

ORDINANCE NO. 10-04

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTION 86-9 DEFINITION OF TERMS, SECTION 102-1 DEFINITIONS, SECTION 122-600 DIMENSIONAL REQUIREMENTS, SECTION 122-630 DIMENSIONAL REQUIREMENTS, SECTION 122-660 DIMENSIONAL REQUIREMENTS, SECTION 122-690, DIMENSIONAL REQUIREMENTS, SECTION 122-720 DIMENSIONAL REQUIREMENTS, SECTION 122-750 DIMENSIONAL REQUIREMENTS, SECTION 122-760 DIMENSIONAL REQUIREMENTS, SECTION 122-810 DIMENSIONAL REQUIREMENTS, SECTION 122-840 DIMENSIONAL REQUIREMENTS, SECTION 122-870 DIMENSIONAL REQUIREMENTS, SECTION 122-900 DIMENSIONAL REQUIREMENTS, SECTION 122-930 DIMENSIONAL REQUIREMENTS, SECTION 122-960 DIMENSIONAL REQUIREMENTS, SECTION 122-970, DIMENSIONAL REQUIREMENTS, SECTION 122-980, DIMENSIONAL REQUIREMENTS, SECTION 122-990, DIMENSIONAL REQUIREMENTS, SECTION 122-1005, DIMENSIONAL REQUIREMENTS, AND SECTION 122-1151, SIZE AND DIMENSION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria; and

WHEREAS, Section 90-142 of the Code of Ordinances incorporates historic architectural review commission Design Guidelines by reference; and

WHEREAS, the Design Guidelines limit the height, proportion, scale and mass of new construction, including limitations to the third story of buildings;

WHEREAS, it is in the public interest to eliminate inconsistencies between the contents of the Design Guidelines and the Land Development Regulations and to cross-reference design guidelines with dimensional requirements; and

WHEREAS, the Planning Board held a held a noticed public hearing on October 15, 2009, where based on the consideration of recommendations by the City planner, city attorney, building official and other information recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on 1-5-2010 and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

WHEREAS, the City determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. Chapter 86, General Provisions, Section 86-9 Definition of Terms, is modified as follows: *Story* means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, or any portion of a building used for human occupancy between the topmost floor and the roof. A basement or cellar not used for human occupancy shall not be counted as a story. ~~The term "half story" means a story under a sloping roof, the finished floor area of which does not exceed one half the floor area of the floor area of the floor immediately below it; or a basement used for human occupancy, the floor area of that part of the basement so used not to exceed 50 percent of the floor area of the floor immediately above.~~

Section 2. Chapter 102, Historic Preservation, Section 102-1, Definitions, is modified

as follows: Building means ~~any structure created to shelter any type of human occupancy or for any type of human use, including without limitation housing, commercial structures, sheds, airports, and garages~~ any structure having a roof and which is entirely separated from any other structures by space or by walls in which there are no communicating doors or windows or any similar opening.

Section 3. Chapter 122, Zoning, Section 122-600 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic medium density residential district (HMDR) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 4. Chapter 122, Zoning, Section 122-630 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic high density residential district (HHDR) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 5. Chapter 122, Zoning, Section 122-660 Dimensional Requirements, is modified as follows: The dimensional requirements in the HRCC-4 district are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 6. Chapter 122, Zoning, Section 122-690 Dimensional Requirements, is modified as follows: The dimensional requirements in the HRCC-1 Duval Street gulfside district are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 7. Chapter 122, Zoning, Section 122-720 Dimensional Requirements, is modified as follows: The dimensional requirements in the HRCC-2 Key West Bight district are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 8. Chapter 122, Zoning, Section 122-7560 Dimensional Requirements, is modified as follows: The dimensional requirements in the HRCC-4 Truman Waterfront District are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 9. Chapter 122, Zoning, Section 122-750 Dimensional Requirements, is modified as follows: The dimensional requirements in the HRCC-3 Duval Street Oceanside District are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 10. Chapter 122, Zoning, Section 122-810 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic neighborhood commercial district – Truman/Simonton (HNC-1) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 11. Chapter 122, Zoning, Section 122-840 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic neighborhood commercial district (HNC-2) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 12. Chapter 122, Zoning, Section 122-870 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic neighborhood commercial district (HNC-3) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 13. Chapter 122, Zoning, Section 122-900 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic commercial district (HCT) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 14. Chapter 122, Zoning, Section 122-930 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic residential/office district (HRO) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 15. Chapter 122, Zoning, Section 122-960 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic public and semi-public district (HPS) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 16. Chapter 122, Zoning, Section 122-970 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic public and semi-public services district -1 (HPS-1) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 17. Chapter 122, Zoning, Section 122-980 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic public and semi-public services district -2 (HPS-2) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 18. Chapter 122, Zoning, Section 122-990 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic planned redevelopment and development district (HPRD) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 19. Chapter 122, Zoning, Section 122-1005 Dimensional Requirements, is modified as follows: The dimensional requirements in the historic limited commercial district (HCL) are as follows. However, construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 20. Chapter 122, Zoning, Section 122-1151 Size and dimension, Table of Size and Dimension Regulations, District, is modified as follows:

- HDR high density residential²⁴
- HMDR historic medium density residential²¹
- HHDR historic high density residential²¹
- HRCC-1 historic commercial core, Duval GS²¹
- HRCC-2 historic commercial core, KW bight²¹
- HRCC-3 historic commercial core, Duval OS²¹
- HNC-1 historic neighborhood commercial²¹

HNC-2 historic neighborhood commercial ²¹

HNC-3 historic neighborhood commercial ²¹

HCT historic commercial tourist ²¹

HRO historic residential office ²¹

HPS historic public/semipublic service ²¹

HPRD historic planned redevelopment/development ²¹

Section 21. Chapter 122, Zoning, Section 122-1151 Size and dimension, Table of Size and Dimension Regulations, Footnotes, is modified as follows: 21 Construction may be limited by proportion, scale and mass considerations as expressed through the historic architectural review commission Design Guidelines.

Section 22. This Ordinance shall become effective immediately upon approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a special meeting held this 15th day of December, 2009.

Read and passed on final reading at a regular meeting held this 5th day of January, 2010.

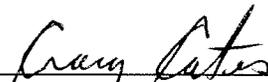
Authenticated by the presiding officer and Clerk of the Commission on 6th day of January, 2010.

Filed with the Clerk January 6, 2010.

ATTEST:



CHERYL SMITH, CITY CLERK



CRAIG CATES, MAYOR

Note: Double cross-out and underlining represent changes between the first and second reading. Sections were also renumbered.

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 10-04

2010 APR 12 AM 8:53
OFFICE OF THE ATTORNEY GENERAL
KEY WEST, FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat., (2009), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.
2. On February 5, 2010 the Department received for review City of Key West Ordinance No. 10-04, which was adopted by the City of Key West City Commission on January 5, 2010, ("Ord. 10-04"). The purpose of Ord. 10-04 is to amend Part B, Land Development Regulations of the City of Key West including Sections 86-9 Definition of Terms; Section 102-1 Definitions; and Sections 122-600, 122-630, 122-660, 122-690, 122-720, 122-750, 122-760, 122-810, 122-840, 122-870, 122-900, 122-930, 122-960, 122-970, 122-980, 122-990, 122-1005 Dimensional Requirements and Section 122-1151, Size and Dimension.
3. The purpose of Ord. 10-04 is to eliminate inconsistencies between the Land Development Regulations and the Design Guidelines with respect to height, proportion, scales and mass of new construction including limitations to three story buildings, and to cross-reference design guidelines with dimensional requirements
4. Ord. 10-04 is consistent with the City's Comprehensive Plan: Goal 1A-1: to Identify and Protect Resources of Archeological, Historical, and Architectural Significance; Policy 1A-1.2.1: HARC Guidelines to protect all historically significant structures and

historic districts; Goal 1A-2 to Promote Public Education, Awareness, and Appreciation of Historic, Architectural, and Archaeological Resources, and Goal 1A-2.16: Infill Development to ensure consistency with the character and scale of adjacent contributing structures.

CONCLUSIONS OF LAW

5. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), Fla. Stat., (2009).

6. The City of Key West is an Area of Critical State Concern. § 380.05, Fla. Stat. (2009) and Rule 28-36.001, Fla. Admin. Code.

7. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2009). The regulations adopted by Ord. 10-04 are land development regulations.

8. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the “Principles”). § 380.05(6), Fla. Stat.; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d.*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), Fla. Admin. Code.

9. The above identified portions of Ord. 10-04, are consistent the following Principles:

(a) Strengthen local government capabilities for managing land use and development.

(e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.

(h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida Resource.

10. Ord. 10-04 is not inconsistent with the remaining Principles and is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 10-04 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.


CHARLES GAUTHIER, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN

STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 21st day of April, 2010.



Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Craig Cates
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Amy Kimball-Murley, AICP
Planning Director
City of Key West
P.O. Box 1409
Key West, Florida 33041

Larry Erskine
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee