

## **DIVISION 7. - TRANSIENT LIVING ACCOMMODATIONS IN RESIDENTIAL DWELLINGS** <sup>[150]</sup>

Sec. 122-1371. - Transient living accommodations in residential dwellings; regulations.

Sec. 122-1372. - Transient living accommodations in residential dwellings—Truman Annex.

Secs. 122-1373—122-1405. - Reserved.

### **Sec. 122-1371. - 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 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 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 business tax receipt which denotes transient use of a residential property. The city intends to develop a uniform guest house business tax receipt category, and then to redesignate all 10C licenses held by guest houses accordingly.

**(b)**

*Unlicensed residential transient use; prohibition.* Except as provided in [section 122-1372](#), all unlicensed transient rental use of residential dwellings is prohibited.

**(c)**

*Application.* The holder of a business tax receipt 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 marshal verifying compliance with the fire marshal'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 marshal 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 Florida Building Code. Units shall comply with the Americans with Disabilities Act, as applicable.
- (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.

**(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. 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 one 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 business tax receipt revocation.

**(10)**

Nothing in this section 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 business tax receipt shall pay the customary annual business tax receipt 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 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 90 days after the effective date of this section [September 22, 2003], the licensing division will receive initial applications pursuant to subsection (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 business tax receipt. The city manager may determine to pro-rate the initial

processing fee.

*Editor's note—*

The city has advised that the effective date of Ord. No. 02-06 actually occurred upon final DCA approval, which was September 22, 2003.

(f)

*Enforcement; penalties.* A violation of this section shall be punishable as a misdemeanor and by a fine of up to \$500.00 per day, per unit, per violation. The code enforcement division may also enforce the terms of this section by bringing a case to the code enforcement special master pursuant to its authority under law and ordinance. In addition, any license or permission granted hereunder may be revoked for cause, upon notice and opportunity to be heard, by the city commission. In addition to any other remedy available to the city, the city or any adversely affected party may enforce the terms of this section in law or equity. Any citizen of Key West may seek injunctive relief in a court of competent jurisdiction to prevent a violation of this section. The city, by and through its code enforcement division, may apply for an administrative search warrant to enter upon the premises of any residence subject to this section.

*(Ord. No. 02-06, § 2, 2-20-2002; Ord. No. 05-11, § 1, 5-17-2005; Res. No. 06-292, § 1, 9-6-2006)*

### **Sec. 122-1372. - Transient living accommodations in residential dwellings—Truman Annex.**

(a)

*Findings.* In *Rollison v. City of Key West*, the Third District Court of Appeal ruled that a unit owner in the Truman Annex established a legal nonconforming use of Shipyards unit 271 as a transient rental, subject to the "50% Rule," because the property was put to a transient use before the city changed the law in 1998. In particular, the city of Key West enacted Ordinance No. 97-20, which was approved by the Florida Department of Community Affairs and became effective on December 26, 1997 (Because the Court identified 1998 in its Opinion, subsection (b) hereof sets a January 1, 1998 date for application eligibility).

Ordinance No. 97-20 established the current definition of "Transient Living Accommodation" and thereby terminated the ability of Truman Annex property owners to rely on the "50% Rule." This rule, a creation of the developers and marketers of the Truman Annex in the early 1990's, provided that a property owner in the Truman Annex could rent his or her unit for fewer than 26 weeks per year, maintaining its residential status and obviating the need for a city-issued transient rental license. The

creators of the "50% Rule" based it on their reading of the definition of "transient housing" set forth in section 35.07(14)(b) of the former Key West zoning code, which applied to the Truman Annex development (the "planned redevelopment district").

The city commission finds that it is fair and reasonable to extend the Rollison ruling to other property owners in the Truman Annex. Accordingly, it hereby establishes an application process to determine similarly situated properties.

**(b)**

*Application.* All owners of eligible residential units in the HPRD zoning district may apply to the city of Key West for a "Truman Annex residential transient rental permit." An application for eligibility of a unit hereunder shall be filed with the city of Key West only one time. The following regulations pertain to this application.

**i.**

An eligible residential unit is one whose owner used it as a transient rental between the date of its original sale and January 1, 1998 (hereinafter the "Eligibility Period").

**ii.**

The current property owner shall file an application with the Key West city attorney's office. The application must include the following information; name of owner; address; owner's telephone number; date of purchase; purchase price; copy or copies of Monroe County transient rental business tax receipt(s) during the Eligibility Period; copy or copies of State of Florida Department of Business and Professional Regulation, Division of Hotel and Restaurant ("DBPR") lodging license(s) during the Eligibility Period; State of Florida sales tax records during the Eligibility Period; and a sworn affidavit of the current market short-term rental rate(s) for the unit. If a property owner intends to provide a blanket DBPR transient license roster for a real estate broker that includes the owner's address, then the owner shall supplement it with an agreement between the property owner (at the time) and the real estate broker for the year(s) of the blanket DBPR lodging license.

**iii.**

All applications shall be bound and paginated, and contain a table of contents.

**iv.**

The deadline for receipt by the city of a completed application is ninety (90) days from the effective date of this ordinance.

**v.**

Shipyards unit 271 was established as legally

nonconforming by a court of law on April 14, 2004. On April 20, 2005, the city of Key West confirmed that the owner was entitled to rent the unit on a transient basis within the scope of the "50% Rule."

**vi.**

If an application is denied for any reason by the city, the property owner may appeal to the code enforcement special magistrate. The appeal must be filed with the code enforcement clerk within ten (10) days of receipt of the denial. The special magistrate shall conduct a public hearing, give notice and opportunity to be heard, receive evidence, and issue written findings and an order.

**(c)**

Once a unit is determined to be legally nonconforming under the procedures set forth in this [section 122-1372](#), the property owner shall be entitled to rent the unit on a transient basis cumulatively for less than a total of twenty-six (26) weeks per year. The city of Key West cedes to each Truman Annex homeowners' association management responsibility of the 26-week cap; provided, however, that the city of Key West shall retain enforcement responsibility.

**(d)**

The property owner of each unit determined to be legally nonconforming hereunder shall be subject to the general regulations set forth in [section 122-1371\(d\)\(1\)–\(7\)](#) and the fee schedule set forth in [section 122-1371\(e\)\(1\)](#). The medallion required in [section 122-1371\(d\)\(1\)](#) must be removed on any day that the unit is not within its lawful rental period.

**(e)**

The cost of a "Truman Annex residential transient rental permit" shall be the equivalent of that of a business tax receipt per [section 66-109\(10\)c.](#), as amended.