

Key West Planning Board Meeting Agenda
August 19, 2010 – 6:00 p.m.
City Commission Chamber
Old City Hall, 510 Greene Street



Item 4.a.1.

An Amendment to Chapter 110 of the Key West Code of Ordinances entitled “Resource Protection” to provide for the consist regulation of palm weavers as street performers / art vendors as contained in Chapter 6 of the Key West Code of Ordinances entitled “Amusements and Entertainment”.



THE CITY OF KEY WEST

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EXECUTIVE SUMMARY

To: The Planning Board for the City of Key West
From: Ron Ramsingh, Assistant City Attorney
Date: August 11, 2010
RE: An Amendment to Chapter 110 of the Key West Code of Ordinances entitled "Resource Protection" to provide for the consist regulation of palm weavers as street performers/ art vendors as contained in Chapter 6 of the Key West Code of Ordinances entitled "Amusements and Entertainment" and to restrict the methodology of coconut palm tree trimming.

Action statement:

Recommend to the Planning Board as well as the City Commission for the City of Key West to approve this ordinance amendment amending Chapter 110 entitled "Resource Protection" thereby permitting palm weavers to abide by the conditions and regulations as contained in Chapter 6 entitled "Amusements and Entertainment". In addition, there is also a new provision prohibiting and trimming of coconut palm trees within 45 degrees of the center of the tree trunk.

Background:

There is currently a proposed amendment to Chapter 6 of the Code of Ordinances which is entitled Amusement and Entertainment currently before the City Commission for consideration on an upcoming second reading. This proposed amended ordinance has been sponsored by Commissioner Jimmy Weekly. The purpose of the Chapter 6 amendment is to bring all street performers, artisans and art vendors in line with an updated and relevant level of regulation. Palm weavers have long been considered outside of this realm of regulations as their permit historically was only considered within the confines of Sec 110-255 of the Code of Ordinances. Specifically, palm weavers are currently only required to supply the city with an affidavit of origin indicating the source of the palm fronds as not being from City property. In addition, there are a limited number of permits issued quarterly and only by lottery administered by the Licensing Division of the City.

Furthermore, upon conferring with the Urban Forestry Program Manager, Cynthia Coogle, there has been additional language included that prohibits the removal of any palm frond that is growing within 45 degrees of the tree trunk. These younger palm fronds provide the tree with vital nutrients and immunity from disease. These younger fronds are much more desired by weavers as they are far easier to weave and work with. However, when they are removed, the tree is left exposed to disease and eventual decay.

Therefore, it is the belief of the amendment sponsor as well as the undersigned that palm weavers should be considered by the same standards, regulations and penalties as street artists and performers. Since this concerns a chapter contained in the Land Development Regulations, the Planning Board must first consider this amendment before the City Commission may consider the change.

Analysis of §90-521:

Sec. 90-522 requires in pertinent part: “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 undersigned has reviewed the “Criteria for

approving amendments to the official zoning map” contained in 90-521; as required by 90-522. However, this ordinance amendment is not a typical requested change to a zoning map, conditional use, or the like. Nonetheless the analysis is as follows:

1. *Consistency with plan:* This ordinance amendment is not inconsistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.
2. *Conformance with requirements:* This proposed ordinance amendment is in conformity with all applicable requirements of the Code of Ordinances.
3. *Changed conditions:* Neither “land use” nor “development conditions” would change as a result of the adoption of this ordinance amendment. This proposal simply seeks to regulate palm weavers in Chapter 6 as well as Chapter 110 of the Code of Ordinances.
4. *Land use compatibility:* This proposed ordinance amendment will not create any incompatible land uses. The only relevant reference is a prohibition of permit holders to acquire palm fronds from city right of way or property.
5. *Adequate public facilities:* The adoption of this ordinance amendment would not have an impact on public facilities.
6. *Natural Environment:* The undersigned respectfully submits that the adoption of this ordinance amendment would further promote the natural environment by providing for a consistent penalty provision as contained in Chapter 6, while still requiring the same source information on palm fronds thereby further protecting palm trees from improper pruning by palm weavers.
7. *Economic Effects:* This proposed ordinance amendment would not have an adverse effect on property values in the area or the general welfare.
8. *Orderly development:* The adoption of this ordinance amendment will not create a negative effect on any “land use pattern.”
9. *Public interest; enabling act:* The adoption of this ordinance amendment will be in the best interests of the citizens and visitors alike to the City of Key West. The intent of the Tree Protection ordinances is contained in Section 110-251 as follows: “The City Commission finds that trees on privately and publically owned property within the city are economic and aesthetic assets to the citizens of the city, because of their

