



**THE CITY OF KEY WEST
CITY ATTORNEY'S OFFICE
EXECUTIVE SUMMARY**

To: Mayor and City Commission

From: George B. Wallace, Assistant City Attorney

Meeting Date: April 4, 2017

Agenda Item: Planning board resolution recommending an ordinance revision to the City Commission amending Section 108-991 requiring that applicants seeking a lawful unit determination show that the existence and use of the unit is permissible under current or previous zoning requirements; providing for severability; providing for repeal of inconsistent provisions, providing for an effective date.

Sponsor: Commissioner Kaufman

Action Item / Background

Section 108-991 provides a mechanism for property owners to seek a determination that an existing dwelling unit is lawful under certain conditions. The section also provides for the licensing of transient units found to be in existence as of April 1, 2010.

The current provision of the code can be interpreted as requiring any unit to be determined a lawful unit if it existed on April 1, 2010 regardless of the previous failure of the property to comply with zoning codes now or previously in effect for the parcel seeking the lawful determination.

The submitted amendment to the code clarifies that to be entitled to a lawful determination, and therefor exempt from BPAS, the unit must comply with zoning requirements in effect for the property in the zoning district in which it is located or a prior zoning ordinance applicable to the site seeking the lawful determination.

Section 108-991, as originally enacted, required the establishment of the use and existence of the unit as of 1990. In 2013 the date was changed to April 1, 2010. Many units, both transient and non-transient are eligible for approval under the current language of the code which does not address compliance with certain zoning requirements such as density, set-back or other zoning classification requirements.

The purpose and intent of the proposed revision of the code is to establish a date certain after which any applications for a lawful determination must establish the additional criteria that the use of the unit is lawful under the zoning requirements at the time the application is filed or some prior zoning designation applicable to the site on which the unit is located.

The May 2, 2017 date has been proposed to allow certain known units an opportunity to apply for a lawful determination while the existing code remains in effect.

The City Attorney's office recommends that the Commission **approve** the draft amendment to Section 108-991 of the City Code of Ordinances.