

EXECUTIVE SUMMARY



To: Jim Scholl, Interim City Manager

Through: Donald Leland Craig, AICP
Director of Community Development Services

From: Nicole Malo, AICP, LEED GA
Planner II

Meeting Date: July 1, 2014

RE: Flood Protection Building Height Referendum Language

Action Statement:

Consistent with the City Charter that requires a positive vote of a referendum in order to change building height regulations, this request is to approve the proposed language for a flood protection building height referendum to be placed on ballot for the November 3, 2014 general election:

To protect property against flooding and reduce flood insurance costs for taxpayers citywide, should the City permit an exception to building height regulations when buildings are voluntarily raised off the ground, up to four feet above FEMA established flood levels, yet no more than 40' in height?

If the referendum is approved by the electorate, the Land Development Regulations must follow the regulated approval process which requires Planning Board and City Commission approval. The proposed Land Development Regulation amendment associated with this referendum is proposed as follows:

Section. 122-1149. Height.

- (a) Flood Protection Building Height Exception: An exception to the building height regulations as referenced in subsection (b) above may be permitted in cases where a building is raised above the ground to meet or exceed FEMA established base flood elevation levels under the following conditions:
1. Only the equivalent measurement of distance from the existing ground level, prior to infill, to the required base flood elevation of the building, and up to a maximum of four (4) feet above the base flood elevation, may exceed the building height regulations.
 2. No exception shall result in a building height that would exceed 40 feet.

Consistency with the Strategic Plan

The referendum approach is consistent with the intent of all chapters of the Strategic Plan including: The Environment; The Economy; Infrastructure; Government; and Quality of Life.

Purpose:

The City Charter prohibits any change to the existing building height regulations without voter approval. The majority of land within the City is already developed and property owners may experience difficulty raising an existing structure to protect their homes and businesses from rising sea levels, increased flooding and meet FEMA structural requirements without exceeding the building height limitation (Please see Attachment B for additional information). The purpose of this flood protection building height referendum is to permit an exception to existing building height regulations for buildings that are raised above flood hazard levels in order to: **help property owners protect their homes and valuables during flood events; mitigate rising insurance rates from the 2012 Biggert-Waters Act; facilitate potential flood insurance rate discounts citywide as a result of improving the City's Community Rating System standing; and in response to Comprehensive Plan Policies related to adaptation.** The proposed Referendum language has been carefully worded as to avoid unintended consequences.

The proposed language was crafted by a diverse group of Key West citizens that represented environmental and quality of life groups, historic preservationists, business owners and home owners. As a group, consensus was reached on the proposal because raising homes above flood levels **1) helps people protect themselves and what is important to them from flooding; 2) is nondiscriminatory, fair and equitable; 3) respects existing building height protections; 4) respects existing Historic District protections; and 5) is the most proactive approach for the future of the Key West community.**

- 1. It helps people protect themselves and what is important to them from flooding.** In 2005, as a direct result of hurricanes Dennis, Katrina, Rita and Wilma some 3,000 of the City's permanent population never returned.

Further, personal belongings were destroyed, several weeks of business lost, approximately 70% of vehicles were ruined, and homes and businesses were flooded, causing \$17 million in public property damage, and at least \$164 million in insured personal property, not including losses that weren't covered by flood insurance.

- 2. Nondiscriminatory - Fair and equitable**

- a. It provides flood relief to the most **existing structures**, particularly in the most low lying flood prone areas of the City with the lowest height limitations (25').
- b. Due to its flexibility, it does not single out or subject the most vulnerable property owners who voluntarily choose to elevate their structures to a height variance process which is costly.

- 3. Provides height protection** - It limits the overall height of the existing or new structure in several ways as follows:

- a. Does **not change the height limitations** currently existing in the Comprehensive Plan and Land Development Regulations nor changes the point where height is measured from Citywide (crown of the road).
- b. Provides an **exception** to the height restriction that is tied to the elevation of the building to or above FEMA flood levels.

Buildings will not be granted an exception that are not elevating above the flood level. The buildings sitting on the highest ground will be the most restricted and the lowest lying structures will be provided the most flexibility to raise the structure.