important and meaningful contribution to a healthy, beautiful, and safer community, attributable to their carbon dioxide absorption, oxygen reproduction, dust filtration, wind and noise reduction, soil erosion prevention and surface drainage improvement. Therefore, the health and economic welfare of the citizens can be served through protection of the health and growth of the trees and through encouragement of additional plantings. The City Commission further finds that this public purpose can be best achieved through a city agency having authority and responsibility to accomplish these goals.”

Recommendation:

To pass this ordinance revision upon reading before the Planning Board as well as before the City Commission after first and second reading and to have an immediate effective date.

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES ENTITLED "RESOURCE PROTECTION"; BY AMENDING SECTION 110-255 TO PROVIDE FOR PALM WEAVING PERMIT ISSUANCE PURSUANT TO SECTION 6-1 THROUGH 6-9; RESTRICTING THE METHODOLOGY OF COCONUT PALM TREE TRIMMING; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, it is the intent of the City Commission for the City of Key West to include palm frond weavers, who use any type of palm fronds in the creation and sale of art or crafts, within the Street Performer and Art Vendor Ordinance section of Chapter 6; and

WHEREAS, regulating palm frond weavers under the Street Performer and Art Vendor Ordinance contained in Chapter 6 will create consistency as well as promote the health, safety and welfare of the citizens and visitors of the City of Key West;

WHEREAS, the purpose of the Tree Protection section of the Code of Ordinances is to protect and enhance the health, growth, and planting of trees in the city; and

WHEREAS, the practice of trimming the younger palm fronds of coconut palm trees have significantly impaired the health of coconut palm trees, which are economically,

historically and aesthetically vital to the City of Key West; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 110-255 of the Code of Ordinances is hereby amended as follows*:

Sec. 110-255. Removal of Portions of Coconut Palm Trees; Permit Required for Sale

(a) *Prohibited acts.* No person shall cause the removal of one or more fronds, nuts, or fruit of or any portion of the trunk or root system of or otherwise deface or damage any coconut palm located upon city-owned property, city streets, or city rights-of-way. No person shall cause the removal of any frond that is located within 45 degrees of the center of the tree trunk located on private property.

(b) *Sale or distribution.* Any person who intends to sell or distribute coconut palm tree fronds or coconuts in any form on city streets, sidewalks or other public areas shall apply to the licensing division for a permit in accordance with the rules and regulations contained in

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

Sections 6-1 through 6-9 of the Key West Code of Ordinances. The permit holder shall display the permit at all times while doing business on city property. The permit holder shall also maintain on a daily basis, on a form provided by the city, a statement of the source of the palm fronds and/or coconuts, and a name and phone number of the private property owner who provided that source.

There shall be a limit of five permits given ~~in any one quarter~~ per permit period as defined in 6-2, and the City Manager shall develop a lottery system for applicants.

No permit shall be given to an applicant who intends to use or has been ~~convicted~~ found in violation of removing fronds or coconuts from city-owned trees or trees located on city property. The City Manager may revoke a permit upon evidence provided at a hearing of a permit holder's violation of this section or any provision of Sections 6-1 through 6-9. ~~The permit fee shall be \$10.00 per quarter.~~

(c) *Exceptions.* This section shall not apply to work conducted for a city purpose by contractors or by city employees or to state agencies performing planting, maintenance, or removal functions with proper authorization.

(d) *Enforcement; penalty.* ~~An alleged violation of this section shall be referred directly to the code enforcement~~

~~special master. When the special master cannot secure compliance, the penalties provided by section 1-15 shall apply.~~ A person charged with violating any provision of this section shall be subject to prosecution and fine under the civil citation procedures of Sections 2-676 through 2-680, or Section 1-15 of the Key West Code of Ordinances or brought before the Special Magistrate under Ch. 162 of Florida Statutes.

Section 2: 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 3: 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 4: 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.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2010.

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

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2010.

Filed with the Clerk _____, 2010.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK