



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager

**Through:** Patrick Wright, Planning Director

**From:** Vanessa Sellers, Planner II

**Meeting Date:** March 20, 2019

**RE:** **Text Amendment of the Land Development Regulations** – 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.

### **ACTION STATEMENT:**

The purpose of this ordinance is to amend Chapter 108 Section 108-991 of the City’s Land Development Regulations (the “LDRs”) to remove the option for transient licensing through lawful unit determination.

### **REQUEST:**

The proposed text amendment to the LDRs is 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.

### **City Actions:**

Planning Board: November 15, 2018 (*postponed*)  
Planning Board: December 20, 2018 (*postponed*)  
Planning Board: January 17, 2019 (*recommendation of approval*)  
*If denied, then appeal may be filed within 10 calendar days.*  
City Commission (first reading): March 20, 2019  
City Commission (second reading): TBA  
Local Appeal Period: 30 days  
Render to DEO: 10 working days  
DEO Notice of Intent (NOI)  
Effective when NOI posted to DEO website

### **Planning Staff Analysis:**

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the “LDRs”) of the Code of Ordinances (the “Code”) of the City of Key West, Florida (the “City”) is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve particular hardships nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the City Commission shall consider, in addition to the factors set forth in this subdivision, the consistency of the proposed amendment with the intent of the Comprehensive Plan.

The current language of section 108-991 enables property owners who illegally misused residential housing as hotel rooms on April 1 of 2010 to obtain a transient license, therefore, the number of transient licenses continues to grow. Consequently, the number of long-term housing units continues to decrease. Short-term rentals command higher rents and the properties remain empty at times, rendering them unavailable for full-time Key West and lower keys residents. Short-term rentals exacerbate the acute affordable housing crisis that the City is currently facing.

In addition, it is difficult for planning staff to complete such a lawful unit determination without sufficient and verifiable evidence to corroborate the claim of transient use. For example, the

current language of section 108-991 requires just two records as documentation, of which one may simply be a handwritten rental record. It is impossible for staff to state with assurance that the claim of transient use on April 1 of 2010 is valid if staff has no way to validate the supporting documents provided within the application.

In conclusion, transient rentals add to the depletion of housing stock in the City. The removal of transient licensing through lawful unit determination is a crucial step towards preserving existing permanent housing in the City.

**Options / Advantages / Disadvantages:**

**Option 1:** **Approve** the text amendment to the City’s Land Development Regulations to amend Chapter 108 of the Land Development Regulations, entitled “Planning and Development”, Section 108-991, entitled “Development not affected by article”; pursuant to Chapter 90, Article VI, Division 2.

- a. Consistency with the City’s Strategic Plan, Vision, and Mission:**  
The Strategic Plan is silent on this issue.
- b. Financial Impact:**  
There will be no cost to the City if this request is approved.

**Option 2:** **Deny** the text amendment to the City’s Land Development Regulations to amend Chapter 108 of the Land Development Regulations, entitled “Planning and Development”, Section 108-991, entitled “Development not affected by article”; pursuant to Chapter 90, Article VI, Division 2.

- a. Consistency with the City’s Strategic Plan, Vision, and Mission:**  
The Strategic Plan is silent on this issue.
- b. Financial Impact:**  
There will be no cost to the City if this request is denied.

**Recommendation:**

As per Resolution no. 2019-01, the Planning Board recommends **approval** of the proposed text amendment to the Land Development Regulations.