



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

**To:** Chairman and Planning Board Members

**Through:** Ashley Monnier, Planner II

**From:** Donald Leland Craig, AICP Interim Planning Director

**Meeting Date:** January 20, 2011

**Agenda Item:** Transient Transfer Ordinance – An ordinance of the City of Key West, Florida, amending Chapter 122 of the Code of Ordinances entitled “Zoning” by amending Section 122-1338, and 122-1346 to provide for clarification to the Transfer of Transient Units Ordinance; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

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**Background:**

In 1999 the City of Key West adopted a Transient Unit Ordinance to allow the transfer of transient units and transient business tax receipts from non-conforming zoning areas to conforming areas throughout the City. The original ordinance had a five year “sunset” date. In February of 2002 the ordinance, including the sunset date, was modified in response to implementation experience, and a new sunset date of March 15, 2005 was established. The ordinance was readopted in its entirety on April 20, 2005 with a new sunset date of May 15, 2010. On April 7, 2010, the City Commission approved an ordinance extending the May 15, 2010 sunset date for a period of 12 months, providing a new sunset date of May 15, 2011. The purpose of this extension was to allow City staff to present options regarding transient units and license transfers to the City Commission. All four ordinances were found consistent with the Comprehensive Plan and Principals for Guiding Development of the Key West Area of Critical State Concern by prior Planning Boards, City Commissions and the Department of Community Affairs.

The purpose of this request is to modify portions of the Transient Unit Ordinance, based on feedback received from the City Commission and Planning Board at two publicly held workshops. On April 20, 2010, the City Commission held a public workshop to discuss the ordinance. At that time, the City Commission provided preliminary input (which focused on a phased elimination of the ordinance or to continue it with clarification) and requested Planning Board input. On July 14, 2010, the Planning Board held a public workshop to discuss the ordinance, and provided direction to the Planning Department to

eliminate the sunset provision in the ordinance and to further clarify what happens to the licenses when they move.

In anticipation of a full discussion about modifications to the Transient Ordinance, the Planning Department has conducted a transient survey and assembled relevant information on prior transfers, existing transfers still in play, and hurricane evacuation impacts of transient units under the Building Permit Allocation System.

**Review Criteria:** Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

**Sec. 90-522. Planning Board review of proposed changes in Land Development Regulations.**

**(a) The Planning Board, regardless of the source of the proposed change in the Land Development Regulations, 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 of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in section 90-521.**

The Planning Board is scheduled to review a draft of the ordinance on January 20, 2010. This document constitutes the summary of relevant criteria reviewed by the Planning Board.

**Sec. 90-521. Criteria for approving amendments to official zoning map. In evaluating proposed changes to the official zoning map, 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 changes do not impact the official zoning map or underlying future land use map designations. Transfer of transient units and transient tax receipts must comply with uses allowed in the Comprehensive Plan and Land Development Regulations. Further, the transient ordinance is consistent with the Comprehensive Plan objectives and policies, in that it is consistent with future land use classification provisions (the ordinance is consistent with allowed uses identified in Objective 1-2.1) and the Building Permit Allocation System (the ordinance maintains fractional allocations and equivalencies as required in Comprehensive Plan Objective 1-3.12 and implementing policies). The ordinance also establishes limits on unit sizes associated with transfers of

units (to two rooms) and requires occupancy equivalency considerations for business tax receipt transfers.

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

The proposed modifications appear consistent with all applicable requirements of the Code.

**(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 changes support or work against the proposed rezoning.**

No rezoning is proposed as part of this ordinance modification. Conditions driving the creation of the ordinance are fundamentally the same: growth management constraints including limits to transient development are still in place; underlying zoning code restrictions on transient development are still in place; and, nonconforming uses and densities still exist which can be remedied by the ordinance.

**(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 modification of the ordinance will have no impact on land uses: transient uses can only be allowed in conforming zoning districts as provided by the overall zoning code and as referenced in the existing ordinance.

**(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.**

The proposed ordinance modification does not impact the allocation of residential units and does not impact concurrency determinations or other public facility determinations in the Comprehensive Plan and Land Development Regulations. All development and redevelopment must comply with those regulations.

**(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 ordinance modification relates to the transfer of existing transient units and business tax receipts and does not impact existing natural resource protection regulations.

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

No economic impacts are anticipated as a result of the proposed sunset provision elimination and ordinance clarification.

**(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.**

By eliminating the sunset provision, the ordinance can continue to help eliminate legally nonconforming transient development by facilitating transfer of transient units and business tax receipts into areas where they are permitted in the zoning code. Should future changes be warranted, the proposed changes to the ordinance can be considered as needed. Further, the proposed clarifications to the ordinance are expected to support orderly and compatible land use patterns.

**(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 ordinance changes will facilitate the public interest and are in harmony with the Land Development Regulations.

**(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.**

The proposed elimination of the sunset provision and clarifying language will potentially streamline future transfer requests.

## **PROCESS**

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the DCA, who will have 60 days to issue an order of consistency.

## **RECOMMENDATION**

The Planning Department recommends consideration and approval of the ordinance modification.

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**Draft  
Resolution**

**RESOLUTION NO- 2011-XX**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING APPROVAL OF AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, AND 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Planning Department initiated the proposed amendments to the ordinance as a result of changes requested by the City Commission and Planning Board; and

**WHEREAS**, the Planning Board held a noticed public hearing on \_\_\_\_\_, where based on the consideration of recommendations by the City Planner, City Attorney, Building Official, and other information, the Planning Board recommended approval of the proposed amendments; and

**WHEREAS**, the Planning Board determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional public demand on public facilities; will have no impact on the built environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

**NOW THEREFORE BE IT RESOLVED** by the Planning Board of the City of Key West, Florida:

**Section 1.** That the above recitals are incorporated by reference as if fully set forth herein.

**Section 2.** That AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, AND 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE is hereby recommended for approval; a copy of the recommended modifications to the Code is attached.

**Section 3.** This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

DRAFT

Read and passed on first reading at a regular meeting held this \_\_\_\_ day of \_\_\_\_ 2011.

Authenticated by the Chairman of the Planning Board and the Interim Planning Director.

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Richard Klitenick, Chairman  
Key West Planning Board

Date

**Attest:**

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Donald Craig, AICP  
Interim Planning Director

Date

**Filed with the Clerk:**

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Cheryl Smith, City Clerk

Date

DRAFT



# **Draft Ordinance**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,  
AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES  
ENTITLED "ZONING" BY AMENDING SECTION 122-  
1338, and 122-1346 TO PROVIDE FOR  
CLARIFICATION TO THE TRANSFER OF TRANSIENT  
UNITS ORDINANCE; PROVIDING FOR SEVERABILITY;  
PROVIDING FOR REPEAL OF INCONSISTENT  
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

**WHEREAS**, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria;

**WHEREAS**, the City Commission held a workshop on April 20, 2010, to discuss potential modifications to the ordinance, and at that meeting directed city staff to consult with the Planning Board regarding potential ordinance modifications;

**WHEREAS**, the Planning Board held a workshop on July 14, 2010, to discuss potential modifications to the ordinance and recommended that the sunset provisions be eliminated and that the ordinance be maintained with only minor clarifications;

**WHEREAS**, staff prepared minor changes to the ordinance in accordance with Planning Board recommendations;

**WHEREAS**, the Planning Board held a noticed public hearing on \_\_\_\_\_, where based on the consideration of recommendations by

the city planner, city attorney, building official and other information recommended approval of the proposed amendments;

**WHEREAS**, the City Commission held a noticed public hearing on \_\_\_\_\_ and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

**WHEREAS**, the City Commission determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

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

Section 1: That Chapter 122 of the Code of Ordinances is hereby added/amended as follows\*:

**Sec. 122-1338 (2). Transfer of Transient Units.**

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

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.

**Sec. 122-1346. Sunset.**

~~This division shall expire on May 15, 2011.~~

Section 2: 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 3: 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 4: 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 \_\_\_\_\_, 2010.

Read and passed on final reading at a regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Authenticated by the presiding officer and Clerk of the Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Filed with the Clerk \_\_\_\_\_, 2010.

\_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK