

Analysis of Short-Term Rental Regulation Authority/Options

CURRENT LAW:

Florida Statutes § 509.013(4)(a)(1) and 509.242(1)(c) together define vacation rental use as follows:

“Vacation rental.—A vacation rental is 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.”

““Transient public lodging establishment” means 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.”

The Florida Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of Chapter 509, and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. The DBPR licenses vacation rentals within the state, and has the power to inspect a licensed vacation rental pursuant to Florida Statutes § 509.241.

The DBPR requires each vacation rental to be readily available for inspection, but vacation rentals are not subject to the regular inspection requirements of other transient public lodging establishments, and DBPR only inspects a vacation rental if there is a complaint. (See F.A.C. Rule 61C-1.002(3) and Florida Statutes § 509.032(2)(a) (stating “[p]ublic lodging units classified as vacation rentals are not subject to this [inspection] requirement but shall be made available to the division upon request”).

Florida Statute § 509.032(7)(b) preempts some local regulation of vacation rentals as follows:

“A local law, ordinance, or regulation may not prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.”

Together, these laws prevent local governments from adopting after June 1, 2011 any regulations of residential properties comprised of four or fewer units, regardless of the form of ownership and regardless of the general requirements of the zoning categories applicable to these properties that:

- a. prohibit nightly rentals, or
- b. establish a minimum duration of stay, or maximum number of times per year that the residence can be rented out.

Municipalities may enact laws in furtherance of the public health, safety and welfare, to the extent authorized by the states. *Breard v. City of Alexandria, Louisiana*, 341 U.S. 622, 71 S.Ct. 920, 95 L.Ed. 1233 (1951). Such municipal enactments are, as a general rule, presumptively constitutional. *Goldblatt v. Hempstead*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130 (1962).

In Florida, a municipality is given broad authority to enact ordinances under its municipal home rule powers. *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006) (citing Florida Constitution, Art. VIII, § 2(b), and Florida Statutes § 166.021(1), (3)(c), (4)). Under its broad home rule powers, a municipality may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the State. *Wyche v. State*, 619 So.2d 231, 237–38 (Fla. 1993); see also *Barragan v. City of Miami*, 545 So.2d 252, 254 (Fla. 1989) (stating that the municipal home rule powers act “limits cities from legislating on any subject expressly preempted to state government by general law”). “Preemption essentially takes a topic or a field in which local government might otherwise establish appropriate local laws and reserves that topic for regulation exclusively by the legislature.” *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005). “Express pre-emption requires a specific statement; the pre-emption cannot be made by implication nor by inference.” *Fla. League of Cities, Inc. v. Dep’t of Ins. & Treasurer*, 540 So.2d 850, 856 (Fla. 1st DCA 1989).

The version of § 509.032(7) adopted by Chapter Law 2011-119 revised subsection (7)(a) by adding to the pre-existing preemption over local regulation of public lodging and public food service establishments a preemption related to “matters related to the nutrition content and marketing of food offered in such establishments.” This addition simply sought to prohibit local governments from making restaurants post nutrition content for the menu items. So, whatever (7)(a) had to say about local regulation of vacation rentals didn’t change in 2011.

Subsection (7)(b) was created by Chapter Law 2011-119. It certainly did create a preemption for local regulations restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy. This new (7)(b) allowed local regulations on these matters existing before June 1st 2011 to remain valid.

After backlash from homeowners angry at having to live next to party houses, the Legislature adopted Chapter Law 2014-071 which revised (7)(b). In this version, the Legislature removed broader language regarding local regulations ‘restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.’ Instead, the new (7)(b) merely provided that a local regulation could not “prohibit vacation rentals”, or “regulate the duration or frequency of rental of vacation rentals.” The 2011 version of (7)(b) may well have preempted at least some parts of § 90-116 since some of the parts of that code section “restrict the use” of vacation rentals in terms of certain conduct and certain occupancy limitations. However, the Town did not adopt § 90-116 until 2020. By then, the 2014 version of (7)(b) was in place, which provided for a narrower preemption, to wit: no complete ban on vacation rentals, and no regulation of rental frequency or duration. The Town’s § 90-116 does not do either. Thus, there is no express preemption of § 90-116 under the 2014 version of (7)(b).

Preemption may also be implied. Implied preemption “occurs when the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive

scheme. In other words, preemption is implied when the legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature.” *D’Agastino v. City of Miami*, 220 So.3d 410 (Fla. 2017) (internal citations omitted).

While it appears no Florida appellate court has yet written an opinion on the application of Florida Statutes § 509.032(7), the few Florida courts to have addressed similar regulations as applied to the statute’s preemption language have found no preemption. For instance, in *30 Cinnamon Beach Way, LLC v. Flagler County*, case no. 2015-CA-167 (Fla. 7th Judicial Circuit, Flagler County (June 1st 2015), *affd.*, 183 So.3d 373 (Table), 2016 WL 194800 (Fla. 5th DCA 2016), the plaintiff, a vacation rental company, filed a complaint seeking to invalidate a Flagler County ordinance enacting certain regulations for vacation rental units, alleging they were preempted by the statute. Plaintiff filed an *Emergency Motion for Preliminary Injunction* seeking to enjoin the enforcement of the ordinance. With one limited exception (not relevant to this case), the circuit court denied the injunction. In finding the Flagler ordinance was not preempted, the court employed the following reasoning:

The phrase “preempted to the state” appears in section 509.032(7) prior to its amendment in 2011. Immediately prior to June 1, 2011, section 509.032(7) provided as follows:

The regulation of public lodging establishments and public food service establishments, including, but not limited to, the inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards adopted under this section, and the regulation of food safety protection standards for required training and testing of food service establishment personnel *are preempted to the state*. This subsection does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to [the cited statutes]. (emphasis added)

In 2011, however, the Legislature enacted Chapter 2011-119, Laws of Florida, effective June 2, 2011. The short title of this law, which substantially amended section 509.032(7), identifies one of its purposes as

prohibiting local governments from regulating, restricting, or prohibiting vacation rentals based solely on their classification, use, or occupancy; providing exceptions; revising authority preempted to the state with regard to regulation of public lodging establishments... (emphasis added).

Chapter 2011-119 both amended the language of the existing statute and added an entirely new subsection (b), as shown below:

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, ~~the inspection of public lodging establishments and public food service establishments for compliance with the sanitation standards, inspections, adopted under this section, and the regulation of food safety protection standards for required training and testing of food service establishment personnel, and matters related to the nutrition content and marketing of food offered in such establishments, is are~~ preempted to the state. This ~~paragraph subsection~~ does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to [cited statutes].

(b) 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.

As noted above, the statement that regulation of public lodging establishments is preempted to the state is in both the pre- and post-June 2011 versions of section 509.032. Yet, in enacting Chapter 2011-119, the Legislature went even further, specifically stating that local governments were prohibited from regulating, restricting, or prohibiting vacation rentals.

The Legislature amended section 509.032 yet again in Chapter 2014-071. The short title of this law identifies its purpose as “revising the permitted scope of local laws, ordinances, and regulations regarding vacation rentals...” This enactment, effective July 1, 2014, left section 509.032(a) intact, and amended section 509.032(b) into its current form as follows:

(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.

The Legislature is presumed to know the existing law when it enacts a statute. Despite the language of preemption in the pre-June 2011 version of section 509.032(7), the Legislature saw fit to amend the statute to prohibit local governments from regulating or restricting vacation rentals. If the preemption language of the then-existing statute already prohibited local regulation, then it would have been unnecessary for the Legislature to add section 509.032(7)(b). The Court cannot conclude that the Legislature amended the statute for nothing; it clearly meant for the amendment to accomplish something the original statute did not. Likewise, the 2014 amendment to section 509.032(7)(b) was obviously undertaken with knowledge of what the statute then said. The Legislature removed language prohibiting local governments from restricting the use of vacation rentals or regulating vacation rentals. It instead substituted a prohibition only against regulating the duration or frequency of rental vacation rentals.

Based on the foregoing, the Court cannot conclude that the State has by virtue of section 509.032(7)(a) completely preempted the field of regulating short-term vacation rentals, their inclusion in the definition of “transient public lodging establishments” notwithstanding. The 2014 amendment of section 509.032(7)(b) allows local governments to regulate short-term vacation rentals, so long as they do not prohibit them, regulate the duration of rentals, or regulate the frequency of rental. *** To read section 509.032(7) any differently would render the Legislature’s actions in amending the statute in 2011 and 2014 meaningless surplusage.

30 Cinnamon Way, pgs. 8-11. (citations omitted).

Similarly, in *Fitz v. City of Vero Beach*, 2016 WL 3921482 (Fla. 19th Circuit Court, March 11th 2016), the owner of three short term rental investment properties in Vero Beach filed a declaratory judgment action against the city alleging a regulatory ordinance it adopted in 2015 violated the preemption language in Florida Statutes § 509.032(7). In denying the owner’s summary judgment motion, the court opined in relevant part as follows:

WHETHER ORDINANCE 2015-02 IS PREEMPTED BY SECTION 509.032(7)(b)

8. Fitz contends in Count I of his Second Amended Complaint that when section 509.032(7)(b), became effective on June 2, 2011, there was nothing in the City’s Code that regulated the duration or vacation rentals; therefore, the statute precluded the City in 2015 from enacting the Ordinance 2015-02 which Fitz claims regulates the duration of vacation rentals by amending the definition of “guest house and transient quarters” and adding the definition of “transient” and “transient occupancy.”

9. The City responds that there is nothing in the Code which prohibits or regulates the duration of vacation rentals. Instead, the challenged provision of the Code, as amended by the Ordinance, regulates the land use “guest house and transient quarters.” The City contends that it has consistently regulated the land use “guest house and transient quarters” since at least 1977, well before the Legislature amended section 509.032.

10. In Ordinance 1977-1334, this use was not a permitted land use in any zoning district but was merely a conditional use in the Transient Residential District (R-3), the Restricted Commercial District (R-3A), the Tourist Commercial District (C-1A), the Highway Oriented Commercial District (C-1), and the Central Business District (C-24). The 1977 Ordinance definition of “Guest Houses and Transient Quarters” set forth in the ordinance was:

Any structure, including converted dwellings in which less than ten room, with or without meals are rented or otherwise provided for compensation to transients for their temporary care and lodging.

Under that ordinance this land use was not a permitted or conditional land use in the R-1A zoning district in which Fitz’s properties are located.

11. In 1986, the City adopted Ordinance 1986-43 which repealed the zoning ordinances existing under the 1977 version of the Code and adopted Title IV of the Code. Chapter 60, the definitions section of Title IV, specifically defined the land use “guest house transient quarters” as;

Guest house transient quarters: Any structure including converted dwellings in which less than ten (10) rooms, with or without meals, are rented or otherwise provided for compensation to transients for their temporary care and lodging.

12. The City also adopted two more ordinances amending Title IV, Ordinance 1987-29 and 1991-06. The 1991 Ordinance eliminated the land use “guest house and transient quarters” as a permitted or conditional land use in any residential zoning district. This prohibition and regulation has remained in place through the present date and was in effect at the time Fitz purchased his properties.

13. Fitz's houses constitute a “guest house and transient quarters” under the plain reading of the Code. As such they are not permitted or conditional uses in the R-1A zoning district and have not been permitted since at least 1977. The 2015 addition of the definitions of “transient” and “transient occupancy” to chapter 60 of the Code does not substantively change the definition of “guest house and transient quarters.”

14. In addition, the court finds no merit to Fitz's contention that the addition of the rebuttable presumption in the definition of “transient occupancy” is a regulation on the duration or frequency of vacation rentals. This rebuttable presumption regulates nothing; rather it is an evidentiary tool by which “an inference [is] drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. Black's Law Dictionary (8th ed. 2004); see *Universal Ins. Co. v Warfel*, 82 So. 3d 47, 51 (Fla. 2012).

15. Fitz's reliance on the appellate case of *City of Vero Beach v. John and Tracey Carroll*, Case Number 312013AP000016 (Code Enforcement Case Number 13-CE-3954) is misplaced. In *Carroll*, the Appellate Division of the Circuit Court reviewed the administrative action of the Code Enforcement Board and issued a per curiam affirmance of the Code Enforcement Board's decision [that “[t]he City Code is vague on this issue and therefore there was no violation of sections 60.11 and 60.02 – operating a guest house and transient quarters in a residential zone].” The per curiam opinion has no precedential value. See *St. Fort v. Post Buckley, Schuh & Jernigan*, 902 Sp.2d 244, 248 (Fla 4th DCA 2005); *State Comm'n on Ethics v. Sullivan*, 430 So. 2d 928, 932 (Fla. 1st DCA 1983).

16. The court concludes that the City's regulation of Fitz's property as a “guest house and transient quarters” and the prohibition of such land use in the residential zoning districts was well settled and existed in the Vero Beach Code at the time section 509.032(7)(b), Florida Statutes, became effective. Further, Ordinance 2015-02 did not make any substantive changes to the definition of “guest house and transient quarters.” Therefore, Ordinance 2015-02 was not preempted by the statute.

17. The plaintiffs request for summary judgment is therefore denied as to Count I. Although there is no dispute concerning the facts, the Plaintiff's argument is not supported by the law.

See also, *Florida Gulf Coast Vacation Homes, LLC v. City of Anna Maria*, 2016 WL 7647544, *1 (Fla. 12th Circuit Court, April 11th 2016), wherein the court granted summary judgment to the Town of Anna Maria in a preemption challenge to a 2015 vacation rental regulation because:

After a review of the Ordinance and Section 509.032(7), the Court finds that the Ordinance does not conflict with Section 509.032(7). The Ordinance does not prohibit vacation rentals that have historically been rented to more guests than is permitted under the occupancy regulations set forth in the Ordinance. The limitation on occupancy is a regulation that does not impinge in any way on the regulatory subjects of frequency or duration of rental as outlined in Section 509.032(7). Therefore, the regulation of the Ordinance is not in conflict with and is not preempted by Section 509.032(7).

Finally, while there appears to be no full appellate court opinion on the topic, The Town notes that its position is supported by footnote four to the opinion in *Mojito Splash, LLC v. City of Holmes Beach*, 326 So.3d 137, n. 4 (Fla. 2d DCA 2021). While *Mojito Splash* was a Bert Harris Act case, it related to the adoption by Holmes Beach of vacation rental occupancy rules. The plaintiff had argued in part that the City's rules were preempted by Florida Statutes § 509.032(7). However, the court dismissed this argument in footnote four as follows:

As part (sic) its argument that Ordinance 08-05 lacked "teeth," Mojito suggests that a 2011 amendment to section 509.032(7), Florida Statutes (2018), preempted the City from adopting any ordinance regulating vacation rentals. See ch. 2011-119, § 7(b), Laws of Fla. (prohibiting "[a] local law, ordinance, or regulation" from "restrict[ing]," "prohibit[ing]," or "regulat[ing] vacation rentals based solely on their classification, use, or occupancy"). However, Mojito overlooks the language exempting "any local law, ordinance, or regulation adopted before June 1, 2011." Id. In any case, the legislature amended section 509.032(7) in 2014 to remove the preemptive language covering occupancy restrictions in vacation rentals. See ch. 2014-71, § (7)(b), Laws of Fla. Thus, the City was not preempted from adopting Ordinances 15-12 and 16-02, as consistent with its 2009 amendment to its Comprehensive Plan. See *City of Miami v. AIRBNB, Inc.*, 260 So. 3d 478, 482 (Fla. 3d DCA 2018) (holding that the City's 2016 re-adoption of the zoning code was not preempted because its substantive content was identical to the provision already in place in 2009, during the period protected by section 509.032(7)(b)'s grandfather clause).

Emphasis added. The foregoing language is best characterized as *dicta*. However, it is at least consistent with the conclusion that local regulations of STRs which do not restrict frequency or duration of renting, and do not completely ban STRs, are not preempted by the 2014 version of the statute.

REGULATORY OPTIONS:

There are a variety of ideas which opponents of short-term renting have proposed which either are

clearly not allowed by law, or which, while no appellate court has yet ruled on the matter, may not survive judicial challenge. However, there are many things that local governments can do to regulate the impact of short-term rentals (STRs) and attempt to recapture the cost of public services devoted to them. These ideas and options are addressed below.

Questionable Regulations

Limiting to Certain Zones. While some have suggested STRs can be made allowable only in some residential zoning districts but prohibited in others, Attorney General Opinion 14-09 opined that a local government cannot use zoning to prohibit vacation rentals in a particular area where residential use is otherwise allowed.

Denying Authorization Without State Registration. Another idea is to insist the STR operator/owner prove compliance with the registration and licensing requirements in Florida Statutes § 509.241 (surrounding hotel/motel licensure). However, Attorney General Opinion 14-09 opined that “a local government cannot prohibit the operation of a vacation rental that does not have proper licensure by the state.”

Create Separation Requirements. Some opponents suggest implementing distance separation requirements between STRs or limiting the percentage or number of STRs in a given street or neighborhood. Unfortunately, in Attorney General Opinion 16-12, the Attorney General opined that “a city may not impose spacing or proportional regulations that would have the effect of preventing eligible housing as defined in Section 509.242, Florida Statutes, from being used as a vacation rental.”

Legitimate Regulations

Registration. The Town may establish a registration requirement as a means of identifying, monitoring, and assuring the compliance of STRs with Town codes. The ordinance would require vacation rentals to register with the municipality in order to operate.

A precondition of registration can be an assurance that the STR fully complies with relevant Town codes, and state building, fire, and other safety codes. Registration would involve an initial inspection, payment for fees for applications and for inspection, and payment of business tax receipt.

