



**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.

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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