



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

To: Chairman and Planning Board Members

Through: Patrick Wright, Planning Director

From: Vanessa Sellers, Planner II

Meeting Date: January 17, 2019

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 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; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

The proposed ordinance to amend the City’s Land Development Regulations (the “LDRs”) is an essential part of an extensive effort to reduce the impact that transient use has on permanent housing within the City.

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)

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

Land Development Regulations Text Amendment Process:

Planning Board:	November 15, 2018 (<i>postponed</i>)
Planning Board:	December 20, 2018 (<i>postponed</i>)
Planning Board:	January 17, 2019
<i>If denied, then appeal may be filed within 10 calendar days.</i>	
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.

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.**

Consistency with the Comprehensive Plan

The City's Comprehensive Plan was developed in response to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, Florida Statutes). The Plan and its updates are consistent with the State, Regional and County plans; and serves as the basis for all land development decisions within the City of Key West. In addition to fulfilling legislative requirements, the City's Plan:

- protects and maintains its natural, historic and cultural resources;
- preserves its community character and quality of life;
- ensures public safety, and;
- directs development and redevelopment in an appropriate manner.

The proposed text amendment would be consistent with the Comprehensive Plan.

Consistent with the adopted infrastructure minimum level of service standards and the concurrency management program

The proposed text amendment would be consistent with the Comprehensive Plan and level of service (LOS) standards.

- (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.**

The existing LDRs were adopted on July 3, 1997 through Ordinance No. 97-10 following adoption of the 1994 Comprehensive Plan. Over the years, the Comprehensive Plan and LDRs have been amended from time-to-time. A new Comprehensive Plan was adopted on March 5, 2013 and became effective on May 2, 2013.

The proposed ordinance to amend the City's Land Development Regulations (the "LDRs") is an essential part of a collaborative effort by the City Commission and City staff to better regulate the number of transient licenses and their detrimental impact on permanent housing in the City.

- (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 current language of section 108-991 allows transiently used properties to be recognized and licensed by the City in zoning districts where transient rentals are prohibited. The proposed text amendment will help prevent future incompatible land uses.

- (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.**

No development plans are proposed with this application.

- (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.**

No development plans are proposed with this application. The proposal would not result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

- (7) ***Economic effects.* Whether, and 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. It is staff's opinion that the proposal would have a positive effect on the general welfare because it would prevent new transient licenses in residential neighborhoods.

- (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.**

The proposal would not result in negative effects to the land use pattern.

- (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.

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

The current language in section 108-991 allows property owners to legally misuse residential housing as hotel rooms and it causes the number of transient licenses to continue to grow. As a result, 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.

As written, the lawful unit determination application process essentially rewards illegal transient operations for driving up rents and keeping residential units out of the rental market. In addition, it is difficult for planning staff to complete such a 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 both may simply be rental records. It is impossible for staff to state with assurance that the claim of transient use on or around April of 2010 is valid if staff has no way to validate the supporting documents provided with 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.

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**.