The ordinance should specify what is required as part of the registration application. Some information the Town may want to seek would be:

- Identifying and contact information for the owner and responsible party (usually a management company)
- all listing services on which the STR is offered for rent
- a copy of the state license to ensure the state collects applicable sales and tourism taxes (the Town already possesses the right for such verification pursuant to Florida Statutes § 205.194(1) (requiring business tax receipt applicants to provide the municipality with a copy of its active state license before obtaining the tax receipt))

- a floor plan of the residence to allow the Town to confirm the STR's occupancy limit
- a drawing of onsite parking spots
- a copy of the STR's conduct rules applicable to guests and a description of how the STR ensures guests are knowledgeable of the rules
- a copy of the STR's disclosure of applicable Town rules (trash pickup days/can location, noise code limitations, parking restrictions, etc.), and a policy covering how the STR will ensure guests receive a copy of these rules

Operation without registration, operating beyond occupancy limits and furnishing false information in the application would be separate violations of the Code.

The application should also have the applicant expressly acknowledge in writing his/her/its knowledge of the Town's regulations and the obligation to ensure they are complied with. The application would be attested to, such that any false statements can be used as an independent basis to pursue revocation of the right to operate.

In terms of a period for the renewal, registration can be effective for one year, and the owner can be required to renew annually so as to allow the Town to verify the STR continues to remain in compliance. Registrants can be required to be amended their applications during the term to reflect changes to the property's layout, identity of the owner or responsible party, or changes in the platform(s) hosting the STR listing.

The ordinance may also require a procedure for transfers to new owners, or may require a new owner to file a new application and obtain licensure independently. Whether the registration transfers or is required to be replaced, the ordinance should set a deadline for documentation of the change of ownership.

If annual registration is required, the Town should consider providing reasons and procedures for suspension or revocation of a STR registration. Suspension or revocation justifications could include:

- failure to provide guests with a copy of internal conduct rules
- failure to provide guests with a copy of applicable Town code requirements
- untruthful or incomplete information submitted in support of an annual STR registration permit
- failure to pay fees or taxes due to the Town or State
- X number of code violations occurring on the STR property (as admitted or found by the Special Magistrate and not overturned on appeal) within the 12 month registration period, whether such violations were due to conditions on the property (illegally parked cars) or conduct of guests (noise violation, litter, public urination)

To prevent STRs from complaining that they do not know for sure which rules of the Town may apply to them, the Town may wish to develop a "plain English" document posted to its website which would be usable by STRs as a baseline source of applicable Town laws and regulations.

Of note, while the Code Deputy may cite an individual guest (for instance due to excessive noise), that violation could be counted as a violation happening on the STR property which would support eventual suspension or termination. A termination should last no longer than one year to avoid legal claims.

Inspection. While no Florida appellate court appears to have addressed the question of local inspection of STRs, Florida Statutes § 509.032(2)(a), dealing with inspections of public lodging, provides in relevant part:

The division has jurisdiction and is responsible for all inspections required by this chapter.
*** The division shall inspect each licensed public lodging establishment at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually. Each establishment licensed by the division shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare.

However, that same subsection creates an exception for vacation rentals:

Public lodging units classified as vacation rentals or timeshare projects are not subject to this requirement but shall be made available to the division upon request.

Under this statutory scheme, there can be an argument that, unlike other public lodging establishments (for which the division has the sole duty to inspect at set intervals), STRs are not subject to such inspections, and thus a local government retains an ability to also conduct inspections. And it is clear that local governments may still conduct inspections related to the fire and building codes. See, *Eisenberg v. City of Miami Beach*, 1 F.Supp.3d 1327 (S.D. Fla. 2014) (while the Florida statute governing the regulation of public lodging and food service establishments generally preempts regulation of public housing establishments, it exempts certain regulation by local government; statute does not preempt a municipality from conducting inspections of public lodging establishments to ensure compliance with the Florida Building Code and Fire Code.).

An annual inspection of the STR property by the Town is premised on the theory that an owner occupant or long-term renter exercises more control over and is more aware of the state of the residence, and can better protect him/herself. By contrast, nightly renters won't know that the smoke detectors do not work, or about other hidden problems that could affect their health, safety and welfare. Because state laws specifically exclude vacation rentals from the inspection schedules applicable to hotels and other hospitality uses, most municipalities have found it important to include an annual inspection requirement.

However, prevailing federal court opinions on administrative searches suggest that the Town must also confine its inspections to just be associated with the initial and annual renewal process. Government searches conducted without a warrant are per se unreasonable subject to only a few exceptions, one of which is if the government received consent to conduct the search. *City of Los Angeles, Calif. v. Patel*, — U.S. —, 135 S. Ct. 2443, 2452 (2015). This is true not only for searches conducted by police officers for evidence of a crime but also for administrative searches

conducted for purposes of civil code enforcement. *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523, 534 (1967). The Fourth Amendment protects against searches of commercial premises as well as homes. *See v. City of Seattle*, 387 U.S. 541, 545 (1967).

In *City of Los Angeles v. Patel*, --- U.S. ---, 135 S.Ct. 2443, 192 L.Ed.2d 435 (2015), the Supreme Court found that a part of the Los Angeles City Code which required hotel operators to retain records about guests for a ninety-day period was facially unconstitutional under the Fourth Amendment because it did not allow for pre-compliance review. The Los Angeles law required hotels to keep certain specified information about their customers, including the name and address, vehicle information, dates of the stay, room number, and how the customer paid the bill, among other information. If a police officer requested the information, the hotel had to make it available or face penalties.

While the City argued to the lower courts that hotels were “closely regulated businesses” (affording more leeway to conduct warrantless inspections), the Supreme Court found the City provided no evidence to support that argument. The court noted that the type of search the Los Angeles ordinance authorized was an administrative one, which meant that its purpose was to ensure that the hotel operators were complying with the record requirement. The court noted that precedent has held that there must be an opportunity for the subpoenaed party to contest the subpoena for an administrative search before penalties are imposed. Such pre-compliance review is necessary to ensure that the search is not a pretext to harass the business owner. The Court also held that hotels are not a “closely regulated” business and therefore do not fall under that exception to the warrant requirement.

In a Fourth Amendment challenge to a similar administrative inspection scheme, the court in *Sweet Sage Cafe, LLC v. Town of North Redington Beach*, 380 F.Supp.3d 1209 (M.D. Fla. 2019) applied *Patel* to find that a requirement in a business tax license code which allowed regulatory inspections tied to compliance with the town code where the inspector was:

inspecting a licensed business engaged in a closely-regulated industry and where the inspector had a reasonable good faith belief, based on a record of non-compliance or other verifiable evidence of probable non-compliance to include citizen complaints, that providing advanced notice of the inspection may allow the business to conceal the code violation which was the subject of the violation

was still a violation of the Fourth Amendment since there was no provision for pre-compliance review as required in *Patel*. Thus, after the 2015 *Patel* decision and 2019 *Sweet Sage* decision, it is very highly unlikely that a warrantless search provision in an ordinance regulating STRs would survive a Fourth Amendment challenge. Thus, assuming an owner does not consent to a search not related to the annual application process, the Town would be required to obtain an administrative search warrant following the procedures in Florida Statutes § 933.20 *et seq.*

In light of the foregoing law, an annual inspection associated with the application/renewal process and consented-to inspections would be the only inspections options the Town should consider without obtaining an inspection warrant.

Identification of Responsible Parties; Duties.

Most ordinances adopted by Florida jurisdictions require the owner to identify the local property agent (if not the owner) designated with authority and responsibility to manage the property and respond to issues. Because most STRs involve the rental of the entire unit, there is no guarantee that the owner is local, or even living in the U.S. Having a local point of contact (an individual, not just a corporate entity) designated with responsibility is essential to effective management of the use in the Town. Questions about the duties of the responsible party include:

- Will they be required to reside within a certain distance of the STR?
- Are they required to be onsite at certain times?
- If not onsite when an issue arises, how quickly are they required to respond based on the severity of the issue? Life/safety issues or issues immediately impacting neighbors, such as noise and parking, should require a more prompt resolution time vs. issues such as documentation deficiencies.
- What level of authority must the responsible party have to immediately act to resolve an issue?
- What is the owner's plan when the responsible party is unavailable due to illness, travel, etc.?

The code should require that the contact information for the responsible party be conspicuously displayed at the STR in a common area location (such as the entryway), so that the first recourse of the guest will be with that person and not with Town officials.

Another potential duty for the responsible person would be an obligation to document each complaint received and the response provided. This information should be provided by the STR owner at application time as a means to let the Town understand what issues commonly arise at the STR to ensure current regulations are sufficient and that the owner is ensuring compliance.

Registration of sexual offenders with law enforcement; Requirement that the STR not be rented to such persons if within statutory prohibited distance limits.

While the courts have not yet ruled on this requirement, the Town could require the responsible party to assure that sexual offenders and predators are timely registered with law enforcement pursuant to statute prior to arrival at the vacation rental, and that the vacation rental not be rented to such persons if it is within the prohibited distance of protected uses such as schools, parks and playgrounds. These provisions are already required by statute, but the Town's code could make the failure to comply with the statute a basis for code enforcement citation and potentially for revocation.

False advertisement. The Town could elect to prohibit advertisement of STRs in violation of the ordinance's requirements. For instance, if the Town adopts an occupancy limit, and the owner allows the property to be listed for rent at a capacity above that limit, this would be a code violation.

Occupancy limits. The statute does not preempt a local government's right to set occupancy limits for STRs beyond those that may apply pursuant to minimum housing codes. Typical regulations will allow a maximum of 2 overnight guests per permitted bedroom (in other words, the number of bedrooms built in the home per the building permit) plus one or two more, to approximate normal occupancy of a residence and avoid overcrowding that could pose safety, parking, sanitation, noise and other problems. Usually, the jurisdiction will add an overall top limit to the number of occupants (often 12 overnight guests is chosen) regardless of the number of bedrooms. This is done because even if a home may have 8 bedrooms, large rental parties often bring multiple vehicles which the homesite is not designed to accommodate, which will result in unauthorized parking. The Town would need to determine if infants or some very young children would count toward an occupancy limit.

Finally, the Town may wish to set a maximum number of non-overnight visitors (guests of the renters) who must not be on the property between, for instance, 10.p.m. and 8 a.m. This limitation may be important when dealing with larger homesites being rented since it is not uncommon for one person or family to rent such a home, then "host" a large wedding party of 30 or more persons brought in by bus or otherwise.

Safety Equipment. Since the State does not actively inspect STRs, the Town may wish to require key safety equipment such as emergency defibrillators, fire extinguishers and carbon monoxide/smoke alarms are installed and working, and that state requirements for pool and hot tub safety are complied with.

Renter Obligations.

Guests should be separately-obligated to comply with the Town's parking, trash, sea turtle, noise and other applicable codes, and should be subject to citation should the responding Deputy find them in violation. Again, a guest's violation can be used as the basis to eventually suspend or revoke the owner's annual registration.

Parking. Requiring the responsible party, on applying each year, to submit a parking plan to the Town will assist the Deputy with knowing where cars should be on the property. The code should probably also address restrictions on oversized or specialty vehicles catering trucks are a common problem), including whether they can be parked overnight on the property, where they must park, and whether overnight occupancy of RVs, campers, boats, or other similar vehicles is allowed.

Wedding events. While the courts do not have appeared to ruled on such a limitation, the Town may wish to provide that only a certain number of weddings may be conducted at the STR per 12 month registration period. Responsible parties would need to provide written notice to the Town at least one month in advance of any such event so the Town could plan for additional law enforcement monitoring.

Noise. The ordinance may noise limits upon STRs beyond those applicable in the Town's general noise ordinance. This differentiation in treatment would be justified in light of the clearly documented late night noise issues, including amplified music, which occur when persons are short-term renting on a vacation vs. noise commonly generated by a long-term resident. One option

is to provide that an STR may not have amplified sound (either affixed to the house or by way of portable amplification equipment) outside of the interior of the STR at any time.

Pool/hot tub use. The Town could provide that use of an STR's pool or hot tub must cease at some hour such as 10 p.m. Such a restriction is similar to closure times placed on similar facilities at hotels and motels, and would be supported as an additional effort to prohibit late-night, alcohol-infused disturbances and the resulting drain on law enforcement services to respond.

Regulatory Costs:

First, Florida law allows a local government to collect a business license tax, it must be established pursuant to Florida Statutes §§ 205.042 and 205.043. While owners may argue the Town should assess and recover any regulatory costs via the occupational license tax certificate process set out in these statutes, the Florida Attorney General has opined:

A regulatory license fee enacted pursuant to municipal police powers, is not within the purview of chapter 205. A regulatory license fee judicially differs from an occupational license tax by the necessity of some standards for regulation and control. The regulatory fee must be reasonably commensurate with the actual municipal expense associated with the regulatory license process and the cost of regulation. The activity or vocation subject to regulation must be one affected with the public interest and then regulated only in the manner reasonably necessary to protect the public interest.

AGO 74-21.

Next, only the Florida Legislature is authorized to authorize the levy of a tax. Florida Constitution Art. VII, § 1(a) (preempting creation of taxes to the state). However, pursuant to Florida Statutes § 166.221:

Regulatory fees

A municipality may levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

A municipality may not impose a regulatory fee pursuant to Florida Statutes § 166.221 on a business which is regulated *exclusively* by the Department of Professional Regulation, since regulation and licensure of such a business has been preempted to the state. See, AGO 93-8. As for the difference between an unauthorized tax and a valid regulatory fee:

The difference between a liquor license fee and a tax may be thus stated: Where the fee is imposed for the purpose of regulation, and the statute requires compliance with certain conditions in addition to the payment of the prescribed sum, such sum is a license proper, imposed by virtue of the police power; But where the fee is exacted solely for revenue

purposes, and payment of such fee gives the right to carry on the business without the performance of any other conditions, it is a tax.

***Bateman v. City of Winter Park*, 160 Fla. 906, 37 So.2d 362 (1948).**

Thus, in conjunction with the Town's adoption of a regulatory scheme for STRs, it can require the payment of an annual registration fee associated with the cost of administering the regulations. However, while some suggestions in the community have been for the Town to adopt an annual fee which is exceedingly high so as to discourage use of a property as an STR, the Town should design the fee to be a close approximation of its costs associated with the additional regulatory and enforcement costs it will incur due to the operation of the STR.

Ordinance Examples:

To assist Commissioners in thinking through what regulations it may wish to adopt, I am attaching to this memorandum a variety of other STR regulations which appear to be comprehensive and effective in their communities.

Legislative Relief:

Ultimately, while Florida's municipalities and counties can adopt a host of regulatory measures and associated fees, unless the Legislature restores local home rule authority to the State's cities and counties in this field, local governments will continue to incur the burdens associated with becoming de-facto hotel managers, and local residents will continue to see the fabric of their home towns deteriorate as more and more traditional family homes convert to vacation rental operations.

The Legislature has the option to provide relief by repealing its 2011 preemption of local authority to prohibit short-term renting. If the Legislature were to do this, it should make clear in the law that properties which would be operating as vacation rentals when the repeal becomes effective would not be allowed to continue operating under a "grandfathering" theory should the local government decide to ban such rentals.

If the Legislature does not wish to completely repeal its preemption, then the Legislature could at least remove the current prohibition of local regulations setting limits on the frequency or duration of short-term rentals at a given property during a year.

ARTICLE V. VACATION RENTAL

DIVISION 1. GENERAL PROVISIONS

Sec. 10-75. Authority, scope and purpose.

This chapter is enacted under the home rule power of the City of Indian Harbour Beach in the interest of the health, peace, safety and general welfare.

F.S. § 509.013, provides a distinction between "transient public lodging establishments" which are rented, or advertised or held out for rental to guests more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less; and "nontransient public lodging establishments" which are rented, or advertised or held out for rental to guests for periods of at least thirty (30) days or one (1) calendar month, whichever is less.

F.S. § 509.242(1)(c), further provides for a subset of transient public lodging establishments, called "vacation rental" which is 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.

It is the intent of this chapter to regulate vacation rentals as defined by Florida Statutes, which are located in the R-1A, R-1AA, R-1AAA and R-2 zoning districts of the City of Indian Harbour Beach, which collectively are referred to herein as "Vacation Rentals".

In 2011, the Florida Legislature passed House Bill 883, (Chapter 2011-119, Laws of Florida), amending F.S. § 509.032(b), to provide that "[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."

In 2014, the Florida Legislature passed Senate Bill 356 (Chapter 2014-71, Laws of Florida), amending that same statute to read "[a] local law, ordinance, or regulation may not prohibit vacation rentals, or regulate the duration of frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011."

The official statement of legislative intent of Senate Bill 356 as reflected in the House of Representatives' Final Bill Analysis, dated June 19, 2014, states that the "Effect of the Bill" is as follows:

"The bill permits local governments to create regulation that distinguishes vacation rentals from other residential property. In the past, local government regulations have included noise, parking, registration, and signage requirements for vacation rentals.

"The bill does not allow local governments to create regulations that would prohibit vacation rentals or restrict the duration or frequency of vacation rentals. These types of regulation remain preempted to the state.

"The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained. Any local law, ordinance, or regulation passed before that date that prohibits or restricts vacation rentals based on the duration or frequency may continue to be enforced."

This chapter does not prohibit vacation rentals, or the duration or frequency of vacation rentals, nor is it the intention of the City of Indian Harbour Beach to do so, but rather this chapter is intended to address life safety and compatibility concerns in the interests of the health, peace, safety, and general welfare.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-76. Findings of facts.

Based on information presented to the city by residents of Indian Harbour Beach and owners and operators of vacation rentals, the practical first-hand experience and observations of city council members, common sense deductions of city council members based on long term experiences in Indian Harbour Beach, information learned by city council members from various residents, information from the U.S. Census, as well as evidence and testimony presented at public hearings before the city council, and on the Short-Term Rental Housing Restrictions White Paper, prepared by Robinson & Cole, Attorneys at Law, in 2011, prepared for the National Association of Realtors®, the city council finds:

- (1) Residents residing within their residential dwellings are inherently familiar with the local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from their residential dwellings, thereby minimizing potential risks to themselves and their families.
- (2) In contrast, transient occupants of vacation rentals, due to their transient nature, are typically not familiar with local surroundings, local weather disturbances, local hurricane evacuation plans, and means of egress from the vacation rentals in which they are staying, thereby increasing potential risks to themselves and their families, and putting an additional burden on, and potentially putting at risk, emergency personnel in the event of an emergency situation.
- (3) Certain vacation rentals may be presently located within the R-1A, R-1AA, R-1AAA and R-2 zoning districts of the City of Indian Harbour Beach.
- (4) Vacation rentals, left unregulated, can create negative impacts within residential neighborhoods due to excessive noise, parking and traffic problems, excessive use and impact on public services and public works, extreme size and/or greater occupancy.
- (5) Vacation rentals situated within residential neighborhoods can disturb the quiet nature and atmosphere of the residential neighborhoods, and the quiet enjoyment of its residents.
- (6) Vacation rentals located within established residential neighborhoods can create negative compatibility impacts relating to extreme noise levels, late night activities, on-street parking issues and traffic congestion.
- (7) A residential dwelling is typically the single largest investment a family will make with the residents of the residential dwelling desiring the tranquility and peaceful enjoyment of their neighborhood without excessive noise and increased parking issues and traffic congestion caused by transient occupants of vacation rentals.
- (8) According to the U.S. Census, (2010) the City of Indian Harbour Beach has an average household size of 1.68 persons.
- (9) According to the U.S. Census, (2010) the City of Indian Harbour Beach has an average family size of 2.21 persons.
- (10) According to the U.S. Census, (2010) the City of Indian Harbour Beach has an average household size of owner-occupied units of 2.11 persons.
- (11) According to the U.S. Census, (2010) the City of Indian Harbour Beach has an average household size of renter-occupied units of 2.32 persons.

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- (12) Vacation rentals situated in R-1A, R-1AA, R-1AAA and R-2 zoning district can and do create a great disparity in occupancy.
 - (13) The city finds that such rentals increase the demands upon code enforcement, police, fire and emergency services beyond those created by non-vacation rental residential dwelling units.
 - (14) Vacation rental use and longer term residential use and ownership are generally incompatible, due to rapid turnover associated with short term vacation residential use and its disruptive effect on the peaceful use and enjoyment of residential areas.
 - (15) The primary reasonable investment-backed expectation of owners of residential dwelling units in the city is the use that is a residence and not a vacation rental.
 - (16) Vacation rentals is a use that is more in nature, that is best accommodated by hotels, motels and timeshares; and,
 - (17) The regulation of vacation rentals will contribute to the stability of existing residential neighborhood.
 - (18) The regulation of vacation rentals will protect visitors to the city by assuring that fire and safety inspections are periodically conducted, that they receive necessary information about the dwelling which they have rented, and notifying them of the owner of the dwellings obligation to provide for their safety and welfare.
 - (19) The regulation of vacation rentals is necessary in order to protect the public health, safety and welfare of the city, its residents and its visitors.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-77. Definitions.

The following terms as used in this chapter are defined as set forth hereinafter:

Bedroom means any room in a vacation rental which has a bed or other place for sleeping and a separate closet that is an integral part of the permanent construction within the bedroom or an ensuite bathroom, and complies with the Florida Fire Code and Florida Life Safety Code as a bedroom, but shall not include a bathroom, a kitchen, a dining room, or any main living area. If a room has been added, altered, or converted without any required building permit having been granted, such room shall not be deemed a bedroom. If a previously approved bedroom exists as of the effective date of this code and does not have a separate closet that is an integral part of the permanent construction of the structure, but rather utilizes an armoire or other furniture piece for clothing storage, the requirement for a closet to qualify as a bedroom is waived.

City Code shall mean the City of Indian Harbour Beach Code of Ordinances, Zoning Code, Land Development Regulations, Comprehensive Plan and Future Land Use Map and applicable Resolutions.

Living area. The area under roof designated primarily for habitation and specifically excluding garages. As used in this chapter, the total living area shall be computed as follows: The exterior dimensions of all enclosed spaces within the framework of the building unit (length and width), multiplied and totaled, as follows:

- (1) Any room or area accessible from any other room or area within the framework shall constitute living area.
- (2) A room or area must be totally enclosed by walls and covered by roofing.
- (3) A room or area must be protected from the elements.
- (4) A utility room within the framework of the main building and accessible within the main living area constitutes living area.

Occupant means any person who occupies a vacation rental overnight.

Owner occupied means the vacation rental is then occupied by person(s), at the vacation rental owner's consent, who do not pay rent for the occupancy of the vacation rental, when such persons are members of the family of the vacation rental owner. Family shall be defined as provided in Appendix A, Article V of the Indian Harbour Beach Code of Ordinances.

Peer-to-peer platform/entity shall mean any person, service, business, company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupant whether through the internet or other means.

Responsible party shall mean the owner, or the person designated by the owner of the vacation rental to be called upon to answer for the maintenance of the vacation rental and the conduct and acts of vacation occupants of residential properties.

Transient public lodging establishments means 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 (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Vacation rental is collectively a vacation rental as defined under Florida Statutes, and any transient public lodging establishment which is located in the R-1A, R-1AA, R-1AAA or R-2 zoning district of the City of Indian Harbour Beach.

Vacation rental owner is the fee simple owner of the vacation rental, whether an individual, partnership, corporation, limited liability company, trust, or other entity. In the event the vacation rental owner is not an individual, the vacation rental owner shall designate a responsible natural person to perform the functions and duties of a vacation rental owner herein. The duties and functions of a vacation rental owner may, at the option of the vacation rental owner, be performed by an agent of the vacation rental owner, so long as the vacation rental owner notifies the city in writing, on a form provided by the city, of the identity and contact information of such agent, and the specific duties that the agent will be performing for the vacation rental owner. The vacation rental owner may change the designation of agent at any time through the filing of a new form and the payment of an administrative fee in an amount as set by resolution by the city council. The vacation rental owner shall be held responsible for all actions of such designated agent with respect to the applicable vacation rental.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-78. Enforcement.

Violations of this ordinance shall be enforced as code violations in accordance with the provisions of F.S., Ch. 162, and chapter 21 of this Code of Ordinances, and through fines in accordance with ordinances and resolutions adopted by the city council.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-79. Appeals.

Any decision of the city manager or his or her authorized designee relating to this ordinance shall be rendered in writing in appealable form, and reviewed by the city special magistrate if a notice by the vacation rental owner or agent is filed with the city clerk within ten (10) days after the action to be reviewed. The city clerk or designee shall place the matter on the agenda of the next available meeting of the special magistrate, but no later than thirty-five (35) days after the notice by the vacation rental owner or agent is filed, at which the matter

will be reviewed. The decision of the special magistrate shall be final and shall be rendered in writing in appealable form. Such final decision may be reviewed as permitted under Florida law.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-80. Construction of chapter.

This chapter shall be liberally construed to accomplish its purpose of regulating vacation rentals, protecting the residential character of the R-1A, R-1AA, R-1AAA, and R-2 zoning districts of the City of Indian Harbour Beach, the health, safety, and general welfare of its residents and visitors, and the quiet enjoyment by Indian Harbour Beach's residents of their residential property located in the R-1A, R-1AA, R-1AAA, and R-2 zoning districts.

(Ord. No. 2018-05, § 1, 8-8-18)

Secs. 10-81—10-100. Reserved.

DIVISION 2. VACATION RENTAL REGISTRATION

Sec. 10-101. Registration required.

As of October 1st, 2018, a vacation rental registration shall be required to operate a vacation rental within the City of Indian Harbour Beach in the R-1A, R-1AA, R-1AAA or R-2 zoning districts, utilizing forms promulgated by the city, electronically or in hard copy. The city may extend the date that such registration is required by notice on the city's website should the city not publish forms and fees for registration by August 13, 2018. Prior to the issuance of a vacation rental registration, the responsible party has the affirmative duty to ensure that the dwelling unit and property in or on which the vacation rental is or will be located, is in full compliance with the appropriate portions of City Code, the Florida Building Code, the Florida Administrative Code, and the Florida Fire Prevention Codes. A separate vacation rental registration shall be required for each vacation rental. The operation of a vacation rental without registration after the date registration is required shall be a violation of this ordinance, except in the instance of providing accommodations to fulfil a pre-existing contract.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-102. Vacation rental registration.

- (a) A vacation rental owner, agent, or responsible party, as applicable, registering a vacation rental with the city shall submit to the city a completed registration form, utilizing a form promulgated by the city, together with all applicable registration and inspection fees in the amount set by resolution of the city council.
- (b) A registration application shall include the following:
 - (1) Full address of the vacation rental property being registered, along with proof of ownership;
 - (2) Name, address, phone number, and e-mail, of the property owner;
 - (3) Name, address, e-mail, and emergency contact phone number of responsible party for the vacation rental, which shall be a twenty-four (24) hour, seven (7) days a week contact number;
 - (4) The vacation rental's current and active license number as a transient public lodging establishment with the Florida Department of Business and Professional Regulation (DBPR), if the registrant has such license;

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- (5) A copy of the vacation rental's current and active certificate of registration with the Florida Department of Revenue and Brevard County for sales and tourist development tax collection, respectively, if the registrant has such certificates or accounts; unless a peer-to-peer platform entity through which the vacation rental is booked will be remitting all such taxes associated with the vacation rental on the responsible party's behalf;
 - (6) Business tax receipt from the City of Indian Harbour Beach, if applicable, in accordance with chapter 9 of the Code of Ordinances;
 - (7) Statement attesting to the number of bedrooms and paved off-street parking spaces available on the property with affirmation that "no on-street parking" will be allowed;
 - (8) Exterior site sketch. An exterior sketch of the vacation rental facility shall be provided. The sketch shall show and identify all structures, pools, spas, hot tubs, fencing, and uses, including areas provided for off-street parking. For purposes of the sketch, off-street parking spaces shall be delineated so as to enable a fixed count of the number of spaces provided. At the option of the vacation rental owner, such sketch may be hand drawn, and need not be professionally prepared.
 - (9) Interior building sketch by floor. A building sketch by floor shall be provided, showing a floor layout identifying all bedrooms, other rooms, exits, hallways, stairways, as applicable. At the option of the vacation rental owner, such sketch may be hand drawn, and need not be professionally prepared.
 - (10) Acknowledgement signed by the owner, or designated responsible party, understanding and agreeing to initial and ongoing compliance with the city's vacation rental regulations and standards contained herein and all other applicable local, state, and federal laws, regulations, and standards; and
 - (11) The landline telephone number on the main level and in the common area at the rental with the ability to call 911 as required by division 3 of this chapter.
- (c) If a registration form is incomplete, the registrant will be notified of the deficiency, and be allowed fifteen (15) days to provide any missing information.
- (Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-103. Modification/change of ownership of vacation rental registration.

An amendment of a vacation rental registration application and affidavit of compliance shall be required, with payment of the appropriate fee set by resolution, in the event that any of the following changes to the vacation rental are proposed:

- (1) An increase in the number of bedrooms in the vacation rental.
- (2) An increase or decrease in the number of parking spaces or a change in the location of parking spaces for the vacation rental.
- (3) A change in the designated responsible party.

A change of ownership shall require a new application and all required documents including appropriate fees set by resolution.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-104. Duration of vacation rental registration.

A vacation rental registration shall be valid for one (1) year after the date of registration.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-105. Renewal of vacation rental registration.

A vacation rental owner must renew its registration annually prior to the expiration date of the previous vacation rental registration and is subject to an annual inspection and applicable fees.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-106. Inspection of vacation rentals.

- (a) Inspection of a vacation rental to verify compliance with the Florida Building Code, and the Florida Fire and Life Safety Codes which governed at the time of completion of the subject construction, shall be required subsequent to the initial registration of the vacation rental, and annually after each renewal. If instances of noncompliance are found, all such instances of noncompliance shall be handled as other violations of the Florida Building Code and Florida Fire and Life Safety Codes are otherwise handled in the city. These requirements will not be imposed so as to affect contracts that pre-exist the effective date of this ordinance. This inspection fee shall be set by resolution of the city council.
- (b) Annual inspections to verify compliance with the Florida Building Code, and the Florida Fire and Life Safety Codes, and the posting of notice requirements required herein shall be made by the city or designated contractor through appointment with the vacation rental owner, agent, or responsible party, as applicable. The annual inspection fee shall be set by resolution of the city council. If a city inspector or designated contractor has made an appointment with vacation rental owner or agent, as applicable, for an inspection, and the city inspector or designated contractor is unable to complete the inspection as a result of an action or inaction of the vacation rental owner or agent, or an occupant of the vacation rental, the vacation rental owner shall be charged a "re-inspection" fee in an amount set by resolution of the city council to cover the inspection expense incurred. The re-inspection fee shall be paid prior to scheduling the re-inspection. In addition, failure of a vacation rental owner agent, or responsible party, as applicable, to make the vacation rental available for an inspection within twenty (20) days after notification by the city in writing that the city is ready to conduct the annual inspection, shall be a violation of this chapter punishable by a fine as set by resolution by the city council. Such violation shall continue until the inspection is accomplished. Each day that such violation continues shall be a separate violation.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-107. Sale of vacation rental property.

When the ownership of the vacation rental is sold or otherwise transferred, the new owner shall file a new registration with the city within thirty (30) days from the date of the sale or transfer. Failing such application for registration, any certificate of compliance as to that vacation rental property shall be null and void on the thirty-first (31st) day after such sale or transfer.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-108. Vested rights/waiver/estoppel.

A vacation rental registration shall not be construed to establish any vested rights or entitle the registered vacation rental to any rights under the theory of estoppel. A vacation rental registration shall not be construed as a waiver of any other requirements contained within the City of Indian Harbour Beach City Code and is not an

approval of any other code requirement outside this chapter. The registration of a vacation rental is not an approval of a use or activity that would otherwise be illegal under Florida law, the Florida Building Code, the Florida Fire Code or Life Safety Code, or in violation of the Indian Harbour Beach City Code.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-109. False information.

It shall be unlawful for any person to give any false or misleading information in connection with any application for registration, modification, or renewal of a vacation rental as required by this article. Vacation rental applications shall be sworn to under penalty of perjury. Any false statements made in an application shall be a basis for the revocation of any license issued pursuant to such application.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-110. Effective date for existing vacation rentals.

The provisions of sections 10-101 through section 10-109 will not become effective for existing vacation rental properties until October 1, 2018. If the registration forms to implement the required registration provisions of this chapter are not available by August 13, 2018, the city may extend the requirement to register vacation rental properties by notice on the city's website.

(Ord. No. 2018-05, § 1, 8-8-18)

Secs. 10-111—10-125. Reserved.

Sec. 10-126. Duties of vacation rental owner or responsible party.

- (a) Every vacation rental owner, or responsible party, as applicable, shall be available by phone at the listed phone number twenty-four (24) hours a day, seven (7) days a week to respond to police, fire or other emergency personnel requests. Otherwise, response to contact by the city's regulatory personnel shall be required only Monday through Friday, except holidays, 9:00 a.m. to 5:00 p.m. Failure of the vacation rental owner, or responsible party, as applicable, to fulfill this duty, shall be a violation of this ordinance which shall be punished by fine.
- (b) Responsible party. All vacation rental units, if not managed by the vacation rental owner, shall have a designated responsible party.
 - (1) The responsible party shall be available twenty-four (24) hours per day, seven (7) days a week, for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. This party must have authority to immediately address and take affirmative action, within one (1) hour of notice from the city, on violations concerning life-safety, noise, and parking violations. A record shall be kept by the city of the complaint and the responsible party's response, as applicable.
 - (2) An owner may change his or her designation of a responsible party temporarily, up to thirty (30) cumulative days during any consecutive twelve (12) month period, or permanently; however, there shall only be one designated responsible party for each vacation rental property at any given time.
 - (3) It shall be the sole responsibility of the property owner to appoint a reliable responsible party and to inform the manager of his or her correct mailing address. Failure to do so shall not be a defense to a

violation of this section. Service of notice on the responsible party shall be deemed service of notice on the property owner, tenant and violator.

- (c) A vacation rental owner or responsible party is responsible for ensuring sexual offenders/predators as defined in F.S. §§ 775.21, 943.0435, 944.607, or 985.4815 register at the Brevard County Sheriff's office and the Indian Harbour Beach Police Department following the process set forth in F.S. § 775.21, forty-eight (48) hours prior to arrival at a vacation rental, regardless of the length of stay.

A vacation rental owner and/or responsible party shall comply with Florida law, Chapter 775.215, as amended from time to time, pertaining to the distance separation of homes with a sexual offender/predator residing within the vacation rental and any business, school, child care facility, park, playground, or other places where children regularly congregate.

Failure to comply with this section shall result in the revocation of the business tax receipt, if applicable, and vacation rental registration for the vacation rental and other enforcement provisions outlined in section 10-79 of this chapter.

- (d) The vacation rental owner or responsible party shall inquire at check-in if any guest of at the vacation rental is a sexual offender/predator as defined in F.S. §§ 775.21, 943.0435, 944.607, or 985.4815. If any guest of a vacation rental public lodging is a sexual offender/predator as defined in F.S. §§ 775.21, 943.0435, 944.607, or 985.4815, the operator shall immediately notify the Indian Harbour Beach Police Department.
- (e) The owner or responsible party shall provide the city and post in a conspicuous place in the premises, the name, address and day/evening telephone numbers of the responsible party and be available twenty-four (24) hours per day, seven (7) days a week for the purpose of promptly responding to complaints regarding conduct or behavior of vacation rental occupants or alleged violations of these regulations. Any change in the responsible party shall require written notification to the city on forms provided by the city and in a manner promulgated by the city upon payment of the applicable fees.
- (f) Complaints to the responsible party concerning violations by occupants of vacation rental units to this section shall be responded to within a reasonable time but in no instance greater than three (3) hours. A record shall be kept of the complaint and the manager's response for a period of at least three (3) months after the incident, which shall be available for inspection by the city during business hours.
- (g) An owner may change his or her designation of a responsible party; however, there shall only be one (1) responsible party for each vacation rental property at any given time. To change the designated agent or responsible party, the owner shall notify the city in writing of the name, contact information and other information required in this subsection for the new vacation rental manager, along with a signed affidavit from the new agent or responsible party acknowledging and agreeing to serve in this capacity and perform the duties of this chapter. Any notice of violation or legal process which has been delivered or served upon the previous vacation rental manager, prior to the city's receipt of notice of change of the vacation rental manager, shall be deemed effective service.
- (h) It shall be the sole responsibility of the property owner to appoint a reliable responsible party and to inform the responsible party of his or her correct mailing address. Failure to do so shall not be a defense to a violation of this section. No property owner shall designate as a responsible party any person who does not expressly comply with the provisions of this section. The property owner or the responsible party shall be deemed to be the "violation" of this section as the term is used in F.S. § 162.06. Service of notice on the responsible party shall be deemed service of notice on the property owner, tenant and violator. Copies of all notices shall also be provided to the property owner.

(Ord. No. 2018-05, § 1, 8-8-18)

Secs. 10-127—10-140. Reserved.

DIVISION 3. STANDARDS AND REQUIREMENTS FOR VACATION RENTALS

Sec. 10-141. Generally.

The standards and requirements set forth in this article shall apply to the rental, use, and occupancy of vacation rentals in the City of Indian Harbour Beach.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-142. Minimum safety and operational requirements.

Vacation rentals in the City of Indian Harbour Beach shall meet the applicable standards under the Florida Statutes, the Florida Building Code, the Florida Administrative Code, the Florida Swimming Pool Safety Act, and the Florida Fire Code and Life Safety Code, and each Vacation Rental shall have at least one (1) landline telephone on the main level and in the common area at the rental with the ability to call 911. The landline telephone number shall be registered at all times with Brevard County Emergency Management for the purpose of receiving emergency alerts for items including, but not limited to, mandatory evacuations for hurricanes and requests to limit utility usage. Additionally, the landline telephone number shall be registered at all times with the City of Melbourne Utilities Department, the water provider within the City of Indian Harbour Beach, for the purposes of receiving boil water alerts and rescinding alerts.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-143. Maximum occupancy based on site capacity/limitations/grandfathering.

- (a) The maximum occupancy of a vacation rental shall be stated in the vacation rental registration form, and shall be limited to two (2) occupants (as defined herein) per bedroom (as defined herein) plus two (2) occupants with a maximum capacity of twelve (12) persons.
- (b) The maximum occupancy restriction as set forth above shall not apply when the property is owner occupied by the vacation rental owner.
- (c) Notwithstanding the above, a vacation rental that was used as a vacation rental as of the effective date of this division, may apply for the status of grandfathered for a period of ten (10) years, as to occupancy limitations, and may cap its occupancy based upon the following criteria and procedures. Vacation rentals that have an occupancy of twelve (12) or less as determined according to Sec. 10-143 (a) above will not require grandfathering to maintain that occupancy.
 - (1) A grandfathered vacation rental shall have its maximum occupancy based upon two (2) persons per bedroom (each bedroom must meet the definition of bedroom herein) at the time of application for grandfather status. A change in the number of bedrooms at the vacation rental shall cause such vacation rental to lose its grandfathered status.
 - (2) The vacation rental owner, or agent, as applicable, ("grandfathering applicant"), shall complete a grandfathering application as prescribed by the city, which shall be submitted under oath and upon penalty of perjury, and provide verifiable written proof of the number of bedrooms as herein defined in the vacation rental.

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- (3) The grandfathering application and supporting proof shall be submitted to the city for review by city staff, and such staff shall make a written determination as to the maximum occupancy of such grandfathered vacation rental.
 - (4) If the city staff fails to confirm the requested occupancy level, the City of Indian Harbour Beach shall notify the grandfather applicant of that fact, and the occupancy level that can be approved, in writing. Within twenty (20) days after such notice, an evidentiary hearing may be requested by the grandfather applicant before the special magistrate to provide the grandfather applicant an opportunity to provide evidence and/or testimony in support of the occupancy requested. A determination by the special magistrate after such evidentiary hearing shall be final. If no hearing is requested during that time period, the occupancy level shall be set at the level determined by the city staff upon initial review.
 - (5) An application for grandfathering shall be submitted, if at all, but no later than the time of registration of the vacation rental, but not later than January 1, 2019, along with fees established by the city council by resolution. If the city extends the date that registration is required, the deadline for the application for grandfathering shall also be extended to the same extended date. If a vacation rental has been registered, but a final determination as to the occupancy level based upon grandfathering has not yet been made, such vacation rental may allow occupancy up to the occupancy requested in the grandfathering application until such time as a final determination as to occupancy has been made.
 - (6) If it is reasonably determined by the city staff that any information supplied to the City of Indian Harbour Beach in support of an application for grandfathering was intentionally false or fraudulent, the person supplying the false or fraudulent information shall be subject to a fine. If there is such a determination by city staff, the City of Indian Harbour Beach shall notify the grandfather applicant of that fact, and within twenty (20) days after such notice, an evidentiary hearing may be requested by the grandfather applicant before the special magistrate to provide the grandfather applicant an opportunity to provide evidence and/or testimony to show that the information supplied in support of the application for grandfathering was not intentionally false or fraudulent. The determination by the special magistrate after such evidentiary hearing shall be final. If no hearing is requested during that time period, the initial determination by the city staff shall be final.
 - (7) If a vacation rental registration does not exist as to a vacation rental for a period in excess of thirteen (13) months, any grandfathering determination shall be deemed abandoned, and shall no longer be applicable to that vacation rental.

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-144. Parking, solid waste disposal, legal compliance, evacuations, miscellaneous provisions.

- (a) All vehicles associated with the vacation rental, including visitors not residing at the vacation rental, must be parked in compliance with the City of Indian Harbour Beach Code of Ordinances. All vehicles associated with the vacation rental must be parked within a driveway located on the subject property. There shall be no sidewalk, on street, right-of-way, or grass parking. Parking shall be paved and shall not be located off the vacation rental property, including common areas.

Parking of boats, watercraft, recreational vehicles, campers, and trailers at vacation rentals shall be to the rear of the front building line of the property.

- (b) Solid waste disposal (household garbage, recycling, and yard trash) at vacation rentals shall be in compliance with the solid waste franchise agreement adopted by the city.
- (c) Vacation rental occupants are required to comply with all local, state and federal laws at all times, including those related to illegal activities, local nuisance ordinances, and emergency management.

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- (d) Vacation rental occupants are required to participate in all mandatory evacuations due to hurricanes, tropical storms or other threats to resident safety, as required by state and local laws.
 - (e) A vacation rental shall not be eligible for a special activity permit.
 - (f) No temporary storage containers may be stored on the vacation rental premises. The term "temporary storage container" shall mean any container, structure, box, cylinder, or crate made of any material not permanently affixed to real property, that is enclosed or capable of being enclosed on all sides, top and bottom, that is stored, placed, located or put on any real property within the city for the purpose of storing personal property, construction material, trash, refuse, garbage, debris, or other material or matter. Provided, however, with prior authorization from the building department a temporary storage container may be authorized during valid construction permit activity for this location.
 - (g) No accessory structure, vehicle, recreational vehicle, trailer, camper, or similar apparatus shall be utilized or rented as a vacation rental.
- (Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-145. Required local information provided in a vacation rental.

- (a) In each vacation rental, there shall be provided, in a prominent location on the inside of the vacation rental, the following written information:
 - (1) The official street address and landline telephone phone number of the vacation rental.
 - (2) The name, address and phone number of the vacation rental owner or responsible party as applicable.
 - (3) The maximum occupancy of the vacation rental.
 - (4) A copy of a document to be supplied by the city which includes excerpts from City of Indian Harbour Beach ordinance provisions of general application relevant to vacation rentals to include solid waste pick-up regulations, regulations related to sea turtles and sea turtle lighting, and City of Indian Harbour Beach Noise Ordinance, as specified by resolution of the city, as a lease addendum. The city will make available to vacation rental owners and agents a copy of such document in digital format upon request, and the city will post such document on its website.
 - (5) The maximum number of vehicles that will be allowed to park at the vacation rental, along with a sketch of the location of the paved off-street parking and a notice that visitors to the vacation rental, not residing at the rental are also prohibited from on-street parking.
 - (6) The days and times of trash and recycling pickup.
 - (7) Phone number and address of Holmes Regional Medical Center Melbourne and Health First Viera Hospital and directions from the vacation rental to the hospital.
 - (8) Emergency and nonemergency phone numbers for Indian Harbour Beach Police and Fire.
 - (9) Emergency evacuation instructions.
 - (10) Rip currents are prevalent in the Atlantic Ocean here in Brevard County. Information from the National Weather Service, available via from <http://weather.gov/mlb> shall be provided to occupants on the dangers of rip currents that occur in the Atlantic Ocean shall be prominently displayed.
 - (11) Notice of the need for respect for the peace and quiet of neighborhood residents, especially during citywide quiet hours identified in the City Code of Ordinances chapter 8. A statement that all occupants shall be prohibited from making excessive or boisterous noise in or about any residential dwelling unit at all times. Noise, that is audible beyond the boundaries of the residential dwelling unit, is regulated by the city's noise regulations and violations can result in fines.

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- (12) In addition, there shall be posted, next to the interior door of each bedroom, and the exterior doors exiting the vacation rental a legible copy of a building evacuation map—Minimum eight and one-half inches (8-1/2") by eleven inches (11").

(Ord. No. 2018-05, § 1, 8-8-18)

Sec. 10-147. Minimum life/safety requirements.

- (a) Swimming pool, spa, and hot tub safety. A swimming pool, spa, or hot tub shall comply with the current standards of Florida Statutes Chapter 515 Residential Swimming Pool Safety Act.
- (b) Smoke and carbon monoxide (CO) detection and notification system. There shall be a smoke and carbon monoxide detection system, installed and maintained in compliance with the requirements of Florida Building Code Residential, Sections R314 Smoke Alarms R315 Carbon Monoxide Alarms.
- (c) Fire extinguisher. On each floor there shall be available a portable, multi-purpose dry chemical 2A:10B:C fire extinguisher, which shall be installed and maintained in compliance with NFPA 10.
- (d) Battery powered emergency lighting. Battery powered emergency lighting, which illuminates automatically for at least one (1) hour when electricity is interrupted, is required at each building exit.

(Ord. No. 2018-05, § 1, 8-8-18)

Secs. 10-148—10-160. Reserved.

DIVISION 4. EXEMPTIONS

Sec. 10-161. Exemption for pre-existing rental agreements.

Notwithstanding any other provision of this ordinance, rental agreements with prospective occupants for vacations rentals that were pre-existing as of the enactment of this portion of chapter 10, (hereinafter "pre-existing agreements") are exempt from the provisions of this ordinance.

If a vacation rental is cited for a violation of this chapter, (that would not be a violation if it were not for this chapter), when the vacation rental is occupied under the terms of a pre-existing agreement, the vacation rental owner may defend such violation based on the fact that the vacation rental was exempt from this chapter due to it being occupied pursuant to a pre-existing agreement. Such defense shall be determined based upon the following information, and upon any additional information supplied by the vacation rental owner or otherwise determined by the fact finder:

- (1) Copy of deposit or payment information evidencing that the agreement was a pre-existing agreement;
- (2) Copy of e-mail or other communication evidencing a binding pre-existing agreement;
- (3) Information from the occupant confirming that there was a binding agreement in a time-frame to make the agreement a pre-existing agreement under this chapter; or
- (4) Written vacation rental agreement dated prior to August 9, 2018.

If it is reasonably determined by the city staff, and confirmed by the city's special magistrate, that any information supplied to the City of Indian Harbour Beach in support of an application for exemption or in support of a defense based upon pre-existing agreement was intentionally false or fraudulent, the person supplying the false or fraudulent information shall be subject to a fine.

3.06.14. Short-term vacation rentals.

- A. *Applicability.* This section shall apply to short-term vacation rental as a commercial business, as defined in section 3.08.02, of a single-family dwelling and a two-family dwelling. This section shall not apply to short-term vacation rentals within a multi-family residential building, or a group of multi-family residential buildings, which includes three (3) or more individual dwelling units within such building or group of buildings. This section shall also not apply to unincorporated areas west of U.S. Highway 1 and to any facilities that are occupied on a full-time basis by the owner as an on-premises permanent resident.
- B. *Short-term vacation rental minimum requirements.* Short-term vacation rentals shall be permitted in all residential zoning districts provided they are in compliance with this section. No person shall rent or lease all or any portion of a dwelling unit as a short-term vacation rental as defined in section 3.08.02 without initially and then on a continuing basis:
1. Obtaining a short-term vacation rental certificate from Flagler County pursuant to this section;
 2. Obtaining a business tax receipt from Flagler County pursuant to chapter 19 of the Code of Ordinances;
 3. Obtaining a Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes, and transient rental taxes;
 4. Obtaining a Florida Department of Business and Professional Regulation license as a transient public lodging establishment; and
 5. As demonstrated through an affidavit, maintaining initial and ongoing compliance with the Short-term Vacation Rental Standards contained herein, plus any other applicable local, state, and federal laws, regulations, and standards to include, but not be limited to, Chapter 509, Florida Statutes, and Rule Chapters 61C and 69A, Florida Administrative Code or such successor statutes or Rules as may be applicable.
- C. *Short-Term Vacation Rental Standards.* The following Standards shall govern the use of any short-term vacation rental as a permitted use:
1. *Minimum life/safety requirements:*
 - a. Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of the Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes.
 - b. Sleeping rooms. All sleeping rooms shall meet the single- and two-family dwelling minimum requirements of the Florida Building Code.
 - c. Smoke and carbon monoxide (CO) detection and notification system. If an interconnected and hard-wired smoke and carbon monoxide (CO) detection and notification system is not in place within the short-term vacation rental unit, then an interconnected, hard-wired smoke alarm and carbon monoxide (CO) alarm system shall be required to be installed and maintained on a continuing basis consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code — Residential.
 - d. Fire extinguisher. A portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected and maintained in accordance with NFPA 10 on each floor/level of the unit. The extinguisher(s) shall be installed on the wall in an open common area or in an enclosed space with appropriate markings visibly showing the location.
 - e. Battery powered emergency lighting of primary exit. Battery powered emergency lighting which provides illumination automatically in the event of any interruption of normal lighting shall be provided for a period of not less than one (1) hour to illuminate the primary exit. For purposes of

this requirement, short-term vacation rentals with Short-Term Vacation Rental Certificates issued prior to the enactment of the ordinance providing for the codification of this standard shall have until December 31, 2016 to receive an inspection (as part of the renewal of the initial certificate) to demonstrate compliance with the emergency lighting standard.

2. *Maximum occupancy.* The following specific site considerations in subsections a., b., and c. shall limit any short-term vacation rental occupancy to whichever is less, but not to exceed the permitted maximums provided in subsections d. or e., as applicable, below:
 - a. One (1) person per one hundred fifty (150) gross square feet of permitted, conditioned living space; or
 - b. The maximum number of occupants allowed shall be restricted in accordance with any septic tank permit and the assumed occupancy/conditions the permit was issued under by the Flagler County Health Department; or
 - c. Two (2) persons per sleeping room, meeting the requirements for a sleeping room, plus two (2) additional persons that may sleep in a common area.
 - d. In the R-1, R-1b, R-1c, R-1d, R-2, MH-1, MH-2, and R/C zoning districts and any PUD development or specific portion thereof developed as a single- or two-family neighborhood, the maximum occupancy shall be limited to ten (10) occupants per short-term vacation rental unit.
 - e. In all other zoning districts and developments predominantly developed with greater than two-family dwelling units, the maximum occupancy shall be limited to sixteen (16) transient occupants per short-term vacation rental unit.
3. *Parking standard.* Based on the maximum short-term transient occupancy permitted, minimum off-street parking shall be provided as one (1) space per three (3) transient occupants. Garage spaces shall count if the space is open and available and the transient occupants are given vehicular access to the garage. On-street parking shall not be permitted.
4. *Solid waste handling and containment.* Based on the maximum transient occupancy permitted, one (1) trash storage container shall be provided per four (4) transient occupants or fraction thereof. Appropriate screening and storage requirements for trash storage containers shall apply per any development approval or local neighborhood standard, whichever is more restrictive, and be incorporated into the Certificate. For purposes of this section, a trash storage container shall be a commercially available thirty-five (35) gallon or greater capacity container with a lid that securely fastens to the container so as to prevent spills and animal access, with the container to be placed at curbside on the day of solid waste pickup and to be removed from curbside no later than sunrise the following day.
5. *Minimum short-term vacation rental/lease agreement wording.* The short-term vacation rental/lease agreement shall contain the minimum information as provided for in subsection 3.06.14.H.
6. *Minimum short-term vacation rental information required postings.* The short-term vacation rental shall be provided with posted material as required by Flagler County as prescribed in subsection 3.06.14.1.
7. *Minimum short-term vacation rental lessee information.* The short-term vacation rental lessee shall be provided with a copy of the information required in subsection 3.06.14.H.
8. Designation of a short-term vacation rental responsible party capable of meeting the duties provided in subsection 3.06.14.G.
9. *Septic tank wastewater disposal.* If wastewater service is provided through a private home septic system, then the owner shall provide Flagler County a valid Health Department septic permit and the

application it is based upon for the property, demonstrating the capacity for the short-term vacation rental occupancy requested.

10. *Advertising.* Any advertising of the short-term vacation rental unit shall conform to information included in the Short-Term Vacation Rental Certificate and the property's approval, particularly as this pertains to maximum occupancy.
 11. *Other standards.* Any other standards contained within the Flagler County Land Development Code to include but not be limited to: noise, setbacks, stormwater, and similar provisions.
- D. *Short-Term Vacation Rental Certificate.* To verify compliance with these short-term vacation rental standards, any property owner who wishes to use his or her dwelling unit as a short-term vacation rental must first apply for and receive a Short-Term Vacation Rental Certificate from Flagler County, and renew the certificate annually for as long as the unit is used as a short-term vacation rental. Each dwelling unit used as a short-term vacation rental requires a separate Short-Term Vacation Rental Certificate. An annual certificate fee shall be paid for each dwelling unit certified as a short-term vacation rental, in an amount to be determined by resolution of the board of county commissioners, to cover the costs of administration of the Certificate and inspection program. Failure to comply with any of the requirements of this section shall be subject to the remedies and enforcement provided in subsection 3.06.14.K.
- E. *Application for a Short-Term Vacation Rental Certificate.* Each property owner seeking initial issuance of a Short-Term Vacation Rental Certificate, renewal, transfer, or modification of a Short-Term Vacation Rental Certificate, shall submit a Flagler County Short-Term Vacation Rental application in a form specified by the county, along with an application fee in an amount to be determined by resolution of the board of county commissioners. The initial Short-Term Vacation Rental Certificate shall be valid through December 31, 2016.
1. A complete application for the initial or modification of a Short-Term Vacation Rental Certificate shall demonstrate compliance with the Short-Term Vacation Rental Standards above through the following submittals:
 - a. A completed application and applicable fees.
 - b. Exterior site sketch. An exterior sketch of the facility demonstrating compliance with the Standards contained herein shall be provided to the county. The sketch shall be drawn to scale, showing all structures, pools, fencing, and uses, including areas provided for off-street parking and trash collection. For purposes of the sketch, off-street parking spaces will be delineated so as to enable a fixed count of the number of spaces provided; however, no parking shall be permitted within a public right-of-way or private roadway tract.
 - c. Interior building sketch by floor. A building sketch(s) shall be provided by floor showing a floor layout and demonstrating compliance with the Standards contained herein. The sketch shall be drawn to scale, showing all bedrooms and sleeping areas, exits, smoke and carbon monoxide detectors, and fire extinguishers etc.
 - d. Required short-term vacation rental postings. Copies of required postings shall be provided.
 - e. A draft short-term vacation rental/lease agreement showing required lease terms - A blank sample to be provided.
 - f. A health department septic tank permit and the application on which the permit is based, if applicable.
 - g. Any other required information necessary to demonstrate compliance with the Short-Term Vacation Rental Standards herein.
 2. *Certificate renewals or transfers.* The application for renewal or transfer of a Short-Term Vacation Rental Certificate shall demonstrate compliance with the following:

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- a. If no changes have occurred since the issuance of the most recent Short-Term Vacation Rental Certificate, then no additional submittals are required to accompany the renewal/transfer Short-Term Vacation Rental Certificate application except as subsection 3.06.14.E.2.b below may be applicable.
 - b. If minor changes not involving the specific modifications described below in subsection 3.06.14.E.3 have occurred since the issuance of the most recent Short-Term Vacation Rental Certificate, then additional submittals specific to the minor changes shall be required to accompany the application as necessary to demonstrate compliance with the standards herein.
 - c. An inspection is required whenever there is a transfer of a certificate.
 - d. A Short-Term Vacation Rental Certificate holder must apply annually for a renewal no sooner than August 1 and no later than October 1 of each year and shall have passed all inspections and complied fully with section 3.06.14 by December 31.
3. *Modification of certificate.* An application for modification of a Short-Term Vacation Rental Certificate is necessary where any of the following apply:
 - a. The gross square footage of the dwelling unit has increased; or
 - b. The number of sleeping areas/bedrooms is proposed to increase; or
 - c. The occupancy is otherwise proposed to increase.

For the inspection of a modification to a Short-Term Vacation Rental Certificate, the modification in facility usage may not occur until after a successful County inspection; however, pending such successful inspection the current certificate will still apply.

F. *Initial and routine compliance inspections of short-term vacation rentals.*

1. An inspection of the dwelling unit for compliance with this section is required prior to issuance of an initial Short-Term Vacation Rental Certificate. 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 Vacation Rental Certificate as provided herein.
2. Once issued, a short-term vacation rental unit must be properly maintained in accordance with the Short-Term Vacation Rental Standards herein and will be re-inspected annually or, in the event of a Certificate transfer, re-inspected at the time of transfer. For an inspection, all violations must be corrected and re-inspected within thirty (30) calendar days. Failure to correct such inspection deficiencies in the timeframes provided shall result in enforcement as provided in subsection 3.06.14.K until such time as the violation(s) is/are corrected and re-inspected.
3. The inspections shall be made by appointment with the short-term vacation rental responsible party. If the inspector(s) has made an appointment with the responsible party to complete an inspection, and the responsible party fails to admit the officer at the scheduled time, the owner shall be charged a "no show" fee in an amount to be determined by resolution of the board of county commissioners to cover the inspection expense incurred by Flagler County.
4. If the inspector(s) is denied admittance by the short-term vacation rental responsible party or if the inspector(s) fails in at least three (3) attempts to complete an initial or subsequent inspection of the rental unit, the inspector(s) shall provide notice of failure of inspection to the owner to the address shown on the existing Short-Term Vacation Rental Certificate or the application for Short-Term Vacation Rental Certificate.
 - a. For an initial inspection, the notice of failure of inspection results in the certificate not being issued and the short-term vacation rental is deemed not in compliance with section 3.06.14.

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- b. For a subsequent inspection, the notice of failure of inspection is considered a violation pursuant to subsection 3.06.14.F.2. above and is subject to enforcement remedies as provided herein.

G. *Short-term vacation rental responsible party.*

1. The purpose of the responsible party is to respond to routine inspections and as well non-routine complaints and other more immediate problems related to the short-term vacation rental of the property.
2. The property owner may serve in this capacity or shall otherwise designate a short-term vacation rental responsible party to act on their behalf. Any person eighteen (18) years of age or older may be designated by the owner provided they can perform the duties listed in subsection 3.06.14.G.3 below.
3. The duties of the short-term vacation rental responsible party whether the property owner or an agent are to:
 - a. Be available by landline or mobile telephone at the listed phone number twenty-four (24) hours a day, seven (7) days a week and capable of handling any issues arising from the short-term vacation rental use;
 - b. If necessary, be willing and able to come to the short-term vacation rental unit within two (2) hours following notification from an occupant, the owner, or Flagler County to address issues related to the short-term vacation rental;
 - c. Authorized to receive service of any legal notice on behalf of the owner for violations of this section; and
 - d. Otherwise monitor the short-term vacation rental unit at least once weekly to assure continued compliance with the requirements of this section.
4. A property owner may change his or her designation of a short-term vacation rental responsible party temporarily or permanently; however, there shall only be one (1) short-term vacation rental responsible party for each short-term vacation rental at any given time. To change the designated responsible party, the property owner shall notify Flagler County in writing via a completed form provided by the County.

H. *Short-term vacation rental/lease agreement minimum provisions and requirements.* The rental/lease agreement must contain the following information at a minimum:

1. Maximum occupancy of the short-term vacation rental unit as permitted on the Short-Term Vacation Rental Certificate for the property;
2. The name and ages of all persons who will be occupying the unit;
3. The license tag numbers for all vehicles that the occupant(s) will be parking at the unit, with a total number not to exceed the number of off-street parking spaces at the unit as designated on the Short-Term Vacation Rental Certificate; and
4. A statement that all transient occupants must evacuate from the short-term vacation rental upon posting of any evacuation order issued by local, state, or federal authorities.
5. The rental/lease agreement shall be retained by the responsible party. The responsible party shall retain all rental/lease agreements for a period of one (1) year following the end of the rental period.
6. No rental/lease agreement shall be provided to or retained by the county except as part of an enforcement investigation, emergency, or other action by the county. At the county's request, the responsible party shall immediately provide the county with the rental/lease agreement.

I. *Required posting of the following short-term vacation rental unit information.*

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1. On the back of or next to the main entrance door or on the refrigerator there shall be provided as a single page the following information:
 - a. The name, address and phone number of the short-term vacation rental responsible party;
 - b. The maximum occupancy of the unit;
 - c. Notice that quiet hours are to be observed between 10:00 p.m. and 8:00 a.m. daily or as superseded by any county noise regulation;
 - d. The maximum number of vehicles that can be parked at the unit, along with a sketch of the location of the off-street parking spaces;
 - e. The days of trash pickup and recycling;
 - f. If the short-term vacation rental unit is located on the barrier island, notice of sea turtle nesting season restrictions and sea turtle lighting usage; and
 - g. The location of the nearest hospital.
 2. If the short-term vacation rental unit includes three (3) or more occupied floors, on the third floor above ground level and higher floors there shall be posted, next to the interior door of each bedroom a legible copy of the building evacuation map — Minimum 8½" by 11" in size.
- J. *Offenses/violations.*
1. Non-compliance with any provisions of this section shall constitute a violation of this section, which shall include, but shall not be limited to, the specific paragraphs within subsection 3.06.14.B.
 2. *Separate violations.* Each day a violation exists shall constitute a separate and distinct violation.
- K. *Remedies/enforcement.* 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 vacation rental program it is key that short-term vacation rental responsible parties are responsive and responsible in the management of the property for compliance with this section. Code enforcement activities will be in accordance with Florida Statutes Chapter 162 and the Flagler County Code of Ordinances.
1. *Warnings.* Warnings shall be issued for first-time violations and have a correction/compliance period associated with it. Such warnings may include notice to other agencies for follow-up by such agencies, such as the Department of Business and Professional Regulation, the Department of Revenue, the Flagler County Tax Collector and the Flagler County Property Appraiser, as applicable. Non-compliance with a correction compliance period shall result in the issuance of a citation.
 2. The County may utilize Part 1 of Florida Chapter 162 to prosecute a code violation and in such case a special magistrate shall be authorized to hold hearings, assess fines in accordance with the statute and order other relief in lieu of using a county code enforcement board. Alternatively, the County may utilize Part 2 of Florida Chapter 162 and pursue violations by way of a civil citation system as provided in its Code of Ordinances. The civil citation fines per violation shall be set by Resolution of the Board of County Commissioners for first (1st), second (2nd), third (3rd) and further repeat violations. Regardless of whether the County utilizes Part 1 or 2, the County may also utilize an appropriate enforcing agency at the state or local level.
 3. *Additional remedies.* Nothing contained herein shall prevent Flagler County from seeking all other available remedies which may include, but not be limited to, injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.
- L. *Reserved.*

M. *Reserved.*

N. *Vesting.* Any holder of a Short-Term Vacation Rental Certificate as of December 31, 2015 is vested in the ways described below, provided they are otherwise in compliance with all other requirements contained herein.

1. *Rental agreement vesting.* It is recognized that likely there are existing rental/lease agreements for short-term vacation rentals in existence at the time of passage of the ordinance enacting this section which may not be in compliance with the terms of this section. Rental agreements that were entered into prior to the adoption of section 3.06.14 on February 19, 2015 shall be considered vested. No special vesting process or fee shall be required to obtain this vesting benefit. Should any issue arise as to whether a rental agreement allows occupancy in excess of occupancy provided by a Short-Term Vacation Rental Certificate or as otherwise authorized in this subsection, the owner or responsible party shall establish a vested rental agreement to the satisfaction of the County, including providing electronic data that establishes the date on which an agreement was entered into.
2. *Maximum occupancy vesting.* In applying the standards of subsection 3.06.14.C to the short-term vacation rentals lawfully in existence prior to February 19, 2015, it is understood that there are properties that may otherwise physically qualify for larger occupancies if the maximum occupancy were set higher. In an effort to recognize investment backed expectations and yet balance and protect the interest of other single-family and two-family properties which are not rental properties, there shall be a phasing-in of maximum occupancy.

The maximum occupancy for these properties may be temporarily allowed to be capped at no more than fourteen (14) transient occupants providing all other requirements of subsection 3.06.14.C can be met. This maximum occupancy may be retained through February 28, 2018 in which case it shall be reduced by two (2) thereafter. The maximum occupancy of twelve (12) transient occupants shall then be retained through February 28, 2021 and then shall be reduced by two (2) to reach the maximum occupancy herein. No special vesting process or fee shall be required to obtain this vesting benefit other than demonstrating eligibility through the normal Short-Term Vacation Rental Certificate process.

3. For those owners that desire a higher vesting occupancy and/or different vesting schedule, the owner of the property may make application for consideration of an alternative vesting benefit. The alternative vesting process shall require the following information at a minimum, although the actual application and review process may require the applicant to submit additional information:
 - a. Submittal of a complete vesting application to include applicable fee;
 - b. Issuance of Short-term Vacation Rental Certificate on the property otherwise meeting all other requirements herein;
 - c. A written narrative and any tabulation/evidence showing what potential financial impacts the reduction in occupancy will create;
 - d. Any prospectus, financial pro forma, or other information relied upon to make the investment into the property;
 - e. Actual short-term vacation rental/lease agreements on the property for the last three (3) years showing the number of occupants for the short-term vacation rental unit per rental;
 - f. Profit and loss statement for the property certified accurate by a Certified Public Accountant for the last three (3) years;
 - g. Detailed gross and net revenues/expenses for the property to include but not be limited to: management fees, maintenance fees, utility costs, and similar expenses;

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- h. Purchase price for the property and/or structure - If constructed by the owner, the construction costs of the facility;
 - i. Any mortgage or debt on the property along with any monthly debt service payments; and
 - j. All other information the applicant believes is relevant in establishing any vested rights claim and to demonstrate an extraordinary circumstance or consideration that should be weighed by the county.

The review process for an application for a higher vesting occupancy and/or different vesting schedule under this subsection will, at a minimum, provide for public notice to property owners within three hundred (300) feet of the subject property.

- 4. In the consideration of applications for vested rights under this subsection, such determinations shall be made by a special master, for which the use and procedures therefor shall be by resolution of the board of county commissioners.
 - a. The determination of the special master shall be deemed final action. In considering an application for vested rights, the burden of demonstrating entitlement to a vested right from the provisions of the ordinance enacting this section shall be on the owner or applicant seeking to establish vested rights.
 - b. Owners, seeking to establish vested rights, must demonstrate that the application of the ordinance enacting this section would inordinately burden an existing use of their real property or a vested right to a specific use of their real property.
- 5. A vested use shall transfer to a subsequent owner provided that all applicable Short-Term Vacation Rental Standards continue to be met in addition to any specific vesting conditions. A vested use is not transferrable to another short-term vacation rental property.
- 6. If a vested use ceases for a period of one (1) year, then the vesting shall be considered to have lapsed and the short-term vacation rental will be subject to all Short-Term Vacation Rental Standards as if a new application.

(Ord. No. 2015-02, § 2.A.1, 2-19-15; Ord. No. 2015-05, § 2, 4-6-15; Ord. No. 2016-01, § 2.A.1, 1-11-16)

Chapter 34.5 VACATION RENTALS

ARTICLE I. IN GENERAL

Sec. 34.5-1. Findings.

The city commission makes the following findings:

- (a) Article VI, division 2 of the City of Sarasota Zoning Code identifies seven (7) zone districts as "single-family zone districts." These districts are the following residential single-family zone districts: RSF-E, RSF-1, RSF-2, RSF-3, RSF-4 as well as the RSM-9 (residential single, multiple) and RTD-9 (Residential Transition District) zone districts. The primary principal use in the residential single family zone districts is a residential use category known as "household living."
- (b) Article VI, division 3 of the City of Sarasota Zoning Code (hereafter the Zoning Code) identifies seven (7) implementing zone districts as "multiple-family zone districts." These districts are the following residential multiple-family zone districts: RMF-1, RMF-2, RMF-3, RMF-4, RMF-5, RMF-6, and RMF-7. The primary principal use in the residential multiple-family zone districts is a residential use category known as "household living."
- (c) In accordance with subsection II-304(b)(1) of the Zoning Code "household living" is "characterized by the residential occupancy of a dwelling unit by a family. Tenancy is arranged for periods longer than one (1) week. Uses where tenancy is arranged for a shorter period are not considered residential. They are considered to be a form of "transient lodging ..."
- (d) Sections VI-201 and VI-301 of the Zoning Code provide that when the Code refers to "residential zones" it is referring to both the single-family residential zones in article III, division 2 and the multiple-family residential zones in article III, division 3.
- (e) Certain vacation rentals are presently operating within areas of the city within residential zones, primarily on St. Armands Key and Lido Key and to date more complaints have been received about the operation of vacation rentals on St. Armands Key and Lido Key.
- (f) The City of Sarasota Zoning Code (chapter 38 of the City Code) defines a hotel as a building or group of detached or connected buildings containing six (6) or more guest rooms designed or used primarily for providing sleeping accommodations for automobile travelers and/or tourists on a daily or weekly rate basis that provides customary hotel services such as linen and maid service and may contain ancillary facilities such as, but not limited to, conference and recreational facilities. This definition was in effect on June 1, 2011.
- (g) Structures have been permitted and constructed in the city with six (6) or more bedrooms which have been subsequently used, without notice to the city, as vacation rentals with transient occupancy levels far exceeding the occupancy levels of surrounding residential zones where household living predominates and such use may fall within the definitional scope of a hotel.
- (h) According to the 2010 U.S. Census, the City of Sarasota has an average household size of 2.16 persons.
- (i) Vacation rentals situated in residential zones can and do create a great disparity in occupancy levels between the resident occupied single- and multiple-family residences and the vacation rentals, which some residents have referred to as "hotel houses."

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- (j) The recurring periodic rental of vacation rentals in residentially zoned neighborhoods tends to erode the residential character of those neighborhoods and undermine the long term stability of those neighborhoods.
 - (k) Vacation rentals located within established residential neighborhoods can disturb the quiet nature and atmosphere of residential neighborhoods and the residents' right to the peaceful use and enjoyment of their homes.
 - (l) It is necessary, appropriate, and in the best interests of the public health, safety, and welfare to monitor and to provide a reasonable means for residents of the City of Sarasota to mitigate adverse impacts of vacation rentals in their neighborhoods.
 - (m) The regulation of vacation rentals in the manner herein provided will help to promote the stability of existing residential neighborhoods and help to achieve a greater level of compatibility between resident occupied homes and visitor occupied vacation rentals.
 - (n) It is unnecessary to regulate owner occupied vacation rentals under this chapter because on site owners can be expected to regulate and supervise their properties to the same or a greater extent than provided under this chapter out of self-interest.
 - (o) It is unnecessary to regulate vacation rentals located in condominium units under this chapter because the Florida Statutes require condominiums to be governed by an association, which can itself provide whatever regulation is necessary and such associations are not subject to the state pre-emptions applicable to local governments.
 - (p) This chapter does not prohibit vacation rentals and this chapter does not regulate the frequency or duration of guest stays in vacation rentals.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-2. Statement of intent.

It is the intent of this chapter to regulate vacation rentals as defined by the Florida Statutes, but excluding those vacation rentals in condominiums and cooperatives. It is the further intent of this chapter to regulate those vacation rentals in any individually or collectively owned single-family, two-family, three-family, and four-family house or dwelling units which are located in residential zones within the Coastal Islands Overlay District established by section VI-907 of the zoning code.

The general purposes of this chapter are to ensure to the city's residents the tranquility and peaceful enjoyment of their homes and their neighborhoods; to mitigate incompatibilities between vacation rentals and resident occupied homes and to protect the health, safety and welfare of the occupants of vacation rentals and their guests and to encourage them to be respectful of the residents of the neighborhood in which they are vacationing. The city intends to address complaints associated with unsupervised vacation rentals (including by way of illustration and not limitation, over-occupancy, open and late night parties, excessive noise, parking on public sidewalks and excessive trash and garbage accumulation) in the manner set forth herein, including, but not limited to establishing a mandatory registration system for vacation rentals; specifying maximum occupancy limits; requiring inspections; and requiring the owner of a vacation rental to designate an individual or two (2) individuals to be responsible for the vacation rental.

This chapter is not intended to regulate and shall not apply to those rentals where the owner of the rental resides on the property and is present on site during a guest stay. This chapter is not intended to regulate and shall not apply to those rentals that are rented for periods of thirty (30) days or more.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-3. Definitions.

For purposes of this chapter, the following terms, words and phrases shall have the meaning set forth in this section. Whenever applicable, the singular shall include the plural.

- (a) *Bedroom* means any room in a vacation rental which has a bed or other place for sleeping and a separate closet that is an integral part of the permanent construction within the bedroom or an en suite bathroom, but does not include a bathroom, a kitchen, a dining area or any main living area. If a room has been added, altered or converted without any required building permit having been issued, such room shall not be deemed a bedroom.
- (b) *Certificate of registration* means the document that is issued by the city in accordance with section 34.5-5 to show that the vacation rental described on the certificate is currently registered with the city as required by section 34.5-4. An initial certificate of registration means the first certificate of registration issued to the owner identified on the certificate for the particular vacation rental identified on the certificate. A renewed certificate of registration means any subsequent certificate of registration issued for a successive calendar year to the same owner identified on the initial certificate for the same vacation rental identified on the certificate.
- (c) *Designated responsible party* means the owner of a vacation rental or a natural person who has been designated by the owner to be called upon to answer for the maintenance of the vacation rental property and to respond to inquiries or complaints regarding the conduct of the occupants of the vacation rental and their guests as provided in section 34.5-15 of this chapter.
- (d) *Guest* means any person physically within the vacation rental or on its grounds with the knowledge of an occupant.
- (e) *Maximum occupancy* means the maximum number of persons who may be occupants of a vacation rental at the same time between the hours of 10:00 p.m. and 7:00 a.m.
- (f) *Occupant* means any person who occupies a vacation rental overnight.
- (g) *Owner or vacation rental owner* means a natural person or legal entity holding all or a portion of the fee simple title to a vacation rental, whether an individual, partnership, corporation, limited liability company, trust, or other entity. In the event that the vacation rental owner is not an individual, each and every person who owns an equitable interest in the vacation rental shall also be considered an Owner.
- (h) *Owner occupied* means a vacation rental that is the primary and permanent residence of the owner of the property and in which the owner will be present throughout the guest stay (including overnight) to host the rental.
- (i) *Pre-existing rental Agreement* means a written agreement with prospective occupants that was already in existence and fully executed on or before May 4, 2021 and in which the occupants' tenancy is arranged for a period of longer than one (1) week.
- (j) *Vacation rental* means a rental as defined in F.S. §§ 509.242(1)(c) and 509.013(4)(a)(1), excluding those vacation rentals in condominiums and cooperatives and which is located in a residential zone within the coastal islands overlay district established by section VI-907 of the zoning code.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

ARTICLE II. REGISTRATION REQUIRED

Sec. 34.5-4. Mandatory registration—Initial certificate of registration.

- (a) No vacation rental (as defined in section 34.5-3(j) above) shall be rented or offered for rent without a current valid certificate of registration (as defined in section 34.5-3(b) above). Failure to possess a current valid certificate of registration while renting or allowing a vacation rental to be occupied is a violation of this section. Every vacation rental owner, either personally or through an agent, shall apply to the city for an initial certificate of registration, in accordance with instructions to be posted on the city's website, no earlier than January 3, 2022 and by no later than March 1, 2022, and shall obtain a certificate of registration by no later than June 1, 2022. Owners of vacation rentals who open a new vacation rental after March 1, 2022 shall apply for an initial certificate of registration prior to renting or allowing occupancy of the vacation rental at any time of year. Owners of vacation rentals who become owners after March 1, 2022 shall apply for an initial certificate of registration at any time of year prior to acquiring ownership or by no later than fifteen (15) days after acquiring ownership. A separate certificate of registration is required for each vacation rental. The operation of a vacation rental without a certificate of registration after June 1, 2022 shall be a violation of this section. Every day of such operation without registration shall constitute a separate violation.
- (b) An application for an initial certificate of registration shall contain a declaration from the vacation rental owner that under penalty of perjury, the owner represents that the information provided on the application and the information submitted with the application is true and accurate to the best of the owner's knowledge and belief. Electronic signature(s), also known as "e-signature", are acceptable on registration documents. The application for an initial certificate of registration shall be accompanied by the following materials and information:
 - (1) A completed application form supplied by the city. At a minimum, the application form shall include the street address of the vacation rental; the parcel identification number assigned by the Sarasota County Property Appraiser; the name, address, electronic mail address, and telephone number of the vacation rental owner(s); and the name, address, electronic mail address, and telephone number of the designated responsible party or parties if different from the owner.
 - (2) Proof of current ownership of the vacation rental property.
 - (3) Payment of the initial registration fee.
 - (4) A form supplied by the city entitled "Designation of Responsible Party" signed by the owner of the vacation rental or authorized representative, naming a single designated responsible party or naming two (2) designated responsible parties who shall have the duties listed in section 34.5-15. The vacation rental owner(s) may appoint himself, herself or themselves as the designated responsible party or as one (1) of two (2) designated responsible parties or shall otherwise designate someone to act as the designated responsible party on his or her behalf. An owner may designate a private property management company to serve as the designated responsible party. However, in the event an owner so designates a property management company, the owner shall also designate one (1) or two (2) individual persons associated with the property management company as the designated responsible party or parties.
 - (5) A written acknowledgment form signed by each designated responsible party acknowledging that he or she is aware of the provisions of this chapter and that he or she agrees to serve in the capacity of designated responsible party for the vacation rental being registered and that he or she agrees to discharge the duties of a designated responsible party as set forth in section 34.5-15.
 - (6) A copy of the business tax receipt showing payment of the City of Sarasota local business tax for the vacation rental for the current fiscal year or other proof of payment.
 - (7) A copy of the business tax receipt showing payment of the Sarasota County local business tax for the vacation rental for the current fiscal year or other proof of payment.

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- (8) Evidence that the vacation rental has a current and active account with the Sarasota County Tax Collector for the purposes of collecting and remitting tourist development taxes and any other taxes required by law to be remitted to the Sarasota County Tax Collector.
 - (9) A copy of a current and active license for the vacation rental issued by the State of Florida Department of Business and Professional Regulation showing that the vacation rental is licensed as a transient public lodging establishment.
 - (10) A copy of the current and active certificate of registration with the State of Florida Department of Revenue for the vacation rental showing that the vacation rental is registered for the purposes of collecting and remitting sales taxes, transient rental taxes and any other taxes required by law to be submitted to the Florida Department of Revenue.
 - (11) The number of bedrooms in the vacation rental.
 - (12) The number of full bathrooms (sink, toilet and bathtub or shower) in the vacation rental.
 - (13) An exterior site sketch of the vacation rental facility. The sketch shall show and identify all structures, pools, hot tubs, spas, fencing, and uses, including areas provided for off street parking. For purposes of the sketch, off street parking spaces shall be delineated so as to enable a fixed count of the number of spaces provided. At the option of the vacation rental owner, such sketch may be hand drawn to reasonable scale and need not be professionally prepared.
 - (14) An interior building sketch by floor for each floor in the vacation rental showing the floor plan layout and identifying all bedrooms, other rooms, exits, hallways and stairways and elevators as may be applicable. At the option of the vacation rental owner, such sketch may be hand drawn to reasonable scale and need not be professionally prepared.
 - (15) A blank sample of the standard rental lease agreement used for the vacation rental.
 - (16) A signed declaration by the owner on a form provided by the city, representing that he or she is aware of the City of Sarasota rules regulating vacation rentals specifically including the minimum stay requirement set out in section II-304(b) of the City of Sarasota Zoning Code.
 - (17) If the application for registration is being submitted on behalf of the owner of the property by his or her authorized representative, a letter of authorization from the owner representing that the representative is authorized to act on his or her behalf.
 - (18) Any pre-existing rental agreements as defined in section 34.5-3(i).
- (c) Submission of an incomplete application for an initial certificate of registration or a submission not accompanied by all of the applicable requirements of this section or submission of an incomplete application for a renewed certificate of registration pursuant to section 34.5-6 shall result in rejection of the application. If the submission for registration is incomplete, the applicant shall be notified of the deficiency and shall be allowed twenty (20) calendar days to provide any missing information or to pay any unpaid registration or inspection fees, or code compliance penalties. If the missing information is not provided or fees or penalties not paid within the twenty-day period, the application shall be deemed withdrawn. If the information is timely provided and any delinquent fees are timely paid, the application shall be processed.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-5. Certificate of registration.

- (a) An initial certificate of registration for a vacation rental shall be issued if each of the following conditions has been satisfied:

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- (1) The application is complete and the applicant has submitted all documents and information required by section 34.5-4.
 - (2) The applicant has paid all required fees and if any fines or penalties have been previously imposed on the applicant or the vacation rental unit, the fines and penalties have been paid or otherwise resolved.
 - (3) The vacation rental has been inspected as required by section 34.5-10 and the inspection shows that the vacation rental is in compliance with the provisions of this chapter including the minimum safety requirements of section 34.5-12 and the informational requirements of section 34.5-13 and in compliance with other applicable city ordinances including zoning regulations.
- (b) Initial certificates of registration issued during the calendar years 2022 and 2023 shall be valid through December 31, 2023. Thereafter, initial certificates of registration issued at any time after January 1 of an even numbered year shall expire on December 31 of the following odd numbered year, such that all initial certificates of registration shall expire on December 31 of each odd numbered year, even if this means the certificate of registration is valid for less than two (2) years. All initial and renewed certificates of registration shall be considered current and valid until their expiration date unless: (1) an amended certificate is required by section 34.5-7; (2) a new initial certificate is required by section 34.5-8; or (3) the certificate has been suspended in accordance with section 34.5-20.
 - (c) Each vacation rental unit shall require a separate certificate of registration. The certificate of registration shall contain the street address of the vacation rental, the name of the vacation rental owner, the name and telephone number of the designated responsible party, the number of bedrooms in the vacation rental unit, the maximum occupancy of the vacation rental unit, the vacation rental registration number and the expiration date of the certificate.
 - (d) If the violation history of the vacation rental identified in the application for an initial certificate of registration shows any violations of City Codes with associated unpaid penalties or unsatisfied liens, the initial certificate of registration shall not be issued unless all outstanding penalties or liens are first paid or satisfied as the case may be.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-6. Renewed certificate of registration.

- (a) An owner or authorized representative shall renew the certificate of registration and obtain a renewed certificate of registration prior to December 31 of each odd numbered calendar year after the initial certificate of registration is issued. An application for a renewed certificate of registration shall be filed no earlier than August 1 and by no later than October 1 each odd numbered year and a determination of compliance shall be made by December 31. Commencing on January 1, 2024, all renewed certificates of registration shall be valid from January 1 of each even numbered year for two (2) calendar years until December 31 of the following odd numbered year. However, renewed certificates of registration issued at any time after January 1 of an even numbered year shall expire on December 31 of the following odd numbered year, such that all renewed certificates of registration shall expire on December 31 of each odd numbered year even if this means the certificate of registration is valid for less than two (2) years. All renewed certificates of registration shall be considered current and valid until their expiration date unless: (1) an amended certificate is required by section 34.5-7; (2) a new initial certificate is required by section 34.5-8; or (3) the certificate has been suspended in accordance with section 34.5-20.
- (b) An application for a renewed certificate of registration shall be made on a form supplied by the city for that purpose. The application shall require the applicant to indicate whether each specific item of information submitted with the application for an initial certificate of registration required by section 34.5-4(b) subsections (1), (2), (4), (5), (8), (10), (11), (12), (13), (14), (15), and (17) remains current and accurate. If the

applicant signs a declaration under penalty of perjury, that the information remains current and accurate, no further information concerning these items shall be requested. If the applicant indicates that specified items are no longer current and accurate, then updated information which is current and accurate shall be submitted to support the application.

- (c) An application for a renewed certificate of registration shall be accompanied by the following:
- (1) Payment of the application fee for a renewed certificate of registration.
 - (2) A copy of the business tax receipt showing payment of the Sarasota County local business tax for the vacation rental for the current fiscal year or other proof of payment.
 - (3) A copy of a current and active license for the vacation rental issued by the State of Florida Department of Business and Professional Regulation showing that the vacation rental is a licensed transient public lodging establishment.
 - (4) A declaration signed by the owner on a form provided by the city, representing that he or she is aware of the City of Sarasota rules regulating vacation rentals specifically including the minimum stay requirement set out in section II-304(b) of the City of Sarasota Zoning Code.
- (d) A renewed certificate of registration shall be issued if each of the following conditions has been satisfied.
- (1) The application is complete and the applicant has satisfied the requirements of subsections (b) and (c) above.
 - (2) The applicant has paid all required fees; and if any fines or penalties have been previously imposed on the applicant or the vacation rental unit, the fines and penalties have been paid or otherwise resolved.
 - (3) City staff has confirmed that the applicant has paid the City of Sarasota local business tax for the vacation rental for the current fiscal year.
 - (4) The applicant signs a declaration supplied by the city certifying that the vacation rental is in full compliance with the provisions of this chapter, specifically including, but not limited to, the minimum safety requirements of section 34.5-12 and the informational requirements of section 34.5-13, and is in compliance with other applicable city ordinances including zoning regulations. If this signed declaration is supplied, the vacation rental shall not be inspected prior to the issuance of the renewed certificate of registration. In the event this declaration is not supplied, the vacation rental shall be inspected as provided in section 34.5-10.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-7. Amendment of certificate of registration.

An amendment of the initial or any renewed vacation rental certificate of registration shall be required in the event that any of the following changes to the vacation rental occur.

- (a) An increase in the number of bedrooms or bathrooms in the vacation rental.
- (b) An increase in the gross square footage of the vacation rental.
- (c) An increase in the maximum occupancy of the vacation rental.
- (d) An increase or decrease in the number of parking spaces or a change in the location of parking spaces for the vacation rental from what was shown on the exterior site sketch submitted with the most recent application for a certificate of registration in accordance with section 34.5-4(13).
- (e) Any other material modifications that would increase the intensity of use.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

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Sec. 34.5-8. Certificate of registration non-transferable, non-assignable.

Certificates of registration are non-transferable and non-assignable. The certificate of registration when issued shall pertain only to the property owner designated on the certificate for use at the one (1) specific property identified on the certificate. A separate certificate of registration is required for the same property owner to operate a vacation rental at another location. A new certificate of registration is required if ownership of the vacation rental changes from the owner(s) identified on the certificate, including purchase or acquisition of the assets of a legal entity identified as the owner on the certificate.

When a vacation rental is sold or ownership is otherwise transferred, the new owner shall apply for an initial certificate of registration within fifteen (15) days from the date of the sale or transfer and shall obtain a new initial certificate of registration. If the new owner fails to apply for a new certificate of registration as provided in this section, any certificate of registration previously issued for that vacation rental shall be null and void on the sixteenth day after such sale or transfer. An inspection of the vacation rental is required whenever a new owner applies for an initial certificate of registration due to the sale of a vacation rental or a change of ownership not involving a sale.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-9. No vested rights, estoppel, or waiver.

The issuance of a certificate of registration as required by section 34.5-5 above shall not be construed to create any vested rights or entitle the owner of the registered vacation rental to any rights under the theory of estoppel. The issuance of a certificate of registration shall not be construed as a waiver of any other requirements contained within the City of Sarasota Code of Ordinances or the City of Sarasota Zoning Code.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-10. Inspections of vacation rentals.

