

ORDINANCE NO. 11-06

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,
AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES
ENTITLED "ZONING" BY AMENDING SECTION 122-
1338, and 122-1346 TO PROVIDE FOR
CLARIFICATION TO THE TRANSFER OF TRANSIENT
UNITS ORDINANCE; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 90-517 of the Code of Ordinances allows the City Commission to amend the text of the land development regulations in accordance with certain procedures and criteria;

WHEREAS, the City Commission held a workshop on April 20, 2010, to discuss potential modifications to the ordinance, and at that meeting directed city staff to consult with the Planning Board regarding potential ordinance modifications;

WHEREAS, the Planning Board held a workshop on July 14, 2010, to discuss potential modifications to the ordinance and recommended that the sunset provisions be eliminated and that the ordinance be maintained with only minor clarifications;

WHEREAS, staff prepared minor changes to the ordinance in accordance with Planning Board recommendations;

WHEREAS, the Planning Board held a noticed public hearing on 1-20-11, where based on the consideration of recommendations by

the city planner, city attorney, building official and other information recommended approval of the proposed amendments;

WHEREAS, the City Commission held a noticed public hearing on 3-15-11 and in its deliberations considered the criteria identified in section 90-521 of the Code of Ordinances;

WHEREAS, the City Commission determined that the proposed amendments: are consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional demand on public facilities; will have no impact on the natural environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

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

Section 1: That Chapter 122 of the Code of Ordinances is hereby added/amended as follows*:

Sec. 122-1338 (2). Transfer of Transient Units.

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

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, regardless of whether it will be used transiently or non-transiently, unless accompanied by a business tax receipt duly issued pursuant to section 66-109 (10). When units are transferred for non-transient use, the licenses will be extinguished.

Sec. 122-1346. Sunset.

~~This division shall expire on May 15, 2011.~~

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 and approval by the State Department of Community Affairs pursuant to Chapter 380, Florida Statutes.

Read and passed on first reading at a regular meeting held this 1 day of March, 2011.

Read and passed on final reading at a regular meeting held this 15 day of March, 2011.

Authenticated by the presiding officer and Clerk of the Commission on 16 day of March, 2011.

Filed with the Clerk March 16, 2010.



CRAIG CATES, 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. 11-06

RECEIVED
CITY OF KEY WEST
FLORIDA
2011 APR -6 PM 1:24

FINAL ORDER

The Department of Community Affairs (the "Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat., (2010), 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 March 21, 2011 the Department received for review City of Key West Ordinance No. 11-06, which was adopted by the City of Key West City Commission on March 15, 2011, ("Ord. 11-06").
3. The purpose of Ord. 11-06 is to amend Chapter 122 of the Code of Ordinances entitled Zoning by amending Section 122-138 and 122-1346 to clarify that transient units shall not be transferred, regardless of whether the unit will be used for transient or non-transient use, unless accompanied by a business tax receipt. Ord. 11-06 also clarifies that if a transient unit is transferred for non-transient use, the license will be extinguished and deletes a sunset provision.
4. Ord. 11-06 is consistent with the City's Comprehensive Plan: Policy 1-2.3.4: Historic Planned Redeveloped and Development.

CONCLUSIONS OF LAW

5. 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., (2010).

6. The City of Key West is an Area of Critical State Concern. § 380.05, Fla. Stat. (2010) and Rule 28-36.001, Fla. Admin. Code.

7. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2010). The regulations adopted by Ord. 11-06 are land development regulations.

8. 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.

9. The above identified portions of Ord. 11-06, are consistent the following Principles:

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

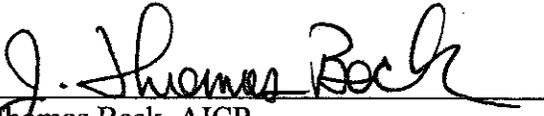
(d) Protection of scenic resources of the City of Key West and promotion of the management of unique tropical vegetation.

(e) Protection of the historical heritage of Key West and the Key West Historical Preservation District.

10. WHEREFORE, IT IS ORDERED that Ord. 11-06 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.


Thomas Beck, AICP
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 ~~4th~~ day of ~~March~~, 2011.

April



Paula Ford, Agency Clerk

By U.S. Mail:

The Honorable Craig Cates
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

Don Craig
Interim Planning Director
City of Key West
P.O. Box 1409
Key West, Florida 33041

Larry Erskine
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

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager
Through: Donald Leland Craig, AICP, Interim Planning Director
From: Ashley Monnier, Planner II *AM*
Meeting Date: March 1, 2011

RE: Transient Transfer Ordinance – An ordinance of the City of Key West, Florida, amending Chapter 122 of the Code of Ordinances entitled “Zoning” by amending Section 122-1338, and 122-1346 to provide for clarification to the Transfer of Transient Units Ordinance; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

ACTION STATEMENT:

Request: A request to propose modifications to the transient transfer ordinance.

Location: City-wide

Background:

In 1999 the City of Key West adopted a Transient Unit Ordinance to allow the transfer of transient units and transient business tax receipts from non-conforming zoning areas to conforming areas throughout the City. The original ordinance had a five year “sunset” date. In February of 2002, the ordinance, including the sunset date, was modified in response to implementation experience, and a new sunset date of March 15, 2005 was established. The ordinance was readopted in its entirety on April 20, 2005 with a new sunset date of May 15, 2010. On April 7, 2010, the City Commission approved an ordinance extending the May 15, 2010 sunset date for a period of 12 months, providing a new sunset date of May 15, 2011. The purpose of this extension was to allow City staff to present options regarding transient units and license transfers to the City Commission. All four ordinances were found consistent with the Comprehensive Plan and Principals for Guiding Development of the Key West Area of Critical State Concern by prior Planning Boards, City Commissions and the Department of Community Affairs.

The purpose of this request is to modify portions of the Transient Unit Ordinance, based on feedback received from the City Commission and Planning Board at two publicly held workshops. On April 20, 2010, the City Commission held a public workshop to discuss the ordinance. At that time, the City Commission provided preliminary input (which focused on a phased elimination of the ordinance or to continue it with clarification) and requested Planning Board input. On July 14, 2010, the Planning Board held a public

workshop to discuss the ordinance, and provided direction to the Planning Department to eliminate the sunset provision in the ordinance and to further clarify what happens to the licenses when they move. Specifically, the proposed ordinance indicates that when units are transferred for non-transient uses, that the licenses will be extinguished. The proposed revisions were heard and approved by the Planning Board at a regularly scheduled meeting, held on January 20, 2011.

Previous City Actions: Planning Board Approval: January 20, 2011

Planning Staff Analysis:

Section 90-522 of the City Code outlines key review criteria for any changes to the Land Development Regulations. After staff review of the criteria, the Planning Board recommended approval of the proposed ordinance to the City Commission. A complete summary of the Planning Department staff analysis can be found in the attached Planning Board staff report.

Process:

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the Department of Community Affairs (DCA), who will have 60 days to review the ordinance and issue an order of consistency.

Options / Advantages / Disadvantages:

Option 1. To approve the proposed changes to the ordinance.

- 1. Consistency with the City's Strategic Plan, Vision and Mission:**
The City's Strategic Plan, Vision and Mission do not address issues pertinent to this request.
- 2. Financial Impact:**
No financial impact is expected to be generated as a result of the proposed ordinance changes.

Option 2. To deny the proposed changes to the ordinance.

- 1. Consistency with the City's Strategic Plan, Vision and Mission:**
The City's Strategic Plan, Vision, and Mission do not address issues pertinent to this request.
- 2. Financial Impact:**
No financial impact is expected to be generated as a result of the proposed ordinance changes.

RECOMMENDATION:

The Planning Department and Planning Board recommend to the City Commission that the proposed changes to the Transient Unit Ordinance be approved.

RESOLUTION NO- 2011-005

A RESOLUTION OF THE KEY WEST PLANNING BOARD RECOMMENDING APPROVAL OF AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, AND 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Planning Department initiated the proposed amendments to the ordinance as a result of changes requested by the City Commission and Planning Board; and

WHEREAS, the Planning Board held a noticed public hearing on January 20, 2011, where based on the consideration of recommendations by the City Planner, City Attorney, Building Official, and other information, the Planning Board recommended approval of the proposed amendments; and

WHEREAS, the Planning Board determined that the proposed amendments are: consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional public demand on public facilities; will have no impact on the built environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use

 Vice-Chairman

 Interim Planning Director

patterns; and are in the public interest.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That AMENDING CHAPTER 122 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING SECTION 122-1338, AND 122-1346 TO PROVIDE FOR CLARIFICATION TO THE TRANSFER OF TRANSIENT UNITS ORDINANCE is hereby recommended for approval; a copy of the recommended modifications to the Code is attached.

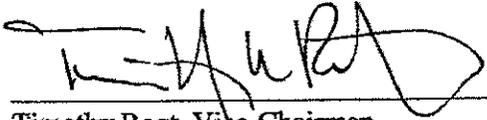
Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this 20th day of January 2011.

Authenticated by the Vice-Chairman of the Planning Board and the Interim Planning Director.

 Vice-Chairman

 Interim Planning Director



Timothy Root, Vice-Chairman
Key West Planning Board

1/31/11

Date

Attest:

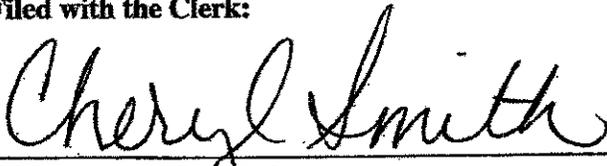


Donald Craig, AJCP
Interim Planning Director

12911

Date

Filed with the Clerk:



Cheryl Smith, City Clerk

2-1-11

Date

 Vice-Chairman
 Interim Planning Director



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

To: Chairman and Planning Board Members

Through: Ashley Monnier, Planner II

From: Donald Leland Craig, AICP Interim Planning Director

Meeting Date: January 20, 2011

Agenda Item: Transient Transfer Ordinance – An ordinance of the City of Key West, Florida, amending Chapter 122 of the Code of Ordinances entitled “Zoning” by amending Section 122-1338, and 122-1346 to provide for clarification to the Transfer of Transient Units Ordinance; providing for severability; providing for repeal of inconsistent provisions; providing for an effective date.

Background:

In 1999 the City of Key West adopted a Transient Unit Ordinance to allow the transfer of transient units and transient business tax receipts from non-conforming zoning areas to conforming areas throughout the City. The original ordinance had a five year “sunset” date. In February of 2002 the ordinance, including the sunset date, was modified in response to implementation experience, and a new sunset date of March 15, 2005 was established. The ordinance was readopted in its entirety on April 20, 2005 with a new sunset date of May 15, 2010. On April 7, 2010, the City Commission approved an ordinance extending the May 15, 2010 sunset date for a period of 12 months, providing a new sunset date of May 15, 2011. The purpose of this extension was to allow City staff to present options regarding transient units and license transfers to the City Commission. All four ordinances were found consistent with the Comprehensive Plan and Principals for Guiding Development of the Key West Area of Critical State Concern by prior Planning Boards, City Commissions and the Department of Community Affairs.

The purpose of this request is to modify portions of the Transient Unit Ordinance, based on feedback received from the City Commission and Planning Board at two publicly held workshops. On April 20, 2010, the City Commission held a public workshop to discuss the ordinance. At that time, the City Commission provided preliminary input (which focused on a phased elimination of the ordinance or to continue it with clarification) and requested Planning Board input. On July 14, 2010, the Planning Board held a public workshop to discuss the ordinance, and provided direction to the Planning Department to

eliminate the sunset provision in the ordinance and to further clarify what happens to the licenses when they move.

In anticipation of a full discussion about modifications to the Transient Ordinance, the Planning Department has conducted a transient survey and assembled relevant information on prior transfers, existing transfers still in play, and hurricane evacuation impacts of transient units under the Building Permit Allocation System.

Review Criteria: Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning Board review of proposed changes in Land Development Regulations.

(a) The Planning Board, regardless of the source of the proposed change in the Land Development Regulations, shall hold a public hearing thereon with due public notice. The Planning Board shall consider recommendations of the City Planner, City Attorney, Building Official and other information submitted at the scheduled public hearing. The Planning Board shall transmit a written report and recommendation concerning the proposed change of zoning to the City Commission for official action. In its deliberations the Planning Board shall consider the criteria stated in section 90-521.

The Planning Board is scheduled to review a draft of the ordinance on January 20, 2010. This document constitutes the summary of relevant criteria reviewed by the Planning Board.

Sec. 90-521. Criteria for approving amendments to official zoning map.
In evaluating proposed changes to the official zoning map, the City shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

The proposed changes do not impact the official zoning map or underlying future land use map designations. Transfer of transient units and transient tax receipts must comply with uses allowed in the Comprehensive Plan and Land Development Regulations. Further, the transient ordinance is consistent with the Comprehensive Plan objectives and policies, in that it is consistent with future land use classification provisions (the ordinance is consistent with allowed uses identified in Objective 1-2.1) and the Building Permit Allocation System (the ordinance maintains fractional allocations and equivalencies as required in Comprehensive Plan Objective 1-3.12 and implementing policies). The ordinance also establishes limits on unit sizes associated with transfers of

units (to two rooms) and requires occupancy equivalency considerations for business tax receipt transfers.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed modifications appear consistent with all applicable requirements of the Code.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

No rezoning is proposed as part of this ordinance modification. Conditions driving the creation of the ordinance are fundamentally the same: growth management constraints including limits to transient development are still in place; underlying zoning code restrictions on transient development are still in place; and, nonconforming uses and densities still exist which can be remedied by the ordinance.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

The modification of the ordinance will have no impact on land uses: transient uses can only be allowed in conforming zoning districts as provided by the overall zoning code and as referenced in the existing ordinance.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

The proposed ordinance modification does not impact the allocation of residential units and does not impact concurrency determinations or other public facility determinations in the Comprehensive Plan and Land Development Regulations. All development and redevelopment must comply with those regulations.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

The proposed ordinance modification relates to the transfer of existing transient units and business tax receipts and does not impact existing natural resource protection regulations.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

No economic impacts are anticipated as a result of the proposed sunset provision elimination and ordinance clarification.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

By eliminating the sunset provision, the ordinance can continue to help eliminate legally nonconforming transient development by facilitating transfer of transient units and business tax receipts into areas where they are permitted in the zoning code. Should future changes be warranted, the proposed changes to the ordinance can be considered as needed. Further, the proposed clarifications to the ordinance are expected to support orderly and compatible land use patterns.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Land Development Regulations in this subpart B and the enabling legislation.

The proposed ordinance changes will facilitate the public interest and are in harmony with the Land Development Regulations.

(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.

The proposed elimination of the sunset provision and clarifying language will potentially streamline future transfer requests.

PROCESS

After the Planning Board recommends changes to the City Commission, the ordinance will require two City Commission readings for adoption. Absent any appeals, the ordinance will be rendered to the DCA, who will have 60 days to issue an order of consistency.

RECOMMENDATION

The Planning Department recommends consideration and approval of the ordinance modification.

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MINUTES
CITY COMMISSION WORKSHOP
OLD CITY HALL, 510 GREENE STREET
TUESDAY, APRIL 20, 2010

A workshop meeting of the City Commission of the City of Key West, Florida was held in Commission Chambers, Old City Hall, on Tuesday, April 20, 2010.

Mayor Cates called the meeting to order at 5:58 p.m.

Answering roll call were Commissioners Teri Johnston, Clayton Lopez, Mark Rossi, Billy Wardlow, Jimmy Weekley and Mayor Craig Cates.

Commissioner Gibson arrived at 6:03 p.m.

Also present were City Manager Jim Scholl, Assistant City Attorney Larry Erskine, Assistant City Attorney Ron Ramsingh, City Planner Amy Kimball-Murley, Finance Director Roger Wittenberg, Fire Chief David Fraga, Building Official John Woodson, Marina Manager Mark Tait, Parking Manager John Wilkins, Manager of Transportation Myra Wittenberg, Utilities Manager Jay Gewin, Human Resources Director Sandy Gilbert, Budget Analyst Trish Whitacre, IT Manager Patti McLaughlin, General Services Director Gary Bowman and Deputy City Clerk Angela Budde.

The pledge of allegiance to the flag of the United States of America was given by all present.

Preliminary Discussion of Transient Unit Ordinance and Potential Revisions

City Planner Amy Kimball-Murley gave a presentation to the City Commission.

The following people spoke on the matter:

Tom Milone, 832 Caroline Street
Robert Kelly, 801 Elizabeth Street
Assistant City Attorney Larry Erskine

The Commission discussed the current ordinance with the City Planner and the Assistant City

Attorney Erskine. Commissioner Johnston stated for the record she would support a clarification and maintain the current Ordinance as is and requested to have the sections on parking, equivalency and units in limbo clarified.

Fiscal Year 2010-2011 Budget Status Update – Mid Year Review

Assistant City Manager Mark Finigan and Finance Director Roger Wittenberg gave the presentation to the City Commission on the General Fund.

Utilities Manager Jay Gewin gave the presentation to the City Commission on Sewer, Stormwater and Solid Waste Funds.

Commissioner Rossi directed staff to draft an Ordinance to incorporate a processing fee to customers who use a credit card to pay utility bills.

Assistant City Manager Mark Finigan gave the presentation to the City Commission on the Key West Bight, Garrison Bight and Transit Funds.

The following people spoke on the matter:

City Manager Jim Scholl
Assistant City Manager David Fernandez
Marina Manager Mark Tait

New Public Transit Facility Update

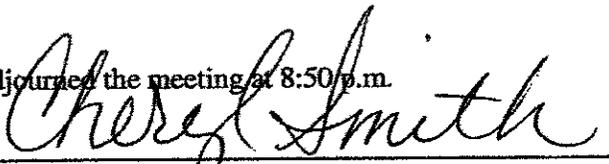
Transportation Manager Myra Wittenberg gave a presentation to the City Commission.

The following people spoke on the matter:

City Manager Jim Scholl
Assistant City Manager David Fernandez

ADJOURNMENT:

There being no further business the Mayor adjourned the meeting at 8:50 p.m.


Cheryl Smith, MMC, CPM
City Clerk

Minutes of the Transient Unit Ordinance Workshop

July 14, 2010

Approved August 19, 2010

Chairman Richard Klitenick called the Transient Unit Ordinance Workshop of July 14, 2010 to order at 6:06 pm at Old City Hall, in the antechamber at 510 Greene Street, Key West.

ITEM 1. ROLL CALL

Present were; Chairman Richard Klitenick, Members, Jim Gilleran, Gregory Oropeza, Michael Browning, Sam Holland, Jr. , and Lisa Tennyson.

Excused Absence: Vice-Chairman, Tim Root

Also in attendance were: Planning Director, Amy Kimball-Murley; Chief Assistant City Attorney, Larry Erskine; Licensing Official, Carolyn Walker; and Planning Department staff, Brendon Cunningham, Carlene Cowart, Ashley Monnier, Nicole Malo and Patrick Wright.

ITEM 2. TRANSIENT UNIT ORDINANCE

Mrs. Kimball-Murley gave a presentation on the Transient Unit Ordinance.

The following people spoke on the matter:
Assistant City Attorney Larry Erskine
Licensing Official Carolyn Walker

Mrs. Kimball-Murley stated that the current ordinance allows transient units accompanied by licenses to be transferred from any district to conforming zoning districts. The ordinance also allows transient licenses alone to be transferred from non-conforming to conforming districts.

The members discussed the current ordinance with Mrs. Kimball-Murley, Mr. Erskine and Mrs. Walker.

Mrs. Walker informed members that some units and licenses stay in an "unassigned" pool for years as long as owners continue to pay their annual fees. Members discussed the importance of maintaining a range of unit types in the market place. Mrs. Kimball-Murley stated that there has been no direction to reduce the units.

Members discussed the fate of licenses transferred with units that cannot be used transiently. Mrs. Walker gave members examples of people who have and keep buying licenses that cannot be transferred under the ordinance as it exists today. Members inquired about how many units have people purchased that cannot be utilized. Mrs. Walker estimated that about ten have been purchased.

Mrs. Walker gave members an overview of the Wilson case where the city was sued for not allowing a license to be transferred from a conforming district to a conforming district. As a result, a person can transfer ownership of a license, which only means that a business tax receipt is transferred, but does not mean that a transient use is permitted. Therefore, people who have purchased units under some sort of pretense, end up having a no use permitted and a tax receipt for their location and no medallion, which can be very confusing for those not familiar with the ordinance.

Mr. Erskine expanded on the Wilson case and stated that their argument was that state law trumps and supersedes the ordinance. The city's argument was that they are probably right about that, but it does not mean that we do not have the right to impose our zoning regulations on the process.

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Approved August 19, 2010

Members then asked staff if the unassigned units were tied to a destination. Mrs. Walker stated that there are units with Planning Board resolutions with a clear sender site and receiver site where the receiver site never became available due to construction never being started and/or they never got their certificate of occupancy. Then there are situations where the property goes into foreclosure and the owners of the property come in and request to separate the license from the unit and place it in the unassigned pool.

Mrs. Kimball-Murley informed members that Nicole Malo has prepared a spreadsheet tracking transfers from 2000 to present. She then stated that over a ten year period, transfers have remained fairly steady. Some transfers have not been developed yet or are associated with long term development approvals.

Members discussed clarifying differences between transfer of units versus licenses.

Chairman Klitenick stated that the ordinance works and serves its purpose.

Members discussed making the following changes to the ordinance which includes eliminating the sunset period and clarifying what actually happens to the licenses when they are moved with units.

Mrs. Kimball-Murley informed members that the next step in this process is to draft any changes, present them to the Planning Board, then if approved, it will move to the City Commission for a first and second reading. All of these steps would need to be done before the sunset date expires.

ITEM 3. ADJOURNMENT

Workshop adjourned at 7:35 pm.

**Submitted by,
Carlene Cowart
Development Review Administrator
Planning Department**