

ORDINANCE NO. 11-11

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTIONS 90-133, 90-136, AND 90-138 TO AMEND NOTICE REQUIREMENTS; BY ADDING SECTION 90-143 TO PROVIDE FOR AN EXPANDED AND CONSISTENT PUBLIC NOTICING PROCESS FOR THE HISTORIC ARCHITECTURAL REVIEW COMMISSION; BY AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES ENTITLED "HISTORIC PRESERVATION" BY AMENDING SECTIONS 102-217 AND 102-251 TO AMEND NOTICE REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, at its meeting of June 29, 2011, the Planning Board reviewed and recommended to the City Commission approval of this amendment to the Code of Ordinances; and

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 90-126 of the Code of Ordinances empowers the historic architectural review commission to preserve the character and appearance of the historic preservation districts of the city as well as the buildings, structures and properties listed in the local register of historic places and the National Register of Historic Places, and buildings, structures, archaeological sites, or districts classified as "contributing"

or "contributing but altered" on the city historic preservation study; and

**WHEREAS,** the historic architectural review commission guidelines, as adopted per Section 90-142, allow the city preservation planner to bring complex projects which substantially alter the exterior appearance of structures or their site and surroundings to the Historic Architectural Review Commission for review at a public meeting; and

**WHEREAS,** actions taken by the historic architectural review commission can be of significant import to surrounding property owners and the public at large; and

**WHEREAS,** Objective 1A-3.2: Public Participation of the adopted Comprehensive Plan states that the city will "provide opportunities for public participation in historic preservation initiatives and activities through public meetings, community workshops, and special events related to historic preservation..."; and

**WHEREAS,** Policy 1A-3.2.1: Advertising Meetings and Scheduling Workshops of the adopted Comprehensive Plan states that "Public participation in the historic preservation planning process shall be encouraged through the advertisement of public meetings and the scheduling of community workshops." And

WHEREAS, the City's certification under the National Historic Preservation Act of 1966, as amended through 2006, requires that the city provide for adequate public participation in the local historic preservation program; and

WHEREAS, existing public notice requirements for historic architectural review commission public meetings are limited in most cases to a newspaper advertisement only; and

WHEREAS, the Planning Board held a noticed public hearing on June 29, 2011 where, based on the consideration of recommendations by the city planner, city attorney, building official and other information, recommended approval of the proposed amendments; and

WHEREAS, the City Commission held a noticed public hearing on July 19, 2011 and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances; and

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 ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 90-133 of the Code of Ordinances is hereby amended as follows\*:

Sec. 90-133. Regular meetings.

The historic architectural review commission shall attempt to convene on a regularly scheduled basis at least once each month. Notice of all meetings will be provided pursuant to Section 90-143. ~~, including the agenda with the address and description of each project, shall be published in a newspaper of general circulation in the city at least five days in advance thereof.~~ At any special or regular meeting the historic architectural review commission may set a future meeting date; however, that meeting must be noticed pursuant to Section 90-143.

Section 2: That Section 90-136 of the Code of Ordinances is hereby amended as follows:

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

Sec. 90-136. Preparation of agenda and minutes.

Minutes shall be kept of all meetings of the historic architectural review commission or committees thereof. All meetings shall be open to the public and, except for emergencies so designated by a majority of the full membership, notice of all meetings shall be published as for a regular meeting, pursuant to Section 90-143 ~~and an agenda for each meeting shall be available to the public at city hall five days in advance thereof.~~

Section 3: That section 90-138 of the Code of Ordinances is hereby amended as follows:

Sec. 90-138. Notice and ability to be heard.

Notice of the date upon which the vote of the historic architectural review commission will be taken shall be provided to the applicant, as shall written notice of the total vote. Applicants shall be given reasonable opportunity to be heard prior to the vote. The historic architectural review commission shall not accept or take action on any application for a certificate of appropriateness for work requiring planning board approval of a major development plan pursuant to sections 108-165 and 108-166, unless the historic architectural review commission first finds that the applicant has ~~, for the two weeks preceding the historic architectural review commission~~

~~meeting, posted on the work site a public notice showing the date and time of the historic architectural review commission meeting at which the application is considered. The size and style of the public notice shall be such that it is readily readable from an adjacent public street, and it shall include the words "public notice" in block lettering three inches or more in height.~~ met the terms of all the requirements of Section 90-143.

Section 4. That section 90-143 is hereby added to the code of ordinances as follows:

Section 90-143. Notice

(a) Scope. The city shall provide notice for all projects that will be reviewed by the historic architectural review commission during their regular meetings in accordance with this section, except as otherwise required or provided by state statute.

(b) Newspaper notice. The city shall publish five days in advance the agenda for all meetings in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter.

(c) Posted notice.

(1) For all projects that are scheduled for review during a public meeting, with the exception of Major Development

Plans and Building Relocations, the city shall provide a completed public notice form to the applicant or the applicant's representative. The notice shall be posted on the subject property, at least five (5) days prior to the relevant scheduled meeting. The notice shall be posted in a location that is visible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height. The applicant or the applicant's representative shall provide a sworn affidavit together with photographic evidence to the historic preservation planner that posting of the notice has been accomplished consistent with this section. Submission shall be made at least 3 days prior to the relevant scheduled meeting of the historic architectural review commission.

(2) For Major Development Plans and Building Relocation projects the city shall provide a completed public notice form to the applicant or the applicant's representative. The notice shall be posted on the subject property at least 14 days prior to the relevant scheduled meeting. The notice shall be posted in a location that is visible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height. The applicant or the applicant's representative shall provide a sworn affidavit together with

photographic evidence to the historic preservation planner that posting of the notice has been accomplished consistent with this section. Submission shall be made at least 10 days prior to the relevant scheduled meeting of the historic architectural review commission.

(d) Content of posted notice. The posted notice required by this section shall contain the date, time and place of the public meeting and a common description of the location of the subject site and the nature of the project.

Section 5. That section 102-217 of the Code of Ordinances is hereby amended as follows:

Sec. 102-217. Required public meetings.

The historic architectural review commission shall not issue a certificate of appropriateness for demolition of a building or structure located in a designated historic zoning district, except after conclusion of two regular historic architectural review commission meetings regarding the application, which shall be at least 14 days apart, and which meetings shall be advertised at least five days in advance in a newspaper of general circulation published in the city. Notice of the meetings shall be published as for a regular meeting, pursuant to Section 90-143. ~~also be posted on site in a conspicuous location at least five days in advance of the~~

~~meeting. The notice shall be posted by the property owner or the property owner's agent. The notice shall be legible from an adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height.~~

Section 6: That section 102-251 of the code of ordinances is hereby amended as follows:

Sec. 102-251. Application and fee.

Application for a certificate of appropriateness for relocating a historic building or structure in the historic district shall be submitted to the historic architectural review commission, together with an application fee as determined by resolution by the city commission. Applications for relocating a historic building or structure shall be reviewed by the historic architectural review commission during a regular meeting. Notice of the meeting shall be published as for a regular meeting, pursuant to Section 90-143.

Section 7: 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 there from and shall be construed as

reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 8: 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.

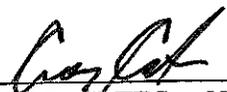
Section 9: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 19th day of July, 2011.

Read and passed on final reading at a regular meeting held this 2nd day of August, 2011.

Authenticated by the presiding officer and Clerk of the Commission on 3rd day of August, 2011.

Filed with the Clerk August 3, 2011.

  
\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

2011 OCT -3 AM 8:16  
CITY OF KEY WEST  
FLORIDA

In re: LAND DEVELOPMENT  
REGULATIONS ADOPTED BY  
CITY OF KEY WEST ORDINANCE  
NO. 11-11

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat., (2010), 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 September 13, 2011 the Department received for review City of Key West Ordinance No. 11-11, which was adopted by the City of Key West City Commission on August 4, 2011, ("Ord. 11-11").
3. The purpose of Ord. 11-11 is to amend Chapter 90 of the Code of Ordinances entitled Administration by amending Sections 90-133, 90-136, and 90-138 to amend Public Notice Requirements; and by adding Section 90-143 to provide for an expanded and consistent public noticing process for the Historical Architectural Review Commission; by amending Chapter 102 entitled Historic Preservation; and by amending Sections 102-217 and 102-251 to amend Notice requirements.
4. Ord. 11-11 is consistent with the City's Comprehensive Plan: Objective 1A-3.2 Public Participation and underlying Policy 1A-3.2.1 that requires the City to provide opportunities for public participation in historic preservation activities and encourages advertisement of public meetings.

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., (2010).

6. The City of Key West is an Area of Critical State Concern. § 380.05, Fla. Stat. (2010) 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. (2010). The regulations adopted by Ord. 11-11 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. 11-11 are consistent the following Principles:

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

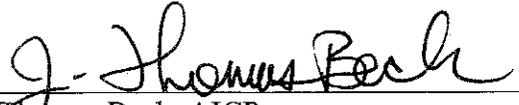
(d) Protection of scenic resources of the City of Key West and promotion of the management of unique tropical vegetation.

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

10. WHEREFORE, IT IS ORDERED that Ord. 11-11 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.



J. Thomas Beck, 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.

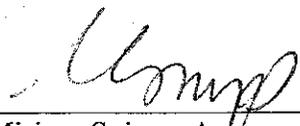
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 28 day of September, 2011.

  
\_\_\_\_\_  
Miriam Snipes, 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

Don Craig  
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



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager  
**Through:** Donald Leland Craig, AICP, Planning Director  
**From:** Enid Torregrosa, Historic Preservation Planner  
**Meeting Date:** July 19, 2011

**RE:** AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTIONS 90-133, 90-136, AND 90-138 TO AMEND NOTICE REQUIREMENTS; BY ADDING SECTION 90-143 TO PROVIDE FOR AN EXPANDED AND CONSISTENT PUBLIC NOTICING PROCESS FOR THE HISTORIC ARCHITECTURAL REVIEW COMMISSION; BY AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES ENTITLED "HISTORIC PROTECTION" BY AMENDING SECTIONS 102-217 AND 102-251 TO AMEND NOTICE REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

### **ACTION STATEMENT:**

Request: Amendments to Noticing Requirements for HARC Items  
Location: Historic Zoning districts and historic and archaeological sites and structures in non-historic zoning districts

**BACKGROUND:** In order to respond to concerns voiced by members of the public and shared by staff, the Planning Department has prepared revisions to the noticing requirements for Historic Architectural Review Commission (HARC) items. Currently, noticing for most items consists solely of a newspaper notice. Unless neighbors and concerned citizens read the notices diligently, they may not know when items are scheduled for hearing. Because HARC decisions are often significant, and because HARC addresses massing and scale issues which are otherwise not readily addressed in development review criteria, the hearings are important to surrounding property owners and residents.

The revisions require any item appearing before the commission to be posted on site. The revisions also address other areas in the code to ensure consistency with the posting requirements.

The Planning Department believes that improving HARC noticing will complement other changes implemented over the last year by staff, including the provision of staff reports and application packages for each application as well as online publication of the agenda and packages.

**Previous City Actions:** The Planning Board recommended approval of the draft ordinance on June 29, 2011.

**Process:** The ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the DCA, who will have 60 days to issue an order of consistency. A draft and the final version of the 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.

**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 staff report and associated resolution constitute the review as required under this subsection.

**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.**

The City's Comprehensive Plan specifically addresses the importance of public participation in the historic preservation process, including the following:

- Objective 1A-3.2: PUBLIC PARTICIPATION. of the adopted Comprehensive Plan states that the city will "provide opportunities for public participation in

historic preservation initiatives and activities through public meetings, community workshops, and special events related to historic preservation. . .”

