Short-Term Vacation Rentals: The Getaway That Got Away!

Florida Association of County Attorneys
2015 Continuing Legal Education Program
June 17-18, 2015

Al Hadeed, County Attorney
Flagler County, FL
ahadeed@flaglercounty.org

Short Term Vacation Rental Legislation and Effects

Pre- June 2011

Home Rule Authority Complete

But see, former Fla Stat. § 509.032(7) (2010) – preempting inspections to the State except for compliance with Florida Building Code and Fire Prevention Code

A number of jurisdictions had regulatory systems, cities (e.g., Dania Beach and Venice) and counties (e.g., Brevard)

See, e.g., *City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla 2d DCA 2011)

Short Term Vacation Rental Legislation and Effects

Background of the June 2011 Legislation, Fla. Chpt. 2011-119 (House Bill 883)

Vacation rental industry sought local preemption under proposal by the Lewis, Longman & Walker law firm which represented the industry.

Premise of legislation was to allow homeowners to rent on short term basis to mitigate for the effects of the economic recession.

Premise of the lobbying by Lewis Longman & Walker was abuse by local governments toward short term vacation rentals using anecdotes. The solution advocated was to preempt local governments in favor of uniform treatment at the state level.

Short Term Vacation Rental Legislation and Effects

Fla. Chpt. 509 was under review for modifications for public lodging and public food service establishments. This review was a convenient vehicle for preemption amendment.

Limiting local government regulation was part of a national effort from the trade groups that advocate for the business of vacation rentals. E.g., Short Term Rental Advocacy Center - www.stradvocacy.org

Short Term Vacation Rental Legislation and Effects

Background of the June 2011 Legislation, Fla. Chpt. 2011-119 (House Bill 883)

Before the end of session, compromise achieved with those communities already regulating by grandfathering existing ordinances and regulations adopted on or before June 1, 2011.

The June 1, 2011 grandfathering date effectively prevented any community from initiating or adopting any ordinance or regulations on vacation rentals, as the bill passed at the very end of session.

Short Term Vacation Rental Legislation and Effects

Background of the June 2011 Legislation, Fla. Chpt. 2011-119 (House Bill 883)

Likewise, no community with existing ordinances or regulations had any time to enact any amendments or even refinements. Most if not all have taken the view that enacting any amendment will result in loss of the grandfathering.

Also as part of the compromise, there was a carve out for certain communities within areas of critical state concern in Monroe County.

See generally, Fla. Stat. § 509.032(7) (2011).

Short Term Vacation Rental Legislation and Effects

What did the 2011 Preemption Legislation do?

No restriction on use or any prohibition of vacation rentals, and no treatment of them based on their classification, use or occupancy.

If a community wanted to regulate them, they would essentially have to fall under a program that regulated all types of rentals, e.g., landlord licensing programs.

No mandatory inspections of vacation rentals by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation ("DBPR") for compliance with state regulatory requirements. See, Fla. Stat. § 509.032(2)(a). ("Whereas" implications)

Short Term Vacation Rental Legislation and Effects

What did the 2011 Preemption Legislation do?

DBPR regulations allowed up to 75 homes to be on one collective license and to be indexed under only the first named property location. ("Whereas" implications.)

The occupancy limit was one person for 150 gross square feet. Twenty visitors could occupy a 3,000 square foot house and the square footage could be computed by including enclosed garages or other spaces. Rooms were converted into bedrooms, some without permits and without meeting Life Safety requirements. ("Whereas" implications.)

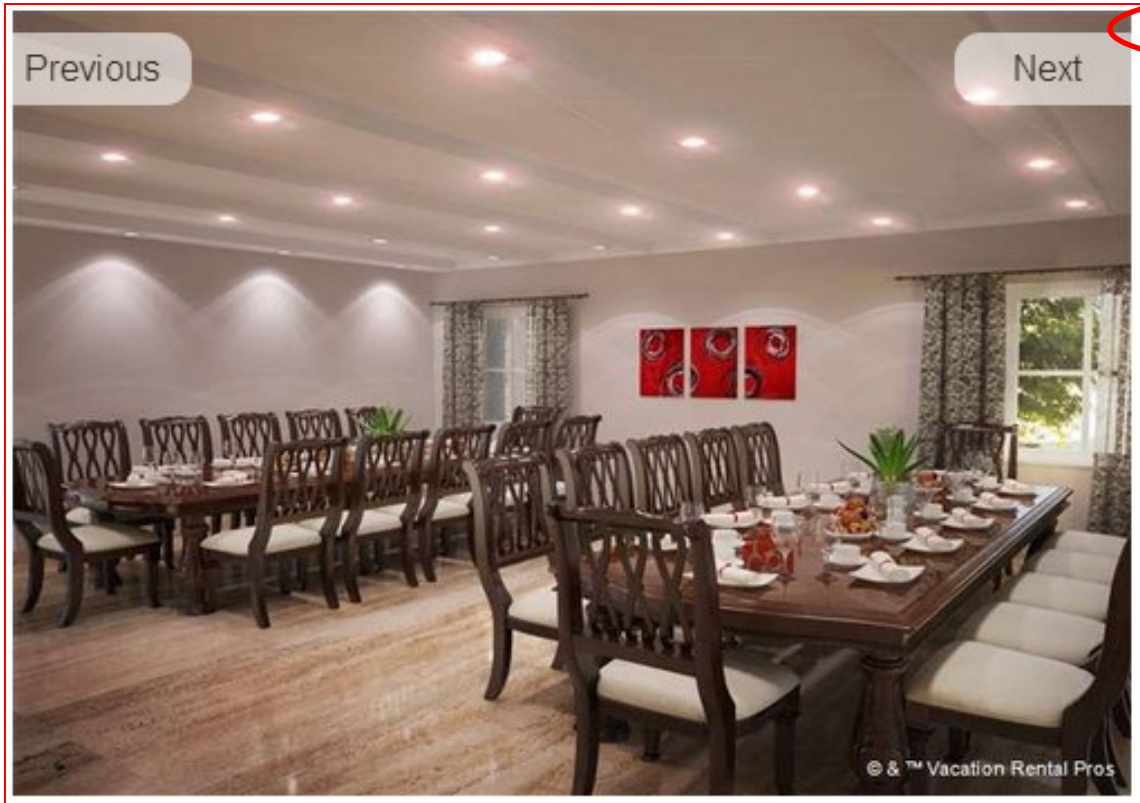
Short Term Vacation Rental Legislation and Effects

The preemption allowed investors and investment groups to purchase property to convert them into vacation rentals. The greatest impact was on single family neighborhoods. ("Whereas" implications.)

Incompatibilities with single family neighborhoods include nuisances (excessive trash and noise), blocking emergency ingress and egress, backed up traffic at entry gates, and constant turnover of occupants, materially affecting the character of the neighborhood. ("Whereas" implications.)

Occupancies for these establishments skyrocketed. Some became mini-hotels. See ads following.

Advertisement For Short Term Vacation Rental



The dining room tables seat 24

The dining room tables seat 24, with more space at the breakfast bar and captain's table.

Atlantis Beach House

Diamond FREE WiFi

New property, not yet rated.

Atlantis is rising! This Palatial 9,000 sqft home will be ready February 2014! Equipped with state-of-the-art electronics, a theatre room, game room, heated pool & spa, elevator, 2 kitchenettes, 1 huge kitchen, dining area for 24+, master suites & more.

Only $300 to Book Now!

Book Now

- Palm Coast
- Best Value/Garden View
- 11 Bedrooms
- 10 Bathrooms
- Sleeps: 24
- HDTV's
- Elevator
- No Smoking Rental

+1 Tweet

"Boasting 9,000 square feet of luxury living, Atlantis is on schedule to be completed by February 2014. It is equipped with state-of-the-art electronics, a theatre room, game room, heated pool & spa, elevator, 2 kitchenettes, 1 huge kitchen, dining area for 24+, master suites, & much more." *Source: www.vacationrentalpros.com; January 6, 2014*

Our Kids Room Can Sleep 6!

Our kids room can sleep 6 with bunk double beds and two twins. This room also has its own TV and DVD player so the kids can have a great time watching their own shows.

2014 Revision

Section 509.032(7)(b):

> "(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."

Senate Bill originally restored full home rule. House of Representatives watered it down.

Legislative history supports intent to restore power to regulate, but not power to prohibit.

Highlights of Legislative History

Repeal of preemption introduced in the Senate, Senator Thrasher, SB 356.

Bill was amended in the House substantially to not go as far as a full repeal due to effective lobbying by Lewis Longman & Walker, producing CS/HB 307.

In its final form, the House bill was substituted for the Senate bill in the closing days of the session. Per the Final Bill Analysis, the adopted bill "removes the total preemption to the state for the regulation of vacation rentals, provided those regulations do not prohibit vacation rentals or restrict the duration or frequency of vacation rentals. The grandfather provision in existing law exempting any local law, ordinance, or regulation adopted on or before June 1, 2011, is maintained." House of Rep., Final Bill Analysis for CS/HB 307 (June 19, 2014).

Highlights of Legislative History

One compromise that was rejected by the House was a Senate amendment to allow local governments to set minimum stay requirement of seven days. SB 356 (1st Engrossed, March 20, 2014; bill amendment introduced by Senator Galvano). (At the time some grandfathered local regulations required minimum 30 day rentals.) The House kept to its local government ban on restricting the duration of a rental.

On the other side of the coin, House members that wanted the preemption repeal narrowed introduced an amendment that local governments could not single out vacation rentals for more onerous restrictions than residential properties. The amendment read: "A local law, ordinance, or regulation may not restrict a use on a vacation rental which is not restricted in a non-vacation rental property." Amendment by Rep. J. Diaz (Amend. No. 2, House Regulatory Affairs Comm., April 10, 2014); and see Amend No. 1 to the same effect by Rep. Gaetz, April 10, 2014, withdrawn by sponsor).

The final bill language adopted in Fla. Chpt . 2014-71 as to the scope of regulatory power read: "A local law, ordinance, or regulation may not prohibit vacation rentals, or regulate the duration or frequency of rental of vacation rentals."

Highlights of Legislative History

What remained the same?

The definition of a vacation rental, sometimes called short term vacation rental or a resort dwelling, did not change. See, Fla. Stat. § 509.013(4)(a).

"Vacation rentals" are a type of "transient public lodging establishment" which are 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.

DBPR standards did not substantially change.

Links to Legislative History Documents of 2014 Legislation

Senate:

http://www.flsenate.gov/Session/Bill2014/0356

(SB 356)

House:

http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?Billld=51421

(HB 307)

What Constitutes a Grandfathered Regulatory Ordinance?

The regulation has to be express to avoid challenge.

AG Inf. Op. to Flagler County (Oct. 22, 3013) (appended to accompanying PDF):

Single family zoning ordinance cannot be interpreted to prohibit vacation rentals when ordinance did not, prior to June 1, 2011, restrict rental of such property and county had no regulations specifically governing vacation rentals.

What Constitutes a Grandfathered Regulatory Ordinance?

Dal Bianco v. City of Ft. Lauderdale (Fla. 15th Jud. Cir., May 9, 2012), cert. denied, No. 4D12-2028 (Fla. 4th DCA, June 21, 2012) (appended to accompanying PDF):

Local code's single family dwelling definition did not expressly address use of dwelling. Therefore, City could not use the provision as a basis for sanctioning the owner in a code enforcement case for use of the dwelling as a vacation rental. City argued that the business of short term leasing was prohibited under its code but could point to no express provision or established interpretation.

What Constitutes a Grandfathered Regulatory Ordinance?

Ocean's Edge Development Corp. v. Town of Juno Beach, 430 So. 2d 472, 473-474 (Fla. 4th DCA 1983):

Zoning ordinance must be construed broadly in favor of property owner absent a clear intent to the contrary.

After-the-fact interpretations of ordinance's intent will be scrutinized if used to fill in gaps in the text of ordinance.

Owners should be entitled to rely on clear and unequivocal language of an ordinance affecting their property.

If grandfathered ordinance, what you can do…or can't do?

Overwhelming consensus of local government attorneys that any amendment will forfeit grandfathered status.

The risk, deemed unacceptable, is the voiding of any provision that presently:

-Excludes vacation rentals from a particular area;

-Allows them only by some special exception process; or

-Places a minimum duration of rental (such as 7 or 30 days).

There is no effective way to test survival of the regulatory ordinance, either before or after an amendment, by a declaratory judgment. And an AG Opinion provides small comfort. There is no safe harbor.

Grandfathered ordinances are therefore frozen. (2015 Legis. Session of the House attempted to address this problem. Bills went nowhere.)

Utilizing the New, Limited Home Rule Authority

Flagler County Ordinance as amended (appended to accompanying PDF):

Detailed findings, vacation rentals expressly permitted in all districts, restricted territorial application of standards; application further limited to dwelling unit type, annual operating certificates, designating responsible party, annual inspections, compliance with life safety and building code requirements, parking and trash, occupancy limits, grandfathering schedules and vesting process using special master.

Documents concerning the history of the ordinance's development are available on Flagler County's website. http://www.flaglercounty.org/index.aspx?NID=1101

Utilizing the New, Limited Home Rule Authority

Marco Island Ordinance (appended to accompanying PDF):

Basic findings, annual registration requirement, broader dwelling type applicability, rentals under 365 days, HOA's and Condo Associations can opt out, designated contact, occupancy limits, trash and parking, "good neighbor" code of conduct, fireworks prohibition, failure to have state licenses and authorizations violation of ordinance.

Defeating the Claim that Preemption Nevertheless Applies Despite 2014 Legislation

The legislation clearly restores home rule authority except its exercise by local government cannot prohibit vacation rentals or regulate their duration or frequency of rental.

30 Cinnamon Beach Way, LLC v. Flagler County, No. 2015 CA 167 (Fla. 7th Jud. Cir., Judge Orfinger, order on prelim. inj., June 1, 2015) (appended to accompanying PDF)

AGO 2014-09 (Nov 13, 2014)(City of Wilton Manors)

Defeating the Claim that Preemption Nevertheless Applies Despite 2014 Legislation

Must make sure ordinance supplements and does not irreconcilably conflict with state statute.

Cannot zone vacation rentals out of an area, see Wilton Manors AG Op.

Cannot revoke authority to operate a vacation rental or fine owner for failure to obtain license from DBPR, see Wilton Manors AG Op.

Additionally, avoid conflicts with the Florida Constitution:

Impairment of Contracts, all rental agreements entered into prior to ordinance enactment must be honored, see 30 Cinnamon Beach Way v. Flagler County.

Other Issues (Fact Intensive)

- Bert Harris Private Property Rights Protection, Fla. Stat. Section. 70.001 – In the vacation rental context having grandfathering and vesting procedures is the best way to avoid or minimize a claim of inordinate burden. A local government is wise to provide allowances in the ordinance for realizing investment backed expectations and to use proceedings internal to it in order to evaluate claims before precipitating court action.
- Equal Protection – Distinguishing between dwelling types or areas must be made on a rational basis. No suspect class or strict scrutiny applies. Need findings to establish the basis for treating one group or category differently from another. See, 30 Cinnamon Beach Way, LLC v. Flagler County.
- Takings – If a government goes too far or tries to prohibit vacation rentals, the government will be in trouble. Government cannot deny property owner all or substantially all economically viable use of his or her land.

Alternatives to Exercising New Home Rule Authority…Or as a Phase 1 Approach

Reasons for reluctance include risk and expense, staff resistance, split in the commission, etc.

Problem sites, research site's internet presence.

Ask Division of Hotels and Restaurants of DBPR whether the dwelling unit licensed.

Inquire of Property Appraiser if property is homesteaded.

Inquire of Tax Collector whether owner has business tax receipt.

Inquire of DOR or Tax Collector whether owner is paying tourist development taxes. Also local and state sales taxes.

Alternatives to Exercising New Home Rule Authority…Or as a Phase 1 Approach

Use code enforcement for trash accumulation at curb side or elsewhere on property.

Use law enforcement to intervene with noise or other public disturbance and ask Sheriff to keep record.

Build a record with all of the above in case you move to ordinance drafting. Convene public hearings or workshops to illuminate the problem and to get input on community concerns and owner concerns even in the absence of a draft ordinance.

All of the foregoing in combination may moderate extreme behavior.

And if it doesn't, you have predicate for a new ordinance.

Strategy Considerations

In choosing to develop an ordinance, one size does not fit all. There is no substitute for knowing your community and holding hearings and meeting with stakeholders to acquire that knowledge. Strive for balance and fairness. Try all reasonable means to solve the issues without a new ordinance and think of regulating as a last resort.

Fact findings and including the jurisdiction's logic for regulation are important for many different reasons.

If you enact a new regulation expect that you will be sued. Craft your ordinance to subject your county to an "on its face" challenge versus an "as applied" challenge.

Collaborate and then collaborate some more with other local governments because precedent is being made that applies to us all.

THANK YOU!

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2015 CA 167
DIVISION: 49

30 CINNAMON BEACH WAY, LLC, a Florida limited liability company, and VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC, a Florida limited liability company,

Plaintiffs,

vs.

FLAGLER COUNTY, a political subdivision of the State of Florida,

Defendant.
_____/

ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE came on for hearing before the Court on May 27, 2015 on Plaintiffs, 30 CINNAMON BEACH WAY, LLC and VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC's, Emergency Motion for Preliminary Injunction. The Court has heard the testimony of witnesses, received documents in evidence, heard the argument of counsel, reviewed the Motion and court file, and is otherwise duly advised in the premises. As explained below, the Court finds that with one limited exception, Plaintiffs have failed to establish that they are entitled to preliminary injunctive relief, and subject to that one exception, their Motion for Preliminary Injunction must be denied.

Plaintiffs in this case challenge the validity of an ordinance enacted by Defendant FLAGLER COUNTY ("the County") relating to short-term vacation rentals. The ordinance in question is Ordinance No. 2015-02, adopted on February 19, 2015 ("the Ordinance"), as amended by Ordinance No. 2015-05, adopted on April 6, 2015 ("the Amended Ordinance"). Plaintiff 30 CINNAMON BEACH WAY, LLC ("30 Cinnamon") is a Florida limited liability company that owns an 11 bedroom house at the address from which it derives its name. 30 Cinnamon uses this house, located in the Ocean Hammock subdivision of unincorporated Flagler County, as a short-term vacation rental property. Plaintiff VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC ("VRP") is a Florida limited liability company that manages various short-term vacation rental properties as agents for their owners, including the one owned by 30 Cinnamon. Stephen Milo is the managing member of VRP, and a member of 30 Cinnamon. VRP manages between 70 and 80 single family homes as short-term vacation rentals in Flagler County.

The subject properties that Plaintiffs either own or manage are "transient public lodging establishments", which Florida law defines as:

> [A]ny 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.

Fla. Stat. §509.013(4)(a)(1). As such, they are regulated by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation. The first issue in this case is whether and to what extent to which the County can also regulate those establishments. Assuming the County has the authority to regulate

short-term vacation rentals at all, the next issue is whether it has exceeded that authority by enacting the Ordinance.

THE ORDINANCE

The Ordinance constitutes an attempt by the County to regulate certain short-term vacation rental properties, specifically properties constructed as single-family or duplex dwellings. The recitals in the Ordinance are adopted as factual findings, only a handful of which are set out here. The County's findings of fact set forth that since 2011, it "has experienced a large increase in the construction of new, oversized structures for the primary purpose of serving as mini-hotels for short-term vacation rentals for up to as many as twenty-four (24) individuals". The County noted that according to the 2010 U.S. Census, the average household size in the County was 2.82 persons, and that the operation of some short-term vacation rental properties with occupancy of some nine times the household average was incompatible with established neighborhoods. The County found that in the absence of some mitigating standards, short-term vacation rentals "can create disproportionate impacts related to their size, excessive occupancy, and the lack of proper facilities if left unregulated". It also found that "the presence of short-term vacation rentals within single-family dwelling units in established residential neighborhoods can create negative compatibility impacts, among which include, but are not limited to, excessive noise, on-street parking, accumulation of trash, and diminished public safety". As such, the County found that "short-term vacation rentals locating within established neighborhoods can disturb the quiet enjoyment of the neighborhood, lower property values, and burden the design layout of a typical neighborhood".

Reduced to its bare essentials, the Ordinance requires that any property owner wishing to operate a non-owner occupied single or two-family residence located east of U.S. Highway 1 as a short-term vacation rental must apply for and obtain a short-term rental certificate from the County, as well as a County business tax receipt. The Ordinance sets forth the process for applying for a certificate, which includes payment of a fee, submittal of scale interior and exterior drawings, proof of septic capacity (if applicable), a draft rental agreement that conforms to the Ordinance, and required safety postings. The Ordinance further requires the installation of hard-wired interconnected smoke and carbon monoxide detectors, the installation of fire extinguishers on each floor, and requires that each sleeping room meet the single- and two-family dwelling minimum requirements of the Florida Building Code. The Ordinance requires an inspection of the property prior to the County issuing a short-term vacation rental certificate, and requires annual inspections thereafter.

The Ordinance also requires that each short-term vacation rental property owner designate a "short-term vacation rental responsible party". The responsible party must be an individual over 18 years of age, be available 24 hours a day, seven days a week, and be able to come to the property upon two hours' notice to respond to issues related to the property. He or she must also monitor the property at least once weekly to assure compliance with the Ordinance.[1]

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[1] By contrast, if the owner of a short-term vacation rental also lives on the property as his or her permanent residence, then the property is wholly exempt from the Ordinance. This is so because of the County's finding of fact that an on-site owner "will likely manage any vacation rental more restrictively than any local regulation because the owner has a direct, vested interest in how the property the owner resides in is used and maintained."

Of key importance to the Plaintiffs is the maximum occupancy limits established in the Ordinance. In areas zoned for multi-family housing, occupancy is capped at 16 persons. In those areas zoned as single-family residential, the maximum occupancy is ten. This is so regardless of whether the structure in question will physically accommodate more people.

The County included in the Ordinance certain provisions for "vesting", which allow property owners time to come into compliance with the requirements of the Ordinance. Certain rights are automatically "vested" so long as the owner submits an application for a short-term vacation rental certificate no later than June 1, 2015. Assuming the owner timely submits the application, the following rights become vested:

a. Rental agreements entered into prior to February 19, 2015 for the period up to February 28, 2016 are vested and unaffected (although maximum occupancy may be capped at 14 people).

b. Rental agreements entered into prior to February 19, 2015 for the period after March 1, 2016 must be submitted to the County for verification and go through a vesting hearing process for a final determination. Rental agreements entered into after February 19, 2015 and for any rental period beyond January 1, 2017 must comply with the Ordinance.

c. Properties are given until December 1, 2015 to come into compliance with the minimum life safety standards of the Ordinance.

d. Maximum occupancy limits are phased in by capping occupancy at 14 persons (as opposed to ten) through February 28, 2018. Maximum occupancy is then reduced to 12 until February 28, 2021, and reduced to ten thereafter.

The Ordinance also provides for a separate vesting mechanism for owners desiring a higher vesting occupancy or different vesting schedule. This mechanism requires a specific vesting application, along with the provision of financial information

related to the property. The decision regarding vesting is made by a special master, whose decision is final.

Vested rights are not transferrable to another owner or another property. If a property is sold or transferred by operation of law (such as by the death of the owner), vested rights are lost and the new owner becomes subject to all terms of the Ordinance.

STANDARD FOR ENTERING A PRELIMINARY INJUNCTION

A preliminary injunction is an extraordinary remedy, and as such should be granted sparingly. See, e.g., Shands at Lake Shore, Inc. v. Ferrero, 898 So. 2d 1037, 1038 (Fla. 1st DCA 2005). "A temporary injunction may be entered only where the party seeking the injunction establishes: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) considerations of public interest support entry of the injunction." Blue Earth Solutions v. Florida Consolidated Properties, LLC, 113 So. 3d 991. 993 (Fla. 5th DCA 2013). It is against this legal backdrop that the Court must measure the relief Plaintiffs seek.

PREEMPTION

Plaintiffs claim that the regulation of short-term vacation rentals is the exclusive province of the State. They base this contention on Fla. Stat. §509.032(7) (2014), which states in material part as follows:

> (7) PREEMPTION AUTHORITY. –
>
> (a) The regulation of public lodging establishments .... including, but not limited to, sanitation standards, inspections, training and testing of personnel .... is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct

> inspections of public lodging .... for compliance with the Florida Building Code and the Florida Fire Prevention Code.....
>
> (b) 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.

Plaintiffs reason from this statutory language that with the exceptions of inspections for compliance with the Building and Fire Codes that the County is powerless to regulate vacation rentals. This Court does not agree.

"Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred." Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010). "Implied preemption is found where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme." Id. (internal quotation marks and citations omitted). Determining whether implied preemption exists requires the Court to look to the provisions of the entire law, as well as to its object and policy. Id.

Plaintiffs argue that section 509.032(7)(a) contains an express statement by the Legislature of its intent to preempt the entire regulatory field for residential lodging establishments, thus ending the Court's inquiry. Accepting that reasoning would make whatever regulation the State chooses to impose on vacation rentals both the minimum and maximum permissible regulation. Alternatively, Plaintiffs contend that the statutory scheme in Chapter 509 and the rules promulgated thereunder demonstrate implied preemption under the test set forth above in Sarasota Alliance. Statutory history, however, does not support either position.

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 ss. 553.80 and 633.022. (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[2] and added an entirely new subsection (b), as shown below:[3]

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[2] Additions to the statutory language are shown in underline, while deleted language is shown by ~~strikeout~~.

[3] Chapter 2011-119 also added section 509.032(c), but that subsection is not germane to the issues before the Court.

(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 nutritional content and marketing of foods 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 ss. 553.80 and 633.022.

(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. See, e.g., Williams v. Jones, 326 So. 2d 425, 435 (Fla. 1976); Opperman v. Nationwide Mut. Fire Ins. Co., 515 So. 2d 263, 266 (Fla. 5th DCA 1987). 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 the 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 of 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. Were the County to attempt overriding the State's regulatory efforts by imposing lesser standards

on short-term vacation rentals, such an attempt would be preempted by the terms of section 509.032(7)(a). To read section 509.032(7) any differently would render the Legislature's actions in amending the statute in 2011 and 2014 meaningless surplusage.

Likewise, the Court does not believe that the Legislature has impliedly preempted the Ordinance. As stated above, concurrent local legislation may not conflict with state law. Masone v. City of Aventura, 147 So. 3d 492, 495 (Fla. 2014). "'Such 'conflict preemption' comes into play 'where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute.'" Id. (quoting Thomas v. State, 614 So. 2d 468, 470 (Fla. 1993)).

No such conflict preemption exists in the instant case. The evidence and argument presented at the hearing fails to show that the Ordinance irreconcilably conflicts with state law. The Ordinance does not stand as an obstacle to executing the full purposes of Chapter 509. In no way does it frustrate state law by lessening the requirements of the statute. The Ordinance imposes some additional requirements that supplement, but do not contradict, state law, which may affect approximately 150 properties. Moreover, as the County found, many of these properties were built as mini-hotels after the 2011 amendment to section 509.032(7), which expressly prohibited the County from restricting or regulating vacation rentals. The removal of that express prohibition has allowed the County to address a situation that the 2011 statutory amendment arguably exacerbated. The Court finds that it does so without infringing upon the regulatory rights and duties of the State.

In sum, the Court finds that the Ordinance is not preempted by state law.

IMPAIRMENT OF CONTRACT

"No ... law impairing the obligation of contracts shall be passed." Art. I, §10, Fla. Const. As Plaintiffs point out, "An impairment ... occurs when a contract is made worse or diminished in quantity, value, excellence or strength." See Motion for Temporary Injunction at 14 (quoting Lawnwood Medical Center, Inc. v. Seeger, 959 So. 2d 1222 (Fla. 1st DCA 2007). The risk of unconstitutionally impairing contract rights comes into play when a statute or ordinance is given retroactive effect to contracts already in place. See, e.g., Cenvill Investors, Inc. v. Condominium Owners Org. of Century Village East, Inc., 556 So. 2d 1197, 1200 (Fla. 4th DCA 1990). There exists a presumption that parties who enter into a contract do so in contemplation of existing law. Id. As a result, the issue of impairment of contract does not apply to rental agreements entered into after the effective date of the Ordinance. As to contracts in existence at the time a law is enacted, however, Florida law follows the principle that "virtually no degree of contract impairment is tolerable". Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774, 780 (Fla. 1979); Yamaha Parts Distributors, Inc. v. Ehrman, 316 So. 2d 557, 559 (Fla. 1975).

The vesting provisions of the Ordinance constitute an attempt to mitigate the effects the Ordinance may have on rental agreements entered into prior to February 19, 2015. Assuming such a contract specifies a rental period ending no later than February 28, 2016, the contract is vested and unaffected so long as the owner submits an application for a short-term vacation rental certificate. If the rental period will extend

beyond February 28, 2016, then the contract must go through a vesting hearing process. Thus, those owners who do not timely apply for a certificate, who apply but do not receive a certificate for whatever reason, or who entered into rental agreements before February 19, 2015 for a rental period after February 28, 2016 have no way to know at present whether they can fulfill their contractual obligations or reap their contractual rights. VRP introduced into evidence nine rental agreements it entered into prior to February 19, 2015[4] with occupancy dates ranging from the summer of 2015 to as late as August 2016.

Even if the Ordinance is otherwise valid, the Court finds that the County cannot constitutionally apply the Ordinance to rental agreements already in existence at the time the Ordinance was enacted. The most straightforward example deals with maximum levels of occupancy. If prior to February 19th the owner of a short-term vacation rental has entered into a rental agreement for a house with a maximum occupancy of 20, and the parties contemplated that 20 people would occupy it during the term of the lease,[5] then the owner cannot fulfill the contract if the Ordinance immediately caps occupancy at 14. Similarly, the owner of a short-term vacation rental may decide that he or she does not wish to apply for a short-term vacation rental

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[4] VRP placed ten rental contracts into evidence; however, one of the contracts in Plaintiffs' Composite Exhibit 8 was entered into on February 20, 2015, one day after the cutoff described in the Ordinance. See Plaintiffs' Exhibits 8 and 11.

[5] VRP's rental agreements require that the "Guest" list the names, ages, and dates of occupancy of each person staying in a unit, and further limit permissible occupants to those listed on the rental agreement. VRP's rental agreements also require disclosure of the license tag numbers of each vehicle to be parked at the property. See Plaintiffs' Exhibits 8 and 11. Interestingly, VRP requires all this information in its rental agreements while simultaneously arguing to this Court that the Ordinance should not require VRP to do so because compliance is "virtually impossible". See Motion for Preliminary Injunction at 23-24.

certificate or otherwise comply with the Ordinance. While this may keep the owner from continuing in business by accepting new rental agreements, whatever rental agreements the owner entered into before February 19, 2015 were legal when made (at least so far as the Ordinance is concerned), and the County cannot use the Ordinance to prevent the owner from fulfilling those agreements.

EQUAL PROTECTION

Plaintiffs next argue that the Ordinance violates the Equal Protection Clause of the Florida Constitution. Art. I, §2, Fla. Const. Plaintiffs correctly recognize that because no suspect classes or fundamental rights are involved, the constitutionality of the Ordinance for equal protection is measured under the "rational basis" test. The rational basis is a very deferential standard indeed. It requires only that the Ordinance must be rationally related to a legitimate governmental objective, and must not be arbitrarily or capriciously imposed. E.g., Department of Corrections v. Florida Nurses Ass'n, 508 So. 2d 317, 319 (Fla. 1987). As the Fifth District Court of Appeal has observed,

> The legislation must be sustained if there is any conceivable basis for the legislature to believe that the means they have selected will tend to accomplish the desired end. Even if the court is convinced that the political branch has made an improvident, ill-advised, or unnecessary decision, it must uphold the act if it hears a rational relation to a legitimate governmental purpose.

Zurla v. City of Daytona Beach, 876 So. 2d 34, 35 (Fla. 5th DCA 2004) (quoting Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 1241 (11th Cir. 1991)). Further, it is unnecessary to engage in courtroom fact-finding to determine whether a

rational basis exists; it "may be based on rational speculation unsupported by evidence or empirical data." Zurla, 876 So. 2d at 35 (internal quotations and citations omitted).

Plaintiffs claim that the Ordinance irrationally distinguishes between two classes of short-term vacation rentals: (1) non-owner occupied single-family and duplex dwellings located east of U.S. Highway 1, and (2) all other short-term vacation rentals, such as condominiums, those located West of U.S. Highway 1, and those which are owner-occupied. The Court disagrees, and finds that the County has drawn a rational distinction between these two classes.

The County set forth extensive factual findings in the Ordinance. Among them were that the vast majority of short-term vacation rentals in Flagler County are located east of U.S. Highway 1, and that the ones situated west of U.S. Highway 1 were primarily hunting camps, owner-occupied, or located on larger lots in a more rural setting. The County also found that it was not necessary (at least at present) to regulate owner-occupied short-term vacation rentals, because the owner would out of self-interest regulate the property more restrictively than the County could by Ordinance. The County also found that it was not necessary to apply the Ordinance to vacation rentals such as condominiums because multi-family housing is typically built to a more stringent standard, and because condominiums are required to be governed by an association which can itself provide the necessary regulation. In applying the "rational basis" standard of review, it is not the province of the Court to second-guess these factual findings.

Plaintiffs further contend that the deadline in the ordinance for applying for a short-term vacation rental certificate is arbitrary and capricious. Plaintiffs note that the

Ordinance originally required applications to be submitted by April 15, 2015, and that the County had not even developed the application at the time it enacted the Ordinance. The County addressed this issue by enacting the Amended Ordinance, which changed the application deadline from April 15 to June 1, 2015. Plaintiffs now complain that the June 1st deadline is "purely arbitrary and capricious". What this argument ignores, however, is that to some degree the selection of any date will always be subject to a claim that it was selected arbitrarily or capriciously. It would be no more or less "arbitrary" to select a date a day, week, month, or six months later. Unless Plaintiffs can show that the County selected a date it knew applicants could not physically meet, they cannot establish that the June 1st date is arbitrary or capricious.

The evidence Plaintiffs introduced at the hearing establishes that it is not impossible for them to comply with the June 1st application deadline. Plaintiffs' consultant, Craig Meek, testified that although Plaintiffs had filed no applications as of the date of the hearing, they had 47 ready to file at that time. Meek said that there were about 22 more that VRP needed to file, but it could not do so because it could not access the properties to take the appropriate measurements for scale drawings. This fact does not, however, render the June 1, 2015 deadline arbitrary. Plaintiffs have been on notice of the need to assemble information for the applications since at least February 19, 2015. While these 22 properties may be heavily rented, there is down time between tenants when the property is being readied for the next guests. If Plaintiffs need to take interior measurements or photographs, they could have done so at that time. That the application forms may not have been ready until sometime in April does not change the fact that the Ordinance specifically calls for scale drawings, which

Meek testified would require interior access. In other words, if Plaintiffs needed to gain interior access to their properties in order to prepare drawings, they knew that fact regardless of whether they had a blank application in hand.[6] The June 1, 2015 application deadline is neither arbitrary nor capricious.

Based upon all the foregoing, the Court must determine Plaintiffs' entitlement to a preliminary injunction by considering rental agreements they entered into after February 19, 2015 separately from those entered into before February 19, 2015.

POST FEBRUARY 19, 2015 CONTRACTS

Both parties appear to equate irreparable injury with the absence of an adequate remedy at law. See Motion for Preliminary Injunction at 24-25; Response in Opposition at 13. As the County states in its response, "irreparable harm can be shown by demonstrating either that the injury cannot be redressed in a court of law or that there is no adequate legal remedy." See Response in Opposition at 13 (citing K.G. v. Florida Dept. of Children and Families, 66 So. 3d 366, 368 (Fla. 1st DCA 2011)). "For injunctive relief purposes, irreparable harm is not established where the potential loss can be adequately compensated for by a monetary award." B.G.H. Ins. Syndicate, Inc. v. Presidential Fire & Cas. Co., 549 So. 2d 197, 198 (Fla. 3rd DCA 1989). "Irreparable injury will never be found where the injury complained of is doubtful, eventual, or contingent". Yachting Promotions, Inc. v. Broward Yachts, Inc., 792 So. 2d 660, 663 (Fla. 4th DCA 2001) (internal quotations omitted). Plaintiffs have failed to establish that

[6] As an aside, the Court notes that paragraph 13 of VRP's rental agreements, titled "Management Access to Property During Your Stay", allows VRP or its vendors to arrive unannounced "to conduct regularly scheduled services", which "will require entry into the property for a brief period of time, even if you are away during their arrival." See Plaintiffs' Exhibits 8 and 11.

they will suffer irreparable harm if the Ordinance is enforced against them prospectively, i.e., as to any rental agreements entered into after February 19, 2015. The Ordinance imposes certain requirements on Plaintiffs that will no doubt entail economic cost, but continued compliance with the law is but one of many costs of doing business. If the maximum occupancy requirements of the Ordinance adversely affect Plaintiffs, it will do so because of lower rental income (or in the case of VRP, lower management fees) or perhaps diminished property values (although no evidence was presented on this point). These are all issues that can be addressed in a court of law in an action for money damages.[7] Accordingly, Plaintiffs fail to satisfy the first two elements of their claim for preliminary injunctive relief.

Plaintiffs have further failed to demonstrate a substantial likelihood of success on the merits. For all the reasons set forth above, the Court finds that the Ordinance is neither expressly nor impliedly preempted by state law. The Court further finds that the Ordinance is rationally related to a legitimate governmental objective, has not been arbitrarily or capriciously applied, and therefore passes muster under the Equal Protection Clause of the Florida Constitution.

Finally, considerations of the public interest do not require the entry of a preliminary injunction. It is true, as Stephen Milo testified, that tourism is an important component of Flagler County's economy, and he testified without contradiction that the short-term vacation rental industry employs many people in Flagler County. On the other hand, however, the County has made a number of factual findings in the

[7] Plaintiffs also indicate in their Verified Complaint that they reserve the right to later assert a claim under Chapter 70, Florida Statutes, commonly known as the "Bert Harris, Jr. Act." See Verified Complaint, ¶179.

Ordinance setting forth the public interests that will be met by enforcing the Ordinance. The Court will not substitute the County's factual findings or policy determinations for its own.

PRE-FEBRUARY 19, 2015 CONTRACTS

The Court must make one exception to the foregoing analysis. Plaintiffs' claims stand on a different footing with respect to rental agreements entered into prior to February 19, 2015. These contracts were not subject to the Ordinance when they were entered into because the Ordinance did not exist. The fact that the County created a vesting schedule in the Ordinance is itself evidence that the County recognized the potential for the Ordinance to impair pre-existing rental agreements. As it currently stands, some rental agreements entered into before February 19th will be automatically vested if the owner applies for a certificate, and some will have to go through a separate vesting process before a special master. Those owners who do not apply for a certificate will presumably be prohibited from using their properties as short-term vacation rentals. The Court finds that to apply the Ordinance to rental agreements in existence before February 19, 2015 amounts to an unconstitutional impairment of contract, regardless of the date on which the vacation rental is to be occupied. Plaintiffs have thus established a substantial likelihood of success on the merits of their impairment of contract claim.

As to this discrete set of contracts, the Court also finds that Plaintiffs have established the likelihood of irreparable harm and the lack of an adequate remedy at law. The only way Plaintiffs can fulfill these pre-existing rental agreements is to apply for short term vacation rental certificates and otherwise comply with the Ordinance. While

there is no reason to suspect that the County would not issue the necessary certificates, there is of course no assurance that it will.[8] Plaintiffs are therefore left in the untenable position of either not complying with the ordinance and thus anticipatorily breaching their rental agreements, or attempting to comply with the Ordinance and hope they will be able to fulfill those agreements. The Court finds that by being put to this "Hobson's choice", Plaintiffs have satisfied the "irreparable injury" and "inadequate remedy at law" elements.

Finally, as to this limited number of rentals, the public interest will not be harmed by entry of a preliminary injunction. As the Court has already stated, the public policy reasons and factual findings the county articulates as support for the Ordinance are both sound and rational. By enacting the Ordinance, the County is responding to an issue it finds was created or exacerbated in part by the 2011 amendment to Fla. Stat. §509.032(7), and particularly the addition of section 509.032(7)(b). Yet the evidence shows that tourism is an important component of Flagler County's economy. There is a public interest to be served in protecting the guests under these pre-existing rental agreements (who may be new or returning visitors to Flagler County) from being "left in the lurch". There is likewise an interest to be served by not disturbing the economic expectations of those who work in the short-term vacation rental industry, or those of its vendors and suppliers with respect to rental agreements already in existence when the Ordinance was adopted. While these interests are not sufficient to prevent prospective

[8] This is not to suggest that the County would arbitrarily deny issuance of a certificate. To the contrary, there may be myriad reasons why an applicant would ultimately not qualify for or receive the certificate it seeks.

application of the Ordinance, they are sufficient to support Plaintiffs' claim for preliminary injunctive relief as to the pre-February 19th rental agreements.

Based upon all the foregoing, it is hereby ORDERED AND ADJUDGED as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties hereto.

2. Plaintiffs' Motion for Preliminary Injunction is hereby GRANTED in part and DENIED in part.

3. The Ordinance is not preempted, either expressly or impliedly, by state law.

4. The Ordinance does not violate the Equal Protection Clause of the Florida Constitution.

5. The Ordinance is unconstitutional as applied to short-term vacation rental contracts entered into prior to February 19, 2015.

6. Defendant FLAGLER COUNTY, its agents, representatives, and assigns are hereby preliminarily enjoined from enforcing Flagler County Ordinance 2015-002, as amended by Flagler County Ordinance 2015-005, against Plaintiffs 30 CINNAMON BEACH WAY, LLC and VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC, with respect to any short-term vacation rental agreements entered into prior to February 19, 2015.

7. The foregoing injunction shall take effect immediately upon entry of this Order; however, it shall automatically dissolve and become void unless Plaintiffs post with the Clerk of this Court a cash or surety injunction bond in favor of the County in the

amount of $5,000.00 no later than 4:30 p.m. on June 4, 2015. Any party may move this Court either to increase or decrease the amount of said bond.

8. In all other respects, Plaintiffs' Motion for Preliminary Injunction shall be, and the same is hereby DENIED.

DONE AND ORDERED in Chambers at Bunnell, Flagler County, Florida this 1st day of June, 2015.

Michael S. Orfinger, Circuit Judge

Copies furnished to:
Peter B. Heebner, Esq. at pheebner@lawdaytona.com
J. Stephen Garthe, Esq. at sgarthe@lawdaytona.com
Gregory T. Stewart, Esq. at gstewart@ngnlaw.com and legal-admin@ngnlaw.com
Edward A. Dion, Esq. at edion@ngnlaw.com
Albert J. Hadeed, Esq. at ahadeed@flaglercounty.org

Short-Term Vacation Rentals: The Get Away That Got Away!

Florida Association of County Attorneys
2015 Continuing Legal Education Program
June 17-18, 2015 – St. Johns County

Table of Materials

Case pleadings under the e-portal file include complaint, answer and affirmative defenses, motion for preliminary injunction, memoranda, and motion for reconsideration

PAM BONDI
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Opinions Section

PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 245-0158 Fax (850) 922-3969
http://www.myfloridalegal.com

October 22, 2013

Mr. Albert J. Hadeed
Flagler County Attorney
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Dear Mr. Hadeed:

Thank you for contacting this office for assistance in determining whether Flagler County may intercede and stop vacation rental operations, as defined in Chapter 509, Florida Statutes, in private homes that were zoned, prior to June 1, 2011, for single-family residential use. Due to an increase in the number of homes being used as vacation rentals in Flagler County, many permanent residents in neighborhoods with vacation rentals have raised concerns about the negative effects such rentals have on their quality of life and the character of their neighborhood. You state that Flagler County has no regulations governing vacation rentals which predate the 2011 legislation.

In sum, absent the existence of a local ordinance on or before June 1, 2011, regulating the rental of vacation homes in Flagler County, section 509.032(7), Florida Statutes, preempts local regulation of lodging establishments and public food establishments to the state and precludes a local ordinance or regulation enacted after June 1, 2011, restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy.

A number of county residents have argued that transient vacation rentals are a commercial activity which is a non-conforming use of a house constructed under a permit for a single-family residence and located in an area zoned for single-family residences. The county has considered this argument and concluded that a residential zoning category, in and of itself, is not sufficient to serve as a pre-existing prohibition of vacation rentals in private homes.

Section 509.032(7)(a), Florida Statutes, preempts the regulation of lodging establishments and public food establishments to the state. Subsection (b) of the statute states:

> A local law, ordinance, or regulation *may not restrict* the use of vacation rentals, prohibit vacation rentals, or regulate vacation rentals *based solely*

> *on their classification, use, or occupancy.* This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.[1] (e.s.)

A "vacation rental" is defined as "any unit or group of units in a condominium, cooperative, or time-share plan or *any* individual or collectively owned *single-family*, two-family, three-family, or four-family *house or dwelling* unit that is *also a transient public lodging establishment.*"[2] (e.s.) Thus, the plain language of the statute recognizes that a single-family house or dwelling may be a "vacation rental" which is used as a transient public lodging establishment subject to regulation by the state. As this office has previously recognized, with the enactment of section 509.032(7)(b), Florida Statutes, the ability of a local government to regulate vacation rentals by enactment of an ordinance after June 1, 2011, has been preempted to the state.[3] While you have premised your question on the existence of a single-family zoning regulation in existence prior to June 1, 2011, you have also indicated that no county regulations of vacation rentals existed on that date.

This office agrees with the county's conclusion that a local zoning ordinance for single-family homes existing on or before June 1, 2011, that did not restrict the rental of such property as a vacation rental, cannot now be interpreted to do so. The clear

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[1] Section 509.032(7)(c), Fla. Stat., provides:

> Paragraph (b) does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

[2] Section 509.242(1)(c), Fla. Stat. *See* s. 509.013(4), Fla. Stat., defining "[p]ublic lodging establishment" for purposes of Ch. 509, Fla. Stat.:

> (4)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.
> 1. "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.

[3] Informal Op. to Marino, dated August 3, 2012. *Cf. City of Venice v. Gwynn*, 76 So. 3d 401 (Fla. 2d DCA 2011), in which a city's code prohibited owners of single-family dwellings in residential neighborhoods from renting their property for short periods of times; the court affirmed the city's administrative determination that owner's non-conforming use of property as a vacation rental violated city's ordinance regarding short-term rentals.

language in section 509.032(7), Florida Statutes, prohibits any local regulation on or after June 1, 2011, based upon the use of a residence as a vacation rental.

Sincerely,

Lagran Saunders
Attorney General

ALS/tsrh

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

June 21, 2012

CASE NO.: 4D12-2028
L.T. No. : 10-29269 08

CITY OF FORT LAUDERDALE, ETC.	v.	ANNERLEY DAL BIANCO, ETC.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that the petition for writ of certiorari filed June 7, 2012, is hereby denied on the merits.

WARNER, GROSS and CONNER, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Alain Boileau Kara Cannizzaro Hon. Dale Ross

dl

Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

ANNERLY DAL BIANCO,
Individual,

Respondent/Appellant,

vs.

CITY OF FORT LAUDERDALE, a Florida
Municipal Corporation,

Petitioner/Appellee.
_____/

CASE NO: 10-029269 CACE (08)
LT CASE Nos.: CE10031605
CE10031607

HON. DALE ROSS

OPINION

THIS CAUSE came before the court, sitting in its appellate capacity, upon appeal by Appellant, Annerly Dal Bianco, of the Final Order of the City of Fort Lauderdale Code Enforcement Special Magistrate. The court, having considered the briefs filed by the parties and being duly advised in premises and law, dispenses with oral argument and finds and decides as follows:

On March 17, 2010, the City of Fort Lauderdale's ("City") Code Enforcement Officer Dick Eaton ("Mr. Eaton") conducted an investigation pertaining to real property[1] owned by Appellant Annerly Dal Bianco ("Appellant"). Mr. Eaton investigated the Property pursuant to a complaint from the neighborhood that the Property was being used as a short-term rental. (See Appendix A, pp. 4-5, 16, 21, 23). On March 18, 2010, Mr. Eaton posted

[1] Appellant owns the properties located at 2624 Grace Drive and 2625 Grace Drive, Fort Lauderdale, Florida(together the "Property"). (Appendix A, at pp. 4, 23, 36).

Inspection Reports and mailed a notice of violation to Appellant informing her that the Property was in violation of local zoning ordinance RS-8. (See Appendix A, p. 6). The Notice of Violation provides, in pertinent part:

> The owner of this single family home in this residential district, zoned RS-8 is operating it as a commercial business involving short term rentals. This is a prohibited land use in this district per Sec 47-5.11.

(See Appendix C). The Notice of Violation permitted Appellant fourteen days to remedy and comply with the zoning requirements. (Id.) On May 20, 2010, this case was scheduled for a Special Magistrate hearing because the violation was not brought into compliance within the time provided. (See Appendix A, at p. 7). At the May 20, 2010 hearing, Appellant's counsel was granted a continuance and the hearing was rescheduled for June 17, 2010. (Id.) On June 17, 2010, after hearing all the evidence presented, the Special Magistrate issued a Final Order permitting Appellant until September 2, 2010 to comply with the zoning ordinance or face a daily fine of $250. (See Appendix D). On July 19, 2010, Appellant timely filed her notice of administrative appeal.

Under Florida law, the review "of a code enforcement board's order is by appeal to the circuit court." *See Sarasota Cnty. v. Bow Point on the Gulf Condo. Developers*, 974 So. 2d

431, 432, n.1-2 (Fla. 2d DCA 2007); *see also* Fla. R. App. P. 9.030(c)(1)(C). An appeal of a final administrative order "shall not be a hearing *de novo* but shall be limited to appellate review of the record created before the enforcement board." *See* § 162.11, Fla. Stat. (2010). Thus, an appellate court must determine: (1) whether procedural due process is accorded; (2) whether the essential requirements of the law have been observed; (3) and whether the administrative findings and judgment are supported by competent substantial evidence. *See City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

Appellant argues that the Special Magistrate's evidentiary rulings and Final Order, requiring Appellant to cease the short term rental of her Property, were a departure from the essential requirements of law and should be reversed. First, Appellant argues that a plain reading of the City Municipal Code demonstrates that Appellant's use of the Property complies with the definition of "single-family dwelling" and thus, is a permitted use. Second, Appellant contends that the Final Order was not based on competent substantial evidence because the City relied on evidence obtained by way of an unlawful search of the Property. Appellant's final argument is that the City failed to afford procedural due process to Appellant by issuing a defective notice.

The Property is located in a zoning district classified as RS-8. (See Appendix A, at p. 19). The RS-8 zoning district expressly permits the construction of: a single-family dwelling and social service residential facilities. *See* § 47-5.11, City's Unified Land Development Regulations ("Code"). Appellant argues that the Code establishes only the architectural or construction based standards for the Property and does not regulate the use of the property. Thus, Appellant argues that the Special Magistrate's Final Order is a departure from the essential requirements of law because the correct law was not applied based on a plain reading of the Code. *See Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995)(concluding that "applied the correct law" is synonymous with "observing the essential requirements of law.")

Appellee asserts that a plain reading of the Code firmly establishes that Appellant's use of her Property as a short-term vacation rental is not contrary to the zoning definition of a single-family dwelling. The ordinance defines single-family dwelling as a "unit designed for or occupied by one (1) family and includes standard, detached and attached dwellings." *See* Code § 47-35.1. However, Appellant argues that the definition speaks only to the configuration of the structure, as opposed to the nature of the use. This Court agrees. The ordinance does not address how a homeowner may use their home. Florida courts

have recognized "since zoning regulations are in derogation of private ownership rights, general zoning law provides that zoning ordinance are to be construed broadly in favor of the property owner absent a clear intent to the contrary." *See Ocean's Edge Development Corp. v. Town of Juno Beach*, 430 So. 2d 472, 473 (Fla. 4th DCA 1983). Furthermore, the City has failed to cite to an ordinance preventing a homeowner from conducting short-term leasing of a single-family home.

This Court is also concerned with the inability of Mr. Eaton to define "short-term." During extensive cross examination, Mr. Eaton was unable to answer how a property owner could come into compliance with a definition that does not exist. Mr. Easton admitted "there is no definition of short-term." (App. Ex. C, pg. 33). Florida courts hold that "[g]overnment cannot function in after-the-fact fashion; property owners are entitled to rely on the clear and unequivocal language of municipal ordinances." *See Ocean's Edge*, 430 So. 2d at 474. Appellant cannot be found in violation of an ordinance that either does not exist nor cannot be readily defined. Moreover, the Florida legislature has enacted laws that specifically authorize the rental of a private residential property, whether the residential rental term is at-will, week to week, or month to month. *See generally*, § 83.46, Fla. Stat.

(2010). As such, this Court finds that the Special Magistrate departed from the essential requirements of the law.[2]

Accordingly, it is:

ORDERED AND ADJUDGED that the Special Magistrate's Final Order is hereby **REVERSED.**

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this day of May, 2012.

DALE ROSS

MAY 0 9 2012
A TRUE COPY

DALE ROSS
CIRCUIT COURT JUDGE

Copies to:

Special Magistrate Rose-Ann Flynn
Kara L. Cannizzaro, Cannizzaro Law Firm, P.L., 3350 SW 148th Ave, Suite 110, Miramar, FL 33027
Alain E. Boileau, McIntosh Schwartz, P.L., 888 SE Third Ave., Suite 500, Fort Lauderdale, FL 33316

[2] This court recognizes that the Special Magistrate expressed the need to rule consistently with *Castro v. City of Fort Lauderdale*, Case No. 08-039311 (Fla. 17th Cir. Ct. 2009). (See App. Ex. C, pg. 65). However, Florida law clearly establishes that "a per curiam affirmance decision without written opinion has no precedential value and should not be relied on for anything other than res judicata." *See St. Fort v. Post, Schuh & Jernigan*, 902 So. 2d 244, 248 - 249 (Fla. 4th DCA 2005)(citations omitted).

ORDINANCE NO. 2015 - 02

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AMENDING APPENDIX C, LAND DEVELOPMENT CODE, OF THE CODE OF ORDINANCES OF FLAGLER COUNTY, FLORIDA, RELATING TO SHORT-TERM VACATION RENTALS; PROVIDING FOR FINDINGS; AMENDING ARTICLE III, ZONING DISTRICT REGULATIONS; CREATING SECTION 3.06.14, SHORT-TERM VACATION RENTALS; AMENDING SECTION 3.03.02, AC-AGRICULTURE DISTRICT, SECTION 3.03.03, AC-2-AGRICULTURE/FORESTRY DISTRICT, 3.03.04, R-1-RURAL RESIDENTIAL DISTRICT, 3.03.05, R-1B-URBAN-SINGLE-FAMILY RESIDENTIAL DISTRICT, 3.03.06, R-1C-URBAN SINGLE-FAMILY RESIDENTIAL DISTRICT, 3.03.07, R-1D-URBAN SINGLE-FAMILY RESIDENTIAL DISTRICT, 3.03.08, R-2-TWO-FAMILY RESIDENTIAL DISTRICT, 3.03.09.01, R-3-MULTIFAMILY RESIDENTIAL DISTRICT, 3.03.09.02, R-3B-MULTIFAMILY RESIDENTIAL DISTRICT, 3.03.10, MH-1-RURAL MOBILE HOME DISTRICT, 3.03.11, MH-2-URBAN MOBILE HOME DISTRICT, 3.03.13, R/C-RESIDENTIAL/LIMITED COMMERCIAL USE DISTRICT, 3.03.20, PUD-PLANNED UNIT DEVELOPMENT, 3.03.20.2, MUL-PUD-MIXED USE, LOW INTENSITY-PLANNED UNIT DEVELOPMENT, 3.03.20.3, MUH-PUD-MIXED USE, HIGH INTENSITY-PLANNED UNIT DEVELOPMENT, 3.03.21, FDD-FUTURE DEVELOPMENT DISTRICT, AND 3.08.02, SPECIFIC DEFINITIONS OF CERTAIN TERMS USED IN THIS ARTICLE; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, prior to 2011 Florida's cities and counties regulated local land use issues and decisions under the Home Rule authority granted them by the Florida Constitution; and

WHEREAS, the 2011 Florida Legislature enacted House Bill 883 (Florida Chapter 2011-119, Laws of Florida)(hereafter "HB 883") which preempted the local regulation of a specific land use commonly called short-term vacation rentals (transient rentals less than thirty (30) days in duration and commonly located in residential areas); and

WHEREAS, the preemption bill provided for very little oversight from the state for short term vacation rentals, for example, did not provide for staffing for mandatory or

randomized inspection of the short-term vacation rental units and applied relaxed standards for short-term vacation rentals when compared to hotels, motels, and bed and breakfast establishments; and

WHEREAS, HB 883 prevented local communities from enacting new regulations necessary to address any negative impacts caused by short-term vacation rentals; and

WHEREAS, Chapter 720 of Florida Statutes provides for the formation and operation of homeowners' associations, independent of government authority; and

WHEREAS, homeowners' associations may or may not exist in all single- and two-family residential neighborhoods; and

WHEREAS, homeowners' associations may not legally be able to fully address all issues regarding short-term vacation rentals; and

WHEREAS, the 2014 Florida Legislature enacted Senate Bill 356 (Florida Chapter 2014-71, Laws of Florida)(hereafter "SB 356") which rescinded the previous preemption on local regulation of short-term vacation rentals, but provided that a local law, ordinance, or regulation adopted after June 1, 2011 may not prohibit short-term vacation rentals or regulate the duration or frequency of rental of vacation rentals; and

WHEREAS, SB 356 has returned some local control back to communities to mitigate the effects of short-term vacation rentals in an attempt to make them safer, more compatible with existing neighborhoods, and accountable for their proper operation; and

WHEREAS, through SB 356 short-term vacation rentals cannot be prohibited from a community and would be permitted in all zoning districts; and

WHEREAS, single-family residential neighborhoods and their required infrastructure are generally designed to accommodate typical single-family residential homes with two (2) to three (3) persons per household on average; and

WHEREAS, local governments apply design standards tailored for residential neighborhoods for their roads, driveways, emergency services planning, public shelters, emergency evacuation plans, solid waste collection, utilities, buffers, and are also tailored in assessing their infrastructure impacts and their corresponding fair and proportionate impact/connection fees; and

WHEREAS, permanent single-family home residents inherently understand and know their physical surroundings, to include any safety gaps and potential risks to their families because they have daily familiarity; and

WHEREAS, short-term vacation rental occupants, due to the transient nature of their occupancy, are unfamiliar with local hurricane evacuation plans, the location of fire

extinguishers, residence exit routes, pool and home safety features, and other similar safety measures that would readily be provided to guests in traditional lodging establishments; and

WHEREAS, short-term vacation rental owners may live elsewhere and not experience the quality of life problems and negative impacts associated with larger, unregulated short-term vacation rental units on residential neighborhoods; and

WHEREAS, short-term vacation rentals with no application of mitigating standards when located in residential neighborhoods can create disproportionate impacts related to their size, excessive occupancy, and the lack of proper facilities if left unregulated; and

WHEREAS, some short-term vacation rentals will likely be created in single-family homes that were built before more current building codes that require minimum life/safety improvements, like hardwired or interconnected smoke detectors, carbon monoxide detectors, or pool alarms and pool safety drains, etc.; and

WHEREAS, some short-term vacation rental owners will make investments in upgrading building safety measures of their rental properties whereas other owners will not make such investments without local requirements and an ongoing inspection/enforcement program; and

WHEREAS, short-term vacation rentals locating within established neighborhoods can disturb the quiet enjoyment of the neighborhood, lower property values, and burden the design layout of a typical neighborhood; and

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

WHEREAS, traditional lodging establishments (hotels, motels, and bed & breakfasts) are restricted to commercial and other non-residentially zoned areas where intensity of uses is separated from less busy and quieter residential uses; and

WHEREAS, traditional lodging establishments have tougher development standards, undergo annual inspections, and have more stringent operational and business requirements; and

WHEREAS, traditional lodging establishments often have to make roadway improvements and/or pay much higher transportation, water, sewer, and other impact fees to offset the infrastructure demands they create; and

WHEREAS, multi-unit condominium buildings with short-term vacation rental units are typically constructed to more stringent building code requirements and other

fire/life safety measures that single- and two-family homes often do not have to meet, including sprinkler systems, interconnected fire alarm systems, fire alarm panels, emergency lighting, exit signs, fire extinguishers, and fire wall separation between occupancies; and

WHEREAS, multi-unit condominium short-term vacation rentals are routinely (often annually) inspected for fire/life safety code compliance to include inspections for the fire sprinkler system, interconnected fire alarm systems, fire alarm panels, fire pumps, emergency lighting, exit signs, backflow prevention, elevator operation, elevator keys and communication; and

WHEREAS, many multi-unit condominium short-term vacation rentals have on-site property managers and employees or other contracted vendors that oversee the maintenance, upkeep, security and/or operation of the property on a frequent basis; and

WHEREAS, the majority of complaints the County has received to date have been from single- and two-family neighborhoods and not from multi-unit condominium short-term vacation rentals; and

WHEREAS, multi-unit condominium short-term vacation rentals are not regulated locally at this time, but may be in the future if deemed necessary by the Flagler County Board of County Commissioners under the County's home rule authority granted within the Florida Constitution; and

WHEREAS, the areas west of U.S. Highway 1 of the unincorporated County are primarily rural in nature and are typically separated by large setbacks with development typically on larger acreage lots; and

WHEREAS, in the areas west of U.S. Highway 1, very few short-term vacation rental units are known to exist with the exception of hunting camps which are in remote, rural locations and often directly supervised or used by the operator on-site; and

WHEREAS, the majority of complaints the County has received to date have been from single- and two-family neighborhoods east of U.S. Highway 1; and

WHEREAS, the unincorporated areas located west of U.S. Highway 1 will not be regulated locally for short-term vacation rental units at this time, but may be in the future if deemed necessary by the Flagler County Board of County Commissioners under the County's home rule authority granted by the Florida Constitution; and

WHEREAS, whenever at least one (1) property owner permanently resides at a short-term vacation rental located within the same structure the number of renters is minimized and the owner can directly manage the property when it is under a short-term rental; and

WHEREAS, an on-site owner permanently residing at a short-term vacation rental which also serves as the owner's principal residence will likely manage any vacation rental more restrictively than any local regulation because the owner has a direct, vested interest in how the property the owner resides in is used and maintained; and

WHEREAS, owner-occupied short-term vacation rental units are not the norm in the County and will not be regulated locally for short-term vacation rental units at this time, but may be in the future if deemed necessary by the Flagler County Board of County Commissioners under the County's home rule authority granted by the Florida Constitution; and

WHEREAS, permanent residents within residential neighborhoods often establish long-term friendships, social norms and a sense of community which often leads to mutual respect among property owners on an ongoing basis; and

WHEREAS, a single-family dwelling home is typically the largest investment a family will make in their lifetime, with the home held sacred in popular culture as the heart and the center of the family unit; and

WHEREAS, permanent residents within established residential neighborhoods deserve the right to tranquility and peaceful enjoyment of their home without over-intrusion by an excessive number of transient occupants in the neighborhood; and

WHEREAS, Flagler County promotes tourism, including appreciation and enjoyment of the County's abundant preserved natural areas, historic sites, rural pristine beaches, and walking and bicycling paths that make Flagler County unique among Florida's coastal counties; and

WHEREAS, some municipalities in Flagler County, and many local jurisdictions in the State of Florida, and across the nation have standards in place to minimize the negative impacts caused by short-term vacation rentals; and

WHEREAS, prior to the enactment of HB 883, short-term vacation rentals in Flagler County seemed to be more compatible and coexisted in a fairly compatible manner within established neighborhoods with relatively few conflicts and complaints to the County; and

WHEREAS, prior to the enactment of HB 883, the City of Flagler Beach had adopted regulations providing for the siting and approval of short-term vacation rentals within established neighborhoods, with relatively few conflicts resulting from the regulatory framework that has now been effect for several years; and

WHEREAS, since the enactment of HB 883, Flagler County has experienced a large increase in the construction of new, oversized structures for the primary purpose

of serving as mini-hotels for short-term vacation rentals for up to as many as twenty-four (24) individuals; and

WHEREAS, although family sizes per residence can vary widely from residence to residence, according to the recently completed 2010 U.S. Census, Flagler County's average family size is 2.82 persons; and

WHEREAS, the 2010 U.S. Census data also indicates the average household size in Flagler County of 2.42 persons; and

WHEREAS, the operation of some short-term vacation rentals in established neighborhoods in the County create a huge disparity in short-term vacation rental impacts with up to nine (9) times the average occupancy of an existing single-family residence, making the higher occupancy of the rental homes incompatible with established neighborhoods; and

WHEREAS, utility usage by short-term vacation rentals may exceed the usage levels anticipated at the time of initial permitting as a single-family residence, creating a disparity between the impact and connection fees paid and the system impacts caused by their increased demand; and

WHEREAS, at least one utility provider has provided user information showing that some short-term vacation rentals can utilize over ten (10) times the capacity of a typical single-family residence; and

WHEREAS, at least one utility provider has taken steps to charge additional impact/system capacity fees based on the increased usage from short-term vacation rentals; and

WHEREAS, the State of Florida through its existing regulatory framework provides for licensing, maintenance, and inspection of hotels and motels; however no similar regulatory framework exists for short-term vacation rentals; and

WHEREAS, according to the State of Florida records, vacation rentals have flourished for decades while solely under local control; and

WHEREAS, according to the State of Florida Department of Business and Professional Regulation the number of vacation rental home units has actually decreased from 10,602 units in 2010 to 10,362 units in 2013, since the State preemption into this local community land use decision; and

WHEREAS, current vacation rental industry practice is to set maximum limits upon the number of transient occupants within a short-term vacation rental unit, but lacking provisions for verification and enforcement when overcrowding occurs; and

WHEREAS, current vacation rental industry practice is to charge a flat rental fee for the term of the lease, regardless of the transient occupant count, which incentivizes the common practice for lessees of oversized structures used as short-term vacation rentals to increase the transient occupant count so as to spread out the cost burden for the rental term among as many payers as possible; and

WHEREAS, the County desires to encourage short-term vacation rentals that are safe, fit in with the character of the neighborhood, provide positive impacts for tourism, increase property values, and achieve greater neighborhood compatibility; and

WHEREAS, Flagler County seeks to balance respect for private property rights and incompatibility concerns between the investors/short-term vacation rentals and families/permanent single-family residences in established residential neighborhoods through the use of reasonable development standards; and

WHEREAS, while Flagler County's average family size is 2.82 persons, the County is desirous of providing for as many as ten (10) transient occupants in a single-family residence – almost four (4) times the County's average family size – within a short-term vacation rental subject to a reasonable regulatory framework; and

WHEREAS, these regulations are deemed necessary by the Flagler County Board of County Commissioners to preserve property values and to protect the health, safety, and general welfare of permanent residents, lot/parcel owners, investors and transient occupants and visitors alike; and

WHEREAS, these regulations are being promulgated by the Flagler County Board of County Commissioners to supplement, but not to replace, any existing federal or state law or regulation, or other controls within established residential neighborhoods served by a homeowners' association; and

WHEREAS, through these regulations, Flagler County is seeking to regulate another type of commercial use of a single- and two-family dwelling, similar to the County's provisions for home occupations, which permit limited commercial use of an owner-occupied dwelling subject to initial inspection requirements, ongoing compliance with specific home occupation regulations as provided in the Land Development Code, and issuance and annual renewal of a business tax receipt for the home occupation; and

WHEREAS, these regulations do not regulate duration or frequency of rentals, but are intended to address the frequent change of many transient occupants housed within a single-family dwelling within an established residential neighborhood; and

WHEREAS, the application of minimum life/safety requirements to short-term vacation rentals, along with other minimum standards, ensures that transient occupants are provided the same minimum level of protection as is required by the current statutes

and codes for single- and two-family residences utilized as hotels, motels, and dormitories; and

WHEREAS, the County has established a maximum occupancy of sixteen (16) persons within any zoning district because an occupancy exceeding sixteen (16) persons falls into a commercial-type classification as a hotel or dormitory for purposes of the National Fire Protection Association (NFPA) 101 Life Safety Code; and

WHEREAS, for purposes of compliance with the National Fire Protection Association (NFPA) 101 Life Safety Code, residential occupancies of sixteen (16) or fewer persons may be provided within one- and two-family dwelling units without consideration as a hotel or dormitory and provision of related life-safety requirements; and

WHEREAS, the minimum residential safety standards, as adopted by the Florida Legislature as the Residential Swimming Pool Safety Act and now in place, include provision of swimming pool, spa, and hot tub barriers or alarms so as to reduce the likelihood of child and elder drowning; and

WHEREAS, sleeping rooms as so designated within short-term vacation rental units shall be recognized in the same manner as bedrooms within single-family residential homes, with the same requirements as are currently provided within local, state, and federal regulations, as applicable; and

WHEREAS, because of the high occupancy and transient nature of occupants within many short-term vacation rentals, fire safety becomes important; and

WHEREAS, where interconnected, hard-wired smoke and carbon monoxide alarm systems are not in place, then at a minimum, these systems will be installed to provide for sufficient warning for evacuation so as to minimize loss of life within an occupied short-term vacation rental unit; and

WHEREAS, where a fire sprinkler system is not in place, then at a minimum, the placement of a multi-purpose dry chemical fire extinguisher on each floor of a short-term vacation rental will provide a basic level of fire protection based on the class of fire and fire loading anticipated to be encountered in an occupied short-term vacation rental unit; and

WHEREAS, in the event of an emergency, the presence of posted building exit routes can reduce the risk to transient occupants who are unfamiliar with the short-term vacation rental unit; and

WHEREAS, site-specific short-term vacation rental standards, like minimum parking standards, solid waste handling and containment, and the establishment of quiet hours, serve to maintain the decorum that exists among owners in established

neighborhoods and are better assured by having these same standards conveyed to transient occupants through the duration of their rental; and

WHEREAS, short-term vacation rentals operate as commercial enterprises, subject to additional regulatory requirements beyond those normally required of single-family and two-family residences, including business licensing by the State of Florida Department of Business and Professional Regulation's Division of Hotels and Restaurants, obtaining a local business tax receipt, and collecting and remitting various sales taxes to state and local government; and

WHEREAS, a vacation rental is a commercial lodging activity; and

WHEREAS, some vacation rentals are being used exclusively as rentals by investors/owners; and

WHEREAS, the establishment of minimum business practices, such as the provision of both lease-specific and property-specific information to lessees, and the designation of a local short-term vacation rental responsible party, ensures that the private property rights of the short-term vacation rental owner are balanced with the needs of the County to protect visitors and tourists and to preserve the general welfare through its limited regulatory power; and

WHEREAS, the County, through its existing regulatory framework, will issue certificates to short-term vacation rentals conforming to these standards, which will in turn provide a level playing field amongst all providers of short-term vacation rental units; and

WHEREAS, this ordinance additionally establishes an enforcement mechanism for those short-term vacation rentals which do not adhere to the standards on an initial or continuing basis, with the overall goal of the short-term vacation rental program being compliance with the standards and not punitive in its scope; and

WHEREAS, the Flagler County Planning and Development Board held a duly noticed public hearing on October 29, 2014 and recommended approval of this ordinance; and

WHEREAS, the Flagler County Board of County Commissioners held a duly noticed public hearing on November 3, 2014 and approved this ordinance on first reading; and

WHEREAS, the Flagler County staff has held at least fifteen (15) different meetings with potentially affected individuals to hear, discuss, and consider their concerns regarding the ordinance; and

WHEREAS, public notice of this action has been provided in accordance with Section 125.66, Florida Statutes and in accordance with the Flagler County Land Development Code.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS

A. The above Recitals are incorporated herein as Findings of Fact.

B. The Board of County Commissioners further finds as follows:

1. The proposed amendment will provide for the orderly development of Flagler County and complies with applicable Comprehensive Plan goals, objectives and policies; and

2. The proposed amendment will serve to protect the health and safety of residents or workers in the area and will be complementary to the use of adjacent properties or the general neighborhood.

SECTION 2. LAND DEVELOPMENT CODE AMENDMENT

A. Appendix C, Land Development Code, Article III Zoning Districts, is hereby amended as follows:

1. Creation of new Section 3.06.14, *Short-term vacation rentals*, to read as follows:

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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.

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.

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.I.

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 grounds for revocation or suspension of the Certificate in accordance with the requirements contained herein.

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.

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. The sketch provided shall be drawn to scale, and 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:

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 of the Certificate by January 1 of each year.

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. An exception to the correction of violations as required in this subsection is made for any short-term vacation rental seeking vested rights pursuant to subsection 3.06.14.N to the extent that a vesting determination specifically provides such exemption.

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 the suspension of the Short-Term Vacation Rental Certificate 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; the short-term vacation rental is not permitted to operate without a valid Certificate.

   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.* 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.

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

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 8-1/2" 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, except that occupancy violations shall be governed by subsection 3.06.14.L.3.

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. 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. 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 and order other relief in lieu of any 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 County may also rely on 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, suspension or revocation of a Short-Term Vacation Rental Certificate, injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

L. *Suspension of Short-Term Vacation Rental Certificate.* In addition to any fines and any other remedies described herein or provided for by law, the County may suspend a Short-Term Vacation Rental Certificate for multiple violations of the maximum occupancy in any continuous thirty-six (36) month period, in accordance with the following:

1. Suspension timeframes.

   a. Upon a fourth (4th) violation of the maximum occupancy the Short-Term Vacation Rental Certificate shall be suspended for a period of seven (7) calendar days.

   b. Upon a fifth (5th) violation of the maximum occupancy the Short-Term Vacation Rental Certificate shall be suspended for a period of thirty (30) calendar days.

   c. For each additional violation of the maximum occupancy the Short-Term Vacation Rental Certificate shall be suspended for an additional thirty (30) calendar days up to a maximum period of twelve (12) months. For example the sixth (6th) violation shall be for sixty (60) calendar days; the seventh (7th) violation shall be for ninety (90) calendar days, and so on.

2. Suspension restrictions. A short-term vacation rental may not provide transient occupancy during any period of suspension of a Short-Term Vacation Rental Certificate.

   a. The suspension shall begin immediately following notice, commencing either:

      1. at the end of the current vacation rental lease period; or

      2. within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the County.

   b. Operation during any period of suspension shall be deemed a violation pursuant to subsection 3.06.14.K.2 and shall be subject to daily fine, up to five hundred dollars ($500) or to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the short-term vacation rental operates during a period of violation.

3. Number of violations. For purposes of this section only, violations shall be considered per the rental period or per every seven (7) days, whichever is less and for only those violations in which a code enforcement citation or criminal charge was issued. Violations could potentially occur over multiple times over the same rental period.

N. *Vesting.* Existing, legally-established short-term vacation rentals located in zoning districts and developments described in subsection 3.06.14.A as of January 1, 2015 may become vested in the ways described below,

provided they are otherwise in compliance with all other requirements contained herein.

To qualify for any vesting existing short-term vacation rentals shall have until April 15, 2015 to make a full and complete application for a Short-Term Vacation Rental Certificate and until July 1, 2015 to receive a Short-Term Vacation Rental Certificate to come into compliance with the County's requirements.

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 February 19, 2015, for the period to up to February 28, 2016 shall be considered vested. 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. Such rental/lease agreement(s) shall not be required to be submitted to the County to retain this vesting.

   Any rental/lease agreement(s) entered into prior to February 19, 2015, for the period after March 1, 2016 shall be required to be submitted to the County for verification and go through a vesting hearing process for a final determination. All rental agreements entered into after February 19, 2015 and for any rental period beyond January 1, 2017 shall comply with the provisions of the ordinance enacting this section.

2. Temporary vesting of certain safety requirements. Some existing short-term vacation rentals may not meet the minimum life/safety standards (subsection 3.06.14.C.1) required herein. Correcting these measures may take some time to secure a licensed contractor, obtain the necessary permits, and complete the work. All short-term vacation rentals shall have six (6) months from the effective date of the ordinance enacting this section to come into compliance with these standards. A provisional Short-Term Vacation Rental Certificate may be issued for up to a maximum of six (6) months past the adoption of the ordinance enacting this section granting this time for the facility to comply with the physical changes required. 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. 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 who 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 density may be retained through February 28, 2018 in which case it shall be reduced by two (2) thereafter. The maximum density 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.

4. 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 request 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;

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 consideration that should be considered 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.

5. 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.

6. A vested use shall not transfer to a subsequent owner. A vested use is not transferrable to another short-term vacation rental.

7. If a vested use ceases for a period of six (6) months, 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.

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2. Amendment to section 3.03.02, *AC-Agriculture district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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18. Short-term vacation rentals.

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3. Amendment to section 3.03.03, *AC-2-Agriculture/forestry district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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7. Short-term vacation rentals.

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4. Amendment to section 3.03.04, *R-1-Rural residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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6. Short-term vacation rentals.

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5. Amendment to section 3.03.05, *R-1b-Urban single-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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4. Short-term vacation rentals.

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6. Amendment to section 3.03.06, *R-1c-Urban single-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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4. Short-term vacation rentals.

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7. Amendment to section 3.03.07, *R-1d-Urban single-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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4. Short-term vacation rentals.

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8. Amendment to section 3.03.08, *R-2-Two-family residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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5. Short-term vacation rentals.

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9. Amendment to section 3.03.09.01, *R-3-Multifamily residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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5. Short-term vacation rentals.

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10. Amendment to section 3.03.09.02, *R-3b-Multifamily residential district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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5. Short-term vacation rentals.

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11. Amendment to section 3.03.10, *MH-1-Rural mobile home district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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6. Short-term vacation rentals.

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12. Amendment to section 3.03.11, *MH-2-Urban mobile home district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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3. Short-term vacation rentals.

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13. Amendment to section 3.03.13, *Residential/limited commercial use district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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4. Short-term vacation rentals.

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14. Amendment to section 3.03.20, *PUD-Planned unit development*, subsection B., *Permitted principal uses and structures*, to read as follows:

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19. Short-term vacation rentals.

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15. Amendment to section 3.03.20.2, *MUL-PUD-Mixed use, low intensity-planned unit development*, subsection B., *Permitted principal uses and structures*, to read as follows:

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16. Short-term vacation rentals.

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16. Amendment to section 3.03.20.3, *MUH-PUD-Mixed use, high intensity-planned unit development*, subsection B., *Permitted principal uses and structures*, to read as follows:

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17. Short-term vacation rentals.

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17. Amendment to section 3.03.21, *FDD-Future development district*, subsection B., *Permitted principal uses and structures*, to read as follows:

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16. Short-term vacation rentals.

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18. Amendment to section 3.08.02, *Specific definitions of certain terms used in this article*, to include the following definitions:

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Bedroom: The term "bedroom" shall have the same meaning as in §381.0065(2)(b), Florida Statutes. The term "sleeping room" is the same as a bedroom.

Short-term vacation rental: Any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit which is also a "transient public lodging establishment." As used in section 3.06.14, the term "vacation rental" is the same as a short-term vacation rental.

Transient public lodging establishment: Any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three (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. A "transient public lodging establishment" shall be a considered as a non-residential, commercial business, whether operated for profit or as a not-for-profit, and be subject to the additional requirements of section 3.06.14 if the transient public lodging establishment is additionally considered to operate as a short-term vacation rental as defined herein.

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SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS

A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or relettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.

B. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

SECTION 4. SEVERABILITY

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 19TH DAY OF FEBRUARY, 2015.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

Frank J. Meeker, Chairman

ATTEST:

Gail Wadsworth, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney

ORDINANCE NO. 2015 - 05

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2015-02, AMENDING APPENDIX C, LAND DEVELOPMENT CODE OF THE CODE OF ORDINANCES OF FLAGLER COUNTY, FLORIDA, AMENDING SECTION 3.06.14 RELATED TO SHORT-TERM VACATION RENTALS; AMENDING SUBSECTION 3.06.14.N, VESTING, BY EXTENDING THE DATE FOR RECEIPT OF A FULL AND COMPLETE SHORT-TERM VACATION RENTAL CERTIFICATE APPLICATION FROM APRIL 15, 2015 TO JUNE 1, 2015, AND BY EXTENDING THE DATE TO RECEIVE A SHORT-TERM VACATION RENTAL CERTIFICATE TO COME INTO COMPLIANCE WITH THE COUNTY'S REQUIREMENTS FROM JULY 1, 2015 TO SEPTEMBER 1, 2015; AND AMENDING SUBSECTION 3.06.14.N.2, TEMPORARY VESTING OF CERTAIN SAFETY REQUIREMENTS, FROM SIX (6) MONTHS FROM THE EFFECTIVE OF ORDINANCE NO. 2015-02 TO SIX (6) MONTHS FROM JUNE 1, 2015; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on February 19, 2015, the Flagler County Board of County Commissioners adopted Ordinance No. 2015-02, creating Section 3.06.14, Short-term vacation rentals, of the Flagler County Land Development Code, adopted as Appendix C to the Flagler County Code of Ordinances; and

WHEREAS, through the ordinance review and adoption process, County staff worked to prepare the necessary applications and fees to implement Ordinance No. 2015-02 upon adoption; and

WHEREAS, following adoption of Ordinance No. 2015-02, the required applications and fees were not immediately available; and

WHEREAS, several key milestones in Ordinance No. 2015-02 were linked to February 19, 2015, the adoption date of the ordinance, particularly as these milestones relate to vesting; and

WHEREAS, the County desires to provide sufficient time for owners of properties used as short-term vacation rentals to achieve compliance with the requirements of the ordinance, including as these relate to vesting; and

WHEREAS, this amending ordinance is limited to the subsections of Ordinance No. 2015-02 as amended herein, and all other parts of Ordinance No. 2015-02 remain as originally adopted unless amended herein; and

WHEREAS, public notice of this action has been provided in accordance with Section 125.66, Florida Statutes and in accordance with the Flagler County Land Development Code.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS

A. The above Recitals are incorporated herein as Findings of Fact.

B. The Board of County Commissioners further finds as follows:

1. The proposed amendment will provide for the orderly development of Flagler County and complies with applicable Comprehensive Plan goals, objectives and policies; and

2. The proposed amendment will serve to protect the health and safety of residents or workers in the area and will be complementary to the use of adjacent properties or the general neighborhood.

SECTION 2. LAND DEVELOPMENT CODE AMENDMENT

A. Appendix C, Land Development Code, Article III Zoning Districts, Section 3.06.14, *Short-term vacation rentals*, is hereby amended as follows:

1. Amendment of Section 3.06.14, *Short-term vacation rentals*, subsection N., *Vesting*, to read as follows (in part):

****

N. *Vesting*. Existing, legally-established short-term vacation rentals located in zoning districts and developments described in subsection 3.06.14.A as of June 1, 2015 ~~January 1, 2015~~ may become vested in the ways described below, provided they are otherwise in compliance with all other requirements contained herein.

To qualify for any vesting existing short-term vacation rentals shall have until June 1, 2015 ~~April 15, 2015~~ to make a full and complete application for a Short-Term Vacation Rental Certificate and until September 1, 2015 ~~July 1, 2015~~ to receive a Short-Term Vacation Rental Certificate to come into compliance with the County's requirements.

****

2. Amendment of Section 3.06.14, *Short-term vacation rentals*, subsection N., *Vesting*, to read as follows (in part):

    2. Temporary vesting of certain safety requirements. Some existing short-term vacation rentals may not meet the minimum life/safety standards (subsection 3.06.14.C.1) required herein. Correcting these measures may take some time to secure a licensed contractor, obtain the necessary permits, and complete the work. All short-term vacation rentals shall have until December 1, 2015 (six (6) months from June 1, 2015) ~~the effective date of the ordinance enacting this section~~ to come into compliance with these standards. A provisional Short-Term Vacation Rental Certificate may be issued for up to a maximum of six (6) months from June 1, 2015 (until December 1, 2015) ~~past the adoption of the ordinance enacting this section~~ granting this time for the facility to comply with the physical changes required. 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.

****

SECTION 3. CODIFICATION AND SCRIVENER'S ERRORS

A. The provisions of this Ordinance shall be included and incorporated into the Code of Ordinances of Flagler County, Florida, as additions and amendments thereto, and shall be appropriately renumbered or relettered to conform to the uniform numbering system of the Code. Scrivener's errors may be corrected as deemed necessary.

B. Only Section 2 herein shall be codified within the Flagler County Code of Ordinances. Sections not specifically amended herein shall remain unchanged by this Ordinance.

SECTION 4. SEVERABILITY

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA THIS 6TH DAY OF APRIL, 2015.

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

Frank J. Meeker, Chairman

ATTEST:

Gail Wadsworth, Clerk of the Circuit Court and Comptroller

APPROVED AS TO FORM:

Al Hadeed, County Attorney

CITY OF MARCO ISLAND

ORDINANCE NO. 15-01

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA CREATING A NEW ARTICLE AND NEW SECTIONS 8-100 THROUGH 8-104, INCLUSIVE, IN CHAPTER 8, BUSINESSES, IN THE MARCO ISLAND CODE OF ORDINANCES, CONCERNING THE REGISTRATION AND OPERATION OF SHORT-TERM RENTALS; PROVIDING APPLICABILITY; PROVIDING FOR REGISTRATION, INSPECTIONS AND FEES; PROVIDING FOR REQUIRED POSTINGS AND NOTICE; PROVIDING FOR INTERPRETATION AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Marco Island finds that residential rental properties within the City are not being properly maintained or managed, creating a potential nuisance for neighboring properties; and

WHEREAS, the Council desires to ensure that residential properties available as short-term rentals are properly maintained and operated; and

WHEREAS, the Council finds that inadequately maintained and operated properties directly affect the surrounding neighborhoods and the City as a whole, and that the regular collection and maintenance of accurate information about rental properties will aid in ensuring compliance with this Ordinance and the Code in general; and

WHEREAS, the Council, therefore, desires to establish a registration program to educate rental property owners, their managers and tenants, on compliance with various statutory and Code requirements relating to the short-term rental of residential property; and

WHEREAS, intent of this Ordinance is to collect current and accurate information regarding rental properties and to encourage the appropriate management of those properties in order to protect the general health, safety and welfare of the residents of and visitors to the City of Marco Island.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Recitals.

The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct

and reflective of the legislative intent underlying this Ordinance.

SECTION 2. The Code of Ordinances, Marco Island, Florida, is hereby amended by creating Article V, entitled "Short Term Rentals" and adding a section to be numbered 8-100, which section reads as follows:

ARTICLE V. SHORT TERM RENTALS

Sec. 8-100. Applicability; Definitions.

(a) The provisions of this Article shall apply to "short-term rentals" which include any dwelling or group of dwellings units, as defined in Section 30-10 of the Code, including those units in a condominium, cooperative, mobile home, or timeshare dwelling located in the City that is, at any time, available for rent or lease for a period of less than 365 days. This Article does not apply to motels or hotels as defined in Section 30-10 of the City of Marco Island Code of Ordinances. As used in this sub-section, the term "available for rent or lease" means that the dwelling is actually being offered for rent or lease or is rented or leased for varying periods of time.

(b) All owners of properties subject to the provisions of this Article shall, prior to offering their property for rent or lease to the public, register each dwelling with the City.

(c) In addition to their tenants, the owner of all applicable properties subject to this Article are at all times be ultimately responsible for compliance with the terms of this Article, and the failure of any tenants, their guests, or agents of the owner to comply will be deemed noncompliance by the owner.

(d) Definitions. As used herein, unless the context affirmatively indicates to the contrary, the following terms are defined to mean:

(1) "City Manager" means the City Manager, or the person or persons designated by the City Manager, to administer the provisions of this Article on behalf of the City.

(2) "Designated Contact" means a person, property manager, or entity designated by the owner of a particular dwelling to serve as the contact for the purpose of immediately addressing or resolving the concerns of the tenants, or responding to and resolving complaints by the City or other persons, regarding property or the conduct of the occupants of a particular dwelling subject to regulation pursuant to this Article. The designated contact must have the authority granted by the owner and the tenant to consent to allow a police, fire or code enforcement entry onto the property to conduct an inspection. The owner may serve as the designated contact. Alternatively, the owner may designate as the designated contact any natural person 18 years of age or older. Alternate designated contacts may also be designated by the owner as part of a regulation application subject to this Article.

(3) "Dwelling" means any building, or part thereof, intended, designed, used or occupied in whole or in part as the residence or living quarters of one or more persons, permanently or temporarily, continuously or transiently, with cooking and sanitary facilities. *See* Section 30-10, Marco Island Code of Ordinances.

(4) "Owner" means the current title holder or owner as reflected on the current Collier County *ad valorem* tax rolls as reflected in the Collier County Property Appraiser's Records.

(5) "Short-term rental" means any dwelling or group of dwellings, including those units in a condominium, cooperative, mobile home, or timeshare dwellings located within the City that is, at any time, available for rent or lease for a period of less than 365 days. A short-term rental does not apply to motels or hotels, as defined in Section 30-10 of the Marco Island Code of Ordinances. As used in this definition, the term "available for rent or lease" means that the dwelling is actually being offered for rent or lease or is rented or leased for varying periods of time.

SECTION 3. The Code of Ordinances, Marco Island, Florida, is hereby amended by creating Article V, entitled "Short Term Rentals" and adding a section to be numbered 8-101, which section reads as follows:

Sec. 8-101. Registration, Inspections and Fees.

(a) Rental Property Registration.

(1) Except as provided in paragraph (2), registration is required for every dwelling subject to this Article. If a property contains more than one (1) dwelling, a separate registration shall be required for each dwelling. Registration application shall be made to the City Manager. The City Manager shall review the registration application to determine that it is for a dwelling subject to this Article and that all required information has been submitted as a part of the registration application. Upon a determination that the dwelling is subject to this Article and that the registration applicant has submitted all required information, the City Manager shall issue a certificate of registration, noting: (A) the effective date of registration; (B) the termination of the registration; (C) the dwelling owner's name; (D) the address and legal description of the dwelling that is subject to the registration certificate; and (E) the designated contact's name, address, telephone number, and e-mail address. The City Manager shall make all determinations with regard to whether a dwelling is subject to regulation pursuant to this article and with regard to registration.

(2) Condominium, cooperative, mobile home, or home owner associations acting in accordance with Chapters 718, 719, 720, or 723, Florida Statutes, respectively, may obtain a blanket registration or request an exemption from registration for a portion or all of the entire property subject to the jurisdiction of the association, encompassing all affected dwellings; provided that such registration or exemption request is supported by a majority of the total ownership of said dwellings included within a registration application or exemption request and is as evidenced by either: (A) a written consent executed by all owners of a dwelling unit, lot, or other similar parcel of land; or (B) a majority vote of those association members voting at an association meeting at which a voting quorum was present and at which the issue to file a blanket registration or an exemption request from the provisions of this Ordinance other than a semi-annual report "opt out" was presented for a vote as an official action of the association. Notwithstanding whether a blanket registration or exemption is granted by the City, the association shall report semi-annually to the City each calendar year which dwellings are currently being used as short-term rentals. However, in the event the association has been found in violation of this Article three (3) times by the City's Special Magistrate within any 365 day time period, the blanket registration shall be revoked by the City, and the dwelling owner(s) shall be so notified in writing by the City and each

affected dwelling unit will be required to obtain an individual registration. Notwithstanding the foregoing, individual dwellings owners have the option of registering independently of their association. Any owner so registering shall be excluded from an association blanket registration.

(3) At the time of application for the issuance of a registration pursuant to this Article, each owner of a dwelling must show evidence of having obtained the requisite license, if available and if required by Florida law or administrative regulation, or a qualifying exemption, from the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation; provided, however that the failure to exhibit a license from the Florida Department of Business and Professional Regulation shall not preclude the operation or registration of a short-term rental. The City reserves its right to report said short-term rental to the state of Florida or Collier County, if City officials believe that the dwelling should be licensed or otherwise regulated by the state or County.

(4) The following information must be included in any application for registration: (A) name, address, telephone number, and e-mail address of the owner, any property manager of the dwelling, and the designated contact for the dwelling regulated by this Article and subject to the application must be included in any application for dwelling registration with the City pursuant to this Article; (B) if the designated contact is other than the owner, an agreement signed by both the owner and the designated contact in which the designated contact agrees to perform the duties of being a designated contact for the specific dwelling subject to registration and in which the designated contact is authorized on behalf of the owner to consent to a search of the dwelling by Marco Island Police, Fire or code enforcement; (C) the owner's agreement to use his or her best efforts to assure that the use of the dwelling will be consistent with the Code of Conduct Policy as specified in Section 8-102(7) of this Article V; and (D) any such other relevant information deemed pertinent to the registration. The application must be signed and contain the date of execution by the owner.

(b) Duties of the owner or designated contact. The duties of the owner or designated contact are to:

(1) Be available at all times at all times to handle any problems arising from the dwelling registered pursuant to this Article;

(2) Be able and willing to email, text or telephone the tenant or guest pursuant to this Article and notify the City of the results within one (1) hour following notification from the City of issues related to the dwelling; and

(3) Receive service of any notice of violation of this Article.

(c) Inspections. Upon filing of a registration application with the City for a dwelling, every short-term rental dwelling is subject to an initial inspection to ensure compliance with the applicable Florida Building Code, and Fire Prevention Code provisions. Dwellings permitted prior to March 1, 2002 shall be subject to annual re-inspection. Dwellings permitted after March 1, 2002 will be subject to biennial re-inspections until December 31, 2025 at which time such dwellings will be subject to annual re-inspection.

(d) Term and Renewal. Initial registrations filed prior to January 1, 2016, are valid through December 31, 2016. All subsequent registrations are valid for a term of one (1) calendar

year until the end of the calendar year in which the registration was issued. Renewal applications that are not submitted in a complete and final form within 30 days of the expiration of the preceding term may be treated similar to new registrations and subject to additional inspections and fees.

(e) Fees. Each dwelling subject to this Article shall pay the applicable building and fire inspection fee assessed at the time of registration and paid upon completion of inspections in accordance with Chapters 6 and 22 of the City Code or as otherwise established by resolution of the City Council. All fees required under this article, including administrative fees, operating and capital, if any, shall be adopted by resolution, reviewed annually, and placed in a self-sustaining special revenue fund.

(f) Agency. Any owner who engages the services of an agent, property manager, or other representative for the purposes of compliance with this Article shall indicate so in their registration.

(g) Modification and Transferability. The occurrence of any of the following shall require the filing of an updated registration application with the City within thirty (30) days thereafter: (1) any alteration, remodel, or other modification to any building or structure subject to this Article requiring the issuance of a building permit; (2) any change in the ownership of the dwelling; or (3) any other material change in the registration application, including the designation of a new contact person. Any such updates, which require re-inspection, may be subject to additional fees. Designation of a new agent or designated contact person more than three (3) times within any 365 day time period shall be subject to an administrative fee.

(h) Non-Exclusive. The registration and fees required by this Article shall be in addition to any other tax, certificate, permit, or fee, required under any other provision of the City Code. Registration pursuant to this Article shall not relieve the owner of the obligation to comply with all other provisions of the City Code pertaining to the use and occupancy of the dwelling or the property on which it is located.

(i) Electronic Registration. The City may establish an electronic registration system for the registry of property, payment of fees, scheduling of inspections, and updating of information required by this Article.

SECTION 4. The Code of Ordinances, Marco Island, Florida, is hereby amended by creating Article V, entitled "Short Term Rentals" and adding a section to be numbered 8-102, which section reads as follows:

Sec. 8-102. General Provisions.

All owners of dwellings registered as provided herein shall comply with the following:

(1) Designated Contact. Each applicant for registration shall at the time of application designate a designated contact for the purpose of addressing the concerns of the tenants or responding to complaints by the City or other persons regarding the conduct of the occupants of a dwelling subject to regulation pursuant to this Article. When an entity is designated, the registration shall include the name of a specific contact person(s); provided, that in all events, there shall be a designated person available for contact by the City for each hour or each day, seven days per week. The designated contact shall respond to concerns regarding potential violations of this Article within one (1) hour of receiving a contact call from the City. The designated contact shall promptly

make at least three (3) attempts following the receipt of a complaint from the City to contact the tenants and resolve the complaint. The designated contact is also responsible for documenting the complaint; the date and time of receipt of the complaint from the city; the date and time of attempts to contact the tenant(s) and the result of the contact; the nature of the response by the tenant(s); and forwarding that documentation to the City Manager within one (1) hour of their response to the initial complaint.

(2) Occupancy Limits:

a. In no case shall the maximum total occupancy for any dwelling exceed the limits permitted by the Florida Fire Prevention Code or Florida Building Code.

b. In addition to the foregoing, the maximum overnight tenant occupancy load of any unit shall not exceed two (2) persons for each bedroom, as "bedroom" is defined under the Florida Building Code, in the rental, plus two (2) persons.

c. Before the hours of 7 AM, or after 10 PM, on any day, the occupancy load of the unit may not exceed the maximum allowed number of overnight tenants.

(3) Recordkeeping. The owner of each dwelling shall maintain a registry of all tenant(s), their address, telephone number, and e-mail address, and the make, model, year, and tag number of their motor vehicle(s) located at the dwelling. The owner shall maintain this information for each tenant for a minimum of two (2) years. The owner or designated contact shall make the information regarding the current tenant(s) available to the City within one (1) hour of a request by the City Manager.

