

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



To: Chairman and Planning Board Members

From: Katie P. Halloran, Planning Director

Meeting Date: November 18, 2021

Agenda Item: **Text Amendment of the Land Development Regulations** -A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission amending Chapter 122 of the Land Development Regulations, entitled “Zoning”, Article V, entitled “Supplementary District Regulations”, Division 7, entitled “Transient Living Accommodations in Residential Dwellings”; by amending Section 122-1371, entitled, “Transient living accommodations in residential dwellings; regulations; by increasing the inspection and enforcement fee through a City Commission Resolution, and establishing a renewal period, delinquent fee, and transfer fee; pursuant to Chapter 90, Article VI, Division 2; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Background:

The proposed ordinance to amend the City’s Land Development Regulations (the “LDRs”) is an effort to update the transient living accommodations ordinance since initial implementation in 2006 and to increase fees for the first time. Per Sec. 86-9, City of Key West Municipal Code, *Transient living accommodations* or *transient lodging* means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is 1) rented for a period or periods of less than 28 days, or which is 2) advertised or held out to the public as a place rented to transients, regardless of the occurrence of an actual rental.

As of today, most transient rental properties do not carry the appropriate Transient Medallion due to supply and demand. The yearly cost of a medallion order is \$8,000.00 for one hundred plaques. The approval of the fee increase will help with the costs associated with this license and will give us the opportunity to license all transient properties appropriately.

These amendments also establish fees to transfer ownership and for monthly delinquency. This ordinance will be considered in conjunction with a City Commission Resolution establishing a fee schedule for Transient Medallion, Transient Rental Medallion Allen Case, and Transient Rental Medallion Truman Annex, which may be amended from time to time as needed.

Request:

The proposed text amendment to the LDRs is as follows*:

Section 122-1371. – Transient living accommodations in residential dwellings; regulations.

(e) *Fees; application schedule.*

(1) A person or entity who holds a transient rental business tax receipt shall pay the customary annual business tax receipt fee, plus an annual inspection and enforcement fee ~~of \$125.00~~ upon the filing of the application set forth in subsection (c). All fees associated with this program are hereby established by City Commission Resolution and may be amended from time to time. All transient medallion licenses are due and payable on or before September 30th of the succeeding year. If September 30th falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30th. Transient medallion licenses that are not renewed when due and payable are delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed 25 percent of the annual fee for the delinquent establishment.

(2) Fee revenues raised under this section shall be used to fund a position in the code enforcement division, and to provide enforcement and processing personnel as needed. The officer holding this position shall have as his or her primary responsibility the enforcement of the terms and conditions of this ordinance, and other city regulations relating to the transient use of properties.

(3) For a period of 90 days after the effective date of this section [September 22, 2003], the licensing division will receive initial applications pursuant to subsection (c), and related fees. There shall be a \$25.00 per dwelling unit late fee payable to the city upon application filing. In all subsequent years after the initial application, annual processing fees shall be paid at the same time as the business tax receipt. The city manager may determine to pro-rate the initial processing fee.

(4) Any transient medallion license may be transferred to a new owner, when there is a sale of the property, upon payment of a transfer fee of ten percent of the annual license tax and presentation of evidence of the sale and the original license upon the filing of the application set forth in subsection (c).

Editor's note— The city has advised that the effective date of Ord. No. 02-06 actually occurred upon final DCA approval, which was September 22, 2003.

(f) *Enforcement; penalties.* A violation of this section shall be punishable as a misdemeanor and by a fine of up to \$500.00 per day, per unit, per violation. The code enforcement division may also enforce the terms of this section by bringing a case to the code enforcement special master pursuant to its authority under law and ordinance. In addition, any license or permission granted hereunder may be revoked for cause, upon notice and opportunity to be heard, by the city commission. In addition to any other remedy available to the city, the city or any adversely affected party may enforce the terms of this section in law or equity. Any citizen of Key West may seek injunctive relief in a court of competent jurisdiction to prevent a violation of this section. The city, by and through its code enforcement division, may apply for an administrative search warrant to enter upon the premises of any residence subject to this section.

Land Development Regulations Text Amendment Process:

Planning Board:	November 18, 2021
City Commission (first reading):	TBA
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	

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.

Pursuant to Code Section 90-552 the Planning Board, regardless of the source of the proposed change in the LDRs, 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 in the LDRs to the City Commission for official action. In its deliberations, the Planning Board shall consider the criteria in Code Section 90-521 and the contents of the application as noted in Section 90-520(6).

Criteria for Approving Amendments to the LDRs pursuant to Code Section 90-521 and 90-522 (a). In evaluating proposed changes to the LDRs, the City shall consider the following criteria:

- (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 proposed text amendment would be consistent with the Comprehensive Plan, the adopted infrastructure minimum levels of service and the concurrency management program.

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

The proposal is in conformance with all applicable requirements of the Code of Ordinances.

- (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 conditions support or work against the proposed rezoning.**

Land use and development conditions have changed since 2006; the City's affordable housing crisis has become more pronounced and impactful to both local residents and business owners. However, these proposed changes are minimal and function to improve the administration of an existing program through adequate enforcement. Fee revenues raised under this section shall be used to fund a position in the code enforcement division, and to provide enforcement and processing personnel as needed; these amendments function to correct the fee amount after fifteen years.

- (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.***

The proposal would not affect land uses; the proposed amendments are minor and involve a long-standing commercial program.

- (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.***

This proposal to amend City Code Section 122-1371 functions to improve administration of an existing program- the regulation of transient rental accommodations in residential dwellings.

- (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 text amendment will have no impacts on the natural environment.

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

The proposal would not adversely affect the property values in the area or the general welfare. The proposed amendments are minimal and would function to improve the administration of this program.

- (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.***

This proposal is not anticipated to affect land use patterns even of transient rental operations; the proposed Land Development Regulation changes are minor.

- (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.***

The proposed text amendment would not be in conflict with the public interest and it is in harmony with the purpose and interest of the Land Development Regulations. It is in the public interest to update regulatory programs as needed and review fees regularly and as needed.

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

Utilization of a companion Resolution to establish fees allows Staff and City Commission a simple and efficient process to amend fees as required from time to time.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to amend the Land Development Regulations be **APPROVED**.