



THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report

To: Chairman and Planning Board Members

Through: Shawn D. Smith, City Attorney

From: Ronald J. Ramsingh, Chief Assistant City Attorney

Meeting Date: June 16, 2022

Agenda Item: **Text Amendment of the Land Development Regulations**– A Resolution of the City of Key West Planning Board recommending an Ordinance to the City Commission amending Chapter 122 of the Land Development Regulations, titled “Zoning”, Article V, titled “Supplementary District Regulations”, by adding Division 15. – Short-Term Rentals.

Request: The proposed ordinance to amend the City’s Land Development Regulations is designed to preserve the current long-term permanent housing stock amid the limited supply when compared to the current demand.

Applicant: City of Key West

**Background:**

The proposed ordinance to amend the City’s Land Development Regulations is an essential part of an effort to promote and preserve current long-term permanent housing stock. Currently, permanent housing is a major concern in Key West. Due to extremely high property values, limited land on which to build, and a significant amount of short term rentals, all of which have negatively affected the permanent housing supply, many residents are finding it difficult to afford to rent or buy a home in Key West. Additionally, the City recognizes that the long-term permanent housing stock demand exceeds the supply. These factors, coupled with the finite nature of BPAS allocations, will only exacerbate an already critical situation. The proposed ordinance to amend the City’s Land Development Regulations is an effort to more effectively implement the Comprehensive Plan Goals, Objectives, and Policies of the City of Key West while also attempting to preserve the current long-term permanent housing supply and our residential neighborhoods.

**Request / Proposed Amendment:** *\*Coding: Added language is underlined; deleted language is ~~struck through~~ at first reading.*

**DIVISION 15. SHORT TERM RENTALS**

**Sec. 122-1560 – Purpose and Intent.**

The purpose and intent of this division is to identify and regulate a short-term rental category that involves tenancies that are greater than or equal to 30 days or one calendar month, up to six

months in a new category of rentals. The city finds that these rentals typically do not promote permanent or longer termed residents that contribute to the workforce of the city. The city specifically finds that the proliferation of such rentals, tempered by the limited housing inventory of a small, tourist-based island have substantially contributed to a critical shortage of affordable housing. By permitting the transfer of one to six month short-term rentals to denser, commercially-oriented zoning districts that permit transient rentals, the city finds that the number of residential rentals that are typically occupied by longer tenants that live and work in the city will increase, while also improving the quality of life of existing long term rentals and homeowners.

#### **Sec. 122-1561. Application.**

- (a) There shall be an application period to obtain a business tax receipt and regulatory permit under this division. Applications will be accepted if received by the Licensing Division of the City of Key West for thirty (30) calendar days after the effective date of this ordinance.  
Applications must show the following:
- (1) A valid non-transient business tax receipt that existed on April 20, 2022;
  - (2) Proof of ownership of the subject property including the name, address, and phone number of any other person with an ownership interest in the subject property;
  - (3) An approved inspection report from the fire marshal of the Key West Fire Department;
  - (4) The gross square footage of the property, including the number of rooms, bedrooms, kitchens, and on-site parking attributable to the rental use;
  - (5) A valid Florida Department of Revenue sales tax identification number under Chapter 212 of Florida Statutes;
  - (6) A valid Florida Department of Revenue sales tax revenue identification number pursuant to Chapter 212, Florida Statutes, and a valid license pursuant to Chapter 509, Florida Statutes;
  - (7) The name, address and phone number of a 24-hour representative who will be operating the property's accommodations;
  - (8) Signatures of all owners, authorized agents and property managers.
- (b) If a license issued under this article is not timely renewed in any given year, the property will forfeit any rights for a license renewal.

#### **Sec. 122-1562. Rebuttable Presumptions of Violation.**

- (a) It shall be unlawful for a property owner, tenant, real estate agent/broker, agent, or representative to rent, lease, let, or otherwise cause to be occupied any residential dwelling unit or any part thereof for a tenancy that is greater than or equal to 30 days or one calendar month, up to six months without the benefit of a valid business tax receipt issued by the City of Key West under this division.
- (b) There shall be a rebuttable presumption of a violation of this division upon the showing of any of the following:
- (1) A lease between a property owner, tenant, real estate agent/broker, agent, or representative and a tenant for a term greater than or equal to 30 days or one calendar month, up to six months without a valid business tax receipt and regulatory permit issued by the City of Key West pursuant to this division;
  - (2) An advertisement in any print or electronic medium or platform that represents a residential property available for rent or lease for a term greater than or equal to 30 days or one calendar month, up to six months without a valid business tax receipt and regulatory permit issued by the City of Key West pursuant to this division;
  - (3) Competent, substantial evidence that is presented by any person who established a pattern of activity generally associated with a tenancy that is greater than or equal to 30 days or one calendar month, up to six months without a valid business tax receipt and regulatory permit issued by the City of Key West pursuant to this division;

### **Sec. 122-1563. Regulations.**

- (a) Each residential unit that is rented, leased, or let under this division shall obtain and display a property medallion prominently on the outside of the unit to alert the public of the rental use. The Licensing Division of the City of Key West shall issue instructions for posting.
- (b) A contact person must be identified to the Licensing Division at the time of application, who must be available 24 hours a day, seven days a week for the purpose of promptly responding to complaints regarding the conduct of the occupants of the rental unit. The name and phone number must be prominently posted on or near the medallion in paragraph (a). The names of any subsequent, replacement or temporary representatives must be given to the Licensing Division of the City of Key West within 24 hours of replacement.
- (c) As a continuing condition to the application, the fire marshal for the City of Key West must inspect and the owner shall maintain certification of the rental unit based on applicable life safety criteria, including but not limited to occupancy and safe means of ingress and egress. The owner of a rental unit pursuant to this division must immediately report any physical changes to rental unit that can affect the fire marshal's certification.
- (d) Occupancy limits must conform to the limits set in the most recent edition of the Florida Building Code.
- (e) Rental units must comply with all applicable aspects of the Americans with Disabilities Act.
- (f) The owner or property manager of a licensed rental unit under this division shall keep and maintain a written or digital record of all tenants who occupy the rental unit, as well as the make, color, model and license plate information of the tenants' vehicles.
- (g) The owner or property manager of a licensed rental unit under this division shall provide one off-street parking space per licensed rental unit. If the unit is located in the historic district, the owner or property manager shall instruct all tenants to park in lawful, non-resident only spaces.
- (h) All rental agreements must contain a provision that the tenant(s) agree to the regulatory provisions herein.
- (i) It shall be a violation of this division to enter into a lease with a term longer than six months, or a lease pursuant to this division with the intent to have any occupancy of a period that would otherwise be subject to this division, or for a period that violates Sec. 18-601 or Sec. 122-1371. Such a contract shall be deemed a sham contract.  
It shall be a violation of this division for a property owner, agent, or representative to lease space to "roommates" for a period regulated under this division when not licensed as provided herein. For purposes of enforcement, a rebuttable presumption shall exist that roommates use a common entrance to a unit.

### **Sec. 122-1564. License Transfer.**

- (a) A business tax receipt for a tenancy that is greater than or equal to 30 days or one calendar month, up to six months under this article may itself be transferred from an area where transient rentals as defined by Sec. 18-601 and Sec. 122-1371 are prohibited to a receiver site where transient rental uses under Sec. 18-601 and Sec. 122-1371 are permitted. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.
- (b) Where a license alone is transferred, the planning board shall consider whether the receiver site is suitable for use under this article in the receiving 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.

### **Sec. 122-1565. Fees.**

- (1) A person or entity who holds a rental business tax receipt pursuant to this division shall pay the customary annual business tax receipt fee pursuant to Sec. 66-109 for non-transient rental, plus an

annual inspection and enforcement fee of \$300.00 upon the filing of the initial application set forth in Sec. 122-1561.

- (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 division, and other related city regulations.
- (3) For a period of thirty days after the effective date of this section, the licensing division will receive initial applications pursuant to Sec. 122-1561 and related fees. In all subsequent years after the initial application, annual processing fees shall be paid at the same time as the business tax receipt, except that pursuant to Sec. 122-1561(b), no late applications will be accepted. The city manager may determine to pro-rate the initial processing fee.

#### **Sec. 122-1566. Penalties.**

A violation of this section shall be punishable in county court as a 2<sup>nd</sup> degree misdemeanor and by a fine of up to \$500.00 per day, per unit, per violation.

The code compliance officer 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.

*\*Coding: Added language is **underlined**; deleted language is ~~**struck through**~~ at first reading.*

#### **Land Development Regulations Text Amendment Process:**

|                                           |                                       |
|-------------------------------------------|---------------------------------------|
| Planning Board Meeting:                   | June 16, 2022                         |
| City Commission (1st Reading):            | July 6, 2022                          |
| Local Appeal Period:                      | 30 days                               |
| DEO Review (1st Reading):                 | Up to 60 days                         |
| City Commission (2nd Reading / Adoption): | TBD, 2022                             |
| Local Appeal Period:                      | 30 days                               |
| DEO Review (2nd Reading):                 | Up to 45 days                         |
| DEO Notice of Intent (NOI):               | Effective when NOI posted to DEO site |

#### **Analysis:**

The purpose of Chapter 90, Article VI, Division 2 of the Land Development Regulations (the "LDRs") of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") is to provide a means for changing the text of the Land Development Regulations. It is not intended to relieve hardships nor to confer special privileges or rights to any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the Planning Board and

the City Commission shall consider the consistency of the proposed amendment with the intent of the Comprehensive Plan.

Pursuant to Code Section 90-552, the Planning Board 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 in the LDRs to the City Commission for official action.

The Code provides criteria by which LDR amendments must be evaluated:

***Section 90-520 (6) Justification. The need and justification for the proposed change shall be stated. The evaluation shall address but shall not be limited to the following issues:***

- a. Comprehensive Plan consistency. Identifying impacts of the proposed change in zoning on the Comprehensive Plan. The zoning must be consistent with the Comprehensive Plan.***

With respect to the additions proposed for Division 15, Article V of Chapter 122 of the Code of Ordinances, Comprehensive Plan Objective 3-1.7 “Conserve Neighborhood Quality and Existing Housing Stock” and its related policies state that the City shall endeavor to preserve neighborhoods and analyze local housing supply and demand. Additionally, Comprehensive Plan Objective 3-1.8 “Continuing Evaluation of Housing Element Effectiveness” and its related policies state that “[h]ousing policy shall be refined as needed in order to remain responsive to changing problems and issues.” The regulation of vacation rentals may assist in implementation of these Objectives and associated Policies.

The proposed text amendment would be consistent with the Comprehensive Plan.

- b. Impact on surrounding properties and infrastructure. The effect of the change, if any, on the particular property and all surrounding properties. Identify potential land use incompatibility and impacts on infrastructure.***

There will be no impact on surrounding property or infrastructure.

- c. Avoidance of special treatment. The proposed change shall not constitute a spot zone change. Spot zoning occurs when:***

- 1. A small parcel of land is singled out for special and privileged treatment:***

The proposed amendments to the LDRs will not affect the zoning of any specific parcels in the City.

- 2. The singling out is not in the public interest but only for the benefit of the landowner.***

The proposed change does not affect the City’s official zoning map nor the City’s future land use map. The proposed amendment will assist in the preservation of long-term permanent housing, a demonstrated critical need of the community. The proposed amendment is in the public interest.

- 3. The action is not consistent with the adopted comprehensive plan.***

The proposed amendment is needed to ensure consistency between the LDRs and the Comprehensive Plan with respect to preservation of long-term permanent housing.

- d. Undeveloped land with similar comprehensive plan future land use map designation. The amount of undeveloped land in the general area and in the City having the same zoning classification as that requested shall be stated.*

This proposed amendment is not associated with a particular Comprehensive Plan Future Land Use designation or specific zoning district.

RECOMMENDATION:

The Legal Department and the Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to amend the Land Development Regulations be **APPROVED**.