- Policy 1A-3.2.1: Advertising Meetings and Scheduling Workshops. of the adopted Comprehensive Plan states that “ Public participation in the historic preservation planning process shall be encouraged through the advertisement of public meetings and the scheduling of community workshops.”

This ordinance will improve site specific noticing and should increase public knowledge about individual applications heard by HARC.

Because the proposed ordinance does not impact density or intensity, it will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan.

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

The proposed ordinance is in conformance with applicable requirements of the Land Development Regulations.

**(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.**

There are no changed conditions or regulations associated with the ordinance.

**(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 proposed ordinance will have no direct impact on land uses.

**(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.**

The proposed ordinance will have no impact on concurrency requirements or the provision of public facilities.

**(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 proposed ordinance will have no impact on natural resource protection.

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

This proposal is not expected to have an adverse effect on the property values in the area or upon the general welfare. Actions which are intended to protect the historic fabric tend to maintain and increase property values, since historic districts and buildings are unique and tend to have higher real estate values than the rest of the City.

**(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 proposed ordinance is intended to address HARC noticing and will have no direct impact on land use.

**(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 appears to support the public interest and is in harmony with the purpose and intent of the land development regulations.

**(10) *Other matters.* Other matters which the planning board and the city commission may deem appropriate.**

Efforts to increase public awareness of HARC decisions is an important step in enhancing public information and transparency associated with city boards and commissions.

**Options/Advantages/Disadvantages:**

**Option 1:** Approve the proposed ordinance.

- 1. Consistency with the City's Strategic Plan, Vision, and Mission:** The Strategic Plan is silent on the issues pertaining to the ordinance.
- 2. Financial Impact:** Additional staff time to post impacted properties will be required; however, no additional staff will be hired to accomplish the posting.

**Option 2:** Do not approve the proposed ordinance.

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The Strategic Plan is silent on the issues pertaining to the ordinance.
  
2. **Financial Impact:** There is no direct financial impact to the city if the ordinance is not adopted.

**Recommendation**

The Planning Department recommends **approval** of Option 1.

RESOLUTION NUMBER 2011-030

A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING APPROVAL OF AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTIONS 90-133, 90-136, AND 90-138 TO AMEND NOTICE REQUIREMENTS; BY ADDING SECTION 90-143 TO PROVIDE FOR AN EXPANDED AND CONSISTENT PUBLIC NOTICING PROCESS FOR THE HISTORIC ARCHITECTURAL REVIEW COMMISSION; BY AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES ENTITLED "HISTORIC PROTECTION" BY AMENDING SECTIONS 102-217 AND 102-251 TO AMEND NOTICE REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning Department prepared an amendment to the Land Development Regulations to provide for consistent noticing of applications heard by the Historic Architectural Review Commission;

WHEREAS, the Planning Board held a noticed public hearing on June 29, 2011, where based on the consideration of recommendations by the city planner, city attorney, building official and other information, the Board recommended approval of the proposed amendments; and

WHEREAS, the Planning Board 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

  
Chairman  
  
Planning Director

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.

**BE IT RESOLVED** by the Planning Board of the City of Key West, Florida:

**Section 1.** That the above recitals are incorporated by reference as if fully set forth herein.

**Section 2.** That AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTIONS 90-133, 90-136, AND 90-138 TO AMEND NOTICE REQUIREMENTS; BY ADDING SECTION 90-143 TO PROVIDE FOR AN EXPANDED AND CONSISTENT PUBLIC NOTICING PROCESS FOR THE HISTORIC ARCHITECTURAL REVIEW COMMISSION; BY AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES ENTITLED "HISTORIC PROTECTION" BY AMENDING SECTIONS 102-217 AND 102-251 TO AMEND NOTICE REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE is hereby recommended for approval; a copy of the draft ordinance is attached.

**Section 3.** This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Page 2  
Resolution Number 2011-030

  
Chairman

  
Planning Director

Read and passed on first reading at a special meeting held this 29th day of June, 2011.

Authenticated by the Chairman of the Planning Board and the Planning Director.



Richard Klitenick -Chairman  
Key West Planning Board

7/20/11

Date

Attest:

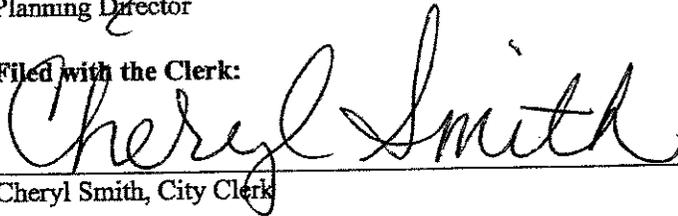


Donald Leland Craig, AICP  
Planning Director

7/20/11

Date

Filed with the Clerk:



Cheryl Smith, City Clerk

7-20-11

Date

 Chairman

 Planning Director

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTIONS 90-133, 90-136, AND 90-138 TO AMEND NOTICE REQUIREMENTS; BY ADDING SECTION 90-143 TO PROVIDE FOR AN EXPANDED AND CONSISTENT PUBLIC NOTICING PROCESS FOR THE HISTORIC ARCHITECTURAL REVIEW COMMISSION; BY AMENDING CHAPTER 102 OF THE CODE OF ORDINANCES ENTITLED "HISTORIC PROTECTION" BY AMENDING SECTIONS 102-217 AND 102-251 TO AMEND NOTICE REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR 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 90-126 of the Code of Ordinances empowers the historic architectural review commission to preserve the character and appearance of the historic preservation districts of the city as well as the buildings, structures and properties listed in the local register of historic places and the National Register of Historic Places, and buildings, structures, archaeological sites, or districts classified as "contributing" or "contributing but altered" on the city historic preservation study; and

WHEREAS, the historic architectural review commission

guidelines, as adopted per Section 90-142, allow the city preservation planner to bring complex projects which substantially alter the exterior appearance of structures or their site and surroundings to the Historic Architectural Review Commission for review at a public meeting; and

**WHEREAS,** actions taken by the historic architectural review commission can be of significant import to surrounding property owners and the public at large; and

**WHEREAS,** Objective 1A-3.2: Public Participation of the adopted Comprehensive Plan states that the city will "provide opportunities for public participation in historic preservation initiatives and activities through public meetings, community workshops, and special events related to historic preservation..."; and

**WHEREAS,** Policy 1A-3.2.1: Advertising Meetings and Scheduling Workshops of the adopted Comprehensive Plan states that "Public participation in the historic preservation planning process shall be encouraged through the advertisement of public meetings and the scheduling of community workshops." and

**WHEREAS,** the City's certification under the National Historic Preservation Act of 1966, as amended through 2006, requires that the city provide for adequate public participation in the local historic preservation program; and

**WHEREAS,** existing public notice requirements for historic

architectural review commission public meetings are limited in most cases to a newspaper advertisement only; and

**WHEREAS**, the Planning Board held a noticed public hearing on \_\_\_\_\_, 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 \_\_\_\_\_ 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 ORDAINED BY THE CITY OF KEY WEST, FLORIDA:**



Section 1: That Section 90-133 of the Code of Ordinances is hereby amended as follows\*:

**Sec. 90-133. Regular meetings.**

The historic architectural review commission shall attempt to convene on a regularly scheduled basis at least once each month. Notice of all meetings will be provided pursuant to Section 90-143. ~~, including the agenda with the address and description of each project, shall be published in a newspaper of general circulation in the city at least five days in advance thereof.~~ At any special or regular meeting the historic architectural review commission may set a future meeting date; however, that meeting must be noticed pursuant to Section 90-143.

Section 2: That Section 90-136 of the Code of Ordinances is hereby amended as follows:

**Sec. 90-136. Preparation of agenda and minutes.**

Minutes shall be kept of all meetings of the historic architectural review commission or committees thereof. All

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

meetings shall be open to the public and, except for emergencies

so designated by a majority of the full membership, notice of all meetings shall be published as for a regular meeting, pursuant to Section 90-143 ~~and an agenda for each meeting shall be available to the public at city hall five days in advance thereof.~~

Section 3: That section 90-138 of the Code of Ordinances is hereby amended as follows:

**Sec. 90-138. Notice and ability to be heard.**

Notice of the date upon which the vote of the historic architectural review commission will be taken shall be provided to the applicant, as shall written notice of the total vote. Applicants shall be given reasonable opportunity to be heard prior to the vote. The historic architectural review commission shall not accept or take action on any application for a certificate of appropriateness for work requiring planning board approval of a major development plan pursuant to sections 108-165 and 108-166, unless the historic architectural review commission first finds that the applicant has ~~, for the two weeks preceding the historic architectural review commission meeting, posted on the work site a public notice showing the date and time of the historic architectural review commission meeting at which the application is considered. The size and style of the public notice shall be such that it is readily~~

~~readable from an adjacent public street, and it shall include the words "public notice" in block lettering three inches or more in height.~~ met the terms of all the requirements of Section 90-143.

Section 4. That section 90-143 is hereby added to the code of ordinances as follows:

Section 90-143. Notice

(a) Scope. The city shall provide notice for all projects that will be reviewed by the historic architectural review commission during their regular meetings in accordance with this section except as otherwise required or provided by state statute.

(b) Newspaper notice. The city shall publish five days in advance the agenda for all meetings in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter.

(c) Posted notice.

(1) For all projects that are scheduled for review during a public meeting, with the exception of Major Development Plans and Building Relocations, the city shall provide a completed public notice form to the applicant or the applicant's representative. The notice shall be posted on the subject property, at least five (5) days prior to the relevant scheduled

meeting. The notice shall be posted in a location that is visible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height. The applicant or the applicant's representative shall provide a sworn affidavit together with photographic evidence to the historic preservation planner that posting of the notice has been accomplished consistent with this section. Submission shall be made at least 3 days prior to the relevant scheduled meeting of the historic architectural review commission.

(2) For Major Development Plans and Building Relocation projects the city shall provide a completed public notice form to the applicant or the applicant's representative. The notice shall be posted on the subject property at least 14 days prior to the relevant scheduled meeting. The notice shall be posted in a location that is visible from the adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public notice" in letters three inches or more in height. The applicant or the applicant's representative shall provide a sworn affidavit together with photographic evidence to the historic preservation planner that posting of the notice has been accomplished consistent with this section. Submission shall be made at least 10 days prior to the relevant scheduled meeting of the historic architectural review

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commission.

(d) Content of posted notice. The posted notice required by this section shall contain the date, time and place of the public meeting and a common description of the location of the subject site and the nature of the project.

Section 5. That section 102-217 of the Code of Ordinances is hereby amended as follows:

**Sec. 102-217 Required public meetings.**

The historic architectural review commission shall not issue a certificate of appropriateness for demolition of a building or structure located in a designated historic zoning district, except after conclusion of two regular historic architectural review commission meetings regarding the application, which shall be at least 14 days apart, and which meetings shall be advertised at least five days in advance in a newspaper of general circulation published in the city. Notice of the meetings shall be published as for a regular meeting, pursuant to Section 90-143. ~~also be posted on site in a conspicuous location at least five days in advance of the meeting. The notice shall be posted by the property owner or the property owner's agent. The notice shall be legible from an adjacent public street. The notice shall contain block lettering on a high contrast background color with the words "public~~

~~notice" in letters three inches or more in height.~~

Section 6: That section 102-251 of the code of ordinances is hereby amended as follows:

Sec. 102-251 Application and fee.

Application for a certificate of appropriateness for relocating a historic building or structure in the historic district shall be submitted to the historic architectural review commission, together with an application fee as determined by resolution by the city commission. Applications for relocating a historic building or structure shall be reviewed by the historic architectural review commission during a regular meeting. Notice of the meeting shall be published as for a regular meeting, pursuant to Section 90-143.

Section 7: 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 there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 8: 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 9: 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 and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Filed with the Clerk \_\_\_\_\_, 2011.

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

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CHERYL SMITH, CITY CLERK