



THE CITY OF KEY WEST

Code Compliance Division

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

NOTICE OF IRREPARABLE CODE VIOLATION AND ADMINISTRATIVE HEARING

DATE: November 3, 2013
RE: CASE NUMBER 13-00001337

CERTIFIED MAIL RECEIPT#: 7007 3020 0000 5347 6064

To:
David And Karen S, Wells Zelinske
10766 Nantucket
Huntley, IL 60142

Subject Address:
1223 2nd Street
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):

Count 1-4

Sec. 18-601. License required.

(a)

The short-term rental of a residential property is a business activity that requires the property owner to hold a business tax receipt issued by the city. A state or county license without an accompanying city license is insufficient. Notwithstanding the existence of any other regulation of the city regulating the transient use of property, the short-term rental of a residential property without a business tax receipt violates the law.

(b)

It shall be unlawful for a property owner to lease a residential property for a period of less than 30 days or one calendar month without having obtained a business tax receipt under this division.

Count 2-4

Sec. 18-602. Rebuttable presumption of violation.

There shall be a rebuttable presumption that a property owner without a business tax receipt is in violation of this division upon the existence of any of the following:

(1)

A lease between a property owner and a tenant that by its terms demonstrates a rental of a residential property of less than 30 days or one calendar month;

(2)

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An advertisement in any medium, such advertisement that holds out the residential property for rental for a period of less than 30 days or one calendar month; or

(3)

Testimony is presented by any person who is a neighbor or by a representative of a condominium or homeowners association board that a pattern of activity generally associated with unlicensed transient rental activity is occurring at the property.

A presumption of illegal activity, as set forth above, may be rebutted by direct testimony under oath by the alleged tenant of the alleged unlicensed rental; or, in the case of a citation based upon an advertisement where the property owner is not cited for a completed rental transaction, by direct testimony under oath by the property owner.

Count 3-4

Sec. 122-269. Prohibited uses.

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

Count 4-4

Sec. 66-87. Business tax receipt required for all holding themselves out to be engaged in business.

No person shall engage in, manage, carry on or practice, wholly or in part, within the city limits, any business, profession or occupation without first procuring a city business tax receipt. For the purposes of this article, any person holding himself out to the public by sign, printed matter, telephone directory classified section, city directory or otherwise as being engaged in business or as offering services or property to the public for a consideration, regardless of whether such person actually transacts any business or practices a profession, shall be considered as engaging in business and shall be liable for a business tax receipt fee thereon.

TO Wit: On October 30th, 2013 around 445pm I conducted a site investigation pertaining to an anonymous complaint of an alleged illegal business activity at 1223 2nd Street; involving multiple people in and out of property and also multiple police calls to the address that involved property owners guests/tenants. While on my site investigation I knocked on front door of residence and found no one home. However, the residence driveway had a scooter parked in it and a car parked on side of the street in front as well. Pictures of both scooter and vehicle were taken and license plates were checked using our DMV website to identify owners and found that the scooter belongs to David James Cuff[lease holder, tenant]. Rental leases identifying Mr. Cuff as a tenant were obtained from Keys Energy Services on October 31st, 2013. This property holds a current non-transient license with our city of Key West but not one to advertise / hold out for transient occupancy as stated on Craig's list add. On October 31st, 2013 at 12:03pm code manager Jim Young located a craigslist advertisement for parking /storage of vehicles, boats, trailers and rooms available on a day to day or weekly rentals. Both ads had the same telephone number 952.292.2826 Jim Young called the number posted on craigslist and a male answered the phone stating his name was Dave,[Mr. David Cuff] and when asked how much he would charge to rent the driveway for his boat and trailer he stated" let me ask my wife". Jean!" [Mrs. Jean Karr] Mr. David said" how much to rent the drive way? Asking his wife"" No not a room, he has a boat and trailer " Jim Young then heard a female stating" \$150.00 per month". Lastly, besides the illegal holding out this property is also in violation of not having a business tax receipt to rent a parking facility which is prohibited in this residential zoning.

CORRECTIVE ACTION: Cease activity.

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:**

November 20, 2013

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.

Paul A Nickle
Code Compliance Officer
City of Key West
(305) 809-3733 Desk
(305) 797-6775 Cell
Work Hours Wed-Sun 3pm-12am

Hand served this _____ *day of* _____, 2013 @ _____ *am/pm.*

Received by: _____

Served By: _____

