

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES, ENTITLED "ZONING" BY REPEALING SECTION 122-1336; BY AMENDING SECTION 122-1338, TO AMEND THE BPAS EQUIVALENCY TO .86 WHEN A TRANSIENT UNIT IS TRANSFERRED TO A NON-TRANSIENT UNIT AND TO REQUIRE REMOVAL OF THE TRANSFERRED MEDALLION AND PLACEMENT OF SAME AT THE RECEIVER SITE; AMENDING SECTION 122-1339 TO PERMIT THE TRANSFER OF A BUSINESS TAX RECEIPT FOR TRANSIENT USE TO AN AREA WHERE TRANSIENT USE IS PERMITTED WITHOUT THE ACCOMPANYING TRANSFER OF THE UNIT AND TO REQUIRE REMOVAL OF A TRANSFERRED MEDALLION AND PLACEMENT OF SAME AT THE RECEIVER SITE; AMENDING SECTION 122-1371 TO CLARIFY INTENT AND TO REQUIRE RETURN OF THE MEDALLION UPON TERMINATION OF A BUSINESS TAX RECEIPT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Key West finds that it is necessary to correct the BPAS unit value for transfer of transient units to non-transient units of less than 600 square feet, to encourage the construction/redevelopment of more non-transient (permanent) housing in the City of Key West; and

WHEREAS, the current code provisions restricting the transfer of transient units or business tax receipts, together with the required medallions, from areas where transient use is no longer allowed, imposes an unreasonable restriction on the

transfer of transient units or uses within areas where transient use is allowed; and

WHEREAS, the failure of property owners to surrender city-issued transient rental medallions when the required business tax receipt expires or is not renewed created an unreasonable record keeping task upon City staff; and

WHEREAS, certain housekeeping clarifications have been identified in the current transient rental code sections; and

WHEREAS, at its meeting of December 21, 2017, the Key West Planning Board recommended approval of this proposed ordinance; and

WHEREAS, amendments to Chapter 122 of the Code of Ordinances will promote the health, safety and welfare of the citizens and visitors of the City of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1*: That Section 122-1336 of the Code of Ordinances is hereby repealed in its entirety.

Section 2*: That Section 122-1338 of the Code of Ordinances is hereby amended as follows:

Sec. 122-1338. - Transfer of transient units.

The owner of an established transient unit may transfer the unit to another site within the City of Key West under the following conditions:

(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 division shall not cause a net increase of units in the city.

*(Coding: Added language is underlined; deleted language is ~~struck through~~.)

(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, regardless of whether it will be used transiently or non-transiently, unless accompanied by a business tax receipt duly issued pursuant to section 66-109(10). When units are transferred for non-transient use, the licenses will be extinguished.

(3) Transient units may be converted to non-transient residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a non-transient residential unit is created by the transfer of a transient unit and the new non-transient residential unit is 600 square feet or less, the transient unit may be transferred at its ~~-.58-ROGO~~ .86 BPAS 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. No ~~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 nonconforming buildings may receive units providing their nonconforming 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.

(11) Within ten (10) days of the approval of the transfer of a transient unit under this section, the property owner shall remove the existing City issued medallion from the sending site and affix the same to the receiver site, pursuant to Section 122-1371(d)(1). This section shall not apply to units transferred for non-transient use, in which case the medallion shall be surrendered to the City and the transient use extinguished from the sender site.

Section 3: That Section 122-1339 of the Code of Ordinances is hereby amended as follows:

Sec. 122-1339 - Transfer of transient business tax receipt.

(a) A business tax receipt for transient use of a unit may itself be transferred ~~from an area where transient uses are prohibited~~ to a receiver site where transient use is permitted 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 business tax receipt for transient use license under this section shall not result in a loss of affordable housing at the receiver site.

(b) Where a business tax receipt for transient use 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.

(c) Within ten (10) days of the approval of the transfer of a transient business tax receipt under this section, the property owner shall remove the existing City issued medallion from the sending site and affix the same to the receiver site, pursuant to Section 122-1371(d) (1).

Section 4: That Section 122-1371 of the Code of Ordinances is hereby amended as follows:

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

(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~~ former rate of growth ordinance, the current BPAS 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 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. The medallion shall be removed and returned to the City licensing division upon the expiration or non-renewal of a business tax receipt allowing transient use. Failure of a property owner to properly display a medallion, or to remove and return the medallion to the City when required shall constitute a violation of this section and is punishable as provided in Section 122-1371(f).

(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 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 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.

(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.

Section 4: 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 5: 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 6: 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 and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes].

Read and passed on first reading at a regular meeting held this _____ day of _____, 2018.

Read and passed on final reading at a regular meeting held
this _____ day of _____, 2018.

Authenticated by the presiding officer and Clerk of the
Commission on _____ day of _____, 2018.

Filed with the Clerk _____, 2018.

Mayor Craig Cates	_____
Vice Mayor Clayton Lopez	_____
Commissioner Sam Kaufman	_____
Commissioner Richard Payne	_____
Commissioner Margaret Romero	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK