



THE CITY OF KEY WEST

Code Compliance Division

P.O. BOX 1409
KEY WEST, FL 33041
(305) 809-3740

AMENDED NOTICE OF IRREPARABLE CODE VIOLATION AND ADMINISTRATIVE HEARING

DATE: June 16, 2011
RE: CASE NUMBER 11-00000581

Certified Mail Receipt#: 7007 3020 0000 5346 0018

To:
Robert B Walsh
80 Old Beach Road
Newport RI 02840

Subject Address:
810 Terry Ln
Key West, FL 33040

7007 3020 0000 5346 0001
Summerwind Props Of Newport, Ll
Richard Klitenick, R/A
1009 Simonton Street
Key West Fl 33040

810 Terry Ln
Key West, Fl 33040

TAKE NOTICE that the City of Key West Code Compliance Division has requested the City of Key West Special Magistrate to conduct an administrative hearing regarding code violation(s) reported to you by **NOTICE OF CODE VIOLATION** concerning the above noted subject address. You were noticed that your property is in violation of the City of Key West Code of Ordinances for the following reason(s):

Violation Detail

TRANSIENT LIVING ACCOMMOD Sec. 122-1371 (b) (c)(9)

Date Est: March 26, 2011 Location: 810 TERRY LN

A business tax receipt to rent this property transiently is required.

Prohibited Uses HMDR Sec. 122-599

Date Est: March 26, 2011 Location: 810 TERRY LN

Transient rental units are not permitted in the Historic Medium Density Residential zoning district.

In accordance with Florida Statutes § 162 and Code of Ordinances, City of Key West, § 2-631 through § 2-647, The City of Key West has scheduled a hearing to be held at **Old City Hall, 510 Greene Street, Key West, Florida at 1:30 P.M. on:**

June 29, 2011

The Chambers will be open at 1:00 PM. These proceedings may be televised.

The purpose of this hearing is to determine if a violation(s) exists, the appropriate action to be taken, if any is required, and if any fines or penalties are to be imposed. **YOU ARE REQUESTED TO APPEAR AT THIS HEARING** to present evidence and/or testimony to show cause, if any, why you should not comply with City Ordinances. **YOUR FAILURE TO APPEAR MAY RESULT IN A FINE OR PENALTY BEING IMPOSED AGAINST YOU AND A LIEN BEING IMPOSED UPON YOUR PROPERTY.**

You have a right to have an attorney present at the hearing. If an attorney represents you, your attorney must file written notice with this office prior to the hearing date.

If you intend to request a continuance from the Hearing Date set out above you must submit a written request for a continuance addressed to the Special Magistrate and mailed to PO Box 1409, Key West, FL 33041 or delivered to the Special Magistrate's Legal Analyst at 3139 Riviera Drive, Key West, FL 33040. All requests must be received at least five (5) working days prior to the Hearing Date set out above. If the request is not received five (5) working days prior to the Hearing Date you or your attorney must appear on the Hearing Date to petition the Special Magistrate for a continuance. If any continuance is granted this will not stay discovery and all records previously requested must be supplied to the City or formally objected to.

Be advised that, if you decide to appeal any decision of the Special Magistrate in this code enforcement hearing, you shall be responsible to ensure that a verbatim record of the proceedings of this code enforcement hearing is made, such that any evidence and testimony upon which an appeal may be based can be submitted to the appellate court.

If you are found to be in violation of City of Key West Ordinances, administrative costs in the amount of **\$250.00** may be levied for administrative recovery for prosecution and investigation in addition to levied fines associated with the violation(s). **Failure to pay these costs will result in a lien against the property in violation.**

PER FLORIDA STATUTES SECTION 162.09, YOUR FAILURE TO CORRECT THE VIOLATION (S) MAY RESULT IN THE IMPOSITION OF A FINE OF UP TO \$250.00/DAY, AND \$500.00/DAY FOR A REPEAT VIOLATION. IF THE VIOLATION (S) IS IRREPARABLE OR IRREVERSIBLE, A FINE OF UP TO \$5000.00 MAY BE IMPOSED BY THE SPECIAL MAGISTRATE. FINES MAY BE IMPOSED ON A PER DAY/ PER VIOLATION BASIS.



Barbara Meizis
Code Compliance Officer
City of Key West

cc: ✓ Samuel J Kaufman, P.A.
1509 Josephine St, Ste 1
Key West, FL 33040

Hand served this _____ day of _____, 2011 @ _____ am/pm.

Received by: _____ Served By: _____

CASE NUMBER 11-00000581
PROPERTY ADDRESS 810 TERRY LN

VIOLATION: TRANSIENT LIVING ACCOMMOD QUANTITY: 1
DESCRIPTION: Sec. 122-1371 DATE: 5/06/11
LOCATION: 810 TERRY LN

NARRATIVE :

A business tax receipt to rent this property transiently is required.

ORDINANCE DESCRIPTION :

(a) Intent. These regulations apply only to the transient use of residential dwellings. In 1986, the city enacted former zoning code section 35.24(44) which provided the following definition of a transient living accommodation: "Commercially operated housing principally available to short-term visitors for less than twenty-eight (28) days." (This definition shall hereinafter be referred to as the "former transient definition.") Some property owners and developers interpreted the former transient definition to mean that an owner could rent his or her residential dwelling for less than half the year without the dwelling losing its residential status, and therefore without the need for a city-issued transient license (so long as state licensing requirements were met). This interpretation went unchallenged by the city. Three categories of transient use of residential dwellings resulted: (1) some owners obtained a transient license allowing unrestricted transient use; (2) some owners followed the former transient definition and, accordingly, rented their properties less than half the year; and (3) some owners put their residences to a transient use without city or state license and without regard to existing regulations. In addition, many residential dwelling owners never put their properties to a transient use and they no longer have the opportunity to do so under the city's current rate of growth ordinance.

The city commission finds that short-term or transient rentals affect the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship; although short-term tenants no doubt are good citizens generally, they do not ordinarily contribute to activities that strengthen a community.

Therefore, the city intends by these regulations to establish a uniform definition of transient living accommodations, and to halt the use of residences for transient purposes in order to preserve the residential character of neighborhoods. The city has provided only a brief phase-out period in recognition that in many instances investment expectations have already been met either through rental income or rising market value. Finally, certain guest houses currently hold a number of the city's category 10C business tax receipt which denotes transient use of a residential property. The city intends

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ORDINANCE DESCRIPTION :

to develop a uniform guest house business tax receipt category, and then to redesignate all 10C licenses held by guest houses accordingly.

(b) Unlicensed residential transient use; prohibition. Except as provided in section 122-1372, all unlicensed transient rental use of residential dwellings is prohibited.

(c) Application. The holder of a business tax receipt allowing residential transient use must annually provide or comply with the following information:

(1) The complete street address and RE number of the property.

(2) Proof of ownership, including the name, address and phone number of each person or entity with an ownership interest in the property.

(3) An approved inspection report of the fire marshal verifying compliance with the fire marshal's criteria for a residential dwelling transient lodging use.

(4) The gross square footage of the property, including the number of rooms, bedrooms, kitchens and on-site parking spaces attributable to transient lodging use.

(5) A valid and current federal employer tax identification number (or Social Security number) for the owner(s) of the property.

(6) A valid and current Florida Department of Revenue sales tax identification number under Chapter 212, Florida Statutes, and a valid and current license under Chapter 509, Florida Statutes.

(7) The name, address and 24-hour phone number of the person who will be operating the property's transient accommodations.

(8) The application shall bear the signatures of all owners, authorized agents and authorized property managers.

(d) General regulations. The following regulations shall pertain to transient lodging use of or within a residential dwelling.

(1) Except as provided herein, each residential property where transient lodging use is in effect shall prominently display on the outside of the property a medallion alerting the public of the transient use. The medallion and instructions for its posting shall be issued by the licensing division.

(2) A contact person must be available 24-hours per day, seven days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the residential dwelling transient lodging. The name and phone number of the contact person must be posted on exterior of the dwelling in a place accessible to the public.

(3) As a condition of application approval, the fire marshal shall conduct an inspection of each dwelling unit and issue to the applicant written approval based on applicable life safety criteria.

(4) Occupancy of individual units shall conform to the

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ORDINANCE DESCRIPTION :

occupancy limits of the Florida Building Code. Units shall comply with the Americans with Disabilities Act, as applicable.

(5) The owner or manager shall maintain a tenant and vehicle registration which shall include the name and address of each unit's tenant, and the make, year and tag number of the tenant's vehicle.

(6) Parking. The owner shall provide one off-street parking space per residential dwelling transient lodging unit, except where the unit is in the city's historic district; provided, however, that the owner or manager must instruct all tenants of the historic district's residential parking program and if the vehicle is not eligible to park on the street, then the owner or manager shall ensure that the tenant is directed to a lawful and appropriate parking space.

(7) There shall be a written lease between a residential dwelling owner and a tenant, and it shall contain the tenant's agreement to the regulations contained in this section.

(8) It shall be a violation of these regulations to enter into a long-term lease with a mutual intent to subvert the regulatory goals of this section. It shall also be a violation of these regulations for a property owner to lease space to "roommates" for a period of less than 30 days or one calendar month when not licensed as provided hereunder. For the purposes of enforcement, a rebuttable presumption shall exist that roommates use a common entrance to a dwelling.

(9) It shall be unlawful for any owner, tenant, broker, realtor, agent or other representative of the owners to hold out or advertise a residential dwelling for transient rental if the property is not permitted, as provided hereunder. A broker or realtor who is found in violation of this regulation shall be subject to business tax receipt revocation.

(10) Nothing in this section is intended to exclude the application of any ordinance of the City of Key West.

(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).

(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

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ORDINANCE DESCRIPTION :

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.

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.

 VIOLATION: Prohibited Uses HMDR QUANTITY: 1
 DESCRIPTION: Sec. 122-599 DATE: 5/06/11
 LOCATION: 810 TERRY LN

NARRATIVE :

Transient rental units are not permitted in the Historic Medium Density Residential zoning district.

ORDINANCE DESCRIPTION :

In the historic medium density residential district (HMDR), all uses not specifically or provisionally provided for in this subdivision are prohibited.

CORRECTIVE ACTION REQUIRED :

In the historic medium density residential district (HMDR), all uses not specifically or provisionally provided for in this subdivision are prohibited.