- c. **Limits the exception to a maximum building height of 40 feet.**

* This does not change the existing building height limitations.

* Size of the building + feet elevated off the ground = 40' or less

- d. Allows a building to be raised **above the regulated flood level to a maximum of 4 feet**. The distance above the required minimum flood level is defined as “*freeboard*.”

According to information obtained from the state representative of the National Flood Insurance Program, the cost of flood insurance goes down exponentially for every foot that a building is raised above the flood zone level with the maximum savings possible being achieved at three (3) feet about the flood level.

In anticipation of the flood map changes expected within the next few years flood levels are expected to increase one foot citywide, an additional foot of freeboard is planned to account for this loss. Further, 4' of freeboard is commensurate with sea level rise projections for the next 50 years.

4. Protects the Historic District

- a. **Does not change or supersede existing Historic Architectural Guidelines.** Existing Historic Architectural Guidelines will continue to regulate properties and protect the character of the Historic District for new development with the following existing provisions (p.38). The Historic Architectural Guidelines presently state the following:

Elevation of finished floor above grade - Applications for buildings with the first finished floor above the minimum height necessary to comply with federal flood regulations will not be approved unless the applicant demonstrates that such elevation does not interfere with the essential form and integrity of properties in the neighborhood. In situations wherein

parking is proposed below the first finished floor, HARC shall consider how visible the parking is from the public right-of-way; whether the parking area is enclosed or otherwise concealed by walls louvers, lattice, landscaping or other features; and whether fill and/or berms are used to minimize the gap between the first finished floor and the crown of the nearest road

Height – *must not exceed 2.5 stories. There must be a sympathetic relationship of height between new buildings and existing adjacent structures of the neighborhood. New buildings must be compatible with historic floor elevations. The height of all new construction shall be based upon the height of existing structures within the vicinity.*

Proportion, scale and mass – *massing, scale and proportion should be similar to that of existing historical buildings in the historical zone. No new construction shall be enlarged so that its proportions are out of scale with its surroundings. No structure shall outsize the majority of structures in the streetscape or historic zone.*

Compatibility- *Design must be compatible with Key West architectural characteristics in the historical zones. All new construction must be in keeping with the historic character in terms of size, scale, design, materials, color and texture.*

- b. FEMA exempts historically contributing structures from having to meet structural elevation requirements.
- c. A significant portion of the Historic District is in the FEMA designated flood zone 'X' which is **above FEMA established flood levels** of type AE and V flood zones and are NOT subject to this height referendum.
- d. Allows historic properties in lower lying areas (outside of the X zone) to elevate their structures protect their historic building from flood damage subject to the guidelines above.

5. Most proactive approach:

- a. It allows property owners to begin to adapt their homes before we are hit by the next big flood event without having to address this ballot question during a period of disaster recovery.
- b. It provides an important piece of regulatory relief to the complicated issues related to adaptation of our community to rising sea levels.
- c. It helps improve the City's Community Rating System ranking with National Flood Insurance Program; therefore providing flood insurance rate reductions Citywide.

- d. It allows new development to be sustainably constructed with a view towards the future of the island in which we experience more frequent flooding and permanent water inundation.
- e. In anticipation of the FEMA- National Flood Insurance Program Map changes expected within the next few years, it allows 4' of freeboard which provides upwards of 94% of reductions in flood annual insurance premiums and is a height commensurate with sea level rise projections.

Previous Actions

During the April 1, 2014 City Commission meeting the body directed planning staff to pursue additional research and input for a potential flood damage prevention building height referendum for the November 2014 ballot (see Attachment A).

Since that time staff has consulted various Flood Insurance Companies to gather additional information; made site visits throughout the city; assessed existing information; updated available Flood Maps; created other demonstrative tools; discussed the unintended consequences of the referendum language; and refined the approach.

Staff also met with local stakeholders to present a full range of potential approaches to a flood damage protection height referendum with limitations related to existing Land Development Code including: Last Stand, the Keys Branch of the US Green Building Council, FIRM, the DEO, the Keys Wide Planners Forum, the Key West Board of Realtors, the Chamber of Commerce, the League of Women Voters, HARC, the Planning Board, the Sustainability Advisory Board and BVRAC. The purpose of these meetings was to share the existing information and gather input (see Attachment B).