- (a) Upon the filing of an application for an initial certificate of registration and prior to receipt of an initial certificate of registration from the city pursuant to section 34.5-5, the vacation rental shall be subject to an inspection to verify compliance with the minimum safety requirements specified under section 34.5-12 of this chapter and minimum informational requirements specified under section 34.5-13 of this chapter and to confirm that the vacation rental is in compliance with this chapter and with any applicable provisions of the Sarasota City Code including the zoning code. The designated responsible party shall schedule and confirm all inspections required by this chapter with the city.
- (b) Subsequent inspections shall be required as provided in section 34.5-6(d)(4) and section 34.5-8.
- (c) If instances of noncompliance with the minimum safety requirements and minimum informational requirements or other provisions of this chapter are found upon any inspection, such noncompliance shall be corrected and the vacation rental re-inspected within thirty (30) calendar days after written notice of such violation(s) is provided to a designated responsible party.
- (d) If the inspector is denied admittance by the designated responsible party or if the inspector fails in at least three (3) attempts to complete an initial or a subsequent inspection of the vacation rental, the inspector shall provide a notice of inability to conduct the inspection to the vacation rental owner or to the designated responsible party at the address shown on the application for registration or on the certificate of registration after each failed attempt. No certificate of registration shall be issued initially or renewed until the inspection has been conducted. The issuance of a notice of inability to conduct an inspection after the third

failed attempt shall be deemed a violation of this section 34.5-10 and shall be subject to enforcement remedies as provided in this chapter.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-11. Schedule of fees.

All fees to be charged under the provisions of this chapter shall be set out in this section. Such fees are as follows:

Application fee for an initial certificate of registration in accordance with section 34.5-4 or section 34.5-8 \$250.00

Application fee for a renewed certificate of registration subsequent to the initial application in accordance with section 34.5-6 \$150.00

Late fee for an untimely submitted application for an initial certificate of registration or a renewed certificate of registration \$100.00

Application fee for an amended certificate of registration pursuant to section 34.5-7 \$100.00

First re-inspection fee \$50.00

Second and third re-inspection fees \$100.00

Inspection fee upon change of ownership \$100.00

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

ARTICLE III. STANDARDS FOR VACATION RENTALS

Sec. 34.5-12. Minimum safety requirements.

- (a) A swimming pool, spa or hot tub shall comply with the current standards of the Residential Swimming Pool Safety Act which specifies that a pool, spa or hot tub must meet at least one (1) of the following requirements relating to pool safety features:
- (1) The pool must be isolated from access to a home by an enclosure that meets the specific barrier requirements of the Residential Swimming Pool Safety Act including, and not limited to, a minimum four-foot height barrier with no gaps, openings, protrusions, or structural elements that could allow a young child to crawl under, squeeze through or climb over the barrier; the barrier must be placed around the perimeter of the pool and must be separate from any fence, wall or other enclosure surrounding the yard unless the fence, wall or enclosure is situated on the perimeter of the pool and is being used as part of the barrier; gates that provide access to swimming pools must open outward away from the pool and be self-closing and equipped with a self-latching locking device with the release mechanism of which must be located on the pool side of the gate;
 - (2) The pool must be equipped with an approved safety pool cover, manually or power operated, that meets all the performance standards of ASTM F1346-91;

Where a wall of the dwelling serves as part of the barrier, one (1) of the following shall apply:

- (3) All doors and windows providing direct access from the home to the pool shall be equipped with an exit alarm complying with UL 2017 that has a minimum sound pressure rating of 85 dBA at ten (10) feet. Any deactivation switch shall be located at least fifty-four (54) inches above the threshold of the

access. Separate alarms are not required for each door or window if sensors wired to a central alarm sound when contact is broken at any opening;

- (4) All doors providing direct access from the home to the pool must be equipped with a self-closing, self-latching device with positive mechanical latching/locking installed a minimum fifty-four (54) inches above the threshold, which is approved by the authority having jurisdiction; or
 - (5) A swimming pool alarm that, when placed in a pool, sounds an alarm upon detection of an accidental or unauthorized entrance into the water. Such alarm must meet and be independently certified to ASTM Standard F2208, titled "Standard Safety Specification for Residential Pool Alarms", which includes surface motion, pressure, sonar, laser and infrared alarms.
- (b) The vacation rental shall have a smoke and carbon monoxide detection and notification system which shall be installed and continually maintained and which shall be permanently powered by the dwelling's electrical system, or where not feasible, shall be powered by ten-year nonremovable, nonreplaceable batteries. The use of combination smoke alarm and carbon monoxide alarms is acceptable. Smoke alarms shall be located in each sleeping room, outside each separate sleeping area in the immediate vicinity of the bedrooms and on each additional story of a dwelling including basements and habitable attics. Carbon monoxide alarms shall be located within ten (10) feet of each sleeping room for any dwelling using fossil-fuel burning heater, fixture or appliance, a fireplace or attached garage.
- (c) A portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected, and maintained in accordance with NFPA 10 on each floor level of the vacation rental. The fire extinguisher may be installed on the wall in an open common area or in an enclosed space with appropriate markings visibly showing the location or with written information provided to the overnight occupants regarding the location of the fire extinguisher(s).

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-13. Minimum informational requirements.

- (a) The following information listed below shall be posted in a conspicuous location on an interior wall inside the vacation rental for the safety and convenience of the occupants. Alternatively, this information may be provided in accordance with subsection 34.5-13(c).
- (1) The location of the nearest hospital.
 - (2) The non-emergency police telephone number.
 - (3) The dates and approximate times of trash and recycling pick up.
 - (4) The street address of the vacation rental.
 - (5) The name and phone number of the designated responsible party or parties.
 - (6) Emergency evacuation instructions.
- (b) The following additional information shall also be posted in a conspicuous location on an interior wall inside the vacation entry in close proximity to the main entrance. Alternatively, this additional information may be provided in accordance with subsection 34.5-13(c).
- (1) The maximum occupancy of the vacation rental.
 - (2) The maximum number of vehicles that will be allowed to park at the vacation rental based on the number of off-street parking spaces on site, including enclosed spaces as determined by city staff.
 - (3) A notice of the need to respect the peace and quiet of neighborhood residents which shall state as follows: "You are vacationing in a residential neighborhood. Please be a good neighbor by not making

excessive noise or engaging in boisterous behavior, especially after 11:00 p.m. Such behavior can deprive your neighbors of the peaceful enjoyment of their homes."

- (4) A statement that sound that is audible beyond the property lines of the vacation rental unit is regulated by the city sound ordinance and that violation of the Sound Ordinance could result in fines to the occupants.
- (c) As an alternative to posting, the information required to be provided by this section may be provided in a "welcome binder" left on a coffee table, kitchen table, or other prominent location in the vacation rental or the information may be provided to the occupants of the vacation rental electronically. In the event the required information is provided electronically, the vacation rental owner shall have the burden to demonstrate that the information was, in fact, provided, if requested to do so by the city director of development services.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-14. Parking.

All vehicles associated with the vacation rental shall be parked within a driveway or parking area located on the premises and in compliance with all applicable city ordinances.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-15. Designated responsible party.

- (a) The duties of a designated responsible party, whether the owner or the owner's authorized representative, are as follows:
 - (1) To be available by land line or mobile telephone at one (1) of the listed phone numbers provided to the city in the application for an initial or renewed certificate of registration twenty-four (24) hours a day, seven (7) days a week and to be capable of assisting with resolution of any issues arising from the use of the vacation rental.
 - (2) To be available twenty-four (24) hours a day, seven (7) days a week for the purpose of promptly responding to complaints regarding the conduct or behavior of vacation rental occupants or their guests or regarding alleged violations of this chapter or violations of other city ordinances. The designated responsible party shall have authority to immediately address and take affirmative action, within one (1) hour of notice from the city, or as soon thereafter as reasonably possible, to address complaints, including but not limited to safety issues, noise, or parking.
 - (3) To come to the vacation rental within one (1) hour, or as soon thereafter as reasonably possible, following notification from an occupant, the owner, or a city official, code compliance officer or law enforcement officer to assist with finding solutions to problems or issues associated with the vacation rental.
 - (4) To receive service of any legal notice on behalf of the owner for violations of this chapter or other law or ordinance.
 - (5) To exercise all rights of the owner under F.S. §§ 509.141, 509.142 and 509.143 to deal with unruly occupants and their guests in the vacation rental.
 - (6) To maintain continuous compliance with the requirements section 34.5-13 of this chapter regarding information to be provided to vacation rental occupants.

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- (7) To maintain the vacation rental premises free of garbage and litter, provided that this subsection does not prohibit the storage of garbage and litter in authorized receptacles for collection.
 - (8) To otherwise monitor the vacation rental when rented to check upon the condition of the unit and the occupants' compliance with this chapter.
 - (9) To be informed as to the name, address and phone number of each individual who booked the vacation rental and as to the number of occupants during each rental period and to provide this information to law enforcement officers or to code compliance officers upon request. In addition, to provide a copy of the rental agreement for the current occupants of a vacation rental to law enforcement officers or to code compliance officers upon request.
 - (10) To provide the office of the city auditor and clerk with notice of resignation in writing at least one (1) week in advance of the effective date of the resignation.
- (b) A designated responsible party must have authority to consent to allow all inspectors access to the vacation rental property to conduct the inspections required by sections 34.5-5(a)(3); 34.5-6(d)(4); and 34.5-8.
 - (c) It shall be the sole responsibility of the owner to appoint a reliable designated responsible party and to inform the city of his or her contact information as a part of the application for registration as provided in section 34.5-4(b)(4) above. Failure to do so shall not be a defense to an alleged violation of other provisions of this chapter.
 - (d) An owner may change his or her designated responsible party temporarily or permanently. However, there shall be no more than two (2) designated responsible parties for each vacation rental property at any one time. To change the designated responsible party, the property owner shall notify the city in writing on a form to be provided by the city at least one (1) week in advance.
 - (e) Personal service on or mailing or emailing of a notice of violation or other notices to the designated responsible party shall be deemed valid service and notification of the owner or occupant as the case may be.
- (Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-16. Maximum occupancy.

- (a) Maximum occupancy for vacation rentals in residential single-family zone districts shall be two (2) persons per bedroom, plus two (2) additional persons per property or ten (10) persons, whichever is less. Children under six (6) years of age shall not be included in the calculation of maximum occupancy. Maximum occupancy for vacation rentals in residential multiple-family zone districts shall be two (2) persons per bedroom, plus two (2) additional persons per property or twelve (12) persons, whichever is less. Children under six (6) years of age shall not be included in the calculation of maximum occupancy.
- (b) Notwithstanding the above, a vacation rental that was lawfully used as a vacation rental as of May 4, 2021, may have a higher maximum occupancy limitation in accordance with this subsection (b). As to the application of the maximum occupancy limitation of subsection (a) to vacation rentals lawfully in existence as of May 4, 2021, it is acknowledged that there are vacation rentals that could qualify for a higher maximum occupancy limit, if the limit were set higher, based on the number of bedrooms in the vacation rental. In an effort to recognize reasonable investment backed expectations and yet balance and protect the interests of residents in surrounding single family homes which are not vacation rental properties, there shall be a phasing in of maximum occupancy in accordance with the schedule below. No special vesting process or fee shall be required to obtain this vesting benefit other than demonstrating eligibility through the certificate of registration process.

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- (1) The maximum occupancy for vacation rentals lawfully in existence on May 4, 2021 shall temporarily be capped at no more than sixteen (16) provided that all the requirements to obtain a certificate of registration in accordance with section 34.5-5 are satisfied and a certificate of registration is issued. This maximum occupancy limit shall remain in effect from June 1, 2022 through December 31, 2023.
 - (2) The maximum occupancy for vacation rentals lawfully in existence on May 4, 2021 shall be reduced from sixteen (16) to fourteen (14) for the one-year period commencing January 1, 2024 through December 31, 2024 provided that all requirements to obtain a certificate of registration in accordance with section 34.5-5 are satisfied and a certificate of registration is issued.
- (c) After December 31, 2024, the maximum occupancy for all vacation rentals shall be as provided in subparagraph 34.5-16(a) above.
 - (d) The maximum occupancy limitations set forth in subparagraphs (b)(1) and (b)(2) above shall not apply in the event two (2) or more adjudicated violations of this chapter, another provision of the City Code or the city zoning code occur at the vacation rental and shall not apply in the event the vacation rental is sold or title to the vacation rental is otherwise transferred.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-17. Exemption from maximum occupancy limits for pre-existing rental agreements.

- (a) The maximum occupancy limits contained in section 34.5-16(a) or (b) above shall not apply to occupancy pursuant to a pre-existing rental agreement entered into and fully executed prior to May 4, 2021. Notwithstanding any other provision of this chapter, occupancy pursuant to pre-existing rental agreements are exempt from the maximum occupancy limits of this chapter.
- (b) If an owner of a vacation rental is cited for a violation of section 34.5-16 when the vacation rental is occupied under the terms of a pre-existing rental agreement, the vacation rental owner may defend against such citation based on the fact that the vacation rental was exempt from the maximum occupancy limits of section 34.5-16 due to occupancy under a pre-existing rental agreement.
- (c) The maximum occupancy limits contained in sections 34.5-16(a) and (b) above shall not apply to occupancy pursuant to a pre-existing rental agreement if the pre-existing rental agreement has been assigned by the owner to a subsequent owner or to any third party and shall not apply to occupancy pursuant to a pre-existing rental agreement if the occupants are not the occupants identified in the pre-existing rental agreement.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-18. Advertising.

Any advertising of the vacation rental shall conform to the information submitted with the application for registration of the vacation rental and to the information shown on the certificate of registration for the vacation rental, specifically including, but not limited to, maximum occupancy and display the City of Sarasota Vacation Rental Certificate of Registration number. Any advertising of the vacation rental shall conform to the minimum stay requirement set out in section II-304(b) of the zoning code. The advertising of a vacation rental for an occupancy level that exceeds the maximum occupancy limit set by section 34.5-16 is a violation of this section and is direct evidence of offering a property for rent as a vacation rental in violation of the maximum occupancy limits of section 34.5-16 and the advertising or advertisement is admissible in any enforcement proceeding. The advertising or advertisement raises a rebuttable presumption that the property identified in the advertising or advertisement was occupied in violation of section 34.5-16. Any advertising of a property for purposes of a

vacation rental shall be deemed sufficient evidence of the use of that property as a vacation rental for purposes of enforcing all sections of this chapter.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

ARTICLE IV. ENFORCEMENT

Sec. 34.5-19. Violations of this chapter.

- (a) Noncompliance with any provision of this chapter shall constitute a violation of this chapter. Violations of this chapter shall specifically include, but not be limited to the following unlawful conduct:
 - (1) It is unlawful to rent out a vacation rental without a current certificate of registration issued by the city in accordance with section 34.5-5 or section 34.5-6.
 - (2) It is unlawful to offer a vacation rental for rent or to advertise a vacation rental for rent without a current certificate of registration issued by the city in accordance with section 34.5-5 or section 34.5-6.
 - (3) It is unlawful to rent a vacation rental for occupancy in excess of the applicable maximum occupancy.
 - (4) It is unlawful to be an occupant of a vacation rental at any time that the number of occupants of the vacation rental exceeds its maximum occupancy.
 - (5) It is unlawful to fail to provide any of the information required to be provided to occupants of the vacation rental by subsections 34.5-13(a) and (b).
 - (6) It is unlawful to provide any false or misleading information in connection with any application for an initial or renewed certificate of registration, or for amendment of a certificate of registration as required by this chapter. Any knowing and intentionally false or misleading statements made in any such application or any intentionally false or misleading statement or information submitted in connection with an application shall subject the applicant to a fine and shall constitute grounds for the suspension of any certificate of registration issued pursuant to such application.
- (b) Each day a violation exists shall constitute a separate and distinct violation.
- (c) The vacation rental owner shall be liable for any violations of this chapter and for any violations of a code compliance order pertaining to the vacation rental. In addition, when two (2) or more persons commit a violation, each violator shall be jointly and severally liable for any fines or penalties assessed. This applies to situations where an owner, a designated responsible party, occupant, or guest are together responsible for a violation of this chapter. Any fines to occupants resulting from violations of this chapter or other city ordinances after the property owner or a designated responsible party was advised shall also be the responsibility of the property owner to pay.
- (d) All repeat violations shall be scheduled for a hearing before the special magistrate and the repeat violator shall not have the option to pay a fine prior to the hearing. For purposes of this paragraph the term repeat violation shall mean a second violation of the same provision of this chapter or the same provision of another applicable city ordinance for the second time within a one-year period.

(Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-20. Suspension of certificate of registration.

- (a) In addition to any fines and any other remedies described herein or provided by law, a special magistrate may, in his or her discretion, suspend an initial or renewed certificate of registration for a vacation rental upon request in accordance with the suspension time frames set forth in subsection (b) below:
 - (b) Suspension time frames.
 - (1) For a first violation of this chapter or other applicable city ordinance, suspension of a certificate of registration is not authorized.
 - (2) Upon a second violation of this chapter or other applicable city ordinance, the certificate of registration, if suspended, shall be suspended for a period of thirty (30) calendar days.
 - (3) Upon a third violation of this chapter or other applicable city ordinance, the certificate of registration, if suspended, shall be suspended for a period of sixty (60) calendar days.
 - (4) Upon a fourth violation of this chapter or other applicable city ordinance, the certificate of registration, if suspended, shall be suspended for a period of ninety (90) calendar days.
 - (5) For each additional violation of this chapter or other applicable city ordinance, the certificate of registration, if suspended, shall be suspended for an additional thirty-calendar-day period up to a maximum period of three hundred sixty (360) calendar days.
 - (c) A vacation rental may not host any occupants during any period of time when the certificate of registration for the vacation rental is suspended.
 - (d) The suspension shall begin following notice, commencing either on the end of the current vacation rental lease period or within thirty (30) calendar days thereafter, or as otherwise determined by the special magistrate in order to avoid impairment of the validity of an executed rental agreement for the vacation rental.
 - (e) Operation and hosting of occupants during any period of suspension shall be deemed a separate violation of this chapter.
 - (f) An application for a certificate of registration may be submitted during the period of suspension; however no certificate of registration may be issued for the vacation rental until the period of suspension has expired.
- (Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

Sec. 34.5-21. Enforcement and remedies.

- (a) Code enforcement shall be undertaken in accordance with F.S. ch. 162 and the City of Sarasota Code of Ordinances.
 - (b) The city may utilize F.S. ch. 162, pt. I to prosecute a violation of this chapter or other code violation with respect to a vacation rental and in such case, the special magistrate shall be authorized to hold a hearing, to assess penalties in accordance with section 2-315 of the Sarasota City Code and to order other relief in accordance with chapter 2, article V, division 5 of the Sarasota City Code.
 - (c) Nothing herein shall prevent the city from seeking all other available remedies which may include, but shall not be limited to, suspension of a certificate of registration, injunctive relief, liens and other civil and criminal penalties as provided by law as well as referral to other enforcing agencies.
- (Ord. No. 21-5353, § 1, 5-4-21; Ord. No. 22-5392, § 1, 1-3-22)

ORDINANCE NO. 22-03

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF REDINGTON SHORES, FLORIDA, AMENDING § 90-116 (VACATION RENTALS) OF THE TOWN CODE TO CLARIFY CERTAIN REQUIREMENTS AND PROCEDURES; PROVIDING RELATED FINDINGS; AND PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes § 509.032(7)(b) prohibits a Florida local government from adopting an ordinance or regulation which prohibits vacation rentals or regulates the duration or frequency of the rental of vacation rentals; and

WHEREAS, notwithstanding those limitations, Florida's courts have recognized that local governments are not wholly preempted from adopting regulations regarding vacation rentals which do not prohibit them or regulate rental frequency or duration; and

WHEREAS, based upon this authority, on August 8th 2020, the Town Commission adopted Ordinance 20-06, which created § 90-116 of the Town Code, and which provides for various regulations vacation rental owners, operators and listing platforms must comply with; and

WHEREAS, on February 10th 2021, the Town Commission adopted Ordinance 21-03, which made several adjustments to the inspection and fee provisions of § 90-116; and

WHEREAS, the Town's new Town Attorney, in further reviewing the vacation rental rules, has recommended certain additional provisions of § 90-116 be clarified to accord with the Town's intent and to make the rules clearer for those parties responsible for compliance; and

WHEREAS, the Town Commission finds that the revisions recommended by the Town Attorney as reflected in this Ordinance are in the best interests of the Town.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Shores, Florida, that:

Section 1. Section 90-116 of the Redington Shores Town Code is hereby amended as follows:

Sec. 90-116. – Vacation rentals.

A. Applicability and purpose.

- (1) This section shall apply to all permitted vacation rentals located in the Town of Redington Shores, Florida, including any grandfathered use of vacation rentals in zoning districts other than Commercial Tourist Facilities (CTF) and Planned Unit Development (PUD) with a Future Land Use category of Resorts Facilities Medium (RFM).

- (2) The purpose of this section is to provide additional regulations pertaining to vacation rentals to preserve the quiet nature and atmosphere of residential areas and to ensure to the town's residents the tranquility and peaceful enjoyment of their neighborhoods. These regulations shall be in addition to and shall not supplant other provisions in this Code that may apply to vacation rentals; and in the event of a conflict, the more restrictive provision shall control. Nothing in this section shall be deemed to create an enforceable right or private right of action against the town.

B. *Definitions.* For purposes of this section, the following definitions shall apply:

- (1) *Peer-to-peer or platform entity* shall mean any person, service, business company, marketplace, or other entity that, for a fee or other consideration, provides property owners and responsible parties a platform or means to offer vacation rentals to transient occupants whether through the internet or other means.
- (2) *Property owner* shall mean the person who, or entity that, owns the property being used or occupied as a vacation rental.
- (3) *Responsible party* shall mean the person or entity authorized by the property owner to obtain a certificate of use for a vacation rental, and who will be:
 - (a) Responsible for ensuring compliance with all regulations related to vacation rentals; and
 - (b) Available to respond 24 hours per day, seven days per week to an issue that arises relating to the vacation rental.

The property owner may serve as responsible party.

- (4) *Transient occupant* shall mean any person who rents or occupies any dwelling unit or residence or part thereof for less than 30 days or one calendar month whichever is less, and any guest or invitee of such person.

C. *Certificate of use required.* No property owner, responsible party, or peer-to-peer or platform entity shall offer as a vacation rental or allow any person to rent or occupy as a vacation rental any property in whole or in part within the Town of Redington Shores, unless a certificate of use has first been obtained in accordance with the provisions of this section. A property may be offered as a vacation rental immediately upon submission of an application for certificate of use, unless and until such time as the application is thereafter rejected or revoked.

- (1) *Application.* A complete certificate of use application shall be submitted to the town. The application must be signed under oath or affirmation, and shall include the following:
 - (a) The address and legal description of the vacation rental property;

- (b) Name, address, email address, and phone number of the property owner;
- (c) Name, address, email address, and phone number of the responsible party;
- (d) Name and contact information for the peer-to-peer or platform entity or entities on which the vacation rental is, or will be, listed for rent;
- (e) Statement that the responsible party is, or will be, remitting all applicable local Pinellas County business and tourist taxes; or that a peer-to-peer or platform entity through which vacation rentals are booked will be remitting all such taxes associated with the vacation rental on the responsible party's behalf;
- (f) Statement that the responsible party is authorized by ~~has the permission of~~ the property owner ~~and authority to offer the property as a vacation rental and act as the responsible party;~~
- (g) Statement as to whether the entire property, or just a part thereof (i.e., a room or rooms) will be used as a vacation rental;
- (h) Statement that insurance coverage will be in effect at all times while the property is being used as a vacation rental to cover liability for injury or harm to transient occupants or other invitees, and acknowledging that a standard homeowner's or renter's insurance policy may not necessarily provide such liability coverage while the property is used as a vacation rental;
- (i) Statement acknowledging that the vacation rental must be registered with the Florida Department of Revenue, or successor agency, for purposes of collecting and remitting applicable state taxes and all such state taxes have been, or will be, paid;
- (j) Statement acknowledging that a vacation rental license, issued by the Florida Department of Business and Professional Regulation, or successor agency, must be obtained; and
- (k) Statement acknowledging that the property is, and will be at all times during which it is used as a vacation rental, maintained in compliance with the vacation rental standards set forth in subsection D. below;
- (l) Statement acknowledging that copies of any executed rental contract in existence prior to August 12, 2020, which contains provisions contrary to this section but are otherwise permissible under Town Code, along with evidence of any deposit received in conjunction with such contract(s), must be submitted to the Town with the initial certificate of use application. The property owner or responsible party must also execute the corresponding affidavit promulgated by the Town, as may be amended by ~~the town from time to time, which is attached hereto as Exhibit A.~~ Failure to submit such affidavit and documentation shall result in all rentals being subject to the terms of this section despite the date such rental agreement was entered into by the parties.

(m) A building sketch(s) shall be provided by floor showing a floor layout. The sketch shall be drawn to scale, showing all bedrooms and sleeping areas.

(2) *Supporting documentation.* The responsible party shall maintain all required licenses, records, and other documentation sufficient to demonstrate that the statements and information required by subsection (1) above are true and accurate.

(3) *Providing false information.* ~~Failure to provide truthful and complete~~ Providing false or misleading information and responses in an application for a certificate of use is grounds to deny or revoke the certificate of use. A determination that an applicant has failed to provide truthful and complete ~~false or misleading information and responses was provided in an application is appealable to the town commission, provided that asueh written notice of appeal is~~ be filed with the town clerk within ten calendar days from of the date of the written denial or revocation of the certificate of use.

(4) *Annual renewal.* The certificate of use shall be renewed annually. A certificate of use may not be renewed if there are any outstanding fines or liens for violations of Town Code.

D. *Vacation rental standards.* The following vacation rental standards shall govern vacation rentals in the Town of Redington Shores:

(1) Duties of peer-to-peer or platform entity. For each vacation rental listed or offered, a peer-to-peer or platform entity shall:

(a) Provide notice of the requirements of this section to any person or entity listing or offering a vacation rental on its service or platform by including a summary of such requirements in a format acceptable to the town on its service of platform:

(b) Only provide payment processing services, or otherwise facilitate payment for a vacation rental that has a valid certificate of use in accordance with this section. A peer-to-peer or platform entity shall not be held liable pursuant to this subsection where it:

(i) As part of its vacation rental listing registration process, informs the responsible party that a certificate of use must be obtained before offering a vacation rental in the town; includes a link to the town's webpage where a certificate of use application can be located; requires the responsible party to confirm that such party has been advised of the town's regulations, including the certificate of use requirement; and provides a dedicated field to enable the responsible party to input the certificate of use number before such party completes registration and lists a vacation rental on the service or platform:

(ii) Provides the town on a monthly basis a report disclosing for each vacation rental listing the information entered by the responsible party in the certificate of use dedicated field, or whether the responsible party left that field blank; the total number of vacation rental listings on the service or platform during the prior

month; and the total number of nights that vacation rentals listed on the service or platform were rented during the prior month.

- (c) Comply with administrative subpoenas or other appropriate legal process from the town seeking information relating to persons or entities listing or offering vacation rentals on its service of platform;
- (d) Maintain records demonstrating that the requirements of this subsection have been satisfied and such records shall be subject to inspection by the town upon request pursuant to the issuance of an administrative subpoena or other appropriate legal process, provided however, that certain confidential information, such as social security numbers, credit card information, and names of minors, shall not be subject to inspection upon request of the town; and
- (e) Make available to the town for inspection upon request pursuant to the issuance of an administrative subpoena or other appropriate legal process all records relating to any suspected violations of state or local law associated with any vacation rental property in the ~~town of Redington Shores~~, provided, however, that certain confidential information, such as social security numbers credit card information, and names of minors, shall not be subject to inspection upon request of the ~~town of Redington Shores~~.

(2) *Duties of responsible party.* For each vacation rental, the responsible party shall:

- (a) Provide written notice to transient occupants, prior to occupancy of the vacation rental, of the town's vacation rental standards set forth in this section, as well as the town's current herein and other applicable laws, ordinances, or regulations concerning noise, public nuisance, vehicle parking, solid waste collection, pet dogs on the beach, and condominium common area usage. This information, which is compiled and updated by the town and maintained on the vacation rental standards page of the town's website, shall also be made available to each transient occupant inside the subject property;
- (b) Ensure compliance with all provisions of this section, including the vacation rental standards set forth herein and the town's regulations concerning noise, public nuisance, vehicle parking, solid waste collection, pet dogs on the beach, and condominium common area usage, and promptly address and report any violations of these standards section or of such other law or regulation of which the responsible party knows, or with the exercise of reasonable diligence and oversight of the property should know, has occurred or is occurring. Such violations may be reported to the county's sheriff's office or, if during regular town hall hours, the town clerk's office, to the town or law enforcement, as appropriate, as well as to the peer-to-peer or platform entity;
- (c) Ensure that any violations regarding the rental of the property are able to be promptly addressed and resolved 24 hours a day/seven days per week; and

- (d) Maintain a register with names and dates of stay of all guests, including, but not limited to, all transient occupants and their invitees.
- (3) *Maximum occupancy.* Maximum overnight occupancy for vacation rentals shall be up to a maximum of two persons per permitted bedroom, plus two additional persons per property up to a maximum of 12 persons excluding children under six years of age. At all other times maximum occupancy for vacation rentals shall not exceed the maximum overnight occupancy of the vacation rental plus four additional persons per property, up to a maximum of 16 persons, excluding children under six years of age. For purposes of this subsection, "overnight" shall mean from 10:00 p.m. until 7:00 a.m. the following day. Notwithstanding the foregoing, at no time may the occupancy of a vacation rental exceed the maximum occupant load for the property under the Florida Building Code.
- (4) *Solid waste handling and containment.* Solid waste containers sufficient to handle the maximum occupancy permitted shall be maintained in accordance with chapter 127. All regulations regarding screening and storage of solid waste containers shall apply to vacation rentals. For purposes of this section, and as required in section 127-4 all solid waste containers shall be placed near the curb or alley no earlier than 6:00 p.m. of the evening preceding the collection day and must be removed not later than 7:00 p.m. of the day of collection.
- (5) *Advertising and signs.* Signs shall only be allowed to the extent permitted by the regulations in the code applicable to the relevant zoning district. Any advertisements or signs pertaining to vacation rentals that are inconsistent with the requirements, restrictions and regulations of the certificate of use or these vacation rental standards shall be deemed prima facie evidence in any enforcement action that a vacation rental is being operated in violation of this section.
- (6) *Posting of certificate of use.* Whenever a property is being used as a vacation rental, the certificate of use required by this section shall be available in a conspicuous location that is clearly visible to guests within the vacation rental and shall include at a minimum the name, address and phone number of the responsible party and the maximum occupancy of the vacation rental.
- (7) *Parking and vehicles.* ~~All parking must comply with chapter 140, and all other applicable sections of this Code. In addition all vehicles associated with the vacation rental, whether in the possession or control of the property owner, responsible party, or transient occupant, including maintenance, service or catering providers, shall comply with chapter 140 and all other applicable sections of the code, and shall not obstruct emergency vehicles, normal movement of traffic, block driveways, mailboxes or beach accesses only be parked within a driveway or in a designated parking area on the subject property.~~ Transient occupants shall not be permitted to park more than two vehicles at any one time on the subject property during the rental period, unless the property has additional lawfully permitted parking spaces sufficient to park additional vehicle(s) without encroaching on town right-of-way.

- (8) *Noise.* All transient occupants shall abide by chapter 101 of the town cCode, which prohibits unreasonably loud, excessive, unnecessary, or unusual noise. ~~On addition~~ outdoor amplified sound at a vacation rental shall not be permitted at any time.
- (9) *Public nuisance.* The responsible party and all transient occupants shall abide by all ~~applicable the following~~ state and ~~town local~~ public nuisance laws; and ~~ordinances, including, but not limited to, Florida Statutes~~ §§ 823.05 and 823.10, and article II of chapter 103 of the town cCode.
- (10) *Pets.* If the responsible party permits transient occupants to have pets at the vacation rental, such pets shall be at all times secured within the property lines or on a leash but shall not be tethered. Continual nuisance barking by pets is prohibited. The keeping of pets shall be subject to the regulations of this section and chapter 56 of the town is ~~c~~Code regarding animals.
- (11) *Swimming pool safety features.* If there is a swimming pool onsite, the responsible party shall ensure that the swimming pool has in place at least one of the pool safety features listed in Florida Statutes § 515.27, (i.e., pool safety barrier pool safety cover pool alarm or door latch/alarm) prior to use of the property as a vacation rental by any person under the age of six. The responsible party shall be deemed to have complied with this provision if the pool safety feature is put in place at the time that the property is turned over to any transient occupant occupying the vacation rental. This provision shall not apply to a vacation rental with a community swimming pool onsite, such as in a condominium. Compliance with this provision shall be in addition to compliance with article V of chapter 90 of the town is ~~c~~Code pertaining to swimming pool fences.

E. *Enforcement.* The requirements of this section shall be enforced in accordance with the following:

(1) *Penalties.* Any person operating a vacation rental without a certificate of use or in violation of the vacation rental standards or any other provisions in this section shall be subject to the penalties set forth in section 1-16 and for the civil infractions as provided below, or both, and to all other enforcement measures authorized in this Code or by other applicable law:

(a) Failure to obtain certificate of use for vacation rental.

- (i) First offense - \$100.00;
- (ii) (ii) Second offense - \$1,000.00;
- (iii) (iii) Third offense and subsequent violations thereafter - \$2,500.00.

(b) Violation of vacation rental standard or any other provision of section 90-116.

- (i) First offense - \$100.00;
- (ii) Second offense occurring within 12 months of the first offense - \$1,000.00;
- (iii) Third offense occurring within 12 months of the most recent two preceding offenses - \$2,500.00 and revocation of the certificate of use.

- (c) Revocation of a certificate of use pursuant to this section shall be for a period of 12 months. Any certificate of use revoked pursuant to this section shall be appealable to the town commission provided that a written~~such~~ notice of appeal is~~be~~ filed with the town within ten calendar days from~~of~~ the date of the written notice of revocation. The notice of appeal must be in writing and filed with the town clerk. The appeal shall be accompanied by a fee as specified by resolution of the town commission.
- (2) *Joint and several liability.* The property owner of the vacation rental property shall be liable for any violations of this section, including any rule or regulation promulgated pursuant to~~under~~ this section. When~~in addition~~ whenever two or more persons commit such a violation, each violator shall be jointly and severally liable for any fines ~~or other~~ damages assessed. This applies to situations where a property owner, responsible party, peer-to-peer or platform entity, or transient occupant, or any combination thereof, are together responsible for a violation of this section. It is provided however, that where a peer-to-peer or platform entity does not itself commit a violation of this section, it shall not be held jointly and severally liable, nor shall it be held vicariously liable for any violations committed solely by the responsible party or transient occupants. In addition where a peer-to-peer or platform entity complies with subsection D.(1)(b)(i) and (ii), it shall not be held jointly and severally liable for providing a listing for, or collecting a fee for listing, any vacation rental. It is the intent of this subsection (2) to address liability for administrative code violations only. This subsection (2) is not intended to address liability for damages suffered by any person as a result of negligent or intentional acts which are sought or awarded under criminal or tort law.

Section 2. For purposes of codification of any existing section of the Redington Shores Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Redington Shores Town Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING on the 9th day of March, 2022, by the Board of Commissioners of the Town of Redington Shores, Florida.

ADOPTED ON SECOND AND FINAL READING on the 13th day of April, 2022, by the Board of Commissioners of the Town of Redington Shores, Florida.

ATTEST:

Marybeth Henderson, Mayor

Mary Palmer, MMC, Town Clerk