



MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 17-048

DATE: February 6, 2017

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services *RB*

FROM: Karen Friedman, AICP, Principal Planner *KBF*

RE: Text Amendments to Chapter 153 "Rental Housing Code"
Short Term Rental Permit

At the December 16, 2015 Planning and Zoning Board hearing Staff presented revisions to Code of Ordinances Chapter 153 "Rental Housing Code" with the purpose of creating a Short Term Rental Permit program. Short Term Rentals were defined as any rental property available for occupancy for less than six months (not including hotels). In addition to creating a Short Term Rental Permit, the revisions included adding specific regulations for Short Term Rentals including limitations on off-street parking, trash and recycling bins, occupancy, noise, and special events. Finally, the revisions also included a mandatory inspection (with fee) prior to issuance of the Permit. As can be seen in the attached Meeting Minutes, the Board unanimously recommended the text amendments for approval.

Since December 16, 2015 the item was further vetted by Staff in order to ensure the proposed standards would effectively address the various types of short term rentals in the City. Staff continued to research best practices and prepared a Staff Report reviewing best practices in Florida. Additionally a Short Term Rental Staff Taskforce was formed in order to address the issues related to Short Term Rentals from a variety of disciplines. The Taskforce includes staff from the following departments and divisions: BSO, Fire Prevention, City Attorney, City Management, Planning and Zoning, Building Inspections, Business Tax Receipt, Code Compliance, Public Works, and CRA.

As a result of the additional review, research, and Taskforce meetings, the revisions to Chapter 153 have been slightly modified. These include standards related to off-street parking, applicability of the Short Term Rental Permit program, appeals provisions, and enforcement / remedies provisions.

The following table described the proposed text amendments.

Page	Section	Change
1 - 2	153.05	Strike several definitions and replace with cross-reference to Zoning Code
2	153.05	Create definitions for Overnight, Short Term Rental, and Short Term Rental Permit. <ul style="list-style-type: none"> The definition for Short Term Rental clarifies the time period of 6 months or less The definition of Short Term Rental Permit clarifies that this is required for single-family, duplex, triplex, and quadplex units.

3 - 6	153.08	Create new section addressing the requirements for the Short Term Rental Permit, including: <ul style="list-style-type: none"> • prohibition on transferability • requirement for annual renewal • application requirements (which include sketches) • prohibition on outstanding liens on both the subject property and other property owned by the same owner, and required inspection • Appeal provisions • Amortization • Revocation standards • Violation / enforcement provisions
6	153.11	Add in references to all disciplines who perform inspections
6 - 8	153.26	Create new sections with specific standards for short term rentals including: <ul style="list-style-type: none"> • Off-street parking: limited to one car per bedroom, required to be parked on paved driveway, prohibition on swale parking, and prohibition of commercial and recreational vehicles parked overnight • Refuse Containers: minimum number of refuse containers and storage location • Occupancy Standards: Clarifying that short term rentals are not exempt from occupancy limitations per zoning (i.e. they must comply with definition of "family") • 24-hour contact person: must be located with 25 miles of the short term rental and outline the responsibilities of the 24-hour contact • Special Events: reduce the permitted number of special events allowed at the property • Outdoor Musical Performance: prohibit outdoor musical performances

The recommended revisions to Chapter 153 include language previously review by this Board as well as newly proposed revisions.

- Amendments highlighted in blue were previously reviewed by this Planning and Zoning Board at the December 16, 2015 hearing.
- Amendments highlighted in yellow are newly proposed revisions.

Staff's Request

Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

In addition to the proposed text amendments, attached to this memo is a copy of the following:

- Staff Report on Short Term Rentals - Best Practices in Florida and Recommendations
- Administrative Memorandum #15-619
- December 16, 2015 Planning and Zoning Board meeting minutes
- "White Paper: Short-Term Rental Housing Restrictions" prepared by Robinson Cole

§ 153.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY BUILDING or ***ACCESSORY STRUCTURE***. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

...

~~***BOARDING HOUSE***. See § 155.003(B).~~

...

DORMITORY. See Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

DWELLING. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

DWELLING UNIT. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

...

FAMILY. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

...

HOTEL OR MOTEL. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

HOTEL OR MOTEL UNIT. Any habitable room or group of habitable rooms, located within a hotel or motel and forming a single habitable unit with facilities used or intended to be used for living and sleeping and which is used for temporary occupancy or part thereof.

...

~~***MOTEL***. See *HOTEL*.~~

~~***MOTEL UNIT***. See *HOTEL UNIT*.~~

...

~~**MULTIPLE-FAMILY MULTIFAMILY DWELLING.** Any structure or building containing two or more dwelling units. See Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).~~

...

OVERNIGHT. Between the hours of 10:00 p.m. and 8:00 a.m.

...

~~**PERMANENT OCCUPANCY.** When the rental unit is the sole residence of the occupant(s) Occupancy of a rental unit for a period of more than six months.~~

...

REFUSE. All putrescible and nonputrescible solid wastes including garbage, rubbish, ashes and dead animals.

REFUSE CONTAINER OR GARBAGE RECEPTACLE. A watertight container that is constructed of metal or other durable material impervious to rodents, that is capable of being serviced without creating unsanitary conditions.

...

~~**ROOMING OR BOARDING HOUSE.** See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).~~

ROOMING OR BOARDING UNIT. Any room or group of rooms, forming a single habitable unit, used or intended to be used for living and sleeping for permanent occupancy with no provision for cooking or part thereof.

...

RUBBISH. All combustible and noncombustible waste materials except garbage, including but not limited to, inoperative toys, bicycles, motorcycles, automobiles, mechanical equipment, machines and other unused or discarded objects and equipment.

SHORT TERM RENTAL. A dwelling unit which rents, leases, or lets for consideration any living quarters or accommodations for a term of six months or less in a calendar year. This term does not include hotel, motel, timeshare property, or bed and breakfast.

SHORT TERM RENTAL PERMIT. An annual permit required to operate a Single Family, Duplex, Triplex, or Quadplex as a Short Term Rental

...
§ 153.08 SHORT TERM RENTAL PERMIT REQUIRED.

(A) It shall be unlawful for any owner to operate a Short Term Rental in a Residential Zoning District unless a Short Term Rental Permit (“Permit”) has first been obtained from the Development Services Director.

(B) Permit not transferable. The Short Term Rental Permit, when issued, shall pertain only to the individual property owner for use at one specific property. Separate permits shall be required for a property owner to operate a Short Term Rental at any other location; and a new permit shall be required if ownership of the property is transferred.

(C) Annual Renewal of Permit Required. The Permit shall apply from October 1 of each year and shall expire on September 30. The Short Term Rental Permit shall be renewed annually. Failure of the property owner to renew and maintain the annual permit shall constitute a violation. Evidence of payment of the Broward County Tourist Development Tax shall be required for annual renewal.

(D) Short Term Rental Application Requirements. An applicant for a Short Term Rental Permit shall submit the following:

(1) Submittal of a Short Term Rental Permit application;

(2) Payment of nonrefundable application fee;

(3) Detailed exterior site sketch identifying property lines, parking spaces, pool, spas, hot tubs, storage area of garbage receptacles, screening of garbage receptacles, and fences. Such sketch may be hand drawn but must be drawn to scale and include accurate dimensions.

(4) Detailed interior site sketch identifying all bedrooms, exits, and locations of fire extinguishers. Such sketch may be hand drawn but must be drawn to scale and include accurate dimensions.

(5) A copy of the standard rental/lease agreement to be used when contracting with occupants;

(6) A business tax receipt from Broward County;

(7) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment; and

(8) Proof of registration with the Florida Department of Revenue for sales tax collection and Broward County for Tourist Development Tax.

(9) Proof of no unsatisfied liens recorded against the Short Term Rental property or any other Short Term Rental property owned by the property owner.

(E) Inspection Required. An inspection of the Short Term Rental for compliance with the City of Pompano Beach Rental Housing Code, the Florida Building Code and the Florida Fire Prevention Code is required prior to the issuance of an initial Short Term Rental Permit.

(1) An inspector from the city's Code Enforcement Division, Building Inspections Division and Fire Department are hereby authorized to inspect all Short Term Rental Housings to insure compliance with the City of Pompano Beach Rental Housing Code, the Florida Building Code and the Florida Fire Prevention Code. If violations are found, all violations must be corrected and the dwelling unit must be re-inspected prior to issuance of the initial Short Term Rental Permit as provided herein.

(a) The inspections shall be made by appointment with the 24-hour contact person. If the inspector has made an appointment with the 24-hour contact person to complete an inspection, and the 24-hour contact person fails to admit the inspector at the scheduled time, the property owner shall be charged a "no show" fee in an amount to be determined by Ordinance of the City Commission.

(b) If the inspector(s) is denied admittance by the Short Term Rental Housing 24-hour contact person or if the inspector fails in at least three (3) attempts to complete an initial or subsequent inspection of the Short Term Rental Housing, the inspector(s) shall provide "Notice of Failure of Inspection" to the property owner.

(c) The "Notice of Failure of Inspection" is considered a violation of this Code and is subject to enforcement remedies as provided herein.

(2) The Development Services Director reserves the authority to require an inspection for permit renewal applications.

(E) Permit Approval or Denial.

(1) The Development Services Department shall issue the Short Term Rental Permit after the property owner has demonstrated compliance with the requirements of the Rental Housing Code and all violations discovered during the required inspection have been corrected.

(2) Once issued, a Short Term Rental unit must be properly maintained in accordance with the City of Pompano Beach Rental Housing Code, the Florida Building Code and the Florida Fire Prevention Code.

(3) The Development Services Department may deny the Short Term Rental Permit application if the property owner fails to demonstrate

compliance with the requirements of the Rental Housing Code or if violations discovered during the required inspection are not remedied (as evidenced by a re-inspection) within 30 days.

(F) Appeal. The denial of the issuance of the Short Term Rental Permit under this section may be appealed in accordance with the provisions in §155.2424, Appeal.

(G) Amortization. Owners who were operating a Short Term Rental Housing prior to the adoption of this section, as evidenced by a written and validly executed rental agreement or contract, shall have six months from the date of adoption of this Ordinance to obtain a Short Term Rental Permit.

(H) Permit Revocation. After issuance of the permit required by this section, such permit shall be revoked if at any time it is discovered that:

(1) There was a false statement or concealment of a material fact in the application for a Short Term Rental Permit required by this section;

(2) The property owner has violated the off-street parking provisions of this Rental Housing Code on two or more occasions in a 30-day period or on five occasions in a twelve month period as determined by the City's Special Magistrate for Code Compliance pursuant to Code or Ordinances Chapter 37, or by a Court of Competent Jurisdiction; or

(3) A Noise Disturbance per §97.60 where such noise emanated from the Short Term Rental property on two or more occasions in a 30-day period or on five occasions in a twelve month period as determined by the City's Special Magistrate for Code Compliance pursuant to Code or Ordinances Chapter 37, or by a Court of Competent Jurisdiction; or

(4) The property owner has violated any provisions of the City's Code of Ordinances on ten or more occasions in a twelve month period as determined by the City's Special Magistrate for Code Compliance pursuant to Code or Ordinances Chapter 37, or by a Court of Competent Jurisdiction; or

(5) The property owner fails to submit required proof of payment of Broward County Tourist Development Tax.

(I) Violations; Enforcement.

(1) Violations of this section shall be subject to penalties as part of a progressive enforcement program with the primary focus on compliance and compatibility with adjoining properties, versus penalties and legal actions. To accomplish a safe and effective Short Term Rental Permit Program it is key that property owners and 24-hour contact person are responsive and responsible in the management of the property for compliance with this section. Code compliance activities will be in accordance with Code of Ordinances Chapter 37.

(2) Daily Fine for Operation of Short Term Rental without first obtaining a Permit. Operation of a Short Term Rental without first obtaining a Short Term Rental Permit or after a Short Term Rental Permit has been revoked shall be deemed a violation pursuant to this section and shall be subject to daily fine, up to One thousand dollars (\$1,000.00) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the vacation rental operates during a period of violation.

(3) Additional remedies. Nothing contained herein shall prevent the City from seeking all other available remedies which may include, but not be limited to, suspension or revocation of a Short Term Rental Permit, the penalties set forth in § 10.99, "General Penalty", of this Code, and injunction issued by the court upon a suit brought by the city.

§ 153.11 INSPECTIONS.

(A) The An inspector from the city's Code Enforcement Inspectors Division, Building Inspections Division, and Fire Department are hereby authorized to inspect all dwellings governed by this chapter to insure compliance with all minimum housing code requirements. When a Code Enforcement an Inspector is required to enter onto private premises to make an inspection, he shall do so with the consent of the owner, operator, lessee or occupant. In the event that consent to enter the premises is withheld, the Code Enforcement Inspector may make application to the proper court for an order requiring access to the premises.

(B) Inspections of all buildings or structures shall be made during reasonable hours. If the Code Enforcement Officer, Building Inspections Division Inspector, and/or Fire Department Inspector, has probable cause to believe an immediate threat exists to the health, welfare or safety of persons in or about any building or structure governed by this chapter, he may direct that an inspection be made at that time.

§ 153.26 MINIMUM STANDARDS FOR SHORT TERM RENTAL.

The following minimum standards are in addition to those required in Chapter 153. The property owner of a Short Term Rental shall be responsible to maintain the Short Term Rental in compliance with these additional minimum standards:

(A) Off-Street Parking. In addition to the standards regarding driveways in §153.19(C), the following standards shall apply:

(1) The overnight parking of more than one automobile per bedroom is prohibited.

(2) At all times all automobiles shall be parked in an approved off-street parking space or driveway. The parking of automobiles in a swale, landscaped area, or within the public right-of-way is prohibited.

(3) The overnight parking of commercial and recreational vehicles is prohibited.

(B) Refuse Containers. In addition to the standards regarding refuse containers and garbage service in §153.19(A)(4) and (5) and garbage collection in § 96.12(A)(1), the following standards shall apply:

(1) A minimum of one 32 gallon refuse container per bedroom shall be provided.

(2) Refuse containers shall be stored in a location that is not visible from public rights-of-way or abutting property owners. The storage location of the refuse containers shall be screened in accordance with §155.5301.

(3) All trash and debris on the property must be kept in covered refuse containers.

(C) Occupancy Standards. In addition to the standards regarding occupancy in §153.33(E), the following standards shall apply:

(1) Occupancy shall be limited to that permitted in the underlying Zoning District.

(2) In no case shall occupancy be greater than two persons per bedroom.

(D) 24-hour Contact Person. In addition to the responsibilities required for a 24-hour contact person as provided for in § 153.33(F), the additional responsibilities of the 24-hour contact person for a Short Term Rental Housing are required:

(1) Be available and have the authority to address or coordinate problems associated with the property 24 hours a day, 7 days a week;

(2) Be situated within 25 miles of the short term rental;

(3) Maintain the entire property free of garbage and refuse. Provided however, that this provision shall not prohibit the storage of garbage and litter in authorized receptacles for collection;

(4) See that the provisions of this section are complied with and promptly address any violations of this section or any violations of law, which may come to the attention of the 24-hour contact person; and

(5) Inform all occupants prior to occupancy of the property of the regulations regarding parking, garbage and refuse, noise, and outdoor musical performances.

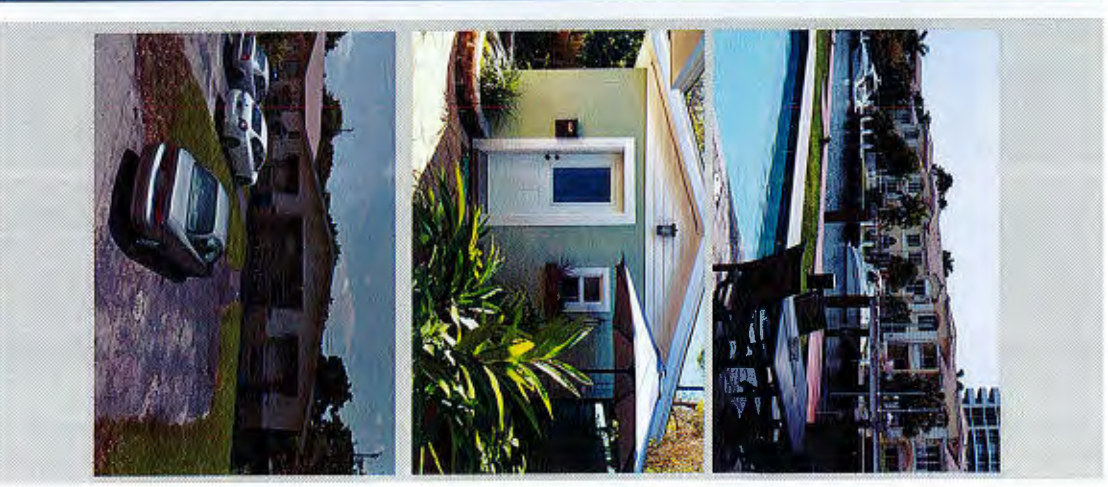
(E) Limit on Special Events per §132.27, Special Events on Private Property; Permit Required. Short Term Rental Housings shall be limited to one special event per fiscal year (October 1 through September 30). Special Events include, but are not limited to, party rentals and other property usage that would substantially inhibit the usual flow of vehicular or pedestrian traffic.

(F) Prohibition on Outdoor Musical Performance. Short Term Rentals are prohibited from giving or hosting outdoor musical performances.

Staff Report: Short Term Rentals, Best Practices in Florida, & Recommendations

October 2016

Karen Friedman, Principal Planner
Development Services Department

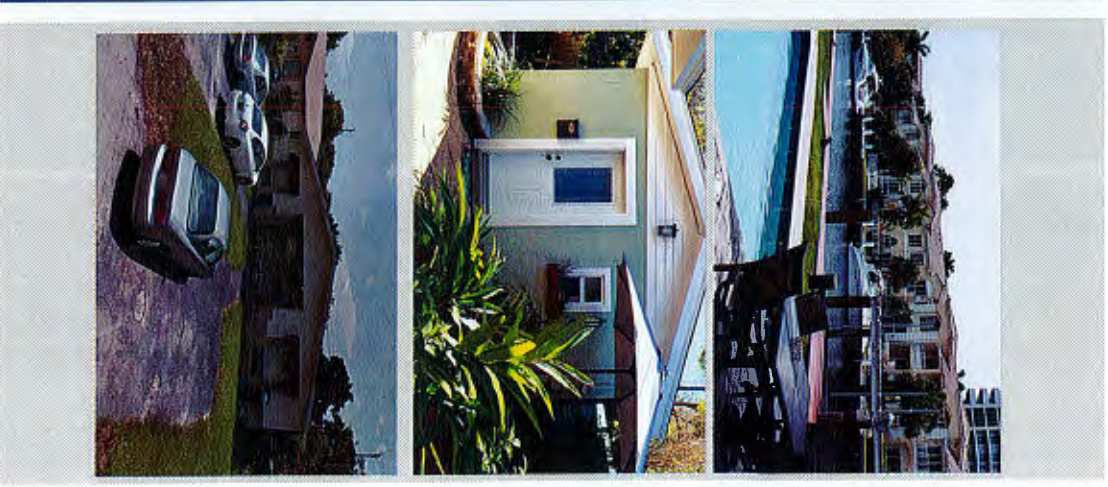


Contents

- Background
- Review of Florida Municipalities Regulations
- Recommendations

Staff Report: Short Term Rentals

Background



Why do people use "Short Term Rentals"?



- Vacation with large family or many friends
- Amenities of house including kitchen, private pool, and boat dockage
- Visit location with few hotel rooms
- Short term housing needed if recently moved to city or in-between house sale / purchase
- Transitional housing needed for people completing substance abuse recovery programs (or after treatment is completed)

History of Short Term Regulations in Florida

2011 – House Bill 883

- Instituted a complete prohibition on municipal regulation of vacation rentals.
- Grandfathered local laws enacted prior to June 1, 2011
 - Cities such as Key Biscayne, Key West, Fort Myers Beach already had regulations for short term rentals are were grandfathered.

2014 – Senate Bill 356

- Revised the state's existing complete prohibition on municipal regulation of vacation rentals.
- Cities cannot prohibit vacation rentals
- Cities cannot regulate the duration or frequency of rental of vacation rentals
- Cities can regulate the impacts of vacation rentals

State Definitions:

- “**Vacation Rentals**” - single family, duplex, triplex, and quadplex dwelling units that are transient public lodging establishments.
- “**Transient Public Lodging Establishment**” - any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Common Complaints

- Overcrowding / Large number of occupants
- Unfamiliar neighbors
- Noise, including late-night parties
- Substandard property maintenance
- Excessive amounts of garbage
- Garbage cans being left out for a long period of time
- Parking on swales and/or other landscaped areas
- Parking on neighboring swales

Common Complaint

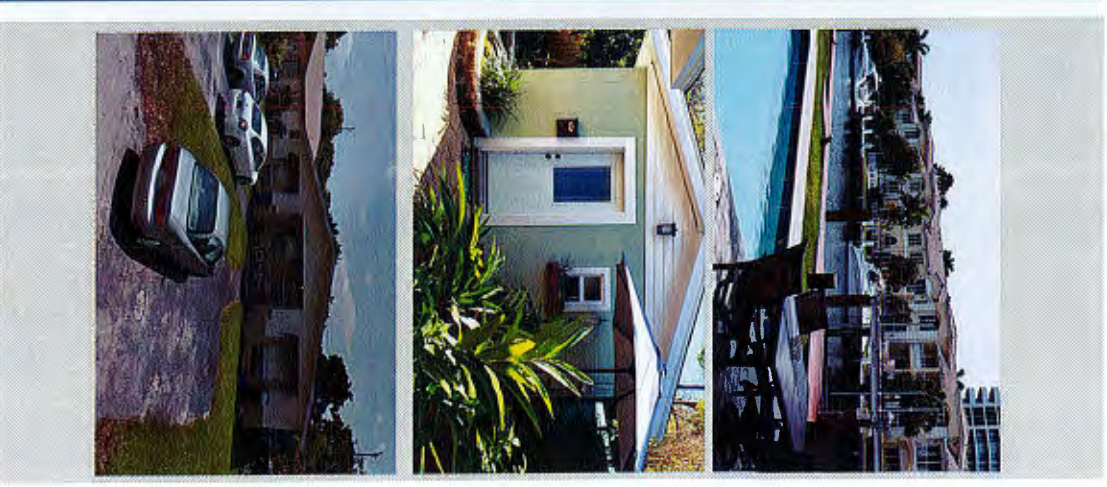
Regulatory Considerations

Overcrowding / Large number of occupants	<ul style="list-style-type: none"> • Code Compliance inspections to ensure occupancy is by Family • Short Term Rental Regulations should reiterate that occupancy is limited to a Family
Unfamiliar neighbors	<ul style="list-style-type: none"> • Require property owner to obtain a Short Term Rental Permit which confirms property will be used for Short Term Rentals • Require Local Representative to live within 25 miles
Noise, including late-night parties	<ul style="list-style-type: none"> • Revoke Short Term Rental Permit if three verified complaints are received in a certain time period (i.e. 60 days)
Substandard property maintenance	<ul style="list-style-type: none"> • Require Building / Code Inspection before initial Short Term Rental Permit is issued. City will reserve right to require re-inspection for annual permits • Charge standard inspection fees (including no show fee) • Make Local Representative a responsible party for property maintenance • Revoke Short Term Rental Permit if three verified complaints are received in a certain time period (i.e. 60 days)
Excessive amounts of garbage	<ul style="list-style-type: none"> • Require additional garbage cans • Require areas where garbage can are stored to be screened
Garbage cans being left out for a long period of time	<ul style="list-style-type: none"> • Make Local Representative a responsible party for property maintenance • Revoke Short Term Rental Permit if three verified complaints are received in a certain time period (i.e. 60 days)
Parking on swales and/or other landscaped areas	<ul style="list-style-type: none"> • Limit parking to one vehicle per bedroom • Require parking plan to demonstrate how parking will be accommodated at property on paved driveway (or in garage) • Revoke Short Term Rental Permit if three verified complaints are received in a certain time period (i.e. 60 days)
Parking on neighboring swales	<ul style="list-style-type: none"> • Require parking plan to demonstrate how parking will be accommodated at property, on paved driveway (or in garage) • Revoke Short Term Rental Permit if three verified complaints are received in a certain time period (i.e. 60 days) • Change City Code to limit swale parking for all properties

Addressing Common Complaints

Staff Report: Short Term Rentals

FL Municipal Regulations
Adopted Since 2014



City	Length of Stay	Unit Types	Parking	Inspection Required	Application Fee	Local Rep.
Fort Lauderdale	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Single family – quadrplex	All vehicles must be parked at the vacation rental property	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$500 / plus \$75 inspection fee	Must be located within 25 miles of the property
Lighthouse Point	Less than 6 months	Single family – quadrplex	All vehicles must be parked on paved surface at the property and a maximum of one vehicle per bedroom	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$500	Must be located within 25 miles of the property
Hallandale Beach	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Any dwelling located in a single family zoning district	Must submit a plan showing where vehicles will be parked	No	\$55	Must be able to be at property within 60 minutes
Hollywood	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Single Family only	Must submit a plan showing where vehicles will be parked	No	\$200 / permit renewal is \$150	Must be able to be at property within 60 minutes
Wilton Manors	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	All Residential Properties	All vehicles must be parked on paved surface at the property and a maximum of one vehicle per bedroom	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$750 / plus \$475 for inspections	Must be located in Broward County
Flagler County	Rentals for a period of 30 days or less	Single Family or Duplex	No on-street parking. One parking space per 3 tenants	Inspection required prior to issuance of initial permit	\$500 / permit renewal is \$150	Must be able to be at property within 2 hours
Bal Harbour	Less than 6 months	All Residential Properties	Limited to park in those spaces shown on approved permit	Inspection required prior to issuance of initial permit	\$150 plus \$300 for inspections	Must live in Bal Harbour or regularly conduct business there
Destin	Less than 6 months	Single Family only	Must be parked on a paved surface. Can not be parked in ROW or swale.	No	\$200	Must be able to be at property within 60 minutes
Anna Maria	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Located in a single family or two family zoning district	Spaces must be shown on a plan	No	\$695	Not specifically listed

City	Length of Stay
Fort Lauderdale	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Lighthouse Point	Less than 6 months
Hallandale Beach	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Hollywood	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Wilton Manors	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Flagler County	Rentals for a period of 30 days or less
Bal Harbour	Less than 6 months
Destin	Less than 6 months
Anna Maria	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less

Length of Stay options:

- **“Rented 3 times in a calendar year for periods of less than 30 days”**
 - Related to the States definition of Transient Public Lodging Establishment
 - This time period will impact fewer rental properties and focus efforts on the units rented for the shortest duration
- **“Less than 6 months”**
 - In Broward County this is related to the Broward County Tourist Development Tax
 - Less than 6 months also will requires more rentals to comply with additional requirements

City	Unit Types
Fort Lauderdale	Single family – quadplex
Lighthouse Point	Single family – quadplex
Hallandale Beach	Any dwelling located in a single family zoning district
Hollywood	Single Family only
Wilton Manors	All Residential Properties
Flagler County	Single Family or Duplex
Bal Harbour	All Residential Properties
Destin	Single Family only
Anna Maria	Located in a single family or two family zoning district

Unit Types options:

- **Single Family Only**
 - Cities want to focus efforts on those properties having most impact on single-family neighborhoods
 - Single-Family areas are not adjacent to any multifamily uses
- **Located in a Single Family (or Two Family) Zoning District**
 - For cities where various units types may be located in a single family (or two family) zoning district. For instance, a quadplex or even larger apartment building may be legally existing in a single family district.
 - Cities want to focus efforts on those properties having most impact on single-family (and two-family) neighborhoods
- **Single Family – Quadplex**
 - Related to the States definition of Vacation Rental
 - In certain cities these unit types are more likely to be next door or adjacent to single-family properties
- **All Residential Properties**
 - For cities with a substantial amount of apartment buildings which are converting to short term rentals
 - For cities where apartment buildings are located adjacent to single family neighborhoods

City	Parking
Fort Lauderdale	All vehicles must be parked at the vacation rental property
Lighthouse Point	All vehicles must be parked on paved surface at the property and a maximum of one vehicle per bedroom
Hallandale Beach	Must submit a plan showing where vehicles will be parked
Hollywood	Must submit a plan showing where vehicles will be parked
Wilton Manors	All vehicles must be parked on paved surface at the property and a maximum of one vehicle per bedroom
Flagler County	No on-street parking. One parking space per 3 tenants
Bal Harbour	Limited to park in those spaces shown on approved permit
Destin	Must be parked on a paved surface. Can not be parked in ROW or swale.
Anna Maria	Spaces must be shown on a plan

Parking options:

- All vehicles must be parked at the vacation rental property
 - Reduces impact of parking on neighboring properties, including parking on neighboring swales
- Maximum of one vehicle per bedroom
 - Reduces excessive number of vehicles (i.e. 2 bedroom house = 2 vehicles)
- Must submit a plan showing where vehicles will be parked
 - Requires property owner to demonstrate that parking can be accommodated at the property
- Can not park in ROW or swale
 - Reduces impact of parking on neighboring properties, including parking on neighboring swales

City	Inspection Required
Fort Lauderdale	Inspection required prior to issuance of initial permit
Lighthouse Point	Inspection required prior to issuance of initial permit
Hallandale Beach	No
Hollywood	No
Wilton Manors	Inspection required prior to issuance of initial permit
Flagler County	Inspection required prior to issuance of initial permit
Bal Harbour	Inspection required prior to issuance of initial permit
Destin	No
Anna Maria	No

Inspection Required options:

- **Inspection Required prior to issuance of permit**
 - Ensures that structures and property meets Zoning Code, Florida Building Code, Florida Fire Prevention Code, and any additional Rental Housing Code requirements
 - Ensures that Short Term Rental Permit / BTR is issued after code requirements are met (versus revoking Permit/BTR after-the-fact)
- **No inspection required**
 - City may not have sufficient staff to undertake inspections
 - City does not want to charge inspection fees

City	Application Fee
Fort Lauderdale	\$750 / permit renewal is \$500 / plus \$75 inspection fee
Lighthouse Point	\$750 / permit renewal is \$500
Hallandale Beach	\$55
Hollywood	\$200 / permit renewal is \$150
Wilton Manors	\$750 / permit renewal is \$750 / plus \$475 for inspections
Flagler County	\$500 / permit renewal is \$150
Bal Harbour	\$150 plus \$300 for inspections
Destin	\$200
Anna Maria	\$695

Application Fees options:

- **\$500 to \$750**
 - The City's charging anywhere from \$500 to \$750 are the same cities which require inspections. Therefore the increased fee covers the inspections costs as well as the additional administrative costs
- **\$55 to \$200**
 - The lower fees are charged by the cities which are not requiring inspections. Therefore the lower fee is charged solely to cover administrative costs.

City	Local Rep.
Fort Lauderdale	Must be located within 25 miles of the property
Lighthouse Point	Must be located within 25 miles of the property
Hallandale Beach	Must be able to be at property within 60 minutes
Hollywood	Must be able to be at property within 60 minutes
Wilton Manors	Must be located in Broward County
Flagler County	Must be able to be at property within 2 hours
Bal Harbour	Must live in Bal Harbour or regularly conduct business there
Destin	Must be able to be at property within 60 minutes
Anna Maria	Not specifically listed

Local Representative options:

- **Must be located within City limits**
 - Ensures that local representative lives in extremely close proximity to property
- **Must be located within 25 miles / or one hour of property**
 - Both standards ensures that local representative lives within one hour drive of the property
- **Must be located within two hours of property**
 - May be necessary for more remote areas of the State but still ensure local representative is truly local

Staff Report: Short Term Rentals

Recommendations



City	Length of Stay
Fort Lauderdale	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Lighthouse Point	Less than 6 months
Hallandale Beach	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Hollywood	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Wilton Manors	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less
Flagler County	Rentals for a period of 30 days or less
Bal Harbour	Less than 6 months
Destin	Less than 6 months
Anna Maria	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less

Recommendation:

- “Less than 6 months”
 - In Broward County this is related to the Broward County Tourist Development Tax
 - Less than 6 months also will requires more rentals to comply with additional requirements

City	Unit Types
Fort Lauderdale	Single family – quadplex
Lighthouse Point	Single family – quadplex
Hallandale Beach	Any dwelling located in a single family zoning district
Hollywood	Single Family only
Wilton Manors	All Residential Properties
Flagler County	Single Family or Duplex
Bal Harbour	All Residential Properties
Destin	Single Family only
Anna Maria	Located in a single family or two family zoning district

Recommendation:

- **Single Family – Quadplex Located in a Residential District**
 - Consistent with programs in two adjacent cities
 - Many of the City's neighborhoods are bordered by triple and quadplex units, therefore the conversion of triple and quadplex units to short term rentals has a distinct impact on single family neighborhoods.

City	Parking
Fort Lauderdale	All vehicles must be parked at the vacation rental property
Lighthouse Point	All vehicles must be parked on paved surface at the property and a maximum of one vehicle per bedroom
Hallandale Beach	Must submit a plan showing where vehicles will be parked
Hollywood	Must submit a plan showing where vehicles will be parked
Wilton Manors	All vehicles must be parked on paved surface at the property and a maximum of one vehicle per bedroom
Flagler County	No on-street parking. One parking space per 3 tenants
Bal Harbour	Limited to park in those spaces shown on approved permit
Destin	Must be parked on a paved surface. Can not be parked in ROW or swale.
Anna Maria	Spaces must be shown on a plan

Recommendation:

- All vehicles must be parked at the vacation rental property
 - Reduces impact of parking on neighboring properties, including parking on neighboring swales
 - Maximum of one vehicle per bedroom
 - Reduces excessive number of vehicles (i.e. 2 bedroom house = 2 vehicles)
 - Must submit a plan showing where vehicles will be parked
 - Requires property owner to demonstrate that parking can be accommodated at the property
 - Can not park in ROW or swale
 - Reduces impact of parking on neighboring properties, including parking on neighboring swales
- **NOTE: parking regulations may only be effective if there are restrictions of parking on neighboring swales.**

City	Inspection Required
Fort Lauderdale	Inspection required prior to issuance of initial permit
Lighthouse Point	Inspection required prior to issuance of initial permit
Hallandale Beach	No
Hollywood	No
Wilton Manors	Inspection required prior to issuance of initial permit
Flagler County	Inspection required prior to issuance of initial permit
Bal Harbour	Inspection required prior to issuance of initial permit
Destin	No
Anna Maria	No

Recommendation:

- **Inspection Required prior to issuance of permit**
 - Ensures that structures and property meets Zoning Code, Florida Building Code, Florida Fire Prevention Code, and any additional Rental Housing Code requirements
 - Ensures that Short Term Rental Permit / BTR is issued after code requirements are met (versus revoking Permit/BTR after-the-fact)
 - City will reserve right to re-inspect for permit renewal
 - Issuance of permit will take a longer time, but will ensure code violations are addressed before permit is issued.
 - Applicants will be charged normal inspection fees, and be subject to no-show and re-inspection fees

City	Application Fee
Fort Lauderdale	\$750 / permit renewal is \$500 / plus \$75 inspection fee
Lighthouse Point	\$750 / permit renewal is \$500
Hallandale Beach	\$55
Hollywood	\$200 / permit renewal is \$150
Wilton Manors	\$750 / permit renewal is \$750 / plus \$475 for inspections
Flagler County	\$500 / permit renewal is \$150
Bal Harbour	\$150 plus \$300 for inspections
Destin	\$200
Anna Maria	\$695

Recommendation:

- Application fee of \$500.00 which includes initial inspection
- The increased fee will cover expenses for additional staff time to review permit applications
- Additional inspections, if required, will be charged accordingly.

City	Local Rep.
Fort Lauderdale	Must be located within 25 miles of the property
Lighthouse Point	Must be located within 25 miles of the property
Hallandale Beach	Must be able to be at property within 60 minutes
Hollywood	Must be able to be at property within 60 minutes
Wilton Manors	Must be located in Broward County
Flagler County	Must be able to be at property within 2 hours
Bal Harbour	Must live in Bal Harbour or regularly conduct business there
Destin	Must be able to be at property within 60 minutes
Anna Maria	Not specifically listed

Recommendation:

- Require Local Representative to live within 25 miles

City	Length of Stay	Unit Types	Parking	Inspection Required	Application Fee	Local Rep.
Pompano Beach	Less than 6 months	Single family – quadruplex in Residential Districts	All vehicles must be parked on paved surface at the property & a max. of 1 vehicle per bedroom	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$500	Must be located within 25 miles of the property
Fort Lauderdale	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Single family – quadruplex	All vehicles must be parked at the vacation rental property	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$500 / plus \$75 inspection fee	Must be located within 25 miles of the property
Lighthouse Point	Less than 6 months	Single family – quadruplex	All vehicles must be parked on paved surface at the property and a maximum of 1 vehicle per bedroom	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$500	Must be located within 25 miles of the property
Hallandale Beach	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Any dwelling located in a single family zoning district	Must submit a plan showing where vehicles will be parked	No	\$55	Must be able to be at property within 60 minutes
Hollywood	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Single Family only	Must submit a plan showing where vehicles will be parked	No	\$200 / permit renewal is \$150	Must be able to be at property within 60 minutes
Wilton Manors	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	All Residential Properties	All vehicles must be parked on paved surface at the property & a max. of 1 vehicle per bedroom	Inspection required prior to issuance of initial permit	\$750 / permit renewal is \$750 / plus \$475 for inspections	Must be located in Broward County
Flagler County	Rentals for a period of 30 days or less	Single Family or Duplex	No on-street parking. One parking space per 3 tenants	Inspection required prior to issuance of initial permit	\$500 / permit renewal is \$150	Must be able to be at property within 2 hours
Bal Harbour	Less than 6 months	All Residential Properties	Limited to park in those spaces shown on approved permit	Inspection required prior to issuance of initial permit	\$150 plus \$300 for inspections	Must live in City or regularly conduct business there
Deslin	Less than 6 months	Single Family only	Must be parked on a paved surface. Can not be parked in ROW or swale.	No	\$200	Must be able to be at property within 60 minutes
Anna Maria	3 times in a calendar year for periods of less than 30 days, or 1 calendar months, which ever is less	Located in a single family or two family zoning district	Spaces must be shown on a plan	No	\$695	Not specifically listed



MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 15-619

DATE: December 8, 2015
TO: Planning and Zoning Board
VIA: Robin M. Bird, Director of Development Services *RB*
FROM: Karen Friedman, AICP, Principal Planner *KBF*
RE: Text Amendments to Chapter 153 "Rental Housing Code"
Short Term Rental Permit

Staff is recommending revisions to Code of Ordinances Chapter 153 "Rental Housing Code" regarding the creation of a Short Term Rental Permit program. Staff recommends adopting regulations related to off-street parking, trash and recycling bins, occupancy, noise restrictions, and special events. More importantly, the proposed amendments would create a required permit, which would only be issued after a property is inspected by City Staff.

The proposed revisions to Chapter 153 are being presented to this Board as a courtesy. Staff is, however, seeking the Board's support for the proposed amendments.

An explanation of the proposed revisions is provided below.

STATUTORY BACKGROUND

This section provides background on the various statutory and other related issues related to the proposed Short Term Rental Permit.

2011 – House Bill 883

During the 2011 legislative session, House Bill 883 instituted a complete prohibition on municipal regulation of vacation rentals. Per FL SS 509.242(1)(c) "Vacation Rentals" are single family, duplex, triplex, and quadplex dwelling units that are transient public lodging establishments. Therefore, despite the impacts on the City's historic and stable single family neighborhoods, the City was unable to create any regulations regarding single family, duplex, triplex, and quadplex units rented for short durations.

2014 - Senate Bill 356

During the 2014 legislative session, Senate Bill 356 revised the state's existing complete prohibition on municipal regulation of vacation rentals. Per FL SS 509.242(1)(c) "Vacation Rentals" are single family, duplex, triplex, and quadplex dwelling units that are transient public lodging establishments.

The specific change in Senate Bill 356 is as follows: *FL SS 509.032(7)(b) – "A local law, ordinance, or regulation may not ~~restrict the use of vacation rentals, prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals based solely on their classification, use, or occupancy.~~ This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."*

While municipalities continue to be precluded from prohibiting vacation rentals and/or regulating a minimum length of stay, the revised statute no longer restricts municipalities from regulating vacation rentals based on their use. Use-based regulations can include, but are not limited to, additional requirements for parking, noise, permitted location, landscape buffers, and licensure.

Statutory Definitions: “Vacation Rentals” and “Transient Public Lodging Establishment”

FL SS 509.242(1)(c) defines Vacation Rentals as *“any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.”*

FL SS 509.013(4)(a)(1) defines Transient Public Lodging Establishment as *“any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.”*

Broward County Tourist Development Tax

Broward County Code of Ordinance §31½-16 is the County’s Tourist Development Tax. Any living quarters or accommodations such as a hotel/motel, apartment, rooming house, mobile home/RV park, condominiums, timeshare or single family home rented for a period of six months or less is subject to the tourist development tax.

RECENTLY ADOPTED BROWARD COUNTY MUNICIPAL ORDINANCES

This section describes the ordinances adopted by other Broward County Municipalities in response to the statutory changes per Senate Bill 356.

Fort Lauderdale – Ord. C-15-29 - was adopted by the City of Fort Lauderdale on August 18, 2015. A copy of the ordinance is attached. Below is a summary of the main components:

- It creates a requirement to register all Vacation Rentals and the Vacation Rentals to obtain a Certificate of Compliance.
- The ordinance regulates single family, two-family, three-family, and four-family homes rented to Transient Occupants more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month.
- It grandfather existing Vacation Rentals if they have a license from the Florida Dept. of Business and Professional Regulations (DBPR) as a vacation rental prior to August 18, 2015 and they have valid leases from before August 18, 2015. Further the property owner must request the grandfather status within approximately 90 days from the date the ordinance became effective.
- They require a “Responsible Party” that not only must be available 24 hours a day, seven days a week. But this person must also be able to respond to an emergency call within 1 hour.
- The ordinance includes rules for parking, garbage cans, maximum number of people per bedroom, and noise.
- An inspection is required prior to the issuance of the initial permit.

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Development Services

Hollywood – Ord. 2015-16- was adopted by the City of Hollywood on October 21, 2015. A copy of the ordinance is attached. Below is a summary of the main components:

- It creates a requirement for Vacation Rentals to obtain a local license.
- The ordinance only regulates single family homes rented more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month.
- It grandfathers existing homes if they can provide a previous rental agreement that they were leased prior to the effective date of the ordinance. There is no deadline for submitting the proof.
- A sketch, even hand drawn, is required to show the number of bedrooms and the bedroom sizes, as well as parking locations.
- No inspection of the property is required.

Lighthouse Point – Ord. 2015-0926 - was adopted by the City of Lighthouse Point on October 13, 2015. A copy of the ordinance is attached. Below is a summary of the main components:

- It creates a requirement to register all Transient Rentals and the Transient Rentals to obtain a Certificate of Compliance.
- The ordinance regulates single family, two-family, three-family, and four-family homes rented to Transient Occupants for less than 6 months.
- It exempts Transient Rentals from obtaining a Certificate of Compliance if they have a license from the Florida Dept. of Business and Professional Regulations (DBPR) as a vacation rental prior to the adopted ordinance date and they have valid leases from before the adopted ordinance date and there are no outstanding liens against the property. Further the property owner must request the grandfather status within approximately 90 days from the date the ordinance became effective. However these properties are not “grandfathered” and any change in the tenants will require a Certificate of Compliance.
- They require a “Responsible Party” that not only must be available 24 hours a day, seven days a week. But this person must also be able to respond to an emergency call within 1 hour.
- The ordinance includes rules for parking, garbage cans, maximum number of people per bedroom, noise, and occupancy by sexual offenders and sexual predators.
- An inspection is required prior to the issuance of the initial permit.
- Includes a Reasonable Accommodation procedure.

ADDITIONAL REGULATIONS CONSIDERED

In addition to the ordinances adopted by the aforementioned Broward municipalities, Staff researched and reviewed regulations related to short term rentals both in Florida and nationally including: Fort Myers Beach, FL; Key Biscayne, FL; Monroe County, FL; Venice, FL; Coconino County, AZ (Flagstaff); Pacific County, WA; Santa Fe, NM; Seaside, OR; Sonoma County, CA; Westport, WA and the National Association of Realtors’ White Paper: “Short-Term Rental Housing Restrictions”.

STAFF RECOMMENDATIONS

“Short Term Rentals”

Based on the statutory changes regarding regulations of vacation rentals, as well as the County’s Tourist Development Tax, Staff recommends creating standards for “Short Term Rentals”. The additional standards would be applicable to single family, two-family, three-family, and four-family properties with occupancy of less than six months.

Additional Standards

G:\Zoning 2009\Code Rewrite\Code Amendments\PublicLodging and Vacation Rentals\153_ShortTermRentals\P&Z Dec 2015\Memo_P&Z.doc

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MEMORANDUM

Development Services

Staff is recommending the following regulations be added to the City's Rental Housing Code (Ch 153):

- **Inspection**
 - Applicants would be required to have their property and dwelling inspected prior to the issuance of the Permit
 - The permit would need to be renewed annually. However the property will only have a mandatory inspection for the initial permit application. Permit renewals will not require an inspection, unless the Development Services Director deems it necessary.
 - The permit would not be transferrable and a new owner would be required to obtain a new permit and new inspection.

- **Off-Street Parking**
 - Require one off-street parking space per bedroom, with a minimum of two parking spaces.
 - Below is current parking requirements per Table 155.5102.D.1.
 - Triplex and quadplex units provide parking in accordance with multifamily standards
 - Short Term Rentals required to provide additional parking, would be required to comply with requirement to provide at least 50% of the front setback as pervious.
 - Require all parking spaces to be on an approved paved surface (not gravel)
 - Prohibit overnight parking of commercial vehicles and recreational vehicles.
 - Prohibit parking on swale, landscaped areas, or within right-of-way.

TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES			
USE CATEGORY	USE TYPE		MINIMUM NUMBER OF PARKING SPACES ^{1,2,3}
RESIDENTIAL USES			
	Dwelling, multifamily ⁹	Efficiency DUs	1 per DU
		DUs with 1 or 2 bedrooms	1.5 per DU
		DUs with 3+ bedrooms	2 per DU
	Dwelling, single-family		2 per DU
Household Living Uses	Dwelling, two-family		2 per DU

- **Trash and Recycling Bins**
 - Minimum of one 32 gallon refuse container per bedroom.
 - Require trash and recycling bins to be stored in a location that is not visible from public rights-of-way. Required locations to be screened.

- **Limiting Occupancy**
 - Limit occupancy to that permitted in the underlying zoning district and no more than two persons per bedroom.

MEMORANDUM

Development Services

- **Outdoor Musical Performance**
 - Prohibit outdoor musical performances
- **Special Events**
 - Limit properties to one Special Event per year (they would otherwise be allowed up to four per year)
- **24-Hour Contact Person**
 - Be responsible for ensuring compliance with all of the standards
 - Be responsible to maintain the entire property
- **Amortization**
 - Existing short term rentals will have one year to come into compliance with the new standards.
 - In order to be eligible for the one-year deferment, the property owner must submit documentation to the City within 90 days of the effective date of the Ordinance.
- **Effective Date**
 - The proposed Ordinance would not become effective upon adoption, rather it would become effective 60 days after adoption. This time will be used to prepare for the new processing and procedures.

ORDINANCE NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 153, "RENTAL HOUSING CODE," OF THE CITY OF POMPANO BEACH TO PROVIDE FOR AMENDMENTS TO SECTION 153.05, "DEFINITIONS"; PROVIDING FOR THE CREATION OF SECTION 153.08, "SHORT TERM RENTAL PERMIT REQUIRED," TO REQUIRE ANY OWNER WHO OPERATES A SHORT TERM RENTAL TO FIRST OBTAIN A SHORT TERM RENTAL PERMIT; BY AMENDING SECTION 153.11, "INSPECTIONS," TO PROVIDE FOR ADDITIONAL INSPECTIONS; BY CREATING SECTION 153.26, "MINIMUM STANDARDS FOR SHORT TERM RENTALS," TO PROVIDE FOR REGULATIONS RELATING TO SHORT TERM RENTALS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Subsection 163.3202(1), Florida Statutes (2015), requires municipalities to adopt and enforce land development regulations that are consistent with and implement their adopted comprehensive plans; and

WHEREAS, the City of Pompano Beach's Comprehensive Plan Future Land Use Map designates areas for residential use that are intended primarily for dwellings as well as other land uses that support the residential environment; and

WHEREAS, the City of Pompano Beach established residential zoning districts within its Zoning Code consistent with the residential land use designations of the City of Pompano Beach's Comprehensive Plan Future Land Use Map; and

WHEREAS, the City's Zoning Code provides a list of permitted and special exception uses permitted within each zoning district and prohibits any use not substantially similar to those permitted uses; and

WHEREAS, Chapter 509, Lodging and Food Service Establishments Membership Campgrounds, Florida Statutes, regulates public lodging establishments, which is divided into the two subcategories: transient public lodging establishment and nontransient public lodging establishment; and

WHEREAS, Subsection 509.013(4)(a)1., Florida Statutes (2015), defines transient public lodging establishment as "any unit, group of units, dwelling, building or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for period of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests."; and

WHEREAS, land uses that are transient public lodging establishments, as defined in Section 509.013, Florida Statutes (2015), are non-residential uses not permitted within the City's single family residential zoning districts and are inconsistent with the City of Pompano Beach's Comprehensive Plan Future Land Use Map; and

WHEREAS, Chapter 2011, Laws of Florida, created a new classification of public lodging establishment known as vacation rentals that is defined in Section 509.242(c), Florida Statutes (2015), as "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project."; and

WHEREAS, Subsection 509.032(7), Florida Statutes (2015), provides that local laws, ordinances or regulations may not prohibit vacation rentals or regulate the duration and frequency of rental of vacation rentals; and

WHEREAS, the Florida Attorney General opined in Advisory Opinion AGO 2014-09, that "[t]o the extent a zoning ordinance addresses vacation rentals in an attempt to prohibit them in a particular area where residences are otherwise allowed, it would appear that a local

government would have exceeded the regulatory authority granted in Section 509.032(7)(b), Florida Statutes."; and

WHEREAS, unregulated vacation rentals can create disproportionate impacts related to their size, excessive occupancy and lack of proper facilities; and

WHEREAS, the presence of vacation rentals within residential dwelling units in established residential neighborhoods can create negative compatibility impacts, among which include, but are not limited to, excessive noise, on-street parking, accumulation of trash and diminished public safety; and

WHEREAS, the other classifications of transient public lodging establishments are subject to stricter development standards, undergo annual inspections and have more stringent operational and business requirements; and

WHEREAS, many residential structures were constructed prior to the enactment of more current building and fire prevention codes that require minimum life, safety improvements, like hardwired or interconnected smoke detectors, carbon monoxide detectors or pool safety drains, etc.; and

WHEREAS, Section 509.032(7), Florida Statutes, authorizes local governments to conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to Sections 553.80 and 633.206, Florida Statutes (2015); and

WHEREAS, in 1996 the City Commission adopted Ordinance No. 96-67 which created Chapter 153, Rental Housing Code, with the intent to protect the public, health, safety and welfare of the people by establishing minimum standards governing the condition, occupancy and maintenance of rental dwellings, rental units, rooming houses and premises; establishing minimum standards governing utilities, supplied facilities, and other physical components and conditions

essential to make rental dwellings, rental units, rooming houses and premises safe, sanitary and fit for human habitation; fixing certain responsibilities and duties of the owners, operators, agents and occupants; and authorizing and establishing certain minimum procedures for the inspection of rental dwellings, rental units, rooming houses and premises; and

WHEREAS, the City of Pompano Beach finds a substantial interest in furthering the public health, safety and welfare by controlling density, by protecting the residential character of areas designated for residential use, implementing its comprehensive plan and establishing and enforcing minimum life safety standards; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of its proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission has been held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had the opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 153.05, "Definitions," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

§ 153.05 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY BUILDING or ***ACCESSORY STRUCTURE***. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

...

~~***BOARDING HOUSE***. See § 155.003(B).~~

...

DWELLING. See § ~~155.003(B)~~ Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

DWELLING UNIT. See § ~~155.003(B)~~ Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

...

FAMILY. See § ~~155.003(B)~~ Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

...

HOTEL OR MOTEL. See § ~~155.003(B)~~ Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

HOTEL OR MOTEL UNIT. Any habitable room or group of habitable rooms, located within a hotel or motel and forming a single habitable unit with facilities used or intended to be used for living and sleeping and which is used for temporary occupancy or part thereof.

...

~~**MOTEL.** See **HOTEL.**~~

~~**MOTEL UNIT.** See **HOTEL UNIT.**~~

~~**MULTIPLE FAMILY MULTIFAMILY DWELLING.** Any structure or building containing two or more dwelling units. See Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).~~

...

PERMANENT OCCUPANCY. When the rental unit is the sole residence of the occupant(s). Occupancy of a rental unit for a period of more than six months.

...

REFUSE CONTAINER OR GARBAGE RECEPTACLE. A watertight container that is constructed of metal or other durable material impervious to rodents, that is capable of being serviced without creating unsanitary conditions.

...

ROOMING OR BOARDING HOUSE. See § 155.003(B) Part 5 (Terms and Uses Defined) of Article 9 (Definitions and Interpretations) of Chapter 155 (Zoning Code).

ROOMING OR BOARDING UNIT. Any room or group of rooms, forming a single habitable unit, used or intended to be used for living and sleeping for permanent occupancy with no provision for cooking or part thereof.

RUBBISH. All combustible and noncombustible waste materials except garbage, including but not limited to, inoperative toys, bicycles, motorcycles, automobiles, mechanical equipment, machines and other unused or discarded objects and equipment.

SHORT TERM RENTAL. A single-family, two-family (duplex), three-family (triplex) or four-family (quadplex) house or dwelling unit which rents, leases, or lets for consideration any living quarters or accommodations for a term of six months or less in a calendar year and which is subject to the Broward County Tourist Development Tax.

SHORT TERM RENTAL PERMIT. An annual permit issued by the Development Services Director to the owner of a short term rental and required for the operation of a short term rental.

...

SECTION 2 That Section 153.08, “Short Term Rental Permit Required,” of the City of Pompano Beach Code of Ordinances is hereby created to read as follows:

§ 153.08 SHORT TERM RENTAL PERMIT REQUIRED.

(A) It shall be unlawful for any owner to operate a Short Term Rental unless a Short Term Rental Permit (“Permit”) has first been obtained from the Development Services Director.

(B) The Permit shall apply from October 1 of each year and shall expire on September 30.

(C) Amortization. Owners who were operating a Short Term Rental prior to the adoption of this section, shall have ninety days from the effective date of this ordinance to provide a copy of a written and validly executed rental agreement to the Director of Development Services as evidence of their lawful operation in order to preserve their vested right.

(D) A Short Term Rental Permit shall be issued by the Development Services Director to the property owner only upon compliance with the following:

- (1) Submittal of a Short Term Rental Permit application;
- (2) Payment of nonrefundable application fee;
- (3) Submittal of a survey/sketch of the property, indicating the number of bedrooms, the number and location of parking spaces, the storage location and screening of the required refuse containers;
- (4) A copy of the standard rental/lease agreement to be used when contracting with occupants;
- (5) Evidence of compliance with the City of Pompano Beach Rental Housing Code, the Florida Building Code and the Florida Fire Prevention Code;

 - (a) An inspection of the dwelling unit for compliance with the City of Pompano Beach Rental Housing Code, the Florida Building Code and the Florida Fire Prevention Code is required prior to issuance of the initial Short Term Rental Permit. An inspector from the city's Code Enforcement Division, Building Inspections Division and Fire Department are hereby authorized to inspect all short term rentals to insure compliance with the City of Pompano Beach Rental Housing Code, the Florida Building Code and the Florida Fire Prevention Code. If violations are found, all violations must be corrected and the dwelling unit must be re-inspected prior to issuance of the initial Short Term Rental Permit as provided herein.

 - i. The inspections shall be made by appointment with the 24-hour contact person. If the inspector has made an appointment with the 24-hour contact person to complete an inspection, and the 24-hour contact person fails to admit the inspector at the scheduled time, the property owner shall be charged a "no show" fee in an amount to be determined by Ordinance of the City Commission.
 - ii. If the inspector(s) is denied admittance by the short term rental 24-hour contact person or if the inspector fails in at least three (3) attempts to complete an initial or subsequent inspection of the short term rental, the inspector(s) shall provide "Notice of Failure of Inspection" to the property owner.
 - iii. The "Notice of Failure of Inspection" is considered a violation of this Code and is subject to enforcement remedies as provided herein.
 - (b) The Development Services Director reserves the authority to require an inspection for permit renewal applications.
- (6) A business tax receipt from Broward County;

(7) A Florida Department of Business and Professional Regulation license as a transient public lodging establishment; and

(8) Proof of registration with the Florida Department of Revenue for sales tax collection and Broward County for Tourist Development Tax.

(E) Revocation. After issuance of the permit required by this section, such permit shall be revoked if at any time it is discovered that:

(1) There was a false statement or concealment of a material fact in the application for a Short Term Rental Permit required by this section;

(2) The property owner has violated any of the provisions of the City's Code of Ordinances on two or more occasions in a twelve month period as determined by the City's Special Magistrate for Code Compliance pursuant to Code or Ordinances Chapter 37, or by a Court of Competent Jurisdiction; or

(3) The property owner fails to submit required proof of payment of Broward County Tourist Development Tax.

(F) Permit not transferable. The Short Term Rental Permit, when issued, shall pertain only to the individual property owner for use at one specific property. Separate permits shall be required for a property owner to operate a short term rental at any other location; and a new permit shall be required if ownership of the property is transferred.

(G) Appeal. The denial of the issuance of the Short Term Rental Permit under this section may be appealed in accordance with the provisions in §155.2424, Appeal.

(H) Annual Renewal Required. The Short Term Rental Permit shall be renewed annually. Failure of the property owner to renew and maintain the annual permit shall constitute a violation. Evidence of payment of the Broward County Tourist Development Tax shall be required for annual renewal.

SECTION 3. That Section 153.11, "Inspections," of the City of Pompano Beach Code of Ordinances is hereby amended to read as follows:

§ 153.11 INSPECTIONS.

(A) The An inspector from the city's Code Enforcement Inspectors Division, Building Inspections Division, and Fire Department are hereby authorized to inspect all dwellings governed by this chapter to insure compliance with all minimum housing code requirements. When a Code Enforcement an Inspector is required to enter onto private premises to make an inspection, he shall

do so with the consent of the owner, operator, lessee or occupant. In the event that consent to enter the premises is withheld, the ~~Code Enforcement~~ Inspector may make application to the proper court for an order requiring access to the premises.

(B) Inspections of all buildings or structures shall be made during reasonable hours. If the ~~Code Enforcement Officer~~ Inspector, Building Inspections Division Inspector, and/or Fire Department Inspector has probable cause to believe an immediate threat exists to the health, welfare or safety of persons in or about any building or structure governed by this chapter, he may direct that an inspection be made at that time.

SECTION 4. That Section 153.26, “Minimum Standards for Short Term Rentals,” of the City of Pompano Beach Code of Ordinances is hereby ~~created~~ repealed and replaced to read as follows:

§ 153.26 MINIMUM STANDARDS FOR SHORT TERM RENTALS.

The following minimum standards are in addition to those required in Chapter 153. The property owner of a Short Term Rental shall be responsible to maintain the Short Term Rental in compliance with these additional minimum standards:

(A) Off-Street Parking. In addition to the standards regarding driveways in §153.19(C), the following standards shall apply:

(1) One off-street parking space shall be required per bedroom. However, in no case shall there be less than two parking spaces for the property.

(2) All motor vehicles and automobiles shall be parked on an approved driveway at all times. The parking of motor vehicles and automobiles in a swale, landscaped area, or within the public right-of-way is strictly prohibited.

(3) The overnight parking of commercial and recreational vehicles is strictly prohibited.

(B) Refuse Containers. In addition to the standards regarding refuse containers and garbage service in §153.19(A)(4) and (5) and garbage collection in § 96.12(A)(1), the following standards shall apply:

(1) A minimum of one 32 gallon refuse container per bedroom shall be provided.

(2) Refuse containers shall be stored in a location that is not visible from public rights-of-way or abutting property owners. The storage location of the refuse containers shall be screened in accordance with §155.5301.

(3) All trash and debris on the property must be kept in covered refuse containers.

(C) Occupancy Standards. In addition to the standards regarding occupancy in §153.33(E), the following standards shall apply:

(1) Occupancy shall be limited to that permitted in the underlying Zoning District.

(2) In no case shall occupancy be greater than two persons per bedroom.

(D) 24-hour Contact Person. In addition to the responsibilities required for a 24-hour contact person as provided for in § 153.33(F), the additional responsibilities of the 24-hour contact person for a Short Term Rental are required:

(1) Be available and have the authority to address or coordinate problems associated with the property 24 hours a day, 7 days a week;

(2) Be situated close enough to the property as to be able to, and shall, service emergency calls within one (1) hour of notification;

(3) Maintain the entire property of the property free of garbage and refuse. Provided however, that this section shall not prohibit the storage of garbage and litter in authorized receptacles for collection;

(4) See that the provisions of this section are complied with and promptly address any violations of this section or any violations of law, which may come to the attention of the 24-hour contact person; and

(5) Inform all occupants prior to occupancy of the property of the regulations regarding parking, garbage and refuse, noise, and outdoor musical performances.

(E) Limit on Special Events per §132.27, Special Events on Private Property, Permit Required. Short term rentals shall be limited to one special event per fiscal year (October 1 through September 30). Special Events include, but are not limited to, party rentals and other property usage that would substantially inhibit the usual flow of vehicular or pedestrian traffic.

(F) Prohibition on Outdoor Musical Performance. Short term rentals are strictly prohibited from giving or hosting outdoor musical performances.

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 6. This Ordinance shall become effective sixty (60) days after date of final passage and adoption.

PASSED FIRST READING this _____ day of _____, 2016.

PASSED SECOND READING this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/cls:jrm
12/7/15
l:ord/ch153/2015-500

DRAFT

MOTION made by Walter Syrek and seconded by Richard Klosiewicz to recommend approval of the proposed text amendments to section 155.2406. All voted in favor of the above motion; therefore, the motion passed.

8. Chapter 155 Text Amendments, AOD Parking Modifications
HEARD FIRST

In conjunction with the proposed text amendments resulting from the Temporary Moratorium, Staff has prepared revisions to the parking modifications for the AOD that are set to expire on January 4, 2016. The intent of the proposed parking modifications is to encourage the redevelopment of the AOD by incentivizing those uses that further the purpose of the district and incentivizing the redevelopment of properties that are the most challenging in terms of providing parking (i.e. existing development and/or small lots). The proposed amendments include a five year extension to the parking reductions.

Mrs. Friedman introduced herself to the Board and stated that this text amendment is in conjunction with the moratorium text amendments which were reviewed by the Board at the November 30th special set hearing. The proposed text amendments address revisions to the modified parking standards for the Atlantic Boulevard Overlay District (AOD) to reflect the recommendations as a result of the moratorium. The proposed amendments include a five year extension to the parking reductions. The exemptions have been tailored down to target the uses that are highly desirable in the AOD. In summary, Eating and Drinking Establishments (excluding halls for hire and nightclubs), Retail Sales and Service Uses (with a few exceptions), and Professional Offices would be targeted use categories and would be eligible to be exempt from parking requirements or would have reduced parking requirements. Mrs. Friedman asked the Board if they had any questions.

The Chairman asked if the Board had any questions. No one responded. Mr. Stacer asked if residential uses will no longer be eligible for parking modifications and Mrs. Friedman agreed.

Mr. Stacer asked if anyone from the audience wished to speak and received no response from the audience.

MOTION made by Richard Klosiewicz and seconded by Jeff Torrey to recommend approval of the proposed text amendments. All voted in favor of the above motion; therefore, the motion passed.

9. Chapter 153 “Rental Housing Code” Text Amendments, Short Term Rental Permit

As a courtesy, staff is presenting its recommended revisions to the Code of Ordinances Chapter 153 “Rental Housing Code” regarding the creation of a Short Term Rental Permit program. Staff recommends adopting regulations related to off-street parking, trash and recycling bins,

Any person who decides to appeal any decision of the PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. // kem

occupancy, noise restrictions, and special events. More importantly, the proposed amendments would create a required permit, which would only be issued after a property is inspected by City Staff.

Karen Friedman introduced herself to the Board and stated that this text amendment is not subject to review and recommendation by this Board because it is a revision to Chapter 153; however, Staff is seeking the Board's support for the proposed amendments because it is an item that has been discussed at this Board and an item of sensitivity. Mrs. Friedman added that this item is a proposal by the City Attorney's office.

Mrs. Friedman stated that in 2011, the Florida Legislature prohibited local governments from regulating these types of properties (single family, duplex, triplex and quadplex) based on the fact that they have short rental periods. In 2014, the statutes were revised by the Legislature and some of the language was relaxed. Cities still cannot prohibit these types of uses nor can they regulate the length of time they are occupied. However, we can regulate these uses.

Mrs. Friedman stated that Staff has been researching this issue since 2004. Mrs. Friedman added that we are subject to the Broward County tourist development tax which means that anyone who is renting out a rental unit for a period of six months or less is required to pay this tax.

Staff is recommending creating a short term rental permit which would be required for any single family, duplex, triplex or quadplex that is available for a tenancy of six months or less. In addition to this, in order to get a permit, the units would have to be inspected prior to the permit being issued. This would be a significant change for the City because, currently, the property does not have to be inspected prior to receiving a Zoning Use Certificate or Business Tax Receipt.

Based on the statutory changes regarding regulations of vacation rentals, as well as the County's Tourist Development Tax, Staff recommends creating standards for "Short Term Rentals". The additional standards would be applicable to single family, two-family, three-family, and four-family properties with occupancy of less than six months. The inspection would only be required for the initial issuance of the permit (however, the Development Services Director does retain the authority to re-inspect if necessary). The permits will not be transferrable when a new owner purchases the property. Staff recommends that one parking space minimum shall be required per bedroom, all parking must be on paved services, overnight parking of commercial/recreational vehicles would be prohibited, and parking in the right-of-way/swale/landscaped areas would also be prohibited. Staff is recommending a minimum size trash container per bedroom and the containers shall be screened from the public right-of-way. Staff recommends limiting the occupancy to the underlying zoning and limiting units to two persons per bedroom. Staff recommends that short term rentals be prohibited from having outdoor musical performances, limiting properties to one Special Event per year, and enhancing the responsibilities for the 24 hour contact person. Staff is recommending an amortization period of one year where, in order to be eligible for the one-year deferment, the property owner must submit documentation to the City within 90 days of the effective date of the

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Ordinance. Mrs. Friedman stated that the proposed Ordinance would not become effective upon adoption, rather it would become effective 60 days after adoption. This time will be used to prepare for the new processing and procedures.

Mr. Klosiewicz asked what prompted the need for this change. Mrs. Friedman responded that there has been concerns from many neighborhoods that homes were being occupied for short periods and the impacts have had a negative effect on the neighborhood-wide and City-wide. Mrs. Friedman added that the City receives many complaints about noise, and parking on the swale. Mr. Klosiewicz asked the projected number of properties that would qualify. Mrs. Friedman answered that there are guesses but not a firm number that code enforcement has used. Mrs. Sarver stated that she does not feel comfortable with staff answering that question because it would only be speculation.

Mr. Syrek asked about the Transient Housing Report prepared in July 2011 by Jennifer Gomez which has eleven recommendations. Mr. Syrek asked if all eleven items have been addressed in the proposed text amendments. Mrs. Friedman stated that she cannot give a definitive answer but the recommendations being given have been upheld in other cities and they received support from the City Attorney's office.

Mr. Syrek read off some of the highlights from the Transient Housing Report. Item 4 states that a 24 hour contact person should be made available to the public at Click 2 Gov. Item 5 states that, at the time of BTR, identify the maximum capacity of each dwelling unit and sleeping rooms and make this information available on Click 2 Gov. Mr. Syrek asked if this information is currently available online and does this ordinance revision enhance this at all. Mrs. Friedman stated that she is not sure if the contact information is available on Click 2 Gov and will have to report back to the Board. Mr. Syrek asked if the property owners have to sign for the educational materials at the time the rental housing BTR is obtained. Mrs. Friedman responded that one of the proposed changes is that the property owner will have to submit a copy of the rental agreement. Mr. Syrek recommended handing out a brochure to the property owner that explains the rules and responsibilities.

Mr. Syrek asked for a number of rental BTRs that are active in the City and Mrs. Friedman responded that she does have the numbers and she can report back to the Board with the number of units and the number of inspections that have been performed.

Mr. Klosiewicz asked if a transitional rental property would currently be registered with the City. Mrs. Friedman responded that anyone who is renting out a single-family, duplex, triplex or quadplex is required to have a Business Tax Receipt.

Mr. Syrek asked Staff about the Florida Accessibility code and Mrs. Friedman responded that these units are still exempt from complying with ADA. Mrs. Sarver stated that she agrees with Mrs. Friedman. Mr. Syrek asked if a property owner is renting out units on a weekly basis and making the property similar to a hotel use, do they still not have to comply with ADA. Mrs. Sarver answered that she is not aware of anything that would have the Florida Building Code treat this any differently.

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Mr. Evans asked if a tenant leaves before the lease is up (prior to six months), does the property owner become exempt from the requirements of the lease. Mrs. Friedman stated that if false information was provided to Staff, the City could revoke the permit.

Mr. Stacer asked why Staff did not address condominiums. Mrs. Friedman replied that condo associations usually have strict requirements on length of stay.

Mr. Stacer asked if anyone else had any questions and he received no response.

MOTION was made by Dwight Evans and seconded Richard Klosiewicz to support the recommended text amendments to Chapter 153. All voted in favor of the above motion; therefore, the motion passed.

I. AUDIENCE TO BE HEARD

The Chair asked if anyone in the audience wished to be heard and received no response.

J. BOARD MEMBERS DISCUSSION

Mr. Torrey and Mr. Klosiewicz wished everyone a pleasant holiday and new year.

Mr. Evans asked if there is a recognized neighborhood association listing and Mr. Syrek stated that the City's website has a PDF that you can access. Mr. Syrek added that the City Manager's office maintains the list and details of neighborhood associations. Mr. Evans asked if there is anything planned for the Northwest corner of Atlantic Boulevard and Dixie Highway. Mrs. Gomez showed Mr. Evans and the Board the Interactive Map on the City's Planning and Zoning webpage which shows current projects. Mrs. Gomez then answered Mr. Evans question by informing him that no site plans were in for this parcel. Mr. Stacer asked Staff when the map is updated, Paola replied that we update the map monthly.

Paola West spoke about the "Click 2 Gov" webpage that will allow anyone the ability to search all Business Tax Receipts. This information will be live. Mrs. West added that Commissioner Dockswell requested this map about two years ago.

Mr. Syrek asked if the buildings on the RaceTrac property on the corner of Federal Highway and 33rd will be torn down and if any new uses will be added. Mrs. West stated that Staff is actively trying to help them apply for demo permits.

Mr. Stacer asked if the new overlay (Transit Oriented District) will supersede the CRA and the AOD in certain areas.

Mrs. Gomez answered that if we adopt a Transit Oriented Development District, it will supersede and eliminate the Atlantic Boulevard Overlay District (AOD) west of the Intracoastal Waterway. There will most likely be a map with a series of regulating plans.

SHORT-TERM RENTAL HOUSING RESTRICTIONS

White Paper

PREPARED BY



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SHORT-TERM RENTAL HOUSING RESTRICTIONS

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PREFACE

This white paper on *Short-Term Rental Housing Restrictions* has been prepared by Robinson & Cole LLP in its capacity as national consultant to NAR. The paper is one in a series of white papers that NAR requests be prepared from time to time in order to focus on a particular smart growth-related issue that has arisen with sufficient frequency in communities around the country to merit a more in-depth analysis.

The analysis of short-term rental housing restrictions in this paper is provided by NAR under its Smart Growth program to help REALTORS® at the state and local level better understand the issues involved in these types of restrictions, and to tailor strategies, as appropriate, to address short-term rental housing regulatory initiatives in their communities.

Brian W. Blaesser
Robinson & Cole LLP
September 2011

SECTION 1: INTRODUCTION

1.1 PURPOSE AND SCOPE OF PAPER

This paper was prepared at the request of the National Association of REALTORS® (NAR). The purpose of this paper is to (1) explain the problem of short-term rental housing restrictions; (2) categorize and describe the different approaches taken by local governments to regulate short-term rental housing in their communities; (3) analyze the issues raised by these different regulatory approaches; (4) provide Realtors® with ways to address these issues; and (5) outline “best practices” approaches to short-term rental housing that Realtors® can use in discussing the issue with local government officials.

1.2 KEY TERMS

The term “short-term rental housing” typically means a dwelling unit that is rented for a period of less than thirty consecutive days. In general, short term rental housing differs from bed & breakfasts, hotels, motels, and other “lodging” uses by providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Although bed & breakfasts often are similar in appearance and location to many short-term rentals, they are distinguishable by the presence of the owner/operator on-site.¹ Boarding houses differ from short-term rentals by having multiple rooms or units for rent and common kitchen and dining facilities that are shared by the occupants.² Boarding houses also tend to be less transient than short-term rentals.³ Similarly, hotels and motels are distinguishable from short-term rentals by having separate entrances and an on-site management office.⁴ In some communities, short-term rental housing may be referred to as vacation rentals, transient rentals, or resort dwelling units.

Terms that appear in **bold typeface** are defined in the Glossary found at the end of this paper.

SECTION 2: OVERVIEW OF SHORT-TERM RENTAL RESTRICTIONS

2.1 PURPOSE – THE MUNICIPAL PERSPECTIVE

Many communities around the country, both vacation destination communities and non-vacation communities, have implemented some form of short-term rental housing regulation. Below is an overview of the most common reasons cited by communities for regulating short-term rental housing.

¹ See Nate Hutcheson, “Short-Term Vacation Rentals: Residential or Commercial Use?,” *Zoning News* (March 2002, American Planning Association) (hereinafter “APA Report”).

² See APA Report at 5.

³ See APA Report at 5.

⁴ See APA Report at 5.

2.1.1 Protection of Neighborhood Environment

The most commonly cited municipal purpose for regulating short-term rental housing is to protect the character of existing residential neighborhoods. Often these communities are responding to complaints from permanent residents about the disturbances that may be caused by short-term tenants, including excessive noise, late night parties, trespassing, increased traffic, and other disruptive activities. Generally speaking, the rationale is that vacationers and guests who do not have ties to the local community are more concerned with maximizing their fun than they are with being a good neighbor. This rationale is evident in the “resort dwellings” ordinance adopted by the City of Venice, Florida, which states:

[The] City council finds that resort dwelling rental activities in single-family neighborhoods affects the character and stability of a residential neighborhood. The home and its intrinsic influences are the foundation of good citizenship. The intent of these regulations is to prevent the use of single-family residences for transient purposes in order to preserve the residential character of single-family neighborhoods.⁵

2.1.2 Protection of Physical Characteristics

Some communities also cite the need to protect the physical characteristics of their residential neighborhoods. The underlying rationale is that short-term rental properties generally are not owner-occupied and therefore are less likely to be cared for to the same degree as permanent residences. At least, in theory, absentee property owners are presumed to be less diligent about the types of regular and routine maintenance tasks typically associated with home ownership, such as lawn maintenance, tree and shrub pruning, and exterior painting.

2.1.3 Revenue

For many communities, particularly those with a robust tourist industry, short-term rentals represent a potentially significant source of tax revenue. In Texas, for example, the Hotel Occupancy Tax statute broadly defines the term “hotel” to include any building that offers sleeping accommodations for consideration, including a “tourist home” or “tourist house,” and imposes a six percent tax on the price paid for such accommodations.⁶ Moreover, the Municipal Hotel Occupancy Tax statute authorizes Texas cities, towns and villages to impose and collect an additional nine percent tax on hotels, including short-term rental properties.⁷ The potential revenue available to municipalities with authority to tax short-term rentals is exemplified by a 2011 study prepared by the city auditor for Austin, Texas, which estimated that the city could gain \$100,000 to \$300,000 annually by collecting taxes on short-term rental properties.⁸ Communities that desire to collect such taxes may impose registration or licensing requirements as a means of identifying properties that are being used for short-term rentals and are therefore subject to taxation.

⁵ Venice, FL Land Development Code § 86-151.

⁶ See Texas Code §§ 156.001, 156.052. Accommodations of “at least 30 consecutive days, so long as there is no interruption of payment for the period,” are exempt from the tax. *Id.* § 156.101.

⁷ See Texas Code § 351.003.

⁸ See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

2.1.4 Fairer Competition with Licensed Lodging

Short-term rental restrictions may also be viewed as a means of leveling the playing field between the short-term rental industry and competing overnight lodging uses that may be specifically regulated under state or local law, such as hotels and bed and breakfasts. In some cases, the hotel industry has lobbied for the adoption of such regulations on the grounds that short-term rentals are functionally the same as hotel units and therefore should either be taxed and regulated like hotels, or prohibited. At a June 2011 meeting of the Planning Board of Buncombe County, North Carolina, for example, several hoteliers cited unfair competition in arguing against the potential repeal of a ban on vacation rentals in the county's more restrictive residential zoning districts. One industry representative testified that hotels "spend many, many hours and many, many dollars abiding by all the regulations that [hotels] are required to abide by and that many do not apply to short-term rentals."⁹

2.1.5 Protection of Renter Safety

A less commonly cited reason for the adoption of short-term rental regulations is the protection of renter safety. The rationale is that operational restrictions (e.g., occupancy limits based on septic system capacity) and inspection requirements are necessary to ensure the safety of occupants of short-term rental units. The City of Big Bear Lake, California, for example, has a "transient private home rentals" ordinance that is intended, in part, "to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions."¹⁰

2.2 TYPES OF SHORT-TERM RENTAL RESTRICTIONS

2.2.1 Prohibition

From the perspective of a short-term rental property owner, the most severe form of restriction is an outright ban on short-term rentals. A short-term rental prohibition may be limited to specific neighborhoods or zoning districts, or may be community-wide.

2.2.2 Geographically-Based Restrictions

Communities that choose to allow short-term rentals often use their zoning authority to regulate the use on a geographic basis. For example, Venice, Florida regulates short-term rental properties (referred to locally as "resort dwellings") only in the city's Residential Estate (RE) and Residential Single Family (RSF) zoning districts.¹¹ Similarly, Maui County, Hawaii permits transient vacation rentals only within certain business zoning districts and certain designated

⁹ "Buncombe planners wade into Asheville-area vacation rental issue again; County debates relaxing the rules," *The Asheville Citizen-Times*, June 6, 2011.

¹⁰ City of Bear Lake, CA Municipal Code § 17.03.310(A).

¹¹ See generally Venice, FL Land Development Code § 86-151.

“destination resort areas,” including the Wailea, Makena, Kaanapali, and Kapalua Resort Areas.¹²

2.2.3 Quantitative and Operational Restrictions

Other communities that allow short-term rentals may choose to implement a cap on the number of short-term rental permits that may be issued. Such an approach constitutes a compromise between short-term rental owners who argue that they have the right to rent their properties on a short-term basis, and opponents who argue that short-term rentals should be prohibited as an unlawful commercial use in a residential neighborhood. Quantitative restrictions may take the form of a fixed limit on the total number of short-term rental permits that may be issued at any given time. The City of Santa Fe, New Mexico, for example, authorizes the Land Use Director to issue “up to 350 short term rental permits” for residential properties that do not otherwise qualify for permits as an accessory dwelling unit, owner-occupied unit, or unit located within a “development containing resort facilities.”¹³ Similarly, the City of Cannon Beach, Oregon maintains a 92 permit cap on the number of transient rental permits that will be issued by the city.¹⁴ Alternatively, a community may implement a proximity restriction that prohibits a short-term rental property from being located within a certain distance of another short-term rental property. The “Residential Vacation Rentals” ordinance of San Luis Obispo County, California, for example, provides:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.¹⁵

Another type of quantitative restriction is that in the Mendocino County, California zoning ordinance, which requires the county to maintain a ratio of “thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”¹⁶

Many short-term rental regulations incorporate performance-type standards for the operation of short-term rental properties. Below are examples of these types of standards that are frequently incorporated into short-term rental regulations:

- **Maximum Occupancy Limits:** This standard limits the maximum overnight occupancy of short-term rental properties based on the number of bedrooms in the home (for example, the Isle of Palms, South Carolina limits overnight occupancy to two persons per bedroom plus an additional two persons¹⁷) and/or on the septic capacity of the property. In Sonoma County, California, for example, the maximum overnight occupancy of a vacation rental property on a conditional septic system is “equal to the design load of the septic system.”¹⁸

¹² See Maui County, HA County Code § 19.38.030(B).

¹³ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(i).

¹⁴ See City of Cannon Beach, OR Zoning Code § 17.77.020(F).

¹⁵ San Luis Obispo County, CA Code § 23.08.165(c).

¹⁶ Mendocino County, CA Code § 20.748.020(A).

¹⁷ See Isle of Palms, SC City Code § 5-4-202(1).

¹⁸ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(2).

- Rental Period Restrictions: This restriction places a limit on the number of times a property may be rented for short-term occupancy. The City of Santa Fe, New Mexico, for example, limits short-term rental units to a maximum of 17 rental periods per calendar year and permits no more than one rental within a seven consecutive day period.¹⁹
- Parking Requirements: This standard may require that the short-term rented property provide more off-street parking than comparable properties that are occupied by owners or long-term tenants. Santa Fe also specifically prohibits short-term rental occupants from parking recreational vehicles on site or on the street.²⁰
- Noise Level Limits: This standard applies specific noise level limitations to activities associated with short-term rental properties. Sonoma County’s vacation rental ordinance, for example, includes an “Hourly Noise Metric” table that imposes specific quantitative noise level limits on vacation rentals during “activity hours” (9:00 a.m. to 10:00 a.m.) and “quiet hours” (10:00 p.m. to 9:00 a.m.).²¹
- Required Postings: This standard requires owners to prominently display a copy of the operational restrictions and contact information for the owner, manager, or other representative of the rental property.²² Owners may also be required to incorporate the operational restrictions in all rental agreements.
- Emergency Access Requirements: If located behind a locked gate or within a gated community, short-term rental units may be required to provide a gate code or lockbox with keys to local police, fire, or emergency services departments.²³
- Mandatory Designated Representatives: This standard requires that the short-term renter provide a current 24-hour working phone number of the property owner, manager, or other designated representative to local officials and to property owners within a certain distance of the rental unit. Some communities also require that the designated representative be available during all rental periods within a certain distance (e.g., a one-hour drive) of the rental property.²⁴
- Trash and Recycling Facility Storage: This standard requires that trash and recycling bins be stored in a location that is not visible from public rights-of-way. Section 5.25.070 of the City of Palm Springs, California vacation rental ordinance, for example, states: “Trash and refuse shall not be left stored within public view, except in proper containers for the purpose of collection by the collectors and between the hours of five a.m. and eight p.m. on scheduled trash collection days.”²⁵

¹⁹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²⁰ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii).

²¹ See Sonoma County, CA Code of Ordinances § 26-88-120(f)(6).

²² See, e.g., Venice, FL Land Development Code § 86-151(2)(b)(1).

²³ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(14).

²⁴ See, e.g., Sonoma County, CA Code of Ordinances § 26-88-120(f)(13).

²⁵ Palm Springs, CA Municipal Code § 5.25.070(g).

2.2.4 Registration/Licensing Requirements

Owners who intend to offer their property for use as a short-term rental unit may be required to register their property with the local government. Garrett County, Maryland, for example, requires owners to register their property with the Office of Licensing and Enforcement Management and to pay a one-time fee as condition precedent to receiving a “transient vacation rental unit license” from the County.²⁶ Short-term rental licenses often are valid only for a one- or two-year period, requiring property owners to renew the licenses—and to pay associated fees—on a regular basis.

Many communities require short-term rental properties to pass certain inspections prior to the issuance of a permit, license, or renewal. Tillamook County, Oregon, for example, as a condition to the issuance of a short-term rental permit, requires property owners to obtain a certification from a certified building inspector evidencing compliance with all applicable operational standards, including minimum fire extinguisher and smoke detector requirements, emergency escape and rescue standards, and structural requirements.²⁷

2.3 ENFORCEMENT

Communities typically enforce their short-term rental regulations (a) in accordance with a generally applicable enforcement provision contained in the code of ordinances or zoning ordinance, or (b) through a specific enforcement provision incorporated into the short-term rental regulations. Article 9 of the Isle of Palms, South Carolina Code of Ordinances is one example of a short-term rental ordinance that contains no specific enforcement provision, but is enforced under a generally applicable penalty provision.²⁸ Under the Isle of Palms Code of Ordinances, violation of the short-term rental ordinance is subject to the same penalties and procedures as a violation of any other provision the zoning code. Potential penalties for a violation are established under Section 5-4-7 of the Code of Ordinances, which states:

In case a structure or land is or is proposed to be used in violation of this chapter, the Zoning Administrator may, in addition to other remedies, issue and serve upon a person pursuing such activity or activities a *stop order* requiring that such person immediately cease all activities in violation of this chapter.

Any person violating any of the provisions of this chapter shall be deemed guilty of a *misdemeanor* and shall for each violation, upon conviction thereof, be punished as provided in section 1-3-66. Each day that a violation continues shall constitute a separate offense.²⁹

²⁶ See Garrett County, MD Code of Ordinances § 160.03(A).

²⁷ See Tillamook County (OR) Short Term Rental Ordinances, Sections 6 (Standards) and 9.A.b (Short Term Rental Permit Application Requirements).

²⁸ See *generally* Isle of Palms, SC City Code §§ 5-4-201 to -206 (Short-Term Rentals) and § 5-4-7 (Violations and Penalties).

²⁹ Isle of Palms, SC City Code § 5-4-7 (Emphasis added).

By contrast, the short-term rental ordinances of Sonoma County, California and Santa Fe, New Mexico contain specifically applicable enforcement provisions. Under Section 26-88-120(g) of the Sonoma County vacation rental ordinance, individuals who register an initial complaint about a vacation rental property are directed to the contact person identified in the zoning permit or use permit issued for the property. Subsequent complaints are addressed to code enforcement officials who are responsible for conducting an investigation to determine whether there was a violation of a zoning or use permit condition. Code enforcement may accept neighbor documentation consisting of photos, sound recordings and video as proof of an alleged violation. If code enforcement verifies that a violation has occurred, then a notice of violation is issued and a penalty may be imposed in accordance with Chapter 1 of the Sonoma County Code. In addition, under Section 26-88-120(g)(1), code enforcement officers are also given the discretion to schedule a revocation hearing with the board of zoning adjustment. If a vacation rental permit is revoked, then a new zoning or use permit for a vacation rental may not be reapplied for or issued for a period of at least one year.³⁰ Santa Fe's short term rental unit ordinance includes a specific provision that authorizes the city to revoke a short term rental permit upon conviction for a third violation of the ordinance.³¹

SECTION 3: IMPACTS OF SHORT-TERM RENTAL RESTRICTIONS

3.1 IMPACTS ON RENTAL PROPERTY OWNERS

3.1.1 Rental Income

For some rental property owners, the adoption of short-term rental restrictions may result in the *loss* of rental income altogether. The most obvious example is an owner of property located in a zoning district where short-term rentals are no longer allowed under a local ordinance. In areas where short-term rentals are allowed, other property owners might face the loss of rental income due to their inability, for financial or other reasons, to satisfy the requirements for obtaining a permit, such as minimum off-street parking or structural requirements. As discussed in Section 5.3.6 below, some short-term rental regulations might also cause an owner to lose rental income because of suspension or revocation of a rental permit, even if the reason for suspension or revocation is beyond the owner's control (e.g., tenant behavior).

There are several ways in which a short-term rental restriction might also result in a *decrease* in rental income. An ordinance that restricts the number of times a property may be rented per year could have a significant impact on the property's income potential. Santa Fe, New Mexico, for example, limits short-term rentals to 17 rental periods per year.³² A maximum overnight occupancy provision could also negatively affect the income potential of a rental property by reducing the number of guests to whom a home may be rented. Rental restrictions can also cause a reduction in rental income where they have the effect of narrowing the field of potential tenants or discouraging vacationers from renting a home. For example, an ordinance that prohibits

³⁰ See generally Sonoma County, CA Code of Ordinances § 26-88-120(g).

³¹ See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(iv).

³² See Santa Fe, NM City Code § 14-6.2(A)(6)(a)(ii)(B).

short-term occupants from parking a recreational vehicle on site or on the street might deter families who travel by RV from renting a home in Santa Fe.³³

3.1.2 Property Values

Short-term rental restrictions can affect property values in different ways. Generally speaking, all else being equal, if identified negative impacts of short-term rentals in a district or neighborhood are reduced or eliminated by short-term rental housing restrictions, property values may increase. On the other hand, the added limitations on the use of properties that short-term rental housing restrictions impose may cause property values in the district or neighborhood to decrease. The precise impact that short-term rental restrictions have on property values will depend on various factors, including the general character of the community (e.g., vacation destination versus non-destination community), the precise terms of the ordinance, local and national economic conditions, and local real estate market conditions.

3.1.2.1 Existing Short-Term Rental Properties

In general, the value of a home that was used as a short-term rental prior to the adoption of restrictions, but is either prohibited or restricted from future use as a short-term rental, can be expected to *decrease*. That is particularly true in vacation destination communities, where homeowners often purchase second homes as investment properties.³⁴ These potential buyers often plan to use the second home as a short-term rental property until they retire or otherwise become able to maintain the property as their full-time residence.³⁵ Such buyers would tend to be less interested in purchasing in an area where the short-term rental market is highly uncertain or is constrained by burdensome regulations.

In some circumstances, it is conceivable that a short-term rental ordinance could increase the value of those homes that were used as short-term rentals prior to the adoption of the restrictions *and* become lawfully licensed for use under the new regulations. Under the general economic principle of supply and demand, if an ordinance has the effect of reducing the *supply* of short-term rental properties and the *demand* for short-term rental properties rises or remains constant, then the value of individual properties licensed as short-term rental properties after the adoption of regulations, can be expected to rise.

3.1.2.2 Properties Not Previously Used as Short-Term Rental Properties

The impact of short-term rental restrictions on the value of properties that were not used as short-term rentals prior to adoption of the restrictions will also vary. The value of a property that becomes licensed as a short-term rental for the first time under a new ordinance conceivably could *increase* if the quantity of short-term rental properties on the market falls as a result of the

³³ Section 14-6.2(A)(6)(a)(ii)(E) of the Santa Fe Short Term Rental Ordinance states: “Occupants shall not park recreational vehicles on site or on the street.”

³⁴ See National Association of Realtors®, *Nearly One in Seven Homebuyers Owned or Bought A Second Home During First Quarter*, July 13, 2003 (accessed at <http://www.realtor.org/publicaffairsweb.nsf/Pages/SecondHomeReport?OpenDocument>).

³⁵ See *id.*

ordinance. In residential neighborhoods where the existence of short-term rentals is considered a negative, an ordinance that prohibits future short-term rental activity in those neighborhoods could positively affect the value of homes in these locations.

3.1.3 Operational Costs

Short-term rental regulations tend to increase the cost of owning and operating a rental property in a number of ways. The regulations typically require owners to pay an up-front registration or permit fee and may also require payment of additional licensing fees on an annual or other recurring basis. Inspection requirements also add to the cost of operating a short-term rental since, in most cases, the inspections are performed at the owner's expense. Performance standards may also require an owner to undertake costly improvements in order to obtain a short-term rental permit. An owner may be required to expand an existing driveway in order to satisfy a minimum parking requirement or to upgrade electrical or sewer systems in order to qualify for a permit. In addition, a rental property owner who resides out of state may have to hire a property manager in order to satisfy a requirement that a designated representative be available at all times and within a certain proximity of the unit during any rental period.

3.1.4 Nonconforming Use Status

A property that was used as a short-term rental prior to the adoption of an ordinance that no longer allows short-term rentals may become a **nonconforming use** under state and local zoning laws. Although state and local zoning laws typically allow nonconforming uses to continue, the right to alter or expand a nonconforming use is usually limited and often requires the issuance of a special permit, or an equivalent form of zoning relief, from the local planning commission or board of appeals. In addition, a nonconforming use that is discontinued for a specific period of time (typically one or two years) may be deemed abandoned, and thereafter prohibited from resuming at a future date.

3.2 COMMUNITY IMPACTS

3.2.1 Local Real Estate Market

In vacation destination communities, many property owners depend on the income gained from short-term rentals to pay their mortgages, real estate taxes, association dues, and other expenses. If that income is taken away or severely reduced by short-term rental restrictions, the only alternative for those homeowners might be to sell their homes immediately in order to avoid foreclosure or a distressed sale. A widespread ban on short-term rentals that results in a substantial number of homes being sold or foreclosed upon may flood the market, causing property values to fall and remain depressed for a period of time.

3.2.2 Tourism

Short-term rental restrictions may negatively impact local tourism in at least two ways. First, they may affect the occupancy rates of vacation rentals by increasing the per-person cost of short-term rentals because they limit the maximum occupancy of a short-term rental unit. Short-

term rental restrictions may also cause rental property owners to increase their rental rates and minimum security deposits in order to cover the increased cost of operating a short-term rental and the risk of incurring a fine or having their rental licenses revoked or suspended. All else being equal, the higher rental rates paid by smaller groups of tenants, increase the per-person cost of short-term rentals in communities with short-term rental ordinances.

Second, tourists who become aware of the new restrictions may perceive them as being motivated by, and evidence of, an “anti-tourist” sentiment among full time residents of the community. Regulations that single out short-term rentals for different treatment may implicitly brand short-term renters as being potentially disruptive even though an individual tenant may have done nothing wrong. Provisions that allow random inspections of short-term rentals without imposing reasonable restrictions on the time or manner of those inspections may be perceived as an invasion of privacy and an unreasonable disruption of a family vacation. A perceived anti-tourist sentiment may ultimately discourage tourists from vacationing in that community.

A January 2010 report prepared by the Napa Valley Vacation Rental Alliance, argued that the availability of short-term rental properties could determine where a family or groups of friends vacationing together chooses to stay. The report states:

Throughout the world, some travelers prefer private dwellings to hotels. For instance, those traveling as a family or group of friends often want spacious accommodations and kitchens. This market segment will not substitute conventional lodging if vacation rentals are not provided, they will simply go elsewhere. Thus, by eliminating vacation rentals, Napa County would deter a substantial number of visitors who currently spend on restaurants, wine, attractions and services and who would instead spend for leisure outside our County.³⁶

The 2008 study “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County”³⁷ commissioned by the Realtors[®] Association of Maui (the “Maui TVR Study”) reached a similar conclusion. Acknowledging that “the TVR industry is concerned about . . . the potential enactment of legislation meant to marginalize [the TVR] industry, and the potential economic consequences of such policies,” the Maui TVR Study concluded:

The extent of the loss of the TVR industry due to government regulations depends to what extent TVR visitors substitute an alternative Maui County accommodation type to TVRs if they are unavailable or not sufficiently available to meet the current and expected future demand level for their accommodation type. In a global market place with alternatives to Maui destinations offering a literal potpourri of accommodation experiences, the modern, well-informed and sophisticated visitor can find the accommodations experience that best fits their tastes and preferences.

³⁶ Napa Valley Vacation Rental Alliance (NVVRA): A Coalition of Napa County Stakeholders (prepared for Napa County by Napa Valley Vacation Rental Alliance (NVVRA), Jan. 2010) (available on-line at <http://www.white.com/nvvra/media/WHY%20CODIFYING%20VACATION%20RENTALS%20NOW%20IS%20GOOD%20PUBLIC%20POLICY.pdf>).

³⁷ “Economic Impact of Transient Vacation Rentals (TVRs) on Maui County,” prepared by Dr. Thomas Loudat & Dr. Prahlad Kasturi for the Realtors[®] Association of Maui (Jan. 8, 2008) (hereinafter the “Maui TVR Study”).

Based on the increasing market share of TVRs on Maui from 2000 to 2006 relative to other accommodation types one can reasonably surmise that the modern visitor increasingly prefers a TVR or its equivalent experience. Thus, even though elimination of Maui TVRs may not result in the loss of all TVR visitors who may substitute an alternative Maui County accommodation type yet available, we would still expect a significantly negative economic impact in Maui County if TVRs are eliminated or significantly reduced.³⁸

3.2.3 Local Economy

Local economies that lean heavily on the tourist economy are more susceptible to the potential impacts of short-term rental restrictions. Even a slight impact on tourism in these communities can have a significant negative effect on the viability and success of restaurants, retail establishments, and other local businesses that provide services to tourists. The potential dollar impacts of a reduction in visitor numbers due to a short-term rental restriction is illustrated by the daily spending calculations of the Maui TVR Study, which calculated that transient vacation rental visitors spent an average of \$159.16 per day in Maui County.³⁹ Based on 2006 transient vacation rental visitor data (105,967) and a 6.85 day average length of stay, the study concluded that transient vacation rentals produced more than \$115 million in total revenue from lodging, food and beverage, entertainment, shopping, and other county businesses and services.⁴⁰

3.2.4 Tax Revenue

Short-term rental restrictions can have a positive effect on tax revenue if communities are authorized by state law to impose and collect a tax on short-term rentals. Cities, towns and villages in Texas, for example, are authorized by the Municipal Hotel Occupancy Tax statute to impose and collect a nine percent tax on the price paid for short-term rentals.⁴¹ In 2011, the City of Austin estimated that it could gain an additional \$100,000 to \$300,000 in tax revenue by taxing short-term rental properties.⁴²

At the same time, however, short-term rental restrictions that negatively affect local tourism could cause sales tax revenue to decrease if restaurant and retail sales are down due to diminished tourism.

3.2.5 Affordable Housing

Short-term rentals can affect housing costs in a community. When property owners elect to rent their homes on a short-term basis rather than renting on a longer-term basis (e.g., by the season or by the year), “they essentially squeeze the supply of housing, pushing up the demand, and subsequently, the cost” of housing in the community.⁴³ In some cases, allowing short-term rentals may fuel speculation in rising housing markets by allowing investors to cover the

³⁸ Maui TVR Study at 1-2.

³⁹ See Maui TVR Study at 16.

⁴⁰ See Maui TVR Study at 16-17.

⁴¹ See Texas Code § 351.003.

⁴² See “City of Austin begins work on short-term rental regulations; Planning Commission to address safety, tax revenue concerns,” (Source: impactnews.com: Central Austin, April 22, 2011).

carrying costs of a house for a period of time while the property appreciates in value and then sell it for a profit.⁴⁴ Tourist communities, in particular, may be affected if the workers in low-paying service and tourism related jobs can no longer afford to live in the community or within a reasonable commuting distance.⁴⁵

3.2.6 Governmental Administrative Costs

Short-term rental restrictions create additional administrative burdens on local government, including the processing of permit, licensing and registration applications. Local building officials are likely to be faced with an increased volume of required inspections. Code enforcement personnel and the police officers may be required to assume additional enforcement duties under a short-term rental ordinance. The financial burden of administering a short-term rental ordinance may weigh heavily on vacation-destination communities, where the a high volume of short-term rental properties may require local government to hire additional staff or pay increased overtime costs to current staff in order to implement the short-term rental program.

3.3 IMPACTS ON RENTERS

3.3.1 Rental Fees

As discussed above, the adoption of short-term rental restrictions may cause rental property owners to increase rental rates as a means of recovering licensing and permit fees, inspection and other related costs. If regulations expose a property owner to the risk of incurring a fine or having the owner’s rental license suspended or revoked, the owner may also increase the minimum security deposit as a means of deterring tenants from engaging in behavior that might violate the short-term rental regulations.

3.3.2 Inventory of Short-Term Rental Units

Short-term rental restrictions can also reduce the inventory of short-term rental units in a community in various ways. For example, zoning regulations may prohibit short-term rentals in single-family residential zoning districts or within certain areas or neighborhoods. An owner who successfully operated a short-term rental property without complaint prior to the adoption of licensing requirements may be barred from continuing the use if the property does not conform to the new licensing criteria. More generally, owners may simply decide they do not want to assume the increased cost and risk of continuing to use their property as a short-term rental, and withdraw their properties from the inventory of short-term rental in the community.

⁴³ APA Report at 2.

⁴⁴ *See id.*

⁴⁵ *See id.*

3.4 UNINTENDED CONSEQUENCES OF SHORT-TERM RENTAL RESTRICTIONS

3.4.1 “Underground Market” for Short-Term Rental Units

Short-term rental restrictions that impose high permit and licensing fees, onerous inspection requirements, and performance standards that are difficult or costly for owners to satisfy might have the unintended effect of creating an underground market for short-term rentals, in which owners continue to rent their properties without obtaining the required permits. Owners who depend on rental income to pay their mortgages to pay the maintenance costs of a second home may be willing to risk incurring fines and other penalties if an ordinance creates obstacles that cannot be overcome or that may make it economically infeasible to obtain a rental permit.⁴⁶

3.4.2 Uncertainty in the Short-Term Housing Market

A short-term rental regulation that authorizes the suspension or revocation of a short-term rental permit can also introduce a degree of uncertainty in the short-term rental housing market. Vacation travelers often reserve short-term housing accommodations several months in advance of a planned vacation, particularly when the stay is planned during a destination’s peak visitation period. Under those circumstances, for example, it is conceivable that a family may make a reservation and pay a deposit several months in advance of a holiday ski vacation only to discover later that the home they had reserved is no longer available because its short-term rental permit was suspended or revoked. In some cases, by the time a vacation home renter makes that discovery, it may be too late to find suitable alternative short-term housing, leaving the vacationer with a negative impression of the local community—an impression that the vacationer is likely to share with others.

SECTION 4: LEGAL ISSUES RAISED BY SHORT-TERM RENTAL RESTRICTIONS

4.1 AUTHORITY TO REGULATE

In general, short-term rental restrictions are typically adopted under the specific authority of a state **zoning enabling statute** or the general **police power** delegated to local governments by the state constitution, or by statute. Zoning regulations that restrict short-term rentals in residential areas have been upheld where the restrictions are found to be substantially related to land use impacts in the area.⁴⁷ Prohibiting short-term occupancy in single-family areas has been held to be within the lawful scope of the zoning power.⁴⁸

However, in 2011 the Florida State Legislature enacted legislation that specifically limits the authority of local governments to regulate or prohibit short-term rentals. Enacted as Chapter No.

⁴⁶ See “More destinations shut the door on vacation rentals, *USA Today*, August 6, 2010 (commenting that the ban on short-term rentals in New York City apartments, most of which are already prohibited under many condominium and co-op bylaws, “will simply go further underground”).

⁴⁷ 5 RATHKOPF’S THE LAW OF ZONING AND PLANNING § 81:11 (4th Ed 2011) (hereinafter “RATHKOPF”) (citing to *Brown v. Sandy Bd. of Adjustment*, 957 P.2d 207 (Utah Ct. App. 1998) (finding that city has authority to prohibit short-term rentals in single-family neighborhood)).

⁴⁸ RATHKOPF § 81:11 (citing *Cope v. City of Cannon Beach*, 855 P.2d 1083, 317 Or. 339 (1993) and *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 286 Cal. Rptr. 382 (6th Dist. 1991)).

2011-119 on June 2, 2011, the Florida law (entitled “An act relating to public lodging establishments and public food service establishments”) states:

A local law, ordinance, or regulation may not restrict the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals based solely on their classification, use, or occupancy. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.⁴⁹

As of the date of this paper, Florida appears to be the only state to have enacted legislation limiting the authority of local governments to regulate or prohibit short-term rentals. It is conceivable, however, that the Florida law may become a model for other states. This would appear to be the most likely in those states where short-term rentals comprise a meaningful segment of the tourist lodging industry.

4.2 TAKINGS

It is well established that a land use regulation that is excessively restrictive may constitute a “taking” of property for which compensation must be paid under the state constitution and the Fifth and Fourteenth Amendments to the United States Constitution.⁵⁰ The prevailing test for determining whether a regulatory taking has occurred was established in the landmark case of *Penn Central Transportation Co. v. City of New York*,⁵¹ decided by the United States Supreme Court in 1978. The *Penn Central* test requires a balancing of the public and private interests involved in each case, weighing the following three factors: (1) the economic impact of the regulation on the property owner; (2) the extent to which the regulation interferes with the property owner’s “distinct investment-backed expectations;” and (3) the character of the governmental action (i.e., physical invasion v. economic interference).⁵²

The application of the *Penn Central* “balancing test” is illustrated in an Oregon case that concerned a takings challenge to a short-term rental ordinance. In that case⁵³ rental property owners challenged a City of Cannon Beach, Oregon ordinance that prohibited the creation of new transient occupancy uses and required existing transient occupancy uses to end by 1997. The petitioners claimed that Ordinance 92-1 constituted a taking of property without just compensation under the Fifth and Fourteenth Amendments.⁵⁴ The Supreme Court of Oregon, however, upheld Ordinance 92-1, focusing ultimately on the economic impact of the restrictions:

We next consider whether Ordinance 92-1, by prohibiting transient occupancy, denies property owners economically viable use of their properties. We conclude that it does not. On its face, Ordinance 92-1 permits rentals of dwellings for periods of 14 days or more. The ordinance also permits the owners themselves to reside in the dwellings.

⁴⁹ The enrolled version of House Bill No. 883 is available on the Florida State Legislature’s website at: http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0883er.docx&DocumentType=Bill&BillNumber=0883&Session=2011.

⁵⁰ PATRICIA E. SALKIN, 2 AMERICAN LAW OF ZONING § 16:1 (5th ed. 2008) (hereinafter “SALKIN”).

⁵¹ *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646 (1978).

⁵² SALKIN § 16:9 (citing *Penn Central*, 438 U.S. at 124).

⁵³ *Cope v. City of Cannon Beach*, 855 P.2d 1083 (Or. 1993).

⁵⁴ *See id.* at 1084.

Although those uses may not be as profitable as are shorter-term rentals of the properties, they are economically viable uses.⁵⁵

As the court's analysis indicates, plaintiffs who challenge a short-term rental restriction as a taking of property face an uphill battle. As a practical matter, it is difficult to argue that a short-term rental prohibition denies the owner of *all* economically viable use of his land, particularly where longer-term rentals are still allowed.

4.3 DUE PROCESS

The Fourteenth Amendment to the U.S. Constitution prohibits any governmental action that deprives “any person of . . . liberty or property, without **due process** of law.” This clause imposes both substantive and procedural requirements. The substantive component of the due process clause, known as “substantive due process,” tests the governmental purposes implemented by land use regulations. To satisfy substantive due process, a regulation must advance a legitimate governmental purpose.⁵⁶ In general, a local land use ordinance will survive a substantive due process challenge if there exists a rational relationship between the terms of the ordinance and a legitimate governmental interest.⁵⁷ A local ordinance may be challenged on due process grounds either on its face, or as applied to a particular case. When a landowner makes a *facial* challenge to a zoning ordinance, “he or she argues that *any* application of the ordinance is unconstitutional.”⁵⁸ On the other hand, when a landowner makes an *as applied* challenge, he or she attacks “only the specific decision that applied the ordinance to his or her property, not the ordinance in general.”⁵⁹

In a California case,⁶⁰ the plaintiffs challenged the city of Carmel's transient rental ordinance on substantive due process grounds, arguing that the prohibition was “not rationally related to the goals sought to be achieved.”⁶¹ The California court of appeals rejected the substantive due process claim, finding that the ordinance was rationally related to the goals and policies set forth in the city's general plan, as well as the stated purpose of the R-1 district.⁶² In support of its conclusion, the court explained that short-term rentals were inconsistent with the residential character of the community:

It stands to reason that the “residential character” of a neighborhood is threatened when a significant number of homes—at least 12 percent in this case, according to the record—are occupied not by permanent residents but by a stream of tenants staying a week-end, a week, or even 29 days. Whether or not transient rentals have the other “unmitigatable, adverse impacts” cited by the council, such rentals undoubtedly affect the essential character of a neighborhood and the stability of a community. Short-term tenants have little interest in public agencies or in the welfare of the citizenry. They do not participate in local government, coach little league, or join the hospital guild. They

⁵⁵ *Id.* at 1086-87 (internal citations omitted).

⁵⁶ See SALKIN § 15:2.

⁵⁷ See *id.*

⁵⁸ *WMX Technologies, Inc. v. Gasconade County*, 105 F.3d 1195, 1198-99 n.1 (8th Cir. 1997) (emphasis added).

⁵⁹ See SALKIN § 15:2.

⁶⁰ *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (6th Dist. Cal. 1991).

⁶¹ *Id.* at 1596.

⁶² See *id.* at 1589.

do not lead a scout troop, volunteer at the library, or keep an eye on an elderly neighbor. Literally, they are here today and gone tomorrow—without engaging in the sort of activities that weld and strengthen a community.⁶³

Referring back to its discussion of Carmel’s stated goals, the court summarily concluded:

We have already determined that the ordinance is rationally related to the stated goal. Carmel wishes to enhance and maintain the residential character of the R-1 District. Limiting transient commercial use of residential property for remuneration in the R-1 District addresses that goal.⁶⁴

The California state court decision illustrates the difficulty of challenging a short-term rental restriction on substantive due process grounds. In general, a short-term rental restriction seems likely to survive substantive due process scrutiny if the local jurisdiction articulates a legitimate governmental interest (e.g., the protection of residential character in predominantly single-family neighborhoods), and can produce some findings connecting short-term rental activity to the types of neighborhood and community impacts described in Carmel’s transient rental ordinance.

4.4 EQUAL PROTECTION

The Equal Protection Clause of the Fourteenth Amendment commands that no State shall “deny to any person within its jurisdiction the equal protection of the laws,” which states the basic principle that all persons similarly situated should be treated alike.⁶⁵ The general rule is that a state or local law is presumed to be valid and will be sustained if the classification drawn by the law is rationally related to a legitimate state interest.⁶⁶ If a local or state law does not involve a suspect classification (e.g., one that treats persons differently on the basis of race, alienage, or national origin) or a fundamental right (e.g., the right to vote, the right to interstate travel), then an equal protection challenge is analyzed under the rational basis test. The rational basis test is a very deferential test, under which an ordinance generally will be upheld if there is any “reasonably conceivable state of facts that could provide a rational basis for the classification.”⁶⁷ Moreover, the rational basis test does not require a legislative body to articulate its reasons for enacting an ordinance, because “[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.”⁶⁸ This means that a court may find a rational basis for a law, even if it is one that was not articulated by the legislative body.

A short-term rental ordinance may be vulnerable to an equal protection challenge on the ground that it treats similar properties differently based on whether a property is occupied by short-term tenants or longer term tenants. For example, take an ordinance that generally does not impose a

⁶³ *Id.* at 1591.

⁶⁴ *Id.* at 1596.

⁶⁵ See generally *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

⁶⁶ See generally *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

⁶⁷ *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, (1980).

⁶⁸ *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 113 S. Ct. 2096 (1993).

maximum occupancy limit on single family homes in a city’s residential zoning districts, but does impose such a limit on homes that are used for short-term rentals. On its face, this ordinance treats similar properties (i.e., single family homes in the same zoning district) differently, based on whether they are used as a short-term rental. Because no suspect classification or a fundamental right is implicated, an equal protection claim against the ordinance would be reviewed under the deferential rational basis test. For the same rational basis reasons discussed above in connection with a substantive due process challenge, the short-term rental ordinance is likely to survive judicial scrutiny.

Since 2000, as a result of the U.S. Supreme Court decision in *Village of Willowbrook v. Olech*,⁶⁹ “selective enforcement” claims in land use cases may also be brought under the Equal Protection clause. Selective enforcement claims generally assert that a municipality arbitrarily applied its land use ordinance to a conditional use permit or other land use approval, or that enforcement of the ordinance was arbitrarily selective.⁷⁰ In *Olech*, the village refused to supply water to the plaintiffs unless they granted the village an easement that it had not required of other property owners. It was alleged that the village did so to retaliate for the plaintiffs having brought an earlier, unrelated suit against the village. The question before the Supreme Court was whether an individual who does not have a suspect classification or fundamental interest claim can nevertheless establish a “class of one” equal protection violation when vindictiveness motivated the disparate treatment. The Court held:

Our cases have recognized successful equal protection claims brought by a “class of one,” where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that “the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.”⁷¹

From a plaintiff’s perspective, the difficult part of the *Olech* decision is its requirement that selective enforcement claims involve intentional treatment. Moreover, it is unclear whether the intentional treatment rule requires merely an intent to do an act or, more specifically, the intent to harm or punish an individual for the exercise of lawful rights.⁷² Since *Olech*, most cases involving “class of one” equal protection claims that assert selective enforcement have not been successful.⁷³

⁶⁹ *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073 (2000).

⁷⁰ BRIAN W. BLAESSER & ALAN C. WEINSTEIN, FEDERAL LAND USE LAW & LITIGATION § 1:20 (Thomson-Reuters/West: 2011) (hereinafter “BLAESSER & WEINSTEIN”).

⁷¹ *Olech*, 528 U.S. at 564 (citations omitted).

⁷² See BLAESSER & WEINSTEIN § 1:20.

⁷³ See generally BLAESSER & WEINSTEIN § 1:20, fn. 7.

SECTION 5: WAYS TO ADDRESS PROPOSALS TO ESTABLISH SHORT-TERM RENTAL RESTRICTIONS

5.1 QUESTION THE NEED FOR SHORT-TERM RENTAL RESTRICTIONS

One of the first questions that should be asked when a city or town proposes to adopt a short-term rental ordinance is whether there truly exists a need for the restrictions. In some cases, the perceived need for a short-term rental ordinance may be based solely on anecdotal evidence about the alleged problems caused by short-term rental tenants rather than on documented evidence that short-term rental tenants are causing problems. If nothing more than anecdotal evidence is provided in support of a proposed ordinance, it may allow opponents to later argue that it was adopted arbitrarily without any rational basis.

5.1.1 Empirical Analysis

Where proposed short-term rental restrictions appear to be supported solely by anecdotal evidence, Realtors[®] should question whether empirical studies using data from police call logs, code enforcement activity, and prosecutorial records have actually established the alleged adverse impacts to the community, and the degree to which those impacts are attributable to short-term rental properties. Below are some examples of the types of inquiries Realtors[®] can make of local government officials:

- What number of complaints logged by the local code enforcement and police departments were generated by short-term rentals? Does the data evidence an increase in the number of complaints attributable to short-term rentals over the last five years?
- How do the complaints concerning short-term rentals relate to the number of individuals occupying the short-term rental that is the subject of the complaint? Does the city or town have factual support to justify a proposed occupancy limit for short-term rental housing and to what extent does this limitation exceed the occupancy limits applicable to other types of housing?
- Does a specific type of complaint (e.g., noise disturbance, litter or trash, parking violations, or late night parties) constitute a large percentage of the total number of complaints recorded in the last five years? If so, does a provision of the local zoning or general ordinance already regulate the offending behavior? If it is possible to address the majority of the problems by enforcing existing nuisance regulations, rather than by imposing new maximum occupancy limits on short-term rentals, it may call into question the need for the proposed ordinance.
- Does a disproportionate number of complaints arise from a small number of rental properties? If yes, then a more appropriate response might be to adopt narrowly tailored regulations. An

example of this approach would be a regulation that would apply only after one or more violations are found on a property, rather than imposing the cost and disruption of new regulations on all owners of short-term rental property.

5.1.2 Stakeholder Input

Realtors[®] should also urge that local government officials seek and consider input from individuals and organizations with a stake in the short-term rental industry as early in the process as possible. Stakeholder groups should include representatives of local homeowner associations, rental property management associations, the local Realtor[®] associations, the chamber of commerce, local tourism bureau, and other organizations involved in the short-term rental industry.

5.1.3 Public Process

Realtors[®] should actively monitor and participate in the public hearing process. Early on, Realtors[®] should request an invitation to participate in any stakeholder groups formed by the local government prior to the public hearing process. Local governments often allow interested parties to discuss their concerns with local officials responsible for drafting and advising the local legislative body on a proposed ordinance at the beginning of the process. To the extent possible, Realtors[®] should take advantage of this opportunity to meet with the local planner or other staff members who may be drafting a proposed short-term rental ordinance.

State and local open public meetings laws generally require local legislative bodies to publish notice of scheduled public hearings, typically in the local newspaper, by posted notice at city or town hall, and/or on the official website of the city or town. If a draft of the proposed short-term rental ordinance is available prior to the public hearing, Realtors[®] should request a copy and review it thoroughly in advance of the hearing.⁷⁴ Realtors[®] should be prepared to submit written comments and/or to testify at the public hearing about their concerns with the proposal.

5.2 SUGGEST ALTERNATIVES TO SHORT-TERM RENTAL RESTRICTIONS

5.2.1 Enforcement of Existing Ordinances

Communities that wish to address the potential negative impacts of short-term rentals on residential neighborhoods likely already have regulations in place that are aimed at curtailing those types of impacts on a community-wide basis. In many cases the existing ordinances already address the types of behaviors and activity that would be the focus of short-term rental performance standards or operational restrictions. Below are some examples.

5.2.1.1 Noise Limits

Absent **preemption** by federal or state law, the control of noise is generally within the police power authority of local government. Communities commonly adopt noise control ordinances

⁷⁴ The Realtor[®] association may obtain assistance in this effort through NAR's Land Use Initiative program.

for the purpose of controlling unnecessary, excessive, and annoying noise within the community. In the City of San Luis Obispo, California, for example, the Noise Control Ordinance Noise Control Ordinance (Chapter 9.12 of the San Luis Obispo Municipal Code) expressly declares any noise in violation of Chapter 9.12 to be a **public nuisance**, punishable by civil or criminal action. The term “noise disturbance” is defined to mean:

any sound which (a) endangers or injures the safety or health of human beings or animals, or (b) annoys or disturbs reasonable persons of normal sensitivities, or (c) endangers or injures personal or real property, or (d) violates the factors set forth in Section 9.12.060 of this chapter. Compliance with the quantitative standards as listed in this chapter shall constitute elimination of a noise disturbance.⁷⁵

Additionally, specific types of noise violations that commonly arise in residential neighborhoods are regulated under Section 9.12.050, including the following:

- Noise disturbances that are “plainly audible at a distance of fifty feet from the noisemaker, unless the noise does not penetrate beyond the boundaries of the noisemaker’s own premise.”⁷⁶
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device between the hours of 10:00 PM and 7:00 AM in such a manner as to create a noise disturbance audible across a property line.⁷⁷
- Operating, playing or permitting the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device in a manner that creates a noise disturbance at any time in excess of noise levels defined in Section 9.12.060 (measured by decibel levels and duration of the disturbance).⁷⁸

5.2.1.2 Public Nuisance

In general, cities and counties have the police power to declare and abate nuisances. The Boulder, Colorado nuisance abatement ordinance (Title 10, Chapter 2.5 of the Boulder Revised Code) defines a “public nuisance” to mean:

[A]ny condition or use of any parcel on or in which two or more separate violations of the Boulder Municipal Code have occurred within a twelve-month period, or three or more separate violations have occurred within a twenty-four month period, if, during each such violation, the conduct of the person committing the violation was such as to annoy residents in the vicinity of the parcel or passers-by on the public streets, sidewalks, and rights-of-way in the vicinity of the parcel.⁷⁹

⁷⁵ City of San Luis, California Municipal Code § 9.12.020(U).

⁷⁶ See San Luis Municipal Code § 9.12.050(A).

⁷⁷ See San Luis Municipal Code § 9.12.050(B)(1)(a).

⁷⁸ See San Luis Municipal Code § 9.12.050(B)(1)(b).

⁷⁹ “Nuisance Abatement Information Sheet,” City of Boulder, Colorado (available on-line at http://www.bouldercolorado.gov/files/PDS/Code%20Enforcement/nuisanceabat_info.pdf).

No violations or actions are designated as “public nuisance” acts. Instead, the determination whether a violation triggers the nuisance abatement process is made by the responding law enforcement agency. For instance, in some cases, a trash violation may trigger the nuisance abatement process, while in others the problem might be best handled with a municipal court summons. Legal remedies to abate public nuisances generally include the filing of a criminal complaint, or a civil action, or an administrative abatement.

5.2.1.3 Property Maintenance Standards

A property maintenance ordinance might be adopted for the purpose of maintaining, preserving, or improving a community’s inventory of residential and non-residential buildings. To accomplish this, property maintenance ordinances typically establish standards for the exterior maintenance of affected structures, including basic structural elements such as foundations and supporting columns, exterior finish surfaces, and doors and windows. Property maintenance standards may also require property owners to maintain existing trees, shrubs and other significant vegetation, and to keep all exterior areas sanitary free of trash and refuse.

5.2.1.4 Unruly Public Gathering Ordinance

Some communities, particularly college towns, such as Berkeley, CA and Tucson, AZ, have adopted “unruly gathering” ordinances that create significant sanctions for residents and property owners who host gatherings that create a substantial disturbance, as well as for party attendees who contribute to the problem. A significant advantage that an unruly gathering ordinance would have over a general noise ordinance or short-term rental ordinance is that the individual responsible for the disturbance is also penalized, rather than the tenant and/or property owner alone. Since the penalties for violating a noise ordinance generally apply only to the residents of the property where the violation occurs, a noise ordinance is unlikely to deter party guests from violating its terms.

5.2.1.5 Nighttime Curfew

To the extent that under-aged drinking and juvenile crime are a significant contributors to excessive noise and party disturbances in short-term rental properties in residential neighborhoods, a nighttime curfew ordinance that prohibits persons under the age of 18 years from being on or about public streets and public places during specified hours of the day could be an effective deterrent. The effectiveness of nighttime curfews is evidenced by a 2002 survey published by National League of Cities, in which 97% of communities that have nighttime curfew ordinances reported that they help combat juvenile crime. It bears noting, however, that a juvenile curfew ordinance generally would not be applicable to college students and other youthful offenders over the age of eighteen. To the extent that parties hosted and attended by college-aged young people are perceived as causing the disturbances that are of greatest concern, a curfew ordinance would probably have little, if any, effect.

5.2.1.6 Parking Restrictions

Communities often address the problem of improperly parked vehicles and excessive numbers of vehicles parked in residential neighborhoods through off-street parking regulations. These regulations may include provisions that prohibit vehicle parking within front yard setback areas in residential zoning districts and that restrict vehicle parking to hard surface driveways or designated parking areas. Regulations may also prohibit parking on grass areas, sidewalks, or within a certain distance of side property lines.

5.2.2 Adoption of Ordinances that Target Community-Wide Issues

Communities that have not adopted general community-wide noise regulations or the other regulations aimed at curtailing the types of behaviors and activities that would be regulated under a short-term rental ordinance, should be encouraged to adopt such general regulations rather than to single out short-term rental properties for regulation.

5.3 SHORT-TERM RENTAL HOUSING REGULATION BEST PRACTICES

This section presents several types of “best practice” provisions that have been implemented in jurisdictions which have short-term rental restrictions and which Realtors® may find acceptable, depending upon local market conditions. Each section begins with a brief description of the type of best practices. This description is followed by one or more examples of the best practice technique as adopted by local jurisdictions.

5.3.1 Narrowly-Tailored Regulations

An effective short-term rental ordinance should be narrowly tailored to address the specific needs of the local community. The potential for over-regulation is a legitimate concern, particularly when a proposed ordinance is driven by the vocal complaints of one or more permanent residents about their negative experiences with nearby short-term renters. Residents often complain that short-term rentals are inherently incompatible with residential neighborhoods and demand an outright prohibition against the use. In those circumstances, the concern is that elected officials, in an effort to please their constituency, may acquiesce to those demands without carefully considering: (a) whether there truly exists a need for short-term rental restrictions; and (b) if a need exists, what regulatory approach is best-suited to addressing the particular needs of the community.

Short-term rental restrictions can be tailored to fit the specific needs of the community in several important ways. As a threshold matter, communities should consider the degree to which short-term rentals need to be regulated. If a community’s overriding concern is that a significant number of residential properties that are being used as short-term rentals are failing to report and pay local and state transient occupancy taxes, then an ordinance requiring short-term rental owners to register their properties with the local government and penalizing noncompliance may be sufficient to address that concern. To the extent that short-term rentals are a problem only in certain residential neighborhoods, a rationally justified ordinance that applies only in those areas

would be a more appropriate response than one that regulates the use more broadly, even in areas where short-term rentals not only are accepted, but also are highly desired.

Best Practice Example: Clatsop County, Oregon. In Clatsop County, the Comprehensive Plan/Zoning Map divides the county into nearly forty zoning district designations, including more than a dozen residential districts.⁸⁰ The county’s short term vacation rental ordinance, however, applies only to properties within the Arch Cape Rural Community residential district.⁸¹

5.3.2 “Grandfathering” Provisions

Short-term rentals that lawfully existed prior to the enactment of a short-term rental ordinance, but are not allowed under the newly adopted ordinance—either because the use is prohibited outright or because the applicant is unable to satisfy the criteria for obtaining a permit—should be allowed to continue (i.e., “grandfathered”) if the property owner is able to demonstrate that the short-term rental use pre-dated the ordinance. Zoning ordinances typically contain a general nonconformity provision that establishes the requirements for a use or structure to secure a legal nonconforming status. However, short-term rental ordinances may also contain specific grandfathering clauses that allow short-term rentals in existence on the effective date of the ordinance to continue even if the property cannot satisfy the applicable requirements.

Best Practice Example: Kauai County, Hawaii. Under Section 8-3.3 of the Kauai County Code, transient vacation rentals are generally prohibited in the R-1, R-2, R-4, and R-6 residential zoning districts, except within the designated Visitor Destination Areas established under the Code. However, under Sections 8-17.9 and -17.10, single-family transient vacation rentals in non-Vacation Destination Areas that were in lawful use *prior* to the effective date of the ordinance are allowed to continue, subject to obtaining a nonconforming use certificate. To obtain a nonconforming use certificate, an owner must provide a sworn affidavit and demonstrate to the satisfaction of the Planning Director that:

[the] dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws . . . up to and including the time of application for a nonconforming use certificate.⁸²

The owner of operator of a transient vacation rental unit bears the burden of proof in establishing that the use is properly nonconforming based on submission of the following documentary evidence: records of occupancy and tax documents, including: State of Hawaii general excise tax and transient accommodations tax filings, federal and/or state income tax returns for the relevant time period, reservation lists, and receipts showing payment of deposits for reservations and fees for occupancy of the subject property by transient guests.⁸³

⁸⁰ See Clatsop County, OR Land and Water Development and Use Ordinance, Table 3.010.

⁸¹ See Clatsop County, OR Ordinance No. 03-13.

⁸² Kauai County Code § 8-17.10(c).

⁸³ Kauai County Code § 8-17.10(e).

Best Practice Example: Monterey County, California. Monterey County’s short-term rental ordinance grandfathers short-term rental units that were in operation before the ordinance was adopted. Section 21.64.280 of the Zoning Ordinance provides:

Transient use of residential property in existence on the effective date of this Section shall, upon application, be issued an administrative permit provided that any such units devoted to transient use are registered with the Director of Planning and Building Inspection and the administrative permit application is filed within 90 days of the effective date of this Section. . . . The owner/registrant shall have the burden of demonstrating that the transient use was established. Payment of transient occupancy taxes shall be, but is no the exclusive method of demonstrating, evidence of the existence of historic transient use of residential property.⁸⁴

5.3.3 Quantitative and Operational Restrictions

Quantitative Restrictions. The use of quantitative restrictions (i.e., fixed caps, proximity restrictions, and maximum short-term to long-term occupancy ratios) as a means of mitigating the impacts of short-term rentals can be viewed in two ways. On the one hand, such limitations on the number of short-term rentals allowed in a community are preferable to an outright prohibition on the use. On the other hand, for property owners desiring to enter the short-term rental market after the effective date of a short-term rental ordinance, a quantitative restriction may act as a barrier to entry. Quantitative restrictions therefore may constitute a reasonable compromise position in circumstances where community support is divided on a proposed short-term rental ban.

Jurisdictions considering a quantitative restriction should carefully consider which technique is best suited to further the needs and goals of the community. For example, if a community finds that the negative impacts of short-term rentals are manifested only when they exist in clusters or in close proximity to one another in a residential neighborhood, then a *proximity restriction* would be a more effective technique than a fixed cap or ratio. On the other hand for a community seeking to maintain a balance between its long-term housing needs and visitor-oriented accommodations, a maximum *ratio* of long term residential dwelling units to short-term rental permits would be more effective than a fixed cap or proximity restriction.

Best Practice Example: Mendocino County, California. Section 20.748.005 of the Mendocino County Code states that the county’s “single unit rentals and vacation rentals” ordinance is intended, in part, “to restore and maintain a balance between the long-term housing needs of the community and visitor oriented uses.” To maintain that balance, the ordinance requires the county to “maintain, at all times, for new vacation home rentals or single unit rentals approved after the effective date of this ordinance, a ratio of thirteen (13) long term residential dwelling units to one (1) single unit rental or vacation home rental.”⁸⁵ While the ordinance does not require any reduction in the number of single unit rentals and vacation rentals in existence on the effective date of the ordinance, no new applications may be approved unless and until

⁸⁴ Monterey County, CA Zoning Ordinance § 21.64.280(d)(1)(b).

⁸⁵ Mendocino County, CA Code § 20.748.020(A).

thirteen new residential dwelling units have been completed since the single unit rental or vacation home rental permit was approved.⁸⁶

Best Practice Example: San Luis Obispo County, California. The vacation rental ordinance adopted by San Luis Obispo County was adopted for the general purpose of ensuring that short-term rental uses “will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.”⁸⁷ More specifically, the county found that “residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents.”⁸⁸ Accordingly, rather than prohibiting vacation rentals in county neighborhoods, San Luis Obispo County adopted the following proximity restriction on the use:

[N]o residential vacation rental shall be located within 200 linear feet of a parcel on the same block on which is located any residential vacation rental or other type of visitor-servicing accommodation that is outside of the Commercial land use category.⁸⁹

Operational Restrictions. Although short-term rental restrictions commonly include some operational restrictions, the restrictions often unnecessarily duplicate generally applicable regulations already adopted by the local jurisdiction. Several of these types of regulations are discussed in Section 5.2 above. In general, the types of negative impacts most commonly cited by communities with short-term rental restrictions—late-night music and partying, garbage left out on the street on non-pickup days, illegal parking, and negligent property maintenance—are community-wide concerns that are best regulated with a generally applicable ordinance rather than one that singles out short-term rentals for disparate treatment. It stands to reason that the impacts that these types of activities have on residential neighborhoods are the same regardless of whether they are produced by long-term residents or short-term renters. Therefore, the best practice technique for addressing those concerns is to adopt a general ordinance that governs the activity or behavior in all areas of the community.

5.3.4 Licensing/Registration Requirements

Virtually all short-term rental ordinances require owners who intend to offer their property for use as a short-term rental to obtain a license or permit prior to commencing the use. In general, licensing and registration requirements enable local governments to create and maintain a database of dwelling units being operated as short-term rentals for code enforcement and transient occupancy tax collection in jurisdictions authorized to collect such taxes. The procedures and criteria for obtaining a short-term rental license or permit should be clearly set out in the local ordinance. Short-term rental licensing and registration applications should be processed administratively and without need for a public hearing. Such licensing/registration requirements should not require a conditional use permit or a similar-type zoning permit.

⁸⁶ See Mendocino County, CA Code § 20.748.020(A)-(B)..

⁸⁷ San Luis Obispo County, CA Code § 23.08.165(a).

⁸⁸ *Id.*

⁸⁹ San Luis Obispo County, CA Code § 23.08.165(c).

Best Practice Example: City of Palm Springs, California. In the City of Palm Springs, residential property owners are required to register the property as a vacation rental prior to commencing the use. Section 5.25.060 of the Palm Springs Municipal Code requires owners to submit a registration form that is furnished by the city and that requires certain information to be provided, including, for example: (a) the name, address, and telephone number of the owner and his agent, if any; (2) the address of the vacation rental unit; (3) the number of bedrooms in the rental unit; and (4) evidence of a valid business license issued for the business of operating vacation rentals, or submission of a certificate that owner is exempt or otherwise not covered by the city’s Business Tax Ordinance for such activity. Vacation rental registration also requires the owner to pay a fee in an amount to be established by the city council, subject to the limitation that the registration fee “shall be no greater than necessary to defer the cost incurred by the city in administering the [vacation rental registration].”⁹⁰

Best Practice Example: City of Encinitas, California. In the City of Encinitas, short-term rental permits likewise require submittal of an application form and payment of a fee no greater than necessary to defer the cost incurred by the city in administering the short-term rental permit program. Short-term rental permits will be granted “unless the applicant does not meet the conditions and requirements of the permit, or fails to demonstrate the ability to comply with the Encinitas Municipal Code or other applicable law.”⁹¹

5.3.5 Inspection Requirements

As noted in Section 3.1.3, many communities require short-term rental properties to pass certain inspections prior to the issuance or renewal of a short-term rental permit. However, mandatory inspection requirements arguably do not advance a community’s interests in protecting and maintaining residential character or preventing the adverse effects of transient occupancy on residential neighborhoods. Therefore, if a short-term rental ordinance is specifically adopted for reasons related to protection of residential character, then a mandatory inspection requirement is unnecessary and should not be imposed upon rental property owners.

Best Practice Examples: Douglas County, Nevada; City of Palm Springs, California; and Sonoma County, California. The short-term rental ordinances adopted by these communities were generally adopted for reasons related to the impacts of short-term rental uses on residential neighborhoods. However, none of these ordinances include a mandatory inspection requirement, either at the time of initial permit issuance or thereafter.

Mandatory inspection requirements may be justified in cases where a short-term rental ordinance is adopted for the purpose (at least in part) of ensuring the safety of short-term rental tenants. For example, one of the stated purposes of the transient private home rental ordinance adopted by the City of Big Bear Lake, California is “to ensure . . . that minimum health and safety standards are maintained in such units to protect the visitor from unsafe or unsanitary conditions.”⁹² It stands to reason that a provision requiring inspection of transient private rental

⁹⁰ City of Palm Springs, CA Municipal Code § 5.25.060(b).

⁹¹ See City of Encinitas, CA Municipal Code § 9.38.040(A)(3).

⁹² City of Bear Lake, CA Municipal Code § 17.03.310(A).

homes in Big Bear Lake to determine compliance with such minimum health and safety standards would further that purpose.

However, even if a mandatory inspection requirement can be justified, the scope of the inspection program should be limited to the initial permit issuance and thereafter only on a reasonable periodic basis. Provisions requiring short-term rental units to be inspected annually (typically as a condition precedent to the issuance of a permit renewal), such as Section 17.03.310(D)(2) of the Big Bear Lake ordinance, are unnecessarily burdensome on owners and the local government alike.

Best Practice Example: City of Cannon Beach, Oregon. The short-term rental ordinance adopted by the City of Cannon Beach provides an example of a more reasonable periodic inspection requirement. Under Section 17.77.040(A)(2) of the Cannon Beach Zoning Code, at the time of application for a new transient rental permit (or new vacation home rental permit) the dwelling is subject to inspection by a local building official to determine conformance with the requirements of the Uniform Housing Code. Thereafter, twenty percent of the dwellings that have a transient rental or vacation home rental permit are inspected each year, so that over a five-year period, all such dwellings have been re-inspected.⁹³

5.3.6 Enforcement Provisions

When short-term rental restrictions are adopted pursuant to a local government's zoning authority and incorporated into the jurisdiction's zoning code, it is reasonable to expect the ordinance to be enforced in accordance with the generally applicable enforcement provisions of the zoning code, if one exists. Similarly, it is reasonable to expect that short-term rental registration and licensing provisions that are incorporated into a community's general (non-zoning) code to be enforced pursuant to the generally applicable code enforcement provision. The short term rental regulations adopted in Tillamook County and Clatsop County, Oregon and Monterey County, California, for example, are enforced in accordance with generally applicable enforcement and penalty provisions.

It is not uncommon, however, for communities to enact special enforcement and penalty provisions in their short-term rental ordinances. Many short-term rental ordinances contain enforcement and penalty provisions that penalize violations more severely than other types of code violations. In Palm Springs, California, for example, a first violation of the Vacation Rental Ordinance is subject to a \$250 fine and subsequent violations are subject to a fine of \$500.⁹⁴ By contrast, under Section 1.06.030 of the Palm Springs Municipal Code, the general penalties for code violations are \$100 for the first administrative citation and \$250 for the second. The Vacation Rental Ordinance does not explain why violations of that ordinance are penalized more severely than other types of code violations.

Enforcement provisions should not penalize short-term rental property owners (or their agents) for violations beyond their control. For example, if a short-term rental *tenant* violates a noise level restriction, the property owner should not be held responsible for the violation.

⁹³ See City of Cannon Beach, OR Zoning Code § 17.77.040(2)(a).

⁹⁴ See City of Palm Springs, CA Municipal Code § 5.25.090(a).

Best Practice Example: Douglas County, Nevada. Chapter 5.40 of the Douglas County Code regulates vacation home rentals in the Tahoe Township. Although the vacation home rental ordinance imposes certain operational restrictions on permitted rental units (e.g., parking and occupancy limitations and trash/refuse container rules), Section 5.40.110 states that a permit may be suspended or revoked only for a violation committed by the owner.

5.41.110 Violation and administrative penalties.

- A. The following conduct is a violation for which the permit [sic] suspended or revoked:
 - 1. The owner has failed to comply with the standard conditions specified in section 5.40.090(A) of this code; or
 - 2. The owner has failed to comply with additional conditions imposed pursuant to the provisions of section 5.40.090(B) and (C) of this code; or
 - 3. The owner has violated the provisions of this chapter; or
 - 4. The owner has failed to collect or remit to the county the transient occupancy and lodging taxes as required by Title 3 of this code.
 - 5. Any false or misleading information supplied in the application process.

Prior to the imposition of fines or other penalties, a short-term rental ordinance should conform to the due process requirements established under state law and/or the local jurisdictions charter or code of ordinances. At a minimum, before fines or other penalties are imposed, property owners should be given notice of, and an opportunity to cure, any alleged violation, except where exigent public safety concerns exist. As demonstrated in the best practice examples below, property owners should be given the opportunity to request a public hearing and have the right to appeal a local government's decision to suspend or revoke a short-term rental permit.

Best Practice Example: City of Encinitas, California. Under Section 9.38.060 of the City of Encinitas short-term rental ordinance, penalties may be imposed and permits may be suspended only in accordance with the following provisions:

- A. The City Manager shall cause an investigation to be conducted whenever there is reason to believe that a property owner has failed to comply with the provisions of this Chapter. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the investigator shall issue written notice of the violation and intention to impose a penalty, or penalty and suspend the permit. The written notice shall be served on the property owner and operator or agent and shall specify the facts which in the opinion of the investigator, constitute substantial evidence to establish grounds for imposition of the penalties, or penalties and suspension, and specify that the penalties will be imposed and/or that the permit will be suspended and penalties imposed within 15 days from the date the notice is given unless the owner and/or operator files with the city clerk the fine amount and a request for a hearing before the City Manager.
- B. If the owner requests a hearing within the time specified in subsection (A), the City Clerk shall serve written notice on the owner and operator, by mail, of the date, time and place for the hearing which shall be scheduled not less than 15 days, nor more

than 45 days of receipt of request for a hearing. The City Manager or his or her designee shall preside over the hearing. The City Manager or his or her designee shall impose the penalties, or penalties and suspend the permit only upon a finding that a violation has been proven by a preponderance of the evidence, and that the penalty, or penalty and suspension are consistent with this Chapter. The hearing shall be conducted according to the rules normally applicable to administrative hearings. A decision shall be rendered within 30 days of the hearing and the decision shall be appealable to the City Council if filed with the City Clerk no later than 15 days thereafter, pursuant to Chapter 1.12.⁹⁵

Best Practice Example: City of Cannon Beach, Oregon. Section 17.77.050(B) of the Cannon Beach Zoning Code provides another example of the notice and public hearing process afforded to short-term rental property owners prior to the imposition of fines or the revocation of a permit.

5. The city shall provide the permit holder with a written notice of any violation of subsection (A)(4) of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
6. Pursuant to subsections (B)(4)(b) through (d) of this section, the city shall provide the permit holder with a written notice of the permit suspension and the reason for that suspension. The permit holder may appeal the suspension to the city council by filing a letter of appeal with the city manager within twenty days after the date of the mailing of the city manager's order to suspend the permit. The city manager's suspension shall be stayed until the appeal has been determined by the city council. The city council shall conduct a hearing on the appeal within sixty days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may uphold, modify, or overturn the decision of the city manager to suspend the permit based on the evidence it received.
7. Pursuant to subsection (B)(4)(e) of this section, the city shall provide the permit holder with a written notice that it intends to revoke the permit and the reasons for the revocation. The city council shall hold a hearing on the proposed revocation of the permit. At the hearing, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the council may determine not to revoke the permit, attach conditions to the permit, or revoke the permit.
8. A person who has had a transient rental occupancy permit or a vacation home rental permit revoked shall not be permitted to apply for either type of permit at a later date.⁹⁶

⁹⁵ City of Encinitas, CA Municipal Code § 9.38.060.

⁹⁶ City of Cannon Beach, OR Zoning Code § 17.77.050(B)

GLOSSARY OF TERMS

Common law: Law developed by judges through decisions of courts and similar tribunals rather than through legislation (statutes) or executive actions.

Due Process: The constitutional protections given to persons to ensure that laws are not unreasonable, arbitrary, or capricious. When such laws affect individuals' lives, liberty, and property, due process requires that they have sufficient notice and opportunity to be heard in an orderly proceeding suited to the nature of the matter at issue, whether a court of law or a zoning board of appeals. Essentially, due process means fairness.

Equal Protection: The right of all persons under like circumstance to enjoy equal protection and security in their life, their liberty, and their property and to bear no greater burdens than are imposed on others under like circumstances.

Nonconforming Use: A use that lawfully existed prior to the enactment of a zoning ordinance, and that is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated, is commonly referred to as a "nonconforming use."⁹⁷

Police Power: The power that resides in each state to establish laws to preserve public order and tranquility and to promote the public health, safety, morals, and other aspects of the general welfare.

Preemption: A doctrine based on the Supremacy Clause of the U.S. Constitution that holds that certain matters are of such national, as opposed to local, character that federal laws preempt or take precedence over state laws on such matters. As such, a state may not pass a law inconsistent with the federal law. The doctrine of *state law* preemption holds that a state law displaces a local law or regulation that is in the same field and is in conflict or inconsistent with the state law.⁹⁸

Public Nuisance: At common law "public nuisance" generally consists of "an unreasonable interference with a right common to the general public, including activities injurious to the health, safety, morals or comfort of the public."⁹⁹

Zoning Enabling Statute: State legislation "authorizing local governments to engage in planning and the regulation of activity on private land."¹⁰⁰

⁹⁷ PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 12:1 (5th ed. 2010).

⁹⁸ Article VI, Section 2, of the U.S. Constitution, commonly referred to as the "Supremacy Clause," provides that the "Constitution, and the Laws of the United States ... shall be the supreme Law of the Land."

⁹⁹ ZONING AND LAND USE CONTROLS § 16.02[2].

¹⁰⁰ See ZONING AND LAND USE CONTROLS, Ch. 1, Introduction and User's Guide § 1.02[2] (LexisNexis Matthew Bender) (hereinafter "ZONING AND LAND USE CONTROLS").