introduction of visual, auditory, or atmospheric elements that are out of character or alter its setting, or other forms of neglect resulting in degradation of historic resources***". It is staff's opinion that outdoor display proposals have a visual effect on the built environment, and they may be detrimental to the historic character of a building or streetscape within the historic district.

In addition, Objective 1A-1.6 of the City's Comprehensive Plan entitled "*Achieve tourism and commercial activities sensitive to historic district character*" establishes the "*encouragement of tourism development activities and commercial land use policies in the historic district which are sensitive to the historic character of the community*". It is staff's opinion that the objective for business owners to have an outdoor display is for attracting general public, and more specific, tourists, to their stores. The Historic Architectural Review Commission is the city's agency chartered with the protection and preservation of the character and appearance of the historic district.

The proposed amendments to the outdoor display and HARC appeal process regulations are consistent with the City's Comprehensive Plan and the Land Development Regulations. The Planning Board is chartered to administer and review land use and growth management proposals and policies. Although outdoor display exceptions regulations are under the LDR's they do not affect land use or growth management so much as the impact the visual character of the historic district, which is one of many HARC responsibilities.

Section 90-522 establishes the Planning Board Review process for proposed changes of the 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 City Attorney's office, Building Official and the Planning Director have worked with HARC staff in the review of the proposed text amendments and find the changes to be consistent with the LDR's and necessary to clarify that the administrative review procedures of outdoor display regulations conforms with the responsibilities chartered to the Historic Architectural Review Commission. Since the proposed text amendment does not alter the official

zoning map, Section 90-521 of the LDR's, entitled "*Criteria for approving amendments to official zoning map*", it is not applicable under this review.

PROCESS:

Section 90-523 of the Land Development Regulations states that the City Commission shall review and act upon all proposed amendments to the LDR's and the official zoning map. As the Planning Board approved the proposed text amendments, the City Commission shall schedule a public hearing on the petition. The City Commission review process requires two readings of the proposed amendments. Absent of any appeals, the ordinance will be rendered to the Department of Economic Opportunities, who will have 60 days to issue an order of consistency. The final ordinance will be sent to the State of Florida, Department of State Division of Historical Resources as required by the city's Certified Local Government Agreement of 1991.

OPTIONS/ ADVANTAGES/ DISADVANTAGES:

Option 1: Approve the text amendment to the Land Development Regulations as per the recommendations from the Historic Architectural Review Commission and the Planning Board through Resolution 2020-26. **Staff recommends changing under proposed Sec. 106-55 Appeals, the word magister for magistrate.**

a. **Financial Impact:**

There will be no cost to the City if this request is approved.

Option 2: Deny the text amendment to the Land Development Regulations as per the recommendations from the Historic Architectural Review Commission and the Planning Board through Resolution 2020-26. The denial will leave the Outdoor Display Exception regulations under the Planning Board jurisdiction and the City Commission will remain as the appellate body.

a. **Financial Impact:**

There will be no cost to the City if this request is approved.

RECOMMENDATION:

The Historic Architectural Review Commission, the Planning Board, and the Planning Department recommends consideration and approval of Option 1.