

Key West Planning Board
July 14, 2010 – 6:00 p.m.
City Commission Chamber
Old City Hall, 510 Greene Street



Transient Units Ordinance Workshop

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



To: Chairman and Planning Board Members

From: Amy Kimball-Murley, AICP, Planning Director

Meeting Date: July 14, 2010

Regarding: Transient Units Ordinance Workshop

Purpose: The purpose of this workshop is to accomplish the following:

- Provide background information on the existing Transient Unit Ordinance and how it has evolved over time;
- Review the ten year history of transfers accomplished under the ordinance; and,
- Identify and discuss issues relating to the ordinance and preliminary options for maintaining and/or modifying the ordinance.

After this workshop, the following process for revising the ordinance is expected:

- Staff analysis of options indentified at workshop;
- Staff to update the City Commission on the workshop discussion;
- Staff to draft changes and bring before the Planning Board for the first public hearing;
- City Commission hearings (two hearings required); and
- Transmittal to DCA for review (order required within 60 days).

Background: In 1999 the City of Key West adopted a Transient Units Ordinance to allow the transfer of transient units and transient business tax receipts (licenses) to zoning districts where transient units are allowed by the zoning code. The original ordinance contained criteria for each type of transfer allowed under the ordinance. Later modifications to the ordinance expanded upon the criteria applicable to each type of transfer. Today the ordinance allows three general types of transfers to occur:

- Transfer of existing transient units from any zoning district to a zoning district where transient units are allowed;
- Combination of transient units into residential units of various Building Permit Allocation equivalencies and transfer from any zoning district to a zoning district where residential uses are allowed; and,
- Transfer of transient unit tax receipts (i.e. licenses) from a zoning district where transient uses are not allowed to a zoning district where they are allowed.

Copies of the entire ordinance as it exists today, as well as the original ordinance and subsequent modifications are attached to this report.

The Transient Unit Ordinance is one of the few ways that residential units regulated by the Building Permit Allocation System (BPAS) can be moved from one site to another within the City of Key West. Other methods include special agreements with the city and state which have been executed from time to time over the years, usually as part of legal disputes involving development rights.

Although the ordinance permits the combination of transient units to form other types of residential units, and the transfer of transient units, residential units, and transient licenses, all of these actions take place within the overall guidance of the City's Land Development Regulations, and more specifically the zoning code. Zoning governs uses and density, and the transfers must be consistent with both permitted uses in each zoning district and the allowable density. As such, the ordinance does not allow nonconforming uses or density to be created as a result of the transfer process.

Since 1999, when the ordinance was first approved, an average of seven applications a year have been approved (there were no applications the first year the ordinance was in effect). A draft summary of transfers which have been approved under the ordinance is provided as an attachment to this report. Although a dip in approvals occurred in 2008, there were a number of pending applications that year which were withdrawn due to legal complications regarding the license source (the source did not comply with the ordinance). In 2009 approvals increased again and applications continue to be filed. Therefore, it appears that the ordinance continues to have utility in the development community.

Some transient units and licenses are in "limbo", in that they have been "lifted" from a redeveloped sender site, but may not have been sent to a receiver site or redeveloped yet at a receiver site. In some cases the ordinance does not allow transfer of these licenses to a sender site because they are located in a conforming zoning district and are not eligible for transfer. The City's Licensing Department tracks unassigned licenses, and when licenses not eligible for transfer are removed from consideration, approximately 31 licenses associated with eight sender sites are shown as unassigned. Because reserved BPAS units are not tracked,

The original ordinance had a five year "sunset" date. In February of 2002 the ordinance, including the sunset date, was modified 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. Typically sunset dates are included in ordinances when there are concerns about the long term need for the regulation. In this case, there may also have been some initial concerns about how the ordinance might cause an imbalance in development types in the city. One outcome of public dialog regarding the ordinance could be that the sunset date is no longer relevant.

The existing ordinance maintains approximate equivalencies between units and licensed rooms in several ways. When transient units are transferred to another location, the new transient unit must be no more than two rooms (excluding bathrooms) unless special conditions are approved by the Planning Board. When transient licenses are transferred, the code requires the Planning

Board to consider the room configuration of both sites to maintain approximately the same or less net number of occupants. Maintenance of BPAS related equivalencies is a primary concern of the ordinance, and the Department has noted issues raised by community members and the Department of Community Affairs as to whether equivalency is maintained by the ordinance. The Planning Department conducted a transient lodging survey during hurricane season in 2009, and draft results from that survey indicate that there may be an increase in vehicle use per bedroom but that it is not very large. Although the primary consideration of the ordinance may have been to address hurricane evacuation equivalencies established through the BPAS system, there may be other aspects important to surrounding uses that are also relevant.

A number of questions regarding the ordinance have arisen in the past. These include:

- Are the original intents of the ordinance still valid and is the ordinance working to accomplish them?
- Are safeguards within the ordinance enough to ensure that BPAS equivalencies are maintained between sender and receiver sites, particularly as they pertain to bedroom numbers and square footage, or is a conversion factor needed?
- Are business tax receipts appropriate growth management tools?
- Is the ordinance clear and understandable?
- Does the ordinance adequately address impacts generating from transient uses at the receiving sites?
- Has the ordinance eliminated non-conformities, especially in light of provisions which allow units to be transferred from conforming sites?
- Should the ordinance be expanded to allow transfer of business tax receipts from conforming to conforming sites?
- Is the ability to assemble transient and residential unit types from overall equivalencies sustainable given the different ways these uses are likely to be treated future evacuation models?

At a meeting on April 24, 2010, the City Commission provided preliminary input (which focused on either a phased elimination of the ordinance or a continuance with clarification) and asked that the Planning Department seek input from the Planning Board as the body most actively involving in hearing applications.

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Attachment A
Current Transient Units Ordinance

**Key West, Florida, Code of Ordinances >> Subpart B - LAND DEVELOPMENT REGULATIONS >>
Chapter 122 - ZONING >> ARTICLE V. - SUPPLEMENTARY DISTRICT REGULATIONS >> DIVISION
6. - TRANSIENT UNITS >>**

DIVISION 6. - TRANSIENT UNITS

[Sec. 122-1336. - Purpose.](#)

[Sec. 122-1337. - Definitions.](#)

[Sec. 122-1338. - Transfer of transient units.](#)

[Sec. 122-1339. - Transfer of transient business tax receipt.](#)

[Sec. 122-1340. - Development review committee and planning board review.](#)

[Sec. 122-1341. - Compliance with codes.](#)

[Sec. 122-1342. - Historic structures.](#)

[Sec. 122-1343. - Tracking system; enforcement.](#)

[Sec. 122-1344. - Application, notice and fees.](#)

[Sec. 122-1345. - Consent by mortgagee and condominium/homeowner's association.](#)

[Sec. 122-1346. - Sunset.](#)

[Secs. 122-1347—122-1370. - Reserved.](#)

| Sec. 122-1336. - Purpose.

The purpose of this division is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal nonconforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 1, 4-19-2005)

| Sec. 122-1337. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affordable housing shall mean housing as defined in section 122-1466 of the land development regulations (LDRs) and amendments thereto.

Receiver site shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

Residence or residential unit shall mean a single-family, multifamily, accessory, or affordable housing unit.

Sender site shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

Transient unit shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 2, 4-19-2005)

Cross reference—Definitions generally, § 1-2.

| Sec. 122-1338. - Transfer of transient units.

- (1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this division shall not cause a net increase of units in the city.
- (2) Transient use must be an allowed zoning use on the receiver site, unless the units are to be converted into nontransient units as contemplated by subsection (3) of this section. Further, no transient unit shall be recognized for transfer purposes unless accompanied by a business tax receipt duly issued pursuant to section 66-109(10).
- (3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.
- (4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.
- (5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.
- (6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.
- (7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.
- (8) Existing nonconforming buildings may receive units providing their nonconforming aspects are not increased.
- (9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.
- (10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 3, 4-19-2005; Res. No. 06-292, § 1, 9-6-2006)

Sec. 122-1339. - Transfer of transient business tax receipt.

- (a) A business tax receipt for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. 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 transient use in the 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.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 4, 4-19-2005; Res. No. 06-292, § 1, 9-6-2006)

Sec. 122-1340. - Development review committee and planning board review.

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific

provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 5, 4-19-2005)

Sec. 122-1341. - Compliance with codes.

All structures proposed to be used on a transient basis must comply with codes and requirements of the building department, fire department, and all other regulatory agencies.

(Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 6, 4-19-2005)

Sec. 122-1342. - Historic structures.

Proposals to change the interior of contributing or altered historic structures located within the historic district shall be subject to the review of the historic architectural review commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the planning board may consider retaining the room layout (notwithstanding sections 122-1338(5) and 122-1339(b) hereof), and may further consider all guidelines adopted by the historic architectural review commission.

(Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 7, 4-19-2005)

Sec. 122-1343. - Tracking system; enforcement.

The city manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the building department shall certify that each such site is being put to the use(s) represented in the transfer application.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 8, 4-19-2005)

Sec. 122-1344. - Application, notice and fees.

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the planning board meeting at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. An appropriate fee schedule shall be established by resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within 18 months of planning board approval, although the applicant may apply to the planning board for an extension(s).

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 9, 4-19-2005)

Sec. 122-1345. - Consent by mortgagee and condominium/homeowner's association.

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

(Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 10, 4-19-2005)

Sec. 122-1346. - Sunset.

This division shall expire on May 15, 2010.

(Ord. No. 99-26, § 1, 12-7-1999; Ord. No. 02-05, § 1, 2-5-2002; Ord. No. 05-09, § 11, 4-19-2005)

Secs. 122-1347—122-1370. - Reserved.

Attachment B
Original Transient Units Ordinance
Number 99-26

ORDINANCE NO. 99-26

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, ADDING SECTION 2.7-25 TO THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF KEY WEST IN ORDER TO ESTABLISH GENERAL REGULATIONS FOR THE TRANSFER OF TRANSIENT UNITS OR LICENSES, INCLUDING: PURPOSE, DEFINITIONS, GENERAL REGULATIONS, AND APPLICATIONS AND FEES; PROVIDING FOR THE TRANSFER OF TRANSIENT OCCUPATIONAL LICENSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission has determined that the limited number of residential unit allocations available under the Comprehensive Plan, combined with existing sites that are in non-compliance with allowable density and its desire to discourage development of environmentally sensitive lands has created the need to provide for the transferring of existing transient units; and

WHEREAS, the City Commission finds that given the limited number of available residential units, the potential conversion of existing transient units to full-time residential units is an effective means to enhance the availability of housing; and

WHEREAS, the City Commission finds that this proposed regulation is consistent with Objectives 1-3.3, 1-3.6 and 1-3.12 and Policies 1-2.3.9 and 1-3.2.2 of the Comprehensive Plan; and

WHEREAS, the City Commission finds that this proposed regulation is consistent with the Principles for Guiding Development; and

WHEREAS, the City Commission is required under Chapter 163, Florida Statutes, to enact a complete set of Land Development Regulations (LDRs); and

WHEREAS, the Key West Planning Board reviewed this ordinance pursuant to section 1-2.10. of the Land Development Regulations at its meeting of October 20, 1999, and recommended approval; and

WHEREAS, the City Commission finds that regulations providing for the transfer of existing transient units would serve to promote the health, safety and welfare of the citizens of Key West;

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

Section 1: That Section 2.7-25 of the Land Development Regulations of the City of Key West Code of Ordinances is hereby added as follows:

Sec. 2.7-25. Transfers.

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units in order to reduce density non-compliance, protect environmentally sensitive lands, and encourage re-development under the existing Rate of Growth Ordinance (“ROGO”) that limits the allowable number of residential and transient units. This ordinance is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

B. Definitions.

(1) “*Affordable housing*” shall mean housing as defined in Section 2-7.24 of the LDRs.

(2) “*Receiver site*” shall mean the property where the unit is desired to be transferred and re-located pursuant to this section.

(3) “*Residence or residential unit*” shall mean a single family, multi-family, accessory, or affordable housing unit.

(4) “*Sender site*” shall mean the property where the transient unit is currently located and recorded prior to application for transfer.

(5) “*Transient unit*” shall mean a transient living accommodation as defined in section 5-21.2 of the LDRs.

C. Transfer of Transient Units.

Transient units may be transferred from their existing location to another location within the City of Key West provided the following criteria are met:

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the Comprehensive Plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) Where applicable, 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 (4); provided, further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 91.25(10) of the Code of Ordinances.

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the Comprehensive Plan so as to not increase hurricane evacuation time.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) At the receiver site, the transient unit may not include more than two (2) rooms, excluding bathrooms.

(6) At the sender site, any remodeled transient units may not include more than two (2) rooms, excluding bathrooms; provided however, that units may be larger in size if the total number of rooms, excluding bathrooms, remains the same.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current Flood Insurance Rate Map, if the transfer would produce new construction.

(8) No height, setback or coverage variances shall be granted for receiver sites' open space, impermeable open space, parking or building. Existing non-conforming buildings, however, may receive units providing their non-conforming aspects are not increased. If the receiver site is governed either by a condominium association or a homeowners association, such association must approve the transfer by a supermajority vote of two-thirds. Proof of approval shall accompany the application for transfer.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the City has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the City shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

D. Transfer of Transient Occupational License

An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In such event, the provisions of Section C (1) - (10), hereof, shall be applicable. A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

E. DRC and Planning Board Review

The Development Review Committee (DRC) shall review each application for transfer. The DRC may recommend denial of an application on the grounds of an inconsistency with the purpose of this ordinance, or a violation of this ordinance. The DRC shall forward all recommendations of approval or denial to the Key West Planning Board. The decision of the Planning Board shall be final.

F. Tracking System; Enforcement

The City Manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the Building Department shall certify that each such site is being put to the use(s) represented in the transfer application.

G. Application and Fees.

Applications for transient unit transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Where a sender site is subject to a mortgage, the application must be accompanied by a consent executed by the mortgagee. An appropriate fee schedule shall be established by Resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within eighteen (18) months of Planning Board approval, although the applicant may apply to the Planning Board for an extension(s).

H. Sunset.

This Ordinance shall expire after five (5) years from its effective date.

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.

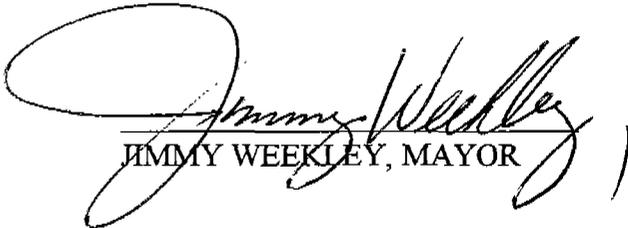
Section 4. This Ordinance shall go into effect immediately upon its passage, adoption and authentication by the signature of the presiding officer and the Clerk of the Commission, and upon approval by the Florida Department of Community Affairs.

Read and passed on first reading at a regular meeting held this 16TH day of NOVEMBER, 1999.

Read and passed on final reading at a regular meeting held this 7TH day of DECEMBER, 1999.

Authenticated by the presiding officer and Clerk of the Commission on 9TH day of DECEMBER, 1999.

Filed with the Clerk DECEMBER 9, 1999.


JIMMY WEEKLEY, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: KEY WEST LAND DEVELOPMENT
REGULATION ADOPTED BY KEY WEST
ORDINANCE NO. 99-26

FINAL ORDER

The Department of Community Affairs ("the Department") hereby issues its Final Order pursuant to Subsections 380.05(6) and (11), and 380.0552(9), Fla. Stat. (1999), which require the Department to enter a final order approving or rejecting land development regulations adopted by the City of Key West ("the City" or "Key West"). This Final Order approves Key West Ordinance 99-26.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Key West is a unit of government within the Florida Keys Area of Critical State Concern.
2. On December 23, 1999, the Department received for review Key West Ordinance No. 99-26, which was adopted by the Key West Board of City Commissioners on December 7, 1999. Ordinance No. 99-26 adds a new section, Section 2.7-25, to the City's Land Development Regulations which will provide for the transfer of transient units or licenses.
3. Ordinance 99-26 includes details on that section's purpose, definitions, general regulations, application process, and fees. By terms of the ordinance, newly created Section 2.7-25 will provide for the transfer of only existing transient units.
4. The Department has reviewed the land development regulation adopted by

Ordinance No. 99-26 for consistency and compliance with the Principles for Guiding Development for the Key West Area of Critical State Concern.

5. The Department finds that the land development regulation adopted by Ordinance No. 99-26 is consistent with the Principles for Guiding Development for the Key West Area of Critical State Concern.

CONCLUSIONS OF LAW

1. The City of Key West is a “local government” within the Florida Keys Area of Critical State Concern. Section 380.0552, Fla. Stat.

2. Section 380.0552(9), Fla. Stat., requires the Department to approve or reject land development regulation adopted by the City of Key West within sixty (60) days of receipt of the regulations. Accord, Section 380.05(11), Fla. Stat. This Final Order is issued within the 60-day time period provided by statute.

3. Section 380.031(8), Fla. Stat., defines “land development regulation” as including local zoning, subdivision, building and other regulations controlling the development of land. The regulation adopted by Key West Ordinance No. 99-026 is a land development regulation, as defined by statute.

4. The Department is required to approve or reject land development regulations adopted in Areas of Critical State Concern in a final order. Section 380.05(6), Fla. Stat.

5. The Department’s approval or rejection of land development regulations adopted by the City of Key West is based upon whether the regulations are consistent with, and in compliance with, the Principles for Guiding Development in Section 380.0552(7), Fla. Stat.,

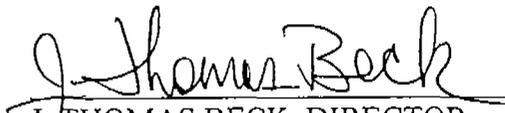
construed as a whole.

6. The land development regulation adopted by Ordinance No. 99-26 is consistent with, and complies with, the Principles for Guiding Development construed as a whole.

ACCORDINGLY, IT IS

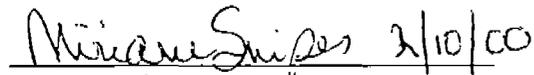
ORDERED that the land development regulation adopted by the City of Key West Ordinance No. 99-26 is consistent with, and complies with, the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is therefore APPROVED. This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED this 9th day of February, 2000, in Tallahassee, Florida.


J. THOMAS BECK, DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

FILING AND ACKNOWLEDGMENT:

FILED on this date with the designated Agency Clerk, receipt of which is hereby acknowledged.


Paula Ford Date
Agency Clerk

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK. IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

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YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true copies of the foregoing were furnished to the persons named below by U.S. Mail on this 10th day of February, 2000.


for Paula Ford

The Honorable Jimmy Weekly, Mayor of Key West
Ty Symroski, Planning Director, City of Key West
Rebecca Jetton, DCA Keys Field Office

cheri, This a copy of the FL. Admin Advertisement.

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LETTER OF TRANSMITTAL

FROM: *Paul J. ...*
Agency Clerk's Office
2735 Shumard Creek Blvd.
Tallahassee, FL 32310-2101
TSA 465 0410 FAX 487-5769



^{ty}
RECEIVED

MAR 13 2000

CITY OF KEY WEST
PLANNING DEPT.

DATE: 3/13/00

RECEIVED
MAR 14 REC'D
CITY CLERK

TO: ty

FAX NO: _____ PHONE NO: _____

SUBJECT Ord. 99-26

ADDITIONAL INFO /// INSTRUCTIONS: _____

You should receive 4 page(s).

Florida Ad

Application forms and more information may be obtained by calling the Grants Manager, (850)487-1902.

Correspondent and Telephone Number: Ed Baranowski, President, (407)277-5045

DEPARTMENT OF BANKING AND FINANCE

Notice is hereby given that the Department of Banking and Finance, Division of Banking, has received the following applications and/or other notices. Comments may be submitted to the Director, Division of Banking, 101 East Gaines Street, Suite 636, Fletcher Building, Tallahassee, Florida 32399-0350, for inclusion in the official record without requesting a hearing; however, any person may request a public hearing by filing a petition with the Clerk, Legal Division, Department of Banking and Finance, 101 East Gaines Street, Suite 526, Fletcher Building, Tallahassee, Florida 32399-0350, pursuant to provisions specified in Chapter 3C-105.100, Florida Administrative Code. Petition must be received by the Clerk within twenty-one (21) days of publication of this notice (by 5:00 p.m., March 10, 2000):

APPLICATION FOR AUTHORITY TO ORGANIZE A TRUST COMPANY

Applicant and Proposed Location: The Trust Company of Florida, 1620 Placida Road (County Road 775), Englewood, Florida 34223

Correspondent: Rod Jones, Esq., Shutts & Bowen LLP, 20 North Orange Avenue, Suite 1000, Orlando, Florida 32801

Received: February 2, 2000

APPLICATION TO MERGE

Constituent Institutions: Broward Schools Credit Union, Lauderdale, Florida, and North Miami Beach #195 Federal Credit Union, North Miami Beach, Florida.

Resulting Institution: Broward Schools Credit Union, Lauderdale, Florida

Received: February 2, 2000

EXPANDED FIELD OF MEMBERSHIP

Name and Address of Applicant: Coast to Coast Credit Union, 8916 Sabal Industrial Blvd., Tampa, Florida 33619-1326

Expansion Includes: Employees of MedX 96, Inc., and Family Care Specialist.

Received: February 4, 2000

Correspondent and Telephone Number: Charles L. Carpenter, President, (813)621-9631

Name and Address of Applicant: Fairwinds Credit Union, 3075 N. Alafaya Trail, Orlando, Florida 32826

Expansion Includes: Employees of the following employer groups: Micro Design International, Inc., who live or work in Winter Park, Florida; SMP Electronics, who live or work in Orlando, Florida; Kodiak Contracting and Dev., L.L.C., who live or work in Orlando, Florida; Dolphin Press & Design, Inc., who live or work in Apopka, Florida; and Von Schmeling Tae Kwon Do, who work in or are paid from Winter Park, Florida

Received: February 7, 2000

DEPARTMENT OF COMMUNITY AFFAIRS

DCA Final Order No. DCAA00-OR-022

IN RE: KEY WEST LAND DEVELOPMENT REGULATION ADOPTED BY KEY WEST ORDINANCE NO. 99-26

FINAL ORDER

The Department of Community Affairs ("the Department") hereby issues its Final Order pursuant to Subsections 380.05(6) and (11) and 380.0552(9), Fla. Stat. (1999), which require the Department to enter a final order approving or rejecting land development regulations adopted by the City of Key West ("the City" or "Key West"). This Final Order approves Key West Ordinance 99-26

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and the City of Key West is a unit of government within the Florida Keys Area of Critical State Concern.
2. On December 23, 1999, the Department received for review Key West Ordinance No. 99-26, which was adopted by the Key West Board of City Commissioners on December 7, 1999. Ordinance No. 99-26 adds a new section, Section 2.7-25, to the City's Land Development Regulations which will provide for the transfer of transient units or licenses.
3. Ordinance 99-26 includes details on that section's purpose, definitions, general regulations, application process and fees. By terms of the ordinance, newly created Section 2.7-25 will provide for the transfer of only existing transient units.
4. The Department has reviewed the land development regulation adopted by Ordinance No. 99-26 for consistency and compliance with the Principles for Guiding Development for the Key West Area of Critical State Concern.
5. The Department finds that the land development regulation adopted by Ordinance No. 99-26 is consistent with the Principles for Guiding Development for the Key West Area of Critical State Concern.

CONCLUSIONS OF LAW

1. The City of Key West is a "local government" within the Florida Keys Area of Critical State Concern. Section 380.0552, Fla. Stat.
2. Section 380.0552(9), Fla. Stat. requires the Department to approve or reject land development regulation adopted by the City of Key West within sixty (60) days of receipt of the regulations. Accord, Section 380.05(11), Fla. Stat. This Final Order is issued within the 60-day time period provided by statute.

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Florida Administrative Weekly

Volume 26, Number 7, February 18, 2000

3. Section 380.031(8), Fla. Stat., defines "land development regulation" as including local zoning, subdivision, building and other regulations controlling the development of land. The regulation adopted by Key West Ordinance No. 99-026 is a land development regulation, as defined by statute.

4. The Department is required to approve or reject land development regulations adopted in Areas of Critical State Concern in a final order. Section 380.05(6), Fla. Stat.

5. The Department's approval or rejection of land development regulations adopted by the City of Key West is based upon whether the regulations are consistent with, and in compliance with, the Principles for Guiding Development in Section 380.0552(7), Fla. Stat., construed as a whole.

6. The land development regulation adopted by Ordinance No. 99-26 is consistent with and complies with, the Principles for Guiding Development construed as a whole.

ACCORDINGLY, IT IS ORDERED that the land development regulation adopted by the City of Key West Ordinance No. 99-26 is consistent with, and complies with, the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is therefore APPROVED. This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED this _____ day of February, 2000, in Tallahassee, Florida.

J. THOMAS BECK, DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

FILING AND ACKNOWLEDGMENT:

FILED on this date with the designated Agency Clerk, receipt of which is hereby acknowledged.

Paula Ford Date
Agency Clerk

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

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YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true copies of the foregoing were furnished to the persons named below by U.S. Mail on this _____ day of February, 2000.

Paula Ford

The Honorable Jimmy Weekly, Mayor of Key West
Ty Symroski, Planning Director, City of Key West

Rebecca Jetton, DCA Keys Field Office

DCA Final Order No. DCA00-OR-030

In re: MONROE COUNTY LAND DEVELOPMENT REGULATIONS (AMENDMENTS TO RESIDENTIAL ROGO) ADOPTED BY MONROE COUNTY ORDINANCE NO. 047-1999

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§380.05(6) and (11), Fla. Stat., and §380.0552(9), Fla. Stat. (1999), which require the Department to enter a final order approving or rejecting land development regulations adopted by Monroe County. This Final Order rejects in part and approves the remainder of Monroe County Ordinance No. 047-1999 as set forth below.

FINDINGS OF FACT

1. The Florida Keys Area is a statutorily designated area of critical state concern, and Monroe County is a unit of government within the Florida Keys Area.

2. On December 22, 1999, the Department received for review Monroe County Ordinance No. 047-1999 which was adopted by the Monroe County Board of County Commissioners on November 10, 1999 ("Ord. 047-1999").

Ord. 047-1999 repeals Monroe County Ordinance No

006-1997 and amends various provisions of the Monroe County Land Development Regulations codified at Sec. 9.5-4, Secs. 9.5-120 through 9.5-124, and Sec. 9.5-266 of the Monroe County Code (the "County Code").

3. Section 1 of Ord. 047-1999 repeals Monroe County Ordinance 006-1997 (effective May 22, 1998 and revised Secs. 9.5-121 through 9.5-129 of the County Code) in its entirety. Section 2 of Ord. 047-1999 amends Sec. 9.5-4 of the County Code. Section 3 of Ord. 047-1999 completely rewrites Secs. 9.5-120 through 9.124 of the County Code (creating a new Division 1.5 within the Code entitled "Rate of Growth Ordinance" and subdivision therein). Section 4 of Ord. 047-1999 amends Sec. 9.5-266 of the County Code. The foregoing amends the residential ROGO regulations, addresses affordable housing in environmentally sensitive lands, allows pooling of unused affordable housing ROGO allocations, revises points for energy conservation and structural integrity, provides new definitions, modifies qualifying criteria for affordable housing ROGO allocations, and revises the total number of allocations available in unincorporated Monroe County as a consequence of the incorporation of Islamorada, Village of Islands. Sections 5 through 9 of Ord. 047-1999 are general provisions.

4. Further, Ord. 047-1999 creates a new sub-section, Sec. 9.5-120.4(b) of the County Code, entitled "Transfer Off-site." This sub-section permits certain existing transient and residential units and spaces previously counted under ROGO to be transferred off-site and exempts such transfers from residential ROGO compliance. The off-site transfer provisions, as adopted by Ord. 047-1999, set forth incomplete requirements in order for the 'receiver' site to be eligible for transfer (i.e. no negative points in the significant or critical habitat categories). The new off-site transfer provisions do not direct development to locations in a manner consistent with the objectives of the County's comprehensive plan, particularly the point allocation system (for example whether a potential transfer from the 'sender' site to the proposed 'receiver' site will, among other things, encourage the infilling of already platted subdivisions, encourage development to those areas where infrastructure is already existing, discourage development in coastal high hazard areas; discourage development within areas of the Coastal Barrier Resource System, discourage development that impacts offshore islands and conservation land protection areas, and/or encourage the preservation and protection of historic and archaeological resources). In this regard, the off-site transfer provisions contained in Sec. 9-5.120.4(b), as adopted by Ord. 047-1999, are inconsistent with Objectives 101.5, 101.11, 101.13, 101.14, 102.3, 102.8, 104.3 and 217.3 of Monroe County's Comprehensive Plan.

Attachment C
First Amendment to Transient Units
Ordinance
Number 02-05

ORDINANCE NO. 02-05

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING ARTICLE VII OF THE KEY WEST LAND DEVELOPMENT REGULATIONS ("LDRs") ENTITLED "GENERAL REGULATIONS" BY AMENDING SECTION 2-7.25 REGARDING THE TRANSFER OF TRANSIENT UNITS OR LICENSES; TO PROVIDE ADDITIONAL REGULATIONS PERTAINING TO SENDER AND RECEIVER SITES, LICENSE TRANSFERS, HISTORIC STRUCTURES, CONSENT BY MORTGAGEES, AND NOTICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission enacted Ordinance No. 99-26, an amendment to the LDRs, on December 7, 1999, allowing the transfer of transient licenses and units; and

WHEREAS, the Planning Board of the City of Key West has had an opportunity to consider several applications for these transfers; and

WHEREAS, the transfer of units and licenses is allowed in certain zoning districts but may not be appropriate in every location within the particular zoning district; and

WHEREAS, one reason the transfer from or to a particular location may not be appropriate is due to the necessity of alterations to an historic structure; and

WHEREAS, the Planning Board directed the planning department to develop a revision based on the City's first year of experience with the ordinance; and

WHEREAS, the Key West Planning Board approved the enclosed revision at its meeting of November 15, 2001; and

WHEREAS, the City Commission finds that revision of the Transfer Ordinance would promote the health, safety and welfare of the citizens of Key West.

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

Section 1. That Section 2.7-25 of the Land Development Regulations of the City of Key West Code of Ordinances is hereby amended as follows*:

Sec. 2.7-25 Transfers of Transient Units and Licenses.

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

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density non-compliance, structures and uses; remove legal non-conforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses, provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage redevelopment under the existing Rate of Growth Ordinance ("ROGO") that limits the allowable number of residential and transient units. This ordinance is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

B. Definitions

(1) "Affordable housing" shall mean housing as defined in Section 2-7.24 of the ~~LRDRs~~ Land Development Regulations ("LDRs") and amendments thereto.

(2) "Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this section.

(3) "Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

(4) "Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

(5) "Transient unit" shall mean a transient living accommodation as defined in section 5-21.2 of the LDRs.

C. Transfer of Transient Units

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the Comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) ~~Where applicable, t~~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 ~~(4)~~(3); provided, further, no transient unit shall be recognized for transfer purposes unless accompanied by an occupational license duly issued pursuant to section 91.25(10) of the Code of Ordinances.

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the Comprehensive Plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the Planning Board determines that special conditions exist at the receiver site that warrant otherwise, At the receiver site, the transient unit may not include more than two (2) rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining remodeled transient units that are remodeled or combined may not increase the existing number of rooms, ~~include more than two (2) rooms~~ excluding bathrooms. All such units shall not have "lockout" capacity. ~~provided however, that units may be larger in size if the total number of rooms, excluding bathrooms, remains the same.~~

(7) There shall be no transfer of units into a "V" zone as depicted on the most current Flood Insurance Rate Map, if the transfer would produce new construction.

~~(8) No height, setback or coverage variances shall be granted for receiver sites' open space, impermeable open space, parking or building. Existing non-conforming buildings, however, may receive units providing their non-conforming aspects are not increased. If the receiver site is governed either by a condominium association or a homeowners association, such association must approve the transfer by a supermajority vote of two thirds. Proof of approval shall accompany the application for transfer.~~

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the City has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the City shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

D. Transfer of Transient Occupational License

(1) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are

prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. ~~In such event, the provisions of Section C(1) (10), hereof, shall be applicable.~~ A transfer of a license under this section shall not result in a loss of affordable housing at the receiver site.

(2) Where a license alone is transferred, the Planning Board shall consider whether the receiver site is suitable for transient use in the 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.

E. DRC and Planning Board Review

The Development Review Committee (DRC) shall review each application for transfer. ~~The DRC may recommend denial of an application on the grounds of an inconsistency with the purpose of this ordinance, or a violation of this ordinance. The DRC shall forward all recommendations of approval or denial to the Key West Planning Board.~~ The Planning Board will receive comments from the DRC and the recommendation of the Planning Department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the Planning Board may

impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this Ordinance. The decision of the Planning Board shall be final.

F. Compliance with Codes

All structures proposed to be used on a transient basis must comply with codes and requirements of the Building Department, Fire Department, and all other regulatory agencies.

G. Historic Structures

Proposals to change the interior of contributing or altered historic structures located within the Historic District shall be subject to the review of the Historic Architectural Review Commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the Planning Board may consider retaining the room layout (notwithstanding sections C.(5) and D.(2) hereof), and may further consider all guidelines adopted by the Historic Architecture Review Commission.

H. F. Tracking System; Enforcement

The City Manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the Building Department shall certify that each such site is being put to the use(s) represented in the transfer application.

I. G. Application, Notice and Fees

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the Planning Board meeting at which the transfer will be considered, pursuant to Section 1-2.14 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. ~~Where a sender site is subject to a mortgage, the application must be accompanied by a consent executed by the mortgagee.~~ An appropriate fee schedule shall be established by Resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within eighteen (18) months of Planning Board approval, although the applicant may apply to the Planning Board for an extension(s).

J. Consent by Mortgagee and condominium/homeowner's association

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

K. H- Sunset

This Ordinance shall expire ~~after five (5) years from its effective date~~ on March 15, 2005.

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.

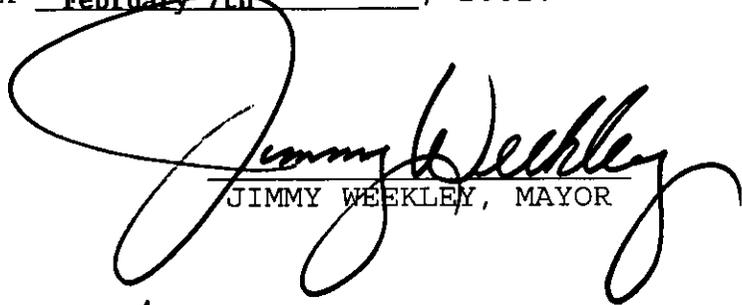
Section 4. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 15th day of January, 2001.

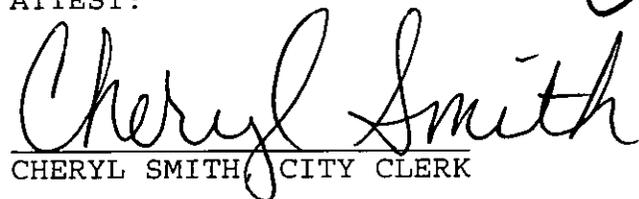
Read and passed on final reading at a regular meeting held this 5th day of February, 2002.

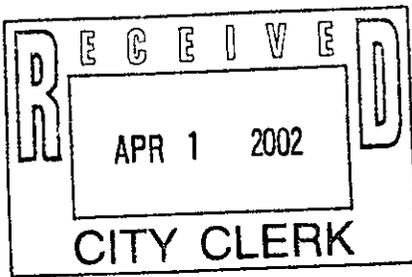
Authenticated by the presiding officer and Clerk of the Commission on 6th day of February, 2002.

Filed with the Clerk February 7th, 2002.


JIMMY WEEKLEY, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK



DCA Final Order No.: DCA02-OR-094

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

In re: CITY OF KEY WEST LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE NO. 02-05

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2001), approving a land development regulation adopted by a local government within the Florida Keys Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.
2. On February 20, 2002, the Department received for review City of Key West Ordinance No. 02-05 which was adopted by the City of Key West City Commission on February 5, 2002 ("Ord. 02-05"). Ord. 02-05 amends Section 2-7.25 of the Land Development Regulations regarding the transfer of transient licenses and units.
3. Ord. 02-05 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are enacted, amended or rescinded by any local government in an area of critical state concern. §§ 380.05(6) and (11), *Fla. Stat.*, (2001).
5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2001)

and Rule 28-36.001, *Fla. Admin. Code*.

6. "Land development regulations" include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2001). The regulations adopted by Ord. 02-05 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the "Principles"). § 380.05(6), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff'd*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003, *Fla. Admin. Code*.

8. Ord. 02-05 promotes and furthers the following Principles in Rule 28-36.003(1):

(a) To strengthen local government capabilities for managing land use and development.

(f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including:

(5) The maintenance and expansion of transportation facilities

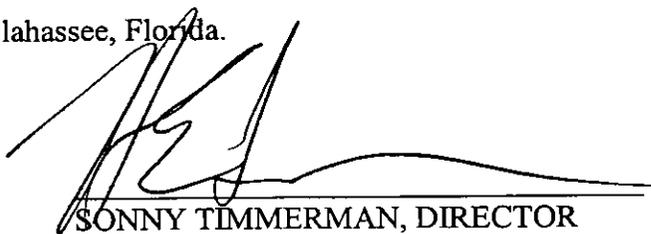
(h) Protection of the public health, safety, welfare and economy of the City of Key West and the maintenance of Key West as a unique Florida Resource.

10. Ord. 02-05 is not inconsistent with the remaining Principles. Ord. 02-05 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 02-05 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



SONNY TIMMERMAN, DIRECTOR
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND

YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, TO CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, TO SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND TO FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF COMMUNITY AFFAIRS A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS RECEIVED BY THE AGENCY CLERK, IN THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100.

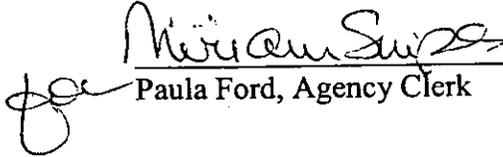
THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 27th day of March, 2002.



Paula Ford, Agency Clerk

By U.S. Mail:

Jimmy Weekly
Mayor of the City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheri Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Robert Tischenkel
City Attorney
P.O. Box 1409
Key West, FL 33041

Julio Avel
City of Key West
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:

Michael McDaniel, Growth Management Administrator, DCA Tallahassee
Rebecca Jetton, DCA Florida Keys Field Office
Richard A. Lotspeich, Assistant General Counsel, DCA Tallahassee

Attachment D
Reestablishment of Transient Unit Ordinance
Number 05-09

ORDINANCE NO. 05-09

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,
AMENDING CHAPTER 122 OF THE KEY WEST CODE OF
ORDINANCES ENTITLED "ZONING" BY RE-
ESTABLISHING SECTIONS 122-1336 THROUGH 122-
1345 IN ORDER TO ALLOW AND REGULATE THE
TRANSFER OF TRANSIENT UNITS OR LICENSES;
ADDING SECTION 122-1346 TO PROVIDE A SUNSET
DATE; PROVIDING FOR SEVERABILITY; PROVIDING
FOR REPEAL OF INCONSISTENT PROVISIONS;
PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City Commission enacted Ordinance No. 99-26, an amendment to the LDRs, on December 7, 1999, to allow the transfer of transient licenses and units; and

WHEREAS, the City Commission enacted Ordinance No. 02-05, an amendment to the LDRs, on February 6, 2002, providing revised regulations for the transfer of transient licenses and units; and

WHEREAS, after five years, the Planning Board of the City of Key West has had numerous opportunities to consider applications for these transfers; and

WHEREAS, the Transfer Ordinance contained a sunset provision of March 15, 2005; and

WHEREAS, City staff has recommended re-establishment of the ordinance; and

WHEREAS, at its regular meeting of February 17, 2005, the Key West Planning Board, consistent with its obligations under section 90-55(3) of the Code of Ordinances, found this proposed ordinance

amendment consistent with the Key West Comprehensive Plan, citing objectives 1-3.3, 1-3.6 and 1-3.12 and Policies 1-2.3.9 and 1-3.2.2; and

WHEREAS, the City Commission finds that re-establishment of the Transfer Ordinance would promote the health, safety and welfare of the citizens of Key West.

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

Section 1: That Section 122-1336 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1336. Purpose.

A. Purpose

The purpose of this ordinance is to provide for the transfer of existing transient units and transient licenses in order to reduce noncomplying density, structures and uses; remove legal non-conforming transient uses from zoning districts that now prohibit them; encourage permanent residential housing by relocating transient licenses; provide for the conversion of transient units to single-family dwellings by the transfer of units; allow for redevelopment without increasing the population requiring evacuation during emergencies or increasing other public services; protect environmentally sensitive lands; and encourage

redevelopment under the existing rate of growth ordinance ("ROGO") that limits the allowable number of residential and transient units. This division is only for the purpose of the transfer of transient units and shall not be construed to create new residential or transient units.

Section 2: That Section 122-1337 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1337. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Affordable housing" shall mean housing as defined in Section 122-1466 of the land development regulations ("LDRs") and amendments thereto.

"Receiver site" shall mean the property where the unit or license is desired to be transferred and relocated pursuant to this division.

"Residence or residential unit" shall mean a single family, multi-family, accessory, or affordable housing unit.

"Sender site" shall mean the property where the transient unit or license is currently located and recorded prior to application for transfer.

"Transient unit" shall mean a transient living accommodation as defined in section 86-9 of the LDRs.

Section 3: That Section 122-1338 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1338. Transfer of Transient Units.

(1) The unit being transferred must currently be counted as a unit for purposes of calculating evacuation time under the hurricane model set forth in the comprehensive plan, and must have been obtained in accordance with all applicable regulations, including building permits, at the time of approval or have been otherwise validly obtained if unbuilt at the time of transfer. A transfer pursuant to this ordinance shall not cause a net increase of units in the city.

(2) 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 unless accompanied by an occupational license duly issued pursuant to section 66-109(10).

(3) Transient units may be converted to residential units at the appropriate exchange rate as determined by the comprehensive plan so as not to increase hurricane evacuation time. Where a residential unit is created by the transfer of a transient unit and the new residential unit is 600 square feet or less, the transient unit may be transferred at its .58 ROGO unit equivalency into a residential unit with transient use prohibited.

(4) The transferred units shall not operate to increase density of the receiver site above the maximum allowed density.

(5) Unless the planning board determines that special conditions exist at the receiver site that warrant otherwise, the transient unit may not include more than two rooms, excluding bathrooms, and excluding porches and decks that are clearly not enclosed or habitable.

(6) At the sender site, any remaining transient units that are remodeled or combined may not increase the existing number of rooms, excluding bathrooms. All such units shall not have "lockout" capacity.

(7) There shall be no transfer of units into a "V" zone as depicted on the most current flood insurance rate map, if the transfer would produce new construction.

(8) Existing non-conforming buildings may receive units providing their non-conforming aspects are not increased.

(9) Development plans for both sites shall be processed as provided in the LDRs, according to the magnitude and type of development.

(10) No building permit shall be granted for the receiver site until the city has verified that the transient use at the sender site unit(s) has been extinguished. A person or entity who has lawfully terminated or extinguished legal transient units existing as of January 1, 1999, may preserve the right to transfer

the units and then transfer such units pursuant to this section, provided the transient licenses have been maintained. Furthermore, the city shall conduct on-site inspections at both the sender site and receiver site to verify that the terms of this ordinance are being met in the proposed transfer application.

Section 4: That Section 122-1339 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1339. Transfer of transient occupational license.

(a) An occupational license for transient use of a unit may itself be transferred from an area where transient uses are prohibited to a receiver site without the accompanying transfer of the unit. In addition, licenses may be transferred from the HNC-1 and HNC-3 zoning districts. 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 transient use in the 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.

Section 5: That Section 122-1340 is hereby added to the Key West Code of Ordinances as follows:

**Sec. 122-1340. Development review committee and
planning board review.**

The development review committee (DRC) shall review each application for transfer. The planning board will receive comments from the DRC and the recommendation of the planning department and may deny an application on the grounds of inconsistency with the purpose of the ordinance or a violation of the specific provisions of the ordinance. When approving an application, the planning board may impose conditions, including but not limited to: physical modifications and the filing of deed restrictions, in order to assure the continuation of permanent residential housing, the preservation of community character and that the transfer advances the purposes of this division. The decision of the planning board shall be final.

Section 6: That Section 122-1341 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1341. Compliance with codes.

All structures proposed to be used on a transient basis must comply with codes and requirements of the building department, fire department, and all other regulatory agencies.

Section 7: That Section 122-1342 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1342. Historic structures.

Proposals to change the interior of contributing or altered historic structures located within the historic district shall be subject to the review of the historic architectural review commission (HARC) for the proposed interior renovations. If the receiver site is an historic structure, the planning board may consider retaining the room layout (notwithstanding sections 122-1338(5) and 122-1339(b) hereof), and may further consider all guidelines adopted by the historic architectural review commission.

Section 8: That Section 122-1343 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1343. Tracking system; enforcement.

The city manager shall establish a tracking system for all sender sites and receiver sites. On an annual basis, the building department shall certify that each such site is being put to the use(s) represented in the transfer application.

Section 9: That Section 122-1344 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1344. Application, notice and fees.

Applications for transient unit transfer and transient license transfer may be obtained from the planning department and must be completed in the form and manner required by the department. Notice of any such transfer shall be given for the planning board meeting

at which the transfer will be considered, pursuant to section 90-60 of the LDRs. Notices shall be sent to the property owners at both the sender and receiver sites. An appropriate fee schedule shall be established by resolution. The amount of the fee shall take into consideration, among other things, the cost of the tracking system and the cost of enforcement of this ordinance. The transfer must occur within 18 months of planning board approval, although the applicant may apply to the planning board for an extension(s).

Section 10: That Section 122-1345 is hereby added to the Key West Code of Ordinances as follows:

**Sec. 122-1345. Consent by mortgagee and
condominium/homeowner's association.**

When a sender site is subject to a mortgage that references the transient license or use, the application must be accompanied by a consent executed by the mortgagee. If the receiver site is governed either by a condominium association or a homeowners' association, such association must approve the transfer by a majority vote as defined by the governing documents of the association. Proof of approval shall accompany the application for transfer.

Section 11: That Section 122-1346 is hereby added to the Key West Code of Ordinances as follows:

Sec. 122-1346. Sunset.

This Ordinance shall expire on May 15, 2010.

Section 12: 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 13: 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.

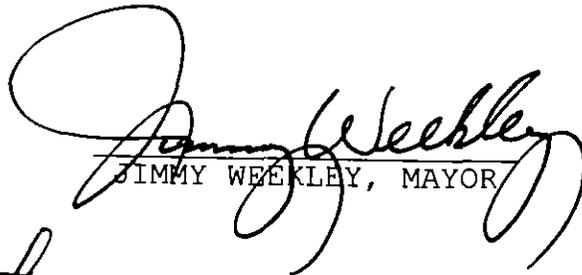
Section 14: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 5th day of April, 2005.

Read and passed on final reading at a regular meeting held this 19th day of April, 2005.

Authenticated by the presiding officer and Clerk of the Commission on 20th day of April, 2005.

Filed with the Clerk April 20, 2005.


JIMMY WEEKLEY, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In re: LAND DEVELOPMENT
REGULATIONS ADOPTED BY
CITY OF KEY WEST ORDINANCE
NO. 05-09

RECEIVED
CITY CLERK'S OFFICE
2005 MAY 23 AM 8:14
CITY OF KEY WEST
KEY WEST, FLORIDA

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), *Fla. Stat.*, (2004), approving a land development regulation adopted by a local government within the City of Key West Area of Critical State Concern as set forth below.

FINDINGS OF FACT

1. The City of Key West is a designated area of critical state concern.
2. On April 20, 2005, the Department received for review City of Key West Ordinance No. 05-09, which was adopted by the City of Key West City Commission on April 20, 2005 ("Ord. 05-09"). Ord. 05-09 amends Chapter 122 of the Key West Code of Ordinances entitled "Zoning" by re-establishing Sections 122-1336 through 122-1345 in order to allow and regulate the transfer of transient units or licenses; adding Section 122-1346 to provide a sunset date; providing for severability; providing for repeal of inconsistent provisions; and providing for an effective date.
3. Ord. 05-09 is consistent with the City's Comprehensive Plan.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern based upon consistency with the Principles for Guiding Development applicable to that area of critical state concern. §§ 380.05(6) and 380.05(11), *Fla. Stat.*, (2004).

5. The City of Key West is an Area of Critical State Concern. § 380.05, *Fla. Stat.* (2004) and Rule 28-36.001, *Fla. Admin. Code.*

6. “Land development regulations” include local zoning, subdivision, building and other regulations controlling the development of land. § 380.031(8), *Fla. Stat.* (2004). The regulations adopted by Ord. 05-09 are land development regulations.

7. All land development regulations enacted, amended or rescinded within an area of critical state concern must be consistent with the principles for guiding development for the particular area (the “Principles”). § 380.05(6), *Fla. Stat.*; see *Rathkamp v. Department of Community Affairs*, 21 F.A.L.R. 1902 (Dec. 4, 1998), *aff’d*, 740 So. 2d 1209 (Fla. 3d DCA 1999). The Principles for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), *Fla. Admin. Code.*

8. Ord. 05-09 promotes and furthers the following Principles in Rule 28-36.003(1):

- (a) To strengthen local government capabilities for managing land use and development.
- (e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.
- (f) Protection of the value, efficiency, cost-effectiveness and amortized life of existing and proposed major public investments, including . . . (5) The maintenance and expansion of transportation facilities because the units to be transferred under this ordinance must have been counted as a unit for the purposes of calculating hurricane evacuation time under the hurricane evacuation model.
- (h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

9. Ord. 05-09 is not inconsistent with the remaining Principles. Ord. 05-09 is consistent with the Principles for Guiding Development as a whole.

WHEREFORE, IT IS ORDERED that Ord. 05-09 is found to be consistent with the Principles for Guiding Development of the City of Key West Area of Critical State Concern, and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is filed as described below.

DONE AND ORDERED in Tallahassee, Florida.



James L. Quinn, State Planning Administrator
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF ADMINISTRATIVE RIGHTS

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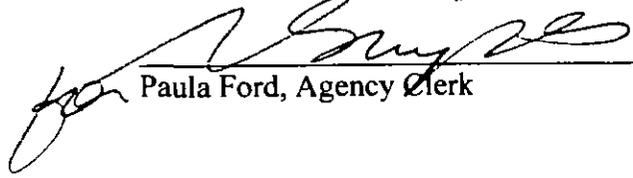
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YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this 19th day of May, 2005.



Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Jimmy Weekley
Mayor, City of Key West
P.O. Box 1409
Key West, Florida 33041

Cheryl Smith
Clerk to the City Commission
P.O. Box 1409
Key West, Florida 33041

Robert Tischenkel
City Attorney
P.O. Box 1409
Key West, FL 33041

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DCA Tallahassee
Richard E. Shine, Assistant General Counsel, DCA Tallahassee

Attachment E
List of Approved Transient Unit Transfers
from 1999-2010

**City of Key West
Transient Unit and Business Tax Receipt Transfer Tracking Log (2000-2010)
Draft Dated April 12, 2010**

Year	From	To	Units Transferred	ESFU Value	No. of Licenses	Resolution No.
2000	None					
2001	1315 Pine St	924 Center St	1	0.58	1	2001-002
	1315 Pine St	820 Center St	1	0.58	1	2001-005
	1128 Margaret St	1502 and 1500 Vernon Ave			2	2001-009
	1128 Margaret St	1000 Duval St			1	2001-010
	57 Front St	Caroline Ct	9	5.22	9	2001-016
	3852 N Roosevelt Blv	531 Caroline St	1	0.58	1	2001-026
	227 Duval St	531 Caroline St	8	4.64	8	2001-026
	1020 Varella St	509 South St			1	2001-030
2002	507 South St	1400 Duval St	2	1.16		2002-020
	1800 Atlantic Blv - C 119	1100 Duval St			1	2002-024
	803 Georgia St	512 Angela St			1	2002-025
	310/312 Margaret St	516 Angela St			2	2002-030
	1800 Atlantic Blv - C131	506 Virginia St			1	2002-032
2003	2601 S Roosevelt Blv - B402	516 Angela St			1	2003-006
	2601 S Roosevelt Blv - C210	510 Bahama St			1	2003-009
	1800 Atlantic Blv	1075 Duval St - R9			1	2003-013
	805 Georgia St	516 Angela St - 2			1	2003-025
	1128 Margaret St	1502-04 Vernon Ave			1	2003-026
	725 Whitmarsh Ln	508 Louisa St			1	2003-027
	1800 Atlantic Blv - C332	1075 Duval St - R25			1	2003-034
	1512 Bertha St - 2	518 Virginia St			1	2003-035
	1800 Atlantic Blv - C441	526 Dupont Ln/ 713 Duval St - 3			1	2003-044
2004	2601 S Roosevelt Blv - 501A	1075 Duval St - R17			1	2004-004
	1800 Atlantic Blv - C421	516 Bahama St			1	2004-005
	1414 Newton St	719 Eisenhower St	4	2.32		2004-009
	905-907 White St	810 Duval St	2	1.16		2004-013
	1800 Atlantic Blv - C321	524 Dupont Ln/ 713 Duval St - B			1	2004-023
	1414 Newton St	809 Shavers Ln	2	1.16		2004-024
	1414 Newton St	809 Shavers Ln	2	1.16		2004-026
	2601 S. Roosevelt Blv B-102	517-1 Olivia St			1	2004-027
	322 Elizabeth St	1224 Duval St			1	2004-028
	2601 S. Roosevelt Blv B- 103	517 Olivia St -2rear			1	2004-034
2005	2601 South Roosevelt Blv - B40	1227 Duval St			1	2005-003
	2601 South Roosevelt Blv - C30	1075 Duval St - R14			1	2005-010
	914 Francis St	800 Eisenhower Dr	1	0.58		2005-039
	914 Francis St	3591 South Roosevelt Blv	2	1.16		2005-040
	915 Windsor Ln	3591 South Roosevelt Blv	15	8.7		2005-041
	409 William St	727-731 Wadell St	2	1.16		2005-032
2006	807-811 Washington St	419 Truman Ave			5	2006-014
	1825 Venetia St	219 Ann St - 1			1	2006-015
	1088 Atlantic Blv - C 433	1075 Duval St - R22			1	2006-016
	914 Francis St	3591 South Roosevelt Blv	1	0.58		2006-019
	807-811 Washington St	614 Greene St			3	2006-031
	2801 N. Roosevelt Blv	213 Ann St			1	2006-033
	2801 N. Roosevelt Blv	1315 Whitehead St	4	2.32		2006-035
	2801 N. Roosevelt Blv	707 Simonton St			2	2006-036
2007	807-811 Washington St	400 South St			2	2007-002
	2801 North Roosevelt Blv	119-135 Simonton St	12	12		2007-007
	716-718 South St	119-135 Simonton St	4	4		2007-008
	710 Caroline St	119-135 Simonton St	2	2	2	2007-009
	2801 N Roosevelt Blv	707 Simonton St			2	2007-010
	916 Fleming St	119-135 Simonton St	2	1.16	2	2007-011
	916 Fleming St	119-135 Simonton St	2	1.16		2007-012
	504 Bahama St	506 Bahama St			1	2007-015
	800 Fleming St - A1	1124 Duval St - C			1	2007-016
	2801 N. Roosevelt Blv	615 1/2 Duval St - 1			1	2007-024
	707 Simonton St	2801 N Roosevelt Blv			2	2007-026
2008	807-811 Washington St	1219 Duval St			2	2008-004
	3312 Northside Dr - 216	1229 Duval St			1	2008-007
	2801 North Roosevelt Blv	623 Duval St - 201	1	1	2	2008-009
2009	904 Simonton St - C	718 Duval St - 1			1	2009-002
	2601 South Roosevelt Blv - B20	718 Duval St - 2			1	2009-003
	409 William St	519 Duval St and 522 Bahama St			6	2009-024
	415 Julia St	918-920 Center St			1	2009-025
	915 Windsor Ln	918-920 Center St			4	2009-035
	1111 Duval St	512-524 Eaton St	1	0.58	1	2009-044
	807-811 Washington St	512-524 Eaton St	3	1.74	3	2009-044
	915 Windsor Ln	515 Amelia St			5	2009-047
2010	1901 S. Roosevelt Blv - 208-E	1016 Duval St			1	2010-008
	2601 S. Roosevelt Blv - A-403	1016 Duval St			1	2010-007
		Total	84	56.7	101	

Notes: The nomenclature used in resolutions, as well as distinctions associated with business tax receipts and units has evolved over time. Before Ordinance 02-05 (Feb 7, 2002) Amending the Transfer of Transient Units and Licenses, when the distinction was made between the transfer of licenses and units, the terms license and units were used interchangeably.

Source: These records were derived from Planning Department data; some data was prepared prior to the distinction between licenses and units.