On June 9, 2014 a Focus Group, consisting of volunteers representing the groups above and the Historic Florida Keys Foundation, the Nature Conservancy, and the Marine Sanctuary (NOAA), was convened to build consensus on a single approach and refine the referendum language. The following approach, which includes an agreed upon amendment was, supported by all members present:

To protect buildings against flooding and reduce flood insurance costs citywide, should the City allow an exception to building height regulations to permit one foot of additional building height for each one foot added, to raise buildings, voluntarily no more than 4' above FEMA established flood levels, not to exceed 40 feet in height?

This consensus is the basis of the recommended referendum language.

General Concerns

Based on discussions with diverse groups and individuals throughout the community the following concerns have been identified, and vetted by the Focus Group and State:

1. *The height referendum will negatively affect the character of the city creating a stilt community:*

The character of Key West is irrefutably changing, but not as a result of the height referendum. The City faces outside pressures that cannot be negated on a local level such as:

- a. Federal and State regulations requiring all new or substantially improved structures be elevated.
- b. The city is built on porous limestone rock and cannot be buffered against flooding (such as in Holland), and that in order to maintain life as we know it both public and private buildings, services and transportation networks must be elevated.
- c. Sea level rise: Currently the City experiences flooding on high tides without rain which is dramatically aggravated during significant rain events. As sea levels continue to rise at their current rate we can expect more frequent flooding events. Climate change will result in increased frequency and intensity of storms and may cause greater sea level rise.

2. *The height referendum will negatively affect the Historic District.*

The language proposed for the Referendum attempts to balance the impacts that will occur with the need to protect the historic buildings from rising and flood water damage and property owners from rising insurance rates. Properties that are listed as Historically Contributing, or are located within the X zone are exempt from meeting FEMA flood elevation requirements; however, Historically Contributing they ARE NOT exempt from flood insurance rate hikes expected to suffer major increases within four years-time. Presently, the Historic Guidelines include a policy that requires permit review, on a site-by-site basis, for properties that wish to elevate above the required FEMA Flood elevation as stated above.

3. *The height referendum will only benefit developers.*

Careful consideration of the need to protect and adapt the existing housing stock has been used to craft the proposed referendum language, including and input from current home owners. This referendum does not change the existing height restrictions and provides a maximum height of 40' for property owners that wish to elevate their low-lying structures above flood prone levels.

4. *People will not be able to afford to elevate their homes.*

Homeowners with mortgaged property are required to carry flood insurance. The cost of flood insurance is incurring historic increases and property owners may decide that elevating their structures out of a rising flood zone is safer and cost effective. Government regulations should not stand in the way of allowing people to protect their homes from flooding and lowering their flood insurance costs to acceptable levels.

Staff is currently seeking the assistance of the Florida Building Commission to provide non-biased data as to how much it costs to elevate an existing structure. Further, the City is pursuing multiple avenues for programs that assist homeowners in the cost of elevating their structures.

5. *Will the program be mandatory?*

No, the referendum language specifically states that the program is voluntary.

6. *A height Referendum won't solve the problems the City faces related to Climate Change.*

True, but it will help to provide relief related to some of the problems. Staff is working the wicked problem through a multifaceted approach most importantly beginning the long range process of coordinating the raising of our transportation networks and critical services throughout the Keys. Staff is also working on a Climate Change element to the Comprehensive Plan.

Legislative Considerations

The proposed referendum language requesting an exception to building height for flood protection purposes is compatible with the existing Historic Architectural Guidelines, and the existing Land Development Regulations because it does not change the height regulations nor does it change where height is measured from. It only allows staff to bring back to the City Commission for further review a Land Development Regulation change based on the proposed exception for height. Staff is proposing that Section 122-1149 read as follows:

Section. 122-1149. Height.

- (a) The term "building height" as used in the land development regulations shall mean the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building.
- (b) Height limitations contained in the schedule of district regulations located in divisions 2 through 14 of article IV of this chapter, in division 2 of this article and in this division shall apply to all construction unless otherwise stated herein below and/or in section 122-1151.
- (c) These height regulations may be waived subject to variance criteria found in Chapter 90-391 in order to accommodate non-habitable hardware and utility structures typically associated with the principal structure, including spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy or use.
- (d) Flood Protection Building Height Exception: An exception to the building height regulations as referenced in subsection (b) above may be permitted in cases where a building is raised above the ground to meet or exceed FEMA established base flood elevation levels under the following conditions:
 - 1. Only the equivalent measurement of distance from the existing ground level, prior to infill, to the required base flood elevation of the building, and up to a maximum of four (4) feet above the base flood elevation, may exceed the building height regulations.
 - 2. No exception shall result in a building height that would exceed 40 feet.

The proposal is consistent with Comprehensive Plan *Policy 1.1.12.5: Increased Height: The City shall consider allowing increased heights for new construction or redevelopment if such additional height is justified based on adopted Coastal High Hazard Maps and Storm Surge Flood Maps in order to promote safe new development and redevelopment based on sea level rise predictions. Such additional height must be compatible with surrounding development.*

Process

City Commission discussion of potential referendum	April 1, 2014
Stakeholder Group Meetings	April – May, 2014
Focus Group Meeting	June 9, 2014
City Commission 1 st reading	July 1, 2014
City Commission 2 nd reading	August 5, 2014

Attachments:

Attachment A – April 1, 2014 **City Commission Discussion item Report** (w/out Exhibits)

Attachment B – **May 22, 2014 Stakeholder Groups Report**. This report contains Referendum Language Options 1-5 that evolved as a result of the stakeholder group meetings and discussions with community members and were presented to the Focus Group. This report also contains important Flood Insurance Terms and Savings analysis.

- a. Exhibit 1 - 2014 Referendum and LDR Amendments Timeline
- b. Exhibit 2 – BW 12 Update. 20140305 email from Scott Fraser
- c. Exhibit 3 – Massachusetts Coastal Zone Management Smart Cost information
- d. Exhibit 4 - FEMA NFIP rate maps (X-zone) and complete City BFE Map
- e. Exhibit 5 - District Map
- f. Exhibit 6 – 2011 Key West Stormwater Master Plan Topography Map
- g. Exhibit 7 – City of Key West Storm Surge Map, Engineering Services, 2012
- h. Exhibit 8 – Comprehensive Plan Coastal High Hazard and Storm Surge Map
- i. Exhibit 9 – FEMA Repetitive Loss and Severe Repetitive Loss Map
- j. Exhibit 10 – CRS points system and insurance rates description

Options/Advantages/Disadvantages:

Option 1: Approve the referendum language as proposed:

To protect property against flooding and reduce flood insurance costs for taxpayers citywide, should the City permit an exception to building height regulations when buildings are voluntarily raised off the ground, up to four feet above FEMA established flood levels, yet no more than 40’ in height?

1. Consistency with the City’s Strategic Plan, Vision, and Mission:

The referendum approach is consistent with the intent of the Strategic Plan, Vision, and Mission to protect and respond to the Environment and the Climate Action Plan; to protect the Economy including our private assets and keep housing affordable; to create sustainable Infrastructure that supports local needs, the economy, and green

practices; to implement the adopted long range plans of the City, such as the Comprehensive Plan and the Climate Action Plan; and protect and improve the Quality of Life.

2. **Financial Impact:** The new regulations would result in higher FEMA Community Rating System standing, which will help to lower flood insurance rates citywide. Additionally, if the referendum is approved and property owners elevate their structures it will result in lower insurance rates for the property owners and help the City to maintain a healthy tax base.

Option 2: Deny the referendum language as proposed:

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** Denying the proposed referendum language may be inconsistent with the intent of the Strategic Plan, Vision, and Mission
2. **Financial Impact:** If the referendum language is denied the City will lose the opportunity to allow the voters to decide whether to allow additional height to mitigate flooding. Preventing the voters from choosing will not help the City achieve higher FEMA Community Rating System standing, which would help to lower flood insurance rates citywide; and may contribute to situations where homeowners are forced to pay high flood insurance premiums because they cannot elevate their structures without exceeding the height restrictions in the lowest lying areas of the City.

Recommendation

The Planning Department recommends **approval** of the proposed flood protection referendum language.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, PURSUANT TO SECTION 1.05(A) OF THE CHARTER OF THE CITY OF KEY WEST, FLORIDA, PROPOSING A REFERENDUM TO PERMIT AN AMENDMENT TO THE LAND DEVELOPMENT REGULATIONS TO PROVIDE AN EXCEPTION TO BUILDING HEIGHT REGULATIONS FOR THE SPECIFIC PURPOSE(S) OF PROTECTING HOMES AND POSSESSIONS DURING FLOOD EVENTS; TO MITIGATE RISING INSURANCE RATES; FACILITATE POTENTIAL FLOOD INSURANCE RATE DISCOUNTS CITYWIDE BY IMPROVING THE CITY'S COMMUNITY RATING SYSTEM STANDING; AND IN RESPONSE TO COMPREHENSIVE PLAN POLICIES RELATED TO ADAPTATION; SETTING THE GENERAL ELECTION OF NOVEMBER 4, 2014, AS THE DATE OF REFERENDUM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Key West Charter Section 1.05(A) provides that the building height restrictions in the land development regulations are subject to change only upon approval of the majority vote of the electors; and

WHEREAS, the City shall follow Florida Statutes Section 100.342 concerning notice of a referendum and Florida Statutes Section 101.161 concerning preparation of the referendum ballot; and

WHEREAS, the City Commission desires to obtain electorate approval to provide an exception for building height of not more than 4 feet above FEMA established flood levels, yet no more than 40 feet in height; and

WHEREAS, the City Commission desires that the proposed referendum appear on the General Election ballot of November 4, 2014.

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

Section 1: Pursuant to Key West Charter section 1.05 a referendum to permit an exception to building height restrictions within the land development regulations shall hereby be presented to the voters of Key West. The question appearing on the ballot shall have the following title: "Referendum - Exception To Building Height Regulations To Protect Properties From Flooding." The question appearing on the ballot shall be worded as follows:

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To protect property against flooding and reduce flood insurance costs for taxpayers citywide, should the City permit an exception to building height regulations when buildings are voluntarily raised off the ground, up to four feet above FEMA established flood levels, yet no more than 40 feet in height?

YES

NO

Section 2: In the event of the passage of the proposed Referendum to allow an exception to the building height regulations for properties that voluntarily raise their buildings above flood levels, as set forth in section 1, above, Section 122-1149 of Division 3, of Article V, of Chapter 122, of the Key West Land Development Regulations shall be amended as follows:

Section. 122-1149. Height.

(a) The term "building height" as used in the land development regulations shall mean the vertical

distance from the crown of the nearest adjacent street to the highest point of the proposed building.

(b) Height limitations contained in the schedule of district regulations located in divisions 2 through 14 of article IV of this chapter, in division 2 of this article and in this division shall apply to all construction unless otherwise stated herein below and/or in section 122-1151.

(c) These height regulations may be waived subject to variance criteria found in Chapter 90-391 in order to accommodate non-habitable hardware and utility structures typically associated with the principal structure, including spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy or use.

(d) Flood Protection Building Height Exception: An exception to the building height regulations as referenced in subsection (b) above may be permitted in cases where a building is raised above the ground to meet or exceed FEMA established base flood elevation levels under the following conditions:

1. Only the equivalent measurement of distance from the existing ground level, prior to infill, to the required base flood elevation of the building, and up to a maximum of four (4) feet above the base flood elevation, may exceed the building height regulations.
2. No exception shall result in a building height that would exceed 40 feet.

Section 3: The City Clerk is hereby authorized and instructed to take all necessary and proper action to place the referendum question set forth in Section 1, above, on the General Election ballot of November 4, 2014, 2014, and to provide notice of the referendum election as provided by law.

Section 4: 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 5: 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 6: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2014.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2014.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2014.

Filed with the Clerk _____, 2014.

Mayor Craig Cates	_____
Vice Mayor Mark Rossi	_____
Commissioner Teri Johnston	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____
Commissioner Tony Yaniz	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK