

ORDINANCE NO. 09-05

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTION 90-140 AND 90-142 CLARIFYING THE PROCESS FOR ADOPTING REVISIONS TO THE HISTORIC ARCHITECTURAL REVIEW COMMISSION DESIGN GUIDELINES; 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, Ordinance 02-12 provided for the adoption of Guidelines of the Historic Architectural Review Commission and a reference to the adoption was incorporated into Section 90-142 of the Land Development Regulation part of the Code of Ordinances; and

WHEREAS, the incorporation by reference of adopted design guidelines in the land development regulations requires modifications to the guidelines to be adopted as amendments to the land development regulations;

WHEREAS, Section 90-140 implies that revisions to the design guidelines can occur without amending the land development regulations which is in conflict with Section 90-142; and

WHEREAS, clarification of the process for revision is necessary to ensure that modifications to the design guidelines are adopted by ordinance and that revisions are processed per the existing procedures for amending the land development regulations as established in Division 2. Land Development Regulations Amendments, Subdivision 2, Procedure; and

WHEREAS, the Planning Board held a noticed public hearing on _____, where based on
February 19, 2009

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 4-7-09 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 COMMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. **Chapter 90, Administration, Division 4, Historic Architectural Review Commission Section 90-140 is hereby amended as follows: Sec. 90-140. Revisions to rules of procedure and design guidelines.** From time to time and by October 1 of each year, the historic architectural review commission shall recommend to the city commission regulations for the conduct of its business ~~and/or design guidelines~~ which guide the historic architectural review commission decisions, which recommendation shall govern the historic architectural review commission upon approval or amendment by the city commission or upon the expiration of 45 days without final city commission action thereon. The rules are at all times subject to amendment by the city commission.

Section 2. Chapter 90, Administration, Division 4, Historic Architectural Review Commission, Section 90-142, is hereby modified as follows: The Historical Architectural

Commission Design Guidelines, as amended from time to time per the procedures specified in Sections 90-516 through 90-524 including amendments, as attached to Ordinance No. 02-12, are hereby ~~adopted~~ incorporated by reference. The guidelines shall be kept on file at both the city clerk's office and the building department.

Section 6. **Effective Date.** 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 regular meeting held this 17th day of March, 2009.

Read and passed on final reading at a regular meeting held this 7th day of April, 2009.

Authenticated by the presiding officer and Clerk of the Commission on 8th day of April, 2009.

Filed with the Clerk April 8, 2009.


MORGAN MCPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

K:\LDR Amendments\021909 - Ordinance HARC Guidelines Amendments.doc

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 09-05

2009 MAY -1 AM 11:39
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.*, (2008), 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 April 14, 2009 the Department received for review City of Key West Ordinance No. 09-05, which was adopted by the City of Key West City Commission on April 8, 2009, ("Ord. 09-05"). The purpose of Ord. 09-05 is to amend Part B, Land Development Regulations, Section 90-140 and 90-142 clarifying the process for adopting revisions to the historic architectural review commission design guidelines.
3. Ord. 09-05 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. 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.*, (2008).
5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2008) and Rule 28-36.001, *Fla. Admin. Code.*
6. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.*

(2008). The regulations adopted by Ord. 09-05 are land development regulations.

7. 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*.

8. Ord. 09-05 promotes and furthers the following Principles in Rule 28-36.003(1):

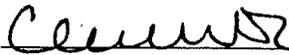
- (a) To strengthen local government capabilities for managing land use and development.
- (e) Protection of historical heritage of Key West and the Key West Historical Preservation District.
- (h) To protect the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

9. Ord. 09-05 is not inconsistent with the remaining Principles. Ord. 09-05 is consistent with the Principles for Guiding Development as a whole. Ord. 09-05 furthers the Key West Comprehensive Plan Objective 1-2.3: Managing Old Town Redevelopment and Preservation of Historical Resources.

WHEREFORE, IT IS ORDERED that Ord. 09-05 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.

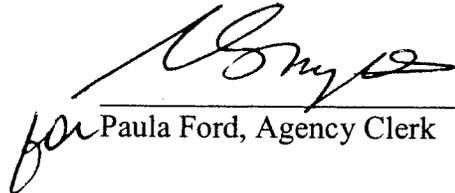
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 7th day of April, 2009.



Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Morgan McPherson
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

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager
From: Amy Kimball-Murley, Planning Director
Date: March 17, 2009
RE: Process for Revising HARC Guidelines

ACTION STATEMENT

Request: An Ordinance amending Sections 90-140 and 90-142 of the Land Development Regulations clarifying the process for adopting revisions to the Historic Architectural Review Commission Design Guidelines

Location: Historic Districts and Properties within the City

BACKGROUND

The Historic Architectural Review Commission (HARC) is guided by Chapters 90 (Sections 126 through 142) and 102 of the Land Development Regulations. These sections collectively provide for the adoption and implementation of design guidelines for use by HARC in the exercise of their duties. However, there are two provisions in Chapter 90 that do not provide consistent direction on the process for modifying the design guidelines. The purpose of this ordinance revision is to remove the inconsistencies within Chapter 90 regarding the design guideline amendment process and clarify the applicable process for reviewing and approving guideline revisions.

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 held a public hearing on February 19, 2009, with due public notice. The board considered the recommendation of the City Planner, City Attorney, Building

Official, and other information submitted at the hearing. A written report prepared by the Planning Department for the Planning Board and a recommendation from the Planning Board are attached.

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:

Please note that the proposed change does not impact the official zoning map or underlying future land use map designations. However, each criterion is addressed.

(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 Ordinance is consistent with Chapter 1A Historic Preservation Element. Concurrency management and infrastructure minimum levels of service are not applicable. Policy 1A-5.1.4 specifically requires that “the City's amended Land Development Regulations shall incorporate criteria for maintaining the unique architectural heritage of the Historic District's housing. HARC responsibilities in protection of historically significant housing and in evaluating alterations, renovations, and rehabilitation efforts shall be incorporated in the amended Land Development Regulations.”

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

The proposed modifications appear consistent with all applicable requirements of the Code and are expected to strengthen the code by eliminating inconsistencies and clarifying the process for modifying important design guidelines.

(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.

Not applicable.

(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.

Not applicable.

(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.

Not applicable.

(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 modifications do not impact existing natural resource protection regulations.

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

Not applicable.

(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.

Not applicable.

(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.

By clarifying the code and providing a clear process for amending the HARC design guidelines the proposal is expected to support the public interest and further the intent of the land development regulations.

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

Clarification of the design guideline adoption process and elimination of inconsistencies will provide clear procedures for future modifications to the HARC design guidelines.

RECOMMENDATIONS

Options / Advantages / Disadvantages:

Option 1. Approve the ordinance

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would provide enhanced services and attractions geared toward tourism, consistent with the mission and vision of the city.
2. **Financial Impact:** No financial impact to the City is anticipated.

Option 2. Do not approve the ordinance

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would not provide enhanced services and attractions geared toward tourism, consistent with the mission and vision of the city.
2. **Financial Impact:** No financial impact to the City is anticipated.

STAFF RECOMMENDATION

Option 1, Approval of the ordinance

RESOLUTION NUMBER 2009-010

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
RECOMENDING APPROVAL OF AN AMENDMENT TO
PART B, LAND DEVELOPMENT REGULATIONS,
SECTIONS 90-140 AND 90-142, CLARIFYING THE PROCESS
FOR ADOPTING REVISIONS TO THE HISTORIC
ARCHITECTURAL REVIEW COMMISSION DESIGN
GUIDELINES; AND PROVIDING AN EFFECTIVE DATE.**

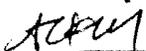
WHEREAS, the Planning Department initiated the proposed amendment to clarify the process for revision of the Historic Architectural Review Commission Design Guidelines and to ensure that the design guidelines are adopted by ordinance and that revisions are processed per the existing procedures for amending the land development regulations as established in Division 2. Land Development Regulations Amendments, Subdivision 2, Procedure; and,

WHEREAS, the Planning Board held a noticed public hearing on February 19, 2009, 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 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



Vice Chairman



Planning Director

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 a **AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTIONS 90-140 AND 90-142 CLARIFYING THE PROCESS FOR ADOPTING REVISIONS TO THE HISTORIC ARCHITECTURAL REVIEW COMMISSION DESIGN GUIDELINES** 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.

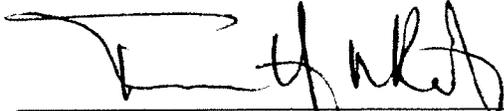
Read and passed on first reading at a regular meeting held this 19 day of February, 2009.

Page 2
Resolution Number 2009-010


Vice Chairman

Planning Director

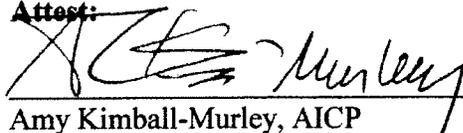
Authenticated by the Vice Chair of the Planning Board and the Planning Director.



Tim Root, Vice Chairman
Key West Planning Board

Date

Attest:



Amy Kimball-Murley, AICP
Planning Director

Feb. 25, 2009

Date

Filed with the Clerk:

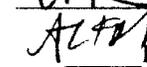


Cheryl Smith, City Clerk

2-26-09

Date



Vice Chairman


Planning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTION 90-140 AND 90-142 CLARIFYING THE PROCESS FOR ADOPTING REVISIONS TO THE HISTORIC ARCHITECTURAL REVIEW COMMISSION DESIGN GUIDELINES; 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, Ordinance 02-12 provided for the adoption of Guidelines of the Historic Architectural Review Commission and a reference to the adoption was incorporated into Section 90-142 of the Land Development Regulation part of the Code of Ordinances; and

WHEREAS, the incorporation by reference of adopted design guidelines in the land development regulations requires modifications to the guidelines to be adopted as amendments to the land development regulations;

WHEREAS, Section 90-140 implies that revisions to the design guidelines can occur without amending the land development regulations which is in conflict with Section 90-142; and

WHEREAS, clarification of the process for revision is necessary to ensure that modifications to the design guidelines are adopted by ordinance and that revisions are processed per the existing procedures for amending the land development regulations as established in Division 2. Land Development Regulations Amendments, Subdivision 2, Procedure; and

WHEREAS, the Planning Board held a noticed public hearing on _____, where based on

A handwritten signature in black ink, appearing to read "TWR" over "ACM", is located in the bottom right corner of the page.

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 RESOLVED BY THE CITY COMMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. **Chapter 90, Administration, Division 4, Historic Architectural Review Commission Section 90-140 is hereby amended as follows: Sec. 90-140. Revisions to rules of procedure and design guidelines.** From time to time and by October 1 of each year, the historic architectural review commission shall recommend to the city commission regulations for the conduct of its business ~~and/or design guidelines~~ which guide the historic architectural review commission decisions, which recommendation shall govern the historic architectural review commission upon approval or amendment by the city commission or upon the expiration of 45 days without final city commission action thereon. The rules are at all times subject to amendment by the city commission.

Section 2. Chapter 90, Administration, Division 4, Historic Architectural Review Commission, Section 90-142, is hereby modified as follows: The Historical Architectural

A handwritten signature in black ink, appearing to be 'ALLEN' followed by a stylized flourish.

Commission Design Guidelines, as amended from time to time per the procedures specified in Sections 90-516 through 90-524 including amendments, as attached to Ordinance No. 02-12, are hereby ~~adopted~~ incorporated by reference. The guidelines shall be kept on file at both the city clerk's office and the building department.

Section 6. Effective Date. 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 regular meeting held this _____ day of _____, 2009.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2009.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2009.

MORGAN MCPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

K:\LDR Amendments\021909 - Ordinance HARC Guidelines Amendments.doc

Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.

Key West Planning Board Meeting Agenda
February 19, 2009 – 6:00 p.m.
City Commission Chamber
Old City Hall, 510 Greene Street



Item 4.b.6.

HARC Guideline LDR – An Ordinance amending Sections 90-140 and 90-142 of the Land Development Regulations clarifying the process for adopting revisions to the Historic Architectural Review Commission Design Guidelines.



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board Members

From: Amy Kimball-Murley, AICP

Meeting Date: February 19, 2009

Agenda Item: An Ordinance amending Sections 90-140 and 90-142 of the Land Development Regulations clarifying the process for adopting revisions to the Historic Architectural Review Commission Design Guidelines

Background

The Historic Architectural Review Commission (HARC) is guided by Chapters 90 (Sections 126 through 142) and 102 of the Land Development Regulations. These sections collectively provide for the adoption and implementation of design guidelines for use by HARC in the exercise of their duties. However, there are two provisions in Chapter 90 that do not provide consistent direction on the process for modifying the design guidelines. The purpose of this ordinance revision is to remove the inconsistencies within Chapter 90 regarding the design guideline amendment process and clarify the applicable process for reviewing and approving guideline revisions.

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.

This report is prepared in anticipation of the first Planning Board meeting regarding the proposed ordinance change. These modifications have been coordinated with the City Attorney and Building Official, and are originating with the City Planner. In addition, the City Planner reviewed the draft ordinance with HARC on January 27, 2009, and prepared the draft amendments in conjunction with the HARC Planner.

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:

Please note that the proposed change does not impact the official zoning map or underlying future land use map designations. However, each criteria is addressed.

(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 Ordinance is consistent with Chapter 1A Historic Preservation Element. Concurrency management and infrastructure minimum levels of service are not applicable. Policy 1A-5.1.4 specifically requires that "the City's amended Land Development Regulations shall incorporate criteria for maintaining the unique architectural heritage of the Historic District's housing. HARC responsibilities in protection of historically significant housing and in evaluating alterations, renovations, and rehabilitation efforts shall be incorporated in the amended Land Development Regulations."

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

The proposed modifications appear consistent with all applicable requirements of the Code and is expected to strengthen the code by eliminating inconsistencies and clarifying the process for modifying important design guidelines.

(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.

Not applicable.

(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.

Not applicable.

(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.

Not applicable.

(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 modifications do not impact existing natural resource protection regulations.

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

Not applicable.

(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.

Not applicable.

(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.

By clarifying the code and providing a clear process for amending the HARC design guidelines the proposal is expected to support the public interest and further the intent of the land development regulations.

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

Clarification of the design guideline adoption process and elimination of inconsistencies will provide a clear path for future modifications to the HARC design guidelines to follow.

PROCESS

After the Planning Board recommends changes to the City Commission, 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.

RECOMMENDATION

The Planning Department recommends consideration and approval of the draft ordinance.

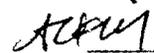
RESOLUTION NUMBER 2009-010

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
RECOMENDING APPROVAL OF AN AMENDMENT TO
PART B, LAND DEVELOPMENT REGULATIONS,
SECTIONS 90-140 AND 90-142, CLARIFYING THE PROCESS
FOR ADOPTING REVISIONS TO THE HISTORIC
ARCHITECTURAL REVIEW COMMISSION DESIGN
GUIDELINES; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Planning Department initiated the proposed amendment to clarify the process for revision of the Historic Architectural Review Commission Design Guidelines and to ensure that the design guidelines are adopted by ordinance and that revisions are processed per the existing procedures for amending the land development regulations as established in Division 2. Land Development Regulations Amendments, Subdivision 2, Procedure; and,

WHEREAS, the Planning Board held a noticed public hearing on February 19, 2009, 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 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


Vice Chairman

Planning Director

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 a **AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTIONS 90-140 AND 90-142 CLARIFYING THE PROCESS FOR ADOPTING REVISIONS TO THE HISTORIC ARCHITECTURAL REVIEW COMMISSION DESIGN GUIDELINES** is hereby recommended for approval; a copy of the draft ordinance is attached.

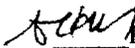
Section 3. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 19 day of February, 2009.

Page 2
Resolution Number 2009-010

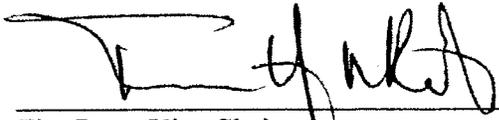


Vice Chairman



Planning Director

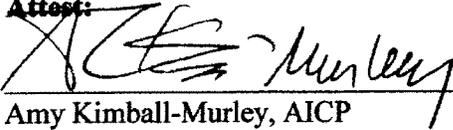
Authenticated by the Vice Chair of the Planning Board and the Planning Director.



Tim Root, Vice Chairman
Key West Planning Board

Date

Attest:



Amy Kimball-Murley, AICP
Planning Director

Feb. 25, 2009

Date

Filed with the Clerk:



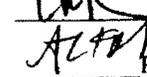
Cheryl Smith, City Clerk

2-26-09

Date



Vice Chairman



Planning Director

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF KEY WEST, APPROVING AN AMENDMENT TO PART B, LAND DEVELOPMENT REGULATIONS, SECTION 90-140 AND 90-142 CLARIFYING THE PROCESS FOR ADOPTING REVISIONS TO THE HISTORIC ARCHITECTURAL REVIEW COMMISSION DESIGN GUIDELINES; 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, Ordinance 02-12 provided for the adoption of Guidelines of the Historic Architectural Review Commission and a reference to the adoption was incorporated into Section 90-142 of the Land Development Regulation part of the Code of Ordinances; and

WHEREAS, the incorporation by reference of adopted design guidelines in the land development regulations requires modifications to the guidelines to be adopted as amendments to the land development regulations;

WHEREAS, Section 90-140 implies that revisions to the design guidelines can occur without amending the land development regulations which is in conflict with Section 90-142; and

WHEREAS, clarification of the process for revision is necessary to ensure that modifications to the design guidelines are adopted by ordinance and that revisions are processed per the existing procedures for amending the land development regulations as established in Division 2. Land Development Regulations Amendments, Subdivision 2, Procedure; and

WHEREAS, the Planning Board held a noticed public hearing on _____, where based on

A handwritten signature in black ink, appearing to read "FWP" over "ACD/M".

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 RESOLVED BY THE CITY COMMISSION OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. **Chapter 90, Administration, Division 4, Historic Architectural Review Commission Section 90-140 is hereby amended as follows: Sec. 90-140. Revisions to rules of procedure and design guidelines.** From time to time and by October 1 of each year, the historic architectural review commission shall recommend to the city commission regulations for the conduct of its business ~~and/or design guidelines~~ which guide the historic architectural review commission decisions, which recommendation shall govern the historic architectural review commission upon approval or amendment by the city commission or upon the expiration of 45 days without final city commission action thereon. The rules are at all times subject to amendment by the city commission.

Section 2. Chapter 90, Administration, Division 4, Historic Architectural Review Commission, Section 90-142, is hereby modified as follows: The Historical Architectural



Commission Design Guidelines, as amended from time to time per the procedures specified in Sections 90-516 through 90-524 including amendments, as attached to Ordinance No. 02-12, are hereby ~~adopted~~ incorporated by reference. The guidelines shall be kept on file at both the city clerk's office and the building department.

Section 6. Effective Date. 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 regular meeting held this _____ day of _____, 2009.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2009.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2009.

MORGAN MCPHERSON, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

K:\LDR Amendments\021909 - Ordinance HARC Guidelines Amendments.doc

ACK
TH