

ORDINANCE NO. 06-14

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, REVISING ORDINANCES PERTAINING TO THE KEY WEST HISTORIC ARCHITECTURAL REVIEW COMMISSION ("HARC") BY AMENDING CHAPTER 90 ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-127 TO CLARIFY THE ROLE OF THE MAYOR IN NOMINATING HARC MEMBERS, TO CORRECT A NAME, TO ADD THE OLD ISLAND RESTORATION FOUNDATION TO THE LIST OF NOMINATING ENTITIES AND TO REMOVE THE RESTRICTION ON THE APPOINTMENT OF AN ARCHITECT; BY AMENDING SECTION 90-141 TO CONFORM HARC PERSONNEL; BY AMENDING SECTION 90-431 TO CLARIFY THE DE NOVO SCOPE OF REVIEW OF THE SPECIAL MAGISTRATE IN APPEALS FROM HARC; BY AMENDING CHAPTER 102 ENTITLED "HISTORIC PRESERVATION" BY AMENDING SECTION 102-1, DEFINITIONS, TO CLARIFY THE MEANINGS OF CONTRIBUTING, NON-CONTRIBUTING AND HISTORIC BUILDINGS; BY AMENDING SECTION 102-62 TO PROVIDE A PROCEDURE FOR THE CONVERSION OF NON-CONTRIBUTING TO CONTRIBUTING BUILDINGS; BY AMENDING SECTION 102-63 TO ADD NEIGHBORHOOD ASSOCIATIONS TO THE LIST OF GROUPS THAT MAY NOMINATE A BUILDING FOR HISTORIC STATUS; BY AMENDING SECTION 102-125 TO CLARIFY THE MEANING OF A FINDING OF NO CONTRIBUTING VALUE; BY AMENDING SECTION 102-159 TO PROVIDE A TIME OF EXPIRATION TO A CERTIFICATE OF APPROPRIATENESS; BY AMENDING SECTIONS 102-216 AND 102-217 TO CLARIFY THAT ALL PROPOSED DEMOLITIONS OF BUILDINGS LOCATED IN THE HISTORIC DISTRICT SHALL BE SUBMITTED TO HARC, AND TO PROVIDE FOR ADDITIONAL ON-SITE NOTICE; BY AMENDING SECTION 102-218 REGARDING DEMOLITIONS TO EXTEND ITS APPLICATION TO ALL BUILDINGS IN THE HISTORIC DISTRICT AND TO SIMPLIFY ITS CRITERIA; AMENDING SECTION 102-220 TO CORRECT A NAME; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, from time to time, pursuant to section 90-146 of the Code of Ordinances, HARC recommends a revision to the City Commission of its governing ordinances; and

WHEREAS, at a special meeting of HARC on May 16, 2006, HARC reviewed and recommended the enclosed revision; and

WHEREAS, pursuant to section 90-55(3) of the Code of Ordinances, at its regular meeting of June 22, 2006, the Key West Planning Board found the enclosed revision to be consistent with the Key West Comprehensive Plan; and

WHEREAS, the City Commission finds that the proposed revision to HARC's governing ordinances would promote the health, safety and welfare of the citizens of Key West;

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

Section 1: That section 90-127 of the Code of Ordinances is hereby amended as follows*:

Sec. 90-127. Membership, terms and removal.

(a) The historic architectural review commission shall consist of five residents of the city who shall be appointed by the city commission. Appointments shall be made for a term of two

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

years and shall be made on a staggered basis of no more than two appointments per year. ~~No member who is an architect shall serve consecutive terms.~~ The city commission may appoint two alternate members to serve at meetings of the historic architectural review commission when the absence of a regular member occurs.

Appointments to replace a vacating member shall be for the unexpired term of the member.

(b) The mayor shall nominate candidates and the city commission ~~mayor, with the advice and consent of the city commission,~~ shall appoint members from lists of nominees provided by the Key West Art and Historical Society, Old Island Restoration Foundation and the Historic Florida Keys Preservation Foundation ~~Board of Trustees~~, unless the mayor finds that an unlisted nominee is better qualified. One member shall be an architect registered in the United States, preferably retired or not practicing in the city. Where possible, other members shall have experience, expertise or demonstrated interest in one of the following areas: architecture, history, architectural history, archaeology, urban planning, historic preservation, real estate, law, cultural anthropology, or building construction. The city commission may evaluate applicants by using the Florida Certified Local Government Guidelines, a copy of which shall be maintained in the office of the city clerk. Additionally, the mayor shall

designate a liaison to the historic architectural review commission from among the city commissioners.

(c) All members shall serve at the pleasure of the city commission and may be removed by majority vote of its full membership. All provisions of division 2 of article V of chapter 2 are applicable to members of the historic architectural review commission.

Section 2. That section 90-141 of the Code of Ordinances is hereby amended as follows:

Sec. 90-141. Personnel.

(a) The city manager shall provide sufficient funds within the general fund that will provide a professional historic preservation planner, a clerk ~~secretarial support~~ and one full-time inspector for the historic architectural review commission and shall cause the minutes of all meetings of the historic architectural review commission to be recorded and transcribed in summary form, subject to historic architectural review commission approval.

(b) The city attorney shall serve as legal counsel to the historic architectural review commission on all matters.

(c) When the historic architectural review commission considers applications for certificates of appropriateness or other formal actions that impact properties which are normally evaluated

by a professional in a specific discipline, and that discipline is not represented on the historic architectural review commission, the historic architectural review commission shall seek input from a professional in this discipline before rendering a decision. Failure to obtain such advice shall not invalidate its decision.

Section 3. That section 90-431 of the Code of Ordinances is hereby amended as follows:

Sec. 90-431. Procedures for rendering decisions.

In considering and acting upon appeals of final decisions of the planning board, the historic architectural review commission, or the tree commission, as well as final orders and questions of interpretation and enforcement of the land development regulations and the building codes by the chief building official, the following procedures shall be observed:

(1) *Procedure and time limitation for appeal.* An appeal to the city commission or the special ~~master~~ magistrate, as the case may be, shall be taken within ten days after the date of the order by the planning board or the historic architectural review commission to which the appeal is directed. An appeal to the board of adjustment shall be taken ten days after the date of the order or the administrative action of the tree commission, chief

building official, or other administrative official to which the appeal is directed. For purposes of computing the time for filing an appeal, rendition of an order, requirement, decision or determination by the planning board, the historic architectural review commission, the tree commission, the chief building official, or other administrative official shall be the date at which a written, dated and signed instrument expressing such decision is filed with the city clerk. The original and one copy of the notice of appeal on a form provided by the city clerk, together with all the documents, plans, papers or other materials constituting the record upon which the action appealed from was taken, shall be filed with the city clerk who shall provide copies thereof to the presiding officer of the city commission, the board of adjustment or the special ~~master~~ magistrate, as appropriate, and to the city manager and city attorney. Appeals not so filed shall be deemed waived.

(2) *Date of hearing for appeals.* Hearings of appeals by the city commission as well as the board of adjustment or special ~~master~~ magistrate shall be held at a date and time fixed by the city manager and shall in no event be less than ~~30~~ 15 or more than 60 days after the filing of the notice of appeal.

(3) *Notice.* Upon notification by the city manager of the date fixed for hearing on any matter subject to this division, the city clerk shall cause notice pursuant to division 2 of article

VIII of chapter 90. The city clerk shall also forward by certified mail, return receipt requested, similar notices setting forth the time, place and purpose of the hearing to the following:

- a. The appellant.
- b. The administrative official.
- c. The owner of the property described in the application, if other than the appellant.

(4) *Scope of review by city commission, board of adjustment, and special ~~master~~ magistrate.* In reviewing final orders, requirements, decisions or determinations of boards, commissions, and the chief building official, upon appeal thereof in conformity with this division, the city commission as well as the board of adjustment shall be limited to review of the documents, plans, papers or other materials constituting the record upon which the action was taken. The city commission and board of adjustment, may, upon appeal, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination made by the planning board, the tree commission, the chief building official, or other administrative official and may make any necessary further order, requirements, decisions or determinations respecting the subject of the appeal and, to that end, shall have all the powers of the planning board, the tree commission, the chief building official, and/or other administrative official

respecting such matter. The concurring vote of no less than four members of the city commission or the board of adjustment shall be necessary to reverse or modify any order, requirement, decision or determination of the planning board, the tree commission, the chief building official, and/or other administrative official. The special ~~master~~ magistrate shall have *de novo* review of the record in appeals from the historic architectural review commission; provided, however, that the term *de novo* shall not be interpreted to allow the introduction of new evidence that was not introduced in the initial proceedings of the historic architectural review commission, unless in the discretion of the special magistrate an additional presentation of evidence is equitable, necessary and limited in order to supplement the record.

(5) *Appearance and argument.* At any hearing upon any matter subject to the land development regulations, the appellant seeking review by the city commission, the board of adjustment or the special ~~master~~ magistrate, and any other party desiring to be heard may appear in person, by agent or by attorney. The appellant shall be entitled to make an initial presentation respecting the appeal and, at the conclusion of presentations or statements by all other parties, shall be entitled to offer a statement in rebuttal to such presentations if the appellant so desires. The presiding officer may, at the commencement of the hearing or at any time during such hearing, require that parties desiring to make a

presentation identify themselves and may specify the time to be allowed for each party to make such presentation.

(6) *Effect of appeal and stay of proceedings.* An appeal to the city commission, the board of adjustment or the special ~~master~~ magistrate shall, upon filing, stay all work on the premises and all proceedings in furtherance of the order, requirement, decision or determination appealed from, unless the building official shall certify to the city commission or the board of adjustment, as appropriate, that, because of facts stated in the certificate, a stay would cause immediate peril to life or property, in which case proceedings or work shall not be stayed except by a restraining order granted by the city commission for due cause shown after notice to the party filing the appeal and to the administrative official. Nothing in this subsection shall be deemed to impair the authority of any court of competent jurisdiction to enjoin or stay actions of the administrative official, the city commission, the board of adjustment or the special ~~master~~ magistrate.

Section 4. That section 102-1 of the Code of Ordinances is hereby amended as follows:

Sec. 102-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * * *

Noncontributing building or structure means a building that contributes less or not at all to the character of the historic district because it is too recently built, too highly altered, or it is irrevocably compromised by extreme deterioration.

* * * *

Section 5. That section 102-62 of the Code of Ordinances is hereby amended as follows:

Sec. 102-62. Classification of structures and buildings.

All historic buildings, structures, archaeological sites, districts, neighborhoods, and the like will be classified and designated on the city historic preservation survey, which will be approved by the city commission and shall be made an overlay to the city zoning map and land use plan. Such buildings, structures, districts, neighborhoods, and the like will be divided into two classes as follows:

(1) *Contributing.* Those buildings, structures, archaeological sites, or districts classified as historic shall possess identified historical or architectural merit of a degree warranting their preservation. All buildings, structures, archeological sites, and the like, listed in the city historic preservation survey, as adopted and approved by the city commission, will be considered worthy of preservation and may be designated as a historic site or a historic district.

(2) *Noncontributing.* Noncontributing classes are those buildings and structures within a historic district not listed in the city historic preservation survey and those buildings and structures determined by the historic architectural review commission to be of no contributing value pursuant to article III of this chapter.

(3) If due to the passage of time, a noncontributing building or structure would become contributing, then the historic architectural review commission shall determine its contributing status and forward the property to the city commission for inclusion in the historic resources inventory. The historic architectural review commission's determination shall be made at a public hearing upon at least ten days' written notice to the property owner.

Section 6. That section 102-63 is hereby amended as follows:

Sec. 102-63. Review of buildings, structures, archaeological sites, interiors or district nominations.

* * * *

(b) *Nomination source.* Nominations for building, structure, archaeological site, interior, or district designation shall be made to the historic architectural review commission on an application form developed and approved by the historic architectural review commission and made available to the nominating person. Nominations are initiated as follows:

(1) Nominations for historic site or interior status may be initiated by the historic architectural review commission, the city commission, or the property owner.

(2) Nominations for historic district status may be initiated by the historic architectural review commission, ~~or~~ the city commission, or a neighborhood association.

(3) Any city resident may make a recommendation only, and submit the recommendation to the historic architectural review commission that any building, structure, archaeological site, or district should be designated as a historic site or district.

(c) *Nomination application.* A property owner, the historic architectural review commission or the city commission, making a nomination for historic site designation, is responsible for completing the application form and submitting it along with any nomination fee or charges to the historic architectural review commission. The historic architectural review commission may require the property owner who initiates a nomination application form to provide any documentation or supporting evidence it deems necessary.

* * * *

Section 7. That section 102-125 of the Code of Ordinances is hereby amended as follows:

Sec. 102-125. Historic architectural review commission findings precedent to issuance.

Upon conclusion of the hearings and the historic architectural review commission's deliberations, the historic architectural review commission shall issue the certificate of no contributing value only if it finds, by clear and convincing evidence, that the building or structure, by virtue of its design, workmanship, materials, setting, and/or history+ does not meet any of the nine criteria set forth below. The building or structure:

(1) Embodies no distinctive characteristics of a type, period, or method of construction of aesthetic or historic significance in the city and is not a significant and distinguishable building entity whose components may lack individual distinction;

(2) Is not specifically associated with events that have made a significant contribution to local, state, or national history;

(3) Has no significant character, interest, or value as part of the development, heritage, or cultural characteristics of the city, state or nation, and is not associated with the life of a person significant in the past;

(4) Is not the site of a historic event with a significant effect upon society;

(5) Does not exemplify the cultural, political, economic, social, or historic heritage of the city;

(6) Does not portray the environment in an era of history characterized by a distinctive architectural style;

(7) If a part of or related to a square, park, or other distinctive area, nevertheless should not be developed or preserved according to a plan based on the area's historic, cultural, natural, or architectural motif;

(8) Does not have a unique location or singular physical characteristic which represents an established and familiar visual feature of its neighborhood or of the city, and does not exemplify the best remaining architectural type in a neighborhood; and

(9) Has not yielded, and is not likely to yield, information important in history.

Section 8. That section 102-159 is hereby added to the Code of Ordinances as follows:

Sec. 102-159. Expiration.

A certificate of appropriateness shall expire two years from the date of its approval if the work has not commenced under a duly issued building permit. Upon application of the property owner, the historic architectural review commission, or its designee, may extend a certificate of appropriateness for a specified period of time not to exceed two years upon a finding of no substantially changed circumstances.

Section 9. That section 102-216 of the Code of Ordinances is hereby amended as follows:

Sec. 102-216. Submission of application to historic architectural review commission.

Application for a certificate of appropriateness for any demolition of a designated historic sites, historic interiors, or

buildings, or structures or appurtenances located within the a
designated historic zoning districts shall be submitted by the
property owner to the historic architectural review commission.

Section 10. 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 historic
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 meeting shall
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 12. That section 102-218 of the Code of Ordinances is hereby amended as follows:

Sec. 102-218. Criteria for review of applications demolitions.

~~Prior to issuing a certificate of appropriateness for an application for demolition, the historic architectural review commission shall render a finding that the proposed demolition is in compliance with the following guidelines:~~

~~(1) The requested demolition will not alter the essential character and integrity of a building and the district in which it is located, nor will the demolition remove a distinguishing architectural character of the subject vicinity or impose a conspicuous void. In considering this factor, the historic architectural review commission shall determine whether:~~

~~a. The structure or structural component to be demolished is a secondary structure.~~

~~b. The structure or structural components to be demolished lack historical, engineering, or architectural significance.~~

~~c. The structure or the structural component to be demolished does not comprise a major portion of a historical site.~~

~~d. Persuasive evidence exists demonstrating that retention of the structure or structural components scheduled for demolition is not technically or economically feasible.~~

~~e. The structure or structural component to be demolished is an important addition to a structure that enhanced the significance of the original structure or the structure or structural component to be demolished is a nonsignificant addition that:~~

~~1. Is less than 50 years old;~~

~~2. Does not exhibit stylistic details or fine workmanship or materials;~~

~~3. Was added after the period of significance of the building or district;~~

~~4. Is so deteriorated that it would require reconstruction; or~~

~~5. Obscures earlier significant features.~~

~~(2) Whether the structure or structural component to be demolished is an important addition to a structure which enhanced the significance of the original structure.~~

~~(3) Whether the building or structure is listed as a contributing structure in the historic district inventory, in which case demolition may not be allowed.~~

~~(4) Whether the building or structure, under the land development regulations, merits issuance of a certificate of no contributing value, in which case demolition may be allowed.~~

~~(5) Whether plans for the affected property have been approved by the historic architectural review commission in accordance with the land development regulations, which is a prerequisite for approval of demolition of any building or structure in the historic zoning districts.~~

~~(6) Identify, retain and preserve buildings which are important in defining the overall historic character of a historic district or neighborhood.~~

~~(7) Retain the historic relationship between buildings, landscape and streetscape features.~~

~~(8) Remove nonsignificant buildings, additions, or site features which detract from the historic character of a site or the surrounding district or neighborhood.~~

(a) The historic architectural review commission shall issue a certificate of appropriateness for an application for demolition:

(1) If the subject of the application is a contributing or historic building or structure, then it should not be demolished unless its condition is irrevocably compromised by extreme deterioration or it does not meet any of the criteria of section 102-125(1)-(9).

(2) For a contributing historic or noncontributing building or structure, a complete construction plan for the site is approved by the historic architectural review commission.

(b) The historic architectural review commission shall ~~(9)~~ Avoid the following removal activities not issue permits that would result in:

a.(1) Removing buildings or structures that ~~which~~ are important in defining the overall historic character of a district or neighborhood so that the character is diminished;

b.(2) Removing historic buildings or structures and thus destroying the historic relationship between buildings, ~~features~~ or structures and open space; and

c.(3) Removing an historic building or structure in a complex; or removing a building facade; or removing a significant later addition ~~which~~ that is important in defining the historic character of a site or the surrounding district or neighborhood.

(4) Removing buildings or structures that would otherwise qualify as contributing, as set forth in section 102-62(3).

(c) Nothing in this section is intended to alter the authority of the Building Official to condemn for demolition dangerous buildings, as provided in chapter 14 of the code of ordinances.

Section 12. That section 102-220 is hereby amended as follows:

Sec. 102-220. Approval of certificate of appropriateness.

* * * *

(d) *Special historic architectural review commission requests precedent to demolition.* The historic architectural review commission may, with the consent of the property owner, request that the owner, at the owner's expense, salvage and preserve specified classes of building materials, architectural details and ornaments, fixtures and the like for reuse in the restoration of other historic properties. The historic architectural review commission may, with the consent of the property owner, request that the Historic Florida Keys Preservation Foundation Board

~~(HEKPB)~~ or the owner, at the owner's expense, record the architectural details for archival purposes prior to demolition. The recording may include but shall not be limited to photographs, videotaping, documents, and scaled architectural drawings. At the historic architectural review commission's option, and with the property owner's consent, the historic architectural review commission or the Historic Florida Keys ~~Preservation~~ Foundation Board may salvage and preserve building materials, architectural details, and ornaments, textures, and the like at its expense, respectively.

Section 13. 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 14. 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 15. 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 18 day of July, 2006.

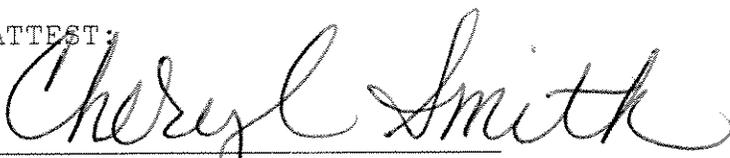
Read and passed on final reading at a regular meeting held this 1 day of August, 2006.

Authenticated by the presiding officer and Clerk of the Commission on 2 day of August, 2006.

Filed with the Clerk August 2, 2006.



MORGAN MCPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK