

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

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 108 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED “PLANNING AND DEVELOPMENT”, ARTICLE X, DIVISION 1, SECTION 108-991, ENTITLED “DEVELOPMENT NOT AFFECTED BY ARTICLE”; PURSUANT TO CHAPTER 90, ARTICLE VI, DIVISION 2; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the provisions of Chapters 163, 166, and 380 of the Florida State Statutes, the City of Key West, Florida (the “City”) proposes to amend Chapter 108 of the Land Development Regulations (the “LDRs”); and

**WHEREAS**, the amendment will remove the option for transient licensing through lawful unit determination; and

**WHEREAS**, the matter was presented to the Planning Board for approval at its regularly scheduled meeting held on January 17, 2019; and

**WHEREAS**, the Planning Board found that it is in the public interest to amend section 108-991 and made a recommendation of approval to the City Commission through Resolution no. 2019-01.

**NOW, THEREFORE, BE IT ORDAINED BY 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 Chapter 108 of the Land Development Regulations is hereby amended as follows:\*

**Section 108-991. – Development not affected by article.**

Development consistent with the following shall not be affected by the terms of this article, but such development shall comply with all applicable sections of the city's land development regulations:

- (1) Any use, development, project, structure, building, fence, sign or activity which does not result in a net addition to the number of residential dwelling unit stock.
- (2) Redevelopment or rehabilitation which replaces but which does not increase the number of dwelling units above that existing on the site prior to redevelopment or rehabilitation.
- (3) Units determined to have been in existence at the time the April 1, 2010, census was prepared are presumed not to be affected by BPAS. The city planner shall review available documents to determine if a body of evidence exists to support the existence of units on or about April 1, 2010. Units existing in 2010 will be documented through a mandatory site visit by city staff and at least two of the following records:
  - a. Aerial photographs and original dated photographs showing that the structure existed on or about April 1, 2010;
  - b. Building permits issued prior to April 1, 2010;
  - c. Copies of city directory entries on or about April 1, 2010;
  - d. Applications received after May 2, 2017 must demonstrate that the unit sought to be established hereunder is or has been legally permissible under the current or any former zoning requirements of the applicable district in which the unit is located.

~~Transient units which meet the criteria in this subsection will be licensed by the city.~~
  - e. Rental, occupancy or lease records from before and including April 1, 2010, indicating the number, type and term of the rental or occupancy;
  - f. Copies of state, county, and city licenses on and about April 1, 2010, indicating the number and types of rental units;
  - g. Documentation for Keys Energy Service, Florida Keys Aqueduct Authority and other available utilities indicating the type of service (residential or commercial) provided and the number of meters on or about April 1, 2010;
  - h. Documentation for the Monroe County Property Appraiser's Office for the time on or about April 1, 2010, (Green Card); and
  - i. Similar documentation as listed above.

Provision of affidavits to support the existence of a unit is allowed, but cannot be the sole record upon which a decision is based. Provision of documents is the responsibility of the

applicant. The city planner's decision shall be rendered to the department of economic opportunity for a determination of consistency with the principals for guiding development.

Units which are determined not to be affected by the building permit allocation system per this subsection but which have not been previously acknowledged by the city planner are presumed to be lawfully established per chapter 122, article II, nonconformities, if the additional following requirements are met:

- a. The applicant satisfies the building department that the unit meets the Florida Building Code, through as-built certifications or other means acceptable to the building official; and
- b. Fees: All back fee payments shall be paid current and in full, from the date determined to be the established date of the unit. All impact fees shall be paid in full for units determined to have been established after the implementation of the Impact Fee Ordinance (January 1, 1985).
- c. Occupational license with the city is updated, and street addresses are assigned commensurate with the updated unit count.
- d. Applications received after May 2, 2017, must demonstrate that the unit sought to be established hereunder is or has been a legally permissible under the current or any former zoning requirements of the applicable district in which the unit is located.

~~Transient units which meet the criteria in this subsection will be licensed by the city.~~

(Code 1986, § 34.1372(4); Ord. No. 09-07, § 6, 5-5-2009; Ord. No. 13-19, § 2, 11-6-2013; Ord. No. 17-02, § 1, 5-3-2017)

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\*Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading.

**Section 3.** 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 provision of this Ordinance shall be deemed severable therefrom and shall be constructed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

**Section 4.** 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 5.** This Ordinance shall go into effect immediately upon its passage and

adoption and authentication by the signature of the presiding officer and the Clerk of the Commission and approval by the Florida Department of Economic Opportunity, pursuant to Chapter 380, Florida Statutes.

Read and passed by the City Commission at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Authenticated by the presiding officer and Clerk of the Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Filed with the Clerk \_\_\_\_\_, 2019.

Mayor Teri Johnston	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Vice Mayor Sam Kaufman	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

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CHERYL SMITH, CITY CLERK