

ORDINANCE NO. 07-08

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 2-939 "LICENSES" TO AUTHORIZE THE CHIEF BUILDING OFFICIAL TO PERMIT THE REVOCABLE USE OF CITY PROPERTY FOR AWNINGS UNDER SPECIFIED CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission desires to amend the Code of Ordinances to allow for the revocable use of City property for the purpose of allowing awnings to encroach into City owned airspace under specified conditions;

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

Section 1: That Section 2-939 of the Code of Ordinances is hereby amended as follows\*:

**Sec. 2-939. Licenses.**

- (a) The city may grant a revocable license for a nonpermanent use of city property. A revocable license shall be revocable at the will of the city.
- (b) A nonpermanent use may include but not be limited to planters, awnings, trash receptacles, planted areas, benches,

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

flagpoles, guardrails, ramps and light fixtures, but shall not include buildings or accessory structures affixed to real property.

- (c) Except for the procedure specified for awnings described in paragraph (e) below, ~~¶~~the same notice requirements pertaining to applications for easement in section 2-938(a)(1) and (2) shall apply to applications for a revocable license.
- (d) Except for a license issued in accordance with paragraph (e) below, if the city grants an applicant's request for a license, the applicant shall pay an annual fee to the city in the amount of \$200.00. This fee shall be prorated based on the effective date of the license. The applicant shall pay the fee each subsequent year the license is in effect.
- (e) The Chief Building Official is authorized to issue a revocable license which allows a non-permanent use of city airspace for an awning under the following circumstances:
  - (1) The applicant has obtained, or will obtain contemporaneously with the request for a non-permanent use of City airspace, a properly issued building permit for such awning; and
  - (2) The applicant shall obtain HARC approval where applicable; and

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

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(3) Unless the circumstances dictate that stricter standards are applicable under the Florida building code, the awning may extend across the front of a building and may only project a maximum of two-thirds (2/3) of the width of a sidewalk, or, to within eighteen (18) inches of the face of the curb, whichever is less. There shall be a minimum eight (8) feet of clearance between the lowest point or projection of the awning and a sidewalk or public travelway immediately below. Any valance attached to an awning shall not project above the top surface of the awning. In no event shall a permit be issued that will adversely impact vehicular or pedestrian traffic and determined by the Chief Building Official in conjunction with the City Engineering Department; and

(4) Prior to the issuance of a permit, the applicant shall furnish the Chief Building Official with a signed and notarized statement that the permittee shall hold harmless and indemnify the city, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit; and

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(5) Permittee shall furnish and maintain such public liability and property damage insurance protecting the city from all claims and damage to property or bodily injury, including death, which may arise from the existence of the awning. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) for bodily injury and property damage respectively, per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the city, its officers and employees and shall further provide that the policy shall not terminate or be cancelled without forty-five (45) days' written notice to the Chief Building Official, sent via certified mail; and

(6) If found to be necessary by the city for the protection of the health, safety and welfare of the public, awnings shall be immediately removed upon the request of the city and in the event an awning is not removed or due to an emergency the city finds it necessary to act immediately, the city may remove same

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and shall not be responsible for damage incurred due to such removal. The costs incurred by the city associated with any such removal shall be borne by the permittee.

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.

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Read and passed on first reading at a regular meeting held  
this 19 day of June, 2007.

Read and passed on final reading at a regular meeting held  
this 3 day of July, 2007.

Authenticated by the presiding officer and Clerk of the  
Commission on 9 day of July, 2007.

Filed with the Clerk July 9, 2007.

  
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MORGAN McPHERSON, MAYOR

ATTEST:

  
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CHERYL SMITH, CITY CLERK