

ORDINANCE NO. 02-06

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER V, ARTICLE XXI OF THE KEY WEST LAND DEVELOPMENT REGULATIONS (LDRS) ENTITLED "DEFINITIONS" BY AMENDING SECTION 5-21.2; ADDING SECTION 2-7.21 TO CHAPTER II, ARTICLE VII LDRS IN ORDER TO ESTABLISH GENERAL REGULATIONS FOR THE TRANSIENT USE OF A RESIDENTIAL DWELLING, INCLUDING: PROHIBITIONS; APPLICATION; GENERAL REGULATIONS; FEES; ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission has determined, upon an examination of the issue and a series of public workshops, that the transient use of residential dwellings has had deleterious consequences in the residential neighborhoods of Key West; and

WHEREAS, the City Commission finds that the increase in the conversion of residential dwellings to transient use is, in part, responsible for the affordable housing shortage in Key West, a shortage confirmed in a study of the City by the Shimberg Center of the University of Florida; and

WHEREAS, although only 507 residential properties city-wide hold residential dwelling transient licenses (for a total of 906 transient unit uses), the City Commission has been advised that many more, and perhaps as high as 1500 residential units, are put to a transient use at some time in a given year; and

WHEREAS, the City Commission desires to impose a phase-out of certain unlicensed transient uses in prohibited zoning districts, in order to address the investment expectations of affected property owners; and

WHEREAS, the City Commission finds that this proposed regulation is consistent with Goals 3-1 and 1A-A, and Policies 1-1.2.1 and 1-2.1.3, of the Comprehensive Plan; and

WHEREAS, the City Commission finds that this proposed regulation is consistent with the Principles for Guiding Development, Section 28-36.003 (1)(a); 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 City Commission finds that regulations prohibiting unlicensed transient uses of residential dwellings will 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 Chapter V, Article XXI, Section 5-21.2 of the Land Development Regulation is hereby amended as follows*:

Sec. 5-21.2 Definition of terms.

Transient Living Accommodations- or Transient Lodging. Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is 1) rented for a period or periods of less than 30 days or 1 calendar month,

*(Coding with respect to Section 5-21.2 only: Added language is underlined; deleted language is ~~struck through~~.)

whichever is less; or which is 2) advertised or held out to the public as a place ~~regularly~~ rented to transients, regardless of the occurrence of an actual rental. Such a short-term rental use of or within a single family dwelling, a two family dwelling or a multi-family dwelling (each also known as a "residential dwelling") shall be deemed a transient living accommodation.

Section 2. That Chapter II, Article VII, Section 2-7.21 is hereby added to the Land Development Regulations as follows:

Sec. 2-7.21 Transient Living Accommodations in Residential Dwellings - Regulations.

A. Intent.

These regulations apply only to the transient use of residential dwellings. In 1986, the City enacted former zoning code Section 35.24(44) which provided the following definition of a transient living accommodation: "Commercially operated housing principally available to short-term visitors for less than twenty-eight (28) days." (This definition shall hereinafter be referred to as the "Former Transient Definition.") Some property owners and developers interpreted the Former Transient Definition to mean that an owner could rent his or her residential dwelling for less than half the year without the dwelling losing its residential status, and therefore without the need for a City-issued transient license (so long as State of Florida licensing requirements were met). This interpretation went unchallenged by the City. Three categories of transient use of residential dwellings resulted: (1) some owners obtained a transient license allowing unrestricted transient use; (2) some owners followed the

Former Transient Definition and, accordingly, rented their properties less than half the year; and (3) some owners put their residences to a transient use without City or State license and without regard to existing regulations. In addition, many residential dwelling owners never put their properties to a transient use and they no longer have the opportunity to do so under the City's current Rate of Growth Ordinance.

The City Commission finds that short-term or transient rentals affect the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship; although short-term tenants no doubt are good citizens generally, they do not ordinarily contribute to activities that strengthen a community.

Therefore, the City of Key West intends by these regulations to establish a uniform definition of transient living accommodations, and to halt the use of residences for transient purposes in order to preserve the residential character of neighborhoods. The City has provided only a brief phase-out period in recognition that in many instances investment expectations have already been met either through rental income or rising market value.

Finally, certain guest houses currently hold a number of the City's category 10C occupational license which denotes transient use of a residential property. The City intends to develop a uniform guest house occupational license category, and then to re-designate all 10C licenses held by guest houses accordingly.

B. Unlicensed Residential Transient Use - Prohibition.

All unlicensed transient use of residential dwellings shall terminate after thirty (30) days from the effective date of this Section 2-7.21; provided, however, that properties subject to Development Agreement executed by the City of Key West may continue such transient use as allowed under that Development Agreement until the expiration of the Development Agreement.

C. Application.

The holder of an occupational license allowing residential transient use must annually provide or comply with the following information:

1. The complete street address and RE number of the property.
2. Proof of ownership, including the name, address and phone number of each person or entity with an ownership interest in the property.
3. An approved inspection report of the Fire Marshall verifying compliance with the Fire Marshall's criteria for a residential dwelling transient lodging use.
4. The gross square footage of the property, including the number of rooms, bedrooms, kitchens and on-site parking spaces attributable to transient lodging use.
5. A valid and current federal employer tax identification number (or social security number) for the owner(s) of the property.

6. A valid and current Florida Department of Revenue sales tax identification number under Chapter 212, Florida Statutes, and a valid and current license under Chapter 509, Florida Statutes.

7. The name, address and 24-hour phone number of the person who will be operating the property's transient accommodations.

8. The application shall bear the signatures of all owners, authorized agents and authorized property managers.

D. General Regulations.

The following regulations shall pertain to transient lodging use of or within a residential dwelling.

1. Except as provided herein, each residential property where transient lodging use is in effect shall prominently display on the outside of the property a medallion alerting the public of the transient use. The medallion and instructions for its posting shall be issued by the Licensing Division.

2. A contact person must be available 24-hours per day, seven days per week for the purpose of responding promptly to complaints regarding the conduct of the occupants of the residential dwelling transient lodging. The name and phone number of the contact person must be posted on exterior of the dwelling in a place accessible to the public.

3. As a condition of application approval, the Fire Marshall shall conduct an inspection of each dwelling unit and issue to the applicant written approval based on applicable Life Safety criteria.

4. Occupancy of individual units shall conform to the occupancy limits of the Standard Building Code.

5. The owner or manager shall maintain a tenant and vehicle registration which shall include the name and address of each unit's tenant, and the make, year and tag number of the tenant's vehicle.

6. *Parking.* The owner shall provide one off-street parking space per residential dwelling transient lodging unit, except where the unit is in the City's Historic District; provided, however, that the owner or manager must instruct all tenants of the Historic District's residential parking program and if the vehicle is not eligible to park on the street, then the owner or manager shall ensure that the tenant is directed to a lawful and appropriate parking space.

7. There shall be a written lease between a residential dwelling owner and a tenant, and it shall contain the tenant's agreement to the regulations contained in this Section 2-7.21.

8. It shall be a violation of these regulations to enter into a long-term lease with a mutual intent to subvert the regulatory goals of this Section 2-7.21. It shall also be a violation of these regulations for a property owner to lease space to "roommates" for a period of less than 30 days or 1 calendar month when not licensed as provided hereunder. For the purposes of enforcement, a rebuttable presumption shall exist that roommates use a common entrance to a dwelling.

9. It shall be unlawful for any owner, tenant, broker, realtor, agent or other representative of the owners to hold out or advertise a residential dwelling for transient rental if the property is not permitted, as provided hereunder. A broker or realtor who is found in violation of this regulation shall be subject to occupational license revocation.

10. Nothing in this Section 2-7.21 is intended to exclude the application of any ordinance of the City of Key West.

E. Fees; Application Schedule.

1. A person or entity who holds a transient rental occupational license shall pay the customary annual occupational license fee, plus an annual inspection and enforcement fee of \$125.00 upon the filing of the application set forth in subsection C.

2. Fee revenues raised under this Section 2-7.21 shall be used to fund a position in the Code Enforcement Division, and to provide enforcement and processing personnel as needed. The officer holding this position shall have as his or her primary responsibility the enforcement of the terms and conditions of this ordinance, and other City regulations relating to the transient use of properties.

3. For a period of ninety (90) days after the effective date of this ordinance, the Licensing Division will receive initial applications pursuant to Section C., and related fees. There shall be a \$25.00 per dwelling unit late fee payable to the City upon application filing. In all subsequent years after the initial

application, annual processing fees shall be paid at the same time as the occupational license. The City Manager may determine to pro-rate the initial processing fee.

F. Enforcement; penalties.

A violation of this section 2-7.21 shall be punishable as a misdemeanor and by a fine of up to Five Hundred Dollars (\$500.00) per day, per unit, per violation. The Code Enforcement Division may also enforce the terms of this Ordinance by bringing a case to the Code Enforcement Special Master pursuant to its authority under law and ordinance. In addition, any license or permission granted hereunder may be revoked for cause, upon notice and opportunity to be heard, by the City Commission. In addition to any other remedy available to the City of Key West, the City or any adversely affected party may enforce the terms of this ordinance in law or equity. Any citizen of Key West may seek injunctive relief in a court of competent jurisdiction to prevent a violation of this section 2-7.21. The City, by and through its code enforcement division, may apply for an administrative search warrant to enter upon the premises of any residence subject to this Ordinance.

Section 3. 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 4. 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.

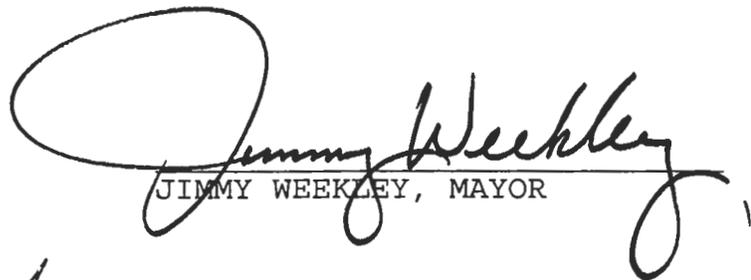
Section 5. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

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

Read and passed on second reading at a regular meeting held this 20th day of February, 2002.

Authenticated by the presiding officer and Clerk of the Commission on the 20th day of February, 2002.

Filed with the Clerk February 20th, 2002.


JIMMY WEEKLEY, MAYOR

ATTEST:


CHERI SMITH, CITY CLERK