(4) Vehicles and Parking. Tenants or guests of any registered unit shall not:

a. Engage in any prohibited parking activities as provided in Sections 50-37 or 30-1007 of the City of Marco Island Code of Ordinances.

b. Park any boat or boat trailer in a residential zoning district, unless fully enclosed in a structure so that it cannot be seen from any abutting property, public way, or waterway. As used in the foregoing sentence, the term "residential zoning district" shall include properties zoned Residential Single Family (RSF), Residential Multiple Family 6 units per acre (RMF-6), Residential Multiple Family 12 units per acre (RMF-12), Residential Multiple Family 16 units per acre (RMF-16), and Residential Tourist (RT).

c. Utilize recreation vehicles for sleeping or overnight accommodations at any property regulated by this Article.

(5) Waterways and Vessels. Vessels may be moored, berthed, or otherwise stored on an approved docking facility; however no vessels may be docked or stored in a manner that constitutes a hazard to navigation and trailers shall also be stored in a legal manner, as authorized by the Marco Island Code of Ordinances.

(6) Refuse. As provided by section 18-36 of the Marco Island Code of Ordinances, refuse, trash, and recycling may not be left out by the curb on a public right-of-way for pick-up until 6 PM on the evening before the scheduled trash or recycling pick-up day with all trash, refuse or recycling containers removed thereafter by 7 PM on the evening of the day of refuse, trash, or recycling pickup, as applicable.

(7) Noise. Tenants and their guests must comply with the requirements of Chapter 18, Article IV, Noise Control, of the Marco Island Code of Ordinances, and not unnecessarily make, continue or cause to be made or continued, any noise disturbance as defined therein.

(8) Code of Conduct Policy. As a general policy and aspirational goal, tenants and their guests are required to adhere to a "good neighbor" Code of Conduct Policy by which they will be respectful of their neighbors and not disrupt the peace and tranquility of their neighbors; not make raucous, loud, or unnecessary noise at any time; not set off fireworks in violation of the city code, not allow drunken, disorderly, or intoxicated conduct on the short-term rental dwelling property; and not violate parking or occupancy restrictions. The owner shall provide a copy of the Code of Conduct "good neighbor" Policy to all tenants at the commencement of occupancy of a dwelling.

(9) Fireworks. The use of fireworks is not permitted and violators will be prosecuted. *See* section 22-32(b)(ii)(3)(i)a, of the Marco Island Code of Ordinances.

(10) Advertisement. It shall be unlawful to offer or advertise any short-term rental dwelling for rent or lease in the City without that unit first being registered as provided in this Article. Where advertised, the registration number provided by the City must appear on all forms of advertisement and on the landing or "home" page for the dwelling when advertised over the internet. Alternatively, the registration number of a designated contact or property manager can appear in lieu of the individual property registrations numbers.

(11) Compliance with Other Regulatory Authorities. Properties subject to this Article must meet all applicable requirements of state law. To the extent provided by general law, violation of any state law relating to the subject matters contained in the Article shall also constitute a violation of this subsection; provided that no penalty under this Article shall be greater than that authorized by state law for violation of the state law provision.

(12) Evacuation. All rental properties shall be evacuated as required upon the posting of a nonresident evacuation order issued by the City, County or State.

SECTION 5. The Code of Ordinances, Marco Island, Florida, is hereby amended by creating Article V, entitled "Short Term Rentals" and adding a section to be numbered 8-103, which section reads as follows:

Sec. 8-103. Required Postings and Notice.

(a) Each registered dwelling shall have a clearly visible and legible notice conspicuously posted within the dwelling, containing the following information:

(1) The designated contact for the unit and a telephone number where the designated contact may be reached on a 24-hour basis.

(2) The occupancy limits, total and overnight, for the dwelling.

(3) The maximum number of vehicles allowed to be parked on the property and the location of on-site parking spaces.

(4) The trash and recycling pick-up day(s).

(5) A notice that no fireworks shall be set off and a statement that violations will be prosecuted.

(6) A summary of the City's noise ordinance.

(b) The information set forth in sub-section (a) must be kept current at all times by the dwelling owner. All tenants must be provided a Code of Conduct summary of the remaining general provisions of this Article including the penalties for violation as set forth in in section 1-14 of the City of Marco Island Code of Ordinances, and a copy of the current City registration.

SECTION 6. The Code of Ordinances, Marco Island, Florida, is hereby amended by creating Article V, entitled "Short Term Rentals" and adding a section to be numbered 8-104, which section reads as follows:

Section 8-104. Interpretation; Enforcement.

(a) Interpretation. All questions of interpretation, or application, of the provisions of this Article shall first be presented to the City Manager. In interpreting or determining the application of the provisions of this Article, the City Manager shall be guided first by the plain meaning of the words and terms in the code and second by the intent expressed therein. Thereafter, the City Council shall have the authority to hear and decide appeals from the decision or interpretation by the City Manager.

(b) Enforcement. Any violation of the provisions of this Article may be prosecuted and shall be punishable as provided in section 1-14, or chapter 14, of the City of Marco Island Code of Ordinances, including but not limited to: (i) a fine of up to $500 per violation, per day for continuing repeating violations; (ii) by civil citation up to $500 per offense; (iii) by the seeking of injunctive relief through the courts, or; (iv) any combination thereof. Each day of renting a dwelling without having a registration certificate issued pursuant to this Article shall constitute a separate and distinct violation of this Article. Tenants and owners may be prosecuted concurrently.

SECTION 7. Codification.

It is the intention of the City Council, and it is hereby ordained that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall constitute a new Article V to Chapter 8 of the City of Marco Island Code of Ordinances, and that the sections of this Ordinance may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be changed to "Section, "Article" or other appropriate word.

SECTION 8. Conflicts.

All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance.

SECTION 9. Severability.

(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) That in interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (* * * *) indicate a deletion from the Ordinance of text, which exists in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 10. Effective Date.

This Ordinance shall become effective on July 1, 2015, following its adoption by the City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 4th day of May 2015.

CITY OF MARCO ISLAND FLORIDA

By: _____
Larry Sacher, Chairman

Attest:

By: _____
Laura M. Litzan, City Clerk

Reviewed for legal sufficiency:

By: _____
Alan L. Gabriel, City Attorney

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2015 CA 167
DIVISION: 49

30 CINNAMON BEACH WAY, LLC, a Florida limited liability company, and VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC, a Florida limited liability company,

Plaintiffs,

vs.

FLAGLER COUNTY, a political subdivision of the State of Florida,

Defendant.
_____/

ORDER ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE came on for hearing before the Court on May 27, 2015 on Plaintiffs, 30 CINNAMON BEACH WAY, LLC and VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC's, Emergency Motion for Preliminary Injunction. The Court has heard the testimony of witnesses, received documents in evidence, heard the argument of counsel, reviewed the Motion and court file, and is otherwise duly advised in the premises. As explained below, the Court finds that with one limited exception, Plaintiffs have failed to establish that they are entitled to preliminary injunctive relief, and subject to that one exception, their Motion for Preliminary Injunction must be denied.

Plaintiffs in this case challenge the validity of an ordinance enacted by Defendant FLAGLER COUNTY ("the County") relating to short-term vacation rentals. The ordinance in question is Ordinance No. 2015-02, adopted on February 19, 2015 ("the Ordinance"), as amended by Ordinance No. 2015-05, adopted on April 6, 2015 ("the Amended Ordinance"). Plaintiff 30 CINNAMON BEACH WAY, LLC ("30 Cinnamon") is a Florida limited liability company that owns an 11 bedroom house at the address from which it derives its name. 30 Cinnamon uses this house, located in the Ocean Hammock subdivision of unincorporated Flagler County, as a short-term vacation rental property. Plaintiff VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC ("VRP") is a Florida limited liability company that manages various short-term vacation rental properties as agents for their owners, including the one owned by 30 Cinnamon. Stephen Milo is the managing member of VRP, and a member of 30 Cinnamon. VRP manages between 70 and 80 single family homes as short-term vacation rentals in Flagler County.

The subject properties that Plaintiffs either own or manage are "transient public lodging establishments", which Florida law defines as:

> [A]ny 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.

Fla. Stat. §509.013(4)(a)(1). As such, they are regulated by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation. The first issue in this case is whether and to what extent to which the County can also regulate those establishments. Assuming the County has the authority to regulate

short-term vacation rentals at all, the next issue is whether it has exceeded that authority by enacting the Ordinance.

THE ORDINANCE

The Ordinance constitutes an attempt by the County to regulate certain short-term vacation rental properties, specifically properties constructed as single-family or duplex dwellings. The recitals in the Ordinance are adopted as factual findings, only a handful of which are set out here. The County's findings of fact set forth that since 2011, it "has experienced a large increase in the construction of new, oversized structures for the primary purpose of serving as mini-hotels for short-term vacation rentals for up to as many as twenty-four (24) individuals". The County noted that according to the 2010 U.S. Census, the average household size in the County was 2.82 persons, and that the operation of some short-term vacation rental properties with occupancy of some nine times the household average was incompatible with established neighborhoods. The County found that in the absence of some mitigating standards, short-term vacation rentals "can create disproportionate impacts related to their size, excessive occupancy, and the lack of proper facilities if left unregulated". It also found that "the presence of short-term vacation rentals within single-family dwelling units in established residential neighborhoods can create negative compatibility impacts, among which include, but are not limited to, excessive noise, on-street parking, accumulation of trash, and diminished public safety". As such, the County found that "short-term vacation rentals locating within established neighborhoods can disturb the quiet enjoyment of the neighborhood, lower property values, and burden the design layout of a typical neighborhood".

Reduced to its bare essentials, the Ordinance requires that any property owner wishing to operate a non-owner occupied single or two-family residence located east of U.S. Highway 1 as a short-term vacation rental must apply for and obtain a short-term rental certificate from the County, as well as a County business tax receipt. The Ordinance sets forth the process for applying for a certificate, which includes payment of a fee, submittal of scale interior and exterior drawings, proof of septic capacity (if applicable), a draft rental agreement that conforms to the Ordinance, and required safety postings. The Ordinance further requires the installation of hard-wired interconnected smoke and carbon monoxide detectors, the installation of fire extinguishers on each floor, and requires that each sleeping room meet the single- and two-family dwelling minimum requirements of the Florida Building Code. The Ordinance requires an inspection of the property prior to the County issuing a short-term vacation rental certificate, and requires annual inspections thereafter.

The Ordinance also requires that each short-term vacation rental property owner designate a "short-term vacation rental responsible party". The responsible party must be an individual over 18 years of age, be available 24 hours a day, seven days a week, and be able to come to the property upon two hours' notice to respond to issues related to the property. He or she must also monitor the property at least once weekly to assure compliance with the Ordinance.[1]

[1] By contrast, if the owner of a short-term vacation rental also lives on the property as his or her permanent residence, then the property is wholly exempt from the Ordinance. This is so because of the County's finding of fact that an on-site owner "will likely manage any vacation rental more restrictively than any local regulation because the owner has a direct, vested interest in how the property the owner resides in is used and maintained."

Of key importance to the Plaintiffs is the maximum occupancy limits established in the Ordinance. In areas zoned for multi-family housing, occupancy is capped at 16 persons. In those areas zoned as single-family residential, the maximum occupancy is ten. This is so regardless of whether the structure in question will physically accommodate more people.

The County included in the Ordinance certain provisions for "vesting", which allow property owners time to come into compliance with the requirements of the Ordinance. Certain rights are automatically "vested" so long as the owner submits an application for a short-term vacation rental certificate no later than June 1, 2015. Assuming the owner timely submits the application, the following rights become vested:

a. Rental agreements entered into prior to February 19, 2015 for the period up to February 28, 2016 are vested and unaffected (although maximum occupancy may be capped at 14 people).

b. Rental agreements entered into prior to February 19, 2015 for the period after March 1, 2016 must be submitted to the County for verification and go through a vesting hearing process for a final determination. Rental agreements entered into after February 19, 2015 and for any rental period beyond January 1, 2017 must comply with the Ordinance.

c. Properties are given until December 1, 2015 to come into compliance with the minimum life safety standards of the Ordinance.

d. Maximum occupancy limits are phased in by capping occupancy at 14 persons (as opposed to ten) through February 28, 2018. Maximum occupancy is then reduced to 12 until February 28, 2021, and reduced to ten thereafter.

The Ordinance also provides for a separate vesting mechanism for owners desiring a higher vesting occupancy or different vesting schedule. This mechanism requires a specific vesting application, along with the provision of financial information

related to the property. The decision regarding vesting is made by a special master, whose decision is final.

Vested rights are not transferrable to another owner or another property. If a property is sold or transferred by operation of law (such as by the death of the owner), vested rights are lost and the new owner becomes subject to all terms of the Ordinance.

STANDARD FOR ENTERING A PRELIMINARY INJUNCTION

A preliminary injunction is an extraordinary remedy, and as such should be granted sparingly. See, e.g., Shands at Lake Shore, Inc. v. Ferrero, 898 So. 2d 1037, 1038 (Fla. 1st DCA 2005). "A temporary injunction may be entered only where the party seeking the injunction establishes: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) considerations of public interest support entry of the injunction." Blue Earth Solutions v. Florida Consolidated Properties, LLC, 113 So. 3d 991. 993 (Fla. 5th DCA 2013). It is against this legal backdrop that the Court must measure the relief Plaintiffs seek.

PREEMPTION

Plaintiffs claim that the regulation of short-term vacation rentals is the exclusive province of the State. They base this contention on Fla. Stat. §509.032(7) (2014), which states in material part as follows:

> (7) PREEMPTION AUTHORITY. –
>
> (a) The regulation of public lodging establishments .... including, but not limited to, sanitation standards, inspections, training and testing of personnel .... is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct

> inspections of public lodging .... for compliance with the Florida Building Code and the Florida Fire Prevention Code.....
>
> (b) 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.

Plaintiffs reason from this statutory language that with the exceptions of inspections for compliance with the Building and Fire Codes that the County is powerless to regulate vacation rentals. This Court does not agree.

"Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred." Sarasota Alliance for Fair Elections, Inc. v. Browning, 28 So. 3d 880, 886 (Fla. 2010). "Implied preemption is found where the state legislative scheme of regulation is pervasive and the local legislation would present the danger of conflict with that pervasive regulatory scheme." Id. (internal quotation marks and citations omitted). Determining whether implied preemption exists requires the Court to look to the provisions of the entire law, as well as to its object and policy. Id.

Plaintiffs argue that section 509.032(7)(a) contains an express statement by the Legislature of its intent to preempt the entire regulatory field for residential lodging establishments, thus ending the Court's inquiry. Accepting that reasoning would make whatever regulation the State chooses to impose on vacation rentals both the minimum and maximum permissible regulation. Alternatively, Plaintiffs contend that the statutory scheme in Chapter 509 and the rules promulgated thereunder demonstrate implied preemption under the test set forth above in Sarasota Alliance. Statutory history, however, does not support either position.

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 ss. 553.80 and 633.022. (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[2] and added an entirely new subsection (b), as shown below:[3]

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[2] Additions to the statutory language are shown in underline, while deleted language is shown by ~~strikeout~~.

[3] Chapter 2011-119 also added section 509.032(c), but that subsection is not germane to the issues before the Court.

(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 nutritional content and marketing of foods 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 ss. 553.80 and 633.022.

(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. See, e.g., Williams v. Jones, 326 So. 2d 425, 435 (Fla. 1976); Opperman v. Nationwide Mut. Fire Ins. Co., 515 So. 2d 263, 266 (Fla. 5th DCA 1987). 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 the 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 of 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. Were the County to attempt overriding the State's regulatory efforts by imposing lesser standards

on short-term vacation rentals, such an attempt would be preempted by the terms of section 509.032(7)(a). To read section 509.032(7) any differently would render the Legislature's actions in amending the statute in 2011 and 2014 meaningless surplusage.

Likewise, the Court does not believe that the Legislature has impliedly preempted the Ordinance. As stated above, concurrent local legislation may not conflict with state law. Masone v. City of Aventura, 147 So. 3d 492, 495 (Fla. 2014). "'Such 'conflict preemption' comes into play 'where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute.'" Id. (quoting Thomas v. State, 614 So. 2d 468, 470 (Fla. 1993)).

No such conflict preemption exists in the instant case. The evidence and argument presented at the hearing fails to show that the Ordinance irreconcilably conflicts with state law. The Ordinance does not stand as an obstacle to executing the full purposes of Chapter 509. In no way does it frustrate state law by lessening the requirements of the statute. The Ordinance imposes some additional requirements that supplement, but do not contradict, state law, which may affect approximately 150 properties. Moreover, as the County found, many of these properties were built as mini-hotels after the 2011 amendment to section 509.032(7), which expressly prohibited the County from restricting or regulating vacation rentals. The removal of that express prohibition has allowed the County to address a situation that the 2011 statutory amendment arguably exacerbated. The Court finds that it does so without infringing upon the regulatory rights and duties of the State.

In sum, the Court finds that the Ordinance is not preempted by state law.

IMPAIRMENT OF CONTRACT

"No ... law impairing the obligation of contracts shall be passed." Art. I, §10, Fla. Const. As Plaintiffs point out, "An impairment ... occurs when a contract is made worse or diminished in quantity, value, excellence or strength." See Motion for Temporary Injunction at 14 (quoting Lawnwood Medical Center, Inc. v. Seeger, 959 So. 2d 1222 (Fla. 1st DCA 2007). The risk of unconstitutionally impairing contract rights comes into play when a statute or ordinance is given retroactive effect to contracts already in place. See, e.g., Cenvill Investors, Inc. v. Condominium Owners Org. of Century Village East, Inc., 556 So. 2d 1197, 1200 (Fla. 4th DCA 1990). There exists a presumption that parties who enter into a contract do so in contemplation of existing law. Id. As a result, the issue of impairment of contract does not apply to rental agreements entered into after the effective date of the Ordinance. As to contracts in existence at the time a law is enacted, however, Florida law follows the principle that "virtually no degree of contract impairment is tolerable". Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774, 780 (Fla. 1979); Yamaha Parts Distributors, Inc. v. Ehrman, 316 So. 2d 557, 559 (Fla. 1975).

The vesting provisions of the Ordinance constitute an attempt to mitigate the effects the Ordinance may have on rental agreements entered into prior to February 19, 2015. Assuming such a contract specifies a rental period ending no later than February 28, 2016, the contract is vested and unaffected so long as the owner submits an application for a short-term vacation rental certificate. If the rental period will extend

beyond February 28, 2016, then the contract must go through a vesting hearing process. Thus, those owners who do not timely apply for a certificate, who apply but do not receive a certificate for whatever reason, or who entered into rental agreements before February 19, 2015 for a rental period after February 28, 2016 have no way to know at present whether they can fulfill their contractual obligations or reap their contractual rights. VRP introduced into evidence nine rental agreements it entered into prior to February 19, 2015[4] with occupancy dates ranging from the summer of 2015 to as late as August 2016.

Even if the Ordinance is otherwise valid, the Court finds that the County cannot constitutionally apply the Ordinance to rental agreements already in existence at the time the Ordinance was enacted. The most straightforward example deals with maximum levels of occupancy. If prior to February 19th the owner of a short-term vacation rental has entered into a rental agreement for a house with a maximum occupancy of 20, and the parties contemplated that 20 people would occupy it during the term of the lease,[5] then the owner cannot fulfill the contract if the Ordinance immediately caps occupancy at 14. Similarly, the owner of a short-term vacation rental may decide that he or she does not wish to apply for a short-term vacation rental

[4] VRP placed ten rental contracts into evidence; however, one of the contracts in Plaintiffs' Composite Exhibit 8 was entered into on February 20, 2015, one day after the cutoff described in the Ordinance. See Plaintiffs' Exhibits 8 and 11.

[5] VRP's rental agreements require that the "Guest" list the names, ages, and dates of occupancy of each person staying in a unit, and further limit permissible occupants to those listed on the rental agreement. VRP's rental agreements also require disclosure of the license tag numbers of each vehicle to be parked at the property. See Plaintiffs' Exhibits 8 and 11. Interestingly, VRP requires all this information in its rental agreements while simultaneously arguing to this Court that the Ordinance should not require VRP to do so because compliance is "virtually impossible". See Motion for Preliminary Injunction at 23-24.

certificate or otherwise comply with the Ordinance. While this may keep the owner from continuing in business by accepting new rental agreements, whatever rental agreements the owner entered into before February 19, 2015 were legal when made (at least so far as the Ordinance is concerned), and the County cannot use the Ordinance to prevent the owner from fulfilling those agreements.

EQUAL PROTECTION

Plaintiffs next argue that the Ordinance violates the Equal Protection Clause of the Florida Constitution. Art. I, §2, Fla. Const. Plaintiffs correctly recognize that because no suspect classes or fundamental rights are involved, the constitutionality of the Ordinance for equal protection is measured under the "rational basis" test. The rational basis is a very deferential standard indeed. It requires only that the Ordinance must be rationally related to a legitimate governmental objective, and must not be arbitrarily or capriciously imposed. E.g., Department of Corrections v. Florida Nurses Ass'n, 508 So. 2d 317, 319 (Fla. 1987). As the Fifth District Court of Appeal has observed,

> The legislation must be sustained if there is any conceivable basis for the legislature to believe that the means they have selected will tend to accomplish the desired end. Even if the court is convinced that the political branch has made an improvident, ill-advised, or unnecessary decision, it must uphold the act if it hears a rational relation to a legitimate governmental purpose.

Zurla v. City of Daytona Beach, 876 So. 2d 34, 35 (Fla. 5th DCA 2004) (quoting Cash Inn of Dade, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 1241 (11th Cir. 1991)). Further, it is unnecessary to engage in courtroom fact-finding to determine whether a

rational basis exists; it "may be based on rational speculation unsupported by evidence or empirical data." Zurla, 876 So. 2d at 35 (internal quotations and citations omitted).

Plaintiffs claim that the Ordinance irrationally distinguishes between two classes of short-term vacation rentals: (1) non-owner occupied single-family and duplex dwellings located east of U.S. Highway 1, and (2) all other short-term vacation rentals, such as condominiums, those located West of U.S. Highway 1, and those which are owner-occupied. The Court disagrees, and finds that the County has drawn a rational distinction between these two classes.

The County set forth extensive factual findings in the Ordinance. Among them were that the vast majority of short-term vacation rentals in Flagler County are located east of U.S. Highway 1, and that the ones situated west of U.S. Highway 1 were primarily hunting camps, owner-occupied, or located on larger lots in a more rural setting. The County also found that it was not necessary (at least at present) to regulate owner-occupied short-term vacation rentals, because the owner would out of self-interest regulate the property more restrictively than the County could by Ordinance. The County also found that it was not necessary to apply the Ordinance to vacation rentals such as condominiums because multi-family housing is typically built to a more stringent standard, and because condominiums are required to be governed by an association which can itself provide the necessary regulation. In applying the "rational basis" standard of review, it is not the province of the Court to second-guess these factual findings.

Plaintiffs further contend that the deadline in the ordinance for applying for a short-term vacation rental certificate is arbitrary and capricious. Plaintiffs note that the

Ordinance originally required applications to be submitted by April 15, 2015, and that the County had not even developed the application at the time it enacted the Ordinance. The County addressed this issue by enacting the Amended Ordinance, which changed the application deadline from April 15 to June 1, 2015. Plaintiffs now complain that the June 1st deadline is "purely arbitrary and capricious". What this argument ignores, however, is that to some degree the selection of any date will always be subject to a claim that it was selected arbitrarily or capriciously. It would be no more or less "arbitrary" to select a date a day, week, month, or six months later. Unless Plaintiffs can show that the County selected a date it knew applicants could not physically meet, they cannot establish that the June 1st date is arbitrary or capricious.

The evidence Plaintiffs introduced at the hearing establishes that it is not impossible for them to comply with the June 1st application deadline. Plaintiffs' consultant, Craig Meek, testified that although Plaintiffs had filed no applications as of the date of the hearing, they had 47 ready to file at that time. Meek said that there were about 22 more that VRP needed to file, but it could not do so because it could not access the properties to take the appropriate measurements for scale drawings. This fact does not, however, render the June 1, 2015 deadline arbitrary. Plaintiffs have been on notice of the need to assemble information for the applications since at least February 19, 2015. While these 22 properties may be heavily rented, there is down time between tenants when the property is being readied for the next guests. If Plaintiffs need to take interior measurements or photographs, they could have done so at that time. That the application forms may not have been ready until sometime in April does not change the fact that the Ordinance specifically calls for scale drawings, which

Meek testified would require interior access. In other words, if Plaintiffs needed to gain interior access to their properties in order to prepare drawings, they knew that fact regardless of whether they had a blank application in hand.[6] The June 1, 2015 application deadline is neither arbitrary nor capricious.

Based upon all the foregoing, the Court must determine Plaintiffs' entitlement to a preliminary injunction by considering rental agreements they entered into after February 19, 2015 separately from those entered into before February 19, 2015.

POST FEBRUARY 19, 2015 CONTRACTS

Both parties appear to equate irreparable injury with the absence of an adequate remedy at law. See Motion for Preliminary Injunction at 24-25; Response in Opposition at 13. As the County states in its response, "irreparable harm can be shown by demonstrating either that the injury cannot be redressed in a court of law or that there is no adequate legal remedy." See Response in Opposition at 13 (citing K.G. v. Florida Dept. of Children and Families, 66 So. 3d 366, 368 (Fla. 1st DCA 2011)). "For injunctive relief purposes, irreparable harm is not established where the potential loss can be adequately compensated for by a monetary award." B.G.H. Ins. Syndicate, Inc. v. Presidential Fire & Cas. Co., 549 So. 2d 197, 198 (Fla. 3rd DCA 1989). "Irreparable injury will never be found where the injury complained of is doubtful, eventual, or contingent". Yachting Promotions, Inc. v. Broward Yachts, Inc., 792 So. 2d 660, 663 (Fla. 4th DCA 2001) (internal quotations omitted). Plaintiffs have failed to establish that

[6] As an aside, the Court notes that paragraph 13 of VRP's rental agreements, titled "Management Access to Property During Your Stay", allows VRP or its vendors to arrive unannounced "to conduct regularly scheduled services", which "will require entry into the property for a brief period of time, even if you are away during their arrival." See Plaintiffs' Exhibits 8 and 11.

they will suffer irreparable harm if the Ordinance is enforced against them prospectively, i.e., as to any rental agreements entered into after February 19, 2015. The Ordinance imposes certain requirements on Plaintiffs that will no doubt entail economic cost, but continued compliance with the law is but one of many costs of doing business. If the maximum occupancy requirements of the Ordinance adversely affect Plaintiffs, it will do so because of lower rental income (or in the case of VRP, lower management fees) or perhaps diminished property values (although no evidence was presented on this point). These are all issues that can be addressed in a court of law in an action for money damages.[7] Accordingly, Plaintiffs fail to satisfy the first two elements of their claim for preliminary injunctive relief.

Plaintiffs have further failed to demonstrate a substantial likelihood of success on the merits. For all the reasons set forth above, the Court finds that the Ordinance is neither expressly nor impliedly preempted by state law. The Court further finds that the Ordinance is rationally related to a legitimate governmental objective, has not been arbitrarily or capriciously applied, and therefore passes muster under the Equal Protection Clause of the Florida Constitution.

Finally, considerations of the public interest do not require the entry of a preliminary injunction. It is true, as Stephen Milo testified, that tourism is an important component of Flagler County's economy, and he testified without contradiction that the short-term vacation rental industry employs many people in Flagler County. On the other hand, however, the County has made a number of factual findings in the

[7] Plaintiffs also indicate in their Verified Complaint that they reserve the right to later assert a claim under Chapter 70, Florida Statutes, commonly known as the "Bert Harris, Jr. Act." See Verified Complaint, ¶179.

Ordinance setting forth the public interests that will be met by enforcing the Ordinance. The Court will not substitute the County's factual findings or policy determinations for its own.

PRE-FEBRUARY 19, 2015 CONTRACTS

The Court must make one exception to the foregoing analysis. Plaintiffs' claims stand on a different footing with respect to rental agreements entered into prior to February 19, 2015. These contracts were not subject to the Ordinance when they were entered into because the Ordinance did not exist. The fact that the County created a vesting schedule in the Ordinance is itself evidence that the County recognized the potential for the Ordinance to impair pre-existing rental agreements. As it currently stands, some rental agreements entered into before February 19th will be automatically vested if the owner applies for a certificate, and some will have to go through a separate vesting process before a special master. Those owners who do not apply for a certificate will presumably be prohibited from using their properties as short-term vacation rentals. The Court finds that to apply the Ordinance to rental agreements in existence before February 19, 2015 amounts to an unconstitutional impairment of contract, regardless of the date on which the vacation rental is to be occupied. Plaintiffs have thus established a substantial likelihood of success on the merits of their impairment of contract claim.

As to this discrete set of contracts, the Court also finds that Plaintiffs have established the likelihood of irreparable harm and the lack of an adequate remedy at law. The only way Plaintiffs can fulfill these pre-existing rental agreements is to apply for short term vacation rental certificates and otherwise comply with the Ordinance. While

there is no reason to suspect that the County would not issue the necessary certificates, there is of course no assurance that it will.[8] Plaintiffs are therefore left in the untenable position of either not complying with the ordinance and thus anticipatorily breaching their rental agreements, or attempting to comply with the Ordinance and hope they will be able to fulfill those agreements. The Court finds that by being put to this "Hobson's choice", Plaintiffs have satisfied the "irreparable injury" and "inadequate remedy at law" elements.

Finally, as to this limited number of rentals, the public interest will not be harmed by entry of a preliminary injunction. As the Court has already stated, the public policy reasons and factual findings the county articulates as support for the Ordinance are both sound and rational. By enacting the Ordinance, the County is responding to an issue it finds was created or exacerbated in part by the 2011 amendment to Fla. Stat. §509.032(7), and particularly the addition of section 509.032(7)(b). Yet the evidence shows that tourism is an important component of Flagler County's economy. There is a public interest to be served in protecting the guests under these pre-existing rental agreements (who may be new or returning visitors to Flagler County) from being "left in the lurch". There is likewise an interest to be served by not disturbing the economic expectations of those who work in the short-term vacation rental industry, or those of its vendors and suppliers with respect to rental agreements already in existence when the Ordinance was adopted. While these interests are not sufficient to prevent prospective

[8] This is not to suggest that the County would arbitrarily deny issuance of a certificate. To the contrary, there may be myriad reasons why an applicant would ultimately not qualify for or receive the certificate it seeks.

application of the Ordinance, they are sufficient to support Plaintiffs' claim for preliminary injunctive relief as to the pre-February 19th rental agreements.

Based upon all the foregoing, it is hereby ORDERED AND ADJUDGED as follows:

1. This Court has jurisdiction over the subject matter of this action and the parties hereto.

2. Plaintiffs' Motion for Preliminary Injunction is hereby GRANTED in part and DENIED in part.

3. The Ordinance is not preempted, either expressly or impliedly, by state law.

4. The Ordinance does not violate the Equal Protection Clause of the Florida Constitution.

5. The Ordinance is unconstitutional as applied to short-term vacation rental contracts entered into prior to February 19, 2015.

6. Defendant FLAGLER COUNTY, its agents, representatives, and assigns are hereby preliminarily enjoined from enforcing Flagler County Ordinance 2015-002, as amended by Flagler County Ordinance 2015-005, against Plaintiffs 30 CINNAMON BEACH WAY, LLC and VACATION RENTAL PROS PROPERTY MANAGEMENT, LLC, with respect to any short-term vacation rental agreements entered into prior to February 19, 2015.

7. The foregoing injunction shall take effect immediately upon entry of this Order; however, it shall automatically dissolve and become void unless Plaintiffs post with the Clerk of this Court a cash or surety injunction bond in favor of the County in the

amount of $5,000.00 no later than 4:30 p.m. on June 4, 2015. Any party may move this Court either to increase or decrease the amount of said bond.

8. In all other respects, Plaintiffs' Motion for Preliminary Injunction shall be, and the same is hereby DENIED.

DONE AND ORDERED in Chambers at Bunnell, Flagler County, Florida this 1st day of June, 2015.

Michael S. Orfinger, Circuit Judge

Copies furnished to:
Peter B. Heebner, Esq. at pheebner@lawdaytona.com
J. Stephen Garthe, Esq. at sgarthe@lawdaytona.com
Gregory T. Stewart, Esq. at gstewart@ngnlaw.com and legal-admin@ngnlaw.com
Edward A. Dion, Esq. at edion@ngnlaw.com
Albert J. Hadeed, Esq. at ahadeed@flaglercounty.org