

ORDINANCE NO. 05-09

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,
AMENDING CHAPTER 122 OF THE KEY WEST CODE OF
ORDINANCES ENTITLED "ZONING" BY RE-
ESTABLISHING SECTIONS 122-1336 THROUGH 122-
1345 IN ORDER TO ALLOW AND REGULATE THE
TRANSFER OF TRANSIENT UNITS OR LICENSES;
ADDING SECTION 122-1346 TO PROVIDE A SUNSET
DATE; PROVIDING FOR SEVERABILITY; PROVIDING
FOR REPEAL OF INCONSISTENT PROVISIONS;
PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City Commission enacted Ordinance No. 99-26, an amendment to the LDRs, on December 7, 1999, to allow the transfer of transient licenses and units; and

WHEREAS, the City Commission enacted Ordinance No. 02-05, an amendment to the LDRs, on February 6, 2002, providing revised regulations for the transfer of transient licenses and units; and

WHEREAS, after five years, the Planning Board of the City of Key West has had numerous opportunities to consider applications for these transfers; and

WHEREAS, the Transfer Ordinance contained a sunset provision of March 15, 2005; and

WHEREAS, City staff has recommended re-establishment of the ordinance; and

WHEREAS, at its regular meeting of February 17, 2005, the Key West Planning Board, consistent with its obligations under section 90-55(3) of the Code of Ordinances, found this proposed ordinance

amendment consistent with the Key West Comprehensive Plan, citing objectives 1-3.3, 1-3.6 and 1-3.12 and Policies 1-2.3.9 and 1-3.2.2; and

WHEREAS, the City Commission finds that re-establishment of the Transfer Ordinance 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 122-1336 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1336. Purpose.

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal non-conforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage

redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

Section 2: That Section 122-1337 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1337. Definitions.

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

"Affordable housing" shall mean housing as defined in Section 122-1466 of the land development regulations ("LDRs") and amendments thereto.

"Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

"Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

"Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

"Transient unit" shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

Section 3: That Section 122-1338 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1338. Transfer of Transient Units.

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into non-transient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 66-109(10).

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

(8) Existing non-conforming buildings may receive units providing their non-conforming aspects are not increased.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer

the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

Section 4: That Section 122-1339 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1339. Transfer of transient occupational license.

(a) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

(b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for transient use in the zoning district, shall consider the relative size of the unit from which the license is transferred, and shall consider the room configuration of both sites to maintain approximately the same or less net number of occupants.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

**Sec. 122-1340. Development review committee and
planning board review.**

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

Section 6: That Section 122-1341 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1341. Compliance with codes.

All structures proposed to be used on a transient basis must comply with codes and requirements of the building department, fire department, and all other regulatory agencies.

Section 7: That Section 122-1342 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1342. Historic structures.

Proposals to change the interior of contributing or altered historic structures located within the historic district shall be subject to the review of the historic architectural review commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the planning board may consider retaining the room layout (notwithstanding sections 122-1338(5) and 122-1339(b) hereof), and may further consider all guidelines adopted by the historic architectural review commission.

Section 8: That Section 122-1343 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1343. Tracking system; enforcement.

The city manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the building department shall certify that each such site is being put to the use(s) represented in the transfer application.

Section 9: That Section 122-1344 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1344. Application, notice and fees.

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the planning board meeting

at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. An appropriate fee schedule shall be established by resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within 18 months of planning board approval, although the applicant may apply to the planning board for an extension(s).

Section 10: That Section 122-1345 is hereby added to the Key West Code of Ordinances as follows:

**Sec. 122-1345. Consent by mortgagee and
condominium/homeowner's association.**

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

Section 11: That Section 122-1346 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1346. Sunset.

This Ordinance shall expire on May 15, 2010.

Section 12: 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 13: 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 14: 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 5th day of April, 2005.

Read and passed on final reading at a regular meeting held this 19th day of April, 2005.

Authenticated by the presiding officer and Clerk of the Commission on 20th day of April, 2005.

Filed with the Clerk April 20, 2005.

ATTEST:


CHERYL SMITH, CITY CLERK


JIMMY WEEKLEY, MAYOR

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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

RECEIVED
CITY CLERK'S OFFICE
2005 MAY 23 AM 8:14
CITY OF KEY WEST
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.*, (2004), 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 20, 2005, the Department received for review City of Key West Ordinance No. 05-09, which was adopted by the City of Key West City Commission on April 20, 2005 ("Ord. 05-09"). Ord. 05-09 amends Chapter 122 of the Key West Code of Ordinances entitled "Zoning" by re-establishing Sections 122-1336 through 122-1345 in order to allow and regulate the transfer of transient units or licenses; adding Section 122-1346 to provide a sunset date; providing for severability; providing for repeal of inconsistent provisions; and providing for an effective date.
3. Ord. 05-09 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.*, (2004).

5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2004) 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.* (2004). The regulations adopted by Ord. 05-09 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. 05-09 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 the historical heritage of Key West and the Key West Historical Preservation District.
- (f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including . . . (5) The maintenance and expansion of transportation facilities because the units to be transferred under this ordinance must have been counted as a unit for the purposes of calculating hurricane evacuation time under the hurricane evacuation model.
- (h) Protection of 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. 05-09 is not inconsistent with the remaining Principles. Ord. 05-09 is consistent with the Principles for Guiding Development as a whole.

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



James L. Quinn, State Planning Administrator
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.

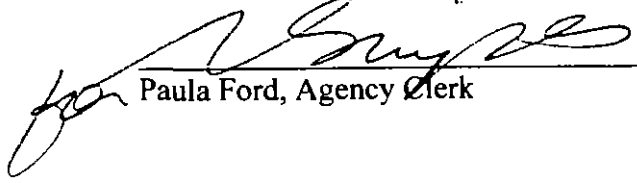
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE 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 19th day of May, 2005.



Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Jimmy Weekley
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

Robert Tischenkel
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